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Sample Conference

[Student brings in copy of critiqued paper, and teacher already has copy of paper. Teacher has student sit next to teacher.]

You can establish some rapport with students by talking about a non-legal writing issue. Sports teams, TV, and the weather are obvious choices.

Generally, you should have the student sit beside you rather than across from you during the conference.

Teacher makes sure that the student is ready and able to take notes. You may wish to discuss conference protocols in class.

Engage the student ASAP to avoid the “descent into nodding.”

Teacher: Hi, come on in! You’re right on time! So are you surviving this weather?

Student: Oh, I grew up in the snow belt in Cleveland, so this is nothing to me.

Teacher: Sit down right here. I grew up in Toledo, which doesn’t get nearly the snow that east Cleveland does. But I was astonished when I moved to Columbus that just two and a half hours south, the weather would be so different.

Student: Yeah, I’m surprised that it took this long to get our first real snow. Back home they’re on their fifth good snow!

Teacher: Okay, do you have your paper?

Student: Yes. [Holds up paper]

Teacher: Did you have time to go through it and review my comments?

Student: Yeah; I did it last night.

Teacher: First, here’s some paper and a pen – I find things go better when the student takes notes. Or do you want to use your laptop? [student gets settled] Let me look at my copy real quick to remind myself Okay, first question: What do you think was the best thing about the paper?

Student: I think my organization was pretty good.

Praise the student for recognizing his or her own strengths and weaknesses.

Teacher: Yes, I agree with you. Organization was great. We'll talk about that in a minute. Okay, on the flip side, what did you struggle with the most? What are you worried about?

Student: I knew what issues to talk about, but I feel like I wasn't sure what to say about those issues – I'm afraid I kind of rambled in some places.

Teacher: Yeah, I noticed some stuff there. Good catch. We'll hit that as well. And at the end, I want you to ask me any questions you have, either about any comments you didn't understand, or about anything that comes up today. Take good notes as we go through, because I hate it when people sit here and nod and nod and nod, and then they leave with no notes and so they forget what they need to do.

So. I want to talk about three things today. First, why your organization was so damned good; second, your legal research; and third, the analytical structure. I also want to try to answer any questions you have – so even before the end, feel free to ask questions as we go.

Student: Okay.

Teacher: Okay. You're right that your organization was the best thing. I just want to be sure we're on the same page. How did you go about choosing your large-scale organizing principle? How did you decide on that?

Because so much feedback is negative, it's important to give praise when appropriate, and to be specific in that praise. Don't presume that students know what they did right, or know why it was right.

Student: Well, it seemed like the courts always talked about the issues in that order; duty, breach, causation. And then I broke causation into two sub-issues because there were really two different standards being applied, so I had to use different cases for each one. And I remember you said in class that that was a signal for creating sub-sections.

Teacher: Excellent. Although I don't think you've found all of the best authorities, which we'll talk about in a minute, you've chosen a great way to organize your analysis. You did a good job of outlining the rule, and using that outline to structure your legal analysis.

Students often claim lack of time when there was really a lack of understanding. This teacher tries to use a face-saving method to force the student to talk about the issue.

[Teacher cont'd] And it was great that you broke causation into two sub-issues. That was exactly what you needed to do to address the two standards that courts use to analyze causation.

Before we get to your analysis, I want to talk about research. How did you go about it?

Student: Yeah, I know my research could be better. Don't worry. I understand how to do research – I just didn't have time. I'll be fine for the final draft.

Teacher: I'm sad that you didn't have time, but we're going to take some time now to talk about this anyway. A lot of times students don't have enough time to do something, but also there is some crucial aspect of the thing that they don't understand, and they don't even realize what they don't understand. And I don't find out what they're confused about until the final draft, and then I have to take points off. So I'm going to take a little time now to make absolutely sure we're on the same page. And if you already get this, that's okay. Either way, it's good for me to understand what students understand about the research process.

So, details: how did you go about your research?

Student: Well, I mostly used Lexis.

Teacher: Okay, I guess what I mean is, what specifically did you start with? Did you do any background reading before you began looking at cases?

Student: Um, no, I think I just put in "negligence" and then the facts that we had.

The teacher gives some positive response, but reminds the student of course standards that were discussed in class.

Teacher: That method can lead to some good results, but there might be better ways to proceed. Like we talked about in class, a lot of times, it can be helpful to do some background reading before you start – in digests or encyclopedias or law review articles. That reading can help you identify good search terms, and know where to look. Of the cases that you have, what do you think is the best one?

Student: Um, Ballou, I guess.

Throughout, the teacher uses a gentle Socratic method when appropriate so that student discovers answers independently when possible.

- Teacher: That case is very much on point factually, you're right. What was the issue in that case?
- Student: It was a negligence case.
- Teacher: That's right. Now, what was the duty based on? Why did the fraternity have a duty?
- Student: It had a duty because of the fraternity/pledge relationship.
- Teacher: Good. And what is the duty based on here?
- Student: Um, the duty is based on Riegert assuming the duty to protect his drunk friend, when the friend was already drunk when he took him away from the party.
- Teacher: Good, that's right. Do you have any cases where the duty was based on an assumption of duty? I'm not saying Ballou isn't relevant at all – it is – but I think for the duty issue that you might want to focus on cases where there was a duty assumed, instead of on cases where the duty came from something else.
- Student: [flips through cases] Well, I have Carson v. Adgar, but there the court held that the guy had *not* assumed a duty.
- Teacher: You're right as to the result, but is the rule from that case relevant at all? Which rule is more useful for the duty issue? Carson or Ballou?
- Student: Oh! I guess I would use the rule from Carson if I had to choose.
- Teacher: And you do have to choose! ☺ You need a rule for this section, and you're right that Carson is more on point as to the duty issue. That court identified and applied the rule about when and how someone assumes a duty. It's true that they found that the person did *not* assume the duty, but they used the right rule, and so the case is good for rule and for rule explanation, because it tells you something about how that rule is applied. Now, how could you find other relevant authorities?

Note student epiphany here. The student in this idealized conference has a few epiphanies; in real life, be grateful for even one in a conference.

Sometimes, when research is a problem, it's good to hop online with the student and have the student conduct research in front of you.

- Student: I have no idea.
- Teacher: Can Carson help you at all?
- Student: Well, I could use headnotes and key numbers, and I could use “more like this,” I guess
- Teacher: All good ideas. And what are phrases-that-pay from Carson? What phrase from that case could you use as a search term?
- Student: Um, duty?
- Teacher: How did the court analyze the duty? What question did they ask?
- Student: They asked whether he had assumed the duty by affirmatively taking charge of the defendant, I think.
- Teacher: Great – a case that had a sentence like that in it would really be helpful to you. What words are in that sentence that are significant terms?
- Student: So I just look for the words “assumed” or “take charge”? Wouldn't that get me a ton of irrelevant cases?
- Teacher: Yes they would, individually. But when you put them together in the right way, in the right juxtaposition, you can reduce the number of irrelevant cases. For example, assum! /3 duty is going to be better. And what kind of case are you looking for?
- Student: A good one?
- Teacher: Perfect! ☺ No, I mean, is this a breach of contract case?
- Student: Oh, no, it's a torts case. Should I put the word “tort” in the search?
- Teacher: No, let's get more narrow. How would the court describe this case? More narrow than tort – what kind of tort is it?
- Student: Oh, um, it's a negligence case.

Teacher: And would the word “negligence” be in the same sentence with “Assume a duty” or “assumption of duty”?

Student: No, but I think maybe same paragraph.

Teacher: Sounds good! So you can try each of those significant terms within the same paragraph as negligence – and be sure to structure it so you catch *negligence* and *negligent* – you know how to do that, right?

Student: The exclamation point thingy?

Teacher: Right. So what are three searches you could do that would pull up relevant cases?

Student: Um, assum! within 4 of duty within paragraph of negligence?

Teacher: Good – and make sure you work the parens and the exclamation points right on that. What else?

Student: Um, take charge within 4 of duty within paragraph of negligence? And maybe affirmativ! the same?

Teacher: Sounds good. Now, not all of these will necessarily work – and some you may need to broaden or narrow (e.g., w/sentence or w/paragraph of duty rather than w/4). But at least one of those should get you some hits, I would think. Now take a minute and write all of those down.

Sometimes you should pause the conference to give the student a moment to record exact information.

[waits]

And what else? What’s the most basic thing to do to check the validity of a case?

Student: Shepardize it? Keycite it?

Teacher: Great. Exactly right. As I said in class, that won’t tell you everything about the validity of a case; sometimes courts overrule legal principles in cases without mentioning the cases, and so those don’t show up on Shepard’s or Keycite. But it’s a good place to start, *and* it’s a good way to find more relevant authority. Be sure to do both Shepard’s *and* Keycite.

Students will often reveal misunderstandings or misapplications of things you said in class. In the conference, praise what's right and correct what's wrong. Then, make a mental (or physical) note to correct the problem with the current class and to avoid this misunderstanding next year.

Note that the teacher is leading pretty directly here. You should not always use this technique, but it is appropriate on occasion. It depends on the needs of the student and on where the student is in the writing process.

[Teacher cont'd] All of those methods – headnotes, “more like this,” and Shepards/Keycite – are good ways to find more cases. Did you look for law review articles or ALR?

Student: Not really. You said that you shouldn't really cite those in memos.

Teacher: It's true that those are usually not worth *citing*, but they are still worth *reading*. Remember that we talked about reading these kinds of sources at the beginning of your research? They can educate you about the area of law, and teach you what the phrases-that-pay are. And they can be good finding tools for cases.

And if you don't have any law review or ALR pieces but you have one good case, you can work backwards. Search for the case in a law review/ALR database to see if that case was cited in articles in law reviews or ALR, and then you can see what other, more recent or more on-point cases are cited in those same articles. In other words, don't cite those articles, just use them as finding tools or learning tools. One more thing about research before we move on. Take a look at your section on breach. How many cases are cited there?

Student: [reviewing paper] Only one – and I know it's not really a good one.

Teacher: But I'm looking at your causation section, and I see you've cited Hurd. Did that court make a finding about breach?

Student: No, the issue in that case was causation.

Teacher: Causation was the issue the court spent the most time talking about, true. Was there a finding as to liability in that case?

Student: Um, yeah, the bus company was liable.

Teacher: So what was the finding as to breach?

Student: [silence]

Teacher: What are the elements of negligence?

Student: Duty, breach, causation, injury.

Teacher: Good. And is that a conjunctive or a disjunctive test?

Student: Disjun. . . *Conjunctive*. You need to prove all the parts.

Teacher: Good. So if the court found liability, what did it find as to breach?

Student: Oh, I guess that they found that it existed, that there was breach.

Teacher: So could Hurd be helpful at all?

Student: Do you want me to use it to explain the breach rule?

Teacher: Why not?

Student: Well, they talked about causation a lot more than they talked about breach. Is it really a good case to use for breach when they hardly talk about breach at all?

Teacher: Of course it's easier to use a case if the court goes into a lot of detail about a holding, but remember that you have to look at what a court *does* as well as what it *says*. if you have the rule, and the facts, and you know what the court did – how the decision came out – then you know something about how courts apply that rule to the facts. You want to try to find some more cases – and we'll be doing some group research in class this week to try that out – but you have one already that you can use.

I think a lot of times that students forget that you have to read cases differently in legal writing than in your casebook courses. In a lot of casebooks, the cases are edited so that it looks like the court decided only one issue. But in unedited cases, in real-life cases, it's easier to see that courts often decide lots of issues and sub-issues in order to decide the case as a whole. For example, what *you've* just recognized is that when a court makes a finding of liability as to negligence, it has – by definition – it has decided what?

Now we find out the real reason behind the student's hesitancy to use Hurd for breach.

Students will often reveal profound misconceptions in conferences, if you are lucky. Although this teacher is a little tactless, she tries to redeem herself and encourage further revelations of this type.

The teacher had two planned topics for the conference: research and use of the elements of an analytical unit of discourse. But the student's comments led her into a discussion of two related topics: choice of authority and use of case descriptions.

Student: Um, it has decided that there was a duty, there was a breach, there was causation, and there were damages.

Teacher: Exactly. So therefore a case in which there is a finding of liability is worth checking out for each of the elements. The case might not always be useful, but it's worth checking out.

Student: But I really like Hurd for causation, and so I wanted to save it for the causation section.

Teacher: Why can't you just cite it in both sections? [eyebrows up] Do you think that you're allowed to cite a case in only one section?

Student: [embarrassed] Um, yeah, but I guess I can see by the look on your face that I'm wrong. But won't it be bad to repeat the exact same case description twice?

Teacher: First, thank you *so much* for telling me this. It really helps me understand how we can make this document better. And I'm sure if you had this misunderstanding, other people did too. So now I know I have to talk about this in class some more. So thank you.

Now you also just told me that you think that if you use a case twice, you have to use the same case description twice. And I know I'm looking alarmed again, and I'm sorry if I'm getting sort of obnoxious here. Let's talk about case descriptions for a minute. First, what are the elements of an effective case description?

Student: [thinks] Is that CREXAC? Conclusion, Rule, Explanation, Application, Conclusion?

Teacher: No, those are the elements of an analytical unit of discourse. A *case description* is something that is part of the rule explanation section – you use cases to explain rules, and you need to describe those cases. So does that help you remember?

Student: Is that, like, the issue, rule, facts, and reasoning thing?

Teacher: Yeah, that's it. And so what would the "issue" be in the causation section?

Student: Um, negligence?

Teacher: No, the narrow issue. The sub-issue, if you want. And those four elements are right, but remember that each one should have a big fat "relevant" in front of it. So what would be the *relevant* sub-issue in the causation section? Go for the obvious answer.

Student: Oh! Causation! And I guess in the breach section it would be breach. So that would make it different enough?

Teacher: Yes, because the facts and the reasoning will be differently-focused, as well. And frankly, even if they were the same, you should still cite a case twice if it is relevant to two different sections of the argument. It would be very rare to need to repeat the exact same information, but sometimes some small little point might need to be repeated – don't let that worry you.

Are you getting this?

Student: Yeah, I think so. Is this in the book anywhere?

Teacher: Yeah, you should review chapter six. Now let's talk about your legal analysis. Can we take a look again at the legal causation issue? Let's look at the sub-section where you discuss foreseeability. Did you annotate your analysis in the margins, like I asked in my comments?

Student: [showing paper] Oh, yeah. Here.

Teacher: Okay, I wanted to look at rule, explanation, and application for this sub-section. Do those terms sound familiar?

Student: [silence]

Teacher: I think you just mentioned them before, when I was asking you about the elements of a case description. Rule, Explanation, Application?

Student: Oh, yeah, they're part of CREXAC. Those are the core parts of the formula, the paradigm, from the textbook.

Teacher: And what it is the formula for?

Student: For how you discuss a controversial issue.

Teacher: Good! Now here, where did you explain the rule for this aspect of causation?

Student: In this paragraph here.

Teacher: And how do you explain a rule, in general?

Student: [Thinks.] You tell how courts have applied the rule in the past.

Teacher: Yes! And I see that you are explaining the rule in this paragraph. But you say that you are applying the rule in the next paragraph, right?

Student: Right. I'm applying the rule from that case.

Teacher: Okay. But if you've already applied the rule to the facts, why do you bring in more cases?

Student: I'm explaining the rule from each case – each case has a different rule.

Teacher: Then why do you have them all in this section?

Student: Because they are all making the same point.

Teacher: And what is that point?

Student: [looks at paper]

Teacher: [covers up paper] Just tell me in your own words.

Student: The point is that a requirement for causation is that some sort of harm be foreseeable from defendant's actions.

Teacher: So does each case have a different rule, or the same rule?

Student: Well, none are exactly the same, but a couple of them are pretty close.

Teacher: Remember, this is why you get the big bucks! You synthesize these various close articulations of the rule into *one* rule. You articulate the rule once – okay, this is a visual, I’m going to do my little hula dance here – you articulate the rule once, and then you explain it using the various cases. It’s okay if those cases use slightly different language, as long as they are using essentially the same rule. So what do you need to do?

Student: [Silence]

Teacher: [holding out book]: Why don’t you read this part right here:

Student: [reads, then says]: Um, I’m supposed to finish explaining the rule before I apply it to the facts?

Teacher: Why?

Student: Because the book says so?

Teacher: [gentle sarcasm] Yes, that’s a level of understanding that teachers just love to see. ☺ Now, when you re-read the chapter tonight, ahem, you’ll see that there’s a reason for that guideline. It’s based on psycholinguistic theory – which they probably don’t mention in the book – but the reason you finish the explanation before you do the application is that readers understand the application better if they understand the rule first.

Student: And the explanation is what helps the reader understand the rule.

Teacher: Right. Excellent. Be sure you review that chapter before you revise. So what do you need to do here?

Student: Make one rule? And move all my explanations up to above my application?

Teacher: Right. Excellent. And what about your rule applications?

Student: So I lump all my applications together then, too?

Teacher: That's a great start – and “lump” is the precise legal term. ☺ You're going to have to shorten this some – this is pretty repetitive here, and you'll see that better when all of your applications are together. Are you sure you get my point here? Your brow looks all furrowed.

Student: Yeah, I think I get it. It's just that I've been thinking of the Hurd rule, and the Ballou rule, and it's just hard to start thinking of them all as the same rule.

Teacher: It's true that when a court changes a rule pretty profoundly, that the new rule often takes its name from that case – the Miranda rule is probably the best example of that. But tons of courts applied the Miranda rule, and it was still the same rule when they were done (although I know recently it has changed). If a court applies the same rule to a new set of facts, don't presume that it's a new rule. Try to decide if that court would have reached the same decision as the courts in the other cases you're citing. If all the courts would have reached the same decision in all the cases – they all would have looked at the rule the same way and said that it works the same way – it's probably the same rule. Are you with me?

Student: I guess so, but it still seems weird to me.

Teacher: Legal writing is different from other writing, so some things are going to seem weird. Tell you what: when you're revising, if it still seems weird, please drop me a private memo footnote and try to explain to me exactly where it feels weird and why it feels weird. That will help me make sure that we're on the same page. And if you get it done by Monday night, you can e-mail it to me with your questions. That way we can make sure we're on the same page before the final draft is due.

I think it will help if you start your application with a direct statement of application.

If you offer students the opportunity to produce an interim draft (or, as here, a partial draft), give a deadline that will save your sanity in case multiple students take the offer.

[Teacher cont'd] Instead of starting by comparing your case to the authority cases, start by saying phrase-that-pays equals or doesn't equal my facts. So think: how does this rule apply to your facts here?

Student: Um . . . there was foreseeability.

Teacher: Oh, I know you can do better than that. What was foreseeable here?

Student: It was foreseeable that some injury would occur when Riegert left Kroger alone.

Teacher: Why was it foreseeable?

Student: Because Kroger was drunk and unconscious.

Teacher: Good! Anything else?

Student: He was in an unfamiliar place?

Teacher: Good! Can you put it all together?

Student: It was foreseeable that Kroger would be injured when Riegert left him alone because Kroger was drunk and unconscious in an unfamiliar place.

Teacher: Good! Work on the elegance and phrasing a little bit, but that's a great start to your application. Take a minute and write that down. [waits.] Okay, we're almost out of time. Do you have any questions for me that we haven't covered yet?

Just as acronyms are often ineffective in formal writing, cryptic abbreviations are often ineffective in written critiques. Use as few as possible, and be sure that you provide a key with each paper.

Student: [looking over notes] Um, we've hit this one, and this one, but . . . Oh yeah! I wanted to ask you what this means – [shows mark on paper.]

Teacher: V.T. That means "Verb tense." That's in the key on the first page – see? You've used present tense to describe the facts of your cited cases, but those facts happened in the past, so they should be in past tense.

Student: But didn't you say that we should use present tense for this?

Students will often misquote what you said in class. Try to clarify in a way that saves both your faces, and take extra care next time. Recognize, though, that no matter how clear you are, some students will get it wrong.

Teacher: I don't think I said that. If I did, I mis-spoke, but I think maybe you misunderstood me. What I probably said is that the *rule* from a case is usually in present tense. So, you say "the court held [past tense, because the court did everything in the past] that an employer has a duty to provide a safe workplace [present tense, because the rule is in current force]." This is tricky, because if you're talking about how the court applied that rule in that case to those facts, use past tense. For example, "the court held that Paperbook Publishing had a duty to provide Steve Johansen with a safe workplace."

You got that?

Student: I think so.

Teacher: That's also in the book, so you can review it there, hint, hint. So we're just about done here. How is everything else going?

At end of conference, move back to non-academic turf. You should know where to refer students who reveal other problems.

Student: Pretty good. Looking forward to break.

Teacher: Cleveland is home? Are you home for break?

Student: Yeah, I have a couple of interviews there for summer jobs.

Teacher: Wonderful! And when this is revised, you'll have a great writing sample for them! Speaking of which, let's talk about the most important things you're going to work on for the final draft. First, what are you going to keep the same?

End the conference by having the *student* summarize next steps.

Student: Organization?

Teacher: Absolutely – it's in great shape. And headings were strong. Now, what are you going to work on?

Student: Using the paradigm better, getting better cases, and looking out for super-long sentences.

Note that you do not have to talk about every comment that you made on the paper. That's why you should return papers at least 24 hours in advance, and preferably sooner. The student can identify which issues he or she needs more help with, and which can be tackled independently.

Teacher: Oh, yeah, I forgot about your super-long sentences! When I wrote sentences like that, when I used to work at the Attorney General's Office, my boss called them "County Fair Specimens." You know, like the big pumpkins and the big rutabagas? But let's go back a bit. What do you mean "using the paradigm better"?

Student: I need to have one rule and not a bunch of rules for each section, I need to finish rule explanation before I do rule application, and I need to lump all of my applications together and start my applications with the phrase-that-pays.

Teacher: Excellent. Do you have that in your notes? I don't want you to get home tonight and not be able to figure that out. And be sure you review those chapters in the book that we talked about. My next student is here, but I want you to go sit out in the hall right now and write that down, okay? [ushering student out the door] Take care, and I'll see you Friday!

Summary of Principles (this is complementary to principles on outline):

1) Preparation:

Student should have the paper far enough in advance so that he or she can review the comments in advance. You can ask students to do written work as a part of conference preparation (e.g., outline, annotations, extra research), but in that situation you probably have to give the paper back at least 2 nights before the conference. Students should know early in the semester about conference protocols, including conference preparation. If you distribute criteria sheets, you can include a requirement about conference preparation, and can deduct points if they are unprepared.

2) Organization:

Have an agenda for the conference. You can identify that agenda in the final comment on the student's paper – some of you may have talked about that in your critiquing small groups. The agenda should have some flexibility, because the conference may reveal other issues.

3) Execution:

You absolutely runs the conference, but you should encourage student participation – encourage the student to take notes, ask questions of the student to force participation, and ask the student for questions at the end.

4) Conversation:

Use course vocabulary and vocabulary from the textbook. Many students have a history of receiving critiques that were arbitrary (or perceived that way). When students see that your critique is based on the text, you and the text reinforce each other, and the student has an objective place to look to solve problems in the future.

5.) Conclusion:

Sum up the conference, ask the student about next steps, and encourage questions.

Sample Complaining-About-A-Grade Meeting

A grade from a writing teacher is often the first signal that a student is not going to be the #1 student in the school. For this reason, teachers may have a rule that they will not talk to students about grades until at least 24 hours after papers are returned. Never return papers at the beginning of a class.

It's okay to have a policy that you almost never change grades. In general, don't make nickel and dime changes, because if you make these changes on one paper, you should review all the papers similarly, and that way lies madness. Further, any paper could have places where you could have awarded more or fewer points. Students, of course, will want you to review only for places where you could add more points. Some teachers review to see if they were too harsh in taking off points in some areas, but only if they can also look to see if they were too lenient in other areas. Most students decline this kind of review.

Student: I wanted to ask about the grade on this paper. There has to be something wrong here. I've never gotten anything lower than an A on writing assignment. I'm a good writer – all my teachers have told me so.

Teacher: Before we continue, let me make sure there was no clerical error. What grade did you receive?

Student: B.

Teacher: [checks] Yep, that's what I have recorded – a B. Before we get started, let me just talk to you about my policy for changing grades. Certainly, I correct clerical errors, which is why I asked about the grade first. And I'm glad to help you understand my comments and understand how to improve your writing in the future. But I almost never change a grade. The only time I will change a grade is if the grade is clearly erroneous. That has happened once in my career, but it's not something that happens very often.

Now, on to your concerns. I'm sure you are a good writer. But legal writing is a different kind of writing than most people have ever done before, and my guess is that you're still in the adjustment period for legal writing. Somebody I know compares it to the difference between a regular driver's license and a chauffeur's license or a truck driver's license – if you try to drive a semi the way you drive a mini-cooper, you're going to be doing it wrong. Some of the skills that work great in other kinds of writing aren't effective in legal writing.

Student: But I did everything that you told me to do, and I still got a bad grade!

Teacher: First, a B is not a "bad grade." Remember that you and pretty much everyone in your class got high grades in all their courses in undergrad. That's how they ended up getting into this great law school. And no matter what we do, 1/2 of those smart people end up in the bottom 50% of the class.

Also note that if you change one grade, the word will go out, and you will have a line of students at the door seeking grade changes.

[Teacher cont'd] So realize that a B is a good grade, even if it's not as high as you hoped for.

Second, remember that we have a curve. We can't give everyone A's. Would you agree that the papers that are better-written should get the best grades?

Student: Yeah, but I did everything that you said . . .

I try to talk about papers generally rather than get into the specifics of a particular student's paper. Most students will be satisfied with this kind of conversation.

Teacher: I don't have your paper memorized, but frequently when people tell me this, the reality is that they *tried* to do everything that I said, but they didn't do it as completely, or as perfectly in every instance, or as effectively as other students did. And because not everyone can get A's, I have to give the A's to the papers where all or most of the things were done the best. It doesn't mean your paper is bad; it just means it wasn't the best.

You may also offer a letter of recommendation if you deem it appropriate. I tell my students that I will write them a letter of recommendation if (1) they behave professionally as to meeting deadlines and putting forth appropriate effort; (2) their work is competent; and (3) They improve over the semester. I note that my letters for A students will be the mushiest, then the letters for B students, etc.

If you would like to work on doing better on the next paper, I have a few suggestions. First, there's a law review article you could read. It's by Anne Enquist, and it's called "Unlocking the Secrets of Highly Successful Legal Writing Students." It's in the *St. John's Law Review*, and it was published in 2008. I think it has *really* helpful advice in it. Shoot me an e-mail, and I'll give you the cite if you want, unless you want to write it down right now. The author's name is Enquist – E-n-q-u-i-s-t. That should be enough to help you find it – it's an unusual name.

Second, as you know, I made comments in the final draft on things you need to work on. If you want, you could try to make improvements on that draft and bring them to me. I won't change your grade on this assignment – as I said, I only do that if someone establishes that the grade was clearly erroneous, and I'm not hearing that here. But some revision could help you make this a better writing sample. *Don't* do that if it will take away time that you need to work on your current homework and writing, though.

Student: I'll think about it.

As soon as possible, I try to thank students for being professional in the way that they raise concerns. It often encourages them to continue professional behavior in the encounter.

I used to tell people to send me the papers, and that I'd critique them when I had time, but then I never had time. But if I set up a meeting and do a live critique, the student gets a good benefit, and I avoid guilt.

I try to change the subject and move the student away from the complaint and onto more neutral turf before the end of the conversation.

You may have to nudge the student to get him or her to leave. Try to use a little charm, but it's perfectly okay to make a student leave if you don't have time to talk (presuming it's not your office hours).

If a student is getting extremely aggressive, you can say, "I'm glad to talk to you about this, but I think you're too upset right now to do this professionally. I know that it's upsetting to get a grade you didn't expect, but let's wait until you're calmer to talk about this. Are you available Thursday?"

Tea

Teacher:

Good. And let me say that I really appreciate the professional way that you have raised this issue. It really makes a difference.

Student:

Um, thanks for taking the time to talk to me. If I revise the paper, could you critique it again for me?

Teacher:

I don't have time to do a whole new critique at this point. But, if you want to take a crack at re-revising the paper for a writing sample, send me an e-mail when you're done, and we'll set up a meeting. Bring two copies. That way I can do a critique on the spot, and you can take notes. So how's the rest of the semester going? What's your favorite course? Besides mine, I mean. ☺.

Student:

Oh, crim, I guess.

Teacher:

Ah, crim. Those cases are so fascinating. Great stories. Have you done *Regina v. Dudley & Stephens* yet?

Student:

You mean the cannibalism case?

Teacher:

Yes! That was our first case in criminal law. First day of school. And the first thing the prof asks is, "Who is Regina?" And pronounced just that way – *Rub-gee-nub*. And he calls on this guy, who says, "Parker's mother?" And we all laughed, which was really unfair, because I'm guessing most people didn't know who it was. I had no clue myself, although if he had said *Rub-ji-nub*, I think I might have gotten it.

Student:

I think I knew who it was, but I had read British cases in undergrad.

Teacher:

Well, you're way ahead of where I was, then. I'm going to shoo you out now, because I have to get ready for my Advanced Legal Writing class. I'll look for that e-mail from you, and I'll see you in class tomorrow.

Student:

Oh! Sure. Thanks. See you then. Bye.

Teacher:

Bye!