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Teaching Students to Use Feedback to Improve Their Legal-Writing Skills



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I. THE PROFESSOR-STUDENT PARTNERSHIP

In an age in which writing-software programs tout formative feedback on student papers and advertise clear and compelling sentences, the roles of professor and student in the assessment and outcome-achievement process may appear passive, or even supplanted. Using feedback to improve learning, however, requires both professor and student to play active roles.¹ In legal education, law professors are tasked with identifying and assessing learning outcomes.² And much has been written about these tasks as they relate to both doctrinal and legal-writing courses.³ But less attention has been devoted to law students' role in responding to feedback on their writing and law professors' role in teaching students to use that feedback to improve legal-writing skills.

The idea that law students should play an active role in learning is not new. The Socratic method, for example, relies on dialogue between professor and student to

stimulate critical thinking. Likewise, legal-writing scholars have recognized the need to teach students metacognitive techniques (such as "pre-writing"⁴ and self-editing exercises⁵) to monitor the students' own learning process during legal analysis and writing.⁶ Indeed, a thread on the Legal Writing Institute listserv suggested post-critique self-assessments⁷ as a means of weaning students from being passive listeners during one-on-one conferences about students' legal writing.

This article addresses the range of guidance that professors can give to law students to help students actively process and learn from feedback. Professors should devote class time to preparing students for the feedback (e.g., explaining the overall purpose, depth, and scope of the feedback), to communicating students' role in responding to the feedback, and to outlining the steps that this role entails. Professors may—in addition to holding individual student conferences—set aside class time for students to reflect on, discuss, or implement the feedback (e.g., during a workshop at which the professor and any teaching assistants are available to answer questions about the feedback).

II. HOW TO PREPARE STUDENTS FOR FEEDBACK AND HOW TO COMMUNICATE THEIR ROLE

All too often, students receive detailed comments on their work and yet still ask, "What can I do to improve?" This question underscores a common disconnect between feedback and learning, which may exist because students failed to review the feedback closely,

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do not understand how to implement the feedback, do not appreciate the value of the feedback, or believe that the professor is hiding additional feedback. To avoid this disconnect, professors should educate students about the types of feedback that students will receive on their legal writing, the reason for this feedback, and students' active role in processing feedback.

Typically, the feedback includes some combination of the following: written comments in the form of line edits, margin comments, and end comments on initial and revised drafts; and oral comments during individual student conferences (pre- and post-written critique or "live," in place of written feedback). The feedback may address all or some of the following topics: format; grammar and punctuation; writing style⁸; organization; and substance.

Because attorneys must be detail-oriented and case outcomes may turn on grammar, punctuation, word choice, and, of course, nuanced analysis, professors should explain that proper feedback is pointed and comprehensive, though it may appear to an untrained learner as too granular. Students seem comforted, though, to hear that the work of all students in the course, whether strong or weak, will receive thorough comment. To the extent that professors choose to narrow feedback to correspond with material taught in class (e.g., withholding comments on citation form until having taught that subject), professors should notify students of the restricted scope. Further, professors should encourage students to view the feedback, whether broad or narrow, as presenting a learning opportunity.

Students will achieve the full benefit of feedback only if they actively participate in the process. Professors should, as detailed below, be proactive in instructing students about this role.⁹

III. STEPS FOR STUDENTS TO ACTIVELY PROCESS AND LEARN FROM FEEDBACK

The steps that follow are designed to help professors teach students how to envision and implement their role.¹⁰

A. Value Feedback

An important step toward improving one's skill set is to value feedback. To be sure, most students will follow feedback if only to meet the professor's wishes and, ultimately, to earn a better grade. But the broader goal—i.e., to learn from feedback—should be paramount.¹¹

Law-school professors, regardless of their seniority, surely have greater legal expertise and experience than do their students. Indeed, having preceded students on the professional path toward becoming a lawyer, law professors are well qualified to provide guidance. Although this feedback is not invariably on-point or correct, it is surely worth consideration even apart from grading concerns. (The same can be said for advice provided by an upper-class teaching assistant.) At the very least, feedback represents the reader's reaction to the writing, a reaction that is in itself worth knowing. Professors should explain that—for these reasons—law students can, generally speaking, invest a good measure of trust in the feedback.¹²

By trusting feedback, and by valuing it for both short- and long-term goals, students may be both more attentive and receptive to it and thereby heighten the likelihood that it will in fact enhance their skill set.

B. Adopt a Growth Mindset

Underpinning the educative process is the principle that students' current skills do not reflect their future skills. And, the dichotomy between a fixed mindset (i.e., believing that one's legal-writing ability, for example, is static) and a growth mindset (i.e., seeing the potential to develop new skills) is significant¹³; the former vitiates the value of feedback. Students, thus, should be dissuaded from believing that deficiencies in their legal writing cannot be overcome and should be encouraged to view feedback as a means to improve their skills (rather than as criticism). In setting the context for feedback, law-school professors can help students develop a growth mindset by explaining that one's legal writing improves with practice and experience.¹⁴

C. Understand the Feedback

Feedback is useful only if understood. Upon receiving feedback, students should first try to ensure that their egos do not impede their ability to understand the feedback. Moreover, students should make every effort to hear the actual content of the feedback rather than what they would like to hear.¹⁵ Pausing before reacting can help prevent emotions from impairing how students absorb the feedback.

Professors should instruct students to reflect on the feedback independently but, if necessary, to seek clarification of feedback that seems ambiguous or obscure, request alternative explanations, or request examples.¹⁶ A brief follow-up with the professor (or teaching assistant) can ease concerns, provide direction, and save time.

Related, professors should caution students not to over-correct the document in response to targeted feedback; at the same time, professors should advise students to assess the document holistically to determine the extent to which initial changes made in response to feedback require additional changes to the document.

D. Distinguish Between Required Changes and Suggested Edits

In a typical legal-writing course, the professor provides considerable feedback on papers that need to be re-written as part of the course requirements and papers that are a final version. Although, in the latter situation, feedback is necessarily suggested rather than required, in the former situation professors should be clear about their expectations for students. Are the comments merely suggestions? Or, instead, do the comments require changes that, if not made, would impact the grade?¹⁷ Of course, even mere suggestions merit careful evaluation: they are, after all, intended to be, and usually are, constructive; and, even if the suggestions arrive too late to incorporate into the current document, they can help to improve future work product.¹⁸

E. Identify Strengths and Weaknesses

Assuming an adequate sample of a student's work, feedback may explicitly designate the student's strengths and weaknesses. Absent explicit designations, students should use the feedback to identify strengths and weaknesses independently. Post-critique self-assessments—whether guided or

not—can be a valuable tool for creating an action or progress plan.

When reviewing feedback as part of a self-assessment, students should extrapolate themes. For example, are many of the comments directed at a particular component of writing, such as organization? And, if so, are those comments directed at, for example, the small-scale organization (e.g., the flow of sentences) or the large-scale organization (e.g., the placement of fact-application in relation to the legal rules)? Awareness of such themes allows students to focus on actual weaknesses rather than one-off errors that do not reflect writing deficiencies. A student who struggles with grammar, for example, should triage that topic; a student who does not should focus on other topics (while still attending to proper grammar).

In addition to extrapolating themes, students can identify challenges that they face—other than lack of time—in responding to particular feedback (e.g., the inability to distinguish between a “rule” and an “explanation of precedent”). These challenges, shared with the professor, can serve as a springboard for a productive professor-student conference. And, when students identify the source of their own confusion, they are already on the path toward improving their skills.

F. Prioritize Feedback and Create Lists

Prioritizing thematic weaknesses can serve a dual purpose: informing students how to allocate their time (both during a professor-student conference and while revising their writing) and how to order revision steps.

The prioritization process may be nuanced. Indeed, all writing problems are not equally important. Clarity, for example, is almost universally ranked as the most important component of good writing. But students should balance attention to clarity against efficiency: although students should make all required changes for an assigned revision, if students correct substantive weaknesses first, clarity-related problems may disappear (either because the problematic sentence was excised or because the substantive fix means that the student more-clearly communicated the idea).¹⁹ To the extent that professors value certain aspects of an assignment more than other aspects, professors should, to help students prioritize, be transparent about those valuations. The depth and scope of the student's weaknesses may also impact how students prioritize feedback.

Creating a list of the prioritized themes can also be helpful. Most obviously, the list may be used as a checklist, enabling the student to customize any rubric that the professor has created. This customized rubric reminds students to apply the feedback going forward, beyond the assigned task. Another technique is to edit a document separately for each listed theme (e.g., passive voice, nominalizations).

G. Review Writing Texts and Style Manuals

A skilled professor can explain, and help students to cure, writing problems. But, given professors' time constraints and the value that students be resourceful, an important source of information for students is often a writing text or style manual. These books can not only teach students rules of which they were unaware but also make even strong writers more conscious of the rules underlying their writing choices. Given the multitude of options, a professor should recommend or require the use of specific guides that best match the professor's writing preferences. Ultimately, these tools can help students to write better revisions and initial drafts.

NOTES

1. See, e.g., Susan E. Davis & Joanne M. Dargusch, *Feedback, Iterative Processing and Academic Trust – Teacher Education Students' Perceptions of Assessment Feedback*, 40 AUSTRALIAN J. OF TEACHER EDUC. 177, 185, 189 (January 2015) (studying how students actively use feedback—e.g., reading and re-reading comments, identifying key features of the feedback, and applying feedback beyond the narrow task or course context—and how professors should actively provide feedback).
2. See Managing Director's Guidance Memo for amended ABA Standards 301, 302, 314, and 315 (June 2015).
3. See, e.g., LORI E. SHAW & VICTORIA L. VANZANDT, *STUDENT LEARNING OUTCOMES AND LAW SCHOOL ASSESSMENT: A PRACTICAL GUIDE TO MEASURING INSTITUTIONAL EFFECTIVENESS* (Carolina Academic Press 2015) (examining the "who," "what," "why," and "how" of outcomes assessment in law school); Deborah L. Borman, *De-grading Assessment: Rejecting Rubrics in Favor of Authentic Analysis*, 41 SEATTLE U. L. REV. 1, 2 (2018) (advocating for a holistic approach to evaluating legal writing, including "engaging in authentic conversations about writing"); see also *infra* note 9.
4. "Pre-writing" denotes a stage in the writing process in which, before students begin writing, they assess their analytical process and the validity of their analysis. See Miriam E. Felsenburg & Laura P. Graham, *A Better Beginning: Why and How to Help Novice Legal Writers Build a Solid Foundation by Shifting Their Focus from Product to Process* 16 (2011), available at <http://ssrn.com/abstract=1845024>.
5. See Mary Beth Beazley, *The Self-Graded Draft: Teaching Students to Revise Using Guided Self-Critique*, 3 J. LEGAL WRITING INST. 175 (1997); Beryl Blaustone, *Teaching Students to Self-Critique and to Develop Critical Clinical Self-Awareness in Performance*, 13 CLINICAL L. REV. 143 (2006) (presenting a feedback model rooted in self-directed learning).

6. Felsenburg & Graham, *supra* note 4, at 13-14.
7. See discussion of post-critique self-assessments *infra* at Part III(E).
8. See Anne Enquist, *Critiquing and Evaluating Law Students' Writing: Advice from Thirty-Five Experts*, 22 SEATTLE U. L. REV. 1119, 1157-58 (1999) (excluding grammar and punctuation from the definition of "writing style" and distinguishing between individual preferences and stylistic choices that represent the legal-writing community's consensus about readability and effectiveness).
9. This article does not address how professors should critique students' writing—a topic extensively covered in legal-writing scholarship. See LEGAL WRITING INSTITUTE MONOGRAPH VOLUME 1: THE ART OF CRITIQUING WRITTEN WORK (listing articles). Certainly, meaningful feedback—i.e., timely, clear, specific, and non-idiosyncratic feedback that avoids substantially rewriting the paper for the student—will require students to actively participate and thereby enhance the learning process. See Jane Kent Gionfriddo, *The Reasonable Zone of Rights Answers: Analytical Feedback on Student Writing*, 40 GONZAGA L. REV. 427, 439 (2005) (noting that simply "giving" students analysis will lead students to revise their work "without ever confronting their initial mistakes" and that, conversely, vague comments or questions do not provide sufficient guidance for students to identify and correct writing problems).
10. The manner in which students respond to feedback will, of course, depend on the type of feedback provided (e.g., students should take written notes during a live critique that is not otherwise recorded).
11. Indeed, research has shown the value of individualized feedback on law students' performance in school. See Daniel Schwarcz & Dion Farganis, *The Impact of Individualized Feedback on Law Student Performance*, 67 J. OF LEGAL EDUC. 139, 174 (Autumn 2017) (finding that students who had received individualized feedback in a first-year course outperformed those who had not and concluding that "the positive impacts of individualized, formative feedback extend well beyond the classroom in which that feedback is given").
12. See Davis & Dargusch, *supra* note 1, at 179 (noting the value that a student trust both the feedback and teacher).
13. See Sarah J. Adams-Schoen, *Of Old Dogs and New Tricks—Can Law Schools Really Fix Students' Fixed Mindsets?*, 19 J. LEGAL WRITING INST. 3, 4 n.4 (2014) (defining and distinguishing "fixed" and "growth" mindsets).
14. Related, professors can help students to understand that adapting to legal writing is a shared challenge. See Anne Enquist, *Talking to Students About the Differences Between Undergraduate Writing and Legal Writing*, 13 PERSP.: TEACHING LEGAL RES. AND WRITING 104-05 (Winter 2005).
15. See handout at <https://www.uts.edu.au/sites/default/files/Giving-and-Receiving-Feedback.pdf>, updated from David Boud, *Implementing Student Self Assessment*, HERDSA Green Guide, no. 5 (2d ed. 1994).
16. University of the Incarnate Word, Writing and Learning Center and Student Engagement Center, *Receiving Feedback on Writing* (handout), <http://www.uiw.edu/wlc/documents/receiving-feedback-on-writing.pdf>.
17. Notably, a skilled professor accounts for a "reasonable zone of right answers," which ensures accuracy while allowing creativity. See Gionfriddo, *supra* note 9, at 438.
18. No doubt, changes, whether suggested or required, are at times difficult to make. Sometimes the reader's concern is not apparent. And, even stated concerns do not always inspire a clear or simple fix. But, without substantial student effort to learn from the feedback, the student's skill set is much more likely to remain static.
19. See JOEL ATLAS, LARA GELBWASSER FREED, JOHN MOLLENKAMP, ANDREA J. MOONEY, URSULA H. WEIGOLD, & MICHELLE A. FONGYEE WHELAN, *A GUIDE TO TEACHING LAWYERING SKILLS* 122 (Carolina Academic Press 2012).