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Before the Final Draft: Oral Argument as a Student-Centered Feedback Tool

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Published: November 2023

At the end of the second semester of legal writing courses, students participate in what may be their first “rite of passage” in their legal careers: oral argument. While in many 1L lecture courses students engage with the material through the professor’s direct questioning, these opportunities are limited to one, or maybe two students, per case; thus, each student will have a handful of opportunities over the course of the semester to engage in an analytical conversation about a few cases rather than presenting their own arguments. Also, it is rare for professors in these courses to ask students to draft arguments about the cases, limiting further the opportunity for feedback on their individual arguments. On the other hand, oral argument in legal writing courses gives each student an opportunity to engage with the cases and arguments, leading to a better understanding of the material.

I had always provided written feedback on students’ trial brief drafts, but I began to wonder whether instead giving students an opportunity to engage in oral argument before submitting their final drafts of their briefs would result in better writing and stronger arguments. Although students appreciated the written feedback, students did not always incorporate my comments effectively and even when they did, they seemed dependent upon my feedback rather than using it as a tool for self-assessment. To test my hypothesis, one year, I incorporated a “mini” oral argument before students submitted their final draft of their trial brief. It met

my goals by giving students an opportunity to not only experience oral argument for the first time, but to assess their writing through self-reflection and active engagement with their drafts. After using the exercise the first time, I added additional steps to enhance the feedback and self-assessment opportunity. This exercise is now divided into three steps: 1) students re-engaging with their brief by presenting their arguments in oral argument; 2) students completing a self-reflection exercise; and finally, 3) students providing and reviewing peer feedback. This article will describe my experience using this exercise including an explanation of the many benefits of oral argument as a feedback tool. It will also present instructions for implementing the exercise as a student-centered feedback tool.

1. Modifying Oral Argument to Provide Feedback

During my Legal Process II class, I used the mini-oral argument exercise for our trial brief problem in spring. After students submitted their first full draft of the brief, they were asked to prepare for oral arguments based on the arguments they had incorporated. Half of the class represented the plaintiff, and the other half represented the defendant. Students were paired randomly. Students were not allowed to exchange papers because the final drafts had not been submitted. I also asked students to submit their own questions they would ask opposing counsel; this helped me also determine whether students recognized the strengths or weaknesses in their own arguments.

In the first iteration of the exercise, oral argument was limited to five minutes per student, no rebuttal. Students understood the purpose of oral argument was to receive feedback on their writing. While the brief assignment included a two-factor test, students could choose either factor to argue, but not both. I reviewed all the drafts before the student argued, but I did not provide written feedback on either issue.¹ I was the only judge, and I asked questions regarding arguments I would expect to read as well as other questions that would pose a more nuanced argument. I asked students to begin their arguments with their roadmap so I could understand the structure of their brief. Then, following their lead as they transitioned to the issue they wanted to address, I began questioning.

After each pair of students finished their arguments, we debriefed for approximately ten minutes. I provided feedback first asking students questions about their experiences, individual answers, and roadmap, e.g.:

¹ I did hold Q&A sessions outside of class on Zoom for students to ask specific questions about their drafts before their final submission.

- What did they think of the questions they were asked? Did they anticipate these questions? Were there questions they had not anticipated?
- What was the student's case support for their arguments? Had they considered a different case? (sometimes I would give the name of a specific case to help them.) How did they anticipate the other side would answer that question, and what case would they use?
- Did the student think they had incorporated their theme well throughout the paper? What was their theme and how was it expressed in their briefs and where? Why did they have three points to make when there were only two factors; or why is there only one point when there are two factors?

In addition to my questions, students asked each other questions about specific cases and arguments. In the subsequent class, the entire class discussed the oral arguments again, considering the questions I posed to them and their own submitted questions, and addressing the different arguments again. The arguments were not graded and occurred during regular class time.

There were benefits and drawbacks for both professor and students to the exercise in this form. Students did not seem to miss the written feedback because I offered other opportunities for them to receive feedback from me regarding their writing, and I was open to answering questions when they needed help.

2. Benefits for the Professor

Using oral argument as feedback tool was much faster than providing written feedback, recorded feedback, or holding conferences. Providing written or recorded video feedback can take upwards of thirty minutes per student. Written feedback is time-consuming; articulating feedback in a constructive, helpful way is an art form itself. Written feedback, however, is helpful for students, particularly in the first semester, because it is valuable for students to see the difference between their drafted sentences and suggested edits and to read the professor's comments. While written feedback in the second semester can be helpful, encouraging students to rely solely on written feedback in the second semester can limit opportunities for students to engage in self-critiquing rather than encouraging them to become more independent writers. In the past, recorded video feedback for students has proved problematic at times when the software fails in the middle of a recording leading to wasted time. Finally, students do not always take full advantage of their time during conferences. Individual conferences usually last twenty minutes. Even when the professor has provided them with the tools necessary to engage in a meaningful conference, students are sometimes late, do not come prepared with questions, or have an incomplete or

missing draft. I am not advocating that professors should abandon conferences, but an alternative or supplemental method for feedback is welcomed.

3. Benefits for the Student

In the mini-oral arguments for feedback, students were more engaged in the feedback and revision process. The mini-oral argument required students to fully invest in writing their drafts. Previously, students may have submitted a draft that did not reflect their best efforts. However, because students now needed to engage in questioning in front of a peer and professor, students prepared more thoroughly. Students can learn to harness this “extrinsic motivation,”² the pressure students feel to perform well in hopes the professor and other students will recognize their achievement, for their education and practice.³ Mini-oral argument could be further expanded to include students’ participating as judges, leading to further engagement.

4. Mutual Benefit

Students’ participation in mini-oral argument can also help identify those students who need intervention. Students are often reluctant to ask for help because asking for help makes them appear vulnerable; participation in the mini-oral argument can reveal to the professor challenges students were otherwise uncomfortable revealing. Professors can then request to meet with students who are not prepared to ask whether they understand the material, whether they are managing their time well, or whether they need to meet with a school counselor to help manage stress. More engagement between professor and students can lead to more open communication and opportunities for early outreach and intervention.

5. Suggestions for Future Implementation

Although this exercise was useful last semester, it also felt incomplete as a feedback tool. As I reflected on how to incorporate this exercise again in the future, I improved the method for students to provide feedback for themselves and each other by including not only feedback during the mini-argument but also

² Douglas A. Blaze, *Law Student Motivation, Satisfaction, and Well-Being: The Value of Leadership and Professional Development Curriculum*, 58 SANTA CLARA L. REV. 547 (2019). Available at: <https://digitalcommons.law.scu.edu/lawreview/vol58/iss3/6>

³ Rudland JR, Golding C, Wilkinson TJ, *The stress paradox: How stress can be good for learning*, MED EDUC. 2020; 54:40–45. Available at: <https://doi.org/10.1111/medu.13830>.

incorporating a self-reflection exercise and peer assessments. As described below, these changes strengthen its use as a student-centered feedback tool.

5.1. *Part One: Feedback During Mini-Oral Argument*

- Conduct the arguments and give feedback.
 - As described above, after students complete the mini-oral arguments, the professor should provide feedback by engaging students in questions about the students' experiences, their answers to questions, and exploring their roadmaps.

5.2. *Part Two: Student Reflection Exercise*

- Students complete a guided reflection.
 - Professor sends each student three recordings to watch: the student and their partner's mini-oral argument session and two other pairs of students' arguments.
 - Each student begins by watching the recordings for the side they represent. For example, if the student represents plaintiff, the student first watches all plaintiffs' oral arguments.
 - The student then chooses three questions asked during the argument. The student would write the question and the student's answer in complete sentences.
 - The student then evaluates the effectiveness of each answer by responding to the following questions.
 1. How would you have answered this question? If this question is from your own argument, are you satisfied with your answer? What would you have changed/added to answer more thoroughly?
 2. Is your response the same or different from the other student? If you would have responded differently, what would you have argued? Did you address this question in your brief? Where in your brief did you include this answer? Did you provide sufficient support for this argument?
 3. What is the potential "hole" in this argument? Is there a way to strengthen your argument?
 - The student then watches the opposing sides' arguments.
 1. The student chooses three questions, one question per the other party's argument. The student writes the question and the student's response.

2. The student evaluates each answer: Do you see a flaw in their response? Do you see a strength in their response?
3. Does your brief address this question? Where in your brief do you address this question? What is your support for your answer?
4. Have you drawn attention to the opposing side's argument in your brief or have you addressed their argument in a persuasive way? Explain.

5.3. Part III: Peer Review Exercise

- The students may next engage in a peer review debriefing exercise.
 - The students share their responses to the questions in Part I with the other students within the assigned groups.
 - Debrief the results of the reflection exercise with the students. It may be done in small groups or as a large class.

6. Other Considerations

Professors may choose to give feedback after the oral argument and ask students to complete the reflection without completing the debriefing session, but students should share their reflection responses with their peers as part of the exercise. The purpose of the reflection is for students to develop the skill of independently evaluating their writing, examining the connections between questioning during oral argument and the contents of their briefs.

Before students can reflect, they must first complete the oral argument. Professors should make pedagogical decisions best for setting up oral argument, i.e. pairing students for arguments, how long students have to argue, how many judges will ask questions, whether students should exchange briefs, and whether students should dress professionally. Professors should also consider the number of issues students will argue: should students be limited to a single issue or given the opportunity to address all issues within the brief? This will affect how long students should be given to argue, which may require the professor to extend the exercise outside of class time to be able to give feedback on each issue. Importantly, the professor should record all arguments so students can participate in the student reflection and peer review exercise.⁴

⁴ Professors should check with their individual school's administration to ensure they are not violating any policy against recording and distributing recordings of students. Students should be advised that they will be recorded, and the recordings will be shared with classmates for the sole purpose of completing the exercise.

7. Professor's Written Feedback on Drafts

Professors may choose to provide additional feedback after the reflection period. As discussed above, however, providing written feedback may lead to students depending on their professor's feedback, which could result in poor reflections. If oral argument is limited to one issue in a multi-issue problem, however, the professor may give written feedback on the other issues. The professor could then begin working on the drafts immediately without waiting for students to complete the reflection assignment. This option is probably the best compromise.

8. Optional Grading of Drafts vs. Final Product

To determine whether oral argument has been effective as a feedback tool for writing, professors may consider grading the improvement between the draft and the final product. Specifically, a professor can reference the students' answers in their reflection responses and compare them to the resulting changes the student made to the brief in response to that reflection. If professors grade briefs anonymously, professors can ask students to submit highlighted portions from the draft and the changes they made in the brief in a separate anonymous document. This could be done as a completely separate grade or as part of the overall final grade for the trial brief. If the improvement is a separate grade, the professor could grade the draft section and the final section and average the grades together. Averaging the grades would prevent students from writing a poor draft and then "improving" it with the hopes that they get a better grade on the improvement alone. Alternatively, professors could simply note the improvements in the drafts and keep them in mind when assigning points in sections of their rubric where it may make sense to consider the student's effort, for example, "editing."

9. Conclusion

Experiential learning may be the best way for students to acquire real skills needed to practice. Professors should think of different ways for students to develop those skills, intertwining them if possible. Mini-oral argument before submitting a final draft gives the students the opportunity to practice their oral advocacy skills while developing self-assessment skills. Similar to the "senior partner meeting" in the first semester, mini-oral argument in the second semester helps students improve their writing with limited comments from the professor, which encourages them to become independent learners. This exercise increases student engagement; could identify students who need more encouragement

during the semester; and through questioning and meaningful reflection, could result in better developed arguments.