THE SECOND DRAFT

ARTICLE

Grade Expectations: Helping Students Process Feedback Better

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Most students are unpleasantly surprised by their first set of law school grades. After working diligently and expecting whatever worked well in undergraduate classes to work in law school classes, many well-intentioned students are disappointed that they did not get an A on their first legal writing assignment. I was. I came to law school expecting to receive glowing praise on my writing assignments. After all, I had a lot of undergraduate academic writing experience. I only needed to glance at the red pen marks on my first legal memo (and it was absolutely a red pen) to realize my dream of sailing through my first legal writing class was fiction.

The problem was that I could not focus on the *constructive* aspects of the red pen. All I saw was the message "you aren't good at this" in red glaring print. Most of the feedback focused on what I was doing wrong, and little, if any of the feedback, told me what I was doing right. (In all fairness to my legal writing professor, it is likely that I was not doing much right.)

I was not prepared to receive critical feedback, and frankly, I was not prepared to receive any feedback. What I know now—being on the feedback-giving side—is that students benefit from knowing what to expect *before* they receive feedback on their writing. For each assignment, they need to know what kind of feedback they are going to receive and what aspects of their work will be evaluated, how to think about it in a broader context, and then, ultimately, what to do with it.

1. Have a Talk about Feedback

Students busily work on assignments. They turn them in. I busily work on reviewing, scoring, and commenting on them. I give them back. We do it again. All of this can happen quietly in the background of legal writing classes, and it often does. But I think there is a better way than the quiet way: have a transparent talk with students about feedback.

Students like to know what kind of feedback they're going to get on an assignment, and some types of feedback feel more personal than others. I use rubrics, comment boxes on digital submissions, hand-written comments, individual conferences, and "track changes" with comments. Receiving feedback in a variety of ways exposes students to the many forms of feedback they may receive in practice. Some forms will be cursory and short, and other forms will be more in-depth. For example, when I was in practice, I worked with supervising attorneys who would "redline" my work (using editing tools that would show me the revised content over the original content) and ask me to apply that feedback to a subsequent draft. Those attorneys mentored me and took the time to help me improve my writing. I also worked with others who preferred to talk with me about a draft instead, explaining which parts they thought needed revision. I needed to take careful notes during those conversations. Many times, I worked with attorneys who did not have time for formal feedback. Instead, a partner would write me a sticky note that would just say "make this punchier" or "make this less punchy, please." Over the years, I learned to translate and appreciate a lot of feedback communication styles!

Given my exposure to a wide variety of feedback in practice, before I release scores and feedback on assignments, I talk with students about what genre of feedback they will be getting, how extensive it will be, and I let them know that I understand how it might make them feel. Then, they know what is around the corner for them, and they also know that I am not an unconscious, unfeeling teaching robot releasing critical comments without concern for their well-being.

Individualized, in-depth feedback is likely to have an emotional charge, so I prepare students to receive extensive comments on their work. I tell them that each person in the class will get a marked-up paper! I also tell them to expect to see comments that indicate they need to revise an entire sentence or paragraph, but I explain that this does not mean that their work product was "bad." Instead, I remind them that my job is to prepare them to practice law by helping them improve their analysis and writing, whatever their starting place. In this way, I try to help students cultivate a "growth mindset," a belief that "your basic qualities are things

you can cultivate through your efforts, your strategies, and help from others" rather than a "fixed mindset," a belief that "your qualities are carved in stone."[1] I do my best to keep students focused on the end goal: by getting coached on ways they can improve, they will improve, and that's what law school is all about! I remind them that they would not want to be operated on by an aspiring surgeon in their first year of medical school. Instead, we hope that any professional, medical, legal, or otherwise, has been trained, coached, and improved over years of practice and constructive feedback. Especially for first-year law students, part of explaining the purpose of the feedback is explaining that law is a *practice*, not a one-time championship game.

Students also benefit from knowing they will receive feedback on both things they have written effectively as well as ineffectively, and most importantly, *why*. Explaining early that they can expect both positive and improvement-focused feedback helps students prepare to receive both kinds. A few of my early memos and exams as a student just had the word "No" circled on a section. The best I can say about that comment is it was concise. In other places, I'd just see a check mark. I inferred the section with "No" on it meant it was bad, but I did not know why, and I certainly did not know what to change. Everything? That seemed daunting. I also assumed that when I saw a check mark it meant I had done something correctly, but again, I had no idea what. To make more of the feedback, I simply needed more information.

To help my students understand effective and ineffective aspects of their work, I try to give detailed feedback about what works in their writing and what needs some revision. Here are a few example comments that I often write on my students' work:

- *You do a great job with deductive reasoning in this section, and it was easy to see how the facts matched the elements.*

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[1] DWECK, CAROL S. MINDSET : THE NEW PSYCHOLOGY OF SUCCESS 12-13 (Updated ed., Random House 2016); *See also Growth Mindset*, THE DECISION LAB, https://thedecisionlab.com/reference-guide/neuroscience/growth-mindset?adw=true&utm_term=carol%20dweck%20growth%20mindset&utm_campaign=2022+-+Thinkers&utm_source=adwords&utm_medium=ppc&hsa_mt=b&hsa_net=adwords&hsa_ad=594890531659&hsa_src=g&hsa_cam=17008083795&hsa_kw=carol%20dweck%20growth%20mindset&hsa_grp=135891146356&hsa_tgt=kwd-329662833484&hsa_ver=3&hsa_acc=8441935193&gad_source=1&gclid=Cj0KCQiA84CvBhCaARIsAMkAvkIdTxsqQf-doA7yLRFq1JoH8tZpaibH1qqUksLfwo4i_4rbyy2HEeQ4aArmpEALw_wcB [https://perma.cc/9LRR-CDY8] (last visited Mar. 13, 2024).

- *You could make your analysis stronger and more thorough if you include more reasoning by analogy to the cases in your rule section.*
- *Your issue statement has a nice statement of the material facts, but it is missing the governing law. A broad rule in an issue statement helps your reader understand how and why the facts have created a legal problem. Be sure to revise this to include a general statement of law.*

It is often easy to skip over the good things we see in our students' analysis and writing, but it is equally important to point out all of things that are working and on the right track if we want them to continue doing those things. Giving regular, positive comments can keep students motivated, especially when the loudest comments they read are the critical ones.[2] Even when a memo has more challenged areas than well-executed ones, students benefit from hearing positive feedback, even about their effort and progress. Here are a few examples of positive praise for effort and care:

- *I can tell how hard you worked on this part of the analysis.*
- *You are making great progress with organization.*
- *This is a thoughtful conclusion that would be helpful to a client.*

Not everyone agrees that positive feedback is helpful, however, and many have argued that the tried-and-true "sandwich method"—the critical feedback is sandwiched between two positive compliments—hinders progress and motivation by obscuring the point of the feedback.[3] Many critics of the "sandwich method" believe that the positive feedback is often superficial and hides the substantive, critical feedback in a sweater of cotton candy that can be easily disregarded. I am not an evangelist for the "sandwich method" of feedback, but I do not think it is as bad approach as some suggest.[4] In fact, studies show that any method of constructive feedback, including the sandwich, can be effective, and not surprisingly, those receiving the feedback prefer hearing a sequence of positive then constructive feedback.[5]

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[2] *See* Alisa Cohn, *Please Stop Using The Feedback Sandwich.* FORBES.COM, (June 20, 2017).

[3] *See e.g. Id.* and Carrie Sperling, *The Feedback Sandwich: A Bad Recipe for Motivating Students' Learning,* BEST PRACTICES FOR LEGAL EDUCATION, BESTPRACTICESLEGALED.COM, (Feb. 28, 2019).

[4] *See e.g.* Cohn, *supra* note 2; Sperling, *supra* note 3.

[5] *See* Summer Bottini & Jennifer Gillis, *A Comparison of the Feedback Sandwich, Constructive-Positive Feedback, and Within Session Feedback for Training Preference Assessment Implementation*, 41 J. ORG. BEHAV. MGMT. 83 (2021), https://doi.org/10.1080/01608061.2020.1862019.

Legal writing professors can help students receive feedback positively by explaining what type of feedback to expect and how extensive it will be. Moreover, sharing *why* something works, or does not, enables students to view their own work with a growth mindset, building on their strengths and motivating them to improve challenge areas.

2. Share Context for Scores and Grades

Many law schools, including my own, use a grading curve. When I first began teaching, I did not tell students about grades or the curve because I feared it made them even more nervous and competitive than they already were. But it turns out, they know about it anyway and it makes them even more nervous and competitive to suffer in silence about it.

Now, instead of running away from conversations about grades and the curve, I talk to students about it at the beginning of each quarter and again right before they will receive grades. I explain that the curve is a metric for comparison against their classmates, but it is not a metric for showing their competence, growth, and abilities as a lawyer. I send an announcement to my students each year about how to think about my comments and their score, the high and low range of points, and the median score. I want students to know how to think about their score in context, and I want students to think holistically about their score and growth. One part of my announcement usually says something like this:

> *Please set aside some time to review and digest my feedback on your memo. I find that it's best if you give yourself a couple of days, and even better, an entire weekend. As always, the goal of my feedback is to help you become a better writer. If you are pleased with your score, please use that as motivation to continue working hard. If you are disappointed by your score, please channel that into focusing on specific areas where you can improve. I want to help you do that! I know that it is easy to feel pressure and stress around law school grades. However, I encourage you to maintain your perspective, take a holistic approach to learning, and focus on how to become a better student and legal writer. As simple as that may sound, if you focus on your progress and your potential for growth, you will be able to serve your chosen communities much better than if you narrowly view your talents through the lens of a number.*
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> *I believe your greatest currency as a student and lawyer is your reputation. If you are helpful to your classmates, have a growth mindset, and work steadily to improve your legal skills, this will do you far better than trying to gain an edge. I do not remember any of my law school grades, and I certainly cannot tell you which of my classmates received As, either.*

> *However, I can tell you who was helpful, professional, competent, and kind, and I still refer clients and cases to those classmates. You worked hard this past quarter and it showed. Try to be proud of how much you've learned about legal writing in a short time!*

Students often need to hear this message more than once: that law school grades are fleeting, but competence, and a helpful, collegial reputation is not. Moreover, the requirements for admission to the bar in most states involve a candidate having the "character and fitness" to practice law, not an A on a transcript. In fact, under ABA Standard 301, law schools must "maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for *effective, ethical, and responsible participation* as members of the legal profession."[6] By encouraging students to view feedback as part of their larger legal journey, not just a letter grade, students are far less likely to misunderstand their scores and more likely to see the path forward as one upon which they belong.

3. Find Ways to Help Students Implement Feedback

Like most legal writing professors, I spend a lot of time giving students feedback on their formative assignments. The goal of my time, and theirs, is to make them better legal writers. To make sure they use my feedback to make thoughtful and effective revisions to an assignment, I require students to do a revision of their previous assignment with annotations about why they are making individual changes. It also prepares them to do this type of iterative drafting in practice.

For their revision assignment, I require students to respond to my comments in two ways: (1) by revising the sentence or section to reflect my feedback by using "track changes" or another editing device that allows me to see their revised text over their original text, and (2) sharing in a comment bubble the reason they are making any given change. I incentivize thoughtful and effective revisions by giving students a revised point score based on their effort, and the efficacy of their changes. For example, if a student received a six out of ten for their first assignment, they may earn eight to ten points for their revised assignment.

Requiring this type of annotated revision has several benefits. First, students get practice revising their work and implementing feedback. Second, it allows students to be more thoughtful about why they are making a change. It elevates their consciousness by requiring them to study and reflect on the "before" and "after"

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[6] *Standard 301*, AM. BAR ASS'N, (2017–2018) (emphasis added), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABAStandardsforApprovalofLawSchools/2017_2018_standards_chapter3.authcheckdam.pdf [https://perma.cc/4BM2-XSM8].

in their writing. They must articulate why they are doing something one way instead of another. This, in turn, makes it more likely they have learned a durable skill—their future writing will demonstrate these improvements. Third, it helps students internalize the revision process as a critical aspect of the writing process—*all* writing requires revision. Lastly, students really like this revision assignment! Each year, students tell me how much it helped their confidence and growth to be able to revise an assignment with the benefit of feedback. In addition, having the chance to do a revision takes stress and pressure out of the first draft.

4. Conclusion

Legal writing professors can help students appreciate and incorporate feedback by explaining the nature of it, giving students a broader, practical context for their scores and grades, and creating revision opportunities that require students to use feedback to revise and improve their writing. The best feedback is the kind that encourages a student's strengths and explains what, how, and why to improve in a particular area. I revise my feedback as much as I revise my writing, and my eraser knows the score. My preferred feedback implement is a Blackwing soft pencil with a sturdy eraser. For that reason, among others mentioned here, you will never catch me with a red pen.