

## THE PROVERBIAL TREE FALLING IN THE LEGAL WRITING FOREST: ENSURING THAT STUDENTS RECEIVE AND READ OUR FEEDBACK ON THEIR FINAL ASSIGNMENTS

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As legal writing professors, we spend hours of our time crafting our students' final assignments of the semester (typically, a memorandum in the first semester and an appellate brief in the second semester). Our students then spend hours of their time drafting, rewriting (we hope), and polishing these assignments—and we devote our time to helping our students understand and complete these assignments. We then spend hours reading, *critiquing*, and grading these assignments. Although our students are very interested in the final grades that their assignments receive, they are frequently less interested in our feedback on these assignments. In fact, students may not even pick up their final, graded assignments, full of our comments.

It is painfully ironic that the very assignments on which we and our students spend so much of our time are the assignments on which our students are most likely *not* to receive our feedback. For our students, failing to read our comments on their major assignments is a huge lost learning opportunity. For us, our students not reviewing our feedback on their major assignments is a huge lost teaching opportunity and a waste of all the time that we have spent writing comments. After all, we do not spend so much of our time writing comments—actively reading our students' writing

and engaging in a written dialogue with the students regarding their papers—for the sheer joy of doing so. Obviously, we spend so much time commenting on our students' assignments because we believe that the students will actually read those comments and apply them to their future writing. Although individuals may debate whether an unheard tree falling in the forest still makes a sound, we know that unread comments on students' papers are as useful to our students as comments that have never been written. Therefore, what can we do to ensure that students read our comments on their final assignments?

I admit that I have harbored a not-entirely serious desire to hand out a one-item questionnaire to my students before I grade their papers. The questionnaire would ask the students whether they actually intend to read the comments that I write on their final assignments. Of course, I would assure the students that I would read and grade their papers with equal care, regardless of their answer to my questionnaire. I, however, would not spend hours writing comments on the papers of those students who had no intention of reading any of my comments.

In reality, I recognize that this questionnaire would serve neither my students nor myself. First, allowing students to opt out of receiving feedback defeats the whole purpose of providing legal analysis and writing instruction in the first place. Our role is not just to assign interesting and challenging memoranda and briefs to our students, but to provide guidance to our students with respect to the documents that they have created. Students should not be permitted to opt out of the process of learning legal analysis and writing, but rather should be given every chance to reap the benefits of this process.

Similarly, I suspect that I would be less effective in my reading and evaluation of students' writing if I was not also writing comments on that writing. Commenting on student writing makes me a more active reader. I am engaged in the text that I am reading because I have to read the text carefully to analyze its organization and content so that I can provide meaningful feedback to the students. Knowing that I have to assign a grade to a writing assignment also requires me to read actively, but writing comments as I read makes it impossible

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not to be engaged with the text, making me a more attentive reader.

My hypothetical questionnaire is, thus, not a viable option. However, I do need to review my students' work with the belief that they will actually read the feedback that I am providing on their papers. By writing comments on my students' papers, I am engaging in a dialogue, albeit on paper, with my students about their writing. The sole point of writing comments for my students is so that they can read those comments and evaluate their own analysis and writing in light of those comments. There is no point in writing comments that are never going to be read.

Moreover, if I believe that many of my students will never read my comments on their final assignments, those students who *would* review my comments will suffer. The more I think that my comments are for naught, the more likely I might be to spend less time and attention reviewing and critiquing my students' final assignments. I might consciously determine that it simply is not worth spending weeks of effort on papers that are likely never to be read, or I might subconsciously spend less time critiquing students' papers believing that, in many cases, my comments will never be read. Either way, students who are eager for feedback will receive less of it.

Thus, it is imperative to ensure that students will read the comments on their final assignments for both our students' sake and our own. All students suffer if there is a pervasive failure to retrieve and review final papers. The students who are not reading our comments lose out on valuable feedback on assignments that, we hope, they have spent a significant amount of time writing. The students who do read our comments lose out because we might not spend as much time commenting on students' papers generally, under the belief that many of the commented upon papers will go unreviewed by their writers. Finally, we suffer because we are holding back from one of our most important roles: providing feedback to our students. Because we may take for granted that our comments will be read or resign ourselves to the fact that many of our comments will not be read, it is worth confronting this issue head-on.

## The Basics

The first step toward getting our students to review their papers is making sure that our students know that there is a *reason* that they should review their papers. In other words, we must tell our students that we will write comments on their papers and that these comments will help them as they continue their legal analysis and writing. In this respect, it is more likely that students will get their first-semester final assignments and review these assignments without much prompting from us. Students know that they will have additional assignments to write in the second semester of their legal analysis and writing course and, in many cases, students know that they will be graded by the same professor who graded their work first semester. Students, therefore, have an incentive to review their final first-semester assignment because it may provide them with insight as to what will be expected of them in the second semester.

It can be harder, however, to inspire students to review (or even retrieve) their final second-semester assignment. At my school, students cannot pick up their final assignment (an appellate brief) until their final grades have been released. By the time grades are released and the students can pick up their briefs, the first year of law school may seem like a distant memory to the students, who may then be deep in the throes of their first legal job and geographically distant from their law school.

Despite these difficulties, we can provide incentives for our students to care what we have written on their final assignments. First, we can lay the groundwork for students to want to get their papers back even before the papers are graded and ready to be retrieved by the students. When we introduce students to their assignments, we can explain that students frequently use their final writing assignments as writing samples, that we will give the students feedback on their final assignments, and that students can use this feedback to craft even better, more polished writing samples.<sup>2</sup> We can also note that even those students who have no intention of revising their

<sup>2</sup> Our students' writing samples should represent their own work, not our editing prowess. However, our written comments can be made with an eye toward helping students improve their own work, as opposed to retyping their own work to incorporate our changes.

assignments after receiving our feedback might, at least, want to review our feedback before deciding whether to use their assignment or portions of it as a writing sample. In addition, we can explain that while the students' final assignment is the last assignment that they will have for their legal analysis and writing course, the assignment is by no means the last analytical legal writing assignment that the students will ever have. In fact, this final assignment represents only the beginning of the ongoing process of legal analysis and writing development in which the students will engage throughout their legal careers. Explaining to our students that we consider their final writing assignment to be part of the process of their legal analysis and writing education (and not merely an end in itself) and explaining that their final writing assignment will have future practical significance in their legal career can prime our students to retrieve their final assignment and review our comments.

Once students' assignments are ready to be retrieved, we can build on the foundation that we have laid during the semester. When the students' assignments are available, I send an e-mail message to my students notifying them that they may pick up their assignments. I tell my students what materials they will be receiving: the copy of their brief with my comments, the copy of their brief with their teaching assistant's comments, and a grade sheet that tells the students their grades for the graded second-semester assignments (the appellate brief and the oral argument on that brief) and their final grade for the course. I also encourage my students to pick up their briefs, noting that I have written extensive comments on the briefs, pertaining not only to the brief assignment but also to the students' legal writing generally. I remind my students that they may use these briefs as writing samples and may want to see the comments on the briefs before doing so. Finally, I encourage the students to contact me if they have any questions regarding their briefs.

This past semester (spring 2002), within two weeks of my initial e-mail message, 22 of my 38 students had picked up their briefs or e-mailed me and requested that I mail their briefs to them.<sup>3</sup> In

<sup>3</sup> One or two of these students stopped by my office shortly before I sent my e-mail message to ask when they could pick up their briefs.

order to encourage the remaining students to retrieve their briefs, two weeks after my initial e-mail, I sent a follow-up e-mail message to the 16 students who had not yet picked up their briefs. This message told the students that their briefs were available to be retrieved and strongly encouraged the students to get their briefs and review the feedback on them. I also offered to mail the students' briefs to them if they were unable to come by school to pick them up. Sending this follow-up e-mail message reinforced the importance of the students' review of their briefs. In addition, this message made clear to the students that, although their briefs were available for them to pick up at Student Services and not my office, I knew who had picked up their briefs and who had not. Moreover, it gave the students an easier option for obtaining their briefs, while still requiring the students to take an active role in receiving them. Within less than 48 hours of sending the follow-up e-mail message, I received 10 e-mail messages from my students requesting that I mail their briefs to them.<sup>4</sup> In addition, following my second e-mail message, one brief was retrieved by a student who did not contact me.

I am a firm believer that having students retrieve their final assignments is more than half the battle in getting students to review the comments on their assignments and, thus, benefit from the feedback. Students have a great incentive to obtain their assignments and review our comments at the end of the semester and over the summer. The assignments are fresh in the students' minds and the students may want additional feedback as they head into their summer jobs and prepare their application packages for second-year summer jobs. We should encourage students to pick up their final assignments as soon as they are available and make sure that our students know that we are available to answer questions about their assignments.

### Beyond the Basics

Even those students who retrieve their final assignments might not read or understand all of our comments. Beyond encouraging our students to read our feedback, we can pursue other options

<sup>4</sup> Of these 10 students, two ended up retrieving their briefs from the law school themselves.

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to make the feedback on our students’ final assignments a more integral part of their legal analysis and writing course.

The simplest option is to follow up with students at the beginning of second year. Specifically, we can e-mail students who have not yet picked up their assignments and, again, encourage them to do so. We can also e-mail those students who have retrieved their assignments and encourage them, now that they are back at school, to see us if they have any questions regarding our comments.

A more complicated option, but one with potentially high returns, is to incorporate a one-on-one conference regarding the final assignment into the curriculum. Our first instinct might be to want to meet with our students to review their final assignments at the end of their first year of law school. However, there are practical and administrative reasons why we might not be able to read, critique, and meet with students about their final assignments at this time. In the alternative, students could be required to have a conference with their legal writing professor to discuss their final assignment at the beginning of the *second* year of law school. In fact, as discussed below, these second-year conferences might be, in some respects, more advantageous than conferences at the end of the first year.

Ideally, second-year conferences would be mandatory for all students. Of course, if we are going to require second-year conferences, the issue of how to enforce this requirement then arises. One possibility would be to make participation in the conference a requirement for receiving credit for the first-year legal analysis and writing course. In other words, students would not officially receive credit for the course until they participated in the second-year conference. This scheme would most effectively render the conferences an integral, entrenched part of the legal analysis and writing course. In reality, it might be more practicable to require second-year conferences only for students whose final assignments demonstrate significant weaknesses and to *encourage* all other students to meet with us about their final assignments.

For the second-year conferences to succeed, students must prepare for and meaningfully participate in the conferences. To this end, we should require our students to review the feedback

on their final assignments prior to their conferences. Knowing that our students would review our feedback on their final assignments and that our comments would form the springboard for final conferences with our students would encourage us in our effort to write meaningful and constructive comments.

Moreover, these second-year conferences could serve a valuable function in the legal analysis and writing curriculum. The conferences would require students to review the feedback on their final assignments and would provide students with an action plan for their future legal analysis and writing endeavors. The conferences would be forward-looking sessions during which the student and professor together would identify both strengths and weaknesses in the student’s legal analysis and writing and would try to formulate strategies to address the student’s weaknesses. Furthermore, these second-year conferences would reinforce for students that the legal analysis and writing skills they learned in their first year of law school should be applied throughout both their law school and legal careers. In fact, having these conferences after many students would have just completed their first legal jobs over the summer could put our feedback in greater practical context for our students and enhance student interest in our comments.

These conferences would also enable students to realize how much they did indeed learn in their first-year legal analysis and writing course and how far they have come after only one year of law school. At the same time, students might be better able to review their assignments objectively and critically at the beginning of their second year than at the end of the first year, closer to the time that the students handed in their assignments.<sup>5</sup>

Students probably spend more time on their final legal writing assignment than on any of their other first-year assignments. We spend a

<sup>5</sup> To be sure, second-year conferences have their drawbacks. These conferences would take a significant amount of time at the beginning of the first semester, when we are already incredibly busy with our new first-year students. In addition, second-year conferences would impose a significant additional workload on us, for which we should be fairly compensated. However, the benefits of meeting with our students about their final assignments make it worthwhile to at least try to devise a workable mechanism to make that happen—regardless of the form this mechanism takes.

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tremendous amount of time reading and providing feedback on these assignments. If our students are to benefit from our feedback, they must, at least, review our comments on their assignments. If students fail to do so, they lose out on a valuable component of their legal analysis and writing course and we have wasted hours of our time writing comments that will never be read. When no one hears a tree falling in a forest, that tree has, nonetheless, fallen. In contrast, when a student fails to read our feedback on an assignment, that feedback might as well not have ever been written. It is, thus, well worth the effort to ensure that our comments are heard.

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