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Patricia G. Montana

St. John's University School of Law

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Live and Learn: Live Critiquing and Student Learning*

By Patricia Grande Montana^{a1}

Patricia Grande Montana is a Professor of Legal Writing and the Director of Street Law: Legal Education in the Community Program at St. John's University School of Law.

After nearly fifteen years of teaching first-year and upper-level legal writing courses and commenting on thousands of student papers, I decided to experiment with a new way of giving feedback. In a break from the traditional written feedback I had become accustomed to in the form of margin comments and a combination of line edits and end notes, I opted to live a little and learn a new practice: live critiquing. Live critiquing is essentially the process of giving students feedback on their work “live” or in-person, rather than in writing. In the most liberal approach to live critiquing, the professor will provide her critique while she is reading the student’s paper for the very first time. Though live critiquing is certainly not a new teaching idea,¹ it was to me. Because I imagine that there are other legal writing professors who are looking for innovative approaches to giving feedback, I thought it would be valuable to share how I live critiqued and what I learned from the experience. As my experience was largely positive, my hope is to inspire others to liven up their feedback practices with live critiquing too.

* This Article is based on my presentation by the same title at the Southeastern Regional Legal Writing Conference in Atlanta, Georgia on April 21, 2018.

^{a1} It is important to acknowledge that it was at the suggestion and encouragement of my legal writing colleagues, including Robin Boyle, Rosa Castello, and Rachel H. Smith, that I ventured on this new journey. In fact, as a legal writing faculty, we decided that we would each live critique our students’ first ungraded assignment in our Legal Writing II course.

¹ For example, Stetson University hosted a virtual legal writing conference webinar entitled, *The Pedagogical Method of Live Commenting and Grading*, back in February 2012. It explained how at that time giving oral feedback instead of written comments on student papers already had been gaining traction in the legal writing community. The approximately one-hour webinar can be found at <http://www.stetson.edu/law/academics/lrw/webinars.php>.

A. The Feedback Challenge

To fully appreciate the benefits of live critiquing, it is essential to understand the challenges the method is intended to overcome. They include challenges as to the timing of feedback, the depth and breadth of feedback, and the appropriate balance of positive and critical feedback. These issues are what I collectively refer to as “the feedback challenge.”

Of these issues, probably the most practical one is giving students timely feedback on their written work. The goal is to provide meaningful feedback quickly so that students can apply that feedback to their next assignment.² This goal is obviously harder to meet the more students the legal writing professor has in her class. Some of us, including myself, have large sections of forty or more students. Therefore, promptly turning around written feedback is a daunting and often tiring task.

Another challenge is to write comments that have enough depth that the student can make meaningful improvements on future assignments. The comments often need to span a variety of areas too, from issues with analysis and organization, to errors in citation and basic grammar. Yet, best practices dictate limiting the number of comments on a given paper as to not “overwhelm[], frustrate[], or ang[er] students.”³ Therefore, the professor must be careful in crafting

² Professor Mark Wojcik refers to the time spent on grading and commenting on student papers using the traditional method as the “grading crush.” Mark Wojcik, *The Pedagogical Method of Live Commenting and Grading* (Stetson University Virtual Legal Writing Conference Feb. 2012), <http://www.stetson.edu/law/academics/lrw/webinars.php>. As he explains, because legal writing professors can have anywhere from twenty-five to seventy-five students and can spend an upward of two hours on each student paper, the professors’ time is inevitably crushed. *Id.* Likewise, when conferencing with students, legal writing professors experience a “conference crush,” as meeting with so many students individually takes a tremendous amount of time. *Id.* As such, Professor Wojcik proposes “live grading” as a solution to both problems. *Id.*

³ Anne Enquist, *Critiquing and Evaluating Law Students’ Writing: Advice from Thirty-Five Experts*, 22 SEATTLE U. L. REV. 1119, 1130 (1999) (explaining the results from a poll of thirty-five legal writing experts about their experience in critiquing and evaluating law students’ writing). Indeed, experienced legal writing professors agree that “it is effective to limit the number of comments on student papers and that a comprehensive, comment-about-everything approach to critiquing is often counterproductive.” *Id.* at 1132.

“Live critiquing is essentially the process of giving students feedback on their work 'live' or in-person, rather than in writing.”

comments that not only provide the appropriate guidance on a diverse set of issues but also motivate and encourage the student to revise and improve her work. In other words, the professor's comments must be more than critical and constructive, but positive and supportive too.⁴ This involves careful attention to phrasing and tone. Obviously, letting "frustration and fatigue show in . . . comments" is "counter-productive" to student learning.⁵

Finally, the comments must clearly set out how the student should be prioritizing her efforts going forward. In fact, some experienced legal writing professors suggest ordering the paper's weaknesses for the student so that the student understands which weaknesses should take priority.⁶ For example, it's important for a student to know she should be bolstering her analysis and resolving any organizational problems before overhauling citation or working on basic grammar and punctuation issues. The comments might suggest improvements on all, but they also must unambiguously convey the professor's "hierarchy of concerns" so that the student can organize her revisions appropriately and efficiently.⁷ In sum, a legal writing professor must weigh many factors when giving written comments, making timely and effective feedback a real challenge.

B. The Live Critiquing Solution

Live critiquing is an excellent way to conquer the feedback challenge with less stress on the legal writing professor, improved communication between the professor and student, and overall enhanced student learning.

1. The Assignment

By way of background, in St. John's University School of Law's first-year legal writing curriculum, students learn predictive writing through several practical closed-universe assignments in the fall semester and then practice persuasive writing with several open-

research projects in the spring semester. It was in the second semester that I tried live critiquing for the first time. The timing was ideal, as the students were no longer new to legal writing and had received traditional written feedback from me on several prior assignments. Thus, the students had developed some confidence in their abilities and familiarity with the feedback process generally. In addition, they already had established a rapport with me. I chose the first assignment—an 1,800-word argument section to a memorandum of law in support of a motion for a preliminary injunction—as the one to live critique because it was a relatively short and simple argument, making live feedback more manageable. Additionally, the assignment was ungraded. Though the students had to complete and pass the assignment as part of the 10% allotted to their class performance, the assignment was not otherwise calculated into their final grade. With these conditions, live critiquing seemed achievable.

2. The Method

I met with each student for approximately thirty minutes.⁸ Because I had assigned a similar motion in the past, I did not read any of the submissions before meeting with students.⁹ Instead, I had them bring two hard copies to the conference and read the briefs "live" and largely out loud for the first time in their presence. What happened next depended on the brief as well as the student. For example, some students interrupted to clarify what I had just read or to ask a question whereas other students waited for me to make a comment or ask a question. The feedback I provided was largely verbal, although there were times when I would edit the text or write a comment; but any written feedback usually followed a discussion and input from the student. Most importantly, the students followed along on their copies and took notes throughout. Toward the end of the conference, I completed a simple rubric, identifying the student's competency as either "beginning,"

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⁴ *Id.* at 1132 (discussing how one of the “most common piece[s] of advice” experienced legal writing professors have about critiquing is to “write positive comments when they are deserved”).

⁵ *Id.* at 1146.

⁶ *Id.* at 1133.

⁷ *Id.*

⁸ Though I had originally scheduled twenty-minute conferences, it quickly became clear that more time was needed. In the end, I met with students closer to thirty minutes each.

⁹ I could see the benefit of skimming the submissions or reading a random sample of them beforehand if the professor is new to teaching or the assignment is an unfamiliar one. *Supra* sec. D (discussing drawbacks).

“Rather than working in ‘isolation,’ live critiquing is by its nature very social.”

“developing,” “proficient,” or “highly proficient” in several core areas, such as organization, statement of the law, argument of facts, writing, and citation. The goal of the rubric was to help the students prioritize their efforts for the next assignment. In fact, a brief discussion about how the student should apply the feedback going forward was typically how the conference ended.

C. The Benefits

Live critiquing not only addresses “the feedback challenge,” but also offers numerous other benefits. First, it is faster to live critique than provide written feedback, especially when reading and commenting on a single submission sometimes can take upward of an hour to complete. More important than the time itself is how that time is spent. Rather than working in “isolation,” live critiquing is by its nature very social.¹⁰ Thus, giving feedback in-person is more stimulating and, in turn, less taxing. Importantly, students receive the feedback closer in time to their writing experience.¹¹ Unlike with written comments, when there is “dead time” between submitting the assignment and receiving feedback, making the written comments less relevant the more time that passes, live critiquing is almost immediate and thus very relatable.¹²

Second, it is simpler to discuss the student’s writing in greater depth and with more examples when the student is available to clarify her writing decisions and answer questions about them. These discussions are invaluable to the student’s improvement and obviously are not possible with written feedback

alone. Third, it is easier, and certainly more natural, to give positive feedback in-person too. A comment like “good statement of the law” simply does not have the same impact on the student as when the professor makes that same comment while reading the student’s explanation of the law out loud in the student’s presence. The professor’s tone and expression, not just the words, are what communicate the support and encouragement the student needs.

Finally, and probably most remarkable, live critiquing allows the professor to help the student prioritize her efforts when revising. The conference gives the professor the opportunity to talk more globally about the issues presented in the student’s writing, quickly point to some examples of each as support, and then triage with the student their order of importance. In contrast, it is nearly impossible to communicate this same information with traditional written feedback. Though lengthy margin and end comments, or a numbering or special coding system that highlights, asterisks, or otherwise underscores the most pressing issues are possible, they are very time intensive and still require that the student internalize the suggested prioritization. Thus, the live critique offers a much simpler and effective way to communicate the “hierarchy of concerns” with the student’s writing.

In addition to confronting the issues presented by “the feedback challenge,” there are other benefits to live critiquing too. During a live critique, students are very candid about their writing decisions and surprisingly receptive to discussing their writing process, not just the final written product. This allows the feedback to have a more enduring effect. Moreover, students are better able to spot problems in their own writing when given the opportunity to re-read it or hear it read out loud to them. Likewise, students also “develop a better understanding of their audience and the problems their paper presents to that audience.”¹³ These types of student-driven fixes sometimes result in little to no conversation, whereas had the professor used traditional written feedback, they would need to be flagged and then

¹⁰ Anne Hemingway & Amanda Smith, *Best Practices in Legal Education: How Live Critiquing and Cooperative Work Lead to Happy Students and Happy Professors*, 29 SECOND DRAFT 7, 8 (Fall 2016) (explaining how the legal writing faculty at Widener Law Commonwealth use live critiquing to provide feedback on assignments, which has led to happier students and faculty).

¹¹ *Id.* at 8 (“Students receive feedback more quickly after submitting assignments, allowing them to move to the next step of the writing process faster.”); Mark E. Wojcik, *Results of an Informal Student Survey on the “Live Grading” Experience* (LWI Biennial Conf. July 15, 2008), <http://ssrn.com/abstract=1161176> (surveying nine students about their experiences with “live grading” and finding that students appreciated the instant feedback).

¹² Alison E. Julien, *Brutal Choices in Curricular Design . . . Going Live: The Pros and Cons of Live Critiques*, 20 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 20, 22 (2011) (characterizing the time—two weeks in the example provided—between when a student submits a paper and then receives traditional written feedback as “dead time” because the student is usually not working on the assignment during that time interval).

¹³ *Id.* at 20.

thoroughly explained.¹⁴ Furthermore, because the live critiquing is student-driven, the feedback is more likely to have a lasting effect on the student's writing.

During the live critique discussions, it also is easier to diagnose a student's strengths and weaknesses. Importantly, because these discussions happen without any "dead time," the student continues to be engaged with the assignment and thus more inclined to make revisions. For the professor, the student is no longer anonymous or a simple name on the paper; therefore, the feedback itself is more personalized and tailored to the student and her uniqueness as a writer. Further, the professor no longer needs to guess what a student was trying to communicate in her writing either. The professor can ask that student and then "tailor[] [her feedback] to the precise point that the student intended to make."¹⁵ In this way, the professor can "avoid making wrong assumptions" about the student's choices and "tailor [the] feedback accordingly," while also saving considerable time.¹⁶

Finally, when the feedback is customized, there is improved collaboration between the professor and student too. The "tone" of the professor's "voice" allows the professor to convey more nuances than a written comment would permit, thereby making it easier for the professor to "convey compassion."¹⁷ Because writing is such a personal experience, it is crucial that the student is not only supported by the professor, but also that the student *feels* supported by that professor. Live critiquing, in addition to its many other benefits, achieves just that.

¹⁴ Alison E. Julien, *The Pedagogical Method of Live Commenting and Grading* (Stetson University Virtual Legal Writing Conference Feb. 2012), <http://www.stetson.edu/law/academics/lrw/webinars.php> (discussing the benefits of live critiquing, including how reading out loud often results in students hearing the problems on their own, eliminating the need for a detailed explanation by the professor).

¹⁵ *Id.* at 24.

¹⁶ Suzanne Valdez, Presenter, *Live Grading—A Meaningful and Effective Way to Assess Student Performance* (AALS Workshop for New Law Teachers June 2018), <https://www.aals.org/wp-content/uploads/2018/06/18NLTLiveGradingPresentation.pdf> (exploring the benefits of live grading to the professor and student alike); Julien, *supra* note 14, at 21 (explaining how with traditional written feedback professors might spend a lot of time "trying to ascertain what a student was trying to accomplish" before writing a comment and in the end the professor's "premise" might be incorrect and the comment unhelpful, thereby making written critiques a far less "effective" and "efficient" approach than live critiques).

¹⁷ Valdez, *supra* note 16.

D. The Drawbacks

Though largely positive, there are several downsides to the practice of live critiquing, all of which could be tackled, however, with some careful planning or tweaks to the method itself. First, the format of a live critique demands that the professor respond quickly and thoughtfully to the student's writing. Depending on the experience of the professor, complexity of the assignment, and quality of the student's writing, it might be difficult to read, process, and formulate helpful and responsive feedback in the moment. Likewise, it might be challenging to address the writing's more pressing issues before the smaller ones, particularly when the smaller ones, like misspellings, citation errors, and grammar mistakes, are pervasive and extremely distracting. The temptation to run through them first is high but doing so could easily misdirect the student as to the "hierarchy of concerns."

Additionally, there is an obvious limit to the number of pages and issues a professor can cover in a single live critique.¹⁸ This is especially true with weaker writing. Therefore, there are times when the critique might not feel as comprehensive as the written comments might have been. In these instances, the goal is to identify the most pressing and recurring problems and then explore and model potential solutions so that the student can apply that feedback to other parts of the writing, even if there is not ample time to review everything.

Completing the rubric at the end of the live critique is not an easy exercise either. It was surprisingly difficult for me to assign a level of proficiency, as I often felt hurried and uncertain about the precision of my assessment. Relatedly, I was uneasy about evaluating a student's competencies without having had the advantage of reading all the student papers first or the benefit of time to reflect on the entire paper. With traditional written feedback, such an assessment is not rushed and is usually more systematic, giving the professor greater confidence in the accuracy of the process.

¹⁸ Julien, *supra* note 14, at 25.

“Finally, when the feedback is customized, there is improved collaboration between the professor and student too.”

“... all the drawbacks to live critiquing are easily surmountable ...”

Yet, probably the greatest challenge for me was being able to comfortably give comments that were critical of a student's work. It can be difficult to explain to a student in-person that the writing has serious shortcomings, for example, particularly when there are only moments to reflect on how best to convey those shortcomings. On these occasions, the professor must pay careful attention to her tone and message, making sure she considers not only the student's writing, but also the student's temperament and openness to a constructive critique.

A live critique could be overwhelming for certain students too. The feedback, though more tailored to the students' writing concerns, is delivered fast. “[S]ome students process information more slowly” and therefore might not be able to keep up with the professor's pace during the live critique.¹⁹ Accordingly, those students “might benefit from a written critique” before conferencing with the professor.²⁰ Likewise, students are naturally anxious about the live critique, especially the first one.²¹ This anxiety can impede a student's receptivity to and understanding of the professor's feedback during the live critique.

Finally, live critiquing makes it very difficult to detect plagiarism, impermissible collaboration, or a similar infraction. Without the benefit of an earlier read or the assistance of a computer (and plagiarism software), subtle similarities in organization, writing, and word choice will be less obvious to the professor during a live critique.²² The fact that the professor is reading so many submissions in such a short period of time, usually fast and

sometimes even cursorily, makes detection near impossible. Therefore, a scan of the papers before or after the live critique is recommended and can certainly help with the detection problem. In summary, all the drawbacks to live critiquing are easily surmountable and thus should not be a deterrent to experimenting with the many live critiquing possibilities.

E. Live Critiquing Possibilities

Given that the benefits of live critiquing outweigh the drawbacks, legal writing professors should consider testing it out. There are countless ways to modify the practice to more directly meet the needs and experience of both professors and students. Several simple modifications include reading or skimming the students' writing ahead of time, allotting more time for the conference itself, or limiting the live critique to certain sections of the assignment or even certain issues, such as analytical, organizational, or basic writing ones. Any type of pre-conference read could help the professor organize her feedback before giving it live, including how best to convey any unfavorable feedback. Additionally, the professor could live critique shorter practice (rather than graded) assignments and write a summary comment at the end instead of completing a rubric. The summary comment could emphasize the strengths and weaknesses of the student's writing and suggest how the student might prioritize her efforts on the next assignment.

The professor could decide to give a mix of written and verbal feedback too, by, for example, reviewing the students' work in advance and making light margin comments that the professor would then explain and elaborate on during the live critique. Likewise, the professor could write on the students' paper more, adding probing questions or margin comments intended to summarize the live discussion. Furthermore, the professor could encourage students to take more detailed notes by providing a blank rubric that matches the feedback the professor intends to give. The rubric categories could help the student internalize the “hierarchy of concerns”

¹⁹ Julien, *supra* note 14.

²⁰ *Id.*

²¹ Wojcik, *supra* note 11, at 2 (even though the students' impressions were largely favorable, many students explained how they were “anxious” or “nervous” to have a professor give feedback in-person, especially the first time).

²² In fact, during my first live critique experience, I failed to uncover that two students had submitted substantially similar briefs in violation of my no-collaboration policy. It was only after I graded the next assignment using traditional written feedback and discovered impermissible collaboration there that I became aware of the problem. I went back to the two students' submissions for the live critique, read them again (more slowly), and quickly realized that they had improperly collaborated on that assignment as well. Though the students were disciplined for violating my course rules, I obviously would have preferred to have discovered it the first time the students cheated.

the student will need to address when rewriting. For students who need more time to process the feedback or who would benefit from further clarification, the professor could offer a follow-up critique or, if time did not permit, additional drop-in hours.

To address student anxiety, the professor should explain clearly the goals and expectations for any live critique upfront. The professor also could demonstrate a live critique with student volunteers (i.e., teaching assistants) or by recording one and making it available for students to watch in advance. Though I first live critiqued with first-year legal writing students, the live critique would be easier and perhaps even more successful with upper-level students, as they have more experience with legal writing and in receiving feedback. As a result, they might be less anxious about

the live critique than first-year legal writing students. As the possibilities for modification are numerous, live critiquing is an innovative way of giving feedback on students' legal writing.

F. Conclusion

Even though live critiquing is not a new practice, it is still one that many legal writing professors have yet to try. Though my first experience had some drawbacks, the valuable benefits clearly make it worth repeating. It is rewarding to live through a new teaching experience and learn a different way to improve on student learning. In the end, live critiquing is a useful methodology for giving feedback—one that legal writing professors should be able to comfortably and easily add to their repertoire of teaching tools.

“... the live critique would be easier and perhaps even more successful with upper-level students, as they have more experience with legal writing and in receiving feedback.”

Micro Essay

Put AI Under Hume's Guillotine

AI knows what is, not what ought to be. Consider a 2017 Science article, in which Caliskan, Bryson, and Narayanan—technology researchers at Princeton—trained AI to associate words with each other based on a massive corpus of text from the web. The AI reproduced biases from the Implicit Association Test, which tests humans' unconscious biases against minorities and women. Those biases in humans could be “a simple outcome of unthinking reproduction of statistical regularities absorbed with language,” according to which, for example, one might conclude “all doctors are men” because in writing, doctors are typically associated with masculine pronouns. Similarly, AI that is given lawyers' writing as an input for training and instructed to compose legal prose would likely reproduce statistical regularities that would fail to meet our normative standards for good legal argumentation, just as much of the writing from which the AI would learn fails. AI would fail to do what lawyers ought to do, and instead would just repeat what they do now.

By Brian N. Larson, Associate Professor, Legal Rhetoric and Argumentation, Texas A&M University School of Law.