

# Using Content and Tone to Deliver Effective Feedback on Legal Research

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*Abstract: This article is written in support of developing the teaching skills of law librarians. It reviews the important role feedback has in teaching legal research and provides an overview of strategic considerations in planning for feedback. By focusing on written feedback as a mode of providing comments to law students, the article applies research on how to utilize content and tone to deliver effective feedback. Effective feedback should engage with the students by being specific, positive, constructive, and personalized. Examples of how content and tone may be utilized to improve comments on legal research assessments are discussed.*

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## INTRODUCTION

When librarians discuss teaching legal research, we categorize legal research as a skill.<sup>2</sup> Our legal research pedagogy places a strong emphasis on skill-based instruction.<sup>3</sup> As librarian teachers, less emphasis may be placed on developing the skills librarians need to be effective teachers in an effort to get law librarians in front of the classroom as soon as possible.<sup>4</sup> Just as students need to learn, develop, and practice their legal research skills, librarian teachers need to learn, develop, and practice teaching skills.<sup>5</sup> Scholarship, workshops, and conferences have developed within the profession to focus on teaching librarians how to develop their own teaching skills.<sup>6</sup> This article contributes to this discussion by tackling the teaching skill of delivering effective feedback, specifically effective *written* feedback, on legal research.

Feedback is a crucial part of student learning, especially when teaching a skill like legal research. As legal research assessment also often involves written work

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<sup>2</sup> See generally Catherine M. Dunn & Michael Whiteman, *Developing Essential Research Skills for Law Practice: The Legal Research Competency Program*, 41:2 Legal Reference Servs. Q. 67 (2022); Alyson M. Drake, *On Embracing the Research Conference*, 111 LAW LIBR. J. 7 (2019); Robert M. Linz, *Research Analysis and Planning: The Undervalued Skill in Legal Research Instruction*, 34:1 Legal Reference Servs. Q. 60 (2015); Kristin B. Gerdy, Teacher, Coach, Cheerleader, and Judge: Promoting Learning through Learner-Centered Assessment, 94 LAW LIBR. J. 59 (2002).

<sup>3</sup> See generally *id.*

<sup>4</sup> See Michael Chiorazzi & Alexandra Lee Delgado, Those Who Do, Teach: Preparing Law Librarianship Students for the Teaching of Legal Research, 37:2 Legal Reference Servs. Q. 134, 137 (2019) (discussing the prevalence of teaching duties for law librarians and lack of formal instruction on teaching legal research in library schools).

<sup>5</sup> See SUSAN BROOKHART, HOW TO GIVE EFFECTIVE FEEDBACK TO YOUR STUDENTS (ASCD 2017) (“Giving good feedback is a skill teachers need to develop.”).

<sup>6</sup> Examples include the scholarship cited in Footnote One, the Teaching Legal Research class at the University of Arizona, and the Teaching the Teachers Conference for law librarians.

product, it is ideal for delivering feedback in written form. However, written feedback is most productive when it is delivered effectively. For feedback to be effective, it must engage students through comments that are specific, positive, constructive, and personalized. Delivering this effective written feedback may be achieved through thoughtful and purposeful use of content and tone. Just like learning any other skill, teachers need to study and practice how to write feedback in order to make it an engaging part of the learning process.

Part One of this article will explain how and why feedback fits in as part of the legal research learning process. Part Two will outline factors to consider in developing strategies for providing feedback. Part Three will focus on what to comment (content) and how to comment (tone) on legal research assessment to make feedback effective. Finally, Part Four of this article will summarize strategies for increasing student engagement after the written feedback is delivered.

It is important to note that the feedback strategies discussed in this article are widely studied in scholarship on educational theory. However, as many librarians are not trained educators, they have not had the chance to study this literature. This article applies the well-developed literature on feedback to legal research in an effort to introduce these materials to the law librarian community.

While this article is written for legal research instructors in formal classroom settings, the feedback strategies may be applied by librarians providing feedback to legal researchers in court and firm settings. Librarians providing feedback to colleagues on scholarship, projects, or other work product may also benefit from

these feedback strategies. Thoughtful consideration of the content and tone of feedback may be universally applied by librarians.

## **PART ONE: FEEDBACK AS PART OF THE LEARNING PROCESS FOR LEGAL RESEARCH**

### **A. Feedback as Part of the Learning Process**

Elizabeth M. Bloom's article<sup>7</sup> on incorporating feedback in law school classes begins by highlighting how central feedback is to student learning: feedback is "one of the most powerful influences on learning."<sup>8</sup> Feedback can be incorporated into the two major categories of assessment utilized in law school courses: summative feedback and formative feedback. The American Bar Association requires law school education to utilize both methods of assessment.<sup>9</sup> Summative assessment is provided at the end of a learning process, like a module or course, usually in the form of a grade.<sup>10</sup> It does not provide much opportunity for dialogue between the teacher and student or for demonstrable change by the student based on the feedback.

Formative assessment is provided at multiple points throughout the learning process and provides students with opportunity to demonstrate improvements and change based on the feedback. The ABA more narrowly defines formative assessment methods as "measurements at different points during a particular

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<sup>7</sup> See generally, Elizabeth M. Bloom, *A Law School Game Changer: (Trans)formative Feedback*, 41 OHIO N.U. L. REV. 227 (2015).

<sup>8</sup> John Hattie & Helen Timperley, *The Power of Feedback*, 77 REV. OF EDUC. RESEARCH 81, 104 (2007).

<sup>9</sup> AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2017-2018, at 23 (2018) (Standard 314).

<sup>10</sup> MICHAEL HUNTER SCHWARTZ, SOPHIE M. SPARROW, & GERALD F. HESS, *TEACHING LAW BY DESIGN* 2<sup>nd</sup> Ed. (2017).

course or at different points over the span of a student's education that provide meaningful feedback to improve student learning.”<sup>11</sup>

As demonstrated in the definition, feedback is a crucial part of formative assessment. Feedback becomes formative when it is “information communicated to the learner that is intended to modify his or her thinking or behavior for the purpose of improving learning.”<sup>12</sup> Essentially, the feedback “forms” new behavior. Formative feedback is most beneficial in that it can be utilized to adjust student learning for the future.<sup>13</sup>

An important part of formative feedback is the facilitation of learning through a dialogue that develops between teacher and student.<sup>14</sup> This is of particular concern for written feedback, where the default assumption is that the student passively receives the feedback. However, the written feedback becomes engaging by calling the student to action or to making future changes. Repeated opportunities for feedback, both written and verbal, help build an engaging, “continuous, collaborative partnership”<sup>15</sup> between the teacher and student.

## B. Feedback as Part of Learning Legal Research

While most teaching benefits from the use of formative feedback, legal research is a topic that is particularly suited to increased learning through the application of effective feedback. There are many reasons that is the case. First, legal research is

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<sup>11</sup> ABA STANDARDS, *supra* note 8, at 23 (Interpretation 314-1).

<sup>12</sup> Bloom, *supra* note 6, at 232.

<sup>13</sup> *See id.* at 233.

<sup>14</sup> *See id.*

<sup>15</sup> *See id.* at 55 and Drake, *supra* note 1, at 14-15.

a skill students need to develop. First-year and upper-level research classes often receive skills or experiential designations, which comes with particular requirements under the ABA.<sup>16</sup> Experiential courses require “multiple opportunities for performance.”<sup>17</sup> Learning a skill requires repeated practice, and improvement can be made in the practice through the use of feedback.<sup>18</sup>

Second, most legal research classes utilize assignments as the primary assessment method, instead of a final exam.<sup>19</sup> Multiple assignments present the opportunity for students to not only receive feedback, but to apply it moving forward within one class. This is more than can be done by other law teachers instructing in doctrinal courses. Considering how many law classes are doctrinal, it may be the best opportunity students have for feedback.<sup>20</sup> Current law students are not avoiding opportunities for feedback. The majority of law students currently enrolled in law school can be categorized as Millennials (born between 1981 and 1994) and Gen Z (1995-2012).<sup>21</sup> There are many efforts to study and categorize the qualities of people in these generations, and scholars have described both generations as eager to receive feedback<sup>22</sup>.

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<sup>16</sup> ABA STANDARDS, *supra* note 8, at 16 (Standard 303).

<sup>17</sup> *Id.* at 16 (Standard 303(a)(3)(iii)).

<sup>18</sup> *See generally*, PETER C. BROWN, HENRY L. ROEDIGER III, & MARK A. MCDANIEL, MAKE IT STICK (2014); *See Schwartz, supra* note 9, at 156-157.

<sup>19</sup> *See Gerdy, supra* note 1, at 78.

<sup>20</sup> To meet ABA curriculum requirements, students may enroll in other experiential courses and writing courses that also heavily incorporate the use of formative feedback, including clinics and externships.

<sup>21</sup> *See* Olivia R. Smith Schlink, *Okay Zoomer, Teaching Legal Research to Gen Z* at 2, <https://community.aallnet.org/viewdocument/2022-ok-zoomer-teaching-legal-re>.

<sup>22</sup> *See* Bloom, *supra* note 6 at 229-230 (summarizing scholarship on millennial students’ requests for multiple forms of feedback); Schlink, *supra* note 21 at 24-25 (“Gen Z both want and need regular feedback. They specifically crave live feedback, although that can be time consuming.”).

Finally, legal research classes may be particularly well-suited to formative feedback due to the presence of librarian teachers in the first-year and upper-level curriculums.<sup>23</sup> Librarians are uniquely visible to students outside of the classroom. Students spend time in libraries, where librarians sit at the reference desk, meet with students, and work with the collection and space. This may make librarians seem more approachable than other teachers, and it also provides students with opportunities to casually engage with librarian teachers outside of the classroom.<sup>24</sup> This may help strengthen the bond between student and teacher that is necessary to achieve effective formative feedback.

## **PART TWO: GOALS AND STRATEGIES FOR DELIVERING FEEDBACK**

### **A. Goals for Feedback**

By providing feedback, a teacher is communicating to a student that they read and thought about the student's work.<sup>25</sup> This can be incredibly impactful to students who often feel they are sending law school exams off to be graded without having anything more than a letter grade to show for it. However, as librarian teachers, we can have stronger goals for feedback than communicating acknowledgment of a student's work.

Feedback has two overarching goals that can be stated simply as: (1) "show students the merits of their work" and (2) identify areas of improvement for future

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<sup>23</sup> See Gerdy, *supra* note 1, at 80.

<sup>24</sup> See *id.*

<sup>25</sup> See Brookhart, *supra* note 4 at 1 ("Somebody cared enough about my work to read it and think about it!").

work.<sup>26</sup> The goals of feedback may be boiled down to identifying what a student did right and what a student did wrong, but it must be accompanied by explanation. The goal is not to praise and criticize, but instead to be substantive in making positive comments and constructive in making critical comments. Comments should be supported by reasoning that allows the student to understand why the comment is worthy of being communicated to the student.

Positive feedback doesn't rely on praise or false platitudes. Positive feedback identifies the strength in a student's work by identifying what they did well.<sup>27</sup> In order to be substantive, it connects the strength with the skills taught, the rubric criteria, and the student's capacity to demonstrate those skills.<sup>28</sup> Identifying weaknesses may also be done positively when it is supported by suggestions for how to improve.<sup>29</sup>

Feedback is only constructive if it is directed at actual improvements which can be made in the future.<sup>30</sup> The idea that feedback is most effective if it can be used by the student to improve future performance can be described as "feed forward" feedback.<sup>31</sup> The comments move the student forward in the learning process rather than keep them in the same place.

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<sup>26</sup> "Feedback has two goals.. Show students the merits of their work – what they did right and wrong and identify areas or skills for improvement"

<sup>27</sup> See Brookhart, *supra* note 4 at 30; Schwartz, *supra* note 9 at 162.

<sup>28</sup> Brookhart, *supra* note 4 at 30

<sup>29</sup> *Id.*

<sup>30</sup> See ALEXA Z. CHEW & KATIE ROSE GUEST PRYAL, THE COMPLETE LEGAL WRITER 2<sup>nd</sup> Ed. 451 (2020).

<sup>31</sup> See Brookhart, *supra* note 4 at 75.



To summarize, feedback should be positive, constructive, and important. Most of the language in this section is directed at providing feedback to a singular student. One-on-one attention specifically communicates acknowledgement of that student's work. While there are opportunities to provide group feedback, feedback designed to improve a student's performance is most effective if it is personalized.

How do these descriptive terms support a pedagogical definition of effective feedback? A study by David J. Nicol and Debra MacFarlane-Dick reviewed the field of scholarship on formative assessment to synthesize seven principles for "good feedback".<sup>32</sup> The study defines good feedback as "anything that might strengthen the students' capacity to self-regulate their own performance,"<sup>33</sup> with self-regulation being demonstrated by a student's ability to process feedback from a teacher and improve by applying it to their next assessment.<sup>34</sup> These seven principles may be utilized to measure good feedback:

1. Helps clarify what good performance is (goals, criteria, expected standards);
2. Facilitates the development of self-assessment (reflection) in learning;
3. Delivers high-quality information to students about their learning;
4. Encourages teacher and peer dialogue around learning;
5. Encourages positive motivational beliefs and self-esteem – encourages and motivates;
6. Provides opportunities to close the gap between current and desired performance; and
7. Provides information to teachers that can be used to help shape the teaching.<sup>35</sup>

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<sup>32</sup> See David J Nicol & Debra MacFarlane, *Formative Assessment and Self-Regulated Learning: A Model and Seven Principles of Good Feedback*, 31:2 STUDIES IN HIGHER EDUCATION 199 (2006).

<sup>33</sup> *Id.* at 205.

<sup>34</sup> See *id.* at 199-200; See Bloom, *supra* note 6 at 230-231.

<sup>35</sup> *Id.* at 205.

These principles are more than can be evaluated in this article, but it will consider how the use of content and tone in written feedback can meet many of these principles for good feedback. It will particularly focus on how written feedback must engage students by being specific, positive, constructive, and personalized as a measure of effectiveness.

## B. Feedback Strategies

When creating a method for delivering feedback, the method must be well-suited to the particular group of students, the subject being taught, and the method of assessment.<sup>36</sup> However, there are many topics to consider in making strategic choices. This article focuses on evaluating format, audience, timing and amount in preparation for providing feedback to law students on legal research assignments. Each teacher will need to specifically evaluate these considerations in applying the factors to their own class and developing their own feedback strategies.

### *1. Format & Audience*

One of the first considerations for providing feedback is the mode of feedback: oral or written.<sup>37</sup> Oral feedback may be delivered via a recording or in a live setting (in person or virtually). It may be provided to an individual student via research conferences or informal conversations, or it may be provided to a class via lecture or demonstration. Oral feedback, especially a one-on-one research conference, is invaluable for providing a student with the opportunity to talk

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<sup>36</sup> See Brookhart, *supra* note 4 at 12. Brookhart specifically evaluates the categories of Mode, Audience, Amount, Timing, and Content individually. *Id.* at 13-14. This article selects and highlights pieces of this discussion to apply to legal research.

<sup>37</sup> See Chew & Pryal, *supra* note 30 at 433-435.

about their assessment; they can ask questions about the feedback and discuss strategies for moving forward.<sup>38</sup>

Librarian teachers have an excellent primer on the importance and use of research conferences in legal research with Alyson Drake's article *On Embracing the Research Conference*.<sup>39</sup> This article will focus on the creation of written feedback, which is often a precursor to one-on-one oral feedback. However, the guidance on content and tone may be carried into the conversation during conferences that provide feedback on legal research.

Written feedback may be electronic or handwritten.<sup>40</sup> It may be provided to an individual student via in line comments or overall comments or it may be provided to an entire group or class of students via overall comments. In order to limit the scope of this article, it will focus on written feedback to individual students. As individualized feedback is also personalized, it helps contribute to the goal of building a dialogue with the student that cannot be attained with group feedback.

There are many challenges to written feedback, including the use of tone, determining appropriate content, and building trust with the student or students.<sup>41</sup> However, when done effectively, students benefit from the direct attention to their work and sends the message that their work is valued.<sup>42</sup> Building trust can be achieved through good use of tone and important content. While ultimately

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<sup>38</sup> See Drake, *supra* note 1 at 9.

<sup>39</sup> See generally, Drake, *supra* note 1.

<sup>40</sup> See Chew and Pryal, *supra* note 30 at 433-434.

<sup>41</sup> See Brookhart, *supra* note 4 at Chapter 3.

<sup>42</sup> *Id.*

effective feedback should create a dialogue between teacher and student, written feedback may also provide the student some needed distance between the message of the feedback and the teacher conveying the message.

When providing written feedback, there are many practicalities to consider, and choices should be made with clear pedagogical intent. Written feedback may be effectively delivered electronically and directly to the student. Electronic delivery eliminates communication issues and student frustration due to illegible handwriting, while also saving the teacher time in writing the feedback. While it is important that individual feedback not utilize the same feedback for all students, themes often emerge and similar comments may be copied, pasted, and edited in the electronic environment.

Feedback may be written electronically in many different places on a particular assessment: directly on the student's work; on a rubric or grade sheet; or a combination of both.<sup>43</sup> While the feedback directly on the student's work is generally targeted to specific comments, the rubric or grade sheet may include a mix of specific comments and global comments.<sup>44</sup>

Wherever a teacher selects to write the feedback, it is important to consider whether the assessment is graded or ungraded. For formative feedback, it has been established that there must be multiple opportunities for assessment.<sup>45</sup> There is another question of whether the assessment should be graded or ungraded for the

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<sup>43</sup> See Brookhart, *supra* note 4 at 42-48.

<sup>44</sup> See Chew & Pryal, *supra* note 30 at 432-433.

<sup>45</sup> See *supra* Part One A.

feedback to be most effective. Feedback literature repeatedly stresses that feedback is most effective with ungraded assessment.<sup>46</sup> When students receive an assignment with both a grade and comments, they often focus on the grade instead of the comments.<sup>47</sup> However, many law librarian teachers don't have a choice in providing graded assignments due to law school mean and curve requirements.

Whether the class is graded or ungraded, teachers can focus on providing ungraded opportunities for feedback before a major assignment that will be graded.<sup>48</sup> Written feedback should be set as an expectation early in the course before it is delivered alongside a grade, and it should be utilized with strategies that prepare students to receive feedback.<sup>49</sup>

## *2. Amount & Timing*

Two related aspects of feedback strategy are amount and timing. Determining the amount of feedback to provide goes to the question of how much feedback is enough, while determining the timing of feedback goes to the question of when to provide feedback. Teachers need to balance providing enough feedback to be effective with returning feedback in a timely manner.

Concerns over determining the appropriate amount of feedback include both how many comments to make and how much to write in each comment. The analysis

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<sup>46</sup> See Valerie J. Shute, *Focus on Formative Feedback*, 78:1 REVIEW OF EDUCATIONAL RESEARCH 153, 156 (2008). Shute's article is a review and categorization of feedback literature, and she highlights numerous studies in support of the conclusion that "providing grades or overall scores indicating the student's standing relative to peers" is a feature of feedback that impedes learning. *Id.* at 156.

<sup>47</sup> See Brookhart, *supra* note 4 at 29.

<sup>48</sup> See Bloom, *supra* note 6 at 250-251.

<sup>49</sup> See *id.*; *infra* Part Four.

is different for in line comments versus global comments, however, there are some guiding principles that can be applied to both efforts.<sup>50</sup> First, pick the most important points to comment on.<sup>51</sup> Next, focus on points that line up with the rubric or grading sheet and reflect the objectives of the assessment.<sup>52</sup> Finally, consider the needs of the specific student and what will help the improve moving forward.<sup>53</sup> For example, if a student repeatedly demonstrates weak skills in relation to one criteria, comment on that issue one time rather than each time the problem is demonstrated.

In order to assess what the biggest issues in need of comment are, consider reviewing an assessment three time to prepare to deliver feedback: first, for the big picture; second, to provide comments; and third, for completeness and consistency.<sup>54</sup> By first reviewing the assessment holistically, teachers can identify the important issues in need of attention in the comments.

There is no doubt that providing written feedback is a time-consuming process, but it still needs to be provided in a timely manner. While providing a guide on right and wrong answers can be done immediately, more time is needed to perform a comprehensive review of student thinking and processing.<sup>55</sup> Written, personalized feedback is not a method that is always best-suited to providing

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<sup>50</sup> See Brookhart, *supra* note 4 at 13 (Figure 2.1 lists three considerations for determining the amount of feedback to provide).

<sup>51</sup> See Brookhart, *supra* note 4 at 13; Chew and Pryal, *supra* note 30 at 430-432 (discussing what feedback will have the biggest effect).

<sup>52</sup> See Brookhart, *supra* note 4 at 13; Schwartz, *supra* note 9 at 162-164 (discussing how rubrics aid in providing students with specific feedback).

<sup>53</sup> See Brookhart, *supra* note 4 at 13.

<sup>54</sup> See CHEW & PRYAL, *supra* note 30 at 422 (modified from the discussion of a three-step structure for students to peer review other students' legal writing).

<sup>55</sup> See Brookhart, *supra* note 4 at Chapter Two.

feedback, especially if there is limited time and/or a large class of students. In that event, other methods of feedback discussed in the previous section may be considered, specifically written or oral comments directed to an entire class.

What qualifies as a timely manner? Feedback needs to be provided in time for the student to utilize it for the next assessment. Remember, feedback is only effective if it can be utilized to improve future performance. Feedback should also be provided when a student has an immediate opportunity to utilize it: “[t]he longer the time between receiving feedback and recalling it, much less using it, the more the feedback message fades from specific descriptions and suggestion to a general memory of evaluation.”<sup>56</sup>

As such, the teacher needs to balance efforts to provide comprehensive, substantive feedback with time constraints, both in a course schedule and a teacher’s work schedule. Librarian teachers are often in the unique position that teaching duties are placed on top of their primary duties as a librarian, compounding the need to consider timing in determining the amount and format of feedback to provide.

### **PART THREE: USING CONTENT & TONE IN DELIVERING FEEDBACK**

The feedback strategies discussed in Part Two may guide teachers in planning the mechanics of delivering feedback. These mechanics lay the groundwork for effective feedback, which is ultimately reliant on the feedback itself. For feedback to be specific, positive and constructive, comments must focus on important

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<sup>56</sup> See Brookhart, *supra* note 4 at 77.

content and be delivered in the right tone. This section will begin by identifying general principles to guide the use of content and tone in feedback. It will then apply these principles specifically to legal research with examples.

### A. Content: What to Comment

There have been many studies on how to create effective feedback; John Hattie and Helen Timperley reviewed these studies to create a model of feedback.<sup>57</sup> The model applies feedback to four “levels” that impact the feedback’s effectiveness.<sup>58</sup> Feedback may be about the task; about the processing of the task; about student self-regulation; and about the student as a person.<sup>59</sup> Feedback about the student’s work and their performance of the work are the most effective, while personal comments about the student (such as positive or negative comments on their intelligence) are not effective for learning.

In making feedback about the work and not the student, comments should be focused on the tasks completed.<sup>60</sup> In order to fulfill this content goal, phrase comments about the work product and not the student.<sup>61</sup> Compare “You did not demonstrate...” *with* “The research log did not demonstrate...” Compare “You did not conclude...” *with* “The memo did not conclude...” Not only do the statements make clear that the comment is about the work rather than the student,

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<sup>57</sup> See Hattie & Timperley, *supra* note 7.

<sup>58</sup> *Id.* at 88.

<sup>59</sup> *Id.* at 88-97.

<sup>60</sup> See generally Shute, *supra* note 46 (creating a review of literature focused on task-level feedback).

<sup>61</sup> See CHEW & PRYAL, *supra* note 30 at 451 (advising students in peer review to comment “on the writing rather than the writer”).



but utilizing this language as a teacher helps to focus the content of comments on the work itself.

Feedback should be compared to a rubric, learning objectives, or other criteria set out for the assessment.<sup>62</sup> It may also be compared to past work of the students, but it should not be compared to the work of other students.<sup>63</sup> Additionally, feedback should focus on continuing to teach the student the lesson objectives, rather than on how they could have attained a higher grade.<sup>64</sup> When highlighting student weaknesses, a delicate balance is needed to continue to encourage and demonstrate mistakes. Mistakes provide the opportunity to identify room for improvement and particular strategies for improvement.

As the feedback is meant to be formative, it should also focus on the strengths and weaknesses of the student's work. Remember, what did the student do right and what did the student do wrong? Why? If identifying a strength of the work, feedback should explain why it was well-done, so the student understands how to replicate good work. If identifying a weakness of the work, it should make substantive suggestions for change that the student can apply in the future.

As discussed earlier in considering the amount of feedback, make sure comments are streamlined in terms of the topics or problems addressed. Don't comment on the same type of mistake or strategy that is made multiple times.<sup>65</sup> Comment on it

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<sup>62</sup> See Schwartz, *supra* note 9 at 164; Brookhart, *supra* note 6 at 27.

<sup>63</sup> See Shute, *supra* note 46 at 167 (providing a review of literature critiquing comparing student performance to that of other students).

<sup>64</sup> See Shute, *supra* note 46 at 178 (reviewing literature cautioning against the use of grades with feedback).

<sup>65</sup> See Schwartz, *supra* note 9 at 164; Brookhart, *supra* note 4 at 16-17.

the first time, and let the student make the connection moving forward as part of self-regulation. Making the same comment multiple times weakens the strength of individual comments and may be repetitive; whereas, limiting comments helps allow students to recognize their importance.

Finally, don't write comments that focus on a judgment made about the circumstances of a student's work, especially weak student work.<sup>66</sup> Don't assume lower performance or late assignments are a result of laziness or lack of effort. Comments should provide a student with an opportunity to address the weaknesses with the work rather than assuming the reason for it.

### *1. Do*

1. *Focus on the student's work, the student's process, and the student's reflection.*
2. *Compare the student's work to identified criteria and/or to the student's past work.*
3. *Describe strengths and weaknesses.*
  - *Use positive comments that describe what is well done.*
  - *When identifying weaknesses, provide ideas for fixing the problem.*
4. *Continue to encourage mistakes.*

### *2. Don't*

1. *Focus on the student personally.*
2. *Compare the student to other students.*
3. *Correct the same type or category of error multiple times.*
4. *Judge.*

## B. Tone: How to Comment

Teachers generally have a lot to say about a student's work. Considering how to write the comments is just as important as knowing what content makes for the

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<sup>66</sup> See Brookhart, *supra* note 4 at 29 (discussing how students read judgment into descriptive language).

best comments. First and foremost, comments should be specific and clear.<sup>67</sup> If a student cannot understand what a comment means, they may become frustrated and stop reviewing valuable feedback.<sup>68</sup> However, the specificity should not be such that a student's work on the next assignment is done for them. Specificity may be obtained by utilizing the guidelines from the discussion on content and focusing on making comments based on a rubric or other assessment checklist.<sup>69</sup> Be clear and specific in identifying how a weakness can be fixed and how a strength can be repeated in the future.<sup>70</sup>

Word choice is incredibly important to tone. Questioning language that asks students to think, consider, try, or wonder is both engaging and putting control in their hands for making improvements.<sup>71</sup> Words should be supportive and encouraging. Compare these terms with commanding language like must, should, or do not.<sup>72</sup> They take away the student's ability to engage with their own learning by having autonomy in their choices on the next assignment.<sup>73</sup>

There are many other word choices and phrasing to avoid. For example, as judgmental content should be avoided, so should judgmental language.<sup>74</sup> It's hard

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<sup>67</sup> See Shute, *supra* note 46 at 177 (identifying the goal of being specific and clear supported by scholarship on the point); Schwartz, *supra* note 9 at 162-163 (discussing how to provide specific feedback).

<sup>68</sup> See Shute, *supra* note 46 at 177.

<sup>69</sup> See Schwartz, *supra* note 9 at 162-163; Brookhart, *supra* note 6 at 27.

<sup>70</sup> See Bloom, *supra* note 6 at 249-250 (discussing the author's efforts to be "forward-looking" in providing feedback).

<sup>71</sup> See Bloom, *supra* note 6 at 249 (discussing how questions engage students the evaluation process); Brookhart, *supra* note 4 at 17 (recommending that to obtain good tone, "choose words that cause students to think or wonder").

<sup>72</sup> See Bloom, *supra* note 6 at 248.

<sup>73</sup> See Brookhart, *supra* note 4 at 25; Bloom, *supra* note 6 at 240; Drake, *supra* note 11-12 (all discussing the strength of self-regulated or self-directed learning of students).

<sup>74</sup> See Bloom, *supra* note 6 at 248; Brookhart, *supra* note 4 at 29.

to even separate the two out from each other. Instead, focus on being respectful of the student's time, energy, strategy, and work. One-word comments are also not effective as they don't provide substance to explain "why?": no, yes, good, wrong, maybe, etc.<sup>75</sup> "No" is particularly damaging to the psyche of a student when reviewing feedback, as it doesn't move them forward with learning but instead is a hard stop.<sup>76</sup>

Another tricky piece of phrasing to avoid is backhanded compliments.<sup>77</sup> They may creep up in attempts to compliment weaker assignments, as efforts to be positive can send a message about the weakness of the assignment. For example, saying "you have so many areas to improve on for the next assignment" implies that this assignment was not good. A modification to "moving forward on the next assignment, focus on the following areas" identifies steps for moving forward and doesn't make implications about the quality of the work being reviewed.

## *1. Do*

- 1. Use clear language and terms reflective of class concepts.*
- 2. Be specific in identifying areas for improvement without making the improvements for students.*
- 3. Respect the student's time and work.*
- 4. Ask questions and choose words that encourage the student to engage with the feedback and their future efforts.*
- 5. Use encouraging or supportive words and phrases.*

## *2. Don't*

- 1. Use unclear language.*
- 2. Be sarcastic (or funny?).*
- 3. Use excessively judgmental language, false praise, or backhanded compliments.*

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<sup>75</sup> See Schwartz, *supra* note 9 at 162-163.

<sup>76</sup> See Bloom, *supra* note 6 at 248.

<sup>77</sup> See CHEW & PRYAL, *supra* note 30 at 433.

4. *Use one-word negatives – “no,” “wrong,” etc.*
5. *Use commanding language.*

## C. Applied to Legal Research

### *1. Use of Content & Tone in Legal Research*

Now that general guidelines have been developed for utilizing content and tone effectively, the next step is to consider how to apply these guidelines to legal research assessments. Legal research may be assessed through multiple means: quizzes, guided exercises, open-ended exercises. This article focuses on examples for guided or open-ended exercises that allow students to demonstrate their methods and strategies for conducting legal research (like a research log) and/or their final work product based on those methods and strategies (like a memo, client letter, or brief).

Considering this type of work product, librarian teachers can focus on the student’s work by identifying specific types of content to provide feedback on versus types of content which aren’t productive for feedback. This content should be developed from assessment criteria, either in the form of objectives, rubrics, or assignment criteria.<sup>78</sup> Examples of content that can be the source for legal research feedback in logs and work product include:<sup>79</sup>

- *Organization / Process / Method*
- *Search Methods*
- *Database & Resource Selection*
- *Resource Authority*

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<sup>78</sup> See Schwartz, *supra* note 9 at 164; Brookhart, *supra* note 6 at 27.

<sup>79</sup> See generally CHEW & PRYAL, *supra* note 30 at 422-432 (focusing on topics for students to consider in reviewing legal writing, such as structure, flow, and grammar).

- *Identification / Misidentification of Law*
- *Updating Law*
- *Discussion, Analysis, & Conclusions*
- *Reflection*

Librarian teachers must also make choices about what they will *not* comment on, due to time or other constraints. For example, if the research class is not held in conjunction with a writing class, feedback on grammar, punctuation, and typos may be limited so students can focus on comments related to research. Limiting these comments may also help from the teacher being seen as nitpicky by the students (again, if it is not a writing class).

Librarian teachers will also need to consider how they provide feedback on substantive analysis of the law, especially as they are not teaching a doctrinal course in an area of law. How does a librarian teacher comment on a student who found the correct law, but did not understand it substantively?

There are topics that can be more uniformly avoided in providing feedback on legal research. For example, a student's personal ideology and beliefs sometimes become clear in assignments. As long as it does not impact the finding of law, feedback can avoid these topics. Finally, a student's intelligence, even in praise of it, may be avoided for law students, who are already a competitive audience.

Examples of content that may not be the source for legal research feedback in logs and work product include:<sup>80</sup>

- *Grammar / Punctuation / Typos*
- *Substantive Analysis?*
- *Student's Ideology / Beliefs*
- *Student's Intelligence*

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<sup>80</sup> See generally *id.*

While this identification of content to focus on and not focus on helps consider how to apply focusing on the student's work in the legal research context, there were many other content guidelines that can be framed within the legal research context.

For example, avoid comparing the student's work to others in the class:<sup>81</sup> "Your research log was the shortest one in the class. You didn't put enough detail in it." or "Your research log was the best one in the class! Don't change anything for the next assignment." Neither option provides a weak or strong student with tangible steps for moving forward. However, comparing the student's work to their own past work can be productive: "Your research log included more in-depth reflection than the first one. You clearly analyzed findings in light of the client's facts. Moving forward, consider utilize findings to make thoughtful decisions about next steps."

Judgment was raised as problematic in terms of both content and tone.<sup>82</sup> For example, judgments about a student's poor performance are seen in comments such as "Your assignment is late and will be deducted 20%." or "This log is incomplete and the rubric will reflect that."<sup>83</sup> Comments do not have to be all positive, but a student may be given an opportunity to explain in the instance of a late or incomplete assignment. Providing this opportunity may make them more receptive to substantive feedback and continue to build the trust needed for

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<sup>81</sup> See *supra* Part Three A.

<sup>82</sup> See *supra* Part Three A & B.

<sup>83</sup> See Brookhart, *supra* note 4 at 34 (modified from examples in Figure 2.12 Examples of Feedback Content).

student's to utilize feedback. These comments may be improved by writing: "I haven't received your assignment yet. Can you please provide me with an update on how you are doing?" or "The memo reflects significantly more research conducted than was tracked. Let's spend some time discussing the research log in a post-conference."

Another content principle that is particularly relevant to legal research is the advice to encourage mistakes.<sup>84</sup> Librarian teachers know that research is an iterative process, which means the first answer or term or resource is not necessarily the right answer or term or resource. While providing feedback that leads a student to improve their skill, teachers need to also acknowledge that research will always involve correcting past searches, methods, and findings. The classroom setting is the time to try, fail, and try again.

This article will continue to apply the use of content and tone in written feedback on legal research by providing comparative examples of feedback written via in line comments and overall comments.

## *2. In Line Comments – Content & Tone*

As discussed in the feedback strategies on format, one option for providing feedback is to make comments directly on an assignment. This method may be called in line or in draft comments. In the legal research context, this involves writing comments directly on a student's research logs or on a student's final

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<sup>84</sup> See Shute, *supra* note 46 at 162 (discussing a conclusion from feedback scholarship that "mistakes are part of the skill-acquisition process"); Brookhart, *supra* note 4 at 27, 79 (discussing how feedback may model mistakes).



work product. It is an excellent way to provide feedback on specific aspects of a student's work. However, in line comments may still be in some sense global, as an overall comment may be placed directly on work product.

Below are examples of ineffective comments utilizing many of the content and tone principles to avoid, and examples of how those comments may be improved by utilizing recommended principles for feedback.

***Content & Tone Applied: In Line Comments on Keyword Searching***<sup>85</sup>

BEFORE	AFTER
Nice Boolean search!	Boolean searching was an excellent choice for searching law review articles on the narrow policy aspect of this issue.
Too soon for statutory research. What are your key terms?	Consider spending more time with secondary sources to gain a better understanding of the terms being utilized in statutes on this topic.
0 results? Why didn't this work?	What steps can be taken to broaden this search? Modification is an essential step in utilizing keyword searching, especially when receiving zero or unsatisfactory results.
You need to utilize an index.	When keyword searching codes is unsuccessful, try switching to an index search. Indexes allow you to utilize a controlled vocabulary to either help navigate to the right topic or help confirm that there are no relevant statutes on point.

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<sup>85</sup> Modified from feedback written on student research logs in Advanced Legal Research at the University of North Carolina School of Law.

*Content & Tone Applied: In Line Comments on an Office Memo*<sup>86</sup>

BEFORE	AFTER
This organization is confusing.	This organization may not allow an attorney to browse quickly for an answer. How could you add more subsections and conclusions throughout?
Citations aren't specific.	When dealing with federal regulations, it is particularly important that citations reflect the precise section of the CFR being referenced whenever possible, rather than entire parts of the CFR.

Most of the original comments were short, but they were not clear or specific.

They may have utilized praising language, but they did not support it with reasoning for the praise. They utilized questions, but not in a way that leads the students to form an answer. They also made use of commanding language as well as negative language about the student's work.

In revising the comments, the feedback became more specific – specific to the student's work and specific to legal research methods assessed. Questions were crafted to lead students to how they can improve on their work, and language was supportive by utilizing suggestive language. An obvious comparison is the length of the comments.

The revised comments are all longer than the original comments, but they are also more effective. Feedback strategies on the amount of comments to provide must

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<sup>86</sup> Modified from feedback written on student research logs in Advanced Legal Research at the University of North Carolina School of Law.

be relied upon here; limit the number of comments to allow for more effectively written comments.

### *3. Overall Comments – Content & Tone*

The other identified format for providing feedback is global or overall comments.

These comments may be made on an otherwise summative assessment of the student's work, usually a rubric or grade sheet. They may be utilized in conjunction with in line comments, or they be the totality of the personalized written feedback a student receives on the assignment. Overall comments focus on recurring themes that were identified in reviewing the assignment.

There are two methods for providing overall comments. The first is the familiarly pictured “feedback sandwich” method.<sup>87</sup> This is where the feedback begins and ends with positive feedback and includes constructive feedback in the middle. it starts and ends on high notes, while the middle highlights a student's weakness and areas for improvement. The second method is a “feedback taco.”<sup>88</sup> It begins with positive feedback and moves to constructive feedback, like the feedback sandwich. Instead of returning to positive feedback at the end, it sprinkles on some encouragement and support.

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<sup>87</sup> Alexa Chew & Rachel Gurvich, Giving Effective Feedback, UNC Festival of Legal Learning, Chapel Hill, NC (February 6, 2020) (continuing legal education program to teach attorneys how to provide feedback on students work product, resumes, and cover letters).

<sup>88</sup> Alexa Chew & Rachel Gurvich, Giving Effective Feedback, UNC Festival of Legal Learning, Chapel Hill, NC (February 6, 2020) (discussion by Professor Chew on how she modifies the feedback sandwich in to a feedback taco).

## ***Content & Tone Applied: Global Feedback on a Statutory Research***

### ***Assignment***<sup>89</sup>

*Great work! The tracked research demonstrated organization and an impressive variety of search methods. It is very clear that you have been listening intently in class to our discussions of resource types and the best methods to search specific resources. The log demonstrated identification of excellent authoritative secondary sources and utilization of a reasonable number of resources from Google. I encourage you to spend more time with the valuable authoritative sources identified; there was additional excellent content to review in both drug testing treatises identified on Westlaw. There were also times where authoritative law reviews and journals on Westlaw could have been utilized to answer state-specific research questions instead of returning to Google, although Google may at times be more cost-efficient.*

*The statutory research tracked in the log demonstrated an efficient jurisdiction by jurisdiction approach. However, the tracked research into statutory law was incomplete. Consider the following recommendations in order to be more comprehensive with research into statutory law. First, try to utilize the statutory citations identified in secondary sources when transitioning to statutory research. There were many notes in the log on relevant statutes identified from secondary sources that were never viewed. Second, read the identified statutes closely and make sure they clearly answer your questions. Whether they do or not, exhaust your search for relevant statutes before moving forward. Finally, always check your pending legislation flags on statutes ultimately identified as relevant. The gaps in identified law translated into a memo that was well-organized and well-written, but it included some incorrect and missing statutory references.*

*Overall, the assignment demonstrated strong foundational skills in identifying resources and selection of search methods. Moving forward on the next assignment, focus time and attention on finding code sections ensuring that you have answered all questions/issues raised in the plan to help create work product that covers all the relevant law.*

This global feedback utilizes a mix of specific feedback in reference to utilized and not utilized secondary sources and overall feedback for statutory research methods. However, in both instances, the feedback was targeted to strengths and weaknesses specific to this student. It began each of the first two paragraphs with

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<sup>89</sup> Modified from feedback written on a student rubric in Advanced Legal Research at the University of North Carolina School of Law.

positive feedback, before focusing on improvements for the future. It ends by reiterating the student's strengths to encourage the student in making corrections for the next assignment. It is very important that the positive comments are genuine to ensure a student trusts the feedback.

There are weaknesses in the example comments, like the short sentence labeling the research as incomplete without providing specific examples. There could also be additional support in the final paragraph by offering to discuss this feedback or help plan for the next assignment referenced.

Whether utilizing in line comments, overall comments, or both, content and tone are critically for making the feedback effective. Feedback strategies need to be considered in conjunction with the feedback itself to meet this article's defining principles of effectiveness: specific, positive, constructive, and personalized.<sup>90</sup>

## **PART FOUR: INCREASING STUDENT ENGAGEMENT WITH FEEDBACK**

One of the guiding principles of effective feedback highlighted throughout this article is the development of a dialogue between teacher and student. The lessons on content and tone are meant to help create this dialogue and engagement, by being questioning, positive, and supportive. However, written feedback is by default not as engaging as oral methods of feedback, and all extra efforts to engage students with feedback should be considered in combination with the written feedback. This part of the article will outline the challenges to getting

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<sup>90</sup> See Nicols & MacFarlane-Dick, *supra* note 32 (listing the principles of "good feedback" used as a jumping off point for this article's definition of effective feedback).

students to utilize feedback in any form, then provide strategies for overcoming these challenges for written feedback.

### A. Student Response to Feedback

When a teacher puts the time, energy, and thought into providing feedback that is outlined in this article, it is incredibly frustrating if a student does not utilize the feedback. Unfortunately, it is a common occurrence to feel like a student is not using feedback, and it is worth investigating why that is the case so that teachers can develop strategies to counteract it.

The first reason students may not utilize feedback is because it is not effective or sufficient.<sup>91</sup> The methods outlined in this article for careful consideration of the content and tone of feedback will make it more effective for students.<sup>92</sup> Another reason a student may not utilize feedback is that it is provided too late.<sup>93</sup> As discussed in Part Two of this article, it is important to make efforts to provide feedback in time for it to be utilized almost immediately on the next assignment.

This article's further consideration of tone is related to one of the most challenging barriers to students' use of feedback: the emotional response to receiving feedback.<sup>94</sup> When students have a strong emotional reaction to feedback, particularly a negative emotional response, it may impede their ability

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<sup>91</sup> See Bloom, *supra* note 6 at 236; TERESA MCCONLOGUE, "Giving Good Quality Feedback" in ASSESSMENT AND FEEDBACK IN HIGHER EDUCATION: A GUIDE FOR TEACHERS 119 (UCL Press 2020) (discussing why students are dissatisfied with feedback).

<sup>92</sup> See *supra* Part Three.

<sup>93</sup> See *id.*

<sup>94</sup> ANASTASIYA A. LIPENEVICH & JEFFREY K. SMITH, THE CAMBRIDGE HANDBOOK OF INSTRUCTIONAL FEEDBACK 517-588 (2018).

to implement the feedback. Professors Chew and Pryal identify three potential causes for these negative feelings in law students: (1) disappointment with their work product; (2) anger at professor's fault finding; (3) frustration at not understanding how they could have done better.<sup>95</sup> It is important for teachers to understand where these negative feelings may come from, because it allows teachers to prepare for the student to be upset with themselves, their work product, or the teacher's grading.

The best way a teacher can combat these negative feelings is to prepare students for receiving feedback. One of the final reasons that students fail to utilize feedback is that they lack the proper strategies for doing so.<sup>96</sup> Teachers may expect that students with weaker performance would benefit the most from feedback. However, it may be that the weaker performers are also those less equipped to apply feedback moving forward.<sup>97</sup>

Providing students with a strategy for implementing feedback helps prepare them to receive the feedback. By doing so, it may help manage negative emotional responses, and it will allow them more potential to utilize the feedback.

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<sup>95</sup> See CHEW & PRYAL, *supra* note 30 at 438. As *The Complete Legal Writer* is written for students, these factors are presented to aid in a student's own evaluation of why they are experiencing negative reactions to feedback.

<sup>96</sup> See Bloom, *supra* note 6 at 236-237; Schwartz, *supra* note 9 at 167-168.

<sup>97</sup> See Bloom, *supra* note 6 at 236-238 (discussing the issue of student's lack of experience receiving feedback). Bloom writes that one study "found that students with the lowest grades, who consequently one would expect to benefit the most from feedback, were less likely to seek it than the students with higher grades." *Id.* at 238.

## B. Student Engagement with Feedback

In order to prepare students for feedback, teachers may engage students in a class discussion that outlines the amount, form, and importance of feedback in the class. As part of that discussion, the students can be made aware of the expectation that future assignments need to demonstrate the application of the feedback, and this discussion may even bring in lessons on the pedagogy in support of these points.

Most importantly, students should be provided with a method for reviewing the feedback that forces them to engage with it. *The Complete Legal Writer* presents the following method for students receiving feedback: (1) Read all the feedback; (2) Summarize comments/themes; and (3) Consider how to apply feedback concretely to future assignments.<sup>98</sup>

This is a good starting point for advising students, and the method can be developed further for student's struggling with identifying concrete steps for future work. Increase student engagement with the feedback by providing specific questions to guide their review of the comments and themes. Recommendations for questions from *Powerful Teaching* include:

- What surprised you about the feedback?
- What feedback did not surprise you?
- What did you think was the most helpful feedback?

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<sup>98</sup> See CHEW & PRYAL, *supra* note 30 at 437-443.



- What are concrete steps for improvement on the next assignment?<sup>99</sup>

Finally, this method may be expanded with a call to action; specifically, provide students with the option or requirement to schedule a meeting with the teacher to discuss the answers to these questions. The research conference provides additional one-on-one attention to the student's work and allows students to ask questions about the feedback.<sup>100</sup>

## CONCLUSION

The amount of work that a teacher puts into providing feedback cannot be underestimated. It involves time devoted to thinking deeply and critically about a student's work and performance. When applied to legal research, it involves considering a wide range of factors – research methods, searching techniques, resource selection, and findings of law, in addition to analysis and reflection. If the time is going to be devoted to these efforts, it is worth providing effective feedback, which is a skill to be developed as much as the skill being taught. Effective feedback engages students by being specific, positive, constructive, and personalized. These goals may be achieved by considering the content and tone of any feedback being written down for students. Most students will have an emotional response to receiving feedback, so it is important that teachers prepare students for this process and prepare themselves to deliver it as effectively as possible.

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<sup>99</sup> POOJA K. AGARWAL & PATRICE M. BAIN, POWERFUL TEACHING: UNLEASH THE SCIENCE OF LEARNING (Jossey-Bass 2019).

<sup>100</sup> For a detailed discussion of the benefits and mechanics of conducting research conferences, see Alyson Drake's article *On Embracing the Research Conference*. Drake, *supra* note 1.