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Live Critique of Oral Arguments: Response to Amanda L. Sholtis,
*Say What?: A How-To Guide on Providing Formative Assessment to
Law Students Through Live Critique*

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I. INTRODUCTION

Live critique is a process through which a teacher reviews a student’s work for the first time “live” with the student and provides feedback.¹ *Stetson Law Review* recently published *Say What?: A How-To Guide on Providing Formative Assessment to Law Students Through Live Critique* by Professor Amanda L. Sholtis, which focuses on the use of live critique to give feedback to students on written law school assignments, such as memorandums of law or exam answers.² This response will offer some reflections on Professor Sholtis’ article and also will discuss how providing feedback to students immediately after they present oral arguments is another useful example of the live-critique method in legal education.

II. REFLECTIONS ON PROFESSOR SHOLTIS’ ARTICLE

New and experienced teachers alike should benefit from reading Professor Sholtis’ article, particularly those—like myself—who have not used live critique for written assignments. Professor Sholtis has extensive experience with the process; her suggestions and observations in the article are based on years of using live critique to review exam essays, legal writing assignments, and other documents or assignments.³ Her article begins by examining the importance and growing use of formative assessments (such as live critique) in legal education⁴ and then describes

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¹ Amanda L. Sholtis, *Say What?: A How-To Guide on Providing Formative Assessment to Law Students Through Live Critique*, 49 STETSON L. REV. 1, 1 (2019).

² See generally *id.*

³ *Id.* at 6–7.

⁴ *Id.* at 3–6. “Effective formative feedback has four characteristics: specific, corrective, positive, and timely.” MICHAEL HUNTER SCHWARTZ, SOPHIE M. SPARROW & GERALD F. HESS, *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM* 19 (2017). If done properly, live critique should have these four features and thus can be a good example of effective formative feedback.

the benefits of using live critique as an alternative to traditional written feedback on law school assignments.⁵ The step-by-step explanation of her method for conducting a live critique of a student's written work is quite detailed and walks the reader through the entire process, from pre-conference preparation to post-conference reflection and next steps.⁶ What is particularly striking about Professor Sholtis' article—and what arguably sets it apart from some other articles about live critique—is the remarkably thorough explanation of her live-critique method and the article's appendices, which provide helpful examples of self-reflection guides for students and small groups, a score sheet for a practice exam, and a rubric for a written assignment in a legal writing class.⁷

As Professor Sholtis explains, live critique may offer several benefits for the students and the professor.⁸ Some of the potential benefits include providing feedback to students sooner after they submit an assignment,⁹ allowing students and the professor to ask follow-up questions and clarify any misunderstandings throughout the conversation,¹⁰ building positive relationships between the professor and students,¹¹ and possibly saving the professor time over providing traditional written feedback on an assignment.¹² Other professors note additional benefits as well. For example, live critique provides an opportunity to discuss the student's writing process and written product, and live critique may be a more effective way to discuss with students how they should prioritize their efforts to improve their writing moving forward.¹³

⁵ Sholtis, *supra* note 1, at 7–10 (describing the benefits to students and teachers).

⁶ *See id.* at 13–24.

⁷ *See id.* at apps. A–D.

⁸ *See id.* at 7–10.

⁹ *See id.* at 9; *see also* Patricia Grande Montana, *Live and Learn: Live Critiquing and Student Learning*, 27 PERSPS.: TEACHING LEGAL RES. & WRITING 22, 24–25 (2019); Anna Hemingway & Amanda Smith, *Best Practices in Legal Education: How Live Critiquing and Cooperative Work Lead to Happy Students and Happy Professors*, 29 THE SECOND DRAFT, Fall 2006, at 7, 8.

¹⁰ Sholtis, *supra* note 1, at 7; *accord* Alison E. Julien, *Brutal Choices in Curricular Design . . . Going Live: The Pros and Cons of Live Critiques*, 20 PERSPS.: TEACHING LEGAL RES. & WRITING 20, 24 (2011) [hereinafter Julien, *Brutal Choices*]; Montana, *supra* note 9, at 24–25; Hemingway & Smith, *supra* note 9, at 8. The live critique also lets the student see the reader's (professor's) actual reactions, and the professor can see whether the student understands the comment. Alison Julien, Jason Palmer & Mark Wojcik, *The Pedagogical Method of Live Commenting and Grading*, at 36:00–39:57 (Stetson University College of Law Mar. 9, 2012), https://www.youtube.com/watch?v=3MNOnojuYpM&feature=emb_logo.

¹¹ Sholtis, *supra* note 9, at 8–9; *accord* Julien, *Brutal Choices*, *supra* note 10, at 20, 23; Hemingway & Smith, *supra* note 9, at 8.

¹² Sholtis, *supra* note 1, at 10; *accord* Montana, *supra* note 9, at 24–25. *But see* Julien, *Brutal Choices*, *supra* note 10, at 25 (explaining that using live critique does not necessarily save the professor time but does allow the professor to reallocate time in a positive way). The professor also might have to cancel classes to make enough time for the live-critique conferences. Julien, *Brutal Choices*, *supra* note 10, at 24; Sholtis, *supra* note 1, at 13.

¹³ *E.g.*, Montana, *supra* note 9, at 24.

There are, however, some potential drawbacks or challenges with using live critique. For example, the professor will have to find time to prepare the materials and schedule the conferences.¹⁴ Additionally, a professor may be nervous about using live critique for the first time,¹⁵ and the professor must be able to read and reflect on the student's writing and clearly articulate feedback on the spot, which could be challenging depending on the professor's experience.¹⁶ Professor Sholtis' article identifies these challenges and offers possible solutions.¹⁷

There are other possible drawbacks, a few of which seem worthy of discussion. Given that the live-critique conference must be limited in duration, the professor might not be able to—and indeed, might deliberately choose not to—provide feedback on the entire written submission and instead may focus on a particular competency (e.g., organization) or a particular section of the written submission (e.g., the argument section for one sub-issue).¹⁸ This potential limitation could be significant, especially for longer written assignments. Ideally, the students would apply the feedback from the live critique to other sections of the document, but a student may face different challenges in other sections than in the section discussed during the live critique. Furthermore, if a professor completes a rubric as part of the live critique, the process of filling out the rubric may not be as systematic as with traditional written feedback.¹⁹ I read students' written submissions at least two times (and sometimes more) before I finalize rubrics or evaluation sheets, even for ungraded assignments, and I like to think this helps me to be more consistent and fair in my evaluations. With a live critique of a written assignment, I worry that I could lose some of the consistency and objectivity by completing each rubric after reading a student's written submission (and possibly only part of the submission) only once and before having read all of the other students' submissions. This possible drawback could be mitigated to some extent by preparing a summary comment for each student rather than a rubric²⁰ or by reviewing the papers again and completing the rubrics after conducting all of the live critiques (which admittedly would detract from the potential time savings that could result from using the live-critique process). Finally, a professor could have a more difficult time detecting plagiarism, collaboration, or other issues during a live critique.²¹ This is, of course, something that a professor could review and remedy after the live critique if necessary, but again, it would require additional time and effort beyond the live critique itself.

¹⁴ Sholtis, *supra* note 1, at 11.

¹⁵ *Id.*

¹⁶ Montana, *supra* note 9, at 25.

¹⁷ See Sholtis, *supra* note 1, at 11–12 (discussing some possible drawbacks and ways to handle the challenges).

¹⁸ Montana, *supra* note 9, at 25.

¹⁹ *Id.* at 25–26.

²⁰ *Id.* at 26.

²¹ *Id.*

To me, these and other challenges associated with live critique make the method seem somewhat daunting.²² I have read other articles²³ and watched presentations about live critique,²⁴ but I have not yet used the method for written assignments. My hesitancy is at least in part because I have not had the experience of using the same assignment several times, and I am unsure whether I could efficiently process a student's written submission and coherently articulate my feedback while reading the student's submission for the first time in a truly "live" critique conference.²⁵

Luckily for me and others, live critique is not a "one size fits all" process—there are ways to modify the technique to make it an effective, feasible method even for newer teachers.²⁶ Professor Sholtis' article helpfully offers possible solutions to some of the challenges that professors might experience when using live critique.²⁷ On balance, given the potential benefits, I expect that I will try the live-critique method for written assignments in the future, but I likely will make some modifications so that I feel comfortable and prepared for the live-critique conferences. For example, I almost certainly will choose to review the students' papers before our conferences and make a few notes,²⁸ and I will ask other more experienced professors for materials or advice.²⁹ I also probably will start by using live critiques on shorter assignments or will schedule longer conferences to ensure I can cover most or all of the written submission during one meeting. With a few modifications to help compensate for my personal preferences and my lack of experience with live critique, the method could become a viable type of formative assessment to use in the future for written assignments.

III. ORAL ARGUMENT FEEDBACK: ANOTHER USE OF LIVE CRITIQUE

²² As Professor Sholtis acknowledges, it may be easier to prepare for and provide live critiques if the professor has used an assignment or problem multiple times. Sholtis, *supra* note 1, at 11.

²³ *E.g.*, Julien, *Brutal Choices*, *supra* note 10; Montana, *supra* note 9; Hemingway & Smith, *supra* note 9.

²⁴ *E.g.*, Julien, Palmer & Wojcik, *supra* note 10.

²⁵ See Sholtis, *supra* note 1, at 11; see also Julien, *Brutal Choices*, *supra* note 10, at 24; Julien, Palmer & Wojcik, *supra* note 10, at 18:03, 24:00.

²⁶ Montana, *supra* note 9, at 26.

²⁷ Sholtis, *supra* note 1, at 11–12 (suggesting that a professor could choose an assignment that the professor is already familiar with, borrow another professor's materials, and focus the live critique on particular components of the assignment); see also Montana, *supra* note 9, at 26–27.

²⁸ Sholtis, *supra* note 1, at 18 n.101 (citing Barbara Fassler, *The Red Pen Revisited: Teaching Composition Through Student Conferences*, 40 COLL. ENGLISH 186, 189 (1978) (noting that reviewing the submission in advance is helpful)); see also Julien, *Brutal Choices*, *supra* note 10, at 21–22; Montana, *supra* note 9, at 23 n.9, 26. *But see* Sholtis, *supra* note 1, at 18–19 nn.102–103 (citing other authors who note the disadvantages with reviewing the submissions before the live critique).

²⁹ Sholtis, *supra* note 1, at 11 & n.74.

Teachers use live critique in various settings³⁰ and at different types of educational institutions.³¹ For the last five years, I have coached and served as a guest judge for law school moot court teams, and although I have not used the live-critique method to provide feedback to students on their written assignments in my classes (undergraduate or law school), I have used the process extensively to provide feedback to students on their oral arguments. In law school, students may present oral arguments in class, as part of intra-school competitions, and during moot court practices and competitions. In the context of moot court, students typically receive “live” critiques of their oral arguments from their coaches, professors, and other attorneys who may act as judges during practices or competitions.

Providing live feedback to students after oral arguments is analogous in several ways to using live critique for written assignments in a legal writing or doctrinal class.³² Before watching students present their oral arguments, the attorney must read the assignment or competition problem and may conduct research to learn more about the legal issues. Similarly, a professor needs to be familiar with the assignment and relevant laws and cases before delivering a live critique of a student’s written work.³³ During a moot court practice or competition, the attorney will listen to the student present an oral argument live and usually will take notes, much like a professor would read a student’s writing out loud and take notes during a live-critique conference. If an oral argument is part of a class or a competition, the professor or attorney may fill out a score sheet,³⁴ just as a professor may fill out a rubric as part of the live critique of a written assignment.³⁵

After a student completes the oral argument, the attorney usually will give “live” feedback, either in front of the other students on the team or individually if, for example, the student is delivering an argument as part of an assignment for a class or in an intra-school competition. Much like a conference with a professor for a legal writing or doctrinal class, during the live feedback after the students’ oral arguments, the attorney and the students have the opportunity to ask each other questions, clarify confusion, supplement the feedback as needed, and engage in a dialogue about

³⁰ *Id.* at 1; AMY VORENBERG, STRATEGIES AND TECHNIQUES FOR TEACHING LEGAL ANALYSIS AND WRITING 31 (2012) (describing how a professor could use “live” feedback during class). Some professors even use live *grading*. See, e.g., Julien, Palmer & Wojcik, *supra* note 10 (Professor Wojcik has used live grading).

³¹ Julien, Palmer & Wojcik, *supra* note 10, at 6:18.

³² See Sholtis, *supra* note 1, at 7, 21–22 & n.121 (briefly mentioning how she uses live critique for oral arguments).

³³ Julien, Palmer & Wojcik, *supra* note 10, at 43:00.

³⁴ For examples of oral argument score sheets from moot court competitions, see THE LEGAL WRITING INSTITUTE ET AL., THE MOOT COURT ADVISOR’S HANDBOOK: A GUIDE FOR LAW STUDENTS, FACULTY, AND PRACTITIONERS, app. B at 267–68 (2015); *Jessup Competition Oral Rounds Score Sheet*, INT’L L. STUDENTS ASS’N, <https://www.ilsa.org/Jessup/Jessup2020/Admin/JessupOralRoundsScoresheet2020.pdf> (last visited Mar. 21, 2020).

³⁵ Montana, *supra* note 9, at 23–24; Sholtis, *supra* note 1, at 15.

the students' performance.³⁶ They also may discuss specific strategies the students could use in the future.³⁷ Typically, the attorney should prioritize the feedback on the oral argument or written assignment and lead by focusing on more global, important areas for improvement and later (perhaps at a subsequent practice) may discuss less significant details.³⁸ My co-coaches and I offer guidance but avoid telling a student exactly what the student should or must say because the oral argument ultimately is the student's to make, and the student should take ownership of the argument. As Professor Sholtis aptly notes, "I am there to provide guidance to the student, not to give the answer."³⁹ Students should write notes as they listen to the feedback after their oral arguments,⁴⁰ and just as some professors record their live critiques of students' written work,⁴¹ students or coaches sometimes will record the students' oral arguments and the feedback provided after the arguments.

Giving live feedback in the context of oral arguments offers some of the same potential benefits as a live critique of a student's written submission. Both allow for meaningful formative assessment of a student's performance, offering important information to the professor/attorney/coach and an opportunity to advance the student's learning.⁴² Students receive feedback that can help them adjust and improve their oral arguments or written submissions.⁴³ In both contexts, the live critique should include positive feedback, which helps students understand what they are doing well and may increase the students' confidence.⁴⁴ The live critique after an oral argument also gives students a chance to interact professionally and build relationships with attorneys or professors, just as during a live-critique conference for students' written work.⁴⁵ Giving live comments immediately after the oral argument also ensures there is no unnecessarily long lag between a student's performance and the attorney's or coach's feedback.

Besides the different contexts, there are at least a few differences between a live critique of an oral argument and a live critique of a written assignment. For instance, students often present oral arguments before multiple attorneys and thus

³⁶ See Sholtis, *supra* note 1, at 7, 15. My co-coaches and I often ask the students to assess their own performance as part of our live critique after their oral arguments; self-reflection also is an important part of providing a live critique of written work. See *id.* at 16; see also Julien, Palmer & Wojcik, *supra* note 10, at 25:38.

³⁷ Sholtis, *supra* note 1, at 22, 23.

³⁸ See *id.* at 21 & n.118.

³⁹ *Id.* at 20, 22.

⁴⁰ See Julien, Palmer & Wojcik, *supra* note 10, at 32:43 (explaining that students should take notes during a live critique).

⁴¹ *E.g.*, Sholtis, *supra* note 1, at 15 & n.89; Hemingway & Smith, *supra* note 9, at 8.

⁴² Sholtis, *supra* note 1, at 2.

⁴³ See *id.* at 7–8.

⁴⁴ See *id.* at 8, 22; see also THE LEGAL WRITING INSTITUTE ET AL., *supra* note 34, at 148 (explaining that when coaches provide feedback after a round at a moot court competition, the feedback should be specific and identify what the students did well and how they could improve during the next round).

⁴⁵ See Sholtis, *supra* note 1, at 8–9.

may receive live critiques from multiple people at a time, rather than meeting with one professor to discuss a written assignment in a legal writing or doctrinal class. Further, students may deliver an oral argument and receive live feedback numerous times over the course of several weeks or months. By contrast, students are likely to have a relatively limited number of live-critique conferences with a professor over the course of a semester to review written assignments. Live critiques in both contexts, however, have similar learning goals and can provide similar benefits for the students and the attorney, professor, or coach.

IV. CONCLUSION

Using live critique for oral arguments, written submissions, and in other contexts likely will continue to grow, especially given the increased emphasis on and utility of formative assessment in legal education. Professor Sholtis' how-to guide and the appendices are excellent resources for those who have not used the live-critique process for written assignments and to those who may have used live critique in the past but are looking to learn more about how others use the technique. Although I might not start using live critique on written assignments for a few more years, I hope to build on my experience with live critique in the context of oral arguments and look forward to one day using live critique for writing or other courses. When I do, Professor Sholtis' article will be a valuable asset as I prepare.