



## ARTICLE

# Teaching Judgment in the Face of Uncertainty

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## I. Navigating uncertainty in legal writing

Law students often enter legal writing classrooms expecting that careful research and close reading of facts will ultimately produce a single “correct” answer. When legal analysis instead produces ambiguity and competing interpretations, many students experience that uncertainty as evidence that they are misunderstanding the law itself.<sup>1</sup> However, ambiguity is not a deviation from legal analysis. In fact, in many respects, it is central to it.<sup>2</sup>

Because ambiguity is an ordinary feature of legal reasoning, legal writing instruction should likewise treat the exercise of judgment as an explicit part of learning rather than an unstated expectation. One way to do so is to make the development of professional judgment an explicit course objective. For example, a syllabus might identify a course

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<sup>1</sup> See, e.g., Molly Townes O'Brien, Stephen Tang & Kath Hall, *Changing Our Thinking: Empirical Research on Law Student Wellbeing, Thinking Styles and the Law Curriculum*, 21 LEGAL EDUC. REV. 149, 175 (2011) (describing findings from surveys and student-faculty dialogue sessions in which students reported “feel[ing] bad when [they experience] uncertainty”).

<sup>2</sup> See Stephen Tang & Tony Foley, *The Practice of Law and the Intolerance of Certainty*, 37 UNSW L.J. 1198, 1198–1200 (2014) (arguing that legal practice necessarily operates within persistent tension between certainty and uncertainty).

objective as: “Develop confidence in exercising professional judgment when making analytical, strategic, and legal communication decisions in contexts where more than one reasonable approach may exist.”

That emphasis can continue throughout the course itself. Assignment instructions and grading rubrics can likewise communicate that students are being asked to exercise judgment rather than simply identify a “correct” answer. For example, an assignment sheet might explain: “As you complete this memorandum, you will make strategic decisions regarding organization, factual emphasis, authority selection, and tone. More than one reasonable approach may exist. Your objective is to make thoughtful, well-reasoned choices and support those choices through your analysis, not to identify a singularly ‘correct’ strategy.” Likewise, a grading rubric might identify “Professional Judgment” as an assessment criterion, explaining that students are evaluated on their ability to make and justify reasonable analytical, strategic, and rhetorical choices.

Making professional judgment an explicit feature of the curriculum is only part of the process. How professors discuss uncertainty with students matters just as much. Students who experience ambiguity as evidence of failure may perceive indeterminate responses from professors as dismissive rather than empowering. Legal writing professors can accordingly play an important role not just by acknowledging uncertainty, but by helping students remain engaged within it. Simply telling students that a particular issue involves a “judgment call” can be unproductive, particularly for students accustomed to more structured educational environments. Professors can instead help students develop that judgment by asking questions designed to guide them through the reasoning process itself. Questions regarding strategic tradeoffs, factual emphasis, or rhetorical consequences help students build confidence in exercising analytical judgment rather than constantly searching for external validation. Framing these questions as the kinds of choices lawyers routinely confront may likewise help students understand that uncertainty does not necessarily reflect analytical weakness. Over time, these moments can become opportunities not only to strengthen legal analysis, but also to build confidence in students’ own emerging professional judgment.

## **II. Teaching judgment through predictive writing**

Predictive writing provides students with an effective early introduction to professional judgment because it requires them to engage seriously with multiple interpretations of law and fact rather than advocate for a preferred result. Unlike persuasive writing, predictive analysis asks students to assess competing positions and determine the most

likely legal outcome through careful analysis.<sup>3</sup> In so doing, students discover that reasonable lawyers may interpret the same authorities and factual scenarios differently while still engaging in thoughtful and sound analysis.

Even before assigning full predictive memoranda, professors can use smaller collaborative exercises to expose students to the range of reasonable interpretations the same authorities may support. For example, during class, professors can distribute two very short cases applying the same legal standard but reaching different outcomes based on subtle factual distinctions. After predicting how a court might resolve a new hypothetical fact pattern on their own, students could compare their analyses in small groups and explain the reasoning underlying their conclusions. These discussions often reveal that students working from the same authorities and factual scenarios emphasize different facts, characterize precedent differently, and weigh policy concerns in their own unique ways. Students begin realizing that these differences do not reflect misunderstanding or analytical error, but rather the reality that reasonable lawyers may weigh facts, precedent, and competing interpretations differently while still engaging in reasonable legal analysis.

Closed-universe predictive assignments are particularly effective for helping students develop professional judgment because they force students to work through ambiguity that cannot be avoided through additional research or selective emphasis. Professors can intentionally design these assignments to require students to grapple directly with authorities applying the same legal standard differently across similar factual scenarios. Because students cannot resolve those tensions simply by locating additional authority, they must exercise judgment in working through competing interpretations before reaching a likely conclusion.

Professors can reinforce these lessons by emphasizing that predictive analysis involves exercising professional judgment rather than uncovering a hidden “right” answer. Predictive qualifiers such as “likely,” “appears,” “arguably,” or “a court may conclude” therefore should not function as formulaic signals inserted because students have been told predictive writing must sound cautious or “hedge-y.” Instead, students should understand those terms as reflecting genuine analytical judgment emerging from serious engagement with opposing authority, factual tension, and unresolved interpretive questions. In this way, predictive writing helps students recognize that

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<sup>3</sup> See, e.g., Joseph Hummel, *You Can't Just Learn It on the Job: The Case for Requiring Transactional Drafting Within the Law School Curriculum*, 57 TEX. TECH L. REV. 1, 3–5 (2024) (distinguishing predictive legal writing from persuasive advocacy and describing predictive writing as requiring objective analysis of legal outcomes).

effective legal analysis does not usually eliminate uncertainty but instead requires lawyers to communicate ambiguity thoughtfully and honestly.

### III. Teaching judgment through client counseling

Client counseling and client letter assignments expose students to another dimension of professional judgment: advising a person, not merely resolving a legal issue.<sup>4</sup> Unlike predictive memoranda directed to supervising attorneys, client-facing communications require students to translate legal uncertainty into practical advice that accounts for the client's broader personal goals.<sup>5</sup> These assignments help students recognize that legal analysis alone does not always determine what course of action best serves a client. Effective lawyering often requires lawyers to balance legal and human considerations simultaneously, making it important for law schools to help students develop those professional competencies early in their legal education.<sup>6</sup>

Professors can help students engage with these competing considerations through fact patterns that leave room for both doctrinal and strategic uncertainty. For example, students might analyze a dispute involving a family who recently moved to a small rural community and began caring for a wandering box turtle that a longtime neighbor later claimed as his own. The problem gives students room to evaluate competing legal arguments regarding possession, ownership, and control of wild animals. But this assignment pushes students beyond purely doctrinal analysis. The family is new to the community. The neighbor appears emotionally attached to the turtle. Litigation may be expensive, emotionally draining, and potentially harmful to long-term community relationships. Thus, the exercise demonstrates that a legally available course of action is not always the wisest or most constructive one. In this way, students are introduced to a different dimension of professional judgment: evaluating not merely what the law permits, but what course of action best serves the client's wider practical and human interests.

Assignments such as these become especially effective when professors deliberately guide students through the counseling process rather than simply asking for a

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<sup>4</sup> See Charity Scott, *Collaborating with the Real World: Opportunities for Developing Skills and Values in Law Teaching*, 9 IND. HEALTH L. REV. 409, 412–15 (2012).

<sup>5</sup> See John Fisher, *The Revolution in Legal Writing Programs and How the College of Law Is Faring*, W. VA. LAW., Nov. 1998, at 8–9.

<sup>6</sup> See Peter A. Joy, *The Uneasy History of Experiential Education in U.S. Law Schools*, 122 DICK. L. REV. 551, 570–72 (2018) (discussing the MacCrate Report's emphasis on counseling, communication, negotiation, and professional values as foundational lawyering competencies).

recommendation. After students identify the legally available options, professors might ask questions such as: What is the client ultimately hoping to achieve? Beyond the legal outcome, what other interests might matter to this client? What financial, emotional, practical, or relational consequences accompany each available option? Which option best advances the client's overall objectives? Are there alternative approaches that might accomplish those objectives more effectively? These questions encourage students to recognize that effective client counseling requires more than identifying every legally available claim. Rather, lawyers must evaluate competing risks, imperfect options, and strategic tradeoffs to determine which course of action best serves the client. In some circumstances, good judgment may instead involve advising restraint, minimizing conflict, and pursuing solutions outside litigation altogether.

Client letter assignments also create opportunities for students to begin developing their own professional voice.<sup>7</sup> Students must make rhetorical and strategic decisions regarding tone, framing, organization, and recommendation style throughout the drafting process. Some students may naturally adopt a warmer and more conversational tone when counseling clients, while others may communicate in a more direct and concise manner. Rather than treating one approach as universally "correct," professors can guide students in evaluating how different rhetorical choices impact the effectiveness and credibility of the communication in light of the client and context. Over time, students may begin developing greater confidence in making strategic communication choices while still maintaining authenticity in their own developing voices as lawyers.

#### IV. Teaching judgment through persuasive writing

Persuasive writing introduces students to a different form of uncertainty because it involves a broader range of rhetorical and strategic decisions than many earlier legal writing assignments.<sup>8</sup> Unlike predictive writing and client counseling, which usually ask students to evaluate competing interpretations as objectively as possible, persuasive advocacy requires students to make strategic choices within less constrained legal landscapes. Open-universe research assignments expose students to conflicting authority, unresolved doctrinal questions, and an overwhelming range of choices.

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<sup>7</sup> See Kathryn M. Stanchi, *Resistance Is Futile: How Legal Writing Pedagogy Contributes to the Law's Marginalization of Outsider Voices*, 103 DICK. L. REV. 7, 15–16 (1998) (discussing the role of legal writing pedagogy in shaping students' professional voice and participation within legal discourse communities).

<sup>8</sup> See Michael R. Smith, *Excellence in Legal Writing: Wyoming's Quiet Powerhouse*, WYO. LAW., Aug. 2025, at 16–18 (identifying persuasive legal writing instruction as an important component of legal writing education and professional preparation).

Students must decide which arguments to foreground, which authorities to emphasize, how aggressively to frame their position, and which counterarguments to address. That transition can initially prove challenging for students newly encountering the broader strategic flexibility that persuasive advocacy allows.

The progression from predictive writing and client counseling into persuasive advocacy may itself help students develop more responsible forms of professional judgment. Students entering persuasive writing assignments initially assume that effective advocacy requires minimizing unfavorable facts, ignoring adverse authority, or presenting arguments with absolute certainty. Yet the habits developed through predictive analysis and client counseling help students realize that persuasive advocacy still requires intellectual honesty, credibility, and thoughtful engagement with competing authority. Lawyers strengthen their advocacy not by pretending weaknesses do not exist, but by addressing difficult facts and counterarguments directly and demonstrating why their position nevertheless remains more persuasive. In this sense, earlier opportunities to grapple openly with ambiguity may help students become more effective advocates once they transition into persuasive writing.

Professors can use collaborative advocacy exercises to help students develop judgment regarding how rhetorical and strategic choices influence audience persuasion.<sup>9</sup> For example, small groups might receive different confidential factual records and bodies of authority and then prepare brief presentations advocating for their assigned position. The remaining students, who have not seen the underlying materials beforehand, could then share which arguments appeared most persuasive, what themes emerged most clearly, and which aspects of the presentation felt confusing or underdeveloped. Because the audience lacks prior familiarity with the problem, the exercise encourages students to evaluate how strategic choices shape persuasive effectiveness for different listeners.

Exercises such as these also help students recognize that professional judgment requires lawyers to think carefully about audience perspective rather than simply focus upon the arguments they personally find strongest. In some situations, judgment may involve anticipating how a certain judge, client, supervising attorney, or unfamiliar audience may respond to particular choices. In others, it may involve soliciting feedback directly and then deciding how to incorporate that feedback while still preserving analytical coherence and voice.

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<sup>9</sup> See Gerald Lebovits, *Legal Writing in the Practice-Ready Law School*, N.Y. ST. B.J., Sept. 2013, at 72 (explaining that “the goal of legal writing is to produce something effective for the reader, not to regurgitate doctrine”).

The feedback and revision process itself can become one of the most evident exercises in professional judgment within persuasive writing. After receiving reactions from classmates, students must decide which suggestions genuinely strengthen an argument, which revisions may undermine persuasive strategy, and how to adapt feedback while still preserving their own professional voice. Students can become frustrated when classmates recommend contradictory revisions. Yet those are the moments that provide especially valuable opportunities for growth because they reveal that persuasive advocacy rarely involves a single objectively correct strategy. Instead, students are required to make decisions regarding audience persuasion in contexts where multiple reasonable approaches may exist.

These exercises also help students recognize that persuasive advocacy develops through ongoing revision, feedback, and reassessment rather than through producing a perfectly formulated argument on the first attempt. Larger persuasive writing assignments usually involve multiple drafts and revision conferences with professors, creating opportunities for students to exercise professional judgment throughout the drafting process. Students may initially approach revision conferences with professors as attempts to identify the professor's preferred wording, structure, or argument.

Professors can instead frame these meetings as ongoing strategic conversations about advocacy choices. At the outset of the conference process, professors might explain that they approach every conference in this way and encourage students not to interpret their questions as indications that something is "wrong" with the draft or that the professor has a preferred answer in mind. Instead, professors can explain that the purpose of these conversations is to help students think more deliberately about the strategic choices underlying persuasive advocacy. Rather than steering students toward a preferred revision, professors might ask questions such as: What are you trying to persuade the court of here? Why did you organize the argument this way? Which facts or authorities best advance your theory of the case? What do you gain, and what might you lose, by emphasizing this point over another? How do you think your reader will respond to this framing? Questions like these encourage students to articulate and evaluate the reasoning underlying their choices rather than simply searching for the professor's preferred answer.

In sum, persuasive writing helps students recognize that effective advocacy requires balancing considerations rather than mechanically applying fixed formulas. A concession that appears damaging in one context may increase credibility in another. A broad policy argument may strengthen one brief while distracting from stronger doctrinal arguments elsewhere. Persuasive advocacy therefore depends less upon

discovering an objectively correct strategy than upon exercising thoughtful and defensible professional judgment.<sup>10</sup>

## V. Teaching judgment through oral argument

Oral argument exposes students to a particularly dynamic form of professional judgment because it forces them to reason through uncertainty in real time. Unlike written assignments, students cannot script every question, hypothetical, factual variation, or doctrinal tension they may encounter. Instead, they must respond actively to questions, distinguish authority, draw lines, and defend positions while reasoning through uncertainty aloud. In this sense, oral argument is not merely a presentation of legal analysis, but part of the analytical process itself.<sup>11</sup>

Many students initially approach oral advocacy as an exercise in performance. However, judges' questions can expose the limits of rigid reasoning by forcing students to articulate limiting principles, reconcile policy concerns, distinguish factual scenarios, or explain how a rule should apply to troubling edge cases. Professors can reinforce these lessons through exercises specifically designed to surface ambiguity and line-drawing problems. For example, professors might present a series of hypotheticals incrementally altering key facts and ask students where they believe the legal rule should apply, where it should stop, and why. Students may initially become frustrated when they realize there is no perfectly obvious cutoff point or universally accepted answer. But these exercises reinforce that legal reasoning often depends upon drawing difficult lines that precedent does not resolve neatly.

Providing students with earlier and more frequent opportunities to engage in oral advocacy can reinforce that legal reasoning develops through responsive dialogue rather than the search for a single correct answer.<sup>12</sup> Rather than waiting until a formal graded oral argument later in the semester, instructors might begin incorporating brief, low-stakes oral advocacy exercises from the first closed memorandum. For example, instructors might reserve a moot courtroom or other meeting space outside of class and

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<sup>10</sup> See Sherri Lee Keene, *One Small Step for Legal Writing, One Giant Leap for Legal Education: Making the Case for More Writing Opportunities in the "Practice-Ready" Law School Curriculum*, 65 MERCER L. REV. 467, 486 (2014).

<sup>11</sup> See Lisa T. McElroy, *From Grimm to Glory: Simulated Oral Argument as a Component of Legal Education's Signature Pedagogy*, 84 IND. L.J. 589, 594 (2009) ("[S]peaking—like writing—is in and of itself a form of thinking.").

<sup>12</sup> See Michael Vitiello, *Teaching Oral Advocacy: Creating More Opportunities for an Essential Skill*, 45 SETON HALL L. REV. 1031, 1035–39 (2015) (advocating for expanded opportunities for oral advocacy instruction and practice).

invite students to sign up for brief individual conferences in which they verbally work through one legal argument before committing it to paper. These conversations allow instructors to model, in real time, how experienced lawyers analogize and distinguish precedent, respond to hypotheticals, and make strategic choices among multiple reasonable approaches. Because students must explain and defend their reasoning in real time, these conversations encourage them to articulate, test, and refine their analytical judgments before translating those judgments into written advocacy.

Oral advocacy also assists students in understanding that confidence and certainty are not identical concepts. Effective advocates are not necessarily those who pretend every answer is obvious or who refuse to acknowledge that some questions are difficult. Rather, strong oral advocates demonstrate credibility precisely because they remain thoughtful, flexible, and analytically grounded. Accordingly, oral argument provides a powerful environment for helping students build confidence in exercising professional judgment under conditions where ambiguity cannot be avoided or edited away.

## **VI. Beyond legal writing: Preparing students for professional judgment**

The value of helping students reason through uncertainty extends beyond the legal writing classroom. Law school examinations in doctrinal courses frequently rely on ambiguous fact patterns designed to generate competing interpretations rather than singularly correct answers, rewarding students for demonstrating thoughtful reasoning and nuanced analysis. Bar exam essays similarly require examinees to evaluate competing arguments and exercise judgment under significant time pressure. And legal practice, of course, routinely requires lawyers to advise clients despite conflicting authority, evolving doctrine, uncertain outcomes, and competing strategic considerations. As the profession itself continues to evolve, lawyers must also navigate uncertainty in determining what kind of lawyers they wish to become and how they hope to practice. Helping students develop professional judgment during legal writing instruction therefore prepares them not only for future assignments, but for the broader realities of legal education and legal practice.<sup>13</sup>

Legal writing professors are uniquely positioned to make the exercise of professional judgment visible rather than implicit. By explicitly framing assignments, conferences, and classroom discussions as opportunities to navigate competing considerations, professors can help students recognize that effective lawyering rarely involves

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<sup>13</sup> See Janet Stidman Eveleth, *Re-Imagining Being a Lawyer*, MD. B.J., Nov.–Dec. 2009, at 52, 54 (quoting Dean Phoebe Haddon's observation that "[l]aw students and future lawyers will be dealing with uncertainty, so they will need to be imaginative in the choices they make").

discovering a single correct answer. Instead, it requires making thoughtful, reasoned, and defensible choices in the face of ambiguity. Helping students recognize that they are developing these habits of mind throughout legal writing instruction may strengthen not only their analytical abilities, but also their confidence, independence, and emerging professional identities as lawyers.