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# Abandoning Predictions

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# Abandoning Predictions

Kevin Bennardo*

Analytical documents are a hallmark of the law school legal writing curriculum and of the practice of law. In these documents, the author applies a body of law to a set of facts and reaches a conclusion. Oftentimes, that conclusion is phrased as a prediction ("The court is likely to find . . ."),[1] and many academics even refer to analytical documents as "predictive" document types.[2] If that describes you, my goal is to convince you to change your ways. Instead of conceptualizing legal analysis as "predictive," we should simply conceptualize it as analytical. Rather than writing predictive conclusions to legal analyses, attorneys and law students should simply write legal conclusions to legal analyses. Why is this distinction important? Because when it comes to legal analyses, couching the conclusion in terms of a prediction is inaccurate. The conclusion of a legal analysis should be a statement about the law, not a prediction about the decisionmaker.

Sensing that inaccuracy, phrasing conclusions to legal analyses in the predictive causes discomfort to some legal writers and can be a barrier especially when training new legal writers. There is a difference between conducting a legal analysis and predicting the outcome of a legal dispute. That line should both be recognized in the teaching of analytical document genres and be conveyed by legal professionals in the execution

1 *See* MARY BETH BEAZLEY & MONTE SMITH, LEGAL WRITING FOR LEGAL READERS 173 (2014) ("In the iconic research memorandum, the senior lawyer will ask the junior lawyer to write an analysis of one or more legal issues, to explore them objectively, and to predict how a court in the relevant jurisdiction would resolve them."); Mark K. Osbeck, *Lawyer as Soothsayer: Exploring the Important Role of Outcome Prediction in the Practice of Law*, 123 PENN. ST. L. REV. 41, 57 (2018) ("Research memoranda (a.k.a. 'legal memoranda' or 'formal office memoranda') have traditionally been the vehicles through which lawyers record and convey their outcome predictions.").

2 *See infra* note 6.

of legal analyses. Thus, law professors and legal supervisors should avoid instructing their charges to hypothesize on the future actions of a third-party decisionmaker when what they really want is for the student or junior attorney to apply the currently existing law to the client's facts and arrive at a legal decision.

## I. Predictive Conclusions to Legal Analyses are Inaccurate

Prediction is forecasting a future occurrence. In the legal context, a prediction often forecasts what a decisionmaker will do.[3] For example, a predictive conclusion is one that surmises that a court is likely (or unlikely) to find that a set of facts satisfies a legal test. Here are just a couple examples of predictively oriented conclusions from popular legal writing texts:

- "[T]he court will probably decide that the substituted service of process was not valid and vacate the judgment terminating Ms. Olsen's parental rights."[4]
- "In conclusion, a court in this circuit will likely categorize the Byerman trial as one raising issues about judicial integrity and government corruption. Combined with the fact that the Byerman trial received extensive public attention during and after its time in court, the court will most likely rule that it was a public controversy."[5]

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**3** *See* RICHARD K. NEUMANN, JR. & KRISTEN KONRAD TISCIONE, LEGAL REASONING AND LEGAL WRITING 7 (7th ed. 2013).

**4** LAUREL CURRIE OATES & ANNE ENQUIST, THE LEGAL WRITING HANDBOOK: ANALYSIS, RESEARCH, AND WRITING 119 (6th ed. 2014).

**5** ELIZABETH FAJANS, MARY R. FALK & HELENE S. SHAPO, WRITING FOR LAW PRACTICE 278 (2004). I don't mean to pick on these sources—plenty of similar examples may be found in other legal writing texts. *See, e.g.*, BEAZLEY & SMITH, *supra* note 1, at 10 ("A court would almost certainly find Ms. Wheelwright guilty of [the offense] . . . . [A] guilty verdict is almost certain."); CHRISTINE COUGHLIN, JOAN MALMUD ROCKLIN & SANDY PATRICK, A LAWYER WRITES: A PRACTICAL GUIDE TO LEGAL ANALYSIS 9 (2d ed. 2013) ("Accordingly, a court will likely determine that Mr. Adams was not stopped and that his statement about the lollipop is admissible."); JOHN C. DERNBACH, RICHARD V. SINGLETON II, CATHLEEN S. WHARTON, JOAN M. RUHTENBERG & CATHERINE J. WASSON, A PRACTICAL GUIDE TO LEGAL WRITING & LEGAL METHOD 452 (5th ed. 2013) ("Thus, the court will likely find that the statute was tolled until he was denied admission and therefore conclude that Tyler's claim is not time-barred."); LINDA H. EDWARDS, LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION 384 (5th ed. 2010) ("On the facts as we presently understand them, a court would probably rule that Buckley did not misrepresent her age."); MARY BARNARD RAY, THE BASICS OF LEGAL WRITING 125 (2006) ("In light of these facts, a court is likely to conclude that Abbott should have known his conduct was so egregious that it created a substantial risk of significant harm to others.").

**6** *See, e.g.*, OATES & ENQUIST, *supra* note 4, at 193 ("In a one-issue memorandum, the conclusion is used to predict how the issue will be decided and to summarize the reasons supporting that prediction."); BEAZLEY & SMITH, *supra* note 1, at 11 ("Some legal writing is *predictive*: it predicts how a court will apply a particular law to a particular set of facts. Examples of this kind of writing include *office memos*, *opinion letters*, and *law review articles*."); TERESA J. REID RAMBO & LEANNE J.

Numerous legal writing texts instruct writers to conceptualize legal conclusions as predictions,[6] and some even go so far as to offer examples of predictively-oriented subsection headings in analytical memoranda.[7] This characterization—that a conclusion to a legal analysis is a prediction—is misleading and inaccurate.

Here's the problem: to make a prediction about the outcome of a particular decision, the predictor should take account of any and all factors that may influence the decisionmaker. Certainly, *legal analysis*—how a body of law applies to a set of facts—weighs heavily on how a court will decide a particular legal issue. However, numerous *extralegal factors* may also influence the decision. If the author of an analysis hasn't accounted for extralegal factors that may influence the decisionmaker, they have no business predicting what "the court" is likely to do.

Take a hypothetical office memo assignment. The client is a restaurant in Iowa, and the restaurant is considering suing a competitor for misappropriating its smoothie recipes. A junior attorney is assigned to write an analytical memo assessing whether the restaurant's smoothie recipes are protected trade secrets under Iowa state law. Let's say the junior attorney researches the law and finds that Iowa has a statute that protects trade secrets, and the statute helpfully defines trade secrets. The junior attorney researches cases from Iowa and elsewhere and finds no case law involving a claim that smoothie recipes are trade secrets. However, she finds case law that protects other types of recipes as trade secrets, and she determines that those other cases are fairly analogous to the client's situation with the smoothie recipes. Thus, the junior attorney is decently confident that the restaurant's smoothie recipes are protected trade secrets under Iowa law. Simple enough.

What our junior attorney has done is a *legal analysis*. She has determined how a body of law applies to a set of facts. The conclusion of a

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PFLAUM, LEGAL WRITING BY DESIGN: A GUIDE TO GREAT BRIEFS AND MEMOS 158 (2d ed. 2013) ("Legal memos are result oriented; through them, we predict a likely outcome to a legal problem and advise our client accordingly."); DERNBACH ET AL., *supra* note 5, at 268 ("Legal memos are written to predict outcomes, and your prediction is reflected in your conclusion."); TERRILL POLLMAN, JUDITH M. STINSON, RICHARD K. NEUMANN, JR. & ELIZABETH POLLMAN, LEGAL WRITING: EXAMPLES & EXPLANATIONS 19 (2011) ("Typically, an office memo is predictive—it answers a question about how the law would likely apply to a particular set of facts and predicts the outcome."); EDWARDS, *supra* note 5, at 155 ("Making an accurate prediction, then, is the function of an office memo."); MICHAEL D. MURRAY & CHRISTY HALLAM DESANCTIS, LEGAL WRITING AND ANALYSIS 185 (2009) (labeling office memoranda "objective (or predictive) legal documents"); DEBORAH A. SCHMEDEMANN & CHRISTINA L. KUNZ, SYNTHESIS: LEGAL READING, REASONING, AND WRITING 134 (3d ed. 2007) (noting that "predicting how the legal system would respond to the client's situation" is one function of a legal memorandum); CATHY GLASER, JETHRO K. LIEBERMAN, ROBERT A. RUESCHER & LYNN BOEPPLE SU, THE LAWYER'S CRAFT: AN INTRODUCTION TO LEGAL ANALYSIS, WRITING, RESEARCH, AND ADVOCACY 111 (2002) ("If the memo writer does not make a prediction and support it with carefully presented legal analysis, the writer might just as well have not written the memo.").

**7** *See, e.g.*, RAMBO & PFLAUM, *supra* note 6, at 546 ("The court will likely conclude that Lionell sufficiently alleged that Walker's conduct was extreme and outrageous.").

legal analysis should be a statement about the law, not a prediction about the decisionmaker. For example, based on her legal analysis, our junior attorney could accurately write the following *legal* conclusion:

> Iowa law likely protects the restaurant's smoothie recipes as trade secrets.

This legal conclusion is focused on the present; it states how the law applies to a particular set of facts. The law itself is the actor; it either protects the recipes as trade secrets or it does not. But based only on her legal analysis, it would be inaccurate for our junior attorney to write the following *predictive* conclusion:

> The court is likely to find that the restaurant's smoothie recipes are protected as trade secrets under Iowa law.

Our junior attorney hasn't assessed any extralegal factors that may sway the outcome. She hasn't analyzed the potential prejudices of the decisionmaker or the reputations of the parties. She simply is in no position to offer a prediction about what "the court" is likely to do or not do.[8] Sure, she has one big chunk of the puzzle—the proper legal analysis—but proper legal analysis does not always dictate outcomes.[9] In short, "the master of law" and "the master of prediction" would not always reach the same outcome.[10]

Extralegal analysis involves consideration of anything, other than the law, that could affect the outcome.[11] Anyone who thinks that cases are decided by the law alone is "fooling themselves."[12] Judges are "not moral or

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[8] Professor Mark Osbeck recently chronicled, in impressive detail, the shortcomings of traditional element-based analysis as a predictive tool. Osbeck, *supra* note 1, at 65–77.

[9] In his article, Osbeck identified that lawyers have principally relied on three tools to create their predictions, and legal analysis is only one of those tools. Osbeck, *supra* note 1, at 45, 53–64. Lawyerly experience and empirical information are the other two. *Id.*

[10] Frederick Schauer, *Prediction and Particularity*, 78 B.U. L. REV. 773, 783 (1998). Schauer gave the following example of how a predictor might blend together consideration of relevant factors, some legal and some not:

> Suppose we were to ask someone to predict a future judicial decision under the "best interests of the child" standard. My suspicion is that the predictor would first ask about the features of the dispute whose resolution she is being asked to predict. She would want to know the characteristics of the parents, the characteristics of the child, and related matters. But when it came down to prediction, she would predict on the basis of these characteristics by knowing which of these characteristics were likely important in this court, based on an analysis of past decisions by this court.

*Id.* at 787.

[11] Osbeck observed that, when predicting an outcome:

> [A]n experienced lawyer may take into account the background and perceived predilections of the individual judge(s) involved in the case particularly if the lawyer has personal experiences to draw on with respect to these variables. The experienced lawyer may also factor in non-doctrinal considerations such as the equities of the lawsuit, the sympathetic or not-so-sympathetic nature of the parties, the reputation of the opposing counsel, etc.

Osbeck, *supra* note 1, at 59–60 (internal citations omitted).

intellectual giants (alas), prophets, oracles, mouthpieces, or calculating machines. They are all-too-human workers, responding as other workers do to the conditions of the labor market in which they work."[13] Simply put, they "are not machines, and they cannot be counted on to apply legal rules to the facts in a purely mechanical manner."[14] Judges bring their *priors*, "the expectations, formed by background, experience, and temperament, that every decision maker brings to a dispute that he is asked to resolve."[15] And they often also face significant docket pressure, especially at the trial level, and need to weigh the costs of taking the time to arrive at the "right" outcome against the sheer need to efficiently dispose of cases.[16] As such, they are prone to mistakes, abuses, and neglects.[17]

There are hosts of extralegal issues that—rightfully or not—may influence decisionmaking: prejudice based on certain characteristics of the parties or the parties' attorneys, the financial resources of the parties, the publicity surrounding a case, public opinion, social trends, and on and on.[18] Indeed, matters so seemingly trivial as the length of time since the judge's latest food break may influence the decision.[19]

A junior attorney or a law student certainly *could* attempt to write a memorandum that contains full consideration of both the legal analysis and the extralegal analysis and venture a prediction of the likely outcome of a future motion or legal proceeding. Tools exist—and costly legal consultants exist—to aid in discerning a decisionmaker's tendencies.[20] Judicial analytics may help discover whether a particular judge is likely to

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**12** RICHARD A. POSNER, REFLECTIONS ON JUDGING 130 (2013) [hereinafter POSNER, REFLECTIONS ON JUDGING]; *see also* RICHARD A. POSNER, HOW JUDGES THINK 72 (2008) [hereinafter POSNER, HOW JUDGES THINK]; E.W. THOMAS, THE JUDICIAL PROCESS: REALISM, PRAGMATISM, PRACTICAL REASONING AND PRINCIPLES 24 (2005) ("As a description of the incremental, intuitive decision-making of judges in general, the title to this chapter ['Muddling along'] is not unduly harsh.").

**13** POSNER, HOW JUDGES THINK, *supra* note 12, at 7.

**14** Osbeck, *supra* note 1, at 71–72.

**15** POSNER, REFLECTIONS ON JUDGING, *supra* note 12, at 129–30.

**16** *See* Henry J. Friendly, *The "Law of the Circuit" and All That*, 46 ST. JOHN'S L. REV. 406, 407 n.6 (1972) (opining that the "greatest district judges [are not] those who stew for months and then write a long opinion on a novel point of law concerning which they are almost certain not to have the last word"); *see also* POSNER, HOW JUDGES THINK, *supra* note 12, at 141 ("Because judges are sensitive to both backlogs and reversal, they will not, by making precipitate rulings, allow their backlogs to grow to inordinate length merely to reduce the probability of reversal, or their reversal rates to soar merely to eliminate their backlogs.").

**17** It likely goes without saying that juries similarly bring their priors and biases to decisionmaking. *See, e.g.*, POSNER, REFLECTIONS ON JUDGING, *supra* note 12, at 304–06.

**18** *See, e.g.*, *id.* at 115; POSNER, HOW JUDGES THINK, *supra* note 12, at 69–70.

**19** *See* Shai Danziger, Jonathan Levav & Liora Avnaim-Pesso, *Extraneous Factors in Judicial Decisions*, 108 PNAS 6889 (2011). *But see* Keren Weinshall-Margel & John Shapard, *Overlooked Factors in the Analysis of Parole Decisions*, 108 PNAS E833 (2011) (criticizing the previously cited study).

**20** Widely available commercial services like Bloomberg Law and Westlaw can generate fairly detailed analytics about parties, lawyers, law firms, judges, and courts. *See, e.g.*, BLOOMBERG LAW, https://www.bna.com/litigation-analytics/ (last visited Sept. 24, 2018).

dispose of a trade secrets lawsuit at the summary judgment stage, or whether a court tends to rule in favor of corporate defendants or individual plaintiffs. However, the analytical documents that are assigned to junior attorneys and law students rarely ask them to take account of extralegal factors.[21] Overwhelmingly, these documents only call for—and only contain—legal analysis.[22] As such, professors and legal supervisors should instruct their charges to arrive at a legal conclusion, not a predictive one.[23]

Simply put, there is a meaningful difference between legal analysis and prediction. In a world where extralegal analysis and litigation consultants are increasingly part of litigation practice and detailed analytics are available at the click of a button,[24] it is at best mildly misleading and at worst downright inaccurate for a legal writer to conclude what "the court" is likely to find unless the writer has incorporated extralegal factors into the analysis.[25] Moreover, there may be times when a law student or a junior attorney is called upon to incorporate analytics and actually make a prediction about what a particular decisionmaker will do. If we've already taught them that legal analysis is inherently predictive, we won't have any vocabulary left to describe the act of combining legal analysis with extralegal analysis to forecast how a judge or court will decide an issue in the future.

Additionally, it is exceedingly strange to phrase a conclusion about something that has already occurred as a future prediction. Returning to the trade secrets example, either the law protects the recipes as trade secrets or it does not. If it does, then that protection arose sometime in the

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**21** For example, one legal writing text includes a very thoughtful list of "How to Test Your Writing for Predictiveness" without ever mentioning the relevance of extralegal factors or characteristics of the decisionmaker. *See* NEUMANN & TISCIONE, *supra* note 3, at 72–74. Analysis of extralegal considerations simply isn't part of introductory instruction in legal writing.

**22** To clarify, writers of legal analyses should do their best to set aside their own prejudices, priors, and other extralegal influences. Just like judges, they should endeavor to apply the law in a neutral (some would say "objective") way divorced from their personal preferences. But just like judges, writers of legal analyses are all too human and will inevitably fail to achieve complete neutrality. Nonetheless, the goal of a legal analysis should be to get as close as possible to a neutral application of the law to the facts.

**23** To be clear, I am not recommending that the law school legal writing curriculum should be overhauled to incorporate extralegal analysis into assignments geared at first-year law students. Legal analysis is generally enough for them to wrestle with.

**24** *See* Osbeck, *supra* note 1, at 61 ("[E]mpirical information is likely to become increasingly important in this age of data analytics . . . ."). Osbeck explains how data science is currently used in the practice of law and the increasing role it may play in prediction in the future. *Id.* at 85–101.

**25** Perhaps some supervisory attorneys understand that predictive language is not meant literally, and they interpret the phrase "the court will likely find X" to instead mean "the court *should* likely find X," or, "if the court *properly applies the existing law*, it will likely find X." *See, e.g., id.* at 59 ("Seasoned lawyers instinctively temper the predictive analysis of an associate's legal memorandum with their own experience in assessing the likely outcome of cases."). I can't say whether and to what extent this occurs. Regardless, I see no reason to perpetuate this type of inaccuracy when reporting the results of a legal analysis—and this is especially true in today's legal culture where extralegal analyses are becoming increasingly common.

past—likely at the moment that the recipes were created. The law's protection is something that has already occurred, not something that occurs only once a future judge reveals it to be so.

To take another example, consider an analysis of whether a neighbor committed a trespass or not. The trespass either occurred or it didn't occur in the past—at the moment of the disputed incident between the two neighbors. The analysis is backward looking; its focus should be on how the law applies to the past event. Thus, it is downright odd to couch the statement of conclusion in terms of a prediction about a future event, but that is exactly what happens when the conclusion is written as a prediction about what the court is likely to find or not find. Whether a trespass occurred does not depend on a later court declaring it as such. Either the incident that occurred was a trespass or it wasn't a trespass in a legal sense, even if no court ever rules on the issue. To avoid the oddity of writing about a past event as a future prediction, our junior attorney should write a statement of conclusion that focuses on the legal determination as a past event rather than on some future decisionmaker's analysis of the past event.

Thus, law professors and attorney supervisors shouldn't be instructing new legal writers to couch the conclusions of their legal analyses in predictive terms when they haven't truly done a predictive analysis.[26] Predictive language should be reserved for actual predictions.

## II. Predictive Conclusions are (Rightfully) Daunting to New Legal Writers

Although they may not be able to put their finger on it with specificity, new legal writers sense that predictive conclusions are inaccurate, and it makes some of them quite uncomfortable.[27] Numerous new law students over the years have expressed to me that they are intimidated by the prospect of making legal predictions.[28] When assigned to answer a legal question, they avoid the task: their "analysis" consists of a list of

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[26] Predictions about what the parties are likely to do should likewise be avoided, unless the writer has truly considered how characteristics of the party are likely to influence their actions. *See, e.g.*, GLASER ET AL., *supra* note 6, at 401 ("The prosecution is likely to prove that Dunn used or exhibited a deadly weapon . . . ."). A writer should not be assessing what a prosecutor is likely to prove without considering all sorts of considerations about the prosecutor's competence and habits.

[27] *See, e.g.*, Andrew J. Turner, *Helping Students Grow Professionally and Overcome Fear: The Benefits of Teaching Unqualified Brief Answers*, 25 PERSP. 3, 4 (2016) ("My students often object to unqualified brief answers for a simple reason: Who really knows what a judge or jury will decide? Unqualified brief answers, they protest, overstate a lawyer's ability to predict outcomes.").

[28] *See* GLASER ET AL., *supra* note 6, at 111 ("Predicting the outcome of a legal question is one of the most difficult challenges facing the novice legal memo writer.")

reasons why the outcome may be "yes" and a list of reasons why the outcome may be "no," and then concludes with a statement that "ultimately it will be up to the court to decide." Then we have an exchange like the following:

> "You failed to state a conclusion," I say, "No one is going to pay you a lot of money to tell them that 'it is up to the court to decide.'"

> They respond, "How should I know what the court will do? I only started law school a month ago. What if I'm wrong and the court doesn't do what I say it is going to do?"

> "Fair enough," I say, "but don't think of your job as predicting what the court will do. Courts do bizarre things sometimes. Courts also make mistakes. I'm not asking you to try to guess what a hypothetical judge would do. I want you to take on the role of judge and tell me how you would decide the case if you properly applied the law to the facts in front of you. In that situation, what would the conclusion be?"[29]

Freed from the shackles of predicting what some hypothetical "court" is likely to do, these students are now up to the task. Conceptualizing the question as "how would *you* apply the law to the facts" puts new legal writers much more at ease. They now inhabit the role of the decisionmaker. And, as decisionmaker, they recognize the importance of actually reaching a decision rather than abdicating the final analysis to some other later "court" to figure out. They are the decisionmaker, so they must decide: do the facts satisfy the legal test, or do they not?[30]

Inhabiting the role of the decisionmaker also breeds confidence. A prediction is provable as right or wrong. A junior attorney who writes that "the court is likely to find that the smoothie recipes are protected as trade secrets" will appear to be "right" or "wrong" depending on the court's decision. The prospect of being branded as "wrong" can be a significant hurdle for some people, especially in the anxiety-inducing world of high-stakes litigation. Legal writers should not be pushed into making a prediction unless they truly have the tools to conduct the extralegal analyses necessary to support a prediction.

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[29] *See also* DERNBACH ET AL., *supra* note 5, at 268 (encouraging students to "think like a judge" when writing legal memoranda: "Put yourself in the position of the judge who will resolve this case after weighing all competing arguments. What law and what facts would you, as the judge, rely on? What would you decide as a judge?").

[30] Casting the student in the role of the judge does not necessarily mean that the conclusion must be stated with unqualified certainty. However, qualifying a conclusion with words such as "likely" and "probably" should not be the product of a student's lack of confidence in her budding analytical abilities or of her inability to know what some third-party decisionmaker is going to do. Rather, it should reflect the unsettled nature of the law in certain areas. *See* Turner, *supra* note 27, at 6.

Instead, new legal writers should be taught to respect the limits of their analyses. If they have done a legal analysis, then a legal conclusion is appropriate. For example, a junior attorney who concludes that "the smoothie recipes are likely protected as trade secrets" isn't necessarily "wrong" if the court ultimately rules the other way. Maybe it is *the court that was wrong*. The junior and senior attorney can then bond over their shared dissatisfaction with the court's analysis. That is a much better outcome than the junior attorney fearing that she will be blamed for her wrong prediction. After all, if every court got every decision right, appellate opinions would be dreadfully boring to read.[31] Matching the appropriate conclusion to the appropriate type of analysis creates comfort and can ultimately lead to a better work product.

## III. Conclusion

Predicting what a court is likely to do is a tall task and involves innumerable calculations, not the least of which is sussing out the decisionmaker's prejudices and tendencies and sorting through any attendant social pressures to rule in a particular way. Rightfully, this type of extralegal analysis is not a task that novice legal writers are generally called upon to do. Instead, law students and most of the junior attorneys they emulate conduct solely *legal* analyses. They apply bodies of law to sets of facts to arrive at legal conclusions. As such, we should not instruct them that they are authoring "predictive documents" that end with conclusions espousing what "the court" is likely to do. Their conclusions should reflect the limits of their analyses, and they simply aren't in the position to confidently posit predictions about a hypothetical decisionmaker's future behavior. Thus, we should take the focus off the decisionmaker and put it on the decision. Novice legal writers are not predicting anything; they are only analyzing.

Moreover, forcing new legal writers into making predictions about decisionmakers can be intimidating, especially when the writer senses that the prediction is misleading. Instead, law students and junior attorneys should be instructed to don the decisionmaker's cap for themselves and

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**31** Not only that, but we wouldn't need attorneys in the first place. In the law school setting, students should learn early and often that courts do not always engage in perfect legal analysis and not every precedent can be reconciled with every other precedent. *See supra* section 1. As recounted in one federal judge's own story of coming to terms with this hard truth, it is simply not accurate or useful for law students or recent graduates to regard judges as robotic engines of legal application. *See* Joseph C. Hutcheson, Jr., *The Judgment Intuitive: The Function of the "Hunch" in Judicial Decision*, 14 CORNELL L.Q. 274, 274–79 (1924) (chronicling Judge Hutcheson's journey from a law graduate who believed that judges "coldly and logically determined the relation of the facts of a particular case to [the] established precedents" to a seasoned practitioner and later judge who came to the realization that "hunches" and intuition play a major role in process of judicial decisionmaking).

determine the appropriate legal conclusion. Law professors and attorney supervisors need to recognize—and convey—that their junior colleagues function as informers, not predictors. We ask them to discover how the law, as it currently exists, correctly applies to a set of facts. We ask them to apprise us of this information so that we may use it to advise the client.

We should not ask them to foresee the outcome of a third-party's future decision based solely on legal analysis. Legal analysis is a necessary-but-insufficient input in predicting a decisionmaker's behavior. Thus, we should expect statements of the writer's conclusions to reflect this distinction and to accurately convey the limits of their analyses. While that distinction may feel relatively minor, it can make all the difference when shepherding novice legal writers toward reaching a conclusion and stating it plainly.