Helping Students Grow Professionally and Overcome Fear: The Benefits of Teaching Unqualified Brief Answers

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When I was a novice lawyer, a supervising attorney asked me to do something that I only later realized was fairly uncommon: write unqualified brief answers in my memoranda. Unless the answer was very unclear, I was encouraged to draft straightforward, unqualified brief answers such as “yes” rather than “most likely yes.”

So as a new legal research and writing professor, it seemed natural to ask the same of my students. I was surprised by how fiercely they resisted. They bridled at this request more than any other I made. Apparently, I had hit a nerve.

This isn't surprising. Qualified brief answers are the standard among students, professors, and practitioners alike and for good reason. Legal questions are typically complex and the law often uncertain. Qualifiers allow writers to express and quantify that uncertainty, adding the necessary nuance that a simple “yes” or “no” cannot. Qualifiers can help the reader by adding valuable information.

But often, students use brief answer qualifiers inappropriately, violating the core principle of good legal writing: serving the reader. Instead of well-reasoned qualifiers that carefully and accurately express legal uncertainty, their qualifiers mask unnecessary sources of uncertainty that can and should have been dealt with in the writing process. The results are reflexive and vaguely considered “most likely” or “probably” and fearful, defensive qualifiers made to avoid committing to their analysis.

Requiring students to use qualifiers thoughtfully—and pressing them to draft unqualified brief answers whenever possible—forces them to deal with sources of unnecessary uncertainty during the writing process, strips them of the ability to use qualifiers as protective cloaks, and refocuses their attention on the true purpose of the brief answer (and the memo itself): communicating effectively and assisting the reader.

I would not expect students to master the intricacies of brief answer qualifiers and their real-world impacts in a first-year legal research and writing course. Still, asking students to think more deeply about their brief answers promotes the higher-level thinking we hope students develop. For instance, it helps students reflect on the brief answer’s purpose, how it might be understood and received by a client, and how minor adjustments in tone and style can inhibit or facilitate communication.

Something as simple as drafting an unqualified brief answer can teach so much for two reasons. First, drafting unqualified brief answers forces students to unpack and eliminate unnecessary sources of uncertainty that otherwise go unstated. Second, it forces students to engage with their writing as a potent tool for communicating with clients rather than as an academic exercise.

I. Eliminating unnecessary sources of uncertainty strengthens brief answers.

In a qualified brief answer, the “most likely” that comes before “yes” signifies uncertainty that the writer wants to communicate to the reader. However, like property law’s proverbial bundle of rights, a brief answer’s qualifier is usually a bundle of uncertainties including legal uncertainty,
outcome uncertainty, factual uncertainty, analytical uncertainty, and emotional uncertainty.

Often, the writer can eliminate all those uncertainties and thus write an unqualified brief answer. So when a student tells me that the answer to a legal question is “probably yes,” I ask her to identify every separate source of her uncertainty. Then I ask her to try to eliminate them all and give me a fair and accurate unqualified answer instead. Forcing students to justify their qualifiers teaches them to clarify their reasoning and, if absolutely necessary, use qualifiers in a more thoughtful and measured way.

A. Outcome uncertainty: Unqualified brief answers help students frame better questions presented.

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. But qualifying a brief answer to account for outcome uncertainty rarely helps the reader. Lawyers and most clients are well aware of the unpredictability of the legal process. For them, outcome qualifiers never add meaningful new information. On the other hand, for those clients who do overestimate the lawyer’s ability to predict an outcome, the solution is an in-depth discussion between client and counsel about realistic expectations and risks, not a qualifier on the brief answer.

Moreover, an outcome qualifier often indicates a deeper failure, specifically the writer’s failure to properly frame the question presented. When a student wants to qualify a brief answer to account for outcome uncertainty, I ask him to rethink the question presented. As novice legal thinkers, students often default to a question presented that asks about an inherently uncertain outcome, rather than about the core legal issue. For instance, take the question: “Will Bob be found guilty of first-degree murder when he intended to cause great bodily harm, but not death?” It focuses on the outcome of the legal proceeding: whether a jury will find Bob guilty. While a client’s concern is the ultimate outcome, a memo’s goal is often more focused: to contribute a precise analytical point to a much larger litigation process. Thus, the writer could refocus the question away from an ultimate outcome onto the core legal issue, such as: “Are the elements of Wisconsin’s first-degree murder statute satisfied if the defendant intended to cause great bodily harm, but not death?”

In many cases, refocused questions can eliminate outcome uncertainty in brief answers and lead to memos that better address readers’ central legal concerns.

B. Factual uncertainty: Unqualified brief answers force students to identify key facts.

When a student doesn’t know, appreciate, or identify key facts, uncertainty slips into the student’s brief answer. For instance, whether a particular contract was enforceable may depend on whether the contracting party was a minor or an adult. If a writer doesn’t know the party’s age, she must analyze both possibilities and then qualify her answer. A seasoned attorney would find out the answer, but new law students are typically more passive. If I don’t specify the contracting party’s age in a problem, few students will ask. As a result, their memos often read like meandering explorations of the law rather than focused, practical, and pragmatic responses to a real situation. When I ask students, “Did you consider asking the party’s age so you could stipulate it in the fact statement and produce a more focused memo?” they usually admit that asking never occurred to them.

Pressing students to use unqualified brief answers teaches them to seek out key information earlier in the writing process. It aids in the transition from the passive, self-focused mindset of most students to the more proactive, client-focused mindset of a real attorney.

C. Analytical uncertainty: Unqualified brief answers hold students accountable for their work product.

Another common objection I get from students when I push for unqualified brief answers is a simple, but telling one: “What if I’m wrong?”

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Effectively, students want to hedge against the possibility that their own analysis is deficient.

Analytical uncertainty is not a good reason to qualify brief answers. These qualifiers just shift the burden of uncertainty off the writer and onto the reader. Instead, the student must reduce or eliminate analytical uncertainty through diligence and competence. For instance, take students’ common concern about missing a key case. The solution is not telegraphing uncertainty in the brief answer, but being diligent enough to feel comfortable that (a) no such case exists or (b) if one does exist, its impact would be insufficient to change the ultimate outcome of the analysis.

Students using qualifiers to cover for a lack of diligence can appear lazy. However, more than simple laziness, diligence qualifiers can be a sign that students underestimate how much work it takes to produce good legal writing.

Paradoxically, students’ past successes can lead them to frustration in law school. Students who have always been academically talented can misinterpret the natural confusion and ambiguity of a tough legal problem as a sign that something is wrong or that a problem has an unclear answer. “No,” I tell them, “nothing is wrong. It’s just really hard. Keep working until you achieve a clear, well-reasoned answer.” (Indeed, I worry about students who confess to me, mid-project, that a problem seems really easy.)

Many students respond well to the reminder that law is a demanding profession and that struggle is a necessary part of achieving results, not a sign of imminent failure or a reason to throw up their arms by qualifying their answers.

D. Emotional uncertainty: Unqualified brief answers teach students to face fear and commit.

Perhaps the most common reason that students qualify answers is emotional: they are afraid. The vast majority of our students have never worked professionally or never held an important decision-making role. They have been surrounded by others who make the key decisions (or at least vet the students’ decisions). But now, they are transitioning into the lawyer’s role. I ask my students to imagine someone making a tough decision and turning around to ask the person behind him, “John, what should I do?” As the question continues down the line, eventually someone turns to the student and asks, “Ms. Attorney, what should I do?” But when she turns around, no one is there. The weight of that responsibility is an unexpected and chilling realization for many young attorneys.

I recall a partner patiently explaining to me that, for at least my first year as an attorney, he would closely double-check my analysis before sending it to clients. I had to win his trust bit by hard-earned bit, he told me. Not a month later, he walked into my office flustered and in a rush asking about a project he had recently assigned me. “Is the memo done?” I told him it was. “It better be right,” he demanded, “the client needs a decision this afternoon, and I don’t have time to check your work.” Welcome to the big leagues.

My response to students who ask “What happens if I’m wrong?” is a simple one. “It’s your job to get it right.” Of course lawyers make mistakes, but fearful qualifiers do nothing to lessen the responsibility for getting the answers right—or the fallout for getting them wrong. Students must confront the reality that they are entering a field where their mistakes can lead to businesses collapsing, people losing jobs, fathers going to jail, and sons being wrongfully put to death. Given those stakes, putting their name and professional reputation on the line by giving an answer unencumbered by a qualifier founded on a lack of confidence is not too much to ask.

In addition to this outward facing fear of harming their (as yet fictional) clients, some students dislike committing to unqualified answers because doing so challenges their own self-image as smart, competent people.

Students will often give me a memo that explains in accurate and excruciating detail why a particular answer is unambiguous—and then qualify the answer anyway. Such qualifiers tell the reader nothing. Instead, they telegraph insecurity and undermine the reader’s confidence in the work.
Students are so focused on day-to-day law school requirements and the pursuit of good grades that they can fall into the trap of viewing memos as merely academic exercises, rather than pragmatic, real-world documents to help clients make decisions and manage risk.

I believe this aversion to commitment—and the resulting desire to hedge answers with qualifiers—is an instinctive and emotional reaction to the uncertainty of law school (and law practice). Many law students’ self-images are closely tied to a belief (often accurate) in their own exceptional intellect. But many have never faced the type of uncertainty they face in law school. While they have been rewarded time and again for finding, knowing, and mastering the answers, they now face unique legal questions with no predefined answers. In these uncharted waters, students struggle to find the confidence to independently develop answers out of the murky soup of law and facts. In that context, unqualified brief answers feel like risky overcommitments to their own work.

Requiring students to commit to their answers helps them develop analytical self-confidence to stand by an answer that comes only from the application of their own analytical skills to law and facts.

E. Acceptable uncertainty.

Sometimes qualifiers are indeed necessary. The law itself may be uncertain or unclear. If so, qualifying a brief answer is not only acceptable but necessary. For instance, we might wonder whether a bicycle constitutes a “vehicle” in a drunk driving statute. If the statute is unclear, and case law does not resolve the issue, a writer should qualify the brief answer. Because the writer doesn’t know the answer (and no one does), an unqualified brief answer would be both inaccurate and presumptuous.

II. Challenging students to use thoughtful qualifiers teaches them that memos are potent tools for communication rather than academic exercises.

That the purpose of a memo is to communicate with a reader seems obvious, yet I didn’t fully understand a memo’s purpose until I was a practicing attorney. I suspect I was not alone. Students are so focused on day-to-day law school requirements and the pursuit of good grades that they can fall into the trap of viewing memos as merely academic exercises, rather than pragmatic, real-world documents to help clients make decisions and manage risk.

First-year law students may perceive the distinction between qualified and unqualified brief answers as needlessly picky semantics, but discussing how and when to qualify answers helps students understand how their writing’s tone and precision affect its reception, particularly by nonlawyers. This is important considering that, unlike litigation-based brief writing, memo writing is important to a broad range of practice settings including transactional and regulatory work. The needs and expectations of a nonlawyer business client may differ significantly from those of an attorney.

For instance, business owners can be much more bottom-line, action oriented. Regardless of its analytical merit, a memo with a qualified (or possibly hedged) answer feeds into clients’ worst stereotypes about wishy-washy, uncommitted, risk-averse lawyers. Instead of enhancing communication, it can shut it down. Consider the question, “May East Hospital refer its patients to West Hospital without violating the Stark law?” A direct and unqualified brief answer that gives an actionable bottom line can make the client more receptive to a subsequent and more nuanced risk analysis. “Yes. Because the statute does not cover this specific type of relationship, it is impossible to state the legality of the proposed referrals with absolute certainty. However, the proposed referral scheme does not break any written rules, does not violate any of the public policies for which the Stark law was written, and provides a significant community benefit.”

When I think about tailoring brief answers to meet clients’ needs, I recall working with two partners who held opposite views. One strongly preferred a direct, unqualified answer. (“Never give a client an answer whose message is, ‘go ask an attorney,’” he’d remind us.) The other wanted a risk analysis, with no real answer at all—qualified or not. I believe they approached the task differently because they dealt with different types of clients.

The “unqualified-answers” attorney tended to work with mid-level decision makers who, though highly
competent in their professions, were not legally trained. They needed input to make immediate and practical decisions. Though they recognized why it was important, I suspect they weren’t interested in actually reading our nuanced legal analysis. For them, the brief answer was the answer.

In contrast, the “give-them-a-risk-analysis” partner felt it was presumptuous to tell a client what she should do. His clients tended to be high-level executives, often law trained, who were making longer-term, strategic decisions. I suspect they pored over memos in great detail, looking to understand the analyses more than any particular recommended course of action. (“She’s the CEO of a major corporation—why would she ask us how to run her company?”)

They were both highly successful attorneys, in large part because they understood their clients’ needs and expectations.

**Conclusion**

Real-world writing choices are complex. Just how definitive a lawyer should be with a brief answer in professional work depends on many factors, including local legal culture, firm policies, and potential impact on malpractice liability. Making those judgments in the real world will be part of students’ lives as professional attorneys.

Meanwhile, for a 1L course, encouraging students to write unqualified brief answers where appropriate helps serve more immediate goals: taking responsibility for work, developing analytical confidence, and treating memoranda as serious and practical communication tools.

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**Micro Essay: Digital Natives**

**Digital Naifs**

Hallelujah! We no longer need to teach computer literacy because our students are digital natives. The trade-off is steep, however, because we must now teach a kind of literacy that has vanished with technology: verbal facility and linguistic resourcefulness. Only five of my 50 students have used an index, and the general quality of student online searches reflects a depressing paucity of linguistic dexterity and mastery of synonyms. Never a fan of the thesaurus, I would now be grateful if my students utilized one. If our students abandoned instant gratification in favor of reflection, their research skills would improve exponentially.

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