

Legal Writing and Academic Support: Timing is Everything

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Like many of my colleagues, I came to academic support after years of teaching legal research and writing. Providing academic support seemed to be a natural extension of the work I was doing in legal writing, and I assumed, like many others, that it would be relatively easy and very effective to deliver academic support through my first-year legal writing course. Indeed, I envisioned the first-year legal writing curriculum as a key component of an academic support program. When I put these very general assumptions about combining legal writing and academic support to work, however, as director of the Academic Achievement Program (AAP) at the University of Maryland School of Law (Maryland), they met with some pesky details. The purpose of this essay is to explore these details as they relate to combining academic support and legal writing in the first year, and outline a potential solution that maximizes the benefits of providing academic support through a legal writing course, and minimizes the negatives, by using the course for advanced academic support after the first year.

Part I of this essay briefly explores the relationship between academic support and legal writing as it exists in many law schools today. Part II will outline the academic support program at Maryland to give context to the observations presented here. Part III will present some of the negative aspects of legal writing courses as they relate to the academic support mission of a law school. Finally, Part IV will describe how a legal writing course can avoid the negatives and be an effective vehicle to deliver more advanced academic support after the first year.

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I. Background: The Legal Writing-Academic Support Relationship

My evolution from teaching legal writing exclusively to also teaching students in need of academic support is a fairly common one. Many academic support professionals either did or currently do teach legal research and writing in conjunction with their academic support duties. The fact that so many academic support professionals have a legal writing background probably accounts to some extent for the legal writing and academic support relationship that exists in many law schools today. At some institutions, the legal writing director is also the academic support director². At others, academic support is delivered through a legal writing course of some kind or by giving students additional assistance with legal writing.³ In addition, at some schools, the academic support program grew out of the legal writing program,⁴ or, as is the case at Maryland, is a component of the legal writing program. Moreover, as Adam Todd has noted, “legal writing professionals are natural allies with [Academic Support] professionals. They . . . are often trying to achieve the same goals.”⁵

This relationship between legal writing and academic support carries a certain intuitive appeal. For many, if students are struggling, more assistance with writing just seems to make sense. There are a number of similarities between legal writing and academic support that reinforce this notion. For instance, legal writing courses and

² Adam G. Todd, *Exam Writing as Legal Writing: Teaching and Critiquing Law School Examination Discourse*, 76 TEMPLE L. REV. 69, 71 (2003) [hereinafter Todd, *Exam Writing as Legal Writing*].

³ *Id.*; M.H. Sam Jacobson, *Providing Academic Support without an Academic Support Program*, 3 LEGAL WRITING: J. LEGAL WRITING INST. 241 (1997) [hereinafter Jacobson, *Providing Academic Support*]; Kathy L. Cerminara, *An Essay Remembering Arthur: Some Suggestions for Law School Academic Support Programs*, 21 T. MARSHALL L. REV. 249, 266 (1996).

⁴ Todd, *Exam Writing as Legal Writing*, *supra* note 2, at 203.

⁵ Adam G. Todd, *Academic Support Programs: Effective Support Through a Systemic Approach*, 38 GONZ. L. REV. 187, 203 (2003) [hereinafter Todd, *Academic Support Programs*].

academic support programs both seek to teach students legal analysis.⁶ Both academic support programs and legal writing programs rely heavily on working with students in small groups.⁷ Both legal writing and academic support are believed to help students cope with the stress of law school, or at least are better positioned to do so.⁸ Legal writing courses also often incorporate the same learning theory that is commonly relied upon in academic support.⁹ Finally, some scholars have noted that at some institutions, both legal writing and academic support programs have a lower status in the “curricular hierarchy.”¹⁰

Consistent with the belief that academic support and legal writing can be combined effectively, some scholars have detailed important ways that a legal writing course can contribute to the academic support mission of a law school. For instance, Herb Ramy has asserted that legal writing and academic support instructors can work together to be an additional tool for identifying struggling students.¹¹ In addition, Sam Jacobson outlined ways that a law school without an academic support program can offer struggling students support through special legal writing courses.¹² Finally, Adam Todd has argued that teaching exam writing in first year legal writing courses can provide

⁶ Todd, *Exam Writing as Legal Writing*, *supra* note 2, at 76; Kevin H. Smith, *Program Evaluation: Defining and Measuring “Success” in Academic Support Programs*, 2003 MICH. ST. DCL L. REV. 177, 194 (2003).

⁷ Martha M. Peters, *Bridging Troubled Waters: Academic Support’s Role in Teaching and Modeling “Helping” in Legal Education*, 31 U.S.F. L. REV. 861, 872 (1997).

⁸ Ruth Ann McKinney, *Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?*, 8 LEGAL WRITING: J. LEGAL WRITING INST. 229, 247-250 (2002).

⁹ See Amy E. Sloan, *Erasing Lines: Integrating the Law School Curriculum*, 1 J. ASS’N LEGAL WRITING DIRECTORS 3 (2001).

¹⁰ See, Cerminara, *supra* note 3, at 250; Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law Schools’ Dirty Little Secrets*, 16 BERKELEY WOMEN’S L.J. 1 (2001).

¹¹ Herbert N. Ramy, *Two Programs are Better Than One: Coordinating Efforts Between Academic Support and Legal Writing Departments*, 9 PERSP.: TEACHING LEGAL RES. & WRITING 148 (2001).

¹² Jacobson, *Providing Academic Support*, *supra* note 3.

struggling students with an important academic support benefit.¹³ The purpose of this essay is to add to these perspectives and the more general belief that legal writing and academic support go hand-in-hand by arguing that while a legal writing course can be a very effective setting for delivering academic support, there are important downsides to such an approach that should be considered. With these downsides and Maryland's academic support goals in mind, I determined, as described in more detail below, that the best use of a legal writing course in connection with an academic support program is in the upper-level curriculum, after students have been identified and had at least some academic support.

II. Legal Writing and Academic Support: The Maryland Academic Support Program

It is important at the outset to note the nature of the programs in place at Maryland, because the structure of the legal writing and academic support programs contributes to the observations made here.¹⁴ Like many law schools, Maryland several years ago determined that it needed to do more to provide academic support services to struggling students. A non-tenure track faculty member was hired to direct the AAP and further study the school's academic support needs. The AAP is part of the Legal Writing program, although it operates separately from it. The faculty member who directs the AAP is supervised by the faculty directors of the Legal Writing Program. Informally, the faculty who administer and teach in the Legal Writing Program and the AAP collaborate on many aspects of the programs, including the Teaching Fellow components of both

¹³ Todd, *Exam Writing as Legal Writing*, *supra* note 2.

¹⁴ It is well established that an academic support program's structure and success depends heavily on the needs, goals, and culture of a given law school. *See* Smith, *supra* note 6, at 200-208.

programs as well as by simply sharing ideas for program innovation and scholarship, among other things.

Maryland has three goals for its AAP. The first is academic competence – that is, Maryland seeks to ensure that all graduating students have a certain base-line level of ability. Second, the Maryland AAP helps students achieve this base-line level of competence by teaching students to be independent learners. Finally, an important part of the AAP is to preserve and nurture the student’s spirit and sense of self-worth.

Of primary importance in achieving these goals is avoiding, to the greatest extent possible, stigma. Accordingly, one of the main features of the Maryland program is that it does not in any way target students, based on admissions predictors, for academic support. My experience has shown that if “at risk” students are targeted for assistance before first-semester grades are available our academic support efforts would be both over- and under-inclusive. Many students who ultimately struggle would be overlooked, and several students who are deemed “at risk” in fact do fine. Moreover, Maryland does not have a targeted program because academic support programs historically have targeted minority students. As a result, we were concerned that any targeted program we had would be perceived as such, and would therefore create stigma based on race. Accordingly, there is no specific summer or fall program for incoming students who are deemed “at risk”. Instead, in the fall semester, the AAP invites all first year students to attend several skills-based sessions which focus on case reading, note-taking, outlining and exams. All students have access to the materials provided at these sessions, and the students are told that to the extent they experience academic difficulty after the first

semester they will be invited, but not required, to participate in a more formal spring semester program. Any student may seek assistance from the AAP at any time.

After first semester grades are available, students in the bottom 20% of the class are notified of their performance and invited to join the Spring Study Group Program, a structured program that is based on the University of California – Los Angeles spring course format¹⁵ which focuses on building students' skills. Using material from one of the students' substantive courses, the group meets weekly to primarily work on case reading and synthesis, note-taking, outlining and exam taking. In addition, the program teaches and emphasizes the importance of good study habits. Finally, the Spring Study Group Program tries to combat students' feelings of powerlessness, stress, alienation, and failure. The program is led by the faculty director of the AAP, with the assistance of several teaching fellows. Students receive no credit for the program.

As initially conceived, I made two assumptions about the AAP. First, I believed that because of the relationship between the AAP and the Legal Writing Program, identifying students who need academic assistance in the first semester could be achieved through referrals from the Legal Analysis Writing and Research I (LAWR I) professors. The LAWR I course is the Maryland version of a first-semester, first-year legal research and writing course, with the important distinction that it is taught by full-time faculty members. I hoped that because these professors worked closely with the students, and were full-time faculty, many students could easily be identified and referred for individual assistance before first semester grades came out. This hope was strengthened by the fact that in some years I would teach a section of the LAWR I course. The second

¹⁵ See Kristine S. Knaplund & Richard H. Sander, *The Art and Science of Academic Support*, 45 J. LEGAL EDUC. 157 (1995).

assumption was that the Spring Study Group Program would be all the structured academic support that struggling students would need. My experience has challenged these assumptions, and pushed me to consider in more detail the relationship between academic support and legal writing, and how best we could use the two to achieve Maryland's academic support goals.

III. What I Have Learned: Some Downsides to the Legal Writing – Academic Support Relationship.

As noted above, there are many positive examples of legal writing courses contributing to a law school's academic support efforts.¹⁶ However, in addition to these potential positives, there are some important negative aspects, outlined below, to combining legal writing and academic support. These negatives grow out of the tendency to rely on the first-year legal writing course to do too much, and an under-estimation of the amount of support struggling students, especially in the first year, often need.

1. The Legal Writing Course is an Imperfect Tool for Identifying Struggling Students.

Because of the number of assignments and frequent contact with students, it is often assumed that legal writing instructors are “uniquely positioned” to determine which students will need academic support.¹⁷ While in many cases this may be true, in fact, legal writing courses are far from being a perfect diagnostic tool for determining which students will need academic support and which will not. In my experience, the legal writing course has given many “false positives” and perhaps more troubling, has given many “false negatives.” This has been the case even when I am teaching the course.

¹⁶ See Ramy, *supra* note 11, at 148; Jacobson, *Providing Academic Support*, *supra* note 3.

¹⁷ Ramy, *supra* note 11, at 148; M.H. Sam Jacobson, *How Law Students Absorb Information: Determining Modality in Learning Style*, 8 LEGAL WRITING: J. LEGAL WRITING INST. 175, 175-176 (2002) [hereinafter Jacobson, *How Law Students Absorb Information*].

The following are recent examples of this issue:

Student A. Student A was relatively quiet and did not participate much in class discussions. His early papers were terrible. He had little understanding of basic structure, and his analysis was always brief and conclusory. He received a great deal of additional assistance from me and the Teaching Assistant. Even with the assistance, his final paper was passable, but unremarkable. I was certain he would not do well, and had targeted him for academic assistance in the spring. I was surprised to learn after exams that he was in the top 20% of the class, receiving one of the highest grades in Torts. His grades have continued to be strong.

Student B. Student B had some of the lowest predictors of all the students admitted to the law school in her year. One of her substantive course professors indicated that when called on, Student B often gave puzzling answers. When her LAWR I professor was consulted about the student, he insisted she was holding her own in the class and was not in need of academic assistance. The student received a grade of B- in LAWR I, and D's in two other courses, finishing second to last in the class after the first semester.

What happened to these students? It is easy to dismiss these two examples as exceptions, however, these were not isolated incidents. In my experience, several students each year who are identified through their LAWR I course as candidates for academic support finish the semester, and the year, with strong G.P.A.'s. Conversely, each year, several students who perform adequately in the LAWR I course finish the semester and the year shocking their writing professors with bottom-of-the class G.P.A.'s.

This suggests two important points. First, many students who have difficulty in a first-year, first-semester legal writing course are actually not having difficulty with the skills with which students in need of academic support frequently need assistance – for example, case reading, general study skills, synthesis, outlining and exam taking. Instead, these students might not very good legal writers, at least starting out. Indeed, they may be performing the way a novice legal writer would. Joseph Williams explains

that in legal writing, two features of “bad thinking” are too much summary and “self-evident banality.” He notes, however, that

It is easy to charge with generic incompetence those who do not know the difference between what is important and what is not, who do not seem to know the difference between summary and analysis. Indeed, they may in fact be generically incompetent. But they may also be novices behaving in ways that novices predictably behave.¹⁸

Second, students who manage to do well enough in legal writing to avoid being referred for academic support may be doing so by relying heavily on the level of support given in such a course. Through faculty conferences, opportunities for rewriting, and, when available, assistance from TA’s and the law school’s Writing Center, struggling students can keep their heads above water, something they cannot do in their large substantive courses. This issue is particularly troubling because struggling students often point to their legal writing grade as “evidence” that they do not need academic support. With a voluntary academic support program, this makes recruitment even more difficult.

This identification problem is significant for an academic support program like that at Maryland where students are not targeted for assistance based on their admissions predictors, and where participation in the program is voluntary. Thus, while the legal writing course may serve as an important *additional* identification tool when used in conjunction with other predictors, performance in the course is unreliable as the primary indicator of the need for academic support.¹⁹

2. *A Legal Writing Course Does Not By Itself Provide Academic Support*

¹⁸ Joseph M. Williams, *On the Maturing of Legal Writers: Two Models of Growth and Development*, 1 LEGAL WRITING: J. LEGAL WRITING INST. 1, 6 (1991).

¹⁹ Even Professor Ramy, who discusses the benefits of collaboration between legal writing and academic support programs, states that “this. . . is not intended to supplant other methods of identifying at-risk students.” Ramy, *supra* note 11, at 148.

Even if struggling students could be identified reliably through a legal writing course, they do not necessarily receive effective academic support through such a course. This is not to say, however, that a law school without an academic support program cannot deliberately use a legal writing course to assist struggling students.²⁰ However, a legal writing course conducted in the *usual* way does not provide “built-in” academic support. This point may seem overly simplistic, but I suspect that at many law schools, the legal writing course is viewed as one which naturally gives support to struggling students, or could easily do so. This is not the case for several reasons.

Legal Writing Courses Cannot Be All Things to All Students. The view that legal writing courses provide a kind of “built-in” academic support is likely rooted in outdated views of what academic support programs really do, and an unrealistic vision of what legal writing courses can and should achieve.

The goals of a first-year legal writing course are in many ways the same as those in traditional first-year substantive courses.²¹ These goals include teaching students to solve legal problems using the syllogism as the paradigm for analysis, teaching students to create and express legal arguments, teaching black letter law, and helping students become part of the “legal discourse community.”²² These goals are achieved while teaching students the mechanics of predictive and persuasive legal writing.²³

Academic support, on the other hand, commonly refers to “programs which are intended to improve the academic performance of traditionally at-risk students and to

²⁰ See Jacobson, *Providing Academic Support*, *supra* note 3. See also Cerminara, *supra* note 3, at 266 (discussing the program at the University of Pittsburgh School of Law, as well as others, that deliver academic support through a writing course).

²¹ Sloan, *supra* note 9, at 3.

²² *Id.* at 6.

²³ *Id.* at 5.

provide ‘early academic assistance’ to those who actually are ‘at risk’ of not succeeding.”²⁴ Academic support programs can take many forms.²⁵ While early academic support programs were aimed at minority students, now, the focus is much broader.²⁶ As Leslie Garfield notes “today, academic support professionals are called upon to recognize the various learning styles of students, to educate them on time and stress management and, in many instances, to counsel students.”²⁷ In addition, academic support programs have shifted from primarily being summer programs prior to the first year to a variety of initiatives offered throughout a student’s three years of law school.²⁸ Thus, effective support for a struggling student today encompasses more than a meeting or two to go over a disappointing exam. It entails, at many law schools at least, a comprehensive effort aimed at helping students make the transition from college or work to law school, understand their learning style, adopt effective study skills, and prepare for and succeed on exams.²⁹ This is done while helping students cope with the stress and stigma of not doing well. Many academic support programs also see as their mission increasing students’ chances of success on the bar exam.³⁰ This is a tall order, and it far exceeds the mission of most first-year legal writing courses.³¹

²⁴ Richard Cabrera and Stephanie Zeman, *Law School Academic Support Programs – A Survey of Available Academic Support Programs for the New Century*, 26 WM. MITCHELL L. REV. 205, 212 (2000).

²⁵ See Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L.J. 449, 485 (1996).

²⁶ Leslie Yalof Garfield, *The Academic Support Student in the Year 2010*, 69 UMKC L. REV. 491, 496 (2001).

²⁷ *Id.* at 497.

²⁸ *Id.*

²⁹ Leslie Yalof Garfield & Kelly Koenig Levi, *Finding Success in the “Cauldron of Competition:” The Effectiveness of Academic Support Programs*, 2004 BYU EDUC. & L.J. 1, 7-10.

³⁰ Garfield, *supra* note 26, at 497-498.

³¹ The notion that a legal writing course naturally or easily serves struggling students is not unlike the common belief, highlighted by Richard Cappalli, that the first-year legal writing course is teaching legal method. In fact, as Cappalli points out, “the ability of LRW courses to teach students competent case and statutory analysis, along with the huge complex of theories, traditions, conventions, and norms comprising

This is not to minimize the abilities of the first-year legal writing instructor. Quite the contrary, the course has a challenging enough goal, teaching legal writing and research, without also looking to it to assist struggling students. In fact, teaching legal writing may be getting harder every year. It has been noted that today's students are spending relatively little time on writing during their undergraduate educations. As a result, if students enter law school with under-developed writing skills, teaching them legal writing will require more time and effort.³² Struggling students, on the other hand, do not simply need assistance with their writing skills; they need assistance with being students – literally learning how to learn.³³

In addition to its own ambitious goals and the effort required to achieve them, the first-year legal writing course is also limited in its ability to identify and assist struggling students because it is usually not structured in a way that allows for the more in-depth assistance a struggling student requires. First, while it has been pointed out that legal writing courses are more likely than typical substantive courses to incorporate concepts of learning theory,³⁴ many legal writing courses, like some of their substantive course counterparts, fail to provide an optimal learning experience for all students. Indeed, the same problems that critics argue can plague substantive course classrooms – too much lecture, plodding through a textbook with little explanation of how the reading fits with the expectations for the course, too little context for what is being taught, among other things – can be present in legal writing classrooms. Additionally, legal writing courses

the American Legal Science, is severely constrained.” Richard B. Cappalli, *The Disappearance of Legal Method*, 70 TEMP. L. REV. 393, 432 (1997).

³² Lucia Ann Silecchia, *Legal Skills Training in the First Year of Law School: Research? Writing? Analysis? Or More?*, 100 DICK. L. REV. 245, 269 (1996).

³³ See Michael L. Richmond, *Teaching Law to Passive Learners: The Contemporary Dilemma of Legal Education*, 26 CUMB. L. REV. 943, 944 (1995-1996); Leslie Yalof Garfield, *The Academic Support Student in the Year 2010*, 69 UMKC L. REV. 491 (2001).

³⁴ Sloan, *supra* note 9, at 3.

oftentimes overlook the diverse learning needs of students in the same way that many substantive courses do.³⁵

Second, even if the legal writing course were conducted in a way that it maximized the learning potential of all students, resource constraints in a typical first-year legal writing curriculum limit a legal writing instructor's ability to deliver meaningful academic support while helping students through the very difficult "novice" stage of legal writing. Learning to write and engage in legal discourse is difficult, and helping a student develop a writing process and produce competent written expression takes an intensive effort, even when the professor is dealing with a top student.³⁶ Joseph Williams explains that new law students struggle with several issues as they become socialized into the law's "community of discourse."³⁷ For instance, most students in first-year legal writing courses will be too concrete, simply summarizing the cases that they are supposed to be using to analyze the issue instead of using the case decisions to help in their analysis of the problem. Most will also fill up their papers with redundant "filler" that shows the student has not yet learned what matters can be taken for granted, and what must be explained. Finally, because of the cognitive overload experienced by new law students, the quality of their writing itself often will suffer.³⁸ Thus, to a large extent, before legal writing professors can focus on their students' cognitive growth and transition to higher level legal analysis, they must first contend with socializing the students into the law's community of discourse. The effort to do so does not necessarily

³⁵ See Robin Boyle and Lynne Dolle, *Providing Structure to Law Students – Introducing Programmed Learning Sequence as an Instructional Tool*, 8 LEGAL WRITING: J. LEGAL WRITING INST. 59 (2002).

³⁶ See Jan M. Levine, *Leveling the Hill of Sisyphus: Becoming a Professor of Legal Writing*, 26 FLA. ST. U. L. REV. 1067, 1072 (1999) [hereinafter Levine, *Leveling the Hill*].

³⁷ Williams, *supra* note 18, at 4 (1991).

³⁸ *Id.*

translate into an academic support benefit. That is, helping a student find their voice in legal writing is different from helping them to find their voice as law students and learners. As a result, there is not enough time, or at most schools a low enough student-faculty ratio, to allow the professor to teach analysis and writing and provide meaningful academic support.³⁹

For instance, at Maryland, the LAWR I course is taught by full-time faculty and the class size usually ranges from 24-28 students. While such a size is workable in light of the goals of the course, such a size does not generally allow for the more comprehensive assistance that a struggling student needs to succeed in other courses. At other law schools, legal writing frequently is taught by adjunct professors⁴⁰. While adjunct professors may bring an important “real world” component to the course, they generally have even less time than full-time faculty to provide significant academic support.⁴¹ All of these resource constraints are compounded by the fact that in a first-year legal writing course of any reasonable size, there is likely to be more than one student who will need academic support.

Third, even assuming the legal writing instructor could identify a student in need of academic support, he or she might not be able to determine how to help the student improve.⁴² For instance, an important factor in student performance in law school is learning style.⁴³ A significant aspect of a student’s learning style is how the student absorbs the information the professor seeks to teach. We know that the primary method

³⁹ See Lisa Eichhorn, *Writing in the Legal Academy: A Dangerous Supplement?*, 40 ARIZ. L. REV. 105, 140 n.162 (1998).

⁴⁰ Jan M. Levine, *Legal Research and Writing: What Schools Are Doing, and Who Is Doing the Teaching*, 7 SCRIBES J. LEGAL WRITING 51, 51 (2000).

⁴¹ Levine, *Leveling the Hill*, *supra* note 36, at 1091-1092.

⁴² Jacobson, *How Law Students Absorb Information*, *supra* note 17, at 176.

⁴³ See M.H. Sam Jacobson, *A Primer on Learning Styles: Reaching Every Student*, 25 SEATTLE U. L. REV. 139, 139 (2001) [hereinafter Jacobson, *A Primer on Learning Styles*].

of conveying information in law school, especially in the first year, is through the use of written materials.⁴⁴ This method facilitates effective learning for most law students, because most law students are strong verbal learners. That is, they learn best by absorbing information through written text.⁴⁵ A student who is not a strong verbal learner, however, may struggle because he or she is not able to absorb the material being taught in a way that enables him or her to actually process the information and use it.⁴⁶ To effectively assist such a student with “information processing,” Sam Jacobson states that the legal writing professor would have to identify the student’s preferred mode of absorbing information⁴⁷, for example, visual as opposed to verbal, and then adjust his or her class materials and classroom methods to teach to “a more diverse range of learning modalities,” and counsel the student so that he or she could make adjustments to the way they study.⁴⁸

While it may be that many legal writing professors have an understanding of learning styles and are motivated and able to do this, it is likely that in most programs, especially those that rely heavily on the use of adjunct professors, the demands on the professor’s time simply may not permit such an approach. As Jacobson herself states “Legal Research and Writing (LR&W) faculty often identify many unmet needs of their students but are unable to offer them support services that might be available in formal academic support programs.”⁴⁹

⁴⁴ *Id.* at 151.

⁴⁵ *Id.*

⁴⁶ Jacobson, *How Law Students Absorb Information*, *supra* note 17, at 177.

⁴⁷ The way students absorb and process information is a key part of their learning style. In addition to verbal, other methods of absorbing and processing information include visual, which is the second most common learning style among law students, oral, aural, and tactile and kinesthetic. *See*, Jacobson, *A Primer on Learning Styles*, *supra* note 43, at 151-153.

⁴⁸ Jacobson, *How Law Students Absorb Information*, *supra* note 17, at 178.

⁴⁹ Jacobson, *Providing Academic Support*, *supra* note 3, at 241.

Not All Struggling Students Are Created Equally. Even if, however, a legal writing professor was aware of these concepts of learning theory, for instance, and was willing and able to counsel struggling students to help them find their preferred method of absorbing new information and adjust class materials to facilitate this, it may be that this would not help. This is because some students struggle not because they prefer a mode of absorbing information other than verbal,⁵⁰ but for other reasons. Some may not have made the adjustment from passive college learning to the more active learning required in law school. That is, putting information in a visual format, for example, may make little difference to a student who still has not developed the more active attitude and basic study skills necessary for success in law school. On the other hand, some students might benefit from more “contextualized learning” techniques,⁵¹ which help students relate new material to their prior experiences, encourages them to express their views on the material and explicitly shows them how to use the material they are learning on an exam.⁵² While an academic support program is designed to individually assess student needs and provide the appropriate assistance,⁵³ a legal writing course is not. Thus, a significant amount of extracurricular work might need to be done by the legal writing professor if meaningful assistance is to be given. Again, the demands on the legal writing professor may not allow for such individualized, and specialized, attention.

Good Pedagogy does not Equal Academic Support. All of this is not to say that the first-year legal writing course cannot offer some benefits to struggling students.

There are several features of a legal writing course that can be pedagogically superior to

⁵⁰ Jacobson, *How Law Students Absorb Information*, *supra* note 17, at 180.

⁵¹ Paula Lustbader, *Teach in Context: Responding to Diverse Student Voices Helps All Students Learn*, 48 J. LEGAL EDUC. 402 (1998) [hereinafter Lustbader, *Teach in Context*].

⁵² *Id.* at 404.

⁵³ Garfield & Levi, *supra* note 29, at 9.

the typical substantive course. For instance, unlike many first-year substantive courses, concepts of learning theory “routinely” shape first-year legal writing courses through such things as the use of incrementally more complex assignments and rewrites, among other things.⁵⁴ In addition, first-year legal writing courses can include instruction on effective exam writing.⁵⁵ Adam Todd makes the case that such an approach can have an important academic support benefit by engaging students at the bottom of the class and giving them a better foundation in exam writing than they might otherwise get.⁵⁶ Finally, as mentioned above, the legal writing course’s small section format, with frequent opportunities for feedback, provides a positive learning environment,⁵⁷ and one which is in a perfect position to uncover student strengths because of the emphasis on individual conferences.⁵⁸

However, while these and no doubt other features of a first-year legal writing course evidence good pedagogy, these features do not necessarily provide academic support to struggling students. Indeed, any benefit from these techniques is likely confined to the legal writing course, or at best can only be translated into a benefit in other courses by students who are already performing adequately in law school. For example, an academic support approach to a struggling student would emphasize developing independent learning skills and providing assistance with case-reading, synthesis, outlining and exam-taking, among other things, that a student can use in other

⁵⁴ Sloan, *supra* note 9, at 3.

⁵⁵ See Todd, *Exam Writing as Legal Writing*, *supra* note 2, at 78.

⁵⁶ *Id.*

⁵⁷ B. Glesner Fines, *The Impact of Expectations on Teaching and Learning*, 38 GONZ. L. REV. 89, 115 (2002/2003).

⁵⁸ Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 ALB. L. REV. 213, 221 (1998).

courses.⁵⁹ In a first-year legal writing course, however, the support is usually more specific to the particular assignment at hand.⁶⁰ Thus, while a struggling student might get a reasonable grade on that assignment, he or she may take little away from that experience which can be applied to other courses.⁶¹ Finally, while there can be important pedagogical benefits to the small section format and other features of most first-year legal writing courses, this is often outweighed, at least for struggling students, by the stress of completing the assignments.⁶²

This certainly has been the case in my experience teaching LAWR I and directing the AAP. During the course of a semester, I identify several students whom I believe will struggle in their other courses. I have found, however, that in the context of the course, my efforts are often directed at getting the student to understand the immediate course material, and I do not have the ability to intensively assist the students with the skills needed to perform well in their other classes. In addition, I incorporate into my legal writing classes a variety of approaches to the material aimed at appealing to different learning styles. I also embrace the view that good exam writing is good legal writing,⁶³ and I repeatedly discuss exam writing techniques and draw parallels between the legal writing the students produce for class and that which they will be expected to produce on exams. These efforts, however, do not ensure that all of my students “get it.” In my view, this is because the legal writing course, even when conducted by an academic support professional, cannot be all things to all students. Moreover, the pedagogical

⁵⁹ Garfield & Levi, *supra* note 29, at 9.

⁶⁰ Susan Hanley Kosse & David T. ButleRitchie, *How Judges, Practitioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study*, 53 J. LEGAL EDUC. 80, 95 (2003).

⁶¹ Laurel Currie Oates, *I Know That I Taught Them How to Do That*, 7 LEGAL WRITING: J. LEGAL WRITING INST. 1, 1 (2001).

⁶² See Suzanne E. Rowe, *Gaining Lawyering Skills: Legal Research, Legal Writing, and Legal Analysis: Putting Law School into Practice*, 29 STETSON L. REV. 1193, 1208-1209 (2000).

⁶³ Todd, *Exam Writing as Legal Writing*, *supra* note 2, at 76.

benefits of the techniques used in a first-year legal writing course are likely confined to that course, or at best are only brought to other courses by students who are already performing adequately.

2. ***A Legal Writing Course Can Draw Attention Away From Academic Support Efforts and Encourage Student Dependence***

For a struggling student, a first-year legal writing course presents challenges and can develop expectations that are problematic from an academic support perspective. For instance, at Maryland, students are offered academic support in the second semester of their first year. In addition to their substantive courses, students are also required to take the second installment of the Legal Analysis Writing and Research course (LAWR II). When faced with the demands of that course, academic support students often scale back their participation in or stop participating in the academic support program altogether. This is particularly troubling because, while the AAP is designed to develop skills that struggling students can bring into their substantive courses, the LAWR II course is not.⁶⁴

Moreover, because the burdens of both the first and second semester LAWR courses are so great, and because struggling students get more one-on-one attention in these courses, such students often become dependent on the kind of intensive, substantive support that a first-year legal writing professor frequently provides. This type of dependence or an expectation of substantive tutoring is exactly what an academic support program seeks to avoid, as it is well established that an effective academic support program must not foster student dependence.⁶⁵ That is, such a program should not tutor students in black letter law, but should focus on teaching students how they learn best by

⁶⁴ Because of concerns regarding stigma, among other things, Maryland does not replace the LAWR II or any other course with the Spring Study Group Program; participation in the program is in addition to the students' other courses.

⁶⁵ Cerminara, *supra* note 3, at 256.

teaching students different learning and studying techniques so that such students are “strengthened in future, independent learning efforts.”⁶⁶ Teaching legal writing, however, often requires a one-on-one approach and a level of “spoon feeding” that would be objectionable if done in an academic support setting. Such “spoon feeding” can be helpful to students who are performing adequately, because a more directive approach to teaching legal writing can often enable a student to develop a context for writing future papers. A struggling student, on the other hand, is typically not able to take the substantive assistance provided by a legal writing professor and use it for more independent future work. In my experience, struggling students can be so overwhelmed by the legal writing course and their other courses, that they become dependent on frequent conferences and require a steady amount of assistance throughout the semester to complete the assignments. This need is particularly great during the first year, because the struggling student has had little experience with law school, and usually no legal experience which provides helpful context for writing assignments. While this assistance might help a struggling student with the assignment at hand, such assistance can essentially amount to the type of substantive tutoring that academic support programs seek to avoid. This can have lasting effects in that the student may come to expect, or believe they need, intensive substantive assistance with their courses in order to succeed.⁶⁷

⁶⁶ *Id.*

⁶⁷ One of the more interesting things we have seen with respect to legal writing and academic support is that students who struggle with the traditional single-exam course often avoid seeking, or continuing with, the academic support program by relying heavily on usually higher-graded seminar or “paper” courses (and the corresponding ability to seek more intensive assistance from the professor and the law school Writing Center). From a struggling student’s perspective, this choice makes complete sense. However, such choices are problematic to the extent that a student selects “paper” courses, and eschews exam courses, as a way to avoid seeking academic support and learning how to learn in a single exam course. Thus, while bringing

Based on these experiences, I have reconsidered what the best role is for legal writing in light of Maryland's academic support needs and goals. In my view, one of the best roles for a legal writing course in a law school's academic support mission is as a vehicle for advanced academic support after the first year.

IV. The Legal Writing Course as a Vehicle to Deliver Upper-Level Academic Support.

As described above, my view is that many of the problems with legal writing and academic support are due to the fact that in the first-year, it is simply not feasible for a typical legal writing course to identify adequately and provide meaningful support to struggling students. However, as will be explained below, I believe an upper-level legal writing course is an ideal vehicle to deliver more advanced academic support.

Why We Needed Upper-Level Academic Support. I determined that an upper-level component to our academic support program was necessary because the Spring Study Group Program, while helpful, did not fully meet Maryland's academic support goals. First, while the students who participate in the Spring Study Group Program report having had a much more positive exam experience and overall renewed enthusiasm for law school, they indicated that they wanted more assistance to continue improving. Second, while the data from the Spring Study Group program show that participants in general see meaningful improvement in their G.P.A.'s⁶⁸, there is still concern that some students do not completely "get it." Third, I want to ensure that students who participate in the AAP, in addition to improving their grades, are comfortable with the independent

temporary grade relief, avoiding such courses in favor of those with papers may spell trouble for the bar exam.

⁶⁸ For instance, students who participated in the spring, 2004 program who were classified as "Hardest Working" based on attendance and completion of assignments had a mean GPA improvement of .43. Students of all effort levels had a mean improvement in their GPA's of .36.

learning and problem solving that will be required of them as practicing lawyers. Finally, I want to ensure that struggling students have the best possible chance of passing the bar exam.

Structure of the Course. Ultimately, it was decided that the best way to provide continued assistance to struggling students was through the required Legal Analysis, Writing and Research III (LAWR III) course. This is the third and final required course in the legal writing curriculum. The course is structured so that all AAP participants are encouraged, but not required, to take the section of LAWR III that I teach. In addition, the course is open to a limited number of non-AAP students. AAP Teaching Fellows are used to provide even more individualized attention and ensure that the presence of non-AAP students does not shift the focus away from the students who most need assistance.

The structure of the course was greatly influenced by concerns over stigma. As mentioned above, Maryland takes the issue of stigma very seriously, and it is well known that stigma can significantly hinder the effectiveness of an academic support program.⁶⁹ Thus, in designing Maryland's advanced academic support course, one of the primary considerations was avoiding the kind of stigma that perpetuates the students' feelings of alienation and defeatism.⁷⁰ Many students cite the issue of stigma as a reason why they do not wish to participate in the AAP, or if they do, stigma can be a factor that is prominent in their minds, at least initially. For example, in response to the question posed as part of the initial self-assessment given to participating students, "how do you feel about being part of the Academic Achievement Program?" one recent student participant answered: "like I have the Scarlet Letter branded on me, but an "I" for idiot."

⁶⁹ Todd, *Academic Support Programs*, *supra* note 5, at 194.

⁷⁰ *Id.*

Another student responded by stating: “it’s like being in the stupid people class.”⁷¹ While these feelings typically dissipate by the end of the spring program, I was concerned about designing an advanced academic support course that would set struggling students apart. Thus, none of the students who enroll for the course are told that it is an academic support course, and it is not treated in any way as a “special” course. All students must take the LAWR III course, and the section that I teach is open to non-AAP students. The fact that I am teaching one section of the course does not signal that it is a “special” course, because I regularly teach throughout the LAWR curriculum. In addition, the basic course requirements are those that are established for all LAWR III sections -- an appellate brief and oral argument.

However, unlike other sections of the course, my section includes more small-group work, opportunities for feedback, independent research and argument formulation exercises as well as the assistance of Teaching Fellows. Thus, the course is structurally designed to accommodate different learning styles and facilitate the transition to more independent learning, but functionally it appears to the students to be the same course that all students must take. In addition, the integrated upper-level legal writing course approach avoids fostering the dependence that a more segregated course would. I was concerned that by separating students for a second semester of academic support into an AAP-only course, we would be sending them a message that we did not believe they could yet fully function in the “real world” of the law school, and that they somehow needed the program to succeed. The integrated course with the same basic requirements as the other sections avoids this.

⁷¹ Academic Achievement Program Self-Assessments, Spring 2004 (on file with the author).

Benefits of Using a Legal Writing Course for Upper-Level Academic Support.

After outlining some of the down sides of combining legal writing and academic support, it may seem odd to propose a legal writing course as a model for upper-level academic support. However, many of the negative aspects of combining legal writing and academic support for struggling students can be eliminated when the legal writing course is used for academic support in the upper-level curriculum. For instance, the risk of dependence that can be a feature of a first-year legal writing course, and can be so detrimental to an academic support program, is lessened in the upper-level legal writing course. Because the student has had one year of law school, he or she is less likely to be as dependent and resistant to active learning as a first-year law student can be. This is especially the case because students who participate in the Spring Study Group Program are acquainted with the notion that they need to become active, independent, learners. Therefore, because they have matured as law students, in my experience they are less likely to expect the type of substantive tutoring and assistance that they frequently expect as first-year students. Additionally, because the students have at this point taken two legal writing courses (LAWR I and II), and usually have had some summer legal employment experience, they are less likely to be overwhelmed by the course, and can be more open to the learning experience the course provides. Finally, the course is not expected to identify struggling students, so the “false positive” and “false negative” problem is eliminated.

More than avoiding the negatives, however, I believe that an upper-level legal writing course as a vehicle for continued academic support can provide struggling

students with some important benefits and help achieve Maryland's academic support goals.

1. ***Encourages Active, Independent Learning.*** One of my concerns with the Spring Study Group Program-only approach to academic support is that I was not convinced that students adequately learned, and became comfortable with, the type of active, independent learning and problem solving that would be expected of them in law practice. While the Spring Study Group Program got the students started on their way towards more independent, self-regulated learning, I believe that a course following up on these skills, and putting them to the test in an appropriate environment, is important. Additionally, a legal writing course is an ideal setting in which to do this because the course is skills-based, and requires the students to do exactly what they will be expected to do in practice. This takes the students' academic support to a deeper level.

Getting students comfortable and competent with active, independent learning is critical for law students' future success.⁷² Quite simply, "active learning occurs when students do more than listen."⁷³ Hess points out that active learning effectively achieves many of the goals of legal education, including developing critical thinking and key professional skills, mastering content, and often most important for the struggling student, it improves their motivation to learn.⁷⁴ Most entering law students are conditioned to learn passively, not actively.⁷⁵ Therefore, as Michael Richmond states

[A]lthough in theory students profit from most active learning, in practice, today's students have not learned how to receive information through the active involvement in

⁷² Paula Lustbader, *From Dreams to Reality: The Emerging Role of Law School Academic Support Programs*, 31 U.S.F. L. REV. 839, 855 (1997).

⁷³ Gerald F. Hess, *Principle 3: Good Practice Encourages Active Learning*, 49 J. LEGAL EDUC. 401 (1999) [hereinafter Hess, *Principle 3*].

⁷⁴ *Id.* at 402.

⁷⁵ Richmond, *supra* note 33, at 944.

the learning process. In other words, contemporary law students must learn how to learn before they can benefit from any of the principal methods of instruction law professors employ today.⁷⁶

While these comments are true of all law students, this is especially the case with those who struggle.

I have found that one of the hardest things to convey to struggling students is that they must take responsibility for their learning and actively engage in the learning process. In many ways, segregated academic support reinforces the students' resistance to independent learning, as many students join the AAP hoping that the program will provide them with what they need to succeed. Some students feel that by simply showing up for the sessions, they will somehow be converted from struggling students to higher-achieving students. While the Spring Study Group Program introduces the notion of taking responsibility for learning, and the students begin to develop more independent learning skills, the upper-level legal writing course provides a structured opportunity aimed at further developing these skills, in an environment where a deliberate effort is being made to facilitate the experience. Unlike large and primarily lecture-based classes, the legal writing class does not allow students to "hide-out" and avoid participation, or the class altogether.⁷⁷ Because of the structure of the course, students can be given many assignments involving legal research, development of arguments, and oral presentation that require them to "do" rather than simply listen. Moreover, because they are in class and frequently paired up with non-AAP students, there is less chance that they will

⁷⁶ *Id.* at 954. *See also*, Leslie Yalof Garfield states that "the reality is that in order to teach these students the law, we need to teach them how to be law students." Garfield, *supra* note 26 at 491.

⁷⁷ *See* Bethany Rubin Henderson, *Asking the Lost Question: What is the Purpose of Law School?*, 53 J. LEGAL EDUC. 48, 64 (2003).

passively expect the course to simply give them what they need to succeed. The availability of frequent feedback reinforces the students' ability to engage in this process.

2. ***Leads Struggling Students to Deeper Analytical Thought.*** One of our goals in providing academic support to our students is to move students from the simplest level of learning (and the one they are most comfortable with) – memorization – to the most complex level, which is the ability to synthesize material and engage in analysis.⁷⁸ Sam Jacobson explains that there are “levels of understanding” by which we can measure whether students are achieving the levels of learning required for effective law study and practice. Jacobson states that the highest level of understanding is when students can apply information, detail their analysis, and conclude. The next lower level of understanding is when students can apply information and come to a conclusion, but with little detail in the analysis. The next lower level of understanding is when the students work is detailed, but descriptive. Finally, the lowest level of understanding is where a student's work is descriptive, but not detailed.⁷⁹

Although the Spring Study Group Program improved struggling students' ability to “think like lawyers,” and perform competent legal analysis, I found that this was not enough. The program spent a great deal of time focusing on study skills and developing the techniques needed to perform adequately on an exam. These efforts, however, largely amounted to pushing the students from detailed descriptive work to work that evidenced application and conclusion, but without sufficient detail. There simply was not enough time and student engagement during the semester to go beyond more formulaic types of legal analysis to reach the highest level of understanding that we hope graduating

⁷⁸ Jacobson, *A Primer on Learning Styles*, *supra* note 43, at 143.

⁷⁹ *Id.*

students will possess. Taking the students to the next level of understanding can be done, however, in an upper-level legal writing course.⁸⁰

First, the course can more squarely focus on the analysis component of legal problems because the “socialization” issues encountered with new law students should be gone. Between their first year of law school and summer employment, the students should have cleared away these threshold issues that take up so much time in first-year legal writing courses, so that they can focus more fully on analysis. Second, the course presents several opportunities for students to receive feedback not just on the substance of their analysis, but also on the process of developing that analysis. An upper-level legal writing course seeking to help students develop higher-level analytical skills can incorporate more effective and frequent one-on-one conferences than the typical first-year legal writing course. One-on-one conferences provide a valuable opportunity for focused attention to the student’s legal reasoning and analysis and for “significant breakthroughs in the student’s ability to think like a lawyer.”⁸¹ As noted above, because students have some writing experience from the first year, and possibly at their summer employment, conferences can move beyond “beginner” issues such as basic organizational structure, use of authority, and typical mistakes in legal discourse (“lawyers don’t say things like that” issues) to more serious analytical issues. In addition, conferences can also focus the student on the process used to develop the analysis.

Third, the course can easily be designed to facilitate deeper analysis. The substantive law used for the legal writing problem can be derived from one of the students’ upper-level courses. For instance, most students in their third semester of law

⁸⁰ See Robin S. Wellford-Slocum, *The Law School Student-Faculty Conference: Towards a Transformative Learning Experience*, 45 S. TEX. L. REV. 255, 256 (2004).

⁸¹ *Id.* at 257.

school will take Constitutional Law II, and this area of law frequently serves as the basis for the problems used in the LAWR III course. This gives the students the benefit of greater understanding in their substantive course, and an enhanced ability to develop high-quality analysis in their papers. In addition, the course can be designed so that the students work on a legal issue with multiple layers. For example, I frequently use a problem involving an appeal from a motion for a preliminary injunction on a constitutional issue. This requires the students to analyze not only the substantive constitutional issue, but do it within the framework of the requirements for a preliminary injunction.

Fourth, unlike substantive courses which may just rely on one exam at the end, students in an upper-level legal writing course can practice their emerging analytical skills with smaller, “bite-size” writing assignments on the issues presented by the problem that build up to the final written product. Finally, the legal writing course helps students to deepen their analytical skills because they can be required to switch sides. That is, after briefing one side of an issue and becoming vested in it, as law students often do, requiring them to switch sides forces them to push their analytical ability further. This is especially important for struggling students, because they frequently engage in one-sided analysis with little consideration of the importance of other critical facts and counter-arguments.

3. ***Teaches More In-Depth Legal Analysis and Writing in a Way that Reaches Struggling Students.*** In addition to the academic support benefits, using an upper-level legal writing course can achieve an important legal writing goal by giving struggling students a meaningful opportunity to improve their writing skills.

Increasingly, law schools are recognizing the importance of legal writing and are responding by providing more upper-level legal writing opportunities for students.⁸² Indeed, writing has become so important that the American Bar Association added to its Standards for Approval of Law Schools a requirement that law schools provide a rigorous upper-level writing experience in addition to the standard first-year legal writing program.⁸³ While this is certainly a positive curricular change, it does not necessarily provide the same benefits to struggling students as it does to others. Because legal writing courses are in many cases presumed to be friendlier for struggling students, often little thought is given to how such students would best be served in such a course. Thus, to provide a meaningful legal writing opportunity to these students, the upper-level legal writing course must incorporate elements of learning theory and academic support practice that reach all students. A deliberate approach to delivering academic support through an upper-level legal writing course can achieve this.

First, emphasis can be placed on “teaching in context” so that struggling students are given a fair opportunity to connect with the material they are to write about. As Paula Lustbader explains:

This disjunction between what teachers mean and how students interpret what is being taught explains why a significant number of law students are not learning or performing at the level of their capabilities. In part the problem is their lack of context. Although this is a challenge for all students, it is often exacerbated for diverse and nontraditional students.⁸⁴

Contextualized learning remedies this by relating the information being taught to the students’ experience and existing knowledge structure or “schemata”; helping students

⁸² See Michael R. Smith, *Alternative Substantive Approaches to Advanced Legal Writing Courses* 54 J. LEG. EDUC. 119 (2004).

⁸³ Wellford Slocum, *supra* note 80, at 256.

⁸⁴ Lustbader, *Teach in Context*, *supra* note 51, at 402-403.

“own” what they are learning so that they take it in and form and express their opinions about it; and helping students understand the context in which the material arises and the way they will be expected to use what they are learning.⁸⁵ This is as important in a legal writing course as a substantive one. As the director of the academic support program, many students come to me for assistance with their legal writing assignments. One of the most frequent issues I see is that the students have no idea how they can use what the professor is discussing in class to produce the required document. As a result, students often miss the opportunity to truly develop their writing skills. While there will always be a certain level of confusion and frustration in developing legal writing skills, struggling students can become alienated to the point where they are less motivated to learn how to write.⁸⁶ Thus, a legal writing course that is in tune with these issues can provide a more meaningful opportunity for struggling students to learn writing. Moreover, because the students likely engaged in some type of legal employment over the summer, they have more developed schemata, and increased motivation, to learn how to express their legal analysis in a competent piece of writing.

In addition to teaching in context, emphasis can be placed on how students absorb information. Indeed, this significant aspect of learning style may be one where legal writing professors can be the most effective in helping students.⁸⁷ By understanding the different modes for absorbing information, a legal writing professor focused on reaching all students can make the necessary adjustments to his or her course materials and class time to accommodate a more diverse range of learning modalities. This information can

⁸⁵ *Id.* at 409.

⁸⁶ *Id.* at 406.

⁸⁷ Jacobson, *How Law Students Absorb Information*, *supra* note 17, at 177.

also be used to facilitate more productive one-on-one conferences.⁸⁸ While this may not be possible in the typical first-year legal writing course, responding to students' different modes of absorbing information can be a central feature of an upper-level course specifically designed to assist struggling students. Moreover, because the students have already had some academic support and become more sensitized to how they learn best, students can more actively request that course material be delivered in a way that best suits their learning style. In this way, an upper-level legal writing course can accommodate struggling students' diverse learning styles and provide a more complete learning experience – one that reaches a more complex level of learning and analysis.⁸⁹

Accordingly, one of the benefits of using an upper-level legal writing course as a component of an academic support program is that struggling students are given a meaningful opportunity to enhance their writing skills as well as their mastery of substantive course material.

4. ***Enhancing Students' Sense of Self-Worth and Motivation With a Positive Learning Environment.*** One of the key goals of an academic support program is to “assist students in maintaining their confidence, values and self worth in the rigorous and often alienating environment of the American law school.”⁹⁰ Maintaining, or building back up, struggling students' confidence and motivation is important as an end in itself, but it is especially so given what we know about stress as it relates to learning. Stress limits students' ability to learn.⁹¹ In addition, while an academic support program can serve to decrease students general stress level, I have noticed that some students

⁸⁸ *Id.* at 178.

⁸⁹ Jacobson, *A Primer on Learning Styles*, *supra* note 43, at 170.

⁹⁰ Todd, *Academic Support Programs*, *supra* note 5, at 192.

⁹¹ Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. Legal Educ. 75, 80 (2002)[hereinafter Hess, *Heads and Hearts*].

actually experience more stress after the conclusion of the first semester of the program, because they feel that after receiving assistance, there is simply no reason why they should not do well on their exams. An upper-level legal writing course can counteract this stress and facilitate deeper learning by creating a positive learning environment.

Gerald Hess lists several elements for an effective teaching and learning environment: respect, expectation, support, collaboration, inclusion, engagement, delight, and feedback.⁹² Hess explains that the more of these elements that are present “the more likely the environment will be conducive to learning.”⁹³ An upper-level legal writing course can incorporate many, if not all of these elements.

The frequent interactions between faculty and students that take place in a legal writing course, through not just the classroom but in individual conferences and simulation exercises, such as an oral argument, offer ample opportunity to show students respect. This is critical for struggling students, who often believe that once they have performed poorly, professors think less of them.⁹⁴

In addition, an upper-level legal writing course offers a variety of opportunities for professors to communicate high expectations. One of the things I stress in my course is the expectation that papers are carefully proof read, and I make this a component of the paper grade, along with quality of the analysis, organization, clarity, etc. For struggling students, this is an expectation that they can clearly meet, and the pride in accomplishing this can serve to some extent to fuel the hard work that is necessary to improve in other areas, such as depth of analysis. Support and collaboration are also easy to successfully incorporate into an upper-level legal writing course. Through more personal interactions

⁹² *Id.* at 87.

⁹³ *Id.*

⁹⁴ Glesner Fines, *supra* note 57 at 93.

with students, the professor can act as a mentor, and can clearly demonstrate to the students that the professor wants them to succeed. These attitudes can not only be conveyed verbally, through classroom and conference exchanges, but in a powerful way through the written comments that are delivered on students papers. While comments frequently serve to communicate expectations, they should also be used to convey support for the student and his or her efforts. Having that written feedback to refer back to is especially important for a struggling student who may have precious little concrete evidence that he or she is on track in law school.

Collaboration is also easily achieved in an upper-level legal writing course. In my course, I design an appellate brief problem that allows the students to work together on developing and executing their research strategy. I frequently use group conferences as brainstorming sessions, where the students work together in identifying determinative facts, generating possible arguments, and experimenting with different organizational frameworks, among other things. Moreover, although they must each write their own briefs, I encourage them to prepare for their oral argument together.

In addition to collaborating with each other, I encourage my students to collaborate with me on how the course is taught. I survey the students during the course on what exercises and readings they found to be most and least effective, and what they would like to see me cover. I talk with them about the results of the survey and discuss their views. I show them that their suggestions were heard by incorporating some into the class. This collaboration is helpful in giving struggling students a sense of power in the classroom and a sense that they are partners in their own education. This is especially important because questions during the course which require the students to think about

what techniques were and were not effective for them helps students learn how they learn, and take responsibility for their learning.

Opportunities for inclusion are also abundant in the upper-level legal writing course because the professor can design problems to which students can relate, and that raise important social issues. While this certainly can be achieved in a first-year legal writing course, in my experience students can be so nervous about mastering material for their substantive courses that they often do not fully appreciate problems in other areas. In the upper-level legal writing course, however, students are more relaxed and excited by legal issues that do not necessarily involve torts or contracts, for instance. In my course, I frequently use problems that feature sports facts to generate the intrinsic motivation that is so important to the quality of students' learning.⁹⁵ Sports is an area to which nearly every student, athlete or not, can relate. It is also an area that can raise important social issues involving race, gender and disability, to name a few. These issues get the students talking, and allow students to voice their opinions and be validated in ways that they often felt they were not during their unsuccessful first year of law school. Moreover, these discussions allow me to signal my respect for different viewpoints and that the classroom is a safe space for all students. The course is also designed to be inclusive in that I plan the course to include a range of exercises that allow students to work with the material in ways other than through lecture and the course text so that students with different learning styles have a meaningful opportunity to excel.

The upper-level legal writing course offers many opportunities to show struggling students the delight the professor has with the law, and this "attitude, enthusiasm, and passion" are not only important for all students to have an effective teaching and learning

⁹⁵ Hess, *Heads and Hearts*, *supra* note 91, at 99.

environment, but is especially critical for those who may have lost, or be on the verge of losing, hope that learning within the law can be a worthwhile endeavor. By using material for my problems that I am excited about, and freely sharing my enthusiasm, I am able to show the students that a life in the law is worth the dark days and disappointment they have endured. My passion can spark their enthusiasm, and I can reinforce this enthusiasm through the many one-on-one interactions and written feedback opportunities the legal writing course includes.

Finally, the upper-level legal writing course gives struggling students an opportunity for frequent feedback. Lawrence Krieger explains that legal writing faculty have a special opportunity to positively impact students, given the consistent contact they have with most law students.⁹⁶ I take this seriously and design meaningful feedback opportunities to be a part of the course. First, I create several opportunities to give effective written comments to students. Very often, comments on legal writing papers can be vague, confusing, inconsistent, and overly harsh. Struggling students are particularly sensitive to written comments, and I look for ways to give them direct, constructive written feedback on their papers. Second, as mentioned above, I use both one-on-one and group conferences to let students know how they are progressing in the course and get them more involved in their learning. Finally, trained teaching fellows add an additional level of feedback.

⁹⁶ Lawrence Krieger, *Psychological Insights: Why Our Students and Graduates Suffer, and What We Might Do About It*, 1 J. ASS'N LEGAL WRITING DIRECTORS 259, 263 (2002).

V. Conclusion.

It is often assumed that legal writing and academic support go hand-in-hand. As a result, little thought may go into the ways that a legal writing course may actually hinder a law school's academic support mission. My experiences with legal writing and academic support, while in some cases driven by Maryland's specific legal writing and academic support needs and goals, provide important insight for law schools that have not carefully thought through the ways in which a legal writing course can be useful, or can undermine, academic support goals. The most important insight is that combining legal writing and academic support in the first-year, or assuming that academic support is somehow a natural part of a first-year legal writing course, can have unintended, negative effects that should be considered when designing an academic support program. These negative effects, in my view, can be largely avoided by using a legal writing course for more advanced academic support after the first-year.