

# LEGAL STUDIES IN BUSINESS AT CENTURY'S BEGINNING: STAGNANT, ADRIFT, OR CHanneLED?

by

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## I. INTRODUCTION

The legal studies in business<sup>1</sup> discipline continues to be plagued by two crucial issues: What are the appropriate educational goals for a required course in legal studies in business within an undergraduate business curriculum;<sup>2</sup> and, more broadly, What is the essence of the discipline? Almost forty years ago, a preeminent leader in the field wrote: "There is no consensus [sic] ...concerning the nature of business law."<sup>3</sup> Nor does it appear the discipline is making progress in this regard. As one author concluded in strikingly similar prose more recently, "there is little consensus about the nature of business law."<sup>4</sup> The same author continues, "(i)t is not even a course of study with relatively uniform content."<sup>5</sup> To the extent the discipline can better define itself, determining the goals of the required course should come into clearer focus. Unfortunately, with the fundamental nature of the discipline shrouded in a fog of uncertainty and ambiguity, efforts to uncover the educational objectives of the legal studies in business core offering with the degree of exactitude enjoyed by neighboring academic disciplines within the business arena will be forever frustrated.

All business-related disciplines (to a greater or lesser degree) work to redefine themselves over time in response to significant changes in both internal organizational dynamics and the external world of business.<sup>6</sup> In some respects, the legal studies in business discipline has responded effectively to these ever-changing needs.<sup>7</sup> So, too, members of the discipline have occasionally labored to determine the nature of the discipline or the function of the required course, often suggesting broad statements of outcomes directly resulting from a student participating in an undergraduate course devoted to legal studies in business.<sup>8</sup> Particularly worthy of note are a number of empirical studies conducted during the 1980s aimed at both ascertaining the subjects currently taught within legal studies in business courses and suggesting topics that ought to be taught in such a course.<sup>9</sup>

In spite of such efforts, the underpinnings of the legal studies in business discipline remain vague. As a result, members of the discipline can be hard-pressed to justify the presence of legal studies in business at the business curriculum "table." The oft-experienced "Ph.D. vs. J.D. debate"<sup>10</sup> is nothing more than a simplistic and cosmetic battlefield that obviates the perception held by both those within and outside the discipline that the nature of the academic area is unclear. The thesis of this article is that the quintessence of the legal studies in business field has lacked and continues to lack the well-established disciplinary foundation endemic to other business-related academic areas. In addition, the article posits that those within the discipline are responsible for acknowledging this condition, creating a clear vision of the essence of the discipline, attaining discipline-wide acceptance of the nature of the discipline, and thereafter communicating effectively why legal studies in business is a critical component to a high-quality business education program.

This article first offers an examination of the condition of the legal studies in business discipline, from an instructional perspective,<sup>11</sup> at the beginning of the 21<sup>st</sup> century. The analysis covers only the past four decades, because prior to 1960 "there was great uniformity in course content and unanimity about what ought to be taught in such courses."<sup>12</sup> The first three sections of this article present this analysis, with each section devoted to reviewing a separate indicator. Each indicator provides a basis for revealing the extent to which the legal studies in business discipline is in disarray (in terms of both perception and substance), providing insight into the degree of responsiveness the discipline has exhibited during the past forty years to bedrock issues related to determining the soul of the discipline, and understanding possible reasons why the discipline lacks certain characteristics of stability present elsewhere within business education. After concluding the review of the three indicators, the last section of this article examines a number of initiatives that might direct the debate toward the beneficial and critical goal of depicting plainly the nature of the legal studies in business discipline.

The thoughts asserted within this article are by no means presented as the final comment on the subject. Rather, the over-arching purpose of this offering is to stimulate thinking and, perhaps, spurn others to conduct scholarship - both conceptual and empirical - in the area. The legal studies in business discipline needs to achieve the requisite recognition that the discipline is "a quality field."<sup>13</sup> The days of being regarded as "the Other"<sup>14</sup> or "the Poor Stepchild of the College of Business"<sup>15</sup> must end. So, more than anything else, this article is a call to action.

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## II. THE NAME OF THE DISCIPLINE

As Shakespeare wrote, “What’s in a name?”<sup>16</sup> Within the world of higher education, a discipline name is critically important. But in an academic subject area where the terminal degree of faculty who teach in the discipline is overwhelmingly an advanced degree other than a Ph.D.,<sup>17</sup> and where professionals in the local community usually possess the same terminal degree as do members of the tenured faculty who teach in the area,<sup>18</sup> and where “(c)ollegiate law teachers have been and will continue to be predominately service faculty (without majors)...”,<sup>19</sup> a discipline name which is comprehensive and does not change over time is nothing short of vital. Note, also, that the name of a discipline is often used to denote the title of the required core course within the business administration/management curriculum.

For more than four decades the membership of the legal studies in business discipline has failed to agree on a name. The inability of the discipline to adopt a common label for itself provides support for the argument that the field is unfocused and that members of this branch of the academy are incapable of defining the “profession in express terms – to establish what in fact we are.”<sup>20</sup> Especially to those who are prone to spend little time attempting to discern the nature of the field, the varied names *members of the legal studies in business discipline* employ in referring to their discipline (e.g., “business law,” “legal environment of business,” and “legal studies in business”) contributes to the precarious stature the discipline. Unfortunately, the situation is getting worse.

### A. Analysis

At the inception of the university-level business school, the term “business law” was employed to describe the field.<sup>21</sup> And until the 1960s, this was the name employed universally to denote the discipline.<sup>22</sup> Today the moniker “business law” enjoys considerable usage on a number of relevant fronts. For example, the preeminent journal in the field continues to include that term in its title (i.e., *The American Business Law Journal*). The term possesses a common sense thrust: the discipline is charged at the most basic of level with the responsibility of examining the relationship between law and business, with particular emphasis on the law portion of that equation.<sup>23</sup> Not surprisingly, “business law” textbooks for decades provided almost identical coverage of and a similar approach to the subject matter, with chapters conveying primarily private law topics, centering on the common law, and presenting material in a rule-oriented fashion.<sup>24</sup> Even “business law” texts published recently hold largely to this view.<sup>25</sup> Further, while these texts are generally found to be more than adequate in terms of providing a student legal rules and a business context for applying those rules, the developmental aspects of both procedural and substantive components of the common law are largely ignored. This shortcoming is examined in the next section.

Similarly, while some might conclude that the boundaries of the legal studies in business discipline might well be ascertained by examining “business law” textbook coverage, an argument can be fashioned that the “business law” discipline is generally thought of as a “catch all” field for all subjects legal. As one author observed in a 1977 article: “Administratively, “business law” is currently anything and everything the speaker wants it to be.”<sup>26</sup> Continuing, the author surmises, “(t)he only common thread in the current administrative use of the term “business law” seems to be that the people who teach this wide range of courses are usually “housed” in the schools and departments of business administration – hence the term “business.”<sup>27</sup> One could conclude that the disciplinary boundaries for “business law” were quite broad (or even nonexistent), so long as the subjects contained a legal component and were taught by business faculty.

In the 1960s the “business law” descriptor began to give way to alternative phraseology following the publication in 1959 of both the Gordon and Howell (“Gordon”) report<sup>28</sup> and the Pierson report.<sup>29</sup> The name “legal environment of business” came into central focus ten years later when the American Assembly of Collegiate Schools of Business (“AACSB”) adopted the requirement that business instruction contain coverage of the “economic and *legal environment of business* enterprise along with consideration of the social and political influences on business.”<sup>30</sup> The apparent broadening of disciplinary title recognized, correctly, the growing role of public law in making business decisions.<sup>31</sup> According to those promoting this approach to the discipline, the student of business should understand the pertinent laws and regulations promulgated by government that increasingly affect business.<sup>32</sup> Necessarily, private law topical coverage is curtailed within textbooks incorporating a legal environment of business approach.<sup>33</sup> The term “legal environment of business,” however, also lends itself to varied interpretations.<sup>34</sup>

Interestingly, there is some evidence of a “third wave” impacting the discipline.<sup>35</sup> John Allison argued in a 1991 article that legal studies in business should shift its perspective from attempting to apply law topics to business to ascertaining the need for law coverage by examining business functional areas through a legal lense.<sup>36</sup> Edwin Epstein continued this theme in a 1996 article by naming this approach “Legal Aspects of Management” and asserting that business leaders should “become intelligent consumers of the law, not mini-lawyers.”<sup>37</sup> Building on this conceptual foundation, one year later Antoni Brack suggested a course entitled “Managerial Law,” with its focus directed to “the fields of distinctive management functions.”<sup>38</sup> It is too early to tell whether the discipline will consider seriously these suggestions.

Yet there is one more term that has found favor with some within the discipline. For more than twenty-five years, the term “legal studies” has garnered some degree of popularity within the discipline.<sup>39</sup> John Truslow argues that “legal

studies” is a subset of “legal education” and that the former is distinguished by its place in educating those *not* engaged in becoming part of the legal profession.<sup>40</sup> Truslow then defines “business law” as the subset of “legal studies” devoted to teaching legal subjects to business audiences.<sup>41</sup>

The term “legal studies in business” has gained popularity, perhaps because it captures the essence of Truslow’s argument while avoiding reference to the confusion generated by the “business law” versus “legal environment of business” debate. Still, numerous difficulties arise when using the base term “legal studies.” For example, members of the law school community do not deem the term restricted to non-law school education.<sup>42</sup> Also, “legal studies” may connote a narrower field than what the discipline desires by not including more standard legal studies in business subject areas and instead focusing on topics such as “law and popular culture, law-related cultural studies, contemporary jurisprudence...”<sup>43</sup> With law school faculty finding the base term “legal studies” a reference to education directed toward individuals studying to join the legal profession, and with non-business, undergraduate faculty suggesting the term refers to more “humanistic” approach, a forceful argument can be posited that “legal studies in business” adds to the confusion surrounding the nature of the discipline.

#### B. *Proffered Rationale*

In addition to externally-developed factors indicated in the previous subsection,<sup>44</sup> the difficulty the legal studies in business discipline has experienced in adopting a common name may well be traced to the lack of a “legal studies in business” track or area of emphasis in law school curricula. For faculty of the legal studies in business discipline, there is no strong tethering to a concentration geared particularly to the discipline. For example, in contrast the professor of legal studies in business who most likely would have matriculated through a law school curriculum, the accounting professor will have completed a Ph.D. program with a strong emphasis of accounting education based on a foundational understanding of other disciplines within business administration. With the orientation of law schools strongly committed to providing students a broad education looking toward a bar examination which covers a wide variety of areas (e.g., constitutional law, contracts, criminal law, criminal procedure, evidence, real property, and torts),<sup>45</sup> the coursework is driven by the need to provide students with exposure to numerous disparate subjects. Members of the legal studies in business discipline, therefore, lack an equivalent type of educational indoctrination in the content parameters of their field (assuming limits do in fact exist).

#### C. *Conclusion*

The legal studies in business discipline is struggling more now than at any time in its history with the simple yet critical task of adopting a common name. The old appellation of “business law” remains popular, as does “legal environment of business.” During the 1990s the term “legal aspects of management” was advanced. It also appears that the “legal studies in business” moniker is assuming a more prominent role, at least in part because the American Business Law Association changed its name to the Academy of Legal Studies in Business (“ALSB”).

Unfortunately, members of the discipline continue to use numerous terms to describe the field. For example, a cursory review of recently-published legal studies in business scholarship reveals the following terms employed by authors to refer to the discipline: “business law,”<sup>46</sup> “legal environment of business,”<sup>47</sup> “business law/legal environment,”<sup>48</sup> “legal studies,”<sup>49</sup> and “legal studies in business.”<sup>50</sup> The list of synonyms is growing, providing further evidence that members of the discipline do not agree with any degree of certainty or commonality on the name for the discipline, the nature of the discipline, or the content of the require course. The proliferation of names touted to describe the discipline is, in sum, quite counterproductive.

### III. NATIONAL CALLS FOR REFORM

This article next examines the responses of the legal studies in business discipline to national calls to revise the educational objectives of the course most often associated with the legal studies in business discipline or to expand curricular coverage of the external (legal, social, political) environment. At least in part, the analysis presented in this portion and the one that follows also provide a means of evaluating the ability – and perhaps the sincerity – of the membership of the discipline to respond to significant requests for change.

#### A. *Analysis*

1. *Gordon and Pierson Reports.* As a result of perhaps the most intense review ever of business education, business disciplines in the 1960s responded to a chorus of demands for improvement with a host of curricular changes. In the legal studies in business area, the criticisms were sharp and reviewers requested monumental shifts in thinking about the discipline. The Gordon report suggested that the traditional business law course be eliminated from the required core.<sup>51</sup> The authors recognized the need for the law course to move away from exclusive coverage of “commerce” and “market” topics

involving “ordinary business dealings...and points of litigation which commercial and financial firms were likely to encounter” and instead substitute a course which presented broader areas of law affecting business, including the “nonmarket environment of business.”<sup>52</sup> The proposed course would emphasize the “legal framework” within which business functions.<sup>53</sup> There is little doubt that Gordon report forcefully argued that one significant aspect of this course would move the student from studying solely private law topics to a set of subject areas drawn from public law. But in addition to calling for coverage of public law topics, the new course described in the Gordon report would provide the student with both “an appreciation of the *workings and origins* of legal institutions” and an understanding of “the *background, importance, and role* of law in our society...and the *evolution* of legal attitudes toward business, including *the changing relations between business and government*.”<sup>54</sup> The authors of the report recognized business students of the future would function in an era that would require “broad and farsighted business leadership that comprehends *how the present evolved out of the past and is evolving into the future*.”<sup>55</sup>

The Pierson report is equally illuminating. The authors suggested that the student should “carry forward the work he did earlier in history and political science.”<sup>56</sup> Moreover, the goals for the new course should include coverage of “how *the great themes in the development of jurisprudence* parallel and fuse with the changing position of business in society” and “how the *relationship between private law (business law) and public law (antitrust or public control law) has come to assume its present form*.”<sup>57</sup> Further, the authors believed that the course would be valuable “in developing the student’s capacity for analytical investigation and for responsible action in a social setting.”<sup>58</sup> The Pierson approach is more radical than the Gordon report by suggesting that the new course might well be housed in the political science department.<sup>59</sup>

The discipline’s immediate responses to the Gordon and Pierson reports are chronicled in Frederick Kempin’s *A History of the American Business Law Association*.<sup>60</sup> It is interesting to note, before proceeding directly with the evaluation of the discipline’s response to the reports, the comments of Professor Gillam, then editor of the *American Business Law Association Bulletin*, who stated:

...beneath the superficial errors of the recent studies there lies a deeper truth. Taking it as a whole, business law teaching has not been everything it ought to be.... Before we can exploit the opportunities which Gordon and Pierson have dumped in our laps, we must set our own house in order. We need to develop some clearly defined standards and goals of our own....<sup>61</sup>

To what extent we were successful in meeting Gillam’s broader challenge is beyond the scope of this paper.<sup>62</sup> But, Gillam’s thoughtful analysis does suggest that major issues not covered within either the Gordon or Pierson reports were facing the discipline forty years ago.

During the 1960s, the general response to the recommendations made in the two reports was straightforward: rather than replace “business law” with another course which would respond effectively to the suggestions included in the reports, the discipline experienced an “evolutionary process” whereby an “environmental” or “liberal arts” course which was simply “added to the traditional armory of courses.”<sup>63</sup> Therefore, within a decade after the two reports were issued, change had indeed occurred. Unfortunately, the direction of the response necessarily created considerable conflict in institutions where only one course in “business law” was required. Now faculty and administrators were forced to choose between the traditional business law offering and the “new” environmental course.

During successive decades, however, a blending occurred where the “business law” course included “environment” topics and “legal environment” course included “traditional” subject areas. For most universities, it appears, the one required course became a hybrid. A review of the topics covered in major textbooks substantiates this conclusion because, regardless of the title of the book, authors no longer present one extreme or the other.<sup>64</sup> Therefore, as to the one aim of the Gordon and Pierson reports to have future curriculum expose students of business to broader “environmental” topics within the legal studies in business course, there is substantial evidence that this goal was realized, especially in the past twenty years.

However, a review of the Gordon report reveals that in addition to becoming familiar with the “legal environment,” business leaders need to understand “developmental” aspects of law.<sup>65</sup> This desire is equally evident in the Pierson report.<sup>66</sup> *Unfortunately, there is a dearth of materials devoted to developmental aspects of law in popular textbooks.* For example, the historical underpinnings of the common law, tracing the growth of major tenets of commercial or property law are generally excluded from business law or legal environment texts. In the area of governmental regulation of business, the same is true: it is uncommon, for example, to find any more than a paragraph in a standard book devoted to describing the social and political factors that led to the creation of the 1964 Civil Rights Act or the Americans with Disabilities Act. The almost exclusive emphasis today is on the rule of law and its application; little if any attention is given to the historical, social, political, economic factors that shaped the rule of law under discussion. The Gordon and Pierson reports stressed viewing the law as a constantly developing discipline, but the legal studies in business discipline has been and is currently are far more inclined to present the law to business students as a static institution. Thus, the other one-half of the call for reform articulated in the Gordon and Pierson reports remains largely ignored.

2. *Porter and McKibbin Report.* The first systematic study of business education in the twenty-five years since the Gordon and Pierson reports were written was commissioned by the AACSB and prepared by Lyman W. Porter and Lawrence E. McKibbin in 1988.<sup>67</sup> In contrast to strong external impetus that provided the underpinnings of the Gordon and

Pierson reports, the Porter and McKibbin report was internally driven.<sup>68</sup> Of greater importance to the analysis undertaken within this article, the aim of the Porter and McKibbin report “was to concentrate primarily on *major* curriculum issues rather than on more micro details of specific curriculum components.”<sup>69</sup> The authors continued, “(t)hus, in this sense, our treatment of the curriculum area will differ somewhat from the way in which the topic was handled in the two Foundation reports 25 years ago.”<sup>70</sup>

While the Porter and McKibbin report does not delve into specific educational objectives of the legal studies in business course, the authors reveal that one of seven specific curricular criticisms of management education states that business schools fail to provide sufficient attention to the external (legal, social, political) environment.<sup>71</sup>

The criticism voices the concern that business schools have been overly concentrated on the internal operations and management of business – the traditional functional areas such as accounting, finance, production, etc. and have generally tended (except in the area of marketing) to neglect the necessity for coping effectively with the external environment. It is mismanaged relationships with various aspects of the social, political, and legal environment, say the critics, that have caused some of the most serious problems for American business firms in the last decade. Business schools, so the reasoning goes, have contribute to these problems by not modifying their curricula to keep up with important developments in the external context in which modern-day business organizations must operate.<sup>72</sup>

Yet when the authors conducted interviews of academic or corporate officials, there was only a “moderate” level of interest in placing more emphasis on legal, social, and political influences.<sup>73</sup> The report offers one specific and one general reason for the lack of interest in this issue. The authors posit that the external environment is “more of a subtle and diffuse issue that some other curriculum issues,” and hence simply more difficult to delineate. From a broader perspective, the Porter and McKibbin report ruefully concludes that business schools in the mid-1980s were experiencing a general malaise toward curricular change.<sup>74</sup> The extent of complacency was summarized in the following: “In marked contrast to the situation reported in the 1950s, we found *no forceful push for systemic curriculum change emanating from business schools themselves.*”<sup>75</sup>

Finally, to the surprise of Professor Porter, he reported in 1997 that during the ensuing ten years after the publication of the Porter and McKibbin report there was a major *decline in the complacency* among business schools regarding the need to institute curricular change.<sup>76</sup> Regrettably, the specific suggestion included in the Porter and McKibbin report to increase curricular attention to the subject of external environment is not mentioned in the 1997 article.

#### B. *Proffered Rationale*

Upon reflection, it should come as no surprise that the members of the legal studies in business discipline show little enthusiasm for considering the suggestion made in both the Gordon and Pierson reports to examine the development of either the common law or public law as these two areas relate to business. The membership comes by this aversion to the developmental approach to law honestly. It is entirely reasonable that traditional business law textbook authors would rely on their training and simply present a one-dimensional description of common law – without reference to the historical development of common law principles. Similarly, even though the Gordon and Pierson reports called for a deeper understanding of the law and legal systems through an evolutionary prism, we should not be amazed that the professional training of authors of legal environment of business textbooks also steered them away from venturing into these waters. Exposing students of business to the myriad forces that influenced the creation of major pieces of legislation or regulation that affect business is, quite simply, not a salient feature of these books.

The authors of textbooks during the past forty years, with few exceptions, were trained to be lawyers, and some even taught lawyers-to-be in law school. So, too, almost all individuals who use those texts to teach a legal studies in business course possess a legal education.<sup>77</sup> As one author concluded regarding those who are attending or have matriculated through law school:

Simply stated, the law student, the law professor, or the practitioner...is interested only in the latest interpretation of the rule - the last decision in the jurisdiction – and nothing else. Lawyers, to function as lawyers, do not have to learn anything of sixteenth-century law, or of ...historical evolution. All that lawyers need care about is the net result of that evolution, the latest judicial, nonhistorical appraisal or interpretation....<sup>78</sup>

While a law school curriculum may include passing references to medieval property cases or seminal constitutional cases decided a hundred or more years ago, the law school student is neither exposed to the impact of these selected cases at the time the opinions were delivered nor taught the significance of the case in a continuum of legal history.<sup>79</sup>

Whatever uncertainties may exist regarding the mission of the legal studies in business discipline, however, it is unambiguously clear that the calling is not now or has never been to train students to become lawyers. That is, participation in the legal studies in business discipline calls for something *not* provided by the professional/graduate education experienced by the vast majority of instructors in the discipline. After recognizing that this perspective is not addressed in the professional training most commonly associated with those who teach in the legal studies in business discipline, and after more closely examining the nature of the suggestions posited in the Gordon and Pierson reports, perhaps it is now more

possible for the membership of the discipline to embrace a clearer view of mission of the academic area of study. The discipline should seize the opportunity to provide students with a deeper, multi-dimensional view of legal principles, which necessarily includes coverage of the evolution of the relationship between business and law.

### C. *Conclusion*

While the legal studies in business discipline has responded effectively to the “environmental” calling of the Gordon and Pierson reports, the need to expose students to the “developmental” aspects of law which would provide students with the ability to see interlocking relationship between law and business is largely unmet. Similarly, the Porter and McKibbin report touts the importance of business students understanding better the external environment, marked by increasing the exposure to the social, political, and legal environment. This finding of Porter and McKibbin may well be another way of saying that the developmental aspects of law relating to business is not being sufficiently covered in the undergraduate business curriculum. Certainly, the 1959 reports and the 1988 report provide considerable direction for the legal studies in business discipline to consider.

Finally, reflect on the following passage from the Gordon report:

We have been impressed, however, by the fact that one objective in particular has been raised so many times to any drastic change in the law requirement. “If we adopt this suggestion,” we have been asked repeatedly, “what will we do with our teachers of business law?” Perhaps too naively, we find it difficult to accept the implication of this question—that the faculty members concerned, all trained in the law, cannot widen their mental horizons enough to give the kind of course proposed here.<sup>80</sup>

After forty years, this passage raises an interesting question: How well have members of the discipline been able to “widen” their “mental horizons”?

## IV. “WHAT SHOULD BE TAUGHT” SURVEY RESPONSES

The third and final indicator also examines the ability (or reticence) of the discipline to respond to needs from the outside, but here the emphasis is directed toward the significant scholarship generated within the past forty years that attempts to determine, based on survey results, what certain “customers” desire from the legal studies in business discipline.

### A. *Analysis*

Over the years, members of the legal studies in business discipline have conducted a number of studies geared toward ascertaining what course (or courses) from the discipline is required<sup>81</sup> and the content of the required legal studies in business course (or courses).<sup>82</sup> While these studies have provided answers to questions relating to the current state of the curriculum, another approach is needed to address the query of what should be taught in the legal studies in business course. Two empirical studies asking two groups who we might agree understand the business/law dynamic are examined below.

Professors Moore and Gillen asked corporate attorneys, from chief counsel to staff attorney, their opinions as to the competence of managers and the importance of instructing managers on a number of both traditional and legal environment topics.<sup>83</sup> The in-house counsels surveyed were overwhelmingly employed by large firms.<sup>84</sup> The authors reported two general results. First, corporate counsel in the study did not find managers particularly competent in areas pertaining to the interplay between business and law.<sup>85</sup> In addition, the survey results revealed the perception that managers should be exposed to almost every topic listed in the instrument.<sup>86</sup> The authors then created a “model syllabus” based on the opinions of the corporate attorneys.<sup>87</sup> The course envisioned includes: approximately one-quarter of time allocated to “Introduction to Law” topics (e.g., nature of law, legal process, dispute resolution), one-quarter to “Private Law” topics (particularly contracts and agency), and one-half of the course devoted to “Regulatory Law” topics (e.g., labor, antitrust, consumer protection, and securities regulation).<sup>88</sup>

Professor Massin surveyed chief executive officers from Fortune 500 businesses regarding their opinions as to what legal studies in business subjects would be most beneficial to the respondents’ employees.<sup>89</sup> Again, a “model syllabus” is proposed, but here the author declines to allocate the amount of instruction for specific categories.<sup>90</sup> The proposed course would include: “Introductory Topics” (nature of law, legal reasoning, ethical issues), “Regulatory Law” (regulatory agencies and their function, administrative law & procedures, government regulation of business (including environmental law, energy law, securities), antitrust law (including mergers and acquisitions), fair employment law, product liability law), and “Private Law” (contract law, sales law of the UCC, commercial paper, agency law, corporations).<sup>91</sup>

### B. *Proffered Rationale*

A cursory review of the tables of contents from issues of *The Journal of Legal Studies Education* and the *American Business Law Journal* published during the past decade reveals little in the way of published scholarship dealing with the

question of what is currently being taught in the legal studies in business course. As to the second question of what should be taught, again two principal organs of legal studies in business scholarship are equally silent during the same term. Therefore, it is not possible to cite current research in support of any conclusion.

The reticence of legal studies in business faculty to support the surveying of stakeholders or to use information gathered from those activities may rest in part on the insular nature of the discipline's faculty. Any attempt to incorporate the views of those outside of the discipline may well be viewed as an affront to the professional stature of a faculty member who does not come from a business graduate program. In a related vein, empirical research is the principal underpinning of most Ph.D. business programs, while a law school education includes little if any reference to research of this type. The lack of familiarity with survey methodology may make legal studies in business faculty uncomfortable with relying on a process that is commonplace to others on the faculty but quite foreign to them. Finally, one can hypothesize that legal studies in business faculty may not wish to probe the thoughts of external stakeholder in subjects relating to law given the perceived stature of lawyers and the legal system in the citizenry at large.

### C. *Conclusion*

The two studies presented above support the offering of a "blended" course consisting of both private law and public law topics. As indicated earlier, it appears to be the direction many instructors have adopted.<sup>92</sup> This is not to say there are no "traditional" or "environmental" textbooks from which to choose, but rather than both "approaches" have moved considerably toward the middle of the continuum. Also, it is unclear whether we paid attention to the survey results included in the two studies detailed above. It may well be that politics – within legal studies in business faculty located on an individual campus, within curriculum committees of colleges of business, and elsewhere – may have contributed significantly to the "blending."

Why is the content of the required course in legal studies in business important? Primarily because to the extent we as a discipline can galvanize support among ourselves for an increasingly-common set of topics to address in the required undergraduate course, the better we will be able to establish in the minds of those outside our discipline the essence of the discipline.

### V. SUGGESTIONS FOR IMPROVEMENT

The evidence provided by the three indicators presents a strong case for the legal studies in business discipline implementing a series of initiatives aimed at improving the quality of the discipline and thereby securing its place as a fundamental element of a business education in the 21<sup>st</sup> century. The following are suggested to members of the legal studies in business discipline as endeavors that flow directly from the analysis presented above and appear worthy of consideration as the discipline charts a course for itself.

#### A. *Create a Common Name*

Members of the discipline need to agree on a common name for the legal studies in business field of study and for the introductory course. This term would become the anchor point for the discipline. Conversations should occur about the nature of the discipline, the subjects that should be addressed in a required, one-semester course, and the skills that would be honed through taking such a course. But the starting place for all work aimed at improving the discipline is through the creation and adoption of a common name. Without accomplishing this basic task, the legal studies in business discipline will never reach its full potential.

#### B. *Explore Fully the Relationship Between General Education and Legal Studies in Business*

As indicated in the Pierson report,<sup>93</sup> the legal studies in business course serves as a bridge between general education courses in political science and history (and no doubt a host of other general education courses not expressly mentioned in the report) and professional courses in business. We need to better understand this role. Not only will a more solid understanding provide a clearer sense of this often ignored reason for requiring a course in legal studies in business, but developing this dimension will ensure that legal studies in business does not become housed in the political science department.<sup>94</sup> The ALSB GenED Task Force has undertaken some work in this realm.<sup>95</sup>

#### C. *Recognize the Relationship Between Legal Studies in Business and Specific Business Majors or Options*

Dual reasons also support the need to examine those areas of the legal studies in business discipline that relate directly to specific business majors or options. While we often consider the subject matter of our courses geared to the broad "management" audience, most undergraduates do not matriculate directly into a managerial position. Instead, they usually find themselves

within a few months of graduation dealing with a particular functional area of business. The orientation of teaching law to a general business students might well, upon study, be somewhat different from how we might approach a classroom comprised of marketing, finance, accounting, information systems, and human resource management students.<sup>96</sup> One group of internal stakeholders evidently has never been surveyed: colleagues from other disciplines within the school of business. What subjects would they believe valuable to a student about to begin a functional area program?

In addition, law pertaining to various functional areas is becoming so complex that distinctive treatment is now warranted. For example, the ALSB now recognizes a Marketing Law section.<sup>97</sup>

D. *Reassess the Directions for Change Posited in the Gordon, Pierson, and Porter and McKibbin Reports*

The suggestions of doing away with the traditional course<sup>98</sup> and teaching the legal studies in business course from the political science department<sup>99</sup> have been largely rejected. More research, though, is needed on the proper content for the required undergraduate course in legal studies in business. In addition, we need to create a dialog as to the suggestion to inculcate in our students an understanding of the development of the interplay between law and business.

E. *Investigate More Thoroughly the Teaching of "Thinking Skills"*

Fifty years ago, a professor from the discipline wrote: "My final suggestion is that a primary objective of business law courses should be to teach students to think."<sup>100</sup> The author continues:

Students, instead of being used as sponges, should be trained to be critics and creators. I believe that a course in how to think correctly should be compulsory for all college students, but unfortunately such courses are rare indeed. However, in business law we do have a good medium.<sup>101</sup>

While the discipline should not be teaching students of business how to "think like a lawyer," scholarship might be directed toward delineating what unique attributes to the thinking process are contributed to an undergraduate education (and what abilities are honed) through a course of study in legal studies in business.

F. *Encourage the ALSB to Establish a "Certificate in Teaching and Scholarship Related to Legal Studies in Business"*

The aims of positively differentiating ourselves from our business colleagues, cementing our status as a central discipline, and improving undergraduate teaching could be achieved by establishing a twenty-four hour certificate program housed within an ALSB-established "Institute for Teaching and Scholarship in Legal Studies" ("Institute"). The certificate program could require the participant "graduate" from three, eight-hour sessions, each offered on a rotating basis at the ALSB's national conference.

The certificate program might include completing the following segments:

- (1) *Adult Learning Theory and Principles of Pedagogy (addressing how to teach)* - Given that few faculty in higher education have degrees in educational psychology or are credentialed to teach in either primary or secondary schools, and given that law school curriculum devote no attention to the subject of learning and teaching (so, too, business Ph.D. programs, for the most part, provide little if any exposure to the topics), an intense study of this topic would provide a solid theoretical foundation for members of the discipline. The framework for this segment could be based on Chickering and Gamson's popular article, *Seven Principles for Good Practice in Undergraduate Education*.<sup>102</sup> Legal educators recently expanded this work in a series of insightful articles in the *Journal of Legal Education*.<sup>103</sup>
- (2) *Teaching Legal Studies in Business: Knowledge, Skills, and Value Components (addressing what to teach)* - The topics addressed here would, for example, provide the participant with a sampling of the key educational objectives of a required course in legal studies in business. One can imagine a panel discussion where traditional, environmental, "blended," "third-wave," or other approaches illustrating knowledge, skills, and values associated with the course are presented. An examination of what should be taught, including a review of relevant empirically based studies, could be of substantial benefit to attendees of the program. Consideration could be given to providing participants with a background understanding of content areas endemic to business education; this knowledge might cause instructors to change the approach taken to teach a legal studies in business course by enhancing the relevancy of the material to other aspects of the business curriculum. In addition, this segment might address changes in the nature of work and organizational forms occurring in the realm of business today for the purpose of providing students with a more relevant educational experience.<sup>104</sup>
- (3) *Practicum in Teaching Legal Studies in Business (practicing the art of teaching)* - Components of instructional methods, curriculum development and assessment could be demonstrated in a peer-dominated environment, perhaps with some perspective of current students of the discipline. Participants in a "hands

on” environment could also address online instruction, collaborative learning, the effective use of technology, and other topics.

#### G. *Stakeholder Analysis Needs to be Revitalized*

More research is needed on what knowledge, skills, and values students of business should attain through a legal studies in business curriculum. A number of new approaches to thinking about the law/business dynamic are ripe for critique. For example, with the explosion of Internet based businesses, will many of our graduates who might have looked to big business for jobs be enticed in the future to work for smaller firms? If so, is there should there exposure to legal topics be different? External stockholders located off-campus would be valuable sources of opinion on these types of issues.

#### H. *Adopt a Supportive View of Assessment*

Assessment, a term that often sends shivers up the spine of the professorate, is truly designed to assist educators determine what students know and can do for the purpose of improving the education provided.<sup>105</sup> Central to the effective assessment of student outcomes is the establishment of clear goals and objectives for the curriculum. The legal studies in business discipline should embrace a culture of assessment as a means not only to improve upon our performance (and hence improve learning on the part of our students), but as a mechanism that can deliver considerable evidence of the discipline’s aims and accomplishments.

#### I. *Sponsor More Research into the Nature of the Discipline*

We should be ever-vigilant to embrace methods which will both determine what subjects are taught within legal studies in business courses (especially the required undergraduate course) and ascertain what knowledge, skills, and values relating to legal studies in business our internal and external stakeholders desire. The 1980s were rich in published research dealing with subjects relating to the core of the discipline, and the legal studies in business discipline needs to achieve again that level of activity.

### VI. CONCLUSION

Forty years ago, what was the state of the legal studies in business discipline? Answer: “At the beginning of the second half of its first century of existence...the Association finds itself the representative of professors who are on the periphery of business education. Not fully recognized as a profession, neither central nor indispensable, lawyers and the law seem to be in business schools mainly because they have always been there.”<sup>106</sup>

What is the status of the discipline as this new century begins? Based on the three indicators presented above, the results reveal little success in wrestling with core issues surrounding the nature of the legal studies in business discipline. As for a common name, the discipline appears splintered far more now than forty years ago. In terms of dealing with the recommendations of the principal reports on business education generated in 1959 and 1988, the discipline has certainly moved toward a greater recognition of public law topics, perhaps to a place where such topics are predominate. Alas, however, the developmental aspect of law as it relates to business has received little attention. Finally, there exists some evidence that the discipline is beginning to incorporate suggestions made by external (off-campus) stakeholders. Taken together, though, progress is minimal at best.

No one doubts the growing importance of law in the world of business. Therefore, the need for the legal studies in business “product” is stronger than ever. The membership of the discipline must turn introspective and take stock of its strengths and deficiencies. The potential for excellence is tremendous. But the discipline also is obligated to answer the difficult question of determining the essence of the legal studies in business discipline. With that question answered, the discipline of legal studies in business can take its place among the pillars of business education, as Joseph Wharton envisioned it over one hundred years ago.<sup>107</sup>

Professor Wolfe posited in 1977, “Perhaps the complexity of our discipline has caused us to shy away from such vital inquiry. Or, perhaps, we have not had the interest.”<sup>108</sup> Has the perspective changed in twenty-five years? As the membership of the discipline looks into the 21<sup>st</sup> century, what does the future portend? Will the legal studies in business discipline stagnate in a secluded cove? Or, will it be seen adrift and subject to the forces of myriad “real” business disciplines? Or, will legal studies in business come to a place of certainty, purposefully channeling valuable knowledge, skills, and values into the business curriculum. “Law is ... a vital component of professional business education...”<sup>109</sup> If so, it is the obligation of membership of the legal studies in business discipline to prove it, once and for all. The gauntlet remains on the ground. Will the challenge be accepted?

## Footnotes

<sup>1</sup> The term “legal studies in business” is used throughout this article as both the name of the discipline and the name of the foundation course colleges and universities offer to acquaint students with the legal aspects of business. In the alternative, I could have chosen “business law,” “legal environment of business,” “legal studies,” or a number of other descriptors.

<sup>2</sup> For a perceptive examination of legal studies in business courses at the Masters in Business Administration level, see Dan Bertozzi, Jr., *A Survey of the Role of Legal Studies in Business, Business-Government Relations/Public Policy and Business Ethics Courses in the Top 50 BMA Programs in the United States*, 17 J. LEGAL STUD. EDUC. 229 (1999). See also, Donald L. Boren, *An Analysis of Law Courses in the Masters of Business Administration Programs at AACSB Institutions*, 11 J. LEGAL STUD. EDUC. 21 (1993); Janine S. Hiller, *Business Law in the MBA Program: A Survey and Comparison*, 22 AM. BUS. L.J. 229 (1985).

<sup>3</sup> William Zelermyer, *A New Approach to Business Law*, 3 AM. BUS. L.J. 352, 353 (1965).

<sup>4</sup> Elaine D. Ingulli, *Transforming the Curriculum: What Does the Pedagogy of Inclusion Mean for Business Law?*, 28 AM. BUS. L.J. 605, 606 (1991).

<sup>5</sup> *Id.*

<sup>6</sup> See, e.g., C. Mitchell Adrian & G. Dean Palmer, *Toward a Model for Understanding and Improving Educational Quality in the Principles of Marketing Course*, 21 (1) J. MARKETING EDUC. 25 (1999); (analysis directed toward the required marketing course); Steven Pharr & Linda J. Morris, *The Fourth-Generation Marketing Curriculum: Meeting AACSB's Guidelines*, 19 (3) J. MARKETING EDUC. 31 (1997) (examining the marketing curriculum).

<sup>7</sup> See, e.g., the discussion of the “legal environment of business” movement, *infra* notes 50-65 and accompanying text.

<sup>8</sup> See, e.g., John R. Allison, *The Role of Law in the Business School Curriculum*, 9 J. LEGAL STUD. EDUC. 239 (1991) (reflecting on an American Business Law Association report addressing the curricular relationship between law and business). Professor Allison concludes that business law: (1) “equips students to recognize legal issues and manage legal risks in business decisionmaking by providing them with fundamental knowledge of relevant legal principles;” (2) provides students with an understanding of processes associated with law making and dispute resolution; (3) improves the “ethical sensitivity of students;” (4) “develops students’ critical thinking and negotiation skills;” and (5) contributes broadly to the “general education of business students.” *Id.* at 240 (emphasis in original). See also John D. Donnell, *Redesigning the Required Undergraduate Business Law Course*, 2 J. LEGAL STUD. EDUC. 1 (1984).

<sup>9</sup> See William G. Elliott & Arthur Wolfe, *The Need for Legal Education by Persons in Business*, 19 AM. BUS. L.J. 153 (1981); Elliott Klayman & Kathleen Nesser, *Eliminating the Disparity Between the Business Person’s Needs and What is Taught in the Basic Business Course*, 22 AM. BUS. L.J. 41 (1984)(surveying business school graduates); S. Scott Massin, *Corporate Perspectives on Business Law Curricula: An Empirical Study*, 8 J. LEGAL STUD. EDUC. 71 (1989-90)(CEOs of Fortune 500 companies); Gary A. Moore & Stephen E. Gillen, *Managerial Competence in Law and the Business Law Curriculum: the Corporate Counsel Perspective*, 23 AM. BUS. L.J. 351 (1985)(corporate counsels); John W. Yeargain & John R. Tanner, *Alumni Perspectives on the Business Law Curriculum*, 9 J. LEGALSTUD. EDUC. 37 (1990) (survey of business undergraduate alumni).

Two studies occurred in the 1960s (John Donnell, *The Businessman and the Business Law Curriculum*, 6 AM. BUS. L.J. 451 (1968) (surveying members of a state chamber of commerce group and large company executives)). One survey also took place in the 1990s (Michael W. Little & William H. Daughtrey, Jr., *Survey of Virginia Corporate Executives on the Role of Law in Business Curricula*, 13 J. LEGAL STUD. EDUC. 147 (1995) (respondents were chief financial officers and vice presidents for large companies). For an insightful depiction of the top three preferred law topics from six previously conducted surveys, see *id.* at 150-151 fig. 1.

<sup>10</sup> See Jordan H. Leibman, *Legal Studies in Business Should be Taught by Academicians Trained in Law*, 10 J. LEGAL STUD. EDUC. 137 (1992). “The 1969 change in the required qualifications of faculty for accreditation by the American Assembly of Collegiate Schools of Business (AACSB), which was interpreted by many deans to make the J.D. insufficient for teaching business law and to justify open discrimination against those holding that degree, caused considerable furor among business law teachers.” Donnell, *supra* note 8, at 4.

<sup>11</sup> Although it may be sensible on first blush to attempt to determine the nature of the discipline through an examination of the scholarship generated by members of the discipline, four reasons obviate against that approach. First, examining the table of contents of the premiere journal in the discipline, the *American Business Law Journal*, one is struck by the broad array of topics receiving treatment. Recent examples of topics addressed by members of the legal studies in business discipline include: business ethics (Don Mayer, *Community, Business Ethics, and Global Capitalism*, 38 AM. BUS. L.J. 215 (2001)), constitutional law (Eric L. Richards, *The Emergence of Covert Speech and its Implications for First Amendment Jurisprudence*, 38 AM. BUS. L.J. 559 (2001)), employment law (Deborah A. Ballam, *Employment-at-Will: The Impending Death of a Doctrine*, 37 AM. BUS. L.J. 653 (2000)), international law, (Barbara Crutchfield George, Kathleen A. Lacey, Jutta Brimele, *The 1998 OECD Convention: An Impetus for Worldwide Changes in Attitudes toward Corruption in Business*

*Transactions*, 37 AM. BUS. L.J. 485 (2000)), jurisprudence, Daniel T. Ostas, *Postmodern Economic Analysis of Law: Extending the Pragmatic Visions of Richard A. Posner*, 36 AM. BUS. L.J. 193 (1998)), and regulatory law (Randall S. Guttery, Stephen L. Poe, and C.F. Sirmans, *Federal Wetlands Regulation: Restrictions on the Nationwide Permit Program and the Implications for Residential Property Owners*, 37 AM. BUS. L.J. 299 (2000)). Therefore, the boundaries of relevant scholarship are expansive.

Moreover, a question exists whether traditional legal research authored by legal studies in business faculty is even deemed relevant though the eyes of business schools in general. See, e.g., Carol D. Rasic, *The Persistent Credibility Gap of Respectability for Legal Research*, 10 J. LEGAL STUD. EDUC. 47 (1992) (“There is an apparent resolute refusal on the part of peer review committees and administration in collegiate schools of business to accept legal research as scholarly and, therefore, worthy of regard in merit promotion and/or tenure decisions. The reasons are puzzling, but the persistence of the disdain with which our non-law colleagues view our research does mandate some rectifying action.”) See also John R. Allison, *The Role of Legal Scholarship in the Business School*, 10 J. LEGAL STUD. EDUC. 131 (1992); Jordan H. Leibman, *The 1990 ALBA Research Committee Report: A First Step in The Search For An Organizing Principle*, 9 J. LEGAL STUD. EDUC. 265 (1991)

In addition, moving to a more modern panorama, there is debate regarding the type of activities that should be considered “scholarship” within the broader academy, primarily regarding “instructional research.” For an excellent treatment of this issue, see Marcia J. Staff, *From Boyer’s Scholarship of Teaching to the AACSB’s Instructional Development: Implications for Faculty Reward Systems*, 18 J. LEGAL STUD. EDUC. 225 (2000).

Finally, even if one was able to corral the disparate topics addressed by legal studies in business authors for the purpose of attempting to better define the nature of the discipline, difficulty is met at the outset by the question: What relationship exists between research and teaching? Consider the following astute observations of one colleague:

Institutions that view their primary function as research sometimes answer, not surprisingly, that excellent research is necessary to support excellent teaching. Research not only keeps faculty at the forefront of their fields, it also means that they are actively engaged in the development of their disciplines, and grappling with the most pressing questions of the time.

The less an institution focuses on research, the less likely it is to see a necessary connection between teaching and research. Some faculty at schools that focus on teaching may reject the notion of research as requisite to teaching excellence. The number of superb teachers at teaching institutions makes one thing clear: if there is a connection between research and teaching excellence, the former is not a necessary precursor to the latter.

While we don’t need to be active researchers to be excellent teachers, research work can and often does *contribute* to teaching excellence.

Steve Salbu, untitled comment of editor-in-chief, 38 (3) AM. BUS. L.J. (2001) (emphasis in original).

<sup>12</sup> Robert N. Corley, *The Teaching of Business Law in the 1990’s*, 2 J. LEGAL STUD. EDUC. 32, 32-33 (1984). “Contracts was the foundation of business law and specialized topics such as sales, negotiable instruments, and bailments were the offspring used to challenge the student’s ability to analyze facts and to apply technical legal concepts to them. At least two and often three courses were required to cover the usual subjects dealing with common business transactions and organizational problems.” *Id.* at 33. Note, though, that members of the discipline were beginning to question the role of business law as early as 1957. See Donnell *supra* note 8, at 2-3.

<sup>13</sup> See Edwin M. Epstein, *We’ve Come a Long Way...From ABLA to ALSB – A Thirty-Year Personal Reflection*, 14 J. LEGAL STUD. EDUC. 225, 233 (1996).

<sup>14</sup> *Id.* at 226.

<sup>15</sup> *Id.* at 229.

<sup>16</sup> WILLIAM SHAKESPEARE, *ROMEO AND JULIET*, act II, scene ii.

<sup>17</sup> More than 90% of respondents to a survey sent to discipline members had a J.D or LL.B degree, and only 8% of all respondents possessed a Ph.D or D.B.A. Frances J. Hill, Marilyn A. Lavin, & Linda B. Samuels, *The 1993/1994 Academy of Legal Studies in Business Salary Survey: Characteristics and Determinants of Faculty Salaries*, 13 J. LEGAL STUD. EDUC. 1, 5 (1995). Survey sent to all members the Academy of Legal Studies in Business and all members of regional academies of legal studies in business who were not members of the ALSB. *Id.* at 2.

<sup>18</sup> The hiring of part-time legal studies in business faculty was recently criticized.

In teaching the core course, business law professor must be prepared to address the legal issues that their students will confront in the technology-driven, global world of business. Some business schools have attempted to supplement their regular business law faculty with part-time faculty from the local legal community. In today’s world, a law course taught by a local practitioner from the perspective of a local jurisdiction is inadequate – and possibly detrimental – to the careers of students intent on creating shareholder value in a global economy where e-commerce is dramatically changing the business and legal

landscape. Development of the business law core course requires full-time business law professors to be increasingly diligent in generating research on the legal issues that shape entrepreneurship and technological innovation and that increase understanding of the global legal environment of business.

George J. Siedel, *Six Forces and the Legal Environment of Business: The Relative Value of Business Law Among Business School Core Courses*, 37 AM. BUS. L.J. 717, 739-40 (2000) (footnotes omitted).

<sup>19</sup> Thomas W. Dunfee, *Editorial*, 15 (1) AM. BUS. L.J. XIII (1977).

<sup>20</sup> *Id.*

<sup>21</sup> The study of law within a college of business first appeared during the nineteenth century. “When Joseph Wharton gave funds to establish the first collegiate school of business in an agreement dated June 22, 1881, he specified that the curriculum should include five subjects, one of which was business law.” George J. Siedel, III, Herbert W. Hildebrandt, & Edwin L. Miller, *An Executive Appraisal of the Importance of Business Law*, 22 AM. BUS. L.J. 249, at 263 (1984) (footnotes omitted). For a listing of the subjects the business law professor was to teach at the Wharton School of Business in the 1880s, *see id.*, at ft. 33. The term “business law” was originally used as the title of a course in 1889. FREDERICK G. KEMPIN, JR., A HISTORY OF THE AMERICAN BUSINESS LAW ASSOCIATION 5 (1973).

<sup>22</sup> *See* Corley, *supra* note 12, at 32-33.

<sup>23</sup> *See* Allison, *supra* note 8. “Business law is inherently interdisciplinary, focusing as it does on the interaction between law and business.” *Id.* at 246. “They are “business courses about law.” Their goal is to give students a working knowledge of the structure of both the law generally and the particular legal area under consideration.” *Id.*

<sup>24</sup> For example, I selected from my bookshelf the business law text my father used in the 1940s (DWIGHT POMEROY, BUSINESS LAW (2<sup>nd</sup> ed. 1939)) and the text I read in the 1970s (RONALD ANDERSON, WALTER KUMPF, AND ROBERT KENDRICK, BUSINESS LAW: PRINCIPLES AND CASES (5<sup>th</sup> ed. 1971)). The tables of contents are amazingly similar. (Note, also, the price of my text was \$11.80, his was \$4.00.) *See also* John D. Donnell, *Business Law Textbooks: A Retrospective Exploration*, 22 AM. BUS. L.J. 265 (1984). “(M)ost business law textbooks extant today follow, more or less, patterns established some decades ago. Basic ingredients experimented with years ago remain in current textbooks in varying combinations.” *Id.* at 278.

<sup>25</sup> *See, e.g.*, KENNETH W. CLARKSON, ROGER LEROY MILLER, GAYLORD A. JENTZ & FRANK B. CROSS, WEST’S BUSINESS LAW (8<sup>th</sup> ed. 2001).

<sup>26</sup> John W. Truslow, Jr., *Legal Education, Legal Studies and Business Law*, 15 AM. BUS. L.J. 1, 5 (1977).

<sup>27</sup> *Id.*

<sup>28</sup> ROBERT A. GORDON AND JAMES E. HOWELL, HIGHER EDUCATION FOR BUSINESS (1959).

<sup>29</sup> FRANK C. PIERSON AND OTHERS, THE EDUCATION OF AMERICAN BUSINESSMEN (1959).

<sup>30</sup> Accreditation Standard IV, AACSB ACCREDITATION COUNCIL POLICIES, PROCEDURES, AND STANDARDS (1976) (emphasis added).

<sup>31</sup> *See, generally*, O. Lee Reed et. al., *The Role of Contracts in the Introductory and Only Law Course that Most Business Students Will Ever Take*, 9 J. LEGAL STUD. EDUC. 1 (1990) (panel discussion occurring at the 1987 American Business Law Association national meeting).

<sup>32</sup> *See, e.g.*, Mark A. Buchanan, *The Legal Environment Requirement: How is it Being Met?*, 21 AM. BUS. L.J. 237, 238 (1983) & John W. Collins, *Law in the Business Curriculum*, 15 AM. BUS. L.J. 46, 50-52 (1977).

<sup>33</sup> *See, e.g.*, ROBERT N. CORLEY, O. LEE REED, PETER J. SHEDD, & JERE W. MOREHEAD, THE LEGAL AND REGULATORY ENVIRONMENT OF BUSINESS (11<sup>th</sup> ed. 1999).

<sup>34</sup> *See, e.g.*, Charles R. McGuire, 23 AM. BUS. L.J. 479 (1986).. “Some would argue that the term “the legal environment of business” is so broad and vague that there can be no real definition and hence the term is useless. That may be the case, but I submit that very few people have really tried to define the term.” *Id.*, at 491. *See also* Donnell, *supra* note 8, at 5. “The term “legal environment” in this statement has been the cause of considerable confusion also. I try to avoid using the term for that reason. Some people have equated the term with teaching public or regulatory law rather than contracts, agency, negotiable instruments, etc. Others have used the term to apply to courses that emphasize the law as an institution and process. Especially when used as a verb – to “environmentalize” a course – I think the term is meaningless without a special definition by the user. I doubt the people who wrote the standard, or who approved it for AACSB, were in agreement as to what it meant.” *Id.* (citations omitted).

<sup>35</sup> *See* Epstein, *supra* note 13, at 232.

<sup>36</sup> Allison, *supra* note 8.

<sup>37</sup> *See* Epstein, *supra* note 13, at 232.

<sup>38</sup> Antoni Brack, *The Paradigm of Managerial Law*, 15 J. LEGAL. STUD. EDUC. 237 (1997). The functional areas listed are: “the management of human resources, production or operations management, marketing management, financial management, and strategic management.” *Id.* at 239.

<sup>39</sup> *See* John W. Truslow, Jr., *Legal Education, Legal Studies and Business Law*, 15 AM. BUS. L.J. 1 (1977).

- <sup>40</sup> *Id.* at 4-5.
- <sup>41</sup> *Id.* at 5-6.
- <sup>42</sup> *See, e.g.*, Cynthia Fuchs Epstein, *Knowledge for What?*, 49 J. LEGAL EDUC. 41, 47 (1999).
- <sup>43</sup> The *Legal Studies Forum* web site lists these among other topics that were the subject of authors for the *Forum* in recent editions. This journal “seeks to promote transdisciplinary, humanistic, critical scholarship.” The web site also contains a listing of legal studies courses, representing a wide array of topics, at <http://www.wvu.edu/~lawfac/jelkins/legstudforum/masthead/aboutlsf.html> (last visited May 25, 2002).
- <sup>44</sup> *See supra* notes 38-43 and accompanying text.
- <sup>45</sup> These are the seven subjects tested in the multiple-choice portion of the multistate bar examination developed by the National Conference of Bar Examiners and employed in forty-eight states (exclusive of Louisiana and Washington), available at <http://www.ncbex.org/tests.htm>
- <sup>46</sup> Christine Neylon O’Brien & John G. Neylon, *The Role of Business Law in the 150 Hour Educational Requirement for CPA Certification*, 18 J. LEGAL STUD. EDUC. 1, at 2 (2000).
- <sup>47</sup> Steven R. Salbu, *Law and Ethics*, 38 AM. BUS. L.J. 209, at 209 (2001).
- <sup>48</sup> Edward J. Schoen & Joseph S. Falchek, *You Haze, I Sue: A Fraternity Stew*, 18 J. LEGAL STUD. EDUC. 126, at 128 (2000).
- <sup>49</sup> Rita Marie Cain, *The Political and Regulatory Environment of Internet Taxation: Opportunities for Learning Abound*, 18 J. LEGAL STUD. EDUC. 277, at 279 (2000).
- <sup>50</sup> Steven R. Salbu, untitled comment from editor-in-chief, 38 AM. BUS. L.J. (unnumbered page)(2001).
- <sup>51</sup> GORDON, *supra* note 28, at 205.
- <sup>52</sup> *Id.* at 204-5.
- <sup>53</sup> *Id.* at 205.
- <sup>54</sup> *Id.* (emphasis added).
- <sup>55</sup> *Id.* (emphasis added).
- <sup>56</sup> PIERSON, *supra* note 29, at 212.
- <sup>57</sup> *Id.* at 212-213 (emphasis added).
- <sup>58</sup> *Id.* at 213.
- <sup>59</sup> *Id.*
- <sup>60</sup> KEMPIN, *supra* note 21, at 22-24.
- <sup>61</sup> *Id.* at 23, quoting from the March, 1960 editorial in the AMERICAN BUSINESS LAW ASSOCIATION BULLETIN.
- <sup>62</sup> At least part of the challenge articulated by Gillam involves the area of business law scholarship. Gilliam states that “...business law...has remained largely isolated from the other social sciences, has generated very little creative intellectual effort, and has failed to establish its rightful place among the applied social sciences in American universities.” *Id.* at 26, again quoting from the March, 1960 editorial in the AMERICAN BUSINESS LAW ASSOCIATION BULLETIN.
- <sup>63</sup> *Id.* at 24.
- <sup>64</sup> *But see*, Donnell, *supra* note 24, at 277-78 (arguing that many traditional business law texts have for decades included materials dealing with the regulatory environment of business).
- <sup>65</sup> *See* GORDON, *supra* note 28, at 204-05.
- <sup>66</sup> *See* PIERSON, *supra* note 29, at 212-13.
- <sup>67</sup> MANAGEMENT EDUCATION AND DEVELOPMENT: DRIFT OR THRUST INTO THE 21<sup>ST</sup> CENTURY? (hereinafter, “Porter & McKibbin report”).
- <sup>68</sup> *Id.* at xiii.
- <sup>69</sup> *Id.* at 48 (emphasis in original).
- <sup>70</sup> *Id.*
- <sup>71</sup> *Id.* at 66.
- <sup>72</sup> *Id.*
- <sup>73</sup> *Id.* at 85.
- <sup>74</sup> *Id.* at 80-82.
- <sup>75</sup> *Id.* at 80 (emphasis in original).
- <sup>76</sup> Lyman W. Porter, *A Decade of Change in the Business School: From Complacency to Tomorrow*, 13 (3) SELECTIONS 1.
- <sup>77</sup> *See* Hill, Levin, and Samuels, *supra* note 17, at 5.
- <sup>78</sup> John Phillip Reid, *Law and History*, 27 LOY. L.A. L. REV. 193, 194-95 (1993).
- <sup>79</sup> *See id.* at 194.
- <sup>80</sup> GORDON, *supra* note 7, at 206.
- <sup>81</sup> *See, e.g.*, Mark A. Buchanan, *The Legal Environment Requirement: How Is It Being Met?*, 21 AM. BUS. L.J. 237 (1983).
- <sup>82</sup> *See, e.g.*, Klayman & Nesser, *supra* note 9.

- <sup>83</sup> Moore & Gillen, *supra* note 9.
- <sup>84</sup> *Id.* at 360.
- <sup>85</sup> *Id.* at 362.
- <sup>86</sup> *Id.* at 369.
- <sup>87</sup> *Id.* at 385-87.
- <sup>88</sup> *Id.* at 386.
- <sup>89</sup> See Massin, *supra* note 9.
- <sup>90</sup> *Id.* at 88.
- <sup>91</sup> *Id.*
- <sup>92</sup> See *supra* notes 63-64 and accompanying text.
- <sup>93</sup> See PIERSON, *supra* note 29, at 212.
- <sup>94</sup> See *id.*
- <sup>95</sup> For an excellent analysis of the issue, see “Phase I Final Report: Academy of legal Studies in Business – Task Force on General Education” available at <http://www2.smeal.psu.edu/courses/bagby/GenEdPh1.html> (last visited May 25, 2002).
- <sup>96</sup> Only one textbook on my bookshelf orients a portion of content to this type of an approach. See BRUCE D. FISHER & MICHAEL J. PHILLIPS, *THE LEGAL, ETHICAL, AND REGULATORY ENVIRONMENT OF BUSINESS* (6<sup>th</sup>. ed. 1998) (with sample modules entitled: “Law Affecting the Business Personnel Department,” “Law Affecting the Business’s Financing,” and “Law Affecting the Marketing Department”).
- <sup>97</sup> See materials at < <http://www.alsb.org/marketing.html> > for more information on the Marketing Law section.
- <sup>98</sup> GORDON, *supra* note 28, at 205.
- <sup>99</sup> PIERSON, *supra* note 29, at 213.
- <sup>100</sup> Louis O. Bergh, *The Teaching of Business Law*, 6 J. LEGAL EDUC. 85, 90 (1953).
- <sup>101</sup> *Id.* at 91.
- <sup>102</sup> AAHE BULL 3 (Mar. 1987).
- <sup>103</sup> See, Gerald F. Hess, *Seven Principles for Good Practice in Legal Education: History and Overview*, 49 J. LEGAL EDUC. 367 (1999); Susan B. Apel, *Principle 1: Good Practice Encourages Student-Faculty Contact*, 49 J. LEGAL EDUC. 371 (1999); David Dominguez, *Principle 2: Good Practice Encourages Cooperation Among Students*, 49 J. LEGAL EDUC. 386 (1999); Gerald F. Hess, *Principle 3: Good Practice Encourages Active Learning*, 49 J. LEGAL EDUC. 401 (1999); Terri LeClercq, *Principle 4: Good Practice Gives Prompt Feedback*, 49 J. LEGAL EDUC. 418 (1999); R. Lawrence Dessem, *Principle 5: Good Practice Emphasizes Time on Task*, 49 J. LEGAL EDUC. 430 (1999); Okianer Christian Dark, *Principle 6: Good Practice Communicates High Expectations*, 49 J. LEGAL EDUC. 441 (1999); and Paula Lustbader, *Principle 7: Good Practice Respects Diverse Talents and Ways of Learning*, 49 J. LEGAL EDUC. 448 (1999).
- <sup>104</sup> See, e.g., Paul Lyons, *Changes in Organizations, Work, and Careers: Implications for Faculty in Colleges of Business*, 19 J. LEGAL STUD. EDUC. 1 (2001).
- <sup>105</sup> See, e.g., DIANE HART, *AUTHENTIC ASSESSMENT: A HANDBOOK FOR EDUCATORS* 1 (1994).
- <sup>106</sup> KEMPIN, *supra* note 21, at 26.
- <sup>107</sup> Siedel, Hildebrandt, & Miller, *supra* note 21, at 263.
- <sup>108</sup> Art Wolfe, *Special Issue Editorial*, 15 (1) AM. BUS. L.J. XVIII (1977).
- <sup>109</sup> Allison, *supra* note 8, at 239.