

AN ADMINISTRATOR'S VIEW OF BUSINESS LAW TEACHERS

JACK D. HEYSINGER

Last January, after procrastinating for a number of years, I sent my membership dues to the American Business Law Association and, in immediate reply, "Zealous" William Zelermyer sent an invitation to appear on this program. I was so bemused by the fact that I was having to pay \$5 for an invitation to speak that I inadvertently answered "yes" without realizing what I was letting myself in for. Since the date for the address was months away, I did not let the matter concern me too much until after the hustle and bustle of the academic year had subsided. When I reviewed what I had committed myself to, I realized, first, that I am probably the poorest administrator to be speaking on this topic since, as many of you know, Leonard Axe, the only Dean under whom I have served, was a business law professor himself and, second, that as a Dean-business law teacher, my views will not necessarily correspond with those of other administrators. However, I am happy to discuss the topic with you.

In the fall of 1955, after a number of years of doing administrative work and teaching business law, I came to the decision that I wanted to get away from colleges of business and do additional work in law, preparatory to moving into a law school. I had become quite discouraged about the undergraduate schools of business and was questioning the reason for their existence. Further, I was somewhat discouraged by the disadvantages of teaching business law. I applied for and was granted a sabbatical leave during the 1956-1957 year to study at the University of Michigan Law School. While at Michigan, I was fortunate in receiving a number of offers from law schools and was at the point of accepting one of them when an invitation to be interviewed for my present position was issued. This, of course, forced me to reconsider my desires and caused a realignment of my personal goals. In the course of my meditations, I had occasion to write some of my impressions of schools of business and of the teaching of law in them. I did not attempt to publish any of the writings; I was merely reducing my thoughts to a concrete form to see if I could justify not only the existence of undergraduate colleges of business but of business law courses per se. As you can see, this act of reflection restored my faith on both counts and resulted in acceptance of the position I now hold. A year ago, when the *American Business Law Association Bulletin*, Vol. 3, No. 1 (May, 1958), entitled "A Symposium on the Place of Business Law in Higher Education," reached my desk, I read the

articles therein with a good deal of satisfaction and, I must admit, some chagrin. There, in much more acceptable language than my own, could be found many of the thoughts I had expressed in writing several years before. From the articles, I could not help but conclude that, although most of us differ in the details of our thinking about business law and business law teachers, we unanimously agree in viewing business law and the business law teacher as having a valid place in higher education. And, after two years as a Dean, which followed two years as an Acting Dean, I cannot help but have some impressions of what Deans think of business law and the business law teacher. Therefore, I would like to pass these thoughts along and trust that you will accept them in the spirit in which they are made and will not take undue umbrage. Further, I would like to recommend that you read the articles to which I have referred, or if you have read them, but not recently, that you reread them. It is of interest that, although various philosophies were expressed therein and various suggestions made for the type of business law courses we should have, the articles were unanimous in recommending changes in, or revitalization of, our business law courses.

In his request for me to speak on this topic, Professor Zelermyer stated the following questions. "What does the Dean think of business law teachers? Is the role of the business law teacher appreciated? How can we achieve a status of importance? How can we best serve the business school? How can we improve our lot?" He stated that he could add more questions, but that this should give me an idea as to what is going through the minds of business law teachers.

Gentlemen, my basic answer is that the role of the business law teacher is neither understood nor appreciated. Although not in as difficult a position as some classes of business teachers, the professor of business law is relatively underpaid and under-ranked. I would like to spend a few moments analyzing these opinions and suggesting reasons for this relatively poor status.

It has been stated that one of the reasons the business law teacher is not appreciated is that he teaches a service course which, as such, is somewhat apart from the main functional areas of business. These speakers, while admitting that the business law teacher serves an important peripheral function, do not believe that he is in the main arena of business education. These same people state that the law teacher's preparation in law alone, as opposed to preparation in law and business, compounds the difference. While I agree that these factors provide a partial answer to the lack of status of the business law teacher, I would like to suggest an additional factor which may or may not be agreed to by other deans. The majority of business school faculties (and faculties in general) have little or no knowledge of law as we see it. To these people, law consists of mechanically applied rules which, while important to the actual practice of business, do not contribute to the development of the neophyte businessman as do other fields of learning. Because of this lack of understanding, law, as subject matter, is regarded as having a lesser importance in the training of the student than the functional areas of marketing, production, finance and human relations, or the "important" service areas of accounting, economics and statistics.

Law, and particularly business law, is not viewed in its most majestic role, that of a structure assuring justice to individuals and organized society. Law is not seen as a live, developing system assuring society and individuals of continuity

in behavioral policy with provision for orderly change. Law is not seen as a philosophy, as a way of life, as a foundation for business and society. Rather, law is merely a set of normative rules for business behavior, the answer to which, in any given instance, can be turned out by a lawyer properly cranking the handle of a pump. And, that the business law course truly can be intellectually challenging, or that the study of law develops in the student the analytical abilities of assembling, ordering, and weighing facts, and reaching valid decisions (a process which, by the way, has only recently been stated as one of the goals of business training), is not recognized by the vast majority of deans and business faculty members.

It is this factor which should be added to those first mentioned as one of the reasons for the low status of the business law teacher. Our academic colleagues have no training in, and little appreciation of, any system of law, let alone our common law system. Collegiate training, in general, has omitted one of the important fields of general education. It is no wonder that we are thought to be outside the main stream!

Other factors which add to the problem of the business law teacher have been identified. Complication exists by reason of the attitude of law school faculties and practicing attorneys toward the teaching of business law. The fact that liberal arts colleges have tended to underplay and deride the importance of teaching the subject matter of business itself complicates our problem. Further, since lawyers are numerous, and since deans cannot judge the preparation and ability of the business law teacher, the deans tend to hire part-time persons, or the first available full-time man, and thereafter forget the matter. Still further, the traditional image of the Ph.D. as the proper academic degree for teaching complicates our problem in that we have not been able to create in the minds of other faculty members a recognition of equivalent training in the L.L.B., J.D., or even the L.L.M. I do not need to dwell upon these factors because they have been dealt with extensively elsewhere.

I would, however, like to raise an additional point, one about which I hesitate to speak, but one which must be faced by this Association. I believe there is another strong reason for our relatively low status, and it rests heavily upon each and every one of us. Although I recognize that the membership of the American Business Law Association, as evidenced by those in attendance today, is made up of the most outstanding teachers of business law, I do not believe that the caliber of business law teachers in general is very high. Let me explain this remark. Again, generalizations are dangerous. I would not for the moment detract from the accomplishments of the many fine members we have within our ranks, many of whom are in this room at the moment. Proof of their scholarly abilities can be found in the many texts and publications filling the libraries of the country and in the enrollment in their classes of students from all walks of the university life. But, I sometimes wonder if all these other factors about which I have spoken are but rationalizations for our low status and that the real reason for this status is that we have not been successful in bringing into our ranks a greater proportion of properly trained, properly motivated people of high academic and intellectual ability. We have spoken many times of the part-time law teacher, of the many teachers of business law who have not the slightest iota of training in law. But, it is not to these that I speak! If we were to analyze the academic ability and

preparation of our trained business law teachers, I am certain that each of us would be forced to agree that the caliber of our teaching group should be raised. And, as a result of this deficiency, I believe that the business law courses themselves, although interesting to students by reason of the subject matter, have not been courses of high caliber. The standards have been woefully weak and the treatment of the subject matter tragically unsuitable for the university level.

Gentlemen, these are strong words—but words I believe each of us knows to be true. And I can assure you it takes courage to stand here and give you my opinion.

Having given you the blackest possible picture, I would like to turn to those things which I think we might do to improve our status. And, gentlemen, that we must improve or disappear as an important professional group is evidenced by the present clamor in collegiate schools of business concerning academic programs. From this clamor have come many recommendations to remove business law from the curriculum or to reduce its relative credit. As you know, at the annual meeting of the American Association of Collegiate Schools of Business at Gatlinburg, Tennessee, on May 2, 1958, Professor R. A. Gordon, Director of the Ford Foundation Study of Business Education, and Professor of Economics at the University of California at Berkeley, recommended, and I quote, "that the traditional course in business law could be dropped." I had the opportunity of talking briefly with Mr. Gordon following his address, but cannot elaborate too much on his recommendation. I think it fair to say that Mr. Gordon has an open mind for the creation of new types of law courses for the curricula of business schools. And, to somewhat reassure you, I believe *most* deans, at this moment, disagree with Mr. Gordon. These deans do not want business law dropped from the business curriculum. But, that Professor Gordon reflects the attitude of many faculty members in business schools across the country is without doubt. And that his recommendation reflects a growing trend is certain. While I believe that many of the criticisms, which have resulted in these attitudes and recommendations, are based on misconceptions of law and the function of law in our business society, yet I do believe that our critics are correct in concluding that changes must take place. *We have not done our best.* As a dean, I am convinced that by reason of academic training and by reason of the subject matter of law, the business law teacher should, can and will occupy a position second to none in undergraduate colleges. But before we can achieve this pinnacle, we must take the initiative and meet the challenge of our time.

For your consideration, I would like to suggest certain specific changes. First, it is my opinion that we must raise the standards of our profession in terms of the caliber of individuals brought into the profession. And on this point you people can, and should, assist the administrators. It seems to me that the American Business Law Association is the best single body to state the minimum preparation and ability of a person teaching business law in colleges of business. These standards should be as objective and specific as possible and, once stated, should be sent to college administrators across the country and presented to the officers of the American Association of Collegiate Schools of Business. And it will not be sufficient that the recommendations be sent to these groups and then forgotten. We will have to continue to

repeat the recommendations. I do not minimize the difficulty of establishing objective standards. But it is a job that can be done and one which, in my opinion, must be done. If the American Business Law Association will set such standards, then, although we may never achieve the ideal satisfaction of those norms, we cannot help but do good.

Second, it is my opinion that each member of the American Business Law Association and each teacher of business law across the country must review constantly the substance and standards of his offerings. There is no doubt in my mind that within this room there are teachers who give courses of the highest possible collegiate level, but, gentlemen, I do not believe that the courses of these individuals represent the average.

This problem will be partially offset by attracting additional high caliber teachers into our ranks. But other efforts must be made. Measurement of content and level is difficult, as are all matters of opinion and judgment. Further, matters of academic freedom are involved. I am not certain that a workable plan can be formulated, but perhaps this organization could offer its services to the American Association of Collegiate Schools of Business in recommending adequate standards. Or perhaps some sort of accrediting device could be arranged. At any rate, the Association might well discuss the various possibilities.

Third, I believe it is imperative that every business law teacher in the country keep up to date on, and contribute to, the thinking about collegiate training for business, and modify his courses in line therewith. It is my personal impression that business law teachers do not understand sufficiently the goals and objectives of collegiate schools of business and, as a consequence, course substance and methodology is not kept in tune with the times. I might add that this criticism can be directed at other groups of business teachers such as accountants, finance and marketing teachers, economists, etc., but the fact that these groups might not understand the objectives of schools of business does not excuse us for our lack of understanding.

In the address to which I have referred, Professor R. A. Gordon listed and explained four common elements governing the kind of business education that should be offered by colleges or universities. Briefly he outlined the elements which are common to the practice of business and which need to be emphasized in devising a business curriculum. First, since a business is an organization, the practice of business involves an understanding of and skill in dealing with organizational and administrative relationships. Second, business firms operate within a non-market environment. This environment includes all those influences acting on the firm that do not involve buying and selling relationships, such as the influence of government, growth and fluctuation of income, technological and scientific development, the general climate of public opinion, and others. The third element is that business firms operate in a market environment and engage in buying and selling activities. Therefore, the business student must have some knowledge of the functioning of the markets within which a firm operates. And, fourth, business students must be concerned with the creation of utilities for sale through the use of men, money and materials. Thus, the businessman is concerned with the manage-

ment of economic resources in accordance with economic criteria. These are the four areas of understanding each business student must grasp.

In addition, Professor Gordon suggests, as have others, that the business student needs to develop skills as well as acquire knowledge. Not only must he have the information for making valid business judgments, but he must develop the skill of decision-making.

Professor Gordon then suggests in detail the type of professional program that will satisfy the elements of his conceptual scheme. He recognizes the need for general education, including historical perspective, the social sciences, the humanities, and the physical sciences. He enumerates those qualities which industrial companies give the greatest weight in business practice. These include motivation, personal drive, skill in inter-personal relationships, moral character, superior mental ability, breadth, imagination, judgment, willingness to accept responsibility and to take risk, ability to communicate, and command of general administrative skills. And, then, gentlemen, Professor Gordon says, "The core should be topped with an integrated case course in business policy, and an intellectually challenging course on the legal, political and social study of business. The function of the latter might be served by various history courses. *I think that the traditional course in business law could be dropped.*" Gentlemen, I wish I had time to quote the entire talk by Professor Gordon. I am sure many of you have read it. But, the paragraph which I have just quoted to you suggests at least two possibilities. First, Professor Gordon may not fully understand the potentialities of a law course in satisfying the very thing he is recommending, and, second, in stating that we should have an intellectually challenging course on the legal, political and social study of business, he has specifically outlined a course of action for us to follow.

Gentlemen, it has been a source of curiosity to me that while we as business law teachers commonly state the objectives of our course in extremely broad terms, such as acquainting students with our legal system, inculcating concepts of justice, developing mental power and capacity for sound decisions, learning self-discipline in the use of business, and teaching the student to reach his maximum potential for service to society, the fact is demonstrated by a glance at our texts and course syllabi that we do *not* actually fulfill these goals. Apparently, it is our opinion that students somehow magically absorb these matters, for very little or no direction is actually given by the teacher. We spend our time in the classroom on the study of specific areas and specific applications of law, with relatively few hours' study of our legal system in operation or of law as the basis of organized society. I might borrow economic terms by way of analogy to emphasize my point. As you know, for teaching purposes the economists generally classify economics into two broad areas. One classification is macro-economics, or the aggregate approach, and the other area is termed micro-economics, or the economics of the firm. Economics departments across the country vary in the weight they give each approach, but any good economics department teaches some of both. By way of analogy, gentlemen, my point is that in the business law field we have stated our objectives in terms of both "macro-" and "micro-law," but we have taught only "micro-law."

The majority of texts have a brief section on "law in general" which is devoted mainly to terminology, a quick review of the court system and trial procedure and, at best, a few brief paragraphs on law and society. The remainder of the course is devoted to the main specific fields of commercial law. It is my suggestion, gentlemen, that if we are to survive as a profession, and if we are to further the objectives of collegiate training for business, our academic preparation and our treatment of the subject matter of law in the classroom must include more of this thing I have termed "the macro-treatment of law."

In my opinion, if we are to meet the challenge presented by Professor Gordon and others and if the trend to reduce the relative required credit in business law or to eliminate it entirely continues, we must move into the area of the study of law in its over-all sense as opposed only to surveys of the specific areas of commercial law. And I do not suggest this only as a last resort—a giving in to the pressure. I feel this is something we should have been doing from the beginning. We must truly develop a course in which our students study law as an instrument for societal development and organization. The students must study the theories of the sources of criteria of justice, and the source of law. We must picture for them the common law system as a framework in which the business and industrial community operates. In short, we must give the students a true overall picture of law as a system. Then, gentlemen, having given them the "macro-viewpoint," we can, through elective courses, provide superb training for business by rigorous courses in "micro-law" or, in our own terms, in the fundamental areas of commercial law.

To summarize my third point, I feel we must understand and contribute to the thinking about the objectives of business training. And, by creating such courses, I believe we will show an appreciation of these objectives. I realize we will meet resistance from faculty groups such as accountants, who will not want to give up the traditional courses, but if we demonstrate the need, such resistance will not be insurmountable. Before going on to my fourth suggestion, I would like to remind you of Professor Jesse S. Raphael's warning in the *Symposium* to which I have referred. He warns that at present we are not equipped to make such changes. We will have to re-train ourselves and develop new habits and techniques. The suggested course of action is not an easy one!

Fourth, having made these curricular changes, we must remember my early statement that the business faculty, and faculties in general, have little or no understanding of the importance of law to the intellectual development of our students. And herein, gentlemen, lies a very difficult task. The American Business Law Association as a group and business law teachers individually must take it upon themselves to educate these people. Each one of you has had the experience of meeting with curriculum committees and self-study groups and knows the resistance which your ideas will encounter. I need only refer you to Professor Lavine's article in the *Symposium* entitled "Business Law and Public Relations" for the task you have ahead.

Fifth, there are other efforts we can make to achieve the status and the role which is rightfully ours. Again, other people have commented upon these, but it would not be amiss to remind you that the business law teacher, by rea-

son of his academic and professional training, is in a unique position to contribute to the creation of new knowledge in the area of business, economics and the social sciences. As pointed out, many of our top men have produced delightful and searching publications. Please remember that an administrative official who is charged with the responsibility of reviewing promotions and salary increases looks not only at the teaching but at the research efforts and the service of his faculty members. Each administrator jealously lists the publications of the faculty in an attempt to determine whether his institution is measuring up to his image of what is a good collegiate school of business. The business law teacher is in a unique position to make himself invaluable to his college by production of sound, valid publications. Also, along these lines, the business law teacher is in an excellent position to do a reasonable amount of consulting with businessmen in the area. The degree to which consultation is allowed varies from school to school, but I can assure you that any administrative official who receives a letter, a note, or a comment from a businessman that such and such a teacher has been exceedingly helpful to him and must be a valuable member of the faculty cannot help but remember this when the times comes to review salaries and promotions.

In summary, gentlemen, I can only say that I may have been overly brutal this afternoon. The danger of doing what I have done today is quite obvious. By emphasizing the less favorable aspects, the good work of the business law teacher seems to be overlooked. One gains the impression that all is bad and nothing good. Far be this from the truth! I recognize, and I believe other deans recognize, that the business law teacher does play a valuable role, but my point of emphasis is that our own failures, largely, have kept us from the pinnacle of success. As I told you, I personally became sufficiently discouraged at one point that I decided to leave the teaching of business law and even the field of business itself. But after an opportunity to reflect upon this for an academic year, I returned to teaching business law and to colleges of business. And I am still teaching business law. So, gentlemen, if you were to believe that I feel our position is bad or hopeless, that belief would be erroneous. If we will set a minimum level of teacher preparation, if we will guard the standards of our offerings, if we will better appreciate and understand the objectives of the collegiate schools of business, if we will devise our courses in terms of broad aspects of law and our legal system as opposed to only specialized fields of commercial law, if we will continually strive to do high-level research and business consulting, there is no reason to believe that we cannot be among the most respected teachers in our academic institutions.