Introduction

Of the three major areas in which small businesses experience serious difficulties, the law area is the most neglected. While scholars, consultants and managers constantly attend to management and financial problems, there is reticence to become involved in legal problems. Although exploration of the complexities and pitfalls of government regulation fascinates many, the day to day legal environment of small business is taken for granted as an unavoidable evil.

The major areas of law that have impact on small business are easy to identify by reference to statutes and cases, yet some of the common areas are overlooked. The low impacts on small business in such areas as antitrust, patent, securities and exchange, labor, product safety, environmental protection, and minimum wage and job safety, (commonly all lumped together in studies of ordinary criminal, contract, sales, negotiable
instruments, torts, secured transactions, business organizations, property and bankruptcy laws have their own continuing, persistent impact. These laws are not usually considered in government regulation studies, but they have special effects on small businesses.

The purpose of this paper is to develop a sense for the nature of the day to day legal environment of small businesses, the legal services available to small businesses, the legal costs of doing business and the typical small business manager's reaction to his or her common legal problems. With an awareness of the impact of the legal environment of day to day law as a basis, policy suggestions will be made.

A survey has been conducted in New England that reveals something about the nature of these issues and questions. Along with some ordinary case law, its results point the way to feasible policies for promoting the interests of small New England businesses in a legal environment context. The recorded court cases reveal the many kinds of legal problems with which small businesses contend.

Because of the magnitude and complexity of the day to day operating legal environment, we have chosen to focus on the effects of strict liability in tort and the "established business" concept in requirements contracts. It is hoped that by showing the effects of these two narrow areas of tort and contract law, that interest will be generated in further research.
of other common areas of law having serious impact upon small business.

Issues And Questions

Inadequate legal representation and high legal costs have two consequences for small businesses. One is financial and affects the ability of a small business to remain viable financially. The other is environmental and affects the ability of a small business to promote a favorable legal environment within which to function successfully. Combined, the two have a single effect: to impose a competitive disadvantage on many small businesses. A careful study is necessary to determine exactly what the economic effects of small business legal problems are. Another question concerns the nature of legal services available to small businesses. Given the nature of small business legal problems, how do small businesses react to them? How can small businesses better contend with legal problems? How can the cost of legal problems be reduced?

How Small Business Deals With Its Legal Problems: Insurance

One of the major concerns for the small business manager is strict liability in tort, or products liability as it is more widely known. Strict liability, simply put, means that the manufacturer of a product is liable, without fault, for any harm incurred through the use of that product. When the product is placed on the market, the manufacturer assumes responsibility for any defect.
The problem that strict liability raises for the small business manager is one of economics. Since he/she is strictly liable for each product, the business must have the means set aside in order to respond to this legal duty. For most business managers, this means higher insurance premiums. In 1978 manufacturers and retailers paid an estimated $2.75 billion for product liability insurance in the U.S.\footnote{Business Week, No. 2572, (February, 1979), p. 72.}

A higher percentage of gross profits allocated to insurance can lead business managers to raise prices and cut back costs. The major area which experts predicted would be cut back is research and development. An ancillary reason for cutback in this area is that many courts view improvements in products as admissions of guilt that the unimproved products were, in fact, defective.

**Pilot Survey Findings**

In order to evaluate the impact on small business, a pilot questionnaire was sent to four hundred small business managers in the Western Massachusetts area. The first section of the questionnaire probed philosophical attitudes; it contained statements - pro and con - concerning the concept of strict liability. Each respondent indicated his position on a five-point spectrum reading from "strongly disagree" to "strongly agree."
<table>
<thead>
<tr>
<th></th>
<th>Strongly Disagree</th>
<th>Disagree</th>
<th>No Opinion</th>
<th>Agree</th>
<th>Strongly Agree</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.</td>
<td>Strict liability results in injustice for the injured consumer</td>
<td>4%</td>
<td>52%</td>
<td>8%</td>
<td>30%</td>
</tr>
<tr>
<td>8.</td>
<td>Strict liability places an unfair burden on business</td>
<td>4%</td>
<td>14%</td>
<td>6%</td>
<td>48%</td>
</tr>
<tr>
<td>9.</td>
<td>Strict liability makes no noticeable change in the situation for business or consumer</td>
<td>24%</td>
<td>46%</td>
<td>14%</td>
<td>12%</td>
</tr>
<tr>
<td>10.</td>
<td>Strict liability has resulted in unnecessary lawsuits</td>
<td>4%</td>
<td>2%</td>
<td>16%</td>
<td>41%</td>
</tr>
<tr>
<td>11.</td>
<td>Strict liability has improved the safety of products</td>
<td>4%</td>
<td>30%</td>
<td>14%</td>
<td>48%</td>
</tr>
</tbody>
</table>
12. The insurance industry has used strict liability as an excuse for increases in rates.

13. Research and development has been curtailed due to strict liability.

14. Strict liability has enabled foreign manufacturers to gain a greater percentage of the market.

15. Strict liability has been the primary reason for the hiring of in-house counsel by the small manufacturer.

<table>
<thead>
<tr>
<th></th>
<th>2%</th>
<th>8%</th>
<th>20%</th>
<th>47%</th>
<th>23%</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4%</td>
<td>36%</td>
<td>30%</td>
<td>26%</td>
<td>4%</td>
</tr>
<tr>
<td></td>
<td>2%</td>
<td>14%</td>
<td>41%</td>
<td>35%</td>
<td>8%</td>
</tr>
<tr>
<td></td>
<td>4%</td>
<td>18%</td>
<td>38%</td>
<td>38%</td>
<td>-2%</td>
</tr>
</tbody>
</table>
16. Consumers should be made aware of the higher cost passed on to them since the manufacturer must protect himself against strict liability.

The results of this section of the questionnaire show that over half of those surveyed disagree with the proposition that strict liability results in justice for the injured consumer. Over 75 percent felt strict liability places an unfair burden on business, that there are unnecessary lawsuits, and 40% felt that the primary reason for hiring in-house counsel is due to strict liability. Thirty percent agreed that research has had to be curtailed.

Fifty-two percent, however, felt that products had been improved because of this law, and ninety-two percent felt that consumers should be made aware of the reason for increased prices they are paying for this legal protection.

The second portion of the questionnaire was designed to discover how the respondent had been personally affected by strict liability in tort. The results of this section show clearly that while small business managers feel that research in
general is being cut back, they themselves have not done so. Eighty-three percent reported no increase in consumer complaints in the past two years when strict liability awards have been so publicized.
Chart II
SMALL BUSINESS MANAGEMENT REACTION TO STRICT LIABILITY

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Has your company ever been accused of harm to property under strict liability?</td>
<td>4%</td>
<td>96%</td>
</tr>
<tr>
<td>Has your company ever been accused of harm to person under strict liability?</td>
<td>10%</td>
<td>90%</td>
</tr>
<tr>
<td>If yes, to either question, what percentage of the time was a lawsuit commenced?</td>
<td>0-25%</td>
<td>25-50%</td>
</tr>
<tr>
<td>What percentage of the lawsuits commenced against you have been resolved by settlement?</td>
<td>0-25%</td>
<td>25-50%</td>
</tr>
<tr>
<td>Have the number of consumer complaints increased in the past two years?</td>
<td>17%</td>
<td>83%</td>
</tr>
<tr>
<td>If yes, by what approximate percentage?</td>
<td>0-25%</td>
<td>25-50%</td>
</tr>
<tr>
<td>Has the cost of your insurance coverage increased due to strict liability?</td>
<td>90%</td>
<td>10%</td>
</tr>
<tr>
<td>If yes, by what approximate percentage?</td>
<td>0-25%</td>
<td>25-50%</td>
</tr>
<tr>
<td>Has any insurance company refused to underwrite coverage for your company due to strict liability?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Have you ever considered self insurance?</td>
<td>35%</td>
<td>65%</td>
</tr>
<tr>
<td>If you decided to self insure, are you happy with the results?</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>Have you cut back on research due to products liability</td>
<td>16%</td>
<td>84%</td>
</tr>
</tbody>
</table>
13. If yes, by what approximate percentage?

<table>
<thead>
<tr>
<th>Percentage</th>
<th>0-25%</th>
<th>25-50%</th>
<th>50-75%</th>
<th>75-100%</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>20%</td>
<td>60%</td>
<td>20%</td>
<td></td>
</tr>
</tbody>
</table>

14. Do you feel that you have lost a greater percentage of the market share to foreign manufacturers due to strict liability?

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>19%</td>
<td>81%</td>
</tr>
</tbody>
</table>

15. If yes, by what approximate percentage?

<table>
<thead>
<tr>
<th>Percentage</th>
<th>0-25%</th>
<th>25-50%</th>
<th>50-75%</th>
<th>75-100%</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>43%</td>
<td>43%</td>
<td>14%</td>
<td></td>
</tr>
</tbody>
</table>

16. Have you considered acquiring in-house counsel due to strict liability?

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>7%</td>
<td>93%</td>
</tr>
</tbody>
</table>

**Insurance: A Key Concern**

The major concern expressed is the high cost of insurance. Eighty-seven percent of the respondents reported that they had never been refused insurance coverage, but ninety percent reported an increase in insurance rates due to strict liability. Of these ninety percent, thirty-one percent reported a rise of up to 25%, forty percent reported a rise of 50%, nine percent reported a rise of up to 75%, and twenty percent reported a rise of up to 100% (with written comments added claiming rate hikes as high as 1375%). Thirty-five percent have considered self-insurance, but only fourteen percent of the thirty-five have implemented it.

This high cost of insurance is the primary problem that small businesses in Western Massachusetts claim they are facing in conjunction with strict liability in tort. There was space left at the bottom of the questionnaire for comments, and these, by and large, reflected a general bitterness at the unfairness of the
Some respondents blamed the insurance industry; others blamed the law itself.

"Insurance companies rip off small business - the rates are too high, and they don't tell us of all the things that can be taken off our insurance - example, subcontracting costs."

"The nature of our business does not give us much direct exposure to products liability claims; however - our insurance rates have still increased."

"We do less than 100,000 a year gross, yet we are continually asked to carry 1 million in coverage - I think this is out of line and I can't do it. Something is very wrong."

"In my opinion the problem is not the concept of strict liability itself but the outrageous court awards granted coupled with the serious risk to business created by the excessive period of time that the business remains liable for its products in use."

"As long as we are committed to a free capitalistic society certain abuses will result but in the end the consumer will have to pay for any protection."

"It goes against the grain for manufacturers to accept punitive liability damages under strict liability when they have not been negligent."

While the small business managers surveyed have not experienced increased consumer complaints because of strict li-
ability, both they and the insurance industry are afraid of its possible financial consequences. Jury awards in product liability cases have been large, so there is a legitimate basis for this fear and for the general increase in rates.

However, in addition to insurance for strict liability, there are other methods for contending with this legal problem, about which small business managers are generally unaware.

Contracts, The Established Business Rule And The Market

For small businesses there are serious market impediments in some of the substantive areas of law that generally go unnoticed by scholars exploring other areas of government regulation. For example, open ended requirement contracts are a very popular form of contract used by businesses that want to insure a source of supply while shifting to the seller the risk as to quantity ultimately exchanged. Rather than the buyer overpurchasing or underpurchasing, the seller assumes the risk of having enough of a supply to meet the buyer's requirements for a given period.

Requirement contracts are used in most types of businesses: agriculture, construction, finance, manufacturing, mining, retail, service, transportation and wholesale. A small business manager in any one of these businesses will be functioning well if the requirement contract can be used to purchase raw materials, supplies, and fuel. The contract states the purchase price for the item but leaves open ended the amount to be purchased. As needs arise, the manager calls for delivery by the supplier at the agreed price. The call is repeated over the life
of the contract. Upon its expiration, the manager has received
the exact amount of business's requirements at an unvarying
price: the manager has successfully immunized the business
against shortages, overpurchases and fluctuations in the market
price.

Presently most jurisdictions enforce such contracts if the
buyer has an established business so that it is certain that
there will be some requirements during the contract period and so
that, based on past experience, approximate requirements can be
known in advance. The law works a considerable hardship on a new
enterprise. Since it is not an established business it cannot
shift to the seller the risk of quantity to be exchanged. Thus
new entrants have a serious business risk that established firms
can avoid. Freedom of entry is restricted because of the
comparative disadvantage of the small firm just beginning in a
business.

The Established Business Rule

Not so very long ago there were hundreds of breweries
throughout the United States. Most of the larger cities in New
England had breweries that produced the "local brand." Each local
beer had its loyal following. It is a different situation today.
With the exception of only a few large regional brewers, the
market is occupied by national brands. As, in many areas of
manufacture, small businesses are not likely to make a safe entry
into this lucrative market dominated by national brand
manufacturers.
The big breweries selling beer in New England, regardless of where the beer was made, have a more favorable legal environment for doing business than has anyone who would like to enter this market by starting up a local brewery. While the big brewers can enter into open ended requirement contracts for their raw materials such as grains, hops, malts and yeast as well as for support supplies such as fuel oil, the new entrant must contract for the purchase of specific quantities of these things. While the established brewer can shift the risk of the exact amount required to be purchased during the time covered by the contract to the supplier, the new entrant must assume the risk of purchasing too much or too little of the things necessary to operation of the business. The established business will have all that it requires at the contract price. The new entrant will have purchased too much; or, having purchased too little, it will be forced back into the market and into other and perhaps more costly contracts to secure its necessities. Either way this discriminatory legal environment places cost control firmly in the hands of the established business and withholds it from the new entrants.\(^\text{111}\)

With all the other comparative advantages including economies of scale possessed by big businesses, any addition to those advantages by law hardly seems necessary. But who is to notice

\(^{111}\)Royal Brewing Co. v. Uncle Sam Oil., 205 Mo. App., 616, 266 S. W. 656 (1920)
among the legal scholars and policy makers, if their attention is riveted on the scene of national government regulation of business rather than on the more mundane world of contract law? It is a fact that before a small business can have the advantages of an open-ended requirements contract, it must establish itself for a time long enough that its requirements can be reasonably known or estimated. Then a court will enforce its suppliers' promises to provide all that is needed at a price agreed upon in advance. But it may take up to five years to qualify. By that time 60 to 80 percent of them probably have failed.

Although a manufacturing example of the discriminatory affect of the established business doctrine applied to requirements contracts has been given, there are examples from all business areas. Cases concerning wholesalers are most plentiful. They often attempt to control stock on hand and the price paid to manufacturers by resorting to requirements agreements. So do retailers. Agriculture cases exist wherein farmers have attempted to obtain adequate supplies of seed, fuel and fertilizer. Fuel supplies are a basic concern in the transportation industry. Construction materials and supplies are similarly subject to use of the requirement contract device.

In franchise contracts for example, scholars have made studies that indirectly demonstrate how traditional contract law may work a hardship on small businesses. But, scholars have not noticed or studied the deterrent effect upon entry into the
market of the established business imperative of the requirements contract concept.

Legal Costs

All small businesses at some time experience legal costs. Before exploring how severely these costs burden the successful operation of a small business, one should be reminded of their basic nature. There are direct costs and indirect costs. Direct costs are easily noticed and recognized. They include lawyers' fees, government fees for licenses, permits, charters, report filing and inspections, money judgments that must be paid when a litigated civil case is lost, fines in lost criminal cases and for late report filing, and other detected errors of procedure, and, finally, insurance costs incurred as a protection against liability.

Indirect costs are less likely to be recognized or identified as legal costs even though they may be substantial. Included are the costs of record-keeping necessary for compliance with the law, information collection and/or case preparation and all the increments of costs of procedures required in business and manufacturing operations necessary for compliance. Less obvious still, but often of greatest significance, is the law imposed cost of doing business caused by a competitive disadvantage most often impressed upon small businesses rather than upon well established larger businesses.

For now the more obvious common legal costs need attention. Legal services costs, liability in the form of civil judgments
and criminal fines, and liability insurance constitute the
greatest potential legal threat to the successful continuance of
a small business. Lawyers' fees often seem enormous to the small
entrepreneur. A recent survey showed that most people with legal
problems will not go to a lawyer. Sixty-two percent of those
surveyed attributed the reason to their belief that "most lawyers
charge more for their services than they are worth." (Falk,
1978). We expect that most managers of small businesses share
this opinion. Whether they also will not go to a lawyer will be
discussed later. With serious legal problems, the failure to
acquire the assistance of competent legal professionals can expose
the small business to serious risks. But, paying for the service
may present the same kind of danger and does not insure avoidance
of the legal problem's threat.

Chart III
COMMON LEGAL FEES RELEVANT
TO SMALL BUSINESS MANAGEMENT

<table>
<thead>
<tr>
<th>Service</th>
<th>Minimum Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incorporation (basic)</td>
<td>350.00*</td>
</tr>
<tr>
<td>Contracts</td>
<td>50.00 per hour</td>
</tr>
<tr>
<td>Consultations</td>
<td>50.00 per hour</td>
</tr>
<tr>
<td>Bankruptcy (simple)</td>
<td>275.00*</td>
</tr>
</tbody>
</table>

*Beyond the basic fees for minimum service, charges are at the
$50.00 per hour rate. (In large New England cities basic &
hourly fees tend to be greater)

Most of the small businesses that have suffered the crushing
experience of huge liability judgments and fines were, in fact,
represented by expensive able legal counsel. The recent record of liability judgments growing to enormous amounts of money is common knowledge. Part of the reason for the phenomenon rests on the availability to the consuming public, customers, suppliers, labor, competitors and the government of a legal practitioner’s market flooded with competent lawyers being churned out in increasing numbers by American law schools. The study of law is now very popular.

Compounding the liability problem for small businesses is the fact that these new, eager young lawyers are devising methods and prices for attracting clients from the dissatisfied among American consumers. The new methods are a result of an unheard of price competition among lawyers that has resulted from a successful assault on the barriers to price competition. One of those barriers was an ethical prohibition on advertising by lawyers. The professional bar associations can no longer enforce the prohibition because the Supreme Court of the United States has declared the law of the land to be that lawyers may advertise their services and fees.118

Growing litigation means increasing the cost of doing business. Greater numbers and sizes of judgments means increasing the cost of doing business. Insurance premiums for policies protecting against litigation and liability are inevitably going up and thereby also raising the cost of doing

business. The analogy between the poor or the mistrustful who will not use lawyers when they have legal troubles because of a belief that they charge more than they are worth and the many small business managers is not a bad one. But lawyers have responded to the poor, the mistrustful and the consumer with storefront practices and legal clinics. There has been no similar rush to the aid of their analogues in the business community—the marginally managed and financed small businesses that are the reluctant recipients of a great deal of attention by their better represented customers and by the government. They, too, are likely to do what others do—underinsure against their legal problems, or not insure at all in the face of expanding premiums.

Inadequate, ineffective or non-existent representation in legal matters for whatever reason can result in development of law that further seriously disadvantages small businesses. For example small businesses are, among all businesses, least able to bear the cost of strict product liability imposed upon manufacturers who are without fault but whose products nevertheless cause harm to consumers. Nor, in attempting to become established, can they bear the increased costs and risks of certain kinds of contracts that can be avoided by well established, larger firms, as noted previously.
Traditional Legal Services

Traditional legal services available to small business management have been limited to the downtown legal practitioner functioning alone or as part of a firm of lawyers. The cost to small business of this limited source of legal help has been great because of an absence of a fee-price competition caused by the omnipresent "suggested" fee schedules promulgated by the local bar associations for their members. In spite of the fact that such schedules are no longer allowed and the fact that lawyers may advertise their services and fees, the high rates maintained in the past persist. The large numbers of recent law graduates may glut an already overcrowded profession and drive fees down further. However, among these graduates is an awareness of the limited demand for legal services at present prices. The result is that only about twenty-five percent about ten percent make a lifetime career of it. Therefore larger numbers of law graduates are only slowly eroding present fee levels.

Traditional methods of practice also persist. New computerized research developments are still very costly and are available only to a few firms that can afford them. For the rest, scouring the dusty books for statutes and precedents continues founded on a cumbersome indexing system. Trial procedures have changed only a little. These too become a caution to haste and in practice are used more for their dilatory attributes than for expeditious resolution of problems. Clients of an established lawyer are themselves established. A long...
enduring connection is made between clients and lawyers. The same client continues to go to the same lawyer for all problems. The relationship is strengthened by the strong urging of lawyers that clients pay annual retainer fees to reserve their services as needed. This intimate lawyer-client relationship is a source of profit for the lawyer and a cost to the client. But the burden of cost does not fall only on the shoulders of one who pays the retainer. His opponent in a case finds a diminished market of legal services and a scarcity that may require him to pay a larger fee for adequate representation. For example, there was once an old Indiana lawyer who was on retainer by every railroad that passed through the state. Each year he received many retainer checks but never actually represented the railroads. Early in his career he successfully represented a plaintiff against a railroad in an Indiana court. Thereafter the retainers effectively deprived others of his services in railroad litigation cases for the remainder of his professional life. A small business manager with a contract dispute against such adversaries must find his legal aid from whom he can and must pay for enough legal talent to have a chance to defend his or her products and services.
Real Cost Unknown

Empirical studies of direct legal costs and ancillary costs of legal problems for small businesses have yet to be made. It is not known with what kinds of lawsuits small businesses become involved or which commonly result in adverse money judgments, injunctions, specific performance decrees, consent decrees and fines. Nor is it known how often financial settlements are made to avoid civil litigation, the equivalent of plea bargaining in criminal cases. One could hypothesize that small businesses that are tangled in legal matters experience legal costs that are a substantial part of the cost of their doing business.

Preventive Counseling

To avoid money judgments, fines and the litigation that precedes them, small businesses that can afford it seek preventive counseling. They spend a little in the hope of saving a lot. Lawyers themselves are constantly sensing frustration when confronted with well matured conflicts ready for litigation presented by clients who could have avoided such an extreme with a little timely preventive counseling. But, again, many clients will avoid the fees of preventive counseling in the hope that a serious and even more costly problem will not develop. Again, it is not known how much money or what percentage of small businesses regularly pay for preventive counseling. Nor is it known what percentage of small businesses could have avoided costly litigation and judgments with a little preventive counseling that was either consciously avoided or otherwise not
used. Preventive counseling tends not to be considered because of an ignorance of legal requirements, standards, or situations fraught with legal dangers, or because of an undue reliance on liability insurance. Careful research will someday clarify the picture and permit some careful policy development to help.

**Litigation**

In addition to preventive counseling costs, litigation costs will continue to burden small businesses. In litigation, lawyers charge fees for case retainer, document preparation, case preparation and research on an hourly basis, court appearances concerning preliminary motions and pleadings and fees by the day for each day spent in court during the trial. At the end of a trial, win or lose, there will probably be more fees for appeals. Commonly, these fees can total hundreds or thousands of dollars.

**In-House Counsel**

The services being rendered include counseling, investigation and interviews, document and pleading preparation, court appearances, research, trial advocacy and appeals as these efforts can be worked in by the lawyer among the demands of his other clients. Some small businesses (not many) attempt to control costs and insure full devotion to their legal problems by employing in-house counsel. Obviously a small business must achieve a certain size before in-house counsels become a realistic alternative. What the threshold size is, research has not determined. Nor has it been established when business
technically defined as small commonly begin employing in-house counsel. It has only been established that some do.

**Solutions: Policy Suggestions**

There should be no argument from any quarter against a policy of promoting lower cost legal service methods for small businesses, if they truly are a significant and valuable part of the economy of the northeast. Among the developing methods that ought to be considered for encouragement are legal clinics, prepaid legal service plans, legal cooperatives, and law centers as a part of (small business development center) projects.

Through adequate legal representation small businesses may be able to promote market conditions more favorable to them, but public policy should be rationally developed and implemented by promoting laws that, at the minimum, do not discriminate against the market positions of small businesses. Probably few laws are designed to discriminate against small businesses, however, some do. The common fields of business law should be carefully studied to identify other laws similar to the requirements contract example that impose restraints on small business's right to compete, and on freedom of entry to take advantage of profit opportunities. Similarly, laws that apply to all businesses may create inordinately great financial problems for small businesses while being only a nuisance for larger ones. Ways should be found for making necessary equal applications of law somewhat more equal in result. Recently Richard Schults, a Congressman from Pennsylvania, introduced a tax bill that, among other
things, would give a $5.00 tax credit for every government form
or report required of small businesses. This idea, or similar
ones may be necessary to small businesses for survival and good
health.

Educational services for management and finance abound, but
there are few continuing legal educational services for small
business. If a small business manager happens to be a college
graduate and happens to have studied business, including a law
course or two about contracts and anti-trust law, these may later
be dimly remembered. But, most continuing education work about
law is provided for practicing lawyers. It is time to promote,
also, educational services for small business managers to avoid
serious legal problems and their cost.

Law centers as a part of small business development centers
should be established. They would perform three basic functions.
The first dominates the others (a) by encouraging the study of
small business legal problems by legal scholars and law students,
who will do the research necessary to answer many of the
questions posed herein, (b) by encouraging the establishment of
legal clinics specializing in small business legal problems and
(c) by direct legal education of small business managers. The
first function is educational. The second would refine the
educational experience by establishing communications between
managers of small businesses with similar legal problems. And,
the third would refer legally troubled managers to legal clinics
specializing in small business problems and offering prepaid and cooperative plans for legal services.

Legal education in law schools to develop small business legal practitioners also should be promoted. In England, where development of law schools is behind the law schools in New England, there is some bold experimenting being done. The law school at the University of Warwick in Coventry has devoted itself to a philosophy of teaching law in social and economic context (Folsom et. al., 1979). One result is the development of courses and law materials to meet modern needs by ignoring traditional subject barriers. Notable is Michael Chestermain’s work (1977) on small business. In the northeast, the Practicing Law Institute has a publication (1968) on small business legal practice for lawyers already graduated from law school indicating that there are some lawyers willing to spend at least part of their time on small business legal matters. But while the old law course on creditors’ rights has been transformed into a course in consumer law, no commensurate development of a course in small business legal practice has occurred.

Small business legal practice preparation means of Small Business Law courses in law schools should be based on identification of parts of various fields of law that until now have gone unnoticed. For the moment schools are teaching requirements contract law only a part of a larger concern for mutual obligations and the doctrine of consideration in all contracts. No one is studying or teaching it as a part of the law of small
business. Perhaps the growth in interest by business schools in courses in small business management will cause a spin-off of a small business law course for business students.

Practitioners in the fields of law, accounting, management consulting, real estate and architecture might also be educated in the profit opportunities that exist in the service of small business. Some have already discovered these opportunities. Small business advisory groups already exist as a teaching model. An attorney who may charge $50.00 per hour for consultations, a C.P.A., who may charge $30.00 per hour and a management consultant who may charge $60.00 or more have joined together to offer joint consultative services to people entering or already started, but struggling, in business and who need direction. For $90.00 the three professionals spend two hours with the client discussing, analyzing and advising about his situation. The client may be advised to give up the venture or develop a more realistic business plan. The professionals, no doubt, hope for a spin-off of future practice from a successful client.

Throughout, private solutions to the problem of finding low cost alternatives have been mentioned. There are law clinics, law cooperatives, self insurance, prepaid legal service plans and the more general small business advisory groups. To the extent that there is public policy behind these solutions, it is in creating the conditions conducive to their acceptance and implementation.
Legal clinics are a special form of law firm that operate on high volume and low price principles over a wide area. They emphasize preventive law practice and streamlined procedures. There is a heavy reliance on computers, para-legal practitioners, word processing systems, nominal cost legal advice by phone and selfhelp packets for clients to do some of their own legal work. They are an outgrowth of the storefront legal operations that have been around since the sixties. For the moment, though much more sophisticated than the storefront firms, they are still very much consumer law oriented and have failed to plunge into the realm of small business legal problems.

CHART IV

TYPICAL NEW ENGLAND LEGAL CLINIC FEES RELATED TO BUSINESS ACTIVITY

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incorporation</td>
<td>175.00</td>
</tr>
<tr>
<td>Bankruptcy</td>
<td>175.00</td>
</tr>
</tbody>
</table>

*Commonly, being individual and consumer oriented, no other business services are listed in legal clinic fee schedules at this time.

Law cooperatives, similarly, are rare entities. There is a natural basis in the world of small business for their growth, since co-ops depend on large numbers of members. Industry trade associations commonly have legal council that represent and advise the association. Member firms are incidental beneficiaries; but the next logical step would be to convert
member firms from third parties to contracting parties. On an industry basis the goals of adequate low cost legal services for small businesses might not be easily achieved if an industry is dominated by big business. Therefore, a further refinement would be required. Law cooperatives could be established in each industry with membership limited to those who qualify as small businesses in that industry according to Small Business Administration definitions. Again, encouragement of cooperatives could come from trade and small business groups, state and federal initiatives, and law schools.

Prepaid legal service plans could be instituted by law firms. Indeed, one such modest legal plan has already been implemented in Illinois. Specializing in small business matters, legal clinics functioning over wide areas would probably be the best central organizational devices for law cooperatives and prepaid plans. Great savings might be possible from the operations of legal clinics with fine tuned and streamlined methods of operation designed especially for the assistance of small businesses combined with cooperative and prepaid legal service plans. The law center component of a small business center at a university would be in the best position to work with law schools and practicing lawyers to set up prepaid legal service plans.
Finally opportunities should not be overlooked to create conditions and procedures permitting unassisted action or self-help. Perhaps in this age of complexity, this goal is unrealistic. Perhaps law and legal procedure are too complex to be broken down into simple parts which non-lawyers can master. And yet, legal clinics are doing just that with their self-help packages for some of their clients. If laws could be enacted or redrafted to permit some self-help, and if small business law centers carefully attend to the challenge of finding self-help opportunities, even if it is necessary to monitor the self-help activity by lawyers or para-legals, a big step will have been taken to create a more favorable legal environment for small businesses by reducing legal costs.

In conclusion, the best consequence of lowered legal costs of doing business would be that, in fact, preventive legal services more likely will be readily used by small business managers who now tend to avoid facing up to legal problems until it is too late. More involvement in legal processes other than as a
passive or ineffectual victim might lead to legislation and legal
decisions more sensitive to the plight of small business. With a
strengthened ability to contend with the law member of the
triumverate of small business death dealers (the other two being
management problems and financial problems) the economy of New
England could be more stable, more competitive and more efficient
than it now is. Liability insurance costs could be greatly
reduced as small business becomes more free of legal troubles.
With knowledge of more low cost legal service options available,
there would be less reliance on insurance as the only way to
contend with legal problems.
References


