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'Are you illiterate?' Web delivered Legal Services and the Demise of High Street legal Practice.

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Basic structure and argument

1. Lawyers are not, and never have been popular, they are A STRESS PURCHASE.
2. The Internet offers, for the first time, an 'apparently stress free' way of purchasing legal services.
3. Predictions, e.g. Susskind, are that increasingly consumers will turn to the Web, not only for answers to some immediate problem, but also for the purchase of their legal services, traditionally offered face to face by their local solicitor.
4. If Susskind is right then the outlook for High Street practice, in the conventional sense, is pretty dire. Increasingly sophisticated computer systems will deliver 'me now' satisfaction to the consumer and moderate or minimal cost; the role of the 'family lawyer', cf. the GP, will be marginalized.
5. As an already unstable business in terms of profitability - much of the High Street legal service - will go to the wall, to be replaced by commodified web delivered legal services.

The question I wish to address is whether such scenario is inevitable, and if it is, the time scale within which practitioners must prepare for it.

INTRODUCTION - *Lawyers are a stress purchase.*

I doubt that many of you will disagree with my first point about Solicitors being a stress purchase. A glance at newspapers most days of the week will soon bring up an anti-lawyer headline. A prominent feature of the Internet is its apparent ability to deliver expert advice free, and the law is no exception.

For example The Sunday Times 'Doors Supplement' of the 28th January 2001 at page 14 boasted '*wills, claims, even divorce - online, you too can practise law.*' Described as Sunday's online challenge it went on: '*Sarah Toyne banishes lawyers from her life.*' The author listed six websites that would help you to do away with lawyers.

They were:

<http://www.desktoplawyer.net/> - across the board help.

<http://www.divorce-online.co.uk/> - self evidently family law advice.

<http://www.lawrights.co.uk/> - less obviously employment law.

<http://www.landlord.law.co.uk/> - guidance on letting property.

<http://www.legalmove.com/> - Hammonds Conveyancing site.

And lastly

<http://www.wills-by-web.co.uk/> - drawing up your will.

The author's basic premise is that you, the consumer, no longer either have to go into a lawyer's office, or make direct contact with one of these rather nasty species. The Internet will deliver all. There is of course a wonderful irony - all the website are run by lawyers - but still you don't actually have to meet one.

This hostility is not new, dislike of lawyers has a long an honourable pedigree, I am sure you have you all have your favourites, but just to quote Samuel Taylor Coleridge's Epigram (1772-1834)

He saw a lawyer killing a viper

On a dunghill by his own stable;

And the Devil smiled, for it put him in mind

Of Cain and his brother, Abel.

On the other hand, even in pre-Internet days - there have been alternative remedies for the attorney-phobic public - from the humble £3.50 'Will Form' through 'Home Lawyer' digests to extensive 'non lawyer' advice agencies such as the CAB.

'The Internet offers, for the first time, an 'apparently stress free' way of purchasing legal services.'

To address the second step in the argument. How qualitatively does the Internet differ from earlier non-lawyer options?

I would offer 7 main considerations which may to a greater or lesser extent will increasingly affect a potential Client's decision to use the Web rather than his or her lawyer, or one of the other options.

1. 'Me now' considerations:

The convenience - 24 hour 365 day accessibility. There is to borrow Susskind's Phrase [1] - 'a blatant trigger' that causes someone to seek legal help or information. The trigger may be 'hard' or what I term soft. A hard trigger is the receipt of a summons or other major catastrophe giving little time for selection and an immediate call for help, or soft, a more gradual process - just waking up and realizing that it is about time one did one's will! Either way there will be a perceived need of legal help. I say wakes up the call, because all too often the Client would have fared better if they had recognized the problem earlier, and one influence of the web will be a better informed public seeking legal information sooner rather than later.

The fact that there are already innumerable legal sites available suggests that this option will become

increasingly popular.

2. Natural Reluctance to go to a lawyer:

Perhaps 'culturally conditioned' reluctance would be a better term, but nevertheless the recognition that something must be done about the problem causes a search for legal help elsewhere than via a traditional lawyer's office.

4. Cost:

'Web' information is free. Lawyers charge enormous sums for the most meagre bits of useless information. So what's lost by consulting the Web?

5. Authority

I don't know if my local lawyer / CAB knows the answer - but surely there is an 'expert' out there that will give me all the info I need for few keystrokes? Web Sites can very easily convey the 'image' of expertise - using all the skills of the designer and advertiser to persuade the viewer that this particular site is the answer to their needs.

6. Adverse prior experiences:

Conversely, of course a good experience with a lawyer may well outweigh all other factors and persuade the potential Client to return to a trusted source.

7. Laziness or at least Inertia.

Making appointments with a stranger is easily put off. It is surprising in practice how many appointments are cancelled, or at least postponed.

On the other hand if you try to produce a list of considerations that would conclusively persuade a potential Client to go to a lawyer, rather than use the Web, it is a pretty short list. I can think of really only two reasons:

- (i) prior knowledge and experience of the 'value' of personal help as mentioned earlier
- (ii) persuasive advice from a friend or colleague who themselves can authoritatively evaluate the help of the lawyer.

3. Predictions as to the supply of legal services in the future:

Richard Susskind in particular predicts that increasingly consumers will turn to the Web, not only for answers to some immediate problem, but also for the purchase of their legal services, traditionally offered face to face by their local solicitor.^[2]

There are demographic issues in play here. To a young (by that I mean under say 25) potential Client, the Web looks like the most useful point of first reference. Even a simple assessment of demographic changes should set High Street Practitioners thinking. The Web is only 10 years old.^[3] It is only during the last five years that the Web's explosive growth has occurred. It follows that most people over say 30 will have had to have made a conscious effort to get grips with IT. To anyone 25 and younger use of the Web is second nature.

It is the under 25's that will soon start to buy their houses, get divorced, fall foul of the law - in brief

become the basic fodder of High Street practice. It is this younger and numerically smaller generation who must replace the 'Post War Bulge' of Clients now reaching their mid 50's who have sustained the profession through the last thirty years or so.

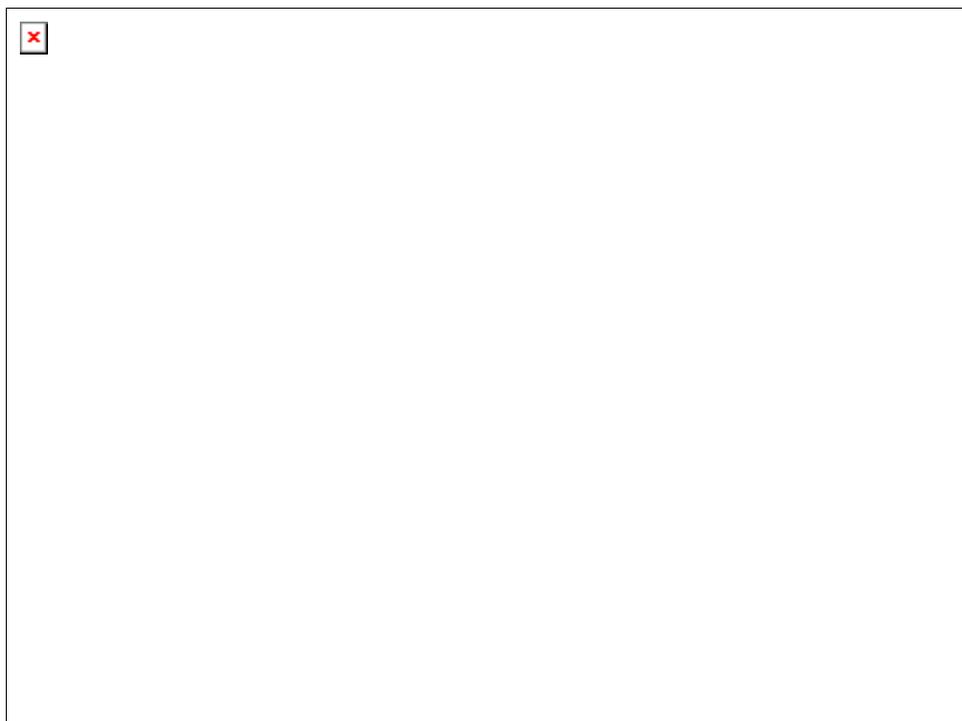
Will this younger, IT literate generation, ever go to visit such practitioners? If I may I will now simply refer to 'Practitioner' to mean your 'average' High Street Solicitor, and not your commercial City based lawyer.

First we need a brief analysis or assessment of the services Practitioners at present offer, and then consider the threats to those services posed by the Internet, and how that threat will affect the stability - i.e. financial viability - of High Street practice in the future. Susskind argues persuasively that the need for those existing services will inevitably diminish as increasingly sophisticated technological solutions to legal problems become available. If he is right, then not only are the implications for Practitioners dire, but the implications for the training of lawyers at University and at post graduate level are also highly significant.^[4] Conventional High Street practice absorbs well over half the entrants to the profession.^[5] Will that market remain? What are the implications for you the educators?

So what do High Street Lawyers do? Well here I draw largely on my own 30 year experience. I have practised largely in the High Street, apart from a spell with a niche London firm in the Wine Trade. I have been mainly a partner in medium sized firms, been through a litigated dissolution and formed my own practice, and most recently, merged with a 5 office 15 partner Welsh Border practice. For the record the Practice is now 240 years old and thus one of the oldest in the Country.

My firm is perhaps larger than most in the area, nevertheless it operates in a large measure in the conventional fields of High Street Practice. I will look first at what we do, where the vulnerabilities lie i.e. the threats are posed by commodification, and finally at the recipes, if any, for future survival.

Here is a diagram of a breakdown of our work areas - *THE GRAPH SHOWS WOREK AREAS BY GROSS COSTS*



At a glance it can be seen that property work represents about 37% of our income. That is split as to 25% domestic and 12% commercial.

Probate (purple) trusts and tax account for about a further 15%, wills about 7%. We have a large family law practice (grey) and this delivers about 10% of our costs, similarly personal injury work also 10%, other civil litigation 6%. Contentious work accounts thus accounts for about 26% of our income.

Taking a broad brush for most multi - partner firms, who offer conventional legal services, the work breakdown (in gross fee income, not necessarily profitability) will be in the region of 1/3 property work, 1/4 contentious work, 1/4 from wills and probate. If my maths still serves me, that leaves about 1/6 for a broad spectrum of other work.

4. If Susskind is right then the outlook for High Street practice, in the conventional sense, is pretty dire.

If we glance back to the Sunday Times Website list - it is no surprise that each of the major areas of work is addressed by the author, and a solution via Web offered. Even on this simple test it appears that all areas of High Street work are under attack from Web based providers. Another test is to assess the amount of material on the UK Web of legal information. Just one search engine Mirago came up 7569 sites on Conveyancing; in excess of 50,000 pages on wills; and 20,000 pages on probate; and an amazing 95,000 pages on divorce. So there is an huge amount of material out there. Given that most people only look at the first tenpages, most of it must be unread. But clearly all areas of High Street practice have their web counterparts which are bound in an as yet undetermined time-frame, materially to affect practice.

The Stability of High Street Practice

So how stable anyway is High Street practice? In October the Gazette^[6] trumpeted the growth in the profits of major law firms, but buried in the article it said:

'Research [by BDO Stoy Hayward] revealed a yawning gap in profitability between firms. The report showed that profits per equity partner in a quarter of the lowest earning firms with between 2 to 4 partners were as little as £37,626 the best firms between 11 and 25 partners showed £83k to £130k.'

However I would comment that most firms of that size are located in major cities. We are exceptionally 15 partners, easily the largest in Herefordshire. Most firms in the area are typically three to six partners. My best estimation of the partner profits of your 'average' High Street firm, in the market towns, is in the region 30k - 65k. Exact statistics are not easy to get at, but we do get information in a variety of ways, not least from matrimonial departments!

By profits I mean net profits, i.e. taxable income. Overheads typically account for anything up to 70% of a firm's gross fee income.

So at what point would a fall in net profits cause a firm to become unstable?

The Instability Threshold

This is a matter of judgment (and perhaps the desperation of the practitioner)- but I would suggest that a fall in net profits of 10k per partner in the lower earnings firms and 20k in the higher earning firms would result in considerable problems. That is something in the region of a 30% fall in profits would produce serious financial difficulty for the partners, and even a 20% fall would I suggest produce instability. Academic salaries may not be the envy of world, but they don't usually go down, on the other hand profits of law firms certainly can.

So for the present analysis I will take a median line of 25%.

The maths are fairly simple, even for lawyers. Instability will set in if your net profits fall by 25%. That equates to about a 10% fall in gross fees in real terms on a profit ratio of 30%. Say 15% if you have rather better profit ratios.

I am shying away from complicated mathematics, but let us assume your average annual increase in gross fees is doing no more than cover the 4% or so rise in inflationary overheads. Even that takes some doing today. Therefore what is the risk that Internet business can take away ten to fifteen percent of your gross income, in the next few years, so as to produce instability?

Here inevitably we move to some extent into the realms of speculation. It is clearly a very fertile area for research if some of you are so tempted. But just to continue with the maths for a moment. Take a ten per cent across the board fall in gross. I suggest on the brief evidence presented that all sectors are likely to be hit, some no doubt harder than others.

Is it fanciful to suppose that over a five year period domestic conveyancing might reduce by 10% and commercial conveyancing 10%; Wills by 20%; litigation by 15%, and General legal work 10%? By 'reduce' I mean that potential Clients will transfer to Web based services. Well if only one in ten of your Clients for property services, one in five of your wills, three in twenty five of your litigation clients and one in ten of your general clients drift away to Web based services - then you have indeed got problems. Those are not comfortable statistics.

The attraction of Web Based Services

So how attractive, at least at the moment, are the services on offer.

Well I will look at some of the options promoted by the Sunday Times article. Dear to the heart of all practitioners is conveyancing. Hear the signals are mixed. On the 10th January 2001 the *Gazette* reported that Marson had pulled out of factory conveyancing:

'Chairman Brian Marson said factory conveyancing does not work for the consumer because it fails to provide local knowledge and connections. There were also problems with hostility from other solicitors and recruiting good staff - it's a case of being honest - we knew our standards were slipping.'

There is some unwitting testimony here. Uniquely, so far as I can tell, the Solicitors profession has to co-operate with its business competitors at a level unprecedented in the business world. I would cite undertakings to vacate mortgages on completion as just one example, but there are many others. There is no easy way round this as political tinkers find if they look beyond the next polling booth. On the other hand it also demonstrates that by the very public demonstration of the representations on your web site, and the promises there made, you may hold up unreal expectations in the minds of Clients. I don't think it's fanciful here to draw some analogies with 'dot com' retailers. You may have a billion books on your database, but you still have to get them to customers.

On the other hand if practitioners drew any comfort from that announcement, a week later the *Gazette* reported that Countrywide was to invest £3m, principally in IT, in a drive to double its share of the Conveyancing market. They seek to increase their share from 30k to 60k transactions a year. [7]

So just how attractive is it to do conveyancing online? Well I had a look at the Sunday Times promoted site of Hammonds (S. No) . There is received wisdom that you should find everything on a website within a couple of clicks - otherwise boredom sets in. Well you begin with an opening page (S No), followed by some puff, then you are invited to take a tour, or perhaps get a quote. By now if you are still there you get hit by a pop up questionnaire 'what do you think of us so far?' - I refrain

from comment - but I opted for a quote, which was when the serious problems began.

I suggested a purchase at 200k. The actual fee quoted was £399.00 - that is 0.1695% of the value of the transaction. (Compare for example an average Estate Agency charge of 1.5% - no less than seven and one half times Hammond's fee). £399 is below the cost of a premium to issue a missing deeds, or restrictive covenant policy. It represents no more than about two and one half hours work for an average conveyancing fee earner at today's rates.

This fee level is clearly predatory pricing. It could only generate profits by a huge investment in technology. Unlike Amazon the world is not your oyster for UK legal services, only England and Wales are, so indefinite growth is not possible. But, the fact is there is now a very public notice board offering services at this price, which inevitably constrains the price that Practitioners can offer. Typically their fee would be two to three times the Hammonds figure. That fact alone will put pressure on the income of High Street lawyers, as if there were not enough price competition in most localities anyway.

Disconcertingly however there was a major fault with the quote when I went online - it suggested that Stamp Duty would be £5, rather than the £2000.00 actually due. (S No). So the global total of '£796.83' to pay - was some £2000 short of the total. Maybe it was due to a comma in the price, I don't know, I refrain from speculating. But it does highlight one of the many problems of on-line business (as of today). A simple programming error might cost the firm thousands of pounds. I am not sure how a disgruntled punter would react to his completion statement which showed more than £2000 to pay than he was expecting. It also shows up the fallacy that even lawyers get it right, and the quasi authoritativeness of a legal site on the web, will not, or probably cannot, be evaluated by the consumer. I am quite sure the Legal Services Ombudsman will come down on the Consumer's side.

Just in case there was an error, I tried again at a purchase of £500,001 - where Stamp Duty jumps to an unprecedented Treasury Avariciousness of 4%! Again I was quoted £20 for Stamp Duty not £4000.00 I will leave the matter there.

Having negotiated these hurdles it became necessary to complete detailed questionnaires, and this of course is where, at present, Web services fall down.

The Interface - the realities of doing business on the Web

Until clever engines arrive operated by voice recognition technologies [8], it looks as though the human / computer interface will be the computer keyboard and screen. However I suspect for some years to come the interface will be much as it is now, no doubt enhanced, quicker and more intuitive, but along way from dealing adequately with 'Oh Mr Halliwell I want you to buy me a house for me' - as Marsons discovered. But that does not hold out so much comfort for the Practitioner, the erosion has started and will gather pace.

However, that is only part of the equation. All practices suffer drift, but historically probably on a swings and roundabout basis. By that I mean the clients you lose are (hopefully) replaced by your gains from the losses of other firms. Clients will drift to the Web, if only for novelty, some will certainly not come back, so on any basis it will be essential for practitioners of the future to conduct, or at least be capable of conducting e-business. What is certain is that there will be increased Client mobility, which has as its corollary decreased client loyalty.

Similar results emerge from a study of the other areas highlighted in the Sunday Times report. Take for example Wills. The 'Wills by Web' page (slide) advocates human intervention. So do I. The title of my talk 'Are you illiterate' - comes from an 'on-line' form filling questionnaire. It again highlights the risk problem for practitioners and their programmers. An illiterate person can of course make a Will, but a special attestation is needed. The programmer rightly asks the question, but if the answer

is yes - it begs the question as to how on earth the 'Client' got to that point in the form in the first place. The program should of course halt, not merely print out a will with the amended attestation.

Certainly there are sites that produce your Will there and then, satisfying 'menow'. I had a look at Fidler and Pepper: at least their conveyancing quote got Stamp Duty right - though it would only accept whole figures. Their questionnaire (which I do not reproduce here) runs to some six printed pages with quite extensive guidance notes to be read and understood. But it does not, for example, ask my age - so would I suspect produce a Will for a minor quite happily, nor can it begin to tackle the complexities generated by second relationships. Indeed it did not appear to ask whether I had been married more than once, or whether the children were all from the same union - niceties now irrelevant in at least a third of all one's Wills!

I am not in the business of demonstrating the problems posed by such programming, although the risks for the practitioner are all too clear, and merit further research. What troubles me is that the very 'authority' and apparent completeness of Web Sites are persuasive to the consumer that *all* his or her needs are being met. This is the beguiling face of the Web, design over content, and the difficulty, for all of us, of evaluating information outside our own areas of specialist knowledge.

I will not venture into divorce sites, but you can well see that a simple undefended divorce, with no children or money to argue about, is ideally suited to processing on-line. We are not quite at Divorce booths in this country yet. However the Gazette of the 24th January 2001 reported David Lock's - The Lord Chancellor's Minister - announcement of a £43 million investment to introduce touch screen kiosks in libraries, to provide advice about Civil Court processes and a video link to the local CAB. Another innovation is the Preston trial of issuing Civil Court applications by e mail.

Three years ago in 1998 David Wall from the Faculty of Law University of Leeds, Leeds LS2 9JT said this:

It is quite conceivable in the near future, that consumers with legal needs will be able to seek advice, if not fulfilment of those needs, without ever consulting a lawyer. And if they do consult a lawyer it could be that they never meet. The implications are quite profound in that even our currently changing notions of legal professionalism will soon be out-dated as more of the professions' mythical legal knowledge becomes publicly available and software is developed to undertake simple legal procedures, then legal practice will tend to relocate in areas of law which require greater specialist knowledge. At present it is by no means certain that lawyers will remain the 'gatekeepers of the law.'

Bileta 1998 Papers

Well clearly he was right, and the drive and Government commitment to make it happen is evidently there.

Joshua Rosenberg writing in the Telegraph of the 16th January 2001

said

people should be able to issue and settle cases through the Internet or by telephone. Court centres will, of course, still have staff to help those who cannot cope with technology. However, as the number of Courts diminishes, people needing help will be directed towards advice agencies. The example held up by the Government is Singapore, where all actions started by writ now have to be filed electronically.

If you want a summarized Government view you need look no further than David Locks' speech to the Annual Conference of the Law Society in Paris on 29 October 1999 - he said:

'There was a time when legal practice was defined by its unchanging nature, but today, the truth is that legal practice is changing at the same rate as the rest of society, and is making up for times past when things stayed static for far too long.

This means it is tough for those of you at the coal face - not that there are many coal faces left in Britain. The legal world is set to change - to carry on....this means that we must guard against a reluctance to think radically.'

High Street Practitioners - if not an irrelevance - can expect no sympathies from Government.

Conclusions:

The question I wished to address was whether the demise, or at any rate imminent decline, of High Street Practice, is an inevitable consequence of the Web, and if it is, the time scale within which practitioners must prepare for it.

Nothing in my research gives very much comfort to Practitioners. IT literacy will grow and erode our natural client base. Technologies will increase in sophistication and become more appealing. It is in my view inevitable that consolidation and shrinkage of legal services in the High Street will follow. I believe it is no co-incidence that in the City of Hereford alone, in the last year, we have seen two old establish practices fragment, and a well-known firm downgraded - if I may subvert PC jargon - to licensed conveyancers.

This has clear implications for those of you here as Educators of potential lawyers. In my academic alter ego I work for the Open University as a Associate Lecturer on the OU law Degree programme, which now has approximately two and a half thousand undergraduates on its law programme, many with expectations of a career in law. This year alone 1461 undergraduates applied to join the first year course W200 which I tutor. For what kind of legal marketplace should they prepare?

Over 80% of Solicitors work in private practice - though that includes the megafirms of course. I have not been able to find the exact statistics whilst drafting this paper but the market for trainees in the high street - already static - will decline further. There are for example only a handful of trainee (three I think) solicitors in Hereford. Ten years ago the number would have been two to three times that amount, with most firms having at least one 'articled clerk'.

What is quite clear is that Trainees will need to be adept at information technology. Indeed one of the messages for Practitioners is that they must recruit not just IT literate but positively IT skilled staff.

I have looked at the probabilities, I would like to have said possibilities, of instability that may be engendered in High Street Practice by IT, and the Web in particular. It does not need the Web to make a megaton impact for its effects to be felt. How many practitioners would say, especially of their younger clients, that one in ten of them might not well drift over to IT based legal solutions over the next 5 to 10 years? Most if they are honest.

Web Drift alone in my judgment is sufficient to cause instability in a significant number of practices in the not too distant future.

The time scale for decline may well be shorter than ten years. Three to six years looks increasingly likely. The effects of course will not be uniform. Access to IT is not uniformly spread, traditional practice will still be wanted in very rural areas and less affluent areas, but will there be enough business to support viable practices? Probably not. As the present 50+ year old Clients reach their retirement, they will not be replaced in the same numbers by the younger and well educated generation. So the alert must go out. Research is needed into the take up of legal e-services on-line, and their appeal to consumers.

Practitioners must embrace the new technologies and expect a radical shift in the way they deliver their services. A conventional High Street practice that does not embrace these changes has at best a decade left to it, at worst significantly less.

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[1] Susskind argues, I think quite rightly, there are three steps in 'The Client Service Chain' - first recognition of the existence of a legal problem 'Recognition - Selection of the lawyer / legal service - finally delivery of the service. *Transforming the Law* - p.43.

[2] See *The Future of the Law* - quoted in *Transforming the Law* - at page 79.

[3] There are numerous histories of the Web on-line - the author has a short article 'Who is the Father of the Internet?' at <http://www.learnedcounsel.com/father.htm>

[4] See The Law Society's Web Site at: [http://www.lawsociety.org.uk/dcs/fourth_tier.asp?section_id=2129&Caller_id\[=\]](http://www.lawsociety.org.uk/dcs/fourth_tier.asp?section_id=2129&Caller_id[=])

[5] See Toghil supra

[6] Sue Allen - Gazette 30.10.2000

[7] 'IT Consultants Cap Gemini Ernst & Young will assist Countrywide in re-engineering and streamlining its conveyancing processes, using technology that has been applied to the banking and manufacturing sectors.'

[8] For a brief discussion of this technology and links to important sites - see the author's article 'Speech Recognition' at <http://www.learnedcounsel.com/speech1.htm>