

NOW AND THEN

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The solicitor of 2024: a vision of general practice 25 years hence

Richard Barr

In the beginning

The problem with having a solicitor as a father is that while other children were learning words like “teddy”, “dog” and “brick” my brother and I (both of whom have succumbed and become solicitors) were making our first hesitant endeavours to pronounce “client”, “office” and, of course, “disbursement.”

When I was small my idea of a solicitor’s office was simple: it was a place filled with brown paint where you went and sat with a couple of tweedy ladies who watched indulgently while you strung paper clips together or made patterns with rubber stamps bearing incomprehensible expressions like “Commissioners for Oaths” or “Signed, sealed and delivered by the said . . .”. It was a place where large telephones made loud buzzing noises and into which one of the ladies would sometimes say “Doranbarnrolls” and this, apparently, made some sense to the caller at the other end. It was the place where my father went everyday and sat behind a desk surrounded by many pieces of paper. He had oil paintings of fish on the wall, and deed-boxes on the floor. Sometimes I would watch him working. He often spoke for hours to another comfortable lady who would sit, with a writing pad, scribbling meaningless characters as he spoke. I meant to report this dereliction of duty to my father, but he seemed to be happy doing what he was doing and with her doing what she was doing. “Shorthand” was still some years from entering my vocabulary.

Just after the Second World War, my father had joined his firm, based in Wisbech, a small farming market-town on the Cambridgeshire–Norfolk border. John Dawbarn then ran it alone. Other names were added and it

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became Dawbarn, Barr and Knowles, so that was what the ladies were saying into the telephone.

Years went by. My legs and my trousers grew longer. The office changed too. John Dawbarn died in a railway accident. The brown paint gave way to pastel shades. The ladies in tweeds were replaced by blondes with mini-skirts; and the telephones shrunk and warbled instead of buzzing. The original photocopier (taking up a whole room and resembling a photographic dark room) was replaced by an early model Xerox copier. But my father still continued to talk to the lady with her pad and her hieroglyphics.

It is true there were dramas and tensions. Sometimes my father was so frantic that he could not sleep. Yet the pace of life and serenity of the firm was not unlike this description from the opening page of *The Franchise Affair*¹, a delightful novel written just after the Second World War by Josephine Tey:

“It was four o’clock of a spring evening; and Robert Blair was thinking of going home.

The office would not shut until five, of course. But when you are the only Blair of Blair, Haywood and Bennet, you go home when you think you will. And when your business is mostly wills, conveyancing, and investments your services are in small demand in the late afternoon. And when you live in Milford, where the last post goes out at 3.45, the day loses whatever momentum it had long before four o’clock . . .

So he sat there, in the lazy atmosphere of a spring evening in a little market town, staring at the last patch of sunlight on his desk, and thought of going home. In the patch of sunlight was his tea tray; and it was typical of Blair, Hayward and Bennet that tea was no affair of japanned tin tray and a kitchen cup. At 3.50 every working day Miss Tuff bore into his office a lacquer tray covered with a fair white cloth and bearing a cup of tea in blue-patterned china, and, on a plate to match, two biscuits . . .”.

It is a story about a country solicitor who takes on a case which changes his life. The story we read now is of all our lives being changed, case or no case. Legal general practice has altered beyond recognition in the past 25 years. It will not take a soothsayer to predict that in the next 25 years there will be further dramatic upheavals: but what will they be?

The problem with predictions

The present is strewn with the debris of shattered predictions. Almost every successful innovation this century was confidently and eminently predicted not to succeed:

“Heavier than air flying machines are impossible.”

(*Lord Kelvin, President of the Royal Society, 1895.*)

“The actual building of roads devoted to motor cars is not for the near future, in spite of many rumours to that effect.”

(*Harper's Weekly*, 1902.)

“We don't like their sound, and guitar music is on the way out.”

(*Decca, rejecting the Beatles*, 1962.)

Unless we are Nostradamus or one of the Biblical prophets none of us has access to anything but the past or present as our tools for looking into the future. Oracles tend to be remembered for what they did get right rather than for what they did not (numerically far greater). The world should have ended many times over by now. If any one of the apocalyptic predictions had been correct I would not be writing this piece. We do therefore have to be grateful for false prophets and silly soothsayers. The predictions made here will no doubt in their turn be the subject of giggles and guffaws in 25 years' time but somebody has to stick their neck out and if mine's for the chopping-board, then so be it.

Back to the future

To look to the future, it is necessary first to look at the past, not the distant past because the expression “solicitor” has only been in existence since the early part of the nineteenth century. The Law Society was not given a Royal Charter until 1845. We start before technology in the modern sense was invented. What was it like?

Here is how Charles Dickens described a solicitor's office:

“Here, among his many boxes labelled with transcendent names, lives Mr. Tulkinghorn, when not speechlessly at home in country-houses where the great ones of the earth are bored to death. Here he is to-day, quiet at his table. An oyster of the old school whom nobody can open. Like as he is to look at, so is his office in the dusk of the present afternoon. Rusty, out of date, withdrawing from attention, able to afford it. Heavy, broad-backed, old-fashioned, mahogany-and-horsehair chairs, not easily lifted; obsolete tables with spindle-legs and dusty baize covers; presentation prints of the holders of great titles in the last generation or the last but one, environ him. A thick and dingy Turkey-carpet muffles the floor where he sits, attended by two candles in old-fashioned silver candlesticks that give a very insufficient light to his large room. The titles on the backs of his books have retired into the binding; everything that can have a lock has got one; no key is visible.

Very few loose papers are about. He has some manuscript near him, but is not referring to it. With the round top of an inkstand and two broken bits of sealing wax he is silently and slowly working out whatever train of indecision is in his mind. Now the inkstand top is in the middle, now the red bit of sealing wax, now the black bit. That's not it. Mr. Tulkinghorn must gather them all up and begin again."

It is taken from that great orgy of litigation: *Bleak House* and is a description of Mr Tulkinghorn's office. It was written in about 1850 and, grim though it is, it probably still embodies many people's view of the inside of a solicitor's office.

Lawyers' offices in the nineteenth century probably reflected the harshness of the laws. The last issue of the *Solicitors' Journal* in the nineteenth century records just how harsh the laws had been earlier in the century:

- It was a capital offence to pick pockets until 1808;
- Trial by battle was still legal up to 1819;
- Benefit of clergy (the right to claim to be excused from the death penalty for felonies if the accused could read) was not abolished until 1827;
- Counsel for the accused had no right to do more than cross examine until 1836. Until that date he could not call character witnesses or address the jury on his client's behalf;
- Transportation was not abolished until 1867.

At that time labour would have been intensive. Every single document would have been written by hand. Every single communication would have been by post or messenger, with telegrams being used as the only rapid means of sending or receiving messages. The bureaucracy of court and of officialdom generally would have been considerably worse than it is now. Most people would not have been able to get anywhere near lawyers. Legal aid was a hundred years in coming. The reforms brought about in the reign of Queen Victoria, and on into the twentieth century slowly introduced order and some semblance of compassion into the legal system.

At the turn of this century most general practitioner solicitors would, like Mr Tulkinghorn in *Bleak House*, have had their offices in their homes, just like family doctors did until far more recently. The average high street practitioner (except that then high streets were fewer on the ground and lawyers' offices tended less to be in them) would have been concentrating his activities mostly on advising businesses, tax, property transactions, commercial disputes and wills and their aftermath. Perhaps not very much has changed in that respect.

We then wind the clock forward to just after the end of the First World War—make it 1926 and the introduction of the controversial property legislation which so incensed practitioners that many of them refused to implement

it. By then telephones and electric lights would have been available (though not universally). Many solicitors were among the first to have telephones in their towns as evidenced by the low numbers (Fakenham 12, Wisbech 16, King's Lynn 6) shown on early versions of their letterheads. The letterheads would also have shown telegraphic addresses and the location of the nearest railway station (something which in many rural areas would be a little extraneous now). Telephones at this stage would have been just that: a telephone in the office. If anyone was wanted, he or she (but usually he) would be called from his room to the telephone where he would speak into the mouthpiece and hold the earpiece to his ear. There is a story of a rather diminutive clerk in a mid-Norfolk office who could not reach the telephone. A pile of legal tomes had to be placed on the floor beneath the instrument so that she could receive calls. Just think how difficult it would have been in the circumstances to take notes while carrying on a conversation.

Typewriters (manual of course) did not become universally used until well after the First World War, and in some parts, engrossments were written by hand even after the Second World War.

The law was then still very much the province of men both in terms of fee earners and support staff. The first woman solicitor was not admitted until 1919.

At this time Land Registration was very much in its infancy and for more than the next 50 years conveyancing would be largely an exercise in the extensive paperwork of abstracts of title, indentures and roots of title going back 30 years or more. And there the legal profession remained largely static until another war came and went—The Second World War.

Looking back the greatest legislative changes introduced in this century were probably, in no particular order: the introduction of universal suffrage, the 1925 property legislation, the tidied-up consumer and sale of goods laws and of course the Legal Aid Land Advice Act 1949.

But the change which had the greatest impact on general legal practice was the removal of the so-called solicitors' conveyancing monopoly in the 1980s. I was in a general practice at the time, and the general feeling was that the world was about to end, as banks, building societies, licensed conveyancers and others muscled in on what had become the bread-and-butter income of solicitors over the preceding 50 years or more. Emergency meetings of local law societies took place. Contingency plans were drawn up and the enemy (the licensed conveyancer or, worse, the unlicensed conveyancer) was brought into our sights. As it happened, conveyancing has remained largely the province of solicitors. The result was that, almost overnight, their charges for this work reduced dramatically, often to the level of barely covering costs. The knock-on effect of this economic change was to reduce the incomes and earning capacity of solicitors in general practice, increase their hours of work and force them to diversify and specialise.

One of the areas of increased specialisation involved legal aid work. Before

these changes came about, not many firms in general practice took legal aid seriously as a source of income. Legal aid's contribution to the firm's earnings had been considered to be small; and it often seemed easier to do the work on a *pro bono* basis (using the income from conveyancing to provide a war chest to help in more deserving but less lucrative causes) rather than grapple with the complexities of the legal aid system. So conveyancing, once the backbone of legal general practice, became something which was delegated to competent legal assistants while solicitors moved on to other things.

Life in the law up until the 1980s had not exactly been a licence to print money but few had to struggle to make a living and most were sufficiently comfortably off to acquire a decent house, educate their children privately, drive cars without too much rust on them and retire in some semblance of maintaining their lifestyle.

What solicitors had then was also time. They worked much shorter hours. Most started work at 9 a.m. and were home by 6 p.m. Many, these days, seldom have enough time to sleep, let alone undertake any other activity. The last decade of the twentieth century has seen a dramatic increase in the pressure on solicitors, to the extent that solicitors now compete with junior hospital doctors in the race for the worst working conditions. Many yearn for less pressure, more time to think, and an opportunity to get to know their families. It is generally not a happy profession.

Plus ça change

Predicting the future involves as much trying to foretell change as attempting to identify those things which will stay the same. Ordinary people and businesses will continue to need help to regulate their lives. Houses will continue to be bought and sold. Divorces will happen. Criminals will not disappear. There will always be negligence. People will not stop dying. There will always be new laws to interpret. The need for, at one end of the scale, lawyers for multinational companies, and at the other, social welfare lawyers, will increase and not diminish in the next quarter-century. Life will inevitably become more and more complex. The overlay of the E.C. law will mean more laws and regulations to grapple with.

It is likely that the belated incorporation into our legal system of the European Convention on Human Rights and Fundamental Freedoms² will lead to whole new areas of claims being brought. The pressures are probably going to be greater (unless something gives and we all take a step back and start to look at our values).

The constraints on funding will remain. If other countries are anything to go by legal aid will gradually diminish and other means of financing cases will have to be found. It is likely that the system will look increasingly towards American-style contingency fees. Conditional fees, certainly as they are

structured at the end of the twentieth century, will neither provide the incentive nor the flexibility to ensure proper access to justice. The government's *Access to Justice* proposals, introduced at the beginning of 1999, will undoubtedly be seen by many practitioners as a retrograde step for practitioners and the public they serve. Its likely effect will be to remove from many general practitioners the ability to take on legal aid cases, and might, certainly in rural areas restrict, rather than enhance access to justice.

Masking the things that don't change will be those that do. When considering the future, first thoughts turn to changes in technology. They will undoubtedly have a dramatic effect on the way that professional lives are run but there will be other changes too.

The traditional picture of legal practice is of many small partnerships (and sole practitioners) in every sizeable town. Each town has always had its big boys too (firms of 10 partners or more) but there has also been a mix. It is difficult to see how that can continue. Apart from those who have "niche" practices (a specialisation so rare that they corner a part of the market) general practice firms run the risk of being edged out in the same way as small shops. The reasons for this are:

- *Price.* Competition and consumer pressure will always ensure that services (particularly those where the solicitor does not offer unique skills) will be cut to the bone.
- *Competition.* There will always be someone who will charge less. It is in the nature of solicitors that they do not love each other—and there will always be somebody who will undercut.
- *Block contracting.* Those who seek legal services will, like the Legal Aid Board, require a structured approach to management. This will involve firms having in place interlocking systems to cover such matters as financial control, supervision, training and forward planning.
- *Skill requirements.* Most general practitioner solicitors are extremely able. Their value to clients is often in their acquired wisdom—the ability to see a problem from all angles. The difficulty nowadays is that if action has to be taken, it is a procedural nightmare and most solicitors can only be expert in a small area of law and practice. Gone are the days when the same solicitor could, as my father did, dabble in divorce, put in an appearance at the local magistrates' court (then called the police court), advise companies and partnerships, make wills, wind-up estates, draw up leases and conveyances, sit as the local coroner, terrorise his partners, go trout-fishing on balmy summer evenings and organise money-raising events for the Wisbech Town Football Club. The trend is likely to be towards fewer and larger firms providing a superstore style service. Major skills could well be far away from the office of contact. Specialised departments in Dunstable and Swansea will, bank-style, offer the main skills.

Other things will change

Life will more increasingly towards “package” or “plan”. Every legal procedure will be uniform throughout the European Community. There will be competition between firms in different countries for lucrative legal work. This is already happening, with the very large firms branching out into other countries, even outside Europe. Several major U.K. law firms have gained a foothold in the United States, employing top-ranking American legal experts, and competing with native firms. Many American firms already have offices in London.

Multi-disciplinary partnerships will surely have been brought in to effect enabling interesting consortia to be set up including accountants, surveyors, solicitors, and even doctors. A development, which, though macabre, might well be commercially justifiable, is a partnership between solicitors and undertakers (the testament to tombstone service!). On the one-stop principle (or last-stop principle) it seems logical to offer as one service the preparation for will, the winding-up of the estate and the burial of the dead. It remains to be seen whether we will go as far as some solicitors in rural Ireland who often combine other activities in their law practices. At least one is also a florist. Perhaps solicitor-florists could focus their activities on reconciliation and mediation?

Other possibilities might include solicitors and financial service advisors, multi-national partnerships, and (oh! the sacrilege) partnerships between solicitors and barristers. As to the last, there are of course technical objections to such partnerships at the moment but these are in fact purely artificial. Leaving aside codes of practice and the long history of the divided legal profession, there is no logical reason why those whose primary job is to be an advocate in court should not work alongside those whose primary job it is to push pieces of paper around a desk.

And so to technology

The last 25 years have seen the almost universal introduction in to solicitors' offices of: fax machines, word processors, plain paper photocopiers and computers. But many firms have not taken modern technology very seriously. Even now, overall, few fee earners have hands-on access to computers. Some firms do not have word processors for all their secretaries (and some indeed do not have them at all). Occasionally, I still receive a letter typed on a manual typewriter. This might reflect the mentality I first came across in my former firm: when secretaries helped out at the branch office (which did have electric typewriters at the time) they used to bring their manual machines with them (presumably because they feared electric shocks from the modern equipment!)

Fax machines

Experts have always claimed that fax machines are a form of intermediate technology and will not last. It is true that what they do does not take technology to its limits. The document that they scan has not been converted (at least in usable form) into editable form. Computers can now receive and send faxes. E-mails (see below) replace a number of the functions of fax machines. The fact remains that faxes are immeasurably more convenient than computers. To operate a fax machine you simply insert the paper into a machine at one end and, as if by magic, it comes out at the other many thousand miles away. Nobody has to crank up a computer or log on to Windows or fiddle around with mice. For the sheer convenience I predict therefore that fax machines will continue. The technology is already available for colour faxes and no doubt as data transmission speeds up this will be an option to consider, but it is difficult to see how it would be particularly useful (as opposed to fun) for high street practitioners to have colour fax machines.

Photocopiers

These have come on a long way in the last 25 years. The present state-of-the-art copiers will duplex (copy from both sides onto both sides) staple, punch and sort documents. What else can they do? We might see more machines multi-tasking. Photocopiers could become scanners (there are scanners already which operate as photocopiers). They might learn how to copy a book by picking it up and turning the pages. Colour photocopiers will no doubt become more widespread. Indeed colour scanners/printers are already available for no more than about £500. Every good conveyancing solicitor should have one (but most don't). It would save hours of colouring plans. Copiers can become fax machines (as indeed fax machines can become copiers).

Secretaries

Surely by 2025 voice recognition technology will have been perfected so that any words, however garbled, can be understood by a computer with at least the same comprehension as by a human being who has not become too deaf or senile. Presumably the same technology will enable instructions to be given to computers to carry out secretarial functions:

“Apex 231, kindly take a letter to Mrs Simpkins”.

Apex 231: “Which Mrs Simpkins would that be, George, Mrs Simpkins of Acacia Avenue or Mrs Simpkins of The Laurels?”

There will no doubt be advances in artificial intelligence. The same computer that can speak to you and take your dictation in ordinary speech will no doubt also be able to scan in your post (including handwritten letters), summarise it

for you and suggest replies. But will secretaries disappear? It is likely that the nature of the job will change. Secretaries will be able to say goodbye to long hours of sitting crouched over a keyboard trying to decipher the wise words of their lords and masters (or ladies and mistresses). Instead, their roles will become much more as editors and personal assistants. It probably means that there will be fewer of them, but it is unlikely that they will disappear completely. When dealing with knotty problems, it will be a long time before any computer can come near the effectiveness of a good secretary with a shorthand pad.

Mail

The nature of post will change over the next 25 years. Nice though it is to see those red vans and pillar boxes, the spread of e-mail (with its capability for numerous "letters" to be sent for no more than the cost of a single first class stamp) will continue. But, by whatever route the mail comes in, it will all be capable of being processed by the computer.

As with many technical innovations this will not be without tears. If you send a document by post or DX there is a reasonable assumption that it will get there without being intercepted. You can do things to make sure that if it is intercepted you know about it (such as liberal use of sealing wax). On the other hand if every message gets in to the Internet ether who knows what terminals are plugged in to it and who else might be reading what you are saying? Besides, a letter before action does not have the same impact if it is simply one more e-mail. It would not strike terror into the heart in nearly the same way as a few paragraphs of menace written on expensive vellum.

A secretary-computer? The next development might be the complete all-in-one secretary-computer the size of a filing cabinet which will:

- Send and receive faxes;
- Scan incoming mail and suggest a reply;
- Intelligently take voice dictation.

Once the dictation has been completed sort out the mail, sending by e-mail where appropriate, and inserting the snail-mail into envelopes, sealing them and franking them before sending them off. The same machine will make the necessary copies of any document required (because they will all be stored in its memory). Thus a machine the size of a filing cabinet will also act as a filing cabinet.

Original documents will be kept only for the purpose of satisfying irascible high court judges and taxing masters. In time even this quaint habit will die out, as everyone will be encouraged to have e-mails; and postmen will enter the history books.

Telephones

There can be no doubt that by 2024 every office telephone will have a little television screen and you will be able to see your caller. This will considerably help in negotiations because you will be able to judge a shift in body language as you move towards clinching the deal or hiking the damages. There could of course be tricks. The person speaking on the telephone may not be the same person whose picture you see on the screen. Who will be in charge of adjusting the camera to pan in or zoom out? Telephones will as a matter of course display who is calling, from what number and the charge as it is run up. Telephone lines will begin to disappear as more and more people receive their telephone/television communication by satellite or use mobile phones.

Telephones will probably have learnt by then to answer themselves completely. They will do as good a job as a mediocre receptionist (though not as good as the best). They will be able to respond to spoken enquiries and only refer callers to a human being if the problem is so arcane as to defeat the logic chips.

It is to be hoped that those who design telephone systems will make them less boring. Grappling with voicemail can be a frustrating experience without having to put up with the voice of a Dalek telling you what to do.

Information

The high street practitioner will have access to immense amounts of information either through the Internet or through CD-ROMs. Many standard textbooks are now available on CD-ROM. This trend will continue, with updates arriving electronically via e-mail. Will books disappear? I hope not. Computer screens and laptops have their uses but it is difficult to conceive that they will ever become so convenient to use that they will supplant a real book. It is true that screens will become flatter and more portable but it is unlikely that they will become so user-friendly that they will ever be a substitute for the real thing. Using fingers, train tickets, Post-It notes and your favourite pen (which you find again years later) as bookmarks give you a far better browsing facility than all the browsers so far invented.

That is not to say that computer access to published material is not in many ways superior. It is excellent for finding that "needle in the haystack" and for extracting all relevant cases since the beginning of time on the law relating to butterflies (or whatever your choice is). And we may see the end of the infernal looseleaf work with its horrendous updates, and its tendency to fall apart when you are under extreme pressure to find your answers by the end of the day. We once had a looseleaf guide to town and country planning that was updated in error with pages from a work on tax. It took years for this cross-fertilisation to work its way out of the system.

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Forms

The Legal Aid Board has already started it and no doubt others will follow. Forms will no longer require us to write clearly in block capitals using black ink. Computers will produce the forms on screen, will prompt for the answers (and tell you if they are the wrong sort of answers) and hey, presto! the form will come out of the printer ready to send to . . . the high court if it is a writ, the Legal Aid Board (if it exists), the Department of Social Security (ditto) or the Inland Revenue (which certainly will exist). But why then print out a form at all? If it is going to be stored electronically at the other end then just send it by e-mail. How do you then make sure that the client really did sign it? Do you use PIN numbers or thumb prints? Will there then be some other computer way of verifying that each individual is who he or she says he is. Instant DNA fingerprinting perhaps or depositing with the solicitor every time a single strand of hair (provision will have to be made for bald clients in those circumstances).

We have been talking about solicitors' offices. Will they be the same places where everybody gathers every day, takes off their hats and coats, chats about last night's television, grumbles about the boss and about those dreadful clients?

A vision of the future office

Duane and Tracey had little difficulty in finding the impressive office of Laws R Us. Solicitors over the past quarter-century have moved away from the old-fashioned idea of stringing together a collection of names of old solicitors and calling it a law firm. Laws R Us with its chain of 560 outlets spread across the United Kingdom and Western Europe is the third biggest law firm in the country, and is competing hard with U Sue (650 outlets) and the giant LSI Inc. which has in excess of a thousand.

Duane and Tracey have a shopping list of legal requirements including both divorcing their ex-partners, buying a house and making a video will. They have no difficulty in recognising the familiar lime-green and purple livery of Laws R Us in the North Walsham retail park. They see it every night in the advertisements on their television walls. They park in the 200-space car park and enter through the automatic doors.

Years of training at food counters in supermarkets ensure that they are patient about waiting in line. They take their queuing ticket and note that 39 people ahead of them are waiting to be served. It should not take long, as there is a whole line of Laws R Us receptionists at their consoles dealing with clients. While they wait they pass the time by playing on the arcade games in the extensive reception area.

Thirty-five minutes later there is a gentle "ping" on the public address

number of consultations they could choose their environment and the type of solicitor they wanted to see. There followed a beauty parade of young and old, male and female, native and ethnic, pretty and ugly solicitors. They were taken through several virtual offices. Being conventional people Wayne and Tracey decided to choose a very traditional background, and an elderly solicitor.

What they saw was an old man with a starched collar standing in candlelight and heavy, broad-backed, old-fashioned, mahogany-and-horsehair chairs, not easily lifted; obsolete tables with spindle-legs and dusty baize covers; presentation prints of the holders of great titles in the last generation or the last but one, environed him. A thick and dingy Turkey-carpet muffled the floor where he sat, attended by two candles in old-fashioned silver candlesticks that gave a very insufficient light to his large room. The titles on the backs of his books had retired into the binding; everything that could have a lock had got one; no key was visible. Very few loose papers were about. The old man turned to them and asked:

“And how can I help you?”

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² By the Human Rights Act 1998 (c.42) enacted in November 1998.