

GAMING THE SYSTEM: APPROACHING 100% ACCESS TO LEGAL SERVICES THROUGH ONLINE GAMES

WILLIAM E. HORNSBY, JR.*

INTRODUCTION

The American legal profession has a longstanding objective of providing 100 percent access to legal services.¹ At the state and federal levels, we allocate hundreds of millions of dollars each year to provide legal services to the poor.² The legal profession may be second to none in its dedication to *pro bono* activities.³ Technological efficiencies have been employed, particularly since the emergence of the Internet, which have driven down costs and made services more affordable to the working class. Yet, the legal needs studies at the state and national levels demonstrate that a major portion of those at both the low and moderate income levels frequently do not recognize when they have a legal problem, often do nothing when they are confronted with the matter, and rarely turn to lawyers or the justice system for solutions. Regardless of the money allocated, the volunteer time committed, or the efficiencies generated, we will never approach full access to legal

* Will Hornsby is staff counsel at the American Bar Association, where he has provided support to the Standing Committee on the Delivery of Legal Services since 1990. The views expressed here are solely those of the author and do not reflect the policies of the American Bar Association or any of its constituent entities. The author thanks Prof. Ron Staudt and Marc Lauritsen for the opportunity to participate in the Chicago Kent College of Law Symposium *Justice, Lawyering and Legal Education in a Digital Age*.

1. See, e.g., *Summit on the Use of Technology to Expand Access to Justice-June 2012, Mission Statement*, LSC TECHNOLOGY INITIATIVE GRANTS, <http://tig.lsc.gov/summit-use-technology-expand-access-justice-june-2012> (last visited Apr. 16, 2013) (stating, in part, "The Summit on Use of Technology to Expand Access to Justice will explore the potential of technology to move the United States towards providing service of some form to 100 percent of those persons with a legal need.").

2. *LSC's Fiscal Year 2013 Budget Request*, LSC, <http://www.lsc.gov/congress/funding/lscs-fiscal-year-2013-budget-request> (last visited Apr. 16, 2013).

3. See MODEL RULES OF PROF'L CONDUCT R. 6.1 (states in part, "[A] lawyer should aspire to render at least (50) hours of pro bono public legal services per year."); see also, *Supporting Justice III – A Report on the Pro Bono Work of America's Lawyers, March 2013*, ABA STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE, available at http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_Supporting_Justice_III_final.authcheckdam.pdf (indicating that 63% of lawyers surveyed provided pro bono services in 2011).

services until those with legal needs become better aware, better educated, and better engaged.

Historically, the public has had great interest in the law and legal cases both within factual and fictional settings. People have a fascination with the drama of high profile legal cases, as well as portrayals in movies, television programs and novels. Curiously, this fascination has not translated to personal engagement. In particular, aspects of the law have not been incorporated into online games. The legal profession is experimenting with online quizzes and educational games at the grade school and high school levels, and there are some examples of simulations in legal education and training. However, little effort is being advanced to use online games, sometimes referred to as “gamification,” to engage the general public in legal matters in ways that can demonstrate the advantages of participation in the legal system. This article explores the need for improved engagement and the extent to which online games centered on legal issues may become a component of engagement by those with legal needs.

Part I of this article begins with an examination of personal civil legal needs and what is known about the actions taken by people to address those needs. Part II looks at the costs and affordability of routine legal services and the disengagement of those who may benefit from those services. Part III looks at the way technology has been used to create economies for personal legal services, yet has avoided meaningful engagement. Part IV looks at the efforts that have been made to use technology to engage those in the legal system. Finally, Part V examines the potential to increase access through online games as one method of enhancing engagement, while Part VI looks at the opportunities to use games to increase access while simultaneously advancing social policies and examines the role of stakeholders who should lead the path to increased access.

I. LEGAL NEEDS AND DISENGAGEMENT

The United States ranks fiftieth out of sixty-six countries in the ability of its people to obtain a lawyer, according to the World Justice Project.⁴ It ranks behind Russia, Pakistan, Albania, Botswana and China, to name a few.⁵ National research conducted by the American Bar

4. Mark D. Agrast et al., *Rule of Law Index 2011*, WORLD JUSTICE PROJECT 21 (2011), http://www.worldjusticeproject.org/sites/default/files/WJP_Index_Report_2012.pdf.

5. *Id.* at *passim*.

Association and state research conducted by several other entities demonstrate the limitations people face when attempting to use the justice system to resolve their issues.

The ABA Consortium on Legal Services and the Public conducted the most recent national survey on legal needs.⁶ The study was much like many of the state legal needs studies that followed, in that the study set out various circumstances and asked people if they had experienced those situations. If they had, the response was recorded as a legal need. If they did not address the matter, the response was recorded as an unmet legal need. Unlike many of the subsequent state studies, the Comprehensive Legal Needs Study surveyed both low and moderate-income people.⁷ When a legal need was identified, survey respondents were asked about the actions taken to address the need and identified the most formal action for both low and moderate-income populations. Thirty-eight percent of the low-income sample and twenty-six percent of the moderate-income sample reported they took no action to address their issues. Conversely, twenty-nine percent of the low-income group and thirty-nine percent of the moderate-income group took judicial or legal action to resolve their legal matters.⁸ In other words, the Comprehensive Legal Needs Study found that only three out of ten low-income people addressed their legal problems through judicial or legal action and only four out of ten people with moderate incomes did so.⁹

When asked why they did not turn to the justice system, the most common responses from those with low incomes were that the system would not help their situation or that it was cost prohibitive.¹⁰ The most common responses from those with moderate incomes were that their issue was not really a problem, turning to the justice system would not help their situation, or that they could handle the matter on their own.¹¹

More recent legal needs studies at the state level reinforce the notions that people are often unaware of their legal problems, or perhaps

6. *Legal Needs and Civil Justice: A Survey of Americans Major Findings from the Comprehensive Legal Needs Study*, A.B.A. 5 (1994), <http://www.nlada.org/DMS/Documents/1029845345.31/legalneedstudy.pdf>.

7. *Id.* Most state studies look only at the legal needs of low-income persons, but the Comprehensive Legal Needs Study surveyed those with household incomes up to \$60,000 per year.

8. *Id.* at 17.

9. *Id.*

10. *Id.* at 20.

11. *Id.* at 20-21.

that people are unaware that their problems are legal in nature, and that they often take no formal action within the justice system to solve them. For instance, the 2010 report entitled, "Civil Legal Needs among Low Income New York State Residents,"¹² made the extraordinary finding that ninety-four percent of respondents believed they did not have a non-criminal legal issue in their household in the prior year. However, when asked questions about specific legal matters, forty-eight percent of respondents identified at least one legal problem, and the report found that the mean number of legal problems was 1.4 per household.¹³ Fifty-six percent of the respondents took no action to address their legal problems, while only seventeen percent sought legal help.¹⁴ People who took no action reported that they did not think that taking action would really help; they did not want to cause trouble; or they did not know where to go for help.¹⁵ Less than ten percent reported that they thought that taking action would be too expensive.¹⁶

The 2009 report "Civil Legal Needs of Low and Moderate Income Households in Georgia,"¹⁷ analyzed the legal needs study conducted in 2007 and 2008. It indicated,

About 87% of households with legal problems did not seek legal assistance. A key reason for not seeking legal assistance is lack of understanding of the legal nature of the problem. Households that had legal problems were asked if they knew the problem was legal in nature. Only about a quarter of the respondents said they were aware of the legal issue involved . . . Among households that did nothing, the main reason given for doing nothing included that they did not know that the problem was a legal problem (18%), believed nothing could be done about the problem (16.7%), did not want the hassle (7.5%), or did not know where to go for help (7.1%).¹⁸

12. *Findings of Lake Research Partners on Civil Legal Needs Among Low-Income New York State Residents*, LAKE RESEARCH PARTNERS 1 (Nov. 2010), <http://www.nlada.org/DMS/Documents/1295715314.39/NY%20Legal%20Needs%20Survey%202010.pdf>.

13. *Id.* at 17.

14. *Id.* at 54, 58.

15. *Id.* at 59.

16. *Id.*

17. D. Michael Dale, *Civil Legal Needs of Low and Moderate Income Households in Georgia*, COMM. ON CIVIL JUSTICE – SUPREME COURT OF GEORGIA EQUAL JUSTICE COMMISSION 1 (June 2009), http://www.nlada.org/DMS/Documents/1309982866.71/GA%20LegalNeeds_Report%20FINAL.pdf.

18. *Id.* at 27-28.

In 2005, 2007 and 2009, the Legal Services Corporation (LSC) issued reports entitled, "Documenting the Justice Gap in America."¹⁹ Among other things, these reports gathered and analyzed the state legal needs studies that had been conducted in the 2000s. The reports present the following table²⁰ of reasons why people did not turn to the justice system or get help from a lawyer.

TABLE: REASONS GIVEN FOR NOT GETTING AN ATTORNEY

Oregon Reason for not getting a lawyer's help, by percentage of respondents with a problem who did not seek legal assistance:

- Nothing can be done: 17
- Not a legal problem: 12
- Nowhere to get help: 12
- Too much hassle: 12
- Worried about cost: 11
- Afraid/intimidated 11
- Turned to other help: 7

New Jersey Reason for not getting a lawyer's help, by percentage of respondents who perceived a need for legal help but did not seek it:

- Could not afford: 56
- "Other reasons included the belief that the problem was not important enough to pursue, the fear of retaliation, and the belief that nothing could be done." No further breakdown given.

Connecticut Reasons for not seeking legal assistance *from legal aid program*, by percentage of problems:

- Did not know legal aid was available: 30
- Legal aid does not help with this problem: 10

Washington Reason for not getting an attorney, as a percentage of households with a legal problem (more than one reason could be cited):

19. Helaine M. Barnett, *Documenting the Justice Gap in America*, LEGAL SERVICES CORPORATION (2009), http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf (hereinafter *Documenting the Justice Gap in America* (2009)); Helaine M. Barnett, *Documenting the Justice Gap in America*, LEGAL SERVICES CORPORATION (2007), <http://www.lsc.gov/sites/default/files/LSC/images/justicegap.pdf>; Helaine M. Barnett, *Documenting the Justice Gap in America*, LEGAL SERVICES CORPORATION (2005), http://www.americanbar.org/content/dam/aba/migrated/media/issues/civiljustice/civiljustice_lscreport.authcheckdam.pdf.

20. *Documenting the Justice Gap in America* (2009), *supra* note 19, at E-5.

- Thought nothing could be done: 27.9
- Didn't know who could help: 24.1
- Worried about cost: 22
- Not a legal problem just the way things are: 21
- Afraid or intimidated: 10
- Turned to someone else: 7.8

Massachusetts Main reason did nothing, by percentage of all legal encounters for which households took no action:

- Not a problem, just the way things are: 30
- Nothing could be done: 18
- Did not know who could help: 8

Tennessee Reason for not taking action to resolve their most difficult legal problem, by percentage of households reporting no action:

- Just the way things are: 17.6
- Nothing can be done: 16.8
- Didn't know where to go: 12
- Too much hassle: 12

Illinois Reason for not having a lawyer, by percentage of household experiencing at least one problem:

- Thought they could handle it on their own: 33
- Hiring a lawyer would be too expensive: 26
- A lawyer would not help resolve the situation: 9

Montana Reasons for not seeking legal help, by percentage of respondents with a problem who did not seek legal assistance:

- Thought nothing could be done: 19
- Did not see problem as legal: 23
- Didn't know who could help: 20
- Worried about cost: 19
- Too much hassle: 16
- Afraid: 10
- Didn't want public dispute: 9

To be sure, the cost of legal services is a factor in some of these studies, but far too often people reported they did not seek a legal solution because (1) they believed nothing could be done; (2) they did not believe the matter was a legal problem; or (3) they did not know where to seek legal help.

These studies also identified the meager percentages of respondents who tried to get or actually received legal help for their problems. The figures range from about nine percent for respondents from Georgia, Nevada and Vermont, to a high of thirty-seven percent for those from Wisconsin.²¹

II. THE AFFORDABILITY OF LEGAL SERVICES

Nothing in this discussion should be deemed to undermine the fact that tens of millions of Americans cannot afford assistance for many of their legal needs and that both funding for legal aid and *pro bono* services provided by lawyers in the United States are grossly insufficient to meet the legal needs of the poor. Nevertheless, an examination of costs, allocations, specialized programs and alternative delivery methods make some legal services more affordable to those in all economic demographics than may be popularly perceived.

In other words, cost is sometimes a factor, but not always *the* factor in the decision to forego legal representation. According to University of Illinois Sociology Professor Rebecca Sandefur, “[w]hat evidence we do have suggests that the cost of lawyers’ services may play some role in explaining why justice problems are seldom taken to attorneys, but that other important factors are also at play.”²² Professor Sandefur speculates that the basis of the perception of a lawyer’s costs and the sense that their services are unaffordable is the disparity between the incomes of lawyers compared to the average incomes of Americans.²³

Real costs, however, are difficult to determine. Professor Sandefur reports “[n]o major contemporary survey asks Americans how much they paid for lawyers’ services to handle a specific justice problem, nor do any of the recent social scientific surveys of lawyers ask attorneys or firms how much they charged for a case or consultation or body of work.”²⁴ Nevertheless, Professor Sandefur examines various sources, adjusts for economic fluctuations over time, and presents certain ranges for some types of legal services. She identifies the cost of a simple

21. *Documenting the Justice Gap in America* (2009), *supra* note 19, at 16. Note also that of the seventeen states studied, none other than Wisconsin reported that more than 30.6 percent of the respondents sought help from a lawyer, and most were below twenty percent.

22. Rebecca L. Sandefur, *Money Isn’t Everything: Understanding Moderate Income Households’ Use of Lawyer’s Services*, in *MIDDLE INCOME ACCESS TO JUSTICE* 222, 244 (Michael Trebilcock et al. eds., 2012).

23. *Id.* at 226. It is reported that the 2009 average annual income for a lawyer was \$113,240, compared to the average household income in the U.S. of \$49,777.

24. *Id.* at 227.

will to be between \$139 and \$600.²⁵ An uncontested divorce is calculated to be between \$848 and \$10,000. Real estate settlements range between \$500 and \$1,500, and the cost to review a rental contract or lease is between \$150 and \$250.²⁶

While Professor Sandefur's analysis uses data from the 1980s in some places and then adjusts for inflation, her analysis does not take into account the growth of the legal profession and the impact this growth has had on the prices of legal services. Again, no research exists on this direct issue, but we do know that in the past fifty years, the legal profession has grown from 288,746 lawyers to 1,225,452; an increase of 425 percent.²⁷

A quick look at online advertisements for legal services on Craigslist shows that lawyers are offering routine services at prices at or even lower than those set out by Professor Sandefur.²⁸ Amid the common, but unspecified "affordable" and "low cost" services and the frequent free consultations, lawyers advertised the following rates, most of which were "from . . ." or "starting at . . .":

- A Jacksonville, Florida, law firm advertises that it provides uncontested divorces starting at \$500, plus costs.
- A Minneapolis law firm offers uncontested divorces starting at \$298, while Chicago law firms offer uncontested divorces from \$300, \$500, and \$550.
- A Detroit law firm offers uncontested divorces from \$499, while another packages divorces and short sale real estate representation starting at \$599.
- A Pittsburgh law firm offers "uncomplicated" divorces for \$150, while another represents clients in family law matters for \$125 per hour.
- One Jacksonville law firm provides estate planning for fixed fees of \$250 for an individual and \$450 for a couple.
- A San Diego firm provides husband and wife estate plans for a total of \$300, while another offers a custom estate package for \$749.
- One Chicago firm offers Chapter 7 bankruptcies for \$500, while another offers a special to veterans and military personnel for \$499.

25. *Id.* at 229.

26. *Id.*

27. 1998 *Forward to ABA Market Research Department's National Lawyer Population Survey*, ABA (2011), available at http://www.americanbar.org/resources_for_lawyers/profession_statistics.html

28. CRAIGSLIST, <http://www.craigslist.org/> (last visited Apr. 15, 2013) (all ads are on file with the author, and were examined in 2013).

- In Jacksonville, one firm offers Chapter 7 bankruptcies for as low as \$699 and Chapter 13 for no money down.
- One Detroit firm provides bankruptcies for \$599, plus costs and another offers DUI defenses for \$400 per appearance.
- In San Diego, Chapter 7 bankruptcies are available from one firm for \$499 and another for \$549.
- A San Diego lawyer provides an array of services at \$75 per hour.

Table 2

	Jacksonville	Chicago	Detroit	Pittsburgh	San Diego
Uncontested Divorce	\$500	\$300-550	\$499	\$150	\$75/hr
Chapter 7 Bankruptcy	\$699	\$499	\$599		\$499-\$549
Wills/Estate Plans	\$250/\$450			\$300 h&w	\$749

This somewhat random online search for the prices of routine legal services suggests that lawyers are available for the most common legal matters for one-half to two percent of the average annual US household income. These prices, of course, apply only to the simplest, most routine matters. The cost of litigation, on the other hand, often involves customized work, is time-intensive, and demands a certain level of skill from the lawyers providing those services. Nevertheless, Professor Sandefur calculates, based on older research that has been price adjusted, that fifty-nine percent of state court cases cost no more than \$5,000.²⁹ While this cost is out of reach for many, the justice system and the legal profession have taken some measures to make legal services available to all socioeconomic levels.

While attorneys provide the common services noted above on flat, fixed, or hourly fees, other legal services have different types of fee allocations that ought to make them even more affordable. These include contingency fees and fee-shifting provisions.

Anyone who has watched cable television for more than half an hour should be familiar with contingency fees. These fees are presented by lawyers who advertise for personal injury and mass tort cases as

29. Sandefur, *supra* note 22, at 227.

“no recovery, no fee.” The client’s fee is contingent on the recovery of an award, whether the reward is the result of a settlement or a verdict. If there is no award, there is no fee (even though the client may be responsible for the costs associated with the litigation).

Contingency fees are most commonly associated with the variety of personal injury matters, ranging from car accidents to medical malpractice matters. However, contingency fees can also be the basis for payments for workers’ compensation matters, employment law claims, and discrimination matters. The Rules of Professional Conduct prohibit the use of contingency fees in criminal and domestic relations matters, but otherwise lawyers are free to make contingency fee arrangements available.³⁰ Therefore, in only very rare instances would a person be dissuaded from pursuing a legal matter because of costs when those costs are contingent on the outcome of the case.

Fee shifting is a payment method closely related to contingency fees and another option for those who cannot afford out-of-pocket payments in the marketplace. In a case involving fee shifting, the lawyer is paid by the opposing party rather than being paid from a portion of the client’s award. The Massachusetts law firm Heisler, Feldman, McCormick & Garrow represents tenants facing evictions on a fee-shifting basis.³¹ This firm uses a rigorous screening procedure to assure they accept cases that are likely to meet the criteria that enable them to successfully obtain fees from landlords, but still allow them to provide the services to clients free of charge.³²

Similarly, the Chicago law firm Mauk & O’Connor represents families of children in need of individualized education plans as a result of learning disabilities.³³ The attorneys’ fees are shifted to the school district when the families prevail in litigation.³⁴ Although under certain circumstances the firm obtains fees from its clients, in about ninety percent of cases, the fees come from the school district.³⁵ Under most circumstances, people with meritorious cases have access to these legal services without out-of-pocket payments.

The organized bar has recognized the need to provide affordable legal services to those of moderate incomes, individuals who may have

30. MODEL RULES OF PROF’L CONDUCT R. 1.5.

31. *Profiles of Moderate Income Delivery Programs*, ABA STANDING COMMITTEE ON THE DELIVERY OF LEGAL SERVICES, 2009, at 5 (on file with the author).

32. *Id.*

33. MAUK & O’CONNOR, LLP, <http://www.maukoconnor.com> (last visited Apr. 16, 2013).

34. *Profiles of Moderate Income Delivery Programs*, *supra* note 31.

35. *Id.*

too much to qualify for legal aid, and so the bar has responded with a variety of “low-bono” programs. The most common method implemented by bar associations is modest means panels of lawyer referral services. These panels, or groups of lawyers, are comprised of those lawyers who agree to offer their services to qualified clients for fees that are less than the market rates they generally offer clients.

In 2008, the American Bar Association identified and surveyed thirty-seven lawyer referral programs from around the country that had modest means panels.³⁶ The programs have criteria for participation; the requirement is most frequently tied to a percentage of the federal poverty guidelines. Programs commonly accept potential clients with incomes between 125 and 200 percent of these guidelines.³⁷ Some programs identify annual income levels, and a few programs examine liquid assets of potential clients.³⁸ In addition, the programs have a wide variety of fee structures. In several referral services, the lawyers agree to reduced hourly rates, usually between fifty and seventy-five dollars.³⁹ In some programs, the lawyers charge no more than a specified percentage of their regular hourly rate (e.g., one-half).⁴⁰ A few programs cap the total case cost, and at least one program has a series of flat fees for specific services.⁴¹

A few states have modest means programs outside of their lawyer referral services. For example, the Arizona Foundation for Legal Services and Education has joined with the State Bar of Arizona to operate a modest means program.⁴² In this program, lawyers provide a wide range of personal legal services for no more than \$75 per hour.⁴³ Similarly, the Washington State Bar Association has a program that refers modest means individual to lawyers to.⁴⁴ This program involves law students from the three Washington law schools. The students conduct intake interviews, do case assessments, and make referrals to the par-

36. See generally A.B.A. Standing Committee on Lawyer Referral and Information Service, *Modest Means Programs*, A.B.A. (2008), available at <http://apps.americanbar.org/legalservices/lris/clearinghouse/modest.html>.

37. *Id.* at 11-26.

38. *Id.*

39. *Id.* at 27-34.

40. *Id.*

41. *Id.* at 59-60, 91 (discussing California and Florida’s modest means programs).

42. *Modest Means Project*, ARIZONA FOUNDATION FOR LEGAL SERVICES & EDUCATION, <http://www.azflse.org/modestmeans/> (last visited Apr. 16, 2013).

43. *Id.*

44. *Moderate Means Project*, WASHINGTON STATE BAR ASSOCIATION, <http://www.wsba.org/Legal-Community/Volunteer-Opportunities/Public-Service-Opportunities/Moderate-Means-Program> (last visited Apr. 16, 2013).

ticipating lawyers.⁴⁵ After executing an engagement contract, the participating lawyers charge a percentage of their regular hourly fee, based on the income of the client.⁴⁶ Lawyers reduce their fees by seventy-five percent for clients with incomes between 200 and 250 percent of the federal poverty guidelines, fifty percent for clients with incomes between 250 and 350 percent, and twenty-five percent for clients with incomes between 350 and 400 percent.⁴⁷ Lawyers may charge less than these rates if they choose.⁴⁸

An additional option, beyond “low-bono” representation, is unbundling legal services. Unbundling is also known as “limited scope representation” or “discrete task representation.” According to the New York Civil Courts, “unbundled legal services” involve,

a practice in which the lawyer and client agree that the lawyer will provide some, but not all, of the work involved in traditional full service representation. Simply put, the lawyers provide only the agreed upon tasks, rather than the whole “bundle,” and the clients perform the remaining tasks on their own.⁴⁹

Unbundling has the advantage of generating full hourly compensation for the lawyer, while allowing the client to pay less overall since the client needs fewer hours of the lawyer’s time.

A major problem with unbundled legal services is that people are not familiar with the concept and do not seek it out. The ABA conducted public research in 2010 probing aspects of finding and using lawyers for personal legal services.⁵⁰ Unbundling was among the issues examined. During telephone interviews, interviewees received a brief statement describing unbundled legal services. These interviewees were then asked how familiar they were with the concept. On a four point Likert scale, seventy percent of the respondents reported they were not at all familiar with the concept.⁵¹ Only eleven percent report-

45. *Prospective Panel Attorneys*, WASHINGTON STATE BAR ASSOCIATION, <http://www.wsba.org/Legal-Community/Volunteer-Opportunities/Public-Service-Opportunities/Moderate-Means-Program/Prospective-Panel-Attorneys> (last visited Apr. 16, 2013).

46. *Id.*

47. *Id.*

48. *Id.*

49. *Definitions*, NEW YORK CITY COURT, <http://www.nycourts.gov/courts/nyc/civil/definitions.shtml#u> (last visited Apr. 13, 2013).

50. *Perspectives on Finding Legal Services*, ABA STANDING COMMITTEE ON THE DELIVERY OF LEGAL SERVICES (Feb 2011), http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/20110228_aba_harris_survey_report.authcheckdam.pdf.

51. *Id.* at 19.

ed that they were somewhat or very familiar with it.⁵² Nevertheless, about two-thirds reported that they would like to explore unbundled representation with a lawyer when faced with a legal problem.⁵³ About the same percentage indicated they would consider whether the lawyer provided unbundled services when deciding whether to engage that lawyer.⁵⁴ In summary, people are not aware of unbundled legal services, but they like the idea after they learn about it.⁵⁵

Marketplace fees for routine legal matters, allocating costs by shifting remuneration through contingency payments and shifted fees, modest means programs providing low-bono services through lawyer referral services and specialized programs, and adjusted delivery models such as unbundled legal services, all combine to make many types of legal services affordable to a large portion of the population who may believe these services are unaffordable. However, if the findings of the legal needs studies move up the economic ladder and people do not turn to lawyers because they do not believe their issues are legal issues, they do not believe that legal solutions are solutions to their problems, or they do not know how to find legal help for their problems, then as Professor Sandefur titles her chapter: "Money Isn't Everything."⁵⁶

III. THE USE OF TECHNOLOGY

Internet-based technological developments have emerged over the past two decades to enhance client development, create the online delivery of legal services, and employ efficiencies, such as document preparation, designed to reduce costs and lower fees.

When the Internet emerged as a widely available form of communication in the early 1990s, it was often called the Information Superhighway. The Internet could have as easily been called the Supermarket, since it quickly became a source of inexpensive advertising. Law firms were among the early marketers. In November 1994, five law firms had websites.⁵⁷ By the following summer, an estimated 500 firms had websites.⁵⁸ By 2012, nearly eighty-seven percent of the

52. *Id.*

53. *Id.*

54. *Id.* at 20.

55. *Id.*

56. Sandefur, *supra* note 22, at 222.

57. *Selling in Cyberspace*, 5 LAWYER ADVERTISING NEWS: NEWSLETTER OF THE ABA COMMISSION ON ADVERTISING 2 (Nov. 1995).

58. *Id.*

lawyers who participated in the ABA Legal Resource Technology Center survey reported their firms operated a website.⁵⁹

Lawyers were also early users of online intermediaries that advanced their services. Lawyers participated, and continue to participate, in fundamental online directories. These directories changed the landscape for finding a lawyer by making the information ubiquitous and perpetually available at costs generally less than print directories. Lawyers also made use of websites that marketed their services in ways that had not been available prior to the Internet, such as the question and answer sites established in the 1990s by LawGuru⁶⁰ and LegalAdvice.⁶¹

Today, there are scores of branded networks that promote the services of participating lawyers. As described by the co-chairs of the American Bar Association e-Lawyering Task Force, Richard Granat and Marc Lauritsen:

Because small firms often have difficulty marketing themselves and gaining visibility for their websites in an environment of intense competition, they will band together into nationally and vertically branded networks to aggregate their marketing resources. Designed around vertical specialties, these networks will provide free legal information to consumers to attract traffic, may have free question-and-answer services from lawyers in the network that may or may not be true legal advice, and may offer free legal forms as a traffic generator. Examples of emerging networks include www.ezlaw.com, www.lawpivot.com, www.totalbankruptcy.com, www.smarterwill.com and www.directlawconnect.com.⁶²

The branded networks include a variety of wrinkles. Directories sponsored by major legal vendors often include libraries of documents that enable people to become familiar with their legal issues before speaking with a lawyer.⁶³ Some networks provide matching services, where a person with a legal problem can post information that is provided to the participating lawyers who can then follow up with the potential client and offer specific service, sometimes at a specific

59. 2012 American Bar Association Legal Technology Survey Report, ABA LEGAL TECHNOLOGY RESOURCE CENTER, at IV-17.

60. About LawGuru.com, LAWGURU, <http://www.lawguru.com/answers/about> (last visited Apr. 16, 2013).

61. LEGALADVICE.COM, <http://legaladvice.com/> (last visited Apr. 16, 2013).

62. Richard S. Granat & Marc Lauritsen, *The Next Five Years – Predictions for the Future of eLawyering*, 37 LAW PRAC. MAG. 5 (Oct. 2011), available at http://www.americanbar.org/publications/law_practice_magazine/2011/september_october/the_next_five_years.html.

63. See, e.g., FINDLAW, <http://www.findlaw.com/> (last visited May 2, 2013).

price.⁶⁴ Some branded networks sell leads to participating lawyers. Sometimes leads are provided to participating lawyers who have purchased a zip code or area code. All calls or online intake leads from that specific area go to the lawyer who has “purchased” that area from the vendor.⁶⁵ Some online sites provide ratings of lawyers and feedback from prior clients.⁶⁶ Branded networks are beginning to explore methods of integration with social networks, where the network combines a person’s search for a lawyer with his or her social media contacts. For instance, if someone from a person’s Facebook presence has rated a lawyer, that information will appear in the person’s search, as a type of endorsement (or warning, depending in the rating).⁶⁷

While the use of the Internet to market legal services may have been revolutionary, its use to actually deliver legal services has been evolutionary, and continues to evolve. Online legal services delivery models include virtual law offices, virtual law practices, aggregated resources for low-income delivery, government resources, and online dispute resolution.

For the purpose of this discussion, a virtual law office is one that aggregates lawyers from various practice areas online rather than through brick and mortar office locations. The administration of the “law firm” is online. The law firm members may never meet in-person, but may collaborate on cases as the clients, typically businesses, assemble teams of lawyers with particular skills to address their legal matters.⁶⁸ Thus far, the virtual law practice has centered on corporate and institutionalized legal matters. However, a variation of the virtual law office being implemented in Michigan involves a cadre of lawyers under an “of counsel” arrangement, which enables the firm to provide legal services throughout the state, relying on technology-based communications.⁶⁹

On the other hand, a virtual law practice, as defined by Stephanie Kimbro, is “a professional law practice that exists online through a

64. See, e.g., LEGAL FISH, <http://www.legalfish.com/> (last visited May 2, 2013).

65. See, e.g., TOTALBANKRUPTCY, <http://www.totalbankruptcy.com/> (last visited May 2, 2013); INJURY HELPLINE, <http://www.injuryhelpline.com/> (last visited May 2, 2013).

66. See, e.g., AVVO, <http://www.avvo.com/> (last viewed May 2, 2013).

67. *Legal Sonar uses social media to help lawyers, clients find right fit*, SILICON PRAIRIE NEWS (Feb. 7, 2012), <http://www.siliconprairienews.com/2012/02/legal-sonar-uses-social-networks-to-help-attorneys-clients-find-right-fit>.

68. *Alternative law firms, Bargain briefs*, THE ECONOMIST (Aug. 13, 2011), available at <http://www.economist.com/node/21525907>.

69. *About ALC*, ACCESS LEGAL CARE, <http://www.accesslegalcare.com/about-alc> (last visited Apr. 16, 2013).

secure portal and is accessible to both the client and the lawyer anywhere the parties may access the Internet.”⁷⁰ Notably, the virtual law practice may be the only interface the lawyer has with his or her clients, or the virtual practice may be a supplement to a traditional land-based practice. Virtual law practices offer several advantages, including low overhead costs, asynchronous communications, and perpetual access to information.

Funding by the Legal Services Corporation through its Technology Initiative Grants (TIGs), among other sources of funding,⁷¹ have stimulated the online delivery of legal services to low-income individuals. These grants have launched resources for the delivery of legal services through the Internet at the national and state levels. At the national level, ProBono.net operates, among its various resources, LawHelp.org, a site that helps low and moderate income people find resources to best address their legal matters.⁷² The state websites offer subject-matter libraries of information, live chat, online forms, and direction for resources; all of which are free to the users (without economy restrictions). The state sites are aggregated and linked from the LSC TIG site.⁷³

In addition to the resources provided and funded by LSC, other government entities provide legal services online. For example, the state secretaries of state typically provide the ability to undertake a series of legal actions online, such as filing for a corporation or applying for a trademark.⁷⁴ Not only do these sites provide fillable forms, they also commonly include informational material.

Finally, the Internet has given rise to online dispute resolution as both a substitute for and supplementary component of legal services. The National Center for Technology and Dispute Resolution aggregates information about Online Dispute Resolution (“ODR”) resources.⁷⁵ Over sixty ODR entities are linked from the Center’s site with names

70. STEPHANIE L. KIMBRO, VIRTUAL LAW PRACTICE 4 (2010).

71. *Background*, LSC TECHNOLOGY INITIATIVE GRANTS, <http://tig.lsc.gov/about-us/background> (last visited Apr. 16, 2013).

72. *Mission*, PROBONO.NET, <http://www.probono.net/about/item.Mission> (last visited Apr. 16, 2013).

73. *Resources and Initiatives*, LSC TECHNOLOGY INITIATIVE GRANTS, <http://tig.lsc.gov/resources/grantee-resources> (last visited Apr. 16, 2013).

74. *See, e.g., Business Services*, ILL. SECRETARY OF STATE, http://www.cyberdriveillinois.com/departments/business_services/home.html (last visited Apr. 16, 2013).

75. *About*, NATIONAL CENTER FOR TECHNOLOGY AND DISPUTE RESOLUTION, <http://odr.info/about> (last visited Apr. 16, 2013).

like the Resolution Forum Inc., the Virtual Courthouse and People Claim.⁷⁶ These entities represent a variety of models designed to address legal matters quickly and cost-effectively in both the business and personal realms, both online and in person.⁷⁷

Automated document assembly remains one of the cornerstones of online delivery of legal services. Leading software manufacturers of document assembly tools include Hot Docs⁷⁸ and RapidDocs.⁷⁹ These programs enable lawyers to move from bespoke pleadings, contracts and other documents to those that are routine and often require little more than filling in the blanks.⁸⁰ The automation of standardized forms saves time and reduces the cost of legal services, both increasing the lawyer's profit and reducing the cost to the client.

Several groups have developed different approaches to automated document production. Law Help Interactive aggregates both self-help and advocate forms from a variety of states.⁸¹ A program developed at Chicago-Kent College of Law known as A2J facilitates automated document assembly.⁸² A2J Authoring Tools provide a visual where an avatar asks the user (who also becomes an avatar) a series of questions. The questions can be written, in bubbles like those found in cartoons, or audio, offered in many languages. The user answers the questions and proceeds down a path to a courthouse. By the time the avatars have arrived at the courthouse, the program has asked and received the answers to all of the information necessary to create the document. The program then piggybacks on a document assembly platform to seamlessly create the documents necessary for the particular legal matter.⁸³

Individual websites, branded networks, virtual law firms, virtual law practices, online delivery resources and systems sponsored by legal aid, online dispute resolution and document assembly are all ad-

76. *Providers*, NATIONAL CENTER FOR TECHNOLOGY AND DISPUTE RESOLUTION, <http://odr.info/node/32> (last visited Apr. 16, 2013).

77. Brian A. Pappas, *Online Court: Online Dispute Resolution and the Future of Small Claims*, 12 UCLA J. L. & TECH. 2 (2008).

78. HOTDOCS, <http://www.hotdocs.com/> (last visited Apr. 16, 2013).

79. *Rapidocs: Our Web-Enabled Document Assembly Technology*, DIRECTLAW, <http://www.directlaw.com/rapidocs.asp> (last visited Apr. 16, 2013).

80. RICHARD SUSSKIND, TOMORROW'S LAWYERS – IN INTRODUCTION TO YOUR FUTURE 25-27 (2013).

81. *Find Forms*, LAW HELP INTERACTIVE, https://lawhelpinteractive.org/legal_information_and_forms (last visited Apr. 16, 2013).

82. *A2J Author*, IIT CHICAGO-KENT COLLEGE OF LAW, <http://www.kentlaw.iit.edu/institutes-centers/center-for-access-to-justice-and-technology/a2j-author> (last visited Apr. 16, 2013).

83. *Id.*

vances in the delivery of legal services. Some were unimaginable not that long ago. These delivery mechanisms have the potential to facilitate legal services and drive down expenses. However, these methods and systems do little to help people understand when they have a legal problem, what the solutions for those problems are, and how they can find the right provider to assist with their problems. The technology we have pursued since the advent of the Internet has generally revolved around assisting those who recognize they need to be in the system and who have taken the steps to use the system to resolve their problems. But, this use of technology has done little to help those who do not realize their situation presents legal implications.

IV. THE STATE OF ENGAGEMENT FOR LEGAL SERVICES

The legal profession has been the centerpiece of entertainment in media for decades. The courtroom has been the setting of highly regarded movies of all types. Dramas such as *To Kill a Mockingbird* and *Twelve Angry Men* are found on the list of all-time best movies.⁸⁴ Movies with social commentary such as *Philadelphia*, *Erin Brockovich* and *The Verdict* play off of the “David vs. Goliath” theme within the courtroom setting. Comedies such as *Adams Rib*, *Miracle on 42nd Street* and *My Cousin Vinny*⁸⁵ have used the legal system as a backdrop to become timeless classics. Lawyers such as John Grisham and Scott Turow have written best-selling novels centered on the legal system, some of which have also been produced as highly regarded movies.⁸⁶

Famously, Erle Stanley Gardner was a lawyer during the 1930s who grew restless with the practice of law and started writing stories in pulp fiction magazines instead.⁸⁷ He then created Perry Mason, a lawyer who was truly a multi-media character. In addition to being the feature character in Gardner’s novels, Mason was the main character in six movies in the 1930s.⁸⁸ The Perry Mason radio show aired from 1943 to 1955. And, of course, the television show starring Raymond

84. Richard Brust, *The 25 Greatest Legal Movies*, ABA JOURNAL (Aug. 2008), http://www.abajournal.com/magazine/article/the_25_greatest_legal_movies/.

85. If there is any doubt that *My Cousin Vinny* has become a classic, note that the American Bar Association screened the movie for those attending the 2013 Midyear Meeting.

86. Eight of Grisham’s novels have become movies. Three of Turow’s novels have become movies.

87. See *Erle Stanley Gardner*, WIKIPEDIA, http://en.wikipedia.org/wiki/Erle_Stanley_Gardner (last visited May 2, 2013).

88. See *Perry Mason*, WIKIPEDIA, http://en.wikipedia.org/wiki/Perry_Mason (last visited May 2, 2013).

Burr and rerun to this day first ran weekly from 1957 to 1966 and then reemerged in various formats years later.⁸⁹

Perry Mason was the dominant courtroom television show of its era, but others have subsequently emerged to satisfy a public appetite for these dramas. For example, *LA Law*, *Law & Order* and *Ally McBeal* have been highly rated television shows set within the legal realm.⁹⁰

In addition to these dramas, daytime courtroom shows have proliferated in recent years. Beginning with *Divorce Court* in 1957, these dramas have morphed into syndicated shows centered on the “celebrity judges” who “preside” over small claims disputes. The best known is “Judge Judy,” but the list also includes Judge Joe Brown, Judge Mills Lane, Judge Mathis, Judge Hatchett, Judge Alex, Judge Maria Lopez, Judge David Young, and Judge Karen, among others.⁹¹

Over ten million people a week watch *Judge Judy*, making the show the second highest rated syndicated program on television.⁹² The show has nearly twice as many viewers as *Entertainment Tonight* and well more than twice as many as *Dr. Phil*.⁹³ For her efforts, “Judge” Judy Sheindlin makes \$45 million for her 52 days of work each year—\$865,385 per half-hour episode.⁹⁴

All of this is to say that the public is, and has been, fascinated with the courtroom, lawyers, and the law. The legal profession is engrained into popular culture unlike other occupations, perhaps rivaled only by the law enforcement and medical communities. Yet, the legal profession has virtually no comparable virtual presence. That is, the law has not yet surfaced in a meaningful way as a source of entertainment on the Internet.

89. See *Perry Mason (radio)*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Perry_Mason_\(radio\)](http://en.wikipedia.org/wiki/Perry_Mason_(radio)) (last visited May 2, 2013).

90. Stephanie Francis Ward, *The 25 Greatest Legal TV Shows*, ABA JOURNAL (Aug. 2009), <http://www.abajournal.com/gallery/top25tvshows>.

91. *Court Show*, WIKIPEDIA, http://en.wikipedia.org/wiki/Court_show#Dramatized_court_show (last visited Apr. 16, 2013) (section 3.3: List of Present-Day Traditional Court Shows).

92. Amanda Kondoloy, *Syndicated TV Ratings: ‘The Big Bang Theory’ is Number 1 in Households & With Viewers, ‘Dr. Phil’ Again Top Talker for Week Ending February 17, 2013, TV by the Numbers*, ZAP2IT.COM (Feb. 17, 2013), <http://tvbythenumbers.zap2it.com/2013/02/27/syndicated-tv-ratings-the-big-bang-theory-is-number-1-in-households-with-viewers-dr-phil-again-top-talker-for-week-ending-february-17-2013/171155/>.

93. *Id.*

94. *Judge Judy Sheindlin Makes \$123,000 A Day, Roughly \$45 M Salary And \$110 M Net Worth For 70-Year-Old*, INT’L. BUS. TIMES (Oct. 22, 2012), <http://www.ibtimes.com/judge-judy-sheindlin-makes-123000-day-roughly-45m-salary-110m-net-worth-70-year-old-850791> (last visited Apr. 16, 2013).

Despite the prevalence of the Internet, the legal profession's idea of engagement centers on a handful of online quizzes for the public and simulations used fundamentally for education at the grade and high school levels. Quizzes can be informative, even if they are not very challenging. Consider for example, the Digital Safety Quiz for Parents provided by the Office of the Illinois Attorney General.⁹⁵ The first of the fifteen questions asks, "When chatting online children often use acronyms and shorthand to communicate. Do you know what "POS" means?"⁹⁶ The multiple-choice answers are "a. Plate of spaghetti, b. Parent over shoulder, or c. Prayer on Sunday."⁹⁷ The quiz is not interactive and the answers, with sources, are set out below the questions. While the information in the quiz may well be of value for parents interested in knowing more about the use of new media by their children, the form is hardly compelling and does little to engage the viewer.

A more functional quiz for adults is a one provided by The People's Law Library of Maryland; however, this quiz still lacks engagement and is rather buried within a broader site.⁹⁸ This quiz offers an assessment to determine if you are likely to be successful pursuing your legal matter without a lawyer.⁹⁹ The text-based quiz asks viewers eleven questions, with "yes" or "no" answers, that center on personality traits, such as whether you can meet deadlines, whether you are comfortable speaking in public, and whether you are organized. In addition, the quiz raises pragmatic issues such as whether those on the other side are friends or family members and whether you have time to get to the courthouse. At the end, the quiz scores your answers, provides feedback on the issues and creates a classification of those who are and are not suited to move forward without a lawyer. The information is important and presented in a way that is more engaging than straight text, but the quiz still lacks elements that stimulate much enthusiasm.

Quizzes on legal matters are not just found on sites pertaining to the law. For example, a series of law-related quizzes are aggregated on

95. *Digital Safety Quiz for Parents, Safeguarding Children: Internet Safety*, ILLINOIS ATTORNEY GENERAL, http://illinoisattorneygeneral.gov/children/internetsafetyquiz_w_answers.pdf (last visited Apr. 16, 2013).

96. *Id.*

97. *Id.*

98. *Am I Likely to be Successful without a Lawyer?*, THE PEOPLE'S LAW LIBRARY OF MARYLAND, <http://www.peoples-law.org/node/139> (last visited Apr. 16, 2013).

99. *Id.*

a site called “Fun Trivia.”¹⁰⁰ The dozens of quizzes found at this site include those on legal subject matter, such as criminal law, divorce, DWI and environmental law. They also include quizzes on more general legal issues, such as famous trials, legal ethics and an entire category of “unusual laws.” The quizzes are text-based, require “yes” or “no,” multiple choice, or fill-in-the-blank answers, provide immediate feedback on the answers and are generally informative and frequently challenging.¹⁰¹ For all their attributes, we should not lose sight of the fact that they are still quizzes and fall short of the interactive capabilities offered in more sophisticated games.

At least one set of quizzes is found at the website of a television show about lawyers. The show *Suits* includes a section that mixes promotion for the show with aspects of being a lawyer.¹⁰² In addition to trivia about the show’s first season, the quizzes assess whether you have a legal mind, what kind of lawyer you would be and whether you can close the deal.¹⁰³ These quizzes have some appeal because they are more self-absorbing than the more educational quizzes. They tend to increase engagement, but they have nothing to do with whether the quiz-taker may have a problem with a legal solution, and, of course, they are still quizzes.

Moreover, existing online games about the law, other than quizzes, seem to be oriented toward the education of children. For example, the website iCivics presents a series of interactive games that include titles such as “Immigration Nation,” “We, the Jury,” and “Do I have a Right?”¹⁰⁴ The site also includes resources for teachers for grades four through twelve.¹⁰⁵ The games include cartoon-like screens with pop-ups that assign tasks, ask questions and provide directions and answers. The interactivity appears to result in engagement beyond that provided by quizzes, but the game still makes little effort to help

100. *Quizzes – U.S. Law*, FUN TRIVIA, http://www.funtrivia.com/quizzes/world/the_law/us_law.html (last updated Feb. 11, 2013).

101. *Id.*

102. *Suits*, USA NETWORK, <http://www.usanetwork.com/series/suits/index.html> (last visited Apr. 16, 2013).

103. *Id.*

104. *Games*, ICIVICS, <http://www.icivics.org/games> (last visited Apr. 16, 2013); *see also*, *Games*, LAW FOCUSED EDUCATION, INC., <http://www.texaslre.org/games.html> (last visited Apr. 16, 2013) (another series of legal-oriented games for children, including the “Cape Justice Game,” the “All Rise Game” and the “Bill of Rights Match Game”).

105. *Welcome Teachers*, ICIVICS, *supra* note 104 (navigate to iCivics homepage, click on “Teachers, this way”).

people understand when they have a problem that the legal system can address.¹⁰⁶

However, at least one online game has more sophisticated aspects. *Defenders of Law* positions players to find clues, present evidence and represent their client on a murder charge.¹⁰⁷ The game costs \$2.99 and has mixed reviews by its players ranging from “cute game”¹⁰⁸ to “just okay”¹⁰⁹ and “not much of a game.”¹¹⁰ Given the interest in lawyers and the law in other media, it seems peculiar that this level of engagement has not translated more efficiently into online gaming. If it is possible to advance that level of interest, it seems likely people will be in a position to better recognize the legal solutions to their problems and to address them in the real world.

V. THE PURSUIT OF ENGAGEMENT THROUGH ONLINE GAMING

This article has raised several paradoxes thus far. First, large percentages of people with legal needs do not know that they have legal problems and frequently do not turn to the legal system, even when resources may be available for free. Second, the costs of legal services often make them affordable to those of modest means, but may not create the engagement necessary for people to recognize the benefits of pursuing those services. Third, technology has created efficiencies and may help to drive down the prices of legal services, but technology has not promoted engagement for legal services. Finally, although the legal system is a focus of interest throughout popular culture, the limited efforts to use technology to advance engagement in legal issues center on grade school and high school education and sporadic outlets, ranging from government websites to sites promoting television shows. The question now becomes whether online games have the potential to drive this engagement so that people understand when their problems have legal solutions, when they should turn to the legal system to pursue those solutions, and who they should turn to for legal help.

Note that the terms used in this discussion can be both fluid and confusing. The concept being explored here uses the words “games”

106. *Id.*

107. *Defenders of Law*, BIG FISH GAMES, <http://www.bigfishgames.com/download-games/4816/defenders-of-law-the-rosendale-file/index.html> (last visited Apr. 16, 2013).

108. Review by mspaws, *Defenders of Law*, BIG FISH GAMES (Dec. 10, 2011), *supra* note 107.

109. Review by kat10, *Defenders of Law*, BIG FISH GAMES (Mar. 13, 2012), *supra* note 107.

110. Review by qpqt, *Defenders of Law*, BIG FISH GAMES (Jul. 23, 2012), *supra* note 107.

and “gaming,” but has nothing to do with the gaming industry, which involves games of chance or gambling. In addition, the literature involving online games often uses the seemingly made-up word “gamification.” This word has different definitions and appears to be a bit of a moving target. For example, the article, *From Game Design Elements to Gamefulness: Defining “Gamification,”* states,

Recent years have seen a rapid proliferation of mass-market consumer software that takes inspiration from video games. Usually summarized as “gamification,” this trend connects to a sizeable body of existing concepts and research in human-computer interaction and game studies, such as serious games, pervasive games, alternate reality games, or playful design. However, it is not clear how “gamification” relates to these, whether it denotes a novel phenomenon, and how to define it.¹¹¹

Others are more blunt. Vicki Suter, director of the California Virtual Campus, says, “‘Gamification’ is a horrible made-up word. Just say games.”¹¹² Therefore, we will, except when quoting others.

According to a Pew Research Center report (the “Pew Report”), [N]euroscientists are discovering more and more about the ways in which humans react to such interactive design elements. They say such elements can cause feel-good chemical reactions, alter human responses to stimuli – increasing reaction time, for instance – and in certain situations can improve learning, participation and motivation.¹¹³

In its Tech Trends 2013, the consulting firm Deloitte states:

Gamification can instill challenge, pay-off and new perspective into day-to-day tasks, tapping into the same human instincts that have led to centuries of passionate competition and engagement – our innate desire to learn, to improve ourselves, to overcome obstacles and to win. As business becomes increasingly social, our professional and consumer lives are being built using digital interactions. This momentum can be tapped to augment performance by embedding gaming mechanics into traditional processes. Technology in the workplace can be rewarding, and (gasp) even fun.¹¹⁴

111. Sebastian Deterding et al., *From Game Design Elements to Gamefulness: Defining “Gamification”*, in PROCEEDINGS OF THE 15TH INTERNATIONAL ACADEMIC MINDTREK CONFERENCE: ENVISIONING FUTURE MEDIA ENVIRONMENTS 9 (Artur Lugmayr et al. eds., 2011), available at http://85.214.46.140/niklas/bach/MindTrek_Gamification_PrinterReady_110806_SDE_accepted_LEN_changes_1.pdf.

112. JANNA QUITNEY ANDERSON & LEE RAINIE, GAMIFICATION: EXPERTS EXPECT “GAME LAYERS” TO EXPAND IN THE FUTURE, WITH POSITIVE AND NEGATIVE RESULTS 6 (2012), available at http://pewinternet.org/~media/Files/Reports/2012/PIP_Future_of_Internet_2012_Gamification.pdf (quoting Vicki Suter, director of the California Virtual Campus).

113. *Id.* at 2.

114. Deloitte, *Gamification Goes to Work*, in TECH TRENDS 2013: ELEMENTS OF POSTDIGITAL 52 (Deloitte Development LLC 2013), available at

In her treatment of games in the book *Reality is Broken*, Jane McGonigal, director of game research and development at the Institute for the Future, casts the issue this way:

Games are showing us exactly what we want out of life: more satisfying work, better hope of success, stronger social connectivity, and the chance to be part of something bigger than ourselves. With games that help us generate these four rewards every day, we have unlimited potential to raise our own quality of life. And when we play these games with friends, family and neighbors, we can enrich the lives of people we care about.

So games are teaching us to see what really makes us happy—and how to become the best version of ourselves. But can we apply that knowledge to the real world?¹¹⁵

One of the Pew Research contributors thinks there is no doubt. Barry Chudakov, visiting research fellow at the University of Toronto, states:

Because we view them as fictional worlds that are made-up, invented to entertain, we miss their astonishing utility. By 2020 we will see that these games and virtual worlds provide alternative ways of seeing and thinking, which is the essence of innovation . . . By 2020 we will realize that gaming's ready-made (albeit carefully crafted) met-alife is one of the best ways ever devised to see, understand, and improve upon reality.¹¹⁶

Another contributor added:

Gaming functionality will continue to grow and be used in more and more facets of our lives. People will receive training on the job, be exposed through education and development programs, and have the ability to learn about areas that are important to them using this technology and social strategy. It will allow people to understand complex topics faster and with more nuances, and make the learning process more anticipated and less to be feared or avoided. New ideas will spread faster as the ability to educate more people becomes easier and quicker.¹¹⁷

If we think that technology-based gaming is a niche that does not have widespread implications, McGonigal sets out some amazing statistics:

- Sixty-nine percent of all heads of households play computer and video games;

http://www.deloitte.com/view/en_US/us/Services/consulting/technology-consulting/e53b217fb162c310VgnVCM1000003256f70aRCRD.htm.

115. JANE MCGONIGAL, *REALITY IS BROKEN* 114 (2011).

116. ANDERSON & RAINIE, *supra* note 112 (quoting Barry Chudakov, principal at Metalife Consulting).

117. *Id.* at 3 (quoting Anonymous survey taker).

- Ninety-seven percent of youth play computer and video games;
- Forty percent of all gamers are women;
- One out of four gamers is over the age of fifty;
- The average player is thirty-five years old and has been playing for twelve years;
- Most gamers expect to continue playing for the rest of their lives.¹¹⁸

If there is any thought that technology-based gaming is not monetized, McGonigal forecast that digital games would be a \$68 billion dollar industry in 2012.¹¹⁹ In the US alone, digital games generated \$25 billion in 2010.¹²⁰

Online games come in a variety of types. There are single player games, multiplayer syncratic games and, perhaps the most powerful, massively multiplayer online games (MMOG). The best example of a MMOG that can stimulate real life behavior and serve as a model for the legal profession is a game called *America's Army*.¹²¹ During a recruitment crisis in 1999, Army Col. Casey Wardynski began working on MMOG that would "lure teenagers into Army culture, hoping both to educate them about the military and to spark interest in volunteering to serve."¹²² In 2002, the colonel launched the game.¹²³ By 2005, twenty million individuals had downloaded the game.¹²⁴ In this game, players go through weapons training and then join others in virtual missions characterized as life-like scenarios. If they make criminal mistakes, they wind up at Fort Leavenworth prison. The game includes links for those who want to contact a recruiter or learn more about the Army. In addition, recruiters sponsor *America's Army* tournaments around the country and seek recruits from the attendees.¹²⁵ The fourth generation is currently under production.

If we can overlook the fact that the Army is using online games to induce high school students to enlist to fight wars in the real world, the

118. MCGONIGAL, *supra* note 115, at 11 (citing *Essential Facts About the Game Industry: 2010 Sales, Demographic and Usage Data*, ENTERTAINMENT SOFTWARE ASSOCIATION (June 16, 2010), http://www.theesa.com/facts/pdfs/esa_essential_facts_2010.pdf).

119. MCGONIGAL, *supra* note 115, at 4.

120. ANDERSON & RAINIE, *supra* note 112.

121. AMERICA'S ARMY, <http://www.americasarmy.com/> (last visited Apr. 16, 2013).

122. Josh White, *It's a Video Game, and an Army Recruiter*, WASH. POST (May 27, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/05/26/AR2005052601505.html>.

123. *Id.*

124. *Id.*

125. *Id.*

point here is that the MMOG has been demonstrated to be a tool that meets the prophecies of those in the Pew Report. Gaming shapes how people think and act. It engages them to move forward on the subject matter of the game.

Online games in general and MMOGs in particular have the capacity to help people understand when they have a problem that has a legal solution, how that problem can be addressed, and how to find those who are able to assist in addressing it.

VI. OPPORTUNITIES TO DEVELOP ONLINE GAMES

Why is it that the Army has had MMOGs for over a decade and the legal profession is just beginning to think of it?¹²⁶ The simple answer is that the Army is a singular monolithic organization that has the ability to identify problems and solve them through direct command. By contrast, the legal profession is comprised of individuals who have nothing in common except a law degree and admission to a bar. Lawyers who provide personal legal services such as family law, estate planning and DUI defense are typically in solo practices or small firms and operate as a cottage industry. These lawyers generally lack the skill-set, resources and time to build a MMOG. The efforts to build online gaming need to come more so from institutional entities, such as law schools.

Legal education, collectively, not only has the ability and resources to create online games to enhance engagement, but also has the imperative to do so. Seemingly, the only way that the legal profession can continue to expand at anywhere near the pace it has done so over the past several decades is by expanding the need for the services lawyers provide.

Individual law schools have shown the capacity to use technology with great creativity. Chicago-Kent College of Law has collaborated with the Center for Computer-Assisted Legal Education (CALI) to design and advance the A2J initiative discussed above.¹²⁷ Students have been instrumental in the design of A2J authoring tools that enable programs to create forms for specific legal matters in particular jurisdictions.

Georgetown Law offers a course on Technology, Innovation and Law Practice that focuses on the uses of computer technologies in the

126. See *Game On*, THE VIRTUAL LAW PRACTICE (May 1, 2013), <http://virtuallawpractice.org/2013/05/game-on/>, indicating that Stephanie Kimbro is developing an online game to expand engagement about legal services.

127. See *supra* note 82.

practice of law.¹²⁸ The course prepares students to design guided interview apps, such as the copyright navigator and the same-sex marriage advisor.¹²⁹ The students then compete for recognition in the Iron Tech Lawyer Competition.¹³⁰

The Michigan State University College of Law has launched the ReInvent Law Laboratory.¹³¹ Among its initiatives is the ReInvent Law Start-Up Competition, which is designed to “challenge student entrepreneurs to explore new business plans and create better delivery models that match appropriately qualified lawyers with the clients who need them.”¹³²

There is no reason why law schools cannot marshal the resources of their students, collaborate with one another, and reach out to other students on a multi-disciplinary basis to build the online gaming tools that enable people to recognize when their problems have legal solutions, stimulate them to turn to the justice system to seek those solutions, and provide direction to the resources that will help them obtain just solutions. However, to obtain the greatest potential from online gaming, these results should be merely an aspect of a much larger online conversation about social issues.

MMOGs have emerged to address social issues in dramatic ways. For example, World Without Oil (WWO), developed in 2007, enables participants to think through life in a world without oil. According to Ken Eklund, the game’s creator, “WWO didn’t only raise awareness about oil dependence. It roused our democratic imagination. It made the issues real, and this in turn led to real engagement and real change in people’s lives. Via the game, players made themselves better citizens.”¹³³

So why not a MMOG called “America without Courts,” where we can see the impact of a society that has no rule of law? At the societal level, such a game could demonstrate what it mean when there is no

128. *Technology, Innovation, and Law Practice: An Experiential Seminar*, GEORGETOWN LAW, http://apps.law.georgetown.edu/curriculum/tab_courses.cfm?Status=Course&Detail=2090 (last visited Apr. 16, 2013).

129. Ann W. Parks, *Simulations, Apps – And Other New Ways to Learn the Law*, GEO. L. MAG., 28, 30 (Fall/Winter 2012), available at <http://www.law.georgetown.edu/news/georgetown-law-magazine/upload/simulations-apps.pdf>.

130. *Georgetown Law’s First “Iron Tech Lawyer” Competition*, GEORGETOWN LAW (Apr. 11, 2012), <http://www.law.georgetown.edu/news/first-iron-tech-lawyer-competition.cfm>.

131. REINVENT LAW LABORATORY, <http://reinventlaw.com/main.html> (last visited Apr. 16, 2013).

132. *Student Entrepreneurs Reinvent Future of Law*, MICHIGAN STATE UNIV. (Feb. 20, 2013), <http://msutoday.msu.edu/news/2013/student-entrepreneurs-reinvent-future-of-law/>.

133. MCGONIGAL, *supra* note 115, at 310.

ability to stop pharmaceutical companies from producing unsafe drugs, no ability to stop employers from using unsafe manufacturing equipment, or no ability to hold companies responsible for contaminating our water supply? At the individual level, America without Courts could demonstrate the impact of living in a society without divorce, child support, bankruptcy or secession planning. It seems logical that the collaborative efforts of the gamers would lead to the development of a system of order and enforcement at both macro and micro level. It would be fascinating to see the emergence of priorities, the sources of resistance and the reinvention of a system of justice, while at the same time helping people realize how the current legal system is a resource to the solutions of their problems.

Engagement in MMOGs can lead to crowdsourcing solutions in an even more practical way, as well. Consider the game *Foldit*, which enables players to contribute to scientific research.¹³⁴ The game allows researchers to determine whether human pattern-recognition and problem-solving capabilities are more efficient than computer programs.¹³⁵ In 2011, *Foldit* players helped decipher the structure of a virus that causes AIDS in monkeys.¹³⁶ Players produced a model in ten days, after scientists had been working on it for fifteen years.¹³⁷ In 2012, *Foldit* gamers redesigned an enzyme that served as another scientific breakthrough.¹³⁸ If gamers can crowdsource to lead to breakthroughs in AIDS research, it is hard to imagine they cannot effectively address issues such as court management and access to justice. Perhaps it is possible to develop a MMOC where the gamers advance equalitarian notions of improved access to justice for all.

Within new games, we ought to be able to help people make those connections that enable them to address their problems with legal solutions in the real world and perhaps contribute to the solutions of more global problems at the same time. Games are a resource to enhance engagement and bring the legal profession one step closer to its goal of 100 percent access to legal services.

134. *The Science Behind Foldit*, FOLDIT, <http://fold.it/portal/info/about> (last visited Apr. 16, 2013).

135. *Id.*

136. Firas Khatib et al., *Crystal Structure of a Monomeric Retroviral Protease Solved by Protein Folding Game Players*, 18 NATURE STRUCTURAL & MOLECULAR BIOLOGY 1175, 1175 (2011).

137. *Id.*

138. Christopher B. Eiben et al., *Increased Diels-Alderase Activity through Backbone Remodeling Guided by Foldit Players*, 30 NATURE BIOTECHNOLOGY 190-91 (2012).