

CHAPTER SEVEN

Using Technology to Unbundle Legal Services

NEW DEVELOPMENTS IN INTERNET technology have made it even more efficient for a law firm to offer unbundled legal services. A law firm can employ different forms of Web-based applications that can be delivered over the Internet, depending on how much it wants to automate the unbundling process for greater efficiency in delivery. These tools may be used to generate legal work product or to provide decision-making tools to guide and assist a lawyer working with a client's case. Thanks to the cost-effectiveness of cloud-based applications, a wide variety of Web-based applications that support the unbundling of legal services, may be added to the budget of any law firm from a solo practice to a larger, multijurisdictional firm. Lawyers are creating entire web-based practices that focus completely on delivering unbundled services online. Larger law firms are having customized technology solutions designed for the needs of their firm's members to deliver services to their clients through secure firm portals. Other firms are taking baby steps into the practice of online delivery and are relying on these cloud-based applications on the side of their traditional practice management software to enhance their unbundling potential. Firms delivering unbundled legal services online are not in direct competition with online legal service companies providing only auto-generated legal forms, but instead offer an alternative to the traditional law firm model with an increasing variety of limited-scope services across practice areas.

Many of the applications used to unbundle legal services operate on software as a service (SaaS), one form of cloud computing.¹ With SaaS, the tools and law office data are hosted by a third-party service. The technology provider most likely has a relationship with a hosting company that owns the data center that houses the servers storing the firm's law office data. The benefit of this form of technology is that the cost of developing and maintaining a single software application for unbundling may be spread out over a larger number of users, making it accessible for any practitioner to afford and add to his or her law practice. Thus, a large capital investment by a solo or small law firm can be avoided and a mid-size to larger law firm can cut costs related to practice management systems.

Because of this flexibility, cloud computing will most likely continue to facilitate the delivery of unbundled legal services for years to come. New innovations in the delivery of unbundled legal services are on the horizon as more attorneys realize the potential of this technology.² It may be used to create an unbundled client base and to deliver services in a more efficient and cost-effective manner that gives the attorney a competitive advantage over traditional firms that are not using these methods or meeting the consumer's need for unbundled legal services.³ In this chapter, we will look at several methods of unbundling that rely on Internet-based technology and at a few emerging models of web-technology-driven delivery.

Document Assembly and Automation

Document-assembly and automation tools have been used by law firms for many years and probably are the first legal technology developed that

¹As with any form of law office technology, an attorney needs to carefully do his or her due diligence in researching the chosen technology solution and understanding the terms of the service level agreement (SLA). See generally NICOLE BLACK, *CLOUD COMPUTING FOR LAWYERS*, ABA/LPM Publishing, 2011; Courtney Kennaday, "Sample Questions to Ask Online Storage Vendors," S.C. Bar (2006), available at <http://www.scbare.org/public/files/docs/VendorQ.pdf> (accessed Jan. 8, 2010); and the proposed N.C. State Bar Ethics Op. 7 (2010) (providing sample questions for attorneys to ask of third-party software vendors before subscribing to services).

²See generally Marc Lauritsen, *Five Tips for Prospering in an Age of Legal Fee Deflation*, *TECHNOLAWYER*, June 7, 2011, available at <http://www.capstonepractice.com/deflation.pdf> (last accessed Nov. 3, 2011).

³See generally William Hornsby, *Improving the Delivery of Affordable Legal Services Through the Internet: A Blueprint for the Shift to a Digital Paradigm*, available at <http://www.abanet.org/legalservices/delivery/deltech.html> (updated June 10, 2009) (accessed Dec. 30, 2010); and Ronald W. Staudt, *All the Wild Possibilities: Technology that Attacks Barriers to Access to Justice*, *Loy. L.A. L. Rev.*, Vol. 42: 1117 (Summer 2009), available at <http://llr.ils.edu/docs/42-4staudt.pdf> (accessed Dec. 30, 2010); and RICHARD E. SUSSKIND, *THE FUTURE OF LAW: FACING THE CHALLENGES OF INFORMATION TECHNOLOGY*, Oxford Univ. Pr. (1996); and RICHARD E. SUSSKIND, *THE END OF LAWYERS?: RETHINKING THE NATURE OF LEGAL SERVICES*, Oxford Univ. Pr. (2008).

greatly facilitated the unbundling of legal services. Some of the more well-known products used by law firms include Hotdocs, Rapidocs, DealBuilder, Exari, and WhichDraft.⁴ These programs often use “intuitive” forms to collect information online directly from clients that are accessible through any web-browser. The client responds to the questions provided by the program and it prompts him or her with the next appropriate questions based on the previous response. The responses then are pulled into a template document which assembles the document instantly, creating a first draft for review and edit by the attorney. The lawyer may use the same legal form or even the same provisions with another client with a similar legal fact pattern without having to reinvent the wheel each time that particular legal document is required for an unbundled project. Accordingly, this reduces the amount of time that the lawyer may produce unbundled legal documents and assists in streamlining the delivery process for the unbundled offerings.

More customized systems are emerging that focus on a specific legal process or practice area. For example, Koncision is a company that provides a document-assembly and automation tool specifically for confidentiality agreements.⁵ The tool is powered by software hosted by Contract Express, a company that produces a number of web-based document assembly tools.⁶ Koncision provides services that may be used to create unbundled contracts by either lawyers working for clients or by companies that may need to generate these documents on a regular basis.

Case Study **Kenneth A. Adams**

*Kenneth A. Adams is President and Founder of Koncision Contract Automation, an online service that provides document-assembly templates for business contracts to lawyers. Adams also gives seminars in the United States, Canada, and internationally, acts as a consultant and expert witness, and is a lecturer at the University of Pennsylvania Law School. His book, **A Manual of Style for Contract Drafting** (ABA, 2nd Ed., 2008), is widely used throughout the legal profession.*

⁴Hotdocs, <http://www.hotdocs.com/>, Rapidocs, <http://www.epoq.co.uk/ep/rapidocs.cfm>, DealBuilder, <http://www.business-integrity.com/>, Exari, <http://www.exari.com/>, and WhichDraft, <http://www.whichdraft.com/> (all last accessed Oct. 29, 2011).

⁵Koncision, www.koncision.com (last accessed Oct. 30, 2011).

⁶Business Integrity and ContractExpress, <http://www.business-integrity.com/products/contract-express.com.html> (last accessed Oct. 30, 2011).

- 1.** Have you noticed an increase in the number of law firms that employ document-automation and assembly processes?

From anecdotal evidence, I know that an increasing number of firms are using document assembly to allow their lawyers to create contracts. And Wilson Sonsini and Goodwin Procter have each installed on their websites a free document-assembly system that allows visitors to create some basic documents.

- 2.** How might the services your company offers to law firms facilitate the unbundling of legal services?

Koncision Contract Automation's first product is a document-assembly template for creating a confidentiality agreement. Using the template allows users to create a confidentiality agreement more quickly than they could with the traditional copy-and-paste process. Furthermore, Koncision allows a greater degree of customization than generally is possible if you are revising a contract used in another deal. Koncision's template uses language that is far clearer and more concise than is traditional contract language. A law firm lawyer could use the product to provide drafting services more competitively. But it might be even more efficient for the lawyer and the client to complete the template's questionnaire together, either during an in-person meeting or by using an online screen-sharing service.

- 3.** What do you think is the importance of document-assembly and automation services or other cloud-based technologies to the attorney who is adding unbundled services to his or her offerings?

Document assembly would allow a lawyer to focus on services that add real value—determining strategy and assisting in negotiations. Coming up with contract language to reflect the deal should be a commodity task.

- 4.** How would you advise lawyers to respond to critics of unbundling or accusations from other professionals that their unbundling work is “commoditizing” the practice of law?

I understand “commoditizing” to refer to automating repetitive and routine tasks, rather than treating them as bespoke work, with all the inefficiencies that that entails. So commoditization is a good thing.

- 5.** What role do you think document assembly and automation will take in the legal profession in the future?

At the high end of the market, document assembly will become increasingly prevalent, but it will happen slowly, particularly at law firms. Unlike companies, law firms are asked to draft a broad and unpredictable range of contracts, and that is not as conducive to automation as repeatedly

using a limited set of templates. And there are various cultural obstacles that I discuss in the following article: <http://www.koncision.com/wp-content/uploads/2011/05/Adams-NYLJ-4.1.11-The-Directors-Cut.pdf>. As regards the lower end of the market, it is falling prey to mediocrity in the form of Rocket Lawyer, LegalZoom, and comparable vendors. That's something I discuss in the following blog post: <http://www.koncision.com/rocket-lawyer-contract-automation-fail/>.

6. When the IBM computer, Watson, played Jeopardy, some thought leaders in the legal profession suggested that our current document-assembly and automation systems might one day be coupled with other forms of artificial intelligence to provide greater "diagnosis" of legal matters for lawyers.⁷ How do you see the current technologies we have evolving to use AI or game theory to assist lawyers?

Document assembly spares users having to constantly re-create the language needed to articulate deal terms. But some commentators suggest that in addition, automated-document analysis allows you to determine what language you should use in a contract. But without strong editorial control, automated analysis of precedent contracts presents an insurmountable garbage-in, garbage-out problem—contract language is not susceptible to a purely technology solution.

7. Do you have any best practices or suggestions for attorneys wishing to minimize the risk of malpractice when using a document-automation and assembly software?

The risk of malpractice as a result of using document assembly to create contracts is essentially the same as with the traditional process—it arises from including in a contract provisions that don't make sense. The safeguards against such problems are old-fashioned—knowing your stuff and checking your work. But lawyers routinely rely on analyses performed by others. In that regard, a lawyer using a document-assembly system prepared by a vendor is in the same position as a lawyer using a form prepared by a bar organization. Your first line of defense is to check the credentials of whoever prepared the contract language that you are proposing to use.

⁷IBM's Watson was a contestant on "Jeopardy" and makes some in the legal profession ponder the use of computers to take over portions of a lawyer's work. See Debra Cassens Weiss, *Watson Computer, Making 'Jeopardy' Debut, Could Do Associate Research, IBM GC Says*, A.B.A. J., Feb 15, 2011, available at http://www.abajournal.com/news/article/watson_computer_making_jeopardy_debut_could_do_associate_research_ibm_gc_sa (last accessed Nov. 14, 2011).

Other products allow for comparisons of versions of documents and will filter a document based on the lawyer's preference and usage of certain terms and provisions. This results in a final document that has the optimum language and that is cleaner than a template that may have been revised multiple times by a law firm with different clients.⁸

Several other methods of document assembly and automation may be used in an unbundling practice. Forms created using document-assembly technology may be used in the client intake process for an unbundling project. A law firm could use the technology to design a questionnaire that the prospective client fills out online after registering on the law firm's website or after following a link e-mailed to the client that sends the client to the application. The questions posed to the prospective client might walk him or her through the unbundling process through a series of questions while uncovering any collateral issues that surround the scope of the requested legal services. After providing this information, a completed client intake sheet then would be generated from the responses and provided to the firm for follow-up with the prospective client. However, if the prospective client responded to questions in the application that determined without a doubt based on the firm's input into the system that the case was not appropriate for unbundling and required full-service representation or that the scope exceeded what the firm would be willing to unbundle, the system would allow the lawyer or other assistant in the firm to stop the intake of data at that point and to follow up with the client to inform him or her that it would not be possible to handle the representation. This would save both the firm and the prospective client the additional time and expense of scheduling an unnecessary meeting in person or over the phone or in a web conference to determine that the unbundling in this case was not appropriate. For the client the firm wants to proceed with, when a follow-up meeting is scheduled, most of the information needed to analyze and begin the project is available.

Document-assembly and automation systems are more frequently used to generate prepared legal forms. Some law firms purchase prepared state-

⁸See, e.g., Kiiac, <http://www.kiiac.com/>. This company has document automation and assembly tools and creates document templates and clause libraries for legal documents. The software can analyze a group of contracts to create a "reference standard" that other contracts may be based on. The owner of Kiiac, Kingsley Martin, writes about the construction of legal contracts and related issues on his blog, Contract Analysis and Contract Standards, at <http://contractanalysis.blogspot.com/> (last accessed Nov. 14, 2011).

based forms already provided in a document-assembly program, while others use their existing law firm templates to create their own forms. In some cases, the firm relies on paralegals or other assistants to enter the data related to the client's matter based on a previous conversation with the client. However, more modern systems allow for the client to input this data and for the paralegals and assistants to add to that data and modify it before generating a legal form. The final legal form generated based on the data provided by the client and firm members then may be provided to the lawyer for review. At that point, the lawyer is able to provide the finalized document to the client as an unbundled service along with the firm's instructions and checklists for the client to take the legal form and either file it at the courthouse, have it properly executed, or do whatever is necessary to complete the legal needs with that document.

One of the main benefits of these applications is the ability to streamline the data intake process. This saves time for the law firm members as well as the client and in theory should result in lower costs for that form of unbundled service. The lawyer is able to spend less time pulling together the boilerplate and standard legal-form language and more time focusing on the client's individual legal circumstances. The value to clients, therefore, should be increased through the use of the technology because it frees the lawyer to focus more on the legal advice and guidance rather than on the administrative aspects of unbundling. Document automation and assembly also may decrease the number of errors in the creation of a legal document by relying on a systematized form of data entry that may catch and correct any human-created omissions and errors in a legal document.

Some web-based technology platforms have integrated document-assembly and automation programs. Virtual law firms with secure client portals use this form of technology on a daily basis to deliver their unbundled services online. Rather than making an appointment to meet with the firm's paralegal or junior associate for an hour or more to handle the client intake process, online clients may complete this information at their own convenience on the Internet. The data from the form then is available for the firm to use with a document-automation program that takes the data, adds it to the template of the requested legal document, and creates a completed document for review by the firm within the virtual office space. If the virtual firm does not use a document-assembly program, the data may be stored digitally by the firm for an attorney to use to draft a legal document with another document-assembly program or as a client intake information sheet for the firm to keep in the client's file. If the information that

was recorded in the program changes or the firm needs to change the form or document template to reflect changes in the law or to update, these programs allow the user to alter the finished product if necessary to reflect these changes and in some cases alter the template and questions generated in the web-based form. A platform such as this might provide multiple ways for a law firm to unbundle services to appeal to a larger market of consumers seeking automated online legal services.⁹

Case Study **Richard Granat**

Richard Granat is President of DirectLaw, Inc., and MyLawyer.com (<http://www.directlaw.com> and <http://www.mylawyer.com>) and owner of Granat Legal Services, P.C., Maryland Family Lawyer Virtual Law Firm (www.mdfamilylawyer.com) that delivers unbundled family law services. He is the co-chair of the eLawyering Task Force of the Law Practice Management Section of the American Bar Association and a liaison member of the Standing Committee on the Delivery of Legal Services of the ABA. He is the co-author of "Best Practice Guidelines for Legal Information Website Providers," adopted by the ABA House of Delegates in February of 2003. DirectLaw provides a virtual law firm platform that supports the delivery of unbundled legal services. MyLawyer.com is a web-based portal that offers automated legal forms directly to consumers and contains a law firm directory of virtual law firms that deliver unbundled legal services online. The portal is designed to promote the work of virtual law firms that offer online legal services.

- 1.** How do the services your company offers to attorneys facilitate the unbundling of legal services?

The platform enables a law firm to define an "unbundled" or "limited" legal service, to assign a price to the service, and to offer it through the law firm's website directly to consumers. Consumers can purchase the service directly through the website after executing a Limited Retainer Agreement.

⁹For example, the DirectLaw.com Platform provides these separate unbundling steps: 1) sale of legal advice alone, 2) review of a legal document, 3) documents that are bundled with legal advice, 4) court coaching with a fee assigned by the lawyer, 5) the capability of defining other services, assigning a fee, and having the client purchase the service through an integrated shopping cart, and 6) law firms can also order documents for free as a traffic generator, and as an inducement to sell more services. At www.directlaw.com (last accessed Nov. 5, 2011).

- 2.** Have you noticed an increase in the number of attorneys who provide unbundling tools, such as web advisers, web calculators, legal forms, or other resources that allow the public to obtain free, unbundled services?

The increase in offering unbundled legal services has been primarily online. As SaaS vendors have moved into the market space that supports a limited legal service approach at a price that solos and small law firms can afford, we see solos and small law firms embracing this approach as a way of expanding their markets and the reach of their firms. By offering unbundled legal services online, a law firm is able to justify the time it might take to design a specific service because it can be offered over a wider area. A good example of this is the development of automated legal documents that may not be cost-effective to develop and deliver if limited to an office situation. When these documents and legal solutions are offered over a wider area, the ROI increases to the point where the cost of development is justified.

- 3.** What do you think is the importance of document-assembly and automation services or other cloud-based technologies to the attorney who is adding unbundled services to his or her offerings?

Web-enabled document assembly is a disruptive technology because it enables the law firm to reach clients who are not normally served by law firms because they can't afford it. By enabling the client to complete an online questionnaire that instantly creates a first draft, ready for the lawyer's review, analysis, and further revision, it is possible for the lawyer to charge a lower price, but also to maintain a profit margin. These new services are by definition cloud-based. Without the availability of cloud-based technologies, these services would not be available.

- 4.** How would you advise attorneys to respond to critics of unbundling or accusations from other professionals that their unbundling work is "commoditizing" the practice of law?

The full legal service approach is too "full featured" for what most consumers need. The broad middle class is presently priced out of the legal market and can't afford legal fees. If the legal profession is going to remain relevant, it must explore ways of serving a large underserved population base. Perhaps aspects of the "practice of law" are being commoditized. The issue is whether the legal profession will be part of this or will law firms find themselves (primarily solos and small law firms) marginalized by developments not taking place in the industry.

- 5.** Are you aware of any existing regulations or barriers to unbundling services that exist from the state bars or another regulatory body?

Not really. The state bars have become more responsive to this trend, although we do see several constraints in some states. For example, one state requires that a Limited Retainer Agreement be hand-signed rather than have clickwrapped-acceptance and be physically mailed to the attorney.

- 6.** Do you have any best practices or suggestions for attorneys wishing to minimize the risk of malpractice when unbundling services (online or off)?

The Limited Retainer Agreement should be clear about the scope of services, where it begins and where it ends. Boundary setting is very important in this type of practice or client expectations are not clear and this causes confusion.

- 7.** Thinking ahead, what role do you think unbundling will take in the legal profession in the future? What currently is driving this trend?

“Unbundling,” which really means that the client participates in doing some of the work that the lawyer normally does, such as representing himself or herself at a uncontested divorce hearing, will come to dominate the way legal services are delivered by solos and small law firms in some practice areas. Not all practice areas, however. In areas such as criminal-defense practice, where freedom is at stake, full-service representation still will be the primary mode of delivery.

Internet-based software applications will become more powerful, delivered to both the desktop and to mobile devices, resulting in enabling consumers to do work that was previously performed by attorneys. In this environment, the attorney needs to be able to redefine his or her services so that he or she adds value to the total legal transaction. Billing by the hour may survive but only if pricing is related to the fixed prices that lawyers now are charging for many tasks that were previously charged for by the hour.

These developments may result in income and fee compression. But they are unavoidable. Just as the iPod resulted in the price of music being reduced, these technological developments will result in lawyer’s fees, at all levels, being compressed. The way to maintain profit margins is to use information technology tools to automate legal tasks wisely.

There is no rule that says that a lawyer is entitled to \$200 an hour for his or her work. Doctors have experienced income compression because of developments in the medical insurance and have less income expectations than they had 25 years ago. The same developments are occurring in the delivery of legal services. It will be possible to make a good living as a solo practitioner or member of a small law firm, but except in a special area of practice such as criminal-defense or class-action litigation, more routine transactions will become commoditized and it will not be possible to “get rich quick.”

At the MyLawyer.com consumer portal, we offer smart legal forms that when purchased in a bundle are less than the cost of a song on iTunes. We do this because we have the capacity to do this, and if we don’t do this, someone else will. At the same time, we provide a pathway directly to a network of virtual law firms that can offer legal advice or alternative legal forms bundled with legal advice for fixed fees. The consumer signs into his or her own MyLegalAffairs page where the consumer can access legal tools, legal information, and automated legal documents. He or she also can directly select a lawyer who is listed in the MyLawyer Directory and call on that lawyer for additional assistance when needed, from purchasing legal advice to reviewing a document to even representing the consumer/client in court.

I see this as a model for the future delivery of legal services, which will become dominant in one form or another over the next five years.

Practitioners who are unbundling online will need to integrate some form of document-assembly and automation component in their process to remain competitive with the many online legal service providers, such as LegalZoom and Rocket Lawyer, which use these technologies to provide increased online usability of their system and to generate faster results. New models of document assembly and automation are turning to cloud-computing to reach a larger market of lawyers looking for automation and assembly solutions in addition to selling their free legal forms online directly to consumers. For example, WhichDraft is a company that provides a product with free legal forms, a document-assembly application for drafting legal documents, and online collaboration tools.¹⁰ These systems may be less robust and complex in nature than the more established document-automation and assembly solutions, but also are either free or low-cost and require little training to use. They also may require that the

¹⁰See Whichdraft at <http://www.whichdraft.com/> (last accessed Oct. 30, 2011).

lawyer spend additional time creating templates of forms that are unique to the firm's practice rather than supplying state-specific forms that are ready to use.

Future document-assembly and automation features may be enhanced so that the questions and forms are revised automatically or suggested changes made to the formation based on data collected from a large body of users, such as the members of a law firm or the firm's clients' responses related to the creation of specific unbundled services, and the record of consistent and frequent edits made by the lawyers using the program.

Depending on the selected technology, systems may be used to set up client libraries of legal forms, instructions, and other documents that the attorney may store online for use with multiple clients. Document-assembly and automation technology may be integrated into a virtual law office to use with these libraries or a traditional law firm may use them in-house in conjunction with the firm's other software applications. Online limited-scope agreements may be created through web-based interfaces and the client's consent for use of the document-assembly process may be collected online and recorded within the client's file.

The attorney may set up unbundled "packages" of services that a prospective client may select from the firm's website when shopping for online legal assistance. The prospective client then would click on the desired legal service and the link would send the client through an automated process on the attorney's virtual law office from registration through a conflict of interest and jurisdiction check, and provide the specific client intake forms and automated responses required of that specific unbundled package. These web-based tools are used most often by transactions-based law firms, but they also may be employed by full-service, litigation-based practices interested in adding unbundled services to the firms' offerings or just to use with in-person clients as a form of speeding up the client intake and document-assembly process as part of larger projects for the clients.

Decision-Making Tools

Products are available that can assist a lawyer in creating a proposed settlement for a legal matter based on the information available before engaging in the lengthy process of preparing to go down the road to litigation. Treeage Pro, for example, helps a lawyer assess the value of settle-

ment before litigation by allowing the lawyer to create decision trees, influence diagrams, and use Markov models based on the issues identified in the client's legal matter.¹¹ Even if the client does not choose to settle, the lawyer may provide this unbundled service as a way to inform the client strategically where to focus on the trial or in the discovery process. "Choiceboxing" is another decision-making tool that may be used by law firms to provide unbundled assistance.¹² Marc Lauritsen, president of Capstone Practice Systems, Inc. and Legal Systematics, Inc., has created a system for supporting decisions that, if implemented in a software program, could be used to assist lawyers in making decisions about strategy for their clients' legal matters. The description of the method from the pending patent explains the process in more detail.

Embodiments of the present invention use a construct referred to herein as a 'choicebox' to support choice-making within a conceptual choice-space. The choicebox allows the identification of one or more options, one or more factors, and one or more perspectives for a particular choice. Each choice is associated with one or more categories. The options, factors, and perspectives are logically mapped to imagined x, y, and z axes and can be envisioned and graphically represented as a three-dimensional assessment matrix or box. Within the context of the present invention, choiceboxing is the activity of deliberating about a choice using such matrices. Choiceboxes are built and manipulated using software that renders their data into visual and interactive form. They serve as shareable places for collaborative deliberation.¹³

This type of decision-making tool works best when fixed choices must be made without any clear-cut way of determining which of those choices is going to have the greater benefit for the client. Choiceboxing allows the choices to be analyzed in a way that includes multiple people's input and emotions surrounding a decision without limiting the decision making to a checklist of tangible outcomes.

Lawyers who make use of decision-making tools such as Choiceboxing might provide them to clients through an interactive web application on

¹¹ See Treeage website at <http://www.treeage.com/industrySol/legal.html> (last accessed Nov. 2, 2011).

¹² MARC LAURITSEN, *THE LAWYER'S GUIDE TO WORKING SMARTER WITH KNOWLEDGE TOOLS*, ABA/LPM, 2009 at chapter 14.

¹³ See the summary of the pending patent application for this concept, Patent No. 20100057645, filed by All About Choice, Inc. at <http://www.faqs.org/patents/assignee/all-about-choice-inc/> (last accessed Nov. 14, 2011).

a law firm website so that prospective clients might use these tools to help determine their choices in a legal matter based on the personal decisions of what matters most to them before approaching the law firm for unbundled or full-service assistance. A law firm might also use a tool like this only internally with clients and only when appropriate to help the lawyers provide unbundled work with the clients to come to the best outcome for their legal matters based on a collective decision-making process and then assign the unbundled tasks and responsibilities to the client and the lawyer, respectively. Clearly, there is a lot of room for innovation and different implementations of a system like this. However, in terms of using these methods for the benefit of self-help individuals as a form of unbundling, providing decision-making tools to clients are going to be most effective with more-educated clients who know how to use the information provided by the tools and continue to represent their own interests.

Online Case and Client Management

Providing a secure client portal with case access for your unbundled clients is an excellent way to keep a digital record of the legal documents and/or guidance and instruction that you have provided to the client. If clients have their own secure home pages online, the clients may log in at any time to access the information that they need to complete the legal matters on their own.

Online case and client management may be used to streamline the process of working with unbundled clients. The attorney may also use the system as a way to set up reminders for clients or to check back in with clients at later dates to ensure that they were able to complete their processes. This form of digital communication may especially appeal to the DIY clients who would appreciate the convenience and easy accessibility of their own case files and documents.

Even after the scope of the legal matter is completed by the attorney, the termination of the limited representation may be noted in the client's online case file. The clients would still retain access to their home pages and the ability to download and review the assistance provided by the attorney during the representation. In terms of converting unbundled clients into full-service clients, providing clients with online access to their legal matters shows clients that the firm is willing to use technology to provide efficiency and help cut the cost of traditional in-person legal services.

Case Study Jack Newton

Jack Newton, President of Clio, www.goclio.com, is a frequent speaker and author on the subject of security and cloud computing. Clio is a comprehensive, cloud-based practice-management product specifically designed for solo practitioners and small law firms. Clio provides case/matter management, time tracking, billing/reporting, client contact and document management, task scheduling, trust accounting, and performance metrics for independent lawyers to benchmark their business goals. Clio includes Clio Connect, a secure portal for document sharing and collaboration with clients, and Clio Express, an offline time-capture application.

- 1.** How do the services your company offers to attorneys facilitate the unbundling of legal services?

Clio facilitates the delivery of unbundled legal services via its Clio Connect client portal. This portal allows lawyers to securely communicate and collaborate with clients in a lower-overhead, efficient manner. Lawyers can securely send and receive “Secure Messages” to clients and can easily collaborate on documents with clients via Clio Connect’s integrated document-management system.

- 2.** How would you recommend that attorneys follow up or monitor the progress of unbundled clients after termination of the limited-scope representation?

As with any engagement, even after a full-service representation, I would recommend attorneys periodically follow up with their clients by e-mail, phone, or even via their virtual law practice platform, to evaluate and understand the outcome of the engagements. It also is important to view this as an opportunity to measure customer satisfaction and to identify ways the attorney’s unbundled services could be delivered more effectively.

- 3.** Have you noticed an increase in the number of attorneys who provide unbundling tools, such as web advisers, web calculators, legal forms, or other resources that allow the public to obtain free unbundled services?

I have observed a large increase in the number of attorneys looking to integrate unbundling tools directly into their websites. The broad sense seems to be that clients are looking for ways of engaging more meaningfully with attorneys online without having to go to the extent of making a

phone call or sending an e-mail. An online adviser, legal form, calculator, client intake form, or other similar “active” online tools do a much better job of fully engaging prospective clients while they are visiting the attorney website, and I believe an increasing number of attorneys recognize this fact and are responding appropriately.

4. What do you think is the importance of document-assembly and automation services or other cloud-based technologies to the attorney who is adding unbundled services to his or her offerings?

Document-assembly and automation services are critical tools for any attorney who hopes to compete effectively on unbundled offerings. I feel that document assembly and automation offer such compelling benefits via improved efficiency and reduced errors that they will become essential tools for almost all attorneys, whether for the delivery of full-service or unbundled representation.

5. How would you advise attorneys to respond to critics of unbundling or accusations from other professionals that their unbundling work is “commoditizing” the practice of law?

Certain aspects of legal work should be commoditized, and for those types of work attorneys can choose to respond by offering competitive, unbundled legal work or risk losing that portion of the market to competitors such as LegalZoom, Rocket Lawyer, and LawDepot. Work that is suitable for “commoditization” will be work that is highly repeatable and mechanizable by using tools such as document automation.

6. Thinking ahead, what role do you think unbundling will take in the legal profession in the future? What is currently driving this trend?

I believe unbundling will take an increasingly large role in the legal profession. Enabling technologies for unbundling are becoming increasingly widespread and affordable for solo and small-firm attorneys, and market demand for these types of limited-scope engagements is only increasing.

Delivering Unbundled Services Online

Comprehensive consumer Web portals are emerging that assist attorneys in delivering legal services online rather than giving them the tools to create their own unique virtual law offices. For example, Rocket Lawyer provides a product that is marketed to consumers who can subscribe for

different levels of access to the service's libraries of legal forms to create their own legal documents online.¹⁴ The consumer then may request to be matched with an attorney within his or her jurisdiction for review of the document and additional assistance at a "discounted rate."¹⁵ The attorney who pays to join this lead-generation service then may be matched with the consumer who continues the relationship where unbundled assistance is provided or it may change to full service depending on the client's needs. The information and prefilled forms that the client completes online are transferred to the attorney when the client begins working with him or her. This legal services model does not provide the same case or client management features or the functionality of a backend virtual law office for the attorney, but it does generate leads to online clients who are interested in unbundled legal services. Another drawback of these services, is that the law firm does not have its own client-facing web and client portal, and is thus dependent on the company providing the service for brand development. Other online legal services companies may be considering similar lead-generation marketing models that also will encourage the practice of using technology and the Internet to deliver legal services online.

For the lawyer delivering legal services online, attention to security and ethics is paramount. Regardless of what Internet technology the attorney chooses, he or she needs to be aware of security risks involved in using cloud-based systems to deliver legal services online.¹⁶ Additionally, there are ethics risks that may arise from the use of a service providing a comprehensive consumer Web portal. Many of the legal service companies and other free to low-cost legal forms found online may not involve the communication of a licensed attorney with the client. However, a lawyer participating in these consumer portals is subject to disciplinary action if the consumer portal is not ethically compliant. The company has no liability, only the lawyer participating in the service. Below is a list of questions that a lawyer might consider before participating in a service that provides a web-based consumer client portal. These services, unfortunately, are not held to the same standards as is an attorney who must protect the confidentiality of the client's data.

¹⁴Rocket Lawyer, <http://www.rocketlawyer.com> (accessed Jan. 8, 2010).

¹⁵*Id.*

¹⁶See "Suggested Minimum Requirements for Law Firms Delivering Legal Services Online," ABA LPM eLawyering Task Force (Oct. 15, 2009), http://meetings.abanet.org/webupload/commupload/EP024500/relatedresources/Minimum_Requirements_for_Lawyers_2009_10_24.pdf (accessed Jan. 8, 2010).

1. Who has access to the client data?
2. What is the security of the process and how does it protect the confidentiality of the client's data?
3. Can I download client data to my local computer?
4. Is a written limited scope engagement agreement executed?
5. How are lawyers added to the service? Is there a qualification for use of the service by a lawyer? Does the company check that the lawyer is licensed and in good standing with his or her bar before allowing them to respond to consumer requests for legal services?
6. What is the process the prospective client goes through in selecting the lawyer he or she works with and how does that process comply with the lawyer's state bar rules regarding the establishment of the attorney/client relationship and duty to prospective clients?
7. Is the client provided with adequate notice of the limited scope of representation and the use of the technology to deliver the services?
8. How does the client know when an assignment or project has been completed? What is the termination of representation process? Does the client retain access to his or her account following termination or does the client have another way of contacting the lawyer for follow-up after termination of representation?
9. Are any revenues split between the non-lawyer provider of the consumer portal and the law firm? If so, how does this avoid the prohibition on divisions of fees with nonlawyer entities?

There may be additional questions to consider when researching whether or not to use a service that provides a web-based consumer portal service. Features provided by the companies offering these services are being developed and updated on a regular basis and most of these companies are well aware of the regulations that lawyers must follow and their concerns about ethics risks. Given the fast pace at which these online services are being developed, the use of these services will require regular re-evaluation by the lawyer to weigh the risks and benefits of using it to deliver unbundled legal services online.

Web Calculators and Web Advisers

Some law firms may choose to start out by providing unbundled services in the form of web calculators or web advisers that directly appeal to self-help, prospective clients, but which do not directly involve interaction with the firm's lawyers. These tools are embedded in the law firm's web-

site for the use of the prospective client. In some cases, they provide information that can educate the prospective client on his or her legal needs and guide the client to retain the law firm for unbundled or full services. In other cases, they may provide an entire unbundled service, such as a legal document or legal guidance on a matter. In most cases, the law firm uses these tools on the law firm website as part of a larger marketing strategy to improve the search-engine optimization for the firm's website by providing unique and useful content, but also in the hopes of converting those self-help individuals into paying clients. Some lawyers may even consider providing the online document-assembly and automation tools for free to the client in addition to other web calculators or web advisers.¹⁷

One example of this is Road Traffic Representation's "expert system."¹⁸ This system was developed by a UK solicitor and serves as a web adviser for an individual who has been accused of a traffic offense. Individuals are able to use the online tool and, by answering questions as prompted, receive tailored legal advice that lets them know what the penalties and outcomes might be in their situations. At that point, the law firm has armed the self-help individuals with the information and then also will provide them with an attorney if they decide that based on the information from the legal diagnostic tool, they would prefer to have a lawyer represent them on their matters in court.

Expect to see more free or low-cost iPad, iPhone and other tablet and smartphone computer applications that are geared toward the self-help individual.¹⁹ These may be developed by forward-thinking law firms that can then redirect those individuals downloading the application to the law firm's website and potentially convert a few of those leads into paying unbundled or full-service clients.

The other benefit of prospective clients using these tools is that when they finally sit down to work with the lawyers in the firm, they are armed with the basic knowledge of their legal matters. This saves time and frustration for both parties and allows the parties to jump deeper into handling the legal matter because many of the decisions already have been made by the client through that initial process.

¹⁷See, e.g., legalmove.com at <http://www.legalmove.com/>. Legalmove is the online division of Fidler & Pepper Solicitors, at <http://www.fidler.co.uk/>, a conveyancing law firm in the UK. It provides conveyancing quotes online from its website and allows clients to track their cases online and receive SMS texts with alerts.

¹⁸See RoadTrafficRepresentation at <http://roadtrafficrepresentation.com/RTR/PublicForms/Home.aspx> (last accessed on Nov. 2, 2011).

¹⁹See, e.g., <http://lawlibe.thelawpod.com/>.

Other companies may develop web-based applications for use by law firms which the lawyer may use for unbundling legal guidance and may choose to share with the client to assist him or her in the future self-representation of the case. For example, in November 2011, a company named Picture It Settled, LLC released an application for iPhones and iPads to help litigants analyze and develop negotiation strategies.²⁰ The application reviews the settlement negotiations of “over thousands” of cases to help the lawyer plan a negotiation strategy. A simpler version of the software tracks the dollar moves in negotiation allowing users to calculate future offers based on the opponent’s moves and the concession rates of both parties. A lawyer might use such software by assisting the client in entering the data into the application related to his or her case. The lawyer might then provide the client with legal guidance based on the returned analysis along with a strategy for negotiation for the self-help client to proceed.

Online Dispute Resolution

In Chapter Five, alternative dispute resolution (ADR) was presented as another method of unbundling legal services. Increasingly, the DIY client is encountering the use of another form of web-based ADR called online dispute resolution, or ODR. ODR is a term that encompasses any methods of dispute resolution—arbitration, negotiations, mediation, and other methods of settlement—that are handled online. Most emerging methods of ODR are conducted by web-based, independent software systems created for the purpose of dispute resolution and involve only the parties to the dispute and the computer. These highly automated systems are owned by for-profit companies that may contract the use of the software out to other companies that focus on e-commerce or other markets that experience a large number of smaller claims.²¹ Many clients are familiar with purchasing items from online retailers, such as eBay or Craigslist. Whether or not they read through the terms of use before signing up for the site, clients most likely agreed to the site’s ODR process in lieu of litigation. When disputes arise between the buyer and the seller online, there is the opportunity for the parties to resolve the dispute using the retailer’s ODR process. The need for a lawyer is cut out of the picture unless one of the parties wishes to retain the unbundled guidance by a lawyer who may be familiar with this form of dispute and can provide strategic guidance in the process.

²⁰Picture It Settled, LLC at <http://www.pictureitsettled.com/>, last accessed December 11, 2011.

²¹SquareTrade is the most well-known example of a company that has created an ODR system and licensed the use of this to online trading website eBay.

One of the more familiar examples of separate web-based ODR systems is Cybersettle.²² Used by trial lawyers, Cybersettle uses a double-blind bidding process that results in a faster resolution of the legal matter.²³

According to the company's website, using this system reduces the average time to settle a case by four to six months.²⁴ The cost savings from using this in place of full litigation are not insignificant and may allow a law firm to work with more clients by offering to use this form of settlement and reserve full-service litigation services for cases where full service is necessary. There is little danger from attempting to use this form of service because if the case does not settle through the process, the information provided by the client and the lawyer remains confidential, and the parties still may proceed through litigation.

SmartSettle is another web-based ODR tool that uses a blind bidding process, but its products focus more on negotiation and can be combined with face-to-face meetings online or in person.²⁵ Clients who decide to use this tool are asked to sign a mediation agreement before proceeding and then may request to work with a neutral mediator and from there may conduct the entire process online or proceed with a combination of communication methods. Legal matters that could be addressed by such a system include separation agreements, property distributions, estate-planning conflicts between parents or parents and their children, small business disputes, disputes related to elder-care issues, and potentially more situations. The company also provides a more robust version of the software for multiparty and more complex situations. Additionally, Smartsettle provides what it calls "Dampened Pendulum Arbitration," which occurs when both parties have agreed to arbitration but no settlement could be reached by the end of the blind bidding process.²⁶ This final stage offered by the company pulls in a neutral third party who will favor the party whose last accepted value during the process was closest to fair.

ODR works well with legal situations where the parties must continue to have contact with each other following the resolution of the case. While litigation may leave the parties feeling adversarial from having to go

²²Cybersettle, at <http://www.cybersettle.com/pub/home/about/users/attorneys.aspx> (last accessed Nov. 3, 2011).

²³*Id.*

²⁴*Id.*, based on an Accenture® study and results from its clients.

²⁵SmartSettle, at <http://www.smartsettle.com/> (last accessed Nov. 3, 2011). SmartSettle is a division of iCan Systems, Inc. and was founded by Dr. Ernest Thiessen, a pioneer in the field of eNegotiations.

²⁶See explanation of the Dampened Pendulum Arbitration at <http://www.smartsettle.com/dampened-pendulum-arbitration/> (last accessed Nov. 3, 2011).

against each other in a process that does not encourage amicable resolution, ODR attempts to preserve the relationship of the parties. Therefore, ODR might be most appropriate in cases such as family-law disputes where children are involved, employee/employer disputes where the employee will continue to work for the employer, disputes arising between neighbors or others who must continue to live and work around each other, worker's compensation matters where the employee must return to work, or e-commerce disputes and business disputes where the company wants to avoid class-action suits and ensure that the customer does not leave with a negative impression of the company that then may affect its reputation or that of a particular product or service the company sells based on negative online customer comments and reviews. The growth of ODR will continue to increase in these particular matters because it benefits both parties in these circumstances to be on the same page without negative feelings after the resolution of the dispute.

Case Study

David Bilinsky—ODR

David Bilinsky is the Practice Management Consultant/Adviser for the Law Society of British Columbia and has studied and written about ODR. He is a fellow of the College of Law Practice Management and past editor-in-chief of ABA's Law Practice Magazine. Bilinsky, an adjunct professor at Simon Fraser University, teaches a graduate-level course in the Master of Arts in Applied Legal Studies program. Bilinsky's Thoughtful Legal Management blog has won numerous awards: <http://thoughtfullaw.com>.

- 1.** How do you see more attorneys becoming involved in the process of online dispute resolution?

ODR is advancing on at least four fronts. One is the macro level: United Nations Commission on International Trade Law (UNCITRAL), the Organization of American States, and other organizations are working on model laws for the resolution of business to consumer disputes that take place across borders. The aim is to increase lower-value cross-border trade by providing an effective and cost-sensitive dispute-resolution mechanism that can be relied on by vendor and purchaser alike.

The second is the micro level: Australia, for example, is using ODR for the resolution of family-law disputes. They have found that it is particu-

larly effective for lowering the emotional temperature of such disputes, for the parties do not need to be in the same physical space at the same time, as the technology bridges the geographical distances.

The third is private law: Businesses are seeking to incorporate ODR as the dispute-resolution method to avoid litigation. Witness the use of ODR by eBay and PayPal—together they deal with more than 60 million disputes per year. Of those disputes, 90 percent are resolved *entirely* by software (without any human intervention by eBay or PayPal).

Also small-claims courts are looking at how they can incorporate ODR into their dispute-resolution process. For example, Singapore, the UK, and Ireland all have ODR as part of their small-claims resolution process.

2. How do you believe ODR can impact access to justice in both individual disputes and within the larger judicial system?

It has been commented by many that the “middle class” has been left behind by the legal system. High costs, delay, and the uncertainty of going to court have led many to either not pursue their claims or abandon them entirely. It is recognized that pursuing a dispute is a Pyrrhic victory at best if the cost of so doing exceeds the eventual settlement or award.

Litigation results in settlements by what has been described as the “shadow of trial” model. The parties seek to resolve a dispute outside of court to avoid an “all-or-nothing” result. They seek to save the costs of going to trial and they seek to try to “divide the pie” in a way that maximizes their return. Furthermore, the “fair trial” principle means that the court process is by definition:

- ◆ adversarial,
- ◆ independent,
- ◆ impartial,
- ◆ very public,
- ◆ concerned with the efficient use of court resources, and
- ◆ accessible to all.

By way of contrast, ODR is founded on interest-based negotiation. It is concerned with speed, flexibility, and reduced cost. The “game theory” approach of ODR can result in parties seeking to “grow the pie” rather than just dividing it (as is typical in litigation).

Since ODR is a subset of ADR, then ODR offers all the benefits of ADR. However, because ODR is Internet-based, it also has the following benefits:

- ◆ disputants don't have to meet face-to-face, lowering the emotional temperature of the dispute;
- ◆ mediation can occur at any time, not just in the shadow of trial; and
- ◆ it lowers transactional costs of resolving the dispute, since geographic, time, and transportation aspects can be minimized.

However, ODR may not offer all the procedural fairness that is built into the trial system. The less expensive and faster resolutions have their price in the lowering of procedural fairness. Accordingly, best practices have been proposed (by the ABA, for example) that seek to delineate the ways that ODR can develop in ways that minimize the lowering of procedural fairness.

- 3.** To what extent do you believe computer systems will become integrated into the delivery of legal services?

When I look at how technology has been applied to the litigation system, it has largely been in a support role that seeks to make existing processes faster. There has not been a great deal of innovation in the actual court system resulting from technology. We still go to court (rather than appearing via videoconference), produce evidence (perhaps in electronic form rather than paper), wait to be heard (synchronous processes), etc.

ODR, on the other hand, is very creative in that the technology is integral—one would say essential—to the dispute-resolution process. The technology is driving the innovation, whether it is using online dispute-resolution methods (such as the Meeting Room) or eBay's dispute-resolution system (that results in virtually all disputes being resolved without any intervention by anyone other than the two parties and the computer system).

In one very real sense, the future is here, given the volume of disputes that are already being resolved by such parties as eBay, PayPal, and ICANN. So disputes are being resolved (mostly) outside of the court systems in the world. What remains is for ODR to be formally integrated into the court systems, such as in small-claims courts, family courts, and the like. There are projects under way now, such as in British Columbia, that are examining ODR in terms of its possible integration into the formal court process.

4. Do you believe computer processing will ever have a place in legal decision making in our profession?

Absolutely. The adoption of computer processing will continue to advance as the abilities of computer systems continue to increase in power and scope. Ray Kurzweil has become well known for his ability to predict the future. In such an environment as Kurzweil predicts (and we have already seen by the explosive growth of the Internet and associated technologies and the impact that just this level of technology has had on the world), it is next to inconceivable that the legal profession and legal decision making will remain immune to these influences.

We have people working on artificial intelligence systems at this present time, including legal analysis. No matter how skeptical you remain regarding the ability of computers to mimic how we as humans think, there have been examples such as IBM's Deep Blue, the chess-playing computer that defeated world champion Garry Kasparov, and IBM's Watson, the "Jeopardy"-playing computer that beat Brad Rutter, the biggest all-time money winner, and Ken Jennings, the record holder for the longest champion streak, that have shown that computer processing can beat the best of us. As long as Moore's Law holds, computers will continue to grow in power. I don't know at which point the processing capability will be sufficient to mimic (and beat) the best legal analysis and decision-making humans, but I have no doubt that this day will come.

5. What do you believe the next steps might be in promoting the use of ODR in the legal profession and with the justice system?

The National Center for Technology and Dispute Resolution (www.odr.info) will continue to be the clearinghouse and thought center for ODR. More and more lawyers and others will take an interest in the NCTDR as well as the Internet Bar Association (<http://internetbar.org/>) and the eLawyering Task Force of the American Bar Association (<http://apps.americanbar.org/dch/committee.cfm?com=EP024500>). UNCITRAL's Working Group will continue to explore ODR for low-value, international business to consumer (B2C) trade disputes.

Corporations will look to incorporate ODR dispute-resolution clauses and methods into their business agreements and business processes. International ODR forums will continue to be held around the world. Universities will develop degree programs in ODR such as Singapore Management University's Master's in Technology and Dispute Resolution. There will be further experimentation in incorporating ODR into legal dispute resolution such as ADR.eu in Europe and the City of Vancouver, British

Columbia, Canada, for parking tickets. Not the least of which, governments and court officials will look to incorporate ODR into their systems. The Organization of American States (OAS), for example, is looking into developing a draft model law for ODR for transnational commerce as is the U.S. State Department.

6. What role do you think unbundling legal services will take in the legal profession in the future?

I think the challenge is for the legal profession to realize that the competitive environment has changed drastically. Competitors are delivering legal services in a way that consumers desire. Lawyers and law firms need to rethink the “bespoke” method of delivery of legal services and approach this issue from the perspective of a consumer and not as a provider.

This is another way of saying that innovation is going to take place. Whether it takes place within or without the legal profession as a whole is perhaps the next challenge facing all of us. I hope, for the profession and for consumers and society alike, that we have those within our ranks that will drive this innovation and bring the rest of the legal profession along with them into the future.

Case Study

The National Center for Technology and Dispute Resolution (NCTDR)– <http://odr.info>

Lawyers interested in learning more about ODR both in the States and abroad should visit the website for NCTDR. Sponsored in part by the National Science Foundation, this organization “supports and sustains the development of information technology applications, institutional resources, and theoretical and applied knowledge for better understanding and managing conflict. The Center believes that networked information technology can be uniquely leveraged to expand and improve conflict management resources and expertise.”²⁷

Working to promote the development of ODR in the legal system, NCTDR views the Internet as an environment where technology may be used to find solutions to conflicts that are both online and off, domestic and international. The NCTDR website features a list of ODR providers and standards created by organizations concerned with ethics issues that may

²⁷<http://odr.info/about>.

arise from the practice. NCTDR regularly posts ODR news updates and publication announcements on its blog and works closely with the Internet Bar Organization (IBO).²⁸

Since 1998, the organization has hosted Cyberweek, a free, annual online conference focused on ODR. This conference precedes the 11th annual congress on ODR that will be held in Prague in June 2012. The focus of this congress will be on “continued preparatory work on the design and development of a global resolution system to handle cross-border, low value disputes. Principal initiatives include the preparation of Rules for cross-border ODR by UNCITRAL, the development of cross-border ODR infrastructure connecting ODR providers in different parts of the world (ODR Data Exchange), current policy development by the European Commission, Organization of American States (OAS) and others.”²⁹ The website for the Prague ODR conference contains a resources page with the most current publications, including information on the formation of a global ODR system.³⁰

Tools such as those used in ODR provide greater opportunity for the lawyer to work with online systems to provide effective unbundled legal services to DIY clients involved in online purchasing disputes or for any client whose circumstances might benefit from the use of the online system rather than in-person ADR. For example, there may be situations where one of the parties is geographically located at such a distance that it would not be cost-effective to have both parties fly out to meet together with their lawyers face-to-face. Or one of the parties may have medical reasons why he or she may not travel to meet with the other party for the process. One or both of the parties to the process may even be incarcerated and unable to leave to resolve the matter. The use of the technology breaks down these barriers to provide greater access to the ADR process. The lawyer or law firm may suggest to a self-help client that these ODR services are an option in his or her circumstance and explain how the lawyer may assist the client in going through the process. The lawyer then defines the scope of ODR services based on what the lawyer agrees that the client would benefit from with the potential to add additional legal services as needed.

²⁸ See the Internet Bar Organization at <http://internetbar.org/>.

²⁹ See the website for ODR 2012 Prague at <http://www.odr2012.org/>.

³⁰ See Del Duca, Louis, Colin Rule and Zbynek Loebel, “Facilitating Expansion of Cross-Border E-Commerce—Developing a Global Online Dispute Resolution System (Lessons Derived From Existing ODR Systems—Work of The United Nations Commission on International Trade Law) at <http://www.odr2012.org/files/pilot.pdf>.

This form of unbundling may have a great amount of potential value for the unbundling lawyer where the law firm has experience in reaching settlements in a specific practice area. For example, if the law firm has more than 30 years of experience in settling insurance claims, its lawyers will know that given the circumstances of the case, a reasonable settlement amount would be X. Accordingly, the client armed with this information would have the confidence going into the ODR system that the asking settlement amount is reasonable and fair under the circumstances. The fact that both parties may not have full-service representation may simplify the process and prevent unnecessary and lengthy negotiations by starting the process with reasonable terms given the circumstances. At some point in the future, it may be possible that computer systems will be able to learn different outcomes and settlements based on input entered from prior cases. When similar circumstances arise in a new case, the computer could parse the data to provide suggested starting points for the parties. In the meantime, the lawyer's own experience may be provided as an unbundled legal service to the ODR client using these technology tools.

These forms of technology-driven ODR focus on online arbitration and this is an area of ADR that may benefit more from the use of the web-based technology. There is less need for the lawyer to unbundle services with the systems when he or she will be providing full-service representation. However, mediation, as a form of ODR, may provide additional opportunities for the lawyer to unbundle. The law firm might consider distinguishing itself by gaining experience in online mediation, where the parties to the case and the mediator communicate with each other online as well as share testimony, evidence, and other information related to the case with the mediator. Initial attempts at online mediation may have been questioned in the past because of the lack of interpersonal communication and the reliance on text-based forms of communication, such as e-mail. However, today, online mediation should be reconsidered given the ease of web-conferencing tools that allow all parties to meet face-to-face online and to have those meetings recorded and shared for future reference.

The international business community is increasingly looking at ODR as a way to circumvent many of the barriers in cross-border law practice. Other companies are creating their own systems and rules for use of the technology that clients are agreeing to follow. These rules are not based on any jurisdiction's laws, but the laws created by the company and the users based on the circumstances on the online activity and e-commerce transactions. As these new systems of ODR evolve, lawyers interested in capitalizing on the need for experienced legal guidance within these systems will find unique opportunities for unbundling.

The use of these tools can also prevent the frivolous filing of lawsuits by encouraging the parties to move toward settlement prior to engaging in litigation. Accordingly, it is not difficult to see the value that this process would have for companies that provide third-party litigation funding. The use of a form of ODR prior to litigation might be included in the review process for that funding company to help it determine the amount and likelihood of providing the funding for the matter to be litigated.

Practice areas where ODR might be an option include:

- ◆ Business
- ◆ Insurance
- ◆ Small claims
- ◆ Commercial law
- ◆ Worker's rights (employers may provide some form of ODR system to resolve employment disputes)
- ◆ Landlord/tenant
- ◆ Intellectual property
- ◆ Family law
- ◆ Distribution of property
- ◆ Contract law
- ◆ Other transactions-based practices

Game-Theoretic Bargaining Systems

Game theory is the science of strategy and interdependent decision-making. It uses principles of logic and mathematics to analyze and illustrate the actions that “players” should take in order to secure the best outcomes for themselves in a wide variety of “games.” The games in question range from simple card games to highly complex transactions and military conflicts.³¹

In recent years game theory has been used to conduct extensive studies of the dynamics underlying legal conflicts and legal negotiations. Thousands of articles using game theory to analyze the legal field have been published in journals dedicated to such studies.³²

³¹See a general summary of game theory in the Concise Encyclopedia of Economics at <http://www.econlib.org/library/Enc/GameTheory.html>.

³²See for example, the American Law and Economics Review, published by the American Law and Economics Association at <http://www.amecon.org/> and the Journal of Empirical Legal Studies, published by the Society for Empirical Legal Studies at <http://www.lawschool.cornell.edu/sels/>.

Practical applications of some of this work have recently been developed and made available to lawyers and to the public at large. For example, several computerized bargaining systems that employ procedures grounded in game theory can currently be accessed and used online.³³ Such systems can be and are being used by parties and lawyers involved in litigation and legal negotiations, including lawyers providing unbundled legal services.

Case Study

Fair Outcomes—www.FairOutcomes.com

James F. Ring is a partner in the Boston law firm of Chu, Ring & Hazel, LLP. He is also a principal of Fair Outcomes, Inc., a company founded by a small group of game theorists, computer scientists, and practicing attorneys to provide parties involved in disputes or difficult negotiations with access to game-theoretic bargaining systems. He has twenty-eight years of experience as a practicing trial lawyer, primarily working on business disputes. He lectures frequently, and is the author of several published articles, on using game theory to understand, manage, and resolve legal conflict.

- 1.** What insights and opportunities does game theory offer to lawyers, including lawyers that are interested in providing unbundled services?

Practicing law consists, to a very large degree, of engaging in or assisting clients with various forms of bargaining. This includes overt bargaining, such as negotiating with governmental authorities, adversaries, and potential contractual partners. It also includes a great deal what game theorists refer to as tacit bargaining, such as when one takes, or threatens to take, or refrains from taking a given action in an effort to influence or induce another party to do or concede certain things. Litigation is, in virtually all cases (and like most forms of conflict), a form of tacit bargaining.

Game theory takes a scientific approach to bargaining. It sheds light on what works and doesn't work in particular contexts. In so doing, it serves to confirm much of what most experienced lawyers intuitively understand, such as that talk is cheap and actions speak louder, and are much more credible, than words. This approach has led to the development of several systems that allow various forms of legal conflict to be managed and resolved in a highly productive and efficient way.

³³See, e.g., the various systems offered at <http://www.fairoutcomes.com/>.

Although the theoretical work underlying these systems is deep and offers a view of legal conflict that differs markedly from the view routinely advanced by many advocates of alternative dispute resolution, the systems themselves are very simple and easy to understand. They are particularly well-suited for use by lawyers that are interested in limiting their services to helping a client identify and pursue a reasonable outcome in a credible, effective, and non-prejudicial manner.

2. What sorts of features do these systems have that might cause them to be of interest to lawyers providing unbundled services?

There are several game-theoretic systems that can be used online, in some cases for free and in almost all cases for less than the filing fees charged to file an action in court. A party can use these systems at any time by entering some simple data identifying the parties and the underlying case and committing, in confidence, to a bargaining outcome that that party would view as acceptable. The system won't reveal that outcome to anyone else unless that outcome is achieved. The data entry process can in most cases be completed in less than five minutes, at which point that party's work is done. The system then offers the other party an opportunity to enter similar data in complete confidence and at no cost. Depending upon how the other party responds, the matter will either be resolved on terms that are acceptable to both sides or, alternatively, a party that has used the system will be given an affidavit attesting to the system's structure and to the manner in which that party, as distinct from its adversary, had used the system.

What makes these systems so attractive is that—although these systems can be and often are used by mutual agreement—they can also be initiated and used productively by one party without having to secure the other party's cooperation or consent. A party that makes a reasonable proposal will, in all cases, either achieve what it considers to be a reasonable outcome or will be able to credibly demonstrate, without having to reveal its own proposed outcome to its adversary, that its adversary had walked away from a fair solution under conditions where the adversary had no rational incentive or excuse for doing so. This is because the structure of these systems negates any incentive or excuse for either party to posture, or to fail to propose, or to walk away from, a reasonable settlement. In stark contrast to the dynamic that exists in litigation, arbitration, mediation, traditional sealed-bid arrangements and online embodiments of traditional ADR methods (all of which provide ample incentives and excuses for posturing up until the eve of trial), self-interest

obliges a party that initiates a use of one of these game-theoretic systems to commit to a reasonable outcome at the outset of the process, and self-interest obliges the other party to do so by a fixed deadline.

3. What sorts of systems does Fair Outcomes presently offer?

Fair Outcomes, Inc. currently offers five distinct systems based on three different sets of patented processes. Three of these systems can be briefly summarized as follows:

Fair Buy-Sell: This system is used by joint owners of property—such as business partners, shareholders, heirs, and married couples—to bring their joint ownership to an end in a fair and efficient manner. The initiating party enters data, and the system invites the other party to enter data, confidentially specifying a price at which the party entering that data would be willing either to sell its share to the other side or buy-out the other side's share (similar to the proposal made by the initiating party under a traditional "buy-sell" arrangement). The system compares the data entered by the two parties and announces a sale to the party that specified the higher price. However, the sale price is set at the midpoint between the two values. When used by both of the involved parties, this system always produces a full and complete resolution, and it always provides each party—whether the buyer or seller—with a resolution that is equal to or (in the vast majority of cases) more favorable to it than what it had proposed.

Fair Division (the "Adjusted Winner" system): In cases in which two parties must divide up multiple items of property or resolve multiple issues that are in dispute, either party can initiate this system and thereby invite the other party to arrive at a resolution in a fair and efficient manner. This system embodies a bidding process (involving confidential bids) that guarantees each party at least 1/2 of what that party considers to be the total value of all of the items or issues in question, and usually allows each party to receive between 2/3 and 3/4 of that value. In the vernacular of game theory, the structure of this system is honesty-inducing and strategy-proof, producing outcomes that are efficient, equitable, and envy-free. Utilizing what has been recognized as some of the most important work that has been done in game theory in recent decades, this system has been used in cases ranging from marital divorce to international border disputes. It has been shown in independent empirical studies to "eminently" and "substantially" improve upon traditional approaches to legal bargaining.

Fair Proposals: In cases in which one party is seeking money or other concessions from another, such as in a lawsuit, a party on either side of such a claim can use this system to propose a resolution that it deems fair in a manner that is credible but non-prejudicial. Unlike litigation, mediation, traditional sealed-bid systems and all other forms of ADR and ODR, the system gives the initiating party a strong incentive to make a reasonable proposal at the outset of the process, and it deprives the other party of any incentive or excuse for failing to do the same prior to a fixed deadline. It has been used in cases involving claims for breach of contract, personal injury claims, whistle-blower claims, and claims for legal malpractice. Prominent economists, strategic analysts, and dispute resolution professionals have described this system as “ingenious” and as “brilliant in its simplicity.”

4. How are lawyers that provide unbundled services making use of the game-theoretic systems offered and administered by Fair Outcomes, Inc.?

As the administrator of these various systems, Fair Outcomes, Inc. is obliged to remain strictly neutral as between the parties. This has created opportunities for lawyers to assist one side, as opposed to the other, in connection with a given use of any one of these systems. Lawyers that wish to provide limited services in a given case generally use these systems in one of two basic ways. Some lawyers offer, in exchange for a fee (either fixed, hourly, or contingent), to provide people (including other lawyers) with limited services consisting of guidance and advice on how to use these systems in a particular case, such as in a divorce or personal injury case. The second way in which lawyers providing circumscribed services often use these systems is to use them to make a credible determination about whether a case can be settled on reasonable terms prior to referring the case out to another lawyer or otherwise withdrawing from involvement in the case.

5. How can people learn more about these systems and about this general approach to dealing with litigation and legal negotiations?

All of these systems can be accessed, examined, and tested free of charge at www.FairOutcomes.com. In-depth information about each system, including access to analytical papers, can be accessed via the “Learn More” pages corresponding to each particular system, along with additional information about this general approach to managing and resolving legal claims.

Touching on the cornerstone rule of “doing unto others as you would have them do unto you,” game-theoretic systems oblige both parties to admit to themselves that what they might want to claim in traditional negotiations and what they would actually view as a fair resolution may not be one and the same. This makes it easier for lawyers, including lawyers providing unbundled assistance, to help a client come to grips at an early stage with what would actually constitute a fair and reasonable outcome given the facts and circumstances of the case. If a client uses the system to commit to a reasonable outcome, the case will either settle on terms that the client deems fair or, alternatively, the client will be able to justify expending resources on additional legal services or moving forward on a pro se or quasi-pro se basis.

Artificial Intelligence

For most lawyers, the term “artificial intelligence” (AI) may elicit images of robots, such as Honda’s well-known Asimo robot.³⁴ However, many other professions use AI as a useful tool that works alongside human intelligence, resulting in increased production and more predictable and stable standards and outcomes. The financial industry uses AI to predict markets and provide guidance to financial planners and investors based on economic trends. The medical industry heavily relies on forms of AI as diagnostic tools that gather input from the patient and report the findings to a medical practitioner who then has existing data from which to provide a more detailed diagnosis and health-care strategy. AI is slowly making its way into the legal profession, but it is most likely still a long way from being relied on as it is in these other industries.³⁵

Neota Logic is one example of a company that has developed an artificial intelligence engine with user-friendly and power authoring tool.³⁶ This technology goes one step beyond basic document assembly by using decision trees, decision tables, if/then rules, calculations, weighted factors, spreadsheets, case-based reasoning and others tools to create customized

³⁴See Asimo at <http://asimo.honda.com/> (accessed Nov. 3, 2011).

³⁵See generally “Swapping Decision Trees for River Logic” by Darryl Mountain on Slaw.ca blog (accessed Sept. 14, 2011), at <http://www.slaw.ca/2011/09/14/swapping-decision-trees-for-river-logic/>, discussing eGanges as a new legal expert system shell being developed by Dr. Pamela Gray, a legal knowledge engineer from Charles Stuart University. See also Neota Logic at <http://www.neotalogic.com/author> (last accessed Nov. 2, 2011) as an example of a company that develops customized legal AI systems for law firms.

³⁶Neota Logic at <http://www.neotalogic.com>, last accessed November 2, 2011, as an example of a company that develops customized legal AI systems for law firms.

systems for law firms. This technology may be used to assist in the decision making process for lawyers. As the expert system continues to be used by the law firm, it learns and aggregates data to increase performance of its operations as well as to create valuable reports from its database for use by the law firm. Only a limited number of law firms employ true expert systems such as those built by Neota Logic which was founded in late 2010. Michael Mills, CEO of Neota Logic, provided this background on how these expert systems are being adopted: “[o]ur discussions with corporate general counsel, compliance directors and human resources staff confirm the prospects for expert systems developed by true experts using smart technology. As one general counsel said to us, “No more memos . . . we want answers.” We are finding law firms quite interested in packaging and delivering their expertise in new ways—ways that do not cannibalize traditional legal work but instead enable creation of new services that meet clients’ needs in ways that traditional services cannot.”

Mills provides an example of how these new services might be offered: “An expert system on human resources law deployed inside a major employer can answer for line supervisors and HR staff many routine legal questions that at present do not benefit at all from legal guidance, because it is simply too costly and time-consuming to consult with in-house or outside counsel. The system answers the routine two-thirds of the questions, and routes the more difficult questions to the right lawyer after collecting online much of the information that the lawyer will need to reach a judgment” However, Mills states that these systems are primarily built to be used by clients rather than by lawyers. He explains that the implementation of expert systems is practical when: “(1) the practice area offers clients advice and answers more than transaction execution or dispute resolution. (Examples: employment law, tax, financial services compliance, data privacy, cross-border issues, multi-state issues, environmental regulation), (2) the clients’ business operations generate a steady flow of questions in a defined topic area, (3) the topic is complex enough to warrant consulting experts, and (4) yet routine and repetitive enough that the traditional service model is not sustainable.”

Mills believes AI will become a powerful tool in the legal profession but one that is “narrow” in its focus, handling only the more repetitive tasks of moderate complexity. In terms of AI’s application to unbundling, Mills sees potential for expert systems to provide unbundled legal services to self-help individuals who are proceeding pro se as well as in conjunction with paid, unbundled services from a lawyer.

He states “[a]s the many legal information web sites demonstrate, consumers of personal legal services, both those who are eligible for pro bono or otherwise free services as well as those who can afford to pay something for assistance, are very often looking for answers to very frequently asked questions. At present, the profession offers consumers two online choices—textual information (articles, FAQs, blank forms, instructions, checklists, etc.) and automated forms (DirectLaw, Law Help Interactive, etc.)—with or without the services of a lawyer. With expert systems, the profession can add a third online choice: personalized answers to legal questions based on the consumer’s specific facts and circumstances. (Constraints and disclaimers are necessary of course.) Because expert systems can be, in fact, very smart, they can help consumers decide whether a problem is simple enough to handle themselves based on the systems’ advice or instead needs live advice from a lawyer, i.e., needs the sort of experience-driven judgment across subtle facts that only human experts can provide. If the problem is indeed not simple enough, the system will route it to a lawyer, bundled with all the information gathered from the consumer by the systems’ online interview, thus improving the quality and efficiency of the unbundled service provided by the lawyer.”

Why should the unbundling lawyer care about the use of AI as it develops? Those law firms that are the first to harness the power of AI in the process of producing legal work will have a clear edge in the future. At this time, the expert system shells or programs that exist may not be especially user-friendly for the lawyer or for his or her client who may not have a technical background or who would prefer a user interface that is more in line with other current web-based applications. However, these interfaces are the icing on the cake, and it is the underlying systems that hold the great potential to streamline a large part of the legal process and to provide greater predictability in legal outcomes, which may result in faster settlements and provide the lawyer with strategic information that would benefit his or her client’s case. For example, imagine a system that took all of the statutes for a state and its existing body of case law related to a specific legal matter. The computer is able to analyze the fact patterns provided to it to scan for similar situations, claims, and outcomes and then provide a statistical analysis that relates the most probable outcomes under multiple variables. A law firm that employs these tools would be able to offer coaching and strategy coupled with the use of the AI system as an unbundled legal service that is based on the outcome of the report, which may or may not result in the client hiring the law firm for full-service representation.

Ethics Concerns with the Use of Technology to Unbundle

Regardless of the chosen method of delivery, attorneys using technology to deliver unbundled legal services must comply with Model Rule 1.6(a), which requires that the attorney use reasonable care to ensure that the client's information is protected.³⁷ There is some dispute within the legal profession as to what level of security a law firm should be required to use when it comes to the use of technology to communicate with clients. Some attorneys argue that e-mail should be the standard because most state ethics opinions specifically permit unencrypted e-mail as a safe way to communicate with clients.

Today, however, most practitioners are well aware that there are more secure methods of digital communication that include encryption. Data privacy laws exist in Nevada and Massachusetts that require encryption in the collection of personal data.³⁸ Considering the confidential nature of the attorney/client relationship, one might predict that in the near future this higher standard of security also will be a requirement of legal professionals.³⁹

Some states have issued ethics opinions regarding third-party hosting of law office data, the use of virtual law offices, and cloud computing in practice management.⁴⁰ A law firm considering delivering unbundled

³⁷See comments for ABA MODEL RULE 1.6, Confidentiality of Information, available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information/comment_on_rule_1_6.html (accessed Dec. 12, 2011).

³⁸See GEN. L. OF MASS., Ch. 93A, Regulation of Business Practices for Consumers' Protection, available at <http://www.mass.gov/legis/laws/mgl/gl-93a-toc.htm> (accessed Dec. 30, 2010); and NEV. REV. STAT. Ch. 603A—Security of Personal Information (2009), available at <http://search.leg.state.nv.us/isysquery/irl5021/1/doc> (accessed Dec. 30, 2010).

³⁹For example, see the ABA Standing Comm. on Ethics and Prof. Resp. ethics opinion, Formal Op. 11-459, Duty to Protect the Confidentiality of E-mail Communications with One's Client (Aug. 4, 2011), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_formal_opinion_11_459.authcheckdam.pdf (last accessed Nov. 14, 2011). This opinion states that the lawyer should warn clients about using workplace unencrypted e-mail to communicate or any time there is a risk that a third party might access and view those confidential communications.

⁴⁰See, e.g., Pa. Ethics Op. No. 2010-060, January 2011; Cal. State Bar, FEO 2010-179 (December 2010), available at <http://ethics.calbar.ca.gov/LinkClick.aspx?fileticket=wmqECiHp7h4%3D&tabid=837> (last accessed Nov. 3, 2011); Fla. State Bar Op. 00-4, Fla. Ethics Op. 00-4, 2000 WL 1505453 (July 15, 2000); N.C. State Bar 2005 Formal Ethics Op. 10, Virtual Law Practice and Unbundled Legal Services, 2006 WL 980309 (Jan. 20, 2006); N.Y. State Bar Ass'n Comm. on Prof'l Ethics Op. 709 (Sept. 16, 1998), Use of Internet to Advertise and to Conduct Law Practice Focusing on Trademarks; Use of Internet E-Mail; Use of Trade Names, 1998 WL 957924 (Sept. 16, 1998); Wash. State Bar Informal Op. 1916 (issued 2000); and Pa. State Bar Formal Ethics Op. 2010-200 (issued 2010).

legal services online should refer to these opinions for guidance. This book cannot go into all the issues related to the use of cloud-based technology in law practice but urges the reader to conduct due diligence in researching any technology product and vendor and to use reasonable care before entrusting any part of the unbundling process to a technology or technology provider.⁴¹

Case Study **Darryl Mountain**

*Darryl Mountain is a Canadian lawyer based in Sydney, Australia, with an interest in disruptive innovations in law. Mountain is a member of the eLawyering Task Force of the American Bar Association, which examines and responds to the ways in which the practice of law is changing in the Internet age. He has written a number of popular journal articles on legal technology topics, including "Disrupting Conventional Law Firm Business Models Using Document Assembly," **International Journal of Law and Information Technology** (Summer 2007) 15 (2): 170–91. He works on projects involving legal document assembly and virtual law practice.*

- 1.** How would you advise lawyers to respond to critics of unbundling or accusations from other professionals that their unbundling work is "commoditizing" the practice of law?

"Commoditizing" the practice of law is a narrow way of looking at it. Steve Jobs was seen not as a commodity producer but rather as a creator of premium products. Very few people talk about how digital cameras and iPhones have commoditized photography. The conversation has shifted from whether the colors are right on the developed photos to how easily the photos can be shared over the Internet. Similarly, I think that unbundling will lead to a shift in the conversations that take place when people judge the provision of certain legal services.

- 2.** What role do you think document assembly and automation will take in the legal profession in the future?

I think the best solutions will be those that combine people and software, whether the people are lawyers, paralegals, or outsourced personnel. There are limits to what document assembly and automation can achieve, at least at their current state of development. Computers are

⁴¹*In general, see* NICOLE BLACK, CLOUD COMPUTING FOR LAWYERS, ABA/LPM 2011, and STEPHANIE KIM-BRO, VIRTUAL LAW PRACTICE: HOW TO DELIVER LEGAL SERVICES ONLINE, ABA/LPM 2010.

good at logical intricacy and people are good at exercising judgment and interpreting difficult fact situations. For example, a software-generated questionnaire with built-in checklists doesn't forget to ask questions such as "Do you have a marriage agreement?" On the other hand, it takes a lawyer asking open-ended questions to discover that the testator will, in fact, be moving permanently outside the jurisdiction next month.

3. When the IBM computer, Watson, played "Jeopardy," some thought leaders in the legal profession suggested that our current document-assembly and automation systems might one day be coupled with other forms of artificial intelligence to provide greater "diagnosis" of legal matters for lawyers to use with clients. How do you see the current technologies we have evolving to use AI or game theory to assist lawyers?

Artificial intelligence may allow generalist legal practitioners to disrupt specialists. One of Clayton Christensen's famous examples is how cardiologists doing angioplasty are slowly disrupting heart surgeons doing cardiac bypass surgery. It took 11 years for angioplasty to overtake bypass surgery in terms of number of procedures. The gulf between the number of angioplasties and the number of bypass surgeries performed continues to widen, and heart surgeons are becoming increasingly marginalized. In the United States as of 2004, they were back to doing the same number of coronary bypasses as they had been doing in the mid-1980s. This example may be a prototype for legal disruption of the future: Perhaps one day a tax lawyer or tax accountant will be disrupted by a less qualified expert working with a suite of online legal knowledge products.

The UK-based Road Traffic Representation site discussed earlier in this chapter allows the client to electronically brief a barrister and bypass solicitors. This is an example of having AI provide the diagnosis and moving straight to the remedy. It is the inverse of the cardiologist example in that it is technology + specialist replacing the less specialized person rather than technology + less specialized person replacing the specialist.

How to Develop a Web-based Application for the DIY Client

Most lawyers are not equipped with the programming and developer skills necessary to create web-based applications for their own websites. If your law firm does not have the in-house talent to take your ideas for a web application and run with them, then you might consider outsourcing this task to a developer who will agree to stay within your fixed

budget. Elance is a website that allows you to post your proposed project and estimated budget to a tailored group of skilled programmers and developers.⁴² Developers who obtain work from the site have acquired positive reviews and ratings and there are several processes in place to protect both you and the developer from fraud or theft. Another option might be to hire the services of a consulting firm, such as Neota Logic, which will use its own customized application to generate the tool that you need for your law firm based on your practice area and needs.⁴³

Remember this simple tip when looking for a developer: A web developer may understand what you want him or her to create, but he or she may not be skilled in design. Without clean design and usability of the application, there will be little benefit for the self-help client. Make sure to emphasize usability and user interface with any prospective developer.

If a lawyer or firm is interested in learning how to develop its own iPad or iPhone legal application, Stanford University has published its iPad and iPhone Application Development course for free on Apple's iTunes U.⁴⁴ For an example of a lawyer who has developed his own web-based application, see the case study for the Kelly Law Firm in the Appendix. Kelly has developed a Smartphone app for use by his clients, which may be downloaded from iTunes.⁴⁵ This application allows his clients to make online payments for legal services, obtain access to case files, and task management features.

There are significant security risks to delivering any legal services—whether unbundled or full scope—to clients online. The use of mobile devices and applications poses even greater risks because of the lack of education by many lawyers and their clients regarding best practices for securing data online and protecting the confidentiality of the law office data. When considering developing a web-based legal application, make sure the developer understands these concerns and the need for encryption if the application will be inviting your clients or prospective unbundling clients to transmit any confidential information over the Internet through the use of a mobile device.

⁴²Elance website at www.elance.com (last accessed Nov. 2, 2011).

⁴³Neota Logic at <http://www.neotalogic.com/author> (last accessed Nov. 2, 2011).

⁴⁴See the free course for download at <http://itunes.apple.com/itunes-u/ipad-iphone-application-development/id473757255> (last accessed Nov. 15, 2011).

⁴⁵See the Kelly Law Firm app at <http://itunes.apple.com/us/app/kelly-law-app-internet-affiliate/id447613097?mt=8> (last accessed Nov. 12, 2011).

Conclusion

The technology and methods of delivery discussed in this chapter will never exclusively replace the need for lawyers who unbundle their services. The goal of the legal profession should be to identify the ways in which these tools may be used to the benefit of legal practices while really questioning which processes in legal product depend on lawyers alone to complete. Computers may be better at parsing through data, and collecting and filtering information with minimum error. They can be a great form of quality control. But lawyers are superior at analytical and creative thinking. After reevaluating the roles of lawyer and machine and delegating responsibilities accordingly, we can more effectively apply innovative systems and technology into our practices for more efficient, ethical, and, hopefully, more error-free unbundling of legal services. Providing prospective clients with a web-based tool to assist them in the DIY process and to provide unbundled services directly to the client serves to differentiate your law firm's services from those of a traditional law firm.