

From Phoenix Wright to Atticus Finch: Legal Simulation Games as an Aid to Self-represented Litigants

Scott Beattie
CQ University
120 Spencer St, Melbourne
Victoria, Australia
+61 3 8662 0584
s.beattie@cqu.edu.au

Stephen Colbran
CQ University
160 Ann St, Brisbane
Queensland, Australia
+61 409 305 235
stephen.colbran@gmail.com

ABSTRACT

This paper examines the feasibility of a courtroom simulation being used to assist self-represented litigants in learning basic advocacy skills. A review of legal and forensic mechanics in games, particularly the *Phoenix Wright* games, provides design roadmap for a courtroom learning simulation.

Keywords

Law; simulation; self-represented litigants; advocacy

1. INTRODUCTION

Play is a compelling form of learning, particularly where it allows exploration of an otherwise high risk environment, whether it be lion cubs play fighting or in simulations of a high pressure courtroom environment¹. Soaring legal costs and cutbacks to legal aid mean that large percentages of clients are forced to represent themselves in court. The rates of self-representation vary by jurisdiction, type of case and year² but are consistently increasing, especially for middle-income earners³ who are unable to obtain legal aid. This paper investigates the feasibility of a using a courtroom learning sim to teach these self-represented litigants basic advocacy skills and by doing so facilitate access to justice.

While many learning games focus on memorising and testing recall of facts, interactive media has the potential to develop more complex capabilities through the exploration of meaningful choices and the consequences that flow from them. Whilst self-represented litigants (and law students) might benefit from a better understanding of detailed court process and etiquette, the real focus of concern is more a broader range of skills such as structuring an argument, choosing between relevant and irrelevant issues, and connecting evidence to assertions; skills that interactive media can cultivate.⁴ Further, simulations can build confidence in the use of courtroom language and cultivate cultural capital around presenting an authentic voice that anchors learning in emotionally relevant experience.⁵

2. THE PROBLEMS FACED BY SELF-REPRESENTED LITIGANTS

Around the world, litigants often represent themselves for various reasons including the high cost of legal services, cutbacks to legal aid or denial of service, individual choice, that no legal representative is willing to act and jurisdictions which discourage or prevent legal representation.⁶ The extent of the problem is considerable. In 2015-2016, the Australian High Court reports rates of around 46% of self-represented clients and 76% self-representation in immigration cases.⁷ In British Columbia, the Court of Appeal in 2015 faced 27% self-representative litigants with the percentage rising to 57% in Family law appeals.⁸

The problems associated with self-represented persons are well known and include:

- Lack of legal skill - ignorance of legal issues, court procedures, forms and legal language;
- Lack of objectivity and emotional distance from their case.⁹
- Impact on court staff – following irrelevant precedents, incorrect or incomplete documents, filing irrelevant materials, ignorance of procedural issues and penalties, consuming library time and resources, misunderstanding procedural advice, frustration and abuse.
- Impact on the judiciary - disruption to the usual flow of court proceedings.

Information collected in Australian Federal courts suggests representation is relevant to outcome, negotiated settlements are more likely with representation and the failure rate for self-presented parties is high.¹⁰

This impacts on the justice system in several ways. Immediately there is an issue of access to justice for the self-represented individuals. Beyond this there are other costs that spill over, these clients require more time to present their case than a trained professional which drive up the costs of the other parties and of administering the system generally.

Self-represented litigants need to focus primarily on presentation of facts, not on understanding the law. An understanding of legal documents and regulatory instruments is important, but knowledge of precedent and statutory interpretation is seldom important at first instance and in any case legally complex cases are generally going to be the domain of legal specialists in the appellate courts.



Self-represented litigants therefore do not to be trained as lawyers, but in the manner of lay advocates with a focus on arranging an argument, understanding the way in which regulatory documents work, filtering relevant from irrelevant information, placing emphasis and providing evidence for arguments. While these concepts can be described in explanatory documents, the practical aspects can only be understood through actual application, preferably in a low risk hypothetical simulation, something which has a long history even in pre-digital legal education.¹¹ While self-represented litigants may, or may not elect to undertake more formal training in advocacy skills, a learning game that simulates these processes might provide a more engaging and practical way to explore the issues and build confidence. A simulation of this kind could service a number of audiences in addition to the self-represented litigant including law students and might also be of use as microgaming activities in broader training contexts.¹²

The key aptitudes that such a learning game might foster could include:

- Understanding how to apply generalised rules and regulations to specific fact circumstances.
- Judging the relevance of different situational facts or arguments.
- Framing an argument, selecting key points, sequencing these in a logical manner and providing appropriate emphasis to each aspect.
- Connecting facts and claims to credible evidence.
- Basic understanding of procedures and etiquette, not tied to a particular jurisdiction but providing appropriate transferable knowledge.
- Confidence in presenting an argument and the resilience to listen to criticism or counter-argument and then respond appropriately.

Learning games have been used to provide coaching in some legal arenas, such as *Party for Your Rights*, an online game created to teach consumer rights and advocacy (<http://partyforyourrights.vic.gov.au>) or the *Law Dojo* (<http://www.lawschooldojo.com>) a set of online games which tests knowledge of the law aimed primarily at law students. While these projects have positive outcomes regarding transfer of knowledge, they are, at their foundation, well presented quizzes and provide little scope for the interaction and experimentation by which play becomes deep learning. They also have limited audience scope because each is bound to jurisdiction-specific detail of laws and regulatory provisions.

One of the strengths of play is the ability to facilitate experimentation and exploration within a safe environment. Ron Edwards 'GNS Theory' of play holds that games allow exploration of three connected, sometimes contradictory domains: *Gamism* (inter-player competition within a rules framework), *Narrativism* (storytelling) and *Simulationism* (providing a credible simulation of a particular environment).¹³ Many learning games do not foster exploration as they focus on quizzes and recall of facts on the foundation that there is a single correct answer. Interactive media has a greater potential to explore more ambiguous situations where there are multiple solutions to a problem.

Courtroom skills and advocacy are seldom a matter of a single correct approach and learning via play might allow novice advocates to experiment with different strategies and obtain

feedback on choices made. Gamist exploration could incentivise play by scoring and providing feedback on recommended strategies. Narrative exploration could engage learners by solving mysteries and understanding the twists and turns of a particular case. Exploration through simulation builds confidence and allows the player to take on the identity of a professional and cultivate cultural capital via a quite literal 'feel for the game'.¹⁴

3. COMPARATIVE ANALYSIS OF GAMES THEMED AROUND LEGAL AND FORENSIC PROCESSES

Inspiration for this project can be derived from games which have dealt with legal process, particularly the aspect of detection and mystery solving. Entertainment games are not constrained by fidelity to jurisdictional and procedural detail, but nevertheless provide useful examples of implementation of legal/forensic problem solving through game mechanics. Educational simulations can sometimes place too much focus on simulationist aspects, in providing an authentic verisimilitude, at the cost of engaging players through game elements and storytelling. In traditional law moots, for example, too much emphasis might be placed on details of court procedure at the expense of deeper understanding of how legal arguments are constructed as narratives. It is important that each of these aspects find the best balance and it is relevant to consider design ideas in entertainment games too understand what drives player engagement. A self represented litigant should feel some motivation to play *irrespective* of the educational benefits if they are to be properly engaged.

3.1 3.1 The Phoenix Wright Games (Nintendo, 2001-2016)¹⁵

The most extensive implementation of legal-themed gameplay is the *Phoenix Wright* series of games on the Nintendo handheld game systems. Similar in format to the Japanese Visual Novel adventure game genre, the storytelling and characters of these games have a generated a strong international fanbase, despite being technically quite simple with limited animation and rigidly structured player choices.

The *Phoenix Wright* games take place in an abstracted version of the Western court room, one where drama and wild storytelling are more important than accurate simulation. Lawyers are involved in criminal investigation, care little for the rules of evidence and sometimes employ psychic powers. Nevertheless, the core of the gameplay is useful in that it involves teasing out fact and relevant data from the mass of contradictory and misleading evidence. Some client interviewing is involved, but the game focuses on physical evidence in a way that is consistent with fictional crime dramas, but less useful in the simulation of everyday court process where testimony and credibility are far more important.

Any law based game must manage the *Phoenix Wright* legacy, by building on the game series' successes, but also in marking itself out as different and distinctive in ways that are crucial to success as a learning tool. The game structure and economical use of animation indicate a useful way in which court process can be transformed into an interactive model, but closer attention must be paid to core skills in structuring argument, applying rules and filtering information for relevance to the case.

3.2 *LA Noire* (Rockstar Games, 2011)

While a high budget, 'triple A' game such as *LA Noire* occupies the opposite end of the technical spectrum from the *Phoenix Wright* games, it has at its core a similar game mechanics in separating truth from lies and finding the correct evidence to apply for each assertion. *LA Noire* is a forensic police drama rather than a legal drama and takes place in a 1940's Los Angeles which is heavily inspired by the fiction of James Ellroy.

As a high profile console game it contains gameplay elements which are beyond the scope of a straightforward learning sim including elaborate 3D modeling of the city, driving mechanics and combat systems. The most pertinent elements of design involve the interrogation of suspects and the process by which truth can be ascertained through threaded dialogue. The game boasts impressive facial motion capture technology and use of recognisable film and television actors to augment the detection process but in actuality it is the comparison of testimony to other evidence in the detective's notebook that provides the most fruitful field of play. This approach might usefully be applied to the less-adversarial lawyer-client interview using mechanics that explore different versions of truth, perception filters and faulty witness memory. *LA Noire* also provides examples of how bad player decisions might be modeled and explored, indeed at one stage the game *requires* the player to make a mistake in a way that advances the plot (and references the Ellroy source material).

3.3 *Her Story* (Sam Barlow, 2015)

In stark contrast to the high production values of *LA Noire*, *Her Story* is an indie game which uses a simple game interface to explore a complex narrative connected by videos of a police interview with an accused suspect. By piecing together these interview fragments, which take place at different times in the game's chronology, players construct the overall narrative in a way which is compelling and often surprising.

Her Story uses actual film video of an actor providing testimony which creates strong verisimilitude, but which might not be practical in a simulation that seeks to focus on the construction and presentation of courtroom argument. The game is noteworthy in its use of individual perspective, unreliable storytelling and the simple database interface through which the player explores the narrative. The mechanics of this game might not be directly transferrable to a legal simulation, but the overall approach to narrative and the complex understanding of testimony and memory indicate allows an exploration of the nature of evidence beyond simple binaries of true and false.

3.4 *Papers, Please* (Lucas Pope, 2013)

Described as "a Dystopian Document Thriller", this indie game simulates bureaucratic border crossing with the aim of illustrating the plight of displaced persons. The game uses documents and bureaucratic paperwork as the means by which narrative is constructed and truth is determined. *Papers, Please* illustrates the role of bureaucracy in supporting totalitarian government, but its design approach might also be useful for understanding the role of documentary evidence in more liberal legal environments. The focus on documentation is useful in conveying its central role in legal process and the importance of creating a clear narrative and argument through written documents.

3.5 *Until Dawn* (Supermassive Games, 2015) and the Telltale Games Series

These games are worth briefly mentioning as contemporary examples of branched storytelling games. *Until Dawn* takes inspiration from slasher horror films. The Telltale Games cross a number of genres including well received adaptations of *A Game of Thrones* and *The Walking Dead*. Each of these games explore, to different degrees, multiple pathways through a narrative where different choices lead to different consequences. While many of the choices available may have limited effect on the overall narrative flow, these games establish the importance of exploration and the incorporation of choice in branching plotlines. The Telltale Games have a useful online feature where players can compare their choices to the statistically aggregated choices of other players, something which might be used as a reflective point in a law simulation, especially if this can be leveraged for further feedback on advocacy skills.

4. APPLICATION OF GAME DESIGN CONCEPTS TO A LEGAL SIMULATION

A review of these very different entertainment game products provides a range of game design tools that can be used to create a compelling, but also educational legal simulation that emphasises the importance of foundational advocacy skills. Such a game would be best delivered through a web interface and via mobile devices in order to reach the broadest audience. Use of an online delivery mode would allow the incorporation of weblinks for additional resources and help. As a service to the community the game would be provided for free (with perhaps some appropriate sponsorship) and should be designed in a way that is independent of any specific jurisdiction and appropriate to a wide audience. Any laws, regulatory provisions, documents and rules would be fictional and designed specifically for the game's generic setting. This would also mean that the game would not be mistaken for concrete legal advice specific to any particular jurisdiction.

The authoring design interface for such a game would also be crucial as this would allow a broad range of contributors, including authors and legal specialists, without the need for programming knowledge.¹⁶ In projects such as this there is a need to draw on writers who can craft compelling and interesting stories that drive players toward resolution, rather than simply modeling what occurs in the courtroom. A diversity of authors would also allow for stories with distinct cultural voices, something which may be important for maximising impact on communities who lack access to the law and individuals of lack confidence in dealing with the justice system. Unlike the *Phoenix Wright* games, the game should also maintain a fidelity toward legal advocacy techniques and authenticity in documentary artefact design,¹⁷ but should not lose sight of the importance of player engagement.

The *Phoenix Wright* games establish a strong precedent for the use of strong character design, but minimal animation, so that the costs of a legal simulation could be managed, especially via the reuse of core game assets. Rather than focus on development of complex graphic systems, the focus of the game would be on the exploration of choice and the consequences of choice. Feedback on these choices could be provided in a mimetic way (via case success or failure, comments from the judge) or through direct feedback to the players themselves on their advocacy choices.

The primary site of exploration would be in the construction of an argument. Prioritisation of different argument elements would be

a fundamental aspect of this exploration. Novice advocates often use a ‘shotgun approach’ to courtroom argument, something which is time consuming for the court and likely to distract from the strongest elements of their argument. By reconfiguring legal argument within a game structure a simulation might emphasise the importance of weighing different alternatives and making strong choices. Individual cases should be re-playable so that player might test out different approaches and enhance their overall success ratings.

Additional game mechanics might also be used to enhance player engagement. The ability to customise a persona, earn achievements/badges and to carry forward success from one case to another would provide hooks for ongoing participation.¹⁸ These mechanisms could also be implemented in a way that is simple and cost effective and ties player identity to a Google or Facebook login. Creating a framework through which different cases can be delivered would also facilitate ongoing development of complexity in advocacy and problem solving skills.¹⁹

Games allow players to experience high-risk situations and may therefore familiarise the unfamiliar. While this proposition is open to debate in the field of combat simulations, a court simulation may be a way of exposing lay people to the language, processes and setting of the courtroom in a way that enhances advocacy skills rather than simply as a vehicle for drama. While rhythm games such as *Guitar Hero* (Activision 2005) or *Rock Band* (Harmonix Music System 2007) may not train actual musical skills, these can provide Bourdieu’s ‘feel for the game’, in a way that cultivates cultural capital and lay the foundation for teaching simulations such as *Rocksmith* (Ubisoft 2011) or actual music lessons. Likewise, by making the player feel like a lawyer a courtroom simulation might establish basic advocacy skills, but also become the vehicle for further formal or informal learning.

5. REFERENCES

- [1] Huizinga, J. 1950. *Homo Ludens: A Study of the Play Element in Culture*, The Beacon Press, Boston, MA. 76-88.
- [2] Richardson et al, 2012. *Self-Represented Litigants, Gathering Useful Information*, Final Report June 2012 Appendix E, Macfarlane, J. 2013. *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants*, Final report, 2013.
- [3] Australian Government Productivity Commission. 2014. Access to Justice Arrangements. Productivity Commission Inquiry Report. No 72 (September 2014).
- [4] Prensky, M. 2001. *Digital Game-Based Learning*. Paragon House, St Paul, MN, 157.
- [5] DeCaporale-Ryan, L. N., Dadiz, R. and Peyre, S. E. 2016. Simulation-Based Learning: From Theory to Practice, *Families, Systems & Health*, 34, 2 (April 2016), 159-162.
- [6] Australian Institute of Judicial Administration. 2001. *Litigants in Person Management Plans: Issues for Courts and Tribunals*. 2-3.
- [7] High Court of Australia. 2016. *Annual Report 2015-2016*.
- [8] Court of Appeal for British Columbia. 2015. *Annual Report 2015*.
- [9] *McInnes v R* (1979) 143 CLR 575, 590 per Murphy J.
- [10] Australian Law Reform Commission. 2000. *Managing Justice: A Review of the Federal Civil Justice System*. 12.218, 12, 221.
- [11] Hollander, P. A. 1977. The Uses of Simulation in Teaching Law and Lawyering Skills. *Simulations and Games* 8, 3 (September 1977), 319-340.
- [12] Lukosch, H., Kurapati, S., Groen, D., and Verbraeck, A. 2016. Microgames for Situation Learning: A Case Study in Independent Planning. *Simulation & Gaming*, 47, 3 (June 2016), 346-367.
- [13] Edwards, R. 2003. GNS and other matters of Role-Playing Theory, *The Forge* (2003), <http://www.indie-rpgs.com/articles/1>.
- [14] Bourdieu, P. 1992. *The Logic of Practice*, Stanford University Press, 66.
- [15] The English editions of the Phoenix Wright games include *Phoenix Wright: Ace Attorney* (2001), *Phoenix Wright: Ace Attorney: Justice for All* (2002), *Phoenix Wright: Ace Attorney: Trials and Tribulations* (2004), *Apollo Justice: Ace Attorney* (2007), *Phoenix Wright: Ace Attorney – Dual Destinies* (2013) and *Phoenix Wright: Ace Attorney – Spirit of Justice* (2016).
- [16] Klemke, R., van Rosmalen, P., Ternier, S. and Westera, W. 2015. Keep It Simple: Lowering the Barrier for Authoring Serious Games. *Simulation & Gaming*, 46, 1 (February 2015), 40-67.
- [17] Dixon, R. J. 2002. Toward greater authenticity: A case for divergent simulations. *Simulation & Gaming*, 33, 3 (September 2002), 360-66.
- [18] McDaniel, R. and Fanferelli, J. 2016. Building Better Digital Badges: Pairing Completion Logic with Psychological Factors. *Simulation & Gaming*, 47, 1 (February 2016), 732-102.
- [19] Wardaszko, M. 2016. Building Simulation Game-Based teaching Program for Secondary School Students. *Simulation & Gaming*, 47, 3 (June, 2016), 287-303.