Senior Lawyers Serving Public Interests:

Pro Bono and Second-Stage Careers

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The United States is facing a demographic transformation with profound implications for all sectors of society. As lives have lengthened, what was once considered “‘old’ has become old-fashioned.”¹ The legal profession is no exception. It is about to encounter the “largest, healthiest and wealthiest generation of lawyers to approach senior status …”² Many will be asking the question that Peter Laslett posed in *A Fresh Map of Life*: How are we “going to use this sudden ... unanticipated release from mortality?”³ For a substantial number of lawyers, the answer will involve some “second stage” of work that involves public service. This overview seeks to provide a better understanding of this transformation of retirement and the opportunities it presents to promote justice for those who need it most.

I. The Changing Profile of the Legal Profession and Employer Responses

As the Baby Boom generation reaches retirement age, an unprecedented number of lawyers will be available to consider sustained involvement in public interest work. Precise numbers are impossible to assemble because many jurisdictions have no data on the age distribution of practicing lawyers.⁴ However, estimates suggest that about a quarter of the nation’s 1.1 million lawyers are over 65.⁵ Over the next two decades, the number of attorneys age fifty or older will triple, and by 2020 they will account for almost half of the legal profession.⁶ The increased life expectancy and improved health of this generation means that many senior lawyers will have a substantial period in which full- or part-time work is possible.⁷
For many of these practitioners, paid legal employment will be hard to come by in either the private or non-profit sector. In legal aid and public interest workplaces, recent financial constraints are curtailing job opportunities. In the private sector, as Marc Galanter has documented, most of the growth in demand for legal services targets large or mid-sized law firms that employ predominantly younger attorneys. To maintain high profit-per-partner ratios, these firms operate with a leveraged work force that limits opportunities for senior lawyers. Many of these firms have formal policies or informal practices that transition senior attorneys into retirement. Recent surveys find that between 40 to 60 percent of firms with at least 50 lawyers have mandatory retirement policies. About 40 percent of surveyed lawyers in management positions favor mandatory retirement, largely on the ground that it opens opportunities for younger colleagues, facilitates orderly transitions in leadership, and avoids awkward conversations with unproductive older partners. However, most lawyers believe that such policies are too inflexible, and in 2007, the American Bar Association passed a resolution calling on firms to end mandatory retirement.

Whether most firms will move in that direction remains unclear, but however they respond, the graying of the profession is likely to pose increasing challenges. The possibility of age discrimination suits compounds the difficulties. In 2009, 40 firms were subject to EEOC complaints alleging such bias. Many firms see a cautionary tale in Sidley Austin’s payment of $27.5 million to settle such a case, and Kelley Drye’s revisions of its policy withdrawing equity status of senior partners in the wake of litigation. Almost 4 out of 10 of Am Law 200 firms report that the treatment of senior lawyers is already a significant management problem.

Retirement Preferences, Second Careers, and Volunteer Work
For a substantial number of senior lawyers, however, paid employment in private practice may not be what they want. Although our knowledge base about their retirement preferences is limited, the research available on lawyers, together with more extensive studies of older Americans generally, suggests that many members of the bar will want to provide some form of public service later in life.

The most comprehensive research on senior lawyers’ plans comes from an Altman Weil survey. It found that 27 percent of lawyers in law firm management positions expected to retire early (i.e. before their Social Security retirement age), 29 percent at retirement age, 29 percent later, and 4 percent never. The majority of lawyers (61 percent) expected to continue some work after retirement, about half of those in law, and a third in some other field. When asked about their primary motivation for continuing to work, almost half cited a combination of income and a desire to stay active (though fewer than 4 percent identified income alone as their primary reason); 40 percent identified just a desire to stay active; and 8 percent listed other reasons, the most common being a desire to give back to the community. These personal expectations vary by respondents’ age, with desires for income greater among younger than older lawyers.

Other research among lawyers in private practice paints a similar picture. In the Pro Bono Institute’s study of large firms, when managers were asked if senior lawyers might be interested in transitioning into a second career in public interest work, 20 percent said “yes” and 50 percent said “maybe." When asked if the firm might be interested in supporting a program for such lawyers, 23 percent said “yes” and 65 percent said “maybe.” However, only 3 percent thought that such a program would reduce the firm’s retirement costs; 53 percent thought that it would not or probably would not. That bottom-line assessment may help explain why only seven percent of firms had programs to support senior attorneys in pro bono work.
A 2008 survey sponsored by MetLife Foundation and Civic Ventures also sheds light on the preferences of professionals concerning retirement. Peter Hart Research Associates polled some 3500 Americans between ages 44 and 70, and asked questions about whether they were in, or interested in, second careers that would improve the quality of their communities. Between 6 to 9 percent of respondents were in such “encore” careers, and 45 percent of those who were not expressed interest in the option. Those interested were primarily professionals, managers, and other white-collar employees, whose views included, and likely reflected those of many lawyers. Of the respondents who were retired and interested in second-stage careers, only about a third were primarily concerned with income; almost two thirds thought it was important to use their skills and experience to help others. But, as with the research described above concerning lawyers, some significant age differences emerge; younger members of this “bookend” generation are more likely than older members to say that income is a very important factor in their plans. Another key consideration is flexibility. About 70 percent of participants rated this as important, and among their main reservations about taking on a second-stage career was that it would not give them sufficient time to do what they needed to do (such as care for family members) or wanted to do (such as travel or take courses). About a third of respondents were also concerned about their health, and slightly over a third about their skills, including technological expertise. However, among those who had taken second careers, 85 percent reported no health concerns and a similar percentage felt that it was definitely or mostly true they had time for activities that they cared about. Almost three quarters reported that it was true or mostly true that they had the flexibility to take time off when necessary.

Other research on Americans’ retirement patterns may help predict lawyers’ preferences. One large-scale National Health and Retirement study found that about half of seniors who leave
their jobs only partially retire or decide to return to work. For those who change their preretirement plans and reenter the paid work force, the most common reason is not financial, but reduced preferences for leisure. Close to half report engaging in volunteer activity, and the best predictor of such involvement is engaging in such work prior to retirement. National surveys by the AARP and Rutgers’ Heldrich Center for Workforce Development found that over two thirds of Americans expected to work after retirement, most for reasons apart from financial need. A Cornell University Retirement and Well Being Study, which surveyed senior New York employees, similarly found that almost half of younger retirees and over half of long-term retirees reported volunteer activity and that the most common reason for working after retirement was “to keep active” (89 percent). The mature adult, noted Erik Erikson, “needs to be needed,” and these studies find that the need does not diminish in later life.

III. Satisfaction and Meaning through Public Service

A wide array of research confirms what retirees have discovered: the importance of meaningful work to individual well-being, and the value of public interest work in providing such meaning. People are happiest when they feel they are being effective, exercising strengths and virtues, and contributing to socially valuable ends. The most lasting fulfillment comes from engaging one’s talents in such activity. Individuals also benefit from benefiting others through public service. In the MetLife Foundation/Civic Ventures study, 85 percent of those in encore careers reported a “tremendous amount” or “quite a bit” of satisfaction from their work. Among lawyers, public interest and government attorneys rank at the top of the profession in job satisfaction.

Such public service, whether paid or unpaid, holds special appeal for older individuals. As individuals confront the finiteness and fragility of life, they focus more on activities that they
find most meaningful. Retirement can provide an unprecedented opportunity for inner growth. Older individuals have more knowledge about their capabilities and preferences, and are less driven by a need for status and income than at any other stage of adult life. Phasing back or transitioning out of prior employment can provide an occasion for individuals to ask what they truly want to do with their time and talents and how they can make a difference in the world around them. For some individuals, focusing on public interest causes offers a chance to develop new skills and gain new understanding of people and places far removed from their prior experiences. For others, it is an occasion for “looking backward into the future:” reconnecting with their early ideals and aspirations to guide their senior years. Those who engage in work that involves concern for others and leaves a positive legacy are likely to experience the greatest fulfillment in later life.

For large numbers of Americans, such work will primarily be unpaid. But the psychic income will be substantial. Volunteering correlates with both physical and mental health. Compared with the population generally, people who regularly assist others apart from family and friends have longer lives, less pain, stress, and depression, and greater self-esteem. Volunteers also report a sense of physical well-being, both immediately after helping and when the service is remembered, and are more likely to be happy with their lives. One of the most commonly cited benefits of assisting others is that it makes individuals “feel better” about themselves; other frequently noted rewards include opportunities to “broaden horizons,” “do something worthwhile,” build social relationships, and gain valuable experience. Some evidence suggests that significantly greater physical and psychological benefits accompany volunteer work that involves personal contact and that occurs on a regular basis (at least two hours a week). Although the correlation between volunteer activities and well-being does not of
itself establish a causal relationship, the evidence available suggests that such a relationship exists, and that selfless action is good for the self. That evidence includes the high frequency of individuals’ subjective experience of benefits, the consistent association of volunteering with objective measures of health, and the biological indications of a “helper’s high.”\footnote{45} So too, volunteer work, like other forms of organizational activity, tends to reduce individuals’ sense of isolation and increase self-esteem.\footnote{46} For seniors, charitable activities that involve intellectual engagement correlate with improvements in physical and cognitive functioning.\footnote{47}

Such evidence of benefits is consistent with lawyers’ accounts of pro bono work. For many individuals, involvement in public interest provides enormous satisfaction, and expresses the values that directed them to legal careers in the first instance.\footnote{48} When asked why they participate in pro bono activities, the most common reason given is personal satisfaction or fulfillment.\footnote{49} Also significant are a commitment to a specific cause and a sense of social obligation.\footnote{50} Among lawyers who do not engage in pro bono work, the main reasons are not lack of interest.\footnote{51} The primary explanations are lack of time and competing billable hour expectations, factors that are no longer present for many second-stage lawyers.\footnote{52} Other obstacles, however, are ones that programs for seniors also have encountered, such as lack of malpractice insurance, administrative support, expertise, and information.\footnote{53} These can and should be addressed along lines discussed below.

IV. The Societal Benefits of Second-Stage Public Service

Lawyers’ involvement in paid and pro bono public interest service work has made immeasurable contributions to society as well. Attorneys have been at the forefront of nearly every major progressive movement in this nation’s history, and have also made path-breaking contributions to the rule of law, human rights, and economic development in other countries.
They have helped secure landmark decisions in courts, legislatures, and public agencies concerning individual rights and liberties, consumer safety, environmental protection, and criminal justice, and economic empowerment. Their direct services to individuals have saved lives, secured essential benefits, and protected basic freedoms. Lawyers’ leadership in non-profit positions, both legal and non-legal, has also been an invaluable force for social progress.

Yet the amount of assistance available has always been wholly inadequate to the need. For decades, bar studies have consistently estimated that over four fifths of the individual legal needs of the poor and a majority of the needs of middle-income Americans remain unmet. Many legal aid and public interest organizers have long reported “putting a thumb in the dyke” of gaping legal problems. These inadequacies have assumed increased urgency in the recent economic downturn. High rates of unemployment, bankruptcies, foreclosures, and reductions in social services have created more demands for legal representation at the same time that many providers are facing cutbacks in their own budgets. As a consequence, legal aid and public interest organizations are often being asked to do more with less. The challenges at a global level are still more daunting.

Pro bono work has been of crucial importance in filling the gaps, but the amounts currently provided come nowhere near to addressing national needs or to filling the bar’s own aspirations to public service. The ABA Model Rules of Professional Conduct call on lawyers to provide 50 hours a year in unpaid or reduced-fee work, predominantly to persons of limited means or to organizations that serve them. Only a quarter of lawyers in a 2008 ABA study met that aspiration. Only about two-fifths of lawyers in the nation’s 200 most profitable firms have contributed at least twenty hours a year. Enlisting more senior attorneys in pro bono work
could make a substantial difference in addressing unmet legal needs and in helping the organized bar live up to its own ideals of public service.

V. Public Interest Initiatives for Senior Attorneys

In recognition of the growing public service potential of senior lawyers, the organized bar has launched a variety of initiatives. In 1981, Florida adopted a pilot program waiving various licensing requirements for retired attorneys contributing pro bono work to qualified legal services organizations.61 Since then, 34 jurisdictions have adopted such “emeritus rules.”62 They vary in scope. Some apply only to attorneys who have formally retired, who have reached a certain age, who have practiced for a certain period prior to retirement, or who have been licensed in the state. The benefits also vary, but typically include reductions or waivers of bar dues and continuing legal education requirements.63 As a report by the ABA Commission on Law and Aging notes, some rules seem unduly restrictive. For example, the requirement that attorneys have practiced for a certain period before retirement excludes potential participants based on a highly imperfect proxy for competence. A better strategy might be effective training, supervision, and evaluation systems.64

As the Commission has also noted, rule changes without broader programmatic changes to support emeriti work are unlikely to have significant impact.65 Recognition of that fact has prompted a broad array of initiatives by national, state, and local bar associations, non-profit service providers, legal entrepreneurs, and law firms. In 2007, ABA President Karen Mathis launched a presidential initiative in support of a “Second Season of Service,” and the ABA Commission on Law and Aging and the Committee on Pro Bono and Public Service have been active partners in many senior attorney initiatives.66 Many initiatives are thriving, often through contributions of space and funds from bar associations, law firms, and foundations. Useful
models include: Senior Partners for Justice, International Senior Lawyers Project, Senior Attorneys Initiative for Legal Services, AARP’s Legal Counsel for the Elderly, New York Legal Aid Society’s Second Acts, and the San Francisco Bar Association’s Volunteer Legal Services Project.67 Other programs have struggled to attract lawyers willing to make significant commitments.68 These struggles invite deeper analysis of the challenges in tapping the bar’s growing talent pool for service in the public interest.

VI. Challenges Facing Programs for Senior Lawyers

Programs for senior lawyers confront a variety of challenges. The most obvious is money. For lawyers without substantial savings, typically those in low-paying areas of practice, substantial involvement in public interest work will need to generate income and may require a period of retooling. Although most retired lawyers could afford to volunteer at least some significant time for free, even their assistance is not free for providers. Training, supervision, staff support, space, and malpractice insurance all may pose significant obstacles for cash-strapped public sector programs. In a recent survey of the nation’s leading public interest organizations, only a quarter indicated that they could benefit from more volunteers, even though all were seriously understaffed.69 About three-fifths had experienced some quality concerns with volunteers, and most felt unable to commit adequate resources to screen cases, and to train and supervise additional pro bono counsel.70

Part of the problem involves the mismatch in the experience of senior lawyers and the demands of legal aid and public interest work. Most private practitioners have no substantive background in the areas in which unmet needs are greatest. Nor do many have substantial experience in dealing with clients of different social, economic, racial, and ethnic backgrounds.71 Some potential second-stage lawyers also lack technological capabilities, and are accustomed to
delegating research, secretarial, and administrative functions to subordinates. Comparable levels of staff support are seldom available in public interest and legal services programs.

The problems are compounded when senior lawyers not only lack the relevant skills, but also are insufficiently motivated to acquire them. A Fortune magazine article captured the difficulties in an article aptly titled “Candy Striper, My Ass.” It detailed the experience of former executives and lawyers in adapting to the limited resources, power, and status available in volunteer roles. As one non-profit manager noted, some of these individuals have “grandiose ideas of their own skills, and they just end up causing trouble.” A director of a New York bar program for retired lawyers expressed similar frustrations with volunteers who expected to be “running the organization” not doing “hands on work with clients.” Even senior lawyers who are more reasonable in their expectations and willing to handle their own administrative needs may be deterred by the scarcity of high impact or intellectually challenging work. Many public interest providers feel pressure to retain such opportunities for their own staff or for other pro bono attorneys whose firms offer financial support. Unless senior attorneys are working through such a firm or for a well-developed bar project, they may have difficulties finding work they feel is well-suited to their talents. When lawyers identify such work and end up playing critical organizational roles, other problems may arise in supervision. It can be difficult for younger leaders of non-profit organizations to manage an older, more experienced volunteer who wants to move in directions inconsistent with current programmatic capacities or priorities.

Additional challenges can arise in meeting retired lawyers’ need for scheduling flexibility and in dealing with age-related cognitive impairments. Although stereotypes about aging often lead to exaggerated performance concerns, some older lawyers may have problems that they fail to appreciate. Not all jurisdictions have developed adequate bar association programs to assist
lawyers with limited functionality, and not all service providers have expertise in responding to the problems.\textsuperscript{79} Nor do many have training designed to address age-related stereotypes, potential generational conflicts, and other issues that may arise in supervision.\textsuperscript{80}

Enlisting law firm support has also proven more problematic than anticipated. In theory, there is a strong business case for integrating senior lawyers into firm pro bono programs. These lawyers can provide valuable training and mentoring and help develop signature projects, including joint ventures with clients. Providing such opportunities can also encourage senior lawyers to transition clients’ paid work to younger colleagues. But in practice, as noted earlier, most firm managers are unconvinced that there are financial benefits in providing public interest opportunities for retiring lawyers.\textsuperscript{81} As a consequence, many firms have failed to encourage senior lawyers’ pro bono participation or to address policies on administrative support, malpractice coverage, and deferred compensation that discourage participation. Unless and until more successful programs are developed and showcased, they may be a difficult sell in a challenging economic climate.

VII. Strategies for Tapping the Potential of Senior Lawyers

A coherent strategy for integrating senior lawyers into public service will require initiatives on several levels. First, we need more comprehensive data on the preferences, concerns, and experiences of lawyers, employers, and public interest and legal services organizations. What factors influence attorneys’ decisions whether to become involved in paid or unpaid public service after leaving their prior practice setting? What obstacles and incentives are most critical? For those who are involved, what motivated their decision, what is the nature of their participation, how satisfying has it been, and what improvements could they suggest? For those who are not involved, what stands in the way? Are the preferences of younger baby
boomiers who are just beginning to think about retirement the same as those of their more senior colleagues? We also need more information concerning law firms and service providers that have attempted to integrate seniors into their pro bono and public interest work. What initiatives have been most and least successful, and what further efforts might be most promising? Our current knowledge base is far too thin, and our need for data will increase along with our target population.

Even in the absence of comprehensive research, the information currently available suggests certain key directions for reform. One set of strategies should attempt to broaden the opportunities for service available in light of the diversity in senior attorneys’ interests, skills, and public service commitments. A second cluster of strategies should focus on expanding outreach efforts, and a third should emphasize removing obstacles to involvement. A final group of initiatives should center on building partnerships and enhancing coordination among those working in the field.

Senior lawyers who might be interested in public service vary considerably in background and priorities. Some want a second career; others, intermittent involvement. Some will want paid work; others will care more about flexibility. Individuals also attach different priorities to opportunities for connecting to social causes, developing new skills, working for systemic change, or interacting with clients and colleagues. Programs need to be designed with these different preferences in mind, as well as the priorities of legal service providers. Commonly proposed opportunities include client advice, document preparation, intake interviews, mediation and dispute resolution, public education, mentoring, staffing senior center and self-help clinics, and transactional, litigation, legislation, and policy work.
Experience also suggests, however, that some of the best uses of seniors are in project development, management, and fundraising. The National Council on Aging recently studied 22 organizations that used professionals and leadership-level senior volunteers. In an attempt to determine which programs yielded the highest return on investment, the study discovered that the best strategy was to give these volunteers some autonomy and to treat them as adjunct staff who could help shape programmatic development.\textsuperscript{84} Using these individuals on self-directed teams, leveraging their community contacts, and providing adequate feedback and recognition were likely to yield the highest payoffs.\textsuperscript{85} Organizations targeted at second-stage attorneys have had similar success. For example, participants in the International Senior Lawyers Project have worked with non-profits to develop innovative projects involving micro-insurance, economic development, and anti-corruption efforts.\textsuperscript{86} Prominent senior lawyers and judges also have played key roles in recruitment. Through personal solicitation and expressions of appreciation, these “pied pipers” can be critical in securing commitment to pro bono programs.\textsuperscript{87}

More efforts should also center on developing opportunities for paid work and full-time careers in public interest organizations. Some individuals would benefit from subsidized fellowships or other initiatives, such as those supported by Civic Ventures for encore careers among workers from varied occupational backgrounds.\textsuperscript{88} Other lawyers might be interested in a model such as the one developed by ReServe, a New York organization that matches professionals ages 55 and over with non-profits and public agencies seeking part-time staff. Pay rates are modest, and some percentage of the salary also goes back to the organization to sustain its work.\textsuperscript{89} Another potential model comes from for–profit organizations like Axiom, which places experienced lawyers on projects based on their substantive and scheduling preferences. Lawyers typically work from home or on-site and occasionally gather for team projects at one of
eight international offices. A comparable approach for second-stage lawyers would match them with pro bono or reduced-fee work supplied through public interest organizations, and use a small percentage of the fees to support the network.

It is, however, not enough to develop a broad array of programs. They also need to be marketed effectively to lawyers. That will require an equally broad set of strategies. Information about opportunities should be readily accessible through online clearinghouses and matching services, special events, bar publications, and personal solicitation. More initiatives can rely on sophisticated electronic communication, through models developed by Pro Bono Net and the Online Tennessee Justice projects. Bar associations should collect age-related data and contact information for retired and inactive lawyers and make it available to pro bono programs. Additional efforts should center on enlisting legal employers in outreach efforts. The Senior Attorneys Initiative for Legal Services has developed sample policies that call on firms to integrate pro bono planning into their structured retirement process and to have their pro bono committee or coordinator meet with seniors on a regular basis to discuss their interest in public interest projects. Because, as noted earlier, the best predictor of volunteer work after retirement is work prior to that stage, programs should target experienced attorneys before they take inactive status.

It would also be useful to provide diagnostic surveys and counseling to assist lawyers in clarifying their preferences and priorities, and in identifying appropriate projects. Some seniors, fed by self-help hype, develop “myths of magical thinking” about career transformation. Others suffer from anxiety, vulnerability, and inertia. Bar associations, employers and providers could work together to link lawyers with resources and consultants that could assist realistic second-stage planning. Marketing experts could also help public interest and legal services organizations
showcase projects in ways likely to maximize appeal. Often that involves putting a human face on abstract needs, and connecting direct services with broader goals such as economic empowerment and social justice.

Pro bono projects should also be tailored in ways that speak to senior participants’ concerns. Opportunities for intellectual challenge, continuing education, and social interaction are often critical to enhancing participants’ sense of connection and commitment, and can help maintain cognitive functioning and promote effective performance. For example, the Boston Bar Association’s Senior Partners for Justice holds monthly lunches with speakers including judges, practitioners, and academics, who address the family and housing issues on which volunteers work. That project, like other successful counterparts, includes a formal mentoring program that not only supplements basic education in the substantive law, but also encourages a feeling of professional community. The Los Angeles Inner City Law Project provides assistance concerning recent technology and practice management tools.

Another set of strategies should seek to remove obstacles to participation. Bar associations should expand restrictive emeriti rules to attract the broadest possible group of participants. These associations could also work with providers and law firm pro bono programs to ensure the availability of malpractice insurance for volunteers. In addition, some firms will need to address deferred compensation policies that inhibit volunteer work by retired lawyers.

Finally, more should be done to encourage coordination, cooperation, learning, and joint resource development among groups working on these issues. Partnerships between local and national bar organizations, legal services providers, non-profit funders, and law firms could provide information clearinghouses, forums for ongoing dialogue and innovative ideas, and best practices for provider organizations and pro bono programs. Such practices should cover
recruitment, retention, supervision, and evaluation. So, for example, all programs should have formal evaluation systems to monitor quality, client satisfaction, and program impact, and to ensure effective responses to performance concerns. To make these and other initiatives possible, these groups need to develop more adequate funding sources. Law firms and corporate counsel offices are obvious targets. Some have already provided space, subsidies, or other support for programs like the International Senior Lawyers Project and Senior Attorneys Initiative for Legal Services. But many more legal employers could become project sponsors and could include retired lawyers in their own pro bono programs. More efforts could be made to enlist private foundations and to seek innovation grants from potential funders of legal services organizations.

If this agenda seems daunting, it is worth recalling how much the generation now reaching retirement has already done to build the public interest and legal services community. Over the past 35 years, the number of organizations involved in such work has grown from fewer than a hundred to more than a thousand. Groups that began with a few idealists and a copy machine have now become multimillion-dollar organizations at the forefront of social change. The dramatic growth in pro bono services has similarly transformed the legal landscape. The challenge remaining is to continue tapping the talents of this generation and to build new career trajectories and programs that will sustain its successors in advancing public interests.
Ernest W. McFarland Professor of Law, Director of the Center on the Legal Profession, Stanford University. This paper grows out of a forum on May 24, 2011, co-sponsored by the Stanford Center on the Legal Profession and Civic Ventures, a non-profit organization that focuses on engaging senior Americans in social impact work. Participants included: Jean Berman, International Senior Lawyers Project; Laura Carstensen, Stanford Center on Longevity; Tiela Chalmers, Bar Association of San Francisco’s Volunteer Legal Services Project; Marc Fleischaker, Senior Attorneys Initiative for Legal Services; Marc Freedman, Civic Ventures; David Godfrey, American Bar Association’s Commission on Law and Aging; Deborah Epstein Henry, Flex-Time Lawyers; Bill Kelly, Stewards for Affordable Housing for the Future; Esther Lardent, Pro Bono Institute; Jan Allen May, AARP Legal Counsel for the Elderly; Mark O’Brien, Pro Bono Net; Deborah Rhode, Stanford Law School; David Roll, Lex Mundi Pro Bono Foundation; Jim Sandman, Legal Services Corporation; Steven Scudder, American Bar Association’s Standing Committee on Pro Bono and Public Service; Phyllis Segal, Civic Ventures; and Barbara Siegel, Senior Partners for Justice. The comments of these participants are gratefully acknowledged and attributed where appropriate in the notes that follow. The research assistance of Sean Hassan and Adam Thomas is also deeply appreciated.

1 John Shoven, New Age Thinking, FOREIGN POLICY, December 13, 2007, at 82.
2 ESTHER F. LARDENT & REENA N. GLAZER, A BLUEPRINT FOR A BIG BANG: TAPPING TRANSITIONING BABY-BOOM LAWYERS TO TRANSFORM ACCESS TO JUSTICE 3 (Pro Bono Institute, 2008).
3 PETER LASLETT, A FRESH MAP OF LIFE 1 (1989).
4 NATIONAL ORGANIZATION OF BAR COUNSEL AND THE ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS JOINT COMMITTEE ON AGING LAWYERS, FINAL REPORT 7 (May 2007).
7 Almost nine out of ten Americans between the ages of 65 and 74 are able to work. LAURA L. CARSTENSEN, A LONG BRIGHT FUTURE: AN ACTION PLAN FOR A LIFETIME OF HAPPINESS, HEALTH AND FINANCIAL SECURITY 31 (2009).
8 For constraints in the public interest job sector, see NALP Public Interest Employment Market Snapshot Report 2010. For constraints on legal services work see Karen Sloan, Perfect Storm Hits Legal Aid, NATIONAL LAW JOURNAL, January 2011, 1, 4.
9 Galanter, supra note 6, at 1087-89.
10 In an Altman Weil survey, half of firms with at least 50 lawyers had mandatory retirement policies Altman Weil, Flash Survey on Lawyer Retirement (2007), available at http://www.altmanweil.com/LawyerRetirement. Of firms with 50-99 attorneys, 39 percent had such policies. A New York Times survey of firms with over 100 lawyers found that 60 percent had mandatory policies. Julie Creswell & Karen Donovan, Happy Birthday, Vacate Your Office, N.Y. TIMES, Dec. 8, 2006, at C1. A Pro Bono Institute survey of firms averaging 391 lawyers reported that 42 percent had such policies and 37 percent had an express target retirement age. Dau-Schmidt, Lardent, Glazer & Ressmeyer, supra note 5 at 333. The average age under mandatory policies was 67 and the target age was 66.
13 Amy Cavalier, Legal Industry Tackles Ageism, DAILY RECORD (Rochester), Sept. 24, 2010.
15 Goldberg, Grey Matters, supra note 11, at 119.
17 Dau-Schmidt, Lardent, Glazer & Ressmeyer, supra note 5, at 338.
18 Id.
19 Id. at 336.
21 Id. at 10, 33.
22 Id. at 35. Seventy percent expressed concerns about doing what they needed to do; 66 percent about doing what they wanted to do. Id.
23 Id. at 36.
24 Id. at 35-36.
25 Id. at 35.
27 Id. at 729, 733.
29 Jerry W. Hedge, Walter C. Borman & Steven E. Lammllein, The Aging Workforce: Realities, Myths, and Implications for Organizations 22, 111 (2006) (reporting AARP survey finding that 69 percent of those surveyed wanted to work in retirement, only 22 percent for financial reasons); Scott Reynolds, Neil Ridley & Carl E. Van Horn, A Work-Filled Retirement: Workers' Changing Views on Retirement and Leisure, 8 Worktrends Survey 1, 1-2, 15 (2005) (nearly 7 in 10 workers expected to work for pay; about a quarter cite a need for income as the primary reason). For another survey citing the importance of reasons such developing new skills, using time productively, and contributing to society, see Hedge, Borman & Lammllein, supra, at 111.
30 This was the reason cited by 89 percent, followed by “had free time” (73 percent), “social contacts” (68 percent), “desire for additional income” (63 percent), “not ready to retire” (58 percent), “professional contacts” (56 percent), and “need [for] additional income” (41 percent). Phyllis Moen & William A. Erickson, The Cornell Retirement and Well-Being Study, Final Report 5 (Bronfenbrenner Life Course Center, Cornell University, 2000). After retirement, 44 percent reported volunteer activity and the percentage increased to 53 percent among long-term employees, with an average contribution of 19 hours a month. Id. at 17-18.
31 Erik Erikson, Childhood & Society 266-67 (1950).
33 Metlife Foundation/Civic Ventures, supra note 20, at 30.
35 Marc Freedman, The Big Shift: Navigating for the New Stage Beyond Midlife 92 (2011); Carstensen, supra note 7, at 109-11.
36 Id. at 60; Sarah Lightfoot-Lawrence, The Third Wave 7-43 (2009). See generally Laslett, supra note 3.
37 Freedman, supra note 36, at 80-98; Carstensen, supra note 7, at 94-95.
38 Lightfoot-Lawrence, supra note 37, at 16, 45, 105-06.
39 Sarah Krass Whitbourne, The Search for Fulfillment: Revolutionary New Research that Reveals the Secret to Long-Term Happiness 105-06 (2010).
40 See research summarized in Corporation for National Community Service, The Health Benefits of Volunteering: A Review of Recent Research (2007); Deborah L. Rhode, Pro Bono in Principle and Practice 58-59 (2005); Alan Luks with Peggy Payne, The Healing Power of Doing Good, xi-xii, 17-18, 45-54, 60 (2d ed. 2001);

42 ROBERT D. PUTNAM, BOWLING ALONE 333 (2000); LUKS WITH PAYNE, supra note 41, at xi-xiii, 17-18, 118-19;


44 LUKS WITH PAYNE, supra note 41, at 17-18, 118-19, 233.

45 Although the neurological basis for heightened physiological well-being is not well understood, some research suggests that socially valued activities reduce stress, which improves the functioning of the immune system and triggers the release of endorphins that produce pleasurable physical sensations *Id.* at 47-55

46 Wilson & Musick, supra note 41, at 154-156; Marc Magee, Boomer Corps: Activating Seniors for National Service, Progressive Policy Institute, Policy Report, Jan. 2004,


47 CARSTENSEN, supra note 7, at 271 (describing New York City’s Experience Corps tutoring program).

48 See RHODE, PRO BONO, supra note 41, at 30-31.

49 *Id.* at 130-31 (on a scale of 1 to 5, satisfaction ranked at 4.2). LEXISNEXIS & PRO BONO NET, *WHY LAWYERS GIVE BACK: A WINDOW INTO DRIVERS AND BARRIERS OF LAWYERS’ ENGAGEMENT IN PRO BONO WORK* (March 2011) (75 percent of lawyers cited personal fulfillment).

50 RHODE, PRO BONO, supra note 41, at 130-31 (finding that a sense of professional obligation ranked 3.7 on a 5-point scale); LEXISNEXIS & PRO BONO NET, supra note 499 (finding that 43 percent cited commitment to a cause and 37 percent cited an ethical obligation).

51 RHODE, PRO BONO, supra note 41, at 13 (finding that lawyers ranked lack of interest at 2.2 on a 5-point scale); LEXISNEXIS & PRO BONO NET, supra note 499 (only a quarter cited no interest).

52 RHODE, PRO BONO, supra note 41, at 133 (lawyers ranked workload demands at 4.5, family obligations at 3.4, and billable hour expectations at 3.0 on a 5-point scale); LEXISNEXIS & PRO BONO NET, supra note 499 (67 percent cited lack of time and 30 percent cited billable hour expectations and policies).

53 RHODE, PRO BONO, supra note 41, at 133; LEXISNEXIS & PRO BONO NET, supra note 499.


56 Rhode, *Public Interest Law*, supra note 544, at 2042 (quoting Martin Needleman, Project Director and Chief Counsel, Brooklyn Legal Services).


58 ABA Model Rules of Professional Conduct, Rule 6.1 asks that lawyers “aspire” to provide at least fifty hours of pro bono work each year or the financial equivalent. A “substantial majority” of their contributions should go to “persons of limited means” or organizations assisting them. Additional assistance should go to activities that improve the law, legal profession or legal system, or that support “civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations” if payment of fees would “significantly deplete the organization’s economic resources or would be otherwise inappropriate.” MODEL RULES
OF PROF’L CONDUCT R. 6.1. The Comment to the Rule also allows firms to satisfy their lawyers’ obligations collectively.

59 ABA STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE, SUPPORTING JUSTICE II: A REPORT ON THE PRO BONO WORK OF AMERICAN LAWYERS 21 (2009).


61 HOLLY ROBINSON, NO LONGER ON THEIR OWN: USING EMERITUS ATTORNEY PRO BONO PROGRAMS TO MEET UNEEDED CIVIL NEEDS 3 (ABA Commission on Law and Aging, 2010).

62 DAVID GODFREY & ERICA WOOD, EMERITUS ATTORNEY PROGRAMS: BEST PRACTICES AND LESSONS LEARNED 3 (ABA Commission on Law and Aging, September 2010). The rules are collected in an appendix to the report.

63 For a summary of rules see id., Appendix 1.

64 Id. at 14-15.

65 ROBINSON, NO LONGER ON THEIR OWN, supra note 61 at 5.

66 For examples, see GODFREY & WOOD, supra note 62, at 5-10.

67 See Alina Tugeno, Fears, and Opportunities, on the Road to Retirement, N.Y. TIMES, June 4, 2011, at B5.


69 Rhode, Public Interest Law, supra note 54, at 2072.

70 Id. at 2071.

71 Michael Kelly, Older Lawyers in Legal Services for the Poor: Challenge and Potential 5-6 (unpublished paper); Adam Thomas, Baby Boom Gone Bust (unpublished paper, Stanford Law School, 2011).

72 Kelly, supra note 71, at 6; Galanter, supra note 6, at 1107, Lardent & Glazer, supra note 2, at 5.

73 Jason Tanz with Theodore Spencer, Candy Striper, My Ass: A Culture Clash is Looming as a High-Powered Wave of Retiring Executives Meets the Genteel World of Volunteerism, FORTUNE, Aug. 14, 2000 (quoting Megan Work).

74 Id. (quoting Miriam Buhl, on judge who expected to run the organization and Arthur Kahn, a former law firm chair who had to learn to send his faxes).

75 Thomas, supra note 71, at 15-16.

76 For formal and informal “pay to play” arrangements, see Rhode, Public Interest Law, supra note 544, at 2074; Ashby Jones, Law Firms Willing to Pay to Work for Nothing, WALL STREET J., June 19, 2007, at B1.


78 For discussion of age related impairments and their effect on work performance, see HEDGE, BORMAN & LAMMLEIN, supra note 299, at 54-59. For stereotypes, see id. at 28-32, 117. See also CARSTENSEN, supra note 7, at 57 (noting that for the vast majority of seniors, declines in mental function are not disruptive to daily life functions).

79 For the need for such programs and expertise, see National Organization of Bar Counsel and The Association of Professional Responsibility Joint Committee, supra note 4, at 20-21.

80 HEDGE, BORMAN & LAMMLEIN, supra note 299, at 117-121 (noting issues such as younger employees reluctant to give candid feedback to seniors, and seniors reluctant to hear criticism from younger, seemingly less experienced staff).

81 See text at supra notes 17-19.

82 GODFREY & WOOD, supra note 62, at 14.

83 ROBINSON, supra note 611, at 4.

84 NATIONAL COUNCIL ON AGING, supra note 777, at 12.

85 Id. at 9-13, 16-17.

86 William Kelly, Comments, Stanford Forum, supra note 77.

87 Barbara Siegel, Comments, Stanford Forum, supra note 777.

88 See MARC FREEDMAN, ENCORE: FINDING WORK THAT MATTERS IN THE SECOND HALF OF LIFE (2007). For example, encore fellowships are providing stipends for high-impact non-profit opportunities that help corporate executives and managers transition to encore careers. See encore.org/fellowships. For concerns about market volatility and increased longevity that may fuel concerns about income, see HEDGE, BORMAN & LAMMLEIN, supra note 299, at 22, 24.
ReServe reports placing 1300 individuals in assignments with 350 organizations over the past 5 years.


Steven Scudder, Comments, Stanford Forum, supra note 777.

See http://www.probono.net/about/; http://www.OnlineTNJustice.org/home/about.

Senior Attorneys Initiative for Legal Services, Sample Law Firm Pro Bono Policies for Senior Lawyers (May 6, 2011).


HEDGE, BORMAN & LAMMILEIN, supra note 299, at 55-56. See also NATIONAL COUNCIL ON AGING, supra note 777, at 15 (describing motivations of leadership level volunteers).


GODFREY & WOOD, supra note 622, at 15 (discussing Texas Lawyers Care).

One possibility would be to create an opportunity for on-line exchanges of innovative ideas along the lines pioneered in Ashoka’s Changemakers. See http://www.changemakers.com/about/changemakers.

Galanter, supra note 6, at 1105-06.

For example, the David and Lucile Packard Foundation provided a grant to the Pro Bono Institute to support four innovative demonstration projects for senior attorneys. Lardent & Glazer, supra note 2. The International Senior Lawyers Project has received funding from the William and Flora Hewlett Foundation and the Open Society Institute.

Rhode, Public Interest Law, supra note 544, at 2032.