

“OLD AND MAKING HAY:” THE RESULTS OF THE PRO BONO INSTITUTE FIRM SURVEY
ON THE VIABILITY OF A “SECOND ACTS”SM PROGRAM
TO TRANSITION ATTORNEYS TO RETIREMENT THROUGH PRO BONO WORK*

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INTRODUCTION

In his 1998 Fairchild Lecture, Professor Marc Galanter proposed the idea that senior attorneys should be encouraged to undertake “a second ‘public service’ career” as a way of transitioning to retirement.⁵ The logic for encouraging such “Second Acts” in lawyers’ careers is compelling. As Professor Galanter has demonstrated, in the coming years, there will be record numbers of attorneys navigating the transition to retirement as the “Baby Boomers” reach their golden years.⁶ This substantial body of highly skilled lawyers could have a significant impact on fulfilling unmet needs for legal representation. If even 5% of the practicing attorneys over sixty-five participated in such a program, this would double the number of attorneys working primarily on public interest work by as soon as 2011!⁷ Such work could provide personal renewal and fulfillment as a capstone

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⁵ Marc Galanter, “*Old and in the Way*”: *The Coming Demographic Transformation of the Legal Profession and its Implications for the Provision of Legal Services*, 1999 WIS. L. REV. 1081, 1102 (1999).

⁶ *Id.* at 1085-86.

⁷ The National Law Journal estimates that by 2011 about a quarter to the nation’s one million lawyers will be over 65. Leigh Jones, *Law Firm Retirement Policies to be Hot Issue at Annual ABA Meeting*, THE NATIONAL LAW JOURNAL, Aug. 7, 2007. Currently “public interest attorneys” account for about 1% of those million lawyers, or 10,000 lawyers. Galanter, *supra* note 5, at 1103. Accordingly, 5% of the 250,000 practicing lawyers over sixty-five in 2011 would be about 12,500 public interest lawyers, more than doubling the number of public interest lawyers in the country. It should be noted that it is estimated that

in the careers of this idealistic generation. Moreover, if such a movement were embraced and systematized by the legal profession, it could provide substantial benefits to firms and the profession as a whole. While facilitating the retirement of an unprecedented number of senior attorneys, “Second Acts” programs would allow those senior attorneys to retain contact with their clients while those clients transfer to other attorneys in the firm and allow senior attorneys to focus on training and mentoring junior associates through pro bono work. This work would also help meet the pro bono obligations of the firm and the profession as a whole.

To further explore and facilitate the development of such “Second Acts” programs, the Pro Bono Institute has undertaken a survey of law firms on the magnitude of their current concerns in facilitating the retirement of senior attorneys, benefits to attorneys and firms in establishing such programs, and possible problems to be addressed in the development of such programs. In this essay, we present the results of the Institute’s survey, along with the other existing arguments and data supporting the establishment of “Second Acts” programs and suggest how they might most usefully be constructed. In the first section of this essay, we present the existing data and literature concerning the establishment of “Second Acts” programs. This discussion not only summarizes the existing literature, but also serves as a basis for the discussion of our survey. In the second section we present and discuss the results of our survey. These results suggest that there is indeed a need for and interest in “Second Acts” programs that will facilitate the transition of attorneys into retirement with personally and socially meaningful work, and that firms believe that such programs will meet some of the firms’ practical business needs. Finally we offer our conclusions regarding the desirability and optimal form of “Second Acts” programs based on our findings.

THE EXISTING LITERATURE IN SUPPORT OF “SECOND ACTS”SM PROGRAMS:
“TALKING ‘BOUT MY GENERATION”⁸

A. *The “Graying” of the Legal Profession: “Will you still need me, will you still feed me, when I’m 64?”*⁹

The current demographics of the legal profession are dominated by the Baby Boom generation. Beginning in 1960, the number of students admitted to law school each year increased steadily from 15,607 to 34,289 in 1970 and reaching 40,000 by 1980.¹⁰ With these large new cohorts entering the legal profession and much smaller cohorts departing (by abandonment, retirement, or death) the size of the bar grew from

the number of attorneys over fifty will exceed 500,000 by as soon as 2020. The Law’s “Gray” Area, <http://www.mayerbrown.com/publications/article.asp?id=1452&nid=6>.

⁸ “My Generation,” The Who, *My Generation* (1965). Music and Lyrics by Peter Townsend.

⁹ “When I’m Sixty-Four,” The Beatles, *Sgt Pepper’s Lonely Hearts Club Band* (1967). Music and Lyrics by Paul McCartney.

¹⁰ Galanter, *supra* note 5, at 1082-83 (1999) (citing Historical Statistics of Legal Education 8 (Carl A. Auerbach comp., 1997)).

less than one quarter million in 1960, to half a million in 1980, to one million in 1999.¹¹ Moreover, as the “bulge” of the Baby Boomers proceeded through their careers, the average age of lawyers first grew younger and then older. The median age of lawyers dropped from forty-six in 1960 to thirty-nine in 1980, but since that time has risen and currently stands at about forty-one.¹² Surveys cited by the National Law Journal and the New York Times estimate that by 2011, nearly one quarter of the nation’s one million attorneys will be sixty-five or older.¹³ A recent survey of Am Law 200 firms by the American Lawyer shows that in 69% of the surveyed firms, 20-39% of equity partners are age fifty or older, and in 23% of the firms, more than 40% of the equity partners are age fifty or older.¹⁴ Examining the impact of these changes on the ratio of older lawyers to younger lawyers in the profession, Professor Galanter has shown that the number of older lawyers (in their fifties) for each one hundred younger lawyers (in their thirties) fell dramatically from seventy-nine in 1970 to just thirty-five in 1985, before it rose again to fifty in 1995 and seventy-nine in 2005--the same ratio as existed in 1970.¹⁵ Galanter projects that, absent an unforeseen increase in younger lawyers, by 2020 there will be ninety-seven older lawyers for every one hundred younger lawyers in the United States!¹⁶

At the same time that the number and proportion of senior attorneys in the profession have grown, the demand for such attorneys in traditional private practice has declined. Although senior attorneys still play critical roles in their firms because of their expertise, experience and ties to clients, there is not enough traditional private practice work to maintain this many senior lawyers, at least not in the manner to which they have become accustomed. Despite the fact that the market for legal services has doubled since 1967,¹⁷ the demand for senior attorneys in their traditional paid positions, has not kept pace. This is because most of the growth in demand for legal services has occurred among corporations and organizations that employ larger private firms, rather than among individual clients that employ smaller firms or individual attorneys.¹⁸ Under the “tournament of lawyers” which determines partnership, large private firms require fewer senior attorneys and a lower ratio of senior attorneys to junior attorneys than small private firms, in order to maintain large firm organizational structure and high levels of partner pay.¹⁹ The recent dramatic growth in firm size and partner compensation has only accentuated this effect. In 1960, only about 2% of the legal profession worked in firms of more than fifty lawyers, while by 1991 over 18% of the legal profession worked in this setting.²⁰ Thus, just at the time when the demographics of the legal profession

¹¹ Id.

¹² See *The U.S. Legal Profession in 1995*, 1995 LAW. STAT. REP. 4 (American Bar. Foundation 1999); see also Back to the Future, <http://calbar.ca.gov/calbar/2cbj/96jan/2cbj11.htm>.

¹³ Jones, *supra* note 7.

¹⁴ Elizabeth Goldberg, *Gray Matters*, THE AMERICAN LAWYER, December 1, 2007.

<http://www.law.com/jsp/tal/PubArticleFriendlyTAL.jsp?id=119676>

¹⁵ Galanter, *supra* note 5, at 1085.

¹⁶ Id.

¹⁷ In 1967 legal services constituted 0.64% of GDP, but by 1997 they had grown to 1.3% of GDP. Id., at 1089-90.

¹⁸ Id.

¹⁹ Marc Galanter & Thomas Palay, *Tournament of Lawyers: The Transformation of the Big Law Firm* (University of Chicago Press 1994).

²⁰ Galanter, *supra* note 5, at 1091-92.

have produced a very large pool of senior lawyers, the proportion of the legal profession that is needed to remain in senior positions to supervise paid work and be well compensated for this is declining.²¹

The mismatch between the profession's current age distribution and the needs of large private firms has not been lost on those firms. The American Lawyer survey of Am Law 200 firms shows that respondents for 38% of the surveyed firms said that the graying of the profession was a significant management problem for their firm.²² Although the experience and skills of senior attorneys are still crucial to firm success, firms have recently placed more pressure on senior partners to generate higher revenues, accept a lower share of firm profits, or retire. Firm retirement policies have increasingly been used to: (1) terminate partnership rights; or (2) decrease attorney shares in equity profits at a pre-fixed rate until the attorney must leave the partnership. The details of these policies vary; some firms require the retiree to leave the firm, others allow the retiree to stay at the firm as "special counsel" and many require non-compete agreements.²³ In a survey of law firms composed of one hundred or more attorneys, the New York Times reports that almost 60% had implemented mandatory retirement policies ranging from caps on benefits to termination.²⁴ The most notorious of these policies—Sidley Austin Brown & Wood's demotion of thirty-one partners—was investigated by the Equal Employment Opportunity Commission in 2002 and settled in October 2007 for \$27 million.²⁵ On August 14, 2006, the American Bar Association adopted Proposal 10A, recommending that firms do away with age-based retirement policies.²⁶ Some firms have already begun to move away from mandatory to discretionary retirement policies. For example, last year the firm of Pillsbury, Winthrop, Shaw & Pittman voted to do away with their mandatory retirement policy and adopt one based on individually designed retirement plans.²⁷ Similarly, the firm of K & L Gates recently did away with its policy requiring attorneys to give up equity partner status at seventy.²⁸ Yet, as experienced professionals in the field, older lawyers are an invaluable resource. Thus, the question remains: Is there a more constructive use of their skills?

²¹ Id., at 1089-90.

²² Elizabeth Goldberg, *supra* note 14.

²³ Galanter, *supra* note 5, at 1089-90.

²⁴ Julie Creswell & Karen Donovan, *Happy Birthday, Vacate Your Office*, NEW YORK TIMES (December 8, 2006), at C1; *see also* Emma Schwartz, *Former Akin Gump Attorney Accuses Firm of Age Discrimination*, LEGAL TIMES, (Mar. 6, 2007), available at <http://www.law.com/jsp/article.jsp?id=1173101897167>. In their National Law Journal survey, Altman & Weil found that over half of all large law firms (100+ lawyers) have mandatory retirement policies in place, with most firms requiring retirement by age seventy. *See* Report of the American Bar Association, available at www.abanet.org/leadership/2007/annual/docs/tena.doc [hereinafter Report].

²⁵ *See*, EEOC v. Sidley & Austin, 88 Fair Empl. Prac. Cas. (BNA) 64 (2002); *Sidley Austin Settles Age-Bias Suit*, CHICAGO BUSINESS, October, 5, 2007, available at <http://www.chicagobusiness.com/cgi-bin/news.pl?id=26624>.

²⁶ Report, *supra* note 24.

²⁷ Elizabeth Goldberg, *supra* note 14.

²⁸ *See*, <http://bostonlawpartners.blogspot.com/2007/11/k-gates-does-away-with-retirement.html>

B. The Case for Second Acts Programs: “I’ve changed the tune I dance to, In this gay old social whirl, But if I get a chance to, I might just change the world”²⁹

The current mismatch in the supply and demand for senior attorneys to do traditional private practice work presents not only a challenge, but also a tremendous opportunity. If not all of these experienced attorneys are needed to represent traditional private practice and corporate clients, certainly their skills can be usefully employed in the cause of public interest work. Not only will these lawyers find such work personally rewarding, but also their labors would help meet society’s interests in legal representation for all. Thus the current demographics and market conditions provide a unique opportunity to institute “Second Acts” programs to engage senior attorneys in a second career in public service before they retire. Second Acts programs could also be of use to firms in transitioning attorneys to retirement, providing continuity for clients, providing training and mentoring opportunities for young attorneys, and meeting the firm’s professional obligation to provide pro bono services.

As people live longer and come to enjoy productive years beyond the typical work life, they are quite naturally looking for new ways to find personal fulfillment and meaning in the last half of their life. In his book, *Encore*, Marc Freedman tells the stories of “encore career pioneers”—men and women [] moving beyond midlife careers. . . . searching for a calling in the second half of life.”³⁰ For lawyers who have been ambitious self-starters their whole career, the natural avenue for finding new meaning and renewal is through their work. Freedman describes the challenge of many professionals who enter their prime later in their career. “[T]he encore career pioneers . . . challenge us in a fundamental way: How might we develop a vision and realize a reality of work in the second half of life that makes a genuine virtue out of the growing necessity of extended working lives?”³¹ A second career in public service under a Second Acts program could be one way lawyers could answer this question. Empirical evidence suggests that pro bono work adds to career satisfaction and fulfillment, especially for large firm attorneys.³²

Moreover, there is a paramount and growing need for greater commitment to pro bono work in the legal profession. Since the founding of our republic, the legal system has been the bed rock of our democratic principles.³³ Thus, adequate legal representation for all is key to a free democratic society. The American Bar Association’s Model Rules of Professional Conduct reflect the importance of pro bono services. Under Model Rule 6.1, every lawyer is asked to perform at least fifty hours of pro bono work annually. However, in recent years, increased pressure to log billable hours in private firms, has discouraged attorneys from performing such work. Full-time public interest attorneys cannot take up the slack. Less than one percent of the nation’s attorneys perform full-time

²⁹ “Bombs Away,” Bob Weir *Heaven Help the Fool* (1977) Lyrics: John Barlow, Music: Bob Weir.

³⁰ MARC FREEDMAN, *ENCORE* (Public Affairs 2007).

³¹ *Id.*

³² Kenneth Dau-Schmidt, *The Fruits of Our Labors: An Empirical Study of the Distribution of Income and Job Satisfaction Across the Legal Profession*, 49 J. LEG. EDUC. 342, 360-61, (1999).

³³ See Democracy Papers: The Creation of Law in a Democratic Society, <http://usinfo.state.gov/products/pubs/democracy/dmpaper5.htm>.

public interest law work,³⁴ and since 1982, funding for public interest law initiatives has been cut in half.³⁵ As a consequence, in a recent report the ABA found that four out of five poor persons have no access to legal representation.³⁶ Second Acts programs can help meet this growing need for legal representation for the poor.

Second Acts programs also promise benefits for firms. With the threat of law suits similar to that in the Sidley case, law firms are looking for gentler ways to help senior attorneys transition into retirement. By supporting such second careers with office space, secretarial support, malpractice insurance, and a reasonable fixed salary, firms can create an intermediate status between partnership and retirement that would be attractive to public-minded lawyers. Moreover, in this intermediate status the senior attorneys can be of great use to the firm. The attorneys will still be in the office regularly, so they can maintain contact with personal clients as those clients transition to other attorneys in the firm. Without the constant press of meeting billable hours, the senior attorneys can increase the time they spend training and mentoring junior attorneys—through the medium of pro bono cases. Younger attorneys appreciate the chance to learn and achieve fulfillment through pro bono work, and mentorship is an important determinant of young lawyer success.³⁷ As a result, the increased emphasis on pro bono work and education that a Second Acts program can bring to a law firm can serve as a recruiting magnet for the firm.³⁸ Finally, initiating a Second Acts program can help a firm, and the profession as a whole, meet their professional obligation to provide pro bono representation. As previously discussed, such work is important to preserving the fairness of our legal system and the integrity of our democracy.

Others have recognized that now is an opportune time to encourage people to undertake “second careers” in public service for personal benefit and the benefit of society. In the late 1990’s Marc Freedman and John Gardner organized “Civic Ventures,” a think tank dedicated to generating ideas and initiatives to help society make the most use of the “experience dividend” we now enjoy from having so many healthy and experienced workers in the population.³⁹ Civic Ventures has developed several broad based initiatives to encourage and reward socially productive work in a “second career,” including: “Experience Corps,” “Lead With Experience” and “The Purpose Prize.”⁴⁰ A variety of programs are already underway to encourage doctors and other healthcare professionals to provide healthcare for the uninsured later in their careers as a

³⁴ Galanter, *supra* note 5, at 1103.

³⁵ *Id.* at 1103-04 (citing LEGAL SERVS. CORP., ANNUAL REPORTS; STATISTICAL ABSTRACT OF THE UNITED STATES tbl. 1301 (119th ed., 1999)).

³⁶ Gregory H. Williams, The President’s Call to Action, *available at* <http://www.aals.org/presidentmessages/action.html> (citing a 1991 ABA study reporting that four out of five low income persons with legal needs had no access to lawyers).

³⁷ *See e.g.*, Mentors, Present and Future, <http://www.wsba.org/media/publications/barnews/april07-president.htm>.

³⁸ *See e.g.*, The Path to Pro Bono: An Interviewing Tool for Law Students, *available at* <http://www.law.stanford.edu/experience/careers/ocs/students/resources/pdf/ABAProBonoInterviewTool.pdf>.

³⁹ Civic Ventures, <http://www.civicventures.org/overview.cfm>.

⁴⁰ *Id.*

means of providing personally rewarding and socially valuable work.⁴¹ Within the legal profession, the luminaries of the DC Bar have already recognized the logic of such programs and developed the “Senior Lawyer Public Interest Project” that facilitates pro bono and public interest work by senior attorneys.⁴² Like-minded lawyers in New York have created an ambitious “International Senior Lawyers Project” to provide pro bono service to the world.⁴³ The ABA has developed the Commission on Second Season of Service to encourage work on such programs.⁴⁴

THE PRO BONO INSTITUTE’S SECOND ACTS PROJECTSM LAW FIRM SURVEY

In order to explore and promote the idea of Second Acts programs based on pro bono work by senior attorneys, the Pro Bono Institute undertook a survey of firm practices and attitudes concerning attorney retirement and the desirability of such a program. The survey was supported by a generous grant from the firm of Mayer Brown LLP. It was hoped that the survey would provide useful information on the need for and interest in Second Acts programs among major firms with a commitment to public interest work. It was also hoped that the survey might suggest some ways in which the Institute can help firms undertake such programs.

Established in 1996, the Pro Bono Institute is a non-profit organization dedicated to identifying and exploring new approaches to the provision of legal services to the poor, disadvantaged, and other groups and individuals unable to secure legal assistance.⁴⁵ In 2005, the Institute launched the Second Acts ProjectSM in order to develop, test, evaluate, and replicate a variety of effective models that facilitate lawyers’ transition from commercial private practice to public service and pro bono practice.⁴⁶ By working with it’s core constituencies – major law firms, corporate legal departments, and public interest organizations – the Institute hopes to use this project to create workable models and programs that facilitate increased pro bono service by transitioning, semi-retired and retired lawyers. The Institute undertook this survey as one of its initial efforts in the project to learn about current major law firm policies and practices regarding transitioning attorneys to retirement and encouraging pro bono work. The results of the survey will serve as the basis for discussions with experts from prominent firms and corporations, and public interest leaders, to develop and implement a series of pilot projects that will test the viability of various models of public interest law practice. Possible pilot projects include: senior sabbatical programs that assign veteran attorneys to

⁴¹ Carolyn Said, *Good Deeds by Retired Doctors: Health Care Professionals, Other Seniors Volunteer Their Expertise at Free Clinics in San Mateo County*, SAN FRANCISCO CHRONICLE (Feb. 20, 2005), at E-1; see also Marc Freedman & Phyllis Moen, *Academics Pioneer ‘The Third Age’*, THE CHRONICLE OF HIGHER EDUCATION (Apr. 29, 2005).

⁴² Senior Lawyer’s Public Interest Project, http://www.dcb.org/for_lawyers/pro_bono/senior_lawyer_public_interest_project/index.cfm.

⁴³ International Senior Lawyers’ Project, <http://www.islp.org/>.

⁴⁴ Commission on Second Season of Service, <http://www.abanet.org/secondseason/>. See also, Senior Lawyers, http://www.abanet.org/legalservices/probono/senior_lawyers.html#projects.

⁴⁵ Pro Bono Institute, <http://www.probonoinst.org/about.php>

⁴⁶ <http://www.probonoinst.org/secondacts.php>

work for a substantial period of time in a public interest organization; “snowbird” programs in which firms with offices in sunbelt communities host senior attorneys to do pro bono work in those offices; and “senior attorney” pro bono programs in which law firms develop policies that permit attorneys who would otherwise fully retire to maintain a presence at the firm while spending a majority, if not all, of their time working on pro bono matters.

A. The Form of the Survey

The survey was constructed in six parts. In section one, we asked questions about the firm and the person who was completing the form: the position of the responder within the firm; the firm’s legal organization; the number of attorneys in the firm; the locations of the firm’s offices and the percent of full-time and part-time attorneys in the firm who were fifty-five to sixty-four years old, sixty-five to seventy-four years old, and seventy-five years young or older. In section two, we asked questions about the firm’s recent retirees: at what ages they partially or completely retired and whether the firm provided financial incentives to induce retirement. In section three we asked questions about the firm’s retirement practices: whether the firm has a written retirement program; whether that program has mandatory or target retirement ages; what was the legal structure of any pension or retirement savings plan; whether health care benefits were provided to retirees; whether the firm had recently adopted, changed or done away with a retirement plan; and what were the customary benefits afforded for retired attorneys to maintain contact with the firm. In the fourth section, we asked whether the firm had any existing programs to transition attorneys into retirement. We asked about: the form of such programs, the age at which such transition typically begins, and whether these programs promoted pro bono work. In section five, we asked about the firm’s existing programs to promote pro bono work, who did this work and what kind of work was done. Questions concerned: the resources the firm committed to pro bono work, the number of senior attorneys participating in such work, firm methods to recruit senior attorneys to perform pro bono work, areas of the law that were amenable to pro bono work by senior attorneys, their efforts to partner with public interest firms in conducting pro bono work, and any problems they had encountered in the pro bono efforts. In the final section, we asked the respondent’s opinion of the likely interest of the firm’s senior attorneys and the firm in a Second Acts program and what advantages or problems they foresaw in establishing such a program. The Institute received survey responses from forty-five of the firms that participate in its Law Firm Pro Bono ChallengeSM program.⁴⁷

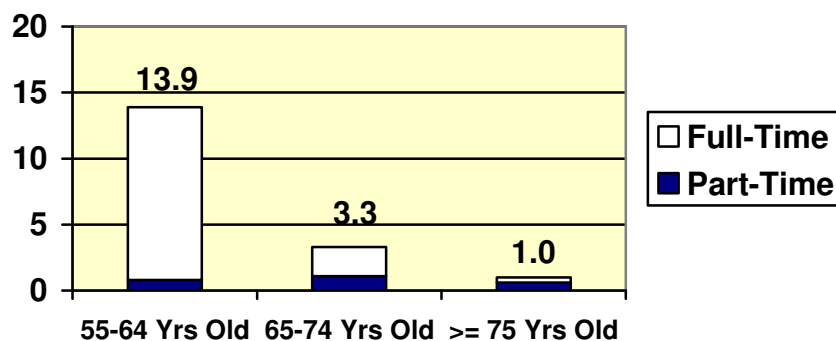
B. The Results of the Survey

⁴⁷ In 1993, the Pro Bono Institute created the Law Firm Pro Bono ChallengeSM—a “global aspirational pro bono challenge” to encourage the provision of pro bono legal services. As of 2006, the Pro Bono Challenge had over 150 signatories. Under the Pro Bono Challenge, law firms pledge either 3 or 5% of their annual billable hours to pro bono work *or* sixty or one-hundred hours per attorney. More information about the Pro Bono Challenge can be found at the Pro Bono Institute’s website, <http://www.probonoinst.org/challenge.php>.

Because of the Institute’s focus, the respondents are large law firms. Nevertheless, there is a fair amount of diversity among the respondents to the survey. The size of the firms varies from fifty attorneys to 1598, with a mean number of 391 attorneys. The primary offices of the responding firms range across all of the major metropolitan areas of the country from Los Angeles to Salt Lake City, St. Louis, Chicago, New York, and Washington. Most of the firms are organized as partnerships (88.4%), although there is significant representation from firms organized as corporations (11.6%). The person who actually completed the form is most often the partner in charge of pro bono work (47.6%), although responses by managing partners are also common (23.8%), and there is representation by people who identify themselves merely as “partners” and human resources specialists.

The respondents report problems and concerns about efficiently using a growing number of senior attorneys like those reflected in the aggregate statistics presented in the prior section. As shown in Table 1, 18.2% of the attorneys in the examined firms are fifty-five years or older, with 13.9% being fifty-five to sixty-four years old, 3.3% being sixty-five to seventy-four years old, and 1.0% being seventy-five years of age or more. Also as reflected in Table 1, we see that part-time employment grows among practicing attorneys as they age from 5.8% among attorneys ages fifty-five to sixty-four, 33.3% among attorneys ages sixty-five to seventy-four, and 60% among attorneys seventy-five year of age or older. Based on the survey responses for the last six retirees in each firm, the average age at which attorneys retire is 65.7 years. The firms show some concern with the problem of transitioning these large numbers of attorneys to retirement. A full 78.4% of the firms report offering special financial incentives to encourage attorneys to retire within the last five years.

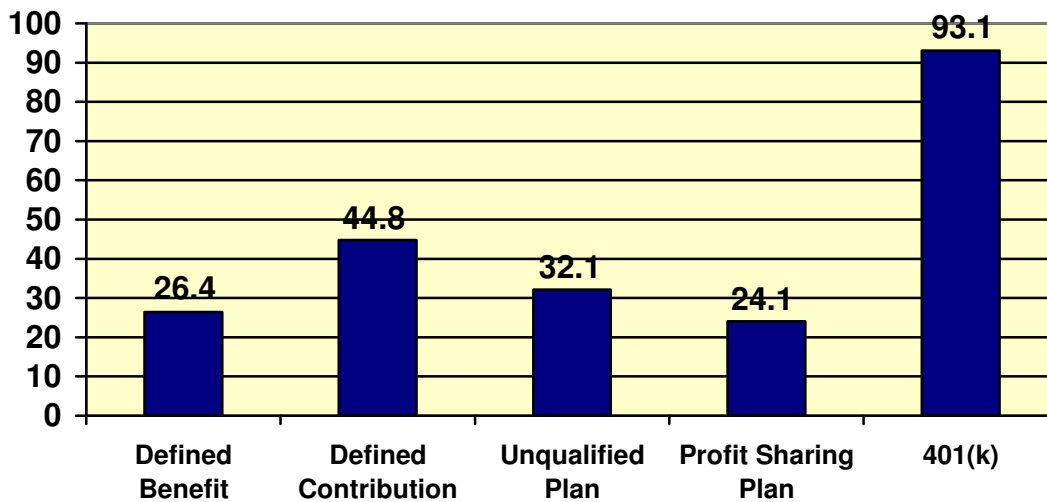
Table 1: Percent of Full-time and Part-time Attorneys in Senior Age Categories



The firms also report a wide variety of existing retirement programs. The vast majority of the firms (78.4%) report that they have a written retirement program to provide income and/or benefits to retirees. Of those firms, 42.9% report that they have a mandatory retirement age, which on average for these firms is 66.8 years old, while 32.1% report having an express “target” retirement age, which on average for these firms

is 66.4 years old. The firms with written retirement programs also report a variety of methods for providing income and benefits, with most firms using more than one method. As reported in Table 2, 26.4% of the firms have a pension that is a traditional defined benefit plan, 44.8% have a pension that is a defined contribution plan while 32.1% have an unqualified plan.⁴⁸ On top of these pension plans, 24.1% of the firms have some program for profit sharing with retired partners, and 93.1% have a 401(k) retirement savings program.⁴⁹ Among those who report no written retirement plan, some say they have no customary plan (“we work until we drop”), but most describe informal profit sharing plans or 401(k) plans (which we would assume are in writing). There is some evidence of turmoil among the firms in providing retirement benefits. Two firms report doing away with written retirement plans within the last 10 years, while only one firm reports adding one. Moreover, among those firms with written plans, 17.3% report reducing retirement benefits by more than 10% within the last ten years, while no firms report increasing retirement benefits by 10% or more over the last ten years.

Table 2: Percent of Written Firm Retirement Plans That Include Each Type of Retirement Saving Plan



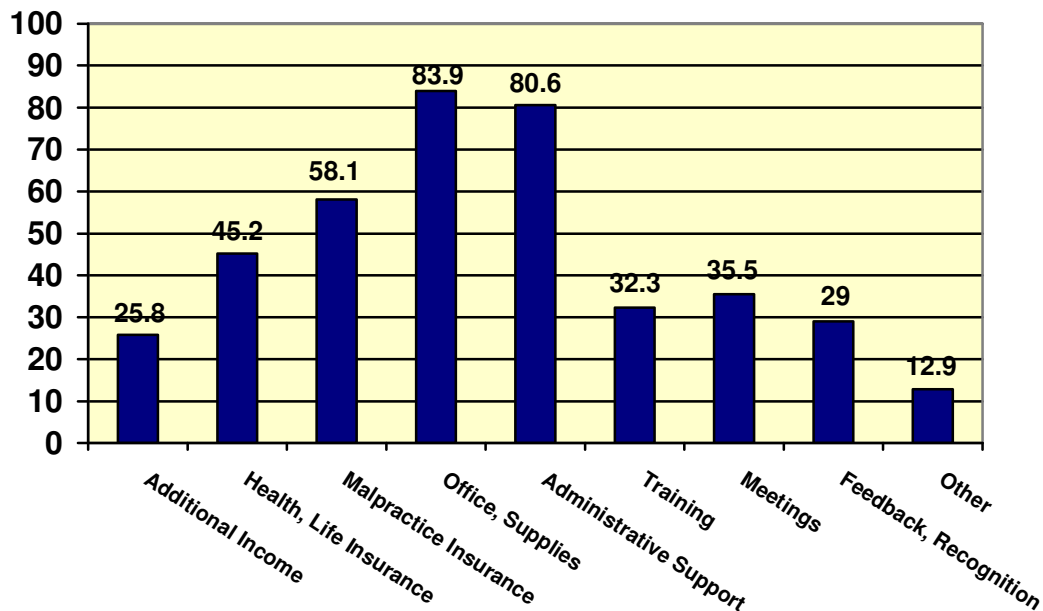
The firms in our sample report other benefits for retirees, either to maintain income and benefits in retirement, or to allow the retired attorneys to maintain some

⁴⁸ Under the Employee Retirement Income Security Act (ERISA), a “defined contribution” plan is a pension plan “which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant’s account * * *,” 29 U.S.C. § 1002 (34). A “defined benefit” plan is a pension plan “other than an individual account plan,” 29 U.S.C. § 1002 (35) in which the firm promises a certain retirement benefit in exchange for service and itself invests money to pay those future benefits. An “unqualified plan” is any pension plan that does not meet the requirements of ERISA and thus does not qualify for a tax deduction.

⁴⁹ Of those respondents who describe their 401(k) programs, about 80% have some mandatory or matching employer contribution.

connections with the firm and the practice of law. The incidence of these “other benefits” among the firms with written retirement plans is reported in Table 3. As we see in Table 3, 25.8% of the firms provide at least some retirees with additional income during retirement, while 45.2% of the firms provide health insurance and/or life and disability insurance for at least some portion of the retirement. To allow and encourage retirees to maintain some connection with the firm and the practice of law, 58.1% of the firms provide retirees with malpractice insurance and over 80% of the firms allow retirees to maintain their office and have access to administrative staff and supplies. About a third of the firms also provide educational or training opportunities for retirees, and include them in firm meetings and firm feedback and recognition.

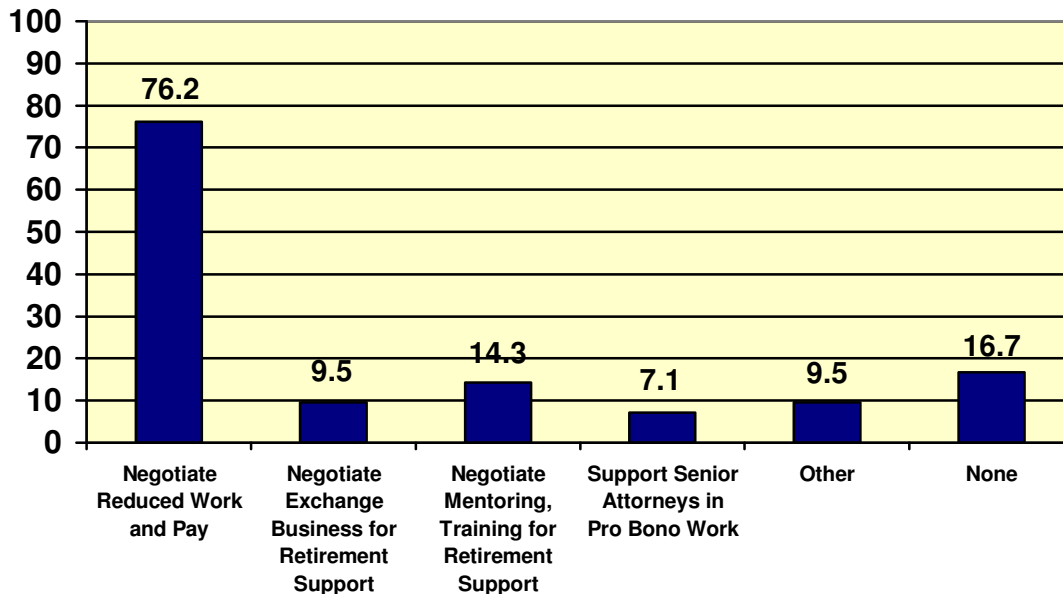
Table 3: Percent of Firms That Provide a Given Benefit to Retired Attorneys



The firms in our survey already have some means to help transition attorneys to retirement. As represented in Table 4, 76.2 % of the firms report having previously negotiated reduced work for reduced pay arrangements for senior attorneys. Other such programs are much less common, but not rare. Among the firms, 9.5% report having negotiated deals with retiring attorneys in which the attorney helps transition clients to others in the firm in return for income. Some firms report already having programs somewhat along the lines of a Second Acts program in that 7.1% report instances of supporting senior attorneys in pro bono work as they transition to retirement, and 14.3% report negotiating deals in which senior attorney agree to focus on training and/or mentoring associates in return for income. Another 15.2% of the firms report having

programs or initiatives to encourage senior attorneys to participate in pro bono work, although these programs are not connected to transitioning these attorneys to retirement. Among the firms that have “programs” to help attorneys transition to retirement, 33.3 % of the firms said that they have a specific age at which the discussions about transitioning to retirement began and the average age given by these firms was 63.3 years old. Almost 17% of the firms report having no program or initiative to help senior lawyers transition to retirement.

Table 4: Percent of Firms That Undertake Certain Programs to Transition Attorneys Into Retirement

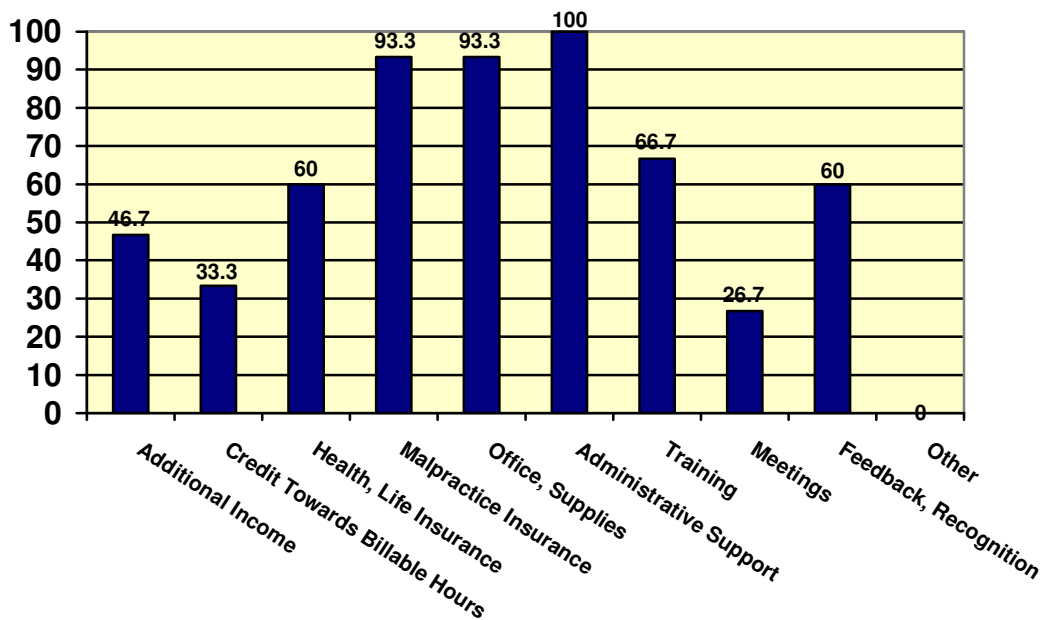


The fifteen firms in our survey who report some program or initiative to encourage senior attorneys to participate in pro bono work use a wide variety of means to support and encourage such work. As represented in Table 5, almost all of the firms report providing administrative support, working space, supplies and malpractice coverage to support such work. Two thirds of the firms provide training to senior attorneys in particular areas of law or procedures in order to facilitate their pro bono work. Fewer firms provide substantial income or benefits to support such work, with only a third giving senior attorneys credit towards billable hour objectives for pro bono work. Among these firms, 60% provide feedback and recognition within the firm for pro bono work, and 26.7% report attorney meetings to support pro bono work. The respondents mention a wide variety of subjects that lend themselves to pro bono work from the traditional work of domestic relations law, landlord-tenant, and immigration law, to the less common criminal work, legislative work and international pro bono work.⁵⁰ To

⁵⁰ The complete list includes: civil rights; corporate law (charities); immigration; real estate; tax; domestic relations; innocence project; securitization of donations; constitutional law; wills; trusts; estates; international human rights; education law; right to counsel in criminal cases.

encourage senior attorneys to undertake pro bono work, at least one partner in charge of pro bono work recommends a personal approach: “I attempt to discover who is transitioning to retirement and then personally contact them to ask whether they are interested in working on pro bono, training or mentoring.” Approximately a third of the firms that encourage senior attorneys to participate in pro bono work report partnering with a public interest or pro bono organization to facilitate such work.⁵¹ The reliance of firms on such partnerships, and our conversations with managing partners about Second Acts programs, suggest that public interest organizations can play an important role in facilitating such programs by acting as clearinghouses to the firms for appropriate public interest work.

Table 5: Percent of Firms With Programs to Encourage Senior Attorneys to do Pro Bono that Provide a Given Benefit in that Program



Finally, in the survey we asked the respondents their opinion on the possible advantages and obstacles to Second Acts programs and whether they thought attorneys in their firms, and their firms, would be interested in pursuing such programs. The survey

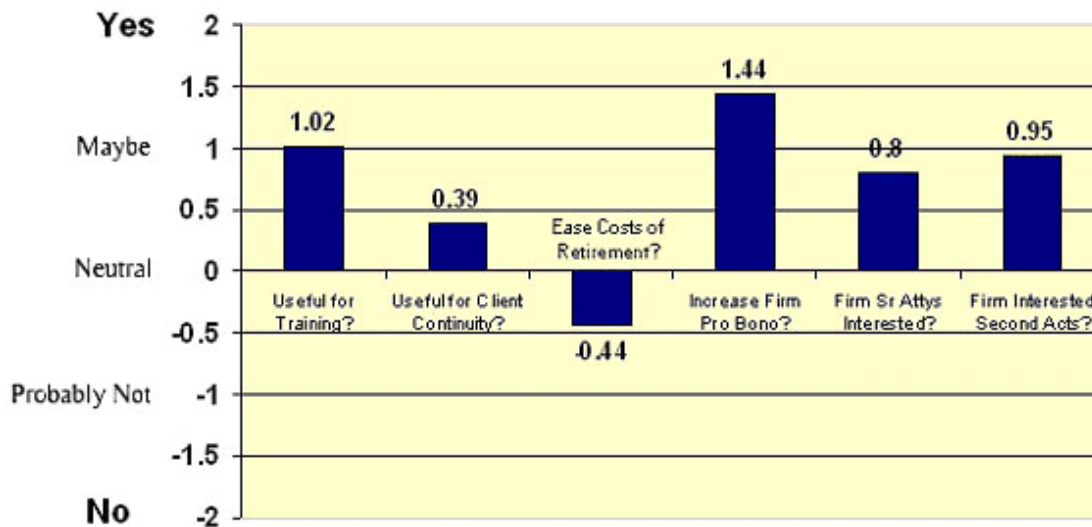
⁵¹ The mentioned groups include: Georgia Resource Center; Appleseed Georgia; Southern Center for Human Rights; Austin Lawyers Care; Human Rights First; New York Lawyers for the Public Interest; Children’s Law Center; Legal Aid Society of DC; Legal Counsel for the Elderly; Women Empowered Against Violence; Washington Legal Clinic for the Homeless; DC Bar and ABA Death Penalty Project; Northwest Immigrant Rights Project (NWIRP); Access to Justice Institute (Seattle University School of Law); Appleseed of Washington; DC Bar Pro Bono Program and the International Senior Lawyers Project.

questions on these subjects asked the respondents to rate their response from positive 2 for “yes” or “they agree,” to a positive 1 for “maybe,” 0 for “neutral,” -1 for “probably not” and -2 for “no” or they “don’t agree.” The respondents found reason to believe all of the arguments previously raised in support of Second Acts programs except that the respondents did not believe that such programs would significantly reduce retirement costs. As represented in Tables 6 and 7, on average the respondents were most convinced that a Second Acts program would increase the firm’s pro bono work (mean answer 1.44) with the majority of all respondents answering “yes” to the question regarding this issue. The respondents were next most convinced that a Second Acts Program would be of use in providing training and mentoring opportunities within the firm (mean answer 1.02), with 26.8% of all respondents answering “yes” to the question regarding this issue and 58.5% responding “maybe.” The respondents were on average positive, but less so, that a Second Acts program would be useful in encouraging continuity for clients (mean answer 0.39), with 12.5% of the respondents responding that “yes” a Second Acts Program would be useful in this regard and 42.5% responding “maybe.” On the whole the respondents were not convinced that a Second Acts program would decrease retirement costs for firms (mean answer -0.44) with a majority of the respondents answering “no” or “probably not” when asked about this possible benefit of such a program. However, on average the respondents were very positive when asked whether their senior attorneys might be interested in such a program (mean answer 0.8) and whether their firm might be interested in one (mean answer 0.95). Of the more than forty firms that responded to these questions, 19.5% responded “yes” that they thought their senior attorneys would be interested in such a program, while 22.5% said that they thought their firm would be interested. Only one respondent was sure that neither her firm’s attorneys nor her firm would be interested in such a program.

Table 6: Percent of Respondents Who Indicated Agreement or Disagreement With Respect to the Advantages of and Interest in a Second Acts Program

	Useful For Firm Training?	Useful For Client Continuity?	Ease Costs of Retirement?	Increase Firm’s Pro Bono Hrs?	Firm’s Sr Attorneys Interested?	Firm Interested Sec’d Acts?
Yes (2)	26.8%	12.5%	2.5%	57.1%	19.5%	22.5%
Maybe (1)	58.5%	42.5%	27.5%	35.7%	58.5%	65.0%
Neutral (0)	7.3%	22.5%	17.5%	2.4%	9.8%	0.0%
Prob Not (-1)	2.4%	12.5%	27.5%	2.4%	9.8%	7.5%
No (-2)	4.9%	10.0%	25.0%	2.4%	2.4%	5.0%
N	41	40	40	42	41	40
Mean Value	1.02	0.39	-0.44	1.44	0.8	0.95

Table 7: Firm Perceptions of Advantages of and Interest in Second Act Programs



In order to determine which factors increase a firms' interest in a Second Acts program, we conduct a simple linear regression analysis estimating firm interest as a function of several variables. Linear regression allows you to estimate the impact of various independent variables on a dependent variable, in this case interest in a Second Acts program, while holding the impact of the other independent variables constant. There are a variety of independent variables that might be thought to have an impact on firm interest in a Second Acts program. First, one might expect that the larger the firm the more interest it might have in a program because large firms would have the necessary resources and enjoy economies of scale in establishing a program. Second, it is reasonable to expect that the more attorneys a firm has approaching retirement, the more interested the firm might be in a Second Acts program. To account for this effect, we include the percent of attorneys between the ages of fifty-five and sixty-four in each firm in the analysis. Finally, if the firm has other programs that already address the challenges of transitioning attorneys to retirement; one might expect that the firm will be less interested in a Second Acts program. Accordingly, we include in our analysis data on whether the firm has written retirement program, whether it already has a program to help transition senior attorneys to retirement and whether the firm already has a program to encourage senior attorneys to undertake pro bono work. The results of the regression analysis are reported below as Regression 1.

As shown in Regression 1, the firms' interest in a Second Acts program is positively related to the number of attorneys in the firm and the percent of the firm's attorneys who are between fifty-five and sixty-four years old, and negatively related to whether the firm already has a written retirement program, or a transition or pro bono program for senior attorneys. Although the impact of the number of attorneys in the firm on the firm's interest in a Second Acts program is positive and statistically significant,

the actual impact of increased firm size on interest is relatively small. With a coefficient of 0.001277, firm size has to increase by 760 attorneys in order to increase a given firm's interest by approximately one standard deviation, or approximately thirty-four percentiles at the mean.⁵² The percent of the firm's attorneys who are between fifty-five and sixty-four years old has a slightly larger impact on firm interest in Second Acts programs that is also statistically significant. With a coefficient of 0.054518, if the percent of a firm's attorneys who are near retirement age increased from 0% to 18%, that would increase firm interest in a Second Acts program by 0.97 or one standard deviation.⁵³ A written retirement program or existing transition and senior pro bono programs give a firm some means of dealing with the large number of senior attorneys and decrease interest in Second Acts programs, although none of these effects are statistically significant. Having a written pension plan reduces a given firm's interest in a Second Acts program by 0.291611, or about a third of a standard deviation. The existence of a transition to retirement program or a pro bono program aimed at senior attorneys both have a slightly larger negative effect on firm interest, decreasing that interest by 0.455236 and 0.382476 respectively. All of these results make sense within the context of our analysis.

Regression 1: Firm Interest in a Second Acts Program (2 = yes to -2 = no) as the Dependent Variable

Independent Variables	Coefficient	Robust Std. Err.	t	Summary Statistics
Number of Attorneys	0.001277	0.000617	2.07	Num of obs = 39
% Attorneys 55-64	0.054518	0.033898	1.61	F(5, 33) = 1.27
Written Retirement Prog	-0.291611	0.310983	-0.94	Prob > F = 0.300
Transition Program	-0.455236	0.312347	-1.46	R-squared = 0.203
Sr Att Pro Bono Prog	-0.382476	0.381597	-1.00	Root MSE = 0.933
Constant	0.475497	0.601319	0.79	

⁵² The mean firm interest in a Second Acts program is 0.95 with a standard deviation of 0.97. With a coefficient of 0.001277 for the number of attorneys, firm size would have to increase by 760 attorneys (0.97/0.001277) in order to increase firm interest by 0.97, or one standard deviation. Assuming a standard normal distribution, if a firm at the mean were to increase its interest by one standard deviation, it would jump over about 34% of the other firms in the distribution in their interest in Second Acts programs.

⁵³ With a coefficient of 0.054518 for the percent of attorneys near retirement, that percent would have to increase by 17.8 points (0.97/0.054518) in order to increase firm interest by 0.97, or one standard deviation.

CONCLUSIONS

The legal profession has a golden opportunity to do well by its members, itself and society at large. The aging of the Baby Boom generation presents us with a large population of idealistic and talented lawyers who have succeeded in their careers and now have the opportunity to better themselves and the less fortunate of society by undertaking a “second act” in pro bono work before they retire. Not only will such work be personally fulfilling for the lawyers involved but it will help meet fundamental needs in providing legal representation to all members of society. Moreover, for firms that construct Second Acts programs to encourage such work, these programs can provide real benefits. Second Acts programs can help the firms ease senior attorneys into retirement while they provide continuity for clients, training and mentoring for young associates and fulfill the firm’s professional responsibility to provide pro bono services. Our survey shows that in the examined firms 18.2% of the attorneys are fifty-five years old or older and the firms are concerned with the problem of transitioning these attorneys to retirement. Our survey also shows that the respondents generally believe that a Second Acts Program will increase the firm’s pro bono hours, be useful in training and mentoring associates and improve continuity for clients. Finally, our survey shows that the respondents generally believe that their senior attorneys and firms would be interested in participating in a Second Acts Program. Firm interest is greater among larger firms and firms that have a high percentage of attorneys nearing retirement and lower among firms that already have retirement, transition and senior pro bono programs to address the needs of senior attorneys. Public interest organizations can facilitate Second Acts programs and pro bono work by acting as clearing houses to the firms with respect to appropriate projects.

The idea of Second Acts programs to encourage senior attorneys to provide pro bono work as they transition into retirement is an idea whose time has come. In the words of the Robert Hunter Song “Dinosaur:”

It's strictly a temporary groove
Got a lot of love and not a lot to prove * * *
And I know - well I know
that growing old with rock and roll
is the best a poor boy can do⁵⁴

⁵⁴ “Dinosaur,” Robert Hunter, *A Box of Rain* (1991). Lyrics and music by Robert Hunter.