

A Blueprint for a Big Bang: Tapping Transitioning Baby-Boom Lawyers to Transform Access to Justice

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Over the past few years, the recipients of the annual California State Bar President's Pro Bono Service Awards for Distinguished Service have included several individuals age 54 or older, and two amazing honorees were each 82 years-old. Each of the award winners is dedicated to helping the underrepresented and deserving of recognition, and the age of these awardees is notable in that it highlights the extraordinary demographic crossroads at which the legal profession finds itself. Simply put: the baby boomers, including the lawyers of this generation, are aging. When we combine the vast numbers of attorneys who will be in career transition over the next several decades with the enormous systemic unmet legal needs of the poor and disadvantaged, the legal community is in a unique position to leverage these experienced lawyers to create a profound impact on public interest organizations, legal services providers, and their clients. Creating the infrastructure that will support and sustain these new roles, however, is a significant and delicate endeavor. To that end, the Pro Bono Institute[®] (PBI) has launched Second Acts[®] ([i.e.](#), second acts in the professional lives of experienced attorneys) to develop, test, evaluate, and replicate a variety of effective models that facilitate lawyers' transition from commercial private practice to public

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service and pro bono practice. Working with PBI's core constituencies – major law firms, corporate legal departments, and public interest organizations – this project will serve as both an incubator and a beacon to create, on a national scale, workable models and programs that facilitate increased pro bono service by transitioning, semi-retired, and retired lawyers to take full advantage of their extraordinary skills and talents. The first wave of transitioning baby boom lawyers may well serve as role models for those who follow, so a great deal depends on how they respond to the call for service and the quality of their pro bono experiences. Meeting this significant challenge requires serious and innovative engagement to build common ground – now is the time to start planning for the demographic explosion on the horizon in order to benefit all of the interested stakeholders.

Unmet Legal Needs

Regardless of the report or the exact methodology used, studies of legal needs reach essentially the same conclusion: there is a significant and persistent shortage of legal assistance available to low-income people. There are several factors that combine to create an unrelenting, yet unmet, need for legal services for low-income and disadvantaged people and for the organizations that serve them. First, the number of people in the United States at or below the poverty line remains substantial (37.3 million in 2007, up from 36.5 million in 2006, according to the U.S. Census Bureau) and the socioeconomic gulf between haves and have-nots is on the rise. National and local studies have consistently found that 80% or more of low-income individuals in need of legal assistance are unable to obtain help. Second, due to the intersection of the justice

system with complex social and political issues of our time, such as terrorism and national security, immigration, and health and welfare, low-income individuals are facing increasingly complex legal problems that they cannot reasonably be expected to navigate by themselves. Finally, resources available for legal assistance for low-income individuals have been on the decline due to government spending cuts and shifting budgetary priorities.

Despite enormous progress and substantial measurable increases in pro bono programs and service over the last decade by attorneys from all segments of the profession, the legal needs of low-income Americans are still not being satisfied. Innovative ideas for generating substantially more legal services, and long-term fixes are in order, rather than continuing with band-aid approaches to this systemic problem. Specifically, a substantial influx of legal talent is required in order to dramatically improve access to justice for underserved populations.

The Coming Wave of Available Legal Talent

Legal researchers and demographers have determined that, over the next 20 years, the number of lawyers in the United States age 50 and older will triple, and that there will be approximately 1.25 million total lawyers, 560,000 of whom will be over 50.¹ This cohort, reflecting the aging of the baby-boom generation and the entry of women into the legal profession, will be, by all estimates, the largest, healthiest, and wealthiest generation of lawyers to approach senior status and will reinvent and reshape the nature of professional transition and retirement. Moreover, a predisposition to “do good” is ingrained in this generation, many of whom decided to attend law school motivated by public interest and civic idealism: many of these lawyers attended

law school in the mid-1960s through the late 1970s, a time of great commitment to public interest law.

Retirement ages and policies vary widely by law firm and corporation. According to a 2005 study by the law firm consultants Altman Weil, 57% of law firms with 100 or more attorneys enforce a mandatory retirement age, typically in the 65 to 75 age range. Although many attorneys may want to stay in their positions in perpetuity, major law firm partners, in particular, increasingly face mandatory retirement ages and pressure to transition clients to younger partners and to accept early retirement or a change in status to something other than equity partner.² Attorneys with smaller practices and in corporate law departments face similar transition issues. The inevitable transitioning of a large generation of attorneys, regardless of professional circumstance, is on the horizon.

Many experienced lawyers, who have had successful careers in commercial private practice, find themselves wanting to undertake pro bono work on a full-time or other significant basis, but are confronted by obstacles, including difficulty finding meaningful pro bono opportunities. These challenges are exacerbated by the lack of institutionalized paths to assist lawyers with this transition.

The “Big Bang” of the Boomers: Second Acts[®]

The coming wave of transitioning lawyers (either by choice or involuntarily) offers an enormous opportunity to deliver desperately needed legal services to the poor and disadvantaged. If even a small fraction of the hundreds of thousands of retired, semi-retired, and transitioning baby-boom lawyers would engage in some form of substantial pro bono work, they could have a sizeable impact on economic and social justice and transform the legal landscape.

The professional transition of baby-boom lawyers presents both enormous opportunities and challenges with regard to maximizing their pro bono and public interest potential. While appealing in concept, there are obvious obstacles to leveraging this enormous pool of talent to provide critically needed legal services. Individual attorneys will need assistance in navigating this new chapter in their professional lives. Many of them would be helped by having productive structures in place as they face a time of personal and professional uncertainty and change. In addition to recognizing the professional bridges that need to be created to ease this transition, personal bridges to cushion the psychological impact of this professional life change are also needed. Many attorneys will need assistance to successfully transition from the high-powered business world to the nonprofit world, and expectations will have to be managed. On the other hand, the public interest community will need to make serious efforts to make sustained use of the talent in this population and to seize the opportunity to meaningfully engage senior lawyers in transition. Existing organizations may need to revamp in order to absorb these volunteer attorneys and to take into account their interests, preferences, and skills. Fortune magazine investigated this dynamic in its provocative piece “Candy Stripper, My Ass!” – and chronicled the frustration of highly-skilled retired professionals, including lawyers, who have tried to apply their talents and

expertise in the nonprofit world. The article's conclusion was that it will take great effort to capture the imagination and passion of baby-boom lawyers and to put their skills to the highest and best use.³ To successfully leverage this opportunity, legal services organizations will have to prove themselves repeatedly and help these lawyers see the clear, measurable, and tangible results of their pro bono work. It will require sophisticated and innovative planning to create strategic links that marry this eligible pool of talent with those individuals and institutions that desperately need their help.

Although there has been a great deal of research and discussion regarding older volunteers in general, relatively little has been done to ensure that professionals who may want to volunteer in their fields of expertise have the opportunity to do so in a meaningful manner. Existing programs, such as the International Senior Lawyers Project and AARP's Senior Lawyer project in combination with various local efforts, provide opportunities for individual lawyers. Many jurisdictions, including Alaska, Arizona, California, Colorado, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Maine, Massachusetts, Mississippi, Montana, North Carolina, Oregon, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, and West Virginia, have or are considering some form of senior or "emeritus" program, which grants limited licenses to practice law to attorneys, who are otherwise fully retired, to conduct pro bono work. The goal of these programs is to encourage pro bono participation by highly skilled and experienced legal professionals, including attorneys, judges, and law professors, who wish to make a contribution to underrepresented people and organizations in need. Rules and conditions vary by program; some waive dues and CLE requirements. Most programs include a length of practice requirement

(generally five to fifteen years). Some states require that the pro bono work be performed under the auspices of a qualified legal services provider or other nonprofit organization. Emeritus lawyers are generally covered by the malpractice policies of the legal services providers for whom they are volunteering.

Elsewhere, individual legal services providers have made their own efforts to reach out to transitioning lawyers, such as the “Senior Lawyer Project” at The Legal Aid Society of the District of Columbia, which had a retired law firm partner on-site as a Volunteer Staff Attorney for a year, and the Legal Aid Society of New York, which created the Bottenwieser Senior Attorney Project to offer pro bono opportunities to those who have “reached a stage in their careers where they are willing and able to devote time on a substantial basis to assist those unable to pay.” Until a strong infrastructure is created and such programs are widely available, however, transitioning attorneys, their employers, bar associations, and public interest organizations are left to cobble together a patchwork of opportunities.

To augment and support these inspiring efforts, the Pro Bono Institute has launched Second Acts to promote pro bono service by those attorneys interested in a second, volunteer career as public interest lawyers by identifying and implementing a range of workable models within law firms, corporate legal departments, and public interest organizations that take full advantage of the extraordinary skills and expertise of these lawyers. Second Acts will focus on creating replicable models and securing institutional support that benefits pro bono clients, transitioning lawyers, and their employers. The project will provide the necessary research, pilot projects, and technical assistance capacity to stimulate the effective pro bono and public interest

engagement of senior attorneys. In doing so, PBI is collaborating with experts in the senior civic engagement field and will share its knowledge with public interest and pro bono programs throughout the country. The project is being conducted in three phases, with the first consisting of comprehensive research, the second encompassing the launching of pilot programs to test and evaluate a number of attorney transition models and existing initiatives to engage senior attorneys, and the third involving targeted implementation and replication of successful models.

PBI began this effort by surveying major law firms about their current policies and practices regarding transitioning attorneys. This empirical data, presented in a final report entitled, “Old and Making Hay:” The Results of the Pro Bono Institute Firm Survey on the Viability of a “Second Acts” Program to Transition Attorneys to Retirement Through Pro Bono Work, has and will continue to guide the project.⁴ Professors Kenneth G. Dau-Schmidt, of the Indiana University School of Law, and Marc Galanter, of the University of Wisconsin Law School, assisted PBI with this research project. Indeed, it was Professor Galanter’s seminal article, “Older and in the Way”: The Coming Demographic Transformation of the Legal Profession and its Implications for the Provision of Legal Services, 1999 Wisc. L. Rev. 1081, that identified this impending demographic transformation and highlighted the question of whether some portion of these transitioning lawyers could be enticed into a second “career” in public service lawyering.

The results of the survey will be integrated with the expertise of an Advisory Committee, composed of prominent law firm, corporate, and public interest leaders, including lawyers within the target age population, culminating in the implementation of a series of pilot projects that will test the viability of various models of public interest law practice. Through a generous three-year

grant from The David and Lucile Packard Foundation, PBI has selected five outstanding and innovative public interest and legal aid organizations to develop four pilot projects for seasoned and transitioning lawyers: Kids Matter, Inc. of Milwaukee, Wisconsin; Legal Aid Society of New York; Volunteer Lawyers Project of the Boston Bar Association; and Volunteer Legal Services Program of the Bar Association of San Francisco in combination with Bay Area Legal Aid. The pilot projects will be closely monitored and evaluated during the test period to determine which models can effectively be taken to scale and replicated across the country. These and other models might include the following:

- Creating a rotation/sabbatical program for attorneys in their 50s and 60s (and beyond) that assigns veteran attorneys to work for a substantial time period on a full-time basis at a public interest law organization, while receiving compensation from their firm and access to their firm's resources, attorneys, and staff. A variation of this model has worked effectively for law firm associates. With the assistance of PBI, almost 100 law firms currently sponsor these rotation opportunities. In planning for the sabbatical while the senior attorney is away from the firm, the firm and the attorney are able to work together to reassign the attorney's clients and plan for the ultimate transition within the firm of those business relationships.
- Developing law firm policies that permit attorneys who would otherwise fully retire to maintain office space, secretarial support, malpractice coverage, and health benefits, while spending a majority, if not all, of their time working on pro bono matters. Senior attorneys would handle their own pro bono cases and mentor and supervise other firm

attorneys as well. Helping firms to create transition pathways that fit within their institutional culture can have a variety of benefits, including enhancing firm loyalty, improving the firm's overall pro bono program, and offering increased mentoring and training for junior attorneys.

- Establishing a “snowbird” project for firms with offices in Sunbelt communities to encourage attorneys to work on behalf of the poor and disadvantaged on a pro bono basis in the Sunbelt offices for a portion of each year while they are living in that community.
- Partnering with law schools to staff and supervise clinics, which may greatly increase the capacity of existing clinical programs and afford meaningful mentoring and public service opportunities.
- Promoting widespread and meaningful opportunities for non-litigators, for example, by creating pathways for business and transactional attorneys to serve as full-time general counsels at community nonprofits and to offer their policy, advocacy, management, and strategic planning skills to enhance existing legal service providers.

There is a broad range of pro bono opportunities for transitioning, semi-retired, and fully-retired experienced attorneys to enhance the infrastructure and capacity of existing legal service providers and nonprofits. Creative thinking about how to effectively match legal services opportunities with the skills, talents, and interests of lawyers from private practice is now required. With adequate training and support, transitioning lawyers would bring the public interest sector not only a major increase in capacity, but also expertise, energy, moral support, access to

fundraising, and new perspectives that would greatly benefit the organizations and the clients they serve. Engaging transitioning attorneys in pro bono work will require a re-envisioning of the role of senior attorneys in the legal community while offering meaning, purpose, and a sense of pride to those lawyers' later years. In short, creating complex and sustained pro bono opportunities for transitioning lawyers will promote both individual personal growth and well-being for the lawyers and enhance the overall social good.

The Pro Bono Institute, with its close working relationships with major law firms, in-house legal departments, and public interest organizations, is well situated to bring volunteer engagement by transitioning, semi-retired, and fully-retired attorneys to scale. Strong bridges must be built to enable all three constituencies to work together in order to ensure the deepest impact possible and to radically increase the number of transitioning attorneys who will participate in pro bono service and broaden the roles they can play. In light of PBI's proven ability to shape and enhance the pro bono culture of major legal institutions, PBI is in a unique position to design, implement, evaluate, and popularize Second Acts efforts.

In sum, if only a small percent of baby-boom lawyers transition to the practice of public interest law as they reach traditional retirement age, the number of public interest lawyers available to meet the needs of the poor, disadvantaged, and the community groups that serve this population will significantly increase. Participation in public interest work by mid-to-late career lawyers has already begun to occur on an individual basis, led, in inspiring efforts, by pioneers in the legal profession. The aim of Second Acts is ambitious, and its goal is to dramatically broaden and institutionalize these opportunities and, thereby, to exponentially increase the resources for

the provision of legal services for those most in need. The project looks to build a strong infrastructure that will enable institutions to support lawyers with this transition. In doing so, these Second Act lawyers will reshape access to justice, the nature of civic engagement by senior professionals, and the dynamic of attorney retirement. In short, as they age, baby-boom lawyers will have a transformative impact on the administration of justice, just as they have had at every step of their generational and professional development. It is no overstatement to conclude that all of society will have a stake in the outcome of these efforts.

¹ Marc Galanter, “Older and in the Way”: The Coming Demographic Transformation of the Legal Profession and its Implications for the Provision of Legal Services, 1999 Wisc. L. Rev. 1081.

² See, e.g., Julie Criswell & Karen Donovan, Happy Birthday. Vacate Your Office., N.Y. Times, Dec. 8, 2006; but see Elizabeth Goldberg, Cashing in on the Golden Years, The American Lawyer, Sept. 2007 (describing a few major law firms “eager to snap up senior talent”).

³ 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.

⁴ “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 is available at <http://ssrn.com/abstract=1215190> and from the Pro Bono Institute, upon request.