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ADDRESS: "OLD AND IN THE WAY": THE COMING DEMOGRAPHIC  
TRANSFORMATION OF THE LEGAL PROFESSION AND ITS IMPLICATIONS FOR THE  
PROVISION OF LEGAL SERVICES

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[\*1082]

*The mark of civilization is the capacity to be deeply moved by a statistic. n1*

Lawyers are growing older! For each of us, this is confirmed by the mirror each morning. But lawyers are getting older in another, collective sense. The legal profession is launched on a massive demographic transformation that will have dramatic but unknown effects on the way law is practiced and the way legal services are distributed in American society. Coping with these effects will form a major part of the profession's policy agenda in the opening decades of the new century. I propose to review with you the story of how we got here and to offer some ideas about the future and the options it holds. For although the aging is inevitable, what we do with the problems and opportunities it presents is something in which we enjoy some degree of freedom - both individually and collectively.

I. Expansion of the Profession Since the 1960s

A. The Overall Size of the Profession

Starting in the 1960s, more students entered law school each year. From [\*1083] 15,607 in 1960, the number of those entering law school rose to 34,289 by 1970 and leveled off in the low forty

thousands after 1980. n2 With these large new cohorts coming in and much smaller cohorts departing (by death, retirement or abandonment) the size of the bar grew. As more students graduated and were admitted to practice, the number of lawyers grew from less than one quarter million in 1960, to half a million in 1980, to one million in 1999.

[SEE FIGURE IN ORIGINAL] n3

Even if the annual crop of new entrants does not increase further, the profession will continue to grow until all of the smaller cohorts that entered in the past have been replaced by larger cohorts already in the pipeline. In another place, we hope to take up various alternative projections of the future size of the profession. For the present, I just note that barring a drastic change in the number of those entering or leaving, the profession will reach [\*1084] a size of roughly one and a quarter million.

[SEE FIGURE IN ORIGINAL]

## B. The Shape of the Profession

The great wave of new entrants starting in the 1960s has transformed the legal profession in several ways apart from the sheer increase in the number of lawyers. The most visible change is in the gender composition of the profession. In 1960, only 3% of lawyers were women. Today about one quarter of all lawyers are women. Since women make up almost half of the law student population (see Figure 1 above), their representation in the profession will continue to grow, reaching forty percent shortly after 2020 and fifty percent by mid-century. n4 The changing gender composition of the profession reflects not only an increase in the proportion of female college graduates choosing to go to law school, but also a decrease in the proportion of male college graduates.

Less visibly, the great surge of new entrants quickly transformed the age structure of the profession. The profession became much younger. The median age of lawyers dropped from 46 in 1960 to 39 in 1980. n5 The shape of the profession changed from a steep pyramid with slightly more younger [\*1085] lawyers than older lawyers to a broad-based pyramid, with its base consisting of the larger, new waves of law school graduates and its peak of the smaller number of lawyers in earlier cohorts. This change is displayed in a series of age pyramids, representing the profession at ten-year intervals since 1970, and projecting out to 2020 (Figures 3a-3f).

To appreciate the effects of the dramatic change in the absolute number of lawyers, we have to consider the relative number of lawyers of different ages. Let us take lawyers in their fifties to represent senior lawyers who occupy the top positions in the various segments of the profession, and lawyers in their thirties to represent young aspirants making their way. In 1970, for every 100 lawyers in their fifties there were 127 lawyers in their thirties. The ratio of younger lawyers rose abruptly to 174 just five years later in 1975, to 233 in 1980, to 284 in 1985. Thus, when the profession was at its youngest, in the mid-1980s, there were almost three times as many younger lawyers as older ones. After 1985, members of those large cohorts of 1960s entrants began to fill the ranks of older lawyers. The ratio of younger to older lawyers fell to 270 in 1990 and to 199 in 1995. Barring another massive surge of law school enrollments, the ratio of younger to older lawyers will continue to fall. If the number of entrants remains steady, by 2005 the ratio will be only 126 lawyers in their thirties for each hundred lawyers in their fifties - virtually identical to the ratio in 1970 - and by 2020 it will fall to 104 lawyers in their thirties for each 100 lawyers in their fifties. That is, the

broad-based age pyramid of the past quarter-century would be transformed into a steep wall with roughly equal numbers of lawyers at every age level.

The portent of these changes for the prospects of future practitioners is revealed by looking at the converse: the ratio of older to younger lawyers, again taking lawyers in their fifties to represent those in top positions in the various segments of the profession, and lawyers in their thirties to represent young aspirants (Figure 4). In a mirror image of the transition we have just traced, we see the number of older lawyers for each 100 younger lawyers fall dramatically from 79 in 1970 to just 35 in 1985 before it starts to rise again to 50 in 1995. And again, barring a major increase in law school enrollment, this ratio will continue to rise to 79 in 2005 - the 1970 figure - to an unprecedented 97 in 2020. After a generation during which older lawyers were relatively scarce compared to the abundance of younger lawyers, the profession is entering an era in which older lawyers will be equally plentiful.

[\*1086]

[SEE FIGURES IN ORIGINAL] [\*1087]

[SEE FIGURE IN ORIGINAL]

## II. The Changing Market for Legal Services

The impending replacement of a broad-based pyramid by a steep wall marks a return to the age structure of an earlier day, when there were similar numbers of lawyers in each age group. But the market for legal services and the organization of their delivery have undergone massive changes in the past forty years. To assess the impact of the changing age structure of the profession, we must take a detour and consider what we know about the market for legal services and about the shape of law firms.

### A. Changing Patterns of Demand

The consumption of legal services has increased dramatically over the past generation. This has registered in the larger portion of the U.S. economy occupied by legal services. Between 1967 and 1997, the legal services industry's share of the growing Gross Domestic Product (GDP) doubled from 0.64% to 1.3%.<sup>n6</sup> This is an underestimate of the total spending on legal services, for it does not include in-house legal services consumed by businesses or governments. Given the substantial growth of the underlying economy, this growth in share represents a very substantial increase in [\*1088] absolute size of the legal services industry. In constant 1987 dollars, the gross receipts of the U.S. law firms increased 239% from \$ 25 billion in 1972 to \$ 85 billion in 1992.<sup>n7</sup>

As the size of the legal services "pie" was increasing, there was a major change in the distribution of the pie. Figure 5 depicts the change in the portion of purchases of legal services by different categories of buyers.

[SEE FIGURE IN ORIGINAL]

An ever-increasing share of the ever-growing legal services "pie" is purchased by businesses and governments rather than individuals. In 1967, individuals bought 55% of the product of the legal services industry and businesses bought 39%. With each subsequent five year period, the business portion has increased and the share consumed by individuals has declined. By 1992 the

share bought by businesses increased to 51% and the share bought by individuals dropped to 40%. Individuals' expenditures on legal services increased 261% from 1967 to 1992, while law firms' income from businesses increased by 555% during that period. Even this more-than-double rate of growth understates the growth of business spending on legal services, for it [\*1089] includes only outside lawyers and does not include in-house legal expenditures, which greatly increased during this period. n8

More and more of the legal world is devoted to servicing organizations rather than individuals. The magnitude of the change in what lawyers do and who they do it for is illustrated by Heinz and Laumann's depictions of the distribution of the total effort expended by lawyers in Chicago in 1975 and 1995. n9 They estimated that in 1975 "more than half (53%) of the total effort of Chicago's bar was devoted to the corporate client sector, and a smaller but still substantial proportion (40%) was expended on the personal client sector." n10 When the researchers returned to the field twenty years later, they found that there were roughly twice as many lawyers working in Chicago. But in 1995, about 61% of the total effort of all Chicago lawyers was devoted to the corporate client sector and only 29% to the personal/small business sector. n11 Since the number of lawyers in Chicago had doubled, this meant that the total effort devoted to the personal sector had increased by 45%. But the corporate sector grew by 126%. n12 Increasingly the law is becoming an arena for routine and continuous play by organizations; individuals enter that arena briefly for a small number of standardized transactions (e.g., wills, real estate purchases) and in personal emergencies (criminal charges, serious injury, financial catastrophe). Few individuals can afford to engage in protracted legal activity. n13

## B. The Changing Organization of Law Offices

As the profession grew, at first an increasing portion of the new entrants were absorbed by government and private industry, but after 1980 the portion going to these settings declined and the portion going to private practice [\*1090] increased. The portion in private practice rose from 68% in 1980 to 74% in 1995. n14

[SEE FIGURE IN ORIGINAL]

When the profession's population explosion began, the contours of private practice were very different than they are now. Almost all lawyers were solo practitioners or in very small practices. In 1960, of the 206,000 lawyers in private practice, some 64% were solos. n15 In the entire country, there were about thirty-eight firms with fifty or more lawyers. n16 Today there are some 700,000 lawyers in private practice, of whom about 47% are solo practitioners, so the number of solos has grown roughly two-and-a-half times since 1960 from 132,000 to 329,000. The number of lawyers in firms has grown twice as fast, to more than five times its earlier size, from some 70,000 to roughly 370,000. In 1960, only a few thousand lawyers were in firms with fifty or more lawyers; today there are over 100,000. n17 A far greater portion of all private practitioners are involved in hierarchic organizations in which younger lawyers staff the lower reaches and older lawyers the upper echelons.

Lawyers in private practice are a diverse group engaged in supplying [\*1091] different kinds of services to different kinds of clients. Examining Chicago's lawyers, Heinz and Laumann conclude that

much of the differentiation within the legal profession is secondary to one fundamental distinction - the distinction between lawyers who represent large organizations (corporations, labor unions, or government) and those who represent individuals. The two kinds of law practice are the two hemispheres of the profession. Most lawyers reside exclusively in one hemisphere or the other and seldom, if ever, cross the equator. n18

Lawyers in the corporate or organizational hemisphere supply services to large businesses, government bodies, unions, and other organizations; those in the individual or personal service hemisphere serve individuals and their small businesses. Most solo practitioners and small firms work in the individual hemisphere. Lawyers who provide services for corporations and other organizations tend to be drawn from more prestigious law schools and to practice in larger aggregations.

The firms that inhabit the corporate hemisphere have a distinctive structure. They are divided into partners, who own the business, n19 and salaried associates, highly qualified law graduates who compete over an extended period (five to ten years) in a more or less meritocratic tournament in which only some are chosen to become partners; the others typically depart. This core of tenured and tenure-track lawyers is surrounded by a smaller periphery that may include temporary or contract lawyers, permanent salaried lawyers, and lawyers in an "of counsel" relationship. The latter may include those affiliated on a piecework basis and former partners who are retired or semi-retired. In terms of our academic analogy, the periphery consists of adjuncts and emeriti.

Firms organized around a promotion-to-partnership tournament contain an inherent growth dynamic; they tend to grow exponentially. n20 Virtually all the firms that service what Heinz and Laumann call the corporate client sector [\*1092] are organized this way. These firms contain somewhere between a quarter and a third of all private practitioners and include most but not all of the most prosperous practitioners and those with organizational clients. The remainder of private practitioners are solo practitioners or in (mostly) small firms that have not institutionalized a promotion-to-partnership tournament. Back in 1960, only a tiny fraction of private practitioners - perhaps two percent - practiced in this kind of large firm. As the market for legal services expanded, such firms grew and multiplied, so that by 1980 some 28,000 lawyers, over 7% of all those lawyers in private practice, were in firms of more than fifty lawyers. In the great legal boom years of the 1980s these firms grew and multiplied at an extraordinary rate. From 1980 to 1991, the number of firms with 51 or more lawyers almost tripled from 287 to 751, while the average size of firms grew from 95 to 140, so that the total number of lawyers in these firms quadrupled. By 1991, firms with over 50 lawyers included some 105,000 lawyers, 18% of a greatly enlarged number of private practitioners. This is an underestimate of lawyers in firms organized around this promotion-to-partnership tournament; for a large number of firms with less than fifty lawyers are organized this way and extremely few, if any, firms of more than fifty lawyers are not organized in this way.

[SEE TABLE IN ORIGINAL]

From 1991 to 1995, the overall size of the large-firm sector remained unchanged, engaging a smaller portion of all lawyers in private practice. The number of large firms fell, leaving a smaller number of slightly larger firms. After 1995 the large-firm sector resumed its growth, but at a slower pace. Since the ABF data takes us only to 1995, the best available data is the National Law Journal's annual survey of the 250 largest law firms, which has [\*1093] been compiled since 1983 and lists the size and composition of the largest 250 law firms each year. n21

[SEE FIGURE IN ORIGINAL]

Firms in the large-firm sector continue to grow in size. In 1983, the average size of the NLJ 250 firms was 138 lawyers. By 1991 that average size almost doubled to 273. After a dip in the early 1990s, the average size continued to increase, but at a much slower rate, to 305 in 1998. Although the size of the partner-associate core continues to increase, Figure 7 shows the periphery is growing faster than the core. "Other" lawyers, who were neither partners nor associates, grew from 4.4% of the NLJ 250 population in 1990 (the first year they were counted as such) to 8.2% in 1998. n22

The large-firm sector seems likely to grow with the continuing increase in the volume of legal services purchased by businesses. The increase in the size of individual firms suggests that many of the existing large firms will [\*1094] continue to grow. But it is less certain that there will be a multiplication of large firms matching that of the past generation. Our uncertainties are accentuated by the specter of so-called multidisciplinary practice - whether and how accounting firms and others will practice law, and how law firms might expand into other work.

### III. Growing Old in the New World of Law Practice

Old and in the way

That's what I heard them say

They used to heed the words he said

But that was yesterday n23 Within the large-firm sector the 1970s saw the dissolution of the world of assured tenure, infrequent lateral movement, and enduring retainer relationships with loyal, long-term clients. In its place rose a world of rapid growth, mergers and breakups, overt competition, aggressive marketing, attorney movement from firm to firm, fears of defection, and pervasive insecurity. n24 Throughout the industry relations are more fluid: The mobility of clients is matched by the mergers and breakups of firms and by the increased mobility of individual lawyers. Within the firm, the tournament is prolonged. Earlier, the fortunate few who gained partnership in a sizable firm acquired a kind of tenure. Partners could anticipate billing fewer hours with the passing years and could expect to stay on at the same firm until a dignified, often gradual and partial retirement, beginning in their late sixties. n25

But the expectations surrounding partnership have been drastically reduced in the new competitive environment. Partners are under mounting pressure to maintain a high level of performance that fits the business strategy of the firm. They are expected to bring in business as well as to contribute to firm revenues by billing long hours. As firms accumulate ever-larger cadres of partners, there is increasing pressure on lawyers over fifty, apart from rainmakers and a few specialists and superstars, to make way for younger partners and eventually to leave. One ex-partner in a large Chicago [\*1095] firm put it, "When you're in your 50s, if you don't bring in enough business, you get pushed." n26 As with professional athletes, there are real possibilities of late-career downward movement. Many new features of the law-firm world (mergers, lateral movement) amplify the power of dominant lawyers within a firm to sanction their errant colleagues, and the prevalent culture endorses such sanctions. By the early 1980s, there were reports of partners having their prerogatives or shares reduced or even being "de-equitized" n27 or "departnerized" n28 or pushed off the iceberg altogether. n29 One observer summed it up: "The rules of the game clearly have changed." n30 A 1991 survey of large law firms found that 60% of those that responded had asked partners to leave during the previous eighteen months. n31 The unassailable [\*1096]

security and tenured prerogative of partnership is no longer assured. "Partnership used to be for life, but it is no longer." n32

In such a volatile atmosphere collegiality gives way to distrust. Lawyers find themselves competing not just with lawyers in other firms, but "with their own partners and even the associates coming up the ladder." n33 One partner reports:

Now you can't trust anyone. You have lunch with a colleague, and the next week, he's taken his clients to another firm. Watch your back, or the guy down the hall will try to have you kicked out because your billings are down that year. It's every man for himself. n34

Another reports that "older partners shield their clients. Younger partners try to steal them." n35 Lawyers complain of the decline of collegiality. The bonds of fraternity are frayed. The decline of trust is marked by the appearance since the 1980s of a series of jokes about lawyers as betrayers of trust in which the treachery is typically against a partner or other professional peer. n36

Firms concerned about an excess of highly paid older lawyers and the need to create space for newly promoted partners have enacted new retirement policies that provide for mandatory retirement at lower ages and for earlier voluntary retirement. For example, at Milbank Tweed, "the age at which partners can retire with full benefits [was lowered] from 62 to 55 [and] the executive committee was given authority to require partners who reach 55 to retire." n37 The devaluation of older lawyers is cumulative: As the ranks of [\*1097] their contemporaries thin out, the value of each survivor's network diminishes. n38

Increasingly, large-firm practice has become a young person's game. A 1999 survey of 34 Chicago firms, ranging in size from 21 to 371 lawyers, found only 17.1% were over fifty years of age (compared to over 30% of the lawyer population of Illinois). n39 In the 28 firms with more than 50 lawyers, 16.8% of the lawyers were over fifty; in the eight smaller firms, 21.9% of the lawyers were over fifty. This pattern is confirmed in a comprehensive picture of American law firms in 1995, derived from the American Bar Foundation's 1995 Lawyer Statistical Report. n40 In firms of more than 50 lawyers, the median age of associates was thirty and the median age of partners was only forty-three. Only 13% of the partners in these firms were fifty-five or older and only 3% were over sixty-five. There is an inverse relationship between the size of firms and the presence of older partners - the larger the firm, the thinner the presence of older lawyers. As Figure 8 shows, almost a quarter of partners in two-person firms are over fifty-five, but the percentage declines regularly with firm size, so that in firms of over 100 lawyers, just over an eighth are over fifty-five. (This probably reflects the more ample retirement and pension plans in larger firms. It may also reflect a cohort effect: that succeeding groups of younger lawyers have chosen to practice in larger firms. Finally, it may be an artifact of the winnowing effect of retirement, so that as partners retire with the passage of time, the units containing the surviving partners tend to be smaller.) But whatever the reason for their absence, the figures suggest that lawyers in large firms are likely to end their partnerships earlier than their counterparts in smaller firms. We saw earlier that the size of firms in the large-firm sector continues to increase, suggesting that the opportunities for older partners may be expected to decline further.

[\*1098]

[SEE FIGURE IN ORIGINAL]

How will this change in the age structure affect the prospects of young lawyers making their way in a profession staffed by twice as many older lawyers as was the case for their predecessors a generation earlier? And how will it affect the fortunes of those larger cohorts of older lawyers?

The shape of lawyers' careers is going to change radically because of the presence of a much greater number of older lawyers. But the changes will not be the same in the two hemispheres of the practicing bar. Among the solo and small-firm practitioners who serve individual and small business clients, there will be ever more lawyers competing for business. The number of lawyers in solo practice and smaller firms will continue to increase in the coming decades. A larger portion of the future increments of additional lawyers will end up in these practices because even with renewed growth in demand, the large-firm sector is not likely to absorb a much larger portion of new entrants. Supply will increase even more rapidly than the number of lawyers, as new technologies for retrieving and generating documents will make lawyers more productive in handling many of the staples of this kind of practice (wills, real estate closings). And new business formats will make them more efficient in delivering services. n41 In addition, non-lawyer advocates, banks and trust companies, and paralegals will be competing for important segments of this business. n42

**[\*1099]**

[SEE FIGURE IN ORIGINAL]

Demand for the services of small practices can be expected to continue to rise as individual wealth increases. But it will fall short of the expected increases in supply. Lawyers in this sector have been experiencing falling real incomes for several decades. n43 With an increasing number of better-equipped lawyers (and non-lawyers) competing for this business, the prospect for higher incomes is remote. n44 Typically, lawyers in this sector have been able to remain in practice into their sixties and seventies. But as competition **[\*1100]** intensifies, many in this sector will find themselves underemployed.

In the large-firm sector, as we have seen, the overall total of business is likely to increase more rapidly. Could firms add partners in sufficient numbers to accommodate a sufficient number of promotions from the associate ranks while retaining the larger number of existing partners until the traditional retirement age? Firms have no choice but to promote the most productive associates to partnership, for such promotion is the prize that energizes the tournament and enables the firm to compete in the market for new talent. But as the size of the partnership grows, to maintain the income of the partners requires additional revenue. This can derive from an increase in billing rates or an increase in hours billed, which may, in turn, be billed by the same number of lawyers or by a larger number. After a prolonged period of firms pressuring lawyers to bill more and more hours, there is not much further to go in increasing hours. Billing by a larger number of lawyers means more associates, which soon leads to pressure for more promotions. In an increasingly competitive market, an increase in billing rates is difficult to achieve. Billing more hours means finding more work. While some individual firms will succeed in finding substantial amounts of new work, the revenues of large firms taken as a whole can grow only as fast as overall business spending on legal services. And some part of that spending may be diverted to accounting firms and other business consultants, who are increasingly competing for the available work in this sector. Even if the same number of lawyers are engaged, accounting firms are more highly leveraged than law firms, so fewer of these lawyers will be partners. There is no reason to think that interdisciplinary practices will significantly increase the aggregate amount of work for lawyers.

In the end, many lawyers otherwise eligible to be partners will not be because the firms cannot accommodate them. In some cases they will not be promoted - but there is a severe limit on how far firms can restrict promotions to partnership, since they have to keep promoting to maintain the motivation of associates and to position themselves in the hiring market for young lawyers. As Figure 9 shows, even during the downturn in the early 1990s, large firms did not stop promoting young people; the number of partners increased by roughly the same percentage each year, even as the number of associates fell. n45

If firms are constrained in their ability to limit promotion, the pressure to curtail the size of the partnership will fall on those who are already partners - to leave gracefully, take early retirement, accept "of counsel" [\*1101] status, or to hang on with diminished status and a reduced share. In consequence, the shape of a career in large law firm practice is changing from a life-long trajectory, culminating as respected elder, to a compressed period of twenty to thirty years of intense and lucrative involvement, followed by a long "retirement." Unlike the old country doctor or lawyer who died in harness, a career in corporate law is beginning to resemble one in investment banking, where careers phase out by one's late forties. An even closer analogy is the military, where career officers leave the service in middle age, except for the few slated to move into the highest ranks. Just as military people anticipate and plan for their second careers, so big-firm lawyers will be pressed to think about "what next?"

It seems highly probable, then, that many of the much larger number of over-fifty lawyers that will soon populate the profession will be involuntary retirees, under-employed, or otherwise inclined to forsake their practices. Many of these people will be financially secure and in good health. Increasingly, a significant portion will be women. Although we have some basis in experience for anticipating the preferences of male lawyers in navigating the later stages of their careers, there is virtually no information from which to predict the choices of these large cohorts of older women lawyers. There are, of course, presently a small number of older women lawyers, but a good portion of those who entered law school before the great surge of women in the late 1960s are atypical pathbreakers and pioneers, from whom it would be very risky to generalize to the broader and more varied group of women who followed them after 1970.

[SEE FIGURE IN ORIGINAL] [\*1102]

#### IV. A Second "Public Service" Career

America's older lawyers form an immense and rapidly growing pool of human capital - roughly equivalent in size to the legal professions of the entire European Union. Absent some major changes in the organization of professional opportunities, much of this human capital will be under-utilized. Surely, there will be many ideas about how to employ this wonderful resource. Since one size does not fit all, there is ample room for ideas here. I would like to use the opportunity of the Fairchild Lecture and the example of Judge Fairchild himself to advance one for your consideration.

##### A. Unmet Legal Needs

In spite of the very large number of lawyers practicing in the United States, many persons and interests are underrepresented and underserved by the justice system. As law has become ever more technical, complex, and expensive, the legal system has been increasingly congenial to corporate actors and increasingly inhospitable to individuals. The poor have little access to the protections and

remedies promised by the law. Few individuals can afford to be players unless they are connected to a corporate actor or have injuries that fit the investment strategies of entrepreneurial lawyers. n46 Many of our interests as citizens and consumers are unrepresented in legal forums because they are diffuse and unorganized. They do not command representation in the private "fee for services" legal marketplace.

The broader public is keenly aware of the disparities in access to justice and believes that legal institutions are more responsive to those with superior fiscal and organizational resources. Survey research reveals a sanguine public estimation that the legal system is biased in favor of the "haves." Twenty years ago, 59% of a national sample agreed that "the legal system favors the rich and powerful" over everyone else. n47 Ten years ago, when asked whether "the justice system in the United States mainly favors the rich" or "treats all Americans as equally as possible," 57% percent of respondents chose the "favored the rich" response and only thirty-nine percent the "equally" response. n48 In a 1995 survey conducted by U.S. News & World Report, fully three-quarters of the respondents thought that the American legal system affords less access to justice to "average Americans" than to rich [\*1103] people - and four out of five of these thought "much less." n49 The same poll shows the public placing responsibility for this imbalance squarely on lawyers. Respondents were asked: "Here are some things that people say about lawyers. Which on of the following comes closest to your views? Lawyers have an important role to play in holding wrongdoers accountable and helping the injured. Lawyers use the legal system to protect the powerful and get rich." n50 Fifty-six percent affirmed the "protect the powerful and get rich" response; only 35% the "helping" response. n51 In August 1998, only 33% of respondents to a national survey thought, "Courts try to treat poor people and wealthy people alike." n52 Half a year later in another national survey, 80% of respondents thought that the "wealthy" receive better treatment from the courts than do other people, and two-thirds agreed that "when a person sues a corporation, the courts generally favor the corporation over the person." n53

To offset these imbalances, other vehicles for delivering legal services have emerged, notably legal services for the poor and public interest law. n54 But the entire legal services for the poor/public interest law sector is vanishingly small. It is estimated to comprise about 6,000 full-time equivalent lawyers - about seven-tenths of 1% of the whole body of American lawyers. n55 Expenditures on legal services for the poor are a tiny [\*1104] and shrinking fraction of the total amount spent on legal services in American society. n56

In 1982, the first year for which we have data to make such a comparison, funding of civil legal services for the poor equaled only eight-tenths of 1% of the amount received from all clients of the legal services industry, n57 and 1.9% of receipts from clients who were individual persons. n58 By 1992, funding for civil legal services for the poor was equivalent to less than six-tenths of 1% of the total received by the legal services industry, and less than 1.5% of the amount received from clients who were individual persons. n59 By 1997, the share of the poor fell further to just over four-tenths of 1% of the total receipts of the legal services. In the course of fifteen years, the relative share expended on civil legal services for the poor was halved.

## B. The Supply of Legal Talent

On the one hand, there are by any measure vast unmet legal needs. On the other hand, there is the prospect of an abundance of experienced but underemployed older lawyers. Can these be joined in a way that would deliver desperately needed legal services and at the same time provide fulfilling

work to lawyers? Imagine that among the hundreds of thousands of experienced lawyers in their fifties and sixties, there is some fraction who would, if a path were readily available, choose to proceed to a second career as lawyers for the poor or for the public interest - let us call this public service lawyering. I make no claim that such an inclination is typical or modal. We know that when they enter law school, many law students think this is what they want to do. Several studies describe the decline of student [\*1105] commitment to this kind of legal career over the course of law school. n60 Although law school tends to reduce the commitment to these kinds of practice, at the end of law school there are still far more students inclined to do such work than the job market can absorb. Among lawyers who have spent many years in other practice settings, these original impulses may have survived or revived in some; for others the attraction may be new.

### C. Building Institutions to Connect Lawyers to Needs

The juxtaposition of a desperate need for public service work and the presence of skilled lawyers with an inclination to take up that work is not in itself sufficient to bring about an enlargement of the public services sector. In a dammed-up river a few resolute salmon may scale incredible obstacles to reach their ancestral spawning ground; similarly, a few determined or lucky aspirants presently find their way from private practice to a rewarding place in public service work. For most who might like to make this journey, there are no paths to follow through the obstacles that abound. We need to think about facilitating this transition. Just as wildlife managers build ladders to enable large numbers of salmon to proceed upstream, we need to institutionalize paths for lawyers to make this journey.

We cannot assume that there is a single format that will utilize older lawyers most effectively, nor that the existing array of practice formats will succeed in enlisting and retaining older lawyers. The most obvious path is to have older-lawyer volunteers augment existing legal services offices. There is some basis for concern about the mismatch between legal services work and skills of lawyers from private practice, particularly those who have spent a career in the corporate sector. The experience of most corporate [\*1106] lawyers is not in areas of law relevant to practicing for poor people. This discrepancy might be substantially obviated by training programs. And this objection may reflect too narrow a view of the legal needs of public service clients. I recently heard an account of a very innovative program for housing families with foster children and the elderly at an abandoned air force base. n61 It was evident that a team of transactional lawyers would have greatly facilitated the project. This is not a singular occurrence. In interviews with sixty-nine Chicago lawyers identified as working with organizations that focus on civil rights and urban poverty issues, Ann Southworth found that about twenty percent of the projects described were primarily planning projects in which the lawyers "counseled, negotiated, drafted legal documents, and identified resources for their clients." n62 An infusion of lawyers with expertise in ERISA or banking law may usefully broaden the repertoire of the legal services sector, turning these into tools to address the problems of poor clients.

A second format would be free-standing "firms" of legal services providers. Let me give a single and impressive example: I recently encountered Warren Sinsheimer, a retired New York corporate lawyer, who after four years with Westchester Legal Services, has founded Legal Services for Children, which appears to be the first non-profit actively and systematically recruiting and training retired law firm partners (and "women who had left the profession to raise families"). n63 Legal Services for Children will serve poor children but will take some cases from non-poor clients that

are relevant to its concerns. For now, it is funded by gifts and grants, but it expects to cover sixty percent of its budget by fees in three years. n64 In addition to such front-line providers, one might imagine older lawyers staffing specialized backup facilities, particularly on matters in which the aggregate experience of the public service community is thin (e.g., banking transactions).

A third format would be for retired lawyers to remain at their old firms and serve as a pro bono department. n65 This would enable firms to fulfill their pro bono obligations while providing an attractive post-retirement option for [\*1107] partners.

A fourth format would be the law school clinic, where the availability of retired lawyers might allow a significant increase in staffing levels and mentoring potential.

Each of these settings will surely reveal cultural as well as organizational challenges in arranging these practices. Generally, there may be some concern about the compatibility of retired lawyers, especially from the corporate sector, with those they will deal with in these settings. Corporate lawyers may lack skills specific to dealing with poor clients and obstinate bureaucrats, but they are not strangers to dealing with foolish and difficult people. In the "old firm" setting, there are problems of resources (especially space), firm culture, and positional conflicts. In the setting of the legal services office, one might imagine some difficulty integrating senior lawyers, accustomed to superior physical facilities, deferential treatment, and a higher level of resources and support services. Although they may have to adjust to resource constraints, corporate lawyers may find gratifying the higher degree of professional autonomy they enjoy, compared with corporate practice. n66 Yet they may find it difficult to subordinate themselves to more experienced "lifetime" legal services attorneys who are younger and lack the indicia of status. These career legal services people, in turn, may feel their expertise is not being acknowledged; and they may view volunteers who have not shared their sacrifices and frustrations as insufficiently dedicated.

Notwithstanding the cultural problems, retired lawyers might bring the public services sector not only a major increase in manpower, an enlarged repertoire of expertise, and new political support, but an infusion of lawyers able to act independently and assertively on behalf of their clients, free of career and command pressures.

#### D. Personal Fulfillment

In terms of personal fulfillment, there is reason to anticipate a very substantial payoff from a shift to public service lawyering. As people age, they experience a deficit of meaning and purpose in their lives. Psychologists have "documented cross-sectional declines in purpose in life and personal [\*1108] growth in older adults compared with middle-age and younger adults." n67 For American professionals, much of their sense of purpose and growth is connected with their work.

The polemical literature serves up images of desolate and despondent lawyers. n68 But more reliable research suggests that overall, lawyers are about as satisfied as any occupational group. n69 That research reveals striking differences in satisfaction between different sectors of the profession. Public interest work seems to promote the most intense feelings of satisfaction among its practitioners and private practice, especially in large firms, the least. Curiously, those lawyers with the highest incomes and in specialities that enjoy the greatest prestige are on the whole least satisfied with their lives as lawyers.

A study of the contemporary Chicago bar finds public interest lawyers the most satisfied and those in large-firm practice the least satisfied, with government and corporate lawyers in the middle. n70 A similar pattern emerges from a more detailed study of graduates of the University of Michigan Law School, which surveys its alumni about their careers five years, fifteen years, and twenty-five years after graduation. n71 Kenneth Dau-Schmit and Kaushik Mukhopadhyaya analyzed the responses to the satisfaction item for two sets of graduates: the classes of 1987-1991 five years out, and the classes of 1977-81 fifteen years out. n72 Satisfaction varied greatly by practice setting. Among the "five years out" lawyers, those in public interest work and legal education were most satisfied, followed by government lawyers and in-house counsel. Lawyers in private practice were far behind, with those in small practices more satisfied, and medium and large practices at the bottom. Among their counterparts who had been out ten years longer, there was little change in [\*1109] relative rankings. Education and public interest remained at the top; in-house lawyers caught up with government lawyers in the middle rank; and lawyers in private practice still trailed behind every other work setting. Fifteen years out, those in private practice were substantially more satisfied than their five-years-out counterparts. The distinctively low satisfaction scores of those in medium and large firms were replaced by scores much closer to those of small firm lawyers. The low five-years-out scores apparently reflect the unhappiness of associates in the large firm setting. By fifteen years out, selection (including self-selection) had eliminated those most unhappy in this setting and partnership had increased the satisfaction of the survivors. n73

The remarkable concurrence of these two studies suggests that lawyers' satisfaction and personal fulfillment diverges considerably from the conventional external marks of success. n74 It is not correlated with income, nor with prestige, both of which overlap substantially with large-firm practice in the corporate hemisphere. The prestige of any given lawyer reflects his or her individual characteristics and accomplishments, but also the kind of practice he or she is engaged in. Heinz and Laumann found that although there was some correlation between the prestige of a practice speciality and the income of those who practiced it, income did not explain the distribution of prestige among specialties. n75 The prestige ranking of legal fields, they report, mirrors the structural division of the profession, "with fields serving big business clients at the top and those serving individual clients (especially clients from lower socioeconomic groups) at the bottom." n76

Is this contrarian capacity to generate satisfaction and fulfillment intrinsic to public service work? Or is it an artifact of selection, so that this effect is produced only in the self-selected few who embark on these careers? The disparity and the stability of relative satisfaction levels from one practice setting to another suggest that there is something going on independent of selection - for why would we think the matching was so much better in every other setting than private practice? Might some of the rewarding sense of purpose and meaning experienced by those in public service work be captured by those who turn to it late in their careers? Many private [\*1110] practitioners embarked on legal careers thinking that public service work was what they wanted to do. Do the minority who actually went into public service carry some special predilection to find fulfillment in that work that is not present in those whose original inclination to public service did not survive the culture of the law school or the contingencies of the job market?

We cannot be sure of the answer to this. But several considerations commend some optimism. First, the fraction of lawyers who make this transition to public service work need not be very large. For example, if just 1% of lawyers over fifty were to follow the second career option, the supply of lawyers for the poor and underrepresented would be significantly enlarged.

Second, the timing is fortuitous. In the coming decade, those in commanding positions in firms and in the legal establishment and the bulk of lawyers over fifty will be drawn from cohorts likely to be responsive to the appeal of public interest and public service. The lawyers who will be proceeding through their fifties in the coming decade went to law school in the period from the mid-1960s through the late 1970s - a time of ferment, excitement about poverty law and public interest law, and misgivings about corporate practice. n77 If there is any cohort of lawyers among whom the appeal of public service work should be revivable, it is the law graduates of this period.

#### E. Professional Renewal

For the legal profession as a whole, an increased commitment to public service may be expected to produce a number of welcome side effects.

(1) Public Image. In recent years public estimation of lawyers' honesty and ethics has fallen. n78 The legal profession suffers from one of the lowest confidence levels of any prominent American institution. In a 1999 survey, only 14% of a national sample were "very confident" of lawyers, compared to 46% for doctors, 39% for accountants, and 37% for organized religion. n79 Although the causes of public antagonism toward lawyers are complex and not reducible to simple reaction to the behavior of lawyers, one of the grounds on which the public is critical of the profession is its perceived lack of devotion to justice. In a national survey conducted in 1993, respondents [\*1111] were asked to compare contemporary lawyers with those of the past. "The public contends," the researchers concluded, "that lawyers have suffered the greatest decline in the areas of defending the underdog, providing leadership in the community, and seeking justice." n80 While one might argue that the image of the profession's past that underlies these judgments is idealized, the verdict of a "public service" deficit among present-day lawyers is undeniable. Some 64% of respondents thought that lawyers had completely or partially lost the trait of "a seeker of justice," and 55% thought they had completely or partially lost the trait of "a defender of the underdog." When asked what sort of information improved their opinion of lawyers, the response most frequently chosen was, "Many lawyers provide free legal services to the needy and to local charities that help the needy." Forty-three percent of respondents said this would improve their opinion a lot, and 27% said it would improve their opinion some. n81 Expanding legal services may not be a priority for most Americans, but pro bono delivery of such services elicits approval.

(2) Professional Self-Image. Large sections of the legal profession have embraced a picture of calamitous decline - loss of collegiality, blunting of public service, rampant commercialism - inspiring a great outpouring of nostalgia for the "good old days." n82 The declension scenario is not new and the imaginary good old days are not a useful model for the future. On the other hand, a visible migration of a sizable number of lawyers, including many prominent and prosperous ones, into public service might help to restore some elan and sense of purpose to the profession.

As we saw earlier, the prevailing system for according prestige within the profession is attuned to the provision of service to large corporate organizations. Before the most recent intensification of the commercial imperatives in law practice, Laumann and Heinz found that in Chicago

the most important feature of a legal specialty in accounting for its relative prestige standing is its pro bono score. The higher a specialty stands in its reputation for being motivated by altruistic (as

opposed to profitable) [\*1112] considerations, the lower it is likely to be in the prestige order.  
n83

For significant numbers of lawyers who are high in the existing prestige hierarchy to move from commercial work to public service work, reaffirming public service as a value that is central to professional identity, would recast the system of professional prestige and open possibilities for reconstructing the profession's sense of its role.

(3) Legal Education. Finally, the change in the shape of legal careers would challenge the law schools to redefine their mission, after an era in which they have increasingly accepted the role of trainers and hiring halls for the large-firm sector. Law schools might enlarge the mandate of their placement services to include late-career transitions as well as initial placements, develop retraining programs, mount expanded clinical operations utilizing senior lawyers, conduct research on lawyer careers, and adapt their curricula to dawning student awareness that large-firm careers are not likely to occupy all of one's working life.

## V. Conclusion

Addressing these issues is a useful place to begin thinking what law practice will be like with the one and a quarter million lawyers that will be on the scene by 2020. By courtesy of new technologies they will be more productive and better informed. About forty percent of them will be women. More than half will be over fifty. Will definitions of eminence and success remain unchanged? Perhaps the definitions of success most familiar to us are tied to a particular historical moment, the great expansion of the profession that for a generation shaped a world of many young lawyers and relatively few older lawyers, a world meshed perfectly with the expanding firm hierarchies that were capable of delivering a satisfying career, albeit stronger on monetary than other career satisfactions. But the second demographic transformation, which ordains that only a declining minority of an older profession can play this out and for a shorter span, portends both a change in forms of practice and corresponding changes in ideas of professional success.

These effects are speculative, but the demographic change discussed here is not. It is already in the pipeline. It is going to happen. There are going to be hundreds of thousands of older lawyers who were not there before. Absent astonishing and sudden change in the pattern of demand for legal services or in the structure of law firms - either of which seems [\*1113] unlikely - it is probable that many of these lawyers will be at loose ends and many in the large-firm sector will be involuntarily retired. What is problematic is whether some small portion of these lawyers could be enlisted for a second career in public service lawyering. The difficulties are formidable, but it is time to start thinking about ways of facilitating such enlistment and utilizing this vast pool of talent and experience.

The aging of the legal profession is our little piece of a much wider phenomenon of the aging of the baby boom generation. It is also an instance of structural lag - in which the institutions of private law practice are not articulated to the new population structure produced by demographic shifts, longer life expectancy, and better health. The future remains tantalizingly hidden, but some of its contours are discernable through the mists. These outlines enable us to begin planning for the inevitable transition that presents a great opportunity and a great challenge to our lawyerly ingenuity.

[\*1114]

[SEE TABLES IN ORIGINAL] [\*1115]

[SEE TABLE IN ORIGINAL] [\*1116]

[SEE TABLES IN ORIGINAL] [\*1117]

[SEE TABLE IN ORIGINAL]

#### FOOTNOTES:

n1. George Bernard Shaw, quoted in Peter G. Peterson, *Gray Dawn: How the Coming Age Wave Will Transform America* (Afterword) (1999).

n2. See *Historical Statistics of Legal Education* 8 (Carl A. Auerbach comp., 1997). These figures are for ABA-approved schools, which numbered 132 in 1960, 171 in 1980, and 175 in 1995. In the latter year there were 37 non-approved schools who enrolled less than 10% of all law students. The percentage of practicing lawyers supplied by these schools is less than their enrollment would indicate, since many of their students do not graduate and many of their graduates do not gain admission to the bar. See Richard Abel, *American Lawyers* 269 (1989).

n3. The informational tables underlying this and subsequent figures are located in the Appendix.

n4. This (and other) projection(s) presented here are based on the assumption that the trends that have prevailed since 1960 will continue without major change.

n5. See *The U.S. Legal Profession in 1995*, *The 1995 Law. Stat. Rep.* (American Bar. Found., Chicago, Ill.), 1999, at 4 [hereinafter 1995 Lawyer Statistics Report].

n6. See Bureau of the Census, U.S. Dep't of Commerce, 1992 Census of Service Industries, SC92-S-5, Miscellaneous Subjects tbl.25a (Feb. 1996); *Economic Report of the President: Census of Service Industries*, H.R. Doc. No. 104-002, at 274 (1995).

n7. These figures are drawn from the Census of Service Industries conducted by the Department of Commerce every five years, for the years ending in "2" and "7." The Census Bureau's category of "Legal Services" includes all law practices that have a payroll, which means virtually all lawyers in private practice. It does not include in-house lawyers within corporations or associations; nor does it include government law offices. For exclusion of in-house legal services from Census of Service Industries, see Bureau of the Census, U.S. Dep't of Commerce, *Introduction to 1982 Census of Service Industries* at iv, vi (1984).

n8. See Bureau of the Census, U.S. Dep't of Commerce, 1992 Census of Service Industries, Miscellaneous Subjects tbl.25a (Feb. 1996); Bureau of the Census, U.S. Dep't of Commerce, 1987 Census of Service Industries, Miscellaneous Subjects tbl.45 (July 1991). For the 1967-1982 expenditures and dollar figures, see Richard H. Sander & E. Douglass Williams, *Why Are There So Many Lawyers?: Perspectives on a Turbulent Market*, 14 *L. & Soc. Inquiry* 431, 441 (1989).

n9. See generally John P. Heinz & Edward O. Laumann, *Chicago Lawyers: The Social Structure of the Bar* (1982); John P. Heinz et al., *The Changing Character of Lawyers' Work: Chicago in 1975 and 1995*, 32 *L. & Soc'y Rev.* 751 (1998) [hereinafter Heinz et al., *Changing Character*].

n10. Heinz & Laumann, *supra* note 9, at 42.

- n11. See Heinz et al., *Changing Character*, supra note 9, at 765 tbl.3.
- n12. To the extent that lawyers serving the corporate sector were able to combine more staff and support services with their effort, these figures understate the gap in services delivered.
- n13. See Gillian Hadfield, *The Price of Law*, Mich. L. Rev. (forthcoming) (corporate buyers outbid individuals for legal talent).
- n14. See 1995 Lawyer Statistics Report, supra note 5, at 7 tbl.4.
- n15. See id. at tbl.5.
- n16. See Erwin Smigel, *The Wall Street Lawyer* 43 (1969).
- n17. See 1995 Lawyer Statistics Report, supra note 5, at 8 tbl.6.
- n18. Heinz & Laumann, supra note 9, at 319.
- n19. In many firms, the owner stratum is smaller than the number of those listed as partners, since these listings sometimes include lawyers who are not "equity partners."
- n20. See Marc Galanter & Thomas Palay, *Tournament of Lawyers: The Transformation of the Big Law Firm* (1991). For recent wrinkles on the tournament, see David Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Market of Elite Law Firms*, 84 *Va. L. Rev.* 1581 (1998).
- n21. From 1978 to 1982, there was a comparable NLJ 200. Unlike the American Bar Foundation data, which is based on individual listings in the Martindale-Hubbell directory, the NLJ 250 is based on aggregate estimates provided by the firms themselves. In 1991 and 1995, the NLJ 250 firms were roughly the upper three-quarters of the firms larger than 100 in the ABF surveys. With some allowance for the different methods of counting, in which ABF is more conservative in its estimates of firm size, the difference represents firms between 101 lawyers and the size of the smallest NLJ 250 firm - 129 in 1991, 131 in 1995 (the NLJ is available online at <<http://www.ljx.com/nlj/>>).
- n22. There is a puzzle here: Where were these lawyers counted in earlier years? Presumably, there were a couple of thousand in the years before 1990. Were they just left out (in which case the increase in the NLJ 250 population in 1990 is mostly the inclusion of these previously left-out lawyers), or were they included in associates? Or in partners?
- n23. David Grisman, *Old and in the Way*, on *Old and in the Way* (Sugar Hill Records 1975).
- n24. See Galanter & Palay, supra note 20, at 47-68.
- n25. See Rita Henley Jensen, *Pensions: Unfunded, Unloved*, Nat'l L.J., Mar. 19, 1990, at 1 (reporting that as late as 1990 a survey of 456 law firms, with a median size of 30 lawyers and over 50 firms with more than 100 lawyers, found less than 1% had mandatory retirement ages below 65); cf. Edward A. Adams, *Positioning Milbank Tweed for the 1990s*, N.Y. L.J., Dec. 24, 1990, at 1 (reporting that one consultant claimed that the average law firm retirement age was 62).
- n26. Peter J.W. Elstrom, *Law of Survival Claims* 6 McDermott Will Partners, Crain's Chi. Bus., Aug. 28, 1989, at 3.

n27. See Randall Samborn, Rudnick & Wolfe Partners "De-Equitized", Nat'l L.J., Nov. 20, 1989, at 2 (reporting that at least eight partners in a 238-lawyer Chicago firm had their equity interest taken away).

n28. See Margaret Cronin Fisk, What Does the Future Have in Store?, Nat'l L.J., Sept. 26, 1988, at 49, 50.

n29. See, e.g., Peter W. Bernstein, Profit Pressures on the Big Law Firms, *Fortune*, Apr. 19, 1982, at 84, 100 ("Dissatisfied with the performance of some of its partners, Willkie Farr and Gallagher of New York has asked about a half dozen to leave ...."); Bruce D. Heintz, Elements of Law Firm Competition, Nat'l L.J., Dec. 26, 1983, at 15 ("With profits being squeezed and competition on the rise, many firms can no longer afford to support these ['unproductive' or 'disaffected'] partners. Firms are trying to 'rehabilitate' these partners, decreasing some partners' incomes and asking others to leave."); Associated Press, Mass Firing in Seattle, Nat'l L.J., July 24, 1989, at 2 (reporting that toward the end of the decade a long-established 87-lawyer Seattle firm dismissed eight partners, along with six associates, on the ground, according to the firm's chair, that "the firings were necessary to increase profitability and keep talented attorneys from being hired away"); Christi Harlan & Wade Lambert, Legal Work for Banks Worries Insurers, *Wall St. J.*, Nov. 29, 1990, at B4 (reporting that Rogers & Wells, a 335 lawyer New York firm, "asked about 15 partners to leave the partnership," and that about ten of those dismissed would leave and the others would retire or continue to work on an "of counsel" basis); T.Z. Parsa, Brief Grief, *N.Y. Mag.*, June 21, 1999, at 24, 27 ("In 1994, a cabal of young Cadwalader [Wickersham & Taft] partners won control of the firm's management committee ... [and] managed to oust seventeen older partners - partners who were being paid far more than their practices were worth, it was felt."); John Schmeltzer, Sidley Shuffles Partners' Status, *Chi. Trib.*, Dec. 8, 1999, 3, at 1 (reporting that in December 1999 at Sidley & Austin, some "20 attorneys in their mid-to-late 50s and early 60s ... [were] switched from partner to "senior counsel" and "more than a dozen" younger partners who were predominantly "servicing clients rather than developing new clients, as partners are expected to do," were relieved of their partnerships and given "counsel" status).

n30. Lee Ann Bellon, Surviving a Firm's Shakedown, Nat'l L.J., Nov. 13, 1989, at 17, 17.

n31. See Jonathan M. Moses & Ellen Joan Pollock, Two EPA Hazardous-Waste Rules Are Thrown out by Appeals Court, *Wall St. J.*, Dec. 9, 1991, at B6. Unfortunately the survey, conducted for Hildebrandt Inc., had a low response rate: Of the 500 largest firms, only 105 responded. See *id.*

n32. Bernstein, *supra* note 29, at 100; see also David Margolick, Pink Slips for Law Firm Partners As Tradition Bows to Tough Times, *N.Y. Times*, Dec. 24, 1990, at 1; cf. Steven Brill, The End of Partnership?, *Am. Law.*, Dec. 1989, at 3 (observing that the single transcendent change in large-firm practice in the 1980s is "the end of law partnerships as we once knew them").

n33. Cynthia Fuchs Epstein, Books in Review, *Society*, May/June 1997, at 88, 89 (reviewing Sol M. Linowitz & Martin Mayer, *The Betrayed Profession: Lawyering at the End of the Twentieth Century* (1994)).

n34. Parsa, *supra* note 29, at 27 (quoting an ex-partner).

n35. *Id.* at 26 (quoting large-firm partner Marianne Rosenberg).

n36. The arrival of these stories is documented in Marc Galanter, The Faces of Mistrust: The Image of Lawyers in Public Opinion, Jokes, and Political Discourse, *66 U. Cin. L. Rev.* 805 (1998).

n37. Adams, *supra* note 25, at 1. Recently, Sidley & Austin lowered its retirement age; the chairman of its management committee reported "a belief that we ought to have a more flexible retirement age and it was decided to use senior counsel status to accomplish that." Schmeltzer, *supra* note 29, at 1.

n38. This progression may be self-limiting. As the ratio of seniors declines, it may reach a point at which the scarcity of lawyers with abundant experience, important contacts, seasoned judgment and fulfilled ambition may make seniors more valued as possessors of a kind of human capital in relatively short supply.

n39. See Mark Schauerte & Zack Martin, *Survey Shows Age 60 As the Gray Ceiling for Lawyers in Chicago Firms*, *Chi. Law.*, Sept. 1999, at 6.

n40. The following sentences are based on 1995 Lawyer Statistics Report, *supra* note 5.

n41. See Carroll Seron, *The Business of Practicing Law: The Work Lives of Solo and Small-Firm Attorneys* (1996); Jerry Van Hoy, *Franchise Law Firms and the Transformation of Personal Legal Services* (1997).

n42. On non-lawyer advocates, see Herbert M. Kritzer, *Legal Advocacy: Lawyers and Nonlawyers at Work* (1998).

n43. See Sander & Williams, *supra* note 8, at 474-75.

n44. See Greg Casey & Ed Robb, *View of Lawyers in the Popular Culture and the Legal Profession's Excess Capacity: Finding Price Equilibria*, Paper Presented at Law and Society Association Annual Meeting, Chicago (May 29, 1999) (on file with author).

n45. This increase does not represent the ratio of promotions to firm size or to associates eligible for promotion. It is the net increase after departures, and should be adjusted for some change in the identity of the NLJ 250 from year to year.

n46. See Hadfield, *supra* note 13.

n47. Barbara A. Curran, *The Legal Needs of the Public: The Final Report of a National Survey* 233 (1977).

n48. ABC News/Wash. Post Survey, June 1985, available in Westlaw, Poll Library, USACWP.196.R24 (on file with author).

n49. See News Release: *Americans Have Mixed Feelings About the Legal Reforms Contained in the House Republicans' Contract with America*, According to a U.S. News & World Report Poll, *U.S. News & World Rep.*, Jan. 21, 1995, item 5 (on file with author).

n50. *Id.* item 2 (emphasis added).

n51. *Id.*

n52. American Bar Association, *Perceptions of the U.S. Justice System* 59 (1999). But 90% agreed that "wealthy people or companies often wear down their opponents by dragging out the legal proceedings."

n53. National Center for State Courts, *How the Public Views the State Courts: A 1999 National Survey* figs. 23, 24 (1999).

n54. By "public interest law," I refer to undertakings to represent parties with few resources or interests that are chronically underrepresented or legally outmatched. Thus it does not include so-called public interest groups that are supported principally by corporations that are already adequately represented in public forums.

n55. This number is an estimate by Esther Lardent of the Pro Bono Foundation. Telephone Interview with Esther Lardent, Pro Bono Foundation (Feb. 2, 2000). Here is an alternative derivation. A 1984 survey of the public interest bar counted 906 full-time public interest lawyers. See Nan Aron, *Liberty and Justice for All: Public Interest Law in the 1980s and Beyond* 33 (1989). Responding groups estimated that outside attorneys performed 28% of their legal work. See *id.* at 33. That would be the equivalent of an additional 254 lawyers, bringing the total to some 1,161 lawyers. If we assume, somewhat optimistically, that the public interest sector grew as fast as the whole legal profession did in the intervening years, we should increase that number by 50%, so the present total would be the equivalent of some 1,730 lawyers. To these we should add the 3590 lawyers who staff programs delivering legal services to the poor. See Legal Servs. Corp., LSC Statistics (visited Feb. 6, 2000) <<http://www.lsc.gov/press/pr<uscore>sl.htm>>. If we adjust for a miscellany of smaller contributions, we come very close to the Lardent estimate.

n56. As expenditures on civil legal services for the poor were declining relative to total spending on legal services, there was also a shift in the sources of funding for the poor. In 1982, funding by the Legal Services Corporation made up 82.8% of the civil legal services funding for the poor; by 1998 the LSC component fell to 53.2%. The bulk of the non-LSC funds come from interest on lawyers trust accounts (IOLTA) and state grants.

n57. See Legal Servs. Corp., Annual Reports; Statistical Abstract of the United States tbl.1301 (119th ed., 1999) [hereinafter Legal Servs. Corp., Annual Reports].

n58. Bureau of the Census, U.S. Dep't of Commerce, 1982 Census of Service Industries, SC82-I-1, Establishment and Firm Size tbl.30 (May 1985); Bureau of the Census, U.S. Dep't of Commerce, 1992 Census of Service Industries, SC82-I-1, Establishment and Firm Size tbl.42 [hereinafter 1987 Establishment and Firm Size]; Legal Servs. Corp., Annual Reports, *supra* note 57.

n59. See Legal Servs. Corp., Annual Reports, *supra* note 57; 1987 Establishment and Firm Size, *supra* note 58, tbl.42.

n60. Howard S. Erlanger & Douglas A. Klegon, Socialization Effects of Professional School: The Law School Experience and Student Orientations to Public Interest Concerns, *13 Law & Soc'y Rev.* 11, 18, 30 (1978) (reporting that of the entering students in the University of Wisconsin Law School Class of 1976, half claimed some social service or social reform motivation for attending law school, but that two years later there was a decline in interest in pro bono and social reform work); Howard S. Erlanger et al., Law Student Idealism and Job Choice: Some New Data on an Old Question, *30 Law & Soc'y Rev.* 851, 862 (1996) (following up on the Wisconsin Class of 1976 and finding that "political commitments, combined with involvement in a supportive subculture during law school" are prominent determinants of a first job in public interest law, but that nine years later few graduates remained in public interest law); Robert V. Stover, Making It and Breaking It: The Fate of Public Interest Commitment During Law School 22-23 (Howard S. Erlanger ed., 1989) (reporting a decline in interest in public interest careers among Denver University law students in late 1970s); Robert Granfield, Making Elite Lawyers: Visions of Law at Harvard and Beyond 151

(1992) ("What changes during schooling is not necessarily a [Harvard Law School] student's 'values' but a student's definition of the reality to which the values are applied.").

n61. See Brenda K. Kheart, Presentation at the Conference on Coming of Age: Shaping the Institutions for an Aging America, San Jose, Cal. (Sept. 30-Oct. 2, 1999).

n62. Ann Southworth, Business Planning for the Destitute? Lawyers as Facilitators in Civil Rights and Poverty Practice, *1996 Wis. L. Rev.* 1121, 1125. The interviews were conducted in 1993 and 1994.

n63. Warren J. Sinsheimer, Legal Services for Children (1999) (proposal, on file with author).

n64. See *id.*

n65. The advantages to firms of participating in pro bono work are detailed in *The Law Firm and the Public Good* (Robert A. Katzmann ed., 1995).

n66. In *Chicago Lawyers*, Heinz and Laumann note the irony that "lawyers doing less prestigious sorts of work for personal clients may have greater 'professional autonomy' than do lawyers performing more prestigious work for corporate clients." Heinz & Laumann, *supra* note 9, at 339. "The higher prestige fields serving business clients tend to have low freedom of action scores." *Id.* at 108. The attrition of long-term retainer relationships and increased competition among large firms have further constrained the autonomy of corporate lawyers. See *id.* at 365-73.

n67. Carol D. Ryff & Burton Singer, The Role of Purpose in Life and Personal Growth in Positive Human Health, in *The Human Quest for Meaning: A Handbook of Psychological Research and Clinical Applications* 213, 216 (Paul T.P. Wong & Prem S. Fry eds., 1998) (citations omitted).

n68. See, e.g., Patrick J. Schiltz, On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession, *52 Vand. L. Rev.* 871 (1999).

n69. See John P. Heinz et al., Lawyers and Their Discontents: Findings from a Survey of the Chicago Bar, *74 Ind. L.J.* 735 (1999).

n70. See *Chicago Lawyers Project*, *supra* note \*.

n71. Although there is no reason to think Michigan graduates atypical of elite law school graduates, I would be hesitant to generalize from graduates of a single elite law school to the bar as a whole. But the striking correspondence in the relative order of different practice settings found in the Michigan and Chicago results suggests that this pattern does not represent the idiosyncrasies of a specific group of lawyers.

n72. See Kenneth G. Dau-Schmidt & Kaushik Mukhopadhyaya, *The Fruits of Our Labors: An Empirical Study of the Distribution of Income and Job Satisfaction Across the Legal Profession*, Paper Presented at Law and Society Association Annual Meeting, Chicago (May 29, 1999) (on file with author).

n73. Those located in these firms fifteen years out would, except in rare cases, be partners.

n74. Of course, there were some differences. The major difference was that medium-sized firms scored higher in the Chicago study than in the Michigan data. This may derive in part from different definitions of "medium." In the Chicago study, medium is 10-30; in the Michigan data it is 11-50. In other words, the 31-50 slab of firms, coded as medium in Michigan, is called "large" in Chicago. If

satisfaction is inversely related to size, as the Michigan data suggest, we would expect that in Chicago, the large versus medium contrast would be less than in Michigan.

n75. See Heinz & Laumann, *supra* note 9, at 117-118.

n76. *Id.* at 127.

n77. The percentage of elite law graduates entering private law practice declined precipitously in the late 1960s, leading some large firms to acquiesce in demands to engage in pro bono publico activities. See Jerry Berman & Edgar Cahn, *Bargaining for Justice: The Law Student's Challenge to Law Firms*, 5 *Harv. C.R. - C.L. L. Rev.* 16 (1970); Mark Green, *Law Graduates - The New Breed*, 210 *Nation* 658 (1970).

n78. Survey evidence on trust of lawyers is summarized in Galanter, *supra* note 36, at 808-810 (1998).

n79. See American Bar Association, *supra* note 52, at 50.

n80. Peter D. Hart Research Associates, Inc., *A Survey of Attitudes Nationwide Toward Lawyers and the Legal System* 18 (1993) [hereinafter *Hart Survey*]. In the 1999 ABA survey, 43% of the public agreed that "most lawyers do not contribute enough to their community through donations of time, legal services, or money." Only 23% disagreed. See American Bar Association, *supra* note 52, at 71.

n81. See *Hart Survey*, *supra* note 80, at 31.

n82. See Marc Galanter, *Lawyers in the Mist: The Golden Age of Legal Nostalgia*, 100 *Dick. L. Rev.* 549 (1996); Robert W. Gordon, *The Independence of Lawyers*, 68 *B.U. L. Rev.* 1 (1988).

n83. Edward O. Laumann & John P. Heinz, *Specialization and Prestige in the Legal Profession: The Structure of Deference*, 1977 *Am. B. Found. Res. J.* 155, 202.