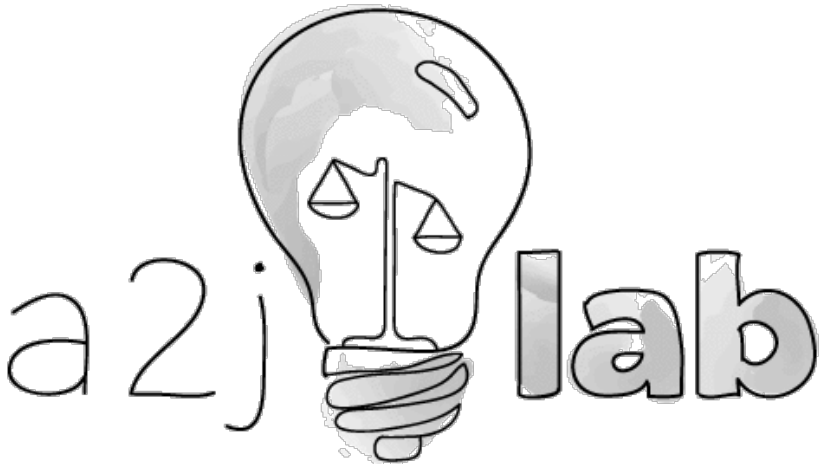
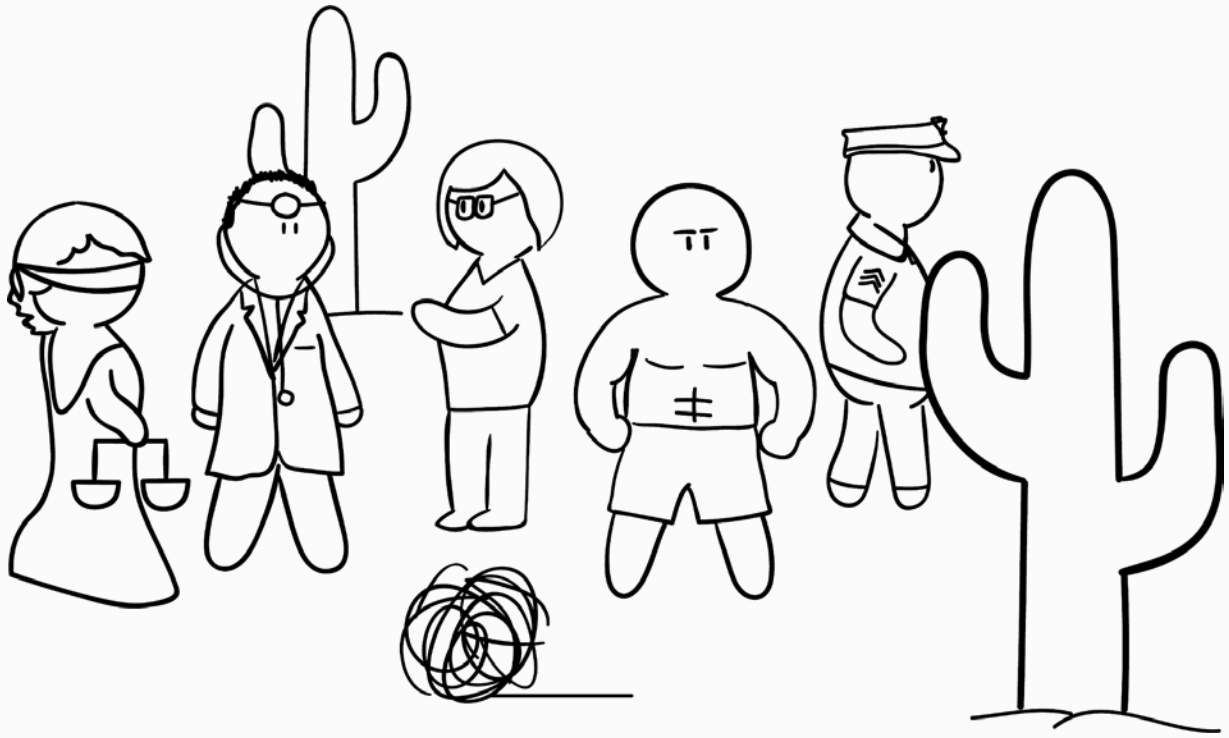
# Researching to Support Justice
# October 4, 2017

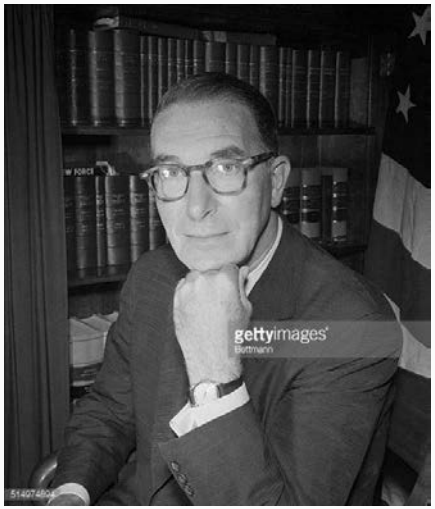


A doctor (and a criminologist and a public health specialist and a fitness expert and a development economist) and a lawyer . . ..



# Medicine in 1935

# 1962: **Kefauver-Harris Amendments**



Before new drugs can be marketed to the public:

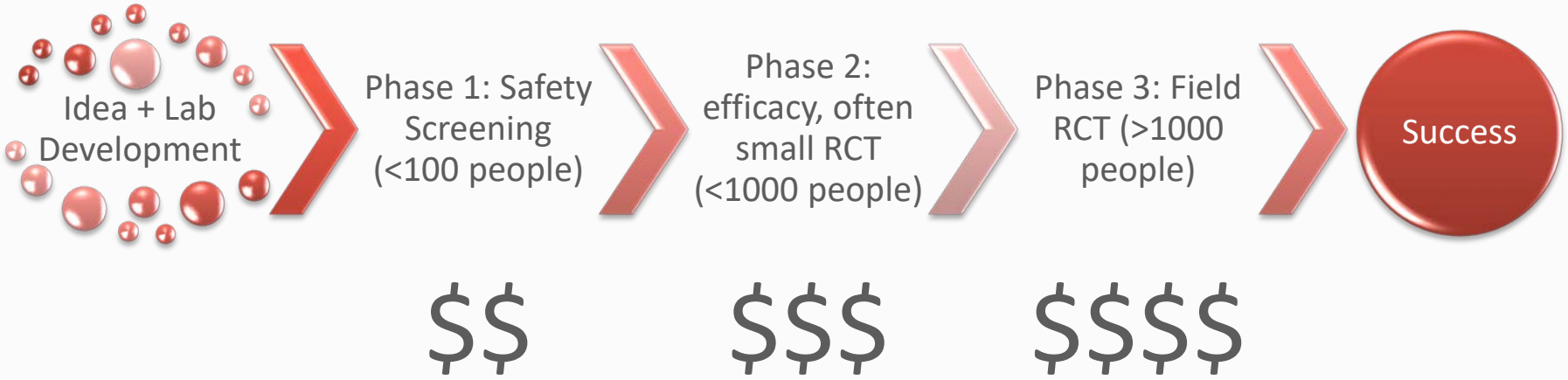
“adequate and well-controlled studies” = RCT (usually)

# Why conduct rigorous studies in medicine?

Physicians recognized:  professional judgments too often

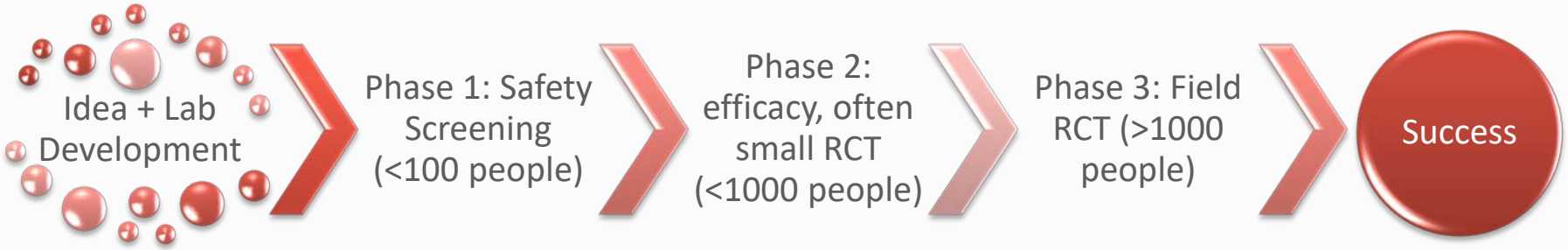
# Wrong

# New Drug Development & Testing




(Source: Bio et al., 2016)

# Question: What fraction of phase 1 drugs clear phase 3?




$$ $$$ $$$$

What fraction make it?

A. 55%

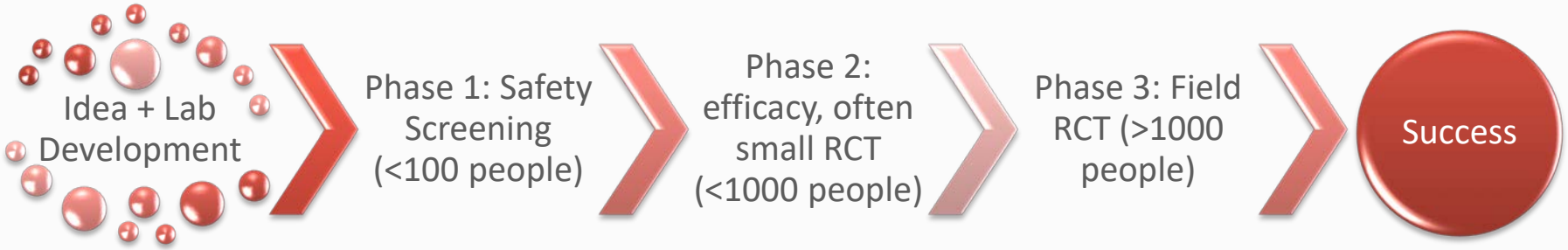
B. 40%

C. 25%

D. 10%

(Source: Bio et al., 2016)

# Question: What fraction of phase 1 drugs clear phase 3?




$$ $$$ $$$$

What fraction make it?

A. 55%

B. 40%

C. 25%

D. 10%

(Source: Bio et al., 2016)

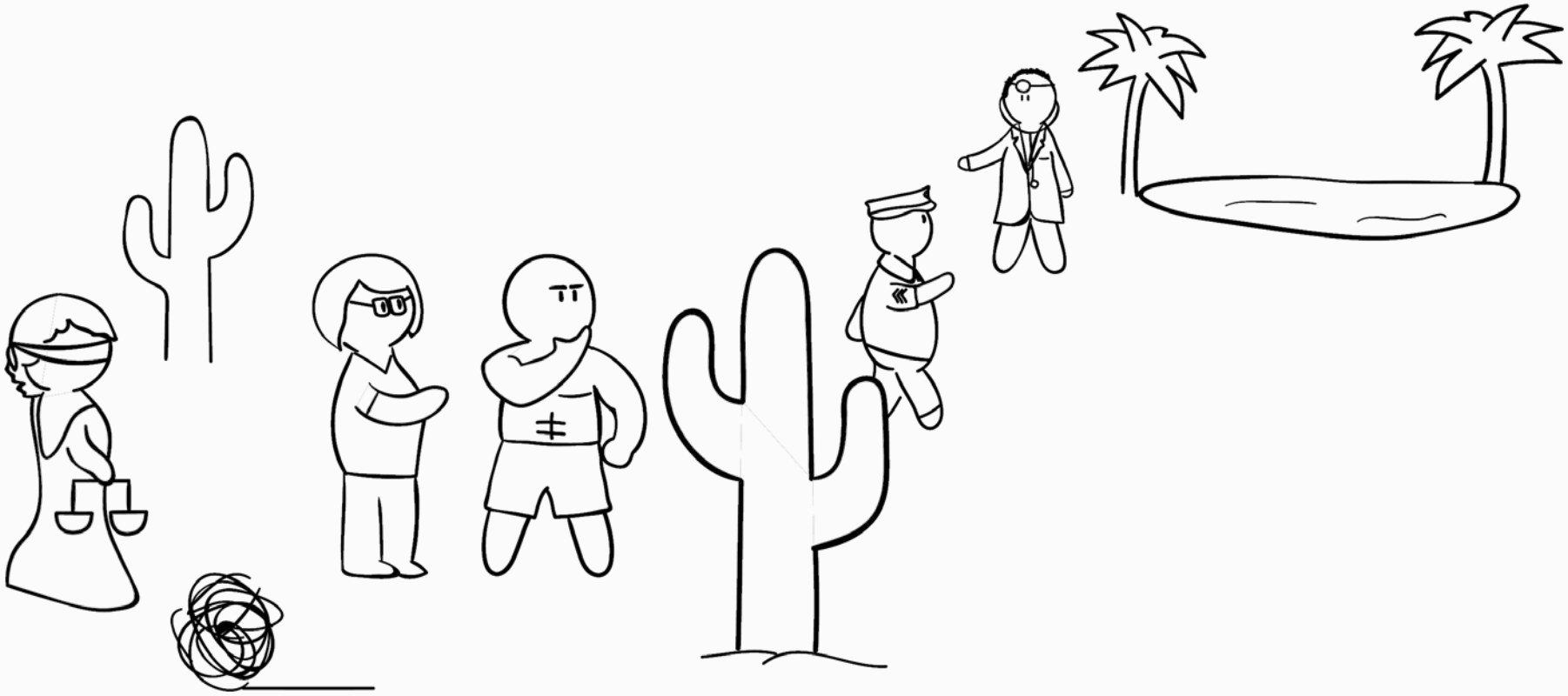
# Maybe doctors just aren't that smart?

(and lawyers are?)

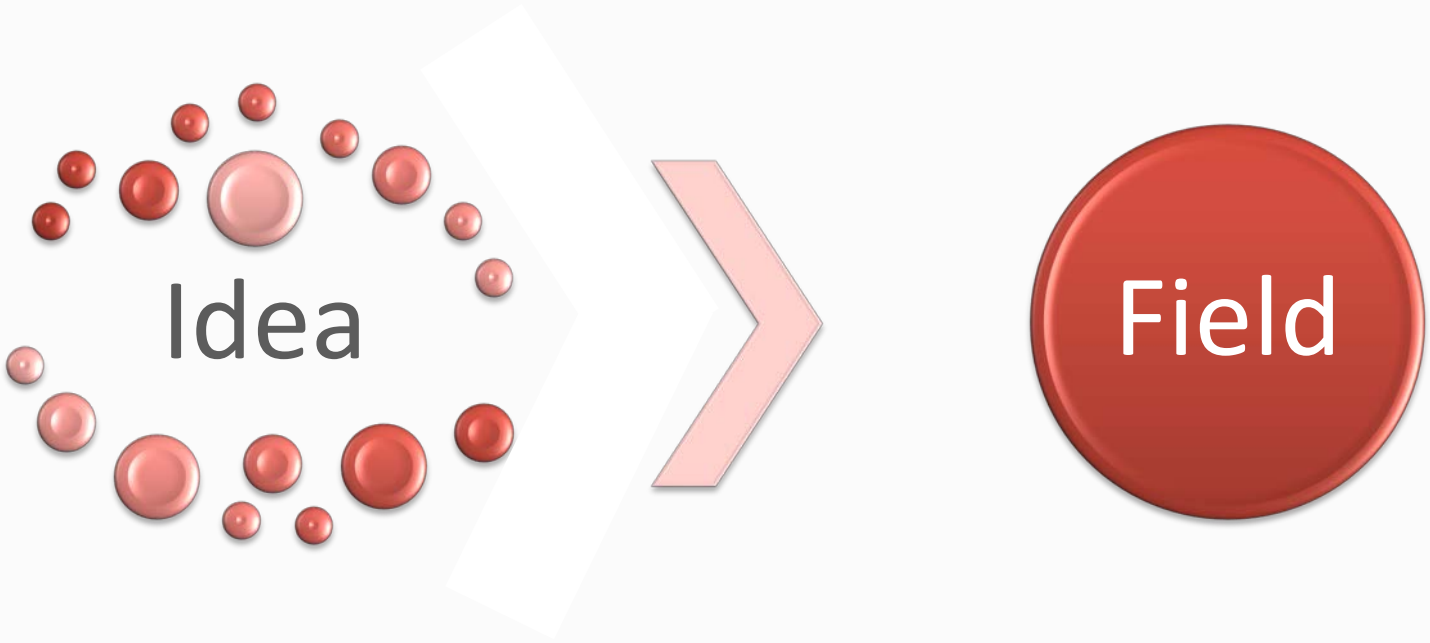
# What happens in other professions?

- Criminology:  Scared straight
- Public health:  Robot babies
- (I don't know what this is):  Fitbits
- Poverty: microcredit business loans

# Other professions beginning to change?

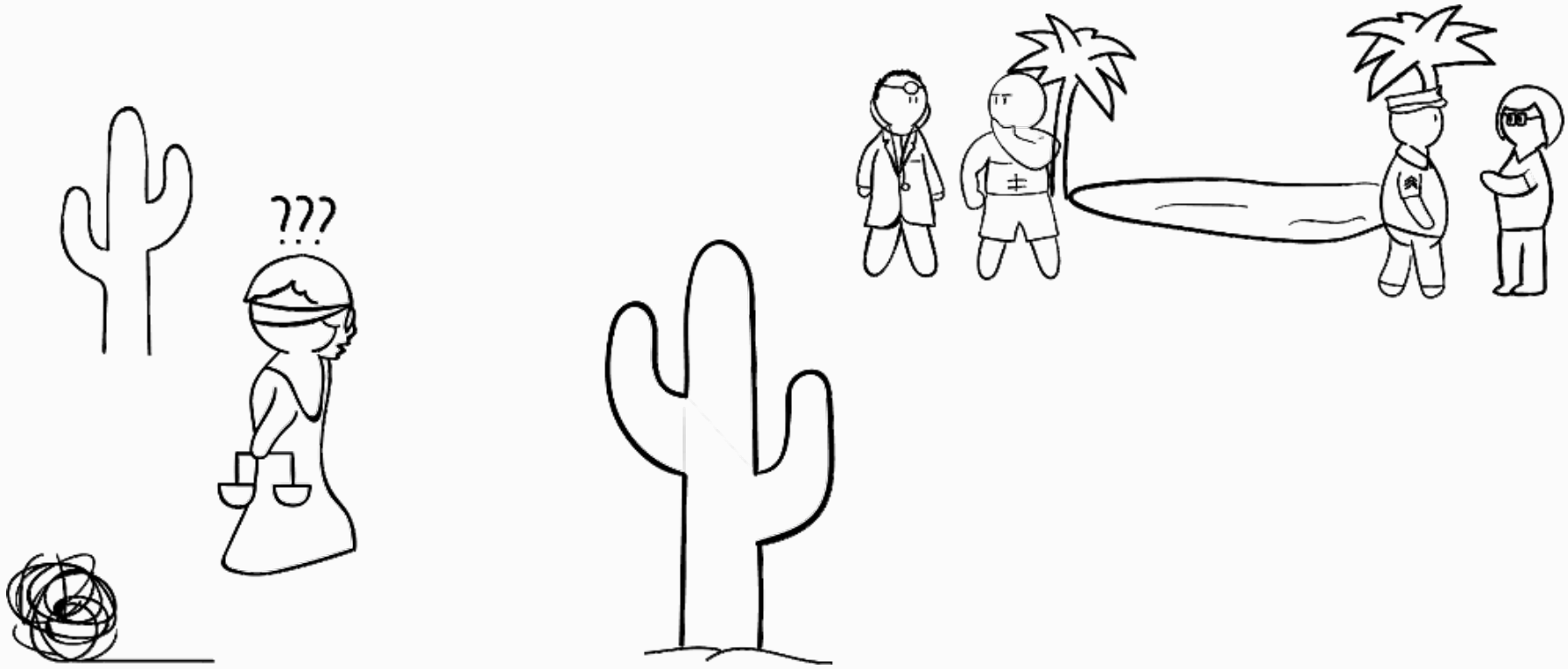


# What we do in law




*(Unless a resource constraint)*

# Maybe lawyers need to rethink?



# Why Care About Rigorous Research in Law?

- There is a huge need for civil legal services
  - Courts are in crisis, with funding cuts and the rise of self-representation
  - Legal service providers turn down 1 out of ever 2 eligible requesters
  - Pro bono attorneys: only about half do pro bono in a given year
  - People who don't self-identify legal issues in the first place
  - Civil Gideon movements
- We don't know everything right now
  - What works and what doesn't
  - How a system works, where the best leverage points are

# What does “rigorous empirics” mean?

Mixed methods (deployed at the same time)

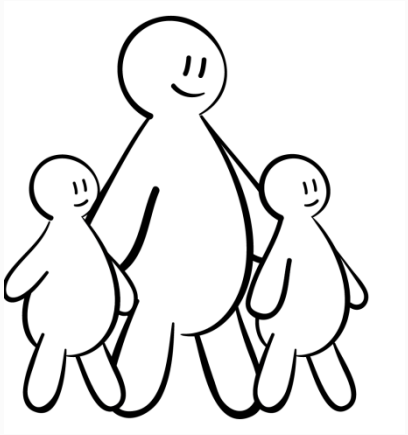
- Surveys
- Detailed, memorialized observations
- Crunching numbers that are already gathered

But: to find out, really, what works and what doesn’t, need a **randomized control trial (“RCT”)**, aka

- Randomized field experiment
- Clinical trial
- Lottery study

# The Harvard A2J Lab is working on…

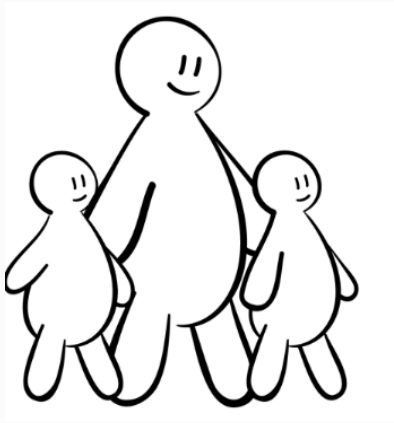
- Incorporating lessons from other fields
  - Adult education (cartoons)
  - Statistics (teaser postcards)
  - Psychology (self-affirmation, *e.g.*, “You’re a good person”)
  - Sociology (social messages, *e.g.*, “You’re not alone”)
  - Economics (cost-benefit)
  - Public health, political science, design, *etc.*

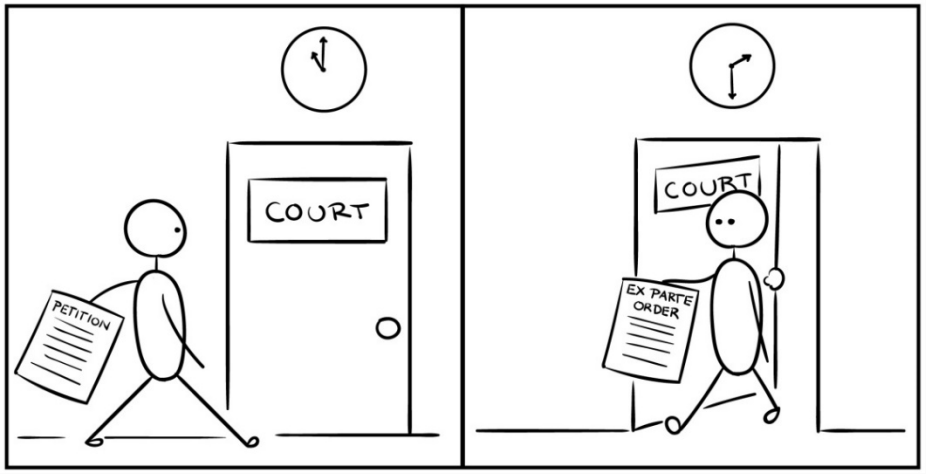


# What does the A2J Lab do?

- Design interventions, *e.g.*,
  - Self-help:  paper & tech
  - Student-supported law practice improvements
  - Outreach mechanisms

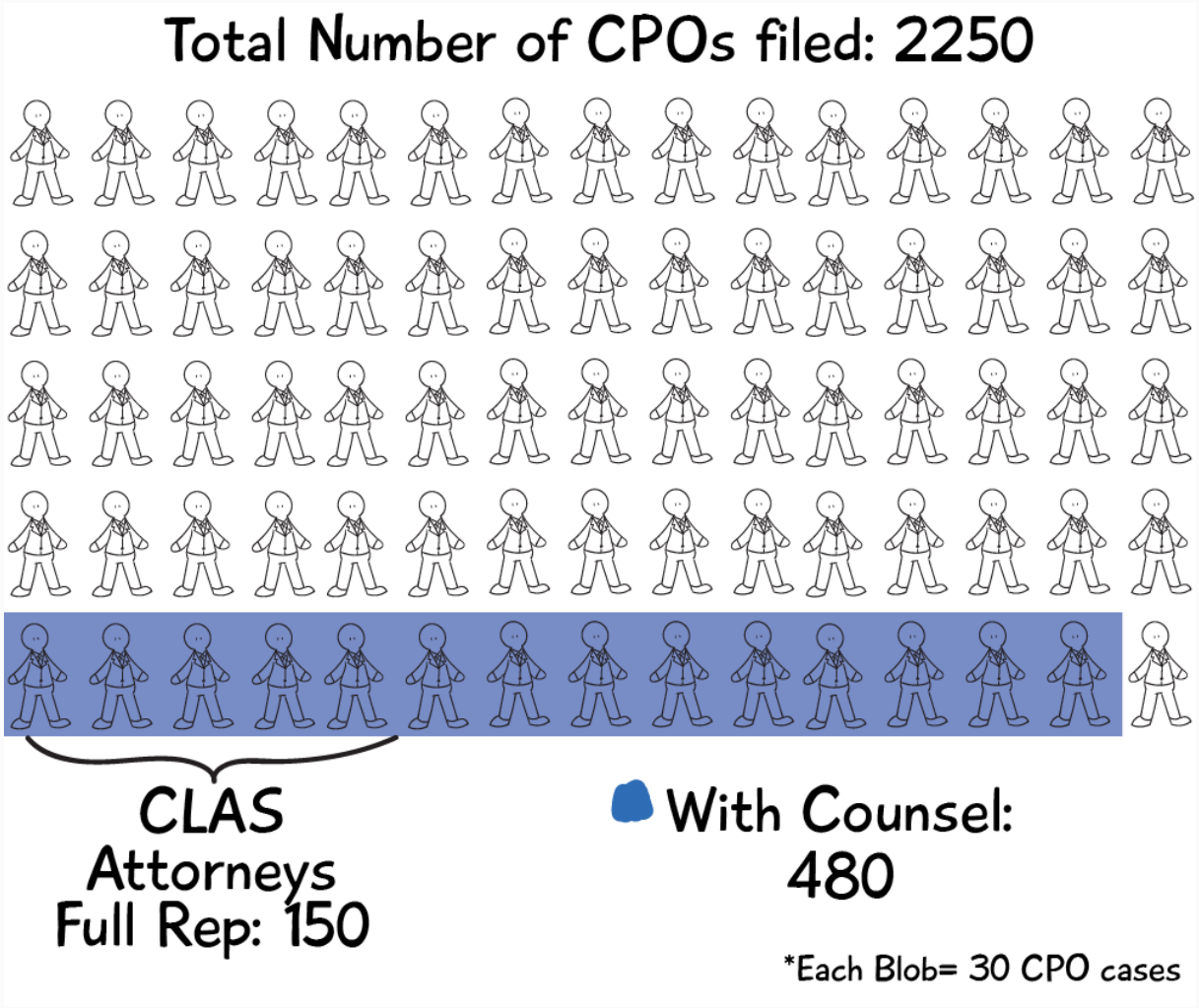
- Evaluate interventions (our own, other's)
  - Legal outcomes (litigant success, court burden, procedural justice, etc.)
  - And beyond (socioeconomic success, stress, family stability, etc.,)



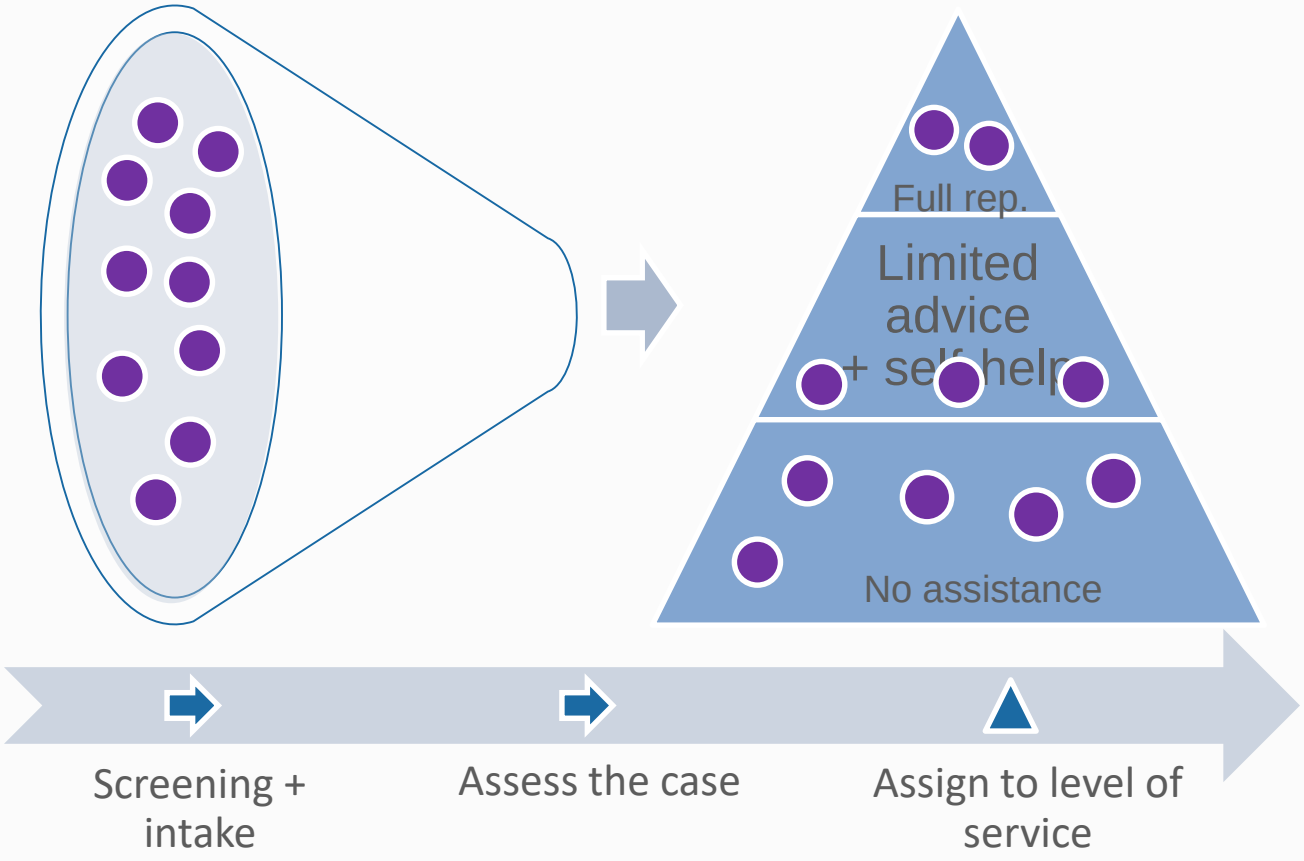


# Case study: ipv triage

Civil Protection Orders Filed in 8 Ohio counties (2014)



# Why study triage?



# Can we win vs. can we help

| Phone Call + Self-Help | Full Rep |
|---|---|
| YES | YES |
| NO | YES |
| NO | NO |

# Can we win vs. can we help

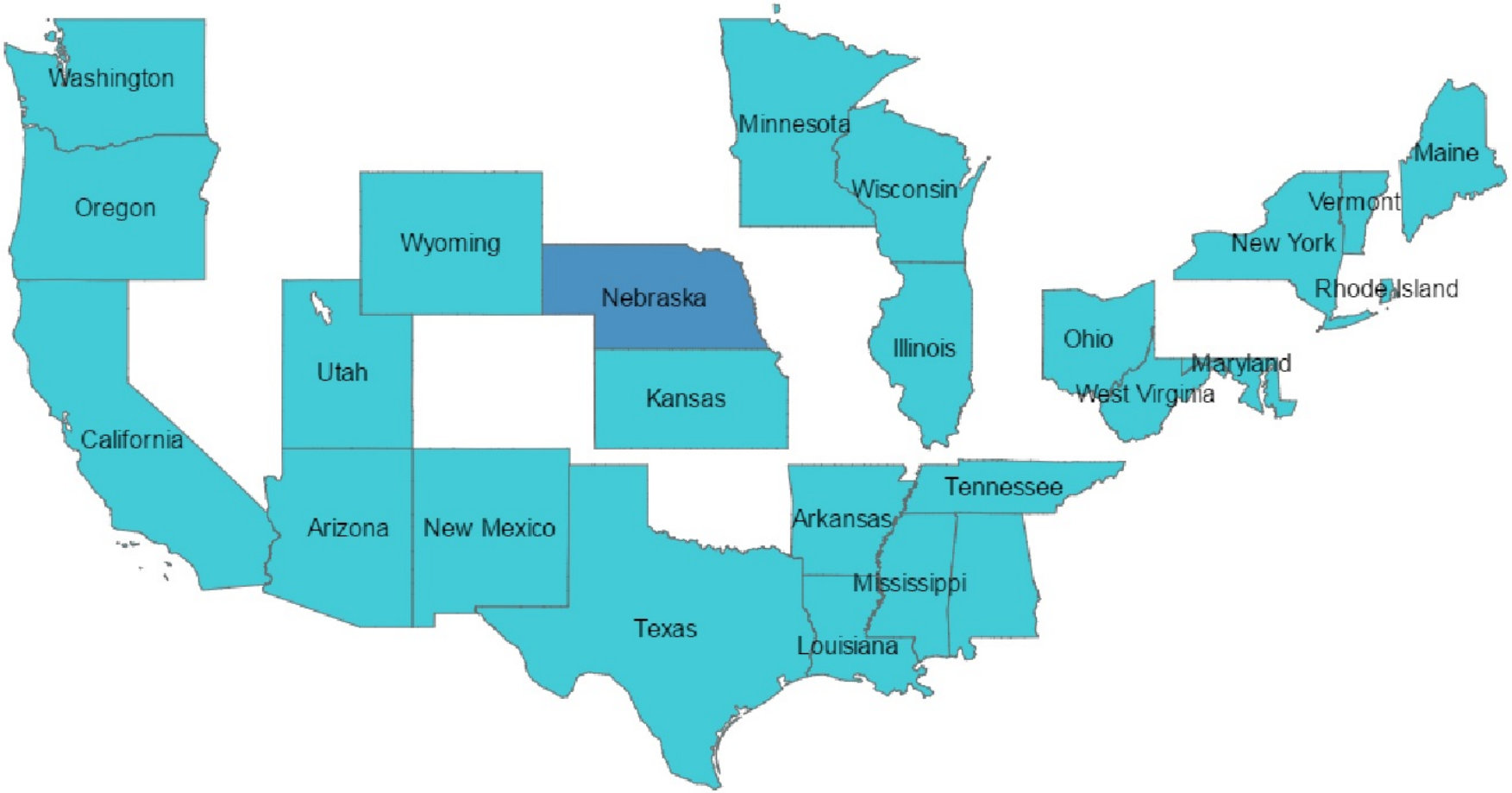
| Phone Call + Self-Help | Full Rep |
|---|---|
| YES | YES |
| **NO** | **YES** |
| NO | NO |

# IPV Triage: Measuring Outcomes

- Where do lawyers make a difference?
- What is the effect of a restraining order?
- How are lawyers making triage decisions?
- Adjudicatory outputs + longer term outcomes

# Changing Gears: Illinois Pro Bono Data

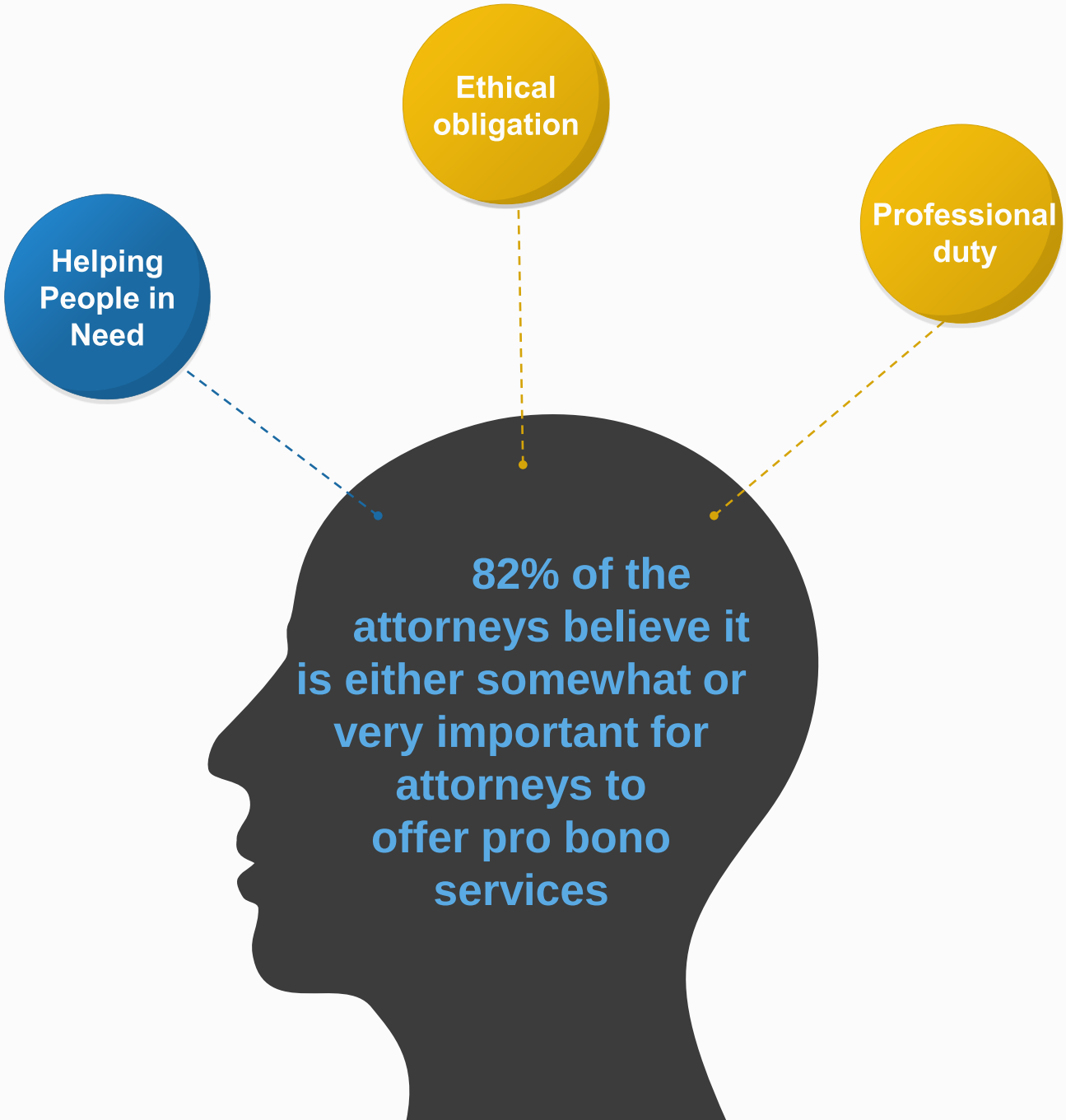
# 2016-17 Survey Project



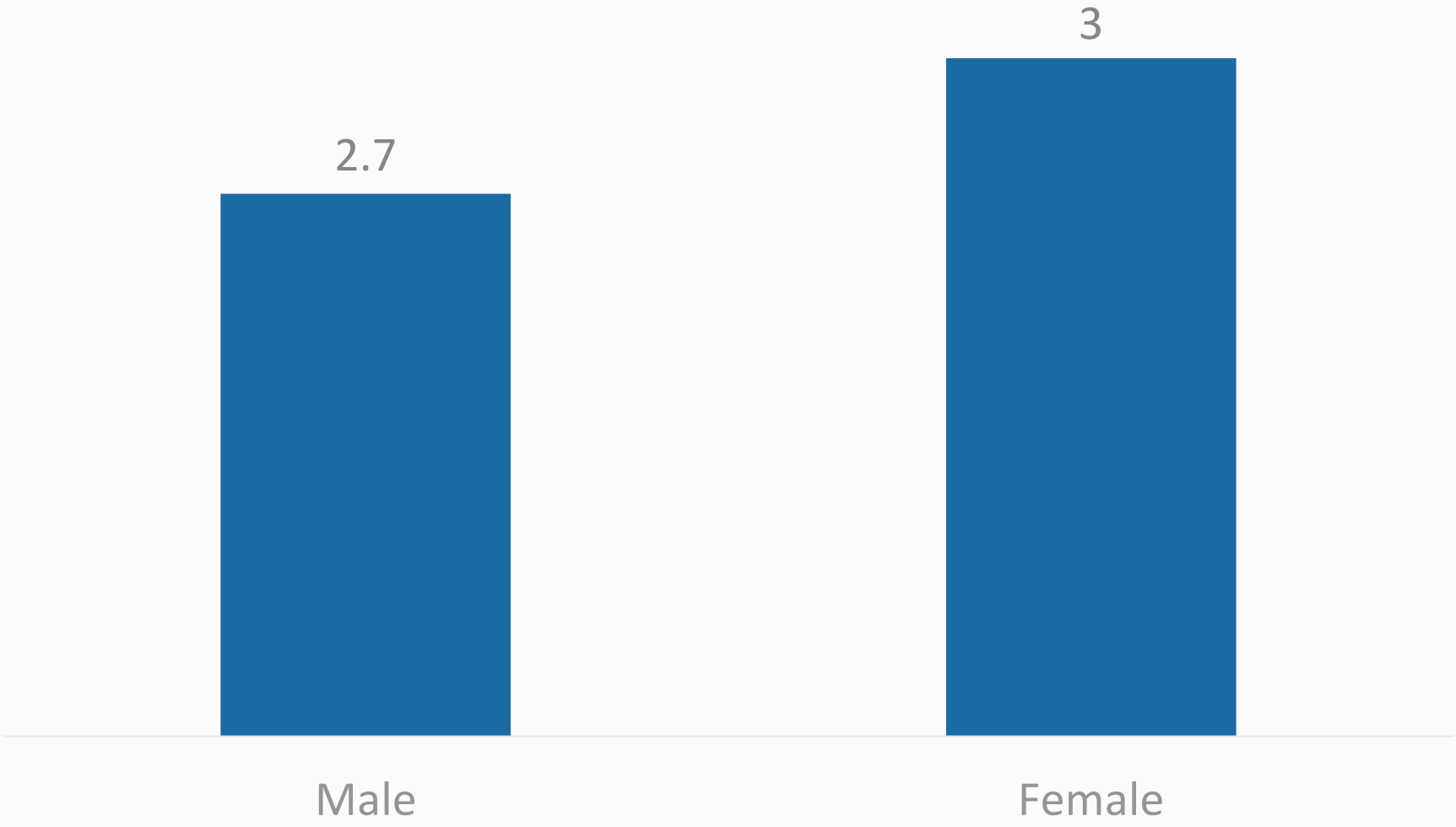
# Attitudes, Barriers, Motivations

# Motivating Factors

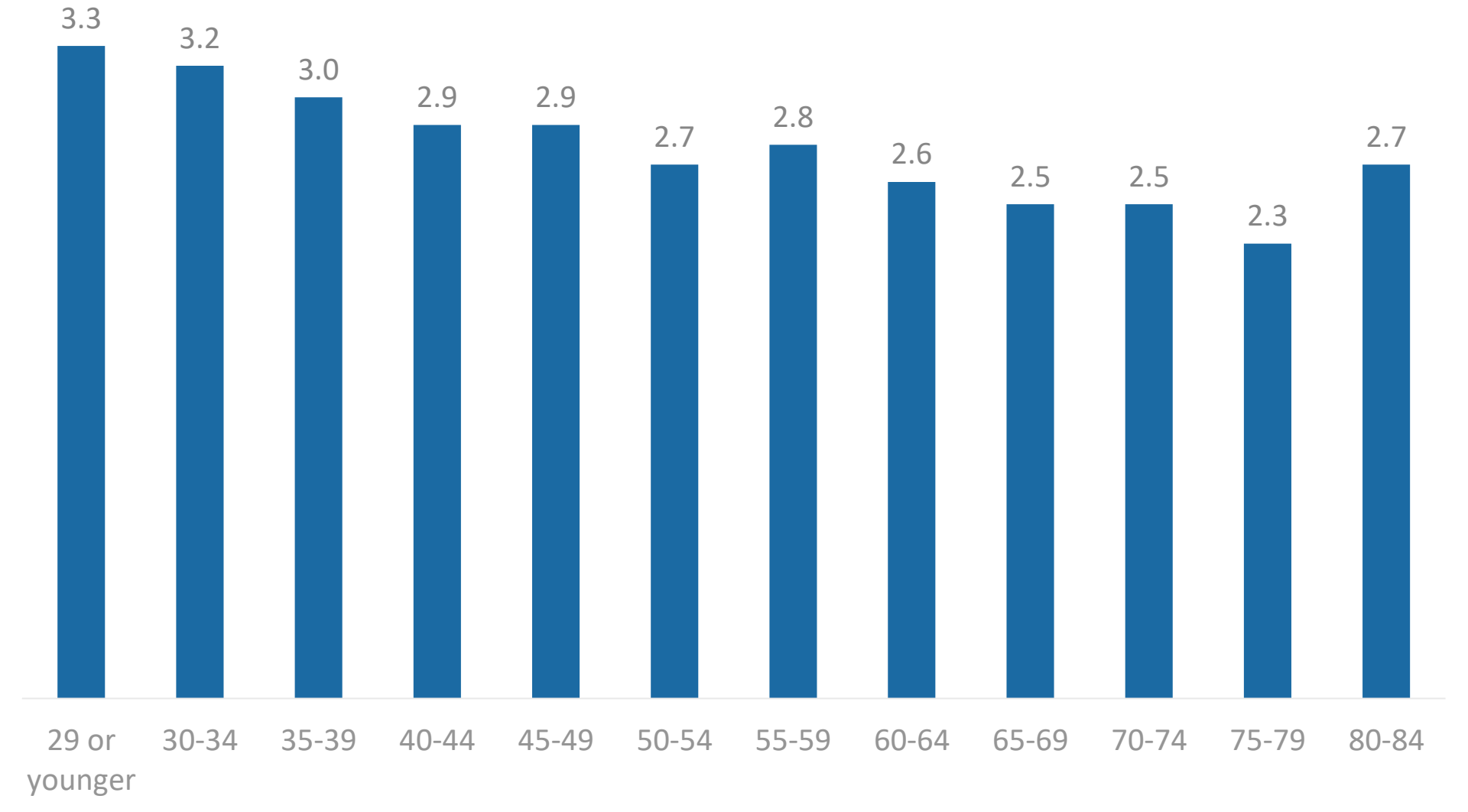
| |
|---|
| Helping people in need |
| Ethical obligation |
| Professional duty |
| Participating in reducing social inequalities |
| It would make me feel like a good person |
| Helping the profession's public image |
| A firm culture that encourages pro bono |
| Opportunities to interact with low-income populations |
| Opportunities to work directly with clients |
| Gaining experience in an area outside of my expertise |
| Opportunities to work with other attorneys |
| Strengthening relationships with my private practice clients who value pro bono engagement |
| Opportunities to go to court |
| Recognition from colleagues and friends |
| Recognition from employer |


Ethical obligation
Professional duty
Helping People in Need
82% of the attorneys believe it is either somewhat or very important for attorneys to offer pro bono services

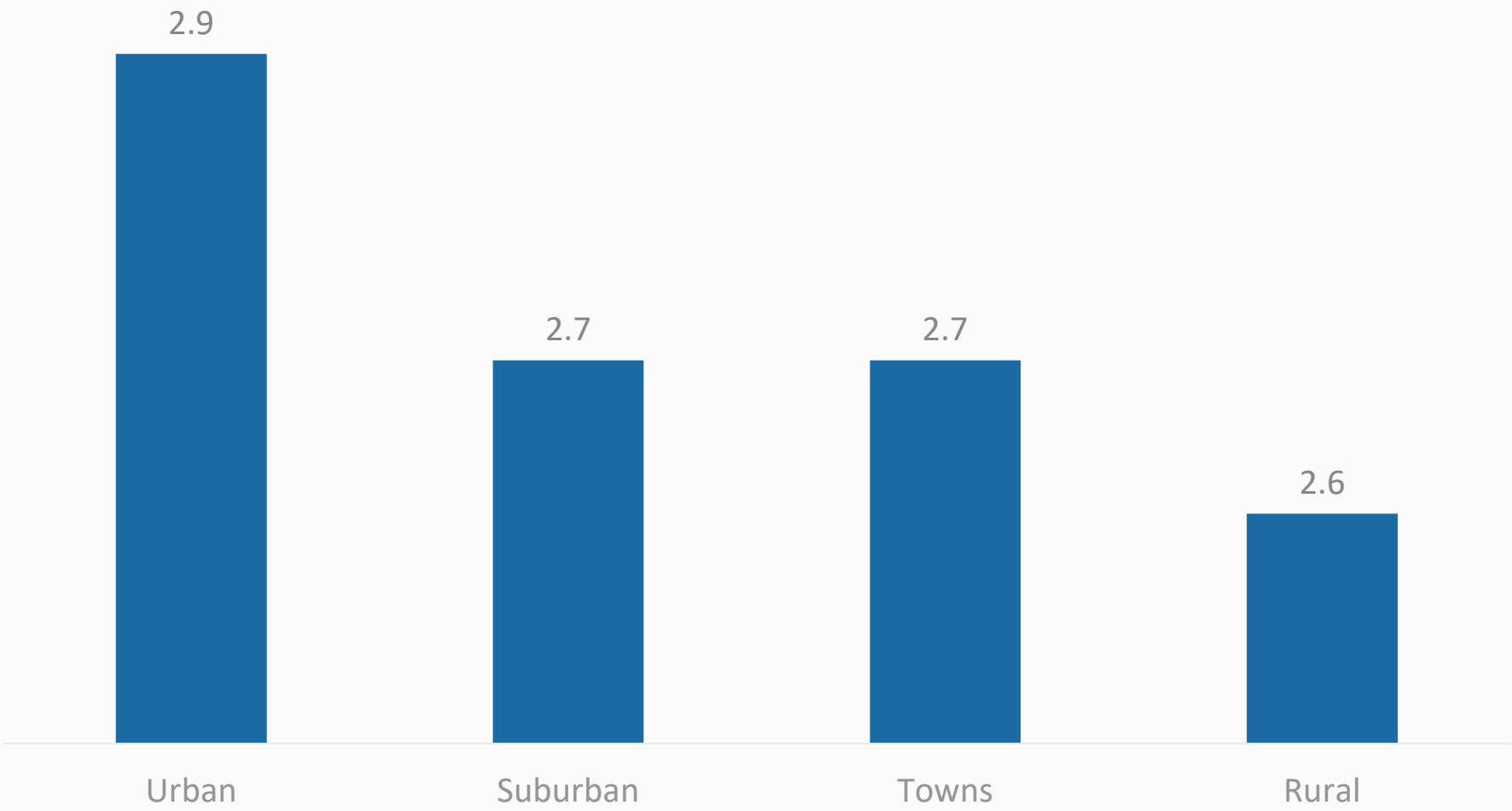
# Motivating Factors: Gender



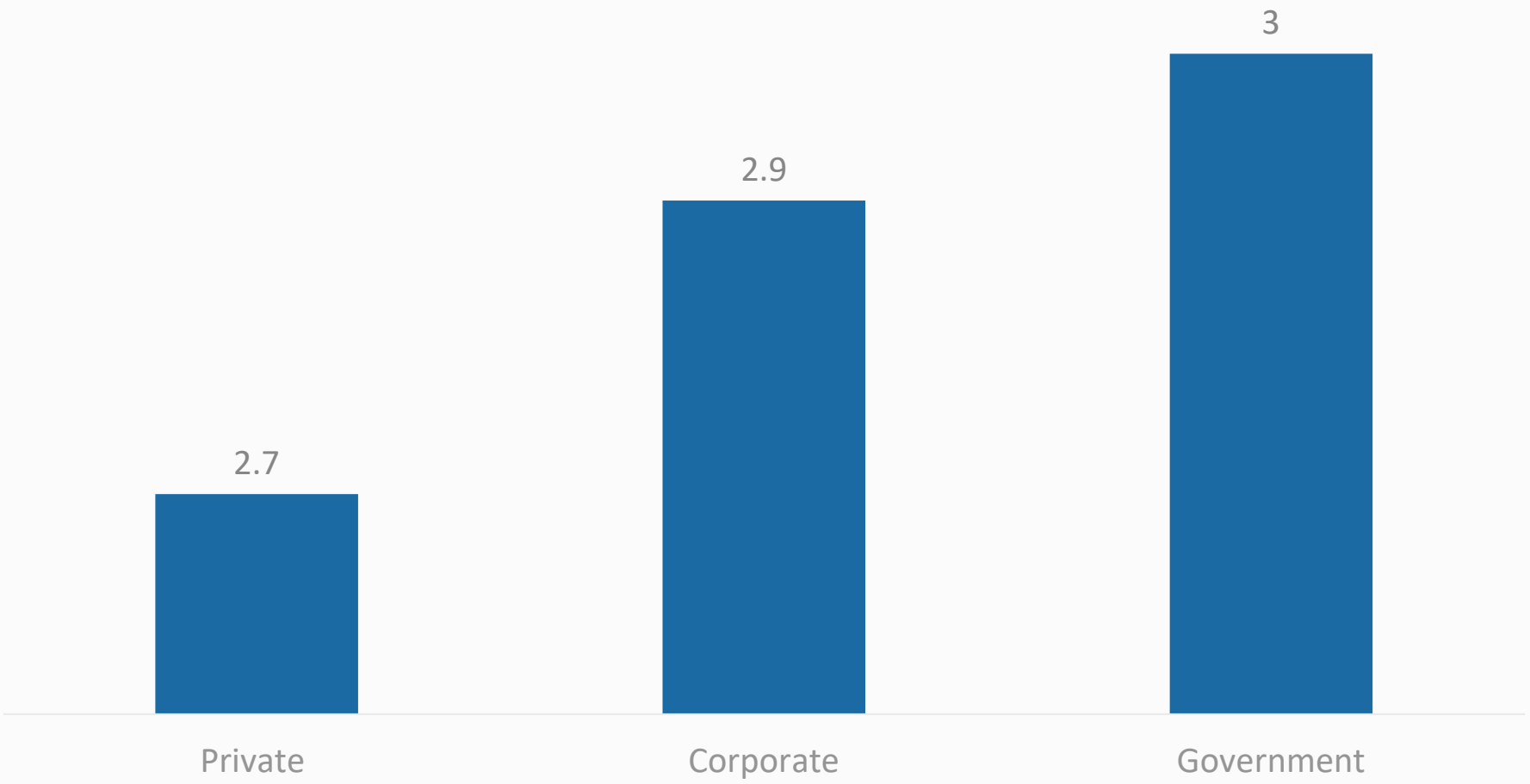
# Motivating Factors: Age



# Motivating Factors: Geography



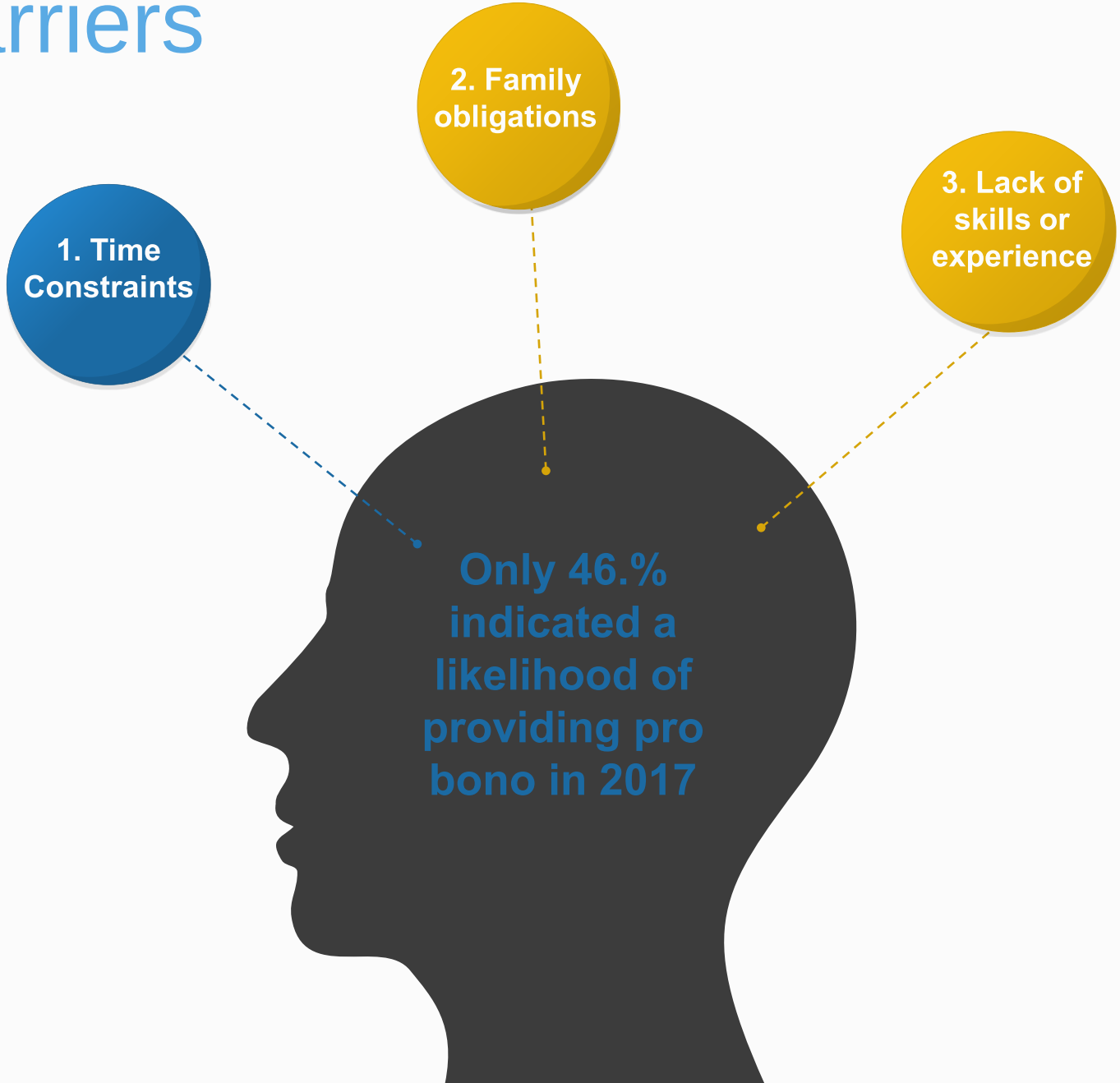
# Motivating Factors: Practice Setting



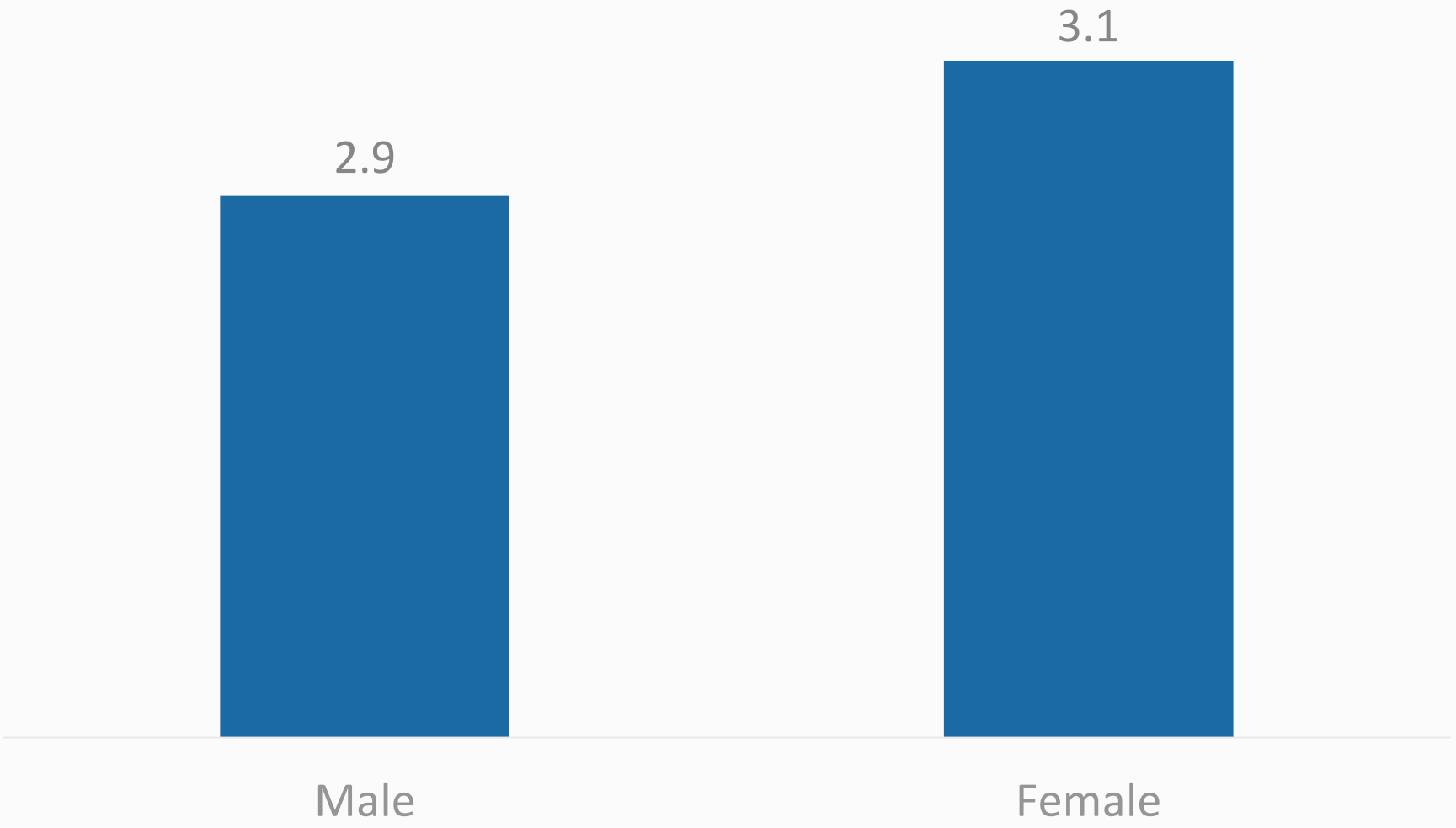
# Barriers

| |
|---|
| Lack of time |
| Commitment to family or other personal obligations |
| Lack of skills or experience in the practice areas needed by pro bono clients |
| Scheduling conflicts making it difficult to be available for court appearances |
| Lack of clarity on how much time I would end up having to commit |
| The unrealistic expectations of clients |
| Lack of malpractice insurance |
| Competing billable hour expectations and policies |
| Lack of interest in the types of cases |
| Too costly; financially burdensome to my practice |
| Lack of administrative support or resources |
| Lack of information about opportunities |
| Discouragement from employer/firm |
| A preference for spending volunteer time on non-legal matters |
| Concerns about compromising the interests of my other clients |
| A preference for providing reduced fee assistance rather than no fee assistance |
| I feel that a lot of pro bono clients really can afford legal assistance |
| Personal or philosophical objections |

# Barriers

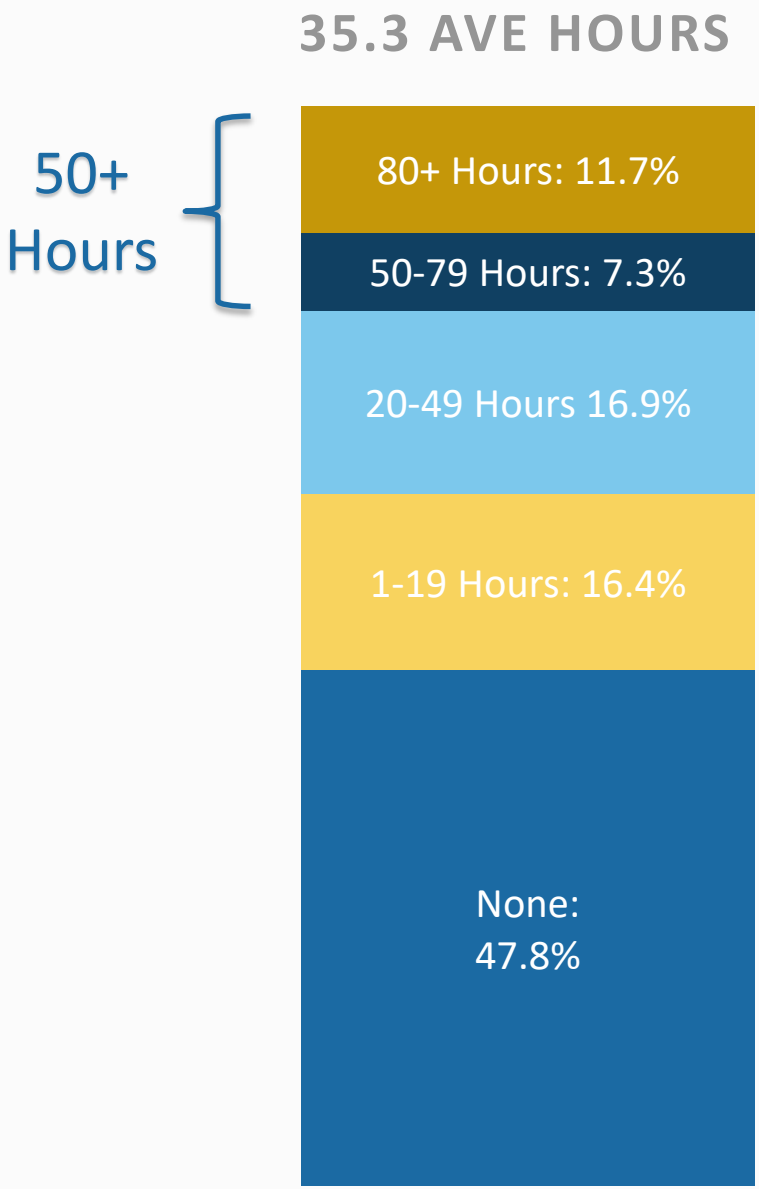

1. Time Constraints
2. Family obligations
3. Lack of skills or experience
Only 46.% indicated a likelihood of providing pro bono in 2017

# Barriers: Gender



# Amount of Pro Bono in 2016

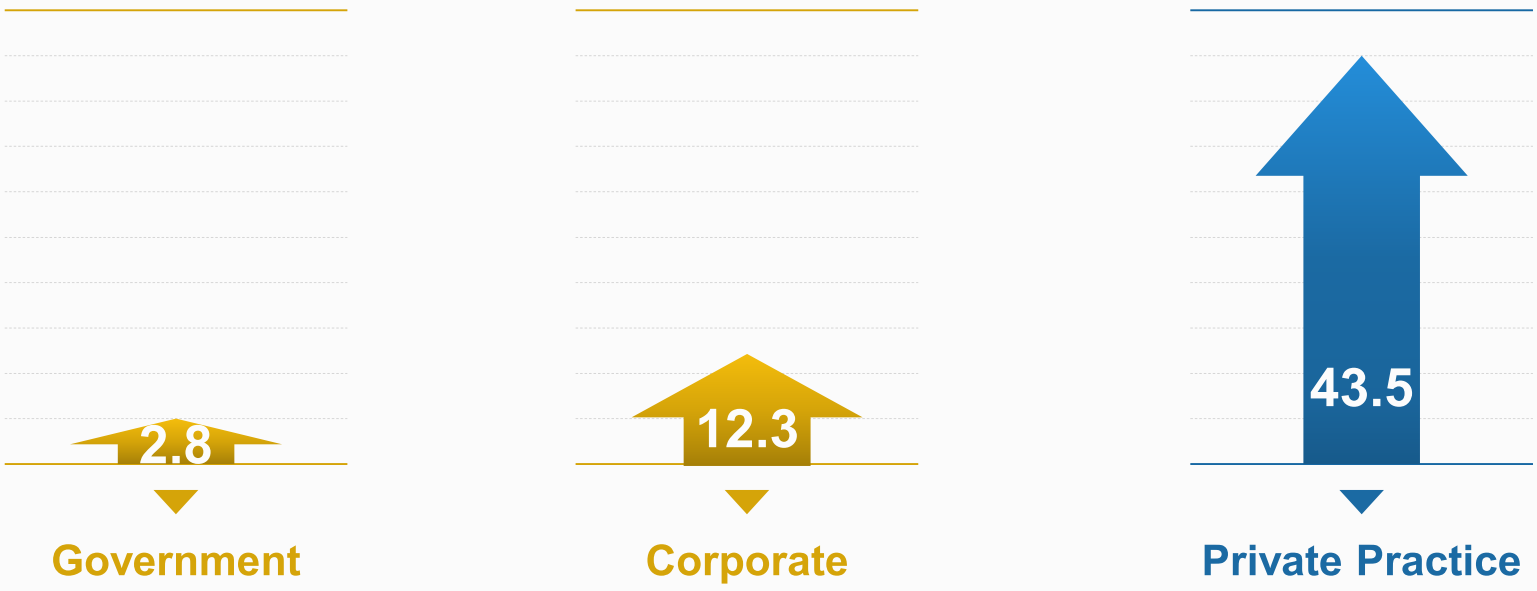
# The Numbers: Pro Bono in 2016




**RULE 6.1**

ABA Model Rule Rule 6.1 states that **every lawyer** has "a professional responsibility to provide legal services to those unable to pay" and that a lawyer should aspire to render "**at least (50) hours** of pro bono public legal services per year"

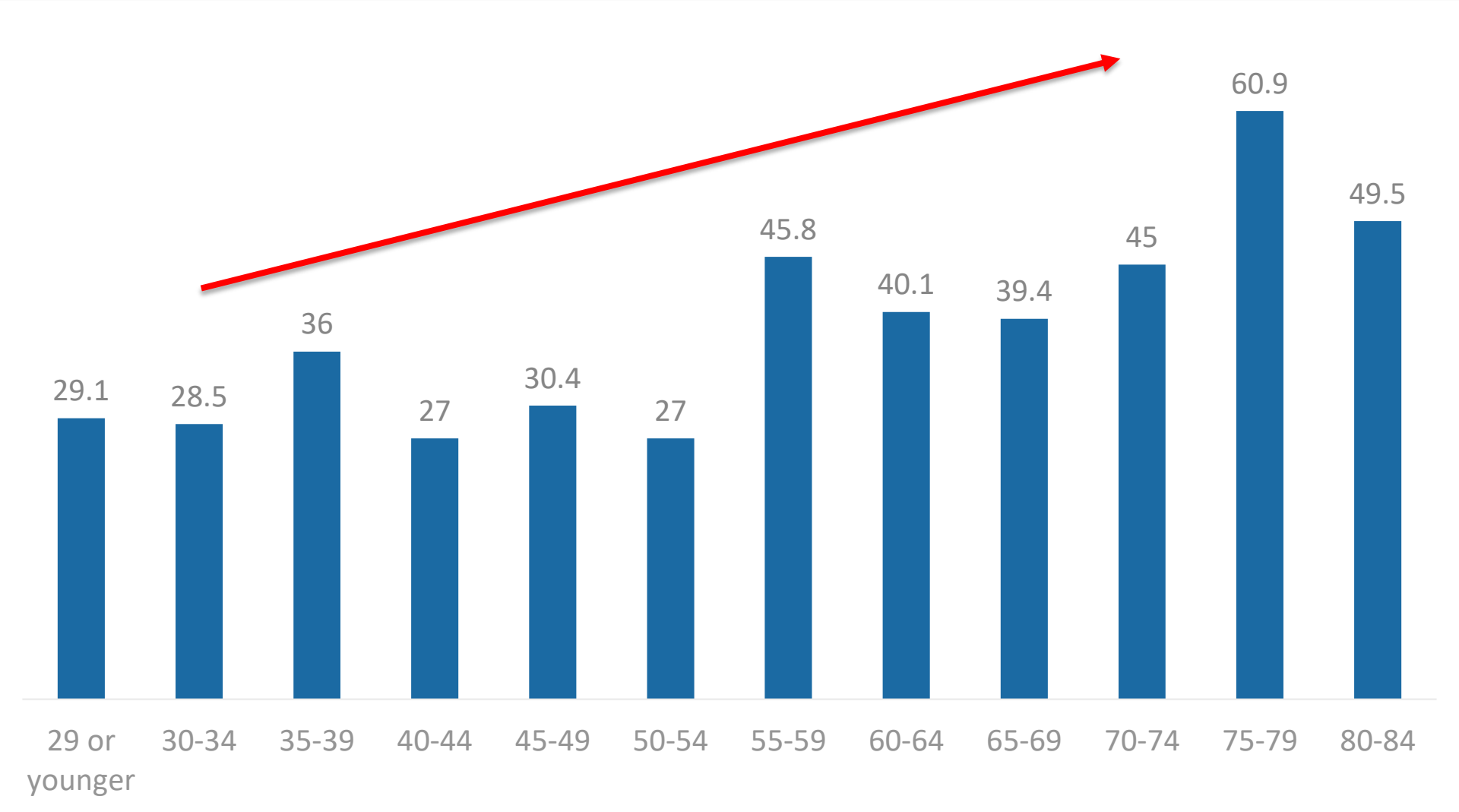
# By practice setting



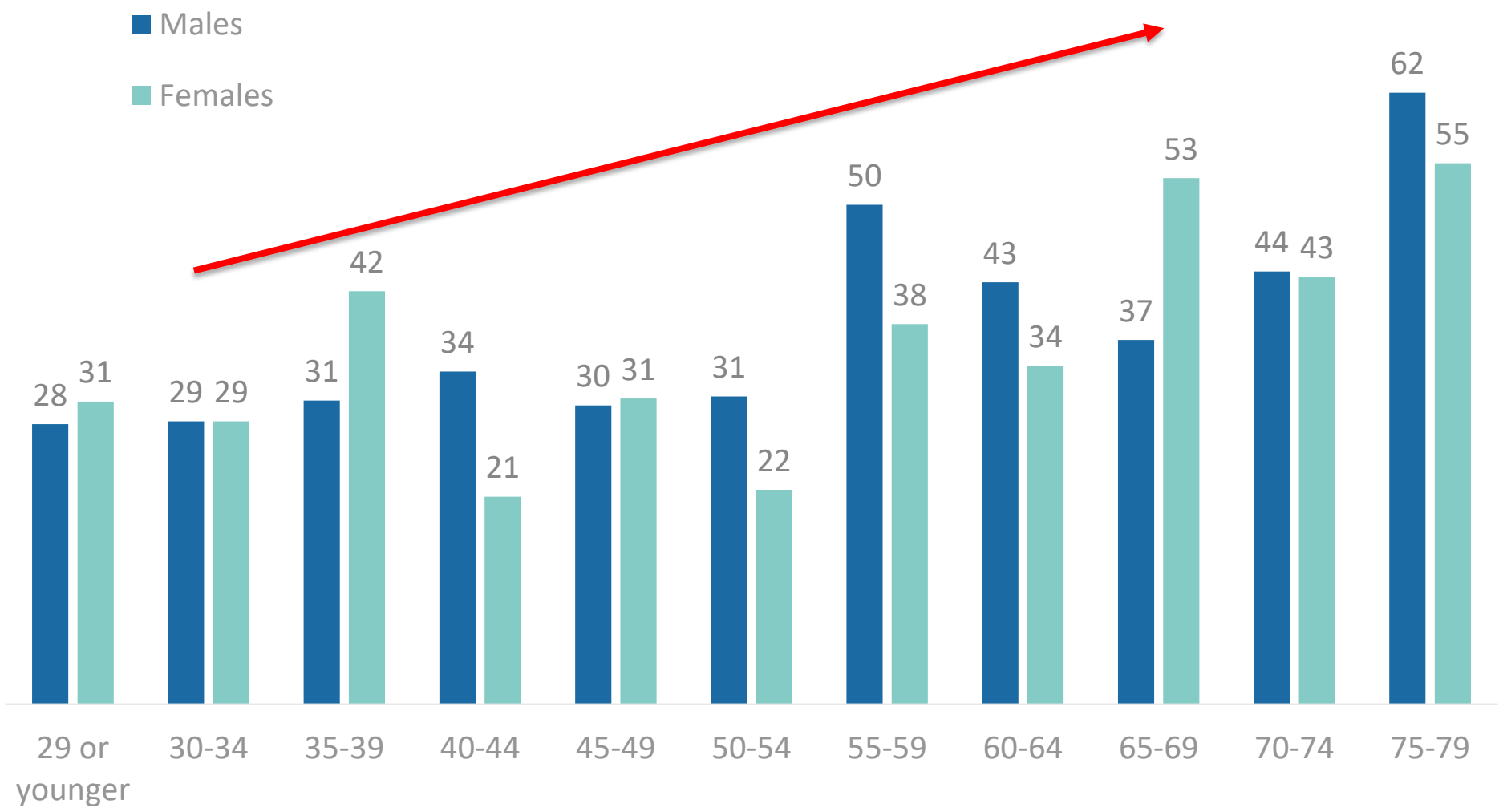
# Geography:

- Urban: 38.9 Hours
- Towns: 32.9 Hours
- Suburbs: 29.7 Hours
- Rural: 26.7 Hours

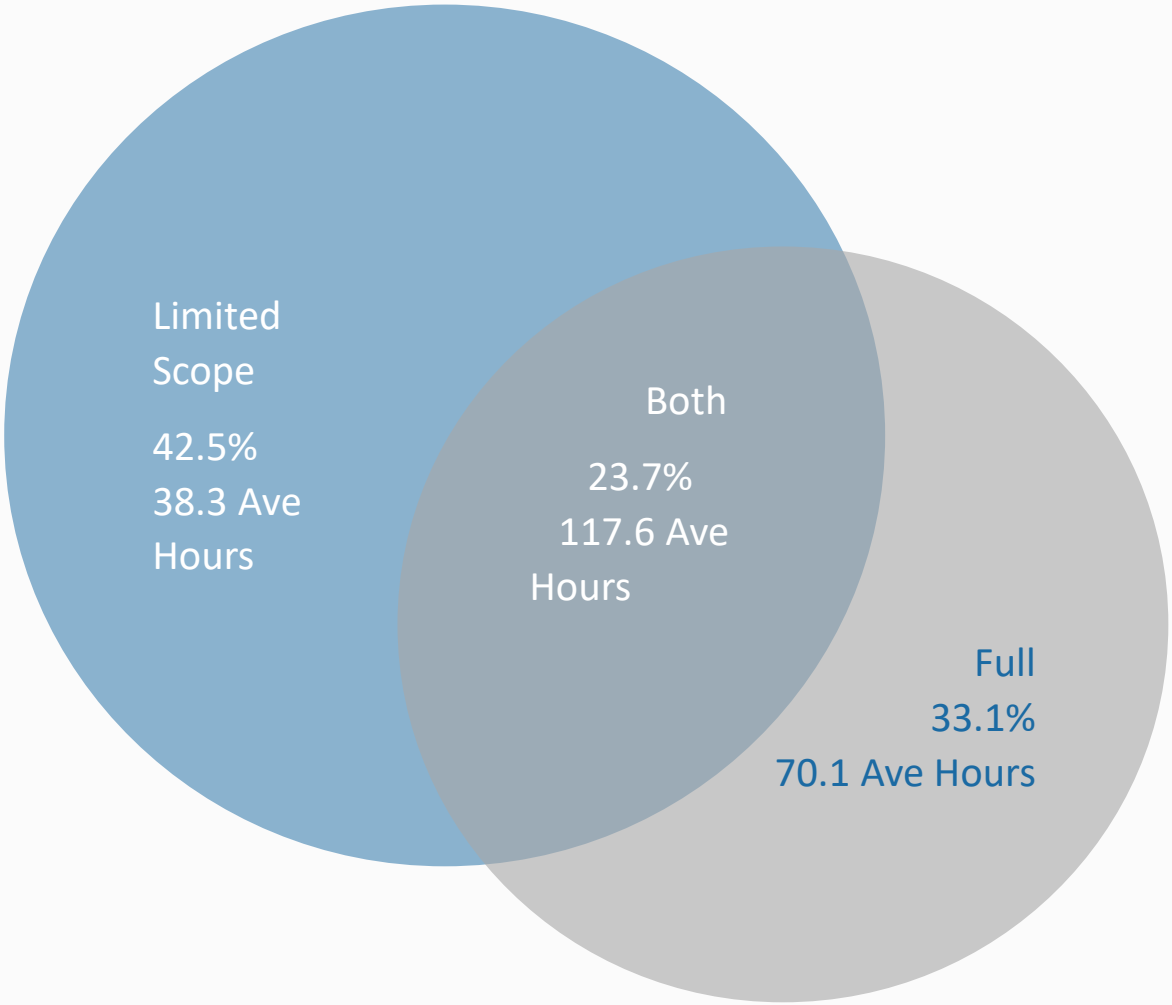
# Age Groups:


29.1
28.5
36
27
30.4
27
45.8
40.1
39.4
45
60.9
49.5
29 or younger
30-34
35-39
40-44
45-49
50-54
55-59
60-64
65-69
70-74
75-79
80-84

# Age Groups + Gender:



# Types of Services in 2016

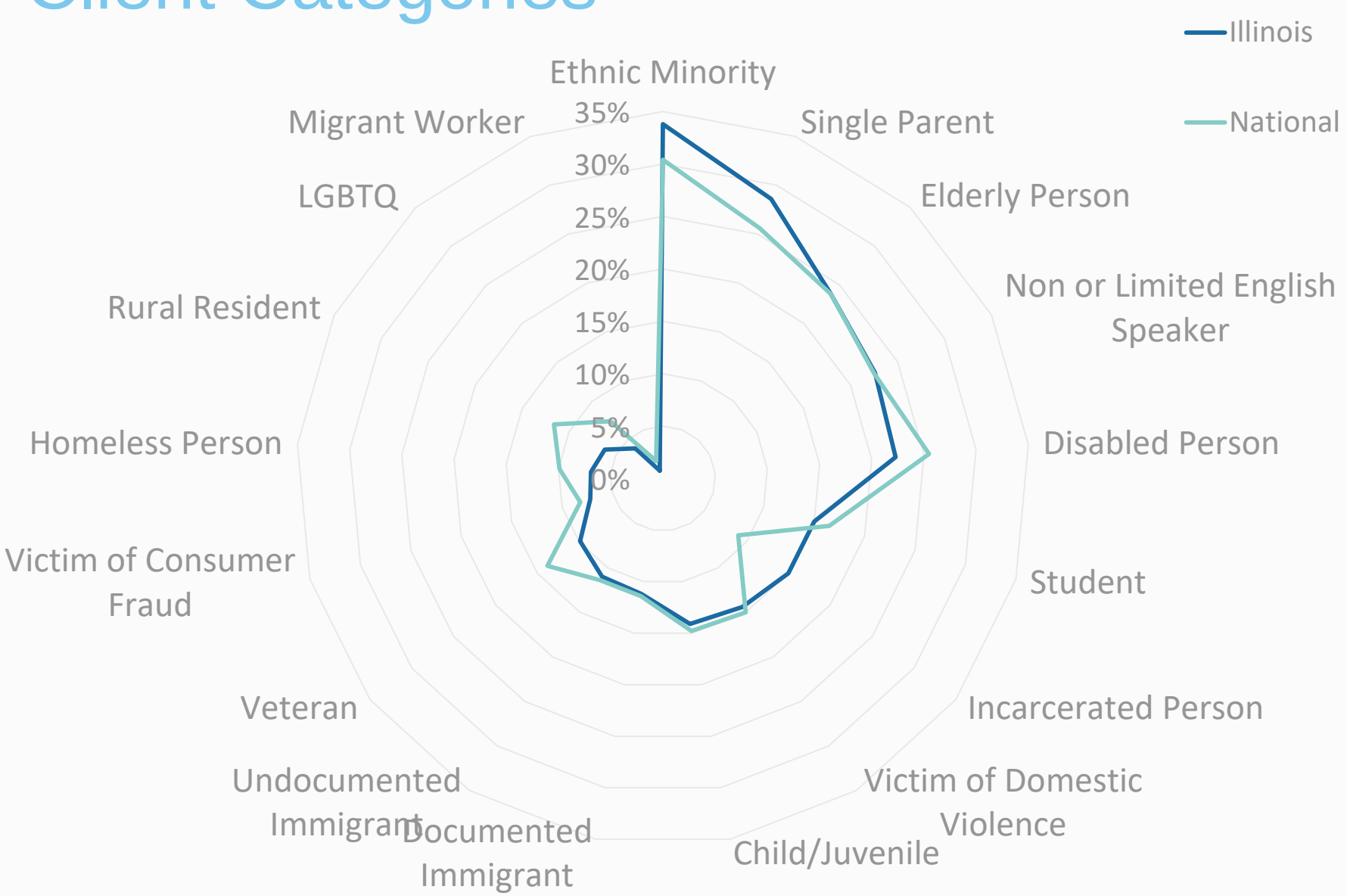


# 2016 Pro Bono Recipients

# Client Types

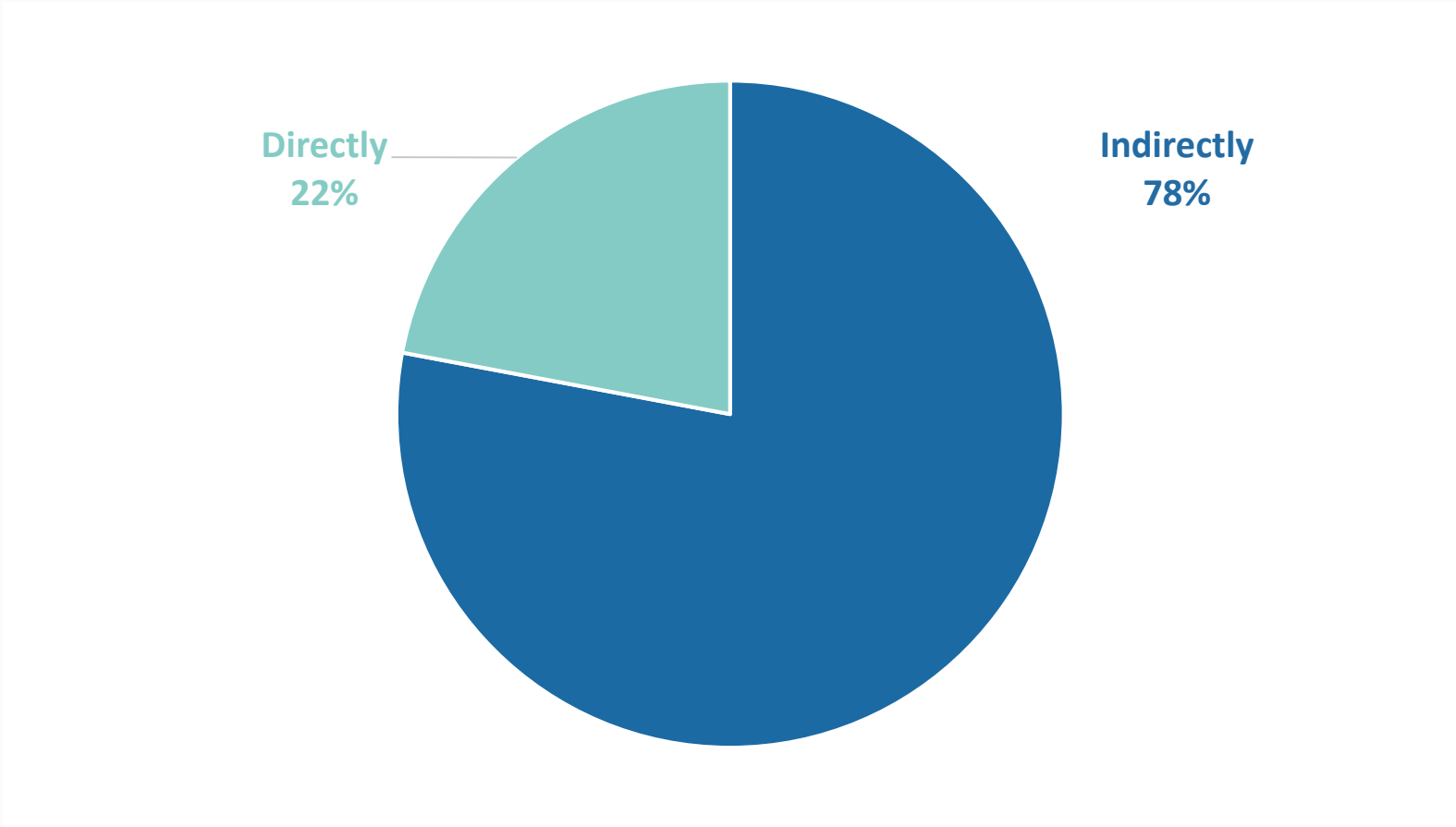
| Services Provided To… | Percent of Attorneys Providing Pro Bono to… | Average Hours |
|---|---|---|
| **Individuals** | 83.6% | 54.6 |
| **Class of Individuals** | 5.5% | 25.1 |
| **Organizations** | 40.4% | 38.1 |

# Client Categories



# Most Recent Pro Bono Experience

# How Attorneys Find Clients



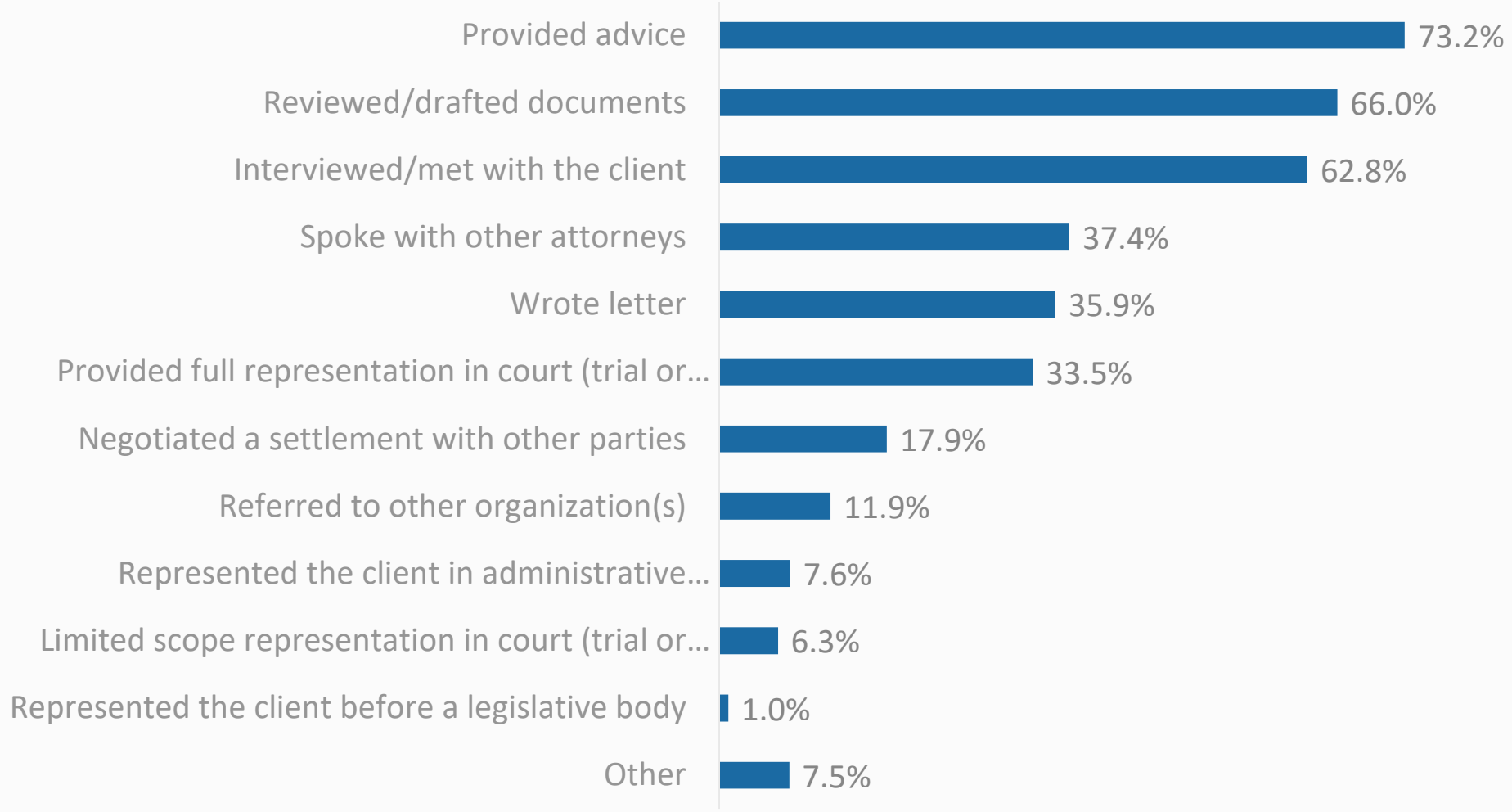

**Direct:**

1. No Relationship
2. An Acquaintance
3. Former client

**Indirect:**

1. Legal Aid Pro Bono Program
2. Judge/Court Administrator
3. Present/Former Client

# Legal Tasks Performed



# Top Areas of Law (National Data)

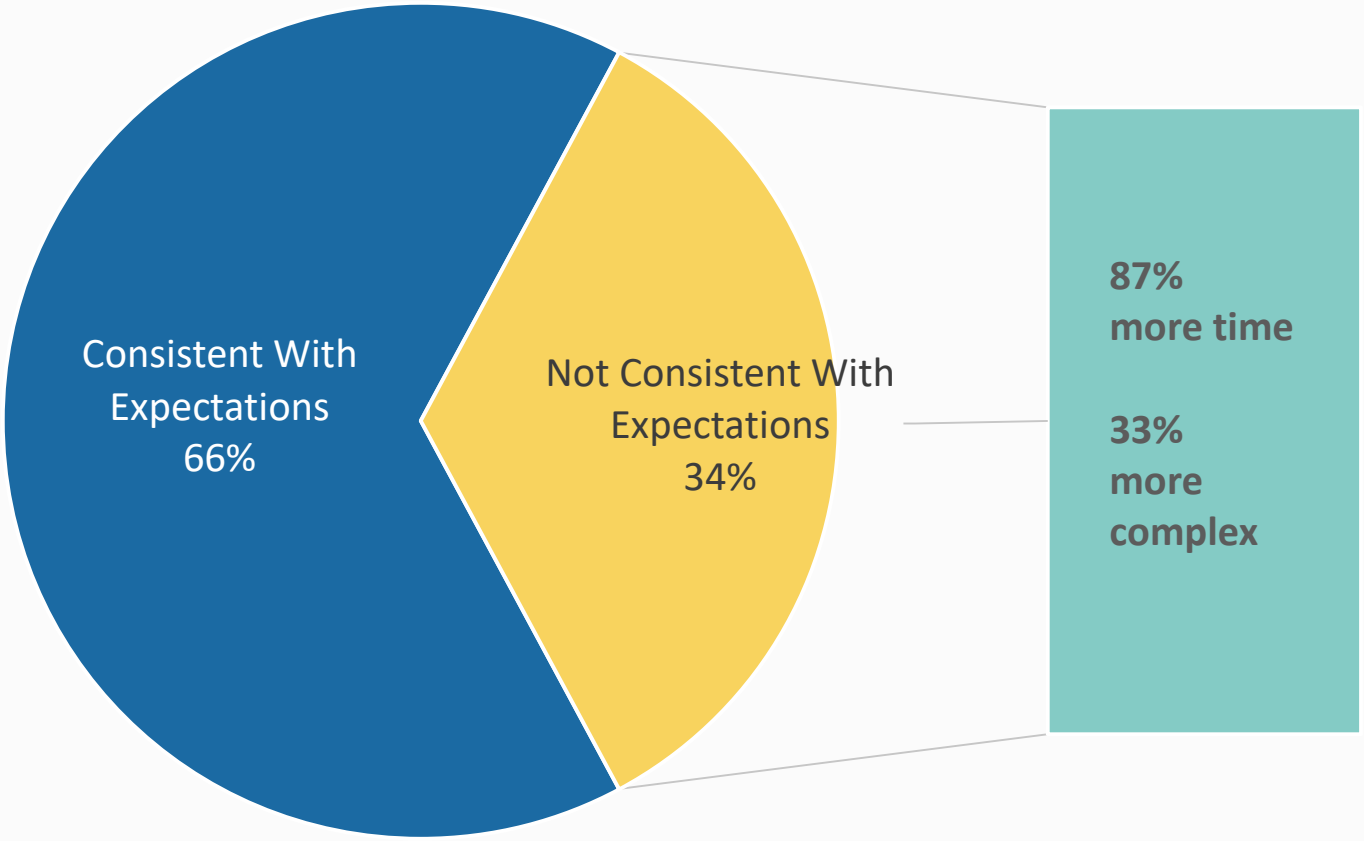
| Full Representation | Limited Scope Representation |
| --- | --- |
| 1. Family (31.6% of the cases) | 1. Family (19.3% of the cases) |
| 2. Criminal (13.4%) | 2. Estate planning/probate (13.7%) |
| 3. Estate planning/probate (9.1%) | 3. Real Estate (9.7%) |
| 4. Immigration (8.3%) | 4. Non-profit organization (9.6%) |
| 5. Real Estate (5.4%) | 5. Contracts (8.4%) |
| 6. Domestic violence (5%) | 6. Criminal (8%) |
| 7. Civil rights (4.8%) | 7. Housing (7.3%) |
| 8. Housing (4.1%) | 8. Business/corporate (7.2%) |

# Most Time Consuming Areas of Law (National Data)

| Full Representation (45.7 average hours) | Limited Scope Representation (16.4 average hours) |
|---|---|
| 1. Medical malpractice (255 hours) | 1. Juvenile (72.9 hours) |
| 2. Military (161.8) | 2. Civil rights (57.2) |
| 3. Civil rights (147) | 3. Securities (50.4) |
| 4. Tribal/native American (117.8) | 4. Technology (36.6) |
| 5. Technology (93) | 5. Non profit organization (29.3) |
| 6. Disability rights (90.6) | 6. Education (29) |
| 7. Health care (88.5) | 7. Criminal (28) |
| 8. Non profit organization (86.1) | 8. Tribal/native American (27.2) |

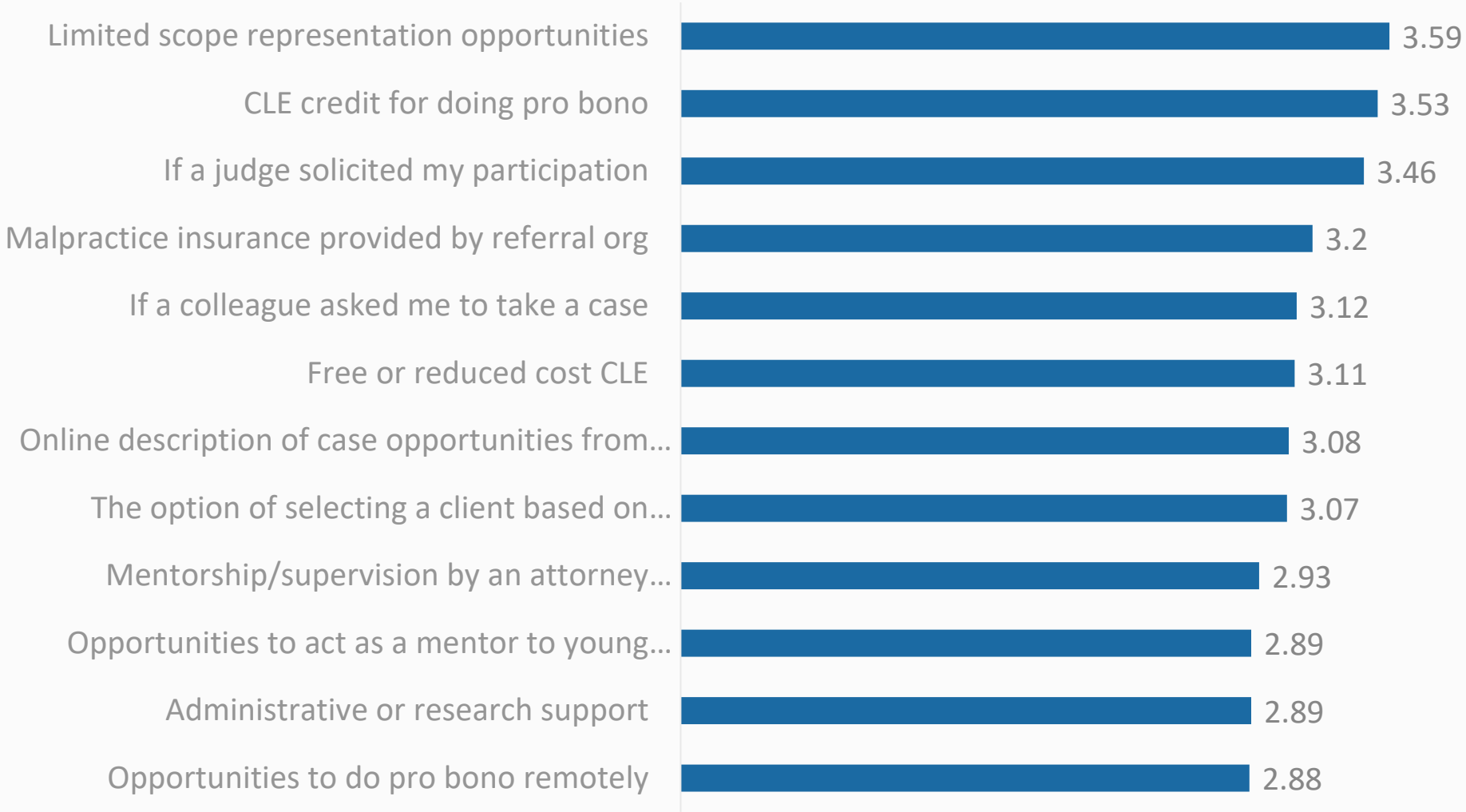
# Expertise and Expectations

**68%** said their most recent case was within their **area of expertise** and **66%** said it was consistent with their **expectations**.



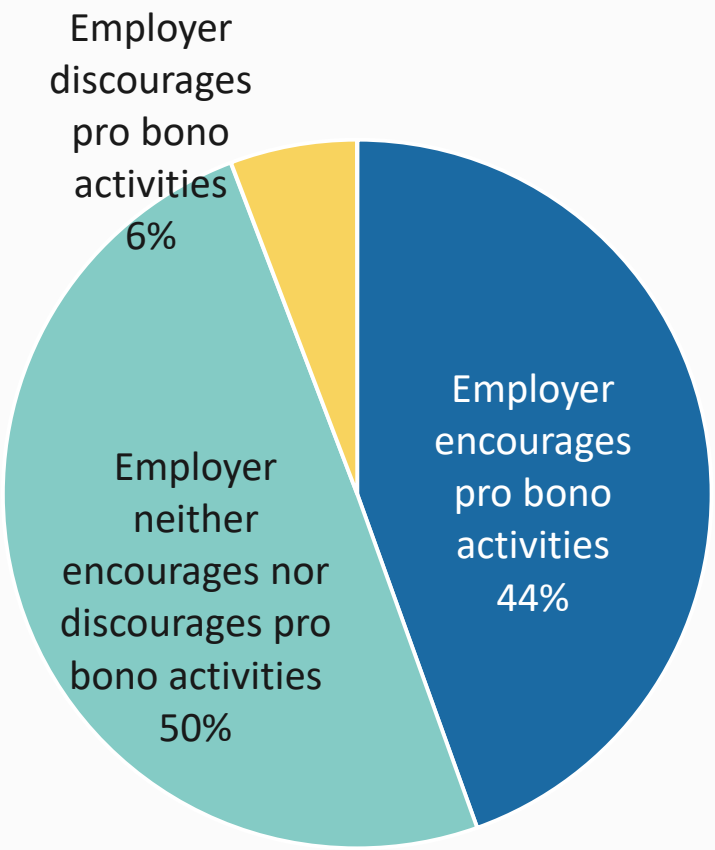
# How to Best Engage Pro Bono Attorneys

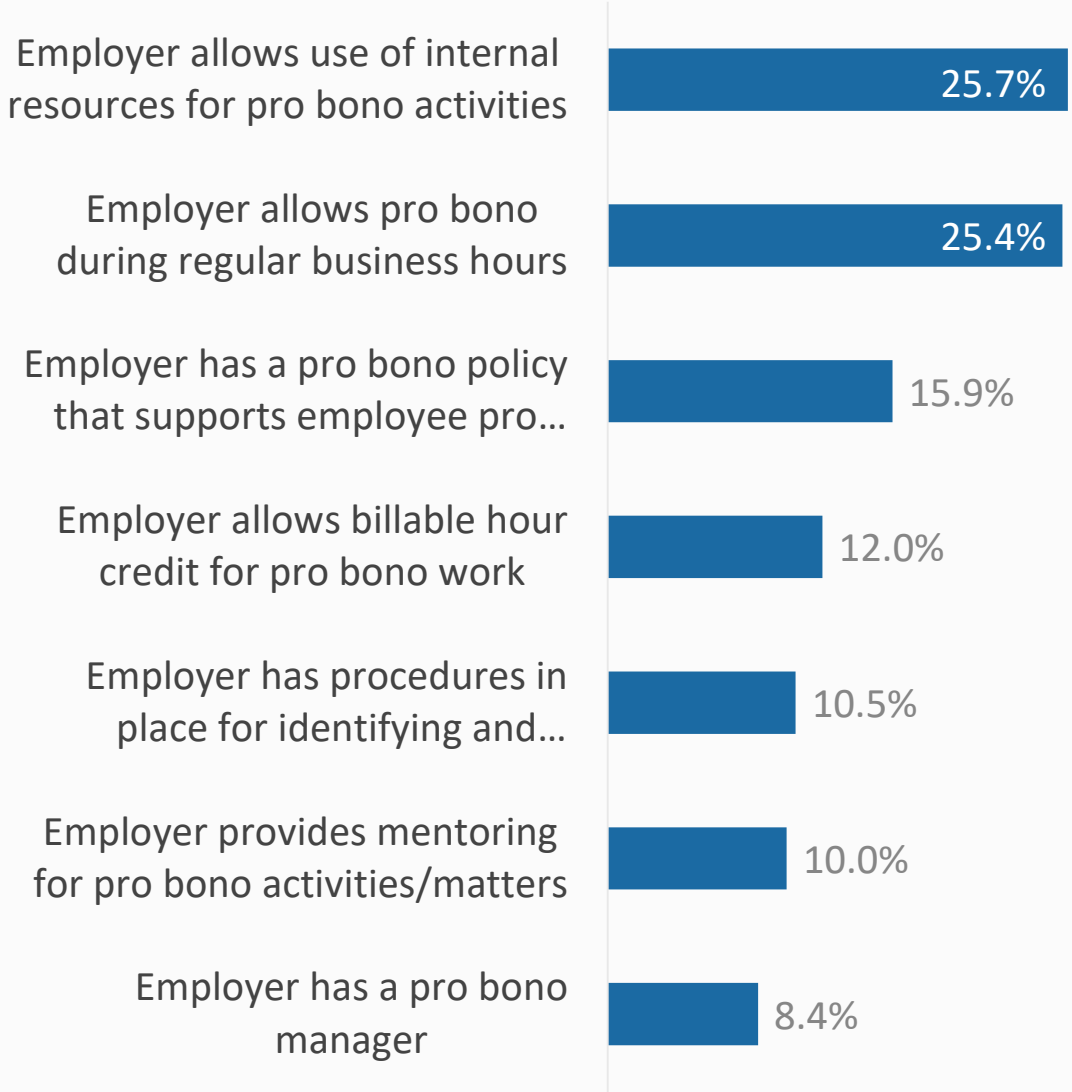
# Top Encouraging Actions



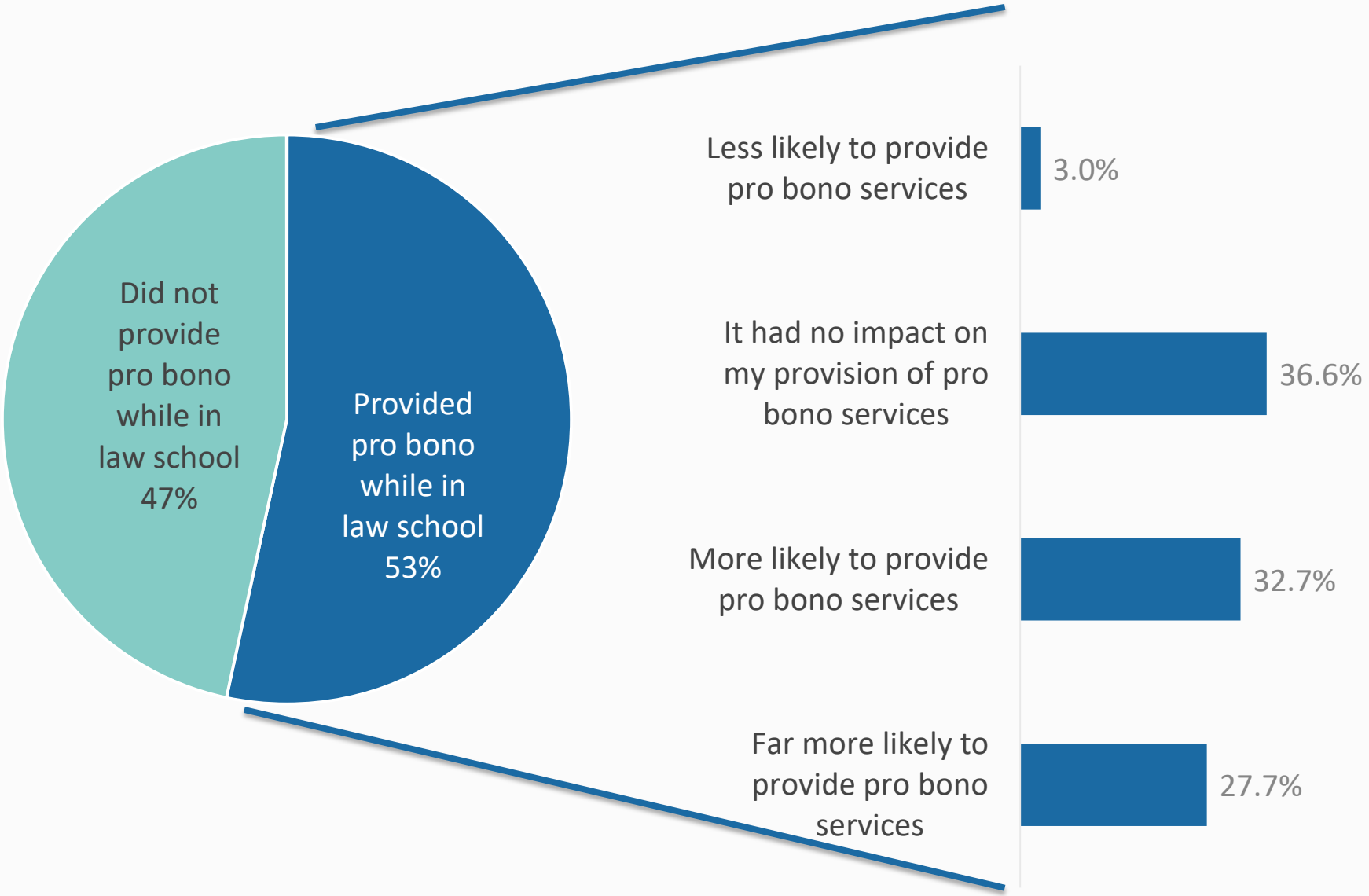

Rating Scale from 1-5, where 1 = least encouraging and 5 = most encouraging

# Employer Attitudes and Actions



# Law School Pro Bono



# How do I learn more?

Harvard Access to Justice Lab:

Website: a2jlab.org

Email : access2justicelab@gmail.com

ABA Committee on Pro Bono and Public Service

Website: abaprobono.org

Email: abaprobono@americanbar.org

Presenter Contact:

April Faith-Slaker: afaithslaker@law.harvard.edu