

From the Editor

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Repository Citation

Barnes (1999) "From the Editor," *Marquette Elder's Advisor*: Vol. 1: Iss. 2, Article 3.

Available at: <http://scholarship.law.marquette.edu/elders/vol1/iss2/3>

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From the Editor

The social construct we call retirement is a fleeting thing in the history of work. Less than a century ago, too few workers lived on after losing their earning ability to make retirement an expected phase of the human life span. Rather, the incapacitated old were the anomalous survivors of usually fatal diseases. The concept of retirement instead represented a choice for the affluent of any age to withdraw from full participation in society, generally for reasons of emotional, intellectual, or physical health. That is, retirement implied disability, regardless of age—for those who could afford it. Workers without family support or non-work income labored on.

As the story goes, our retirement age of 65 is the product of savvy politicking on the part of the King of Prussia in the wake of the universal draft and prolonged wars of the mid-nineteenth century. Wishing to reward his aging soldiers and win their gratitude, he proposed to create a military pension plan. With an eye on the public treasury already depleted by the wars, he asked his Chancellor Bismarck about the life expectancy of a Prussian soldier. The answer was age 63. Thus, the universal retirement age of 65 was adopted.

But retirement is not necessarily feasible for the individual or the society. The King of Prussia had it right: retirement is for those who are incapacitated and at the end of their lives. If capable people leave the workforce in numbers, the productivity of the society is diminished and the political entity weakened.

Therefore, the market and public policy are adjusting to the healthier, more capable status of most older people, and age-based policy is receding. With increasing frequency, the low-income elderly continue to work beyond the nationally declared age of retirement. Disability criteria are replacing age criteria with the growing impact of the Americans with Disabilities Act (ADA). It is quite feasible that retirement income based on disability will extend to the incapacitated survivors of illness and trauma who must leave the workforce in their 50s or earlier. Currently covered by Social Security only after two years in disabled status, such early involuntary retirees are shortchanged on a subsistence retirement income and health care coverage because the typical needs of old age were visited on them too early.

The Employee Benefits Research Institute (EBRI) has published a report (Issue Brief Number 206) that gathers the factors that will shape the characteristics of the elderlaw population in the future.

The most telling summary is that retirement patterns in America are more varied than the Social Security norms suggest, and that public policy somehow will change to reflect individual and family reality.

One critical factor is the end of mandatory retirement, the effects of which surely are not fully appreciated by advocates for passage of the Age Discrimination in Employment Act (ADEA). As a result, firms and institutions often must buy out workers, providing a nice retirement nest egg. Alternatively, employers must make a case for dismissal for cause, often at the conclusion of a long and mutually beneficial career by the employee. The costs of the ADEA, whether they are financial or psychological, are big.

The EBRI brief, by Joseph Quinn of Boston College, notes the different patterns of men and women in the workforce. After World War II, men left the labor force at ever earlier ages up to the mid-1980s, when the trend halted and slowly reversed. More older men are now remaining in the workforce. Women were just entering the workforce in large numbers during WWII, so their rates of participation have risen and fallen more slowly. Nevertheless, more older women are workers than the post-war retirement trends could predict.

Many older workers do leave their heretofore primary occupation for so-called bridge jobs that are less than half time or perhaps less than full responsibility. In a parallel transition that is institutionalized in Japan, the executive takes an advisory position late in a career. The position requires the same level of expertise, but carries less decision-making power. In either country, older workers leave room for young leadership without completely giving up their work income or activities.

The American trend generally does not accommodate the opportunity for older workers to continue to provide oversight of their successors. Rather, American bridge jobs are often in a different field. Many are independent, entrepreneurial enterprises—a trend that prompted us to consider the phrase “post-employment,” rather than the familiar (but oxymoronic) phrase “post-retirement” for the cover of the *Journal*.

The strength of the U.S. economy is significant in shaping these trends toward longer work lives. Business trends and government policy have fallen

in line. Social Security has changed its constraints on retiree income, so most workers incur no penalty to their income for work after age 65. Pension plans have changed from defined benefits to defined contributions, omitting age-related retirement incentives. Fewer jobs, in this post-manufacturing era, require physical strength and stamina. In the service sector, relatively more jobs require poise, dependability and maturity.

Still, there is no group so diverse as the aged, and retirement patterns that are true in general may not be true for any particular group. Among men, workers at the top and bottom of the pay scale are most likely to utilize bridge jobs. In contrast, women with higher incomes—at least in this generation of elderly—do not typically stay in the work force.

The analysis suggests two distinct groups of older workers: those who have to, and those who want to. This is supported by a 1998 EBRI study in which 60 percent of respondents said that a “major reason” to remain in the workforce after retirement age was their enjoyment of work, and the desire to stay involved. Thirty-eight percent cited the need to make ends meet, and 26 percent expected to support family members.

Times have changed. Apparently, continued work at older ages is increasingly likely. For some, retirement from a career leads only to another career and yet another retirement. Elderly clients with ongoing income should be recognized as being completely in sync with their peers. In any case, the ability of the post-65 worker to provide increased security and well-being through work should be acknowledged, not dismissed as with the earnings of women and domestic workers in the past.

In addition, if the future of the elderlaw clientele has as much to do with disability as with chronological aging, then the impact of technology to compensate for disability is a critical component of that future. Assistive technology is not new, but it is tempting to believe it has stayed in a primitive state for most people with disabilities. Improved walkers and wheelchairs still cannot overcome the simplest architectural and natural barriers. Bath and bed are traps for the unwary whose balance or strength are diminished. Outside the home, non-drivers are restricted in their travel timing and destinations—especially if they are unable to utilize mass transport. Telephone technology offers the

most options for access for people with disabilities, but access to the Internet is foreclosed to many whose lives might be greatly enhanced.

The Public Policy and Aging Report (Gerontological Society of America, Vol 10, No 1) offers a “National Policy Agenda for Technology and Healthy Aging” that calls for lifelong transportation, healthy homes without injury and with access to services, and access to personal communications in lieu of isolation for people with disabilities.

Increasingly, the agenda of elders and elderlaw is one of disability—and choice. In future volumes, the *Journal* will inevitably bring to readers the expanding principles developed in the case law on the ADA, the technology of independence in living, and the technology of interdependence through communication.

Alison McChrystal Barnes
July 1999

