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## SOCIAL POLICY AND RETIREMENT PLANS

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Public Social policies regarding age, sex, marital status, income level, and other factors will have important implications for private and public retirement programs. To what extent are retirement plans instruments of public social policy, and to what extent should they be? Several key issues will be discussed.

1. Age: To what extent should eligibility, accrual of benefits and conditions of retirement depend upon age? What changes are needed in current laws and regulations? What changes may be expected?
2. Sex and marital status: To what extent should pensions be defined as property with survivor rights mandated for spouse? What are the implications of unisex mortality tables for pension plans?
3. Income level: To what extent may retirement plans discriminate among employees at different income levels under current laws and regulations? What are the public social policy implications, and what changes are needed?
4. Other factors: What will the impact of public social policy be on future trends in disability benefits, death benefits, termination benefits, and other factors in private and public retirement plans?

MR. JAMES R. SWENSON: I would like to begin by introducing the distinguished members of our panel. They are Judith Wolfson, Director of Group Pension Government Relations at Connecticut General, Laurence Coward, Director of William Mercer Limited of Canada and Anna Rappaport, Vice President and Actuary of William Mercer in Chicago.

Our session will be divided into two major parts. In the first part, the panelists will discuss public social policy and retirement plans from a broad perspective. In addition, the panelists will discuss those issues involving age. In the second part, the panelists will discuss other issues such as sex, income levels, vesting and other related issues. There will be opportunity for comments and questions from the audience at the end of each of the two parts.

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MRS. JUDITH P. WOLFSON : I am delighted to be here with you today. I am pleased and honored that you asked a Government Relations type to join you in your deliberations. Some of you may have seen the article in the Washington Post earlier this week that talked about actuaries as a very exclusive society, composed of social mathematicians. That characterization helped me put today's talk on Social Policy and Retirement Plans in a better perspective.

"Are Retirement Plans instruments of public social policy, and to what extent should they be?" is a very intriguing issue. We first need to be clear about what we mean by social policy. Are we talking about legislation and regulations, or about court decisions, or demographic and economic trends, or about the concerns of special interest groups? Although many would feel that public social policy can be expressed in all of those ways, and others would disagree, I think everyone would agree that public social policy is expressed clearly through legislation and regulation. Retirement plans, therefore, can definitely be viewed as instruments of public social policy since they receive tax favored status and are regulated through ERISA. I would argue, however, that public social policy expressed through legislation and regulation should be broad in outline and should not include the kind of specific detail currently contained in the ERISA legislation (to say nothing about the myriad of regulations that followed).

Another example of the thesis that retirement plans are instruments of public social policy are the Social Security integration rules, in that plans are allowed to integrate with Social Security on the grounds that employers are already contributing to the cost of Social Security benefits.

Public social policy however, really should be viewed more broadly. There seems to be a general acceptance in this country of the three legged stool concept, with appropriate roles for Social Security, private pensions and individual saving. Although this concept has been accepted for some time, it has received increased visibility through the President's Commission on Pension Policy. In looking at the hearing record and attending some of the hearings myself, I recall that most of the witnesses who testified assumed the validity of the three legged stool, although they did differ about the appropriate roles for each leg of the stool.

But again in looking at retirement issues, one also has to look at how the public views those issues.

The public perception seems to increasingly be that everyone is entitled to an adequate retirement income. They also tend to be concerned about whether their own retirement income will be adequate. Another increasingly accepted public view is that pensions are deferred compensation which is an outgrowth of the entitlement philosophy.

Other issues that need to be taken into account by the public, employers and government policy are the expected major demographic changes and the impact of the economy, particularly inflation, on retirement income issues. In the decades ahead, with the expected increase in the ratio of retirees to workers, we should expect to see more and more demands by older persons and retirees for adequate retirement income. Indeed, the power of this constituency and the general entitlement philosophy in this country is really what has brought about the increased breadth and scope of the Social Security Program from its minimum floor of protection to a program that replaces increasingly larger shares of people's preretirement income. As a result of expected demographic changes, economic conditions and the entitlement expectations that I referred to before, there is a clear danger that if retirement plans do not serve perceived public needs, then Government programs will take the place of private solutions. This presents a substantial challenge to private employers and service providers.

The major public social policy issue facing our country today is a future need to encourage people to work longer because of the needs of the economy and demographic changes. These changes include: increasing longevity, low fertility rates and the expected demographic composition of the future work force.

Americans are living longer and life expectancy at age 65 has increased since 1935. Another key change is the lower fertility rate. While future fertility rates are difficult to predict, most demographers agree that future rates are not likely to reach the level of the 1950's. Combining the increasing longevity and the declining fertility with the aging of the baby boom will cause a significant shift in the demographic composition of the country. It is projected that by the year 2030, 22% of the population will be 65 or older, compared with 11% today.

Although employers will need to find ways to encourage people to work longer, and this will raise plan design issues, the immediate public policy issue is the retirement age under Social Security. This has major implications, not only for the financial health of the Social Security system but also for private plans, because of the impact that Social Security has on private plans and working patterns.

Although we are talking about demographic impact twenty years in the future, public policy really needs to focus on making changes now to take place in the future. We would like to see legislation enacted now that would raise the normal retirement age under Social Security to 68 or older **gradually**, perhaps a quarter or a half of a year at a time, beginning in 1990.

Although such legislation is not going to be enacted tomorrow, it is encouraging to see that so many groups have been pushing and recommending this kind of change. These include the President's Commission on Pension Policy, the National Commission on Social Security, the Advisory Council on Social Security, the Joint Economic Committee, Reagan's transition team, the ACLI, and ERIC. In addition, various bills have been introduced in Congress. It is still rather difficult to predict the chances of such legislation being enacted. Most of the special interest older persons' group, such as AARP, have opposed any kind of legislative change in Social Security. So far, the Reagan Administration seems to be treading very carefully upon all of the programs associated with Social Security. I am somewhat optimistic, however, that we will see an increase in the normal retirement age under Social Security legislated in the future as it becomes more and more evident that the current Social Security program is just not affordable. If such legislation is passed, many plan sponsors will probably want to increase the normal retirement age under their own plans and, indeed, they would save money by doing so.

Changing the normal retirement age under Social Security is a good example of how public policy might influence plan design and employer policies. Employers should not be mandated to increase the normal retirement age because different industries and different employers need to develop their own plans to suit the characteristics of their own work force. Other incentives to encourage people to work longer also need to be explored by employers, plan designers and actuaries. If employers are responsive to individual needs and economic and demographic trends, we may avoid governmentally mandated solutions.

As you may recall, the EEOC developed draft guidelines for the Age Discrimination in Employment Act about a year ago. These guidelines would have mandated plans to provide for accrual of benefits and/or actuarial adjustments for service after normal retirement age. As a result of the substantial amount of negative comment that the EEOC received, they have indicated that they would drop these draft guidelines although, based on past history, it is difficult to predict what the EEOC is going to do. No matter what is legislated or regulated, employers should consider a variety of ways to encourage people to work past 65. This could take various forms including accrual of pension benefits past 65, making early retirement less attractive than it is now, exploration of alternative work patterns and redesign of jobs. More importantly, employers and employees need to base retirement decisions not on age alone, but on individual productivity because of the wide range of differences among individuals.

My conclusion is that retirement plans are, and probably should be, instruments of public social policy. The big question is "What kind of social policies?"

MR. LAURENCE E. COWARD: I address myself to the question: To what extent are Retirement Plans instruments of public social policy? In Canada they certainly have been regarded as such since they were conceived a century or so ago. The Government, for that reason, has offered ever increasing incentives and encouragement to their development. This occurs as far back as the Pension Fund Society's Act of 1887 and the Government Annuities Act of 1908. Later on, tax deductibility was allowed for contributions from employers and employees, and more recently we have had direct legislation through the Pension Benefits Acts.

About three years ago, when the Royal Commission was established, one of the prominent members warned that the private pension system could not be cured through bandages, and unless the private sector smartened up, the Government would be forced to intervene. The smartening up was largely on social grounds, and that warning has been taken fairly seriously.

In the 1950's, the Government of Canada tried to direct pension plans into socially desirable directions. They produced some guidelines for income tax registration, such as vesting after twenty years. The guidelines were attacked on the constitutional grounds that the Federal Government had no power to do indirectly through the Income Tax Act what it could not do directly because the provinces had jurisdiction there. The guidelines were withdrawn and for many years there was very little control of pension plans until about 1965 when the provinces started enacting their Pension Benefits Acts, which were the forerunners of ERISA. The Acts are really the result of consumerism and of the deferred pay concept.

We recently had five major Government reports on pensions, and the National Pension Conference was held last month in **Ottawa**. It seems certain that there will be very significant legislation in the near future. Among the proposals that have a very good chance of enactment, in at least some of the provinces are: (1) a provision for considerably earlier vesting, (2) a provision that not more than half of any pension should be derived from employee contributions, (in the case of a contributory plan) and that applies both to a deferred pension or to an immediate pension, (3) a provision for some degree of indexing through excess interest earnings, (4) the normal form of pension should be Joint and Survivor with 50% or 60% going to the surviving spouse, (5) splitting of pension credit in the event of marriage breakdown and (6) much fuller disclosure. Action on all of these seems highly probable.

Going further, the Ontario Royal Commission has recommended that employers have a system of mandatory plans and that all employees be required to join. The minimum plan would be on a 4% money purchase basis. Another major report, the Lazar Report to the Federal Government, recommended that mandatory plans should be one of the four main alternatives offered. The Canadian Life and Health Insurance Industry has been seduced into thinking that this was a good idea. About three years ago, they were supporting an increase in Old Age Security. I find it quite remarkable that the President's Commission in the United States has supported mandatory plans and this was hailed as late evidence that Canada was going in the right direction. I then received a copy of the National Commission on Social Security which said that the idea was unnecessary and undesirable. I have not heard that getting the same publicity in Canada.

The Canadian proposals are quite controversial. One particular difficulty is that pensions are a provincial jurisdiction and the provinces have never been more independent and they will certainly not act all together. Some will probably never introduce the mandatory plan and they will not all introduce the same mandatory plan. Pensions will be very small for many years and in a great many cases, anything that the employee gains from the new mandatory plan would be taken away by reduction in his Federal and Provincial Supplementary Pensions.

Canada and the United States are very close together. So close that ideas flow easily across the border. It is rather like dangerous infectious diseases. Perhaps my examples will make you think of that too. The United States' influence has led to Canada's capital gains tax and may be leading us to unisex mortality tables. Canada has exported the idea of Pension Benefits Acts which turned into ERISA. The latest idea to be coming over is that of National Medicare. The trouble is many of these principles of social behavior are very praiseworthy, but if carried to excess they can be costly to society and offensive to common sense. The United States has a history of getting a very good idea and flogging it to death. Prohibition is a prime example. Antidiscrimination laws suggest the same.

I would like just to conclude by making a few remarks about age discrimination. Several provinces define age as 45 to 65 or 40 to 65 for purposes of the antidiscrimination complaints, and some provide exemptions for bonafide pension plans. At present, most provinces require vesting for employees age 45 with 10 years of service. That is our standard vesting rule. But in the future, the age limit is likely to be removed on the grounds that it is discriminatory. So we will probably see vesting required after a short period of service, regardless of age.

Senator Croll made the bold statement that mandatory retirement is the last great human rights issue. He headed a Senate Committee which recommended that the maximum age for mandatory retirement be abolished after a five year transition. The Committee did not do a very thorough job and did not say what benefits had to be provided for people who continued in employment after their normal retirement age. Of course, that is a very important question.

The Ontario Royal Commission recommends that if retirement is postponed beyond normal retirement age, the employee should always receive an actuarially increased pension. They did not address the question of whether the pension accruals should continue after normal retirement age. Frankly, the Royal Commission was much more concerned by the dangerous cost implications of the trend to early retirement.

Provincial law varies and in Manitoba the court ruled that the mandatory retirement of a university professor was illegal. In British Columbia it was ruled that mandatory retirement was legal, if consistently applied by the employer. This has become an emotional issue and so we probably will see the abolition of mandatory retirement.

Age is fundamental in the design of pension plans. Plans have an age of eligibility, a vesting age, disability age, early, normal and postponed retirement ages. It is really hard to imagine a plan where there is no reference to age. I hear that there is an undesirable tendency to argue that the actuary should not be allowed to use age in his costings on the grounds that it would show the cost of a pension as higher for an older person. The employer will then be led to alter his hiring policies. How we are to get around that one, I just do not know.

MRS. ANNA M. RAPPAPORT: I think our first problem this morning is to try to focus on some of the definitional problems. This topic is extremely important and it is crucial that we understand what the issues and the relevant questions are.

I prepared this questionnaire to help us focus on some of those issues. I would like to run through the first few questions and particularly, question 7.

SOCIAL POLICY AND RETIREMENT POLICY

Questionnaire

1. What is work?
2. What is retirement?
3. Who should decide when a person will receive income while not currently working?
4. Whose responsibility is it to pay that income?
5. How much money should be paid to a person not currently working?
6. What factors should be used to determine that income?
7. Determine whether the following individuals are retired:
  - a. John Smith, age 50, is drawing a military pension of \$3,000 per year and is employed at a local bank earning \$25,000 per year.
  - b. John Smith, age 50, is drawing a military pension of \$3,000 per year and stays at home to care for the household and his 4 minor children. His wife is employed at a local bank earning \$25,000 per year.
  - c. John Smith, age 60, is receiving a pension of \$15,000 per year from work as a policeman. He is employed at a local bank earning \$8,000 per year.
  - d. Mary Smith, age 45, stays at home and cares for her 4 minor children and her home. Her husband, John, is employed and earns \$25,000 per year.
  - e. Mary Smith, age 45, stays at home and cares for her 4 minor children and her home. Her husband, John, is drawing a pension of \$25,000 per year.

Write the answers from the viewpoint of:

- a. An individual in the census bureau giving instructions to enumerators as to how to fill out census forms.
  - b. A market researcher working for a company trying to market products to retired people.
  - c. A social researcher trying to determine whether people are satisfied with their retirement plans.
8. Determine which of the people mentioned in question #7 are working.
9. Was the question about which people were retired the right question to ask?

The seventh question asks us to determine whether the following people are retired. I would like us to think about that question from three different perspectives. From the perspective of an individual in the Census Bureau giving instructions to the Census enumerators as to how to fill out the Census Forms. Secondly, from the perspective of a market researcher working for a company trying to market products to retired people. And third, from the perspective of a social researcher trying to determine whether people are satisfied with their retirement plans.

My first case is John Smith, age 50, who is drawing a military pension of \$3,000 a year, and employed at a local bank earning \$25,000 per year. Is he retired from each of those perspectives?

My second case is John Smith, again age 50. He is also drawing a military pension of \$3,000 per year, but now he is staying at home to care for the household and four minor children. His wife is employed at the local bank earning \$25,000 per year; is he retired? We must think about this balance and how these two concepts fit together.

I have a mission today. I hope that everyone here will go home questioning some of the views that you held previously and thinking through the issues, putting them in perspective of peoples' life cycles and saying, "What are the issues? Maybe they are more complex and how do we cope with them?" And if I get you to think through whether the definitions and the issues that you held before were the right ones, or whether they should be broadened somewhat, I will feel very satisfied.

Traditionally, as actuaries, government people and benefit planners, we tend to think about the linear life cycle as being the normal pattern. Linear life cycle means that we have a period of growing up, we then go to school and get an education, have a long period of work in the middle of our life, and then retire. I think that people are increasingly having different life cycle patterns; females tend to have more variation in life cycles than males. We need to be concerned about what has been called a cyclical life cycle, which calls for more spreading of leisure through the life, more spreading of

education through life. We will also need, as actuaries, to develop a definition of the role of the actuary in addressing these issues.

The real topic that we are talking about is social policy and individual economic security, a much broader issue than that of retirement plans alone. Actuaries face a tremendous challenge. It is those individual economic security systems that help to define what life cycle choices are available to people. People can decide to work or not to work at given stages in their lives, depending on the resources that are available to them. Personal savings wealth and income earned by other family members help to define the choices, as well as the individual economic security systems. The systems in place today are built around the assumptions that the normal life cycle is the linear life cycle and the normal family pattern is the traditional family. Our challenge is to try to understand some of the emerging patterns and understand how we might adopt these economic security systems to fit the new patterns well. I believe that we can divide the life cycle into several periods. One is when the individual is dependent on other family members for support and makes little or no economic contribution to the family. A second type of period is when the individual works in the paid labor force, a third is when the individual works out of the paid labor force as a family member in the home. I believe that we tend to confuse not working and working not in the paid labor force but in the home as being the same thing. I do not think that they are. Any one person will have combinations of these periods during his life and may combine them at the same time. Our individual economic security systems flow from work within the paid labor force. Benefits earned are based on that work within the paid labor force and are attachments to persons who have earned economic security.

I think that individual economic security is a very appropriate topic for social policy and I am going to propose that the following principles might govern that policy.

To the extent the jobs are available, adults who can work should work and provide for themselves unless they or their families can provide for them. Public policy should also foster flexibility in life cycle patterns and in patterns of work. Public policy should encourage meaningful job training to keep the individual able to work over as long a part of the life cycle as possible. Individuals should be encouraged to provide security for themselves and their families through private programs. The employer should be encouraged to provide security for workers and workers' families through private programs. Government programs should serve as a floor protection and a source of last resort and should be kept relatively small. Women should be told that they must join the paid labor force in order to have access to security systems, or the systems should be altered to take adequate and equitable care of women who work outside of the paid labor force for long periods of time.

The problem now is that the social patterns have changed and the systems do not fit them well. The same general public policy principles that apply to compensation should also apply to fringe benefit provisions, particularly with respect to nondiscrimination.

I would like to address some of the age related retirement issues. I view the retirement system in the United States as an outgrowth of public policy. Social Security has a retirement age range of 62 to 65 which has been the major factor in setting retirement ages in private pension plans.

The Internal Revenue Code, in allowing that pension plan contributions meeting certain requirements may be deductible, has been a major factor in determining the structure of retirement plans. ERISA plus the integration rules have been major factors in setting plan structures. The rights of individuals with respect to employee benefits are founded in ERISA, provisions of the Internal Revenue Code, and the rights of unions to negotiate about benefits. The laws have created a framework for employee benefits that we have worked within.

The retirement ages today are not based on biological grounds, but flow from Social Security retirement ages. They serve as a foundation upon which the human resource policy in most organizations is built, that is, employers have designed plans such that they would be able to retire people at ages 62 to 65. The Age **Discrimination** Act changed that foundation and employers could not force people to retire before age 70. We must be careful when changing the foundation upon which the system has been built to consider the implications of change.

Retirement systems today are based on the assumption that our work pattern will be 100% work and then retirement. There are problems with respect to disability. One of the issues which we will increasingly face is that we will not be able to separate age retirement from disability retirement, particularly as retirement ages stretch out over a longer period of time. The design of the various systems will have to be coordinated. In the past, forced retirement has been used to avoid performance evaluation on a meaningful basis. Employers are not going to be able to afford that; in the future, performance evaluation will be crucial to personnel policy.

As an indication of a relatively recent social pattern in the United States, one-fifth of men and one-twelfth of women over 65 in 1979 were in the paid labor force, compared to two-thirds of men in 1900. If one retreats far enough, one can see that we have not always had retirement issues confronting us. Retirement questions have only been applied to work that is in the "paid labor force". I would like to suggest some expansion of the program issues as written.

The program, as stated now, is to what extent should eligibility, accrual of benefits and conditions of retirement depend upon age? The additional issues that I would propose are: How can work patterns be modified to accommodate gradual retirement? How can security systems be used to foster movement into second and third careers and how can meaningful retraining be organized and paid for? What other life cycle models and what spreading of non-work and education over a life is appropriate? Following are some changes desirable in the current systems from a longer term perspective. We should provide tax incentives for individual retirement savings. This is a desirable goal from almost any perspective, particularly in the United States today. We should **accommodate a diversity of work patterns and offer options which make gradual retirement possible.** Increasing retirement ages is an extremely important change in the Social Security system. It is vital that employers develop good

performance evaluation systems and use the performance as a criteria for forcing anyone to leave the employer to retire. We need to develop job options so that a less demanding job can be an option to retirement. We need to tie together the design of retirement and disability programs to foster meaningful midcareer retraining, and to refine the definition of retirement. We need to re-evaluate very early retirement to see if the benefit should provide, not for immediate retirement income, but for retraining plus a deferred benefit. In the long term, we probably also need to eliminate mandatory retirement.

I hope I have encouraged all of you to question whether you have been thinking about the right issues because I think that this is much of our problem -- that we have not asked the right questions.

MR. SWENSON: Anna, I must say that I agree with you whole-heartedly that we have to expand our horizons. As an anecdote to your discussion, my own father is now 77 and he works six hours a day as a machinist, a **relatively strenuous** occupation. He increased the number of hours worked at age 72 when the retirement earnings test no longer applied under Social Security. While I do not advocate elimination of the retirement earnings test, I do think that there are means to encourage people to work and earn income at ages which our society has generally considered retirement ages. The demographics of our country are such that it is going to become imperative for us to do so on a macroeconomic basis.

MR. STEVEN COOPERSTEIN: Mrs. Rappaport was talking about what we in the business world think about products: the products of the government, providing governmental pensions, mandated pensions, tax incentives, employers providing pensions. We are providing products that perhaps are not in keeping with general social welfare of individuals. We are being forced into a mold of one life style. It is very antisocial, as it causes inflation and other things that are damaging. Why should we not provide a benefit for which people do not have to save, and give tax incentives? Why not start putting money aside for an endowment ten years from now, where you could take off from work for two or three years and enjoy your life, or even enjoy part of the work week, part of the work year, provide money for sabbaticals? We have to rethink our whole system. Mrs. Rappaport also mentioned that the government should provide a very small portion of the retirement benefits and most should come from the employer and the individual. I really do not understand why the employer should provide any more than the individual. When you say the employer provides it, you are really saying that the employer can provide because the government will support the employer by giving him tax incentives. In reality, the employer and the government are giving those benefits, and I really think it should be a matter of individual determination.

MRS. RAPPAPORT: I am very intrigued with the possibility that you could use programs, such as systematic savings programs in which the employer is involved, as a way of financing mid-career sabbaticals or periods of education. I am personally convinced that fairly extensive mid-career education is really important and we have not begun to seriously address the issue.

MR. MICHAEL COHEN: Two comments I would like to make. One is in regard to the almost unanimous opinion that the retirement age should be increased to 68. I

think the best reports on retirement in Canada were the Economic Council Reports One and Three. Some interesting simulations and projections were done, one of which addressed increasing age of entitlement. I think it was found that that has very, very minor effect on changing the dependency ratios. Before everybody rushes headlong into this particular direction, I would ask for some actuaries to quantify the effects, positive or negative, that these programs would have. Another issue is the question of individual responsibility. I certainly would like the individual to take a lot of initiative, but the question I ask is: "What if he makes the wrong decision?" What if he decides on a certain pattern of lifetime earnings which results in very little disposable income from his own resources. When he reaches retirement age, will the government withhold benefits because he had the opportunity to provide for himself and he did not? The government which does provide a pension for this person also has a responsibility to successor governments to ensure that individuals who do have the means should provide for their own retirement rather than become wards of the public purse twenty or thirty years down the road.

MR. COWARD: Can I just say that the Economic Council obviously needed some actuarial advice? They should have been told that a male at age 65 lives fifteen years and if his retirement age is raised to 66 then obviously the cost of the plan is reduced by exactly one-fifteenth. I see no way that they can argue that that is not correct.

In Canada, we have not so much been concerned with raising the retirement age as with preventing it from dropping due to the pressure for yet earlier retirement. I am involved in advising several groups, where the retirement age is quite low, 50 to 55. Our evidence is that 75% of the employees do not really retire at all, they go and get another job. The remark made by one of them was: "I am going to retire the moment I can find another job."

MRS. RAPPAPORT: I think that you are really raising the question: "What is the correct level of the floor of protection?" Another question is: "When should a person be automatically entitled to retire?" The past philosophy has been that when you get to a certain age, you have this entitlement. I suggest that if you are able to work, that is the wrong concept. Perhaps the concept should be that if you are able to work, you should take care of yourself. If you do not want to work and you are able to work, then it is your responsibility to provide for yourself. The public does not have a responsibility to make that choice available on a voluntary basis. Do not think that we are going to swing away from that 100%, but I hope we will swing back to that in some direction. I believe the aggregate of the effects of the entitlement concept has created major economic problems in the United States.

MRS. WOLFSON: You raised the question as to whether the government should try to save people from themselves. That is a dangerous philosophy to take. Part of the answer may depend upon how much we believe in individual choices and in the freedom of people to make their own choices. In your philosophy, the government would be making all kinds of choices for people. Although no one can guarantee that an individual will make only good choices, we have to give the people the freedom to make those choices.

MR. SWENSON: The role of government should be limited to providing a mandated floor of protection of income for the elderly. In the United States, the Social Security Program does that. Such a program should provide income adequate to meet basic needs. Beyond that, the role of government should be to provide the opportunity for individuals and their employers to meet their own personal retirement income objectives.

MRS. RAPPAPORT: Our retirement system is tied to the concept of the traditional family with some patches. What do I mean by patches? We have provisions in Social Security to take care of people who are married for a certain period of time and then divorced. So we have put some bandages on but it is still really a traditional family system. The retirement system today recognizes only work in the paid labor force. That would be satisfactory if we had either permanent attachment of people who were out of the paid labor force to people in the paid labor force or some way of sharing the entitlement.

Women today have mixed life cycles which are not accommodated well at all by our security systems. Discrimination issues arise from discrimination in the work place, the failure to recognize as work any activity outside of the paid labor force, the inability of our systems to accommodate to mixed life cycles and mortality and morbidity differences and conflicting desires to provide equal amounts on a periodic basis versus equal values. In fact, if you have an honest mortality table, you can do both. I would like to suggest some expansion of the program issues.

We should be concerned about problems created by changing family structures and adapting our systems to recognize these changes. I am troubled because many of the questions raised in recent times, such as the issue of expansion of mandated survivor coverage, are asked as if we had the family patterns of thirty years ago. In this regard, I would like to particularly caution us in thinking about benefits that are tied to legal definitions of marriage and divorce. In the employee benefits area, we still have not moved from the traditional family to where we are now. For instance, let us examine the issue of property rights of couples. Under the traditional family definition, both husband and wife had property rights in the event of a marriage split-up. Now, if you have a relationship similar to a marriage but not a legal marriage, there may exist property rights. There have been some very publicized cases in the United States and it is a very confused area. We do not want to solve problems based on the social patterns of ten years ago and find that the solution no longer works because the patterns have changed.

We must either find a rational, consistent way to recognize work out of the paid labor force as creating a right to retirement benefits, or have adults recognize the potential price that they will pay for being out of the paid labor force. Earnings-sharing seems to be a rational and desirable approach, but a very complex one to implement. Further, benefit determination under defined benefit plans on a unisex basis seems logical and sensible. One approach is to use a formula for determining benefits under optional methods of payment rather than tying them to a mortality table. The formula can be constructed to produce results similar to what a mortality table would provide. This is very similar to the approach that is used to determine early retirement benefits. Many retirement plans have early retirement benefits that are not actuarially determined but determined using a formula.

In trustee defined benefit plans, unisex benefit determination on all forms of uninsured benefits would not seem to be a major problem. The major road-blocks for trustee case plans are ambiguities in the regulatory environment. We are afraid to change because we may run afoul of this regulation or that regulation. So we wait and see where the regulations go. I know that insured plans have a different set of problems.

MRS. WOLFSON: The public concern with sex discrimination has spilled over into the issues of discrimination in retirement benefits, and questions of risk classification. Here it is more difficult to state what the public social policy is. It is important that we distinguish the issues of purchase rates from the issues of benefits. For most defined benefit plans, sex discrimination really is not a major issue since most plans provide the same benefits upon normal retirement for similarly situated men and women. Although the costs are based on the numbers of males and females in the plan and their different mortality rates, the employer subsidizes the women so that the basic benefits are the same upon normal retirement. Although the election of certain options may produce unequal benefits, this had not been a major issue until the recent Shaw case, which I will examine later.

In the case of most defined contribution plans, one can also make the argument that if there is a lump sum payment which is equal in amount between men and women then the employer is providing the same basic benefit for men and women. It is only when you get into "optional" benefits (annuities) that the question of equality gets raised. The distinction to be made is between the basic benefit, promised by the employer as a condition of the employment, and those optional benefits that the employee chooses to purchase to provide for his or her own individual needs. In this "sex discrimination" area the social policy will be made in the courts rather than in the legislature. There have been a variety of court cases on this issue and I will describe them briefly.

The Manhart decision concluded that it was discriminatory for a defined benefit pension plan to require females to make greater contributions to the plan than males for the same retirement benefit. Beginning in December 1978, with the Colby College case, there were a variety of suits brought against TIAA-CREF Plans. Most of the decisions held that the plans, because they used sex-related annuity purchase rates, violated Title 7 of the Civil Rights Act. In August 1979, the United States District Court for the Southern District of New York, further ruled that in the Spirit case, that because of its unique relationship to educational institutions, CREF actually should be considered an employer rather than an insurance company. With the mounting pressure from court decisions and EEOC, TIAA-CREF decided to offer sex neutral annuity rates. Their first proposed unisex rates were not acceptable to the EEOC since males would be receiving a smaller retirement income than with their earlier sex distinct rates. TIAA-CREF then modified the rates and filed with all the states. Recently, this TIAA-CREF situation took an interesting twist. The new unisex annuity tables were not approved by the New York Insurance Department and therefore, because New York is TIAA-CREF's state of domicile these tables cannot be used in any other state.

EEOC has escalated this issue to a federal-state conflict by filing suit against the New York Insurance Department (EEOC v. Lewis), with the intent of forcing state approval of the unisex tables.

TIAA-CREF plans are really unique from most other defined contribution plans because the annuity had been the only retirement income option offered. There was no cash option or lump sum benefit.

An interesting recent case was Norris v. the State of Arizona. The Federal District Court in Arizona concluded that the administration of the State's deferred compensation plan was discriminatory and violated Title 7 of the Civil Rights Act. Unlike the TIAA-CREF programs, the Arizona State Plan provided for a lump sum cash option as an alternative to the sex distinct annuity rate. The District Court, however, ruled that the availability of the cash option did not bear on the plan's lawfulness since most of the women actually elected the annuity option.

The Shaw case adds a new interesting perspective to this whole issue. In this case, the issue involved a male worker with a female spouse. When the male worker elected the Joint and Survivor benefit, his benefit was reduced by more than a female worker's would have been. The Federal Court in California ruled that all portions (including the optional benefit) of a defined benefit plan must comply with Title 7 of the Civil Rights Act.

In addition to bringing suits, the EEOC has drafted proposed interpretative regulations for the Equal Pay Act addressing sex discrimination in fringe benefit plans. The draft proposal has been circulated among government agencies and is now being reviewed by EEOC staff. With respect to pensions, the proposed regulations as originally drafted indicated that it would be unlawful for a retirement plan to establish different retirement ages based on sex or to otherwise differentiate in benefits on the basis of sex. The guidelines were quite broad and if the concept of equal basic benefits is used, the results would probably be acceptable. The guidelines, however, will have little practical impact, since the real decisions on sex discrimination will be made in the courts over the next few years.

However, we will continue to see Federal bills, two of which have already been introduced this year in Congress. One is the Non-Discrimination in Insurance Act which is the reintroduction of the Dingle Bill (HR-100). Most recently, there has been the introduction of the Women's Equity Act. It is expected that these bills will have a lot of visibility in Congress over the next few years, but it is doubtful that they will be enacted into legislation, in the next few years.

It is too early to tell how these sex discrimination issues are going to be resolved because the law still is evolving. But I think we will continue to see more and more court cases, and women's groups will remain very active in this area.

If the argument that sex neutral benefits should be required for basic benefits but not for incidental benefits cannot be sustained, then the pension and insurance industry must examine other alternatives. One would be unisex tables. A better alternative is to establish the policy that income entitlement rates, not purchase rates, should be sex neutral for all primary plans. In other

words, an income entitlement rate would be the retirement income that a participant would be entitled to receive under the plan. Premiums required to equalize this would be borne by the employer just the way they are in the defined benefit plan. This position has the advantage of keeping the distinction between purchase rates and entitlement rates as well as the distinction between the primary plan and supplemental plans that an individual may have. It also helps answer the public policy adequacy question for females since they do live longer than men. Although this alternative is not without problems, employers and service providers do need to explore alternatives to meet perceived public needs. On the other hand, it is always possible that we will have more suits like the Shaw case, as men become more concerned about perceived discrimination.

MR. COWARD: First of all, a word on equal pay. The Canadian Human Rights legislation prohibits discrimination in wages between males and females performing work of equal value, if they are employed in the same establishment. The idea of equal pay for work of equal value is causing great concerns. It is being strongly resisted because it is impossible to quantify the comparative value of very dissimilar jobs. An employer can never be sure that he has complied with the Act if he has to compare the pay of two people doing completely different things. The Human Rights tribunals will be presented with almost insuperable problems. Most provincial legislation merely prohibits discrimination in pay between males and females who do substantially the same work in the same establishment. This comparison of completely different jobs is going to be a tremendous headache and I hope we can persuade the authorities in Canada to go for equal pay for substantially the same work.

Now on unisex, most of the Provinces do not require that unisex tables be used in defined contribution plans, but they do for money purchase pension plans. But the Federal Human Rights Commission favors unisex tables and then puts itself in a very awkward situation. The Federal Act, which as I mentioned, requires equal pay for work of equal value, then defines pay as being all forms of remuneration including the employer's contribution to pension plans. In spite of that, the Federal Human Rights Commission put out regulations and directives to require that unisex tables be used in money purchase plans. This seems to be a direct conflict of the wording of the Act and so a complaint has been made to the Statutory Instruments Committee, which is a Parliamentary committee whose functions include making sure that the bureaucrats do not exceed their powers and bring in regulations and directives which are not justified by the Act.

The Ontario Royal Commission is unanimous that unisex tables should be used for their proposed minimum mandatory plan, recommending that insurance companies use unisex tables for all of their annuity business. Of course their recommendations are not yet law. I also can see absolutely no reason why the law has to choose between providing benefits of equal value or benefits of equal monthly amount. I think that in this controversial area, either of those should be permitted or any compromise in between.

A new area will be opened up in Canada, if the new Canadian Constitution is adopted, because it includes the words, "notwithstanding anything in this Charter the rights and freedoms referred to in it are guaranteed to male and female

persons". How that is going to be interpreted with respect to equal pay and unisex, I do not know. It appears to go further than the United States Constitution since the Equal Rights Amendment has not been approved. The Supreme Court of Canada is having hearings to whether the procedure on the Canadian Constitution is legal or not.

Women do generally get lower benefits in Canada. This is not due to the weakness of pension plans, but due to the fact they have lower pay and that they are more mobile in their work. In order to equalize pay, two things should be done: First of all, it is probable that women should have much more training. It is suggested that women are usually less qualified for promotion to the higher jobs; this is changing but the older women did not have the educational advantages of the younger ones. Also, there is still discrimination which should be eliminated by more vigorous application of the Human Rights legislation. Pension plans, by and large, have eliminated discrimination; we no longer have different retirement ages, we no longer have pensions for widows but not widowers. Our trouble now is really to find what a marriage is and to find what to do where there is more than one claimant or what to do about survivor benefits if the marriage breaks up.

MR. SWENSON: In the United States, there has been a great deal of recent activity recommending that the age at which full benefits could be received under government retirement programs be gradually increased. Mr. Coward, could you speculate as to why there has not been a similar groundswell of enthusiasm for this type of recommendation in Canada? The President's Commission on Pension Policy made such a recommendation, the National Commission on Social Security made the recommendation, and actuaries in the United States have been promoting the concept for a number of years.

MR. COWARD: One well known actuary took up the cause of delaying retirement some years ago. He was offering this as a panacea for just about every pension problem. If you have a deficit, you raise the retirement age a few years and the deficit disappeared. However, it just did not seem to be a practical proposition in a private plan. Regarding Social Security, I do not think anyone took that as being a very likely thing to get through the Parliamentary process. And as I mentioned earlier, the main concern has been to stop the trend to much earlier retirement. There was an unfortunate action taken some years ago when they introduced spouse's benefits at age 60. All other Canadian Social Security benefits begin at the age of 65. Previously, in the situation of an Old Age Security recipient under 65, only one item of Old Age Security was payable. It was decided that since most men tend to retire at 65 with wives a few years younger, a spouse's allowance would be provided. The difficulty immediately arose in that the NDP began to argue, what about single women? What happens if the husband dies? If the husband died, the spouse's allowance immediately ceased. It did not seem logical to have a benefit granted when the husband attains age 65, and then stop when the husband dies. In response, the benefit was changed so that it continues after the husband has died.

My point is that this step to introduce age 60 into Canada's Social Security system could be **disastrous** because once you get a lower age into the system, it is extremely hard to get it back up. In Great Britain, women retire and get

Social Security at age 60 and men at 65. In spite of strenuous efforts to eliminate discrimination, they are stuck with it. There is no way that they can bring the male retirement age down to 60 and there is no way they can lift the female retirement age to 65.

As regards to early retirement, some positive actions have been taken. Under Registered Retirement Savings Plans, your annuity must start beyond age 60 and there is an attempt to inhibit early retirement before age 60. A Federal government task force was very keen that early pensions without any actuarial or other reductions, payable for long service, say after thirty years of service, should not be allowed. They would have enacted some sort of legislation either through taxation or more directly, which would have made that impossible or difficult.

MRS. WOLFSON: In the United States, there is a big push to raise the normal retirement age under Social Security. This is partially based upon the changing demographics and the need to encourage people to work longer. However, the major push is just that the system is going to run out of money. Is there a financial problem in the Social Security system in Canada?

MR. COWARD: Well, not now. Contributions right now are extraordinarily low for two reasons. First of all, Old Age Security is financed from general taxations, so that does not appear in the Social Security contribution. Second, our plan is immature. Right now, each employer and each employee pays 1.8% of a slice of earnings; the contribution this year is just above \$200. I understand the United States contribution in Social Security is about seven times that amount. If projected to the year 2000, we would require contributions of 3% from each employer and each employee on a pay as you go basis. That would continue to rise until the year 2030 or 2050, but my opinion is that any projections made beyond twenty five years are absolutely and completely worthless.

MR. SWENSON: It is clear that income security programs really need to be based on a strong and vital economy. It is becoming increasingly apparent that in the United States, we as individuals are becoming dissavers or we are not saving at very substantial rates in comparison with other countries. The rate of individual saving in the United States has been declining whereas the rate of saving in Canada has actually increased the past decade. I believe their rate of individual saving was something in the neighborhood of 4.5% or 5% in 1967 and they are now up around 9% or 10%. In the United States, the rate of individual saving has declined from a historic rate of around 6% to the 3.5%-4% range in 1980. And it seems to me that Registered Retirement Savings Plans that Canada offers perhaps are in part responsible because they provide an incentive to save whereas the United States provides incentives for people to spend. Mr. Coward, I was wondering if you care to comment on that issue and the role that RRSP's have played in Canada?

MR. COWARD: RRSP's have generated a great deal more money than was expected when they were brought in. Some of it is transferred from retirement plans, but a lot is direct contributions. I am not an economist; economists all tell me that the rate of saving is very important for the growth and development of the country. I accept that to a point. But one can really be heroic about

this for the benefit of future generations and perhaps, unnecessarily so. My grandfather was much worse off than my father, he was worse off than I was and my children are better off still. I think each generation is 50% or 100% better off than the previous one and I expect that will go on with our current rate of savings. If we increase the rate of savings very greatly then it is conceivable that our children and grandchildren will be even further ahead. But is it fair or should we make that kind of sacrifice and provision for them?

Canada is a very high saver in comparison to most countries and it is quite largely due to the tax **deductibility** of employee contributions both to pension plans and to our RRSP's. This is one of the big controversial items of the day. As you know, the Ontario Royal Commission concluded that we needed a great deal more saving and they want the mandatory plan in order to generate additional savings. Other groups do not feel the same way.

