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From the Bar to the Bar

Prevailing Despite Gender Bias

Nancy Woolley

The report of the Gender Bias Study of the Supreme Judicial Court of the Commonwealth of Massachusetts was released in May 1989. After a thorough study of the areas of family law, domestic violence and sexual assault, criminal and juvenile justice, civil damage awards, gender bias in courthouse interactions, and court personnel, the study committee concluded that there was significant gender-based bias in the courts. The following article demonstrates how bias affected one woman and her children, and how, in spite of it and with the help of individuals and institutions in the private sector, she has attained empowerment and a chance for economic independence. Both the study and the author provide recommendations for women in similar circumstances, for public policymakers, and for professionals in the judicial branch.

Three years ago I was sleeping in my car. Although I am an alcoholic, this was not the reason for my predicament. At the time I had been continuously sober for six years and had just started my second year in college. Nonetheless, each night I pulled my Toyota into my driveway, pushed the passenger seat back as far as it would go and put it in the reclining position, spread my sleeping bag, padded the gearshift with a pillow, and tried to sleep, hoping my ex-husband would leave early enough so I could get into the house to wash and dress and arrive at my morning class on time. Today I am a first-year student at Harvard Law School; I no longer sleep in my car.

How I went from sleeping in my car and accepting that humiliation as my only entitlement to becoming a college graduate, Truman Scholar, winner of various prestigious awards, and law student is the narrative of a journey from powerlessness and dependency to dignity, purposefulness, empowerment, and self-esteem. Although my odyssey has taken forty-five years, the last eight are the most remarkable. My excursion is also the story of gender bias in the courts.

The Gender Bias Study

“Every day women, men and children across the Commonwealth bring to the courts mat-

Nancy Woolley is a first-year student at Harvard Law School.

ters of importance in their lives. Often decisions made in court will affect them for years to come. Their cases can involve intimate aspects of their family life.”

This introduction to the 1988 “Status Report of the Gender Bias Study” of the Supreme Judicial Court is significant in its understatement. The third branch of government, the judiciary and the court system, has often been overlooked by policymakers and those studying the status of women, yet the reach of the court system is pervasive and significant, particularly for women whose status, economic or otherwise, depends on its whims.

In light of this, it was striking that in 1986, the Supreme Judicial Court of the Commonwealth of Massachusetts mandated an investigation of whether gender bias existed within the Massachusetts judicial system, and if it did, to make appropriate recommendations for remediation.

The justices named a thirty-five-member committee and appointed Justice Ruth Abrams of the Supreme Judicial Court and Chief Justice John Greaney of the Appeals Court (who was appointed a justice of the Supreme Judicial Court in 1989) as cochairs of the study. More than sixty people volunteered to serve on subcommittees; staff was hired, public hearings conducted, and research, surveys, and interviews held.

The study looked at gender bias, specifically, “whether decisions made or actions taken are based on preconceived, or stereotypical notions about the nature, role or capacity of men and women. Gender bias is also at work when proceedings are influenced by myths and misconceptions about the social and economic realities of women’s and men’s lives.”¹

The long-awaited study was released to the press and the public in May 1989. The first sentence read: “Gender bias exists in many forms throughout the Massachusetts court system.” The study supports my experience in remarkable detail.

The First Crucial Days

As one lawyer testified at a public hearing, “In our experience, it has been those first few days or weeks following a separation where legal assistance is most critical to the economic safeguard of a woman and her children.”²

After a fifteen-year marriage and four children, my husband and I separated in 1985. Since all marital assets were in my husband’s name, I had no access to them and therefore did not retain an attorney. It was only when I was served with divorce papers a year later and a friend convinced a lawyer friend to take my case without a retainer that I finally secured legal representation.

It did not occur to me then that this arrangement was odd or might cause my attorney to be less than enthusiastic in his representation of me. I was naively and arrogantly under the assumption that the intent of the legal system, including private attorneys, was to guard my interests and those of my children, and I also believed that my husband would be required to pay all attorney’s fees. I realize now that my lawyer’s failure to pursue discovery energetically when my husband and his attorney were not forthcoming with requested documents may have resulted from the prospect that he would not be compensated. In fact, during my research for this article, I discovered that my lawyer’s cursory handling of my case probably was responsible for my loss of over \$10,000 worth of stock assets.

An early order of the Norfolk County Probate Court, agreed to by both parties during the separation, stipulated that neither my husband nor I be permitted to dissipate any of the marital assets. At the time the order was written, my husband’s financial statement listed \$20,000 in stocks that had been acquired during the marriage. A year after this

order, a senior partner of a law firm, who was technically representing me (although an associate who billed at a lower fee usually did all the work on my case), took my husband's deposition, including a new financial statement, in which the stocks were no longer listed. The associate counsel was on vacation at the time. A year and a half later, at the time of the divorce, my husband's financial statement likewise did not declare the stocks; and the contortions of the hammered-out agreement and settlement did not factor in their value. I was not aware of the oversight; my only focus was on keeping my children. The associate attorney obviously failed to detect the discrepancy from the deposition or earlier financial statement. Since this occurred under the temporary orders, I now have no claim to the stocks or subsequent reimbursement.

I discovered further that the QUADRO (qualified domestic relations order) regarding payment to me upon my ex-husband's retirement of a portion of one of his pension plans was improperly filed with his employer, and I now have no right to any part of it. My attorney failed to follow up on this before resigning from the case.

Mediation May Be the Ball Game

According to attorneys . . . the purpose of mediation is to dispose of the issues quickly so that a full judicial hearing is not necessary: "(Family service officers) browbeat the parties to the cases in order to process the cases more quickly. This saves the court the time it would take to hear the cases before judges. Family service officers are more interested in settling the cases than in getting to the right result."³

The first time I went to court — for the temporary orders — I was startled to hear that we were being sent to family services for mediation. Since that time I have come to expect this as the norm; in seventeen court appearances in the past five years, I have done the "family services shuffle" seventeen times. I have lost ground each time, but one does not refuse the order to family services even though "mediation" is not desired.

Once there, if one of the parties refuses to settle, the family services officer nonetheless makes a recommendation to the judge, who usually follows the recommendation. Given the situation, it is better to try to reach some agreement and secure some of your demands than to refuse settlement and chance conceding everything in front of a judge rendered unsympathetic by virtue of your intransigence.

So Watch the Umpires

Men are more likely to be favored in custody and financial arrangements made through mediation than they are in custody and financial arrangements arrived at without mediation.⁴

On this occasion, the two opposing attorneys spoke with the court official from family services without either party being present. Periodically my husband's attorney came out and counseled with him, and I saw my husband become visibly upset and vigorously shake his head "no." Finally the two attorneys emerged, and my lawyer took me aside and explained the agreement that had been reached: I would keep physical custody of the children, remain in the house, and receive \$12,000 a year (from my husband's \$94,000 annual salary) to pay for food, clothing, utilities, car expenses, my uninsured medical

expenses, and all household maintenance and incidentals; my husband would pay the mortgage, insurance, and uninsured medical expenses of the children.

The Lady or the Tiger?

Women are more likely than men to bargain property to get their preferred custody or visitation arrangement. “Women who are afraid cannot mediate, especially regarding child support.”⁵

My attorney said he thought it was a very good arrangement and told me I should sign it. I had never before had to handle money, so \$250 per week seemed like a very decent sum. Besides, my husband had been disputing custody, and this arrangement assured me my children — for the moment.

The judge rubber-stamped the agreement effecting the order. Attorney’s fees were not granted.

I soon learned that the support to which I had agreed was woefully insufficient to meet the basic needs of the children and the household expenses. As the children and I experienced more and more deprivation, morale plummeted, tempers shortened, and animosity grew. The children hesitated to ask for necessities. Things around the house broke or wore out, but I could not have them repaired or replaced. The only time the children went to the movies, out to eat, miniature golfing, or to other entertainments was when their father — Uncle Daddy — took them. My role became one of the glum witch with a monosyllabic vocabulary — *No!* No to treats from the grocery store; no to any clothing that wasn’t absolutely essential; no to friends sleeping over (they would need snacks and breakfast); no to raising the heat too high; no to using the air conditioning; no to extra driving; no to gymnastic or piano lessons; no even to chewing gum or marking pens. *No! No! No!*

Poverty and the Single Parent

Life cannot be efficient for people living on the precarious edge of impoverishment, and there is little energy for chimerical idealizing. Poverty is extraordinarily time-consuming and truncating: doing dry cleaning at a coin-op takes time; using public transportation because the car is not working or to avoid expensive parking fees eats up hours; cutting, filing, and redeeming cents-off coupons consumes whole days, as does taking care of home and car repairs that most people have done by professionals; cooking inexpensive meals from scratch takes longer than quickly heating costly prepared foods in a microwave. And one crisis, one emergency, one setback too many, is enough to generate a downward spiral to complete economic ruin and spiritual depletion from which the effort to rise is a monumental task.

Poverty also exacerbates everyday annoyances into threats to one’s existence. Expenditures many take for granted, if expanded only slightly, can be enough to tip the scale from marginal subsistence to indigence. Poverty means no photographs are taken to record significant family events. It means cutting hair at home and renouncing one’s sense of vanity. If one is fortunate enough to have a yard, it will very likely become overgrown because there is just not enough money to buy gas for the lawn mower. None of this is due to lack of caring, lack of taste, or laziness; it is due simply to poverty.

Those in poverty do not have the luxury of a “cushion” for a rainy day. The safety pre-

caution of routine maintenance to extend a car's usefulness is rarely possible. One gambles that another two or three thousand miles without an oil change (even though the work is done at home, six quarts of oil and a new filter represent \$15 plus two hours of labor) will not produce serious damage, knowing that this, like so much else that is left undone, is a gamble that will eventually be lost. And driving with studded snow tires necessarily left on into July can mean a fine of \$50 a day. But, what do you do if you cannot afford other tires?

Such a small thing as one of my children leaving the outside door open can presage another night of hot dogs instead of a roast. The same is true for stereos and lights left on, lengthy showers, and teenage telephone use. Even a seemingly innocuous event like my daughter, Anna, using more paper towels than (I perceive as) necessary to wipe up a spill causes me stress. I find myself constantly aware — guiltily — of the amount of cereal the children eat in the morning or the number of times they help themselves to snacks. My resentment builds that they even want a snack when they return from school. Getting their clothes dirty provokes censure from me, since doing laundry costs money and makes the clothes wear out quickly. The children become angry that their every move is monitored, evaluated, and commented upon in terms of wastefulness. And their anger is not directed at some abstract and inequitable system or at an absent and dishonorable wage earner, which are the true geneses of their dilemma, but toward the closest person, the custodial parent: *me*.

This has been my children's and my daily life for the past five years. In calmer moments we have been able to talk about it and have agreed that a complex set of emotions is constantly playing, but guilt is foremost among them. We feel guilty for getting angry; for our "short fuses"; for feeling resentful toward one another; for lacking enough strength of character to resist "kissing up" to our husband/father to allay his anger and the possible cessation of treats; for wanting more than the essentials; for being wasteful. We even feel guilty that clothes wear out, children grow taller, and new clothes are needed. Anna feels guilty for wanting to join the soccer team and needing special shoes; Adam feels guilty of false pride for wanting to dress like his peers; Seth feels guilty that he does not have enough money to buy his own schoolbooks; Ned feels guilty for disliking the free lunch at the high school; and I feel guilty for continuing my education and concentrating on the long-term goal of financial security and independence rather than obtaining a modest job to ease my children's lives for the short term.

We question, "Why us?" What crime has any of us committed to deserve this? This last question contains my most profound feeling of guilt, for there is a worm in my brain that bores in with the message that had I somehow stayed in my marriage, my children would not be living under such stress. Then I recall how my spirit was almost extinguished; I remember my daily humiliation, how I was stripped of dignity, and how my self-loathing was taking its toll in my ability to be emotionally present for my children; and I know that as intolerable as things are now, they are infinitely better than they were. Still, the worm whispers: "Selfish!"

We try to be understanding and patient. We try to be optimistic and "good team members," adopting an attitude of "all for one, and one for all," but when each of us feels so intimidated by every aspect of life, and knows that the least failure of conservation can cause an intense and negative ripple effect, it is difficult to muster such grace; we feel guilty about that, too.

Through all of this I became adept at stretching a dollar and improvising. For instance, when I took my asthmatic son to Children's Hospital for his scheduled checkups every six

to eight weeks, I made sure to arrange it for a day when I could donate blood; blood donors receive free parking passes. I quickly learned where all the discount stores were and became a zealous user of grocery coupons. I shopped only once a month, having learned that if I disciplined myself to refrain from shopping more frequently (and prevented the children from gobbling everything up the first two weeks), I could save almost \$100 per month. Since the only thing I owned outright was a small amount of jewelry, I sold it, including the gold charm bracelet my father had started for me when I was fourteen. I continued, as I had always done, to make most of my daughter's and my clothes. Yet, for all these efforts, it was not possible to make ends meet, and I had to enroll the children in the free lunch program at school. They disliked this, because they had to accept the meal for the day and could not choose lunch à la carte. When the electric company threatened to shut off power for nonpayment, it was avoided only through the intervention of the doctor at Children's Hospital who wrote a letter stating the medical necessity of maintaining service for my son.

As Christmas approached during that first year under the temporary order, I was anguished thinking how painful the holiday was going to be until a bank sent me an unsolicited, approved credit card. Knowing it was foolhardy, I nonetheless decided to use the card, believing still that all our difficulties would be resolved once the divorce decree was obtained.

The Best Representation Money Can Buy

Most legal services programs rely on private attorneys to handle the cases *pro bono* [without charging a fee]. . . . The waiting list for a *pro bono* lawyer can be up to two years. . . . Private attorneys often limit the types of cases they will handle *pro bono*; in some areas, they will handle only uncontested divorces.⁶

During the following year things proceeded pretty much as they had the previous one. My husband did not move the divorce along, and I could not spur my attorney to action. The case and the children languished in limbo.

I knew I was not receiving adequate representation and contacted several legal services programs, endeavoring to obtain a *pro bono* attorney. After I explained that both the divorce and custody were being contested, however, they invariably replied that they could not be of help and suggested I remain with my current attorney.

Domestic violence, lack of child support, inequitable distribution of assets after divorce — are not purely private matters; women are still being told by the court that these are, indeed, family problems for them to work out with their husbands or ex-husbands: they do not belong before a judge. Few other classes of disputes are so routinely diverted from the court.⁷

One morning in October, a year and a half into the pendency of the divorce, I turned on the water tap but nothing came out. I called the well people, who came, checked the system, and informed me that the pump was broken. The cost to replace it would come to between \$1,000 and \$2,000. I called my husband, who refused to do anything. He did, however, offer to have the children stay with him at his apartment in the next town until the well was fixed; he would drive them to school each morning. I called the well people again, but they refused to do any work unless they were paid up-front; they knew a divorce was pending.

Again, the Best Representation . . .

Attorney's fee decisions can deny effective representation to women, particularly in the area of discovery.⁸

I contacted my attorney, but he never took any action other than to send a letter to my husband's attorney, several weeks later, which was ignored. As the days turned into weeks and the weather became colder and colder, my days were devoted to simple survival. Not only was I without heat and water, but my husband cut support payments by four-fifths, reasoning that the four children were living with him. Again my attorney put me off, taking no action to have the support order enforced.

Most of my day during this time was spent going to friends' houses to fill water containers, shower, and gather wood for the stove in the family room. In fact, water conservation was the primary focus of my life. I developed a system whereby I used only one pitcher of water to brush my teeth and wash in the morning. Anytime I used water for dishes or washing, I saved it for later use. I had discovered that by forcefully dumping a bucketful in the toilet, I could cause it to "flush," but it took about two days to accumulate a full bucket. The house plants had to be sacrificed to water conservation.

To preserve heat I blocked off the downstairs rooms with quilts, except for the kitchen and family room, where I lived. During the evenings, when I tended the fire, sitting in the family room under my blankets and sweaters was relatively comfortable, but by morning the inside temperature usually hovered around forty degrees. When the children arrived home each day, I had to remind them constantly not to use the toilets but to go outside. They were glad each evening when their father picked them up.

October turned into November, and November to December. We had a month-long cold spell that year, when the temperature never rose above twenty degrees. Frequently there was a skim coat of ice on the water in the containers in the kitchen. Feeling betrayed by the system and becoming despondent, with Christmas only six days away, I finally called the well company on my sixty-sixth day without water or heat. I lied to them, saying that an agreement had been reached between me and my husband and that they could come to do the necessary work; I would pay them the day they completed it. I felt horrible about the deceit; I had avoided it as as I could. When I called my lawyer to tell him what I had done, he congratulated me. I felt even worse.

Out of the Blue

Several months later I was surprised to receive a call from my attorney informing me that the court had granted my husband's motion to have a *guardian ad litem* — someone appointed by the court to defend the interests of a child — appointed to do an investigation and make a recommendation concerning custody. I did not know that a motion was pending. I was angry that I had not been notified and vaguely apprehensive. Nonetheless, I tried to remain objective. After all, I *knew* I was a good mother, and the psychological parent.⁹ Besides, the children had been living with me for the past three years; they were doing well in school; none of them had ever been in any trouble with the authorities or at school; and I had always been the parent at home with them and the one who cared for my asthmatic son's medical needs. With a whistling-in-the-dark kind of confidence, I went to my appointment.

A Double Standard

The courts, as in the rest of society, expect far more from women as caretakers than they do from men. Any shortcomings the woman has, whether directly relating to her parenting or not, are closely scrutinized. Whereas, if a father does anything by way of caring for his children, this is an indication of his devotion and commitment.¹⁰

When I sat down I saw a six-inch pile of papers on the psychologist's desk. Recognizing my husband's handwriting on the top sheet, I commented on it. The psychologist said he had met with my husband the previous day; my husband had left a stack of information that included private detectives' reports, transcriptions of our telephone conversations (my husband's), journals my husband had written, letters he had asked people to write, as well as other documents. This, along with the psychologist's opening remark — "I understand there's some question about alcoholism?" — gave me my first indication that the investigation would not be unbiased or neutral.

It turned out, essentially, to be the custody trial, and there I was, without counsel or any preparation, facing a "judge" who did not know or care about rules of evidence or procedure and did not have to fear review.

Responding to his opening inquiry, I answered that there was no question at all about alcoholism; I was an alcoholic who, at that time, had been in continuous recovery for four and a half years. Following my response, the psychologist proceeded to go down a list of my husband's accusations. I tried not to sound overly defensive in responding to them, but given the format of the "interview," it was very difficult, and I was not too successful.

During the session I tried to explain the ramifications of alcoholism as a family disease: frequently those living in long-term relationships with an alcoholic become as sick or sicker than the alcoholic, which was certainly the case with my husband. They exhibit most of the symptoms of alcoholism — self-centeredness, denial (relating to both the alcoholic's disease and their own), anger, feelings of betrayal, dependency, a need to control, manipulativeness, impulsiveness, paranoia, and so on — except uncontrolled drinking. Specialists in the field of alcoholism treatment refer to this as para-alcoholism.

The psychologist reached for his book listing all recognized psychological disorders. Failing to find para-alcoholism listed, he passed the book to me. I reminded him that until 1954 he would not have found alcoholism in the book, either, but that did not mean the condition did not exist before that date.

Next, I asked him to request a copy of the reports on me and my husband which the court, several months earlier, had ordered done by NorCAP, the Norwood Hospital Comprehensive Alcoholism Program. He refused, stating that the counselor there was only a licensed social worker. She was, in fact, an alcoholic in recovery for many years who worked five days a week treating alcoholics and their families. These reports depicted me as an alcoholic in good recovery who was experiencing stress owing to my life situation and my husband as a family member with significant unresolved emotional problems and an intense anger and obsession with me.

When the *guardian ad litem* finally released his report, his recommendation was that my husband have custody and implement his plan to hire a housekeeper. The reason given was that I "chose" to go to AA meetings several nights per week. I have since wondered what the recommendation would have been if I had "chosen" to go for chemotherapy, dialysis, even psychotherapy, or some other scientific and non-"amateur" modality of treatment.

Beware the Custody Contest

When fathers contest custody, mothers are held to a different and higher standard than fathers.¹¹

Merely seeking custody may be viewed as an extraordinary act of commitment by a father.¹²

Of all that occurred during the divorce and since, the investigation and report by the *guardian ad litem* stands out most clearly in my mind, for it is the incident that I consider to have forever altered the course of my life and the lives of my children. Had my attorney verified that the *guardian ad litem* truly knew something about alcoholism,¹³ had the *guardian ad litem* been less biased and less arrogant, had the courts not had such a strong history of relying on and rubber-stamping “expert” recommendations, had I had the means to hire an expert to neutralize the opinion of the *guardian ad litem*, had the judicial attitude not so frequently been that the husband is entitled to a larger share of the marital estate,¹⁴ had the legal system truly put the interests of the children above “rights” of adults and “entitlements,” my story would be quite different and my struggle for economic security for me and my children less toilsome.

As things happened, my husband arrived for his appointment with the *guardian ad litem* looking, by all outward appearances, like a successful, well-adjusted businessman. He wore a suit, was a college graduate, had worked as a salesman for the same company for seventeen years, made an enviable salary, declared how important his children were to him and how much he loved them, and presented a well-prepared “case.” In short, he was a perfect example of the male hierarchical model.

On the other hand, I arrived for my appointment with a list of accusations hanging over me, no status as an employee, no degree after my name, not only an alcoholic, but the invidious label “*woman alcoholic mother*” branding me as surely as the letter *A* branded Hester Prynne. Furthermore, realizing what was at stake, I was scared, which for me usually translates into an attitude of belligerency and imperiousness.

Trading Off the Children

The higher orders established under the child support guidelines have led to an increase in disputes over custody and visitation as many noncustodial parents seek ways to avoid paying support.¹⁵

Following this devastating report, I tried in abject desperation to negotiate all sorts of custody arrangements with my husband, but he would hear none of them because I refused to concede the one thing he demanded, the sale of the house.

Money, Again

Judges rarely or never award adequate expert witness fees, either during or at the close of a case.¹⁶

I repeatedly suggested to my attorney that we hire an “expert” to refute the *guardian ad litem*’s report, but he cited the prohibitive expense and put me off with various other excuses.

Divide the Child in Half

Shared legal custody is being awarded inappropriately, to the detriment of women with physical custody.¹⁷

A second study of . . . families who were involved in custody disputes found substantial evidence that, where parents were in conflict, joint custody inflicted significant additional harm on the children.¹⁸

On the day of the trial in August 1986, I was frantic, convinced I was going to lose my children if the judge read the *guardian ad litem*'s recommendation. As I was discussing yet another coparenting scheme with my attorney, the psychologist passed by and overheard our conversation. He thought my plan had merit and told the judge he wanted the attorneys and my husband and me to try to work something out — this despite his own report that there was “a great deal of residual anger and emotional intensity” between the two of us and my husband “frequently became overwrought in dealing with [me].” The judge directed us either to have an agreement before him by nine o'clock the next morning or he would start the trial, recess it for a month while he went on vacation, and resume it the beginning of October. My attorney added in a whispered aside that a trial would likely cost me another \$15,000 on top of my already huge bill; with a trial I stood only a remote chance of keeping my children.

The Ultimate Trade-off

When a woman “is desperate to keep custody she is not generally in an equal bargaining position, so will bargain away all of her other rights to keep custody.”¹⁹

The judge was quite aware, I believe, that starting the trial and then recessing it would mean that matters which had been reviewed the first day would have to be gone over again if the trial were reconvened a month later. He had to know that extending the trial this way would cost substantially more both monetarily and emotionally. He was wrong to place such an ax over our heads. It was heavy-handed, probably unethical, and close to judicial blackmail, but I saw it as my only chance to keep my children. In spite of all my experience with the courts and the legal system to this point, I still believed (hoped?) that the intention was to guard the best interests of the children and produce a fair settlement.

Statements by the courts and legal community to the contrary, I now know this was not the case. Domestic law is primarily geared toward reaching any settlement as quickly as possible, and the fastest method to achieve this end is to wear down the weaker party so she will make concessions that will hasten an out-of-court settlement. To do otherwise and deal with the important human issues would take too long. It is only coincidental if fairness or justice triumphs in the current system. This mode of functioning seems to be driven by an attitude that domestic law — issues concerning women, children, and families — is somehow not quite as important as other areas of law, that it is one peg down from the really important stuff, such as civil disputes and murders.

But breathing is not dramatic either, unless it is a first or last breath. We usually do not even think about it because it is simply routine. When there is a problem, however, extraordinary means are employed to reestablish an airway. Why then do we treat domestic law with such disdain? The family and children are the very breath of society, and they are too often taken for granted. If they are not protected and supported by every means necessary, society cannot continue to enjoy health and life.

Merger and Acquisition

The courts are seeing an alarming number of cases in which attorneys are signing off women's alimony rights forever in nonmerged agreements, without any consideration of the problems facing women who are primary caretakers of children. This is of crucial concern because nonmerged agreements are generally not modifiable.²⁰

From ten that morning until eleven at night (ending up in a cocktail lounge when the court was locked at five o'clock), all the parties tried to come to an agreement concerning custody, coparenting, support, division of marital assets, and so on.

All I was concerned about was losing my children. In the end, in an agreement in which significant sections were "nonmerged," I signed everything away except for a half interest in the house. I had no idea at the time what the sinuous complexity of "merged" and "nonmerged" was about, nor which components of the agreement fell under which category. I have learned since — painfully — that merged sections are modifiable; nonmerged portions have the force of a contract and can be changed only by agreement of the parties; they cannot be modified in the probate court by the judge. Except for custody and child support, all the sections of the agreement I signed were nonmerged.

Before signing the agreement and making it an order, the judge asked each of us if we understood the agreement and signed it of our own free will and without coercion. As I answered in the affirmative, I knew I had a loaded gun at my head; I believed that to have given a negative reply would have meant a trial and losing my children.

My husband and I agreed to joint custody and to "coparent," with each of us living with the children in the marital home seven days out of a fourteen-day cycle. Every two days one parent moved out to the "parents'" apartment in the next town, and the other parent moved into the "children's" house. I received a \$15,000 lump sum and was told I could live on that until I obtained some training to "get a job." Further, I was to pay half the rent on the apartment the first year, in one lump sum from my settlement. My husband agreed to pay directly for all expenses relating to the children and the maintenance of the house, but since he had never done the grocery or clothing shopping, it essentially meant that we had to go together — I to do the actual shopping, and he to write the check. Our agreement stipulated that during the second year, I was supposed to pay the full rent on the "parents'" apartment.

Contempt, but No Relief

In many parts of the state no legal services staff lawyers work on family law cases.²¹

Several months into the first year of the coparenting arrangement, my ex-husband returned the furniture he had leased to furnish the apartment when he was living there, because he was living with his girlfriend during his "out" time. For the rest of the year I slept on a mattress on the floor and ate my meals squatting in the kitchen. There was little I could do about the situation or several others in which he was in contempt. I no longer had representation, since I had been able to pay only \$3,000 of my attorney's \$24,000 bill. Although I called many legal aid services, none could or would help me.

Punish the Victim

Contempt defendants often are entitled to appointed counsel if indigent, but the person seeking a contempt is not.²²

After the first year of coparenting, when I was to begin paying the full rent on the apartment, I attempted to give a check to the landlord on the appointed day. He informed me that my former husband had discontinued his tenancy and that if I wanted to keep the apartment I would have to sign a lease, pay the first and last months' rent, and give a security deposit. Clearly this was not within my means, nor within the terms of the court orders. I had nowhere to go but back to the house, even though I believed it was dangerous.

Initially I slept in my car in the driveway on my "out" days, too afraid to go into the house. Once I had to park in the field in front of the house when my ex-husband blocked the driveway to prevent me from parking there. When the children came out in the mornings to go to school, they knocked on the car window to say good-bye or stopped and chatted for a few moments. It amazes me now that I did not comprehend the insanity of this situation.

Eventually, with the weather getting colder, I started locking myself in my bedroom with a supply of food during my ex-husband's parenting time; he continued the old alternating schedule. On several occasions, when the children came into my locked room for help with their homework, my ex-husband angrily screamed at them to leave, bellowing, "She's not here; this is my time, and you have no right to be in her room!"

Finally I became bolder and used the entire house even when he was present. On one occasion he became violent, shoving me against the corner of the kitchen counter in his rage and hurling a cup of coffee that hit my son, as my eleven-year-old daughter watched.

I went to court by myself the next day and obtained a restraining order, but during the hearing three days later, when we were once again shuffled to family services, it was "suggested" that I sign an agreement stipulating that each of us would "refrain from abusing the other."

Probably no one can adequately appreciate the need for a lawyer until she herself is in such a position. The sense of loneliness, the confusion of guilt and outrage, the feeling that one is caught up in machinery she does not understand — all these emotions well up in a person who finds herself in court at the mercy of inexorable forces.²³

Within the next couple of months my ex-husband moved out permanently.

The Facts of Life

The decline in women's standard of living after divorce is one of the major reasons that female-headed households are now the fastest growing segment of the poverty population.²⁴ . . . The feminization of poverty in Massachusetts is more acute than elsewhere. Nationally, 48% of those living below the poverty level are mothers and children; here, 68% of the poor are mothers and children.²⁵

Two weeks after my divorce, and during all the switching between house and apartment, I started as a freshman at Regis College. I had been awarded my children (sort of), a battered 1981 Toyota with over 100,000 miles on the odometer, the bill for the well pump replacement, half the *guardian ad litem's* \$1,300 bill, and a half interest in the house. I had no life insurance, no health insurance, no retirement, no alimony, and after nineteen years as a homemaker, no marketable skills. What I had, however, was a conviction that I was not going to remain one of Mr. Reagan's "new poor" because of my status as a divorced woman with children. I was further determined that I was not going to allow my talents to lie dormant, for I was beginning to realize a hard-won sense of dignity and self-esteem.

What Are We Worth?

Women are negatively affected by unrealistic expectations concerning their ability to procure employment and by an undervaluation of a caretaker's contributions to the family.²⁶

I decided to allocate \$10,000 of my settlement to finance my first year of college, knowing this was a completely audacious decision. I had previously attempted to secure some tuition assistance from the Massachusetts Rehabilitation Commission but was refused. Without help, I knew, I could not possibly expect to go beyond the first year, especially at a private institution. I also knew I was expected by the terms of the agreement to "get my act together" in a year and become completely self-supporting. The two seemed mutually exclusive; one year of college would prepare me for nothing.

The Middle-aged and Older Poor

The wife often receives no retirement benefits from the marriage; instead, she gets 50% of the present value [of the pension]. Women who have spent the major part of their adult lives as family caretakers are particularly disadvantaged by this practice . . . [because] women who have given up their careers to raise a family "are counting on the same retirement benefits to take care of them in later years" as are their husbands. If these women return to the labor force after the divorce, it is almost certain that their pension benefits will never equal those of their former husbands and that their social security benefits will also be lower.²⁷

In spite of all this, I started classes. As things turned out, going to college was one of the pivotal decisions in my life. Besides gaining academic knowledge, I found a career direction and the confidence to pursue a goal.

Displaced Homemakers

There is a problem of gender bias affecting awards of alimony to middle-aged women (aged 40–50) who have spent a long time as homemakers. . . . It is these women who are most affected by the unrealistic expectations some judges have concerning the earning capabilities of women.²⁸

I am still amazed when I ponder my experiences, especially the desperation that drove me to sign the agreement and the censoriousness or indifference of a legal system that would allow such obvious inequity.

After the first year, I had no money left, but my determination to finish college was greater than ever. Somehow, between loans and scholarships that just seemed to land in my lap at the precise moment when all my resources were depleted, I managed to stay in school and graduate. Each day I showed up and trusted that the next day would be taken care of when it arrived. Somehow it always was.

I attended Regis College, a women's college, and I am convinced that had I gone to a large, coeducational school, my story would be far different from what it is and promises to become. When I arrived at Regis, I was a defeated, scared, angry, and self-pitying middle-aged woman who believed the implicit and odious messages of my probate court experience: my life's work of homemaking and caretaking was of little value; I was not a

legitimate contributing member of society since I did not have a paycheck; if I could not make it in the world with the resources that had been allocated to me by the court, it was my own fault; because I am a woman alcoholic, I am contemptible; if I were more worthy, the court would have awarded me more; if I were more capable emotionally, I would not have caved in and been intimidated on so many occasions in family services; in short, I deserved precisely what I had received.

Today I know that none of this is true.

Those Prime Years: At What Cost?

[Alimony] awards do not appear to be based on a realistic understanding of the impact of lost career opportunities on future earnings or to properly take into account the sacrifice of earning potential many women have made in order to be the primary caretaker of the family.²⁹

Because committed people gave me a vision of the person I could become and provided practical advice on how to attain my goals, I was empowered to excel academically. I applied and was accepted at the Harvard Law School for the 1989 entering class. I know there are many other women of equal but untapped potential who should be entering college and training programs but are not because they are mired in an inequitable system, just trying to make ends meet and care for their children, and who may be discouraged from trying to start school with peers the ages of their children. There are many who will never be able to contribute their unrecognized but needed talents to society because they are consigned to the fringes of the economic mainstream, forced to be “takers” even when they would prefer to be “givers.”

As a consequence of gender bias and poor public policy choices, many of the children of these women have had their lives forever altered and scarred, their dreams shadowed, their aspirations brutally destroyed, and their potential stunted because a plutocratic or ignorant public thinks platitudes and aphorisms are sufficient in lieu of action and reform. I am, sadly, one of the few who has been fortunate enough to have a chance to move from hopelessness to independence and choice, although public policies or public institutions never helped me; the private sector has been my sole aid. Indeed, the public sector frequently acted as an impediment.

Public Sector of No Help

I remember going to apply for food stamps once before my divorce. I had to swallow a good deal of false pride to do it, but things had gotten to the point where I did not seem to have much choice; I simply could not afford to buy adequate food and pay for utilities and other expenses with the child support I was receiving. Working was not an option because of the chronic illness of my asthmatic son and his frequent absences (40–70 days per year) from school and multiple emergency admissions to the hospital each year. With the facts and figures about my expenses in hand, I went to the welfare office, filled out the forms, and was promptly refused. Decisions, you see, are arbitrarily based only on the number of dependents versus income. Actual expenses and overhead are not factored in. I felt particularly humiliated after this experience, not because I was reduced to seeking public assistance, but because I was afraid the people at the welfare office might think I was trying to milk the system.

Another time, when I applied for financial aid for college, I was refused state and federal grants because I own real estate — my half interest in the house that I can neither use for collateral for loans nor sell for five more years under the terms of the court order. Instead, at age forty-eight, when I graduate from law school and start my career, I will have \$65,000 or more in educational loans to repay while trying to establish a retirement pension so neither the state nor my children will have to care for me.

Public institutions and public policies designed to help people have never helped me, but my children are the ones who have particularly suffered at the hands of the system. My two oldest sons, Seth and Adam, want to go to college and have the intellectual talent and the SAT scores to get into top private colleges. However, because the language in the court order is so flaccid concerning this area of parental responsibility, their father could refuse to aid them either directly or by cosigning loans. Lending institutions structure their requirements so that eighteen-, nineteen-, and twenty-year-olds, even though emancipated, cannot obtain loans themselves. They must have a cosigner; if a parent will not sign or is ineligible to do so, the prospective student cannot get a loan. There is a further catch: in order to apply for state and federal aid, the student must submit a copy of the parents' tax returns. Seth and Adam's father earns too much for them to be eligible for scholarships or grants. It does not matter that he no longer pays support for them. In our legal and educational systems, children like Seth and Adam slip between the cracks, and there is little that can be done without starting a court action to compel their father to help them.

A particular problem *pro se* women [who represent themselves] experience is lack of assistance and hostile attitudes from court personnel . . . “They are often given the wrong information.”³⁰

I tried once to represent myself without benefit of counsel. After Seth graduated from high school, he attended an out-of-state college for the first semester. After Christmas break, two days before he was scheduled to return for the second semester, his father informed him that he had done his share, and it was now up to his mother. Seth was devastated. He knew I had no way of paying his tuition. He did not go back.

That summer I filed a complaint against my ex-husband alleging that he was in contempt of the court order relative to helping Seth with college expenses. Unfortunately I was given incorrect instructions at the court and did not serve the summons to my ex-husband properly, so my action could not be heard. Seth planned to take one or two courses at a time while he earned money working as a carpenter to pay his tuition.

The Goal: A Female Value System

On my journey from sleeping in my car to becoming a law student, there have been many key incidents, but one of the most profound and enlightening has been working on this issue of the *New England Journal of Public Policy*. Dealing with the topic of the economic empowerment of women — and necessarily in my endeavors studying the history and reasons for women's lack of empowerment — has sensitized me to injustice in many areas of civil rights. Moreover, researching the various articles, working with and being mentored by the authors, and experiencing their friendship and commitment to the advancement of women have strengthened my commitment to work in the public service sector when I graduate from law school. It has been quite an odyssey, and I have experienced some valuable lessons and learned some authentic truths.

People who have been victimized — and I think that because of socialization they include more women than men — have a natural inclination to view themselves as victims, as powerless, as unable to take responsibility for situations in their lives; they adopt the attitude “The world is big and cruel, and I am at its mercy.” This is an especially easy trap for women if they and those who work with them continue to subscribe to male-prescribed myths of femaleness and use a male hierarchical model to measure worth and progress. This model seems to me to be centered on a Lockean philosophy of property rights and inflexible concepts of entitlement; it implies that property rights are more sacrosanct than personal rights. This is foreign to the female value system and the manner in which most women experience life. New models need to be established that are accepted as legitimate and interpret women’s experiences and the way women experience life in terms that are authentic for them, models that are not viewed as inferior or superior, but as parallel and distinct.

In my personal experience I have encountered many well-meaning friends and counselors who subtly and unknowingly encouraged my self-perception as a victim, all of us believing they were “supporting” me. What they were actually doing was encouraging my belief in my powerlessness, which quickly led to pernicious dependency. Dependency is inevitably followed by lowered self-esteem, feelings of alienation from society, and a plummeting sense of worth and ability. The cycle becomes a self-fulfilling prophecy that feeds on itself.

With the help of others who cared for me enough to be tough and impatient when it was called for and who were gratified to be needed less and less as I became more independent, I learned that I was not a “victim” but someone who had been victimized in some areas of my life. I was enabled to break free of self-defeating attitudes of powerlessness and take control — and responsibility. In simpler terms, I was encouraged and allowed to grow up. Many women are not as fortunate; they are kept in childlike dependency by the very few institutions and public policies designed to help them, almost as though there is a need on the part of some “professional helpers” to keep a ready supply of “victims” available — a symbiosis of sorts.

Those who establish policy and those who implement it must clarify in their own minds the difference between “victim” and “victimization” and “helper” and “enabler” if they are going to be effective in understanding and aiding people who have been victimized. The clients who need help are frequently unable — and initially unwilling and too fearful — to understand the difference between the terms and the importance of the distinction for empowerment in their lives.

While writing this article I went through the boxes containing my divorce files. It was a frequently painful, arduous, but profound experience as I looked back from a different and more objective perspective. Not only did I learn more about myself, but I also discovered just how damaging inadequate or uncaring legal representation can be, both psychologically and financially, and the pervasive long-term and toxic effects it can have on the lives of children. I saw clearly the degree to which gender bias in the legal system adversely affected me and my children. And I now recognize that the way to effect change is to situate more women, with their female value system, in positions of power and influence.

I would like to be able to leave the reader with an image of me riding into the sunset with all my problems resolved and a clear vision of my future. That is not possible. I am still beleaguered by legal difficulties and economic insecurity. Even now, issues of child support and custody are unresolved. Although my ex-husband relented when Adam was accepted at college and agreed to underwrite both boys’ expenses, Adam and Seth do not

know if or when their father will get angry and arbitrarily decide to cease paying their college tuition. I am not sure we will make any great strides in correcting public policy and gender bias in the court system, or that women like me will fare much better than I did.

For example, just after the *Gender Bias Study* was released with great publicity, I witnessed a judge in a probate court motion session who spent two days directing court proceedings from his chambers, never sitting on the bench in the courtroom. The assistant register acted as messenger between the petitioners and the judge. There was no possibility of advocacy or due process in this perfidious situation. And since many of the motions were brought by women seeking enforcement of child support or modification of support orders to accommodate inflation or the rising cost of caring for growing children, the judge's behavior is another example of gender bias in the courts, despite the stinging criticism of the study.

But the behavior of individual judges is not the only warning signal that the battle is far from over. Generally, civil rights has suffered a blow with the Supreme Court decisions concerning affirmative action;³¹ other decisions have switched the burden of proof in discrimination cases onto the plaintiff,³² and still other decisions have eroded the right to privacy and loosened the requirements concerning searches.³³ One of the most threatening indications of the direction civil rights and public policy have followed is the breeze wafted by the *Webster* decision, which, recalling the words of Justice Harry Blackman in his dissent, may well turn out to be the "ill wind" that curtails a woman's right to make choices about her own body.³⁴ And the fact that in 1989 a gender bias study of the courts was *needed* is yet another indictment of present policy.

This is why I am studying law. I believe laws are the concrete reality of a society's philosophy and ethos, and it is through modifying and changing law that society's morality can be changed. I have heard the argument that attitudes need to change before laws are enacted to mirror society's ethos. If this were so, we would still have legal segregation in the public schools, and *Brown v. Board of Education* would have been decided quite differently.³⁵ As it was, the law was declared, and society's attitudes for the most part changed in response.

In spite of these developments, I have faith in the future, an optimism tempered with pragmatism, and a belief that each of us has a duty to work for greater justice. Using law as a tool of social engineering is the road on which I have chosen to continue my journey to work for equity for all people, but especially for women.

At times I get fatigued (I would give anything for a "real" vacation; it has been nine years since I have had even a weekend away), and the fact that I will have such immense student loans to repay is daunting, not to mention my legal studies, the day-to-day crises of managing my household, marshaling the children and attending to their emotional demands, dealing with ongoing legal and financial problems, and my continued attendance three nights a week at AA meetings — although I now study civil procedure rather than Shakespeare during some of them. For all of it, though, I would not change the place where my journey has brought me and may yet lead me. for I own myself and have a clear voice, and that is the beginning of empowerment.

Recommendations

The *Gender Bias Study*, in accordance with the mandate given the study committee, provides both general and specific recommendations to mitigate the problems that were iden-

tified. Appendix A contains the “Executive Summary” of their recommendations with reference to the family law section of the study. I concur with and support all of those recommendations. However, I would like to add a few of my own thoughts and suggestions. Some are general ideas, while others are directed at women who find themselves facing the breakup of a marriage.

Attitudes on the part of those in the legal profession and society at large need to change. Specifically, avowed attitudes about the worth of children and the family that nurtures them must be translated into action to give them validity. Acknowledging by words that we value our children and then denying by action — or more properly, lack of action — that serious problems exist as policy is currently implemented undercuts the veracity of professed caring. Unfortunately, mere hortatory proselytizing will not bring about the degree of attitudinal change necessary to support effective policy alteration. If those in positions to change public management are not directly affected by poor policy or are insensitive to it, they have little incentive to upset the status quo. The answer lies in a two-pronged strategy: engendering keen sensitivity and ensuring that policymakers feel directly the effects of their decisions.

One of the best ways to increase sensitivity is to get those who are already sensitive — women — into policymaking and policy-implementing positions. A good portion of the articles in this issue of the *Journal* are about this strategy, and I won’t belabor the point further beyond observing that women who are not currently negatively affected by public policy nonetheless might one day find that they are. Furthermore, they may have daughters, granddaughters, sisters, and friends who are affected or might be in the future. Bearing this in mind, it is a form of insurance, not to mention justice, to work to change the system now by getting sensitized policymakers into positions of power and by sensitizing policymakers who are already in power, so that people and their family members and friends will not suffer the results of gender bias as it exists. Remember, most people who have had a catastrophic occurrence in their lives were completely surprised. It *can* happen to you or your loved ones.

The second prong of the strategy is to make those who develop policy feel directly the effects of their decisions. Of course, laws and policies that are inequitable to women and children would not seem to have a remote chance of touching a happily married male legislator who contributed to them, but he could be made to feel the effect: do not return him to office, and let him know why. This is a powerful message. Witness the sound defeat of Florida’s governor’s attempt to push through anti-choice legislation and the recent gubernatorial elections in Virginia and New York, where anti-choice candidates were left with no question about the will of the electorate. As a result of these situations, those politicians who have espoused the anti-choice position in the past are scrambling to find some way out of their dilemma.

Individuals speaking alone have little impact, it is true, but individuals banding together become a vocal group, groups become a force to be reckoned with, and a force gaining momentum becomes inexorable. Start as an individual. Contact the local office of your state and federal representatives and senators and tell them you want to be apprised whenever legislation affecting women and children is voted upon and the way they vote. Share this information with others, and actively support only those candidates who vote in accord with your wishes. Those who have the ability but fail to exercise this most basic power have little ground to complain of powerlessness if they become victims of current policy.

Specific Suggestions to Divorcing Women

First, don't think that you, your husband, and your situation are unique and that your husband would *never* do anything to hurt his children. After all, he has always been such a devoted, caring father. Wrong! When people are caught up in the emotion and anguish of divorce, when their money and assets are involved, normally rational, reasonable people can become completely unpredictable. The best course is to assume that the worst will happen and plan accordingly. If it does not come to pass, you have lost nothing; if the worst should happen, you will have prepared.

Second, make an inventory of your marital assets and update it routinely. In just about every marriage one partner is the primary handler of finances, but this is no reason why the other partner should not know precisely how much there is and where it is going. Additionally, the preponderance of the assets should not be in one name.

Next, get educated, especially if you have been out of the job market for even as short a time as two years. If you lack a high school diploma, get one. If you never went to college or a trade school, go. If you are a college graduate, take refresher courses in a particular field or obtain an advanced degree. Time and again, as I have been working on the research for this *Journal* and reading reports and statistics, one message is repeated over and over: the emerging economy in the New England region requires an educated work force. Do not simply take a "job" and assume that you will eventually remarry. What if that does not come to pass? Whatever you have to do to manage it, whatever short-term sacrifices you must make, get yourself to school.

When you are in court and your name is among those directed to family services, you must go, but you do not have to engage in negotiation. Your lawyer, your husband's lawyer, the family services worker, and the judge will all put pressure on you to do so, inferring that you are being stubborn and intractable if you are unwilling. If you do not want to accept mediation, resist. You can only worsen your situation. The probate courts usually employ the Child Support Guidelines (for those whose incomes are below \$75,000) to determine child support. If this is the case in your district court, you will receive the recommended amount. In negotiation, under the stressful and hurried conditions in family services, you will not improve on this amount and stand a good chance of conceding terms and assets and settling for less than the court would have awarded. If you think you cannot stand firm in your resolve against being coerced into "mediation," take a friend with you for support.

Do not assume that the courts will protect your interests or be equitable. I have observed that courts have a primary interest of their own that is antithetical to the interests of the parties — an overwhelming obsession to clear their dockets. Settlement by the parties effectuates this and, notwithstanding all the laudable other reasons put forth, is the primary reason subtle, but strong pressure is applied to litigants to mediate.

Insist that your lawyer keep you apprised of all pleadings, motions, affidavits, depositions, and the like, and attend all court hearings. Keep duplicate copies of all these papers and record everything. Frequently it is not a matter of who is "right," but of who can most quickly put her hands on information to substantiate claims.

Attorneys charge by the hour or a portion of the hour. When you must call your lawyer, prepare a well-thought-out written list of questions and concerns and avoid prolonged discussion. Many times situations that seem to require immediate handling can wait. This becomes apparent if you force yourself to refrain from calling for several hours, until you

have had a chance to gain a better perspective — perhaps by speaking to a friend whose counsel you trust. Additionally, writing a letter to your attorney is far less expensive than telephoning and frequently has the bonus of helping you to clarify your thoughts.

If you think your husband's financial statement is inaccurate, *insist* that your attorney pursue the matter and subpoena documentation. Your counsel will probably make some comment about the expense of pursuing discovery, but it can end up costing you more not to do it, when you discover, too late, that there were more assets than those declared. Make sure your lawyer gets all the information concerning various pension, profit-sharing, savings plans, and the like from your husband's employer; most companies have more than one plan of which employees may avail themselves, and this information is not currently required on the financial statement forms provided by the courts. If your husband is self-employed, demand an independent evaluation of the worth of his business; businesses have greater monetary worth than the value of their physical property.

If you believe it is in the best interests of the children for you to have permanent physical custody, do not give temporary custody to your husband. If a woman leaves her children, even for a short time, she seriously jeopardizes her chances of regaining custody if the issue is disputed. No matter what assurances your husband may give you as to the temporary nature of his custody request during the separation, he will very likely disavow his agreement later and could use disputed custody as leverage to gain concessions from you. Even if he keeps the bargain, the children will be needlessly disrupted by having to readjust to a different parent coming back into the household and the parent they have become used to leaving.

Ask questions, make sure you know what terms mean, and do not sign anything unless you completely understand its future ramifications. Know precisely what your attorney and your husband's attorney mean when they use words such as "joint custody," "physical custody," "shared custody," "coparenting," and so on. Make sure you know what sections of a proposed agreement are merged and which nonmerged and what this means. Insist that the agreement stipulate specified periodic updates of child support in consideration of inflation and the increased needs of growing children, and make sure there is no amorphous and ambiguous language about such important concerns as the future education of the children. An agreement should not read, "Both parties shall be responsible to the extent they are able for the postsecondary education of the minor children." Such language is useless; there is nothing for a court to enforce; and it ensures that you will be back in court to renegotiate the funding of your children's education. Sign nothing with a verbal assurance that some other term not in the written agreement will be fulfilled. If your husband states that he will do something which was negotiated, have it put in the agreement. If he actually intends to honor it, he should have no objection to its being included.

Finally, do not believe the implicit and explicit messages of the legal system and your own psyche that you do not deserve a fair and decent settlement, that you are unworthy, and that you are primarily at fault. I know how difficult this is when one is feeling afraid and vulnerable, but it is the most important item on my list of suggestions. Talk to other women who have been divorced for several years (avoid the recently divorced; they have not had time to gain an accurate perspective); join a support group for divorcing women (there are several around); keep in close contact with friends and family; when an issue must be decided, pro-act and refuse to react to — in other words, do not respond to — the taunts and manipulative maneuvers of your husband and the legal system. The more you pro-act, the greater your self-esteem will be and the less vulnerable you will feel.

Divorce is a process. No one who divorces can avoid its developmental nature. As frightening, intimidating, demoralizing, undignified, and awful as it is, however, it is also a learning experience, albeit a painful one. In all likelihood you will alternate wildly between the extremes of passivity and belligerence, quivering fear and bellicose heroics, believing each, in its turn, is the authentic place. Recognize that this is the process; you will finally achieve acceptance and balance. Most of all, know that because a legal system and certain public policies victimize you and your children, you do not have to become victims, forever after interpreting all your experiences in light of the victimization and reacting to it. You can be a pro-actor; you can regain control of your life and the lives of your children; and you can work for change. Doing so, you will have retained your personhood and dignity in spite of the obstacles thrown up by public policy and gender bias in the courts. 🐼

Appendix A Executive Summary of Recommendations³⁶

Access to the courts by *pro se* litigants should be improved by designating personnel to assist them, educating all court personnel, and eliminating rules and procedures that act as barriers for *pro se* litigants. The private bar and legal services organizations should devote more resources to representation of women in family law cases. Judges must award adequate attorney and expert fees during the pendency of divorce litigation.

The probate court financial statement form should be changed to require the disclosure of accurate data concerning the valuation of pension and other deferred compensation and retirement rights. The probate court rules should require that counsel for the parties sign financial statements and certify to the correctness of the statements. The rules should call for parties to a divorce to recognize marriage as a “partnership.” It should place the responsibility of full disclosure upon the divorcing parties, and it should authorize sanctions for failing to do so.

Family service officers should be relieved of any pressure that might lead them to coerce settlements. Parties to mediation must understand the particular nature of mediation in the probate court and should be routinely informed that their case can be heard by a judge if they so desire. Both family service officers and judges need to be sensitized to signs of unequal power in the dynamics between the parties, unfair concessions, and the effects of abuse on the parties and on the children whose custodial parent is being abused.

M.G.L.c.208, sec. 34, the statute regarding division of marital property, should be amended in the following manner: (1) lost career opportunities resulting from child-care responsibilities should be added to the list of mandatory factors to be considered by judges in determining alimony and property awards, and (2) a consideration of the tax consequences to each of the parties resulting from property and alimony dispositions should be required. Enforcement provisions, such as security interests, bonds, and wage assignments, should be included in financial orders. In addition, judges should be required to impose appropriate civil and criminal penalties for noncompliance with court orders concerning alimony and property division.

The legislature and/or appellate courts should better define the “best interests” standard to direct judges to give primary consideration to the parent who has been the primary caretaker and psychological parent throughout the child’s life, not merely from the point of separation.

Permanent shared legal custody should be awarded only when the parents submit an acceptable shared legal custody plan to the court and the court finds that the parents are willing and able to work together to make major decisions concerning the children.

The legislature and/or appellate courts should make it clear that abuse of any family member affects other family members and must be considered in determining the best interests of the child in connection with any order concerning custody. If access to the child is allowed, judges should be directed to make arrangements to protect any family member from further abuse.

The Department of Revenue should be given the resources to handle as many cases as possible to provide the greatest amount of assistance to the most people. DOR should issue written directives to emphasize to its staff and court staff that collection of support is not secondary to collection of arrears and that support payments are vital for the well-being of female-headed families, including those receiving public assistance and those who are not.

Automatic periodic updating of child support orders, in accordance with guidelines, should become standard practice through revision of the statute and a change in practice

of the family law bar. The current child support guidelines should be made presumptive in order to further increase consistency from court to court and to continue the trend of making orders more reflective of the real needs of children. When the guidelines' content is reassessed as required by federal law, any change should be to reduce the disparities between women's and men's households after family breakup.

Notes

1. *Gender Bias Study of the Supreme Judicial Court*, Commonwealth of Massachusetts, 1989, Justice Ruth I. Abrams, Supreme Judicial Court, and Chief Justice John M. Greaney, Appeals Court, Cochairs, 1.
2. *Ibid.*, 21.
3. *Ibid.*, 24.
4. *Ibid.*, 25.
5. *Ibid.*
6. *Ibid.*, 21.
7. *Ibid.*, 26.
8. *Ibid.*, 21.
9. *Ibid.*, 73.
10. *Ibid.*, 63.
11. *Ibid.*, 59.
12. *Ibid.*, 63.
13. One of the activities in which I am involved at Harvard Law School is as a steering committee member for the National Conference on Attorney Representation of Children, sponsored by the Children and Family Rights Project. This student-sponsored and -organized conference, to be held in April, 1990, will focus on the role of *guardians ad litem* and legal counsel for children. Panels, presentations, and papers will deal with a wide range of topics to educate and train those who act as Guardians ad Litem and those who make disposition decisions. Because of my own experience and the prevalence of alcohol and drugs in society today, I suggested and was authorized to organize a panel discussion by prominent people in the field of substance abuse.
14. *Gender Bias Study*, 37.
15. *Ibid.*, 43.
16. *Ibid.*, 21.
17. *Ibid.*, 59.
18. *Ibid.*, 72.
19. *Ibid.*, 25.
20. *Ibid.*, 31.
21. *Ibid.*, 21.
22. *Ibid.*, 49.
23. Because I remember so keenly my own feelings of loneliness, helplessness, and confusion when I went by myself to get a restraining order, called a 209A, I have become involved in the Harvard Law School Battered Women's Advocacy Project. Law students, male and female, offer their services as advocates to assist women who are petitioning for 209A's and help them obtain support and custody orders several days later at the hearing following the issuance of the initial restraining order.
24. *Gender Bias Study*, 19.
25. *Ibid.*
26. *Ibid.*, 32.

27. Ibid., 35.
28. Ibid., 32–33.
29. Ibid., 28.
30. Ibid., 20.
31. Both *Martin v. Wilks*, 109 S.Ct. 2180 (1989) and *City of Richmond v. J.A. Croson Co.*, 109 S.Ct. 706 (1989) had negative effects on minority hiring and affirmative action.
32. *Patterson v. McLean Credit Union*, 109 S.Ct. 2363 (1989) and *Wards Cove Packing Co. v. Atonio*, 109 S.Ct. 2115 (1989) signaled a retreat of the Supreme Court from the battle against private discriminatory conduct and switched the burden of proof onto the plaintiff.
33. Both *National Treasury Employees Union v. Von Raab*, 109 S.Ct. 1384 (1989) and *Skinner v. Railway Labor Executives' Association*, 109 S.Ct. 1402 (1989) have eroded the right to privacy and loosened the requirements concerning searches, and mark a further retreat by the Court from the principle that exceptions to the warrant requirement of the Fourth Amendment must be carefully drawn with much consideration.
34. *Webster v. Reproductive Health Services*, 109 S.Ct. (1989) is the Supreme Court decision that gave to the individual states significant power to regulate abortion in accordance with *Roe v. Wade*.
35. Richard Kluger, *Simple Justice* (New York: Alfred A. Knopf, 1975). During the movement to desegregate the schools, there was considerable disagreement about the best way to proceed. White Southerners, and some blacks, feeling increasing pressure, maintained that attitudes had to change before desegregation would be possible. Justice Thurgood Marshall, leading the legal efforts in the courts, was adamant in his belief that the law had to change to create the impetus for a change in public policy.
36. *Gender Bias Study*, 3–4.

One hundred and thirty years ago we fought a civil war because this country could not exist half slave, half free. Once again America is embattled. Women are saying that the constitutional right to reproductive freedom must exist in every state, accessible to every woman and girl. Women cannot be enslaved. We cannot live half slave, half free.

— Molly Yard