

# UNLOCKING DOORS: REFLECTIONS ON MYRNA RAEDER'S GENERATIVITY AND GENEROSITY

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Celebrating Myrna Raeder is an honor, as is joining this symposium, *Locking Up Females*, which is a fitting tribute to her work. My connection to Myrna comes through joining with her in efforts to respond to gender inequalities in the institutions around us. The problems we saw were not only in jails and prisons, which famously occupied Myrna's time, but also in law schools and courts. Thus, in Myrna's memory and in her tradition, I reflect on some of the issues that we encountered and the collective efforts in which we participated to mitigate some of the hardships.

To do so requires context. Therefore, a return to the late 1960s and 1970s, when Myrna was just graduating law school, is in order. Only then was the topic of women and the law coming into sharp focus in law schools. Credit goes to a cohort of female law students, whose numbers were sufficient to enlist law teachers to help them fashion new courses addressing the complexity of the interactions of law and gender.

1971 was the year that Myrna graduated from NYU Law School, where I also went and graduated a few years later. In the year of her graduation, 1971, enough threads of feminist activity existed to spark a meeting, called "Women and the Law," supported by the Carnegie Corporation and convened at Yale Law School.<sup>1</sup> The materials for that conference included a "34-page

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\* Arthur Liman Professor of Law, Yale Law School; © all rights reserved, 2015. My thanks to Danielle Hart, Marina Angel, Ellen Podgor, and Miriam Krinsky for shaping this symposium, to Diana Li and Marianna Mao for help in editing this brief essay, to the many people who joined Myrna and myself in efforts related to women in education and women in prison, and to the women we hope we have been and will be able to help.

mimeographed packet” entitled “Women and the Law: A Collection of Reading Lists.”<sup>2</sup> But in only three years, two thick casebooks had been brought into existence, one entitled *Text, Cases, and Materials on Sex-Based Discrimination* (by Kenneth Davidson, Ruth Bader Ginsburg, and Herman Hill Kay, and published in 1974 by West’s Publishing Company) and another, called *Sex Discrimination and the Law: Cases and Remedies* (by Barbara Allen Babcock, Anne E. Freedman, Eleanor Norton, and Susan Deller Ross, and published in 1975 by Little, Brown).<sup>3</sup>

New classes and new books were some of the artifacts of women’s entry into the legal academy. So too was the creation of a new group – Women in Legal Education (WLE) – a special “section” of the American Association of Law Schools (AALS). Myrna served as WLE chair in 1982, in the year before she was tenured.<sup>4</sup> Myrna pressed for another new section on “Gay and Lesbian Legal Issues” (renamed thereafter), and later served in several other leadership roles in legal education.<sup>5</sup>

Yet more context is needed. Before the 1970s, the Association of American Law Schools had areas organized by subject matter, the “Sections” on Contracts, Constitutional Law, Property, and many other areas of law. The work I have described about the Section on Women in Legal Education, which named “women” as a distinctive group, had parallels in projects in other parts of the academy, where women also carved out “committees,” “task forces,” or “caucuses” – as part of larger associations of philosophers, economists, and chemists.<sup>6</sup> And, as Myrna explained, the value was

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1. See Linda K. Kerber, *Writing Our Own Rare Books*, 14 YALE J.L. & FEMINISM 429, 429 (2002). See generally Symposium, *Women, Justice, and Authority*, 14 YALE J.L. & FEMINISM 210 (2002).

2. Kerber, *supra* note 1, at 429-30.

3. An earlier monograph, *Women and the Law: The Unfinished Revolution* (1969), was published by Leo Kanowitz. Kerber, *supra* note 1, at 429. Likewise, the first chair of Women in Legal Education (WLE) was Dan Collins from NYU Law School. The contributions of these men serve as reminders to appreciate that women and men joined together to insist on shaping ways for women to gain ground in the legal academy. See Marina Angel, *Women in Legal Education III*, 80 UMKC L. REV. 711 (2002).

4. Myrna Raeder, *Reflections About Who We Were When Joining Conveyed a Message*, 80 UMKC L. REV. 703, 703 (2012) [hereinafter Raeder, *Reflections About Who We Were*].

5. See *id.* at 704. See also Faculty Profile of Myrna S. Raeder, SW. L. SCH., [http://www.swlaw.edu/faculty/faculty\\_listing/facultybio/70107](http://www.swlaw.edu/faculty/faculty_listing/facultybio/70107) (last visited April 23, 2015). As Myrna recounted, in 1984, before her oldest son was born, she was appointed to the AALS’s “Committee on Sections.” Raeder, *Reflections About Who We Were*, *supra* note 4, at 703. Myrna also was active in the American Bar Association (ABA) as the Chair of the Criminal Justice Section from 1998-99 and served as an ABA representative to the National Commission of Uniform State Law Commissioners from 1997-98 and 1998-99. See Faculty Profile of Myrna S. Raeder, *supra*.

6. See Ruth M. Oltman, *Women in the Professional Caucuses*, 15 AM. BEHAVIORAL SCIENTIST 281 app. I at 297-301 (1971).

enormous “at a time when so many . . . were either geographically isolated from other female professors or were isolated in their own universities.”<sup>7</sup>

Time and again, these collectives pressed their host organizations to attend to discrimination against women and to the challenges of understanding bodies of knowledge in which issues of gender had been sidelined. The shared theme was that the long-standing absence of women in the professoriate was a problem *for* the academy and *for* the quality of the education and research that resulted. Of course, Myrna’s work is proof positive of those points.

What were the issues? Employment was one: too few women were law professors. Other concerns were the substance of what was taught, the way that classes were taught,<sup>8</sup> the categories of analyses in diverse bodies of law, and a host of research questions that had not been explored. Myrna’s scholarship and teaching engaged all these issues. She analyzed categories of law that were well known for decades – evidence<sup>9</sup> and criminal law<sup>10</sup> – in which she was expert in general; further, Myrna sought to understand the relationship of these topics to gender and gender’s effects on them. She also built new categories of legal inquiry about women, children, sentencing, and prisons.<sup>11</sup>

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7. Raeder, *Reflections About Who We Were*, *supra* note 4, at 704.

8. See Lani Guinier, Michelle Fine, Jane Balin, Ann Bartow & Deborah Lee Stachel, *Becoming Gentlemen: Women’s Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994); see also Marina Angel, *Women in Legal Education: What It’s Like To Be Part of a Perpetual First Wave or the Case of the Disappearing Women*, 61 TEMP. L. REV. 799 (1988).

9. See PAUL F. ROTHSTEIN, MYRNA S. RAEDER & DAVID CRUMP, EVIDENCE: CASES, MATERIALS AND PROBLEMS (4th ed. 2013); PAUL F. ROTHSTEIN, MYRNA S. RAEDER & DAVID CRUMP, EVIDENCE IN A NUTSHELL: STATE AND FEDERAL RULES (6th ed. 2012; 5th ed. 2007).

10. See generally Myrna S. Raeder, *Executive Summary*, in AM. BAR ASS’N, THE STATE OF CRIMINAL JUSTICE 2013 (2013). And among many other activities related to criminal justice, Myrna served as co-chair of the Ad Hoc Innocence Committee to Ensure the Integrity of the Criminal Process from 2002 onwards.

11. See generally Myrna Raeder, *Selected Bibliography on Gender Issues in Sentencing and Corrections*, in NATIONAL SYMPOSIUM ON WOMEN OFFENDERS CONFERENCE PROCEEDINGS (1999) [hereinafter Raeder, *Bibliography on Gender Issues*]; Myrna S. Raeder, *Gender and Sentencing: Single Moms, Battered Women, and Other Sex-Based Anomalies in the Gender-Free World of the Federal Sentencing Guidelines*, 20 PEPP. L. REV. 3 (1993) [hereinafter Raeder, *Gender and Sentencing*]; *Policy Issues Concerning Women Offenders and Their Children: Hearing on Incarcerated Mothers Before the California Legislative Women’s Caucus* (Nov. 2001) (testimony of Prof. Myrna Raeder), published in INT’L COMM. CORR. ASS’N J. (Nov. 2001); Myrna S. Raeder, *Sentencing Symposium, Gender-Related Issues in a Post-Booker Federal Guidelines World*, 37 MCGEORGE L. REV. 691 (2006) [hereinafter Raeder, *Gender-Related Issues*]; Myrna S. Raeder, *Preserving Family Ties for Domestic Violence Survivors and Their Children by Invoking a Human Rights Approach To Avoid the Criminalization of Mothers Based on the Acts and Accusations of Their Batterers*, 17 J. GENDER RACE & JUST. 105 (2014) [hereinafter Raeder, *Preserving Family Ties*].

From the vantage point of 2015, enshrining these topics in legal analysis might be thought to be easy, as the connections today seem obvious. But in the 1970s, women were rare in the legal academy and rarely the focus of scholarship and legal inquiry. In terms of those of us teaching even in the 1980s, we remained at the margins. Moreover, we were warned about what was needed to be accepted by our male colleagues. I can provide one example from my own experience, of a colleague's comment to me when I started teaching law. He gave me what he understood to be kind advice — not to “teach in any areas associated with women's issues,” which he defined as family law or sex discrimination (or even trusts and estates), and not to be “too visible on women's issues.”<sup>12</sup>

On one level, he was right. My almost all male co-teachers were more interested in my work on procedure and federal courts, and less interested in my work on women in prison. But his well-intended advice was misguided, for he assumed that certain areas of law were “safe,” far removed from gender. But whether teaching about women in prison or about federal courts, procedure, property, contracts, torts, or of course — pace Myrna — criminal law and evidence — gender remains relevant. Gender is both constructed by law and constructs categories in law. Examples come from federal law, as debates have taken place about the boundaries of a so-called “domestic relations” exception to federal court diversity jurisdiction and about the reasons why the myriad ways in which federal law governs family life (such as through immigration, ERISA, bankruptcy, and sentencing) are not readily seen as part of the “federal laws of the family.”

Thus, my first point is that Myrna Raeder helped to remake the legal academy by showing the intersection and the impact of gender on criminal law, evidence, and sentencing and by bringing new areas of concern — women and prisons — to the fore. In short, Myrna was central to women in the academy, as well as for so many women dealing with the criminal justice system. In 2002, Myrna's many accomplishments in and her contributions to the profession were recognized by the American Bar Association's Commission on Women, which awarded her the Margaret Brent Women Lawyers of Professional Achievement Award.<sup>13</sup>

My second point is to consider the effect Myrna had on courts. Here, my focus shifts to the 1980s, when the National Association of Women Judges (NAWJ), working in conjunction with the National Judicial Education Program of the NOW Legal Defense and Education Fund, spearheaded

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12. Judith Resnik, *Visible on “Women's Issues,”* 77 IOWA L. REV. 41, 41 (1991). For additional discussion, see Judith Resnik, *A Collective Collage: Women, the Structure of American Legal Education, and Histories Yet to be Written*, 80 UMKC L. REV. 737 (2012).

13. Raeder, *Reflections About Who We Were*, *supra* note 4, at 705.

efforts to understand what has come to be known as “gender bias in courts.”<sup>14</sup> Concerns about fairness in courts emerged as plaintiffs brought cases alleging sex-based stereotyping, and encountered some judges whose views were akin to those of the defendants, adamant about what women could and could not do.

Ever optimistic (the footnote here being that optimism is both an under-appreciated hallmark of feminism in a world busily painting feminists as dour, and that optimism was one of Myrna’s many wonderful qualities), women’s rights advocates proposed documenting gender bias, jurisdiction by jurisdiction. That idea was not novel; special study commissions are commonplace in the U.S. legal system, which has had task forces on sentencing, youth violence, prisons, and alternative dispute resolution.

Success came in New Jersey when, in 1982, that state’s Chief Justice, Robert N. Wilentz, chartered the first such task force.<sup>15</sup> Two years later, in 1984, he established the first Task Force on Minorities in the Courts. (More than a decade later, his successor, Deborah Poritz, was again a pioneer, chartering a first Task Force on Gay and Lesbian Issues.<sup>16</sup>) The mandates were capacious; for example, in Connecticut, the Chief Justice, the Honorable Ellen Peters, charged the Connecticut court-appointed task force in 1989 that its duty was “to determine the presence and extent of gender bias in Connecticut courts and to develop strategies for its eradication.”<sup>17</sup>

The federal judiciary was, however, initially reluctant to set up task forces. Some judges equated gender with family and assumed that since states dealt with marital dissolution and child custody, the federal system was “naturally” without issues of gender bias.<sup>18</sup> But the Ninth Circuit took the lead; Chief Judge Clifford Wallace chartered a Gender Bias Task Force in

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14. See generally Lynn Hecht Schafran, *Educating the Judiciary About Gender Bias: The National Judicial Education Program to Promote Equality for Women and Men in the Courts and the New Jersey Supreme Court Task Force on Women in the Courts*, 9 WOMEN’S RTS. L. REP. 109 (1986); LYNN HECHT SHAFRAN & NORMA JULIET WIKLER, FOUNDATION FOR WOMEN JUDGES, OPERATING A TASK FORCE ON GENDER BIAS IN THE COURTS: A MANUAL FOR ACTION (1986); Lynn Hecht Schafran, *Documenting Gender Bias in the Courts: The Task Force Approach*, 70 JUDICATURE 280 (1987); Lynn Hecht Schafran, *Gender Bias in the Courts: An Emerging Focus for Judicial Reform*, 21 ARIZ. ST. L.J. 237 (1989).

15. See Judith Resnik, *Asking About Gender in Courts*, 21 SIGNS 952, 953 (1996).

16. NEW JERSEY COURTS, FINAL REPORT OF THE TASK FORCE ON GAY AND LESBIAN ISSUES (Sept. 26, 2001), available at <http://www.judiciary.state.nj.us/pressrel/2001/taskforce.htm>. See Terry Pristin, *Court Names Bias Task Force*, N.Y. TIMES (July 11, 1997), available at <http://www.nytimes.com/1997/07/11/nyregion/court-names-bias-task-force.html>.

17. CONNECTICUT TASK FORCE ON GENDER, JUSTICE, AND THE COURTS, REPORT OF THE CONNECTICUT TASK FORCE ON GENDER, JUSTICE AND THE COURTS TO THE CHIEF JUSTICE 6 (1991).

18. See Judith Resnik, “Naturally” Without Gender: Women, Jurisdiction, and the Federal Courts, 66 N.Y.U. L. REV. 1682 (1991).

1990, chaired by the Honorable Jack Coughenour of the Western District of Washington; I was appointed as one of the seven members.<sup>19</sup>

Given that our questions were focused on identifying the interaction of gender and the federal court system, I sought to enlist Myrna, who became a central participant. She co-convened a working group for the Central District of California, and she co-chaired the Advisory Group on Criminal Justice Issues. The resulting study, *The Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force*, reflects a great deal of Myrna's contributions,<sup>20</sup> supported by Southwestern Law School which (along with the USC Law Center, RAND, and other institutions) generously provided assistance.

The range of topics was ambitious, as we addressed demographics (for example, where are the women? what roles do they play?); courtroom interactions and related activities (how do lawyers behave in discovery and when trying to settle cases?); the lives of women and men who are professionals in courts (how much time is spent at work? what about families?); the court as an institution and as an employer (who is assigned to what committees? who speaks at conferences? what are staff and employee relations like?); and the application of legal doctrine and the effects on women litigants (how do sentencing guidelines affect women? how are women who are victims of violence treated? what role does gender play in bankruptcy or immigration?). Using both legal and social science research techniques, we embarked on fact-finding inquiries to learn whether and how the treatment of lawyers, parties, witnesses, jurors, judges, and court employees differed by gender, inflected with the intersections of race, ethnicity, and religion.

We developed new data through sample surveys aimed at capturing the views of participants in legal processes. The people most readily surveyed – because they were easy to find – were lawyers and judges. Thus, the Ninth

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19. Thereafter, several other circuits launched task forces on gender, race, and ethnicity. See, e.g., Hon. Bruce M. Selya, *First Circuit: A Study of Gender Bias in and Around the Courts*, 32 U. RICH. L. REV. 647 (1998); Hon. David M. Ebel, *Tenth Circuit: Gender Bias Study — Continuing Education and Training*, 32 U. RICH. L. REV. 745 (1998); Hon. Phyllis Kravitch, *Eleventh Circuit: "Executive Summary" — Report of the Eleventh Circuit Task Force on Gender Bias*, 32 U. RICH. L. REV. 751 (1998); Special Comm. on Gender, *Report of the Special Committee on Gender to the D.C. Circuit Task Force on Gender, Race and Ethnic Bias*, 84 GEO. L.J. 1657 (1996).

20. See John C. Coughenour, Proctor Hug, Jr., Marilyn H. Patel, Terry W. Bird, Deborah R. Hensler, M. Margaret McKeown, Judith Resnik & Henry Shields, Jr., *The Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force*, 67 S. CAL. L. REV. 745 (1994) [hereinafter *Ninth Circuit Gender Bias Task Force*]. The volume was introduced by many jurists, including Justice Sandra Day O'Connor. See *id.* at 759; see also Myrna Raeder, *The Effect of Gender on the Sentencing Guidelines* (1992) (unpublished material for the Ninth Circuit Gender Bias Task Force).

Circuit Gender Bias Task Force reviewed many documents and received responses from more than eighty percent of the judges sitting on the Ninth Circuit then, as well as administrative law judges, and 3,560, or more than fifty percent, of the lawyers sampled from the public and private sector.<sup>21</sup>

We also researched substantive areas of law, including immigration, bankruptcy, federal benefits, federal Indian law, and the criminal justice system. Myrna took the lead on one chapter, “Gender and the Criminal Justice System,” which bears her stamp.<sup>22</sup> Topics ranged from the demographics of women as defendants and as prisoners to the facilities in which they were housed, their personal privacy and safety, medical care, access to lawyers, visits by family, the grievance system, and sentencing. One way to say thank you to Myrna is to repeat the findings, detailing the special challenges women faced because women were often put at great distances from their families and home communities. As the overview of the Task Force’s findings explained:

Because there are relatively few facilities for women across the country, women detained or incarcerated at the behest of federal authorities are often placed at great distance from home, families, and lawyers. As of year-end 1991, the only federal pretrial and prison facilities for women in the Ninth Circuit were in California and Arizona . . . . [T]hese women reported that, once inside jails and prisons and on route to them, they are concerned about their physical safety, personal privacy, and health care. Women who are also members of minority populations may feel particularly vulnerable in the criminal justice system. Often foremost among the concerns of all women are the families they have left behind.<sup>23</sup>

Sadly, this commentary is all too familiar, and not only a relic of bygone decades. Indeed, my last project with Myrna was focused on exactly these issues, this time in the context of the federal prison system as a whole.

Again, a bit of context is needed. Today, the Federal Bureau of Prisons (BOP) houses about 220,000 people.<sup>24</sup> Fewer than seven percent (roughly

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21. *Ninth Circuit Gender Bias Task Force*, *supra* note 20, at 766-67.

22. *Id.* at 916-18.

23. *Id.* at 917.

24. Judith Resnik, *Harder Time*, SLATE (July 25, 2013, 11:32 AM), [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2013/07/women\\_in\\_federal\\_prison\\_are\\_being\\_shipped\\_from\\_danbury\\_to\\_aliceville.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2013/07/women_in_federal_prison_are_being_shipped_from_danbury_to_aliceville.html).

14,500) are women.<sup>25</sup> A few decades ago, in 1979, I testified before a subcommittee of the House of Representatives about the lack of attention paid to and the few housing options for women prisoners in the federal system.<sup>26</sup> At the time, there were 27,000 federal prisoners, not 220,000.<sup>27</sup> Then, 1,600 – not 14,500 – of the 27,000 federal prisoners were women.<sup>28</sup> And, in the 1970s, five facilities housed federal women prisoners– in just a few states, including West Virginia, Kentucky, and California.<sup>29</sup> Thus, none were in the Northeast, despite the fact that a significant number of women came from the Northeast.

Victory for those women came in 1994, when the BOP opened the first prison for women in the Northeast - in Danbury, Connecticut, which is about seventy miles from New York City. There, the BOP created both a minimum security prison, called FCI (Federal Correctional Institution) Danbury, and what is called a “camp,” providing the lowest security in the system. (Danbury has become better known as the place where Piper Kerman, who wrote *Orange is the New Black*, was incarcerated.<sup>30</sup>)

As of the summer of 2013, about 1,200 women were at Danbury, but we learned then that the Federal Bureau of Prisons planned to ship women out – and leave only a couple hundred beds for women at the Camp.<sup>31</sup> The goal was to open up space for 1,000-plus beds to male prisoners, and a good many of the women were to be sent to a new, 1,800-bed facility in Aliceville, Alabama – fifty miles west of Tuscaloosa, near the Mississippi border.<sup>32</sup>

This plan was good news for Aliceville, a tiny town that is about five square miles and has about 2,500 people.<sup>33</sup> As a *New York Times* editorial

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25. *Id.*

26. *Female Offender-1979-1980, Part 1: Hearings Before the Subcomm. on Courts, Civil Liberties, and Admin. of Justice of the H. Comm. on the Judiciary*, 96th Cong. 59 (1979) (testimony of Professor Judith Resnik).

27. *Id.* at 137.

28. *Id.*

29. *Id.*

30. PIPER KERMAN, *ORANGE IS THE NEW BLACK: MY YEAR IN A WOMAN’S PRISON* (2011).

31. Anna Arons, Katherine Culver, Emma Kaufman, Jennifer Yun, Hope Metcalf, Megan Quattlebaum & Judith Resnik, *Dislocation and Relocation: Women in the Federal Prison System and Repurposing FCI Danbury for Men*, YALE L. SCH. 2 (Sept. 2014), [http://www.law.yale.edu/images/liman/Liman\\_DanburyPrisonReport\\_9.3.14.pdf](http://www.law.yale.edu/images/liman/Liman_DanburyPrisonReport_9.3.14.pdf) [hereinafter Arons, Culver, Kaufman, Yun, Metcalf, Quattlebaum & Resnik, *Dislocation and Relocation*]; Johanna Kalb & Judith Resnik, *Women in Detention: The Need for National Reform*, YALE LAW SCH. 1-2 (Mar. 3, 2015), <http://www.law.yale.edu/documents/pdf/Liman/limancolsontaskforce.pdf> [hereinafter Kalb & Resnik, *Women in Detention*] (statement of the Arthur Liman Public Interest Program at Yale Law School, Professor Johanna Kalb, and Professor Judith Resnik, before the Charles Colson Task Force on Federal Corrections).

32. See Kalb & Resnik, *Women in Detention*, *supra* note 31, at 1-2.

33. *Id.*

explained a year earlier when the prison at Aliceville was under construction, the decision to site the new facility there was an economic boost to the area, and that it had cost the federal government – i.e. U.S. taxpayers – some \$250 million.<sup>34</sup> Thus, as the newspaper put it, what the government bought was a “white elephant.”<sup>35</sup>

Aliceville is a terrible place to be a prisoner, even if you come from Alabama. Aliceville is hard for anyone without a car to get to; it has neither a train station nor an airport nearby. Aliceville has no medical center or university, nor many lawyers, religious leaders, or other service providers. Thus, the 2013 decision of the federal prison system to send women from the Northeast to Aliceville reflected many of the concerns that Myrna Raeder had registered in the 1994 *Ninth Circuit Gender Bias Task Force Report*.

I was one of many people worried about this proposal, and my response was to call Myrna, who quickly linked us to the work she was doing. She had been the guest editor of the 2012 Special Issue on Children of Incarcerated Parents in *Family Court Review*, and in the summer of 2013, she was to speak at a conference, sponsored by the White House, to bring more attention to the problems of being a parent in prison and of being a child of prisoners.<sup>36</sup> In the fall of 2013, as we were submitting a statement for congressional hearings, we emailed Myrna, who agreed to review drafts and provide directions on avenues of commentary. Myrna, who was then ill, did not speak about how she was feeling; instead, Myrna read our statement and gave wise

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34. *Alabama's White Elephant*, N.Y. TIMES (JUNE 23, 2012), [http://www.nytimes.com/2012/06/24/opinion/sunday/alabamas-white-elephant.html?\\_r=1](http://www.nytimes.com/2012/06/24/opinion/sunday/alabamas-white-elephant.html?_r=1).

35. *Id.*

36. See Myrna S. Raeder, *Making a Better World for Children of Incarcerated Parents*, 50 FAM. CT. REV. 23 (2013) [hereinafter Raeder, *Making a Better World*]; Press Release, Am. Bar Found., ABF Convenes Conference at White House on Effects of Parental Incarceration on Children (Aug. 26, 2013), available at <http://www.americanbarfoundation.org/news/432>; see also Roy L. Austin & Karol Mason, *Empowering Our Young People, and Stemming the Collateral Damage of Incarceration*, WHITE HOUSE BLOG (Oct. 8, 2014, 7:30 PM), <https://www.whitehouse.gov/blog/2014/10/08/empowering-our-young-people-and-stemming-collateral-damage-incarceration>; Cecilia Muñoz, *Supporting Children of Incarcerated Parents*, WHITE HOUSE BLOG (June 19, 2013, 9:46 AM), available at <https://www.whitehouse.gov/blog/2013/06/19/supporting-children-incarcerated-parents>; *Champions of Change: Champions for the Children of Incarcerated Parents*, WHITE HOUSE BLOG, <https://www.whitehouse.gov/champions/champions-for-the-children-of-incarcerated-parents> (last visited Mar. 27, 2015); James M. Cole, *Deputy Attorney General, Department of Justice, Remarks at the Children of Incarcerated Parents Initiative “Champions of Change” Event*, U.S. DEP’T. OF JUSTICE (June 12, 2013), <http://www.justice.gov/opa/speech/deputy-attorney-general-james-m-cole-delivers-remarks-children-incarcerated-parents>.

counsel.<sup>37</sup> She was helping to enhance the health of others – without talking about her own health challenges.

Of course we used Myrna’s work to explain – to U.S. Senators, to the press, to judges, and to the BOP and Justice Department – that being incarcerated far from home was harmful to both inmates and their families. We relied on Myrna’s research<sup>38</sup> as well as other studies reporting that inmates who receive regular visits are less likely to have disciplinary problems while in prison and have better chances of staying out of prison once released.<sup>39</sup>

At one level, it seemed like we were preaching to the choir. In June of 2013, the director of the federal prison system had sent a memo on “Parenting” to all inmates.<sup>40</sup> He announced that the BOP staff was “committed to giving you opportunities to enhance your relationship with your children and your role as a parent.”<sup>41</sup> In addition to letters and calls, he hoped that inmates’ families would bring their children to visit: “there is no substitute for seeing your children, looking them in the eye, and letting them know you care about them.”<sup>42</sup>

But the plan to close off Danbury and send so many to Aliceville did not change until many groups raised concerns – eleven U.S. Senators from the Northeast, twelve chief judges of federal district courts in Northeast states, the National Association of Women Judges, Cure, the Osborne Association, the American Bar Association, and many others.<sup>43</sup> In November of 2013, the

37. *Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism: Hearing Before the S. Judiciary Comm.*, 113th Cong. (2013) (statement of Professor Judith Resnik, Professor Hope Metcalf, and Megan Quattlebaum, Senior Liman Fellow).

38. See, e.g., Myrna S. Raeder, *A Primer on Gender Related Issues That Affect Women Offenders*, 20 CRIM. JUST. 4 (2005); Raeder, *Bibliography on Gender Issues*, *supra* note 11; Raeder, *Gender and Sentencing*, *supra* note 11; Raeder, *Gender-Related Issues*, *supra* note 11; Raeder, *Making a Better World*, *supra* note 36; Raeder, *Preserving Family Ties*, *supra* note 11.

39. See Chesa Boudin, Trevor Stutz & Aaron Littman, *Prison Visitation Policies: A Fifty-State Survey*, 32 YALE L. & POL’Y REV. 149, 151-52 (2013).

40. FED. CORR. INST., *Director’s Message to Inmates – Parenting*, in ADMISSIONS & ORIENTATION HANDBOOK: AN INMATE’S GUIDE TO POLICIES AND PROCEDURES 5 (2013), available at [http://www.bop.gov/locations/institutions/men/MEN\\_aohandbook.pdf](http://www.bop.gov/locations/institutions/men/MEN_aohandbook.pdf).

41. *Id.*

42. *Id.*

43. *The Real Deal at Danbury: One Woman’s Experience Testing the BOP’s Commitment to Families*, NATION INSIDE (Feb. 2, 2014), <http://nationinside.org/campaign/cure/storybank/danbury/>; Josh Zembik, *Blumenthal, Murphy Announce Changes to FCI Danbury Transfer*, BLUMENTHAL SENATE (Nov. 4, 2013), <http://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-murphy-announce-changes-to-fci-danbury-transfer>; Letter from Thomas M. Susman, Dir. of the Governmental Affairs Office of the Am. Bar Ass’n, to Hon. Charles E. Samuels, Jr., Dir. of the Fed. Bureau of Prisons (Aug. 6, 2013), available at <http://www.americanbar.org/content/>

BOP announced it would temporarily close FCI Danbury and reopen with beds for women citizens from the Northeast, to add to the “camp,” which was to remain open and to house about 200 women.<sup>44</sup>

As of this writing, I cannot report that the women will soon return. Further, at the behest of the Senators from Connecticut, a group of faculty and students in the Arthur Liman Program at Yale Law School, filed another report in 2014<sup>45</sup> describing that construction was yet to begin. Beds had been provided for women in the Northeast, but in federal jails in Brooklyn and Philadelphia which, while permitting visits by families, were often overcrowded and offered few programs.<sup>46</sup> Further, one important option, Residential Drug Treatment (“RDP”), serving as a basis for sentence reductions if completed successfully,<sup>47</sup> remains, as of this writing, unavailable in the Northeast for women.

In short, so much remains to be done for women in prison, and this work must proceed without direct guidance from Myrna, who had such an impact on legal education, substantive law, federal and state courts, and prisons. Therefore, I am grateful for this opportunity to reflect on all that she provided at personal and structural levels. Myrna joined willingly and selflessly in collective efforts to help others. So many diverse people benefitted from Myrna’s insights, intelligence, kindness, tenacity, commitments, concerns, and especially from her warmth. It was a special pleasure to see her at meetings because she simply made me feel good by having a chance to say hello and talk with her. (As she recalled in her essay on chairing the Section on Women in Legal Education, while pressing to make major changes in law schools, “we also laughed a lot.”<sup>48</sup>)

Myrna mixed brilliance and unpretentiousness; she was thoughtful, wise, and genuinely friendly. Given Myrna Raeder’s contributions and that this symposium is entitled *Locking Up Females*, what came to mind were a few words from a great feminist from across the Atlantic Ocean. The volume, *A Room of One’s Own*, was written in the late 1920s by Virginia Woolf, who said:

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dam/aba/uncategorized/GAO/2013aug6\_alicevilletransfer\_1.authcheckdam.pdf; *Bring Mom Close to Home*, OSBORNE ASS’N BLOG (Nov. 5, 2013), <http://www.osborneny.org/post.cfm?postID=301>.

44. Arons, Culver, Kaufman, Yun, Metcalf, Quattlebaum & Resnik, *Dislocation and Relocation*, *supra* note 31, at 7.

45. *Id.* at 7.

46. *Id.* at 3.

47. 18 U.S.C. § 3621(e)(2)(B) (2010) (“The period a prisoner convicted of a nonviolent offense remains in custody after successfully completing a treatment program may be reduced by the Bureau of Prisons, but such reduction may not be more than one year from the term the prisoner must otherwise serve.”).

48. Raeder, *Reflections About Who We Were*, *supra* note 4, at 709.

[I]n a hundred years, I thought, reaching my doorstep, women will have ceased to be a protected sex . . . . Anything may happen when womanhood has ceased to be a protected occupation, I thought, opening the door.<sup>49</sup>

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49. VIRGINIA WOOLF, *A ROOM OF ONE'S OWN* 69-70 (Harcourt 1957) (1929).