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GETTING *the* BETTER HALF

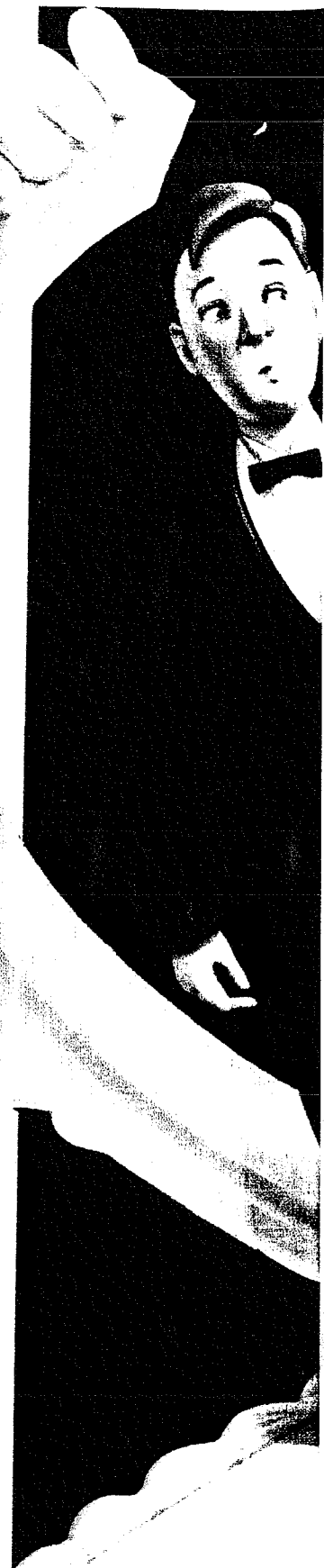
In a little-noticed trend, women are finally achieving financial parity in divorce settlements—and men are goggle-eyed at the price tag. How an ex-wife's share can add up to 70 percent.

By Brad Reagan

Illustration by Thomas Reis

PETER COOPER-ELLIS TALKS LIKE A MAN WHO HAS been blindsided by a catastrophe. A software executive who once considered himself set for life, Cooper-Ellis recently had to refinance his home in San Francisco to pay his bills. His substantial savings have been bled nearly dry. His voice betrays a barely suppressed despair as he describes his life: "I am literally living on the edge and going downhill."

It's the kind of tragic arc you associate with a medical disaster or a felony conviction. For Cooper-Ellis, however, the trigger was something much more common: a divorce. And it wasn't even a particularly nasty one. Peter and Jo, his wife of 16 years, agreed they wouldn't fight over custody of their three kids. There was no tangled history of abuse or affairs. Their talks were initially so cordial, Peter says, that he didn't even think he'd need a lawyer. But when it came time to argue over money, the gloves came off, the attorneys came on, and Peter found out how radically the math of divorce has changed.



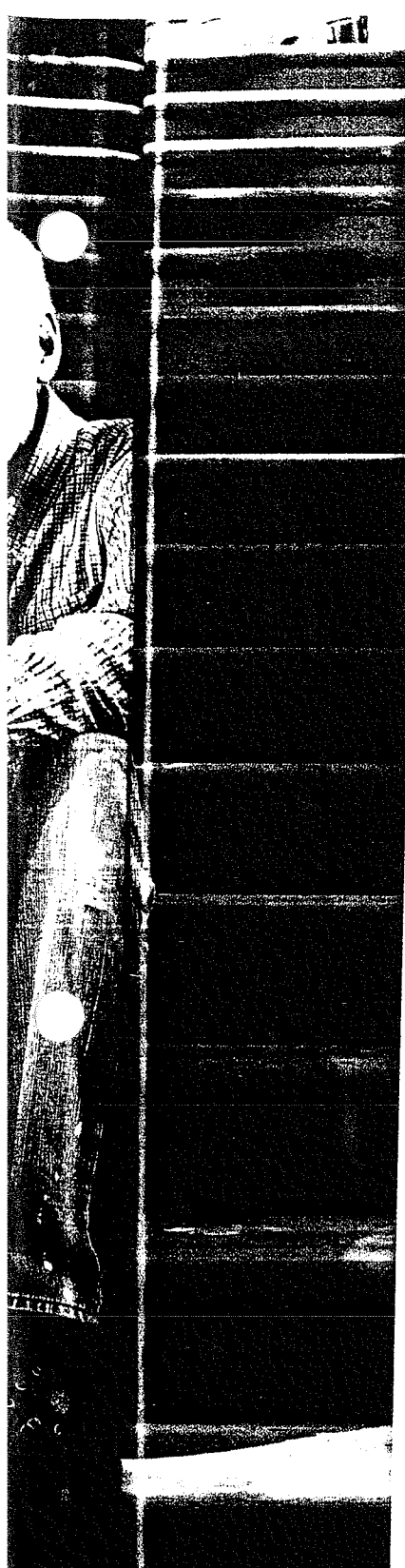
In the not-too-distant past, his wife might have won little more than the house and a small amount of alimony. In the 21st century, judges say that's unfair, not to mention woefully inadequate. Jo gave up her own career years ago to care for the kids, including a special-needs daughter. In Vermont, where the couple lived before they separated, she argued for and won not only \$10,000 a month in child support and alimony, but also Peter's entire retirement portfolio and \$1.2 million worth of his unvested stock options. Granted, Peter won't need reservations for the poorhouse: He kept most of the family's real estate investments and commands a salary in the mid-six figures. But the hit he took is still inducing postdivorce financial trauma. "They took my retirement, my pension, my 401(k) and all the cash," he says. "I didn't even think that was a possibility."

FOR as long as divorce has existed, men have griped about their divorce settlements—perhaps most succinctly in Jerry Reed's 1982 hit single, "She Got the Goldmine (I Got the Shaft)." But in courtrooms and lawyers' offices across the country, you can hear the gripes turning into gasps. For almost four decades, since the dawn of the "no fault" divorce, even the most ardent male chauvinist had to admit that a savvy man could fare pretty well economically in divorce court. Today, after a long behind-the-scenes struggle, women are closer than ever to winning financial parity there. Shifting cultural attitudes and a sea change in the legal system have led courts to place a higher price tag on what the nonworking or lower-earning spouse—the wife, in the vast majority of cases—contributes to the marriage. The balance of power has shifted with little fanfare, playing out in dimly lit courtrooms and out-of-court settlements, but the momentum is undeniable. And for men who expected something more favorable, the experience is about as comfortable as a colonoscopy. Prominent Washington, D.C., attorney Sanford Ain sums up the trend this way: "The husbands are more nervous, and the women are more confident."

They've got reason to be, as courts change their financial prospects in ways large and small. According to the IRS, average alimony income was \$16,520 in 2004, up from \$10,162 in 1995—an increase of 30 percent after adjusting for inflation—but that statistic is just the nose of the camel under the tent. Laws governing divorce vary enormously from state to state, but in general, courts have become far more expansive about what assets the woman can pursue, whether they're retirement accounts and stock options or intangibles like future earnings.



Judges increasingly are requiring husbands to pay their court fees during divorce proceedings. And the starting point for financial negotiations has shifted inexorably in their favor. "It used to be 25 to 30 percent" of the estate for the economically dependent spouse, says Manhattan attorney William Beslow. "Now 50 percent is the starting point and the judge is saying, 'Why should it be less?'"



Peter Cooper-Ellis assumed he'd "split everything" with his ex-wife but was stunned when a court gave her \$1.2 million worth of his stock options.

From the woman's side of the negotiating table, the response, understandably, is, "It's about time." Statistics have long shown that divorce is an economic catastrophe for women, especially mothers with dependent kids. Having fully joined the workforce, women today are more assertive about money and keenly aware of what they sacrifice in order to raise children. At the same time, there's greater recognition of the economic value of the work of stay-at-home moms. Loyola University Chicago business professor Linda Stroh found that men in traditional marriages earn significantly more than men in dual-income households, suggesting that the labor of homemakers—everything from carpooling and keeping house to entertaining—helps hubby get ahead. Although both spouses do at least some work outside the home in

most marriages, only 12 percent of wives make substantially more than their husbands, the National Council on Family Relations reports. So it's no surprise that in the vast majority of divorces, it's still the man writing the checks.

While larger settlements for women may be the new normal, their impact is being felt in unexpected ways. In 2006 the American Academy of Matrimonial Lawyers reported that

almost 80 percent of its members saw an increase in prenuptial agreements in the previous five years—a sign that the wealthier partners, usually men, were being more aggressive about covering their assets. Mediation has become more popular as an alternative to divorce litigation, as men seek to keep fees down and prevent emotions from stoking a punitive payout. But above all, men are rethinking their marriages, considering both how to save them and how to prepare themselves for the very different financial reality of today's breakup.

YOU don't have to be Gloria Steinem to believe that women have traditionally gotten the short end of the divorce stick. California Gov. Ronald Reagan, who went on to become the nation's first divorced president, kicked off "the divorce decade" in 1969, when he signed no-fault divorce into state law. The move was lauded by feminists and women's-rights advocates, who argued that the previous system trapped women in abusive marriages, and by 1983 every state except South Dakota had enacted some form of no-fault divorce. But it quickly became apparent that, in many ways, the system still favored men. The standard settlement resulted in the husband retaining the bulk of the property and the wife receiving alimony or "maintenance" payments to cover her bills. In an era when women's earning power was much weaker than it is today, a newly divorced woman could almost always kiss her married standard of living goodbye.

Perhaps the most influential study on the divorcee's plight came out in 1985, when sociologist Lenore Weitzman published *The Divorce Revolution*. Citing data from the mid-1970s, the book contained startling stats: After the average divorce, the woman's standard of living dropped 73 percent, while the man's increased 42 percent, a "gender gap" of 115 percent. Many researchers thought Weitzman had overstated her case; indeed, in 1996 Weitzman revised her wealth-gap estimate down to a much smaller though still significant 37 percent. But the original, more explosive data from her book garnered headlines and played a major role in prompting states to change their laws. In the mid- and late 1980s, the vast majority of states—California, New Mexico and Louisiana are notable exceptions—adopted some form of "equitable distribution" statutes, laws that make most marital property subject to division even if it is held in the husband's name. Judges were now required to consider factors such as the length of the marriage and the earning potential of each spouse, but it was still their call to decide what was "equitable."

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Photograph by Jonathan
Sprague/Redux

Cue Up The Prenup...

For many years judges continued to follow the "he earned it, he keeps it" model and showed little sympathy for homemakers. But the laws gave women and their attorneys an umbrella under which they could argue for a much bigger share of the estate. And as a younger generation of judges came to the bench, the judiciary's sensibilities evolved to embrace the idea that, as one attorney put it, the breadmaker could be as valuable as the breadwinner. It certainly didn't hurt that more of the judges could empathize with the female underdog. In 1985 about 7 percent of state judges were women; today it's almost 30 percent, according to the National Center for State Courts.

The new crop of judges has plugged systemic holes that once stacked the deck against wives. In past years, for example, it was common for courts to look the other way as husbands "starved out" their wives by cutting off funds, leaving them



Lorna Jorgenson Wendt's settlement, a 50/50 split, broke new ground. She rejected a lower offer. "I didn't give 10 percent to my marriage," she says.

Once a tool for old-money scions and serial marri
Ron Perelman and Donald Trump, the prenuptial
agreement has gone mainstream and been embra
middle-class professionals. But it's also becoming
legal battleground, as some spouses overreact in
outmaneuver their partners. Here are some tips fo
preparing fair prenups.

LIMIT THE SCOPE. All states ban limits on child support and most won't allow restrictions on spousal support. "least controversial agreements focus on protecting sp assets, like a business or a prized vacation home, says Charlottesville, Va., attorney Laura Morgan. Even then s judges will throw out prenups that are too one-sided.

NO BULLIES ALLOWED. Courts frown on agreements where one side pressures the other too much, so many l now film the prenup signing to show that both parties kn they were doing. To avoid the appearance of a shotgun c the American Law Institute recommends drafting prenup 30 days before the ceremony. A California law passed in actually requires one week between signing and marriag that restriction, you can thank slugger Barry Bonds, who public outrage by springing a prenup on his fiancée on th to the airport the day before their wedding.

STICK TO THE FINANCES. One husband in prenup negotiations wanted to require sex at least three times a while another demanded 10 hours of golf each week w nagging" from his wife. Tough luck for them: Provisions mandate behavior are not enforceable. Even penalties f adultery—a common prenuptial request—are out of bou Chicago attorney Mike Minton puts it, "You can't econo sanction someone for [sleeping with] someone else."

with no means to pay for counsel in divorce proceedin the Washington, D.C., attorney, points out that 20 y judges were awarding women as little as \$75 for leg; barely enough for a consultation with the cheapest att the phone book. Stuck without help, many wives wer to settle on the cheap. These days judges often arm wi plenty of ammunition to head into battle: In a recent c was awarded almost \$900,000 in temporary fees alo

Perhaps most important, equitable-distributi opened the door for courts to consider a wide new i

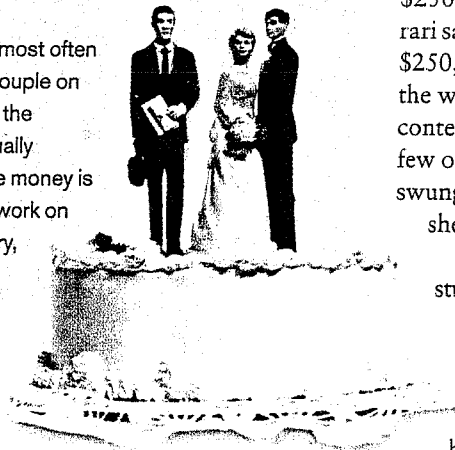
...or Bring On The Postnup

Rocky marriage? Or did you recently come into a pile of money? A postnuptial agreement may be just the ticket. Although postnups are still relatively rare, 49 percent of the members of the American Academy of Matrimonial Lawyers say they saw an increase in such pacts in the past five years. Here's what to expect.

SETTLE FOR PARITY. Postnups are almost never a runaway financial victory for one spouse. The reason: The one with the money has little bargaining power. Since the dependent spouse would already be entitled to a sizable share of the couple's assets if they split, "there is no reason for her [or him] to say yes," says Laura Morgan. One reasonable approach: Propose terms that guarantee that the dependent spouse will maintain the same standard of living after a divorce.

YOU STILL CAN'T BE A BULLY. The "sign this or I will divorce you" approach may sound impressively hardball, but almost any agreement made on those terms will get thrown out by the courts as coercive.

CLEAR THE AIR. Postnups most often occur, lawyers say, when a couple on the rocks wants to figure out the financial ramifications of actually reaching Splitsville. Once the money is settled, the couple is free to work on the marriage. That's the theory, anyway. The reality, says Washington, D.C., divorce attorney Sanford Ain, is that postnups are often simply a prelude to divorce papers.



the husband's assets—stock options, future earnings, shares of privately held businesses—as marital "property" to which the wife had a legitimate claim. Homemakers' earning disadvantages often come back to bite them later in life because they contribute less—or nothing—to retirement plans or the Social Security system. According to the Social Security Administration, 21 percent of divorced women over age 65 live in poverty, compared with only 12 percent of men. That's one reason that in many cases, attorneys say, the biggest assets under dispute are in tax-advantaged retirement accounts like 401(k) plans

and IRAs, as courts rethink how couples should share what's currently a \$14.75 trillion pot. That trend is bound to continue: In 2002 the influential American Law Institute recommended changes in family law that would push courts to officially consider assets like these as shared marital property.

BRITNEY and K-Fed and other tabloid regulars notwithstanding, divorce settlements seldom make newspaper headlines. But Lorna Jorgenson Wendt got on the front page in 1998, when she was awarded \$20 million from her husband Gary Wendt, at the time the CEO of GE Capital. The award included roughly half of the hard assets accumulated through the 32-year marriage, and women's advocates cheered what was considered a landmark decision. "I didn't give 10 percent to my marriage, so I didn't feel like I was worth 10 percent of our money," she says now.

Manhattan divorce attorney Patricia Ferrari says that what was news nine years ago is close to the norm now. This spring Ferrari represented a woman who had never worked but had helped her husband build his substantial fortune with \$250,000 of her family's money. Twenty-five years ago, Ferrari says, the wife might have received a one-time payment of \$250,000, along with about \$75,000 a year in support. Today the woman is negotiating a 50/50 split, and the husband is contesting only minor details. What surprises Ferrari is how few of her male clients recognize how far the pendulum has swung. "You should be aware of what the courts are doing," she cautions.

Some men, of course, are painfully aware, and they're stung by a sense that they're getting far less than half. Robert Palumbo, a 59-year-old Long Island psychologist, has been locked in a long battle with his ex-wife involving custody of the couple's daughter. But the presiding court has been quite rigid about having Palumbo pay his wife's fees: He has already been forced to sell two homes to defray his costs, and he says his payments to his wife's counsel total more than \$350,000. "If there is money there, they will go after it," says Palumbo, who's now renting. (His ex-wife's attorney, Vincent Nicolosi, blames Palumbo for dragging out the case.) Peter Cooper-Ellis can sympathize with Palumbo. He thought he was up to speed with trends in divorce law and says he "expected to split everything" with Jo. But he's still stunned by the stock-options award; after all, he notes, those options are incentives to reward his future work performance, long after he and Jo are out of each other's lives.

Photographs (from left) by
Evan Kukul, Getty

Evette Boyle, with attorney Mike Minton, got 70 percent of the marital estate. Today she earns \$14,000 a year; her ex earns 16 times as much.



Jo, who describes having to roll quarters to buy groceries after the couple broke up, retorts that she wanted only what was fair. She was earning as much as Peter when they married. "When I stopped working, his salary started to skyrocket," she says, adding that the stock options were a part of their long-term financial planning. Now she is faced with reentering the workforce at age 51 in a society where, for a hodgepodge of reasons, women still make only 74 cents for every dollar that men earn—much less, presumably, when they've been out of the workforce for a while. Those economic realities have attorneys pushing for settlements that go well past a 50/50 split. In March 2006, 40-year-old Evette Boyle of Lake Zurich, Ill., filed for divorce from her husband Robert, an insurance executive. Boyle had stayed home with their three children for most of their 13-year marriage, but she asked for at least half of the couple's assets—and when the case settled, she wound up getting 70 percent. Her attorney, Mike Minton, says that the settlement was focused on putting the spouses "at parity" in their postdivorce lives. Consider that Boyle now works as a bank teller earning \$14,000 per year, while her husband makes more than \$225,000 annually. "The money I am going to get, he'll make it up in less than a year," Boyle says. "I don't feel sorry for him." Pioneer divorcée Lorna Jorgenson Wendt could tell a similar story. Eighteen months after her divorce was final, Gary Wendt accepted the CEO post at insurance giant Conseco and was rewarded with a signing bonus of \$45 million. Needless to say, Lorna, who was more than 30

years out of the workforce, was not fielding any job offers with eight-figure incentives.

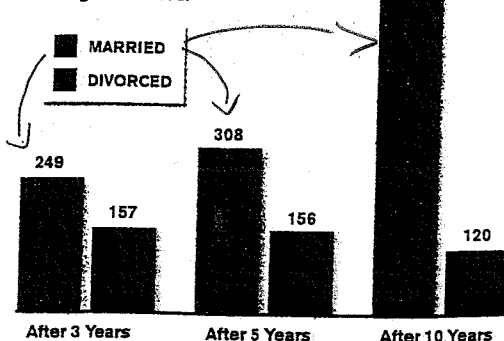
Men's advocates like Mike McCormick, executive director of the American Coalition for Fathers and Children, complain that big awards for women reflect an image of the impoverished divorcée that's already outdated; he cites a study by Arizona State professor Sanford Braver suggesting that the divorce wealth gap "all but disappeared" as early as the late 1980s. Some recent rulings seem to reinforce McCormick's point: In a New York state case this March, for example, a court ruled that because the husband had earned a night-school MBA during the marriage, his wife was entitled to 35 percent of his future earnings—even though the

husband was one of four graduates that he holds, and she has a six-figure income of her own. In Tennessee, judges decided in a case in which the wife, a physical therapist, earned three times as much as the husband, a dentist. The court's award to the wife was 10 percent of the estate. She accepted it; she keeps it.

Then again, the Tennessee case is something of an exception. Most attorneys say the current trend favors the economically dependent spouse, even if it's a man. In another relevant development, men are increasingly paying bigger settlements—in exchange for more time with their kids. Thirty years

For Better or for Worse

Divorce is financially crippling to both men and women, especially compared with married people. Here, 100 equals the median net worth of the surveyed individuals the year of their marriage or divorce.



SOURCE: CENTER FOR HUMAN RESOURCES RESEARCH, OHIO STATE UNIVERSITY

it was virtually unheard of for men to receive joint custody of their children in a divorce; today they retain some form of shared custody in roughly 15 percent of divorces. "In the past women were more willing to accept a less than equal division of some assets in exchange for custody," says Diane Neumann, a divorce mediator in Boston. Now it's men following women's example.

SANFORD Ain made his reputation as a savvy negotiator of divorce settlements—but like many of his colleagues, he says that today he spends more time negotiating prenups. The prenuptial agreement is probably the wealthier spouse's most effective defense against a trip to the proverbial cleaners (just ask Donald Trump), so it's not surprising that it's becoming more popular as divorce settlements get more substantial. In theory, good prenups ensure that wrangling over money won't add to the emotional pain and strain of a divorce. In practice, however, they often become power plays—ways for the richer man to keep the upper hand—and that's making

them the new financial battleground for sparring spouses.

Most states forbid prenups that rule out marital support or alimony, and all outlaw those that curtail child support. In addition, courts won't honor agreements that are signed as a result of outright coercion or fraud. But courts are surprisingly tolerant of even blatantly unfair agreements, as long as they're signed "knowingly and voluntarily," says Laura Morgan, a family law attorney in Charlottesville, Va. Some years back, slugger Barry Bonds broke new ground in premarital brazenness when he surprised his fiancée with a prenup on the way to the airport for their Las Vegas ceremony. Bonds was accompanied by several lawyers and a financial adviser, while his wife-to-be, a recent Swedish immigrant, was alone. But while California later passed a law forbidding such ambushes, the courts upheld Bonds's pact.

Of course, not everyone makes prenuptial plans with an eye toward shafting their spouses. The best prenups, veteran attorneys say, allow those with deep pockets to protect assets they cherish while still providing security for the one in the supporting role. It's increasingly common for agreements to stipulate that payouts increase with the length of the marriage, and some include a "sunset provision" after 15 or 20 years—by which time the lesser-earning partner has proven to be more than just a gold digger. If done well, a prenup—and its cousin, the postnup, an agreement reached midmarriage—really can minimize the rancor and bitterness. For similar reasons, mediation is an increasingly popular alternative to litigation. Both options attempt to settle important financial matters in a less adversarial setting, and for a couple stinging from the emotional pain of a split, that can be a real gift. By the end of a divorce negotiation, says attorney William Beslow, husband and wife are "like fighters coming out for the 15th round, too arm-weary to throw another punch." Small wonder that more and more couples are looking for referees who can send them back to their corners and declare a financial draw. **S**

Locked in a long child-custody battle, Robert Palumbo has sold two homes to help pay the \$350,000 in legal fees he owes—to his ex-wife's attorneys.



Photographs (from left) by Roark Johnson, Evan Kalka