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Is Your Best Woman Really a Man?

Nurturing a new image of women criminal defenders
By SUSAN RUTBERG

Every year they come to my Trial Advocacy class: smart, anxious, young women, speaking in strangled voices. We go around the room, everyone introducing themselves, and I hear their stories: One dreads the idea of speaking out in court. Another, a high school debating champion, dreads even taking this class.

There's no easy explanation for the overrepresentation of scared rabbits among the women students: Fear of stand-up lawyering seems to know no class or race bounds. Something about the law school experience just sucks the confidence out of many young women — even those who graduated with honors from some terrific women's college.

It's sad to see, but 20-some years after the first wave of women criminal defense lawyers hit the streets, many male and female law students are still plagued by a socialization process that leaves women insecure and tongue-tied, while validating a male concept of "Samurai" lawyering.

How does this happen? It's the culture, I think. Students' mental images of lawyers have been shaped by *L.A. Law*, *Law and Order*, and the Simpson trial. Lawyers, they think, operate in an equal opportunity world where the women are just as heartless and ego-driven as the men. The fact that so many women coming to law school still think that to be a good criminal defense lawyer they need testosterone shots is depressing. And it makes me mad.

GAINING CONFIDENCE

I recently re-read the journal I kept when I started practicing law more than 20 years ago. Every day brought a new crisis in confidence: Could I write a persuasive motion? Cross-examine a narcotics cop? Argue a very complicated motion to a very simple judge? Be taken seriously by the good "ole boys who run the Hall of Justice?

I watched the swaggering and posturing that seemed so much a part of being a good criminal lawyer and despaired because I knew it was out of my range. The things that came easier for me — talking to clients, preparing witnesses, picking juries, finding words to tell my client's story — were easy to dismiss simply because they were "women's work," things I'd been doing all my life.

My empowerment came in different ways.

First of all there were those indomitable pioneer criminal defense lawyers, some I knew and some I'd only heard of: Beverly Axelrod, Barbara Babcock, Rose Bird, Penny Cooper, Anne Cumings, Estelle Doolley, Gail O'Connor, Susan Jordan, Harriet Ross, Harriet Verbin and Ruth Young. Their example gave me the courage to try to find my own style of lawyering. Holding their example like a mental shield ("I think I can... I think I can..."), ultimately my confidence came

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Marcia Clark's O.J. memoir is long on *huevos*, short on candor By TERRY DIGGS

Without a Doubt, Marcia Clark's behind-the-scenes account of the O.J. Simpson prosecution, is an effort that could well have been dubbed *Without a Clue*. The book is more an exercise in recrimination than in revelation. Clark's team lost, we learn, because of everybody's mistakes but hers.

Yet for all its backbiting, *Without a*

Pages

Doubt ultimately proffers something more than a rehash of the double homicide we would all rather forget. Hidden within Clark's Simpson saga is a troubling picture of the images that bind — and perhaps betray — the women who go after America's bad guys.

Clearly, women prosecutors are pop culture's current "flavor of the month" — short-skirted centerpieces in Lynda LaPlant's miniseries *The Prosecutors*; leggy litigators in the fiction of Nancy Taylor Rosenberg and former Miami Deputy DA Barbara Parker; take-no-prisoners chroniclers of true-crime stories in Alice Vachss' *Sex Crimes: Ten Years on the Front Lines Prosecuting Rapists and Confronting Their Collaborators*; tough-talkers like Court TV's Nancy Grace (*The Recorder* is an affiliate of Court TV).

Through these characters, contemporary culture has spun an archetype of "the prosecuting female" — a package of sleek suits and smart speech that has little to do with real attorneys who are ultimately as diverse as Janet Reno and Elizabeth Holtzman. Yet the studied artifice and bad attitude are packaging we have seen before — not in life, or even in law, but in the dangerous dames of post-war film noir.

Clark's prologue is less diary than *Dou-*

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ble Indemnity.

"I drink Glenlivet. And you know that I smoke Dunhills," she writes. "And you know, or think you do... that I have 'unpredictable' taste in men." She needn't have mentioned a penchant for power, a love of control, and an appetite for retribution of the sort that seduced and scared the pants off noir-era America.

SEXUAL BRAGGADOCIO

There is, of course, something wonderful for women in the bad girls of noir. Noir women rushed toward a '50s netherworld of impudence and impropriety, finding something much like Clark's contemporary criminal court: a place of certainty beyond the gender-wrought compromises of daily life ("You will be treated with dignity," Clark tells a rape victim. "I will make it happen."); a venue for women's sexual braggadocio ("Size

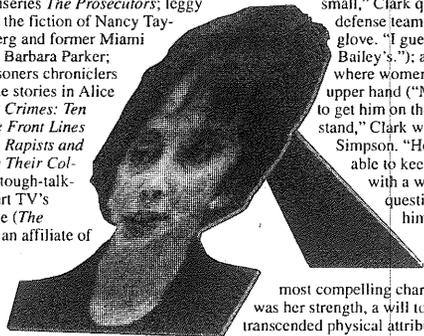
small," Clark quips of the defense team's model glove. "I guess it is Mr. Bailey's."); and an arena where women wield the upper hand ("Man, I'd love to get him on the witness stand," Clark writes of Simpson. "He wouldn't be able to keep his cool with a woman firing questions at him.")

But the noir woman's

most compelling characteristic was her strength, a will to prevail that transcended physical attributes. "Marcia, you're going to have to pick a partner," Los Angeles DA Gil Garcetti advises in the days preceding Simpson's preliminary hearing. "I want you to find someone who's as strong as you." Regrettably, Clark's book concludes, no one was.

But in the end, noir women jolted a generation by spoofing cultural stereotypes of maleness. Thus, the lithe and lethal women of *Gilda*, *Dead Reckoning* and *The Lady From Shanghai* prove better at "masculine" maneuvers than their male counterparts. Apropos, Clark justifies her

See DIGGS page 6



decide when we have recesses in this court. We will continue the morning calendar, and take our recess at the usual time."

Desperate, I reached into my briefcase, pulled out a tampx, and held it high so everyone could see. "Your honor, I need a brief recess." The judge banged his gavel. He said: "This court is in recess. Back in 10 minutes!" The spectators cheered as I walked out, tampx held high. Wow, I thought to myself. And ain't I a lawyer?

WOMEN MODELS

I struggle to find ways to provide support for the terrified students. I cheer when the first one takes a chance, puts her notes down, makes eye contact with her witness, really listens and starts to think on her feet.

But my support isn't enough. To find an antidote for the cultural indoctrination that so many bring to class, I do what worked for me. I send my students to court to look for role models, to give them the courage to find their own way.

And you're the ones they watch: the way you talk to your clients and your clients' families, breaking things down, but not talking down. The way you negotiate and re-negotiate, making something out of nothing. They listen to you argue motions, cross-examine, give closing arguments. They see you changing judges' minds in court and in chambers, outdoing your opponents, winning over juries.

They learn that there are many ways to be a good lawyer and that there's nothing innate in maleness or femaleness that gives one gender the edge. They see that

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lawyers able to adopt a range of styles win more and gain more respect than those who lead with their egos.

The popular image of lawyers that cripples so many students bears very little relationship to the present-day criminal justice system. TV and the movies lag way behind reality here. The culture still promotes killer cross-examination as the mark of a real criminal lawyer.

In-your-face confrontation is one way to deal, and it works for some women. But there are other gentler arts of persuasion that are often just as effective. Women defenders in practice demonstrate that a problem-solving approach is also a powerful one, that paying attention to preserving a witness' dignity — while never letting up on behalf of a client — ultimately wins more points with judges and juries.

Change comes incrementally, but it comes. Twenty years ago there were only a few of us women defense lawyers out there. Now we're everywhere. Women of all backgrounds — and men and women of color — still enter the practice of criminal defense feeling like outsiders. But now, when they get to the courthouse and see so many others being treated with the respect they've earned, they can breathe a little easier, stand a little straighter and push a little harder. ■

from learning that my own ordinary woman's way of handling impossible situations sometimes actually worked.

There was that time a judge I'd just met called me "Susie" in court. As in: "Now Susie, that's just not the way we do things around here..." When this same thing happened to Susan Jordan in federal court, she told that judge exactly how out of line he was.

I knew I couldn't carry that off, but I had to do something. I asked to approach the bench. On the way, as sometimes happens, I got an idea. "You know Judge, it's really OK with me if you want to call me by my first name in chambers, and by the way it's Susan, not Susie. But here in court I'm afraid some people might get the wrong idea. Like some people might think you and I have something going on..." He turned deep red, cleared his throat and announced,

"Pardon me ladies and gentlemen, I meant no disrespect to counsel, Ms. Rutberg. We only met this morning and I couldn't remember her last name."

Or the time, as a public defender, I was responsible for a long morning calendar of arraignments and bail motions. I started the day in the holding cell, gathering "community ties" information from 15 guys. The judge took the bench late and in a foul mood. About 10 minutes into the calendar, I realized my unpredictable period had just arrived.

Politely I asked the judge for a brief recess. He said no. I was wearing a new suit, purchased the week before when I was in trial. Having run out of clothes, I knew that going shopping would take less time than running back and forth to the dry cleaner. I tried again. "Your honor, just five minutes, please." The judge got angry: "Counsel, I