

SUSAN JORDAN

**MONICA LEWINSKY
(AND OTHERS) NEED
WOMEN LAWYERS**

Are clients who are women going to be better off with women lawyers? In my book, the answer in many cases, is obviously "yes." Just look at Monica Lewinsky, or Louise Woodward, in the "nanny" case. As for Monica, certainly something—or anything—sympathetic could have been said about her during her recent undressing (literally as well as figuratively) by the press. If you're her lawyer, that's your obligation. That's what O.J. Simpson's lawyers tried to do, and they never quit. Monica's lawyers negotiated her immunity deal—which frankly didn't look all that hard to do, so hungry was Starr for the story—and then hung her out to dry in the public eye. They accomplished the easy job, and then didn't even attempt the harder one. It wouldn't have been easy, but had she been my client I would have worked real hard to create a sympathetic spin on her circumstances and probably her family background, which would explain why she is such a needy and pathetic kid.

And though I wasn't close to the Louise Woodward case, it looked to me like her lawyers developed a lot of scientific evidence to combat the prosecution's scientific show, but then failed to say anything nice about who Louise was, and how she got herself into these difficult circumstances. Instead, the defense did the utterly and anti-female thing, and tried to accuse Dr. Eappen, the baby's mom, of middle-class neglect by hiring a nanny in the first place. This approach could not have helped.

There was a time when the mere thought of a female defense lawyer was assumed to be a recipe for failure. It was assumed that in order to succeed, an effective defense had to be mounted by a powerful male lawyer. We are beyond those times, and we have new questions to answer and challenges to face. When female criminal defense lawyers were a rarity, we could not have realistically asked the question I now pose. But it is one we can and ought to be asking. And if the answer is "yes"—that in many circumstances female defendants need female lawyers—then the next question is "what should we do about it?"

Susan Jordan is a California criminal defense attorney and criminal defense consultant. This article is reprinted from the *Women Defenders Newsletter*, Winter, 1998.

It really isn't a new question, nor is it one that is unique to our profession. In medicine for example, since the advent of female gynecologists and internists, female patients in large numbers have chosen and will choose to be examined and advised by competent female medical practitioners. It's a matter of comfort; it's also a matter of feeling that a female doctor may well understand the medical issues that exclusively affect women from a more effective perspective than a male doctor. While it would be inappropriate to surmise that male doctors do not understand breast cancer or yeast infections, for example, it is legitimate to feel that a female doctor just might have a heightened interest in the subject, causing her to treat the issue or problem with an additional sensitivity which might result in more effective treatment or advice.

The same is true in law, and in criminal defense, especially. The history of the accomplishments of women lawyers in the past thirty years—since there came to be women lawyers in any numbers—demonstrates that for any number of female clients (criminal defendants as well as parties in civil lawsuits), having a woman lawyer made all the difference in the world. Let's begin with *Roe v. Wade*, the seminal abortion case, establishing a woman's right to abortion. Sarah Weddington, who was a small Texas practitioner, took the case all the way to the Supreme Court and won on behalf of her client. I don't think it any coincidence that this case was pursued, against great odds, on behalf of a female client. While of course I don't doubt that any man could have done the litigation involved, it is clear that the initial decision to take the case on behalf of a poor pregnant woman, to carry the litigation for years (unpaid is my guess), and to see and frame the issues in a way that would win came very much from the fact that the lawyer was female.

Other examples abound, if we just take a moment to look. Our colleague Ellen Barry recently won a MacArthur "genius" award for 20 years of successful litigation on behalf of female prisoners with children. Again, while I would never argue that men cannot do this type of litigation—many successfully do—it often takes a female sensibility and understanding of women's issues to achieve a successful result in areas that are new and require creative strategies to solve age-old problems that are deeply rooted in sexism.

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identified by Dr. Lenore Walker, and then used in court as the Battered Spouse Defense, would have been developed, at least as early as it was, by male psychologists and male lawyers. The same is true with a myriad of other women's problems that end up in the criminal justice system—welfare, the problems of motherhood, of being the girlfriend of a drug dealer or other habitual offender. I once represented a woman charged with being part of a four million dollar bank embezzlement scheme, by pointing out to the court that she had been a rape and incest victim almost the entirety of her childhood. While my background has been much more privileged than most of the women I represent, there is something I understand about them, that my male colleagues often miss. When that experience can be woven into a defense in a criminal case, that is when it becomes important to have a female defense lawyer.

In representing our female clients, we need to credit the value of our own understandings and intuitions in order to tell the court, juries and probation officers what we understand about the circumstances of our female clients. But we also, on occasion, need to tell our male colleagues that the case needs a woman; often the client won't know or understand. I can think of any number of cases involving female defendants where a female lawyer may well have made the difference. While we don't hesitate to represent men, our male colleagues should not hesitate to represent women. But in that kind of case which looks perfectly indefensible—developing sympathy for Monica Lewinsky or defending Louise Woodward—the touch and talents of female counsel just might make the difference.

We are competent criminal defense lawyers, but we are more than that. We have fought hard to get where we are, many of us against very difficult odds and circumstances. Our empathy and creativity in the courtroom should translate into increased visibility and success. Our universe is still short on high visibility women. Let's begin to assure a world where trial counsel—be it in the Monica Lewinsky case or the Microsoft trial—means a woman defender.

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