

THEY DID THEIR JOBS

Jurors freed Michael Jackson for a reason

By Julius (Jay) Wachtel. When is a jury always wrong? When they find a celebrity innocent. After attentively sitting through four months of sordid, contradictory and often mind-numbing testimony, twelve citizens upended the wishes of innumerable pundits, media personalities and columnists, who made it clear throughout the whole ordeal that nothing short of a conviction would do.

Now that Michael Jackson has been set free the conundrum continues, most recently with a suggestion in the [editorial pages of the Los Angeles Times](#) that jurors should have avoided applying their “personal feelings” and concentrated on the “facts”. But how is it possible to decide between competing versions of events without injecting “feelings”? That is why standard California juror instructions expressly direct panelists to use their common sense:

- Consider carefully, and with an open mind, all the evidence presented during the trial. It will be up to you to decide how much or little you will believe and rely upon the testimony of any witness. You may believe some, none or all of it.
- Use the same common sense that you use every day in deciding whether people know what they are talking about and whether they are telling the truth.
- Did the witness seem honest? Is there any reason why the witness would not be telling the truth?

Jurors must hesitate to accept even the most plausible circumstances as fact. In October 2001 Efren Cruz, 27, was freed after serving four years for a murder he did not commit. Three years earlier, in a secretly recorded conversation, a gang member admitted he was the triggerman and absolved Cruz. But Santa Barbara County D.A. Tom Sneddon – the same prosecutor who hammered Jackson – tried to block judicial review of the conviction. Earlier this year Santa Barbara County settled a multi-million dollar lawsuit alleging that Sneddon and police violated Cruz’s civil rights.

Sex crime cases are particularly tricky to prosecute. Reports of sexual assault are often so delayed that no evidence is left other than testimony. And testimony can prove unreliable:

“He grabbed my hair and then he started pulling me. And that's when I screamed. I tried to go away, and then my friends were trying to help me, and that's when he

started choking me.” In January 2004, as Garden Grove transient Eric Nordmark sat on trial for molesting three girls, he was convinced that his accuser had been assaulted by someone. But he was wrong. In jail since May 2003, Nordmark was freed after the girls admitted they concocted the tale to avoid being punished for coming home late.

Perhaps the best known example of the fallibility of child witnesses is the 1984 McMartin scandal, where false memories of sex abuse were implanted into scores of children who attended a Huntington Beach day-care. The case soon fell apart. Of the seven employees indicted, only two were tried and both were acquitted. (Stanley Katz, the psychologist who examined Jackson’s alleged victim, was an executive of the firm that helped conduct the McMartin interviews.)

Another instance from the same era had a particularly tragic outcome. In May 2004 a Kern County judge declared John Stoll innocent after he served eighteen years for allegedly leading a cabal of child molesters. The last of forty-six defendants in a string of put-up cases, Stoll’s luck turned during two tearful, in-court recantations, including one by a 26-year old man whose false statements as a youth sent his mother to prison for six years.

Pedophiles may be particularly vulnerable to false accusations. In 1986 Nassau County, N.Y. police charged Arnold Friedman, an admitted past abuser, and his son Jesse for molesting children during group computer classes. Facing highly graphic tales of forced sex, both eventually confessed. Arnold Friedman committed suicide in prison, while his son served thirteen years. Police conceded that no one had complained until they went calling. One parent, whose child insisted that nothing happened, reported that detectives pressured his son to say otherwise.

We should all celebrate the outcome of the Jackson case, not for the sake of the accused, who will be ultimately judged by a higher order, but as an affirmation of a process that, however imperfect, has no suitable replacement. As in so many other things, those who now scream the loudest would probably be the first to demand the same right afforded to Jackson – a jury of twelve decent, thoughtful persons who would not hesitate to apply their “feelings” in court.