

Avoiding the Willfulness Trap
With the rising trend of monetizing IP through assertions of patent rights, companies must choose their responses wisely, writes Michael Warner Kallus. **INSIGHT PAGE 5**



Defending Michael
Defense attorney Thomas Mesereau Jr. reflects on the spectacle, difficulties and vindication that came with representing Michael Jackson. **FORUM PAGE 6**



Cut Short
When implementing cost-cutting measures, there are many "gotcha" issues that can trip up even the most experienced in-house counsel, write Jenni Field, Cynthia Jackson and Michael Westheimer. **FOCUS PAGE 7**

Forum

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Defending Michael

by Thomas A. Mesereau Jr.

The Michael Jackson trial was unique. More accredited media covered these proceedings than the O.J. Simpson and Scott Peterson trials combined. When the verdicts were reached, people in every capital around the world were riveted to their radios, computers and televisions. The "King of Pop" was more popular than anyone, including Elvis Presley.

Jay Leno, Chris Tucker, Macaulay Culkin, George Lopez and lesser-known celebrities testified. Larry King testified outside the presence of the jury. The trial lasted five months with more than 140 witnesses appearing. Twenty-four-hour coverage, including actors re-enacting the proceedings, emphasized the trial's popularity.

When more than 70 Santa Barbara sheriffs raided Neverland Ranch in November 2003, I was driving to Los Angeles from Northern California. I was ending a nine-day vacation and ready to resume preparation for the Robert Blake murder trial, set for February 2004. My phone started ringing off the hook with frantic requests that I travel to Las Vegas and defend Michael. I refused, because I did not think I could handle the two cases at once.

After jury selection began in the Blake case, the client and I had a severe disagreement that Judge Darlene Schemp could not resolve. Mercifully, she granted my motion to withdraw. Within a short period, Michael's brother Randy called me again, see if I would defend his brother. I flew to Florida, where I met Jackson for the first time.

Upon arriving, I was told by Michael and Randy that they had spoken with Johnnie Cochran in the hospital. According to them, Johnnie said I was the one who could win. I knew Johnnie, but he was not a close friend. I was quite surprised that he would speak so glowingly about me.

Three weeks later, I was told that Michael wanted me and my law firm partner, Susan Yu, to defend him. I returned to Florida and firmed up the understanding. The adventure began.

When I first met Michael, he said virtually nothing. He sat at a distance and observed others field questions. I didn't know if he was intentionally being mysterious or simply observing in his own way. At that point, I had little information from which to judge whether he could possibly have committed the alleged crimes.

My retention generated enormous media coverage. One anti-Jackson reporter immediately appeared on "The Today Show" to announce that I had an African-American girlfriend and attended a black church. The lawyers I replaced did not depart gracefully. One appeared on "Good Morning America" to say he had left voluntarily because less than desirable people surrounded Michael. Certain tabloid shows, like those hosted by Geraldo Rivera and Bill O'Reilly, criticized my appearance. I assumed they were "in the pocket" of prior counsel. This was my baptism.

Initially, Michael was very inaccessible. I scoured every used bookstore and Web

site for books and articles about his life and character. I read all of them, sometimes twice. My meetings with him confirmed my suspicions about these charges. He was a gentle, kind soul. Sensitive, intuitive and creative, it seemed inconceivable that he could be the monster his enemies portrayed him as.

Much has been made about the child molestation charges. Little has been said about the other claims. The prosecution alleged that Jackson masterminded a conspiracy to falsely imprison a family, abduct children and commit criminal extortion. I can assure you that Michael was not capable of even imagining such behavior. But the more I spoke with him about the alleged molestation charges, the more firm I became in my belief that they were part of a universe of money-making opportunities created by charlatans.

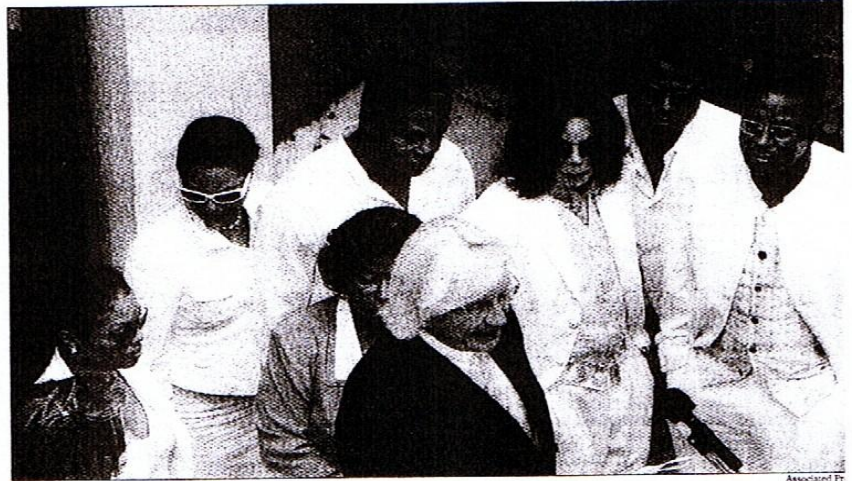
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During my first court appearance in Santa Maria, the entire Jackson family appeared dressed in white. They were unified, exquisite and powerful in their message of innocence. I delivered my first statement to the media regarding his innocence and my respect for the court and community. My statement included words, to the effect, that this case was not about "lawyers, or anyone else, becoming celebrities."

These words were designed to change the atmosphere surrounding the defense and, of lesser importance, to hurl a barb at prior counsel. I had not liked the carnival atmosphere surrounding Jackson's defense lawyers. In my opinion, they repeatedly advertised their absolute delight at being in the middle of the circus. Their public statements were, to me, self-serving and amateurish. Michael and Randy Jackson were very suspicious of them.

My anti-lawyer-like comments generated controversy. But, a new firm did have been cast. My Irish grandmothers smiled from the heavens!

The prosecutors had an enormous advantage: Two grand juries in Los Angeles and Santa Barbara had investigated Jackson in the early 1990s. Nobody was charged. A third grand jury indicted him in 2004. During the interim, District Attorney Tom Sneddon had traveled to at least two countries, Australia and Canada, searching for



In this Sept. 17, 2004, file photo, entertainer Michael Jackson, surrounded by his family, listens as his attorney Thomas Mesereau Jr., center, speaks to reporters at the Santa Maria courthouse in Santa Maria, Calif.

victims. The Santa Barbara Sheriff's Department had a Web site seeking information on Michael. The trial judge wanted to waste little time.

The politics surrounding the defense were horrific. Numerous lawyers, most of them mediocre at best, were constantly trying to get to Michael to undermine me. The media smelled enormous ratings and revenue in a conviction. They were like a cloud of locusts, constantly descending on any weakness they spotted or created.

There were numerous efforts to discredit me. Former girlfriends called to say they had been approached for unsavory information. I received calls from alleged "journalists" promising me favors for inside information. Tabloid sensationalism was at a premium.

The trial was carnival-like. Mountains were made out of molehills. For example, Jackson hurt his back one morning and went to the hospital. I informed Judge Melville immediately. His message was firm. If Michael did not appear forthwith, bail would evaporate. I instructed him to rush to court in whatever he was wearing.

His pajama bottoms became a media feast. But, they had no bearing on the trial or verdict. The jury foreman later informed me that no juror even noticed Michael's pants, or lack thereof.

This case was characterized by shock, crisis and confusion. On numerous occasions, I was summoned to Neverland to handle searches, disputes and a variety of crises. Michael seemed to always have a new "guru," adviser or lawyer who virtually guaranteed a dismissal or acquittal. It was a veritable "sea of fools." But the effort it took to handle these crises was wasted time.

The trial was characterized by contentious legal rulings. For example, the trial judge allowed the following:

The prosecution was permitted to start its case by showing a scurrilous, slanted British documentary that claimed Michael was a pedophile. The prosecution claimed this was evidence of "motive."

The prosecution was permitted to in-

troduce evidence that Jackson had settled other claims of child molestation in civil court. The actual dollar amounts were not admitted (as if anyone hadn't heard them).

It was also permitted to introduce evidence of alleged prior similar acts of child molestation. Prosecutors were permitted to introduce such evidence extending back 10 years. As icing on the cake, the court permitted them to call third-party witnesses who watched the alleged acts without any requirement that the actual alleged victims testify.

During the prosecution's rebuttal, the court permitted the prosecutors to play a police interview tape of the alleged victim. Of course, this was rank hearsay. The theory of admissibility was that I had challenged the demeanor of the alleged victim and the tape was relevant to rebut.

As a measure of fairness, Melville permitted the defense to play "outtakes" of the interview footage that were edited out of the British documentary. In these interviews, Jackson denied abusing children.

Five lawyers testified. Three were called by the prosecution and two by the defense. I have always believed that lawyers are the easiest witnesses to discredit. Throw them any measure of flattery and the seeds of arrogance are sown.

We had more good days in this trial than anyone can reasonably expect. But the public never saw how many prosecution witnesses were scorched on cross-examination. The judge imposed a gag order, which I supported. While this permitted more flexibility in court, it made the trial easily distorted by self-serving pundits. I would often return to my duplex, turn on the TV and turn apologetic at what was being reported. Quite often, former prosecutors in New York would wax passionately about how a witness behaved. Their theatrics were totally lacking in substance or accuracy.

I thought we were winning all along. But the media reported the very opposite. And, of course, jealous, shallow legal pundits had a field day criticizing my performance. To

them, God help any lawyer who engaged unconventional trial behavior. Such hearsay merited capital punishment.

From the outset, I did everything I could to remove race from the case. I immediately removed the Nation of Islam from Jackson public persona and asked that his faith refrain from commenting on race in the media. It became clear that Michael was person who brought all races together. Unfortunately, some of the mediocrities who surrounded him wanted to profit through racial conflict. This was a constant source of tension.

My reaction to this cauldron was stoic and a hermit-like existence. Our team lived in condominiums far from the media hot restaurants and bars. I was in bed at 7:30 most evenings with a 3 a.m. start. Our staff worked all night updating witness books and performing other chores. Because this had a key to my apartment, the door would open virtually every hour with update binders appearing miraculously on the stairwell. We lived like this for six months.

In the wake of his passing, I am haunted by certain late-night phone calls I received from Michael. Childlike, kindhearted and terrified, Michael begged me not to alk corrupt enemies to co-opt my performance. He seemed skeptical about any lawyer truly acting in an honorable, professor manner. I repeatedly assured him that my background had more to do with civil right than it did Hollywood. The world's most famous celebrity was not accustomed to honest, decent representation.

The 14 acquittals were tantamount to complete legal vindication. Nevertheless, I wrote this with a heavy heart. Michael was one of the kindest, nicest people I ever met. His wistful desire to heal the world with love, music and artistry clashed horribly with the barbaric way he was exploited. The world is a far better place because of him.

Thomas A. Mesereau Jr. is a partner in the firm of Mesereau & Yu Los Angeles. He was lead trial counsel in the trial of Michael Jackson in 2005.