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## Tom Mesereau Talks MJ, Cosby, Unconventional Choices

By **Randy Maniloff** (September 11, 2018, 9:27 PM EDT)

Tom Mesereau could have been the most famous lawyer on the planet. It would have been easy. It was 2005 and Michael Jackson was getting ready to go on trial for various charges of sexual molestation. The proceeding was going to get even more attention than the O.J. trial. Mesereau, Jackson's lawyer, would be spending the next five months sitting inches away from the King of Pop. If the trial were televised, Mesereau would be seen in every living room from Toledo to Taipei. He would spend the rest of his life unable to walk down the street in Tanzania without being recognized.



Tom Mesereau in Los Angeles County Superior Court in 2017.  
(AP)

But the Jackson trial was not televised. Mesereau objected to cameras in the courtroom. I pointed all of this out to Mesereau when we spoke recently. But, he explained, "having witnesses see what other witnesses are saying, and then potential witnesses watching what commentators on TV were saying about the testimony," would not have been beneficial to Jackson. Some lawyers make it about themselves, Mesereau told me. "That's not what I do."

Michael Jackson won — something that many said was impossible. A few weeks ago, just days before what would have been Jackson's 60th birthday, I spent an hour on the phone with the lawyer who achieved that feat for the man who moonwalked. The silky-voiced Mesereau, once named one of Barbara Walters' "Ten Most Fascinating People," was kind enough to speak to me from his Los Angeles office about his astonishing 40-year career, getting acquittal after acquittal in courtrooms across the country.

Mesereau, with his trademark long gray hair (there were times it was brownish, he joked), has represented other high-profile individuals, such as Mike Tyson (rape charges dropped), Robert Blake

(broke legal ground by securing bail in a potential death penalty case, following a three-week televised preliminary hearing), Joe Babajian, real estate agent to the stars (acquitted on fraud charges), and most recently Bill Cosby, against sexual assault charges in Pennsylvania. Cosby was found guilty. Mesereau's practice involves both white collar and violent crimes, often murder and sexual assault. He has spent two decades traveling to the Deep South to handle death penalty cases pro bono. And, on Saturdays, volunteers meet at a Los Angeles church to provide services at the Mesereau Free Legal Clinic.

The 68-year-old son of an Army lieutenant colonel (a close aide to General Douglas MacArthur) and grandson of the owner of the famed Mamma Leone's restaurant in Times Square, Thomas Mesereau has a simple secret sauce — a lack of fear of the unconventional. He dished it out for me, also discussing his recent defeat in the Cosby case, which he called "the most unfair trial I have ever been part of," and sharing what goes through his mind when a Michael Jackson song comes on the radio.

### **A Lawyer Looking for His Way**

Tom Mesereau's road to the criminal defense bar was a circuitous one. Following a bachelor's degree from Harvard and master's from the London School of Economics, the 1979 graduate of the University of California, Hastings College of Law bounced around — a year at Hunton & Williams LLP in D.C., followed by another as a prosecutor in California. From there he served as assistant to the president of a Getty Oil subsidiary. It wasn't until Mesereau got to a small civil firm, where he was bringing in criminal cases, that the peg finally fit.

Mesereau's resume presents a picture of a lawyer trying to find his way, I suggested. "I think that's true," he said. "Most lawyers lack the courage or the gumption to switch subjects. They try something and then they don't like it and they try the same thing in another form." But Mesereau did not fall into this trap. "What I was always willing to do was make a radical change if I thought it was a good idea. Everything interested me initially because I am interested in life, I am interested in people, I am interested in society. So any subject was interesting for a while. But then the question would always come up: 'Are you going to have passion for this the rest of your career?'"

I joked that he seemed like the last lawyer in the world who would enjoy big firm life. "That's correct," he replied — in a nanosecond. Mesereau had high praise for the "outstanding lawyers" at Hunton & Williams, but said the firm wasn't for him. "Any organization requires that you master a set of survival skills — and I realized that I had no interest in mastering such a set of skills."

Despite Mesereau's time at Hunton & Williams being limited to a year, it gave him a taste of criminal law. He said he was involved in responding to one of the largest subpoenas ever issued by the Federal Energy Regulatory Commission, an administrative subpoena of The Virginia Electric and Power Co. From this morsel, Mesereau next took a very large bite — joining the Orange County, California District Attorney's office. But he quickly realized that he didn't have the stomach for it. His first case was to prosecute a young woman for petty theft from a department store. He learned that the defendant had a history of physical, sexual, emotional and drug abuse.

"My first instinct," Mesereau said, "was to want to hug this poor soul and get her the proper help, but I was being asked to convict her." He got the conviction. Afterward the other DAs wanted to celebrate. But Mesereau said he was disgusted. "I realized my compassion for people, my empathy for people who are poor or disenfranchised or had a tough go in life, was going to prevent me from being a particularly effective prosecutor."

### **The Unconventional Trial Lawyer**

These days, Mesereau has his pick of cases. But there are only so many hours in the day. How does he decide which ones to take? Some of it has to do with his current caseload and trial schedule, he explained. But he added that "the challenge can be very important." Mesereau made clear that he was not a criminal lawyer who cherry-picked cases. "I am well aware of some lawyers who have been fortunate enough to win big cases and then they're very careful with what they take, lest they lose one. I am not that kind of lawyer. I take pride in trying one difficult case after another. ... I didn't win the Michael Jackson case and then decide I'm not going to take tough cases. That's not how I behave."

Mesereau's website describes him as an "unconventional, unpredictable trial lawyer." What does that mean? He explained it to me this way: "I said to myself at one point there's got to be a reason why certain lawyers become the best and others don't. Because you have to assume that most lawyers are intelligent, most lawyers are highly educated, most lawyers take a trial practice course or two. So why are some better than others? It can't be because they do the same thing that everybody else does. So early in my career I tried to figure out what the great lawyers did that others didn't and they typically were not conventional lawyers."

Mesereau also thinks civil litigators would be well-served to try something unconventional. He called pretrial civil litigation "the worst preparation for a trial lawyer imaginable," noting that its practitioners were "nasty and unprofessional and hostile towards each other," sending "one nastygram after another. ... To take all that nasty demeanor and nasty behavior and then drop it all before you walk into the courtroom is not easy, in my opinion." Instead, he suggested, "if you are humane, decent, compassionate, if you are a real person, using real words, real phrases in a courtroom, you're better off. And all of that seems to be anathema to civil litigators during their pretrial work."

### **Michael Jackson: Keeping Handcuffs Off the Gloved One**

In 2004, Michael Jackson was charged with molesting a 13-year-old boy whom he had befriended. The alleged incidents, including providing alcohol to the boy, took place at Jackson's 2,700-acre Neverland Ranch in Santa Barbara County, California. Mesereau represented Jackson. He said he considered it a death penalty case, as he did not believe that Jackson would survive prison. After a nearly five-month trial — 140 witnesses — a jury found Jackson not guilty on all 14 charges.



Mesereau with client Michael Jackson and Jackson's mother Katherine outside the Santa Barbara County Courthouse on May 2, 2005, following a day of testimony. (AP)

Mesereau had been strongly warned by close friends not to take the case. He said he knew of some very prominent lawyers in California who had been approached to represent Jackson and declined. "I was repeatedly told nobody can win the case," Mesereau said. "He's been condemned all over the world. It's being tried in a very conservative location [Santa Maria — the northern part of Santa Barbara County] and they're going to let in evidence of other prior similar acts. You can't win it. And I was told, if you lose it, the rest of your life will be defined by that loss. Everywhere you go in the world people will say 'he sent Michael Jackson to prison.'" But Mesereau signed on: "I decided I am a criminal defense attorney. This is what I do. This is who I am. And I went for it."

Hearing every reason why he should request a change from such a conservative venue, Mesereau took the issue into his own hands. He made the three-hour trip north from Los Angeles to Santa Maria. His purpose, he told me, was "to hang out in some bars and restaurants and just see what I could see and feel what I could feel." The idea worked. "Invariably people would come up to me and say 'aren't you Michael Jackson's lawyer?' and I would say 'yes' and we would start chatting." Mesereau said he learned that the residents of Santa Maria liked Jackson and were hoping the

allegations were wrong. So, despite the fact that “all these geniuses who appear on television were knocking my choice,” Mesereau said, he did not seek to move the trial out of Santa Maria. As Mesereau was telling me about his reconnaissance trip to Santa Maria, I couldn't help but think of something he'd said earlier — about great lawyers typically not being conventional lawyers.

Mesereau's road trip revealed something else very important. While residents in the northern part of Santa Barbara County were indeed quite conservative, they were also quite libertarian. “Their view of government was,” Mesereau explained, “we're good people so government don't go too far into our lives.” Mesereau was onto something. The prosecution filed a pretrial motion to stop him from referring to them as “the government.” The motion was denied and Mesereau would often refer to the prosecutors as “lawyers of the government.”

Unconventionality also played a part in Mesereau's opening statement in the Jackson trial. He did the unthinkable — what he calls “heresy.” He did not tell the jury that the prosecution has the burden of proof and that it is one that is beyond a reasonable doubt. To Mesereau, a juror who hears this from a defense attorney thinks “his client is guilty, he just thinks he can stop them from proving it.” Rather, Mesereau said he believes jurors want to know the truth.

“Walking into the Jackson trial,” he said, “I fervently believed we had the truth on our side, we had the evidence on our side and we were in the right. And I saw no reason not to flaunt that. ... I wanted to be the bearer of truth, not them. I did not want to look like someone who was playing with technicalities. Let them look like it.”

The tone in Mesereau's voice, when discussing Michael Jackson, leaves little doubt that he has very warm feelings for the pop icon, whom he said he got to know “probably in a way that few people do, given the severity of the circumstances.” Despite what you see of Jackson on stage, Mesereau said, “if he was sitting at a table with you and me he would be very shy and awkward.” What does Mesereau think of when he hears a Jackson song on the radio? “What a brilliant artist he was and what a nice, sensitive, kind person he was.”

## The Cosby Case

Mesereau has a laid back, easy-going manner. To know how he is feeling is more listening for nuance in his voice than looking at his sleeve. But then I asked him about the Cosby case.

This spring, just outside Philadelphia, Bill Cosby was found guilty of aggravated indecent assault for drugging and sexually assaulting a woman. Mesereau represented Cosby in what was a retrial of a 2017 case that ended in a hung jury and was not involved in the first case.

When asked about the retrial, Mesereau bitterly rattled off a long list of rulings that he believed were wrong, causing him to call the proceeding “the most unfair trial I have ever been part of.” His list of criticisms included the breach of a prior agreement not to prosecute, the court's mishandling of a statute of limitations defense, a statement by a juror and in-court outbursts by Cosby accusers that should have led to mistrials, the court allowing five other Cosby accusers to testify (but only one in the first trial), and there are more. [For an in-depth look at Mesereau's outrage at the Cosby trial, check out his **interview with private investigator Scott Ross on YouTube.**]

Cosby is scheduled to be sentenced later this month. Mesereau no longer represents the 81-year-old comedian as he begins the appellate process.

## Mesereau Free Legal Clinic

Mesereau began doing pro bono work in the 1980s, donating his time to various legal clinics and public service organizations. Following the Jackson trial, he decided to use his public persona to start the Mesereau Free Legal Clinic, which meets two Saturdays a month at a church on the edge of South Los Angeles. It is still going strong. Law students, college students and activists come together to help people with both civil and criminal problems.

“The more I did this kind of work,” Mesereau said, “the more fulfilled and happier a lawyer I seemed to be.” He invites other lawyers to do the same, especially those who are unfulfilled by their work. “One way to deal with that is go get involved in pro bono work and don't be as concerned about

greed and money and status, and use your great education and skills to make a difference in society. You will be surprised what it does for you, let alone the people you are helping. I always say there are no losers in this process — everybody gains.”

### **Alabama Getaway**

Once a year, for the past two decades, Mesereau’s commitment to pro bono work take him from South Los Angeles to the U.S. South. He works with long-time friend and Alabama lawyer Charlie Salvagio to represent a defendant charged with murder, oftentimes with the death penalty on the table. The scheduling takes some challenges, Mesereau said, but “we just work it out.”

Last year, in Bessemer, Alabama, the duo secured the high-profile acquittal of Charleston Wells, a 17-year-old African-American accused of shooting to death Mike Gilotti, a white Iraq War veteran. The year before, the team represented Odell Marzette Allen in Birmingham, accused of murder by shooting the victim three times in the back. Allen was acquitted — based on self-defense.

In 2003, Mesereau and Salvagio handled the retrial of Wesley Quick, who had previously been found guilty of murder and spent six years on Alabama’s death row. Quick’s retrial was the result of him being denied a free copy of the transcript from his first trial. This time Quick was acquitted, prompting a Birmingham News editorial that called the state’s approach to capital cases “slipshod.”

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Tom Mesereau is well-known for his gray hair. But he doesn’t see it when he looks at the man in the mirror: “Many lawyers want to reach a point where they think they know everything there is to know about what they do and they stop learning. And their attitude is ‘I should be teaching you, not the reverse.’ That to me is a mistake because you never fully master trial practice. You are always a student in my opinion.”



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