

# Who Can Stand Up To The Government?

THE AMERICAN JURY.

by David Lefkowitz

One of the most high-profile trials in recent years came to an end with the acquittal of Casey Anthony on the charge of murder. She was convicted of lying to the police and obstructing the investigation, but the prosecution could not prove that she killed her daughter. By the time you read this article, Casey Anthony will be out of prison.

Caylee Anthony was missing for four weeks by the time the police arrested her mother, Casey, for obstructing the investigation into her daughter's disappearance. Months later, the young girl's body was found in woods, not far from her house. Many jumped to the conclusion that Casey Anthony must have killed her daughter; others screamed it into a TV camera, giving analysis such as that provided by legal commentator Nancy (dis) Grace. Some pundits and politicians are convinced that Casey Anthony got away with murder.

Let's face the facts: the Florida prosecutors had unlimited resources at their disposal and were battling against a high-school dropout accused of murder and a lead defense attorney who had only been licensed to practice law for a few years. The prosecution was unable to prove beyond a reasonable doubt that Casey Anthony was guilty of murder. (Even when that standard

is met, the verdict is not always correct. According to the Innocence Project, 272 individuals in the United States have been exonerated of their crimes, with the use of post-conviction DNA tests since 1989.) The prosecution could not prove where Caylee died, when she died or how she died. Sometimes innocent people are convicted and guilty people are set free. We have a system that would prefer a guilty person go free than an innocent person be put to death, and we have a system that requires the government to prove its case and a criminal defendant to prove absolutely nothing.

If you think the verdict was wrong, as many do, remember that the United States Constitution places a huge burden on the state: a defendant shall not be convicted of a crime unless the state can prove guilt beyond a reasonable doubt. The Casey Anthony jury did not rule that she was innocent. The jury simply ruled that the state had not proven, beyond a reasonable doubt, that Casey had intentionally killed her daughter. Sometimes though, the government oversteps its bounds (in the courtroom and elsewhere). Our founding fathers wanted to protect individuals from the power of the state and therefore, the Constitution provides us with many wonderful protections from the government. The government cannot deny us our freedom of speech or the freedom to practice

our religion, nor can it deny us our liberty, or our life, without a fair trial. The government cannot *tell* a jury how to rule and must *convince* a jury, which is comprised of our neighbors, that the defendant is truly, not just probably, guilty. On July 5, 2011, 12 jurors faced the government head-on and said: "You have not met your burden." If we lived in a dictatorship, there would be no jury to stand up to the government. If you had been falsely accused of a crime, you would want brave jurors to give you a fair hearing, while the government, with its vast resources, threatens your freedom.

The pressure on the jury to reach the correct decision is even greater in a death penalty case. Some experts disagreed, from day one, with the prosecution's decision to announce it would seek the death penalty if Casey Anthony were convicted. The stakes were that much higher for the all the parties involved in the trial, including the jury. It takes overwhelming evidence of guilt for 12 people to agree that someone should be sent to their death. The prosecution needed some powerful evidence – more than Casey Anthony's revolting delay in reporting that Caylee was missing – to prove that Casey had killed her daughter. As a father, I am horrified by Casey Anthony's behavior. She lied about her job, she made up imaginary friends and she partied for weeks while knowing

her daughter was dead. She even got a new tattoo. I don't believe a word she says, but the jury did not have to, because she did not testify. Even with all the inferences we can raise from the delay in reporting Caylee missing and the numerous lies she told the police, the jury (unanimously) felt that they did not have enough evidence to convict her of murder.

After the trial, one of the jurors commented on the delay and the lies: "It looks very bad. The behavior is very bad. But, bad behavior is not enough to prove a crime. It's not." A law professor at UCLA commented that, "The public has been whipped up into this frenzy wanting revenge for this poor little adorable child, and because of the desire for revenge, they've been whipped up into a lynch mob. Nobody likes a liar, and Anthony was a habitual liar; nobody liked the fact that she was partying after Caylee's death. Casey obviously has a lot of psychological problems. Whether she murdered her daughter or not is another thing."

If you are watching a trial on TV, from the comfort of your living room, it's easy to take issue with a jury's verdict. It's a lot different if you are actually sitting on the jury, fulfilling an oath to listen to the evidence and to the instructions the judge gives you. Suddenly, as a juror, you have the weight of justice on your shoulders (and your conscience). You are deciding whether a woman should be put to death for an alleged crime. The stakes are much higher when you are one of 12 citizens deciding the fate of your neighbor from across the street or across the county. While it is true that juries can occasionally reach a wrong verdict, we will only

have true justice if juries know that if they abide by their oath and take their responsibilities seriously - and most juries do - they are free to reach decisions they know may be unpopular. If we cannot allow a jury to reach a potentially unpopular decision, then we might as well not have a trial at all. Without a jury of 12 citizens, the government would decide who to toss in jail and who to execute.

If you remain convinced that Casey Anthony murdered her daughter, consider this: after the trial, the county's chief prosecutor told reporters, "We are disappointed with the verdict today. [But] we did our job. The jury did their job. This is justice in America." If the prosecutor believes in the sanctity of the jury system, even in the face of a disappointing result, then perhaps we should all agree that the justice system, while not perfect, usually does work.



*David Lefkowitz is the founder of The Lefkowitz Firm, LLC, which has offices in Atlanta and Athens. The Lefkowitz Firm, LLC, represents individuals and corporations in their claims for legal malpractice (legal negligence) and similar claims such as breach of fiduciary duty, trustee misconduct and executor misconduct. The firm also represents attorneys with regard to law firm management issues, including conflicts and bar discipline matters. Mr. Lefkowitz frequently is an invited speaker at continuing legal education seminars on the topics of legal malpractice, ethics and professionalism. For more information, visit the firm's website at: [LefkowitzFirm.com](http://LefkowitzFirm.com).*