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Observers say judge doomed defense

By ANN V. BOLLINGER

From its explosive beginning to its stunning end, the cybersex trial of Oliver Jovanovic has been the talk of the Manhattan Criminal Courts building — and not just because of the titillating subject matter.

Spectators — including many lawyers — were intrigued by the courtroom theatrics between acting Supreme Court Justice William Wetzel and defense lawyer Jack Litman.

Many of those lawyers — and even a judge — yesterday suggested the bitter antagonism led to the guilty verdict against the 31-year-old Columbia microbiology grad student.

"Unequivocally, the judge's attitude toward the defense had everything to do with the verdict of this case," said one defense lawyer. "It led the jury to draw one conclusion."

One judge in the building said he was "embarrassed by Wetzel's behavior in this case."

"The way he treated the defense is unheard of," the judge said. "I was especially surprised at the judge's charge [to the jury] when he told them consent is not a defense on assault."

In his instructions, Wetzel told the jury that even if the victim consented to sex with Jovanovic, it did not defend him against assault charges.

It was a pitched battle almost from Day One between Wetzel and Litman: one a politically powerful figure, the other a criminal-defense titan.

Twice, Litman moved for a mistrial, citing Wetzel's "increasing hostility in front of the jury." Often, the judge abruptly cut off Litman mid-sentence. Other times, the judge's face said it all.

"He would laugh and smile and make faces at his law secretary about Litman," one lawyer said.

The talk of the courthouse also centered on Wetzel's "back-door" journey to the Criminal Court bench — a journey that included no experience in criminal law, lawyers say.

He was affiliated with the law firm of Plunkett and Jaffe — Gov. Pataki's former firm.

When Pataki won election, he appointed Wetzel to the Court of Claims. Wetzel immediately was assigned to state Supreme Court as an acting justice — skipping the lower Criminal Court altogether.

That, according to some lawyers, put Wetzel in over his head.

"I think this case was all about the judge's hatred of Jack Litman," one lawyer said. "This was about, 'I can't hide my disdain for Jack Litman.'"

EX "K-1"



Judge William Wetzel

Wacko Wetzel left Oliver's lawyer defenseless

DEFENSE lawyer Jack Litman might as well have been getting a suntan in Florida during this farce of a cybersex trial.

Because you could wait until the Sahara needs sand for Judge William Wetzel to have given him anything but what amounted to "jurisprudence" in this very troubling case.

Never in all my time of covering courts have I seen a sitting judge tie a lawyer's arms and legs and put a gag in his mouth.

Yesterday, after a long trial in which we saw Oliver Jovanovic, 31, get the best railroad job since Union Pacific, Judge Wacko Wetzel couldn't help himself.

After countless days of scowling at Litman, appearing bored, nodding his head in contempt and slapping down the defense on every trip of the train, Wacko couldn't contain himself.



STEVE DUNLEAVY

"Stand back," he barked rudely at Litman, as other lawyers gathered at the bench for a post-sentencing conference.

Several leading criminal lawyers and at least one prominent retired judge have puzzled over Wetzel's unreasonable rudeness.

Others have questioned outright the entire fabric of the case that yesterday saw Jovanovic sentenced to 15 years to life for a crime I sincerely believe didn't happen.

His accuser, Madame X, who obviously we don't name, claims Jovanovic kidnapped her, bit her breasts until they bled and did other unspeakable acts.

Yet, when she was exhaustively examined at Barnard College, no signs of this horrific abuse existed as far as the doctors were concerned.

Then the prosecution, now remember that — the prosecution — was about to call in a medical witness, Dr. Jacques Maurice.

But they suddenly backed off.

Why?

You see, Dr. Maurice found no injury with the exception of a cut on Madame X's vaginal area — a cut that wasn't present during the first examination.

When Litman wanted to call Dr. Maurice for the defense, Wacko Wetzel wouldn't allow it.

The great suspicion arises that if Madame X did not have that wound before her first examination, then a strong case exists that the whole thing was a fabrication.

Much was made about the

activity between Jovanovic and Madame X over the Internet.

But when Litman wanted to introduce a bizarre series of Madame X's Internet files, Wacko Wetzel said no.

This Barnard student talked at length about past experiences in sadomasochism and "snuff" films, where actors supposedly are murdered.

Charming.

She admits to willingly undressing in his apartment. Now, I believe "no" means "no," but she wasn't there to pose for a statue.

Madame X, by many people's observations, is an extremely troubled young woman.

A top cop involved in sex crimes once told me, "Rape is the most under-reported crime in America."

"There are those who don't report it out of shame. And there are those who do report it and it never happened."

Remember Tawana Brawley.

Now, Wacko Wetzel raged yesterday about newspaper columns, and undoubtedly he was talking about my defense of Jovanovic.

"I thought the judge was going to jump over the bench and hit you on the head with his gavel," said one veteran court reporter.

Well, let's call off the brawl until later.

"Oliver will appeal the case vigorously and expects to be cleared on appeal," said Jack Litman.

Let's wait until round two, Judge Wetzel. By that time you may have worked out your aggression on Jack Litman and found yourself embarrassingly reversed on a case that should never have happened.

Oliver Jovanovic might be an egg-headed computer nerd. But if the jury had been allowed to hear the facts, he wouldn't be on his way to state prison.

EX "K-2"

CITY

Defense in Sexual Torture Case Says Court Let the Accuser Lie

By JOHN SULLIVAN

Defense lawyers for Oliver Jovanovic, the graduate student accused of kidnapping and sexually abusing a woman he met on the Internet, claimed yesterday that the judge and prosecutors had allowed the accuser to lie on the stand.

In a bitter argument, a defense lawyer, Fred Sosinsky, implied that prosecutors had suborned perjury, encouraging the accuser, a Barnard College student, to lie in her testimony. Mr. Sosinsky made the accusation in asking Justice William A. Wetzel of State Supreme Court in Manhattan to reconsider a ruling made earlier in the case. The ruling, under New York's rape shield law, removed parts of computer messages transmitted between Mr. Jovanovic and his accuser.

The issue is a critical one in the case, because defense lawyers are trying to prove that the accuser en-

gaged in consensual, albeit sado-masochistic, sex with Mr. Jovanovic, a Columbia University graduate student. Prosecutors have said that Mr. Jovanovic kidnapped the young woman after meeting her for a date on Nov. 22, 1996, and then tortured her for 20 hours in his Washington Heights apartment in Manhattan.

The argument yesterday came after a morning of testimony in which the young woman said that her computer correspondence with Mr. Jovanovic did not refer to any underlying interest in sadomasochism.

Judge Wetzel refused to reopen the issue in open court, threatening to hold lawyers in contempt for discussing the matter. The rape shield law specifically forbids the discussion of the accuser's sexual history except in narrow circumstances. The exceptions include conduct that has a direct bearing on the alleged crime.

The young woman's testimony is expected to continue today.

Cybersex defense wants trial halted

By BARBARA ROSS and CORKY SIEMASZKO

Daily News Staff Writers

Cybersex suspect Oliver Jovanovic's defense attorneys demanded a mistrial yesterday after accusing the alleged victim of lying and clashing with the judge and prosecutors over forbidden evidence.

Manhattan Supreme Court Justice William Wetzel promptly nixed attorney Jack Litman's motion to stop the sensational trial of a 31-year-old Columbia University grad student accused of sodomizing and torturing a student he'd met on the Internet.

Litman, who cross-examined the accuser yesterday, had asked for the mistrial, "given the increasingly hostile attitude that your honor displays toward me in front of the jury."

Jovanovic is on trial for allegedly luring a 22-year-old Barnard College student to his apartment Nov. 23, 1996, hogtying her, dripping hot wax on her and assaulting her during a 20-hour ordeal.

Litman has portrayed the accuser as an "embellishing, fantasizing woman" who engaged in kinky but consensual sex with Jovanovic.

Prosecutors have portrayed the defendant as a cold, calculating sexual sadist.

The fireworks began yesterday after Litman began questioning the accuser about her family. The judge warned

Litman to stay away from "irrelevant and immaterial" subjects.

"Ask your next question at your own peril," Wetzel said.

Litman backed off. But he continued to try to get the accuser to admit that some of her E-mail to Jovanovic contained "code words" and metaphors for bondage and domination, and sado-masochistic sex.

She repeatedly denied such claims — though conceding some of the computer banter was "flirtatious."

Just before lunch, after the jury left the room, Litman's partner, Fred Sosinski, charged the accuser was lying — and asked the judge to permit them to question her about subjects Wetzel had ruled out of bounds.

Wetzel warned Sosinski not to say anything that would violate the state's Rape Shield Law — which forbids discussions of a rape victim's sexual history.

The lawyer shot back: "Is it your honor's ruling that a witness can get upon the witness stand and intentionally lie in front of the jury?"

The judge denied Sosinski's bid to argue the point before the jury, prompting the lawyer to complain, "I don't know why you can't hear this in open court."

Then Assistant District Attorney Gail Heatherly shot out of her seat and blasted the defense. "You want to try this in the press? We will!" she declared.

DAILY NEWS • Tuesday, March 24, 1998

EX "K-3"

Sandro Cohen, a poet, novelist and Humanities Professor at the Metropolitan University (UAM) in Mexico City, read about the Jovanovic case from his home in Mexico. While Mr. Cohen knew nobody involved in the case, he was struck like many others by the unique aspects of the case involving the internet. After researching the case on his own, however, Mr. Cohen was struck not by the novelty of the allegations, but by the surreal travesty of the trial that followed — a trial that never should have taken place. The passionate article he then wrote for the newspaper La Jornada shows just how baffling and outrageous this tragedy is to a truly disinterested party. As Sandro Cohen's piece is in the form of a commentary, supporting evidence with sources has been added as footnotes or those not familiar with the facts of the trial.

OLIVER JOVANOVIC: FIRST SACRIFICE OF THE DIGITAL AGE

BY SANDRO COHEN

"LA JORNADA" — MAY 19, 1998

Cast of Characters

Oliver Jovanovic: the accused; he signs his e-mail "Gray"; doctoral candidate in Microbiology from Columbia University; among his many interests and talents is computer science.

Jamie Rzucek: The accuser; during the trial and in the press she was only referred to as "Madame X," out of respect for the victim of a possible rape; she herself declared in her e-mail that she was a "pushy bottom," which in sadomasochistic jargon means that she enjoys receiving punishment and that she also likes to determine what this punishment will be.¹

Luke DuBois: Jamie's lover; is a bisexual heroin addict; Jamie told Oliver that she was having sex with him, which may be the reason Oliver declined to do so with her, thereby igniting Jamie's wrath.²

William Wetzel: The presiding judge; appointed by Governor Pataki to the Court of Claims, he jumped to the State Supreme Court of New York as an acting justice, skipping the lower Criminal Court entirely; those who have seen him working have argued that "he is in way over his head" at this post, and that he was overpowered by his own disdain for Jack Litman (see below).³

Jack Litman: The defense attorney; openly and brazenly mocked by Wetzel during the trial; the fact that Litman is hard of hearing, for example, was good for abundant mockery by Judge Wetzel.

Linda Fairstein: The prosecutor who decided to go ahead with the trial against Oliver Jovanovic; however, Gail Heatherly was directly in charge of the prosecution; Fairstein is also a novelist.

New York Rape Shield Law (RSL): Criminal Procedure Code §60.42; it is a broad prohibition against asking a jury to infer present consent to sexual activity merely from past conduct. There are five exceptions under which evidence may be presented in the interest of justice. In this case, it is my contention that four of the five exceptions should have been applied. Instead, e-mail evidence was brutally redacted so as to change its very nature, and other exculpatory testimony was also incorrectly disallowed.

Computers are to their aficionados what caldrons were to witches. They embody and even provoke the fears of those who do not understand them. And when they are involved—even vaguely—in some sort of crime, misdemeanor, or emotional mishap, it seems that everyone ends up pointing an accusing finger not only at the tools but at those who make them work, those who derive pleasure from their structure, their playful possibilities, the almost

pure joy that comes from manipulating code so the machine do the bidding of the will of man. There is nothing more suspect than a computer enthusiast whose tastes go beyond "the ordinary."

These misunderstood initiates—like the witches, sorcerers, prophets, alchemists, and other proto-scientists of the past—daily risk losing their freedom and even their lives in extreme cases. And if they are not burned at the stake, a ruined life awaits them, the shreds of what could have been.

This is the case of Oliver Jovanovic, a computer and cyber enthusiast who was to defend his doctoral thesis in Microbiology at Columbia University in New York on December 20, 1996, when the world came tumbling down on him. On April 15 of this year, Jovanovic—who will be 32 years old next month—was found guilty of kidnapping, assault, and sexual abuse, accused by Jamie Rzucek, 21, whose past, tastes, and habits were never made known to the jury thanks to Judge Wetzel's notoriously twisted interpretation of the Rape Shield Law (RSL) and to his general manipulation of the trial. Wetzel has scheduled the sentencing for May 29.

Among other glaring irregularities and misuses of the RSL, Judge Wetzel did not allow the defense to present witnesses that could contradict the testimony of prosecution witnesses. Nor did the jury ever find out that Rzucek had been involved in two previous false sexual abuse claims. In one she was the alleged victim, and the accused were her own father and uncle, all because she did not want to attend a family gathering. Her father and uncle, it seems, carried her downstairs from her bedroom. In the other case she aided and abetted a false rape claim by a friend, Karen Kahn, "as a means of getting attention," referring to Luke, the heroin addict mentioned below; but Jamie seems to have been in the process of stealing Luke away from her.⁴

Perhaps even more serious is the fact that the judge, twisting the RSL's noble raison d'être, never allowed the jury to find out about Jamie Rzucek's frequent sadomasochistic activity, a fact that is fully corroborated in her own e-mailings to the accused and now convicted criminal.⁵ If the judge had allowed the jurors to examine the uncensored e-mail, they would have realized immediately that Rzucek was lying methodically and that she in no way was a credible witness. They also would have discovered the true motives behind the accusation:

Jamie Rzucek was an obvious health hazard, as Oliver Jovanovic must surely have realized through her e-mail and casual conversation. If he did indeed consent to tying her up, he probably proceeded no further because he was simply too careful for that. If one tries to reconstruct the evening, one can imagine the frustration of a practiced masochist, a pushy bottom, who is denied her torture. And given Jovanovic's character, which rings clear as a bell from the e-mail he exchanged with several different people, he probably gave her a good lecture on safe sex and sexually-transmitted diseases, in view of her having confessed to him that she was having sex with a cousin who used drugs and with a bisexual heroin addict. He probably also gave her a good talking-to about how dangerous it was to request an almost complete stranger to tie her up and "make her beg for mercy."

It's like the old joke that, in the light of *The People vs. Jovanovic*, isn't at all funny but pathetic: "What does the masochist say? Hit me! Hit me! And what does the sadist say? No! No!"

In this case, Jovanovic would be the alleged sadist who said No, but the revenge of the woman he did not allow to become his sex-slave was much crueler: Oliver Jovanovic is facing a minimum jail sentence of 15 years to life, or a maximum sentence of 25 years to life solely because he refused to play along, because—in a fatherly way—he didn't want Rzucek to get involved in situations that put her life at risk.

So, What Happened?

Toward the end of 1996, Jovanovic—who was then 30 years old—met Jamie Rzucek electronically in an Internet chat room. She was 20 years old and was a Barnard undergraduate. After this initial interchange, they decided to get together, in person, on November 23. They had dinner at a Thai restaurant and returned to Jovanovic's apartment upon her invitation, where they watched Peter Jackson's *Meet the Feebles* on video (Jackson is the director of *Heavenly Creatures*). What happened in the hours that followed, only Rzucek and Jovanovic know, but the fact is that two weeks later, on December 5, Jovanovic was arrested, accused of kidnapping, sexual abuse, and assault. He couldn't believe it.

And rightly so. As has already been said, Jovanovic emphatically denied from the beginning that anything non-consensual had occurred between them. Rzucek, nevertheless, accused him of having kidnapped her for 20 hours, during which time Jovanovic tied her up with pieces of cloth, burned her with candle wax, and sexually abused her with a martial arts baton.

Up until this point it would be a case of "he said, she said," but in a trial one must examine the evidence. Rzucek's body showed no physical signs of her allegations, although it did reveal bruises from other sadomasochistic encounters that had nothing to do with Jovanovic. [Jamie Rzucek was examined at Barnard Health Services by Dr. Chin Quee, a gynecologist, on 11/27/96, and no evidence of genital injury was found. Prosecutors then sent Jamie Rzucek to Dr. Jacque Moritz, a forensic gynecologist, on 12/16/96 for further examination. Dr. Moritz also found no evidence of genital injury but did find a fresh cut on Jamie Rzucek's labia, which medically could not have happened before 12/9/96, at most 7 days old. Jamie Rzucek had turned over a pair of pants to the police with a trace of blood in their crotch on 12/10/96, which she claimed were the pants she had worn on 11/23/96. As of this time, no explanation has been given as to what caused the new cut. At trial, Dr. Chin Quee testified on behalf of the prosecution and her medical report was allowed into evidence, but when defense attorneys subpoenaed Dr. Moritz, prosecutors objected, and Judge Wetzel ruled that Dr. Moritz could not testify and his medical report could not be introduced into evidence.] But the jury was not allowed know this because of Judge Wetzel's strange interpretation of the RSL. And to complicate things even more, after their "date" of November 23-24, they continued to exchange

e-mail, and Rzucek never made any specific complaints.

She waited four days before accusing Jovanovic, although this in of itself means little because it is not unknown that rape victims wait before acting legally. But in view of Rzucek's past, this delay could denote circumstances that go far beyond questions of shame, fear, terror, anguish, or depression, the feelings that usually cause hesitation in cases of traditional rape. At any rate, she underwent a medical examination but it did not corroborate her allegations.

In one of the dirtiest tricks of recent times, Judge Wetzel, only a day before the jury was to begin deliberations, leaked a former scorned girlfriend's copycat false accusations. He himself had already ruled them inadmissible, but for some reason he saw fit to make them available to the press so they could demonize Oliver Jovanovic even further.

When you add this to the open hostility that Judge Wetzel showed to the defense attorney, Jack Litman (many lawyers and even judges witnessed his mocking comments and facial expressions), one realizes that Wetzel has strayed way off base to become a truly dangerous element in the United States judicial system.

At the heart of *The People vs. Jovanovic*, however, and beyond any possible revenge motive, are the prima donna aspirations of the prosecutor, Linda Fairstein, who seemingly wanted to be the star of the "first Internet rape case." She is also a novelist, and her book *Likely to Die* has recently made it into the bookstores. A little publicity and media hype would come in handy, as indeed it has. After all, it was she who, through the press, performed the original demonization of Oliver Jovanovic, calling him the cyber-stalker and the cyber-fiend.

So Why Did the Judge Twist His Interpretation of the RSL?

No one knows what Judge Wetzel's ulterior motives for interpreting the RSL in such a convoluted way may have been. But the law is very clear: "Evidence of a victim's sexual conduct shall not be admissible in a prosecution for an offense or an attempt to commit an offense defined in article one hundred thirty of the penal law *unless such evidence* 1. proves or tends to prove specific instances of the *victim's prior sexual conduct with the accused*; or [...] 3. rebuts evidence introduced by the people of the *victim's failure to engage in sexual intercourse, deviate sexual intercourse or sexual contact during a given period of time*; or [...] 4. rebuts evidence introduced by the people which proves or tends to prove that the accused is the cause of pregnancy or *disease of the victim, or the source of semen found in the victim* [...] or 5. is determined by the court after an offer of proof by the accused outside the hearing of the jury, or such hearing as the court may require, and a statement by the court of *its findings of fact essential to its determination, to be relevant and admissible in the interests of justice*. (I am responsible for the italics and have only included the four clauses of five that pertain to this case.)

Judge Wetzel ruled that the e-mail was to be considered "sexual conduct," a notion which common sense tends to contradict. But assuming it was, it surely should have been admitted

according to the first exception, thereby establishing *the victim's prior sexual conduct with the accused*. The judge, under the RSL, disallowed evidence dealing with the accuser's past, but this evidence rebutted what she had declared under oath regarding her supposedly knowing nothing about sadomasochism; therefore, the third exception should have been applied. Instead, the judge redacted the e-mail of all pertinent references, thereby greatly distorting reality. The defense, in addition, was not allowed to establish the very good possibility that Luke had caused Jamie's bruises; it should have been permitted to do so under the fourth exception.

Almost anyone under these circumstances can come to the conclusion that Jamie Rzucek's sadomasochistic activities clearly explain her behavior toward Oliver Jovanovic, who—according to the evidence—most likely did nothing whatsoever to her. And if Judge Wetzel had applied point five, "in the interests of justice," he would have allowed the jury to examine such e-mail as clearly showed the plaintiff to be lying through her teeth. To put it bluntly, the judge knowingly allowed Rzucek to perjure herself. A very serious situation for him, but even more serious for Jovanovic.

If he had proceeded correctly, "reasonable doubt" would have been established, and a jury will not convict if there is reasonable doubt as to a defendant's being guilty. Although no one knows exactly what happened (outside the two directly involved), there is more than "reasonable doubt" as to Oliver Jovanovic's being guilty. What's more, his innocence is more than probable. What we have seen in this case is how certain media in the U.S. have combined the "sex angle" and the "cyber-fiend" angle in an explosive brew that has blown up in the face and life of a man who only a short time ago aspired to a brilliant future as a scientist.

1 Email from Jamie Rzucek to Oliver Jovanovic, on 11/20/96, 16:01:26
"-and yes, i'm what those happy pain fiends at the Vault call a 'pushy bottom'."

2 Email from Jamie Rzucek to Oliver Jovanovic, on 11/19/96, 20:39:35, referring to Luke DuBois: "the boy calls, tells lots and lots of a life led like burroughs: heroin addicted, bisexual atheist. My kinda comrad. so he seduced me."

3 New York Post, Friday, April 17, 1998. "Observers say judge doomed defense" by Ann Bollinger: "When Pataki won election, he appointed Wetzel to the Court of Claims. Wetzel immediately was assigned to state Supreme Court as an acting justice — skipping the lower Criminal Court altogether. That, according to some lawyers, put Wetzel in over his head."

4 Email from Jamie Rzucek to Oliver Jovanovic, on 11/18/96, 22:29:11, referring to Karen Kahn: "So said intrest plotted . . . a means of getting attention, thus the rape."

5 Email from Jamie Rzucek to Oliver Jovanovic, on 11/20/96, 01:32:09, referring to her relationship with Luke DuBois: "more interesting than sex yes he did catch me, no sex, but he was a sadomasochist and now i'm his slave and it's painful, but the fun of telling my friends 'hey i'm a sadomasochist' more than outweighs the torment." (Rzucek testified under oath that she knew

nothing about S and M.) (New York Times, Tuesday, March 24, 1998. "Defense in Sexual Torture Case Says Court Let the Accuser Lie" by John Sullivan: "the young woman [Jamie Rzucek] said that her computer correspondence with Mr. Jovanovic did not refer to any underlying interest in sadomasochism.")

6 New York Times, Saturday, December 7, 1996. "Biologist Is Charged In Sex Abuse Of a Student" by David Stout: "Ms. Fairstein said that this was the first sex-crime case her office had prosecuted in which the complainant and suspected assailant got acquainted on the Internet. . . an example of 'a whole new entry in the acquaintance-rape category'"

7 New York Post, Friday, April 17, 1998. "Observers say judge doomed defense" by Ann Bollinger: "One judge in the building said he was 'embarrassed by Wetzel's behavior in this case.' . . 'He [Wetzel] would laugh and smile and make faces at his law secretary about Litman,' one lawyer said."