

**IN THE SUPERIOR COURT OF THE STATE OF NEW YORK
IN AND FOR ALBANY COUNTY**

| | | |
|---|---|----------------------|
| People of the State of New York, |) | |
| |) | |
| Prosecution |) | |
| |) | |
| v. |) | No. 2006-0001 |
| |) | |
| Pat C. Macintosh, |) | |
| |) | |
| Defendant |) | |

Case Summary¹

Pat C. Macintosh, a sophomore at Big Apple State College, a small college in upstate New York, has been charged with cyber-stalking. The person Pat allegedly stalked via an on-line, campus-sponsored chat room is Jamie Gates, also a sophomore at Big Apple. Both students live in Adirondack Hall, a co-ed dormitory on campus.

Big Apple State established the chat room as a resource to enable students to engage in discussions about campus life, courses, homework assignments and related matters. Although the chat room was set up originally for professors to continue classroom discussions and engage in intellectual debate, the chat room now is used almost exclusively by students. However, students are discouraged from using the chat room as merely an entertainment outlet. Also, there are rules that prohibit unauthorized and/or abusive use of the computer system, such as, but not limited to, hacking, using a password belonging to someone else and sending offensive messages. Members of the faculty rotate on a regular basis to monitor the chat room for improper activities.

Students who use the chat room must first sign a waiver regarding unauthorized use and prohibited language. Along with the waiver, students must also check a box on the chat room home page which indicates they have agreed to the rules of the chat room. A student is not able to use the chat room until he/she checks the box. Access to the chat room is password-protected. Students are able to choose their own passwords and are required to keep the passwords strictly confidential. While most students are careful with their passwords, some students are known to write their passwords on book covers or to lend their passwords to friends. The students also use chat room user names, as opposed to their real names, in order to maintain some level of anonymity. The purpose of remaining anonymous is to protect the students from invasion of their privacy and misuse of their personal information.

In addition to the chat room monitoring by the faculty, the computer system employs a security-screening device called a filter to prevent the transmission of messages containing offensive words. However, because some words in one context may be offensive, but not offensive in another context

¹ The foregoing summary of the case is provided solely for the convenience of the participants in the Mock Trial Tournament. This overview itself does not constitute evidence and may not be introduced at trial or used as impeachment.

(such as the use of the word murder or death in the discussion of a Shakespearean tragedy), the filtering device has not been very effective. In order not to stifle important discussions and debates, some words and phrases that might be offensive in a particular context are nevertheless not filtered by the security device. Therefore, the constant faculty monitoring is designed to hinder the transmission of contextually offensive messages.

Jamie Gates, whose chat room user name is Jammin@BASC, was in the chat room one day and observed chat room entries that he/she believed were directed to him/her from someone who calls himself/herself SirVive2005. The official transcript of the chat room shows that these entries rendered on Monday, May 9, 2006 were as follows: *Jam's in the window. Exercise all you want, my friend, you won't be able to run fast enough.* These messages originated from a computer in the campus library.

On Thursday, May 12, 2006, while in the chat room again, Jamie read another message that he/she believes was meant for him/her. The official transcript shows that someone using the moniker Shokwave left the following entry: *Speaking of colors, Jammin's been seen wearing school colors all week. Think blood won't show on those dark colors?* This message originated from a computer in Adirondack Hall. Jamie exited the chat room shortly after reading the entry. Because of an incident in the student union building on May 12th, there were no classes and the student union building was relatively empty.

On Friday, May 13, 2006, Jamie entered the chat room at 2:45pm. He/She signed off at 3:15pm after reading the following message from Shokwave: *Listen good and respond or don't. Anticipation is what it's all about, and building fear. You never know when you'll be forced to face your greatest fear ... suffocation, torture, painful prolonged death.* Jamie signed back on at 3:35pm and Shokwave rendered this message: *Jammin is back. Time is running out my Jammin friend. Maybe we can meet in the alley?* Jamie signed off at 3:37pm. Both messages were from a computer located in Adirondack Hall.

Finally, during a chat room session on Saturday, May 14th, Shokwave typed in these messages: *I admit to being mad, but madness can be a good thing. It gives me direction, focus, and an outlet for my aggression. Ever wonder about pain and suffering. Just remember, the clock is ticking. Time is on my side. Time is running out my friend.* Approximately ten minutes after the second message, Jamie received an e-mail message from a campus computer that said, *SV may lose control at any time ... longs to test your control. How long will you last, my jammin friend? If you're afraid, you better stay locked up in your 2nd floor roost and not go out to play. You could be sorry. You could be dead.*

Albeit they are not friends, Jamie and Pat have known each other since their freshman year. They were in the same freshman psychology class. Jamie has felt uncomfortable around Pat ever since Pat presented a very graphic report on Jack the Ripper in their psychology class.

Computer security personnel have provided a red button, or a panic option, at the bottom of the chat room page. If a participant is alarmed or concerned about any on-line discussion, he or she may click on the red button, which will alert the monitoring faculty to the problem. Jamie did not click the red button at any time during his/her on-line chat sessions.

After receiving the chat room message, Jamie and his/her roommate, Casey Wallner, who had also seen some of the chat room messages, went to the campus police to report what they had observed.

The campus police contacted the Albany County Sheriff Department, which sent Ashton Hopp, a deputy sheriff, to investigate. While Pat admits to making the statement, "*The clock is ticking. Time is on my side. Time is running out, my friend,*" he/she denies having authored any of the other allegedly threatening statements.

The State of New York has charged Pat Macintosh with stalking in the second degree, a class E felony, and stalking in the third degree, a class A misdemeanor. Pat Macintosh has entered a plea of not guilty.

STIPULATIONS

1. There is no First Amendment issue in this case.
2. There is no entrapment issue in this case.
3. There is no jurisdictional issue in this case.
4. Chat room discussion transcripts are stipulated as an authentic representation of what was on the computer at the time they were seized by the authorities.
5. All students named in this mock trial problem have signed the waiver for chat room use and agreed to chat room rules by checking off the rules agreement box on the chat room home page.
6. The campus online discussion option is one where messages and comments may be entered in real time and are then posted and left, and can be read at any time.
7. Witness statements are sworn and notarized.
8. All items of evidence are eligible for use at trial, following proper procedure for identification and submission.

WITNESSES

Prosecution witnesses:

1. Jamie Gates, alleged victim of cyberstalking
2. Casey Wallner, Jamie Gate's roommate
3. Ashton Hopp, Albany County Deputy Sheriff investigator assigned to the case

Defense witnesses:

1. Pat C. Macintosh, alleged cyberstalker
2. Loren Albert, BASC professor of computer sciences
3. Jesse Clifford, BASC Webmaster

Affidavit of Jamie Gates,
Alleged Victim of Cyberstalking

1. My name is Jamie Gates and I'm currently a sophomore at Big Apple State College. I live on campus in Adirondack Hall, one of the co-ed dorms on campus. This is my second year living at Adirondack Hall. I requested assignment to this residence hall again because I knew so many of the student residents, the place started to feel like home.

2. I logged onto the campus chat room the College sponsors as part of my class registration. The chat room gives students a chance to discuss courses, homework assignments, and things like that. I posted a message asking for the reading assignments for my literature course. I didn't want to fall behind.

3. Prior to signing on for the first time, I had to read and sign the usual release that says that the campus authorities monitor user activity by use of the "red button" scheme to protect students from unsavory activities, and I was also required to check-off on the chat room home page that I understood so-called "panic" options available to chat room users. I had to check off that I read the rules in order to use the chat room. I was in the campus advisor's office to sign up for the service. A couple of other students were in there with me at the time. We all joked about the release; I don't think any of us took that seriously at the time. I didn't think signing the releases would really be a deterrent if someone wanted to hack or bend the rules.

4. I hadn't used the chat room all that much until the middle of May. I know it was on a Friday. The campus pretty much clears out on Fridays, so I gave it a shot and asked if anyone had the assignment for my English 301 class. I got an almost instant response to my request for the homework assignment from another student in class. It seemed funny that we had been told not to reveal our actual names, address, telephone numbers, or other personal information. I thought at the time that the small campus was full of friendly folks all concentrating on their educations and having a good time at college.

5. After that first positive experience, I visited the chat room often. There would often be movie reviews or discussions on books being read, bestsellers and assignments, and information on good places to eat. And, there was also the routine info on class assignments in case someone was out sick. I'm not very computer savvy, but I could use the chat room and my campus e-mail account with no problems.

6. I was in a class with Pat Macintosh during our freshman year. It was a class on psychology and the professor was using quite a bit of literature as a way to help us understand various psychological problems and profiles. It was a fun class, but I remember that Pat was frustrated because none of the literary situations created really challenging psychological profiles. Pat asked to do some extra-credit reading and did a report on Jack the Ripper. It was a painful report to listen to, and I guess I was a bit more sensitive than some. Pat's report almost made me ill. It was very graphic. Pat seemed to enjoy the class's discomfort with some of the descriptions and photographic materials that were circulated during the report. I asked the professor if I could be excused in the middle of the report, I was that upset. I was given permission to leave, but had to explain to the professor in the hallway why I was so upset. The professor understood and I left and called home and discussed the report with my parents. I felt better after speaking with them.

7. I think it was about two months after I'd signed up to use the chat room, and about a week after the student union incident where I'd avoided Pat Macintosh that I noticed some references to my nickname, which is Jam. Some kids in the dorm call me "the Jam" because my dorm room is so messy that the door sometimes jams up against something...and my real name is Jamie, so it sort of fits. My chat room and e-mail user names are both the same, Jammin@BASC and Jammin@BASC.edu. In hindsight, I should have been much more careful in choosing user names and e-mail addresses. Better to be as anonymous as possible on the Internet. My password is, or was, JRCHAT. These have changed now.

8. Anyhow, one day I logged onto the chat room and remembered that someone had posted two messages on previous dates that had sort of freaked me out. "*Jam's in the window. Exercise all you want, my friend, you won't be able to run fast enough.*" My first thought on reading that was that I'd been goofing

around the night before doing some jumping jacks and running in place in the dorm room. My room is on the second level so I rarely bother to close the drapes, as no one can really see in the room. I sort of calmed myself down by telling myself that I wasn't a jogger, so it must not have really been meant for me. But, I did show the message to my roommate Casey. Casey sort of shrugged it off at first, but then read the second message further down the discussion thread. Then we both got concerned.

9. There were some other messages on the board that same day, and the discussion was about a campus hazing that had taken place at a high school a few weeks ago. Some kids had been pretty badly beat up and suffered some extreme indignities, to say the least. There are no sororities or fraternities allowed at Big Apple, so there's never been a problem with that kind of social rite of passage, so to speak.

10. We both saw the statement; *"Jamming has been seen wearing school colors all week. Think blood won't show on those dark colors?"* and Casey and I both thought that this line in particular was directed at me, because I had been wearing school colors all week. I have a part time job at the College Union and we were promoting t-shirts, sweatshirts, and other BASC logo clothes and items and all of the student employees had been given an assortment of stuff from the union store to wear as a sales promotion.

11. Casey and I were both convinced that someone using the chat room knew that I was Jammin@BASC and was trying to prank me somehow. I first thought someone was just trying to get my attention, but some of the other lines started to really get to me and I started having trouble sleeping and would constantly look over my shoulder wherever I went. Casey and I started going places together or not going out at all. This made going to class for a week or so a little difficult, but we worked it out between us so that neither of us would be alone walking on campus.

12. Even though we were careful, we kept visiting the chat room. We felt like sleuths looking for some additional evidence, to determine for sure if someone was earmarking me for trouble, or threats or something. We were drawn to it, even though it was freaking us out. It really never occurred to either of us that we should press the panic button that the College offers as a safeguard. I can't say why. We sure got to the point that we were close to panic.

13. On May 13, 2006, a Friday, there was a flurry of chatter about a course on campus that was talking about terrorism and the law. It's a government and current events course, in the political science field. There was plenty of discussion on freedom of speech and September 11, and individual rights. Nothing too frightening, it was a good discussion actually.

14. But then we saw another reference to "Jam." *"Anticipation is what it's all about, and building fear. You never know when you'll be forced to face your greatest fear...suffocation, torture, painful prolonged death."* And then there was *"You can keep your friends around you, but the clock is ticking. Time is on my side."* And it started up again with, *"Time is running out, my Jammin friend. Maybe we can meet in the alley?"*

15. Casey and I saw it at the same time and Casey said that maybe we should notify someone on campus about the series of postings that were mentioning me. I said I'd think about it. I guess I was trying to talk myself out of being afraid. But the next day, on the 14th, a Saturday, when campus was really empty, there were two more postings.

16. One was responding to the comment I mentioned above, about suffocation and torture, saying that the language was inappropriate. I don't know who had posted that response, but I was glad someone else on campus was feeling uncomfortable about the discussion.

17. The person who'd been posting the threats responded to that by saying, *"I admit to being mad, but madness can be a good thing. It gives me direction, focus, and an outlet for my aggression."*

18. About ten minutes later my computer indicated I'd received an incoming e-mail with the subject line blank. I usually just delete these without opening them; fear of virus problems, but I opened it. The message was from user@BASCLib, which meant it was from one of the campus library computers where you can either sign on with your student I.D. or as a general student, using the user@BASCLib and then the password student. Its anonymous, so far as I can tell. Anyhow, the message said, "*SV may lose control at any time...longs to test your control. How long will you last, my jammin friend? If you're afraid, you better stay locked up in your 2nd floor roost and not go out to play. You could be sorry. You could be dead.*" Someone had figured out that all you had to do to Jammin@BASC was add a dot and then "edu" to turn it into my e-mail address.

19. And then we totally freaked. Casey and I turned off the computer and locked the dorm room on our way out and went right to the campus police station to report on what we'd been seeing. Campus police called the Albany County authorities and they all met with Casey and me and with other campus officials who got involved. That's when I learned how high-tech the campus computer system was. Every chat room discussion had been captured, fully, and was stored on disks in the security offices. They had access to every chat room discussion thread and all they had to do was search for "Jam" and "Jammin" or other variations, and they found some vague references I hadn't even seen.

20. The campus police and other College personnel asked if I had any idea who might be targeting me, and I said I thought of one person but really didn't want to say because I wasn't at all sure. I was relieved when their investigations lead them to Pat Macintosh. I just don't know why Pat chose me as a target for the stalking, which is what it really was. Stalking.

21. Once the police became involved, there were only two more references to me in chat room discussions, neither was as threatening as the first, but they still crossed the line and are included in the complaint against Pat Macintosh.

22. One appeared on Sunday, May 15th, and referred to Jam and Jammin, and included mention of my English homework. It was then I remembered that I'd asked for the homework assignment for English 301. It must have been pretty easy for Pat Macintosh to figure out that Jammin@BASC was Jamie in English 301.

23. The message that appeared on May 12 was probably what convinced me that Pat was, in fact, the person behind all the threatening chat room messages. I'd seen Pat in the student union and had made a point of turning and walking in a different direction. I'm absolutely positive Pat and the friends that were there with Pat all saw me avoid them, and I have to say I wasn't all that subtle about it. Casey was with me and I actually grabbed his/her arm and dragged him/her down a side hallway. I also know that they saw us make that move, because we stopped and looked back and saw Pat laughing and pointing at us. That's when Pat said, and we both heard it perfectly, "There goes Jammin@BASC, The Jam," and when Pat said "The Jam," he/she made that little quotation mark sign with his/her hands and laughed a pretty scary laugh.

24. Another proof, sort of, that it was Pat Macintosh who was posting all those messages in the chat room is that they stopped right after Pat was arrested. During the whole investigation we were told to keep on using the chat room and not discuss the investigation with anyone.

This I swear under penalty of perjury.



Jamie Gates

Date: 6/2/06

Affidavit of Ashton Hopp,
Albany County Deputy Sheriff Investigator

1. My name is Ashton Hopp, I am a Albany County Sheriff Investigator. I moved to Albany from Delaware about a year ago because my spouse got a great job in Albany as a court reporter. When I was on the force back in New Castle County, I was assigned to one of the police force's "elite cyber crimes squad," which means I've received special training in computers and on-line security issues. Investigators were allowed to choose which "elite squad" they are interested in and then the force offered extensive training. The fact that we got to choose means that each officer on the force was given special training in his or her area of interest. Goes a long way to boost morale, I really liked that job, kind of miss it. I also have a degree in computer science from University of Delaware, where I met my spouse. I graduated with honors 10 years ago and went right to the police academy. I served 4 years in the Navy as a computer technician on board the U.S.S. Reliant. During the time I was part of the cyber crimes squad in New Castle, I had investigated more than a dozen cases involving alleged cyber crimes. This is my first year on the force in Albany. I was on duty when Jamie Gates and Casey Wallner arrived at the College security offices. I took the call from the College and went over there to help with the preliminary interviews and investigations. Given my background in cyber crimes, it was lucky I was on duty that day.

2. When I arrived, both of the students were highly agitated and nervous. My first thought was that if we don't get them calmed down, we're not going to get good information from the interviews. So, I set out to calm them down by offering them sodas, sitting with them for a while, introducing myself and generally making them comfortable with the surroundings and the people they'd be speaking with. Even after they relaxed, Jamie kept exhibiting nervous tendencies like hand wringing, twisting and turning in the chair, standing and pacing the floor, things like that are very telling during the interview process. I'd say that whatever had happened to these two kids, they were taking very seriously and they were scared.

3. They mentioned that almost all of the communications had taken place through computer on-line chat rooms but that there had been one face-to-face confrontation that had also upset them both. Evidently Pat Macintosh saw Jamie and Casey in the student union and had targeted them there with some teasing remarks that had made quite a threatening impression on them both.

4. It's routine for Big Apple State College campus police and the Albany County Sheriff's Department to cooperate fully when something happens on campus or a student has a complaint. We have a long history of cooperation and support for each other's offices and authority. I was called in to take statements, so if a civil or criminal investigation ensued, there would be a proper chain of evidence.

5. The campus police had already called the computer technical staff to retrieve the chat room conversations that had taken place in the past two or three weeks. We were going to limit the search for the threatening language by asking the students what times they had entered and exited the chat room. Knowing how efficient the computer staff at Big Apple State College can be, I knew we'd have the information very quickly.

6. Casey Wallner had the presence of mind to bring in a calendar that indicated quite a few of the incidents they were questioning. Nice kid. Thoughtful and I'd be willing to bet Casey is a good student. Organized.

7. It's routine in this kind of case to encourage continued chat room use to see if we can draw out the person or persons who are making threats. When we encouraged Jamie to continue utilizing the on-line chat-room until they could follow the leads they had to try to identify the sender of the threatening messages, Jamie's fear showed in full force. You could see his/her face go pale and his/her hands tremble. Casey Wallner looked a bit taken aback as well. I suppose they had thought that simply reporting the problem would make it go away. That's not how investigations work though. We sometimes need help to find out the computer that was used, and the pass code of the user.

8. I am aware that Big Apple State College has in place monitoring software that automatically alerts security staff when certain words or phrases are used in the chat-rooms on campus. It's called the "shark program." I knew we'd need to interview the computer technology staff to see when the discussions took place, which computers were used, etc. This could be a lengthy process.

9. In the past, I have investigated some child exploitation cases on the Internet. The common denominator was that all three cases originated in chat rooms. I try to encourage parents and teens, and even younger children who are allowed Internet use to always take great care in protecting their confidentiality. In one of the cases I mentioned, I asked the teenager involved if she knew how to research the name and information on the person she'd been chatting with. She felt she didn't need to because she'd been chatting with this person and had asked so many questions. She felt confident she knew the person. What she hadn't thought of was that person might be lying. I asked her if she had given out any personal information and she said she hadn't. But then I asked if she'd ever mentioned her high school name. She said yes. I asked if she'd indicated her gender, and she admitted she had. I asked if she'd ever mentioned what year she was in school. She said she had. I then asked one more question, had she ever mentioned any of her extracurricular activities. Again, she said yes. All these, to her, seemed innocent enough. However, when all are taken as a whole, they provide an incredible amount of information for a stalker or other criminally minded individual.

10. The information she offered could have helped to narrow the search for a target. Think about it. She told this person what high school she went to. That narrows the field, in this case, to less than 800. From the entire world, to 800. Then she said she was a female. That cut the number in half, to approximately 400. She mentioned she was a senior, narrowing the field to about 100, and she also indicated she was a cheerleader, thus narrowing the global field to eight. And, take this into account as well. The high school she attended has a website that displays photographs of team sports and, you guessed right, the cheerleaders. So, if this girl had also mentioned that she was blond, or had long hair, the field would narrow even more. So, even though this girl hadn't given out her name, address, telephone number, e-mail or web information, anyone with enough will could have located her pretty easily with the information she had provided.

11. After checking the captured computer information available from the College's computer systems analyst and computer tech people, we were able to determine which computers on campus had been used to enter the chat room each time one of the suspect comments was made. All but one time, the computer used was the one located in the Adirondack Hall common room on the first floor of that dormitory. That computer sits in a small, rather out of the way room, down a hallway and you can close the door for complete privacy. It's the perfect place to undertake questionable computer behavior, and think that you couldn't be traced because of the number of students with access.

12. The College has in place a "filter" system called "the shark program" that has the capability to capture questionable language and alert monitors to potential problems. However, we've learned through experience that no software program is foolproof. First, it has to be switched on. You have to learn how to maneuver through the data history files to see what's been going on.

13. By checking user files, sign on dates and times, we were able to discern that the user name and pass code, which students must register when they sign the initial release forms to utilize the chat room, belonged to Pat Macintosh. The username was "Shokwave," which is one of Pat Macintosh's usernames. Shokwave's password is "Crag06." The other registered student username Macintosh uses is "SirVive2005" with the password "Kincrag." Both usernames appear on the printouts of the chat room discussions in question. Both were using the Adirondack Hall computer. After reviewing all the chat room transcripts printed by the college as part of my usual investigation, I noted that one message that did not use that particular computer was the first message with a reference to "Jam." That one appeared on May 9th and said "*Jam's in the window. Exercise all you want, my friend, you won't be able to run fast enough.*" That message was posted from a computer in the Big Apple State College Library, second floor student lounge. The username was "SirVive2005" with the appropriate password "Kincrag."

14. As a routine user of the campus e-mail and website, I can testify that often e-mails are sent but don't arrive until seconds, minutes or even hours later. And, relying on any campus clock when indicating where you might have been at what time, can be taking a chance. Everyone on campus knows the campus clocks are unreliable and more often than not they're way off. Must be because of power brownouts or something. They just can't seem to keep the things running right.

15. Macintosh seems to think that his/her username and password from last year, which were "SirVive2005" and "Kingcrag" were found on a textbook he/she sold and are being used by someone trying to get Macintosh into trouble. We have yet to locate that particular textbook, which Macintosh says was sold back to the College bookstore. We checked at the College Library to see if this particular textbook had found its way onto the bookshelves and might have been available or accessible for student use, but they don't have that particular textbook in their inventory. They have five duplicate versions, but none have the writing on the cover that Pat Macintosh says should be there. We also checked with the College bookstore. There was no book so marked in their inventory, but that doesn't mean there might not have been at some time. College personnel did indicate that they do not make an effort to clean or erase markings off of used textbooks sold back to the bookstore.

16. There is some responsibility that the selling student should assume in erasing any personal information, like a password, personal code, etc., if they choose to sell a textbook, or donate it somewhere. Even if accounts are no longer being used, or go stagnant, they can still cause problems. Macintosh should have taken care to erase his/her computer e-mail and user codes from that textbook. If there's a lesson to be learned here, in addition to the seriousness of computer threats, it's that personal information should be guarded.

This I swear under penalty of perjury.



Ashton Hopp

Date: 6/1/06

Affidavit of Pat C. Macintosh,
Alleged Cyber Stalker

1. My name is Pat Macintosh and I'm a sophomore at Big Apple State College. I live in Adirondack Hall, the same dorm where Jamie Gates and Casey Wallner live. I admit to using the on-line chat room offered by the college, but never intended to threaten anyone in the various postings I submitted.

2. I guess I can see how someone might not like to talk about sleep deprivation and human laboratory experiments to study pain and suffering, and hate crimes, but my major is psychology with a minor in law enforcement. I have an honest curiosity about these things that is shared by many in my classes.

3. I decided on this major because I want to become a psychologist to help post-traumatic stress disorder patients recover from their traumas. I watch quite a bit of television when I'm not doing my homework and the history channel, and the news channels, often have special programs on virtually every crime that has ever been committed and they often run stories told by the survivors. I'm incredibly interested in these first-hand accounts of how victims survive, their thought processes, their physical strengths, etc. I mean, if we all knew what it took to survive a terrible situation, they'd be able to train us all to withstand just about any terror we could ever expect to face. I think my research is going to be very useful someday.

4. I guess that because I'm such a serious student, I am often perceived to be a loner or outsider. I know I'm a bit of an over-achiever and often accept extra credit assignments, especially if they allow me to undertake some individual options in my research. One of my extra credit reports in a psychology in literature class evidently freaked out some of the less challenged students. I don't really understand why. I wasn't exposing any deep dark historical or psychological secret. The schools all teach crime and punishment, and television programs run the same kinds of pictures I showed. One student got up and walked out, obviously shaken. Now that same student is lodging a complaint against me.

5. The chat room has been a great resource for me and I vigorously deny improper use. I've often ridiculed the general chat room population, but I've never targeted any individual. The statement that said, *"Anticipation is what it's all about, and building fear. You never know when you'll be forced to face your greatest fear...suffocation, torture, painful prolonged death,"* was from me. I had been discussing torture camps with some other students and was responding to a question that someone had asked as we all headed home. It's true. Anticipating something dreadful is often worse than the actual happening, when it finally occurs. Like going to the dentist. You think how awful it's going to be, but then you do it and it's not all that bad. Fear gets to you and makes you freak. Discussing controversial views should not be illegal, even if someone misinterprets the statements that are made!

6. I remember writing something like *"I admit to being mad, but madness can be a good thing. It gives me direction, focus, and an outlet for my aggression."* Someone had said that I was nuts in one of my classes. I prefer the word "mad." It's so much more poetic, somehow. Loads of highly productive and famous people have been thought to be mad, but they still gain fame and fortune for their thought processes. I admit that being a bit different makes one appear to be a bit mad, thus the statement. Being different, to me, is a good thing. It isolates me from people I don't really care about and I'm allowed to focus on my thoughts, goals, class work, research, etc.

7. I am, while a loner, a very aggressive student. I like to challenge my professors by tossing them questions they don't expect. I like to make them think as much as they like to make me think. I guess I may be a different kind of student from what they normally see, but I've had quite a few professors compliment me and tell me they enjoy the challenge of having me in their classes.

8. I flat out deny having anything to do with the two statements that are included in the complaint that say; *"Jam's in the window. Exercise all you want, my friend, you won't be able to run fast enough."* And *"Jamming has been seen wearing school colors all week. Think blood won't show on those dark colors?"* Who cares when Jamie was exercising or what color his/her clothes were? And that bit about the blood. I

am absolutely convinced that some nut case with some computer expertise has been out there using my passwords.

9. I'll also admit to typing in the statement that *"The clock is ticking. Time is on my side. Time is running out, my friend."* How anyone could see that as a threat, I don't know. I was talking about a statistical probability that all of us in the chat room at the time would be victims of crime. I think everyone understood what the context was. It's when you pull the dialogue apart and start looking for ugliness that it appears to be threatening. That's not my fault.

10. And, when that second transmission, the one on the 13th that everyone thinks is so awful, appeared, I wasn't near a computer. I had logged off and was actually at an interview, talking with the computer lab personnel about a report I was going to do about on-line research. So now they're probably going to say that I have the technical ability to pause a computer e-mail entry or had someone else press the enter key? Good luck.

11. I think that someone in the chat room knew that Jamie and I weren't seeing eye to eye and started tacking on comments to my chat room commentary. I even think I know how it was done and I've asked Jesse Clifford if I'm right. I think if you ask Jesse, you'll find that anyone could have logged into the chat room using my personal information and tagged words onto my comments after I'd signed off. This is especially true if I happened to be using one of the College computers, like at the library, the union or in the common room at Adirondack Hall, and I have used those computers, but not frequently. I can't remember the last time I used the library computer. Must have been a few semesters ago.

12. There's a strong possibility that someone's pranking both Jamie Gates and me. I know that I had written my personal pass code from last year for the chat room on the cover of my forensics textbook from last year and I sold that book or donated it to the library without erasing the information. I haven't closed that account, I just added a new one this year, so someone could be making all of this look like it's coming from me, when it isn't. That should be illegal, if it isn't! Some may think that it's a convenient way for me to have pranked someone, using an old account, but it's just plain easier to let the old accounts ride, rather than completing paperwork. It's not a crime to be lazy, is it?

13. I've been asked what computer usernames I've got on file in my name. This year I registered the username "Shokwave" with a password "Crag06." Last year, I had registered under the username "SirVive2005" with the password "Kincrag." I'm absolutely positive that the SirVive2005/Kingcrag information was written on my forensics book from last year. I'm also absolutely positive that whoever has that book is the person you're looking for. Again, I'm willing to admit to making some of the statements, or participating in some of the discussions, but my intent was not to harass anyone. I thought all along I was in an educational conversation, a learning experience, you know?

14. People are also making a big deal about me making fun of Jamie in the student union. Since when has laughing at someone been a crime? All I did was make fun of the nickname "The Jam." I was sitting at a table in the union with some friends and Jamie came around the corner and lurched back so suddenly, dragging someone with him/her out of view. Then they peeked around the corner, like kids playing hide-and-seek! Jamie was making a fool of him/herself by dragging that friend behind some wall and acting so afraid. It was pretty childish.

15. By the way, someone tells me that Jamie received an e-mail from the College library computer that they think came from me. I wish they'd fingerprint all those computers over there. I haven't used the library computers for months.

This I swear under penalty of perjury.



Pat Macintosh

Pat C. Macintosh

Date: 6/16/06

Affidavit of Loren Albert,
College Professor of Computer Sciences

1. My name is Loren Albert and I am a Big Apple State College Professor. I teach computer science, computer ethics, and advanced technology and research. I've been serving in my capacity as head of the computer technology division for four years.

2. I encourage my students to use the on-line chat room and discussion opportunities as a safe and efficient way to expand their studies. It is important for students to realize early on that our student chat rooms are not meant for entertainment, they are meant as learning and communication tools. They should be used for open dialogue. Students are encouraged to utilize the chat rooms, and to adhere to the rules and guidelines set forth by the College and individual professors. For example, I tell my students to be particularly aware of message length, continuity of discussion and articulate responses that can keep the discussion flowing. Short is always better. Brief phrases are easier to respond to and keep the discussion going without lengthy delays that can create confusion.

3. Some students arrive on campus experienced with computer chat rooms. Others experience a bit of timidity when they first use the tool, but with some encouragement these students learn how the medium works and are able to use it efficiently within a matter of weeks.

4. What students sometimes don't understand is that there can be a number of "conversations" going on simultaneously and they need to process the discussions to weed out what is relevant to their particular discussion.

5. Having a problem like this arise on the Big Apple State College Campus is disturbing and I've been in meeting after meeting with College Deans, the Chancellor, faculty and staff to try to determine whether or not the chat room facilities should be shut down. There seems to be the overwhelming response from the student body that they want the chat rooms to continue, but with additional monitoring by campus officials.

6. It was one of my responsibilities to supervise the on-line chat rooms and I take that responsibility very seriously. I believed I should assume this role as I have both a technical understanding of chat rooms and an understanding of computer ethics. It was my decision to include the "red button" feature that students can click if they feel discussions are getting out of line or crossing into a territory that makes them uncomfortable. The red button has never been used during this academic year. Quite often students take it upon themselves to admonish other students that ask inappropriate questions or use unacceptable language. I'm very proud of the Big Apple State College students. They are using a tool in a very adult manner.

7. Unfortunately, on the week that the alleged cyber-stalking took place on the Big Apple State College chat room I was on and off campus taking care of family wedding plans and was not checking on the chat room conversations, as I usually do at least three to four times a day. I log on routinely and read discussion threads to see how students are using the chat room and if there are problems with the equipment, etc.

8. This particular allegation is the first time in the history of the chat room that such a threat has been observed. It is my personal opinion that the language does not rise to the level of a criminal complaint; however, as a College official, I need to be aware of all investigations and allegations so I've reviewed all the chat room discussions in question.

9. I am concerned that there may be some unauthorized use of a student's password. Based on our records, one of the alleged offensive statements occurred on Saturday, May 14th. Between the entry, *"The clock is ticking, Time is on my side. Time is running out my friend,"* and the line *"Time is running out, my Jammin friend. Maybe we can meet in the alley,"* There's a 20 minute break or lapse in the discussion. That is plenty of time for Pat Macintosh to have logged off and left the building and someone else, an unauthorized user, to enter, log on and use Pat's password to continue the conversation and issue the threatening second phrase. Pat Macintosh was actually interviewing someone on campus in the computer lab

at the time that second phrase appeared so Pat may not have been the person responsible for making the entry. I can confirm that because I saw Pat.

10. Unauthorized use, if indeed that is what happened in this situation, is a serious infraction of the campus rules. A year ago, the College experienced an on-line prank when a student I'll call John, left a computer workstation without logging off and protecting his e-mail account. The next student who sat down at the station realized that he had the opportunity to prank the student named John and sent out a rather innocent message to the chat room that indicated that John was madly in love with Marsha. This embarrassed both John and Marsha, who had never really spoken to each other. I was able, in class, to call attention to the breach and discussed the misconduct, which violated College policy and academic integrity of the chat room. The resulting gossip from the incident was innocent and no one was hurt. And the prankster issued a verbal and written apology to the parties he'd pranked. This offered a valuable learning experience to everyone involved in the chat room. We haven't had that type of prank since.

This I swear under penalty of perjury.

Loren Albert

Loren Albert

Date: 6/27/06

PART V

NEW YORK STATE HIGH SCHOOL MOCK TRIAL

OFFICIAL EXHIBITS

- A. Big Apple State College Chat Room Rules and Regulations
- B. Big Apple State College Student On-line Chat Room Usage Policy
- C. Internet Chat Room Dialogue Excerpts
- D. Casey Wallner, Daily Diary Excerpts

Welcome to Big Apple State College's On-Line Student Chat Room.
Click to select chat topic: You will need your Student Chat room User Name and Password to participate!

Student Directories

Freshman

Sophomores

Juniors

Seniors

Faculty Notes (Find course descriptions and syllabus information)

Library Study Circles (Join a topic/discussion thread)

English & Literature

History & Archeology

Forensics & Law

Mathematics & Sciences

Music & Theater

Athletics & Health

General On-line Discussion Group (campus life, assignments, general discussions)

Chat Room Rules: No swearing, racist or sexually explicit language. Respect the opinions of others. Provide accurate information when discussing class assignments. Be aware of the panic and discipline systems used in this chat room.

a. Panic. There is a red button at the bottom of the chat room page. If you are alarmed or concerned about on-line discussions, feel free to click on the red button, which will alert College personnel to the problem.

b. Discipline. Big Apple State College reserves the right to monitor the chat room message boards 24/7. College monitors are authorized to act on behalf of the College if they feel action should be taken to close the chat room to protect the integrity of the site and ensure the safety of our users.

(A-Z Index) (About BASC) (Academics) (Admissions) (Alumni & Friends) (Arts) (Athletics) (Calendar) (Contact BASC) (Current Student Directory) (Faculty & Staff Directory) (Life @ BASC) (Library) (Online Research) (Technology) (Visitors) (Legal Notices & Disclaimers) (Web Privacy Waiver) (Questions/Contact Us)

Privacy Waiver: Information contained in this communication is neither privileged nor confidential. You have signed a waiver of privacy, which is on file in the office of the Dean of Students. This page and the sub-pages may be monitored by the campus office of information technology and security personnel. Campus authorities will address any misuse and serious infractions of chat-room rules may lead to loss of campus privileges, expulsion or criminal prosecution. Infractions should be reported to campus security or to the Dean of Students by dialing 9999 on any campus telephone.

Big Apple State College Student On-line Chat Room Usage Policy

All students utilizing the On-line Chat Room must read and sign this release form. Students who are found to have violated this Usage Policy will be barred from further use of the On-line Chat Room and may face civil or criminal penalties, depending upon the violation.

Students violate Big Apple State College's On-line Chat Room Usage Policy when they engage in any of the following prohibited activities. This is not an exclusive list; other activities not listed may be prohibited, at the discretion of Big Apple State College.

- Hacking and related activities are strictly prohibited. Hacking includes, but is not limited to, illegally or without appropriate College authorization accessing computers, accounts or networks, penetrating or attempting to penetrate College computer security measures, port scans, stealth scans, and other activities designed to assist in hacking.
- Obscene, defamatory, abusive or threatening language or content is strictly prohibited. Use of the Big Apple State College On-line Chat Room to post or transmit, or otherwise make available obscene, defamatory harassing, abusive or threatening language is strictly prohibited.
- Pornography is strictly prohibited. Use of the Big Apple State College On-line Chat room to post or transmit, or otherwise make available any pornographic, obscene or other inappropriate materials is strictly prohibited.
- Any activity meant to cause disruption or interference with the Big Apple State College On-line Chat Room is prohibited. Actions meant to harm, disrupt or threaten to disrupt services, business operations, reputation, goodwill, student and/or student relations, or the ability of Big Apple State College students to effectively and safely utilize the Big Apple State College On-line Chat Room are prohibited.

If Big Apple State College finds any violation of this Usage Policy, Big Apple State College may take any appropriate action to stop or correct such violation, including, but not limited to, shutting down the On-Line Chat room and/or removing information. In addition, Big Apple State College reserves the right to monitor and retain electronic copies of all communications posted through its On-line Chat room for security purposes and for purposes of quality assurance.

Violations received by Big Apple State College regarding the use or misuse of the On-line Chat room may be forwarded to campus or other appropriate law enforcement authorities for investigation and resolution.

Student users of the Big Apple State College On-line Chat Room are encouraged to maintain strict levels of secrecy and confidentiality to guard their personal information. If a breach of personal on-line security has been noted or is suspected, students are advised to immediately change their passwords and/or e-mail addresses. Additionally, there is a red button at the bottom of the chat room page. If you are alarmed or concerned regarding on-line discussions, feel free to click on the red button, which will alert College personnel to the problem. Serious breaches of security may be reported to campus administration, campus security, the Big Apple State College Student Union, Computer Services Division, and/or the Dean of Students.

I have read and understand and agree to the Big Apple College Student On-Line Chat Room usage policy.



9/4/05

Student Signature

Date

Big Apple State College Student On-line Chat Room Usage Policy

All students utilizing the On-line Chat Room must read and sign this release form. Students who are found to have violated this Usage Policy will be barred from further use of the On-line Chat Room and may face civil or criminal penalties, depending upon the violation.

Students violate Big Apple State College's On-line Chat Room Usage Policy when they engage in any of the following prohibited activities. This is not an exclusive list; other activities not listed may be prohibited, at the discretion of Big Apple State College.

-Hacking and related activities are strictly prohibited. Hacking includes, but is not limited to, illegally or without appropriate College authorization accessing computers, accounts or networks, penetrating or attempting to penetrate College computer security measures, port scans, stealth scans, and other activities designed to assist in hacking.

-Obscene, defamatory, abusive or threatening language or content is strictly prohibited. Use of the Big Apple State College On-line Chat Room to post or transmit, or otherwise make available obscene, defamatory harassing, abusive or threatening language is strictly prohibited.

-Pornography is strictly prohibited. Use of the Big Apple State College On-line Chat room to post or transmit, or otherwise make available any pornographic, obscene or other inappropriate materials is strictly prohibited.

-Any activity meant to cause disruption or interference with the Big Apple State College On-line Chat Room is prohibited. Actions meant to harm, disrupt or threaten to disrupt services, business operations, reputation, goodwill, student and/or student relations, or the ability of Big Apple State College students to effectively and safely utilize the Big Apple State College On-line Chat Room are prohibited.

If Big Apple State College finds any violation of this Usage Policy, Big Apple State College may take any appropriate action to stop or correct such violation, including, but not limited to, shutting down the On-Line Chat Room and/or removing information. In addition, Big Apple State College reserves the right to monitor and retain electronic copies of all communications posted through its On-line Chat room for security purposes and for purposes of quality assurance.

Violations received by Big Apple State College regarding the use or misuse of the On-line Chat Room may be forwarded to campus or other appropriate law enforcement authorities for investigation and resolution.

Student users of the Big Apple State College On-line Chat Room are encouraged to maintain strict levels of secrecy and confidentiality to guard their personal information. If a breach of personal on-line security has been noted or is suspected, students are advised to immediately change their passwords and/or e-mail addresses. Additionally, there is a red button at the bottom of the chat room page. If you are alarmed or concerned regarding on-line discussions, feel free to click on the red button, which will alert College personnel to the problem. Serious breaches of security may be reported to campus administration, campus security, the Big Apple State College Student Union, Computer Services Division, and/or the Dean of Students.

I have read and understand and agree to the Big Apple College Student On-Line Chat Room usage policy.

Jamie Gates

9/14/05

Student Signature

Date

Big Apple State College Student On-line Chat Room Usage Policy

All students utilizing the On-line Chat Room must read and sign this release form. Students who are found to have violated this Usage Policy will be barred from further use of the On-line Chat Room and may face civil or criminal penalties, depending upon the violation.

Students violate Big Apple State College's On-line Chat Room Usage Policy when they engage in any of the following prohibited activities. This is not an exclusive list; other activities not listed may be prohibited, at the discretion of Big Apple State College.

- Hacking and related activities are strictly prohibited. Hacking includes, but is not limited to, illegally or without appropriate College authorization accessing computers, accounts or networks, penetrating or attempting to penetrate College computer security measures, port scans, stealth scans, and other activities designed to assist in hacking.
- Obscene, defamatory, abusive or threatening language or content is strictly prohibited. Use of the Big Apple State College On-line Chat Room to post or transmit, or otherwise make available obscene, defamatory harassing, abusive or threatening language is strictly prohibited.
- Pornography is strictly prohibited. Use of the Big Apple State College On-line Chat room to post or transmit, or otherwise make available any pornographic, obscene or other inappropriate materials is strictly prohibited.
- Any activity meant to cause disruption or interference with the Big Apple State College On-line Chat Room is prohibited. Actions meant to harm, disrupt or threaten to disrupt services, business operations, reputation, goodwill, student and/or student relations, or the ability of Big Apple State College students to effectively and safely utilize the Big Apple State College On-line Chat Room are prohibited.

If Big Apple State College finds any violation of this Usage Policy, Big Apple State College may take any appropriate action to stop or correct such violation, including, but not limited to, shutting down the On-Line Chat room and/or removing information. In addition, Big Apple State College reserves the right to monitor and retain electronic copies of all communications posted through its On-line Chat room for security purposes and for purposes of quality assurance.

Violations received by Big Apple State College regarding the use or misuse of the On-line Chat room may be forwarded to campus or other appropriate law enforcement authorities for investigation and resolution.

Student users of the Big Apple State College On-line Chat room are encouraged to maintain strict levels of secrecy and confidentiality to guard their personal information. If a breach of personal on-line security has been noted or is suspected, students are advised to immediately change their passwords and/or e-mail addresses. Additionally, there is a red button at the bottom of the chat room page. If you are alarmed or concerned regarding on-line discussions, feel free to click on the red button, which will alert College personnel to the problem. Serious breaches of security may be reported to campus administration, campus security, the Big Apple State College Student Union, Computer Services Division, and/or the Dean of Students.

I have read and understand and agree to the Big Apple College Student On-Line Chat Room usage policy.

Casey Wallner

9/14/05

Student Signature

Date

**BIG APPLE STATE COLLEGE
INTERNET CHAT ROOM DIALOGUE EXCERPTS**

EXHIBIT 3

Monday, 9 May 2006

Canonball: enters the chat room 4:45 p.m.

Hi folks, anyone got the assignment done from History of Western Civ from last week? I thought it was pp 205 to 400, but Chancy5 said we had to go all the way to 414. Anyone?

Chancy5: 4:52 p.m.

I'm pretty sure it's to 414 but I could have written it wrong.

Butters: 4:55 p.m.

It must be 414, that's what I wrote 2.

Allthumbs enters chat room at 4:55 p.m.

Cannonball: 4:55 p.m.

More work for me. I'd rather be outside.

Micahforce enters chat room at 4:55 p.m.

page 414 is right. I have that too and just spoke with Prof. G.

Jammin@BASC enters chat room at 4:56 p.m.

Hi everyone. Concur with page 414. BTW-Anyone in here seen the student play at the Union? Hamlet?

Cannonball:

Nope. Shakespeare ain't my bag.

SirVive2005 enters Chat room at 4:58 p.m.

Yankeegirl enters chat room at 4:58 p.m.

Butters: 4:59 p.m.

I heard it was good, but haven't seen.

HughesQ enters chat room at 5:01 p.m.

Cannonball: 5:02 p.m.

I'd rather be outside than in on a day like today.

Micahforce: 5:10 p.m.

Just walked by the lake. Joggers are out in force. Go track team Big Apple.

PhoebeS: 5:11 p.m.

So why, if we'd all like to be outside are we in on our computers?

Jammin@BASC 5:11 p.m.

I'm going out now. Get some p.m. sunshine and exercise.

SirVive2005 5:11 p.m.

Jam's in the window. Exercise all you want, my friend, you won't be able to run fast enough.

Micahforce: 5:12 p.m.

`Jam, you run with the track team?

Yankeegirl: 5:12 p.m.

If you do, run fast and win!

Cannonball: 5:13 p.m.

Jam, if you're on the team, fly!

Jammin@BASC : 5:13

Not on the team.

Jammin@BASC exits chat room 5:13 p.m.

SirVive2005: 5:14 p.m.

Not on the team, but practices nonetheless. In the window.

Canonball 5:15 p.m.

SirVive2005, you're creeping me out.

SirVive2005 exits Chat room at 5:25 p.m.

Allthumbs:

That survivor person was making some inappropriate comments, don't you think?

Cannonball:

Sure do. Vive's out now. No worries.

Thursday, 12 May 2006

Jammin@BASC : enters chat room 3:18 p.m.

Fleetstreet: enters chat room 3:18 p.m.

Yankeegirl: enters chat room 3:19 p.m.

Anyone know if the campus is doing a flag day celebration again this year?

Striker8: enters chat room 3:19 p.m.

Coreforce: enters chat room at 3:19 p.m.

Allthumbs: enters chat room at 3:19 p.m.

Zulu: enters chat room at 3:20 p.m.

Don't know but last year's celebration was a gas. Check the union bulletin board?

Yankeegirl: did that.

Nothing there.

Rogerwilco: enters chat room 3:22 p.m.

Jammin@BASC:

Last year's was cool. The color guard was awesome.

Shokwave: enters chat room 3:23 p.m.

Speaking of color, Jamming's been seen wearing school colors all week. Think blood won't show on those dark colors?

Yankeegirl:

What's that all about?

Fleetstreet:

Yeah, what's up?

Yankeegirl:

Talk like that can prompt a panic button alert, you goof.

Shokwave:

No harm intended, no harm done. Drop it

Jammin@BASC:

exits chat room 3:25 p.m.

Allthumbs:

Hey Shokwave, you know someone using SirVive2005? You two should get together sometime.

Shokwave: Aware of SirVive2005.

Not interested.

Friday, 13 May 2006

Shokwave: enters chat room at 2:30 p.m.

Striker8: enters chat room at 2:45 p.m.

Jammin@BASC: enters chat room at 2:45 p.m.

TravellerX: enters chat room at 2:45 p.m.

Yankeegirl: enters chat room at 2:46 p.m.

Classes out for the weekend. Sigh.

Striker8:

Yeah, relief from drudgery, eh?

TravellerX:

Anyone on from the history and forensics class? Some pretty strange stuff in that class.

Striker8:
like what?

Allthumbs enters chat room 2:47 p.m.

TravellerX:
like lots of talk about killing. Really freaky.

Striker8:
that's what's going on in class? Talk like that?

Shokwave:
Some criminals used fear as a control; fear is stronger than chains and fences.

TravellerX:
Upset quite a few students in the class. Some had relatives who had been victimized. It was a sad class.

Yankeegirl:
My neighbor's mother survived an attack. She absolutely never talks about it.

Striker8:
understandable not to talk about pain and suffering when it's been so close.

Yankeegirl:
Guess so. Not sure I'd have survived.

Shokwave:
Wonder if anyone our age would handle the situation well. Would be interesting to try to re-create the atmosphere.

Yankeegirl:
You kidding?

TravellerX:
That's crossing the line. Who would want to do that?

Striker8:
Someone not quite right in the head.

Shokwave:
Don't call me crazy.

Striker8:
I didn't. But the thought of studying pain and suffering? Come on.

Shokwave:
It would be amazing to study pain and suffering. Doctors must do it all the time. Long-term effects of suffering could produce some interesting data. Volunteers?
Hey, Jam you still here?

Jammin@BASC:
just listening

Allthumbs:
Don't respond to that kind of comment.

Shokwave:
Listen good and respond or don't. Anticipation is what it's all about, and building fear. You never know when you'll be forced to face your greatest fear...suffocation, torture, painful prolonged death.

Jammin@BASC signs off at 3:15 p.m.

Striker8:
You're a freak

Shokwave:
Thanks for the compliment. Jam is full of fear. Would make a great experiment.

TravellerX:
You're so lame.

Allthumbs:
Shokwave, you're about crossing the line there with all that torture talk.

Shokwave:

Don't be such babies. It's talk.

*** no significant discussion for approximately 20 minutes

Jammin@BASC signs back on at 3:35 p.m.

Shokwave: Jammin is back.

Time is running out my Jammin friend. Maybe we can meet in the alley?

Jammin@BASC signs off at 3:37 p.m.

Saturday, May 14 2006

Allthumbs enters chat room 9:30 a.m.

Anyone up yet?

Coreforce enters chat room at 9:32 a.m.

Just joined in. No chatter?

Allthumbs:

nothing this a.m. Weekend. Sleeping late maybe

Talon enters chat room at 9:33 a.m. There's been talk on campus that someone in the chat room is freaking people out. Anyone on line a witness?

Allthumbs:

You may mean someone named Shokwave. Been picking on participants and trying to scare people.

Talon:

Why would someone do that?

Shokwave enters chat room 9:34 a.m.

Coreforce:

Who knows? Shokwave, you nuts or what?

Shokwave:

I was just talking about a forensics and history class. I can't help if people take things out of context.

Allthumbs:

You were crossing a line. You obviously ID'd Jammin and have been trying to freak...you crazy?

Shokwave:

I admit to being mad, but madness can be a good thing. It gives me direction, focus, and an outlet for my aggression. Ever wonder about pain and suffering?

Jammin@BASC enters chat room:

Shokwave:

And, after a five-minute break, "Jamming, can you come out of your 2nd floor roost and play?"

Jammin@BASC exits chat room.

*** (indicates lapse in time and refers to later in the day)

HMSPinfore: enters chat room at 7:30 p.m.

LaLa: enters chat room at 7:30 p.m.

Shokwave enters chat room at 7:31 p.m.

Anyone review the chat room conversations from earlier in the afternoon re: torture, etc.?

LaLa:

not me

HMSPinfore:

me neither.

Thor56:

enters chat room at 7:32 p.m.

Yankee girl: enters chat room at 7:32 p.m.

Not that again.

CATGIRL: enters Chat room at 7:32 p.m.

Free speech. What was going on?
Shokwave:
discussion on pain and torture and what can be learned from fear.
Thor56:
I'd just as soon not know.
LaLa:
Me neither.
Shokwave:
Why not? Statistics tell us that we're just about all going to be victims at some point in our lives.
LaLa:
So what? You can't let fear guide your whole life.
CATGIRL:
No kidding. What a waste of time.
Jammin@BASC
enters chat room at 7:45 p.m. Not this again.
Shokwave:
You chickened out before.
Jammin@BASC:
Had better things to do.
Shokwave:
Really? Like what.
Jammin@BASC:
Inappropriate question.
Shokwave:
Not really, but never mind. Back to the discussion. Everyone's going to be a victim. Even all of us.
I've actually been one already so statistically I may be out of the picture.
LaLa:
What happened to you?
Shokwave:
to quote someone above, inappropriate question.
LaLa:
sorry
Shokwave:
Just remember, the clock is ticking. Time is on my side. Time is running out my friend.
LaLa:
What's that supposed to mean?
CATGIRL:
Yeah, what are you talking about?
Shokwave:
Just that statistically, all of you are going to have to endure. Gotta meeting.
Shokwave:
exits chat room 7:50 p.m.

No relevant discussion for approximately 20 minutes

SirVive2005:
enters Chat room 8:15 p.m.
Anyone still want to talk about pain and suffering? Time is running out, my Jammin friend. Maybe we can meet?
Jammin@BASC:
exits chat room at 8:16 p.m.

Message posted at 9:30 p.m. by Shokwave

Chat room entry read at campus computer room with police witnesses, "Jam will rot just like Jelly if buried long enough."

PART VI NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT

RELATED LAW

Set forth below is the law that is applicable to the case. Although you can review other materials in preparing your case, you can only cite to the sections of the New York State Penal Law set forth in Section A and the case law that is set forth in Section C in your trial enactment.

Section A contains relevant excerpts from the New York State Penal Law that we have adapted for use in the Mock Trial Tournament. **Section A contains the only statutory law that applies in this case.** Although New York State has had laws against stalking on the books since 1999, those laws did not specifically cover stalking that involved the use of a technological device or what is sometimes more commonly referred to as “cyberstalking.” Today, there are a number of bills pending in the New York State legislature that would make cyber-stalking a crime. The excerpts set forth in Section A are based on the relevant sections of the New York State Penal Law in effect as of the printing of these materials; however, we have changed that statute for purposes of the Mock Trial Tournament so that it includes amendments that have been proposed in one of the bills pending in the New York State legislature that would make “cyberstalking” a crime in New York State.

Section B contains a copy of Bill 5038, which, as of the printing of these materials, is pending in the New York State Assembly. Bill 5038, if enacted, would amend the New York State Penal Law by criminalizing stalking with the use of a technological device in the way that is set forth in Section A. We have included Bill 5038 so that you have a better understanding of how existing laws are amended to keep up with our ever changing times. **You should not cite Bill 5038 in your trial enactment; it is included as a reference only. For purposes of the Mock Trial Tournament, you should assume that Bill 5038 was passed and enacted into law exactly as it was proposed, and that the amended statute (as set forth in Section A) was in effect at the time of the chat room communications that are the subject of the case.**

Section C contains summaries of relevant cases from the State of New York. Since for purposes of this Mock Trial Tournament, New York’s “cyber-stalking” statute will be newly adopted, *State of New York v. Pat C. Macintosh* presents a “case of first impression” in the state. In other words, this case is the first time that a person has been charged under the newly amended statute and therefore it is the first time that a judge and jury will be applying the new “cyber-stalking” statute in a case. Therefore, while existing New York case law (the “law of the land”) is certainly relevant because the existing New York stalking statute has been on the books since 1999, there are no New York cases addressing “cyberstalking” under the new statute.

SECTION A: Relevant Law

(Excerpts from New York State Penal Law that includes the amendments from Bill 5038)

**Title A – General Purposes, Rules of Construction, and Definitions
Article 10 – Definitions**

§ 10.00 Definitions of terms of general use in this chapter

Except where different meanings are expressly specified in subsequent provisions of this chapter, the following terms have the following meanings:

* * * *

4. “Misdemeanor” means an offense, other than a “traffic infraction,” for which a sentence to a term of imprisonment in excess of fifteen days may be imposed, but for which a sentence to a term of imprisonment in excess of one year cannot be imposed.
5. “Felony” means an offense for which a sentence to a term of imprisonment in excess of one year may be imposed.
6. “Crime” means a misdemeanor or a felony.
7. “Person” means a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

* * * *

9. “Physical injury” means impairment of physical condition or substantial pain.
10. “Serious physical injury” means physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

**Title H – Offenses Against the Person Involving Physical Injury,
Sexual Conduct, Restraint and Intimidation
Article 120 – Assault and Related Offenses**

§ 120.40 Definitions

For purposes of sections 120.45, 120.50, 120.55 and 120.60 of this article:

* * * *

- 4 . “Immediate family” means the spouse, former spouse, parent, child, sibling, or any other person who regularly resides or has regularly resided in the household of a person.

* * * *

6. “Technological devices” means the internet, cameras, global positioning tracking devices and any other tracking device, but shall not be limited to such items.

§ 120.45 Stalking in the fourth degree

A person is guilty of stalking in the fourth degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:

1. is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person’s immediate family or a third party with whom such person is acquainted;
2. causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person’s immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct;

* * * *

Stalking in the fourth degree is a class B misdemeanor.

§ 120.50 Stalking in the third degree

A person is guilty of stalking in the third degree when he or she:

* * * *

3. With intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family; or

* * * *

5. Commits the crime of stalking in the fourth degree by the use of a technological device or technological devices.

Stalking in the third degree is a class A misdemeanor.

§ 120.55 Stalking in the second degree

A person is guilty of stalking in the second degree when he or she:

* * * *

6. Commits the crime of stalking in the third degree by the use of a technological device or technological devices.

Stalking in the second degree is a class E felony.