

## West High teacher not guilty in sex case

Judge says no evidence sex acts occurred with the 16-year-old student

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Nearly the entire courtroom burst into tears Friday when the judge pronounced West High School teacher Jose Bernardo Fanjul not guilty of illegal sexual conduct with a 16-year-old female student.

There were whoops and hollers of joy for Fanjul, who stood, tears streaming down his cheeks, while one supporter after another crushed him in emotional hugs and wept on his shoulders.

Meanwhile, across the aisle, the girl put her head down and sobbed, sitting with her father's arm around her and her stepmother on the other side gently stroking her back. The girl's family left through a secure back door while Fanjul and a group of friends and relatives went to an empty witness room on the first floor of the courthouse for private prayer.

Fanjul, 46, had faced five counts of forcible sodomy and five counts of forcible sexual abuse, all second-degree felonies that each carry a potential prison term of up to 15 years behind bars. He chose to have a bench trial, in which 3rd District Judge Ann Boyden alone rather than a jury would determine his fate.

Outside the courtroom, a visibly relieved and tired-looking Fanjul thanked God, his attorneys and his wife, Angela, for supporting him.

"I live in the greatest country in the world," the Venezuelan native said. "I was afraid this would turn into a lynching, a high-tech lynching, my own lynching. But thanks to (my attorney) and a judge who is outstanding and honorable, they stopped the lynching."

Defense attorney Kenneth Brown termed the verdict "justice" and said he loved it.

"It's a judgment of a system that works," Brown said. "There has to be proof, not a possibility (of wrongdoing)."

Another West High employee, Marco Herrera, 54, a school counselor, is in prison after he admitted he had engaged in illegal sexual activity with the same girl. No one in Fanjul's case challenged Herrera's guilt. Herrera's situation was discovered by impeccable witnesses — police officers who chanced upon him engaging in sexual behavior with the girl in a public place.

Fanjul's four-day trial included exhaustively detailed descriptions of alleged sexual acts the girl said had occurred between her and her teacher. Prosecutor Cristina Ortega said the judge did not have to rely solely on the girl's word, but could look at the unusually high number of documented phone calls and electronic communications between Fanjul and the girl, even when school was not in session. The girl's father had grown suspicious when she was on the phone so much with mystery calls and installed spyware that captured the content of social networking conversations, including some where Fanjul said he "loved" the girl.

Fanjul did not testify, but a parade of students and teachers testified on his behalf and many spoke of how he expressed fears about the girl's self-esteem and his efforts to enlist other students to befriend her, especially since she said she felt ostracized by many West High teachers after the Herrera case. However, Ortega characterized this as a smokescreen to conceal the true nature of Fanjul's interest in the girl. The prosecutor suggested Fanjul had "used" the girl's closest friend as a third-wheel cover for out-of-school get-togethers.

"He wasn't trying to help her, he was trying to help himself," Ortega said repeatedly during closing arguments. "There is no evidence for (the girl) to have any motive to lie."

Brown, however, struck back at what he considered the core of the case: Everything rode on the girl's accusations.

Numerous phone calls and e-mails alone do not add up to illegal sexual activity, Brown said. Fanjul socializing with the girl, as well as other students, outside of school does not add up to illegal sexual activity, he argued.

Brown also called the girl a liar and an admitted perjurer. He made much of the fact that the girl confessed she had lied under oath at an earlier hearing for Marco Herrera because, as she said later, she had wanted to protect Herrera.

"Why are we convinced she doesn't have some ulterior motive now?" Brown asked. "She would have you believe that just because she said it, it is so."

Brown suggested that perhaps the girl was upset about the Herrera situation, felt the school had not protected her and was very angry.

Boyden is a veteran judge who was appointed to the bench in 1997 and served on the Salt Lake County Children's Justice Center Advisory Board for six years. She said she spent considerable time on Thursday reviewing the evidence in the case so she would be prepared to hear closing arguments and render a verdict.

Boyden said there was no credible evidence sufficient to find Fanjul guilty beyond a reasonable doubt.

Fanjul, 46, an award-winning teacher who is admittedly unconventional, has been on unpaid administrative leave from West High School.

"Other than that, we cannot give out current employment status," Salt Lake School District spokesman Jason Olsen said when asked about Fanjul's work situation.

Fanjul said Friday he was unsure what his future plans were. He added jokingly, "I'm going on a world tour with the Spice Girls."

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