

Reformers Want to Give Jurors a Freer Hand

Courts: Juries should be able to ignore laws they deem improper and instead follow their consciences, group says.

By Rene Lynch

Times Staff Writer

Santa Ana – The jurors were agreed: The Anaheim woman had died of toxic shock syndrome in 1989 because of a tampon that she used shortly before lapsing into a life-ending coma.

But when it came time to consider damages in the Santa Ana courtroom four month ago, many of the jurors said later, they found themselves restricted and befuddled by the complex legal instructions. And so while some jurors felt that the victim's husband and three young children deserved compensation for their loss, the family was ultimately given nothing.

To hear members of a fledgling Orange County judicial reform group tell it, cases like this one have become disturbingly common in the American legal system. Jurors, they insist, have been stripped of their power to balance the law against their own consciences.

"The American jury system used to be a balance and check on government but we've gotten away from all that," said Peymon Mottahedeh, 29, of Tustin, a court interpreter who is the local organizer for the Orange County branch of the Fully Informed Jury Assn.

The Montana-based FIJA caimans about 20,000 members nationwide, including a few dozen in Orange County. It is backed by many libertarians and others seeking to limit government control and to realize more lenient laws on weapons, drug use and other controversial issues.

Four months in existence, the Orange County chapter is now mounting an aggressive campaign of its own to give jurors more leeway over the decisions they make.

FIJA members have written to Superior Court judges in recent weeks to ask that they instruct jurors that they have an inherent right to nullify laws that they feel are improper. They plan to pass out literature on the subject to jurors. And they are holding

a protest at the Orange County Courthouse this week to rally support for their ideas, an event timed to commemorate a centuries-old rebellion by a jury in England.

The little-known association is the latest group to express dissatisfaction with the legal system in Orange County.

The Municipal Court in Santa Ana that is responsible for arraigning hundreds of criminal defendants each week has come under fire from the public defender's office for allegedly sidestepping well-established judicial procedures, such as providing attorneys for poor defendants. And minority advocates have attacked the Orange County Grand Jury in recent months over its lack of minority representation, accusing it of insensitivity.

But some judges remain skeptical over FIJA's aims.

Presiding Orange County Superior Court Judge Donald E. Smallwood said the group is welcome to protest, but he does not anticipate any wide-scale juror revolt.

"I just take this stuff and toss it in the trash," said another Superior Court judge, who did not want to be identified, "It's crazy propaganda."

Smallwood added that he is not concerned that FIJA leaflets or the protest will interfere with jury selection.

FIJA members believe that jurors have the inherent right to nullify the law. Such a right would allow a jury to acquit a defendant in a case where there is evidence of a violation if jurors believe the law is unjust, supporters say. FIJA claims reform will lead to a fairer legal system and rid of government interference.

The organization collected more than 500,000 signatures in California several years ago in a failed effort to place a measure on the ballot that would require judges to advise jurors that they can judge the law as well as the facts in a case.

A similar bill died in the Arizona state Senate this past spring.

"It's a very, very controversial issue," said William C. Thompson, associate professor of criminology, law and society at UC Irvine. "juries have long been celebrated in part because they can and do nullify laws, and it's seen as a blow for liberty in a time of tyranny."

Thompson warned, however, that allowing juries to rule by personal belief could lead to "vigilante justice."

"One has a great deal of difficulty with a lawless jury," said Thompson. "Does that mean jurors evidence but the defendant is real scum?"

But Mottahedeh of FIJA said opponents of jury reform wrongly assume that 12 jurors would come together and agree to do the unthinkable – such as unleashing a child molester or convicting an innocent but unsavory defendant.

“If we are not good enough to judge our own laws, we should have a dictator telling people what to do and a government that treats their people as incompetents and bad subject,”

Mottahedeh said. “In America, we the people rule ourselves and can make and repeal the laws.”

Drug laws are a prime target, Mottahedeh said, adding that he believed jurors could send a message to legislators about where the so-called “war on drugs” should continue.

The history of the United States is rich with examples of jurors rebelling against laws they deemed unfair, said Don Doug, a Montana resident who is FIJA’s national director and co-founder.

During slavery, jurors in the North Routinely refused to convict slaves of running away, even through they were clearly in violation of existing law. Diog said.

It was also the free will of jurors that helped put an end to the Salem witch trials and to Prohibition, Doig said.

FIJA declared Sept. 5 “Jury Rights Day” in commemoration of an English jury that refused to convict two Quaker men accused of unlawful religious assembly. The jury was locked up, refused food and even fined but they refused to charged their verdicts, Diog said.

Erwin Chemerinsky, a constitutional law professor at UCLA, said there is no provision in the U.S. Constitution that allows jurors to disregard the law.

“In practical terms of course, it happens. If a jury is outraged they can acquit,” Chemerinsky said. “But the jury is supposed to follow the law as instructed by the judge. I don’t think it would ever be a good idea for judges to tell jurors: Here’s the law, but if you don’t like it. Throw it out the window.”

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