

# Prosecutor asks judge to rule out 2 arms protesters' defense theories

By Rachele Kanigel  
Staff writer

CONCORD — The prosecutor in the trial of 15 Concord Naval Weapons Station protesters asked a judge Friday to ban two defense theories he anticipates the demonstrators may want to use.

Deputy District Attorney Dodie Katague asked Mt. Diablo Municipal Court Judge Douglas Cunningham not to allow the so-called "international law" and "choice of evils" or "necessity" defenses that justify breaking a law in order to block something unlawful or unacceptable from happening.

The international law defense argues that defendants can break a law to avoid or block the commission of international crimes against peace or humanity, Katague said.

Attorneys for the protesters urged the judge not to disallow the defenses before the trial begins.

"We can't be forced to disclose our theory of defense," said Stan

Dewey, one of six attorneys representing the protesters free of charge. That would violate the defendants' right to protect themselves from self-incrimination, he said.

Katague said the judge should determine whether the defenses are legal in California. Cunningham said he will make a decision by the next hearing on Feb. 26.

"I am strongly inclined to deny the motion," he said.

The 15 protesters will represent a total of 37 people who were arrested at the Weapons Station between Sept. 3 and Oct. 13. They are charged with blocking railroad tracks, blocking a public thoroughfare and trespassing.

Katague dismissed charges of resisting arrest against two of the defendants.

The trial is scheduled to begin March 7 in Mt. Diablo Municipal Court in Concord.

Attorneys for the protesters asked that the trial be held in Marti-

nez or some other spot that can accommodate the large crowd anticipated. They suggested the Veteran's Hall in Martinez. Cunningham said he would rule on that motion Feb. 26.

Katague anticipated the trial will take about a week.

He said the issue of what was in the trains the protesters tried to block will not be addressed at any time in the trial.

"We're not here to argue the policies of the United States of America," he said. "It's a question of whether they were blocking the tracks or trespassing."

Protesters have said they block the railroad tracks at the weapons station because the trains carry arms to be sent to Central America.

In addition to Dewey, attorneys representing the protesters are Sylvia St. A. Keita of Point Richmond, Mary Izett of Oakland, Margaret Mossman of Berkeley, Lowell Richards of Pleasant Hill and Daniel Russo of Vallejo.

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## Judge leaves door open for protesters to use 'Nuremberg' defense at trial

CONCORD - It appeared yesterday that an attempt to limit the defense available to protesters arrested at the Naval Weapons Station before they go to trial will be rejected by Municipal Court Judge Douglas Cunningham.

During a pretrial conference, Cunningham said he was inclined to deny a motion by the District Attorney's Office to prohibit a defense relying on the issues of necessity or international law.

Once the trial begins, however, Cunningham said the question of an appropriate defense may be raised again.

Cunningham took the matter under submission and said he will make a final ruling before the trial of 15 protesters begins March 7. Twenty-two others arrested have agreed to abide by the verdict received by the majority of those on trial.

All face misdemeanor charges, including blocking a public roadway, blocking railroad tracks and trespassing.

Deputy District Attorney Dodie Katague said yesterday he will fight any attempt during the trial by the protesters to move the issue beyond the question: "did they block traffic, did they trespass?"

Although the protesters' attorneys said a defense has yet to be discussed, it is believed they will attempt to defend their actions based on the Nuremberg principles of international law accepted by the United States.

The Nuremberg principles, say members of the peace group called Nuremberg Actions-Concord, requires individuals to take action to stop crimes against peace and humanity.

# Nuremberg Actions

65 Eckley Lane Walnut Creek, California 94596

415/933-7850



## PRESS RELEASE

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Contacts: Ellen Danchik  
Chuck Goodmacher  
(415) 933-7850

## DEFENDANTS IN "CONCORD 33" CASE FILE WRIT

Attorneys for the "Concord 33", defendants arrested at the Concord Naval Weapons Station for blocking arms shipments, filed a writ today in Superior Court, asking that a municipal court decision preventing the use of the Nuremberg Defense be reversed. Judge Douglas Cunningham had ruled on a District Attorney's motion on February 26, 1988 that the defendants could not argue their actions were necessitated by U.S. violation of international law and by the need to prevent crimes being committed by the U.S. with weapons shipped from Concord Naval Weapons. Attorneys for the "Concord 33" argue to respond to the District Attorney's motion would force them to reveal legal strategies before trial and shift the burden of proving the case to the defendants, in violation of Constitutional guarantees, including the right to be presumed innocent until proven guilty.

Oral arguments will be heard in Superior Court in Martinez on April 12, 1988 in Dept. 2.

10:30AM at 725 Court St.