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Contra Costa

Lawyers Question Necessity Defense

A municipal court judge's ruling prohibiting attorneys representing Concord Naval Weapons Station protesters from using "international law" and "necessity" defenses was the subject of oral arguments Tuesday in Contra Costa County Superior Court.

Prosecutor Dodie Katague maintains that "international law" defense, the premise that protests at military installations are justified by a need to stop activities allegedly violating international law, generally has not been allowed by state or federal courts.

Attorneys for 33 protesters charged with blocking roads and railroad tracks at the Concord facility contend that eliminating defense strategies before a trial begins forces them to reveal their arguments prior to trial.

Superior Court Judge Richard Arnason said he will rule next week on the writ, *Duncombe v. Mt. Diablo Municipal Court*, C88-01168, filed by defense lawyers objecting to a decision by Municipal Court Judge Douglas Cunningham.

Cunningham ruled in February that international law cannot be used as a defense because California law does not recognize international war crimes as offenses.

Even if defense lawyers ultimately are prohibited from citing international law, the protesters' reasons for blocking the railroad tracks and demonstrating are expected to be heard by the jury.

At a recent separate trial of two people arrested for protesting at the Concord facility, Cunningham allowed the defendants to say they were protesting arms shipments to Central America, sometimes over Katague's objections.

Katague said Tuesday he thinks defendants in upcoming trials will also be allowed to explain their motives for demonstrating.

The trial date will be set after Arnason rules on the defense writ.