

Jurors can fight injustices

BY ARAM JAMES

On April 19, New York-based federal Judge Kimba Wood dismissed an indictment against 80-year old Julian P. Hecklen for alleged jury tampering in the case against him for handing out materials to members of the public regarding the right of jurors to apply the historic doctrine of jury nullification.

Nullification is the right of jurors to come back with a verdict of not guilty even if the jurors believe that the defendant in fact technically violated the law, but the jurors conclude that the law in question is an immoral or bad law or a reasonable law applied in a discriminatory fashion.

Judge Wood said that a person violates the jury tampering law only when they try to influence a juror in a specific case pending before those same jurors but not for merely handing out informational materials (a protected First Amendment activity) to members of the public who come to the courthouse for a variety of reasons not necessarily related to jury duty.

A critical right

The right of jurors to veto or nullify an unjust law — or a law that may be fair on its face but is being applied in a discriminatory fashion — is critical to our democracy and to our ability to serve as citizen jurors.

The decision by a federal judge to

GUEST OPINION

toss out an indictment against a citizen for handing out materials in public in front of a courthouse is a powerful rebuff to the U.S. government's ongoing efforts to intimidate and steal from its citizens the right to think and speak freely and to exercise their independent judgment in the context of their jury service.

The judge's decision goes a long way to prevent — or at least to mitigate — jury tampering by judges and prosecutors who, on occasion, attempt to leave jurors with the wrong and intimidating impression: that to do anything other than to convict the person on trial is itself a criminal act.

Brave jurors

Historically brave and courageous jurors refused to convict those charged with violating the Fugitive Slave Act and other immoral laws despite the best efforts of prosecutors and judges to steer jurors toward a conviction.

If more jurors were fully informed of their right to disregard immoral or discriminatorily enforced laws — such as California's "Jim Crow Drug Laws" and the racially motivated three-strike law — they would undoubtedly refuse to convict many defendants charged under these morally repugnant and frequently discriminatory laws.

Knowledge is power. We can just say "no" to bad laws. We can take back our criminal justice system from the forces that would prefer that justice be administered and understood for the benefit of the few to the detriment of the majority of people.

In California, pursuant to the holding in *People v. Williams* 25 Cal. 4th 441 (2001), jurors are explicitly precluded from exercising the doctrine of jury nullification. In fact, if a judge discovers that a juror is refusing to apply the law to a case, he or she may be discharged from the jury.

On the other hand, if the judge is unaware that the jury has engaged in nullifying what they perceive to be an unfair or bad law — the double jeopardy clause would prohibit retrial of an acquitted defendant. In *Sparf v. U.S.* 156 U.S. 51 (1895), the U.S. Supreme Court held that federal judges are not required to instruct jurors on their right to nullify bad laws.

Understanding the power of jury nullification is one way to even the odds of obtaining justice for all. To learn more, check out the Fully Informed Jury Association.

Aram James is a retired Santa Clara County deputy public defender and a co-founder of the Albert Cobarrubias Justice Project, a legal advocacy organization located in San Jose.

LETTERS

New smoking ban

Dear Editor: Mountain View's new smoking ban recently took effect and the city is telling business owners they must "proactively inform customers (they) find smoking in violation of the law" about it. This includes customers outside their building but within the 25-foot restricted smoking perimeter.

As the Post pointed out Saturday, a failure by business owners to make smokers extinguish their cigarettes could result in an administrative or criminal citation or a fine for the owner.

Why should business owners be responsible for enforcing the new, more restrictive smoking ban? The City Council seemed more interested in receiving a \$53,788 grant from the county to impose a new ban than it was in listening to objections from business owners and citizens.

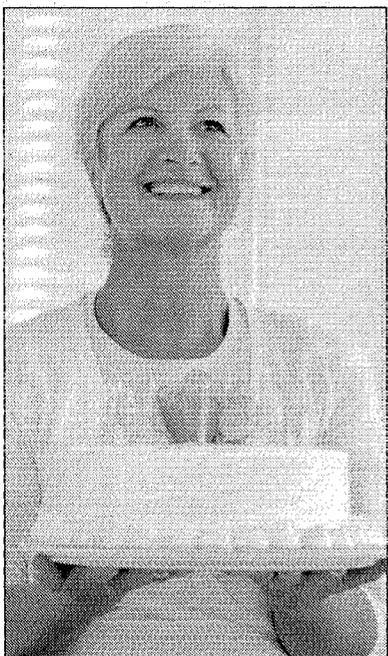
Mylan Mann
Mountain View

'Pave the Bay' guys

Dear Editor: It's good news that Cargill/DMB withdrew their initial proposal for building on the Redwood City salt ponds. But "The Pave the Bay" guys have not really gone away. They are preparing their second assault and we taxpayers had better be prepared to fight again.

Ramona M. Ambrozic
Redwood City

Happy 65th Birthday!



Medicare Supplement Plan F as low as

\$97*

per month

Authorized Broker

blue 

Blue Shield of California
An Independent Member
of the Blue Shield Association

 ProInsurance
INTERNATIONAL PROINSURANCE SERVICES, LLC.

(650) 326-1900

3925 Bohannon Drive Suite 100, Menlo Park, CA 94025

www.prohealthinsurance.com

CA Ins Lic #0D35070

*As of January 2012, the featured monthly rate of \$97 is the Single-party non-tobacco rate for Medicare Supplement Plan F for individuals age 65-66 residing in San Mateo county after Welcome to Medicare Rate Savings and Easy\$Pay savings are applied. Other rates may apply.

Timing Is Everything

Free Wills and Living Trust Seminar!

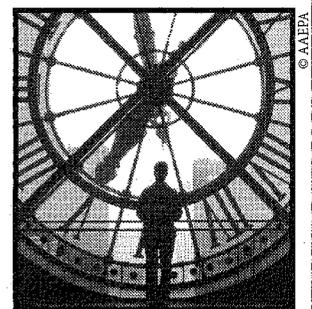
Join us at a FREE Wills and Living Trust seminar conducted by a leading estate planning law firm, and learn how a living trust can benefit you and your family:

- AVOID probate delays and expenses!
- PROTECT your assets from your child's possible divorce!
- SAVE estate taxes—give your money to your family!
- PRESERVE your money for your children and charitable causes!
- CHOOSE the right options for your IRA and 401(k)!

Everyone needs an estate plan, but sometimes it seems like we're too busy, or it's not something we need today... As long as we do nothing about it, it will always be in the back of our mind. There is no time like the present to learn more about what your options are.

(650) 463-1550

Attend one of these seminars and receive a FREE, one-hour, private consultation to answer any questions about setting up a Living Trust (up to a \$450 value).



Presented by:

FALK, CORNELL & ASSOCIATES

An Estate Planning Law Firm
350 Cambridge Avenue Suite 130
Palo Alto, CA 94306

Attorneys Serra Falk Goldman and Lisa M. Kajani provide clients with the best in Estate Planning services. The law firm handles Wills, Trusts, Probate, Trust Administration, Elder Law, Medi-Cal Planning, Special Needs Planning and Asset Protection. Falk, Cornell & Associates, LLP are members of the American Academy of Estate Planning Attorneys.

PALO ALTO

Wednesday, May 23rd

7:00 p.m.-8:30 p.m.

Offices of Falk,
Cornell & Assoc., LLP

350 Cambridge Ave., Suite 130

Seating Is Limited, So Call (650) 463-1550 Now!

24-Hour Seminar Reservation Line

www.falkandcornell.com

Estate Planning Advertisement