

COVER STORY

JUSTICE DENIED

BY JILL KRAMER

On the judge's order, a big, black dog was posted immediately behind the woman's chair, a bailiff hanging on to its leash. The woman sat before the judge without a lawyer. Across the aisle, she was opposed by two attorneys, one representing her ex-husband, the other representing her ex-father-in-law. The woman, Semrin Etefagh, was accused of no crime. She was appearing in Marin county family court for the financial settlement of her divorce.

The judge, John Sutro, was eventually disqualified by an appellate court for the appearance of bias. He was the third in a succession of judges assigned to the case. The first, Michael Dufficy, was challenged for bias and recused himself. The second, Lynn Duryee, was overturned on appeal. Currently handling the case is Commissioner Randolph Heubach, who was recently challenged as well. The attorney now representing Ms. Etefagh has asked that the case be moved to Los Angeles. His contention is that she can't get justice in Marin county.

It's not the first time troubled Marin litigants have looked to the L.A. court for justice. When Alanna Krause was forced by the Marin family court to live with her father despite her repeated claims that he abused her, she ran away to the south. The Los Angeles juvenile court found her complaints credible and restored her to her mother's custody. Now 18, Alanna is suing her father, her court-appointed therapist and the attorney who had been assigned by the Marin court to represent her.

Criticism of Marin family court has been simmering for years, occasionally

erupting in a well-publicized splash. But the efforts of advocates working for reform seemed stymied for a long time. Complaints to the county civil grand jury sparked an investigation in 1997, but it was aborted by county counsel. Litigants and attorneys have been questioned by the FBI, but that probe was eventually tabled. A privately commissioned white paper damning Judge Dufficy prompted a public outcry, but talk of recalling the judge was quickly hijacked by the marijuana reform movement and other agendas. The recall effort turned into a witch hunt targeting not only Dufficy, but two other judges and the district attorney. It ultimately failed. The National Council for State Courts was asked to review local procedures and make recommendations; but when the NCSC's report was finally issued, after months of investigation, multiple drafts and repeated delays, the essential issue of fairness in family court was ducked.

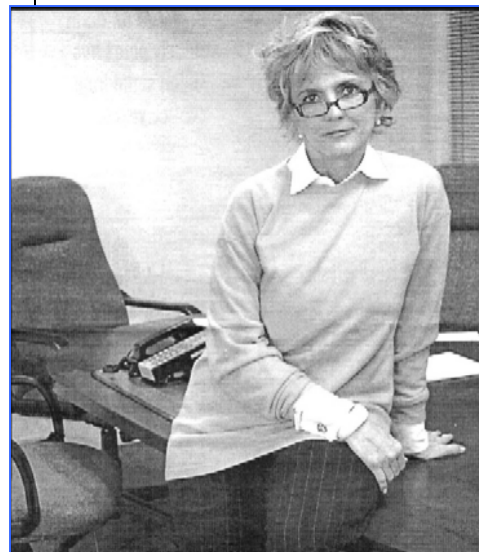
But court critics hope the tide is now turning. The state chapter of the National Organization for Women conducted an investigation last year and produced a report on inequities in family courts throughout California. A coalition of activists in Santa Clara county have succeeded in reforming the court there, restoring custody to 24 parents who had been fighting the system for years. And the Commission on Judicial Performance, after dismissing numerous complaints against Marin county judges in the past, recently took "corrective action" against both Dufficy and Sutro.

The recent filings in the Etefagh case give critics even more hope that change is coming. If a higher court grants the

motion to move this case out of the county, it may pave the way for other cases to change venue as well. And it may prompt needed reforms and restore confidence in the court here.

The Etefagh case is notorious in the Marin legal community. In a county where enormous wealth and charges of hidden assets are not unusual, the size of this estate and the complexity of the case dwarfs all others. But the case is typical in that the wealth is in the hands of the ex-husband, who has hired a crack attorney, while the ex-wife, with no resources of her own, was at one point left to represent herself. Not surprisingly, the court's rulings seem to consistently favor the well-represented, moneyed party.

But Semrin Etefagh thought her ex-husband enjoyed an edge in court even at the beginning of the case, while she still had a lawyer. At the time, in 1998,



Michael Dufficy was the one judge who heard all family cases in Marin, as he had for the previous five years. Semrin was told that there was a group of attorneys that Dufficy favored. Every attorney practicing family law in the county knew about the FLEAs – Family Law Elite Attorneys, as they called themselves – a part-business, part-social club that used to meet regularly. Dufficy had been a member before he became judge, and he continued to invite the crowd to his Calaveras county ranch for an annual bash over Memorial Day weekend. The attorney for Semrin's ex-husband, Judith Cohen, was a FLEA. Semrin decided that, if she were to get equal treatment, she would have to hire another FLEA.

She hired Kathryn Ballentine Shepherd, one of Dufficy's closest friends. The Shepherds and the Dufficys had even vacationed in Italy together one summer. Shepherd took the case in January, 1999. In time, she became convinced that Dufficy had pre-judged the case against her client long before. She filed a declaration outlining the reasons for her belief and Dufficy recused himself. But Semrin was to see no improvement in the way she was treated in court. In fact, things got considerably worse.

Semrin had been married to Vahid Etefagh for 23 years. Born in Istanbul, Semrin came West in her teens and graduated from University High School in Los Angeles in 1971. In her class photo, the dark-haired cutie looked like a Mary Quant model. Vahid, an Iranian student at UCLA, was her first boyfriend. They married a year after she graduated. While Vahid attended graduate school in textile engineering, they lived in North Carolina, where their first son was born.

It was after the young family moved to Iran in 1977 that Semrin and Vahid began, slowly, to drift apart. Semrin found herself in a strange country, struggling to learn Farsi, while her husband was away in the military for six months at a time. When he was home, he ran his family's textile factories. The 1979 revolution ushered in a repressive fundamentalist regime, and it seemed to Semrin that Vahid was reflecting the new culture, becoming

more macho, more emotionally distant. But the biggest change in their lives came with the Iran-Iraq war. Vahid won the government contract to produce blankets and other textile supplies for the military. It was a huge windfall. The Etefaghs became fabulously wealthy, traveling the world, buying up properties in their favorite vacation spots - a ski chalet in Switzerland, a sprawling home in Palm Springs, a \$2 million home with an indoor pool in Tiburon. "The money was coming in jute bags to our house," says Semrin. She believes it destroyed the marriage.

Semrin came to Marin for the birth of their second son in 1990. Meanwhile, Vahid maintained his jet set lifestyle. She says that involved drugs and other women; he denies it. Over the next several years, she shuttled back and forth between Tehran and the U.S. In the summer of '96, while she and her younger son were living in their Tiburon home, the boy developed epilepsy. Semrin decided to keep him here, where she felt he could receive the best medical care. Vahid insisted that she return with their son. She refused. She was certain their married life was already over. She was afraid that, if she returned to Tehran, he might never allow her to leave again. She filed for divorce in 1997.

The fight over money began immediately. Vahid claimed that their apparent assets were actually owned by his father and other members of his family; and that certain accounts and properties that were in Vahid's name had been acquired by his father and could not be considered community property. Semrin countered that Vahid had hidden their assets in a complex international money laundering scheme involving family members outside Iran.

At a deposition one late afternoon in December, 1998, Vahid's attorney Judith Cohen presented Semrin with a corporate financial document supporting his claims and showing signatures of both husband and wife. Semrin looked at the unfamiliar document and saw that her name had been signed in Farsi, - a language she had never learned to write. This is a forgery, she said. Cohen snatched the document out of Semrin's hands. An ugly scene ensued between Cohen and

Semrin's attorney, Joe Descala, who called the police in a rage. As it turned out, the cop who arrived knew Cohen and sent everyone home.

Cohen rushed over to Salute, an Italian restaurant in San Rafael, where Dufficy was holding a dinner meeting with a group of FLEAs. The last to arrive, Cohen took a seat across from the judge and breathlessly told the group how she'd almost been arrested by the "madman" who was representing Semrin. Kathryn Shepherd, seated next to Cohen, listened with sympathy. Descala had recently approached her about taking over the case from him. Hearing Cohen's story, she thought to herself that might be a mistake. But she met with Descala again and became persuaded that Semrin was not getting a fair shake. She took the case.

Shepherd hired a private investigator to go to Tehran and begin to document Vahid's assets and track his financial transactions. Based on her preliminary findings, Shepherd estimated the estate at over \$100 million. Dufficy disregarded the evidence she amassed. Semrin and her son were moved out of their home in Tiburon into a condo owned by her husband's corporation and the boy was taken out of the private school he'd been attending. Semrin was awarded \$2,234 a month in spousal and child support, which she continues to receive. Out of that, she pays \$886 a month in insurance premiums for her son. The 12-year-old is now taking three different kinds of anti-convulsants which still fail to completely control his seizures. Semrin is afraid to leave him alone. She worries about the side effects of the strong medications. She'd rather see him treated with gentler, alternative remedies, but says she is already spending more money than she receives.

In the spring of 2000, Shepherd filed a declaration accusing Dufficy of bias. The evidence she cited included an account of the incident at Salute. Shepherd wrote that Cohen's derogatory remarks at dinner poisoned Dufficy's mind against Semrin, whom he blamed - -- in a statement he made in court -- for the ruckus at the deposition. She also cited a comment Dufficy once made about "those Iranian women" who believe that property in Europe is

being concealed from them. Further, she wrote, she overheard a conversation between her secretary and Dufficy's wife, a legal temp who worked in her office in March, 1999, two months after Shepherd took the Ettefagh case. "I hope Kathryn will not be too disappointed by the outcome of this case," she quoted Mrs. Dufficy as saying, implying that the judge had already made up his mind. Shepherd also referred in her declaration to Dufficy's "A-list" of favored attorneys, of which she was one.

The declaration hit the Marin legal community like a bomb. The bar association was already reeling from a scathing report written by private investigator Karen Winner, which accused several attorneys of unsavory practices as well as collusion with the judge and a commissioner. One of the cases detailed in the report was that of Alanna Krause, whose father, Marshall Krause, was a highly respected and well-connected local attorney. The Winner report was covered copiously in the press. The recall effort was launched. Court officials and attorneys reacted as if they were under siege. Shepherd, the traitor, was ostracized. Certain vocal litigants were viewed as enemies of the court. Semrin was one of them.

Semrin was contacted by a woman who had organized a support group for local litigants who felt they'd suffered unfair treatment by the court. She attended a few of their meetings, but had no involvement in the recall activity. Yet the court assumed she was involved. Shepherd learned of that assumption the following year, when Sutro was presiding over the case. He called Shepherd into his chambers to discuss Semrin's requests to have Vahid pay for her attorney's fees, then speculated that Semrin was getting financial support from the marijuana reform group that had co-opted the recall campaign. His speculation was not based on any evidence presented in the case.

The issue of attorney's fees has plagued this case for the last two years. Dufficy had granted Semrin about \$300,000 in fees and costs for Shepherd to track Vahid's assets. It was an enormous sum, but the documents discovered so far barely scratched the surface. With properties scattered all over the world

and file cabinets full of records -- all in Farsi --- Shepherd needed more time and more money. She never got it.

Dufficy not only recused himself from the Ettefagh case, he stopped hearing family law cases altogether and moved to the civil bench. The Ettefagh case first went to Judge Duryee, then to Judge Sutro when he took over the family law bench in 2001. Neither of them has granted Semrin attorney's fees. Shepherd continued to represent Semrin for months without compensation before withdrawing from the case in October, 2000. For the next two years, Semrin was forced to appear in court alone, up against two seasoned professionals.

Withdrawing from Semrin's case was a gut-wrenching decision for Shepherd. Since first discovering what looked like money laundering, she had been working like a demon, driving herself so hard it took a toll on her health. "I kept peeling back layers of the onion, and it kept getting bigger and bigger," says Shepherd. "The work started to be way too much for me. My immune system completely caved." She was diagnosed with thyroid cancer and had surgery in the fall of 1999. Soon after, she developed a seizure disorder that she believes must have been latent for years. "I think it was exhaustion that just brought it on at a much more serious level."

At the same time, she was going through an emotional upheaval. Practicing in Marin for 24 years, her professional and personal life had revolved around the family law in-crowd. Being a FLEA was like being a high school cheerleader, with all the attendant status and popularity. Suddenly she was questioning the seamliness of everything she'd identified with. When the Winner report hit and the legal establishment circled the wagons, Shepherd could no longer deny that the system was warped. "Although I disagreed with some of the factual details of the Winner report, I thought that overall, in general, it described the situation," says Shepherd. "And I was very offended by the idea that lawyers and judges were unified [in their defense against the report] and the clients were like the enemy. That's not the way the system's supposed to work. And it started to

really give me cause for self-examination as to why I'd ever gotten involved with these people in the first place -- which has been a major source of grief for me."

Although small and delicate-looking, Shepherd projects a formidable presence. She grew up in Kentucky but sounds like an upper-crust Yankee, (think Katherine Hepburn), her southern drawl drummed out of her by a drama coach she worked with in her teens. The persona she has cultivated seems so indomitable, it's a shock to see her dissolve into tears while telling her story. She quickly pulls herself together, bringing her reading glasses up to her face to look at one of the documents spread across her conference table.

The table is the last piece of furniture left before Shepherd clears out her office, chucks her shingle and leaves Marin county. Her husband, who produces software for the intelligence industry, has taken a new job in Washington, D.C. And make no mistake, says Shepherd - she's not running away. "I'm not leaving because of these people," she says, referring to the local legal eagles. "I would never give them that satisfaction. I want to be real clear about that. They've not driven me out of practice." Not that they haven't tried, she says. "Clients would call me and say, 'My spouse's attorney tells him or her that the court really hates you and I'll never get anything from the court as long as you represent me.' It's like Alabama in the '30s. I got no awards of attorney's fees since August 2, 2000" -- the day a Pacific Sun article was published, featuring Shepherd as a court whistleblower. "My phone stopped ringing. People I thought were my friends said horrible things about me. People wouldn't look at me."

The backlash was petty and personal, with retaliation against Shepherd both in and outside the courtroom. When a couple of Shepherd's lawyer friends wanted to throw a farewell party for her, some court officials reacted with such vitriol that Shepherd, getting wind of it, sent e-mail messages to the invitees saying she wouldn't be able to attend. "These people have lost their minds!" says family law attorney Godfrey Tencer, referring to Shepherd's

enemies. Tencer had been planning on attending the party with his wife. "You can agree or disagree with Kathryn, but this is disgusting."

Shepherd continued to consult with Semrin even when she was no longer the attorney of record. She helped her file an appeal that overturned Duryee's decision to deny fees. Duryee had abused her discretion, said the appellate decision, and the court was ordered to take into account the disparity in the litigants' incomes, the complexity of the case and Vahid's unwillingness to cooperate with the discovery process.

The ball was tossed to Sutro, who was hearing the case when the appellate decision came down, and he still denied fees. One of the factors influencing his decision, he said in court, was a conversation he'd had with Dufficy about Shepherd's unreasonable behavior. Dufficy told him that Shepherd had walked into a settlement conference, "demanded \$10 million and said, 'That's it.' That was the end of any settlement conference." In fact, the transcript of the proceedings shows that the settlement conference lasted all day and ended amicably. Shepherd had made no such demand.

But the inaccuracy of the information was beside the point; here was a judge asking for advice from another judge who had recused himself from the same case after being challenged for bias! Court watchers had long suspected that Dufficy continued to pull the strings even after leaving the family law bench. Now Judge Sutro had confirmed it.

Semrin, with Shepherd's assistance, filed a motion to disqualify Sutro. The matter went to a judge in another county, who denied it. So Shepherd contacted an appellate attorney in Santa Rosa, Ozro Childs. Childs prepared a writ describing Sutro's displays of bias, including his ill-advised conference with the recused judge. He also cited the time Sutro had Semrin removed from the courtroom and put in a holding cell for 20 minutes to teach her a lesson, "without any apparent legal authority to do so." Childs said in a recent phone interview that he could have also mentioned the dog that Sutro had posted behind Semrin's chair, but

apparently he didn't need to. His writ won. The appellate court ruled that there was an appearance of bias and Sutro was disqualified.

The Marin family court is keeping Childs very busy these days. He's now preparing writs in two more cases to disqualify Commissioner Heubach. And it's likely he'll be doing another one in the Ettefagh case soon.

Heubach got the Ettefagh case after Sutro was disqualified. In August, Heubach ordered a one-week trial beginning December 9, to be presented by declarations --- in other words, each side is to present its case completely on paper. It would be a monumental task for an experienced attorney; for Semrin, it's completely overwhelming. Heubach urged Semrin to hire an attorney, but granted her no fees to do so. Semrin contacted several attorneys, asking that they represent her, but they all said they couldn't do it unless fees were awarded in advance. There are four motions for Semrin's fees still pending. Yet, when Semrin asked Heubach to address the issue, he told her she needed to get an attorney to file a motion for fees so she could hire an attorney. It was a Catch-22: she couldn't get an attorney until she got an attorney.

Shepherd, meanwhile, was determined to secure some professional help for Semrin before she left town. There was one firm big enough to handle this case: Trope and Trope. Based in Los Angeles, it's the oldest and largest law firm in the country devoted exclusively to family law. She sent their lawyers reams of documents, spoke with them extensively on the phone. They agreed to take the case initially without fees, long enough to have it transferred to L.A. where, they felt certain, fees would be granted and a fair trial could take place.

The motion to disqualify Heubach and change the venue was filed on November 1. Like the motion to disqualify Sutro, it will go to a judge in another county who will probably deny it. The denial will be appealed.

There are a few plausible explanations for the apparent bias in the Ettefagh

case, and in a number of other troublesome Marin cases:

1) One spouse is represented by one of the court's favored lawyers, while the other spouse is represented by either an outsider or a perceived enemy of the court, or not at all.

2) One spouse is perceived as an enemy of the court.

3) The court is unwilling to devote time and resources to lengthy, complicated, contentious cases.

Divorcing couples are, as a rule, encouraged to settle out of court. It's less expensive for the litigants as well as the taxpayers. How well it works depends on how fair-minded and reasonable both parties are. But when one spouse is financially dependent on the other and the monied spouse is set on concealing assets, it doesn't work at all. A judge can "level the playing field" by ordering the wealthy spouse to pay the other's attorney fees and costs for discovery, to investigate the assets of the uncooperative spouse. But too often, it appears that Marin county judges cut off fees for discovery before the process is complete.

"They don't want litigation and they don't care how it ends up as long as they get rid of the cases," says Paul Camera, who's been practicing family law for 41 years, 27 in Marin. "They think the higher benefit is that there be no litigation, regardless of the fairness of the settlement. When a case comes along where the woman has no money and she's against a guy who has all kinds of resources and can buy the best legal talent and is absolutely resolved to give her as little as possible in the way of information or money, -if you don't get a judge to give you the money to do the discovery, ladies, you might as well just forget it. You're screwed. That's what's happening in good old Marin County."

Camera has been the most outspoken of the few Marin attorneys willing to openly criticize the system. He's now nearing retirement. Shepherd is "leaving Alabama," as she puts it. But there are a growing number of community advocates rallying around the issue of court reform. Some are working on organizing a Court Watch

group to attend hearings and report any inequities. And a new Web site has been created—www.marininjustice.com—to help activists organize.

Jean Taylor, who first brought complaints about family court to the civil grand jury, has been battling for reform since 1997. "I'm giving myself five more years," she says. Taylor is one of the tireless advocates for the homeless who are responsible for establishing Marin's year-round shelter. "It took us 11 years to get the New Beginning Center built," she says. "When we started in 1989, everybody said, 'You're crazy, they're never going to allow it.' So I do have a lot of stick-to-itiveness. I'm hoping that this Etefagh case may open the doors for a lot of other cases." [PacificSun](#)