

THE JURY ON TRIAL

In the mountains west of Denver, Colorado, amid the changing aspens that glitter like gold nuggets among the pine trees, there is a new brand of frontier justice being practiced. A vigilante justice perpetrated by the court, where the accused is deprived of a jury trial, and lawless men become judge, jury, and executioner. On trial; the jury as our founding fathers envisioned it.

Behind the modern stone facade of the Gilpin County courthouse, Laura Kriho stands accused of contempt of court for her actions as a juror. Kriho was the solitary holdout against a conviction on a drug case, and based on the case presented by the prosecution, has been singled out for prosecution as a direct result of her vote during jury deliberations.

Her crime? Laura Kriho obeyed the law and appeared for jury duty as ordered and honestly answered all the questions she was asked during the voir dire process prior to being selected as a juror. She brought with her into the jury deliberation room her life experience and her knowledge and did not check her conscience at the door as the judge instructed her to do. For this alleged act of jury nullification, she has been tried without a jury. With the judge's verdict, some legal eagles say, goes the jury system in this country.

A CONSPIRACY?

The tangled web that has entrapped Kriho appears to have its origins in an article published in the Summer 1996 issue of *The Judges' Journal* by another Gilpin County judge, Frederic B. Rodgers. The article is entitled "*The Jury in Revolt? A 'Heads up' on the Fully Informed Jury Association Coming Soon to a Courthouse in Your Area.*" In this article he describes the juror nullification movement as having "as it's basic theme that all laws and government, including courts, are illegal - and that we should all make decisions based on whatever feels right to us . . ."

He goes on to discuss the Fully Informed Jury Association (FIJA), stating "FIJA supports the de facto power of juries to refuse to convict, even when the government proves its case beyond a reasonable doubt . . . FIJA members, who hide their affinity for it during the voir dire, have a great potential for causing mischief. They are arguably committing perjury when during voir dire they fail truthfully to answer the judge's questions that address their willingness to follow the rules of law contained in the jury instructions. The first hint of trouble will usually come in the form of notes from the jury deliberation room that ask questions about how to deal with an 'obstructionist' juror." Rodgers instructs judges to "be vigilant during voir dire to ascertain this influence. If nullification is discussed by a jury panelist during voir dire, a judge's delicacy and care are required."

When a judge encounters a juror with "nullification tendencies," Rodgers suggests removing this juror to an "individualized voir dire setting." He states that "if others have been infected by the (jury nullification) disclosure, they should be interviewed individually, outside the presence of other panelists." He also offers a stern admonishment to present to the jury panelists, "*Violating the jury oath may subject you to prosecution for perjury.*"

Perjury is difficult to prove under the best of circumstances, hence the reduction of

charges against Kriho to criminal contempt of court. It is obvious that with a conviction on this lesser charge, the prosecution hopes to create a precedent in this area of law. Once case law is established against jury nullification, the threat of criminal prosecution will insure effective control over each and every jury member in each and every courtroom in America. In the absence of any legislation to support their position, Gilpin County court is trying to make jury nullification a crime by legislating from the bench. Their problem is, they picked the wrong juror to make an example out of. Laura Kriho is an activist, with a large, loyal following. She is fighting for her rights and the rights of every juror in America. And much to the surprise of Judge Nieto, she has garnered nationwide media attention. This may be her only hope of salvation against a corrupt judicial system.

There have been few, if any, cases where a juror has been actually prosecuted for their actions during deliberations. The most notable was during the trial of William Penn in 1670, where four jurors endured nine weeks of prison and torture for adhering to their “not guilty” votes. They ultimately won Penn’s acquittal and nullified the law prohibiting the preaching of any religion except that of the Church of England.

During her testimony Kriho said she believed that the “jury room is confidential, privileged, secret.” Her attorney, Paul Grant, argued that “Deliberations simply cannot be subjected to this kind of scrutiny.”

In a 1995 case similar to the Kriho case, which also ended in a mistrial, Hawaii Judge Helen Gillmore did not seek to prosecute a juror who looked up information from the Bill of Rights during jury deliberation. She was concerned about picking a new jury if the public fears jurors will be pressured. Judge Gilmore was quoted in the December 27, 1995 issue of the Honolulu Star-Bulletin as saying, “The privacy interest of jurors is paramount.” This may be still be so in Hawaii, but it’s not so in Gilpin County, Colorado.

In an unprecedented move, Gilpin County has broken down the doors of the jury deliberation room and many of the jurors who served with Kriho were subpoenaed to testify about their deliberations. Grant claims, “This is really an obnoxious process. In a sense, we’re putting the jury on trial. We’re forcing open the jury room and we’re forcing these people to testify about their deliberations, and that’s improper. It hasn’t been done, it is routinely never done, it can’t be done to attack a verdict. It can only be done to attack a juror.”

KRIHO’S JURY DUTY

Laura Kriho was called to jury duty on May 13, 1996, and was seated as a juror in the case of a 19-year-old female accused of felony possession of methamphetamine. The prosecutor in this case was Jim Stanley. After two days of evidence, the jury was sent to the jury room to render a verdict.

After a mere four hours of deliberation, the jury remained hung on the count of possession. The other jurors had grown increasingly angry and abusive toward Kriho. About this time, according to testimony, a single juror, possibly without the knowledge of the other jurors, sent a note to the judge asking if a juror could be disqualified for looking up the sentence related to the case among other things. This note was not signed.

When Judge Kenneth Barnhill received this note, he showed it to the attorneys. After a brief discussion, Barnhill declared a mistrial.

Only after declaring a mistrial, did Barnhill call the jury into the courtroom and admonish them. He never questioned them, or investigated the circumstances behind the note. Then he

dismissed the jury.

Kriho said she went up to Barnhill and told him that the note came from just one juror and that some of the information in the note was untrue. Barnhill allegedly expressed surprise that it was not from the entire jury. Then Kriho said she thought she was supposed to use her prior knowledge and experience to judge the case, which Barnhill agreed with. Kriho asked him what if knowledge of the sentence is part of that knowledge. Kriho said at that point, Barnhill left the bench without answering.

Kriho left the courthouse and found the one juror she felt was sympathetic with what she said in the jury room and gave him a pamphlet from FIJA. This juror became angry and immediately took this pamphlet to the judge, saying, "This is why we had a hung jury. (This) seemed to be a program set up [sic]. We had a hung jury before the jury was ever selected." He testified for the prosecution that Kriho was part of "a preplanned program to hang the jury," believing there was an "agenda to get several people planted in the jury pool designed to hang the jury."

Barnhill gave the pamphlet to Stanley and told him to look into this. On July 19, Kriho was cited with contempt of court.

THE CHARGES

Gilpin County Deputy District Attorney Jim Stanley, cites three counts of contempt against Kriho. First, Stanley accuses Kriho of committing perjury by lying under oath to the Judge and the attorneys; specifically "lying in open court (regarding) her views about drug laws," of lying about her "willingness to follow the law" as given to the jury by the judge, and of lying about her "prior experience in the justice system."

Stanley claims that Kriho "failed to disclose" this information during voir dire. After the mistrial was declared, Kriho's background was investigated. This investigation turned up a 1984 drug conviction which Kriho had been told would be purged from her record upon the successful completion of two years of community service. She believed it would be as if it had never occurred. Obviously, she was lied to. She acted on good faith. The government didn't. But even if she didn't, according to the transcripts of her voir dire, she was never directly asked about having a drug conviction, about her views on the drug laws, or about whether or not she was willing to follow the law as given to her by the judge. It seems that Laura Kriho has been prosecuted for not volunteering any information. The defense argued that the court did not ask for a narrative, it asked questions. "Jurors don't see these questions the same way the court sees these questions," argued Grant.

What really happened is that the presiding judge, Kenneth Barnhill, and Deputy DA Stanley got sloppy during the questioning of prospective jurors, and didn't follow up on important issues. Rather than admit their mistake, they decided to punish Kriho for their failure to question her properly to elicit the answers they required.

The second offense includes her "flagrant disobedience of direct orders from the presiding judge" in that she allegedly gathered her own data and researched the possible penalties of the crime being tried.

This charge refers to the instructions that a judge gives to the jury before they retire to deliberate. These instructions often include items such as:

The jury is not to consider the potential punishment as a factor in deciding the case.

The jury is to decide the case based only on the facts presented during the trial, and not to

allow any outside factors influence their decision.

The jury is to only follow the law as it is given to them by the judge.

The jury is not to discuss the case outside the deliberation room, nor conduct any research in regards to the case being tried.

This is just a small sample of the types of instructions given to any jury. The key here is that these are instructions, not orders. If they are meant to be orders, they should be clearly presented as orders, but they aren't. Jury instructions, when blindly followed by ignorant jurors, give the judge an enormous amount of control over the verdict in a case. But instructions cannot be construed to have the same force of law that an order from the judge has. An order cannot be disobeyed without risking contempt of court charges. A jury instruction is guidance, and can be lawfully disobeyed by a knowledgeable juror with a conscience. There is no law to state differently.

Kriho allegedly disobeyed an instruction by looking up on the Internet, the possible punishment for the case being tried. She testified that she had prior knowledge of this punishment, that she just wanted to verify her knowledge. Whether she had prior knowledge or not, she allegedly disobeyed an instruction, not an order from the court. The defense argued that if jury instructions are an order, then it would be controlling a person's thoughts, and the court cannot order a person how to think.

Finally, Kriho is accused of obstructing the administration of justice by "furthering her own agenda" in that she "obstructed the trial process and the jury process by integrating her beliefs into the jury (process)."

Obviously, this charge is related to her holdout vote of not guilty against the other jurors on one of the three counts being deliberated. Kriho claims she had a reasonable doubt, and testified that she demonstrated the reasons for her doubt during deliberations. Two jury members offered to swap their guilty votes on another count for Kriho's guilty vote on the possession count. Kriho declined, standing on her conscience.

KRIHO'S TRIAL

There are many disturbing circumstances surrounding Kriho's trial. There was only the barest suggestion of fairness demonstrated by the presiding judge. Judge Henry Nieto presided over this kangaroo court with a bias against Kriho that was blatantly obvious.

It also appears highly irregular and inappropriate that the prosecutor for each trial is Jim Stanley, especially since Stanley could realistically be considered a witness in the Kriho trial. At the very least, this trial had all the appearances of being a vindictive prosecution and an abuse of power. Many people believe that Kriho cost Stanley a conviction on the drug case, so Stanley is prosecuting Kriho to get even. Stanley should have been dismissed by Nieto, but he wasn't.

Kriho has been denied her Sixth amendment right to a trial by jury by Judge Nieto. Under Colorado Statute, if the jail sentence is six months or less, the court does not have to allow a jury trial. Stanley decided to seek a sentence of less than six months at the last minute. This ruling conflicts with the Sixth amendment which guarantees a trial by impartial jury "in all criminal prosecutions." Since the rights of the jury was obviously on trial, the court could not hope for a conviction if a jury were to render a verdict on this case.

She was also denied her Sixth amendment right to confront her accuser and subpoena witnesses. In this case, Judge Nieto ruled that Judge Barnhill cannot be compelled to testify regarding his part in this incident. Nieto claimed that Barnhill was not the accuser, that the prosecution is, and that everything involving Barnhill which pertains to this case is a matter of

record and the record could be admitted into evidence. However, testimony later revealed that an important exchange took place outside the courtroom between Barnhill, Stanley and the defense attorney. Another one took place after the mistrial was declared and the jury was dismissed, once again involving Barnhill and Stanley. Stanley also had contact with the other jurors during the course of his investigation of Kriho. These events are not part of any public record or transcript. Since the only witnesses to these events have been protected by the court from testifying, this important evidence, which could help the defense, has been excluded during Kriho's trial.

On October 1, 1996, the stage was set. Court TV had cameras in the hallway, but not the courtroom. Not surprisingly, Judge Nieto denied virtually all requests for expanded media coverage, stating that the requests were not timely. No audio recording was allowed, and only one still camera without a flash was permitted.

The small courtroom was packed with Kriho supporters, a motley assortment of Generation Xers sporting shaggy hair, sandals, and tie-dyed shirts mingled with middle aged "suits" and casual clad baby boomers. Copies of *The Pikes Peak Hemp Coalition Newsletter* were circulated freely along with FIJA pamphlets and literature from the Green party. Conspicuous by their absence in such a landmark case was the major media. Only a handful of the observers sported press badges or identified them as journalists.

As the two-day trial progressed, the dynamics in the courtroom were fraught with tension and emotional electricity. At one point, Stanley directed a scathing remark to Grant when he, with futility, objected yet again to Stanley's asking leading questions. Only after an embarrassing long pause did Judge Nieto admonish Stanley to address his remarks to the bench. Behind Stanley's back, the audience responded audibly to the patently biased rulings by the judge, and to the arrogant attacks by the prosecutor. Stanley reportedly complained about the hostile audience behind him, some of whom he claimed were calling him names and rolling their eyes at him, and asked the judge to clear the courtroom. Nieto refused.

On another occasion, Stanley attempted to have a defense witness's testimony about the witness' own conversations excluded, claiming it was hearsay. Grant responded audibly to this inane objection in much the same manner as the audience. Stanley glared down at Grant, and Grant placidly smiled up in return. The two men maintained eye contact, Stanley hostile and Grant smiling smugly, until Stanley finally looked away, his face red with ill-concealed rage. On the whole, Stanley's performance, was unprofessional, vindictive, and ineffectual. It lacked substance and the authority of law. Whether it was good enough for Nieto to convict Kriho remains to be seen.

Nieto has not ruled on the case as of this writing. Perhaps he is waiting for the glare of the media to fade. Who knows? After Nieto declared the court in recess until his ruling in no less than a week, the observers in the courtroom broke into a spontaneous standing ovation for Paul Grant's valiant defense of Laura Kriho and for his passionate closing arguments. Stanley was visibly perturbed and left the courtroom hastily.

THE JURY SYSTEM TODAY

The real intent behind this trial was revealed in the closing arguments. What was on trial is whether the jury has the right to nullify. Stanley acknowledged that the jury is the foundation of the trial process and stated that "Kriho's conduct presents a threat to the foundation of our judicial system." He insisted that Kriho practiced a deception which cannot be tolerated, the basis of which is "the belief that the juror does not have to follow the law if they think it is wrong." He

said, “She had an agenda to act on her firm beliefs that drug laws in this country are wrong and to change (those) laws. It is offensive to everything that the court system stands for.” Stanley stated that if the court had known of her views, she would have been excused from jury duty.

It is clear from these statements that our courts in America want nothing to do with a fully informed juror. They want to people the jury box with sheeple, who will blindly follow the court’s instructions without qualm or conscience. Such jurors would be unqualified to recognize a defendant being railroaded under bad laws and the pretense of fairness. In their ignorance, these jurors would contribute proudly to the miscarriage of justice.

In the process known as “scientific jury selection,” defense attorneys attempt to pack the jury box with people of little education and much human emotion. Prosecutors want people who hold the law to be sacred, and who don’t question governmental authority. Education is not necessarily desirable. Juror questionnaires are being used in many areas to preselect a jury pool by weeding out undesirables such as FIJA advocates and religious people. Some of these questionnaires number in the hundreds of questions on items such as education, residence, employment, family, previous legal or courtroom experience, media preferences and more. These questionnaires far exceed the few stated requirements for jury duty, and actually invade the privacy of prospective jurors. If Kriho is convicted and the conviction is upheld, there is the real potential of these questionnaires being used as evidence to prosecute nonconformist jurors.

The pre-screening of jurors and jury pools has been likened by some with jury tampering. A jury is often instructed to bring their life experiences and knowledge into the deliberation room, but the courts are striving to keep certain types of knowledge and experience out of the jury; knowledge and experience that would overrule the self-assumed absolute authority of the judge. This includes any knowledge of the constitution and the original intent of our founding fathers in designing the jury system as a shield against government oppression.

THE CONSEQUENCES

There is an invisible victim directly affected by this case. The accused. There can be no assurance of a fair and impartial trial from jurors who face prosecution for their vote or for their beliefs. If a bad law cannot be nullified, good people can be indiscriminately criminalized and punished. Despite the wishes of today’s judiciary, the jury was not intended to be a rubber stamp.

Grant claims that this trial is designed to eliminate hung juries. “This sends a message that you’d better go along with the majority or you can be criminally prosecuted for hidden biases,” said Grant.

According to Bill Orr, executive director of the American Constitutional Law Foundation, “I think, quite frankly, the reason this case is being brought is because the judiciary is looking for a way to prevent jury nullification in drug cases. And this is the one.” This is only the beginning. If it works for drug cases, it will work for any other case.

According to Grant’s closing argument, there are two important decision makers in the courtroom, the judge and the jury. Each is indispensable. But the purpose of the jury is not to do the dictates of the prosecution or the court. There are laws that protect jurors from intimidation, threats and harassment. Grant observed that “Juries every day fail to comply 100% with (the court’s) instructions.”

When these instructions are contradictory, as they often are, how can a juror comply 100%? How can he comply when they are unconstitutional without violating his juror’s oath?

If Kriho is convicted for her noncompliance, every juror in America will be at risk of prosecution if they vote contrary to what the court thinks they should vote or are a holdout in the jury room. Is this not intimidation, threat and harassment under the color of law?

Grant thinks this case is a declaration that jury nullification is unacceptable. He said, "We have to resolve it, we have to tell the judges they don't run the show."

There is a common saying that we Americans have the ballot box, the jury box, and the cartridge box, in that order. There is overwhelming evidence that the ballot box has been compromised. A conviction in this case could virtually eliminate the recourse we have through the jury box. Judge Nieto must weigh very carefully, the consequences of his verdict. If We the People lose the power of the jury box, that only leaves the cartridge box, and Judge Henry Nieto may very well be recorded in infamy as the Benedict Arnold of the second American Revolution.

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LAURA KRIHO

The icon of the fully informed jury movement is an accidental heroine. Laura Kriho was not a member of FIJA, and claims to have had no contact with FIJA prior to her service as a juror. She simply voted her conscience in the wrong place at the wrong time.

Laura reported reluctantly, as do most who are summoned, for jury duty. She never imagined she could be prosecuted for her vote as a juror. She didn't want to be a juror and admits she wants it "even less so now." She believes that if she was risking prosecution based on her answers during voir dire or for her jury vote, she should have been advised of her rights prior to questioning and of the potential of being prosecuted, and she should have been provided with a court-appointed attorney. Based on the rulings of Nieto during pre-trial hearings and the trial itself, she believed she was facing a sure conviction. Kriho emphasized her opinion with the statement, "Why do you think Stanley's not objecting to anything my lawyer says? He knows what the outcome is gonna be."

One of Laura's supporters describes her as "a totally classy chick with unlimited influence in the Colorado hemp scene." Laura is a vocal supporter of the legalization of industrial hemp and spoke knowledgeably about the differences between industrial hemp and marijuana. As for her views on the drug laws, testimony revealed that she believes the courts are an inappropriate place to deal with drug problems, that the family and community could better deal with this issue.

Laura claims she had no agenda in serving as a juror. She felt she could sit as a fair and impartial juror, and did her best to do what she was told. In spite of the hostile abuse she endured at the hands of the other jurors, she stuck by her conviction that the prosecution had not proved its case.

During deliberations, she made mention about the rights of jurors, which she had learned from a pamphlet. Laura testified that she didn't remember where or when she got the pamphlet. But the information contained in the pamphlet had impressed her. She reread it after the first day of the drug trial to "help her understand her role and perform her service better." Her attorney, Paul Grant said, "Laura . . . had the misfortune of being the single juror who did (jury nullification). Had she had the entire jury go with her, disregard the instruction, and acquit the defendant, they couldn't have touched her. But they wanted to interrupt the trial and punish her because she was the single dissident on the jury panel."

While Judge Nieto kept insisting that Laura was not being tried for her vote as a juror or for her beliefs, Laura testified, "If I had voted guilty, I would not be sitting here now." She feels she could have said whatever she wanted in the jury room, but if she had voted guilty, she would never have been charged with contempt. "Now all jurors are going to be afraid to serve on jury duty," Laura commented, "I hope that no other juror has to go through this again because it was a very painful experience."

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INTERVIEW WITH A JUROR/WITNESS

The juror who turned Kriho's FIJA pamphlet over to Judge Barnhill was interviewed briefly after his testimony against her. When he was asked how would Kriho's conviction affect him if he had to serve on a jury in the future, he replied, "I have no problem with serving as a juror anywhere."

This juror had testified that he felt there were appropriate situations where a juror could in fact judge the law as well as the evidence. When asked: If Kriho were convicted, would that conviction affect his ability to vote to nullify the law, he said, "If they ask me again, and I'm sure that they would, could I judge the case according to the evidence, and not judge the law, and it was a law that I knew that I would have problem with, I would have to excuse myself."

So where does that fit in with the jury being able to judge the law? "I don't know," he replied.

JURORS ON STRIKE

If Laura Kriho is convicted, she only gets one mandatory appeal, according to the rules governing contempt charges in Colorado. The Colorado Supreme court is not required to hear her case if she loses on appeal. In that event the precedent is established which would then be used across the country against any other juror. This would make jury duty in America a risky proposition.

It would also effectively keep any knowledgeable juror from serving, and give the courts absolute power over the verdicts juries render. Defendants would not receive an impartial jury, and trials will be a mockery of justice. The constitution would be effectively nullified.

If, however, every potential juror were to demand an attorney before they respond to any questions during voir dire, the court system would only be suffering the natural consequences of its arrogant foolishness. Can you imagine a court system operating if it cannot get jurors willing to risk their freedom over jury duty? Without at least the appearance of a jury, a defendant cannot be tried. It would take only one juror in a pool of jurors to expose the risk. When asked as a group if they had any reason why they couldn't serve, a juror could say he isn't willing to risk being prosecuted like Laura Kriho was for her jury vote and her personal opinions. This would have the effect of informing the other candidates in the jury pool of the potential risks involved, and getting many of them to request being excused. The entire jury pool would be "tainted," and the court would have to start over.

If Kriho is convicted for failing to comply with jury instructions, because Nieto would have construed jury instructions to be orders, a juror could read the instructions carefully prior to the actual deliberation process. Finding contradictions, a juror could ask to be excused because he would be unable to comply with the instructions and was unwilling to risk prosecution for noncompliance. Since these instructions are given after the testimony is complete, if enough jurors claimed they were unwilling to risk prosecution for noncompliance, the case would have to be retried. Do this enough and jurors could jam up the court system completely.

