

## RIGHTS ON TRIAL: THE VERDICT

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When Laura Kriho served on a jury in May 1996, in Gilpin County, Colorado, she was the single hold out against a conviction in a drug case. After less than five hours of deliberation, Judge Kenneth Barnhill declared a mistrial claiming the jury was hung. When Kriho was tried on October 1 & 2, 1996, for contempt of court as a direct result of her lone hold out not-guilty vote, the presiding judge, Henry Nieto, was hung for more than four months before issuing a guilty verdict on February 10, 1997. Neither Kriho nor her lawyer, Paul Grant, was notified by the court when the verdict was issued. They found out when a local reporter, who had just happened to call the court that day asking about a verdict, wanted their comments.

Kriho was not surprised by the conviction, but she was surprised by which of the three charges of criminal contempt of court she was convicted of.

She was found not guilty of disobeying an order of the court. According to the ruling, “No evidence of the trial court’s orders to the jury was introduced by the People. Orders given to jury concerning their conduct during the course of a trial are court orders and might support a finding of contempt if there was evidence that such an order was given and it was deliberately violated.”

This charge was related to the allegation that, as a juror, Kriho looked up the sentence the defendant was facing. Kriho testified that she already knew the penalties, and was just verifying her prior knowledge.

On the charge of perjury, Kriho was found not guilty. She was accused of lying under oath ‘regarding her views about drug laws,’ about her ‘willingness to follow the law’ as given by the judge, and about her ‘prior experience in the justice system,’ referring to her 1984 plea bargain on a drug charge. According to the ruling, “The evidence in this case does not meet [the] conditions [described in *Murer v. Rogowski*, 780P.2d 853 (Colo. App. 1971)]. . . The District Attorney could have filed a criminal charge against Ms. Kriho for perjury if he had chosen to do so.”

Kriho was convicted of what was believed by her lawyer to be the vaguest charge against her - obstruction of justice. The court ruled that “Kriho deliberately withheld her opinions. . . Based on all the evidence, this Court concludes that it was Ms. Kriho’s intent to withhold this information from the trial court and the parties so that she could be selected to serve on the jury and obstruct the judicial process. By deliberately withholding this information, she obstructed the process of selecting a fair and impartial jury. . . This Court finds this conduct constitutes obstruction of justice and the conduct was offensive to the authority and dignity of the trial court.”

Red Beckman of the Fully Informed Jury Association (FIJA) is “. . . glad [the judge] put [the ruling] that way because they don’t have any right to sort the jury. This is one of our long standing complaints. Instead of an impartial jury, they want a partial jury. And they don’t have any right whatever to ask [jurors] questions.”

Kriho still doesn't really understand what she did wrong. "I responded to all their questions. I answered truthfully and honestly." If she had to do it over again, she can't think of anything she would do differently. She had testified that she felt she could be fair and impartial, and that there was nothing she could think of that would interfere with that ability. Testimony from other jurors revealed that she even demonstrated her reasons for reasonable doubt during deliberations. Kriho also testified that she tried to get out of reporting for jury duty, citing transportation difficulties, to no avail.

## THE REAL ISSUE

In his ruling, Nieto stated, "Ms. Kriho, through her counsel, has mischaracterized the issues in this case. This case is not now and has never been about how Ms. Kriho voted during jury deliberations. This case is about whether Ms. Kriho misled the trial court and the trial attorneys about important matters during the jury selection process with the intent to remain on the jury and obstruct the legal process."

"That's false," insists Kriho's attorney, Paul Grant. "She was accused of disobeying a court order, and the only thing that she was given that could be construed as an order would be the jury instructions. And if she disobeyed them, she disobeyed them in the jury room. . . The original motion for contempt citation quoted, at length, other jurors [revealing] what Laura said in the jury room. So it is about jury deliberations."

Kriho also believes that her jury vote is the issue. "If I would have convicted [the defendant] this never would have happened. Basically what they said in my ruling is not that you have the right to remain silent, but that you don't have the right to remain silent and it can be used against you." It is interesting to note that if she had voted to convict the defendant, she still would have had the same 'criminal' opinions. Would she have been placed on trial for her opinions under those circumstances? Judge Nieto was unwilling to answer any questions, including this one, until after Kriho's sentencing on March 7.

## JURY NULLIFICATION VS. JURY TAMPERING

Nieto acknowledged jury nullification in his opinion, stating "No juror can be punished for their vote in deciding a case. Even if the juror's vote amounts to jury nullification and flies in the face of the evidence and the law, they cannot be punished." However, he has circumvented this time-honored principle, and convicted Kriho for a vague and previously unknown 'thought crime.' A crime that you can apparently only be charged with if you, as a juror, vote against the wishes of the court, and especially if you are a hold out in the jury room. If you vote according to the wishes of the court, or if the other jurors vote with you, there's nothing to be charged with. Under these circumstances, wouldn't a juror be intimidated into voting how the court wanted or risk facing criminal charges for having an undisclosed opinion about something?

"This new legal duty was invented by this court for Laura Kriho," said Grant, "The verdict has created a new legal theory, and certainly we were not aware of it at the time of the trial. The theory is that there is a legal duty to volunteer your political beliefs if you think the court would

be interested in them, even though they don't ask you.”

Red Beckman believes that the Kriho case is going to be one of the cases that gets the current practice of jury selection by screening potential jurors, eliminated from the judicial process. “It will get the question out to the people whether the prosecutors and judges have the kind of power they're using. We're talking about a very, very fundamental legal principle here. A constitutional principle.

That would be the principle of an impartial jury of your peers. To judges and prosecutors, this means uneducated, mindless robots who accept authority unquestioningly and are easily manipulated emotionally, who will rubber-stamp the wishes of the court. To FIJA and others, it means intelligent, knowledgeable people who can recognize a bad law, a bad judge, a bad defendant, a bad prosecutor, and vote according to their conscience and the constitution, rather than according to the instructions of a judge.

“I just don't think the court has any right to purge the jury of all jurors who think independently, and that's really what this case is all about,” said Grant. “I don't believe that all the questions that the court is suggesting it can ask [of jurors] are proper. I don't think the court has the authority.”

Beckman agrees, “They're jury tampering and they're trying to get it so people are hesitant about serving on juries. The effect is that they're going to poison the jury pool.”

Kriho will appeal. Grant thinks the chances are good that her conviction will be overturned. He believes this verdict “. . .sets a very dangerous precedent. It gives a license to prosecutors and judges to subject jurors to an inquisition during jury selection. Holding people liable for not volunteering [their opinions] is an impossible standard to hold jurors to. I think the appellate courts will recognize the first amendment problems with this opinion.”

Laura Kriho probably summed it up best when she asked, “Is it OK to prosecute jurors for what they didn't say to questions that weren't asked of them?” Well, is it?

## SIDEBAR

Laura will continue to need money to appeal this conviction. Donations may be sent to the Laura Kriho Legal Defense Fund c/o Paul Grant, Box 1272, Parker, CO 80134

Note: Kriho's conviction was overturned on appeal. The full story is included in Profane Justice Second Edition.