

JUSTICE DENIED

The Magazine for the
Wrongly Convicted

SPECIAL ISSUE

Kirstin Blaise Lobato's "Very Peculiar Story"

Kirstin Blaise Lobato

Convicted of the murder of a homeless man in Las Vegas on July 8, 2001 that occurred when she was at her home 170 miles away in Panaca, Nevada.



"She placed her belief in the justice system, and she ended up being convicted of a crime that she did not commit."

United States District
Court Judge Gloria Navarro

**NEW EVIDENCE
KIRSTIN BLAISE LOBATO
IS INNOCENT OF ANY
INVOLVEMENT IN THE
DEATH OF DURAN BAILEY
IN LAS VEGAS, NEVADA
ON JULY 8, 2001**

Prepared by Hans Sherrer, JusticeDenied.org, hsherrer@justicedenied.org

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Message From The Publisher

This issue consists of articles published on Justice Denied’s website about Kirstin Blaise Lobato’s case after the updated edition of *Kirstin Blaise Lobato’s Unreasonable Conviction* was published in November 2010. The PDF version of the book can now be read online for no charge at, <http://justicedenied.org/lobato.htm>

Justice Denied began investigating in 2003 Ms. Lobato’s conviction of murdering 44-year-old homeless man Duran Bailey near the Las Vegas strip on July 8, 2001. What made her case very peculiar was eyewitness and telephone evidence the 18-year-old Ms. Lobato was at her home in Panaca – 170 miles north of Las Vegas – on the entire day of Mr. Bailey’s murder, and there was a complete absence of any physical, forensic, eyewitness, confession, or CCTV evidence that she was at the crime scene, that she committed the crime, that she and Mr. Bailey had ever met, or that she had ever been to where he was murdered. Ms. Lobato’s conviction was overturned in 2004 by the Nevada Supreme Court based on errors by her trial judge. She was then convicted in 2006 of voluntary manslaughter and other charges after a retrial, again without the prosecution presenting any evidence she was anywhere in Las Vegas on the day of the murder.

Ms. Lobato’s alibi defense that she was in Panaca on the entire day of Mr. Bailey’s murder was supported by the testimony of a dozen witnesses and telephone records. The prosecution conceded she was in Panaca from at least 11:30 a.m. until after Mr. Bailey’s body was discovered about 10 p.m. in Las Vegas 170 miles away. However, the prosecution claimed he was murdered sometime “before sunup” at 5:30 a.m. on July 8, 2001, and **argued** that Ms. Lobato was in Las Vegas at that time, and she then drove to Panaca in time to be there mid-to-late morning. The prosecution had to **argue** she was in Las Vegas, because all the witnesses who testified for both the prosecution and the defense about her whereabouts on July 8, stated she and her car were in Panaca.

The Nevada Supreme Court upheld her convictions and in May 2010 she filed a state habeas corpus petition that included new scientific forensic entomology and forensic pathology (medical) evidence that Mr. Bailey died after “sunset” at 8 p.m. on July 8. So he was murdered during the two hours between 8 p.m. and the discovery of his body about 10 p.m. – when even the prosecution conceded un rebutted evidence conclusively proves she was in Panaca.

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If you have an account of a wrongful conviction that you want to share, send a first-class stamp or a pre-stamped envelope with a request for an information packet to, Justice Denied, PO Box 68911, Seattle, WA 98168. Cases of wrongful conviction submitted in accordance with *Justice:Denied’s* guidelines will be reviewed for their suitability to be published. *Justice:Denied* reserves the right to edit all submitted accounts for any reason.

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Justice: Denied’s logo represents the snake of evil and injustice climbing up on the scales of justice.



Ms. Lobato now has scientific proof of her factual innocence. It is up to the Nevada Supreme Court – which is reviewing her case – to do the right thing and acquit her and release her from prison.

Hans Sherrer, Editor and Publisher
www.justicedenied.org – email: hsherrer@justicedenied.org

* The quote on the cover by Judge Navarro was during an interview with the Las Vegas Review-Journal on May 29, 2002 when she was Ms. Lobato’s attorney and a Clark County Deputy Special Public Defender.

Two jurors who voted to convict Kirstin Blaise Lobato in 2006 have signed documents supporting a new trial for her. Ms. Lobato was convicted in October 2006 of charges related to the murder of Duran Bailey in Las Vegas on July 8, 2001.

Ms. Lobato's filed a petition for a writ of *habeas corpus* filed on May 5, 2010, in the Clark County, Nevada District Court that includes significant new evidence she is actually innocent of having anything to do with Mr. Bailey's murder. That new evidence includes 13 new alibi witnesses, forensic entomology and forensic pathology evidence that at the time of Mr. Bailey's murder Ms. Lobato was 170 miles north of Las Vegas, and new evidence identifying Mr. Bailey's actual murderers. Justice Denied prepared a 49-page document outlining Ms. Lobato's key new evidence in 16 areas that wasn't introduced during her trial. The cover of the document is at the bottom of this page, and it can be read online at, <http://justicedenied.org/lobato/lobato.htm>.

After reviewing that document outlining Ms. Lobato's key new evidence that they didn't know when they convicted her, two jurors not only agree that she deserves a new trial so that a jury can consider her new evidence, but they each signed a document supporting a new trial for her. Those jurors are Mr. Lloyd Taylor and Mr. Thomas Ciciliano, and they both agree, "I believe it is in the interest of justice that Ms. Lobato be granted a new trial."

Mr. Taylor's Affidavit dated January 26, 2011 states:

1. I was a juror in 2006 for the criminal case of the State of Nevada vs. Kirstin Blaise Lobato in the Clark County District Court.
2. Based on the evidence presented during Ms. Lobato's trial the jury voted she was guilty of voluntary manslaughter with a deadly weapon and sexual penetration of a dead body.
3. I am aware that Ms. Lobato has filed a petition for a writ of habeas corpus in the Clark County District Court, and that she is seeking a new trial in part based on numerous claims of new evidence the jury was not aware of when it convicted her in 2006.

Jurors Support A New Trial For Kirstin Blaise Lobato

By Hans Sherrer

4. I have reviewed 16 separate claims of Ms. Lobato's new evidence that the jury did not have available in 2006 when it deliberated her case and found her guilty.
 5. I believe that if the jury in 2006 had known the new evidence in Ms. Lobato's habeas corpus petition it could have influenced the jury's deliberations, and it could have possibly resulted in either a hung jury or Ms. Lobato's acquittal.
 6. I believe it is in the interest of justice that Ms. Lobato be granted a new trial.
 7. I am executing this AFFIDAVIT voluntarily and of my own free will. No force has been used upon me, and no threats or promises made to me by anyone.
- (Affidavit of Lloyd Taylor, January 26, 2011.)

Mr. Ciciliano's Statement dated January 5, 2011 states:

1. I was a juror in 2006 for the criminal case of the State of Nevada vs. Kirstin Blaise Lobato in the Clark County District Court.
2. Based on the evidence presented during Ms. Lobato's trial the jury voted she was guilty of voluntary manslaughter with a deadly weapon and sexual penetration of a dead body.
3. I am aware that Ms. Lobato is seeking a new trial based in part on numerous claims of new evidence the jury was not aware of when it convicted her in 2006.
4. I have reviewed new evidence in Ms.

Lobato's case that the jury did not have available in 2006 when it deliberated and found her guilty.

5. I believe that if the jury in 2006 had known Ms. Lobato's new evidence it could have influenced the jury's deliberations, and it could have possibly resulted in either a hung jury or Ms. Lobato's acquittal.
6. I believe it is in the interest of justice that Ms. Lobato be granted a new trial so that a jury can fairly consider all the evidence that is now available in her case after hearing both the defense and the prosecutions arguments about that evidence.
7. I am executing this STATEMENT voluntarily and of my own free will. No force has been used upon me, and no threats or promises made to me by anyone. (Statement of Thomas Ciciliano, January 5, 2011.)

The document the jurors reviewed is titled "New Evidence Kirstin Blaise Lobato Is Innocent Of Any Involvement In The Death Of Duran Bailey In Las Vegas, Nevada On July 8, 2001." It is available online at, <http://www.justicedenied.org/lobato/lobato.htm>

The documents signed by Mr. Lloyd Taylor and Mr. Thomas Ciciliano were obtained as a result of Justice Denied's continuing investigation into Ms. Lobato's case. The following webpage explains what was learned from Justice Denied's interview of jurors for Ms. Lobato's 2006 trial. See, Report About Interviews Of Jurors For Kirstin Blaise Lobato's 2006 Trial at, http://justicedenied.org/kbl_juror_interviews.html

On February 24, 2011, the documents signed by Mr. Taylor and Mr. Ciciliano were filed in the Clark County District Court as Supplemental Exhibits supporting the granting of Ms. Lobato's habeas corpus petition. The document filed is titled, "Supplemental Exhibits To Petitioner's Answer In Support Of Petition For Writ Of Habeas Corpus," and it can be read at, http://justicedenied.org/kl/lobato_supplemental_juror_exhibits_11242011.pdf

The new evidence in Ms. Lobato's case is summarized on page 14 of the document re-



Continued on p. 4

Comparing New Evidence Of Blaise's Innocence With Evidence The Jury Relied On To Convict Her

New Evidence In Blaise's Habeas Corpus Petition Summarized

1. Blaise's Statement is about the attempted rape of her at a Budget Suites Hotel in May 2001.
2. Blaise is innocent of Bailey's murder says a polygraph examiner used by the Clark County DA's Office, and her shoes were not worn by Bailey's killer.
3. Blaise did not make the shoeprints imprinted in blood on the concrete leading away from Bailey's body and on the cardboard covering his body, which were made by a person involved in his murder.
4. Blaise was in Panaca 170 miles north of Las Vegas the entire weekend of July 6 to July 8, 2001.
5. Blaise did not use methamphetamine on July 6 to July 8, 2001.
6. Methamphetamine was available in Panaca the weekend of July 6 to July 8, 2001.
7. Bailey was murdered between 8 p.m. and discovery of his body "around 10 p.m." on July 8, 2001.
8. Bailey was murdered when unrebutted alibi evidence establishes Blaise was in Panaca.
9. Bailey did not stay or live in the trash enclosure where he was murdered.
10. Bailey was assaulted by more than one person.
11. Bailey was murdered by Diann Parker's "Mexican" friends.
12. Bailey's groin was skinned like an animal after his penis was amputated, and "The perpetrator either had some medical knowledge, or experience skinning an animal." - and Blaise had neither.
13. Bailey's teeth were not knocked out by a baseball bat.
14. Bailey was lying down when he was assaulted.
15. Bailey was alive when his rectum was injured, so it is not a "post-mortem" injury.
16. Bailey was buried alive in trash handled by his killer or killers.

14

The experts and their new evidence is:

- Forensic pathologists Dr. Gail S. Anderson, Dr. M. Lee Goff, and Dr. Linda-Lou O'Connor with new evidence that to a scientific certainty Bailey died after sunset, which was at 8:01 p.m. on July 8, 2001. Dr. Anderson explains in her report dated December 17, 2009 that flies begin laying eggs within minutes after death on an exposed body and they stop laying eggs after sunset. There were no fly eggs in any of Bailey's many open wounds or his orifices, so the three experts independently determined he died after sunset.
- Forensic pathologist Dr. Glen Larkin, one of the leading experts in the U.S. at determining time of death, with new medical evidence that Bailey died within the two hours between 8 p.m. and his body's discovery at 10 p.m. That corroborates the new entomology evidence about Bailey's time of death. Dr. Larkin also determined Bailey was alive after his rectum area wound was inflicted. This unrebutted new evidence is proof Ms. Lobato is not guilty

of her convicted crime of sexual penetration of a dead body (Count II) – because that crime requires that a victim is deceased.

- Drs. Anderson, Goff, O'Connor, and Jason Byrd with new evidence that Bailey's body had no insect or rodent bites so he likely died close to the time he was discovered in the trash enclosure.
- The new scientific and medical evidence Bailey died after 8 p.m. on July 8 in Las Vegas is proof that it is physically impossible Ms. Lobato murdered Bailey, because even her prosecutors acknowledged during her trial she was in Panaca the entire afternoon and night of July 8.
- Impressions expert William J. Bodziak, who worked with the FBI for 26 years, with new evidence that shoeprints imprinted in blood found on cardboard and leading away from Bailey's body were not made by Ms. Lobato's shoes or shoe size.
- Forensic scientist George Schiro with new evidence that Bailey's murderer made the shoeprints imprinted at the

crime scene, and the murderer could not have been wearing the shoes the prosecution contends Ms. Lobato was wearing at the time of his murder.

- Dental surgeon Dr. Mark Lewis with new evidence Bailey's teeth were not knocked out with a bat, while the prosecution claimed it was "possible" her bat knocked out his teeth.
- Psychologist and confession expert Dr. Allison D. Redlich with new evidence Ms. Lobato's police statement on July 20, 2001 described in detail the attempted rape of her at a Budget Suites Hotel on Boulder Highway, and it had nothing to do with Bailey's murder that occurred weeks later in a different location.
- Polygraph examiner Ron Slay, who is used by the Clark County DA's Office to determine a suspect's truthfulness, with the new evidence he declared after examining Ms. Lobato: "I am certain Ms. Lobato is innocent of Mr. Bailey's murder."

Judge Valorie Vega Publicly Lied About The Jurors Who Support A New Trial For Kirstin Blaise Lobato

By Hans Sherrer

Judge Valorie Vega presided over Kirstin Blaise Lobato's trial in 2006. She was also assigned to preside over Ms. Lobato's the petition for a writ of *habeas corpus* filed on May 5, 2010, in the Clark County, Nevada District Court.

Judge Vega lied at least seven times during a hearing on March 1, 2011, about the documents signed in January 2011 by two jurors who voted to convict Kirstin Blaise Lobato in 2006. Ms. Lobato was convicted of charges related to the murder of Duran Bailey in Las Vegas on July 8, 2001.

The two jurors are Lloyd Taylor and Thomas Ciciliano. Mr. Taylor and Mr. Ciciliano each state in their documents, "I believe it is in the interest of justice that Ms. Lobato be granted a new trial."

Ms. Lobato's *habeas corpus* petition includes significant new evidence she is actually innocent of having anything to do with Mr. Bailey's murder. That new evidence includes 13 new alibi witnesses, forensic entomology and forensic pathology evidence that at the time of Mr. Bailey's murder Ms. Lobato was 170 miles north of Las Vegas, and new evidence identifying Mr. Bailey's actual murderers. Justice Denied prepared a 49-page document outlining Ms. Lobato's key new evidence in 16 areas that wasn't introduced during her trial. The document is, "New Evidence Kirstin Blaise Lobato Is Innocent Of Any Involvement In The Death Of Duran Bailey In Las Vegas, Nevada On July 8, 2001." It is available online and can be read by anyone in the world with Internet access at the following address, <http://justicedenied.org/lobato/lobato.htm>

After independently reviewing that document outlining Ms. Lobato's key new evidence they didn't know when they convicted her, Mr. Taylor and Mr. Ciciliano determined that she deserves a new trial so that a new jury can consider her new evidence. Those jurors signed separate documents that specifically, directly and unambiguously state they advocate a new trial for Ms. Lobato based on "new evidence" "that the jury did not have available in 2006 when it delib-

erated [her case] and found her guilty."

Mr. Taylor's Affidavit dated January 26, 2011 states:

1. I was a juror in 2006 for the criminal case of the *State of Nevada vs. Kirstin Blaise Lobato* in the Clark County District Court.
2. Based on the evidence presented during Ms. Lobato's trial the jury voted she was guilty of voluntary manslaughter with a deadly weapon and sexual penetration of a dead body.
3. I am aware that Ms. Lobato has filed a petition for a writ of *habeas corpus* in the Clark County District Court, and that she is seeking a new trial in part based on numerous claims of new evidence the jury was not aware of when it convicted her in 2006.
4. I have reviewed 16 separate claims of Ms. Lobato's new evidence that the jury did not have available in 2006 when it deliberated her case and found her guilty.
5. I believe that if the jury in 2006 had known the new evidence in Ms. Lobato's *habeas corpus* petition it could have influenced the jury's deliberations, and it could have possibly resulted in either a hung jury or Ms. Lobato's acquittal.
6. I believe it is in the interest of justice that Ms. Lobato be granted a new trial.
7. I am executing this AFFIDAVIT voluntarily and of my own free will. No force has been used upon me, and no threats or promises made to me by anyone. ([Affidavit of Lloyd Taylor](#), January 26, 2011.)

Jurors Lloyd Taylor and Thomas Ciciliano reviewed the new evidence in Ms. Lobato's habeas corpus petition and they each state in their document, "I believe it is in the interest of justice that Ms. Lobato be granted a new trial."

Mr. Ciciliano's Statement dated January 5, 2011 states:

1. I was a juror in 2006 for the criminal case of the *State of Nevada vs. Kirstin Blaise Lobato* in the Clark County District Court.
2. Based on the evidence presented during Ms. Lobato's trial the jury voted she was guilty of voluntary manslaughter with a deadly weapon and sexual penetration of a dead body.
3. I am aware that Ms. Lobato is seeking

a new trial based in part on numerous claims of new evidence the jury was not aware of when it convicted her in 2006.

4. I have reviewed new evidence in Ms. Lobato's case that the jury did not have available in 2006 when it deliberated and found her guilty.
5. I believe that if the jury in 2006 had known Ms. Lobato's new evidence it could have influenced the jury's deliberations, and it could have possibly resulted in either a hung jury or Ms. Lobato's acquittal.
6. I believe it is in the interest of justice that Ms. Lobato be granted a new trial so that a jury can fairly consider all the evidence that is now available in her case after hearing both the defense and the prosecutions arguments about that evidence.
7. I am executing this STATEMENT voluntarily and of my own free will. No force has been used upon me, and no threats or promises made to me by anyone. ([Statement of Thomas Ciciliano](#), January 5, 2011.)

On February 24, 2011, the documents signed by Mr. Taylor and Mr. Ciciliano were filed as supplemental exhibits supporting the granting of Ms. Lobato's *habeas corpus* petition. The document filed with the Clark County District Court is titled, "Supplemental Exhibits To Petitioner's Answer In Support Of Petition For Writ Of Habeas Corpus," and it can be read at, http://justicedenied.org/kl/lobato_supplemental_juror_exhibits_11242011.pdf

On February 28, 2011 the Clark County District Attorney's Office filed the "State's Opposition and Motion to Strike Defendant's Supplemental Exhibits to Petitioner's Answer in Support of Petition for Writ of Habeas Corpus."

A hearing was scheduled for the next day, March 1, during which Judge Valorie Vega was expected to announce her decision as to whether she was granting Ms. Lobato's *habeas corpus* petition, ordering an evidentiary hearing to hear testimony regarding specific grounds for a new trial, or summarily denying the petition.

During that hearing Judge Valorie Vega announced she was granting the District Attorney's motion to strike the juror affidavits from Ms. Lobato's *habeas corpus* case. The Minutes of the hearing document that Judge Vega said in public and on the record:

Vega lied cont. on p. 6

Vega lied cont. from p. 5

“Court had some new affidavits presented but they were unsubstantiated and based on their belief with speculation, there was no new evidence presented, the Defendant got new people to review the old evidence presented at trial, that was available at trial to elaborate on it.” Court’s Minutes, March 1, 2011 hearing regarding Kirstin Blaise Lobato’s habeas corpus petition presided over by Clark County District Court Judge Valorie Vega.

It is known that Judge Vega lied at least seven times in the above 45-word sentence. And it is known that she knowingly and deliberately lied on the record because the following facts were known to her from Mr. Taylor and Mr. Ciciliano’s signed documents that she admitted during the hearing she had received at least a day prior to the hearing.

Judge Valorie Vega’s lied about the following:

1. Judge Valorie Vega lied when she stated “... they were unsubstantiated...”

The truth is the jurors Mr. Lloyd Taylor and Mr. Thomas Ciciliano both substantiated their determination that “in the interest of justice” Ms. Lobato deserves a new trial by specifically stating they think she does based on their review of “new evidence” “that the jury did not have available in 2006 when it deliberated [her case] and found her guilty.”

2. Judge Valorie Vega lied when she stated “...based on their belief with speculation...”

The truth is the jurors Mr. Taylor and Mr. Ciciliano both substantiated their determination that “in the interest of justice” Ms. Lobato deserves a new trial by specifically stating they think she does based on their review of “new evidence” “that the jury did not have available in 2006 when it deliberated [her case] and found her guilty.”

3. Judge Valorie Vega lied when she stated “... there was no new evidence presented ...”

The truth is the jurors Mr. Taylor and Mr. Ciciliano both substantiated their determination that “in the interest of justice” Ms. Lobato deserves a new trial by specifically stating they think she does based on their review of “new evidence” “that the jury did not have available in 2006 when it deliberated [her case] and found her guilty.”

4. Judge Valorie Vega lied when she stated “... got new people to review the old evi-

dence presented at trial ...”

The truth is the jurors Mr. Taylor and Mr. Ciciliano both substantiated their determination that “in the interest of justice” Ms. Lobato deserves a new trial by specifically stating they think she does based on their review of “new evidence” “that the jury did not have available in 2006 when it deliberated [her case] and found her guilty.”

5. Judge Valorie Vega lied when she stated “... that was available at trial ...”

The truth is the jurors Mr. Taylor and Mr. Ciciliano both substantiated their determination that “in the interest of justice” Ms. Lobato deserves a new trial by specifically stating they think she does based on their review of “new evidence” “that the jury did not have available in 2006 when it deliberated [her case] and found her guilty.”

6. Judge Valorie Vega lied when she stated “... [that was available at trial] to elaborate on it.”

The truth is the jurors Mr. Taylor and Mr. Ciciliano both substantiated their determination that “in the interest of justice” Ms. Lobato deserves a new trial by specifically stating they think she does based on their review of “new evidence” “that the jury did not have available in 2006 when it deliberated [her case] and found her guilty.” Mr. Taylor and Mr. Ciciliano make no mention that their advocacy of a new trial for Ms. Lobato is based in any way of any elaboration about evidence the jury relied on to convict her — but they specifically state it is based on “new evidence.”

7. Judge Valorie Vega also lied when she stated Ms. Lobato is the “... the Defendant ...”

The truth is Ms. Lobato is the Petitioner in her *habeas corpus* proceeding, and not a Defendant in a criminal prosecution. Ms. Lobato’s criminal case was closed on October 16, 2009. The Nevada legislature in Nevada Revised Statutes 34.360-34.830 established a habeas corpus proceeding as a civil remedy that a convicted person can pursue to prove their claim(s) that they are illegally confined. The NRS Habeas Corpus statutes not only specifically identify Ms. Lobato as the “Petitioner” and the State as the “Respondent,” but the statutes specifically identify in several places that the Nevada Rules of Civil Procedure apply to the handling of a *habeas corpus* petition. Furthermore, the Nevada Rules of Civil Procedure specifically states: “Section 1. The supreme court of Nevada, by rules adopted and published from time to time, shall regu-

late original and appellate civil practice and procedure, including, without limitation, pleadings, motions, writs, ...” Judge Vega knowingly and deliberately lied in describing Ms. Lobato as “the Defendant” because she was specifically made aware that under Nevada law Ms. Lobato’s *habeas corpus* petition is civil proceeding and that she is the civil Petitioner, in Petitioner Lobato’s Notice Of Motion And Motion For The Court Clerk To Assign A Civil Case Number As Required By The NRS, that was first filed in the Clark County District Court on September 7, 2011.

8. Judge Vega was deceptive by concealing from everyone in the courtroom and failing to disclose on the record that the two people she referred to as providing “affidavits” weren’t just anyone — but where jurors who convicted Ms. Lobato in 2006.

Furthermore, by deliberately and knowingly lying repeatedly in her description of the juror’s signed documents during the March 1 hearing, Judge Valorie Vega deliberately falsified the record of that hearing for anyone who reads a transcript without knowing she lied about the documents signed by the jurors. That means the Nevada Supreme Court and if necessary any federal judge involved in reviewing Ms. Lobato’s habeas corpus case will be deceived by Judge Vega’s lies regarding Mr. Taylor and Mr. Ciciliano’s signed documents. Judge Vega’s falsification of the record is known by the two representatives of the Clark County District Attorney’s Office who were present and advocated suppressing the truth in Ms. Lobato’s *habeas corpus* case by the striking of the juror’s “affidavits” that advocate a new trial for Ms. Lobato “in the interest of justice.”

It is important to note that Judge Valorie Vega did not identify a single error in the 49-page document Mr. Taylor and Mr. Ciciliano reviewed to arrive at their independent conclusions that Ms. Lobato is deserving of a new trial based on her “new evidence” the jury did not have available in 2006 when it convicted her. Judge Vega simply lied repeatedly about the content of Mr. Taylor and Mr. Ciciliano’s signed documents and the content of the document they reviewed.

It is not known why Judge Vega resorted to blatantly lying in an effort to denigrate the jurors’ determination that “it is in the interest of justice that Ms. Lobato be granted a new trial” based on her new evidence she had nothing to do with Mr. Bailey’s murder, and that she was 170 miles from Las Vegas

Vega lied cont. on p. 7

Vega lied cont. from p. 6

when the crime occurred.

What is known is the jurors' determination Ms. Lobato should be granted a new trial carries more weight than that of any other persons in the world because only they know what evidence the jury relied on to convict her in 2006. It is also known that Mr. Taylor and Mr. Ciciliano have publicly stated in their documents that based on their personal knowledge of Ms. Lobato's case her "new evidence" could have changed the outcome by resulting "in either a hung jury or Ms. Lobato's acquittal."

It is important to point out that Judge Vega's blatantly dishonest conduct during the hearing on March 1, 2011 appears to have violated a number of ethics provisions of the Revised Nevada Code of Judicial Conduct (ADKT 427), that all judges are mandated to abide by without exception. One of rules Judge Vega appears to have violated is Rule 1.2. that states:

Rule 1.2. Promoting Confidence in the Judiciary. A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety. (emphasis added to original)

Since Judge Vega grossly undermined "Confidence in the Judiciary" by lying repeatedly on the record about the two jurors' documents that were favorable to the granting of the new trial requested in Ms. Lobato's habeas corpus petition, it appears that Judge Vega engaged in conduct that legally obligated her disqualification from Ms. Lobato's case under RNCJC Rule 2.11:

Rule 2.11. Disqualification.

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

...
And,

Comment [1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. (emphasis

added to original)

In addition to her apparent multiple violations of the RNCJC, Judge Vega may have engaged in conduct during the hearing on March 1, 2011, that can be considered criminal under state and/or federal laws, such as criminally violating Ms. Lobato's constitutional rights. Independent state and federal law enforcement investigations can determine if Judge Vega should be criminally prosecuted for her conduct during the hearing.

Judge Vega's conduct during the hearing on March 1, 2011 was a continuation of her disreputable conduct in Kirstin Blaise Lobato's habeas corpus case, some of which is documented in the article, "Is Valorie Vega The Most Corrupt Judge In The United

States?" That article is on page 10, and can be read online at,

<http://justicedenied.org/wordpress/archives/242>

Judge Vega is an elected public official and a public figure — but she acts as if everything she does is hidden in the closet away from public view.

This article was originally published on Justice Denied's website on March 7, 2011. It is online at,

<http://justicedenied.org/wordpress/archives/824>

AFFIDAVIT OF LLOYD TAYLOR

STATE OF VIRGINIA)
)
COUNTY (CITY) OF POQUOSON)

I, LLOYD TAYLOR, being duly sworn, hereby depose and say that the following statements are true and correct to the best of my knowledge and belief:

1. I was a juror in 2006 for the criminal case of the *State of Nevada vs. Kirstin Blaise Lobato* in the Clark County District Court.
2. Based on the evidence presented during Ms. Lobato's trial the jury voted she was guilty of voluntary manslaughter with a deadly weapon and sexual penetration of a dead body.
3. I am aware that Ms. Lobato has filed a petition for a writ of *habeas corpus* in the Clark County District Court, and that she is seeking a new trial in part based on numerous claims of new evidence the jury was not aware of when it convicted her in 2006.
4. I have reviewed 16 separate claims of Ms. Lobato's new evidence that the jury did not have available in 2006 when it deliberated her case and found her guilty.
5. I believe that if the jury in 2006 had known the new evidence in Ms. Lobato's *habeas corpus* petition it could have influenced the jury's deliberations, and it could have possibly resulted in either a hung jury or Ms. Lobato's acquittal.
6. I believe it is in the interest of justice that Ms. Lobato be granted a new trial.
7. I am executing this AFFIDAVIT voluntarily and of my own free will. No force has been used upon me, and no threats or promises made to me by anyone.

Lloyd Taylor
LLOYD TAYLOR

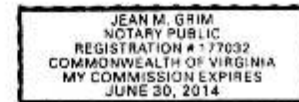
SUBSCRIBED AND SWORN before me this 26 day of January, 2011.

Jean M. Grim
Notary Public

Jean M. Grim
[typed/printed name]

Notary Public for *City of Poquoson*

My Commission expires *June 30, 2014*



Report About Interviews Of Jurors For Kirstin Blaise Lobato's 2006 Trial

By Hans Sherrer¹

In December 2010 every juror for Kirstin Blaise Lobato's 2006 trial who could be located was contacted by Justice Denied as part of its ongoing investigation into her case. In addition to being asked general questions about their impressions of Ms. Lobato's trial, the jurors were asked if they were willing to review a 49-page summary of new evidence in Ms. Lobato's case and evaluate if it likely would have affected the jury's deliberations and verdict.²

A key finding of those interviews was the effect on the juror's perception of the issues in Ms. Lobato's case caused by the superior skill and commitment to win of her prosecutors – Clark County Assistant District Attorneys William Kephart and Sandra DiGiacomo – compared with Ms. Lobato's lawyers. The following observations are a composite of the information gleaned from the juror interviews.

1. Ms. Lobato's lawyers failed to bolster the credibility of non-relative witnesses who provided testimony favorable to her by establishing through testimony and then emphasizing to the jury in closing arguments that those witnesses were not close friends, but acquaintances or buddies living in Las Vegas and Panaca who did not stay in contact with her after her arrest.

Consequently, the jury was left with the false impression that Ms. Lobato's non-relative witnesses who lived in Las Vegas or Panaca in May, June and July 2001 were close friends who had a motive to lie to assist her when in fact they were acquaintances whose only interest was to testify truthfully.

2. Ms. Lobato's lawyers failed to bolster the credibility of three alibi witnesses who were relatives and testified to seeing her at her parents' house in Panaca on July 8, 2001 between about midnight and 7:15 am, by establishing through testimony and then emphasizing to the jury in closing arguments that two of those alibi witnesses had not been called to testify at any prior proceeding, but if they had been called they would have testified about seeing her during the early morning of July 8, and that when the third, Becky Lobato, testified during a prior proceeding she had not been asked if she saw Ms. Lobato on the morning of July 8.

Consequently, the jury was left with the false impression that Ms. Lobato's three alibi witnesses who were relatives were not truthful when they testified to seeing and talking with her at her parents' house between about 1am and 7:15 am on July 8, 2001, because the prosecution argued during closing and rebuttal arguments their testimony was "new" – when in fact Ms. Lobato's trial in 2006 was the first opportunity they had been given to testify about their personal knowledge that she was at her parents' house that morning.

3. Ms. Lobato's lawyers failed to use available information to undermine the testimony of Clark County Medical Examiner Lary Simms, LVMPD Detective Thomas Thowsen, and Lincoln County Juvenile Probation Officer Laura Johnson, by cross-examining them to bring to the jury's attention inconsistencies in their direct testimony with their testimony in prior proceedings or in the case of Johnson, her police statement. In contrast, ADA's William Kephart and Sandra DiGiacomo thoroughly examined witnesses subpoenaed by the prosecution who were acquaintances of Ms. Lobato's to expose to the jury inconsistencies in their testimony favorable to her or that it was inconsistent with their testimony in prior proceedings. An example of this is Dixie Tienken who was subpoenaed by the prosecution and declared a hostile witness by Judge Valorie Vega at DiGiacomo's request. Kephart and DiGiacomo were equally thorough in cross-examining witnesses subpoenaed by the defense to bring to the jury's attention inconsistencies in their testimony favorable to Ms. Lobato or that it was inconsistent with their testimony in prior proceedings. Examples of this are the cross-examination of Becky Lobato and Heather McBride.

Consequently, the failure of Ms. Lobato's lawyers to use available information during cross-examination to impeach the credibility of the prosecution's key witnesses Thowsen, Simms and Johnson left the jurors with the false impression that their testimony favorable to the prosecution was truthful while the witnesses acquainted with Ms. Lobato who provided testimony favorable to her were deceptive or untruthful.

4. Ms. Lobato's lawyers failed to bring to the jury's attention during closing arguments that there was no evidence she used any methamphetamine anywhere at any time during the month of July 2001 – which includes the weekend of Duran Bailey's murder on Sunday July 8, 2001.

Consequently, the jury was left with the false impression created by the prosecu-

tion's closing and rebuttal arguments unsupported by any evidence introduced during the trial, that Ms. Lobato used a large quantity of methamphetamine the weekend of Bailey's murder on July 8, 2001.

5. Ms. Lobato's lawyer failed to bring to the jury's attention during closing arguments that the only evidence introduced during the trial was she had socially used methamphetamine at times in May and June 2001.

Consequently, the jury was left with two false impressions created by the prosecution's closing and rebuttal arguments unsupported by any evidence introduced during the trial: First that in the spring of 2001 Ms. Lobato was a methamphetamine "addict" when in fact she was only a sometime user; and second, that because she sometimes used methamphetamine in May and June 2001, it meant she used it in July 2001, and specifically on July 8 – the day of Mr. Bailey's murder.

6. Ms. Lobato's lawyer failed to bring to the jury's attention during closing arguments that the only evidence introduced during the trial was Mr. Bailey used crack cocaine, and there was no testimony he had used, traded, sold, or even possessed any methamphetamine at any time in the months of May, June and July 2001. (Crack cocaine is not only what Bailey used but it is what Diann Parker testified he gave her in exchange for sex on several occasions.) Cocaine was detected in Mr. Bailey's blood by his autopsy tests

Consequently, the jury was left with the false impression created by the prosecution's closing and rebuttal arguments unsupported by any evidence introduced during the trial that a methamphetamine user would have tracked Mr. Bailey down prior to dawn on July 8, 2001, to obtain methamphetamine from him – when the evidence is he had none.

7. Ms. Lobato's lawyer failed to bring to the jury's attention during closing arguments that there was no evidence introduced during the trial that she had ever used any crack cocaine at any time in her life.

Consequently, the jury was left with the false impression created by the prosecution's closing and rebuttal arguments unsupported by any evidence introduced during the trial that it was "possible" Ms. Lobato would have tracked down Mr. Bailey down prior to dawn on July 8, 2001 to obtain methamphetamine from him – when the only evidence introduced during the trial was Mr. Bailey used,

Jurors cont. on p. 9

Jurors cont. from p. 8

possessed and occasionally traded crack cocaine with one person (Diann Parker).

8. Ms. Lobato’s lawyer failed to bring to the jury’s attention during closing arguments that because she had used methamphetamine and did not use crack cocaine, while Bailey used crack cocaine and did not use methamphetamine, there was no reason for her and Bailey to have every crossed paths and there is no evidence they had ever met or knew each other.

Consequently, the jury was left with the false impression created by the prosecution’s closing and rebuttal arguments unsupported by any evidence introduced during the trial that it is “possible” a methamphetamine user would have tracked Bailey down prior to dawn on July 8, 2001 to obtain methamphetamine from him – when the evidence is he had none.

9. Lobato’s lawyer failed to bring to the jury’s attention during closing arguments that no crack cocaine or methamphetamine or traces of any drugs of any kind was found at the scene of Bailey’s murder. Likewise, no drug paraphernalia or containers were found nor was any evidence found that anyone had ever used crack cocaine or methamphetamine in the trash enclosure where Mr. Bailey was murdered.

Consequently, the jury was left with the false impressions created by the prosecution’s closing and rebuttal arguments unsupported by any evidence introduced during the trial that a quantity of methamphetamine was used in the trash enclosure immediately prior to Bailey’s murder.

The juror interviews make it clear that Ms. Lobato’s conviction is attributable to the success of prosecutors Kephart and DiGiacomo to manipulate the juror’s perception and evaluation of numerous exculpatory facts that her lawyers failed to bring to the juror’s attention, the failure of her lawyers to elicit testimony of witnesses subpoenaed by both the defense and prosecution who provided testimony favorable to Ms. Lobato that would have strengthened their credibility, and the failure of her lawyers to elicit testimony on cross-examination of prosecution witnesses Thowsen, Simms, and Johnson that would have undermined their credibility.

Endnotes:

1 Hans Sherrer is editor and publisher of [Justice Denied](#) – the magazine for the wrongly convicted.

2 [“New Evidence Kirstin Blaise Lobato Is Innocent Of Any Involvement In The Death Of Duran Bailey In Las Vegas, Nevada On July 8, 2001,”](#) Prepared by Hans Sherrer/Justice Denied, December 12, 2010.

This article was originally published on Justice Denied’s website on February 4, 2011. It is online at, http://justicedenied.org/kbl_juror_interviews.html

STATEMENT OF THOMAS CICILIANO

STATE OF NEVADA)
)
COUNTY OF CLARK)

I, THOMAS CICILIANO, hereby say that the following statements are true and correct to the best of my knowledge and belief:

1. I was a juror in 2006 for the criminal case of the *State of Nevada vs. Kirstin Blaise Lobato* in the Clark County District Court.
2. Based on the evidence presented during Ms. Lobato’s trial the jury voted she was guilty of voluntary manslaughter with a deadly weapon and sexual penetration of a dead body.
3. I am aware that Ms. Lobato is seeking a new trial based in part on numerous claims of new evidence the jury was not aware of when it convicted her in 2006.
4. I have reviewed new evidence in Ms. Lobato’s case that the jury did not have available in 2006 when it deliberated and found her guilty.
5. I believe that if the jury in 2006 had known Ms. Lobato’s new evidence it could have influenced the jury’s deliberations, and it could have possibly resulted in either a hung jury or Ms. Lobato’s acquittal.
6. I believe it is in the interest of justice that Ms. Lobato be granted a new trial so that a jury can fairly consider all the evidence that is now available in her case after hearing both the defense and the prosecutions arguments about that evidence.
7. I am executing this STATEMENT voluntarily and of my own free will. No force has been used upon me, and no threats or promises made to me by anyone.


THOMAS CICILIANO

DATED this 5 day of January, 2011.

Information about Kirstin Blaise Lobato’s case is on the following websites and webpages:

Justice4Kirstin (official website), <http://www.justice4kirstin.com>

Kirstin Blaise Lobato (*Justice Denied’s* webpage with information about her case and links), <http://justicedenied.org/kbl.htm>

Kirstin Blaise Lobato v. State of Nevada (*Justice Denied’s* webpage with information about her habeas corpus case and links), http://justicedenied.org/kbl_habeas.htm

Guilty Until Proven Innocent (Lobato family’s website), <http://www.angelfire.com/stars4/justicefor/kirstin/>

Justice for Kirstin Blaise Lobato (cause.com webpage), <http://www.causes.com/causes/257433-justice-for-kirstin-blaise-lobato>

Kirstin Blaise Lobato’s Facebook page, <http://www.facebook.com/pages/Kirstin-Blaise-Lobato/153274544720208>

Justice:Denied articles:

[Las Vegas Police and Prosecutors Frame Woman 170 Miles From Murder Scene - Kirstin Lobato’s “Very Peculiar Story”](#), *Justice:Denied*, Issue 26, Fall 2004

[Possibility Of Guilt Replaces Proof Beyond A Reasonable Doubt](#), *Justice:Denied*, Issue 34, Fall 2006

Judges in Nevada are popularly elected by the public just as they are in the majority of states. Those judges conduct a political campaign in competition with other people pursuing the same position like any other person seeking a public office.

Is Valorie Vega The Most Corrupt Judge In The United States?

By Hans Sherrer

It is well known that persons elected to a public office can be corrupt, and judges are no different. As with other politicians, corrupt judges come in many flavors. The rulings of some are influenced by money taken under the table. The rulings of others are influenced by political payback either for their backer or against persons supporting their opponent. The rulings of others are influenced by their prejudices against particular ethnicities, religion or skin color. The rulings of others are influenced by the history of a litigant they may have read or heard about, or who they have personal knowledge about. Judges that are appointed have these same foibles – except some of their prejudices and shortcomings may be concealed from the public by them not having to go through the minimal filter of a public political campaign.

Clark County District Court Judge Valorie Vega presided over the 2006 trial of Kirstin Blaise Lobato, who goes by her middle name of Blaise. That trial was for charges related to the murder of a homeless man – Duran Bailey – near the Las Vegas Strip on July 8, 2001.

The prosecution introduced no forensic, physical, eyewitness, confession, documentary (gas receipt, etc.), or CCTV security video evidence that Ms. Lobato was anywhere in Clark County (Las Vegas) at any time on July 8, 2001 – the day of Bailey’s murder, or that she knew Bailey or had ever been to where he was murdered.

Ms. Lobato gave a police statement on July 20, 2001, that describes her defending herself from a rape attempt in east Las Vegas at a Budget Suites Hotel on Boulder Highway that she stated occurred “more than a month ago” (i.e., prior to June 20). Even though Ms. Lobato’s statement does not include any material details of the manner or location of Mr. Bailey’s murder and she described her assailant as a completely different person than him, the foundation of the prosecution’s case was their contention her statement is about Bailey’s murder that occurred at a west Las Vegas bank weeks after the attempted rape she describes in her statement.

After two days of deliberations the jury convicted Ms. Lobato on October 6, 2006, of voluntary manslaughter and the sexual penetration of Bailey’s dead body (an injury to his

rectum). She was sentenced to 13 to 35 years. It was reported that the prosecutor and Ms. Lobato’s public defender agreed the verdict was a compromise between jurors wanting to acquit her and those wanting to convict her of murder.

Ms. Lobato’s conviction was affirmed by the Nevada Supreme Court on February 5, 2009, based on her alleged “admission” to murdering Bailey and alleged “positive” tests for blood in her car.¹ However, there was no testimony she ever made any admission to murdering Bailey, and the testimony was that scientific confirmatory tests were negative for blood in her car. Consequently, the Court’s ruling was not based on trial evidence, but an alleged incriminating “admission” and alleged “blood” “evidence” that the Court concocted out of thin air.²

“In Blaise’s case Judge Vega went beyond allowing her courtroom to be transferred into a den of lies – there is reason to believe she betrayed the public trust and her obligation as a public servant by actively aiding the prosecution’s suppression and obfuscation of the truth to procure Blaise’s convictions regardless of her innocence.”

(Afterword at page 147. of *Kirstin Blaise Lobato’s Unreasonable Conviction* by Hans Sherrer.)

The U. S. Supreme Court denied Ms. Lobato’s writ of *certiorari* in October 2009, and her convictions became final. Ms. Lobato’s representation by her public defender ended and he turned over her case files to her.

Intensive investigation of Ms. Lobato’s case by Justice Denied resulted in the discovery of significant new evidence, including scientific evidence Bailey died after 8 p.m. on July 8 – while the un rebutted trial testimony that not even the prosecution disputed was that reliable alibi witnesses and telephone records establish Ms. Lobato was in Panaca on July 8 from at least 11:30 a.m. until after Bailey’s body was found that night “around 10 p.m.”

On May 5, 2010, Ms. Lobato filed a 770-page state *habeas corpus* petition in the Clark



Judge Valorie Vega on a weekday afternoon after she had adjourned a murder trial to attend her daughter’s soccer game. It was during this period of time that she was legally obligated to thoroughly review Ms. Lobato’s 770-page *habeas corpus* petition. (Las Vegas KLAS-TV)

County District Court that has 79 grounds for a new trial based on new evidence of her innocence; exculpatory evidence concealed by the prosecution; prosecutor, police and jury misconduct; and ineffective assistance of counsel.

Ms. Lobato filed in September 2010 a 43-page Motion For Recusal Of Judge Valorie Vega to disqualify her from presiding over her *habeas corpus* petition.³ The motion cited four grounds. Ms. Lobato filed a 44-page Supplement to that Motion on October 1, 2010, that cited five additional grounds.⁴ Those motions that total 87-pages are public

documents filed in the Clark County District Court Clerk’s Office.

The original four grounds for Judge Vega’s recusal / disqualification are:

1. Judge Vega has personal knowledge of facts that are in dispute in Ground 52 of Ms. Lobato’s *habeas* petition, and that makes her a material witness. Ground 52 concerns alleged prosecutorial misconduct by Clark County Assistant District Attorney William Kephart, and ADA Sandra DiGiacomo during Ms. Lobato’s trial that Judge Vega witnessed, and that she states in the transcript she made notes about.⁵ Judge Vega’s disqualification is mandated by Revised Nevada Code of Judicial Conduct Rule 2.11(A)(1) that prohibits a judge from presiding over a case in which he or she has “personal knowledge of facts that are in dispute in the proceeding.” In addition, Ms. Lobato has a state and federal constitutional due process right to have a neutral and detached judge preside over her *habeas corpus* petition.⁶ It is a violation of Ms. Lobato’s right to due process when a judge – such as Judge Vega – is not neutral and detached and has “personal knowledge of facts that are in dispute” and who is a material witness in Ms. Lobato’s petition for a writ of *habeas corpus*.

Furthermore, Judge Vega is a material witness to repeated lying by Assistant District Attorney William Kephart to first deceive her into admitting hearsay and double hearsay testimony by LVMPD Detective Thomas Thowsen, and then to avoid her granting a defense motion to strike Det. Thowsen’s testimony.⁷ She is ethically and legally required by Rule 2.15(B) and (D) of the Revised Nevada Code of Judicial Conduct to report that conduct to the Nevada Bar Association. Consequently, Judge Vega’s disqual-

Vega corrupt cont. on p. 11

Vega corrupt cont. from p. 10

ification is required by Revised Nevada Code of Judicial Conduct Rule 2.11(A)(1) because she “personal knowledge of facts” about the dishonest conduct by the lawyer that she would have to testify about as a material witness during any subsequent proceeding.⁸

2. Judge Vega has a conflict of interest and a prejudgment about the issues regarding Grounds 46, 60, 61 and 75 because they involve the allegation that Ms. Lobato’s trial lawyer was ineffective for failing to object to rulings that Judge Vega made and which were not raised in her direct appeal, so no judge has considered the legality of Judge Vega’s rulings.⁹ Judge Vega’s disqualification is mandated by the Revised Nevada Code of Judicial Conduct Rule 2.11(A) that states “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned ...” Furthermore, it will violate Ms. Lobato’s state and federal constitutional right to due process and her right to a fair, impartial, and disinterested judge if a judge with a conflict of interest and/or pre-judgment in the proceedings presides over Ms. Lobato’s petition for a writ of *habeas corpus*.¹⁰

3. Judge Vega’s conducted a hearing on July 15, 2010, regarding a motion by the State that had not been served on Ms. Lobato so she had no opportunity to respond to the motion, she was not notified about the hearing, and she was not present at the hearing so as a *pro per* litigant she was not represented. Judge Vega granted the State’s motion.

Judge Vega’s conduct was contrary to at least 7 rules of the Revised Nevada Code of Judicial Conduct,¹¹ and her disqualification is mandated by Rule 2.11(A) that states “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned ...”

Furthermore, Judge Vega’s conduct requires her disqualification because the U.S. Supreme Court has mandated that due process fundamentally requires that a litigant – such as Ms. Lobato – is provided notice of a proceeding, the opportunity to be heard during the proceeding, and that a neutral and detached decision maker presides over the proceeding.¹² Ms. Lobato’s motion explains that Judge Vega didn’t comply with any of those mandatory due process requirements during the hearing on July 15, 2010. Ironically, in 2004 the United States Supreme Court ruled in *Hamdi v. Rumsfeld* (542 U.S. 507 (U.S. 06-28-2004), ¶75.) that accused enemy combatants at Guantanamo Bay, Cuba and other U.S. Government detention facilities who have filed a

petition for a writ of *habeas corpus* must be granted the full due process protections that Judge Vega denied Ms. Lobato on July 15, 2010. So accused enemies of the United States are accorded more due process “rights” than Judge Vega accorded Ms. Lobato on July 15, 2010.

4. Judge Vega has publicly stated she believes Ms. Lobato is guilty.¹³ Consequently, Judge Vega’s recusal/disqualification is mandated by the Revised Nevada Code of Judicial Conduct’s Rule 2.11(A) that states, “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned ...”

Furthermore, Judge Vega’s recusal/disqualification is required by due process that requires an impartial decision maker and prohibits a judge with even the appearance of bias from presiding over a case – much less a case such as Ms. Lobato’s in which Judge Vega has publicly expressed the extraordinary bias of believing Ms. Lobato is guilty.¹⁴ Judge Vega’s lack of impartiality and manifest bias against Ms. Lobato makes it impossible for her to fairly consider Ms. Lobato’s writ of *habeas corpus* that among its grounds sets forth that she is actually innocent of Mr. Bailey’s murder based on new scientific and medical evidence he died in Las Vegas at a time when credible and un rebutted alibi evidence establishes she was in Panaca, Nevada 170 miles north of Las Vegas at the time of his murder.

The additional five grounds in the Supplement are:

5. Judge Vega conducted a proceeding on September 17, 2010, and granted a motion by the State that had not been served on Ms. Lobato so she had no opportunity to respond to it, she was not notified about the proceeding, and she was not present at the proceeding so as a *pro per* litigant she was not represented.¹⁵ The U.S. Supreme Court has ruled repeatedly that due process requires that a litigant be provided notice of a proceeding, the opportunity to be heard during the proceeding, and that a “neutral and detached judge” presides over the proceeding.¹⁶ Judge Vega didn’t comply with any of those due process requirements during the proceeding on September 17, 2010, and her conduct provides evidence of her actual bias against Ms. Lobato, which requires her disqualification under U.S. Su-



Judge Valorie Vega beginning jury deliberations in the murder trial of Victor A. Fakoya at 2:43 a.m. on December 17, 2010, so she could leave the next day on vacation. *Inside Edition* did a feature television story about this incident that was broadcast multiple times around the world. This photo is taken from the courtroom video that was broadcast by *Inside Edition*. The story was first broke by KLAS-TV in Las Vegas. On June 5, 2012 the Nevada Commission on Judicial Discipline filed a three count complaint against Judge Vega accusing her of unethical actions during Mr. Fakoya’s trial, that include her adjoining court early on at least six occasions so she could attend her daughter’s soccer games. It was also during this period of time that Judge Vega was legally required to thoroughly review Ms. Lobato’s 770-page *habeas corpus* petition. The complaint is at, <http://judicial.state.nv.us/Formal%20Statement%20of%20Charges--Vega.pdf>

preme Court precedents.¹⁷ Ironically, in 2004 the United States Supreme Court ruled in *Hamdi v. Rumsfeld* (542 U.S. 507 (U.S. 06-28-2004), ¶75.) that accused enemy combatants at Guantanamo Bay, Cuba and other U.S. Government detention facilities who have filed a petition for a writ of *habeas corpus* must be granted the full due process protections that Judge Vega denied Ms. Lobato on September 17, 2010. So accused enemies of the United States are accorded more due process “rights” than Judge Vega accorded Ms. Lobato on September 17, 2010.

6. Judge Vega’s conducted a proceeding on September 17, 2010, and granted a motion by the State that had not been served on Ms. Lobato so she had no opportunity to respond to it, she was not notified about the proceeding, and she was not present at the proceeding so as a *pro per* litigant she was not represented.¹⁸ Judge Vega’s conduct was contrary to at least 7 rules of the Revised Nevada Code of Judicial Conduct, so her disqualification is mandated by Rule 2.11(A) that states, “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned ...” (See also, Judge Vega’s violation No. 3.)

7. Judge Vega misstated a court rule in her Minutes ruling of September 17, 2010, which provided justification for her to grant the State’s motion to strike three motions filed by Ms. Lobato on September 7, 2010.¹⁹ In October 2009 Ms. Lobato executed a general power of attorney that granted unlimited authority

Vega corrupt cont. on p. 12

Vega corrupt cont. from p. 11

to the woman she appointed to act on her behalf. The woman signed the three motions on Ms. Lobato's behalf as her duly authorized "attorney in fact," which is the official designation of a person with power of attorney. By altering the wording of the court rule Judge Vega was able to create the appearance that Ms. Lobato's motions had not been properly signed even though the Nevada Supreme Court has repeatedly ruled beginning in 1875 that the authority she granted to her "attorney in fact" is governed by the words of her power of attorney document.²⁰

Judge Vega's conduct also undermined Ms. Lobato's authority to grant her power of attorney under the Contract Clause of the U.S. Constitution, and it created the appearance Judge Vega is not the "neutral and detached judge" required by due process – consequently her disqualification is required.²¹ In addition, Judge Vega's conduct was contrary to at least 3 rules of the Revised Nevada Code of Judicial Conduct, and her disqualification is mandated by Rule 2.11(A) that states, "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned ..."

8. Judge Vega's conducted a proceeding on September 17, 2010, and granted a motion by the State to strike three of Ms. Lobato's motions. Ms. Lobato had not been served with the State's motion so she had no opportunity to respond to it, she was not notified about the proceeding, and she was not present at the proceeding so as a *pro per* litigant she was not represented.²² Judge Vega's conduct preceding and during that proceeding created the appearance she colluded with the Clark County District Attorney's Office to grant the State's Motion to strike Ms. Lobato's three motions.²³

Judge Vega's conduct was contrary to at least 3 rules of the Revised Nevada Code of Judicial Conduct, and her disqualification is mandated by Rule 2.11(A) that states, "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned ..." Furthermore, due process requires disqualification of a judge who has even the appearance of bias, and Judge Vega's conduct goes far beyond meeting that requirement.²⁴

9. Judge Vega is a material witness to repeated lying in a court document filed in Ms. Lobato's habeas corpus case by a lawyer with the Clark County District Attorney's Office.²⁵ She is ethically and legally required by Rule 2.15(B) and (D) of the Revised Nevada Code of Judicial Conduct to report that attorney's

dishonest conduct to the Nevada Bar Association. Consequently, Judge Vega's disqualification is required by Revised Nevada Code of Judicial Conduct Rule 2.11(A)(1) because she "personal knowledge of facts" about the dishonest conduct by the lawyer that she would have to testify about as a material witness during any subsequent proceeding.²⁶

The Motion To Recuse Judge Vega and in the Supplement explain the factual basis for each of the above summarized 9 Grounds, along with the relevant Nevada Code of Judicial Conduct rules, and U.S. Supreme Court rulings.

Judge Vega filed a response to the Motion To Recuse on September 27, 2010,²⁷ and a response to the Supplement on October 7, 2010,²⁸ Judge Vega denied in general terms that she is biased against Ms. Lobato, or that she is a material witness, or that she has a conflict of interest regarding several of the habeas petition's grounds. Judge Vega can be considered to have blatantly lied in her responses, such as when she wrote "The Court's notes ... are not in any way part of record in the case ..." The truth concealed by Judge Vega is that she specifically states in the trial transcript that she was relying on her trial notes in making a ruling regarding a key issue in Ground 52.³⁰

Judge Vega was also openly deceptive in her responses, such as when she wrote, "I am not a "material witness" nor percipient witness to any of the facts and circumstances concerning the July 8, 2001 offences of which Petitioner Lobato was convicted."³¹ That was a deceptive evasion of Ground 1 in Ms. Lobato's Motion To Recuse that cites from the trial transcript to plainly set forth that Judge Vega is a material witness to events in the courtroom during the trial that form the substance of Ground 52 – and thus her disqualification is mandated by Rule 2.11 of the Nevada Code of Judicial Conduct. Judge Vega's publicly expressed opinion that Ms. Lobato is guilty of murdering Duran Bailey is the 4th Ground for her disqualification. Judge Vega's defense to that Ground was to contradict herself in consecutive sentences by first stating it was "legally appropriate" for her to express her belief in Ms. Lobato's guilt, and then in the next sentence she stated she "has no bias or prejudice for or against either Petitioner Lobato and/or the State of Nevada."³²

Judge Vega's defense to not being disqualified amounted to "I'm a judge and I presided over Ms. Lobato's trial so I should preside over her habeas corpus petition." Judge Vega even goes so far as to pretend she is deaf, dumb, and blind to the content of Ms. Lobato's two motions that total 87

pages (43 and 44 pages) by writing, "To my knowledge, no grounds for recusal exist."³³

Consequently, Judge Vega's responses amount to no defense to the grounds stated by Ms. Lobato for her recusal/disqualification. Relying on Judge Vega's rationale, the Nevada Code of Judicial Conduct rules and the U.S. Supreme Court's due process precedents mandating the disqualification of a judge who even has the appearance of not being "neutral and detached" are meaningless and not worth the paper they are written on, if they are inapplicable in a case with the grounds cited by Ms. Lobato of egregious unethical conduct by Judge Vega that mandates her disqualification.

Under the circumstances of Judge Vegas known bias and prejudice against Ms. Lobato, her known conflicts of interest related to Ms. Lobato's habeas corpus petition, and her self-interest to preserve Ms. Lobato's convictions since she presided over her trial in 2002 and her retrial in 2006, it is reasonable to expect that Judge Vega would deny Ms. Lobato habeas corpus even if she had a time and date stamped video showing her in Panaca the entire day of July 8, 2001.

The ultimate corruption of a judge is to elevate their desired outcome for a case above the outcome dictated by the actual facts and the applicable law(s). Judge Vega's conduct during the entirety of Ms. Lobato's case can be interpreted that she used her position as a judge to ensure Ms. Lobato was convicted,³⁴ and her enmity against Ms. Lobato is further suggested by her unusually harsh sentence.³⁵ Judge Vega's questionable conduct during Ms. Lobato's habeas proceeding that is documented in the Motion to Recuse and the Supplement to that Motion is consistent with her pattern of questionable conduct during Ms. Lobato's trial that is documented in her habeas corpus petition.³⁶

It is written in the book, *Kirstin Blaise Lobato's Unreasonable Conviction: Possibility of Guilt Replaces Proof Beyond a Reasonable Doubt* — Second Edition by Hans Sherrer (The Justice Institute: Seattle, 2010):

"In Blaise's case Judge Vega went beyond allowing her courtroom to be transferred into a den of lies — there is reason to believe she betrayed the public trust and her obligation as a public servant by actively aiding the prosecution's suppression and obfuscation of the truth to procure Blaise's convictions regardless of her innocence." (Afterword at page 147.)

The only rational reason for Judge Vega to

Vega corrupt cont. on p. 13

Vega corrupt cont. from p. 12

vehemently oppose her disqualification as the judge presiding over Ms. Lobato's habeas corpus petition is to ensure that it isn't assigned to a judge who will fairly and openly review its 79 grounds and grant Ms. Lobato a new trial based on one or more of those grounds. Judge Vega would voluntarily and with grace step down from Ms. Lobato's habeas corpus case if she had any concern whatsoever with preserving even a modicum of personal or judicial dignity, or the appearance of justice that the U.S. Supreme Court has ruled numerous times is a requirement for a person to receive due process.

Hearing of the Motion to Recuse Judge Vega was assigned to Clark County District Court Judge Douglas E. Smith. The motion was scheduled to be the first motion heard in Judge Smith's courtroom at 8:30 a.m. on October 20, 2001. During the few minutes the hearing lasted, Judge Smith did not allow any arguments nor did he address the substance of any of the nine grounds cited in Ms. Lobato's Motion to Recuse Judge Vega. What he did do was deny the Motion with the comment "Judge Vega is a fine judge."³⁷ That rationale is completely irrelevant and non-responsive to the nine specific grounds in Ms. Lobato's Motion and Supplement that require Judge Vega's disqualification under both numerous provisions of the Nevada Code of Judicial Conduct and to protect Ms. Lobato's federal and state constitutional right to due process of law. There is no evidence that Judge Smith considered the merits of the facts and the law underlying Ms. Lobato's nine grounds detailed in her Motion to Recuse Judge Vega and the Supplement. Judge Smith's ruling suggests he abrogated his responsibility to function as a judge by automatically deny Ms. Lobato's Motion as a courtesy to his fellow Judge Vega to protect her from the embarrassment of being disqualified from Ms. Lobato's habeas corpus case. Judge Smith's conduct may subject him to disciplinary action under the RNCJC.

It is as impossible for Judge Vega to fairly consider the merits of Ms. Lobato's petition for a writ of *habeas corpus* as it is for water to defy gravity and flow uphill on its own. It is a thorough corruption of the judicial process for any judge to preside over any proceeding under the circumstances that exist for Judge Vega in Ms. Lobato's *habeas corpus* case. Judge Vega's conduct during Ms. Lobato's trial and her habeas corpus proceeding can legitimately be described as at least as corrupt as that of any judge in the United States.³⁸ There is only one possible circumstance under which Judge Vega will act like a judge in considering the merits of

Ms. Lobato's habeas corpus petition: If she succumbs to outside influences that shame her into fulfilling her constitutional and moral obligation to function as a neutral arbiter.

This article was originally published on Justice Denied's website on December 21, 2010. It is online at, <http://justicedenied.org/wordpress/archives/242>

Endnotes:

- 1 *Lobato vs. Nevada*, No. 49087 (NV Supreme Ct, February 5, 2009). The Court's comment about the alleged "admission" is at 4, and about the alleged "positive" blood test is at 2.
- 2 The Nevada Supreme Court's fabrication of the non-existent "admission" of guilt and the "positive blood" evidence they relied on to affirm Ms. Lobato's conviction is explained in detail in Chapter IX – Blaise's Conviction Affirmed, of *Kirstin Blaise Lobato's Unreasonable Conviction – Second Edition*, by Hans Sherrer (Seattle: The Justice Institute, 2010).
- 3 *Kirstin Blaise Lobato v. Warden Of FMWCC, and The State Of Nevada*, No. C-177394, Motion For Recusal Of Judge Valorie Vega, September 17, 2001.
- 4 *Kirstin Blaise Lobato v. Warden Of FMWCC, and The State Of Nevada*, No. C-177394, Supplement To Petitioner Lobato's Motion For Recusal Of Judge Valorie Vega, October 1, 2001.
- 5 Motion For Recusal Of Judge Valorie Vega, at 2-3.
- 6 *Hamdi v. Rumsfeld*, 542 U.S. 507 (U.S. 06-28-2004), "Due process requires a 'neutral and detached judge' .. For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.' It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.' ... These essential constitutional promises may not be eroded." *Id.* at ¶75.
- 7 Motion For Recusal Of Judge Valorie Vega, at 3-4.
- 8 *Id.*, at 3-4.
- 9 *Id.*, at 4-5.
- 10 *Hamdi v. Rumsfeld*, 542 U.S. 507 (U.S. 06-28-2004), ¶75.
- 11 Motion For Recusal Of Judge Valorie Vega, at 6-10.
- 12 *Hamdi v. Rumsfeld*, 542 U.S. 507 (U.S. 06-28-2004), ¶75.
- 13 Motion For Recusal Of Judge Valorie Vega, at 10-12.
- 14 *Hamdi v. Rumsfeld*, 542 U.S. 507 (U.S. 06-28-2004), ¶75. There are a number of other U.S. Supreme Court cases consistent with the *Hamdi* ruling holding that a requirement of due process is that a judge must be impartial and not biased.
- 15 Supplement To Petitioner Lobato's Motion For Recusal Of Judge Valorie Vega.
- 16 *Hamdi v. Rumsfeld*, 542 U.S. 507 (U.S. 06-28-2004), ¶75.
- 17 Supplement To Petitioner Lobato's Motion For Recusal Of Judge Valorie Vega, at 2-4.
- 18 *Id.*, at 4-5.
- 19 *Id.*, at 5-6.
- 20 Nevada Supreme Court's precedent in *Maynard v. Mercer*, 10 Nev. 33 (1875) that was restated in *Seigworth v. State*, 91 Nev. 536, P.2d 464

(Nev. 8-26-1975).

21 *Hamdi v. Rumsfeld*, 542 U.S. 507 (U.S. 06-28-2004), ¶75.

22 Supplement To Petitioner Lobato's Motion For Recusal Of Judge Valorie Vega, at 6-9.

23 *Id.*, at 6-9.

24 *Hamdi v. Rumsfeld*, 542 U.S. 507 (U.S. 06-28-2004), ¶75. Also, to protect a litigant's constitutional rights, "the Due Process Clause has been implemented by objective standards that do not require proof of actual bias." *Caperton et al v. A. T. Massey Coal Co.*, 556 US. ___, (2009), at ¶65. The Caperton decision cited the Supreme Court case of *In re Murchison*, in which the Court ruled regarding recusal of a judge, "... our system of law has always endeavored to prevent even the probability of unfairness." *In re Murchison*, 349 U.S. 133, 136 (1955).

25 Supplement To Petitioner Lobato's Motion For Recusal Of Judge Valorie Vega, at 9-11.

26 *Id.*, at 11.

27 *Nevada v. Lobato*, No. C-177394, Court's Opening Procedural Remarks and Answer, September 27, 2010.

28 *Nevada v. Lobato*, No. C-177394, Supplement To Court's Procedural Remarks and Answer, October 7, 2010.

29 *Nevada v. Lobato*, No. C-177394, Court's Opening Procedural Remarks and Answer, September 27, 2010.

30 "I want to go back to my notes." at 8 App. 1414; XIII-177, 9-27-06.

31 *Nevada v. Lobato*, No. C-177394, Court's Opening Procedural Remarks and Answer, September 27, 2010.

32 *Id.*, at 2.

33 *Nevada v. Lobato*, No. C-177394, Supplement To Court's Procedural Remarks and Answer, October 7, 2010.

34 Ground 46 of Ms. Lobato's habeas corpus petition documents that Judge Vega refused to allow Blaise's alibi witnesses testify that she told them beginning in late May 2001 that she had defended herself against a sexual assault at the Budget Suites Hotel by using her knife to try and cut her assailant's penis. Grounds 60 and 61 document that Judge Vega then gave the jury instructions that shifted the burden of proof to Blaise to prove she was innocent and reduced the government's burden to prove she was guilty beyond a reasonable doubt – after Judge Vega had refused to allow the jury to hear the alibi witness testimony that provided proof she was innocent. So Judge Vega directly assisted the prosecution by relieving it of their constitutional requirement of introducing evidence proving Ms. Lobato was guilty of every essential element beyond a reasonable doubt.

35 Judge Vega imposed the maximum prison sentence of 13 to 35 years in prison, and imposed additional extraordinary post-release sentences of lifetime registration as a sex offender and lifetime supervision by the Nevada Dept. of Corrections.

36 *Kirstin Blaise Lobato v. Warden Of FMWCC, and The State Of Nevada*, No. C-177394, Motion For Recusal Of Judge Valorie Vega, September 17, 2001.

37 *Nevada v. Lobato*, No. C-177394, Minutes of Recusal Hearing, November 20, 2010.

38 Corruption: "6. Perversion or destruction of integrity in the discharge of public duties. ... b. A case or instance of corrupt practice." Oxford English Dictionary, Second edition, 1989; online version November 2010.

<http://dictionary.oed.com> (last visited December 8, 2010).

Judge Valorie Vega Has Acted Like A Clark County Assistant DA In Kirstin Blaise Lobato's Case Since 2002

By Hans Sherrer

Las Vegas is a city largely built on figuring out the odds for different events, whether it is the odds for what card will be dealt in a poker game or the odds for a basketball game's point spread. Odds are mathematics in action. Mathematics is coldly objective, and like the law of gravity it is not subject to personal whim, preference, or opinion.

Clark County, Nevada District Court Judge Valorie Vega was assigned to the case of 18-year-old Kirstin Blaise Lobato after she was charged with the murder of Duran Bailey in Las Vegas on July 8, 2001. After Ms. Lobato was convicted in May 2002 of first-degree murder and other charges related to Mr. Bailey's death, her convictions were overturned in 2004 by the Nevada Supreme Court based on errors made by Judge Vega that the court ruled deprived Ms. Lobato of a fair trial. After a retrial Ms. Lobato was convicted in October 2006 of voluntary manslaughter and other charges related to Mr. Bailey's death. Ms. Lobato's convictions were affirmed by the Nevada Supreme Court in February 2009 and her convictions became final in October 2009.

Ms. Lobato's filed a petition for a writ of

habeas corpus on May 5, 2010, in the Clark County, Nevada District Court that includes significant new evidence she is actually innocent of having anything to do with Mr. Bailey's murder. That new evidence includes 13 new alibi witnesses with testimony her jury didn't hear, new forensic entomology and forensic pathology evidence that Mr. Bailey died when it is known Ms. Lobato was 170 miles north of Las Vegas, and new evidence identifying Mr. Bailey's actual murderers. Ms. Lobato's *habeas corpus* petition included 79 separate grounds stating a legal reason for her to be granted a new trial.

On March 1, 2011 Judge Vega summarily denied Ms. Lobato's *habeas corpus* petition.

On September 1, 2011 Judge Vega summarily denied a Motion to reconsider her denial of post-conviction DNA testing.

From Ms. Lobato's trial in May 2002 to September 2011 in issues raised by Ms. Lobato, Judge Vega's made 273 consecutive significant rulings beneficial to the Clark County District Attorney's Office that were contrary to Ms. Lobato's position or requested relief. The odds against that being by coincidence and not by design is 1 in $6.58887371 \times 10^{83}$ (10 to the 83rd power). That is 1 chance in 6,588,873,710,000 plus an additional 237 zeros.

Those odds are so astronomical that they are difficult to comprehend, but suffice to say it is more likely that a person will buy a single ticket every month for a year (12 months in a row) that is the only winning ticket for a \$100 million Powerball jackpot than that

Judge Vega's rulings coincidentally favored the prosecution in Ms. Lobato's case — in other words it is a practical impossibility.

It is difficult to comprehend such huge numbers, but suffice it to say that the odds are trillions and trillions and trillions times greater that a person will win a \$100 million Powerball jackpot after buying a single ticket than that Judge Vega by chance ruled to the benefit of the Clark County District Attorney and to the detriment of Ms. Lobato from May 2002 to September 2011. Undermining that Judge Vega's rulings were by chance and not design is they are indistinguishable from the rulings that would have been made if a Clark County Assistant District Attorney had presided over Ms. Lobato's trials and her *habeas corpus* petition — since Judge Vega ruled as Clark County's District Attorney wanted her to.

Calculations

Probability it was by chance that Judge Vega ruled against Ms. Lobato and in favor of the prosecution 273 times in a row is $6.58887371 \times 10^{-83}$ (1/2 to the 273rd power = $6.58887371 \times 10^{-83}$).

Odds are 1 in $6.58887371 \times 10^{83}$ it was by chance that Judge Vega ruled against Ms. Lobato and in favor of the prosecution 273 times in a row (2 to the 273rd power = $6.58887371 \times 10^{83}$).

1 The census bureau reports Clark County, Nevada's population as 1,951,269 after the 2010 census, <http://2010.census.gov/2010census/data/>

Rulings Judge Vega made against Kirstin Lobato from her first trial in May 2002 to denying DNA testing in September 2011

When	What	How Many
1st Trial	Trial rulings (Six evidentiary rulings that were pre-trial motions in 2nd trial, limiting George Schiro's exculpatory expert testimony, denying the defense to introduce documents and testimony impeaching the testimony of a key prosecution witness.)	9
1st Trial	Post-verdict <i>habeas corpus</i> petition	1
1st Trial	Sentencing (mirrored prosecution recommendation)	1
2nd Trial	Pre-trial motions about evidentiary matters	8
2nd Trial	Trial rulings (Denied defense motion to strike Det. Thowsens' hearsay testimony and upheld prosecution objection to alibi witness testimony.)	2
2nd Trial	Post-verdict (Revoked bail pending sentencing)	1
2nd Trial	Sentencing (mirrored prosecution recommendation)	1
Habeas corpus	Prior to hearing (appointment of counsel, 3 motions, discovery of Dr. Larkin and discovery of shoeprints)	6
Habeas corpus	Hearing (79 grounds, 79 requests for evidentiary hearing, and 80 requests for appointment of counsel)	238
Habeas corpus	Hearing (Motions (appointment of counsel and civil case no.), and striking affidavits of jurors who support a new trial for Ms. Lobato.	3
Habeas corpus	Findings of Fact and Conclusions of law (written by the CCDA's Office and signed by Vega)	1
DNA testing	Petition for post-conviction DNA testing and Motion For Reconsideration	2
Total		273

Did Judge Valorie Vega Read Kirstin Blaise Lobato's Habeas Corpus Petition Before Denying It?

By Hans Sherrer

Clark County, Nevada District Court Judge Valorie Vega was assigned to the case of 18-year-old Kirstin Blaise Lobato after she was charged with the murder of Duran Bailey in Las Vegas on July 8, 2001. After Ms. Lobato was convicted in May 2002 of first-degree murder and other charges related to Mr. Bailey's death, her convictions were overturned in 2004 by the Nevada Supreme Court based on errors made by Judge Vega that deprived Ms. Lobato of a fair trial. After a retrial Ms. Lobato was convicted in October 2006 of voluntary manslaughter and other charges related to Mr. Bailey's death. Ms. Lobato's convictions were affirmed by the Nevada Supreme Court in February 2009 and her convictions became final in October 2009.

Ms. Lobato's filed a 770-page petition for a writ of *habeas corpus* on May 5, 2010, in the Clark County District Court that included 79 separate grounds stating a legal reason for her to be granted a new trial, and 101 exhibits were attached in support of those grounds. Ms. Lobato's petition included 24 grounds based on new evidence supporting that she is actually innocent of having anything to do with Mr. Bailey's murder. That new evidence includes 13 alibi witnesses with testimony her jury didn't hear, new forensic entomology and forensic pathology evidence that Mr. Bailey died when it is known Ms. Lobato was 170 miles north of Las Vegas, and new evidence identifying Mr. Bailey's actual murderers.

Judge Valorie Vega summarily denied Ms. Lobato's *habeas corpus* petition during a hearing conducted in her courtroom on March 1, 2011. During that hearing Judge Vega did not provide information that she had read Ms. Lobato's 770-page petition, that she had knowledge and understanding of the details of the petition's 79 grounds for a new trial, and that she had knowledge and understanding of the details of the 101 exhibits supporting a new trial. Neither did Judge Vega provide information that she had read and had knowledge and understanding of the details in Ms. Lobato's [205-page Answer](#) and its attached 5 exhibits that she filed on October 2, 2010 to counter the Clark County District Attorney's 42-page Response to her petition.

Ground one of Ms. Lobato's petition states:

"New forensic entomology evidence of Duran Bailey's time of death conclusively establishes the Petitioner could not have been in Las Vegas at the time Mr. Bailey was murdered, and if the jury had known of this exculpatory evidence, individually or cumulative with other evidence, no reasonable juror could have found the Petitioner guilty beyond a reasonable doubt, under the standards established by the state and federal constitutional rights of the Petitioner to due process of law and a fair trial." (underlining added)

There was no forensic entomology testimony during Ms. Lobato's trial, so *any* forensic entomology evidence in her petition is new evidence in her case that was unavailable for the jury to consider when it voted to convict her. Furthermore, there were reports by three forensic entomologists included as Exhibits 1, 2, 3 to Ms. Lobato's petition. Yet Judge Vega comments during the hearing support that she didn't even read the *first four words* of ground one — "New forensic entomology evidence" — much less its entire contents, or any of the other 23 grounds in the petition based on new evidence, because she stated — "there was no new evidence presented" — in describing a summary of the new evidence in Ms. Lobato's petition. It is impossible for Judge Vega to believe there "there was no new evidence presented" if she had read even the *first four words* of ground one ... or the first few words of ground two through ground twenty-four that each begin by stating they are based on "New" evidence: evidence that was not introduced during Ms. Lobato's trial and that the jury did not have available to consider. Furthermore, it is impossible for Judge Vega to believe "there was no new evidence presented" if she had read the 101 exhibits attached to Ms. Lobato's petition that included extensive new expert and witness evidence not introduced during Ms. Lobato's trial.

Judge Vega's own words during the hearing constitute a *de facto* confession to the world that she summarily denied Ms. Lobato's *habeas corpus* petition without reading it and its 101 exhibits, or her Answer and its 5 exhibits, and that Judge Vega didn't have knowledge and understanding of the details of Ms. Lobato's 79 grounds for a new trial..



Judge Valorie Vega on a weekday afternoon after she had adjourned a murder trial to attend her daughter's soccer game. It was during this period of time that she was legally obligated to review Ms. Lobato's habeas corpus petition. (Las Vegas KLAS-TV)

What Judge Vega did do during the hearing on March 1, 2011 was read a pre-printed document that cited one or more legal cases as the reason for denying each ground of Ms. Lobato's *habeas* petition. There was no factual explanation given by Judge Vega — either from reading the document or in an off-the-cuff remark — of how the cases she cited were relevant to denying any of the grounds. A person can know more factual details about the plot of a 30-minute episode of the television comedy "How I Met Your Mother" than Judge Vega exhibited knowing about the details of Ms. Lobato's *habeas corpus*

petition.

Just as it is known when a 3rd grader has cheated by copying answers from a neighbor, it is known that the document Judge Vega read in denying Ms. Lobato's *habeas* petition was largely copied from the Clark County District Attorney's Response to Ms. Lobato's petition — because it relied on cases that the DA's Office cited in their Response that Ms. Lobato's Answer explained are irrelevant to her case.

That Judge Vega did not author the document she read during the hearing to deny Ms. Lobato's petition and that she had not even read it prior to the hearing, is also supported by her unfamiliarity with the document's contents that she had difficulty reading it at times.

After Judge Vega denied Ms. Lobato's *habeas* petition she assigned the writing of the written ruling denying it to the Clark County District Attorney's Office.

So from the hearing on March 1, 2011 it can be deduced:

- Judge Vega did not provide information that she had read and had knowledge and understanding of the details of the 79 grounds for a new trial in Ms. Lobato's *habeas corpus* petition.
- Judge Vega did not provide information that she had read and had knowledge and understanding of the details of the 101 exhibits that were attached to Ms. Lobato's *habeas corpus* petition in support of its 79 grounds for a new trial.
- Judge Vega did not provide information that she had read and had knowledge and

Vega cont. on p. 16

Judge Valorie Vega Is A Modern Day Judge Roland Freisler

By Hans Sherrer

Roland Freisler was a judge in Germany from 1942 until his death in 1945. Prior to that he was the Secretary of State for Germany's Ministry of Justice from 1934 to 1942. As a judge Freisler uncritically adopted the prosecution's position about an accused person's culpability, and then after their conviction imposed the sentence sought by the prosecution. Judge Freisler lacked judicial independence and effectively functioned as an arm of the prosecution.

Judge Freisler is most well-known for presiding over the treason trials of a loosely

knit group known as The White Rose that produced and distributed mimeographed flyers that detailed crimes by the German government and encouraged non-violent passive resistance to its policies. After White Rose members Sophie Scholl, her brother Hans Scholl, and Christoph Probst were found guilty in February 1943, Judge Freisler sentenced them to death. Members of The White Rose are now honored in Germany with statutes, and roads and parks named after them, while Judge Freisler is remembered as a black heart.

Judge Freisler unabashedly represented the interests of the government's prosecutors and his conduct sets a benchmark to evaluate the independence of other judges. A judge who mimics Judge Freisler by failing to exhibit independence from the prosecution and rules as if the defense's position on an issue is irrelevant rates a 10. A judge

rating a 10 on the Freisler Scale is a judge in name only, because he or she functions as a prosecutor wearing a robe. In contrast a judge who exhibits independence by regularly ruling in favor of the defense's position on multiple substantive issues and in whose courtroom a defendant is routinely acquitted when it is warranted by the evidence, would have a 0 rating on the Freisler scale.

There are judges in countries around the world who conduct themselves as Judge Freisler did. One of these is Clark County, Nevada District Court Judge Valorie Vega. Judge Vega rates a 10 on the Freisler Scale by her unrelenting prosecution favorable conduct in the case of *Nevada v. Kirstin Blaise Lobato*.

Judge Vega was assigned to the case of 18-year-old Kirstin Blaise Lobato after she was charged with the murder of Duran Bailey in Las Vegas on July 8, 2001. Ms. Lobato's alibi defense is she was 170 miles north of Las Vegas on the entire day of Mr. Bailey's murder. After Ms. Lobato was convicted in May 2002 of first-degree murder and other charges related to Mr. Bailey's death, her convictions were overturned in 2004 by the Nevada Supreme Court based on errors made by Judge Vega that the court ruled deprived Ms. Lobato of a fair trial. After a retrial Ms. Lobato was convicted in October 2006 of voluntary manslaughter and other charges related to Mr. Bailey's death. Ms. Lobato was convicted even though the prosecution did not introduce any evidence she was anywhere in Clark County (Las Vegas) at anytime on the day of Mr. Bailey's death, or that she had ever met Mr. Bailey or ever been to where he was murdered. Judge Vega imposed the sentence requested by the prosecution of up to 35 years in prison and lifetime custody by the Nevada DOC. Ms. Lobato's convictions were affirmed by the Nevada Supreme Court in February 2009, and her convictions became final in October 2009.

Ms. Lobato's filed a petition for a writ of *habeas corpus* on May 5, 2010, in the Clark County, Nevada District Court that includes significant new evidence she is actually innocent of having anything to do with Mr. Bailey's murder. That new evidence includes 13 new alibi witnesses with testimony her jury didn't hear, new forensic entomology and forensic pathology evidence that Mr. Bailey died when it is known Ms. Lobato was 170 miles north of Las Vegas, and new evidence identifying Mr. Bailey's actual murderers. Ms. Lobato's *habeas corpus* petition included 79 separate

Vega cont. from p. 15

understanding of the details of Ms. Lobato's [205-page Answer](#) and it's attached 5 exhibits that she filed on October 2, 2010 to counter the Clark County District Attorney's Response to her petition.

- Judge Vega read a pre-printed document that denied each of Ms. Lobato's 79 grounds for a new trial and she did not provide an explanation of how the cases she cited were relevant to denying those 79 grounds based on the facts.
- Judge Vega read a pre-printed document that denied each of Ms. Lobato's 79 grounds for a new trial that was largely copied from the Clark County District Attorney's Response to Ms. Lobato's petition.
- Judge Vega was not familiar with the pre-printed document she read in court that denied each of Ms. Lobato's 79 grounds for a new trial.
- Judge Vega read a pre-printed denial of Ms. Lobato's *habeas* petition that was written by a person or persons unknown.
- Judge Vega assigned the writing of the ruling denying Ms. Lobato's *habeas corpus* petition to the Clark County District Attorney's Office – which she could not write without reading the petition and having personal knowledge and understanding of both the petition and its 79 grounds for a new trial, and Ms. Lobato's Answer to the DA's Response.

The totality of Judge Vega's conduct during the hearing was consistent with her denying Ms. Lobato's *habeas corpus* petition without having read it and having knowledge

and understanding of the details of that petition's 79 grounds for a new trial and the 101 exhibits supporting those grounds, and that she did not author the document she read. Although Judge Vega may have read portions of one or several pages in Ms. Lobato's petition, that doesn't suggest she had knowledge and understanding of the details of any of its 79 grounds for a new trial that she summarily denied.

Las Vegas Channel 8 investigative reporter Colleen McCarty reported in a February 7, 2011 broadcast that Judge Vega "heard few afternoon proceedings in the month of January," and that "As of early January, Vega has the lightest caseload among judges who hear both civil and criminal cases." McCarty also reported that Judge Vega attended at least five of her daughter's afternoon soccer games in January 2011. So it is publicly known that Judge Vega was working part-time during the period of time that she was supposed to be reviewing Ms. Lobato's *habeas corpus* petition and Answer that total 975 pages. Judge Vega's extra-curricular family activities during working hours may provide at least some explanation for why she would deny Ms. Lobato's *habeas corpus* petition without reading it and her Answer, and without having knowledge and understanding of the details of her 79 grounds for a new trial supported by the 101 exhibits attached to her petition and the 5 exhibits attached to her Answer.

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Freisler cont. on p. 17

Freisler cont. from p. 16

grounds stating a legal reason for her to be granted a new trial.

During the more than nine years since Ms. Lobato's trial began in May 2002, Judge Vega has made at least 273 consecutive substantive rulings favoring the Clark County District Attorney's Office and against Ms. Lobato. (See, "Judge Valorie Vega Has Acted Like A Clark County Assistant District Attorney In Kirstin Blaise Lobato's Case Since 2002," on page 14.) The odds against that being by coincidence and not by design is 1 in $6.58887371 \times 10^{83}$ (10 to the 83rd power). That is 1 chance in 6,588,873,710,000 plus an additional 237 zeros. Those odds are so astronomical that they are difficult to comprehend, but suffice to say it is more likely that a person will buy a single ticket every month for a year (12 months in a row) that is the only winning ticket for a \$100 million Powerball jackpot than that Judge Vega's rulings coincidentally favored the prosecution in Ms. Lobato's case — in other words it is a practical impossibility.

That is particularly the case because all things being equal Ms. Lobato position on an issue would be expected to be correct approximately 50% of the time — the same as the prosecution — and not wrong 100% of the time for years on end. Judge Vega could have traded places with one of the prosecutors in the courtroom at any point during Ms. Lobato's trials or a post-conviction hearing, and a person reading the transcript wouldn't know it because the prosecutor's rulings would have been materially indistinguishable from those made by Judge Vega.

In the course of making some of those rulings Judge Vega has outright lied and in others cases grossly misrepresented the truth to justify ruling in favor the District Attorney's Office. (See e.g., "Is Judge Vegas The Most Corrupt Judge In The United States," on page 10; and, "Judge Valorie Vega Publicly Lied About The Jurors Who Support A New Trial For Kirstin Blaise Lobato," on page 5.)

It is known from court documents that after Ms. Lobato filed her *habeas corpus* petition Judge Vegas had *ex parte* communications with the District Attorney's Office during which they appear to have schemed (some people might describe it as conspired) to rule against motions filed by Ms. Lobato with no recognition of her due process rights. (See e.g., *Kirstin Blaise Lobato v. Warden of FM-WCC and The State of Nevada*, No. C-177394, Clark County District Court, "Sup-

plement To Petitioner Lobato's Motion For Recusal Of Judge Valorie Vega," filed October 1, 2010; and, "Is Valorie Vega The Most Corrupt Judge In The United States?," on page 10.)

During a hearing on March 1, 2011 Judge Vega broke new ground by denying Ms. Lobato's 770-page *habeas corpus* petition that includes 79 grounds for a new trial, when there is no evidence Judge Vega read the petition, the 101 exhibits supporting the petition, or Ms. Lobato's 205-page Answer countering the D.A.'s Response that opposed granting the petition. (See, "Did Judge Valorie Vega Didn't Read Kirstin Blaise Lobato's Habeas Corpus Petition Before Denying It?," on page 15.)

In fact, during that hearing Judge Vega didn't exhibit any awareness of the contents of even the first sentence of Ground 1 of Ms. Lobato's petition — or that she knew the new forensic entomology evidence in Ground 1 scientifically establishes Mr. Bailey died on the evening of July 8, 2001 when even the prosecution conceded to her jury she was 170 miles from Las Vegas. Likewise, Judge Vega was ignorant of all the many dozens of other aspects of new evidence in Ms. Lobato's petition, including the new medical evidence in Ground 7 that the 18-year-old Ms. Lobato lacked the specialized medical knowledge or animal husbandry skill exhibited by Mr. Bailey's killer in performing the near surgical cutting of his groin.

What Judge Vega did during the hearing on March 1 was read a pre-printed document denying each ground of Ms. Lobato's petition. Her difficulty at times in reading the document suggests she was so unfamiliar with its contents that she did not see it or know its actual contents prior to the hearing. What is known is the denial Judge Vega read mirrored the Clark County District Attorney's objections to granting Ms. Lobato's petition set forth in their Response dated August 20, 2010.

At the end of the hearing Judge Vega directed the DA's Office to write her opinion (order*) denying Ms. Lobato's petition, even though the opinion will contain her alleged inner thought process underlying her reasoning and rationale for denying each ground of the



Judge Roland Freisler in 1942
(German Federal Archive)

petition — which only she can know. However, since there is no evidence Judge Vega even read ground one of Ms. Lobato's petition it is impossible for her to write an opinion detailing her reasoning for denying each ground of the petition she is ignorant of.

The denial of Ms. Lobato's petition that Judge Vega read in court was based on the DA's Response — consequently, the only person who can write Judge Vega's opinion is the person in the DA's Office who wrote the

Response upon which Judge Vega's denial is based. More plainly stated, Judge Vega denied Ms. Lobato's petition by mimicking the DA's position — and thus only the DA's Office can write "her" opinion outlining the reasons for her denial of the petition she hasn't read — because she doesn't know what those reasons are. Consequently, an opinion by Judge Vega denying Ms. Lobato's *habeas corpus* petition lacks legitimacy and is as fraudulent as any document to be filed in any court case in the history of the United States because it represents the *de facto* denial of her petition by the Clark County District Attorney's Office under the guise Judge Vega denied it.

Judge Freisler would be proud of Judge Vega, because in Kirstin Blaise Lobato's case she rates a 10 on the Freisler Scale of a judge lacking independence from the prosecution. Judge Vega is faithfully carrying on Judge Freisler's legacy of favoring the prosecution to the detriment of innocent defendants such as Kirstin Blaise Lobato. Likewise, Judge Freisler would be proud of every judge in the U.S. and other countries who assists the prosecution in their effort to convict a defendant, and then if necessary makes sure that the conviction stands.

* Although during the hearing on March 1, 2011 Judge Vega stated her conclusions of law and findings of fact in support of her denying Ms. Lobato's *habeas corpus* petition, the opinion (order) is a document of her conclusions of law and findings of fact upon which Ms. Lobato's appeal to the Nevada Supreme Court will be based.

This article was originally published on Justice Denied's website on June 28, 2011. It is online at, <http://justicedenied.org/wordpress/archives/1267>



Kirstin Blaise Lobato Files Petition For DNA Testing

By Hans Sherrer

Kirstin Blaise Lobato filed a petition on Friday, February 25, 2011 in the Clark County, Nevada District Court seeking an order for post-conviction DNA testing of evidence recovered from the scene of Duran Bailey's murder in Las Vegas on July 8, 2001. Mr. Bailey was murdered in a west Las Vegas bank's trash enclosure.

Mr. Bailey's autopsy determined he died from a head injury, but he also had been beaten, stabbed in his face, neck, hands, abdomen, his rectal area was injured, and his penis was amputated.

Ms. Lobato was convicted by a jury on October 6, 2006 of voluntary manslaughter and sexual penetration of a dead body (Mr. Bailey's rectal area injury).

Ms. Lobato's alibi defense was that on the entire day of Mr. Bailey's murder she was 170 miles north of Las Vegas in the Lincoln County town of Panaca where she lived with her parents. No physical, forensic, eyewitness or confession evidence was introduced during Ms. Lobato's trial that she was at the crime scene, or *anywhere* other than Panaca on the entire day of the murder.

Ms. Lobato's prosecution and conviction were based on her conversations with many people describing that she fought off an attempted rape in the parking lot of a Budget Suites Hotel in east Las Vegas by trying to cut her attacker's penis. When the detectives investigating Mr. Bailey's murder learned of that rape attempt they drove to Panaca and interrogated Ms. Lobato. She repeated her account of the attempted rape that she described as occurring weeks prior to the date of Mr. Bailey's murder. Since Mr. Bailey's penis had been amputated the detectives arrested Ms. Lobato for Mr. Bailey's murder. The prosecution was able to convince the jury that the attempted rape Ms. Lobato described as occurring at the Budget Suites Hotel and Mr. Bailey's brutal murder at the Las Vegas bank were the same event.

The Nevada Supreme Court affirmed Ms. Lobato's convictions in February 2009 solely on the basis of her "admission" to using her knife to try to cut her attacker's penis when she defended herself from the rape attempt which the Court assumed, just as the prosecution and jury did, was Mr. Bailey's murder.

Ms. Lobato filed a 770-page petition for a writ of *habeas corpus* on May 5, 2010 in the Clark County District Court that includes 79 grounds supporting the granting of a new trial. Included is new medical and scientific evidence that Mr. Bailey died on the evening of July 8. Ms. Lobato contends the new evidence proves it is physically impossible she murdered Mr. Bailey because the prosecution conceded in their arguments to the jury that credible alibi witnesses establish she was in Panaca from at least 11:30 am on the morning of the 8th until after Mr. Bailey's body was found about 10 p.m. that night.

Ms. Lobato's petition seeks the DNA testing of more than 13 items of evidence recovered from the crime scene.

Although all DNA testing of crime scene evidence conducted prior to Ms. Lobato's trial excluded her, there was evidence that wasn't tested and more sensitive DNA testing techniques have been developed since her conviction that can detect the DNA of skin cells from items that a person has touched. Crime scene evidence that Mr. Bailey's killer(s) would have handled include the plastic sheeting wrapped around his torso, cigarette butts and a match found on his body underneath the plastic sheeting, and his pants that were pulled down to his knees. There was also semen recovered from Mr. Bailey's rectum that has not been DNA tested.

Ms. Lobato petition requested DNA testing that could identify Mr. Bailey was murdered by Diann Parker and possibly her Hispanic male friends who lived less than 100 yards from the murder scene. Prior to Mr. Bailey's murder Ms. Parker reported to the Las Vegas Metro PD that Mr. Bailey beat and raped her on July 1 – a week before his murder. Ms. Lobato presented the third-party culprit defense at trial that Mr. Bailey was murdered in retaliation for his assault on Ms. Parker that occurred only hours after her Hispanic male friends warned him to stay away from Ms. Parker. Ms. Lobato argued at trial that Ms. Parker's Hispanic friends had the motive, means and opportunity to murder Mr. Bailey that she didn't have. Ms. Lobato's *habeas corpus* petition includes the new evidence that Ms. Parker admitted to the detectives investigating Mr. Bailey's murder that the morning after his murder she had a bloody shirt and bloody pants – however, the detectives didn't follow up on that information.

Ms. Lobato is represented *pro bono* by Travis Barrick, a prominent Las Vegas attorney. The Innocence Project in New York has agreed to pay for the DNA testing if Ms. Lobato's petition is granted.

Nevada Supreme Court Rules Judge Vega's Denial Of Post-conviction DNA Testing Can't Be Appealed

The Nevada Supreme Court ruled on January 12, 2012 that a district court's denial of post-conviction DNA testing cannot be appealed.

In 2009 Nevada amended its post-conviction DNA testing law NRS §176.0918 to include persons who were not sentenced to death.

Kirstin Blaise Lobato was convicted in October 2006 of charges related to the July 2001 murder of a homeless man in Las Vegas. The State didn't introduce any physical, forensic, eyewitness, informant or confession evidence linking Ms. Lobato to the crime, and her alibi defense supported by telephone records and a dozen witnesses is that on the entire day of the murder she was 170 miles from Las Vegas at her home in Panaca, Nevada. Ms. Lobato was 18 in 2001, and her conviction was based on the prosecution's contention that in spite of the lack of evidence it is possible she committed the crime. [A book about her case](#) is subtitled, *Possibility Of Guilt Replaces Proof Beyond A Reasonable Doubt*. She was sentenced to 13-to-35 years in prison.

After Ms. Lobato's convictions were affirmed on direct appeal she filed a state habeas corpus petition in May 2010 that is pending.

DNA appeal cont. on p. 19

The DNA petition is: *In Re: Kirstin Blaise Lobato*, Petition Requesting Post-Conviction DNA Testing Pursuant to NRS §176.0918, District Court, Clark County, Nevada. The Petition can be read at, http://justicedenied.org/kl/lobato_dna_petition_11252011.pdf

Ms. Lobato is believed to be the first prisoner convicted of a non-capital crime to file a petition for post-conviction DNA testing in Nevada under a revised state statute that went into effect in October 2009. Prior to the 2009 change in the state law only death row prisoners were authorized to seek post-conviction DNA testing in Nevada.

This article was originally published on Justice Denied's website on February 26, 2011. It is online at, <http://justicedenied.org/wordpress/archives/787>



Kirstin Blaise Lobato Petition On Change.org

A Change.org petition in support of Kirstin Blaise Lobato requests that Clark County District Attorney Steven Wolfson not oppose Kirstin's *habeas corpus* appeal now before the Nevada Supreme Court. Lobato is appealing the denial of her *habeas corpus* petition by Clark County District Court Judge Valorie Vega on June 16, 2011.

Kirstin was convicted in October 2006 of charges related to the murder of 44-year-old homeless man Duran Bailey, whose body was found about 10 p.m. in a trash area outside the Nevada State Bank at 4240 W. Flamingo Road in Las Vegas on July 8, 2001.

Assistant District Attorneys William Kephart and Sandra DiGiacomo did not introduce any direct physical, forensic, eyewitness, confession or CCTV evidence during Kirstin's trial that she committed the crime or that she was in Las Vegas on the day of the crime. ADA DiGiacomo asserted during closing arguments that Bailey was murdered "sometime before sunup," and conceded witness testimony and telephone

records established the 18-year-old Kirstin was in Panaca where she lived – 170 miles north of Las Vegas – from at least 11:30 a.m. through the night of July 8. Kirstin was sentenced to 13 to 35 years in prison.

After the Nevada Supreme Court denied Kirstin's appeal in 2009, she filed a 770-page *habeas corpus* petition on May 5, 2010 that includes new evidence supporting her factual innocence by 10 experts and 12 alibi witnesses.

The experts include three forensic entomologists with new evidence establishing to a scientific certainty Bailey died after sunset, which was at 8:01 p.m. on July 8, 2001. Dr. Gail S. Anderson explains in her report dated December 17, 2009 that flies begin laying eggs within minutes after death on an exposed body and they stop laying eggs after sunset. There were no fly eggs in any of Bailey's many open wounds or his orifices, so the three experts independently determined he died after sunset. The forensic entomologists are Dr. Anderson, a professor at the School of Criminology at Simon Fraser University in Burnaby, British Columbia; Dr. M. Lee Goff is the director of the Chaminade University Forensic Sciences program in Honolulu, Hawaii, and the entomology advisor

for the *CSI* and *CSI: Miami* television shows; and, Dr. Linda-Lou O'Connor was formerly with the Department of Entomology at the University of Kentucky and is an independent consultant at forensic entomology.

Forensic pathologist Dr. Glen Larkin's new medical evidence that Bailey died within the two hours between 8 p.m. and his body's discovery at 10 p.m. corroborates the new entomology evidence about Bailey's time of death.

The new scientific and medical evidence Bailey died after 8 p.m. on July 8 in Las Vegas is proof it is physically impossible Kirstin murdered Bailey, because even her prosecutors acknowledged during her trial she was in Panaca the entire afternoon and night of July 8. The expert evidence also include:

- Drs. Anderson, Goff, O'Connor, and Jason Byrd with new evidence Bailey's body had no insect or rodent bites so he likely died close to the time he was discovered in the trash enclosure.
- The new scientific and medical evidence Bailey died after 8 p.m. on July 8 in

Change.org cont. on p. 20

DNA appeal cont. from p. 18

All DNA tests of crime scene evidence conducted prior to Ms. Lobato's conviction excluded her from the crime. However, after her conviction three DNA testing techniques were developed that were unavailable at the time of her conviction. One of those is touch DNA testing that has the ability to determine the DNA profile of a person who "touched" something and left identifiable skin cells, oils or perspiration. Touch DNA testing was used to discover new evidence that exonerated Timothy Masters of a 1987 murder, and it cleared John and Patsy Ramsey of involvement in the 1996 murder of their daughter JonBenet. A second development were refinements in the ability of a DNA test to detect a DNA profile from degraded, impure or minute evidence, including spermless semen. The third development is the ability of a DNA test to identify the individual DNA profiles from evidence that contains mixed DNA of two males.

Those new testing techniques are all relevant to the testing of evidence recovered from the crime scene in Ms. Lobato's case. If performed they could be expected to result in additional exculpatory evidence and the DNA profile of the killer, that could then be uploaded to the Nevada and FBI's DNA databases to search for a match.

In February 2011 Ms. Lobato filed a Petition Requesting Post-Conviction DNA Testing Pursuant To NRS §176.0918. Ms. Lobato was the first person in Nevada known to have filed a post-conviction DNA testing petition under NRS §176.0918.

Under the statute a DNA testing petition must be assigned to the district court (trial) judge if possible, so her petition was assigned to her trial judge, Valorie Vega. The State opposed the petition, and during a hearing on June 7, 2011 Judge Vega denied the petition. Her written Order denying the petition was filed on July 27 and Ms. Lobato filed a Motion For Reconsideration. That motion was denied on September 1, 2011 and Ms. Lobato filed a Notice of Appeal that same day.

Nevada has a single-tier appeals system, and on October 3, 2011 the Nevada Supreme Court issued an Order To Show Cause why Ms. Lobato's appeal should not be dismissed for lack of jurisdiction. The Order stated two reasons the Court was considering dismissal: First, the notice of appeal was filed 34 days after the Order denying the petition was filed, and by statute there is only 30 days to appeal a "final order." The second reason was that NRS §176.0918 doesn't provide for the appeal of a denial of a DNA testing petition.

After briefing on the Order To Show Cause

by Ms. Lobato and the State, on January 12, 2012 the Nevada Supreme Court issued its Order Dismissing Appeal. The Court ruled that in Nevada the appeal of an Order is only conferred by statute, and since NRS §176.0918 doesn't include a provision to appeal the denial of a DNA testing petition, Ms. Lobato's appeal must be dismissed. Based on the Court's rationale a district court judge's denial of post-conviction DNA testing is not appealable in Nevada.

The Nevada Supreme Court also ruled that even if the statute provided for an appeal, Ms. Lobato's appeal would be dismissed as untimely because it was filed after the 30-day deadline for filing a notice of appeal. The Court ignored that the reason Ms. Lobato's appeal was filed 34 days after Judge Vega's Order was filed, was because she was waiting for Judge Vega to make a ruling on her Motion For Reconsideration — and she filed her notice of appeal the same day that Motion was denied.

The Nevada Supreme Court's January 12, 2012 [ruling is](#) *Kirstin Blaise Lobato v The State of Nevada*, No. 59147 (Nev. 1-12-12).

This article was originally published on Justice Denied's website on January 14, 2011. It is online at, <http://justicedenied.org/wordpress/archive>

Change.org cont. from p. 19

Las Vegas is proof it is physically impossible Ms. Lobato murdered Bailey, because even her prosecutors acknowledged during her trial she was in Panaca the entire afternoon and night of July 8.

- Impressions expert William J. Bodziak, who worked with the FBI for 26 years, with new evidence that shoeprints imprinted in blood found on cardboard and leading away from Bailey's body were not made by Ms. Lobato's shoes or shoe size.
- Forensic scientist George Schiro with new evidence that Bailey's murderer made the shoeprints imprinted at the crime scene, and the murderer could not have been wearing the shoes the prosecution contends Ms. Lobato was wearing at the time of his murder.
- Dental surgeon Dr. Mark Lewis with new evidence Bailey's teeth were not knocked out with a bat, while the prosecution claimed it was "possible" her bat

knocked out his teeth.

- Psychologist and confession expert Dr. Allison D. Redlich with new evidence Ms. Lobato's police statement on July 20, 2001 described in detail the attempted rape of her at a Budget Suites Hotel on Boulder Highway, and it had nothing to do with Bailey's murder that occurred weeks later in a different location.
- Polygraph examiner Ron Slay, who is used by the Clark County DA's Office to determine a suspect's truthfulness, with the new evidence he declared after examining Ms. Lobato: "I am certain Ms. Lobato is innocent of Mr. Bailey's murder."

In addition, nine alibi witnesses have new evidence not presented at Kirstin's trial that she told them about the attempted rape at the Budget Suites Hotel between late May 2001 and days prior to July 8 – so it is not possible the rape attempt described in her statement was the same event as Bailey's murder. Also, four alibi witnesses have new evidence

Kirstin was in Panaca the weekend of July 6 to 8, not 170 miles away in Las Vegas where Bailey was murdered.

With the new evidence it is physically impossible Kirstin was in Las Vegas at the time of Bailey's murder and the new evidence that her police statement described the attempted rape of her more than a month before his murder, there is no rational basis for DA Wolfson not to support the granting of her petition and her immediate release from prison in the interests of justice.

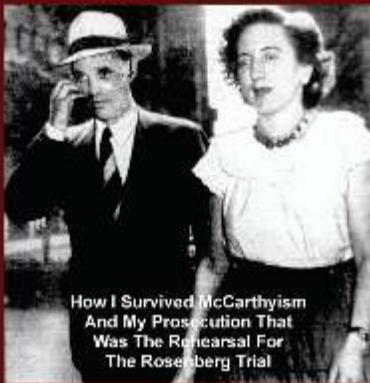
As of June 30, 2012 over 129,000 people had signed the change.org petition at, <http://www.change.org/petitions/justice-for-kirstin-blaise-lobato>.

This article was originally published on Justice Denied's website on May 27, 2012. It is online at, <http://justicedenied.org/wordpress/archives/1826>



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(Published by Justice Denied/The Justice Institute)

The human cost of the anti-Communist witch-hunt during the McCarthy era is brought to life in *Phantom Spies: Phantom Justice* – Miriam Moskowitz' personal account of that terrible time. Ms. Moskowitz' was arrested in 1950 and prosecuted for conspiracy to obstruct justice during a grand jury investigation of suspected Soviet espionage. She was sensationally branded by the prosecution and in news stories as part of an atom bomb spy ring.

Yet it was a lie. And her prosecutors knew it was a lie.

Phantom Spies: Phantom Justice reveals through Ms. Moskowitz' many years of diligent research of court records, FBI documents and other sources that her prosecutors knew she was innocent, and yet kept silent as the lone witness against her repeatedly lied during his testimony. After she was convicted of conspiracy to obstruct justice FBI officials and the government's lawyers also remained silent as she was sentenced to two years in federal prison and fined \$10,000.

Now in her mid-90s, Ms. Moskowitz has lived for 62 years with the false stigma of being a convicted felon and an enemy of the United States.

This updated edition includes two new chapters, additional photos, and FBI docu-

ments with proof of her innocence that the prosecutors concealed from her lawyers, the trial judge, the jurors, and the appeals court judges who upheld her conviction in 1951.

One of the new chapters elaborates on Ms. Moskowitz' experience in prison with Iva Toguri d'Aquino, who was wrongly identified as Tokyo Rose and falsely convicted of treason in 1949. She was granted a full and unconditional pardon in 1976 by President

Ford based on newly discovered evidence that the government's two key witnesses committed perjury at the behest of the prosecution.

Includes FBI documents proving the U.S. Government obtained Ms. Moskowitz's conviction by knowingly relying on the perjured testimony of the infamous informant Harry Gold.

Hans Sherrer, editor and publisher of *Justice Denied*, writes in the Afterword: "Miriam Moskowitz is an innocent person who was caught up in the whirlwind of anti-communist hysteria that prevailed in this country at the time of her trial in 1950."

David Alman, co-founder in 1951 of the National Committee to Secure Justice in The Rosenberg Case, writes in the Foreword: "A few simple questions may occur to readers after they turn the last page of *Phantom Spies: Phantom Justice*: How did all this happen? What happened to the Constitution? What happened to the conventional concept of Americanism? Where was our vaunted media? Where were the whistleblowers?"

Nevada Supreme Court Asked To Reconsider Denial Of An Amicus Brief In Kirstin Blaise Lobato's Case

The Justice Institute has filed a Motion For Reconsideration of the Nevada Supreme Court's refusal to allow the filing of an *amicus curiae* brief in support of Kirstin Blaise Lobato's habeas corpus appeal now pending before that Court.

The Justice Institute is the parent organization of Justice Denied. Two other organizations, Proving Innocence based in Detroit, Michigan, and the Worldwide Kakogawa City, Japan, have joined in support of the *amicus* brief.

Ms. Lobato was convicted in October 2006 of charges related to the murder of 44-year-old homeless man Duran Bailey in a trash area outside a Las Vegas bank on July 8, 2001. After her conviction was affirmed by the Nevada Supreme Court in October 2009, she filed a *habeas corpus* petition in May 2010. Her [habeas petition](#) includes 24 claims based on new evidence of her actual innocence and 51 claims based on ineffective assistance of counsel.

Under the Fifth Amendment to the U.S. Constitution a conviction must be overturned if the prosecution failed to *introduce* evidence sufficient to prove *every* essential element of a defendant's charged crimes beyond a reasonable doubt (See, *Jackson v. Virginia*, 443 US 307 (1979)), and their retrial is barred by double jeopardy (See, *Burks v. United States*, 437 U.S. 1 (1978)). Under the Sixth Amendment it is required that a conviction must be overturned if a defendant's trial or appellate lawyer(s) provided representation that fell below professional norms and there is a reasonable probability the lawyer's deficient conduct undermines confidence in the outcome. (See, *Strickland v. Washington*, 466 U.S. 668 (1984)).

Four essential elements the prosecution had to present evidence proving beyond a reasonable doubt were that Ms. Lobato was in Las Vegas on July 8, 2001; that she was at the scene of the crime at the time of Mr. Bailey's murder; that she murdered Mr. Bailey; and, that she inflicted a wound to Mr. Bailey's rectum after his death.

Yet, the prosecution failed to introduce evi-

dence proving *any* of those four essential elements beyond a reasonable doubt. In fact, the prosecution didn't introduce any direct or circumstantial evidence she was in Las Vegas at any time on the day of Mr. Bailey's murder (July 8). Her prosecutors only *speculated* during their opening statement and then during their closing argument that she was in Las Vegas and at the crime scene.

The Justice Institute's *amicus* brief focuses on the failure of Ms. Lobato's lawyers to submit jury instructions, make motions to her judge, or argue to the jury that she was required to be acquitted due to the lack of evidence against her. The brief also argues Ms. Lobato's appeal lawyers failed to adequately raise the issue in her direct appeal that the prosecution failed to introduce evidence sufficient to prove *any* of those four essential elements, which required her acquittal and the dismissal of the charges.

Since the prosecution failed to introduce the required evidence of Ms. Lobato's guilt, the *amicus* brief argues there is no question her lawyer's conduct was deficient and that it undermines confidence in the outcome of both her trial and her appeal. Consequently, the brief argues U.S. Supreme Court precedents require the Nevada Supreme Court to grant her habeas petition and either order her immediate release from custody or order a new trial.

The State opposed the filing of the *amicus* brief and the Nevada Supreme Court denied the Justice Institute's motion for the court clerk to file it. The Justice Institute filed a Motion For Reconsideration on May 16, 2012 that detailed the Court's denial has no legal basis because it ignored the only two factors relevant to approving the filing of an *amicus* brief in Nevada. First, that it is filed by a party that has an "interest" in the case. Second, that the brief is "desirable" to assist the court in understanding legal issues in the brief. Neither the State in its opposition nor the Court in its denial disputes that the Justice Institute, Proving Innocence and the WWCJN have an "interest" in Ms. Lobato's appeal. Likewise, neither the State in its opposition nor the Court disputes that the Justice Institute, Proving Innocence and the WWCJN exceed the threshold for determining a brief is "desirable." Since the Court overlooked and did not apply the correct legal standards under NRAP 29, it should modify its order and direct the court clerk to file the *amicus* brief.

The Motion for Reconsideration, that includes the *amicus* brief as Exhibit 1 begin-

Kirstin Blaise Lobato Files 129-Page Opening Brief In Nevada Supreme Court

Attorney Philip Mause [has written](#) that "The all time, all weight division, all region champ in wrongful convictions is Kirstin Lobato." In 2006 Ms. Lobato was convicted of crimes related to the July 2001 murder of a man in Las Vegas, even though the prosecution doesn't deny it has no evidence she was within 170 miles of Las Vegas on the day of the crime. In addition, no physical, forensic, eyewitness or confession evidence links the then 18-year-old Ms. Lobato to the murder, and there is no evidence she knew the murder victim or that she had ever been to the crime scene.

Ms. Lobato's conviction was based on the prosecution's closing argument that it is "possible" she somehow committed the crime, and therefore she is guilty.

In May 2011 Ms. Lobato's filed a state *habeas corpus* petition that includes new scientific evidence the murder occurred at a time when the prosecution admitted at trial credible telephone and alibi witness evidence conclusively establishes she was at her home 170-miles from Las Vegas. Clark County District Court Judge Valorie Vega's Order denying the petition was filed on August 2, 2011.

Ms. Lobato appealed to the Nevada Supreme Court, and on March 5, 2012 she filed her opening brief. Her 129-page brief that the NSC authorized her to file is believed to be the largest opening brief in a non-capital habeas case in the Nevada Supreme Court's 143-year history.

Ms. Lobato's Opening Brief can be read at, http://www.justicedenied.org/kl/lobato_nsc_opening_brief_no-58913_3-5-2012.pdf

ning on page 16, can be read at, http://justicedenied.org/motionforreconsideration_amicus.html.

This article was originally published on Justice Denied's website on May 29, 2012. It is online at, <http://justicedenied.org/wordpress/archives/1831>

"Kirstin Blaise Lobato's Unreasonable Conviction" Updated Second Edition Now Available!

The revised and updated second edition of *Kirstin Blaise Lobato's Unreasonable Conviction* by Justice Denied's editor and publisher Hans Sherrer is now available.

The first edition was published in February 2008. The second edition includes more than 70 pages of new information, including the filing of Ms. Lobato's Nevada state *habeas corpus* petition, which is pending.

Kirstin Blaise Lobato was 18-years-old when charged with the first-degree murder of Duran Bailey in Las Vegas in July 2001. She was convicted in October 2006 of voluntary manslaughter and other charges. Her case is an example of the perfect wrongful conviction:

- She had never met Mr. Bailey.
- She didn't know anyone who knew Mr. Bailey.
- She had never been to where the murder occurred.



- At the time of the murder in Las Vegas she was 170 miles north in the small rural town of Panaca, Nevada where she lived with her parents.
- No physical, forensic, eyewitness, or confession evidence ties her to the crime.
- All the crime scene DNA, fingerprint, shoeprint and tire track evidence excludes her and her car from being at the crime scene.
- There is no evidence she was anywhere in Clark County (Las Vegas) at anytime on the day of the murder.

Ms. Lobato's prosecution for Mr. Bailey's murder is as inexplicable as if she had been randomly chosen for prosecution by her name being pulled out of a hat containing the name of everyone who lived within 200 miles of Las Vegas.

The simple fact of the matter is that there was more evidence that the men and women executed for witchcraft in Salem, Massachusetts in 1692 were guilty, than there is that Kirstin Blaise Lobato murdered Duran Bailey. Why? Because those accused witches were present at the scene of their alleged sorcery — not 170 miles away. Yet we know that the people found guilty in Salem were all innocent.

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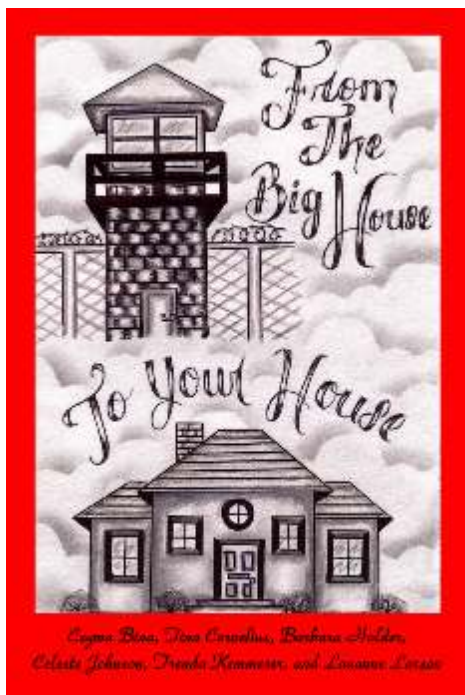
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JUSTICE DENIED

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