

## 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

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### 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.

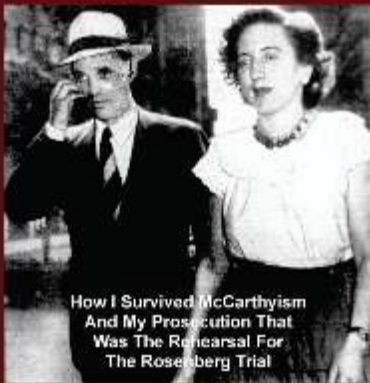
As of June 30, 2012 over 129,000 people had signed the change.org petition at, <http://www.change.org/petitions/justice-for-kirstin-blaise-lobato>.

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?"