

Kirstin Lobato's Habeas Case Sent Back To District Court By Nevada Supreme Court

On November 23, 2016 the Nevada Supreme Court [ruled that](#) Kirstin Lobato's habeas corpus case will be returned to the district court for an evidentiary hearing and consideration of her actual innocence claim.

Ms. Lobato was convicted in October 2006 of charges related to the death of homeless Duran Bailey in a Las Vegas bank's trash enclosure on July 8, 2001. She was sentenced to serve 13 to 35 years in prison.

The Nevada Supreme Court affirmed Ms. Lobato's convictions in October 2009, and in May 2010 she filed a habeas corpus petition that included 79 grounds for overturning her convictions.

In August 2011 Ms. Lobato's petition was summarily denied by Clark County District Court Judge Valorie Vega, and she filed an appeal in the Nevada Supreme Court.

The NSC heard oral arguments in Ms. Lobato's habeas corpus case on September 9, 2014.

After more than two years of deliberations the NSC issued its ruling on November 23. The Court overturned Vega's ruling on 27 of Ms. Lobato's 79 habeas grounds. However, the Court did not reverse her conviction. Instead her case was remanded to the district court for further consideration of two issues in her petition.



Kirstin Lobato after her release on bail in Dec. 2005 while awaiting her retrial.

was in Panaca, 165 miles from Las Vegas.

Strickland v. Washington, 466 U.S. 668 (1984) established a two-prong test to determine ineffective assistance of counsel: that there is a reasonable probability a petitioner was *prejudiced* by their counsel's *deficient* conduct. The NSC ruled MS. Lobato satisfied the first prong because she was prejudiced by her trial counsel's conduct because there is a reasonable probability she would have been acquitted if her jury had known the new forensic evidence. However, the Court ordered an evidentiary hearing to determine if her counsel's failure to investigate the new evidence was deficient conduct by falling "below an objective standard of reasonableness."

The NSC also ruled Judge Vega erred in summarily denying Ms. Lobato's 25 grounds that assert new evidence supports her actual innocence. Although the NSC's ruling in three cases over the past 50 years supports that a claim of actual innocence can be made in a post-conviction habeas petition, the Court has never specifically ruled that it can. The NSC's Nov. 23 ruling states that it wants the district court to decide if an actual innocence claim can be

The NSC ruled Judge Vega erred in summarily denying Ms. Lobato's two grounds that assert her trial lawyer provided ineffective assistance of counsel for failing to investigate forensic entomology and forensic pathology evidence that establish Bailey died at a time the prosecution has conceded Ms. Lobato

made under Nevada's post-conviction statute. That issue was somewhat argued in the briefs by Ms. Lobato and the State filed in the NSC, so it is not known why the Court chose to pass off the responsibility to make that important decision to the lower court.

The NSC summarily denied Ms. Lobato's two grounds based on the failure of the Clark County District Attorney's Office to disclose evidence favorable to her innocence. The NSC refused to consider 50 of her grounds that asserted ineffective assistance of her trial lawyers. Eight of those grounds detail her trial lawyers ineffectiveness for failing to object to the commission of at least 293 deliberate acts of gross misconduct by ADAs William Kephart and Sandra DiGiacomo throughout Ms. Lobato's trial. The NSC's ruling rewards the State of Nevada by letting Kephart and DiGiacomo get away scot free for repeatedly stepping on the scales of justice to ensure the outcome of Ms. Lobato's trial would be her conviction.

Ms. Lobato and the State each have the option to file a motion for the NSC to reconsider its ruling.

Justice Denied began investigating Ms. Lobato's case in 2003. Justice Denied's post-conviction investigation of Ms. Lobato's case resulted in the discovery of the new evidence of her actual innocence that the NSC's ruling directs the district court to review for its admissibility in her habeas petition.

Judge Vega retired in January 2015, so Ms. Lobato's case is now reassigned to Clark County District Court Judge Stefany Miley.



President Obama Doesn't Know He Can Pardon Edward Snowden and Hillary Clinton?

President Barack Obama was asked during an interview on November 17, 2016 if he was going to pardon Edward Snowden. [Obama responded](#): "I can't pardon somebody who hasn't gone before a court and presented themselves, so that's not something that I would comment on at this point."

On June 14, 2013 Snowden [was charged](#) with three federal charges: one count of theft, and two counts of violating the Espionage Act for "unauthorized communication of national defense information"; and,

"willful communication of classified communications intelligence information to an unauthorized person."

The charges were related to Snowden's copying and leaking classified information from the National Security Agency in 2013 without prior authorization. The public disclosure of that information revealed global surveillance programs run by the NSA and other countries, including the Five Eyes Intelligence Alliance operated with the cooperation of telecommunication companies and European governments.

In May 2013 Snowden flew from Hawaii, where he was working, to Hong Kong with the information he had taken. He was in Hong Kong when the first news stories about the NSA surveillance programs were

published, and he was there when the charges against him were unsealed on June 21, 2013. Two days later he flew to Moscow, Russia, with the intention of flying to Ecuador that had granted him asylum. After Snowden arrived in Russia the U.S. revoked his passport. That prevented him from flying to Ecuador, because his connecting flight to Cuba had to fly over U.S. friendly countries and territory.

Unable to leave Russia, Snowden was initially granted temporary asylum, and he remains in Russia under a residency permit.

Wikileaks has admitted it paid for Snowden's hotel stay in Hong Kong and his flight to Russia.

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Oliver Stone's 2016 movie *Snowden* is a bio-pic that depicts the events surrounding the release of the classified NSA documents.

Snowden has let it be known that wants to be pardoned by Obama so he can return to the U.S. Stone and many other people have publicly spoke out in support of Snowden being pardoned. Hence, when Obama was interviewed by German media outlets Spiegel and ARD on November 17 in Berlin, Germany, [he was asked](#):

ARD/Spiegel: Are you going to pardon Edward Snowden?

Obama: I can't pardon somebody who hasn't gone before a court and presented themselves, so that's not something that I would comment on at this point. ... At the point at which Mr. Snowden wants to present himself before the legal authorities and make his arguments or have his lawyers make his arguments, then I think those issues come into play."

The U.S. Supreme Court has recognized the near all-encompassing authority of a president to pardon a person. The [Court stated in Ex parte Garland](#), 71 U.S. 333 (1866):

"The Constitution provides that the President "shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment. [Article II, § 2.]

The power thus conferred is unlimited, with the exception stated. It extends to every offence known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken or during their pendency or after conviction and judgment. This power of the President is not subject to legislative control. Congress can neither limit the effect of his pardon nor exclude from its exercise any class of offenders.



President Barack Obama interviewed by Klaus Brinkbäumer and Sonia Seymour Mikich (Spiegel)

The benign prerogative of mercy reposed in him cannot be fettered by any legislative restrictions." *Id.* at 380. (underlining added)

Obama is well aware his pardon power is all but unlimited. With two months to go in his presidency Obama [has already](#) pardoned 71 people. Consequently, his answer to the question by the German reporters was disingenuous, and he may have deflected it to avoid the controversy of plainly stating he doesn't want to pardon Snowden.

Obama's position he can't preemptively pardon Snowden means he also can't preemptively pardon Hillary Clinton of many possible federal crimes she committed during her tenure as U.S. Secretary of State from 2009 to 2013. It also means he can't pardon Clinton, her husband Bill Clinton, and their daughter Chelsea Clinton for possible federal crimes committed in the operation of the Clinton Foundation before, during, and after her time as Secretary of State. The Clinton Foundation has been described as a massive money laundering scheme that is a "[fake charitable organization](#)," and the "[largest unprosecuted charity fraud in history](#)."

Contrary to his public assertion, Obama can with strokes of his pen pardon Edward Snowden, and Hillary Clinton, Bill Clinton, and Chelsea Clinton.

Sources:

[Spiegel Interview with US President Barack Obama](#): 'We Could See More and More Divisions', Interview Conducted by Klaus Brinkbäumer and Sonia Seymour Mikich, Spiegel.de, Nov. 18, 2016

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[Snowden](#), IMDB.com

[The Clinton Foundation Has Collected More Than \\$1.34 Billion Operating As A Fake Charitable Organization](#), *Justice Denied*, Oct. 1, 2016

[Clinton Foundation Largest Unprosecuted Charity Fraud in History](#) — Charles Ortel, USAWatchdog.com, August 28, 2016

“Rape Culture” Hysteria: Fixing the Damage Done to Men and Women

By Wendy McElroy

Vulgus Press (Canada)
(2016)

Review by [Hans Sherrer](#)
[JusticeDenied.org](#)

Rape Culture” Hysteria: Fixing the Damage Done to Men and Women is Wendy McElroy's new book. *Rape Culture Hysteria* impressively tackles and debunks the idea that the United States has a “rape culture” -- which McElroy calls a fiction that doesn't exist.

The majority of Americans are not generally aware of “rape culture” so it may seem bizarre to them that it needs debunking. While it is flying under the radar of the silent majority, McElroy explains “rape culture” is an idea with dangerous ramifications that has infected certain areas of American society -- most notably college campuses.

Rape is a serious crime. It is so serious that 988 convicted rapists [were executed](#) in the United States before the U.S. Supreme Court abolished the death penalty as a punishment for rape in 1977. The criminal code of many states authorize a sentence of life imprisonment for a rape conviction.

The U.S. Constitution specifically mandates that a person accused of a crime -- including rape -- has the right to: due process; appointment of counsel; confront one's accuser; and trial by jury. Furthermore, under the U.S. Constitution a person can only be convicted after the prosecution has introduced admissible evidence that proves beyond a reasonable doubt that the person is guilty.

Considering the severity American society places on rape, it is reasonable to assume that whenever a woman has a rape complaint the incident is reported to the police and handled by the legal system. A news flash for most Americans is that isn't necessarily true. Of particular importance to those concerned about innocent persons being wrongly accused and found guilty of rape, McElroy explains the bizarre handling of rape allegations on college campuses.

With the approval of the U.S. government,

McElroy cont. on p. 18

