

The Justice Institute
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July 3, 2012

Steven B. Wolfson, District Attorney
Clark County District Attorney's Office
Government Center
500 S. Grand Central Pkwy.
Las Vegas, NV 89155-1111

RE: Assistant District Attorney Steven S. Owens' conduct

Dear Mr. Wolfson,

This letter is in regards to a pattern of extraordinarily dishonest conduct by Clark County Chief Deputy District Attorney Steven S. Owens in four separate incidents that were contrary with upholding the integrity of the Clark County District Attorney's Office and the administration of justice in Clark County, Nevada. As explained below, we believe that Mr. Owens' ethical transgressions are serious enough that termination of his employment may be warranted.

I – Steven S. Owens' false statements to KLAS-TV

KLAS-TV in Las Vegas on June 26, 2012 broadcast comments that Mr. Owens made about the case of *Kirstin Blaise Lobato v. The State of Nevada*, No. 58913 ("Lobato Case"), when he was interviewed by reporter Aaron Drawhorn. (See, <http://www.8newsnow.com/story/18889069/petition-urges-dna-testing-in-murder-case>) When speaking publicly, Mr. Owens is acting as a representative of a public agency – the Clark County District Attorneys Office – and as your subordinate he is representing you as the District Attorney. Among Mr. Owens' materially false and/or misleading public statements to KLAS-TV are (the false portions are in bold):

1. "It's a confession case. Kirstin Lobato confessed to murder."

The truth is, it is a matter of public record there was no testimony during Ms. Lobato's trial in 2006 that is the subject of her habeas corpus petition filed on May 5, 2010 in the Clark County District Court, that she "confessed to murder." Furthermore, there was no finding by the District Court that Ms. Lobato "confessed to murder" – or *confessed to anything* – in that court's Findings of Facts and Conclusions of Law that are the subject of Ms. Lobato's pending appeal in the Nevada Supreme Court. Furthermore, the Arrest Report by the homicide detectives who took Ms. Lobato's Statement on July 20, 2001 doesn't state she orally confessed in her statement, or to the officers after her arrest during the approximate three hour drive from Panaca to the Clark County Detention Center, or that she did so in writing.

Consequently, there is no evidence in the record of Ms. Lobato's habeas corpus appeal currently before the Nevada Supreme Court that supports Mr. Owens' statement. As the attorney of record for the Clark County District Attorney's Office in Lobato's Case, Mr. Owens knows his public

statement to KLAS-TV had no basis in reality. He simply fabricated it out of thin air. If Mr. Owens' life depended on it he could not produce a confession by Ms. Lobato in the record of her appeal before the Nevada Supreme Court. Mr. Owens fabrication of a materially false public statement that was broadcast to the people of Clark County and to people throughout the world over KLAS-TV's website falsely accusing Ms. Lobato of confessing to a serious crime can legitimately be called malicious and defamatory.

2. "She admitted to unique circumstances and facts that tie her, link her, to this murder."

The truth is, it is a matter of public record that there was no testimony during Ms. Lobato's trial in 2006 that is the subject of her habeas corpus petition, that she "admitted to unique circumstances and facts" tying her to Mr. Bailey's murder. Mr. Owens masked that truth by making a general statement maligning Ms. Lobato without providing any specific evidence to back it up – which he can't do because that evidence doesn't exist. The Justice Institute/Justice Denied began investigating Ms. Lobato's case in 2003 and it has yet to discover any evidence tying her to Mr. Bailey's murder or even being at the crime scene. A detailed analysis of Ms. Lobato's police statement on July 20, 2001 identifies at least 40 material differences between her description of the attempted rape in May 2001 at the Budget Suites Hotel at 4855 Boulder Highway, and Mr. Bailey's murder eight miles away on July 8, 2001 at the Nevada State Bank at 4240 W. Flamingo Rd. (See, Table 1 and Table 2, "Significant Differences Between Bailey's Death and Blaise's Statement," from *Kirstin Blaise Lobato's Unreasonable Conviction -- updated edition*, by Hans Sherrer, attached to this letter as Exhibit 1.)

In fact, neither the District Court's order denying Ms. Lobato's habeas corpus petition, nor your office – the Clark County District Attorney's Office – in its opposition to her habeas petition, disputed the factual statement made in different forms about two dozen times in Ms. Lobato's habeas petition that:

"No physical, forensic, medical, eyewitness, documentary, surveillance or confession evidence was introduced at trial placing the Petitioner in Clark County at any time on July 8, 2001, the day of Duran Bailey's murder." *Kirstin Blaise Lobato vs. Warden Of FMWCC and the State Of Nevada*, No. C-177394, Petition For A Writ Of Habeas Corpus, p. 244.

Since it is an undisputed fact of Ms. Lobato's habeas appeal currently before the Nevada Supreme Court that the Clark County District Attorney's Office doesn't deny there is no evidence Ms. Lobato was in Las Vegas on the day of Mr. Bailey's murder, and that the jury wasn't presented any evidence she was anywhere in Clark County at anytime on July 8, 2001 – it is obvious Mr. Owens above public statement is not only materially false on its face, but his statement can be legitimately described as malicious and defamatory.

3. "This is not a DNA case."

As the attorney of record for the Clark County District Attorney's Office in the Lobato Case, Mr. Owens is aware there are at least 17 items of crime scene evidence in Ms. Lobato's case that have not been DNA tested. Yet your office is on record as acknowledging those items were handled by Mr. Bailey's killer. (See, "What Evidence Needs To Be DNA Tested In Kirstin Blaise Lobato's Case And Why It Can Prove Her Innocence," attached to this letter as Exhibit 2.) That is only logical because there is photographic evidence that prior to Mr. Bailey's murder there was no trash in the area where his body was found. (See attached Exhibits 3 and 4.) There are also at least nine other items of

evidence recovered from Mr. Bailey's body (Rectum and penile swabs, silver and plastic paper from his rectum, loose pubic hairs combed from his pubic area.) that have never been DNA tested. (See attached Exhibit 2.) All of that evidence can be tested by DNA techniques unavailable at the time of Ms. Lobato's trial in 2006. Those new tests are extremely sensitive at detecting a DNA profile from a very small amount of biological material. Furthermore, there are five pieces of evidence DNA tested in 2001, and three pieces of evidence DNA tested in 2006 – all of which excluded Ms. Lobato as the source of DNA detected – that can be tested by DNA testing techniques developed since 2006 that can identify a DNA profile from degraded DNA, as well as from samples that are limited by an impurity, and from skin cells, oils or perspiration deposited on an item touched by a person.

All the evidence recovered from within, or on, Mr. Bailey's body is critical evidence to be DNA tested, because it is possible his killer can be directly identified from that evidence by one or more of the three DNA testing techniques developed after Ms. Lobato's 2006 trial. (See attached Exhibit 2.)

It is a fact of Ms. Lobato's case – which Mr. Owens knows as the attorney of record – that the technology exists to identify Mr. Bailey's killer by DNA testing the more than 30 items of crime scene evidence that are available, by DNA testing techniques developed after Ms. Lobato's trial in 2006. (See attached Exhibit 2.)

Consequently it was not just materially false, but an outright lie for Mr. Owens to have told KLAS-TV, "This is not a DNA case."

4. **The judge** looked at all the evidence in the case and **said, 'No,'** said Chief Deputy District Attorney Steve Owens. **"There's no reasonable possibility that any of the evidence in this case, if it were tested for DNA, could result in an exoneration of Kirstin Lobato, and then they took that up on appeal, and it was denied on appeal as well."**

First, Mr. Owens' statement is false because the denial of DNA testing wasn't based on Ms. Lobato not being exonerated if "any of the evidence in this case" were DNA tested – because her DNA testing petition didn't even include all the evidence that is available for DNA testing. (See the attached Exhibit 2) Mr. Owens knows that as the attorney of record for the Clark County District Attorney's Office in Lobato's Case.

Second, Mr. Owens' statement is false because the Nevada Supreme Court ruled the District Court's denial of post-conviction DNA testing couldn't be appealed by Ms. Lobato because the Nevada legislature didn't include a provision for her to appeal. Thus, the District Court's ruling was final. Consequently, the Nevada Supreme Court didn't deny DNA testing – but completely contrary to Mr. Owens' false statement, the Supreme Court ruled it couldn't even consider whether Ms. Lobato should be granted DNA testing.¹

Third, Mr. Owens false statements open a can of worms because the Clark County District Attorney's Office wrote the "Findings Of Fact, Conclusions Of Law And Order Denying Petition Requesting Post-Conviction DNA Testing Pursuant To NRS 176.0918" ("Opinion") filed in the Clark

¹ The District Court's Order denying Ms. Lobato's DNA testing petition didn't take into consideration that it is completely irrelevant that items from a dumpster (coffee cups, pop cans, etc.) were piled on and around Mr. Bailey's body, because his killer handled all that evidence and the DNA technology now exists to identify the DNA profile of the person who handled the types of evidence collected from Mr. Bailey's crime scene. That technology didn't exist in 2006 at the time of Ms. Lobato's trial. (See the attached Exhibit 2.)

County District Court on July 27, 2011. Even though that document is a judicial opinion that the public expects to be comprised solely of the inner thought processes of Judge Vega and her personal rationale and carefully considered legal reasons for the denial of post-conviction DNA testing to Ms. Lobato, there is no indication that Judge Vega had any input into the writing of the Opinion filed in her name, or that she even read it before it was filed. The following is known from the public record: 1. The Opinion wasn't personally signed by Judge Valorie Vega; 2. The Opinion is undated; 3. The Opinion was filed exactly as written by Mr. Tyler Smith with the District Attorney's Office because there are no handwritten corrections or notes by Judge Vega on the document; 4. There is no evidence in the public record that Judge Vega provided any personal input whatsoever into the writing of the Opinion; 5. There is no evidence in the public record that Judge Vega ever saw or read the Opinion prior to it being filed. 6. There is no evidence in the public record that Judge Vega was in her office at the time the Opinion was filed. 7. The Opinion's signature page only has a stamp applied crookedly that says "Valorie J. Vega." 8. There is no evidence in the public record the Opinion was ever transmitted to Judge Vega by the District Attorney's Office.

In other words, a person in the District Attorney's Office could have simply stamped the Opinion with a "Valorie J. Vega" stamp and had it filed without transmitting it to Judge Vega, which while shocking to the conscience, wouldn't have actually changed anything because the Opinion denying post-conviction DNA testing to Ms. Lobato was written by the DA's Office without any known participation by Judge Vega. It is known that the DNA testing was denied to Ms. Lobato in name by Judge Vega, but it is also known the judicial work on the Opinion was solely performed by the DA's Office.

That is not surprising considering the pending ethics charges against Judge Vega involve gross misconduct in her performance as a judge.

Fourth, Mr. Owens' comments are grossly misleading because Ms. Lobato's current effort for the DNA testing of the crime scene evidence in her case is directed at you, Mr. Wolfson, to exercise your authority as the Clark County District Attorney to order DNA testing of the evidence.

KLAS-TV reporter Drawhorn can't be faulted for allowing Mr. Owens' multitude of materially false and/or misleading statements to be broadcast to the people of Clark County, because it can be surmised that he assumed Mr. Owens was being truthful and not deceptive and dishonest. Mr. Owens' false statements egregiously misled every person who saw KLAS-TV's broadcast over the air or on their website about Ms. Lobato's case and what the District Court and the Nevada Supreme Court did and did not do.

II – Steven S. Owens' false statements to the Associated Press

The *San Francisco Chronicle's* website on July 2, 2012 published comments in an article about Ms. Lobato's case that Mr. Owens made when he was interviewed by Associated Press reporter Ken Ritter. (See, <http://www.sfgate.com/news/article/Supporters-seek-DNA-testing-in-Vegas-slaying-case-3679350.php>) Among Mr. Owens' materially false and/or misleading public statements to the Associated Press are (the false portions are in bold):

1. "Two different juries have heard the evidence on a court of law,"

The truth is, that neither of Ms. Lobato's juries "heard the evidence" because her habeas corpus petition that is now being considered on appeal by the Nevada Supreme Court includes new evidence never heard by a jury from 12 experts, 13 alibi witnesses, 3 alternate suspect witnesses, and 7 fact witnesses that support Ms. Lobato's factual innocence. That is a total of 35 witnesses with evidence of Ms. Lobato's innocence not heard by her jury in 2002 or in 2006. Mr. Owens' statement to the

Associated Press is so devoid of any relationship to reality that it is unconscionable and can accurately be described as an outright lie. As the attorney of record for the Clark County District Attorney's Office in the Lobato Case, Mr. Owens has personal and specific knowledge of all the new evidence never heard by a jury that he knows is thoroughly detailed in more than 40 professional reports, affidavits, statements, and documents incorporated in her 770-page habeas corpus petition.

Mr. Owens knows that Ms. Lobato's new evidence includes the determination by two of the world's leading forensic entomologists – Dr. Gail S. Anderson and Dr. M. Lee Goff (who among other things has taught entomology at the FBI Academy and is the forensic entomology advisor for the *CSI* television programs) – that to a reasonable scientific certainty Mr. Bailey died after sunset at 8:01 p.m., and most probably after dark at 9:08 p.m. on July 8, 2001. As explained in detail in Dr. Anderson's Report, it is scientifically known that flies are attracted to a dead body and begin laying eggs within minutes. It is also scientifically known that flies don't lay eggs after sunset. Dr. Anderson and Dr. Goff, and also forensic entomologists Dr. Linda-Lou O'Connor and Dr. Jason H. Byrd, and forensic pathologist Dr. Glenn M. Larkin, all examined the case evidence and crime scene and autopsy photos and none could locate any fly eggs in any of Mr. Bailey's orifices or his many open wounds. Likewise, neither the Autopsy Report nor the crime scene examination report by the Coroner's Office reported the presence of any fly eggs. Consequently, Mr. Bailey's time of death can be established to a reasonable scientific certainty as after sunset at 8:01 p.m. Bailey's body was discovered "about 10 p.m." – which was no more than two hours after his death.

Mr. Owens also knows that an eyewitness, subpoenaed by the District Attorney's Office, testified as a witness for the prosecution that he was with Ms. Lobato in Panaca during the evening of July 8 until between 10:30 and 11 p.m. – which was after Bailey's body was discovered. Witnesses subpoenaed by Ms. Lobato's attorneys corroborated the prosecution witnesses' testimony. It is a matter of public record that during the closing arguments of Ms. Lobato's trial, Assistant District Attorney Sandra DiGiacomo conceded that credible eyewitness testimony and telephone records established Ms. Lobato was continuously in Panaca from at least "11:30 a.m. through the night," and that she was probably there at "10 a.m." Thus, if Mr. Bailey died *after 8:30 a.m.* it is physically impossible Ms. Lobato murdered him, with a three-hour travel time from Las Vegas to Panaca. The new scientific evidence establishes Bailey died at least 11-1/2 hours after that, at a time when even a prosecution eyewitness conclusively proves she was in Panaca 170 miles from Las Vegas.

So Mr. Owens knew at the time he talked with the Associated Press reporter that based on Ms. Lobato's un rebutted new scientific entomology evidence it is physically impossible she committed her convicted crimes because she was 170 miles from Las Vegas.

As Mr. Owens also knows, Ms. Lobato's habeas petition includes the new evidence of her factual innocence by impressions expert William J. Bodziak, who worked with the FBI for 26 years, that shoeprints imprinted on the cardboard covering Mr. Bailey's body and imprinted in blood leading away from his body were made by the same men's size 9 athletic shoe, and they were not made by Lobato's shoes or shoe size that equals a men's size 6. In addition, Mr. Owens knows that forensic scientist George Schiro determined the crime scene evidence supports that Bailey's killer made the shoeprint impressions, which he identified were made by an Athletic Works Spitfire shoe sold through Wal-Mart stores. It is an undisputed fact of the Lobato Case that the DA's Office didn't contest at her trial that she was wearing her black high-heeled platform shoes during the attempted rape she described in her statements to the police and friends.

Mr. Owens also knows Ms. Lobato's habeas petition includes new evidence by nine alibi witnesses told by Ms. Lobato beginning in late May 2001 that she used her pocket knife to defend herself against an attempted rape in Las Vegas. All of those witnesses were told about the sexual assault prior to Mr. Bailey's murder. Many of those witnesses have never met one another since some lived in Panaca and some in Las Vegas, and none of them has kept in contact with Ms. Lobato since

her imprisonment.

So Mr. Owens is aware that based on the new expert shoe evidence and the new alibi witness evidence that the sexual assault Ms. Lobato described to the police and her friends was a different event than Bailey's murder.

Mr. Owens further knows that the homicide detectives investigating Mr. Bailey's murder ignored that Diann Parker told them in her police statement that she had a bloody shirt and pants the morning after Mr. Bailey's murder. Yet, the detectives didn't even ask her to give those clothes to them, or attempt to obtain a warrant for their seizure so they could be forensically tested by the crime lab for the presence of Mr. Bailey's blood. Ms. Parker lived in the same block and about 100 yards from where Bailey was murdered. It is a matter of public record that Ms. Parker reported to Metro PD that Mr. Bailey raped her a week before his murder, and that in her police statement she told the officers she needed police protection from Mr. Bailey because he was going to kill her for reporting him. The police officer's response was that she needed to do whatever it took to protect herself from Mr. Bailey. An unmistakable aspect of Mr. Bailey's murder was the amount of blood at the crime scene. (See attached Exhibit 4.) Ms. Parker's admission to the homicide detectives that she had a bloody shirt and pants after Bailey's murder strongly suggests she may have been an accessory with her Hispanic male friends in killing him. Ms. Parker died of natural causes in 2005, but the names of two of her male Hispanic friends have been known to Metro PD since July 2001. As Mr. Owens knows, Metro PD has not made any attempt to locate and question those men in the 11 years since Mr. Bailey's murder.

The new evidence in Ms. Lobato's habeas petition of her actual innocence is so compelling that two of her jurors from her 2006 trial are on record as supporting a new trial for Ms. Lobato "*in the interest of justice*," because if a jury were to hear her new evidence it could result in her acquittal. (See, <http://justicedenied.org/wordpress/archives/794>)

Consequently, it is impossible for Mr. Owens to tell the Associated Press reporter without smirking that Ms. Lobato's juries convicted her based on having "heard the evidence" – when he knows for a fact that isn't true and there is extensive evidence those juries did not hear supporting her factual innocence.

2. "That's not just reading about it online or hearing from someone's impressions."

The truth is, there are extensive court documents about Ms. Lobato's case available on several websites including the Nevada Supreme Court's website, that people around the United States are reading to determine Ms. Lobato is actually innocent. Her trial transcript, her habeas corpus petition with all exhibits, her opening brief to the Nevada Supreme Court and the Appendix are among the many court documents available to anyone with an Internet connection. The Nevada Supreme Court's website has available to the public documents filed in her pending habeas corpus appeal and her direct appeal. People are able to form an opinion about Ms. Lobato's case based on the court documents that are readily available and the actual facts – without having to rely on the materially false and dishonest public statements of Mr. Owens to the Associated Press.

Mr. Owens' comment also denigrated United States District Court Judge Gloria Navarro's publicly stated opinion in the Las Vegas *Review-Journal* when she was Ms. Lobato's attorney, that Ms. Lobato is actually innocent, based on Judge Navarro's first-hand knowledge of the facts of her case.

III – Steven S. Owens' false statements to the Las Vegas Review-Journal

The Las Vegas *Review-Journal* on July 2, 2012 published comments in an article about Ms. Lobato's case that Mr. Owens made when he was interviewed by reporter Ed Vogel. (See,

<http://www.lvrj.com/news/campaign-aims-to-free-woman-who-killed-homeless-man-161047465.html>) Among Mr. Owens materially false public statements to the *Review-Journal* are (the false portions are in bold):

1. “She confessed to the crime.”

This was a repeat of his materially false statement to KLAS-TV. The truth is, it is a matter of public record there was no testimony during Ms. Lobato’s trial in September and October 2006 that is the subject of her habeas corpus petition filed on May 5, 2010 in the Clark County District Court, that she “confessed to murder.” Furthermore, there was no finding by the District Court that Ms. Lobato “confessed to murder” – or *confessed to anything* – in that court’s Findings of Facts and Conclusions of Law that are the subject of Ms. Lobato’s pending appeal in the Nevada Supreme Court. Furthermore, the Arrest Report by the homicide detectives who took Ms. Lobato’s Statement on July 20, 2001 doesn’t state she orally confessed in her statement or to the officers after her arrest during the approximately three hour drive from Panaca to the Clark County Detention Center, or in writing.

Consequently, there is no evidence in the record of Ms. Lobato’s habeas corpus appeal currently before the Nevada Supreme Court that supports Mr. Owens statement. As the attorney of record for the Clark County District Attorney’s Office in Lobato’s Case, Mr. Owens is aware his public statement to the *Review-Journal* had no basis in reality. He simply fabricated it out of thin air. If Mr. Owens life depended on it he could not produce a confession by Ms. Lobato in the record of her appeal before the Nevada Supreme Court. Mr. Owens fabrication of a materially false public statement for broadcast to the people of Clark County and to people throughout the world over *Review-Journal* website falsely accusing Ms. Lobato of confessing to a serious crime can legitimately be called malicious and defamatory.

2. “The Dumpster (where Bailey’s body was found) could have been used by hundreds of people.”

The truth is, Duran Bailey was found dead lying on a concrete floor. (See attached Exhibit 3.) During closing arguments Assistant District Attorney Sandra DiGiacomo told the jury that the items on and around Bailey’s body were handled by his killer. (See attached Exhibit 2.) That is only logical because there is photographic evidence that prior to Mr. Bailey’s murder there was no trash in the area where his body was found. (See attached Exhibit 4.) Touch DNA testing techniques developed after Ms. Lobato’s trial can detect the DNA of a person who handled an item – so every single item on and around Bailey shown in Exhibit 3 is material evidence that can be DNA tested to identify his murderer.

As the Clark County District Court’s attorney of record for the Lobato Case, Mr. Owens knows there are about two dozen items of crime scene evidence in Ms. Lobato’s case that your office is on record as tacitly acknowledging were handled by Mr. Bailey’s killer. (See attached Exhibit 2.)

All the evidence recovered from within or on Mr. Bailey’s body is critical evidence to be DNA tested, because it is possible his killer can be directly identified from that evidence by any one of the three DNA testing techniques developed after Ms. Lobato’s 2006 trial. (See attached Exhibit 2.)

However, by falsely stating Mr. Bailey was found in a dumpster and surrounded by trash in it, Mr. Owens misled anyone reading the *Review-Journal* into thinking the items Ms. Lobato wants to have DNA tested would have no evidentiary value – which is completely false and contrary to the record and photographic evidence that his killer handled all the evidence piled on and around him as he was lying on the concrete floor.

IV – Steven S. Owens’ false statements to the Nevada Supreme Court

Mr. Owens signed a document on your behalf that was filed in the Nevada Supreme Court on March 13, 2012 in the case of *Kirstin Blaise Lobato v. The State of Nevada*, No. 58913 (“Lobato Case”). That document misled the Supreme Court by making a number of demonstrably false statements, some of which could be considered slanderous. That document was the Opposition To Motion For Leave To Submit Brief As Amicus Curiae (“State’s Opposition”). Mr. Owens’ false statements are a gravely serious matter because they were specifically intended to mislead the Supreme Court and influence its decision making process as to whether it would grant amicus curiae status to the Justice Institute, and order the filing of its brief in support of legal positions in Ms. Lobato’s opening brief in her appeal of the District Court’s denial of her habeas corpus petition. Mr. Owens’ dishonesty also negatively affected two other organizations with an interest in correcting the wrongful imprisonment of an actually innocent person – *Proving Innocence* based in Detroit, Michigan, and the *World Wide Women’s Criminal Justice Network* based in Kakogawa City, Japan – that also sought amicus curiae status in Lobato’s Case.

The magnitude of Mr. Owens’ dishonesty is apparent by comparing statements he made in the State’s Opposition and the Affidavit of Hans Sherrer (“Sherrer Affidavit”), filed in the Lobato Case on March 19, 2012, as Exhibit 1 in the Reply to the State’s Opposition to Motion for Leave to File Amicus Curiae Brief. Among Mr. Owens’ materially false statements to the Nevada Supreme Court are (the false sections are in bold):

1. **“The Justice Institute,” is apparently the same as that affiliated with Michelle Ravell and Hans Sherrer,**” (State’s Opposition, lines 14-15, p. 2)

The truth is:

2. I [Hans Sherrer] am President of the Justice Institute.
3. The Justice Institute is a public interest non-profit organization incorporated in the State of Oregon, it operates from Seattle, Washington, and it is an IRS approved 501(c)(3) charitable non-profit.
4. The Justice Institute promotes public awareness of issues related to wrongful convictions and cases of the possible conviction of an actually innocent person.
5. The Justice Institute operates the website www.justicedenied.org that is a resource center concerning wrongful convictions and cases of convicted persons based on post-conviction claims of their actual innocence.
19. Michelle Ravell is not affiliated with the Justice Institute and she has never had any authority to act on behalf of the Justice Institute.
(Sherrer Affidavit, at 2-5, 19.) (underlining added)

2. **“A website identifies Justice Denied as a “trade name of The Justice Institute,” and recognizes Hans Scherrer [sic] and Michelle Ravell as author and co-author of a book about Kirstin Lobato’s case on sale for \$20.”** (State’s Opposition, lines 17-19, p. 2)

The truth is:

17. Kirstin Blaise Lobato’s habeas corpus petition is a public document, and her petition is based on her claims of new evidence proving her actual innocence and that her conviction violates her constitutional rights. As a matter of public interest the Justice Institute provided a link on www.justicedenied.org for a person to read, download or print Kirstin Blaise Lobato’s habeas petition at no charge. For a person

wanting a hard copy, a printed version of her petition was made available for the Justice Institute's printing and mailing cost of about \$20.

18. The printed version of Kirstin Blaise Lobato's habeas corpus petition states on its cover: *Kirstin Blaise Lobato vs State of Nevada: Habeas Corpus Petition with Grounds and Exhibits*, **Compiled** by Hans Sherrer and Michelle Ravell, (underlining added), and it does not state Hans Sherrer is the author and Michelle Ravell is the co-author. (See Exhibit A attached.)

(Sherrer Affidavit, at 17 and 18. Underlining added, bold added to original underlining.)

3. "Apparently, **"Justice Denied" or "The Justice Institute" is actively engaged in raising money for Lobato's defense which has then been used to investigate and employ experts for use in the post-conviction proceedings below.**" (State's Opposition, Lines 20-23, p. 2)

The truth is:

8. The Justice Institute is not affiliated with any organization working on behalf of Kirstin Blaise Lobato.

9. The Justice Institute has not raised or contributed any money toward any defense fund for Kirstin Blaise Lobato.

10. The Justice Institute has not paid any money to any person, expert, or organization related to an investigation of Kirstin Blaise Lobato's case.

(Sherrer Affidavit, at 8-10. Underlining added.)

4. **"Hans Sherrer, as President of The Justice Institute, sought to assist Lobato's defense attorneys with strategy, expert assistance, and arguments for DNA testing."** (State's Opposition, Lines 24-25, p. 2)

The truth is:

11. The Justice Institute was not involved in Kirstin Blaise Lobato's defense.

20. Based on publicly available information that included news reports and information on the website of the DNA testing laboratory Bode Technology Group, Hans Sherrer wrote a letter to Kirstin Blaise Lobato's **appellate** counsel dated January 19, 2009, that specifically stated: "The purpose of this letter is to **inform you** that there have been several significant advances in DNA testing since Ms. Lobato's conviction in October 2006." (emphasis added) Her appellate counsel did not respond to that letter.

(Sherrer Affidavit, lines 11 and 20. Underlining added, bold added to original underlining.)

The truth that Mr. Owens obfuscated with his materially dishonest statements to the Nevada Supreme Court that have no basis in reality, is "The Justice Institute has no interest in Kirstin Blaise Lobato's case beyond that justice may be done, which courts have recognized is a central purpose of the legal system." (Sherrer Affidavit, at 15.)

However, Mr. Owens did not stop his deception of the Nevada Supreme Court by only making materially false statements and maligning the Justice Institute, Justice Denied, and Hans Sherrer. In the State's Opposition Mr. Owens also recklessly made false statements regarding Michelle Ravell – a bookkeeper who is founder and administrator of the www.justice4kirstin.com website – as detailed in

the Affidavit of Michelle Ravell (“Ravell Affidavit”), filed in the Lobato Case on March 19, 2012, as Exhibit 2 in the Reply to the State’s Opposition to Motion for Leave to File Amicus Curiae Brief. Among Mr. Owens’ materially false statements to the Nevada Supreme Court are (the false portions are in bold):

1. **“Michelle Ravell also appears to have participated in the drafting and/or co-signing of Lobato’s post-conviction petition below as well as at least three motions even though she is not a licensed attorney.”** (State’s Opposition, Lines 27-28, p. 2 and line 1 p. 3)

The truth is:

2. I did not draft Kirstin Blaise Lobato’s post-conviction petition or any motion in her post-conviction proceedings.

3. I did not co-sign Ms. Lobato’s post-conviction petition, and page 7 of that petition plainly shows it is signed only by Ms. Lobato. (See attached Exhibit 1.)

(Ravell Affidavit, at 2 and 3. Underlining added.)

2. **“This, coupled with her attempted appearance in court, resulted in Michelle Ravell being reported to the State bar and being considered for criminal charges for the unauthorized practice of law.”** (State’s Opposition, Lines 2-4, p. 3)

The truth is:

4. I did not attempt to make an appearance in court as Ms. Lobato’s lawyer.

5. To my knowledge I was not reported to the state bar or considered for criminal charges for the unauthorized practice of law – which I believe based on common sense would have no basis considering the above facts.

(Ravell Affidavit, at 4 and 5. Underlining added.)

3. **“The Justice Institute,” is apparently the same as that affiliated with Michelle Ravell and Hans Sherrer,”** (State’s Opposition, Lines 14-15, p. 2)

The truth is:

7. I am not affiliated with the Justice Institute, I have not donated money to the Justice Institute, and I have not received any money from the Justice Institute.

(Ravell Affidavit, at 7. Underlining added.)

4. **“A website identifies Justice Denied as a “trade name of The Justice Institute,” and recognizes Hans Scherrer and Michelle Ravell as author and co-author of a book about Kirstin Lobato’s case on sale for \$20.”** (State’s Opposition, Lines 17-19, p. 2)

The truth is:

6. I did not co-author “Kirstin Blaise Lobato vs State of Nevada: Habeas Corpus Petition with Grounds and Exhibits,” which is a compilation of public documents that I assisted to compile.

(Ravell Affidavit, at 6. Underlining added.)

As stated above, by publicly and recklessly making materially false statements to the Nevada Supreme Court that Michelle Ravell – a private person – was reported to the State bar, and even more recklessly defaming Ms. Ravell by falsely stating she was being considered for criminal charges that

have no factual basis – Ms. Ravell may have grounds for a libel action against Mr. Owens and the Clark County District Attorneys Office. Instead of conveying the truth to the Nevada Supreme Court Mr. Owens chose to deceive the Supreme Court with scurrilous false statements.

Conclusion

Mr. Owens pervasive dishonesty is a gravely serious matter. His multitude of false statements have misled the Nevada Supreme Court in its decision making process and the public to whom you are responsible – the people of Clark County, Nevada – about Ms. Lobato's case.

The District Attorney for Oklahoma County, Oklahoma terminated the employment of two assistant district attorneys in April 2012 for the ethical misconduct of misleading a trial court and the defendant's counsel about a witness statement in a murder case. District Attorney David W. Prater stated in part when he publicly announced the firings:

Prosecutors must be different than any other type of attorney. We are not simply advocates, but are charged with a ministerial duty within the criminal justice system. We are duty-bound to seek justice, period. That duty includes protecting the constitutional and substantive rights of criminal suspects and criminal defendants. **We must never abrogate that duty to the justice system we are privileged to serve.**

To protect the integrity of this office, its dedicated employees and most importantly, our justice system, **I have taken swift and definitive action. Pam Kimbrough and Stephanie Miller were terminated last Thursday.** Though I am heart-broken over their loss to this office, **my decision to terminate them was an easy decision to make. The gravity of their alleged ethical violation is so great that only one punishment equals their transgression.** Additionally, I am forwarding our investigation to the Oklahoma Bar Association and the Oklahoma Attorney General's office to assign a special prosecutor to evaluate the investigation for possible criminal violations.

PRESS STATEMENT BY DISTRICT ATTORNEY DAVID W. PRATER,
Oklahoma County District Attorney's Office, April 11, 2012 (See, attached Exhibit 5.
Bold added.)

The magnitude of Mr. Owens' ethical misconduct by making materially false and/or misleading statements regarding the Kirstin Blaise Lobato case to the Nevada Supreme Court, KLAS-TV, the Las Vegas *Review-Journal*, and the Associated Press, is much more serious than the misconduct that led to the termination of Ms. Miller and Ms. Kimbrough because his dishonesty not only successfully impaired Ms. Lobato's constitutional and substantive rights by tricking the Supreme Court to deny the filing of an amicus brief that includes a number of arguments that her convictions and continued imprisonment violate her federal and state constitutional rights, but his dishonesty tricked at least three separate media outlets to report and allow public opinion to be influenced by fabricated information that Mr. Owens knows is factually false.

We believe that Mr. Owens' public conduct in regards to Ms. Lobato's case is compelling evidence that he lacks the character necessary to be in a position of public trust and responsibility, and his conduct establishes that he simply has no credibility.

It can't seriously be doubted given his termination of his two subordinates that Oklahoma County DA Prager would not hesitate to terminate Mr. Owens' employment under the circumstances of his ethical transgressions. We can only suggest that you are in the same situation that Mr. Prager

was faced with, and to protect the integrity of your office you need to take swift and definitive action.

We are requesting, in addition to whatever action you decide to take in regards to Mr. Owens, that you publicly and officially retract his false and misleading public statements, personally apologize to Michelle Ravell, Kirstin Blaise Lobato and Hans Sherrer for his unprofessional and unacceptable ethical misconduct, and notify the Nevada Supreme Court of his unethical conduct in the Lobato Case.

Don't hesitate to contact me if you have any questions.

Sincerely,

Hans Sherrer
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**JUSTICE
DENIED**

The Magazine for the
Wrongly Convicted

Exhibit 1

Kirstin Blaise Lobato's Unreasonable Conviction

Possibility of Guilt Replaces Proof Beyond a Reasonable Doubt – Second Edition

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Table 1
27 Significant Differences Between Bailey's Death and Blaise's Statement Known to the LVMPD at the Time of Her Arrest on July 20, 2001 ⁸¹

Difference	Bailey	Blaise
Date	Bailey was murdered on July 8, 2001.	Blaise specifically described the attack occurred "over a month ago," from the date of the July 20 interrogation – or prior to June 20. ⁸² Other details she and Jeremy Davis provided pinpoint it to on or about May 25, 2001.
Location	Bailey's murder occurred in a bank's trash enclosure on the west side of Las Vegas – on West Flamingo Road several blocks west of the Vegas Strip that demarcates east and west Las Vegas.	Blaise described a rape attempt that occurred in a hotel parking lot on the far east side of Las Vegas on East Boulder Hwy. near the intersection of East Boulder Hwy and S. Nellis Blvd. (Eight miles east of Bailey's murder.) Consistent with that location is Blaise said she immediately went to her friend Jeremy Davis' house and cleaned herself up. Davis' house is about 1 mile from the Budget Suites Hotel and about 8 miles southeast of the Nevada State Bank. Boulder Highway was mentioned five times in Blaise's statement, and Flamingo Road was never mentioned.
Place	Bailey was murdered inside of the trash enclosure for a Nevada State Bank.	Blaise described being assaulted in the parking lot of a Budget Suites Hotel.
Geography	There was no shopping center across the street from where Bailey was murdered, there was no fountain visible from the Bank's parking lot, and there was no Sam's Town casino nearby.	Blaise provided specific details about the area around where she was assaulted, including the shopping center across the street, the Budget Suites' fountain, and that it was near Sam's Town Casino.
Physique	Bailey was 5'-10" and weighed 133 lbs. (at time of autopsy). (Bailey lost approximately 40% of his blood (two quarts), which would have weighed approx. 4 lbs. So his pre-death weight was about 137 lbs.) ⁸³	The 5'-6" Blaise described her assailant as "really big," and "he seemed like a giant compared to me" when she was standing next to him before he threw her on the ground. (Consistent with her initial description, Blaise's assailant was later described as over 6' and 200 lbs. ⁸⁴)
Attack	Bailey's head was hit, his face was pummeled, his neck and face were stabbed, his stomach was stabbed, and after dying his abdomen was repeatedly stabbed, his penis was severed at its base, and his rectum was cut with an unidentified sharp object.	Blaise described trying a single time to cut at her attacker's exposed penis with a pocket butterfly knife when she was on her back and he was above her. After that she was able to escape and she heard him "crying" (She later said the knife was given to her by her father for self-defense.)
Injuries	Bailey's Autopsy Report lists 31 separate external injuries – including his post-mortem penis amputation.	Blaise described trying a single time to cut at her attacker's exposed penis with a pocket butterfly knife when she was on her back and he was above her.
Condition	Bailey was dead when his attacker(s) left.	Blaise described her attacker as "crying" when she got away from him.
Circumstances	Bailey was killed in an altercation that occurred entirely in the back of the trash enclosure.	Blaise described being bum rushed when she got out of her car in the Budget Suites parking lot. At no time did she describe that the ensuing struggle occurred inside a trash enclosure.
Mode of Attack	Bailey was killed by one or more intruders who <i>entered</i> the trash enclosure.	Blaise described that she was getting in her car to <i>leave</i> the Budget Suites Hotel when she was assaulted.
Drugs	Bailey had cocaine in his system at the time of his death, and no methamphetamine was present.	Blaise described using methamphetamine for a week before and after being attacked. She did not mention cocaine or the use of cocaine a single time in her statement. ⁸⁵ No witness testified she used cocaine.

Table 1 (Continued)

Difference	Bailey	Blaise
Striking	Bailey's cause of death was "blunt head trauma," according to the autopsy performed on July 9, 2001, and he had numerous pummeling type injuries.	Blaise said, "No," she didn't remember hitting her assailant a single time. (Consistent with her Statement is she had no bruises, cuts, broken bones or any other injuries to either of her hands.)
Dumpster Location	Bailey was murdered in the rear of a trash enclosure directly next to a dumpster that a person had to sidle by to get to his body.	Blaise described being assaulted in an open "parking lot" and "there was a dumpster not far from where it happened." There are dumpsters at the Budget Suites.
Curb	The car that left the tire tracks next to the trash enclosure drove over a planter median.	Blaise stated she didn't drive over "anything" when she drove away.
Body Position	Bailey was found face-up. So after his anus was sliced (based on ME's testimony) with him face down, his body was turned over.	Blaise stated "No," she didn't move her assailant at all.
Covered Body	Bailey's groin area was wrapped with plastic sheeting, his upper body was covered by a piece of cardboard with bloody shoeprints imprinted on it, and then a large quantity of trash was heaped around and on him.	Blaise stated "No," she didn't cover her assailant with anything, she immediately got in her car and drove away while he was "crying."
Person Lying in Enclosure	There was no evidence found at the crime scene that an unknown person had lain in Bailey's blood or anywhere in the trash enclosure at the time he was killed.	Blaise stated she was lying on her back with her assailant above her when she attempted to cut his penis.
Blood	Bailey bled at least a half gallon of blood, his upper body and shirt were soaked in blood, there was blood on his pants, and there was blood on the concrete floor, cardboard, the block walls, and other items in the enclosure.	Blaise described herself as lying down as her assailant knelt on top of her when she tried to cut him, but there is not a single mention in Blaise's statement that either she or her attacker bled, or that she had any blood on her or her clothes. (Consistent with this, lab tests later confirmed no blood was found in her car.)
Cigarettes	Three cigarettes were recovered underneath the plastic that covered Bailey's groin area.	Blaise made no mention about smoking a cigarette at the scene before or after being attacked.
Beer	There was a partially filled can of beer found near Bailey's body.	Blaise made no mention about drinking a beer at the scene before or after being attacked.
Moving Body	Bailey's upper body was moved about 3 feet from the left rear corner of the trash enclosure toward the front of the enclosure.	Blaise stated "No," she didn't move her assailant at all.
Turn Body Over	Bailey's body was turned over at some point so his rectum could be cut.	Blaise stated "No," she didn't move her assailant at all.
Silver Fragments	"Silver" coated pliable paper-like fragments were recovered from Bailey's rectum during his autopsy.	Blaise made no mention about inserting anything into her assailant's rectum, or that she had any "silver" substance with her.
Behavior	Bailey was known, from the interview with Diann Parker, to exchange crack cocaine for sex.	Blaise did not describe exchanging sex for methamphetamine. (And no evidence has been presented that she ever did so or that at any time she used crack cocaine.)
Hang Out	Bailey was known from interview with Diann Parker and items found on his body, to mainly "hang out" at locations on the west side of Las Vegas.	Blaise described living and spending time with people on the east side of Las Vegas.

Table 1 (Continued)

Difference	Bailey	Blaise
Hygiene	Bailey's aunt who positively identified his body, described him as fastidiously clean, and his shoes were found neatly arranged in an undisturbed part of the trash enclosure. He frequented the nearby Nevada State Bank daily, and no prosecution witness familiar with Bailey described him as unclean or "smelly." The Crime Scene Analysts who processed the crime scene and the Coroner's Investigator did not make any mention in their reports or testimony that Bailey was "very smelly" or that he emitted any unusual odor at the scene.	Blaise described her assailant as "very smelly, ...Like old alcohol and dirty diapers almost." ⁸⁶
Gate	The gate was closed to the trash enclosure where Bailey's body was found.	Blaise stated she was sexually assaulted in a parking lot and escaped in her car after getting away from her assailant. She makes no mention of a gate in her statement, much less closing a gate before escaping in her car.



Budget Suites Hotel at 4855 Boulder Hwy. where Blaise was assaulted in the parking lot. The sign for Sam's Town Casino is in the background on the right hand side.



Holy Family Catholic Church where Blaise said in her Statement she went after changing her clothes at a friend's house less than a mile from the Budget Suites Hotel where she was assaulted.

Physical landmarks identified by Blaise in her statement as being near the scene of the attempted rape of her



Blaise's statement about the attempted rape of her in May 2001 did not refer to any landmark near the scene of Duran Bailey's murder on July 8, 2001

Physical landmarks near the scene of Duran Bailey's murder

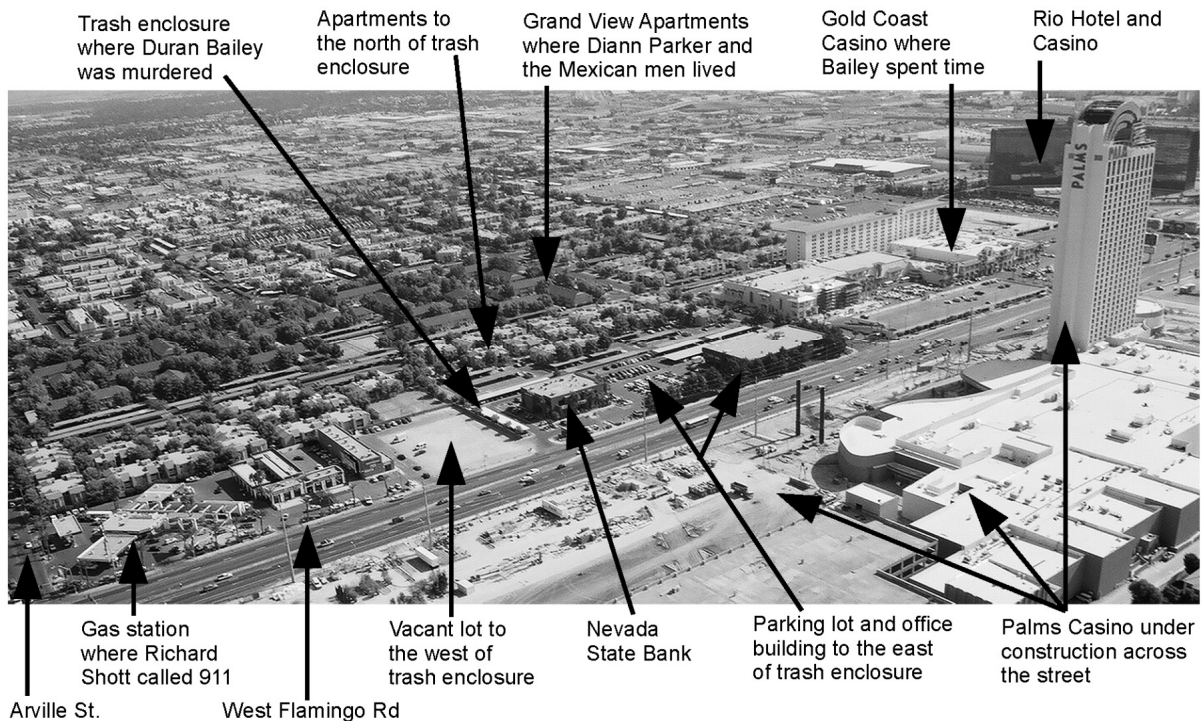


Table 2**13 Significant Differences Between Bailey's Death and Blaise's Statement Learned by the LVMPD and the Clark County D.A.'s Office After July 20, 2001**

(Due to forensic testing, expert evidence analysis, or a witness interview after Blaise's arrest.)

Difference	Bailey	Blaise
Sexual Component	A prosecution and defense expert agree the assault and sexual mutilation of Bailey has a distinct homosexual component.	Blaise is a woman and she was alone when assaulted, yet the prosecution has never alleged that anyone other than Blaise was involved in Bailey's death.
Shoe Size	The shoeprints imprinted in blood leading away from Bailey's body were made by a U.S. man's size 9 athletic shoe, ⁸⁷ which equals a woman's size 10-1/2.	Blaise wears a woman's size 7-1/2 that equates to a U.S. man's size 6, which is 3 sizes smaller than the bloody shoeprints. ⁸⁸ The black high-heel shoes that Blaise said she was wearing when assaulted tested negative for the presence of blood on their soles.
Shoe Type	The shoeprints imprinted in blood leading away from Bailey's body were made by a man's size 9 athletic shoe. ⁸⁹	Blaise described wearing "black high heels." ⁹⁰ Those black high heels were seized at the time of Blaise's arrest. The heels neither matched the bloody shoeprints, nor did they have blood on their sole. That Blaise was wearing high heels is consistent with her statement that when she was attacked, "I was getting ready to go out." ⁹¹
Bat	ME Simms and a defense expert determined it was not probable that any of Bailey's injuries were caused by a baseball bat.	Blaise described keeping a baseball bat in her car for self-defense, which later tested negative for the presence of blood or other biological material.
Blood Pool	Bailey had numerous bleeding wounds and there was a pool of blood where his stabbing wounds were inflicted.	Blaise described herself as lying down as her assailant knelt on top of her. If he had been profusely bleeding, or she had been lying in a pool of his blood, she would have been bathed in his blood and transferred it to numerous areas of her car, including the exterior driver's side door handle, the steering wheel, head rest, floor board, foot pedals, seat, seat back, etc. Scientific confirmatory tests were negative for the presence of any blood on the interior or exterior of her car.
Tire Tracks	The tire tread design of the undisturbed fresh tire tracks near the trash enclosure were identified.	Blaise described driving away from her assailant in her car, which had a different tread design from the tire tracks found at the scene of Bailey's murder. That is consistent with the numerous people who testified about their personal observation that Blaise's car had not been driven from where it was parked in front of her parents Panaca home from July 2, 2001, to the time it was seized by the LVMPD on July 20, 2001.
Drug Use	Bailey had cocaine in his system when he died, but no methamphetamine, and Diann Parker verified his crack cocaine use.	Blaise only described using methamphetamine and her use of methamphetamine was later verified by acquaintances and family members.
Semen	Semen was recovered from Bailey's rectum and his penis.	Blaise described an attempted sexual assault against her that did not involve any sexual activity between her attacker and another man.
Blood Dripping	Bailey's blood did not drip vertically from his wounds in the opinion of two experts – so he was stabbed while lying down.	Blaise only described stabbing once at her assailant as he was above her while <i>she</i> was lying on the ground.
Red Hat	Bailey always wore a "red hat."	Blaise did not mention her assailant wearing any kind of hat, and no "red hat" was found during the search of her car or belongings.

Table 2 (Continued)

Difference	Bailey	Blaise
Date Mismatch	Bailed was killed on July 8, 2001.	Blaise said that she was assaulted more than a month before the July 20 interrogation, and that for a week before and a week after the assault “I was out of my mind on drugs.” ⁹² She also said that the attack on her was at the end of being up for “three days” continuously, ⁹³ which means that for her to have been assaulted by Bailey, she had been using methamphetamine since July 1 and had not had any sleep since the night of Wednesday, July 4. Blaise returned to Panaca from Las Vegas on July 2, 2001. After her arrest, people who saw her described her as lethargic and sleeping a lot – including during the Fourth of July gathering of family and friends at her parent’s house. On July 5, three days before Bailey’s death, Blaise’s mom took her to the Caliente Clinic where a blood sample was drawn at 5:15 p.m. The lab test showed there was no meth in her system. ⁹⁴ Blaise’s mom stayed home from work to be with her on the 6th. The doctor requested that Blaise provide a 24-hour urine sample, which was collected by her mom on the morning of the 7th. The lab test showed no meth in her system. On July 8, at least eleven people (have testified they) saw Blaise in Panaca between 12:30 a.m. and midnight (23-1/2 hours), and none reported (testified) that she either had the appearance of being under the influence of any drug or of having been awake for days on end. In addition to the negative tests for drugs on the 5 th and 7 th , not a single witness testified to seeing Blaise use or exhibit any signs of using drugs of any kind from the time of her arrival in Panaca on July 2 to the time she left on July 9.
Likely Time of Death	ME Simms testified at Blaise’s August 2001 preliminary hearing that it was “more likely than not” his death occurred within 12 hours from when Bailey’s body was discovered – or between about 10 p.m. and 10 a.m. on Sunday, July 8. It was dark on July 8 at 9:08 p.m. Thus Simms’ estimate encompassed the daylight hours from about 10 a.m. to 9:08 p.m., and an hour of darkness. During Blaise’s 2006 retrial Simms testified that to a “medical certainty” Bailey died between 9:50 a.m. and 3:50 p.m. – all daylight hours.	Blaise described twice in her statement being attacked when it was dark, “late at night like probably more into early morning.” ⁹⁵ Since she said she “was getting ready to go out,” it could have been from around midnight to 1 a.m., give or take possibly an hour – which would have been 2 a.m. at the outside. Because it was dark, she could only describe her assailant as “black,” “really big,” and “smelly.”
Most Remote Time of Death	During Blaise’s retrial ME Simms testified that there was a 5% “possibility” Bailey died between 3:50 a.m. and 9:50 a.m. Dawn on July 8 was 4:24 a.m., so according to Simms Bailey’s most remote possible time of death of 3:50 a.m. was 34 minutes before dawn.	Blaise described twice in her statement being attacked when it was dark, “late at night like probably more into early morning.” ⁹⁶ Since she said she “was getting ready to go out,” it could have been from around midnight to 1 a.m., give or take possibly an hour – which would have been 2 a.m. at the outside.

EXHIBIT 2

Justice Denied

Seattle, Washington
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July 2, 2012

What Evidence Needs To Be DNA Tested In Kirstin Blaise Lobato's Case And Why It Can Prove Her Innocence

Every item recovered from the garbage bin enclosure where Duran Bailey was murdered on July 8, 2001 is evidence that has the potential to identify his killer and exonerate Kirstin Blaise Lobato of her convicted crimes. Mr. Bailey's body was discovered about 10 p.m. on July 8 at the Nevada State Bank at 4240 W. Flamingo Rd.

During closing arguments Assistant District Attorney Sandra DiGiacomo specifically told the jury that the items on and around Bailey's body were handled by his killer. (Transcript, XIX-125, 10-5-2006)

Forensic scientist Brent Turvey testified as a defense expert that, **"The primary and guiding principle of forensic science and crime reconstruction, the cornerstone of crime reconstruction, is Locard's Exchange Principle,** which he started writing about in the 19 -- late 1920s and early 1930s. ... And he came up with the notion, eventually, after much research, study and publication and case work, that between every – **whenever two objects come in contact there's an exchange of evidence,** and that is the fundamental and guiding principle of forensic science. **That's the reason that we do crime scene investigations. It's the reason why we test evidence. It's the reason why those results are very important to the outcome of criminal proceedings.** And stated simply, **his exchange principle is that every contact leaves a trace.** In fact I think there's a very popular book out right now by someone who wrote a book with the title "Every Contact Leaves A Trace" about physical evidence and forensic science." (Transcript, XVI -117, 10-2-2006)

The popular *CSI* television programs seen by millions of people weekly have plots based on the principle that every contact at a crime scene leaves a trace.

After Kirstin Lobato's trial ended in October 2006 at least three DNA testing techniques were developed that can test evidence in her case that either couldn't be tested at the time of her trial, or test it much more precisely to identify the DNA profile of the person from whom the evidence originated or who handled that evidence. DNA testing of the crime scene evidence by those new techniques can both exclude her and identify the DNA profile of Duran Bailey's murderer. Those three techniques are:

DNA testing of spermless semen

One of the developments is the testing of spermless semen to identify the DNA profile of the male it originated from. Previously sperm cells needed to be present in semen for DNA testing. The first reported use of this technology was in the March 7, 2007 issue of *New Scientist* magazine.

Touch DNA Testing

Another development is the ability to determine the DNA profile of the person who "touched" something and left identifiable skin cells, oils or perspiration. The first reported use of touch DNA testing was in November 2007.

In January 2008 Timothy Masters became the first person in the United States exonerated by touch DNA testing when he was excluded as the source of DNA recovered from the waistband of the pants worn by the woman he had been convicted in 1999 of murdering. On July 9, 2008 the District Attorney for Boulder, Colorado announced that members of the John and Patsy Ramsey family had been cleared of involvement in the 1996 murder of their daughter JonBenet. Touch DNA testing of her long johns identified a male DNA profile that matched the male DNA profile previously recovered from biological material on her underwear. That profile excluded all members of the Ramsey family.

DNA testing of degraded or impure evidence

There have also been additional refinements in the ability of a DNA test to detect a DNA profile from a degraded, impure or minute evidence sample. In February 2007 it was announced that STR MiniFiler PCR Amplification was available to generate a profile from “degraded DNA as well as from samples that are limited by an impurity.” (Applied Biosystem’s press release)

Innocence Project Will Pay For Testing

The Innocence Project in New York has accepted Kirstin Lobato’s case, and has officially informed Clark County District Attorney Steven Wolfson that it will pay for the DNA testing of evidence in her case. It will not cost the taxpayers of Clark County one penny to test more than a dozen items of crime scene evidence in Ms. Lobato’s case. Since the first DNA exoneration in 1989, post-conviction DNA testing has resulted in new evidence clearing at least 292 men and women in the United States of their convicted crimes.

FBI Database is used to match crime scene DNA evidence with a possible perpetrator

CODIS is the FBI’s DNA databank containing the DNA profiles of convicted felons. By matching the DNA profile collected from probative biological crime scene evidence to DNA profiles on CODIS, advanced DNA testing has the unique ability to simultaneously establish innocence and identify actual criminal perpetrators. To date, **DNA evidence has helped in 1,401 criminal investigations in the state of Nevada alone.**¹

Summary of evidence to be DNA tested

Items	Where evidence was found	What could be discovered by testing the evidence	DNA tested previously? If so, result
Semen	Bailey’s rectum. The semen lacked sperm and in 2006 DNA testing technology didn’t exist to identify a DNA profile from semen lacking sperm.	The identity of the man who had sex with Bailey – possibly minutes before he died. Both the prosecution’s expert Medical Examiner Lary Simms, and the defense expert forensic scientist Brent Turvey testified Bailey’s injuries and the type of assault were consistent with a male-on-male encounter. A foreign DNA profile from the semen could be	No

¹ See, Postconviction Testing: Recommendations for Handling Requests, Nat’l Instit. Just., Off. Just. Programs, Dept. Just., Pub. No. NCJ 177626 (Sept. 1999), at 1; Using DNA to Solve Cold Cases, Nat’l Instit Just., Off. Just. Programs, U.S. Dept. Just., Pub. NO NCJ 194197 (June 2002) at 1.)

		uploaded to CODIS to identify the person and match it with other crime scene evidence.	
Penis swabs	Two swabs of Bailey's penis. In 2006 the technology didn't exist to distinguish between the DNA of two men intermixed.	Foreign DNA on Bailey's penis could establish one of two things. First, if the foreign DNA is from semen and matches the semen in his rectum then Bailey was involved in a male sexual encounter at some point, and if the DNA matches other crime scene evidence, that male can reasonably be identified as his murderer. Second, Bailey's assailant physically handled his penis, so if the DNA is not from semen, then it can only reasonably be from his killer holding his penis as he amputated it. A foreign DNA profile from the penis swabs could be uploaded to CODIS to identify the person and match it with other crime scene evidence.	No
Plastic and silver paper	Several pieces of plastic with silver-colored paper were recovered from Bailey's rectum.	The only reasonable explanation is Bailey's killer placed the pieces of plastic with silver-colored paper in his rectum. DNA techniques unavailable at the time of Ms. Lobato's 2006 trial could identify the killer's DNA profile. A foreign DNA profile could be uploaded to CODIS to identify the person and match it with other crime scene evidence.	No
Cigarette butts and filter paper	Two cigarette butts (A Marlboro and an unbranded cigarette) and filter paper (which was from a cigarette that fell apart when collected as evidence) were underneath the plastic sheeting wrapped around Bailey's upper legs and lower torso. One butt was lying on Bailey's bare right hip, and the other butt was on his left thigh. The filter paper was also on his body.	The only reasonable explanation is Bailey's killer placed the butts and filter paper on his body, and then covered those items with the plastic sheeting wrapped around his upper legs and lower torso. The 2006 DNA tests prove that person is not Ms. Lobato. Touch DNA and other techniques can now be used to test this evidence more precisely. If the CODIS database produces a match between any of this evidence that person is the prime suspect, and if that person's DNA matches other crime scene evidence such as the match, semen, penis, pubic hair, etc., then that person is almost certainly Bailey's murderer.	2006 Ms. Lobato was excluded as the foreign DNA source from both butts. The Marlboro butt only had male DNA, and Bailey and Ms. Lobato were excluded as the source. The other butt had DNA of someone other than Ms. Lobato and it didn't match the DNA on the Marlboro. The filter

			paper wasn't tested.
Match	A match was underneath the plastic sheeting wrapped around Bailey's upper legs and torso. The match was lying on Bailey's bare right thigh about two inches below a cigarette butt.	The only reasonable explanation is Bailey's killer placed the match on his body, which was then covered with the plastic sheeting wrapped around his upper legs and lower torso. Touch DNA and other techniques can now be used to test the match for foreign DNA. If the CODIS database produces a match between foreign DNA and a person in the database, that person is the prime suspect. If that person's DNA matches other crime scene evidence such as a cigarette butt, semen, penis, pubic hair, etc., then that person is almost certainly Bailey's murderer.	No
Pubic hair	Multiple loose pubic hairs were combed from Bailey's pubic hair.	The DNA testing used in 2006 on only a single pubic hair was much less precise than the techniques available today. Retesting of that one hair by today's sophisticated techniques could possibly produce a more complete DNA profile. As could testing of untested hairs. The foreign DNA profile from the pubic hair could be uploaded to CODIS to identify the person and match it with other crime scene evidence.	2006 Ms. Lobato excluded. One hair only was tested and it had foreign DNA that didn't match Ms. Lobato.
Chewing gum	Lying on cardboard covering Bailey's mid-and-upper body. The cardboard had shoeprints imprinted on it and the gum had blood on it.	Because the gum was lying on top of the cardboard covering Bailey's upper body – it is reasonable that only his killer could have placed it there after covering Bailey. The DNA testing used in 2001 was much less precise than the techniques available today. Retesting by today's sophisticated techniques could possibly detect the presence of foreign DNA that the 2001 tests failed to detect. A foreign DNA profile from the gum could be uploaded to CODIS to identify the person and match it with other crime scene evidence.	2001 Ms. Lobato excluded. Bailey's DNA and foreign DNA were detected as a minor component, but Ms. Lobato was excluded as the source.
Cardboard	Vertical blood drops have been identified by the post-conviction investigation of forensic scientist George Schiro. The cardboard covered Bailey's mid-and-upper body. The blood drops are on top of shoe imprints made by the same shoe as the shoeprints imprinted in blood leading away from Bailey's body.	The blood drops can only be from one of two people – Bailey or his killer. If a DNA profile is recovered from the blood and it is not Bailey's DNA, then it is that of his killer. A foreign DNA profile from the blood drops could be uploaded to CODIS to identify the person and match it with other crime scene evidence.	No
Cardboard	Bailey's body was found with cardboard covering his mid-and-upper body.	The only reasonable explanation is Bailey's killer handled the cardboard.	No

		Skin cells or perspiration from the killer's fingers and hand could be expected to be on the cardboard. Foreign DNA from the cardboard could be uploaded to CODIS to identify the person and match it with other crime scene evidence.	
Gold colored chain	Gold colored chain lying near Bailey's body that was broken. Bailey's cousin had provided testimony to seeing him wearing a gold colored chain.	The chain can be expected to have the DNA of Bailey's killer on it, because it is reasonable that Bailey's chain was broken when grabbed by his killer and ripped from his neck. A foreign DNA profile from the chain could be uploaded to CODIS to identify the person and match it with other crime scene evidence.	No
Buttons	Two black buttons w/ torn thread and apparent blood were found next to Bailey's body.	The buttons can be expected to have the DNA of Bailey's killer on it, because it is reasonable that they were ripped from Bailey's shirt by his killer during the assault. A foreign DNA profile from the buttons could be uploaded to CODIS to identify the person and match it with other crime scene evidence.	No
Plaid shirt	Bailey was wearing a plaid shirt when his body was found.	It is now possible by touch DNA to test Bailey's shirt for skin cells or perspiration from Bailey's killer who it is reasonable to believe was the person who manhandled his shirt enough to tear off two buttons. A foreign DNA profile from the pants could be uploaded to CODIS to identify the person and match it with other crime scene evidence.	No
Tan pants	Bailey was found with his tan pants pulled down to about his knees.	It is now possible by touch DNA to test Bailey's tan pants for skin cells or perspiration from Bailey's killer who may have pulled his pants down. Timothy Masters was exonerated by recovery of the killer's DNA from the waist-band of the victim's pants pulled down by her killer. A foreign DNA profile from the pants could be uploaded to CODIS to identify the person and match it with other crime scene evidence.	No
Plastic sheeting	Plastic sheeting was wrapped around Bailey's upper legs and lower torso.	The only reasonable explanation is the plastic sheeting was extensively handled by Bailey's killer in the course of wrapping it around part of his body. Consequently, the plastic sheeting can be expected to have the DNA of Bailey's killer on it. The DNA techniques did not exist at the time of Ms. Lobato's trial to test the plastic sheeting for the killer's	No

		DNA. A foreign DNA profile from the plastic sheeting could be uploaded to CODIS to identify the person and match it with other crime scene evidence.	
Beer can	Sitting near Bailey's body	It is possible that skin cells or perspiration from the person who handled the beer could to be recovered from the beer can. A foreign DNA profile from the beer can could be uploaded to CODIS to identify the person and match it with other crime scene evidence.	No
Torn condom wrapper and Kleenex	A torn condom wrapper and a Kleenex were recovered from the crime scene.	A foreign DNA profile from the torn condom wrapper and the Kleenex could be uploaded to CODIS to identify the person and match it with other crime scene evidence.	No
Fingernail clippings	Fingernail clippings were recovered from Bailey. There was expert testimony by M.E. Simms that Bailey had defensive wounds on his fingers which suggests he had physical contact with his killer.	The DNA testing used in 2001 was much less precise than the techniques available today. Retesting by today's sophisticated techniques could possibly detect the presence of foreign DNA that the 2001 tests failed to detect. A foreign DNA profile recovered from the fingernail clippings could be uploaded to CODIS to identify the person and match it with other crime scene evidence.	2001 Ms. Lobato was excluded by tests that only detected Bailey's DNA profile.
Fingerprints	At least four fingerprints were recovered from the crime scene.	A foreign DNA profile from the fingerprints could be uploaded to CODIS to identify the person and match it with other crime scene evidence.	No
Matchbook	A matchbook was recovered from the crime scene.	A foreign DNA profile from the matchbook could be uploaded to CODIS to identify the person and match it with other crime scene evidence.	No

Justice Denied has published a quarterly magazine since 1999 that is the only regularly produced publication in the United States reporting on issues related to wrongful convictions and specific cases. Justice Denied maintains the world's largest database of wrongly convicted people, which includes more than 3,400 people who have been exonerated.

Justice Denied began investigating Kirstin Blaise Lobato's case in 2003, and editor and publisher Hans Sherrer wrote the book, *Kirstin Blaise Lobato's Unreasonable Conviction: Possibility Of Guilt Replaces Proof Beyond A Reasonable Doubt* (Revised and Updated Second Edition 2010).

This document was prepared by Hans Sherrer on July 1, 2012.

EXHIBIT 3

Bailey as found lying on the concrete floor



EXHIBIT 4

After Bailey's body was removed, which is approximately as it looked before he was murdered less the blood.



EXHIBIT 5

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STATE OF OKLAHOMA



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PRESS STATEMENT BY
DISTRICT ATTORNEY DAVID W. PRATER

FOR IMMEDIATE RELEASE:

On March 15, 2012, an Oklahoma County jury convicted Billy Thompson of 1st Degree Murder at the conclusion of a trial held before the Honorable Donald Deason. The next day, I discovered that a potentially exculpatory statement made to Assistant District Attorneys Pam Kimbrough and Stephanie Miller by a witness to the original crime was not disclosed to defense counsel.

Within minutes of learning of the nondisclosure, I contacted Chief Public Defender, Robert Ravitz to notify him of the allegations. To ensure the integrity of our investigation into the alleged ethical violations of the ADAs, I invited Mr. Ravitz to jointly investigate the allegations. He accepted.

The joint investigation confirmed that the witness did make a statement to the assistant district attorneys that was materially inconsistent to his original statement made to the Oklahoma City Police Department. The substance of the inconsistent statement was not disclosed to defense counsel. The assistant district attorneys allowed defense counsel to stipulate to the witness's testimony without including the subsequent inconsistent statement. Finally, in their closing arguments, the assistant district attorneys argued that the witness's stipulated testimony corroborated other trial testimony.

Prosecutors must be different than any other type of attorney. We are not simply advocates, but are charged with a ministerial duty within the criminal justice system. We are duty-bound to seek justice, period. That duty includes protecting the constitutional and substantive rights of criminal suspects and criminal defendants. We must never abrogate that duty to the justice system we are privileged to serve.

To protect the integrity of this office, its dedicated employees and most importantly, our justice system, I have taken swift and definitive action. Pam Kimbrough and Stephanie Miller were terminated last Thursday. Though I am heart-broken over their loss to this office, my decision to

terminate them was an easy decision to make. The gravity of their alleged ethical violation is so great that only one punishment equals their transgression. Additionally, I am forwarding our investigation to the Oklahoma Bar Association and the Oklahoma Attorney General's office to assign a special prosecutor to evaluate the investigation for possible criminal violations.

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