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HELENA DIVISION

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

JIMMY RAY BROMGARD,

Plaintiff,

v.

STATE OF MONTANA,
COUNTY OF YELLOWSTONE,
CHAIRMAN BILL KENNEDY,
COMMISSIONER JOHN OSTLUND,
COMMISSIONER JIM RENO,
ARNOLD MELNIKOFF, and MIKE
GREELY,

Defendants.

Civil No. CV-04-192-M-LBE

COMPLAINT

COMPLAINT

GSJW

1. This is a civil rights Complaint for money damages for the extraordinary injuries suffered by plaintiff Jimmy Ray Bromgard. Mr. Bromgard was arrested and wrongly convicted in 1987 for the sexual assault of an eight-year-old girl in Billings, Montana. He spent fifteen years in prison before DNA testing on the semen stains recovered from the child's underwear excluded him and proved beyond any doubt his actual innocence. The conviction was vacated and the charges dismissed on October 1, 2002.
2. This unfathomable miscarriage of justice was not the product of an innocent mistake or oversight on the part of well-meaning public authorities. Rather, it resulted from the unconstitutional conduct committed by Arnold Melnikoff, the one time chief of the Montana state crime laboratory, his supervisors, and the county commissioners of Yellowstone County. Melnikoff fabricated falsely inculpatory evidence and acted negligently, recklessly, and intentionally in the pursuit of his professional responsibilities. His direct supervisor, the Montana Attorney General, failed to afford even minimal oversight - there was no training nor any supervision.
3. Mr. Bromgard's conviction was also caused by the deliberate indifference of

Yellowstone County policymakers who knowingly established a woefully inadequate system of indigent representation in criminal cases, utterly lacking adequate compensation, screening, supervision and training for its contract counsel. The County's contract system ensured that, as in this case, the least competent attorney, such as John Adams, would provide an inadequate defense for his client and get paid for doing next to nothing.

4. Beyond compensating Mr. Bromgard for the fifteen years stolen from him, and his continuing injuries, this action seeks to redress the unlawful practices, customs, and policies, pursuant to which defendants, acting under color of law, violated Mr. Bromgard's clearly established rights as guaranteed by the First, Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution, rights secured by the Civil Rights Act of 1871, 42 U.S.C. §1983 and by the laws of the State of Montana.
5. Plaintiff seeks damages, both compensatory and punitive, affirmative and equitable relief, an award of costs and attorneys fees, and such other and further relief as this court deems equitable and just.

JURISDICTION

6. This Court has jurisdiction over the subject matter of this Complaint pursuant to 42 U.S.C. §1983 and 28 U.S.C. Sections 1331, 1343(3), 1343(4)

and supplemental jurisdiction over pendent state law claims pursuant to 28 U.S.C. Section 1367(a).

VENUE

7. This Court has venue over this matter pursuant to 28 U.S.C. §1391 and Local Rule of Civil Procedure 3.3(1). Under the laws of the State of Montana, specifically under § 25-2-122(b), MCA, venue is proper in Missoula County, wherein the Montana Crime Lab is located.

PARTIES

8. Plaintiff Jimmy Ray Bromgard was and is a resident of Montana, currently residing in Billings.
9. Defendant Arnold Melnikoff was an agent acting for and on behalf of the State of Montana, and, at all times herein mentioned, was the Bureau Chief and Laboratory Manager for the Division of Forensic Science, Department of Justice, State of Montana (hereinafter "Montana Crime Lab"), and at all relevant times, a resident of Missoula, Montana. He is named individually and his relevant conduct was under color of state law.
10. Defendant Attorney General Mike Greely, retired, was at all relevant times the immediate supervisor of Melnikoff, had oversight responsibilities for

the Montana Crime Lab, and resided in Helena, Montana. He is named individually and his relevant conduct was under color of state law. He also was an agent acting for and on behalf of the State of Montana, and is designated as an agent of the State for the pendent state claims only.

11. Defendant State of Montana at all relevant times was the employer of Arnold Melnikoff and is named as a party for the pendent state claims only.
12. Defendants Chairman Bill Kennedy, Commissioner John Ostlund, and Commissioner Jim Reno are currently Yellowstone County Commissioners.
13. Defendant County of Yellowstone is a sub unit of government authorized under the laws of the State of Montana.

FACTS

14. In the early morning hours of March 20, 1987, L.T., an eight-year-old girl slept in her bedroom in the family home in Billings, Montana. An intruder pushed a swing set up against the rear of the house, climbed up, and entered the house through an open second floor bathroom window. Once inside, he quietly entered the little girl's room and raped her.
15. After the assailant fled, L.T. woke her mom and dad, who then summoned the Billings police. The police processed the crime scene, interviewed the victim, and collected the underpants stained with semen and a bed sheet

covered with scattered hairs.

16. L.T. gave a description of the perpetrator and worked with a police artist to create a composite sketch. An officer at the police station noticed the sketch and remarked to the case detective that the subject bore a resemblance to Jimmy Ray Bromgard, a twelfth grader he had recently arrested for assault following a fight at the local high school. The police put Bromgard in a corporeal lineup and the girl allegedly made a positive identification of him as the rapist.
17. The police collected reference blood and hair samples from L.T. and Bromgard to compare with the semen stains on the underwear and the hairs recovered from the sheet. All the crime scene evidence and reference samples were sent to defendant Melnikoff at the Montana Crime Lab in Missoula.
18. As was often the case prior to the availability of forensic DNA typing, the attempt to identify the less sensitive ABO blood type of the semen stain was unsuccessful. Therefore, corroboration of the victim's tentative eyewitness identification depended solely upon the microscopic comparison of hairs recovered from the bedding, which were assumed to be hairs from either the victim or the perpetrator. Hairs from the bedsheet along with reference

samples from L.T. and Bromgard were examined by Melnikoff.

19. Melnikoff issued a report on May 7, 1987 that he presented to the prosecutor prior to Bromgard's trial in which he concluded that both a questioned head hair and a pubic hair collected from the victim's bedding had the same microscopic characteristics as the head and pubic hairs collected from Bromgard and that they could have come from him.
20. The conclusions in Melnikoff's report were false. His actions were intentional and reckless, and constituted a fabrication of evidence.
21. As a matter of scientific fact, neither hair was consistent with Bromgard and the head hair was actually consistent with the victim. Thus, the head hair had no probative value as to Mr. Bromgard's guilt, and the pubic hair actually excluded him as the perpetrator of this crime. These conclusions were confirmed in a re-examination of the hairs conducted by the FBI Crime laboratory following Mr. Bromgard's exoneration.
22. On June 8, 1987, based on this false report and without the benefit of the exculpatory evidence that existed, the Yellowstone County Attorney filed an information charging Mr. Bromgard with the rape of L.T.
23. In addition to mis-representing that the crime scene hairs were consistent with having come from Bromgard, upon information and belief, Melnikoff

falsely represented to the prosecutor before trial, that there was a one in ten thousand chance that the hairs belonged to anyone other than Bromgard.

The statistics had no basis in science but instead, were fabricated by Melnikoff.

24. The prosecutor relied on Melnikoff's false match and bogus statistics which he was given before trial to secure a conviction.
25. At the criminal trial, Melnikoff was asked by the prosecutor to estimate the probative value of the hair "matches."

Q. How common is it for two individuals to have head hair which is microscopically indistinguishable?

A. Well the best way that I know to answer that question is to relate to my own case work experience, and I have done over 700 cases involving head hair and have only had five or six cases where I could not distinguish the head hair between two individuals.

Q. What is your experience in the same regard with pubic hair?

A. Well I have probably examined less cases because not all the cases involving hair involve pubic hair, but I would guess it's probably close to 500 cases, most of the time it does, and I have had the experience where only three times pubic hair standards from two individuals submitted in the case could not be distinguished.

Q. So each one would be one in a hundred, what would the two together be. In other words if the pubic hair and head hair are both matching up, what are the odds of that being a mistake?

A. Well there are actually two mutually exclusive events because they come from different areas of the body, and their characteristics are not necessarily the same. So if you find both head and pubic hair there you have one chance in a hundred for the head hair matching a particular individual and one chance in a hundred for the pubic hair. If you find both it's a multiplying effect, it would be one chance in 10,000, it's the same as two dice, if you throw one dice with a one, one chance out of six; if you throw another dice with a one, it's one chance out of six, you multiply the odds together. You do the same in this case, so it's one times one hundred, times one, times one hundred, and you get one in 10,000.

Q. Consequently, so that I understand it correctly and the jury understands it correctly, is it your opinion that there is less than one in ten thousand chance that this was not actually Jimmy Bromgard's hair?

A. Yes.

26. The only evidence at trial against Mr. Bromgard was the forensic evidence, which was actually exculpatory, and the eight-year-old victim's shaky identification.
27. No formal challenge to the admissibility of the statistics or to the "match" was ever made by defense counsel. But counsel's lapse was not unexpected. Mr. Bromgard was indigent. Under the Yellowstone County plan for indigent representation, there were but a few lawyers in private practice who had contracted with the County to provide defense services. John Adams, Esq. was one of those lawyers. He was assigned to represent Mr. Bromgard.

His representation did not pass muster with the Sixth Amendment.

28. Adams met with Jimmy only once before trial. He hired no investigator; he retained no expert to challenge the patently false "scientific" evidence; and he failed to conduct any investigation. He filed no pre-trial motions.
29. In this case, the assailant entered L.T.'s bedroom in the middle of the night. The only illumination came from a light in the hallway. The lineup was videotaped by the police. John Adams never reviewed the video tape before trial and never requested a *Wade* hearing pre-trial to test the reliability of the victim's identification. At trial, under direct examination by the prosecutor, L.T. testified that when she picked Jimmy out of the lineup, she "wasn't too sure," but when she saw him on video tape she was "about 60%, 65% sure." The prosecutor, obviously concerned by her uncertainty, finally asked L.T.:

Q. And if we were to quit using percentages, would you say that you are, how would you describe how sure you are?

A. I am not too sure.

T. 71.

30. Adams made no opening statement, although studies indicate that juries tend to make up their minds after hearing opening statements. He made no effort to prepare Jimmy before he testified. He admitted he did not prepare

his closing statement. Although he filed a Notice of Appeal, he failed to file the appeal itself. An appellate court later found that Jimmy had been denied effective appellate counsel.

31. At the time Bromgard was tried, Yellowstone County Commissioners had an indigent defense system which paid attorneys a monthly lump-sum for the representation of indigent defendants. This sum was stagnant and was not based on the number of cases an attorney took or the actual work an attorney performed on his or her cases. Thus, if an attorney was to be paid \$1000 per month, if he or she spent 50 hours on the cases, the rate of compensation would be \$20/hour; for an attorney who spent 100 hours on the cases, the rate of compensation would be reduced to \$10/hour.
32. Further, most of these contract attorneys were in private practice and had obligations to clients who paid for their services based on the amount of work the attorney performed. This system inevitably created a tension between the contract attorney's private practice and indigent defense work, with private clients winning out.
33. This contract system of payment guaranteed that the only attorneys who were representing indigent defendants such as Mr. Bromgard, were those attorneys who either worked for free, or attorneys who were willing and

comfortable ignoring their ethical duty to provide a minimally competent and constitutionally adequate defense.

34. Yellowstone County policymakers had actual and constructive notice of this inherent tension in the contract system, which resulted in constitutionally inadequate representation at least ten years prior to the Bromgard trial, as the National Center for Defense Management conducted a study of Montana's indigent defense system ("Defense Management Study" Attached as Exhibit 1) and stated:

The contract defender is in the ethically untenable position of choosing between his civil and criminal practice, to the likely detriment of his clients. No matter how much defender work he does, his public compensation will (until re-negotiated) remain the same. On the other hand, his private civil practice returns compensation directly proportionate to the amount of time he gives to it. Frequently, cases require immediate attention of the lawyer. Where the attorney's public work and private work compete for attention, the private work usually receives priority because the lawyer's compensation for that work (unlike his public salary) is not secured. There is also a status gap between the indigent criminal client and the paying civil client which must, however subtly, work against the indigent's interest. Once again, the conflict is obvious; the pressures, compelling.

(Defense Management Study at 16).

35. Yellowstone County also failed to establish and enforce adequate standards for hiring contract attorneys or for the delivery of defense services. Upon information and belief, there was no system in place to ensure attorneys who

were given contracts were qualified to represent criminal defendants or were performing at a constitutionally adequate level. In sum, Yellowstone County did not have any idea "exactly what it [was] paying for." (Defense Management Study at 16).

36. As one example of the failure to monitor or screen attorneys, on information and belief, the County was aware that Adams consistently failed to provide constitutionally adequate representation but took no action to correct the deficiencies. Indeed, he was known as John "jailhouse" Adams because almost every one he represented ended up in prison.
37. Yellowstone County, by and through its final policymakers, maintained an unconstitutional custom, policy and practice of providing grossly inadequate rates for attorneys who represented indigent criminal defendants during trial and appeal, thereby assuring a system in which the attorneys representing indigent defendants in serious felony cases would be the least qualified. Pursuant to this policy, the County contracted with incompetent and indifferent John Adams to provide little or no defense to his clients accused of serious felonies.
38. Despite their actual or constructive knowledge of the ineffective assistance of counsel defendants were receiving, the County Commissioners did

nothing to ameliorate these conditions. The County failed to reasonably screen, evaluate, supervise, and train the lawyers it selected for assigned counsel. The County's constitutional violations proximately caused Mr. Bromgard's conviction.

IMPRISONMENT AND EXONERATION

39. Mr. Bromgard was convicted and received a sentence of forty years. His sentence was particularly harsh because the state shipped him out to a special penal institution for sex offenders in Arizona, precluding any contact with his family and branding him as a sex offender when he was an innocent man.
40. Eventually, Mr. Bromgard contacted The Innocence Project at the Benjamin Cardozo School of Law. The Innocence Project secured a court order for DNA testing on the semen stained underpants. The testing by Forensic Science Associates excluded Mr. Bromgard as the source of the semen. That report dated August 27, 2002 is attached as Exhibit 2. The prosecutor had the underpants re-tested by a second lab and achieved identical results.
41. On October 1, 2002, on a joint application of Mr. Bromgard and the prosecution, his conviction was vacated and the indictment dismissed on the grounds of actual innocence. The Order releasing Mr. Bromgard on the

grounds that his conviction had been set aside is attached as Exhibit 3.

42. After serving fifteen years for a crime he did not commit, Jimmy Ray Bromgard finally was released from prison.

Systemic Misconduct in the Lab

43. Once the DNA testing cleared Mr. Bromgard, his counsel contacted Dr. Walter Rowe, Professor of Forensic Science at George Washington University. Professor Rowe was sufficiently concerned with Melnikoff's testimony to establish a peer review committee to examine Melnikoff's role in the Bromgard case. He selected four preeminent experts on hair examination, all of whom had extensive experience teaching law enforcement and working with prosecutors. The members of the peer review committee did not receive any compensation for their efforts and none of the experts selected by Professor Rowe knew the identity of the hair examiner when they reviewed the transcript. Identifying information was whited out so that the reviews would be "blind."
44. The hair examiners' peer review findings were unanimous: Melnikoff's sworn testimony concerning the science of forensic hair examination, genetics and statistics was false. The Peer Review Report is attached as Exhibit 4. At the conclusion of the report the reviewers urged the

prosecutor to undertake a microscopic reexamination of the hair evidence in the Bromgard case and if it is discovered that mismatches were declared, then they further urged the Montana Attorney General to conduct an external audit of all the cases in which Melnikoff examined hair.

45. At the request of the Innocence Project, the prosecutor asked that the questioned head and pubic hairs be microscopically re-examined by the FBI. This re-examination excluded Bromgard as the source of both the pubic and head hairs and revealed that the questioned head hair was microscopically similar to that of the victim.
46. On Mr. Bromgard's appeal, the Montana Supreme Court had commented favorably on the compelling evidence offered by Melnikoff. State v. Bromgard (1993), 261 Mont. 291, 862 P.2d 1140. Counsel for Mr. Bromgard conducted a Lexis search for other Montana Supreme Court cases commenting favorably on Melnikoff's expert testimony involving hair. Two cases were found: State v. Bauer (1984), 210 Mont. 298, 307, 683 P.2d 946, 951 (en banc) and State v. Kordonowy (1991), 251 Mont. 44, 823 P.2d 854.
47. Mr. Bauer was prosecuted and convicted for a 1983 rape. After serving fourteen years of his sentence, post-conviction DNA testing was sought by

Bauer's counsel in a civil proceeding. The testing confirmed Mr. Bauer's innocence, and the District Court found that Mr. Bauer's wrongful conviction was based in part "on evidence offered by the state [Melnikoff's testimony] which was inaccurate, erroneous, and misleading." State v. Bauer, Order Vacating Convictions and Sentences, No. 83-CR-27 (2d Judicial District, Sept. 22, 1997).

48. Mr. Kordonoy was tried in 1990 for a 1987 rape. He was arrested in 1989, the same year Melnikoff conducted his examination of the evidentiary hair in this case. In what may have been his last Montana trial, Melnikoff testified that he had testified over 60 times in the State of Montana on the subject of hair and fiber examination. Tr. 269:2-7. He testified, as he had before, that he had done hair analysis in 500 to 700 cases.
49. Bromgard's counsel contacted Kordonowy's last-known lawyer to determine whether Kordonowy wanted DNA tests of the semen introduced by the prosecution at trial. He did. The testing exonerated him.
50. Thus, the first three defendants in Montana to seek and obtain post-conviction DNA testing were all exonerated. More egregiously, the conviction in each case was based on Melnikoff's fabricated hair evidence. Melnikoff's 100% error rate on the first three cases re-tested is

unprecedented in the annals of forensic science scandals.

51. Upon information and belief, notwithstanding this remarkable and horrifying error-rate, no scientific reexamination of any of Melnikoff's microscopic hair comparisons has been conducted. Melnikoff's supervisor, Mike Greely, did nothing to address the pattern of misconduct, nor to ensure that other forensic scientists in the Montana state crime lab were properly conducting hair analysis.
52. In 1989, Melnikoff resigned from his position as Director of the Montana State crime lab and took a new position as an entry level forensic scientist with the Washington State Police. In an effort to investigate the reasons for such an unusual career move, counsel for Bauer sought disclosure of Melnikoff's Montana personnel file reflecting his nineteen years of employment with the Montana Department of Justice. On information and belief, Bauer's counsel was told by the Department of Justice that the Melnikoff personnel file was missing and could not be located.
53. After one year as a entry-level forensic scientist, Melnikoff attempted to become certified to conduct microscopic hair analysis, as he had done in Montana. Washington state requires an individual to pass a certification test before conducting hair analysis. Melnikoff failed this test, and as a result

was denied permission to conduct precisely the same type of analysis that he had been conducting in Montana for over a decade, which led to the conviction of at least three innocent men.

54. Upon information and belief, Melnikoff's direct supervisor, Attorney General Greely provided no oversight, supervision or training to Melnikoff or any other forensic examiner in Montana. Further, upon information and belief, Greely failed to properly screen Melnikoff and allowed him to become the director of the state crime lab although he was woefully unqualified.
55. Upon information and belief, Greely, completely abdicated his responsibility for the administration of the crime lab to such an extent, that Melnikoff was free to fabricate results and withhold exculpatory evidence in order to obtain convictions, as he did in Mr. Bromgard's case.
56. Mr. Bromgard has attempted to secure compensation through the Montana Legislature. After numerous efforts, the only measure passed provided college tuition for proven exonerees. It was only after all other avenues for meaningful compensation for the fifteen years of his life that were lost dead-ended that the predicate for this lawsuit, a notice of claim, was filed.
57. Notices of Claim were timely filed with the State of Montana and the

Yellowstone County Commissioners. More than 120 days have passed without either entity offering to settle the claims.

58. As a direct and proximate result of the acts of the defendants, the injuries and damages sustained by Jimmy Ray Bromgard, arising from the deprivation of civil rights and pendant state claims include:

- a. Violation of his clearly established rights under the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution;
- b. Loss of physical liberty;
- c. Physical injuries, pain and suffering, extreme fear, and emotional trauma;
- d. Economic damages including loss of income; and
- e. Humiliation, embarrassment, and injury to reputation.

FIRST CAUSE OF ACTION

42 U.S.C. § 1983 - Fourteenth Amendment Due Process and Fair Trial Right Violations: Fabrication of Evidence and Failure to Disclose Exculpatory Material to the Prosecution against Melnikoff

Bromgard re-alleges all of the foregoing and further state as follows:

Fabrication of Evidence

59. Defendant Melnikoff fabricated inculpatory evidence against Mr. Bromgard

before trial, including the fact that the questioned head and pubic hairs left at the scene matched Mr. Bromgard, and the chance the hairs belonged to someone else other than Mr. Bromgard was one in ten thousand.

60. Neither hair actually matched Mr. Bromgard, and Melnikoff deliberately, and with reckless disregard for the truth made up this inculpatory evidence.
61. This fabricated evidence was used to make the decision to try Mr. Bromgard and was used at trial to convict Mr. Bromgard.
62. Deliberate fabrication of false evidence used against a criminal defendant violated clearly established constitutional law of which all reasonable law enforcement personnel would have known.

Brady Claim

63. As a member of the investigatory team, Defendant Melnikoff deliberately failed to document and disclose to the prosecutor and the defense attorney material information that was favorable to Mr. Bromgard. This undisclosed information included the fact that none of the hairs left at the scene belonged to Mr. Bromgard, and that one of the hairs at the scene - the pubic hair - matched neither Mr. Bromgard nor the victim, and thus excluded him as the perpetrator of this crime.

64. Acting with deliberate indifference by withholding this material exculpatory evidence from the prosecutor and the defense prior to trial, violated Mr. Bromgard's clearly established Fourteenth Amendment right to due process of law as interpreted by the United States Supreme Court in Brady v. Maryland, 373 U.S. 83 (1963), and its progeny. Brady imposed a clear duty on Melnikoff, as part of the investigatory team, not to conceal exculpatory evidence and rather to report all material exculpatory and impeachment information to prosecutors.
65. Melnikoff's bad-faith, intentional and/or reckless failure to disclose this material exculpatory information to the prosecutors deprived Mr. Bromgard of significant exculpatory and impeachment material that would have eviscerated the incriminating value of the identification in this case.
66. Withholding material exculpatory evidence violated clearly established constitutional law of which all reasonable law enforcement personnel would have known.

SECOND CAUSE OF ACTION

42 U.S.C. § 1983 - Fourth Amendment Malicious Prosecution Claim

Bromgard re-alleges all of the foregoing and further state as follows:

67. Had Melinkoff correctly reported the probative value of the hair found at

- the crime scene, the incriminating value of the shaky identification in this case and probable cause for the arrest would have been eviscerated.
68. Without the hair evidence there was no probable cause to indict or try Mr. Bromgard, and no probable cause would have been found to hold Mr. Bromgard for trial if Melnikoff had properly performed and reported the results the hair analysis in this case.
69. Based upon the fabricated inculpatory evidence, defendants held Mr. Bromgard for a crime he did not commit, and caused the prosecution to continue against him for rape.
70. Melnikoff acted with bad faith to secure Bromgard's conviction despite the evidence. He chose to ignore, not disclose, or misrepresent the evidence that strongly suggest Plaintiff's innocence. Defendant tendered information he knew, or should have known to be false and failed to disclose material exculpatory evidence, including the exculpatory nature of the hair evidence in this case, which misled the prosecutor to believe he had probable cause and influenced the decision to prosecute.
71. The criminal action ultimately terminated in Plaintiff's favor, when his conviction was vacated and the indictment dismissed on the grounds of his actual innocence, due to conclusive comparative DNA testing, which

excluded Mr. Bromgard as the perpetrator.

72. Melnikoff took these actions to specifically deprive Mr. Bromgard of his constitutional rights, including his right to a fair trial under the Fourteenth Amendment, and his rights under the First and Fourth Amendments to the United States Constitution.

THIRD CAUSE OF ACTION

42 U.S.C. § 1983 - Supervisory Liability Against Greely

Bromgard re-alleges all of the foregoing and further states as follows:

73. The wrongful prosecution, unfair trial, conviction and confinement of Jimmy Ray Bromgard was caused by the deliberate indifference and recklessness of Mike Greely, acting in his individual capacities and under color of law, when he failed to train and supervise defendant Arnold Melnikoff adequately.
74. This failure to train and supervise Melnikoff was so deficient that it encouraged and/or permitted Melnikoff to report false serology results and to suppress exculpatory data as he did in this case.
75. This failure to train and supervise caused Bromgard to suffer the constitutional deprivations and grievous personal injuries and damages described above.

FOURTH CAUSE OF ACTION

42 U.S.C. § 1983 – Monell Claim against Yellowstone County and the Yellowstone County Board of Commissioners for Unconstitutional Policy, Practice and Custom

Bromgard re-alleges all of the foregoing and further states as follows:

76. Yellowstone County violated his civil rights by reason of its policy, custom and practice regarding providing indigent representation.
77. Yellowstone County failed to implement adequate procedural safeguards to ensure Plaintiff's Sixth Amendment Right by: (1) failing to adequately screen attorneys, including without limitation, Adams, before entering into a contract with them to provide indigent representation to the county residents; (2) failing to provide supervision or training to attorneys, such as Mr. Adams; and (3) inappropriately retaining attorneys, such as Mr. Adams, even after it was or should have been obvious that he was providing ineffective assistance.
78. Yellowstone County entered into individual contracts with attorneys, paying a fixed monthly rate regardless of how many indigent clients the attorney represented. The amount of pay was not affected by the hours worked,

therefore there was an economic disincentive to perform work, since the more work done the lower the hourly rate of compensation. The attorneys who accepted these contracts were placed in a position of either providing free legal services or shirking their ethical duty to provide constitutionally adequate services.

79. Yellowstone County knew of the dilemma it was creating, but failed to remedy it.
80. The counsel provided by Yellowstone County to Plaintiff was John Adams, Esq.
81. Yellowstone County failed to adequately screen attorneys, including Adams before entering into a contract with them to provide indigent representation to the county residents.
82. Yellowstone County failed to provide supervision or training of Mr. Adams.
83. Yellowstone County inappropriately retained Mr Adams even after it was or should have been obvious that he was providing ineffective assistance.
84. Mr. Adams did not meet with his client prior to trial, except for one brief instance; did not retain an expert to explain to counsel or challenge the false scientific evidence of Mr. Melnikoff; conducted no pretrial investigation or preparation; filed no pretrial motions; made no opening statement; did not

prepare a closing statement; and filed no appeal following the conviction.

Mr. Adams' representation was significantly below the applicable standards for competent representation of a client in a criminal matter.

85. The level of representation by Adams in this case was consistent with his practice of proving woefully inadequate assisting in this criminal cases both before and after Mr. Bromgard's trial.
86. As a result of Yellowstone County's policy, custom and practice for providing indigent representation, Plaintiff received ineffective representation before and during his trial, and during his appeal. Adams' ineffective representation under the supervision of Yellowstone County violated Plaintiff's Sixth Amendment Right to counsel during his trial and appeal, and Fourteenth Amendment Right to a fair trial.
87. The ineffective assistance of counsel that Plaintiff received was a cause of his unconstitutional trial, wrongful and unjust conviction.
88. The ineffective assistance of counsel also deprived Plaintiff of his liberty interest in being free from a 15 and ½ year detention without any procedural safeguards to ensure that he received competent counsel as required under the Sixth Amendment.

FIFTH CAUSE OF ACTION

Negligence - Pendent Claim against Melnikoff and the State of Montana

Bromgard re-alleges all of the foregoing and further states as follows:

89. Melnikoff's and the State's actions in this case constitute negligence which resulted in unfathomable injury to Plaintiff.
90. Melnikoff and the State had a duty to conduct forensic examination in criminal cases with due care and to testify truthfully.
91. Melnikoff and the State failed in this duty and such failure caused Mr. Bromgard to be convicted of a crime that he did not commit, thus causing him to be deprived of his liberty for 15 and ½ years.

SIXTH CAUSE OF ACTION

False Imprisonment - Pendent Claim against Melnikoff and the State of Montana

Bromgard re-alleges all of the foregoing and further states as follows:

92. The State's prosecution in the absence of credible evidence, in conjunction with Melnikoff's fabrication of evidence, constituted false imprisonment.
93. Because of these acts, Plaintiff was deprived of his liberty of movement and freedom to remain out of detention. Plaintiff was restrained against his will and the restraint was unlawful.

94. Plaintiff was damaged by his false imprisonment by being convicted of a crime that he did not commit, resulting in his incarceration for over 15 years.

SEVENTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress - Pendent Claim against Melnikoff and the State of Montana

Bromgard re-alleges all of the foregoing and further states as follows:

95. Plaintiff has suffered serious and severe emotional distress as a result of Melnikoff's intentional actions and the State's intentional actions, which caused him to be wrongfully incarcerated for over 15 years.
96. Plaintiff's serious emotional distress was a reasonably foreseeable consequence of these acts.

EIGHTH CAUSE OF ACTION

Negligent Infliction of Emotional Distress - Pendent Claim against Melnikoff and the State of Montana

Bromgard re-alleges all of the foregoing and further states as follows:

97. Plaintiff has suffered serious and severe emotional distress as a result of Melnikoff's negligent acts and the State's negligent acts, which caused him to be wrongfully incarcerated for over 15 years.

98. Plaintiff's serious emotional distress was a reasonably foreseeable consequence of these acts.

NINTH CAUSE OF ACTION

Malicious Prosecution - Pendent Claim against Melnikoff and the State of Montana

Bromgard re-alleges all of the foregoing and further states as follows:

99. Melnikoff's actions constituted malicious prosecution.
100. A criminal proceeding was commenced and prosecuted against the Plaintiff, and Melnikoff was responsible for instigating, prosecuting or continuing the prosecution by providing false inculpatory information against Mr. Bromgard.
101. Melnikoff had information that if provided to the prosecutor, would have eviscerated probable cause to prosecute Plaintiff and by withholding this information ensured the prosecution would be instigated and continued against Mr. Bromgard.
102. Melnikoff's actions were taken with malice.
103. Ultimately, Plaintiff was exonerated when DNA testing revealed that he was innocent of the crimes for which he was prosecuted.
104. Plaintiff suffered significant damage as a result of Melnikoff's wrongful

prosecution.

TENTH CAUSE OF ACTION

Negligent Supervision- Pendent Claim against the State of Montana

Bromgard re-alleges all of the foregoing and further states as follows:

105. The State and Attorney General Greeley's actions in this case constituted negligent supervision.
106. The State and Greeley had a duty to adequately supervise those who conducted forensic analysis in the State crime lab.
107. The State and Greeley failed to adequately supervise those who conducted forensic analysis in the State crime lab. This action foreseeably created an unreasonably great risk of harm to those indigent citizens, including Plaintiff.
108. As a reasonably foreseeable consequence of the State's and Greeley's negligent supervision, Plaintiff suffered damages.

PRAYER FOR RELIEF

Plaintiff respectfully requests:

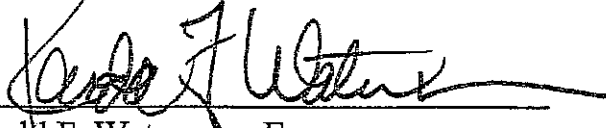
- A. Compensatory damages from the defendants, jointly and severally;
- B. Punitive damages from the individual defendants;

C. Reasonable attorney's fees and costs;

D. Such other and further relief as the Court deems appropriate.

Plaintiff hereby demands a jury trial.

DATED this 22nd day of September.

A handwritten signature in black ink, appearing to read "Ronald F. Waterman", written over a horizontal line.

Ronald F. Waterman, Esq.

GOUGH, SHANAHAN, JOHNSON & WATERMAN

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