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## **Bromgard suit blames defender system**

**By CLAIR JOHNSON**  
**Of the Gazette Staff**

When Jimmy Ray Bromgard was convicted in 1987 of raping an 8-year-old Billings girl and was sentenced to 40 years in prison, he was represented by John Adams, a public defender for Yellowstone County.

Adams, formerly a Yellowstone County attorney, has since died. Adams' defense of Bromgard is at the heart of a claim Bromgard has filed against the county in a \$16.5 million federal lawsuit naming both the county and the state. DNA testing eventually exonerated Bromgard of the rape in 2002, and he was released from state prison after 15 years behind bars.

No trial date has been set in the three-year-old federal civil suit, but the parties have met a few times in settlement talks.

During the latest session mediated by U.S. Magistrate Judge Keith Strong earlier this month, Yellowstone County made Bromgard a final offer, said Dan Schwarz, chief deputy Yellowstone County attorney. While prohibited by the court from discussing the details, Schwarz said the county's offer is open until the end of the year. Bromgard has not yet accepted or rejected the offer.

U.S. Magistrate Judge Carolyn Ostby, the presiding judge, has denied the county's efforts to be dismissed from case and has not yet ruled on similar motions by the state.

Bromgard alleges the county violated his constitutional right to effective legal counsel and that it consistently failed to supervise or train attorneys appointed to represent indigent defendants. The county's policy amounted to "deliberate indifference" to his rights, he claims.

Adams met with Bromgard only a few times before trial, gave no opening statement, called few witnesses, did not prepare a closing argument and failed to file an appeal, Bromgard says.

The county argues that its only involvement in the indigent defense system at that time was to pay the salaries of the appointed lawyers. The state district judges, not the county, were responsible for hiring, supervising and setting the pay of the lawyers, the county says.

Depositions taken in the lawsuit of former county commissioners, judges, a lawyer and Bromgard portray an indigent defense system that operated with little, if any, scrutiny by anyone.

The Billings Gazette obtained depositions through a court order. Portions of depositions, which are sworn statements of witnesses, were blacked out to protect the privacy of the victim and personal information of others.

According the depositions, commissioners didn't question the money they approved for district court. And judges showed little interest in budgeting and took an informal, hands-off approach to hiring and supervising attorneys for the poor.

One of the appointed attorneys, who quit after 11 years, tried to do his best. At that time, judges hired private

practice attorneys to represent indigent clients and paid them a flat rate of about \$2,400 a month.

Bromgard, who was 19 years old when convicted, said he believed in the system and trusted Adams. He thought he'd be acquitted.

Depositions examined by The Gazette include those of Bromgard, former commissioners Dwight MacKay and Conrad Burns, former Judge Diane Barz and Judge Todd Baugh, who presided at Bromgard's trial, and Allen Beck, an attorney who represented indigent defendants in the 1980s.

## **Defendant**

Under questioning by Schwarz, Bromgard said he met with Adams only a few times before trial.

The first words Adams spoke to him at his arraignment were, "'Plead guilty. I'll get you a plea bargain,'" Bromgard said. "I don't know if that's the kind of thing he used to always do or what. And I told him no. He said, 'Are you sure?' I said, 'I'm not pleading guilty.' He said 'OK,' and he pled not guilty for me."

Adams arrived for trial with an empty notepad, called none of the character witnesses he had suggested or expert witnesses, Bromgard said. "He called my mother and my stepfather only because they were in court and told him they wanted to be called."

After he was convicted, Bromgard heard from prison inmates that Adams' nickname was "Jailhouse John" because "nobody walked," he said. "When John represented them, they all went to prison."

Adams and Bromgard didn't talk much during trial. "We didn't discuss anything. He didn't ask me anything, and I didn't know I had to volunteer anything. I didn't know anything at the time," he said.

Schwarz questioned Bromgard about whether he felt pessimistic or optimistic while awaiting a verdict. "Back then, I still believed the system worked, so I believed if you didn't do something, you wouldn't be found guilty," Bromgard responded. When the verdict was guilty, Bromgard said he was surprised. "I was speechless. I didn't know what to say."

Bromgard believed Adams was competent. "I had no idea what I was doing," he said. "I thought he had it all under control."

At sentencing, Adams told the judge he would appeal, Bromgard said. He never saw Adams again. Bromgard learned much later that his appeal was dismissed because Adams had not filed a brief. Bromgard was allowed to file another appeal and his conviction was upheld until DNA evidence cleared him in 2002.

## **County commissioners**

MacKay, now U.S. marshal for Montana, was one of the county commissioners at the time of the Bromgard trial. He told Bromgard's attorney, Ron Waterman of Helena, the county was responsible for funding district court, including indigent defense, through a mill levy. The county, however, had nothing to do with the court's operations.

MacKay acknowledged he understood the importance of having an adequate defense to protect the rights of indigent defendants. But, he continued, he had no idea how the judges hired, supervised or set pay for the attorneys. He couldn't recall ever having discussed indigent defense with the judges.

MacKay said he assumed there was some kind of contract between the judges and the attorneys but never saw one.

Waterman asked MacKay if he knew how the judges carried out their responsibilities with indigent defense or if the judges understood they had been delegated authority for the program.

"I haven't got a clue what they did," MacKay answered.

The former commissioner said that because of the public defender system that was in place in the 1980s, he did not feel any responsibility for Bromgard's wrongful conviction.

Burns, who was a county commissioner for two years before being elected to the U.S. Senate in 1988, said he could not remember talking to the judges about indigent defense or seeing an employment contract. He was not involved in any hiring, never asked whether there were any job criteria and didn't know how wages were determined, Burns said.

When Waterman asked if the public defender issues were beyond Burns' focus, Burns answered, "It was beyond the grasp of my role. ... And if there had been any doubt in my mind, I would have sought outside advice, I think."

Both MacKay and Burns said they knew John Adams but not well and were unaware of any complaints about him.

## **District judges**

From the judges' side, Barz and Baugh indicated they were uncomfortable appointing and supervising the lawyers for poor defendants because as judges, they had to be independent.

Barz, who was chief judge at the time and is now retired, said there was nothing formal in how the judges supervised or evaluated the performance of the attorneys. There was no evaluation of the case load.

"You know, we felt that was a big no-no. You know, we were most uncomfortable with the idea that we had to have anything to do with it in the first place," she told Waterman.

Baugh agreed. "It just didn't seem like the thing we ought to be doing," he said. "When you lose a case, which most often happens in a criminal case because most of them are guilty, or they wouldn't be charged in the first place, then it gives the appearance that maybe you didn't do what you should have done in appointing that attorney."

Baugh described a hiring system in which there was no written job description and the judges relied on their own knowledge. "We knew who the attorneys were. We knew who could try a case and who couldn't try a case. And so, you know, our standards were our knowledge of the bar, of the attorneys in the bar," he said.

The commissioners never gave the judges any direction that they expected the judiciary to run the indigent defense system, Baugh said.

Baugh didn't pay attention to the budget process and couldn't remember how indigent defense funding was determined. "I always figured that whatever we needed was the county or the state - county at that time - would fund it," he said. "Like I said, I had very little interest in the budget process."

Neither judge had complaints about Adams' work. But Barz called him "kind of a pest" because he was always in their outer office or in the library. Judges would sometimes look for him in the Empire Bar where he liked to play cards, she said, though "he was never a drinking man."

When Barz left office in 1989, Adams was in his mid-60s and had diabetes, she said. "I think he just kind of faded away. But during the time I was there, you know, he was front and center."

Baugh had no problems with how Adams practiced law or his ability to handle complex cases. Adams did "a pretty good job" defending Bromgard, he said.

"My recollection, when I went back and read the transcripts, was that he had done just fine, and that there wasn't any big problem with his cross-examination or argument or his examination, that he seemed to do a

good job," Baugh said. "Obviously, in this particular case, we ended up with a wrong result."

## **Appointed attorney**

Attorney Allan Beck, who practices in Lewistown, served as a public defender in Yellowstone County for 11 years starting in 1980 while maintaining a private practice. Beck, a former assistant judge advocate general in the Air Force, worked with Adams.

At some point Adams began to decline, he said. Adams was not as prepared and asked him to assist in more and more cases or to take over his cases, Beck said.

There were times when he had to nudge Adams to wake him during court, Beck said. Adams may have been falling asleep because he would stay late playing cards at the Empire Bar, he said. Although Beck thought Adams lost a lot of confidence, he said Adams was still effective in front of judges.

Beck began representing poor clients for the county when Barz invited him to apply for the job to fill an opening, he said. Barz had reminded him that he had been critical of public defense work. His criticism, he said, was that he heard complaints from people in jail about lack of contact by attorneys. Beck interviewed with then-Judge Charles Luedke and had an oral agreement for defense work. Beck took cases by rotation.

No one from the county supervised him, and the judges did not supervise him any more than any other attorney, he said.

No one evaluated his performance.

"There would only be from time to time comments by a judge about a particular case," Beck said. He had no contact with the county commissioners and did not participate in budgeting for indigent defense, he said.

When he quit, Beck said he brought to the attention of Yellowstone County how the magnitude of the caseload interfered with his ability to effectively represent some of his clients. He got cases continued when he needed more time. Beck said he didn't know whether the judges thought the volume was too much.

"I felt that the judges, the prosecutors and the defense counsel, which the public defenders did the bulk of the criminal work, were working hard and well, and for the most part, cooperatively," Beck said. "I don't know if I quit in 1991 because I was overwhelmed, or because I was burned out, so my perception may be skewed."

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## Events since release spur lawsuit, Bromgard says

**By CLAIR JOHNSON**  
**Of The Gazette Staff**

Jim Bromgard hadn't planned to sue anyone after serving 15 years in state prison for a crime he did not commit.

But he changed his mind after the state "screwed him" by not paying for his college education as promised, he said.

Bromgard is suing the state of Montana and Yellowstone County for \$16.5 million in federal court. Also named as defendants are Mike Greely, former state attorney general; Arnold Melnikoff, former state crime lab director; Yellowstone County and Commissioners Bill Kennedy, Jim Reno and John Ostlund.

Bromgard discussed his reasons for suing, his prison experience and the rape case in a daylong deposition he gave in 2005 in his federal lawsuit. He filed the suit in 2004, two years after being exonerated when DNA evidence showed he did not commit the crime. He alleges the state and county were negligent and violated his rights.

The state and county deny the claims. The parties have met in a few mediation sessions to try to settle the case, but so far, there has been no settlement. No trial date has been set.

Meanwhile, the state has spent more than \$1 million defending itself. Yellowstone County has spent more than \$13,000.

The Billings Gazette obtained Bromgard's deposition, along with depositions of other witnesses in the case, through a court order. Portions of the sworn statements were blacked out to protect the victim's name and the personal information of others.

Bromgard was 19 when a jury convicted him of raping an 8-year-old girl. He was sentenced to 40 years in prison. Testimony by Melnikoff on hair analysis helped convict Bromgard but was later discredited by a panel of forensic experts. DNA evidence years later exonerated Bromgard.

Bromgard, now 39, told the state's attorney, Sheldon Williams of Missoula, that he decided to sue "when the state decided they were going to put me through college then screwed me on that, so I had to take out a loan to go to school."

At the time, Bromgard said, then-state Sen. John Bohlinger, who is now the lieutenant governor, passed a bill in the Legislature that would provide a college education for people who had been wrongly imprisoned and exonerated.

"I quit my job in Kalispell to move to Billings to go to college," he said. "And then I find out the bill passed, but there's no money in the bill because the state overlooked that part of it, so I had to take out loans to go to school. So I just got another shaft from the state, so I decided, you know."

Bromgard dropped out in his second semester because he had to get a job to pay the bills, he said. He now

lives in Kalispell and works for a company sandblasting and painting water towers around the country.

Bromgard arrived at the \$16.5 million figure by figuring \$1 million a year for his time in prison and for physical damages and losses.

"I am suing for half of my life. That includes lost wages, loss of freedom, loss of fresh air, loss of decent food, loss of any kind of privileges, loss of being able to have children and get married at a young age, loss of being able to go to my prom, loss of being able to go to college when I'm supposed to, loss of all that, yeah," he said.

"I'm not a greedy person," he said. But since he has been released, the state has "screwed me again and again and again," he said.

Bromgard volunteered to help the public defender system with testimony and while he didn't expect to be paid, the county told him he would be, he said. The county never paid him, he said. The state prison also owed him \$700 when he was released but he never got the money, he said.

Before the rape charge, Bromgard said, "I wanted a job working with my hands outside, preferably construction, welding, mechanics, one of those types of things. I just wanted to enjoy my life."

But the rape conviction and prison changed all that.

Bromgard had had a few scrapes with the law as a juvenile and was sent to Pine Hills Youth Correctional Facility in Miles City for stealing a car, his deposition said. Pine Hills released him in January 1987, after he turned 18. Three months later, an 8-year-old girl was raped in her bedroom in Billings by a man who broke into her house as she slept.

Police arrested Bromgard. He went to trial and was convicted.

Prison life was hard.

"I got jumped by people coming into my cell wanting to beat me up at least once or twice a week, occasionally more," Bromgard said. "The assaults stopped or slacked off when I was sitting in the maximum-security unit because I was locked down 24 hours a day, so nobody could get to me."

Bromgard also was sent to Arizona and to Texas, when the state housed inmates in private prisons out of state. Arizona was an easier prison, he said. All the inmates there were sex offenders, so he didn't have to worry about getting attacked.

Williams asked Bromgard what were his worst prison experiences.

"Getting beat up were the worst experiences," he answered. "I mean, any time my door opened, I had to make sure I was awake so I could get up there and close it so somebody wouldn't beat me up." He tried to avoid the recreation yard and gym because "people could get you there, too," he said.

"I had to pretty much stay in my cell. I ordered canteen when I could afford to. I ate in my cell. I didn't go - leave the cell for anything."

He had few visitors. His mother came to see him about five times and he had one or two visits from other family members, Bromgard said.

About a month after Bromgard was released, he talked to the victim's father and had several telephone conversations with him.

"He wanted to apologize because he felt bad that he got me locked in prison," Bromgard said. "I assured him that it was not his fault that I went to prison; it was the state's fault. And he asked me if there was anything he

could to do help, to just let him know, and I said OK."

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## **Exonerated man says defender system failed**

**Posted on Dec. 26**

Print Page

*By the Associated Press*

**BILLINGS** - A man exonerated of rape charges after 15 years in prison claims in a federal lawsuit seeking damages that he was poorly represented at trial, by a now-deceased court-appointed defender.

Jimmy Ray Bromgard, whose conviction was overturned in 2002, is suing the state of Montana and Yellowstone County for \$16.5 million. In depositions reviewed by the Billings Gazette, Bromgard claims his court-appointed attorney, John Adams, advised him to "plead guilty" the first time they met, then mounted a shoddy defense and bungled his appeal.

The public defender program was funded by the county. County attorneys have argued state judges were largely responsible for its operations, the Gazette reported.

Yellowstone County recently made a final offer to Bromgard in an attempt to settle the lawsuit, deputy county attorney Dan Schwarz told the newspaper. Schwarz would not provide further details except to say the offer is open until the end of the year.

The state has filed motions to be dismissed from the case, but they have not yet been ruled on by U.S. Magistrate Judge Carolyn Ostby. That part of the case is expected to focus on allegations of incompetent forensics work by the State Crime Lab and its former director, Arnold Melnikoff.

The Gazette obtained depositions in the case through a court order.

Under questioning by Schwarz, Bromgard said he met with Adams only a few times before trial. Bromgard was 19 years old at the time.

The first words Adams spoke to him at his arraignment were, "Plead guilty. I'll get you a plea bargain," Bromgard said.

"I don't know if that's the kind of thing he used to always do or what. And I told him no. He said, 'Are you sure?' I said, 'I'm not pleading guilty.' He said 'OK,' and he pled not guilty for me," Bromgard said.

Adams arrived for trial with an empty notepad and called none of the character witnesses Bromgard had suggested nor any expert witnesses, Bromgard said.

Adams and Bromgard didn't talk much during trial. "We didn't discuss anything. He didn't ask me anything, and I didn't know I had to volunteer anything. I didn't know anything at the time," Bromgard said.

Bromgard said he believed Adams was competent.

"I had no idea what I was doing," he said. "I thought he had it all under control."

Bromgard said an initial appeal of his conviction was dismissed because Adams never filed the necessary legal documents. Bromgard was later allowed to file another appeal. His conviction was upheld until DNA evidence cleared him in 2002.

According to other depositions, two former commissioners didn't question the money they allocated to the district court



to oversee the public defender program. The two were Dwight MacKay, now U.S. Marshal for Montana and Conrad Burns, who was later elected to three terms in the U.S. Senate.

When asked about the state judges who oversaw the program, MacKay reportedly said, "I haven't got a clue what they did."

Two former state judges questioned in the case said they were uncomfortable appointing and supervising the defense attorneys. Judge Diane Barz, who left office in 2003, said there was no evaluation of the appointed attorneys' performance.

Former Judge Todd Baugh, who presided at Bromgard's trial, said he "had little interest in the budget process" for the program. "We knew who could try a case and who couldn't," he said.

He added that Adams had "done just fine" in presenting Bromgard's defense.

"Obviously, in this particular case, we ended up with a wrong result," he said.

## Depositions show holes in public defender system

[Print Page](#)

By *CLAIR JOHNSON Billings Gazette*

**BILLINGS** - When Jimmy Ray Bromgard was convicted in 1987 of raping an 8-year-old Billings girl and sentenced to 40 years in prison, he was represented by John Adams, a public defender for Yellowstone County.

Adams, formerly a Yellowstone County attorney, has since died. His defense of Bromgard is at the heart of a claim Bromgard has filed against the county in a \$16.5 million federal lawsuit naming both the county and the state of Montana.

DNA testing eventually exonerated Bromgard of the rape in 2002, and he was released from state prison after 15 years behind bars.

No trial date has been set in the three-year-old federal civil suit, but the parties have met a few times in settlement talks.

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U.S. Magistrate Judge Carolyn Ostby, the presiding judge, has denied the county's efforts to be dismissed from the case and has not yet ruled on similar motions by the state.

Bromgard alleges the county violated his constitutional right to effective legal counsel and that it consistently failed to supervise or train attorneys appointed to represent indigent defendants. The county's policy amounted to "deliberate indifference" to his rights, he claims.

Montana's public defender system was overhauled after the American Civil Liberties Union sued the state in 2002, arguing that funding, oversight and the quality of free lawyers provided varied dramatically throughout the state. The ACLU put its suit on hold to allow the Legislature to craft and fund a new system, which went into effect in 2006.

In Bromgard's case, Adams met with his client a few times before trial, gave no opening statement, called few witnesses, did not prepare a closing argument and failed to file an appeal, Bromgard says.

The county argues that its only involvement in the indigent defense system at that time was to pay the salaries of the appointed lawyers. The state district judges, not the county, were responsible for hiring, supervising and setting the pay of the lawyers, the county says.

Depositions taken in the lawsuit of former county commissioners, judges, a lawyer and Bromgard portray an indigent defense system that operated with little, if any, scrutiny by anyone.

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According to the depositions, commissioners didn't question the money they approved for district court. And judges showed little interest in budgeting and took an informal, hands-off approach to hiring and supervising attorneys for the poor.

One of the appointed attorneys, who quit after 11 years, tried to do his best. At that time, judges hired private practice

attorneys to represent indigent clients and paid them a flat rate of about \$2,400 a month.

Bromgard, who was 19 years old when convicted, said he believed in the system and trusted Adams. He thought he'd be acquitted.

Depositions examined by the Gazette include those of Bromgard, former commissioners Dwight MacKay and Conrad Burns, former Judge Diane Barz and Judge Todd Baugh, who presided at Bromgard's trial, and Allen Beck, an attorney who represented indigent defendants in the 1980s.

**Under questioning** by Schwarz, Bromgard said he met with Adams only a few times before trial.

The first words Adams spoke to him at his arraignment were, “ ‘Plead guilty. I'll get you a plea bargain,’ ” Bromgard said. “I don't know if that's the kind of thing he used to always do or what. And I told him no. He said, ‘Are you sure?’ I said, ‘I'm not pleading guilty.’ He said ‘OK,’ and he pled not guilty for me.”

Adams arrived for trial with an empty notepad, called none of the character witnesses Bromgard had suggested, or any expert witnesses, Bromgard said. “He called my mother and my stepfather only because they were in court and told him they wanted to be called.”

After he was convicted, Bromgard heard from prison inmates that Adams' nickname was “Jailhouse John” because “nobody walked,” he said. “When John represented them, they all went to prison.”

Adams and Bromgard didn't talk much during trial. “We didn't discuss anything. He didn't ask me anything, and I didn't know I had to volunteer anything. I didn't know anything at the time,” he said.

Schwarz questioned Bromgard about whether he felt pessimistic or optimistic while awaiting a verdict. “Back then, I still believed the system worked, so I believed if you didn't do something, you wouldn't be found guilty,” Bromgard responded. When the verdict was guilty, Bromgard said he was surprised. “I was speechless. I didn't know what to say.”

Bromgard believed Adams was competent. “I had no idea what I was doing,” he said. “I thought he had it all under control.”

At sentencing, Adams told the judge he would appeal, Bromgard said. He never saw Adams again. Bromgard learned much later that his appeal was dismissed because Adams had not filed a brief. Bromgard was allowed to file another appeal and his conviction was upheld until DNA evidence cleared him in 2002.

**MacKay**, now U.S. marshal for Montana, was a Yellowstone County commissioner at the time of the Bromgard trial. He told Bromgard's attorney, Ron Waterman of Helena, the county was responsible for funding district court, including indigent defense, through a mill levy. The county, however, had nothing to do with the court's operations.

MacKay acknowledged he understood the importance of having an adequate defense to protect the rights of indigent defendants. But, he continued, he had no idea how the judges hired, supervised or set pay for the attorneys. He couldn't recall ever having discussed indigent defense with the judges.

MacKay said he assumed there was some kind of contract between the judges and the attorneys, but never saw one.

Waterman asked MacKay if he knew how the judges carried out their responsibilities with indigent defense or if the judges understood they had been delegated authority for the program.

“I haven't got a clue what they did,” MacKay answered.

The former commissioner said that because of the public defender system that was in place in the 1980s, he did not feel any responsibility for Bromgard's wrongful conviction.

Burns, who was a county commissioner for two years before being elected to the U.S. Senate in 1988, said he could not remember talking to the judges about indigent defense or seeing an employment contract. He was not involved in any

hiring, never asked whether there were any job criteria and didn't know how wages were determined.

When Waterman asked if the public defender issues were beyond Burns' focus, Burns answered, "It was beyond the grasp of my role. And if there had been any doubt in my mind, I would have sought outside advice, I think."

Both MacKay and Burns said they knew John Adams, but not well, and were unaware of any complaints about him.

**From the judges' side**, Barz and Baugh indicated they were uncomfortable appointing and supervising the lawyers for poor defendants because as judges, they had to be independent.

Barz, who was chief judge at the time and is now retired, said there was nothing formal in how the judges supervised or evaluated the performance of attorneys. There was no evaluation of the caseload.

"You know, we felt that was a big no-no. You know, we were most uncomfortable with the idea that we had to have anything to do with it in the first place," she told Waterman.

Baugh agreed. "It just didn't seem like the thing we ought to be doing," he said. "When you lose a case, which most often happens in a criminal case because most of them are guilty, or they wouldn't be charged in the first place, then it gives the appearance that maybe you didn't do what you should have done in appointing that attorney."

Baugh described a hiring system in which there was no written job description and the judges relied on their own knowledge. "We knew who the attorneys were. We knew who could try a case and who couldn't try a case. And so, you know, our standards were our knowledge of the bar, of the attorneys in the bar," he said.

The commissioners never gave the judges any direction that they expected the judiciary to run the indigent defense system, Baugh said.

Baugh didn't pay attention to the budget process and couldn't remember how indigent defense funding was determined. "I always figured that whatever we needed the county or the state - county at that time - would fund it," he said. "Like I said, I had very little interest in the budget process."

Neither judge had complaints about Adams' work. But Barz called him "kind of a pest" because he was always in their outer office or in the library. Judges would sometimes look for him in the Empire Bar where he liked to play cards, she said, though "he was never a drinking man."

When Barz left office in 1989, Adams was in his mid-60s and had diabetes, she said. "I think he just kind of faded away. But during the time I was there, you know, he was front and center."

Baugh had no problems with how Adams practiced law or his ability to handle complex cases. Adams did "a pretty good job" defending Bromgard, he said.

"My recollection, when I went back and read the transcripts, was that he had done just fine, and that there wasn't any big problem with his cross-examination or argument or his examination, that he seemed to do a good job," Baugh said. "Obviously, in this particular case, we ended up with a wrong result."

**Attorney Allan Beck**, who practices in Lewistown, served as a public defender in Yellowstone County for 11 years starting in 1980 while maintaining a private practice. Beck, a former assistant judge advocate general in the Air Force, worked with Adams.

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His criticism, he said, was that he heard complaints from people in jail about lack of contact by attorneys. Beck interviewed with then-Judge Charles Luedke and had an oral agreement for defense work.

No one from the county supervised him, and the judges did not supervise him any more than any other attorney, he said.

No one evaluated his performance.

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Missoulian reporter Tristan Scott contributed to this story.

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## Bromgard settles with state for \$3.5M

By CLAIR JOHNSON - Billings Gazette - 01/12/07

BILLINGS — Former Billings resident Jimmy Bromgard, who spent more than 15 years in prison for a child rape he did not commit, on Friday settled his lawsuit against the state of Montana for \$3.5 million.

The settlement is the largest amount the state has ever paid for a civil rights violation, said Bromgard's attorney, Ron Waterman of Helena.

"Indeed, it is the most the state has ever paid to any individual for its misconduct except in cases in which the victim of the state's misconduct died," Waterman said.

"This has been a long journey for Jimmy that started in 1987 with a wrongful conviction," Waterman said. "There's no amount money that will compensate him for 15.5 years in prison. This will start to heal the wounds."

Bromgard, 39, now of Kalispell, sought \$16.5 million when he sued in 2004, naming the state; Mike Greeley, former attorney general; Arnold Melnikoff, former state crime lab director; Yellowstone County, and Commissioners Jim Reno, Bill Kennedy and John Ostlund, alleging violations of his constitutional rights.

While Bromgard and the state have settled, Bromgard's case against the county continues in federal court.

Bromgard was 19 in 1987 when a jury convicted him of raping an 8-year-old girl while she was home in her bed in Billings. A judge sentenced him to 40 years in prison. But in 2002, Bromgard was exonerated and released after DNA testing found he did not commit the crime.

The DNA testing was conducted by the Innocence Project, a New York-advocacy group that works to exonerate wrongfully convicted criminal defendants.

Bromgard alleged that the state and Melnikoff were negligent. Melnikoff's testimony at trial on hair comparisons helped convict Bromgard, but his work was later discredited by national forensic experts.

Peter Neufeld, an attorney with the Innocence Project who also represents Bromgard, said the settlement was achieved "in response to the disgraceful role" Melnikoff played in providing "false testimony" to convict an innocent man.

Melnikoff worked for the Department of Justice for about 19 years before leaving Montana in 1989 to work at the Washington State Patrol crime lab. He was fired in 2004, based in part on his work in Montana.

Bromgard's attorneys said the Washington State Court of Appeals last week upheld the Washington State Patrol's decision to fire Melnikoff because of false and misleading testimony he had given in Montana.

In Montana, the attorney general has failed to conduct a comprehensive audit of Melnikoff's casework, they said. The first three cases examined, however, resulted in exonerations.

In a statement through his attorneys, Bromgard said that while he was relieved to be paid some measure of compensation, he was concerned about other men sitting in prison as a result of Melnikoff's incompetence and misconduct.

"I urge the attorney general to appoint an independent examiner to conduct DNA testing on the hairs in every criminal case in which Melnikoff declared a match," Bromgard said. "DNA and the truth set me free. The state of Montana should not be allowed to ignore its duty to seek the truth in all of these other criminal cases."

Missoula attorney Mike Williams, who represented the state, said he could not comment on the settlement.

Lynn Solomon, with the state Justice Department, said Attorney General Mike McGrath would not comment because the case with the county is still pending.

Deputy County Attorney Kevin Gillen also declined comment.

Bromgard's claim against the county is moving forward. He alleges that the county violated

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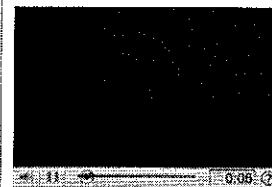
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his right to effective legal counsel and failed to properly hire and supervise attorneys hired to represent indigent defendants. A conference is scheduled next week with U.S. Magistrate Judge Carolyn Ostby to review the status of the case. Most of the motions have already been made and the case could proceed to setting a trial date, Waterman said.

The state settlement is the result of a mediation session held among all the parties in early December. U.S. Magistrate Judge Keith Strong of Great Falls conducted the talks. Bromgard declined an undisclosed final offer from the county. Ongoing talks between the state and Bromgard led to Friday's settlement, Waterman said.

The parties notified the court Friday of the settlement, which was approved later in the afternoon by U.S. District Judge Richard Cebull. Each party is to pay its own legal costs. As of last September, the state has spent \$1.1 million from its self-insurance program on its defense. A state official said earlier that a settlement would come from that program.

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## **Bromgard seeking \$16.5 million in compensation**

**By JACI WEBB Of The Gazette Staff**

Jim Bromgard is seeking \$16.5 million in compensation from the state of Montana, Yellowstone County and the city of Billings for a wrongful rape conviction in 1987 that led to 15 years in prison.

On April 6, his attorneys sent an administrative notice of claim to the three public entities asking for \$1 million in compensation for each year Bromgard spent behind bars - including time he spent in the Yellowstone County Detention Facility awaiting trial - and another \$500,000 for "anxiety accompanying the pending prosecution."

New York City lawyer Peter Neufeld co-founded the Innocence Project, which worked to prove Bromgard's innocence in 2002 through DNA testing.

Neufeld said the state, county and city have 120 days to respond to the notice of claim.

"It's Jimmy's belief that they are responsible for Jimmy's wrongful conviction and incarceration," Neufeld said Thursday.

"The feeling is that people can talk these things out. We're asking them to discuss these issues with us. If they don't respond within the time period, Jimmy is free to file more formal action. The point is that obviously it's better to proceed with this before a lawsuit is filed."

Chief Deputy County Attorney Dan Schwarz said his office plans to investigate the allegations outlined in the claim.

He said he and Yellowstone County Attorney Dennis Paxinos probably were still in law school when Bromgard was convicted, and their investigation will be challenging because the trial and police investigation took place 17 years ago.

"The big question is 'Are we liable?'" Schwarz said Thursday.

The three-page letter sent by Neufeld and Helena attorney Ron Waterman, who is providing local representation, lays blame with the state of Montana for "reckless, and intentional misconduct of Arnold Melnikoff, Hair Examiner and Laboratory Manager of the Montana Laboratory of Criminalistics" in Bromgard's rape case.

The letter goes on to say that "Melnikoff provided false testimony under oath that hair taken from a crime victim's bedding matched hair taken from the claimant."

Melnikoff was fired last month from the Washington State Patrol after it concluded that his testimony in a different Montana case did not meet professional standards. That 1990 rape case involved Paul Kordonowy, who was convicted. Kordonowy was exonerated by DNA evidence in 2003.

The letter of claim in Bromgard's case says that liability in his wrongful conviction also rests with Yellowstone County for "ineffective assistance of counsel" provided by former public defender John Adams, who is



deceased.

According to the claim, Adams "did not retain an expert to explain to counsel or challenge the false scientific evidence of Mr. Melnikoff" and "conducted no pretrial investigation or preparation."

It goes on to say that Yellowstone County "provided no supervision or training of Mr. Adams; and inappropriately retained him even after it was or should have been obvious that he was providing ineffective assistance."

The third liability rests with the Billings Police Department, according to the letter, which says. "These officers utilized and were responsible for the unduly suggestive albeit misidentification of Mr. Bromgard by the crime's only witness, an easily manipulated adolescent child."

Bromgard's lawyer, Waterman, said Thursday that the amount of the compensation was set based on compensation for exonerated people in other states.

Bromgard, now 35, was sent to prison in November 1987 at the age of 19. He was exonerated and released on Oct. 1, 2002, and lives in Billings with his mother, Dianna Merrill, and fiancé LaShon Gordon.

He said Thursday that he thinks the state needs to be held accountable and should compensate him for spending 15 years in prison.

"This won't ever make up for losing half my life, but it can give me a good start on the future," Bromgard said.

"Right now, I'm living in my mom's basement, and I'm 35 years old. The money won't make up for it, but it will allow me to enjoy some of my future.

"The state needs to be held accountable for their actions. They can't just take 15 years out of a man's life and say 'I'm sorry.' That's not acceptable.

"People need to know that the system is broke, and they need to know that their actions can't be covered up and swept under the carpet. There are repercussions."

Gordon, who worked at the private prison in Shelby where Bromgard served his final months, said the money can't make up for the pain and suffering Bromgard experienced in prison, but it can help him build a better future.

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## **FREE after 15 years**

**BY JACI WEBB AND GREG TUTTLE** *Of The Gazette Staff*

After spending the last 15 years in prison for a crime he didn't commit, it took about 15 minutes Tuesday morning for Jimmy Ray Bromgard to regain his freedom.

Bromgard, 33, walked out of the courtroom at about 9:10 a.m. after a judge agreed that DNA evidence proves that he is innocent of the rape of an 8-year-old Billings girl in 1987.

"I really don't know what I want to say," a smiling Bromgard said in the lobby of the Yellowstone County Courthouse after the hearing. "I'm going to get out, probably get something to eat and go to a park."

Asked by a reporter if he was angry, Bromgard shrugged.

"I quit being mad years ago," he said.

Bromgard quickly became serious when asked if he still had faith in the criminal justice system.

"I don't think I'll ever have faith in the system again," he said.

Minutes earlier, Judge G. Todd Baugh ordered Bromgard released from custody, offering an apology as Bromgard's family looked on.

"Mr. Bromgard, on behalf of the citizens of Montana, let me offer our apologies," the judge said. "While the conviction was obviously in error, it was not made in malice."

Bromgard declined to speak during the brief hearing.

Yellowstone County Attorney Dennis Paxinos said during the hearing: "Mr. Bromgard has spent 15 years in prison for a crime the state is now convinced beyond a reasonable doubt that he did not commit."

Bromgard's freedom came after recent DNA tests determined that he is not the man who broke into a Billings home on March 20, 1987, and raped an 8-year-old girl in her bed. He was convicted at a trial later that year of three counts of rape and was sentenced to 40 years in prison.

The Montana Supreme Court twice upheld the convictions.

About two years ago, Bromgard's case was taken by the Innocence Project, a nonprofit legal organization based in New York City. The group's co-founder, Peter Neufeld, attended the hearing Tuesday and said Bromgard's wrongful conviction should shed light on problems in Montana's criminal justice system.

Neufeld said Bromgard was inadequately represented at trial. The conviction also was based on the "bogus" science of a Montana State Crime Lab expert who testified, Neufeld said. The expert told jurors that head and pubic hair samples taken from Bromgard matched hairs recovered at the crime scene.

Neufeld said he would press Montana Attorney General Mike McGrath to perform an audit of all the criminal

"Otherwise, Montana is doomed to have dozens more Jimmy Bromgards," Neufeld said.

Neufeld said Bromgard will ask the Montana Legislature to compensate him for the years he spent in prison. Bromgard was 18 when he was convicted; he turned 19 on Dec. 10, 1987, the day before he was sentenced.

"You can't put a dollar figure on 15 years," Neufeld said when asked how much the state should pay Bromgard. "Some compensation needs to be given."

Bromgard said he is was more concerned about his immediate future. Prison "definitely wasn't easy," he said, and he will need time to adjust to his new life.

"I'm a little nervous, but I've got family who love me and people who support me," he said.

Bromgard's first act as a free man was to turn to his family seated in the courtroom gallery. He wrapped his arms around the first relative he reached, Emma Fode.

"Hello, Grandma," he said. "It's been a long time."

Six family members filled a row in the courtroom where they alternated between laughter and tears, waiting for Bromgard - their grandson, son, brother, uncle - to be released. Two other relatives sat in the rear of the courtroom.

Fode and her daughter, Dianna Merrill, Bromgard's mother, sat side by side in the courtroom that held 23 observers, including 10 members of the news media and several attorneys and law clerks. Neither woman had seen Bromgard since they visited Montana State Prison in Deer Lodge in the early 1990s.

Merrill wiped away tears as she hugged her son.

Merrill said her son never lost his sense of humor while locked away.

"He would call and tell me jokes," she said. "If there were any humorous moments in prison, he'd tell me about them."

Rodney Bromgard said his brother never expressed anger over the conviction; he was focused on survival.

"He was a very strong-willed kid," Rodney Bromgard said. "Instead of giving up, he just kept going. That's what helped him make it through prison. He had a rough time there. He did what he had to do to survive."

Rodney Bromgard said the family's reunion Tuesday would be a low-key event, focused on whatever his brother felt like doing on his first day out. When he learned last month that he was going to be released, Jimmy Bromgard told his mother he wanted a hamburger and an order of onion rings, Rodney Bromgard said.

"He said he just wants to go out and walk and go swimming," he said.

While Bromgard celebrated his release, officials said Tuesday they have no suspect in the 1987 crime. McGrath said a search of state and national DNA databases has been completed and no match was found.

The next step will be to try to match a fingerprint taken from the windowsill of the girl's house with state records, McGrath said. The fingerprint did not match Bromgard or any of the girl's family members.

"We're hoping that the prints are still available and we can get a hit on the prints," McGrath said. "It's a lead, and we'll follow up."

As he headed out of the courtroom and back to his office, Paxinos said his thoughts were with the victim who

was raped 15 years ago.

"I feel bad the real perpetrator is out roaming around somewhere," he said.

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## **DNA clears inmate of rape**

**By GREG TUTTLE Of The Gazette Staff**

For 15 years, a Billings man believed that the man who broke into his home and raped his 8-year-old daughter was off the streets, secure behind prison bars and unable to hurt his or any other child.

That belief was shattered with the announcement Tuesday that prosecutors convicted the wrong man.

"We've had a sense of false security all these years," the girl's father said Tuesday.

DNA evidence has exonerated Jimmy Ray Bromgard, a Billings man who was 18 when Yellowstone County prosecutors charged and convicted him at trial on three counts of sexual intercourse without consent. Bromgard's innocence was announced by County Attorney Dennis Paxinos and state Attorney General Mike McGrath.

Paxinos and McGrath said recent DNA tests show Bromgard is not guilty of the 1987 rape of the then 8-year-old girl. The tests done recently were not available at the time of Bromgard's conviction, they said.

"We are grateful that this new technology has allowed a not-guilty man to be set free," McGrath said in a release. "We hope, using the same technology, investigators will be able to apprehend the person who did commit this crime."

Paxinos filed a motion Tuesday in District Court asking a judge to reject Bromgard's conviction and release from the prison in Shelby where he has been serving a 40-year sentence. Paxinos requested an Oct. 1 hearing. He could be released on that day.

"We're very supportive of this," Paxinos said. "The DNA does not match his."

Billings Police Chief Ron Tussing said the case would be reopened and investigated.

Bromgard, now 33, was "ecstatic" over the announcement, said New York attorney Peter Neufeld, who handled the case through the nonprofit legal organization The Innocence Project.

"He's waited a long time for this," Neufeld said. "It's a very good day."

Bromgard's half-brother, Rodney Bromgard, said news of the request that his brother be set free brought mixed emotions.

"There's joy and then there's sadness," he said Tuesday. "He lost his life pretty much. I'm concerned for how he's going to be able to function on the outside."

Neufeld said Bromgard is the 111th person convicted of a crime that the organization has exonerated through DNA testing. The organization, which was founded in 1992 by Neufeld and Barry Scheck, took on the case about two years ago, Neufeld said. The nonprofit group concentrates on cases where convictions are based on little evidence other than a victim's identification and where DNA evidence is still available.

A similar motion seeking Bromgard's release was also filed Tuesday by Neufeld.

Neufeld praised Paxinos for cooperating with the organization in completing the DNA analysis. Two separate tests were done, including one at the Montana State Crime Lab in Missoula.

The victim has since moved away from Billings. Her father said Tuesday the family has known for about six months that attorneys were working to free Bromgard based on the DNA testing, which was not available in 1987.

"She feels horrible that an innocent man spent all those years in jail, but she was only 8 years old at the time and had no power," her father said. The Gazette is not identifying the father to protect the identity of the victim.

"We just want to extend our sympathy for the Bromgard family that the loss of 15 years of a man's life is a tragedy as well," he said.

The case reaches back to March 20, 1987, when a man broke into a Billings home through a bathroom window at about 4:30 a.m. While her family slept, the girl said she was repeatedly raped for about 15 minutes by the stranger in her house.

According to court documents filed by Neufeld, the girl said the man threatened her, then told her to put her head under a pillow and left the room. Her best look at the man was when he entered her room from a lit hallway.

Five hours later, the girl gave police officers a description of the rapist and a composite drawing was made. A Billings police officer noticed the drawing resembled Bromgard, who had recently been arrested and jailed for assault. Four days later, a stolen checkbook from the girl's home was found in a yard near Bromgard's house.

Later, the girl identified Bromgard during a police lineup. He was charged in June 1987 with three counts of sexual intercourse without consent.

At his trial the following November, a state crime lab expert testified hairs taken from Bromgard matched characteristics of hairs found in the girl's bedding. The jury also was told by witnesses that Bromgard was out drinking the night of the rape, and returned home between 3 and 4 in the morning. Prosecutors said he had the opportunity to commit the rape at 4:30 a.m.

Bromgard testified at his trial and denied raping the girl.

His conviction was twice upheld by the Montana Supreme Court.

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*The Associated Press contributed to this report.*

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