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## Lab errors cited in petition on 200 Montana cases

### Retests reverse analyst's findings

August 26, 2004 | By Maurice Possley, Tribune staff reporter.

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HELENA, Mont. — Accusing Montana Atty. Gen. Mike McGrath of abandoning justice, three retired state Supreme Court justices and other concerned citizens on Wednesday filed a petition demanding an independent investigation of more than 200 cases handled by a crime lab analyst whose testimony helped wrongfully convict three men.

The petition filed with the state Supreme Court seeks appointment of a "special master" to convene a panel of experts and state funding to investigate and, if necessary, retest evidence in cases handled by former state crime lab director Arnold Melnikoff, who gave testimony on hair analysis that experts said was scientifically baseless.

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Chester Bauer, Jimmy Ray Bromgard and Paul Kordonowy, all convicted of rape in part because of faulty testimony from Melnikoff, were exonerated by later DNA analyses.

After Bromgard was exonerated in 2002, the hairs that helped convict him were sent to the FBI, whose reanalysis determined that hairs from Bromgard and a hair found at a crime scene were not similar.

In the wake of Korodonwy's exoneration last year, McGrath ordered an investigation of Melnikoff cases. To head the probe, McGrath appointed a former sheriff of Lewis and Clark

County, the county where he had been chief prosecutor before being elected the state's chief law-enforcement officer.

That review, which the petition describes as "superficial" and inadequate, identified 244 cases in which Melnikoff did hair comparisons. In 118 cases, Melnikoff said he found similarities between the hair of a suspect and a hair found at a crime scene. In the other 126, Melnikoff made no links.

Only the cases where Melnikoff testified--19 trials--were examined. Seven were discarded because the defendants were acquitted. In the 12 cases where defendants were convicted, four were discarded because no trial transcript was ever typed up. Transcripts were located and examined in the remaining eight cases, and McGrath determined that none were wrongful convictions.

Melnikoff headed the lab in Montana from its inception in 1970 until 1989 when he left for the crime laboratory in Washington, where he handled only drug testing after officials there said he was not competent to handle hair comparisons.

Analyst denies wrongdoing

He was fired last spring by the Washington State Patrol following an audit of his drug cases there. The dismissal cited his 1990 testimony in Kordonowy's trial for which he returned to Montana to testify.

Melnikoff, through his attorney, has denied any wrongdoing.

The petition was filed by attorneys from the University of Montana Criminal Defense Clinic, the New York-based Innocence Project, and the state's former chief appellate defender, on behalf of the justices. The Innocence Project is a non-profit organization that has been involved in more than half of the nation's 150 DNA exonerations.

The petition contends that not only was McGrath's investigation of the cases inadequate, but that an examination by the lawyers of cases handled by other lab analysts "suggest(s) a cultural pattern" of making "grandiose but inaccurate or false statements" inflating "their testimony in ways that favored the prosecution."

A spokesman for McGrath said he would not respond to the petition until he reviewed it.

But in an interview Tuesday, before the petition was filed, McGrath stood by the findings of his audit. "Our purpose was to determine whether anyone was wrongfully convicted based on Arnold's testimony," he said. "I feel very comfortable about the work that we did."

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He said there was no review of any cases where defendants had pleaded guilty. "I was a prosecutor for 18 years," McGrath said. "It's highly unlikely that somebody is going to plead guilty based on the testimony of Arnold Melnikoff."

McGrath said there was no reason to retest evidence examined by Melnikoff. "What would be the purpose?" he asked.

Jeff Renz, attorney and professor at the UM clinic, replied, "The purpose of retesting is to determine whether or not the FBI's determination and the Washington State Patrol's determination that he was an incompetent hair examiner is reflected in the other 250 cases in which he did hair examination."

Bromgard, reached at his job in Tennessee, said: "Arnold Melnikoff's incompetence has been proven. Any evidence he touched in any way, shape or form should be retested. It's unfair to everyone in the system if it's not."

McGrath said he believes Melnikoff was competent and there are no problems in the crime lab. During a recent interview, Bill Unger, head of the lab, said no current lab workers were trained by Melnikoff and denied that other lab workers have been biased.

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Peter Neufeld, an attorney with The Innocence Project, said there have been several DNA exonerations in cases where defendants had pleaded guilty. He said that McGrath was in "cover-up mode" because "he relied on Melnikoff when he was a prosecutor. Given the run of crime lab scandals in this country, McGrath stands virtually alone in his unwillingness to examine the evidence."

Among those seeking the audit is former Chief Justice Jean Turnage, as well as Bromgard, the Montana Association of Criminal Defense Lawyers and some convicts at whose trials Melnikoff testified.

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#### More audits sought

The petition seeks the sort of audit that Cleveland officials agreed to earlier this year, following the DNA exoneration in 2001 of Michael Green for a rape he did not commit. Green had spent 13 years in prison.

The city retained a former federal prosecutor to evaluate cases involving Joseph Serowik, a civilian scientist at the Cleveland Police Department's crime lab, whose allegedly faulty work led to Green's conviction. City officials believe there were at least 100 cases in which Serowik testified.

Increasingly in the wake of DNA exonerations, attorneys for The Innocence Project have sought reviews or audits of crime laboratories and analysts where mistakes have been made. A similar audit request of serology cases has been made in Houston, where retesting has already occurred in more than 350 DNA cases.

Earlier this month in Houston, a petition by The Innocence Project, citing six independent forensic experts, found the testimony of an analyst--either because he testified falsely or did not understand what he was doing--helped wrongly convict a man of rape in 1987. Estimates of the cases in such an audit range as high as 10,000.

The Montana petition seeks "to identify cases of wrongful conviction and cases in which the real perpetrator was incorrectly eliminated from investigation, to make recommendations regarding conditions at the lab, the reporting of lab results, and standards for lab personnel testimony in Montana courtrooms."

McGrath's investigation was a "superficial, incomplete review of paperwork," the petition alleges. McGrath and the sheriff who conducted the review had worked with Melnikoff on cases, the petition states.

"The attorney general would have us believe that the only people to be wrongly convicted in Montana just happen to be the first three men to ask for postconviction DNA testing," the petition states. "[It] is inconceivable that an audit will not reveal additional travesties."

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