

Oregonian says  
**DNA frees  
condemned  
Idaho man**

*Death row inmate Charles Irvin Fain is released 17 years after he was convicted of killing a girl, 9*

By **RAYMOND BONNER**  
NEW YORK TIMES NEWS SERVICE

BOISE — Charles Fain had been on death row for almost 18 years for the rape and murder of a 9-year-old girl who was snatched off the street in Nampa, west of here.

But Thursday afternoon, Fain, 11 days shy of his 53rd birthday, walked out of the maximum security prison here into the blazing sun, a free man.

Two hours earlier, a state judge ordered the charges against him dismissed on the basis of DNA tests indicating that hairs found on the girl's body, which had been used to convict Fain, were not his.

"Sometimes it looked pretty dark," Fain said, but he added that he was confident he would be exonerated. "I'm 100 percent innocent. The day the crime happened, I was sound asleep at my dad's house — 306 miles away in Redmond, Ore.

Fain had difficulty Thursday using the seat belts in the car that drove him away from prison — they were not mandatory when he went to jail — held on tightly when he rode in an elevator to his lawyer's ninth-floor office and was uneasy walking on thick carpet. "I'm used to walking five steps forward, five steps back, then three steps to the side," he said, describing life in his cell.

Fain was convicted of the Feb. 24,

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# Inmate: Prosecutor says real killer yet to be apprehended

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1982, kidnapping, rape and murder of the girl, Daralyn Johnson, after a forensics expert from the FBI said that microscopic examination showed three hairs found on the victim's body were probably Fain's.

But the DNA test obtained last month by defense lawyers found that the hairs were not his.

"Justice requires the action we have taken today," David L. Young, the Canyon County prosecutor, said Thursday at a news conference in Caldwell, where the case was tried. "It also requires that we do everything we can to solve this case."

Young added, "The killer has not yet been apprehended."

The Johnson family seemed to accept Fain's release.

"We would like to say we are in complete support of the judicial system and all those involved in the reinvestigation of this case," the family said in a statement. "We are confident that we will have closure and that all those involved will be brought to justice."

At least 96 people have been exonerated and freed from death rows in 22 states since the death penalty was reinstated in 1973, according to the Death Penalty Information Center, a nonprofit group in Washington that opposes capital punishment.

Six death-row inmates were exonerated in the first six months of this year.

Sen. Patrick Leahy, D-Vt., chairman of the Senate Judiciary Committee, has introduced a bill to improve the quality of defense counsel and ensure the availability of DNA testing in capital cases.

The Johnson murder shook the residents of Nampa, and the police were pressed to solve it. The girl was abducted as she walked to Lincoln Elementary School, then raped. Her body was thrown in a ditch near the Snake River, and it

wasn't found for several days.

After seven months, the police were stymied. Then they picked up Fain, who had moved into the area.

Fain, a Vietnam veteran who had served with the 101st Airborne, had difficulty holding a job after his honorable discharge. He bounced between Idaho and Oregon, working where he could. At the time of his questioning, he was living in Nampa, a block from Daralyn's house.

His address, and his light-brown hair — similar to that found on Daralyn's body — were the reasons he was called in for questioning, his appellate lawyers said in one filing.

Fain was among dozens of men asked to give hair samples. An FBI expert concluded his were similar to those found on Daralyn.

A month later, the police interrogated Fain for more than two hours, then asked him to take a polygraph test; he agreed.

A state examiner of the test concluded Fain was telling the truth when he denied involvement in the rape and murder. At the trial, however, prosecutors objected to introducing the polygraph results as evidence, and the judge agreed.

Some of the most damning evidence against Fain was the testimony of two jailhouse informers, Bobby Allen Roberson and Ricky Lee Chilton, who shared a cell with him before his trial. The men gave graphic and lurid details of what they said Fain had told them about what he had done to Daralyn.

It's not clear why the two men gave what now appears to be false testimony. Fain's appellate lawyers said they had no direct evidence that prosecutors had offered them any deal.

One lawyer, Spencer McIntyre, said it showed how jailhouse informers manipulate the system, knowing that if they cooperate, the authorities will go easier on them,

even without an explicit promise or deal.

Roberson, who is now dead, was related to one of the jailers. Chilton, who was facing more than 20 years in prison for several crimes served only a few years.

One person who always contended Fain was innocent was Christine Harding, a librarian at the Redmond Public Library. She testified at his trial that in February 1982 he was a regular at the library although she couldn't say unequivocally he was there on Feb. 24.

"Awesome!" an elated Hardir exclaimed Thursday when told the news in a telephone interview from Garden City, S.D., where she now lives. "Praise God. I just think it pathetic so many years of Charlie have been taken away from him that can't be given back."

But Richard Harris, the prosecutor, said that his verdict case had not changed, citing the testimony of the two informers and an FBI expert who said a shoe print at the scene matched shoes belonging to Fain.

"It doesn't really change my opinion that much that Fain guilty," Harris said. "The case was circumstantial-evidence cases. There was a myriad of circumstances that pointed in his direction."

Fain's parents died while he was in prison. He had no idea where he would live or what he would do now. "One day at a time," he said. Asked what he was planning to have for dinner, he said, "whatever they put on the tray." Then, realizing he was not going to be fed by authorities Thursday night, he said "I'll have to start making decisions for myself."

## WEATHER

Low clouds, then mostly sunny  
High: 78 Low: 54

For complete weather, see Business, B8



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