

**Statement of Idaho Attorney General Al Lance
Regarding Charles Fain Case, July 6, 2001**

This announcement relates to the capital case of Charles Fain, who was convicted in 1983 and subsequently sentenced to death for the 1982 kidnapping and murder of 9-year-old Daralyn Johnson of Nampa.

A short time ago the Attorney General's Office filed, with the United States District Court in Boise, a stipulation that the court should enter an order and judgment granting a writ of habeas corpus. We have further stipulated that the court's order direct Canyon County to initiate new trial proceedings within 60 days or to release Fain from custody. The stipulation also states that Fain should no longer be classified as a death row inmate.

This stipulation is the result of DNA testing requested by the Office of the Attorney General and conducted by an independent laboratory. The DNA testing shows that pubic hairs recovered from the undergarment and sock of the victim are not the hairs of defendant Charles Fain. The office received the test results late on June 28 and notified defense counsel on June 29.

The DNA test is significant because the testimony of an FBI agent at trial, nearly 20 years ago, may have been a factor in the jury's decision to find Fain guilty. The agent testified that microscopic examination indicated that the hairs could have been Fain's.

Our system of criminal justice requires that defendants be found guilty beyond a reasonable doubt. Although the jury made that finding in 1983, the jurors may have believed that the hairs could have been Fain's.

We cannot know how much weight the jury gave to the FBI agent's testimony. However, it is clear from this new evidence that the hairs were not Fain's. This fact raises the critical question: Would the jury have reached the same verdict had the jury known the hairs were not Fain's?

It is the Attorney General's duty to defend the decisions of Idaho juries and trial courts when challenged in the appellate courts. However, that duty is not ethically blind. As prosecutors we also have a duty to seek the truth and justice. We have a duty to do what is right.

Based on the DNA evidence, the interests of justice require that this case be returned to the trial court for further proceedings. The trial court and the Canyon County Prosecuting Attorney will determine the nature of those proceedings.

Assuming that the court grants relief, Idaho law vests the decision to go forward with a new trial with the county prosecuting attorney. Attorney General Lance has committed the resources of the Office of Attorney General to assist the Canyon County Prosecuting Attorney, should such assistance be requested.

We have fully apprised Dave Young, the Canyon County Prosecuting Attorney, of this matter. Mr. Young concurs in this decision and is currently reviewing the case. He has been in contact

with the Johnson family. They have asked that I convey their full support for the judicial system and their desire that the person responsible for Daralyn's murder be punished.

The Idaho Legislature has determined that, as a matter of public policy, capital punishment is appropriate in certain cases. However, no one believes that the State should improperly go forward with an execution where significant issues have not been fully adjudicated.

The Attorney General is obligated to defend against appeals in the remaining capital cases and we will continue to do so. This is serious business. Justice requires that where new evidence raises substantive questions about a conviction, the case must be reviewed. Justice also requires that when the state has met its legal burdens, the sentences of our courts must be carried out. It is important to the interests of justice that there be no misunderstanding as to the meaning of this announcement. DNA testing was not available at the time of Fain's trial and conviction. It is available today and, appropriately, has been used in this case. While this new evidence does show the need for further review, it would be wrong to say that it proves Fain's innocence. The DNA testing proves only one thing. It proves that the pubic hairs found on the victim's clothing did not belong to Charles Fain. That fact in itself does not mean that Fain did not commit these crimes. This evidence does not exonerate Mr. Fain.

We should keep in mind that, while we have served justice today for Charles Fain, we have failed to serve justice for Daralyn Johnson. I know that even with the passage of so many years, her family still suffers from her loss. Daralyn was an innocent nine-year-old walking to school on a winter morning when she was abducted, sexually assaulted and brutally murdered. We owe to her and to her family our best efforts to hold accountable the person or persons responsible.

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