

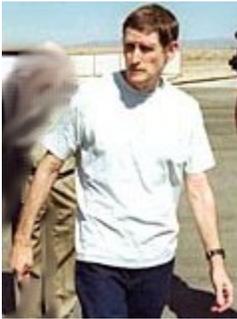
http://forejustice.org/wc/charles_fain.htm

Charles Fain Proved Innocent of Murder, and Released After Almost 18 Years On Idaho's Death Row

By Hans Sherrer

For Justice: Denied magazine

In November 1983 Charles Fain was convicted of kidnapping, assaulting and murdering 9-year old Daralyn Johnson. On Death Row since February 1984, he was released from prison in August 2001 after DNA tests exonerated him as her assailant.



Charles Fain released after spending 18 years on Idaho's Death Row.

After being wrongly imprisoned for almost 19 years, all but the first year of which he spent on Idaho's Death Row, 52-year old Charles Fain was ordered released from prison on August 23, 2001 by Idaho Third District Judge Sergio Gutierrez. Mr. Fain's release followed U.S. District Judge B. Lynn Winmill's order on July 6, 2001 setting aside his November 1983 conviction of kidnapping, sexually assaulting and murdering 9-year old Daralyn Johnson of Nampa, and his February 17, 1984 death sentence. His exoneration and release resulted from state of the art DNA tests of her assailant's pubic hair found on her socks and underwear. The tests proved he wasn't the person who attacked and killed her.

A white Nampa sanitation worker who lived several blocks from Daralyn's home until he was laid off in June 1981, Charles Fain maintained his innocence from the time of his arrest on March 7, 1983 through his nearly two decades on Death Row. After his arrest he voluntarily took and passed a polygraph test that he had nothing to do with the crime. His claim of innocence and the test results were corroborated by several witnesses who testified at his trial that he was in Redmond, Oregon, 360 miles from Nampa, at the time of Daralyn's abduction and murder. His parents lived in Redmond and he moved in with them after losing his job in Nampa. He moved back to Nampa in mid-March 1982, three weeks after Daralyn was abducted on February 24, 1982 while she walked to school. The DNA tests of the physical evidence proved that from the beginning of his ordeal, Charles Fain and his alibi witnesses had been telling the truth to disbelieving police, prosecutors, jurors and judges. Daralyn Johnson's family was supportive of Mr. Fain's release, saying in a prepared statement: "We are in complete support of our judicial system and all those involved in the reinvestigation of this case."

It's difficult if not impossible, however, for Charles Fain to have any faith in the investigative abilities of law enforcement authorities to solve Daralyn Johnson's murder.

An FBI specialist testified at Mr. Fain's trial that the pubic hair found on her clothes was microscopically *similar* to his, and a jailhouse snitch facing 230 years in prison for fraud, escape, armed robbery and kidnapping testified he overheard Mr. Fain tell another inmate he was guilty. The inmate, Ricky Chilton, had some charges dropped and others significantly reduced after testifying against Charles Fain, and he was released from prison after only three years. Mr. Chilton, however, had pangs of conscience after Charles Fain's trial, and at one point "Chilton filed a formal statement asserting that the prosecutors office "had conspired to force him into testifying" and that the prosecutor's office made death threats against him." The prosecutors put the full court press on Ricky Chilton to give favorable testimony for them, because they knew that without his suspect testimony their shaky case against Mr. Fain would fall apart.

In 1989 the Idaho Supreme Court upheld Charles Fain's conviction by a 3 to 2 vote. In his dissent, Justice Stephen Bristline castigated the Court for endorsing Ricky Chilton's repudiated testimony that at a minimum was untrustworthy.

After living for years in a small cell while waiting day after day, year after year to be executed for a heinous crime he didn't commit, Charles Fain seemed to be in a near state of shock after his release: "I found myself wanting to walk five steps and then go back five steps again. Our cells have room enough to go five steps forward, five steps back and three to the side." He also mentioned that: "Everything was a certain way. Now its completely different. I'm suddenly able to make decisions for myself. But I'll get back into the swing of things."

Charles Fain owes his second chance at life to his lawyer's ability to stave off his execution for the 18 years it took for his innocence to be proved. As his lawyer Frederick Hoopes of Idaho Falls diplomatically noted: "Fortunately, we were able to keep him alive until technology caught up with the evidence." Charles Fain's other lawyer, Spencer C. McIntyre of Seattle was more blunt: "Mr. Fain is completely innocent. This has been a gross injustice."

Given the outcome of his case, it can't be glossed over that if his prosecutors and the state judges involved in his case had been successful in their desire to execute him, the truth of Charles Fain's innocence would have been buried with him. That outcome would have accomplished the tidy closing of Daralyn Johnson's case file. However, it is doubtful she would have wanted the blood of an innocent man's execution to cover-up that the last person she saw, her murderer, had gotten away without anyone but Charles Fain, his witnesses, and her knowing it.

Sources:

Wrongfully convicted man holds no grudges, Chuck Oxley (AP), The Spokesman-Review, Spokane, WA, August 25, 2001, B2.

Condemned man could go free after DNA testing, Henry Weinstein (Legal Affairs Writer), Los Angeles Times, August 19, 2001, Home Ed., A1.

<http://www.deathpenaltyinfo.org/innocence-cases-1994-2003>

96. Charles Irvin Fain *Idaho Conviction: 1983, Charges Dismissed: 2001*

Charles Irvin Fain, a Vietnam veteran who spent over 18 years on Idaho's death row, was freed with all charges dismissed in 2001. Although Fain always maintained his innocence, he was convicted and sentenced to death for the February 1982 kidnapping, sexual assault and drowning of 9-year-old Daralyn Johnson. Fain, who was unemployed and living with his parents in Redmond, Oregon at the time of the crime, had lived in Idaho until June 1981. He returned to Idaho in March of 1982 to look for work. Fain moved in with a neighbor of the Johnson family, and in September of 1982, police asked that he provide hair samples. Fain agreed, and those samples were the key evidence against him in his trial. Testifying on behalf of Fain were witnesses who placed Fain in Oregon in February of 1982. However, the jury found Fain guilty, primarily on the forensic testimony of an FBI specialist about the hairs, and the testimony of two jailhouse informants who claimed that Fain made "incriminating statements" about the case. With the help of new attorneys, Fain was able to get the physical evidence tested under a new DNA testing process known as Mitochondrial DNA Testing. Results of those tests not only excluded Fain, but pointed to two other suspects. The US District Court judge who originally would not consider Fain's innocence claims vacated the conviction on July 6, 2001 and ordered prosecutors to either retry or release Fain. Canyon County District Attorney David Young announced that the state would not retry Fain, who was released from the maximum-security facility in Boise, Idaho on August 23, 2001. (Los Angeles Times, August 19 and 24, 2001) Young stated that "justice requires the action we have taken today," indicating that the investigation for the killer would be re-opened. (New York Times, August 24, 2001)

August 24, 2001

The New York Times

Death Row Inmate Is Freed After DNA Test Clears Him

By RAYMOND BONNER

BOISE, Idaho, Aug. 23 — Charles Fain has 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, a small town west of here.

But this afternoon, Mr. 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 Mr. Fain, were not his.

"Sometimes it looked pretty dark," Mr. Fain said, but he said he had been confident he would be exonerated. "I'm 100 percent innocent. The day the crime happened, I was sound asleep at my dad's" house — 360 miles away in Redmond, Ore.

Mr. Fain had difficulty today using the seat belts in the car that drove him away from prison — they were not mandatory when he went to prison — 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.

Mr. Fain was convicted of the Feb. 24, 1982, kidnapping, rape and murder of the girl, Daralyn Johnson, after a forensics expert from the Federal Bureau of Investigation said microscopic examination — the standard test at the time — showed three hairs found on the victim's body were probably Mr. Fain's.

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

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

Today the Johnson family seemed to accept Mr. 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."



The Associated Press

Charles Fain, left, hugged two supporters on Thursday - Ken Solts, center, and Henry Warren - after his release from death row. DNA tests cleared him of involvement in a 1982 murder in Idaho.

At least 96 people have been exonerated and freed from death rows in 22 states since the death penalty was reinstated in 1976, 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 half of this year, Senator Patrick J. Leahy, Democrat of Vermont, said in June. Mr. Leahy, chairman of the Senate Judiciary Committee, has sponsored 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. The girl had been abducted as she walked to Lincoln Elementary School, then raped; her body was thrown in a ditch near the Snake River. It was not found for several days.

After seven months, the police were stymied. Then they picked up Mr. Fain. A Vietnam veteran who had served with the 101st Airborne, Mr. Fain had difficulty holding a job after his honorable discharge, bouncing between Idaho and Oregon. 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.

Mr. Fain was among scores of men asked to give hair samples. An F.B.I. expert concluded that his were similar to those found on Daralyn.

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

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

Some of the most damning evidence against Mr. Fain was the testimony of two jailhouse informers. The men gave lurid details of what they said Mr. Fain had told them about what he had done to Daralyn.

It is not clear why the two men gave what now appears to be false testimony. One of Mr. Fain's appellate lawyers, 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.

One person who always contended Mr. 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, though she could not say unequivocally that he was there on Feb. 24.

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

But Richard Harris, the original prosecutor, said the DNA test had not shaken his view, citing the testimony of the two informers.

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

The trial judge, James Doolittle, also said he had no doubt that Mr. Fain was guilty. "If I had had the slightest doubt, I certainly would not have imposed the death penalty," said Judge Doolittle, who is retired.

D. Fredrick Hoopes, an Idaho lawyer who has worked on the case for more than a decade, said such reactions reinforced the problems with the death penalty. "We just can't kill people who we are sure are guilty," Mr. Hoopes said.

Mr. Fain's parents died while he was in prison; he did not know where he would live or what he would do now. "One day at a time," he said at his lawyer's office. Asked what he would have for dinner, he said, "whatever they put on the tray." Then, realizing he was not going to be fed by authorities tonight, he said, "I'll have to start making decisions for myself."

<http://articles.latimes.com/2001/aug/19/news/mn-35886>

THE NATION

Justice: On death row 17 years, Charles Fain has insisted he is innocent. New technology could finally prove his claim.

August 19, 2001 | HENRY WEINSTEIN | TIMES LEGAL AFFAIRS WRITER

Three strands of hair that helped put Charles I. Fain on Idaho's death row 17 years ago for the rape and murder of a 9-year-old girl may just give him his life back.

For nearly two decades, Fain has maintained he was wrongfully convicted in the February 1982 slaying of Daralyn Johnson, who was abducted while walking to school in the small town of Nampa, Idaho.

Fain passed a polygraph examination, and several witnesses said he was in Redmond, Ore., 360 miles away, at the time of the murder. But two jailhouse informants said they had heard Fain make incriminating statements. Local police said Fain had lied about his whereabouts and that shoe prints found near the crime scene could have been made by his shoes.

Yet the most critical evidence against Fain was provided by an FBI specialist, who testified at the 1983 trial that pubic hair found on the dead girl's clothes was similar to Fain's, based on a microscopic comparison.

In late June, after a protracted legal battle by Fain's lawyers, sophisticated new DNA testing proved conclusively that the hairs--one found in the victim's sock, the other two in her underwear--did not come from Fain.

A week later, a federal judge, who earlier said he would not consider Fain's claims of innocence, set aside the conviction. U.S. District Judge B. Lynn Winmill in Boise, Idaho, gave prosecutors a deadline of Sept. 4 to either initiate retrial proceedings against Fain, now 52, or release him.

It now appears that as early as next week Fain could walk off death row a free man--the 94th prisoner exonerated as a result of DNA testing in the last decade. Ten of those exonerated were on death rows in five states, including five in Illinois, where the governor responded by declaring a moratorium on executions last year.

If he is freed, Fain also would be the second convicted rapist cleared as a result of mitochondrial DNA testing, which can extract DNA directly from the shaft of a hair and is dramatically altering the field of forensic hair analysis. Besides establishing innocence, it also is used to prove guilt.

Late last week, David Young, the prosecuting attorney in Canyon County, Idaho, said he hoped to announce his decision next week about whether to seek a retrial in Fain's case.

First he wants to complete further forensic tests, which he would not describe.

Idaho state court documents show that Young's office now is focusing its attention on

two other suspects, both of whom have a history of sex crimes.

Fain's appellate attorneys, who have been working on his case for nearly 10 years, expressed confidence that he would be released.

"I firmly believe it would be improper to retry Mr. Fain," said defense lawyer Spencer C. McIntyre of Seattle. "The hair was really the linchpin of their case, and the other evidence is highly suspect. It is not just that the state has the same case minus the hair evidence; the pubic hair evidence is now our evidence. It is exonerating evidence.

"Mr. Fain is completely innocent. This has been a gross injustice."

Fain, an inmate at a maximum security prison near Boise, was not available for comment. But his other attorney, Frederick Hoopes of Idaho Falls, said Fain told him, "I'm walking on air" after hearing that Winmill had set aside his conviction.

The Fain case is particularly significant because of its use of mitochondrial DNA testing, said defense lawyer Barry Scheck, co-founder of the Innocence Project at Cardozo Law School in New York, whose work is responsible for freeing numerous inmates through the use of DNA examination.

Mitochondrial testing was first used in the U.S. in a September 1996 trial in Chattanooga, Tenn., where it played a key role in the conviction of a man later sentenced to life without possibility of parole for the rape and murder of a 4-year-old girl.

Since then, its use has burgeoned. On Friday, an FBI spokesman said that the agency's laboratory had worked on 700 cases involving mitochondrial DNA since 1996 and that FBI agents had testified on the subject in cases in 26 states, Canada and Australia.

The technology also has been used to confirm that the infamous 19th century outlaw Jesse James is buried in Missouri and to identify the remains of U.S. servicemen found in Southeast Asia.

"Mito" testing, as people in the field refer to it, has several advantages over other types of DNA testing, primarily because it can be used on very old, degraded or small samples of hair, bones and body fluids.

Mitochondrial DNA differs from nuclear DNA in its sequence, its quantity in the cell, its location in the body and its mode of inheritance, according to an FBI report. In humans, mitochondrial DNA is inherited only from the mother. Consequently, mitochondrial analysis cannot distinguish between individuals of the same maternal lineage.

Funding Sought to Ease Backlogs at Labs

At a June congressional hearing chaired by Rep. Stephen Horn (R-Long Beach), Scheck urged legislators to appropriate funds so that government crime laboratories--saddled with vast backlogs of DNA samples from incarcerated offenders and from unsolved crimes--can expand their ability to do DNA testing, including mitochondrial testing. No action has been taken so far, though earlier this month Atty. Gen. John Ashcroft committed more than \$30 million to help ease the backlogs.

FBI officials agree on the need to increase their testing capacity. The bureau has estimated that 5% to 10% of the agency's traditional hair analyses, done using a microscope, have been proved wrong by mitochondrial testing--a finding that could affect many cases because strands of hair frequently are found at crime scenes.

Indeed, more than a fourth of the cases in which DNA testing was used to exonerate prisoners have involved faulty hair analysis, Scheck said. He said that conventional hair analysis, based on looking at one strand of hair under a microscope and comparing it to another, is "junk science."

Just five months ago, Jeffrey Pierce was released from an Oklahoma prison after DNA tests demonstrated that he had not committed the rape for which he had served 15 years. Joyce Gilchrist, a supervisor in the Oklahoma City police laboratory, had testified that samples of Pierce's hair matched those found at the crime scene. Oklahoma officials now are reviewing her work in hundreds of cases after an initial FBI review found she had given misleading testimony in five of eight cases the agency investigated.

Polygraph Answers 'Substantially the Truth'

Daralyn Johnson, the 9-year-old murder victim, was killed more than a decade before mitochondrial testing was used in court.

She left her house shortly after 8 a.m. on Feb. 24, 1982, for the four-block walk to school in Nampa. She never arrived. Three days later, her body was found by fishermen on the Snake River outside town. Several hairs and fibers were recovered from her clothing. The police immediately began taking hair samples from a number of suspects but eliminated them from consideration after their hair was judged to be dissimilar, according to court records.

At the time, according to his lawyers, Fain was unemployed and living with his parents in Redmond. He had been a garbage collector in Nampa before being laid off in June 1981. Fain said that he returned to Idaho in mid-March 1982 to look for work and eventually moved in with a woman who lived about a block from the Johnson home. That September, police stopped Fain and asked him if he would provide a sample of his hair. Fain agreed and an FBI examiner concluded that the sample exhibited similar characteristics to the hair recovered from the victim's clothing.

Fain, a Vietnam War veteran who had burglary convictions, became the leading suspect but steadfastly maintained his innocence. He agreed to take a polygraph conducted by Idaho law enforcement officials. Fain denied raping Daralyn or having any knowledge of the incident, and the polygraph administrator concluded that "he is telling substantially the truth."

Nonetheless, Fain was convicted in November 1983 of murder, kidnapping and lewd and lascivious conduct with a minor. The trial judge, James R. Doolittle, did not permit the polygraph results as evidence. Doolittle sentenced Fain to death in March 1984.

Fain appealed on numerous grounds. The Idaho Supreme Court ordered Doolittle to hold a special hearing concerning Fain's contention that the state had destroyed semen swabs collected at the crime scene. A state chemist said then that the evidence might have exonerated Fain.

Ultimately, Doolittle decided that the swabs had been destroyed in good faith, a ruling that was upheld by the state Supreme Court, which sustained the conviction despite reservations by two of the five judges.

But Justice Stephen Bistline issued a blistering dissent, saying the trial judge made several key errors, especially by allowing the testimony of the jailhouse informants, in particular that of Ricky Chilton. Chilton faced charges of fraud, escape, armed robbery and kidnapping at the time. He faced a possible sentence of 230 years but, after testifying against Fain, got a plea agreement for a considerably shorter sentence and was released after three years.

At one point, Chilton filed a formal statement asserting that the prosecutor's office "had conspired to force him into testifying" and that the prosecutor's office made death threats against him.

But when Chilton faced the jury, he said he was testifying freely and voluntarily. Bistline was severely critical of the use of Chilton's testimony that he had overheard Fain telling another inmate he was guilty:

"In these many years in this profession, I have never before seen the equal of these circumstances and would hope to never see them again. Where a witness has testified to being intimidated into testifying by state officers, there is no way to rehabilitate him as to make him a palatable witness in a jury trial. From a reading and rereading of his testimony, Chilton comes across as a person who would and did say anything--and nothing in the record refutes his sworn testimony that he was intimidated by the authorities in a manner made felonious by law."

Despite sustaining the conviction in 1989, Idaho's highest court ordered Doolittle to resentence Fain, saying he had not properly weighed other factors. Once again Doolittle issued a death sentence, and in 1991 the state Supreme Court affirmed the decision. The U.S. Supreme Court declined a review the following year.

In 1993, new lawyers launched a lengthy legal attack on the conviction in federal district court in Boise. Ultimately, Fain's lawyers prevailed and paved the way for the DNA testing, which was not available at the time Fain was convicted.

First a DNA test was done on a small amount of sperm found at the crime scene. The laboratory said that it had identified one gene pair that could not have come from Fain or the victim but that there was not enough DNA for any conclusive reports. Then the pubic hair was tested by Bode Technology Group in Virginia, and the laboratory concluded definitively that the sample did not come from Fain.

A week after the DNA test results came back in late June, Idaho Atty. Gen. Al Lance issued a statement saying he agreed that Fain's death sentence should be vacated.

"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," Lance said.

"The agent testified that microscopic examination indicated 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."

Lance stressed that the test results did not prove that Fain was innocent and said it was up to Canyon County prosecutor Young to decide whether to retry Fain.

Lance said the victim's family had expressed its support for the judicial system "and their desire that the person responsible for Daralyn's murder be punished."

Defense attorney Hoopes said it was tragic that Fain had been imprisoned so long, but he said the dramatic DNA test results represented "a fortunate marriage between jurisprudence and science. Fortunately, we were able to keep him alive until technology caught up with the evidence."



Charles Fain

On February 24, 1982, while on her way to school in Nampa, Idaho, 9-year-old Daralyn Johnson was kidnapped, raped and murdered. Fishermen discovered her body in the Snake River a few days later. Police conducted an investigation which included collecting hair samples from many men in the area, but for nearly a year, no one was arrested. In March 1983, police questioned Charles Fain. His hair was similar to samples found on the body, he owned a car similar to one seen at the scene of the crime, and he lived a block away from the Johnson family. Fain denied any involvement in the crimes, and passed a polygraph test. Nevertheless, he was charged with kidnapping, sexual assault, and murder.

At Fain's trial, prosecutors emphasized the similarity between Fain's hair and pubic hairs found on the victim's body, and police testified that a shoeprint found near the body could have been Fain's. Two jailhouse informants testified that they had heard Fain admit to committing the crime; both received reduced sentences in exchange for their testimony, and one later claimed that police had threatened him with violence if he did not testify. Fain claimed that he was hundreds of miles away at the time of the crime, and his testimony was corroborated by other witnesses. The judge did not permit results of the polygraph test as evidence, and semen swabs from the body had been destroyed. On November 4, 1983, Fain was convicted, and in March of 1984, he was sentenced to death.

After Fain appealed to the Idaho Supreme Court, the trial judge was ordered to hold a special hearing to investigate the destruction of the semen samples taken from the victim's body. The judge, however, found that the samples had been destroyed in good faith. In 1989, the State Supreme Court upheld Fain's conviction, but ordered the judge to re-sentence Fain, saying he had not properly weighed all relevant factors. The judge once again sentenced Fain to death, and in 1991, the State Supreme Court affirmed the decision.

In 1993, new lawyers appealed to the Federal District Court in Boise, and were eventually granted a new hearing. The defense carried out mitochondrial DNA tests on the crime scene hairs, a type of testing that had been unavailable at the time of Fain's conviction. These tests proved conclusively that the pubic hairs found on Johnson's body did not come from Fain. In June 2001, a U.S. District Court judge set aside the conviction. The prosecution did not seek a retrial, and Fain was released on August 23, 2001.

– Alexandra Gross

[Report an error or add more information about this case.](#)

State: Idaho

County: Canyon

Most Serious Crime: Murder

Additional Convictions: Rape, Kidnapping

Reported Crime Date: 1982

Convicted: 1983

Exonerated: 2001

Sentence: Death

Race: Caucasian

Sex: Male

Age: 33

Contributing Factors: False or Misleading Forensic Evidence, Perjury or False Accusation, Official Misconduct

Did DNA evidence contribute to the exoneration? Yes

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