

New Evidence Prompts Stay of Arkansas Execution

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The wreckage of a twin-engine plane that crashed Monday near Fallon, Nev., injuring State Senator Sue Wagner, who is running for lieutenant governor, and Bob Seale, who is running for state treasurer. Mr. Seale's wife, Judy, was killed in the crash. Two campaign aides were also injured.

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LITTLE ROCK, Ark., Sept. 4 — A Federal appeals court today stayed the execution of a retarded prison inmate after hearing new evidence that Sheriff Tommy F. Robinson, who is now a Congressman, tried to coerce the confessions of other inmates in the rape and murder of an Air Force nurse seven years ago.

The inmate, Barry Lee Fairchild, 36 years old, had been scheduled to die Wednesday by lethal injection. Instead, the appeals panel ordered his case back to Federal District Court here for a hearing on the new evidence. Arkansas's Attorney General, Steve Clark, is appealing today's ruling to the United States Supreme Court, which could consider the case as early as Wednesday.

Mr. Fairchild was convicted of taking part in the kidnapping, rape and murder of Second Lieut. Marjorie (Greta) Mason, an Air Force nurse stationed near Little Rock, in February 1983. The police say that he did not fire the shot that killed Lieutenant Mason and that the person who did has never been found; under Arkansas law, an accomplice to murder can be put to death.

Mr. Fairchild has long contended that he was beaten and that his confession was coerced. He won a stay of execution last year on the ground of mental impairment, but by the end of last month he seemed to have exhausted his appeals.

Today, however, his lawyers presented new evidence, including testimony from other inmates who said

Witnesses accuse a Congressman who was sheriff.

Sheriff Robinson and his deputies tried to coerce their confessions as well. That led a three-judge panel of the United States Court of Appeals for the Eighth Circuit, in St. Louis, to order a new hearing.

"The same kind of coercion directed toward Mr. Fairchild — physical abuse, brandishing weapons and threatening death — was directed toward the other five suspects as well," said one defense lawyer, John Wesley Hall Jr., in a petition to the Court of Appeals.

'Treated With Kid Gloves'

Congressman Robinson was sheriff of Pulaski County, which includes Little Rock, from 1980 to 1984. He has denied all allegations of brutality by him and his deputies, saying Mr. Robinson was "treated with kid gloves" after his arrest.

Today he called the new witnesses liars and charlatans and added, "The action of the appeals courts merely has delayed the inevitable."

Elected as a Democrat, Mr. Robinson switched to the Republican Party last year and was defeated this year in its primary for governor. He is not running for re-election.

The Federal Bureau of Investigation

and Justice Department are investigating allegations of civil rights violations by the sheriff's office under Mr. Robinson, in this case and others. Mr. Fairchild and the other inmates named today are black.

In two 1983 videotaped confessions, Mr. Fairchild is shown with a bandage around his head and swollen eyes. Law-enforcement officers said he was injured by a police attack dog during his arrest. No other witness has corroborated his story that he was beaten, and last week Federal District Judge G. Thomas Eisele said that even if he had been, "it would not change or affect the fact of his guilt." Judge Eisele, who was appointed by President Richard M. Nixon in 1970, denied Mr. Fairchild's previous appeal.

The appellate judges who ordered today's stay were Richard S. Arnold of Little Rock, Frank Magill of Fargo, N.D., and Donald Ross of Omaha.

National civil and human rights groups have intervened on behalf of Mr. Fairchild, who would be the third person to be executed in Arkansas since June 18, when the state reinstated executions after 26 years.

Lieutenant Mason, a former homecoming queen from Panama City, Fla., was abducted by two men outside a North Little Rock furniture store. Her body was found the next day behind an abandoned farmhouse 15 miles away.

Mr. Fairchild, who has scored 60 to 80 on I.Q. tests, confessed to kidnapping and raping her but said an accomplice shot her twice in the head while he waited in a car.

High Court Upholds Ruling To Block Arkansas Execution

LITTLE ROCK, Ark., Sept. 5 (AP) — The Supreme Court today upheld a ruling that blocks the execution of a convicted murderer who says his confession was coerced by a sheriff who is now a member of Congress.

Barry Lee Fairchild, 36 years old, had been scheduled to die tonight by injection, but the United States Court of Appeals for the Eighth Circuit voted on Tuesday to stay the execution and to send the case to Federal District Court for a hearing on the allegations that he was beaten by the sheriff and his deputies. After an appeal today by the State Attorney General's Office to lift the stay, the Supreme Court voted to uphold the appeals court's ruling.

Representative Tommy F. Robinson, a Republican, has denied that, as sheriff, he and his Pulaski County deputies beat Mr. Fairchild and five other black suspects and urged them to confess to the 1983 abduction, rape and murder of Marjorie (Greta) Mason.



Paul Hosefros/The New York Times

Democratic and Republican leaders considered competing proposals aimed at cutting \$50 billion from the budget. Discussing the Democratic plan

yesterday were, from left, Richard A. Gephardt, House majority leader, George J. Mitchell, Senate majority leader, and House Speaker Thomas Foley.

Killer's Stay of Execution Angers Lawmaker

LITTLE ROCK, Ark., Sept. 6 (AP) — Representative Tommy F. Robinson criticized the legal system on Wednesday after a Federal appeals court upheld a stay of execution for a convicted murderer who contends that when the Congressman was a sheriff, he beat a confession out of him.

A three-judge panel of the United States Circuit Court of Appeals for the Eighth Circuit, in St. Louis, on Tuesday ordered Federal District Judge G. Thomas Eisele to look at new evidence presented by lawyers for the convicted man, Barry Lee Fairchild. Among the evidence, to be considered on Nov. 13, are affidavits from four men who say they were beaten by Mr. Robinson or his deputies during the murder investigation that later led to Mr. Fairchild's conviction.

"These legal maneuvers could go on for years," Mr. Robinson said in a statement issued through a spokesman, Rex Nelson. "The time has come for Congress to limit the number of appeals that can be filed by those on death rows across the country."

Mr. Fairchild, 36 years old, was to have been executed by lethal injection on Wednesday for the 1983 rape, abduction and murder of Second Lieut. Marjorie Mason, an Air Force nurse.

An ex-sheriff faulted in a death row appeal wants to limit appeals.

The Federal Bureau of Investigation confirmed on Wednesday that it was investigating reports of civil rights abuse by the Pulaski County sheriff's office, which Mr. Robinson headed when Mr. Fairchild was arrested. Mr. Fairchild and the four others who charge beatings are black.

The bureau would not say if the investigation covered the period when Mr. Robinson was sheriff.

Mr. Fairchild's lawyers have contended in appeals that Mr. Robinson and his deputies beat him until he confessed. Mr. Robinson denies the allegations.

"I am tired of attorneys who waste a court's time and waste our tax money," the Arkansas Republican said in the statement. "I also am tired of groups that try to make heroes of convicted murderers and rapists. The

rights of Barry Lee Fairchild were never violated."

Mr. Robinson said that in the closing days of the Congressional session, he would work for passage of a bill limiting Federal court appeals. His tenure in Congress ends in January because he chose to run for governor instead of for re-election. He lost the Republican gubernatorial primary in May.

Assistant Attorney General Jack Gillelan said only three of the four men who submitted affidavits had been suspects in the 1983 murder. He said the police had questioned the men days before Mr. Fairchild was arrested and questioned.

John Wesley Hall, of Little Rock, a lawyer for Mr. Fairchild, said the existence of the other suspects was not disclosed to Joe O'Bryan, Mr. Fairchild's lawyer in his trial. Such information could have helped convince the jury that the "police rounded up blacks and beat on them until they elected which one was the best one to be charged," Mr. Hall said.

Mr. Gillelan said he was told by the Pulaski County sheriff's office that the information about the three suspects was in the department case file and had no reason to believe it was withheld.

Death Row Inmate Rebuffed On Plea of Forced Confession

Special to The New York Times

LITTLE ROCK, Ark., Feb. 8 — A Federal district judge has rejected accusations that law-enforcement officers, including one who went on to serve in Congress, forced a man now on death-row here to confess to a 1983 murder.

The inmate, Barry Lee Fairchild, 36 years old, who was scheduled to be executed by lethal injection on Sept. 5, 1990, has long contended that he was beaten by officers to confess to the kidnapping, rape and murder of Second Lieut. Marjorie (Greta) Mason, an Air Force nurse stationed near Little Rock, in January 1983.

The judge, Garnett Thomas Eisele, ruled Wednesday after a 17-day hearing in which new evidence was offered alleging that the officers, including Tommy F. Robinson, a former sheriff and United States Representative, beat and threatened six suspects in attempts to obtain confessions. Mr. Robinson has denied the allegations. Judge Eisele said the new evidence did not change his earlier decisions in the case.

"Nothing has been brought forth in evidence to weaken the court's confidence in its conclusion," Judge Eisele said.

In two 1983 videotaped confessions, Mr. Fairchild, who is black, is shown with a bandage around his head and swollen eyes. Law-enforcement officers said he was injured by a police attack dog at the time of his arrest. No other witness has corroborated his assertion that he was beaten.

Appeals Court Ordered Hearing

Judge Eisele has twice ruled that Mr. Fairchild's confessions were voluntary, but the United States Court of Ap-

peals for the Eighth Circuit in St. Louis ordered the latest hearing after the inmate's lawyers contended they had new evidence that black men had been systematically rounded up and abused in attempts to obtain confessions.

In testimony at the hearing, Mr. Robinson, who was Sheriff of Pulaski County, which includes Little Rock, from 1980 to 1984, and a Congressman until January, denied allegations of brutality.

"No one's civil rights were violated," he said. "There were no mass round-ups as has been testified to in this court. The information we had was two blacks kidnapped Greta Mason. It would be ridiculous to round up white men."

During the hearing, a former sheriff's deputy testified that he heard an officer beating someone shortly after Mr. Fairchild was arrested. A state prison inmate jailed on drug charges also testified that while a sheriff's deputy held a gun to his forehead, Mr. Robinson threatened him if he did not confess to the murder.

Jack Gillelan, an assistant state Attorney General, told the hearing: "The coercion of the others has no bearing directly on whether Barry Lee Fairchild was coerced or not. You have to make too great a jump."

Judge Eisele's findings will go the appeals court, along with Mr. Fairchild's request for a new trial and sentencing. The judge is to make a subsequent finding about whether there was a pattern of abuse by the sheriff's office in its investigation.

Execution of Retarded Man Is Fought

By The New York Times

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Execution of Retarded Man Is Fought

In 11th Hour, Arkansas Lawyer Calls Client's Sentencing Flawed

By The New York Times

LITTLE ROCK, Ark., Aug. 30 — The best reason that Barry Lee Fairchild should not be executed on Thursday occurred at his clemency hearing two weeks ago, Mr. Fairchild's lawyer said today.

"I'm sitting there arguing my guts out, trying to save his life," the lawyer, Charles Baker, said in an interview. "We're in a room crowded with people and television cameras at 10 o'clock in the morning, and he falls asleep!"

While Mr. Baker argues that his client, a convicted killer, is not guilty of murder, it is the second part of his appeal that he now emphasizes: that Mr. Fairchild is retarded.

What further proof is needed, he contends, when "my client, who's scheduled to be executed in days, can't stay awake"?

A jury sentenced Mr. Fairchild, 41, to death for the 1983 murder of an Air Force nurse, Marjorie Mason, who was abducted, robbed, raped and shot twice in the head in a rural area near Little Rock.

Before his trial, Mr. Fairchild gave a statement to the police in which he acknowledged participating in the kidnapping and rape but denied involvement in Ms. Mason's death. He said he had not known that those with him would kill her.

At his trial, Mr. Fairchild recanted and insisted he had no connection to the crimes.

Prosecutors and defense lawyers agree that the only evidence tying Mr. Fairchild to Ms. Mason's death is his statement to the police, which was the subject of controversy at his trial. The videotaped interrogation shows Mr. Fairchild continually looking away from the camera and appearing to respond to prompting from voices elsewhere in the room.

Mr. Fairchild has refused to say whom he was with the day of Ms. Mason's killing.

On Monday, a former prison chaplain who said he had counseled both Mr. Fairchild and his brother, Robert, said in a letter to Gov. Jim Guy Tucker that he had been told that Robert Fairchild fired the fatal shots. But the chaplain, Dennis Pigman, did not say how he had obtained that information. Robert Fairchild is serving a sentence in an Arkansas penitentiary for an unrelated crime.

For a decade, Barry Fairchild has appealed his case, basing his petitions on his claim of innocence. He has been aided by the NAACP Legal Defense and Educational Fund Inc.,

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Associated Press

Barry Lee Fairchild.

and the National Coalition to Abolish the Death Penalty, which enlisted Mr. Baker, who has practiced corporate law here for 30 years.

Only when the Supreme Court refused to rehear Mr. Fairchild's arguments again did he challenge the propriety of his sentence. In 1993, Judge G. Thomas Eisele of Federal District Court here, who had rejected Mr. Fairchild's earlier arguments, blocked his execution hours before it was to take place and voided the death sentence, effectively commuting it to life imprisonment.

Although Arkansas law provides that accomplices to a capital offense may be executed, Judge Eisele ruled that the state's model jury instructions were constitutionally flawed in that they did not specify that a defendant's intentions should be con-

sidered in deciding sentence.

The state appealed Judge Eisele's decision. The United States Court of Appeals for the Eighth Circuit, in St. Louis, reversed Judge Eisele's ruling, and the Supreme Court refused to hear the case. On Aug. 11, the Arkansas clemency board declined to recommend a reduction in Mr. Fairchild's sentence to Governor Tucker, although its vote — 4 to 3 against clemency — was its closest on record.

Mr. Tucker has said he sees no legal basis for commuting Mr. Fairchild's sentence, which is to be carried out on Thursday at 10 P.M.

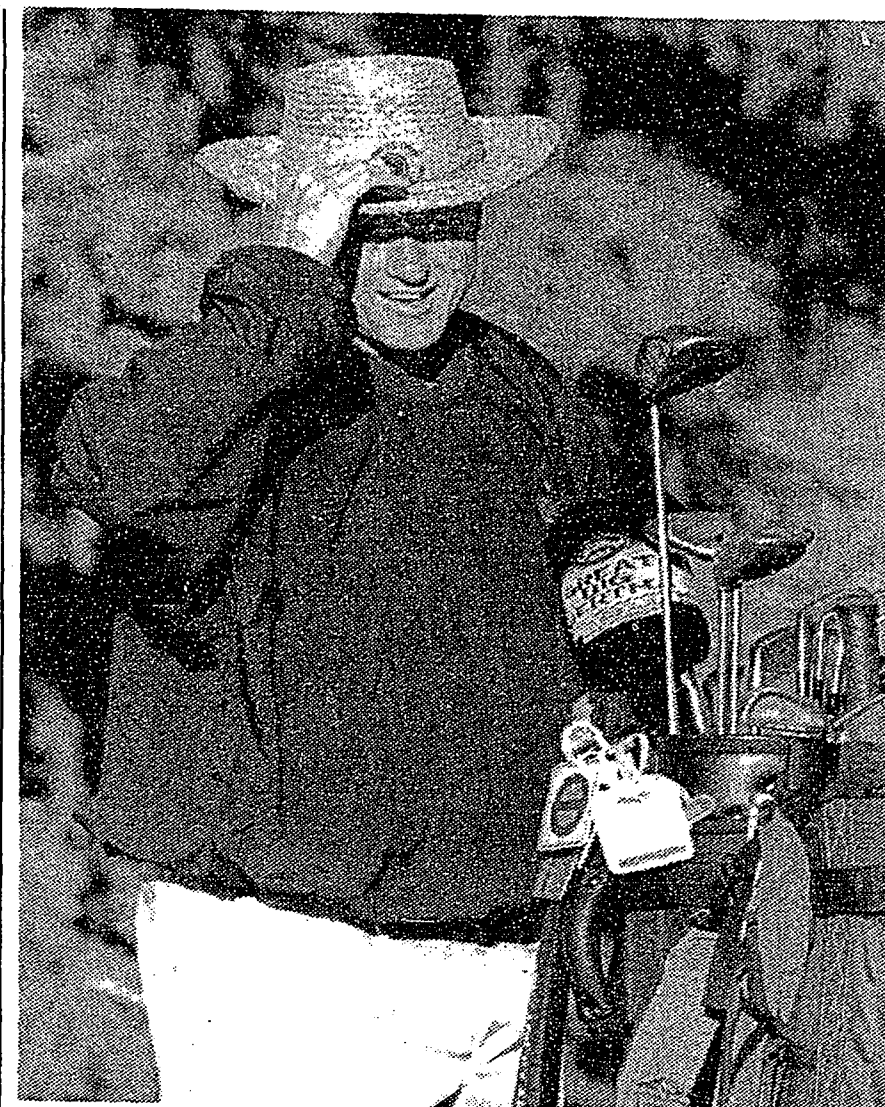
Mr. Baker said his client had an I.Q. of 60 to 80, "depending on who gives the test and when." A 1993 Arkansas statute bars the execution of defendants with an I.Q. of 65 or lower.

Earlier this month, Judge Eisele held there was insufficient evidence that Mr. Fairchild had such a low I.Q. and denied a request for a jury determination of his mental capacity. Again, the appeals court declined to hear an appeal.

Today, Mr. Baker was busy preparing a petition to the Supreme Court on the issue. That appeal, he said, will be Mr. Fairchild's last hope of avoiding execution.

Mr. Fairchild has chosen lethal injection over electrocution. For his last meal, he has asked for the same menu that will be served other inmates. He has been moved to an isolation cell near the death chamber.

"He knows why he's there," Mr. Baker said. "He knows they're getting ready to kill him."



Reuters

Farewell to Wyoming Fairways

Wrapping up his 17-day vacation in Jackson Hole, Wyo., President Clinton tipped his hat yesterday after a tee shot at the Jackson Hole Golf Club. The President, who plans to leave today for a four-day trip to Honolulu to mark the 50th anniversary of the end of World War II, was up at dawn yesterday to play a quick round of golf on frosty greens.

Arkansas Executes Man Who Argued He Was Retarded

VARNER, Ark., Aug. 31 (AP) — A prisoner who had contended that he should not be executed because he was mentally retarded was put to death by injection tonight for the kidnapping, rape and murder of an Air Force nurse 12 years ago.

Lawyers for the condemned man, Barry Lee Fairchild, 41, had maintained that he was incapable of distinguishing right from wrong when he abducted the 22-year-old victim, Marjorie Mason.

But a final appeal, to the United States Supreme Court, was rejected earlier today without comment, and no dissent among the Justices was noted.

Ms. Mason had been assigned to Little Rock Air Force Base for just 10 days when she was kidnapped while shopping for furniture. Her body, with two bullet wounds in the head, was found in a rural area near Little Rock the next day, and Mr. Fairchild was convicted half a year later.

A Federal judge found only a month ago that Mr. Fairchild had not fired the shots that killed the victim, but Arkansas law allows for the execution of accomplices to murder. No second suspect has ever been charged.

Alan Ables, a spokesman at the prison here, said Mr. Fairchild had declined a final meal and had made no final statement. Mr. Ables said that Mr. Fairchild's lawyers had provided him \$50 for incidentals in his last days and that about half of it had been spent on candy and junk food.