

DATE TYPED: August 29, 2005
DATE PUBLISHED: August 30, 2005

IN RE: JOHN G. SPIRKO, MANCI #171-433

**STATE OF OHIO
ADULT PAROLE AUTHORITY
COLUMBUS, OHIO**

Date of Meeting: August 23, 2005

Minutes of the **SPECIAL MEETING** of the
Adult Parole Authority held at 1030 Alum Creek Drive,
Columbus, Ohio 43205 on the above date.

IN RE: John G. Spirko, MANCI #171-433

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: **CR 83-9-72:** Count 1: Kidnapping; Count 2: Aggravated Murder with Specifications; Specification #1 – the offense of Aggravated Murder was committed for the purpose of escaping detection, apprehension, trial and punishment for the kidnapping of Betty Jean Mottinger. Specification #2 – John G. Spirko has previously been convicted of the offense of Murder on February 16, 1970 in Case Number 1483, Kenton County Circuit Court, Kenton County, Kentucky.

Case #2551: Felonious Assault

Case #2552: Felonious Assault

DATE, PLACE OF CRIME: August 9, 1982: Elgin, Ohio:
October 9, 1982: Swanton, Ohio
October 27, 1982: Swanton, Ohio

COUNTY: Van Wert/Fulton

CASE NUMBER(S): **CR 83-9-72**
Case #2551
Case #2552

VICTIM(S): **CR 83-9-72:** Betty J. Mottinger
Case #2551: Teresa Fabbro
Case #2552: Ivan Ford

INDICTMENT: **CR 83-9-72:** Count 1: Kidnapping; Count 2: Aggravated Murder with Specifications; Specification #1 – the offense of Aggravated Murder was committed for the purpose of escaping detection, apprehension, trial and punishment for the kidnapping of Betty Jean Mottinger. Specification #2 – John G. Spirko has

previously been convicted of the offense of Murder on February 16, 1970 in case number 1483, Kenton County Circuit Court, Kenton County, Kentucky.

Case #2551: Felonious Assault and Kidnapping.

Case#2552: Aiding Escape, Escape and Felonious Assault

VERDICT:

CR 83-9-72: Found guilty by Jury as charged in Counts One, and Two (Specification One). Found guilty by Judge on (Specification Two) in Count Two.

Case #2551: Pled guilty to Felonious Assault

Case#2552: Pled guilty to Felonious Assault

SENTENCE:

CR 83-9-72: Count 1 – 7-25 years cs/w; Count 2 – Death; cs/w 5-15 years in Fulton County Case #'s 2551 and # 2552

ADMITTED TO INSTITUTION:

December 21, 1982

CURRENT AGE:

59

DATE OF BIRTH:

June 13, 1946

PRESIDING JUDGES:

CR 83-9-72: Honorable Sumner E. Walters

Case #2551 and #2552: Honorable Richard McQuade, Jr.

DEFENSE ATTORNEY:

CR 83-9-72: Jerry McHenry and Edward Hatcher

Case #2551 & #2552: J. Alan Keiser

PROSECUTING ATTORNEY:

CR 83-9-72: Stephen E. Keister, Van Wert County Prosecutor

Case #2551 and #2552: William Swigart, Fulton County Prosecutor, and Michael Bumb Assistant Prosecutor

FOREWORD:

Clemency in the case of John G. Spirko #171-433 was initiated by the Honorable Bob Taft, Governor of the State of Ohio, and the Ohio Parole Board, pursuant to Sections 2967.03 and 2967.07 of the Ohio Revised Code and Parole Board Policy #105-PBD-05. A previous Clemency Report was sent to The Honorable George V. Voinovich on March 24, 1995. That report contained a unanimous Parole Board recommendation against clemency.

On August 4, 2005, inmate John Spirko met with Kathleen Kovach, Parole Board Member, for his clemency interview at Mansfield Correctional Institution. Mr. Spirko's counsel, Alvin Dunn, was also present for this interview. The Parole Board subsequently met on August 23, 2005 to hear the case of John G. Spirko. The case was considered upon application by the inmate's counsel, Thomas Hill, Alvin Dunn, Ashley McDonald Delja, and Vadim Schick. Testimony in support of clemency was presented by Mr. Spirko's counsel, Thomas Hill of the Pillsbury, Winthrop, Shaw and Pittman firm. Further testimony was presented on Mr. Spirko's behalf by Mr. Steven Drizen, Legal Director for the Northwestern University School of Law's Center on Wrongful Convictions, Bill Latham, Investigator for Wyandot County, and Cathy Bailey, Mr. Spirko's sister. Testimony in opposition to clemency was presented by Van Wert County Prosecutor Charles Kennedy, Senior Deputy Attorney General Tim Pritchard and by Assistant Attorney General Chuck Wille. Also speaking in opposition of clemency were Thomas Strausbaugh, Retired Postal Inspector and Ralph Eversole, Retired Deputy from the Van Wert County Sheriff's Department. Testimony was also presented by Kent Mottinger, son of the victim, Kay Varley, daughter of the victim, and Jane Varley, a relative of the victim all of whom were strongly opposed to any form of clemency being granted.

On August 24, 2005, the Board reconvened for executive session to deliberate the case. The Board gave careful review, consideration and discussion to all testimony, to Mr. Spirko's interview, to all available facts pertaining to the crime including voluminous supplemental materials submitted by counsel and the family for Mr. Spirko, by the Van Wert County Prosecutor, and by the Office of the Attorney General. There was considerable discussion as to all credible evidence offered or adduced in mitigation. The Board deliberated extensively upon the propriety of clemency in the form of a pardon, commutation, and in the form of reprieve. With nine (9) Board members participating, six (6) Board members voted to provide an UNFAVORABLE recommendation for clemency of any kind and three (3) Board members voted to provide a FAVORABLE recommendation for a REPRIEVE to the Honorable Bob Taft, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE (CR 83-9-72):

The following details of the instant offense are taken from the Supreme Court of Ohio opinion that was decided on April 10, 1991:

Prior to August 1982, Betty J. Mottinger had been employed as the postmaster in the village of Elgin, Ohio for approximately five years. Sometime after 8:00 a.m. on August 9, 1982, Mottinger reported to work. Two eyewitnesses reported that they observed a male outside the post office at approximately 8:30 a.m. that morning. Opal Seibert, who lived across the street from the post office, testified that she noticed a strange man standing beside a brown car that she did not recognize.

Subsequently, Seibert described the man she saw to a police artist. Upon viewing several photo arrays, Seibert picked out the picture of Delaney Gibson as the person she saw outside the post office. Gibson was the best friend and former cellmate of the subject, John George Spirko.

Mark Lewis, a truck driver, testified that he saw a man near a brown car as he was driving past the post office on the date and time in question. Lewis also described the man he saw to a police artist, and was also shown photo arrays. From one such array, Lewis picked out a photograph of Spirko and stated that he was 70 percent certain that the picture he chose was the man he saw outside the Elgin post office. While Lewis had initially chosen the photo of Sonny Baumgardner as a person he thought had similar features to the person he saw outside the post office, he later decided that Baumgardner was not the man he had seen on the morning of August 9, 1982.

Shortly after 8:30 a.m. on August 9, 1982, it was discovered that Mottinger was missing from the post office, as was her purse, some postal bait money orders, and over \$700 aggregate in cash and postage stamps. Inspectors from the United States Postal Service were contacted by local officials and an investigation ensued which included the lifting of fingerprints from the safe and office areas of the post office.

On September 18, 1982, Mottinger's body was discovered by a person searching for butterflies in a field located in Hancock County. The victim's body was wrapped in a canvas-like material which was covered with paint spots of various colors and was secured by a rope and duct tape. It was later determined that Mottinger's death was caused by approximately 14 to 18 stab wounds to her chest and abdomen.

In late October 1982, John Spirko, who was then incarcerated in the Lucas County jail on two pending charges of felonious assault, indicated that he wished to speak to postal authorities. On October 31, 1982, postal inspector Steve Cline contacted John Spirko at the jail. At that time, Spirko stated that he had knowledge concerning the Mottinger murder, and wished to exchange his information for the elimination of the remainder of the jail time that he was serving. Several days later, another postal inspector interviewed John Spirko. Spirko again indicated that he wished to make a deal with the postal authorities whereby he would provide information concerning the Mottinger murder in exchange for the freedom of his girlfriend, LuAnn Smith, who was serving time in jail, and for protection for his family.

Continued contacts between Spirko and the postal inspectors resulted in a plea bargain agreement among the prosecutor, Spirko, and the postal authorities. In accordance with the plea bargain, Spirko was inducted into the Federal Witness Protection Program.

On November 29, 1982, postal inspector Paul Hartman interviewed Spirko in jail, and Spirko stated that a reddish-blond person told him at a party that the Mottinger murder had been committed by three white males. Spirko further related to Hartman that three white males went to the Elgin post office to claim a parcel containing heroin, and that a scuffle ensued which resulted in the abduction of Mottinger.

Several days later, Hartman again interviewed Spirko, and Spirko told Hartman that he had been commissioned by someone named Vito to recover a parcel of heroin. Spirko stated that he and one of the persons involved in the murder drove from Toledo to the murder scene where he saw Mottinger's body and noticed that the victim had been stabbed approximately 15 times. Spirko also told Hartman that he had delivered the heroin to "the dope man," and that this person wanted one of the alleged murderers nicknamed Rooster to be killed. Spirko stated that Rooster was killed by another of the murderers and buried in a marsh at an unknown location.

On December 8, 1982, Hartman conducted yet another interview with Spirko. Hartman was told that a person named Swartz had informed Spirko that Mottinger was dead. Spirko stated that Swartz told him that Rooster wanted the victim to perform oral sex and that Rooster stabbed the victim after she bit him on the penis. Spirko stated he and Swartz went to the house where the murder took place and saw Rooster and a person named Dirty Dan with blood on their clothes. Spirko stated he was told that these individuals had already dumped the victim's body.

During an interview conducted by Hartman with Spirko on December 9, 1982, Spirko stated that Rooster told him about the murder and that the only thing Rooster said that bothered him was the "whoosh" sound the knife made when he stabbed the victim. Spirko then related to Hartman that Rooster was killed in a Florida swamp.

On December 13, 1982, another interview was conducted by Hartman, Spirko stated that he and Swartz were at the house where the murder took place and that he was lying on the couch watching television when he saw the victim running down steps, screaming and crying, while Rooster was pursuing her. Spirko stated that the victim then ran out of the house and that he saw Rooster and Dirty Dan grab the victim and stab her.

Later that same day, Hartman conducted another interview with Spirko. He stated that three men including a biker, a man named Dino, and Rooster took turns raping the victim. Spirko stated that he, Dino, Rooster, the biker, Dirty Dan and the victim walked outside the house and that the victim tried to run away when Dirty Dan displayed a knife. Spirko stated that he tackled the victim, held her down, and that Rooster then ran up and started stabbing her.

On December 15, 1982, another interview took place during which Spirko said he had seen Rooster stabbing the victim as he and Dino were walking outside around the house.

In yet another interview with Spirko conducted by Hartman in January 1984, it was stated by Spirko that Delaney Gibson told him that Gibson and his cohorts had erred in robbing a post office since it did not have any money in it. According to Spirko, Gibson told him that he and his accomplices raped the victim and that she jumped out of the assailants' car and started to run. After grabbing the victim, Gibson told Spirko that he and his accomplices "took" her to the ground, stabbed her, and later dumped the body.

When asked by his attorney at trial why he told Hartman so many different stories, Spirko stated: "He wouldn't settle for nothing else. I would tell him one story and be back the next day, he would come back for another story, and the more I told the more deeper I got into it, you know, and finally he told

me one time, he said, he said either you did it, or he says you know who did it. I don't know if those were his exact words but it was something to that effect."

In a letter written to his girlfriend LuAnn Smith, Spirko stated that "...there are some things that I told him [Paul Hartman] that only the person who did this shit knows, there are no if and ands about that."

On September 13, 1983, John Spirko was indicted by the Van Wert County Grand Jury for the aggravated murder and kidnapping of Betty J. Mottinger. A trial commenced on August 6, 1984 and ended on August 22, 1984 when the jury returned a verdict of guilty on charges of kidnapping, aggravated murder and one of the death penalty specifications. The court found Spirko guilty of the second death penalty specification. Following the mitigation phase of trial, the jury found that the aggravating factors outweighed the mitigating factors beyond a reasonable doubt and recommended that Spirko be sentenced to death.

Details of Felonious Assault (Case #2551): On October 9, 1982, police received a call in reference to a man with a gun at the Long Branch Saloon in Fulton County, Ohio. They spoke with the bartender, and he stated that the victim, Teresa Fabbro, advised him that the John Spirko had taken her into the rear parking lot to talk to her. She further stated that Spirko produced a gun, put it to her stomach and threatened her. John Spirko then attempted to get the victim into his car, but she was able to break free after he hit her. The victim then ran into the bar. John Spirko went to the front of the bar and asked for the victim but was told to leave. He was later contacted by police and asked to report to the station for questioning. Spirko arrived a short time later and was advised that he was being taken into custody for a parole violation and Felonious Assault.

Details of Felonious Assault (Case #2552): On October 27, 1982, John G. Spirko was involved in an attempted jailbreak from the Fulton County, Ohio Jail. During this escape attempt, the jailer, Ivan Ford, was seriously injured by being beaten with an eight-inch metal bar that was sawed off from the shower window. The prisoners escaped from the confinement area into a catwalk and out into the booking area where a deputy, at gunpoint, stopped them. An investigation revealed that prior to this escape attempt, John Spirko's girlfriend, LuAnn Smith had smuggled two hacksaw blades into the jail by placing them in the sleeves of her sweater.

APPLICANT'S STATEMENT:

Mr. Spirko was interviewed by Board Member Kathleen Kovach on August 4, 2005 at the Mansfield Correctional Institution. Also present were Mr. Spirko's counsel, Alvin Dunn, and Parole Board Quality Assurance Case Analyst Matt Morris. The interview was witnessed via teleconference at the Department of Rehabilitation and Correction's Central Office in Columbus by Assistant Attorney Generals Tim Pritchard and Chuck Wille and by Paralegal Phil Summit. Also in attendance were Van Wert County Prosecutor Charles Kennedy, Retired Deputy from Van Wert County Sheriff's Office Ralph Eversole and Parole Board Chief Hearing Officer Trayce Thalheimer.

With regard to culpability and in detailing his account of the murder and kidnapping of Betty J. Mottinger, John Spirko stated that he did not commit this murder, nor does he have any idea who

committed this crime. He explained that he has never been to Elgin, Ohio and that he had never met the victim in the case, Betty J. Mottinger. Rather, he went on to explain that he was having his first visit with his parole officer on the morning of August 9, 1982 around 9:00 or 9:30 a.m. which is the very same day of the Mottinger crime. John Spirko stated his sister Cathy Bailey accompanied him to his visit with his parole officer. John Spirko stated that his parole officer did testify at his trial, but was unable to speak to the actual time in which they met. The parole officer also verified that his sister accompanied him to the visit. Mr. Spirko went on to share that following his visit with his parole officer, he took his sister to a doctor's appointment so she could obtain a Demerol shot for her headache. Mr. Spirko stated he remained in the waiting room while his sister was treated. He further indicated that the doctor who treated his sister testified at trial that someone would have had to have been with his sister who received the shot of Demerol to drive her home. However, the doctor was unable to state who the individual was that accompanied Ms. Bailey.

John Spirko stated during his interview that he wanted authorities contacted so he could make a deal regarding his girlfriend LuAnn Smith who was being held in jail for attempting to help him escape. Apparently, she brought him hacksaw blades to assist in his attempted escape. He also stated he told authorities that he had information in the Mottinger case so he could "walk free".

When questioned about the specificity of the detail he gave to authorities regarding the murder of Betty Mottinger, Spirko stated that all of the details he shared were described in the paper and on the television. When asked specifically about the description of the victim's purse, Spirko stated that he did not say anything about a purse. Rather, he claims to have given a description of a "mail bag" and that he made up that description because he knew that it was a post office that was robbed. When questioned about the victim's clothes, Spirko stated that he is color blind. Therefore, he could not have known the color of the victim's blouse. He also indicated that he said the victim was wearing a blouse and jeans because that is what people wore during those times. With regard to the victim's ring with the stone that was pried out, Spirko stated that Inspector Hartman told him about this information. When asked if he ever told Inspector Hartman that he killed the victim in this case Spirko responded, "I might have told him I was present." As far as his knowledge regarding how the victim's body was wrapped, Spirko again stated he found this information in the paper or on the television.

During this interview, Ms. Kovach inquired as to the testimony of Leon Connors and Andre Ruffin who were housed at the same jail as Spirko. They both testified at trial that Spirko shared information with them about this case. However, Spirko denies sharing any information with either of these individuals. He went on to state that Andre Ruffin was a very "young and loud" inmate and that the two of them had had a physical fight over the use of the telephone. John Spirko feels that Ruffin testified against him a trial to get back at him for that fight.

John Spirko shared during his interview that at no point did he feel he would ever be charged for the death of Betty Mottinger. In fact, he never knew he was a suspect until he was served with the indictment. He went on to state that it was his "big mouth" that got him into trouble coupled with his past criminal history. During the interview Spirko was asked directly if he wanted the Board to spare his life. He told Ms. Kovach that he was not asking the Board to spare his life. Rather, he wanted a reprieve so the courts could examine the new filings. At some point during the interview a 3- to 5-

minute break was taken during which Ms. Kovach and Mr. Morris left the room. Mr. Spirko was left in the room with his attorney during this time. When the interview reconvened, John Spirko told Ms. Kovach that he wanted "...a pardon and to be set free". One could infer that this was done per the advice of his attorney who was present with Spirko during the break.

John Spirko was also asked about the last time he had any contact with his friend and former cellmate Delaney Gibson. To this question, he responded that it was in 1980 or 1981 when Mr. Gibson came with his wife and children to visit Spirko at the Kentucky prison farm. Spirko also pointed out that there was no way Opal Seibert could have seen Delaney Gibson on the day of the murder because he was 600 miles away and had a full beard.

When asked if he committed the murder of Myra Ashcraft in Covington, Kentucky on July 3, 1969, Spirko stated it was a "just" conviction but that he did not kill the victim. Rather, he stated he was present with a total of four other people, all of whom testified against him at trial, and none of whom were ever prosecuted. Spirko did admit to committing the felonious assault crimes for which he stands convicted.

Lastly, Spirko was asked why he did not allow his attorneys to offer any mitigation at his trial during the penalty phase. Spirko stated that he was angry and did not want to beg for his life. "They had already found me guilty," stated Spirko.

In closing John Spirko was asked again if he knows who committed the murder of Betty Mottinger to which he responded, "No." He then went on to state that he wanted the Board to keep an open mind about this case and pointed out that his entire case revolved around Paul Hartman.

Insofar as his support systems are concerned, John Spirko mentioned that he was recently married in February, 2005 and that his wife lives in Youngstown, Ohio. He also mentioned the support of his two sisters and his current defense team.

PRIOR RECORD:

JUVENILE:

<u>DATE</u>	<u>OFFENSE</u>	<u>LOCATION</u>	<u>DISPOSITION</u>
2/4/55 (Age 8)	Dependency	Toledo, Ohio	Parental counseling

Details: The subject was found asleep in his uncle's car after his parents had an argument and left him.

8/23/56 (Age 10)	Larceny	Toledo, Ohio	Possible placement
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Details: The subject stole a cigarette box full of tools from a car.

3/8/57 Larceny Toledo, Ohio Psychiatric evaluation
(Age 10)

Details: The subject stole \$1.50 that had been collected at a Polio Drive from his teacher's desk. At this time, he also admitted to committing additional thefts.

5/29/57 Larceny Toledo, Ohio Probation
(Age 10)

Details: The subject stole a carton of cigarettes from a grocery store.

3/26/58 Conduct injurious to Toledo, Ohio Continued probation
(Age 11) health and morals

Details: The subject begged money from a known child molester and turned in a false report to police that the child molester had attempted to have him seduce his sister in an alley.

6/12/58 Larceny Toledo, Ohio Probation
(Age 11)

Details: The Subject stole items from a local grocery store.

12/30/58 Larceny Toledo, Ohio Pending placement
(Age 12)

Details: The subject was charge with fraud after attempting to collect money from another young man's paper route.

1/31/59 Larceny Toledo, Ohio Continued probation
(Age 12)

Details: The subject stole items from a local store.

4/14/60 Conduct injurious to Toledo, Ohio Placed in child custody
(Age 13) health and morals

Details: The subject masturbated a 22-year old nephew who was babysitting in his house on two occasions.

8/18/60 Probation Violation Toledo, Ohio Committed to BIS
(Age 14)

Details: The subject stole four cartons of cigarettes from a local grocery store.

2/21/62 Probation Violation Toledo, Ohio Restitution & parole
(Age 15)

Details: The subject stole three cartons of cigarettes and a radio from a bus station.

5/2/62 Parole Violation Toledo, Ohio Continued on parole
(Age 16)

Details: The subject stole a pair of pants from a store.

7/19/62 Parole Violations Toledo, Ohio Returned to BIS
(Age 16)

Details: Unknown

INSTITUTIONAL AND/OR SUPERVISION ADJUSTMENT: On 10/30/62, the subject was transferred to Mohican Youth Camp where he did not make a satisfactory adjustment. Therefore, he was transferred on 1/9/62 to TICO, where he remained until paroled to a placement in Toledo on 2/8/64. His supervision was terminated 6/5/64 due to his age and because he moved to Bay City, Michigan.

ADULT:

<u>DATE</u>	<u>OFFENSE</u>	<u>LOCATION</u>	<u>DISPOSITION</u>
1964 (Age 18)	Larceny from Auto	Saginaw, MI	Found guilty, 90 days jail.

Details: Unknown

3/8/65 (Age 18)	Interstate Transport of a Stolen Vehicle	Detroit, MI	Found guilty, 4 years prison.
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Details: Unknown

7/3/69 (Age 24)	Willful Murder (Case # 1483)	Covington, KY	Found guilty, sentenced to life.
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Details: Seventy-three year old Myra Ashcraft, of Covington, Kentucky was discovered by her neighbor lying on her bed with a pillow over her head on 7/3/1969. The police were then summoned, and they found the victim on the bed with both arms tied behind her and a pillow over her head. The victim in this matter was robbed and strangled to death.

9/22/82 DUI Lucas County, Ohio Pled no contest, found guilty.
(Age 36)

Details: Unknown

10/9/82 Felonious Assault Fulton County, Ohio 5-15 years in ODRC
(Age 36) **(Instant Offense)**

10/27/82 Felonious Assault Fulton County, Ohio 5-15 years cc/w above.
(Age 36) **(Instant Offense)**

9/13/83 Kidnapping/ Van Wert County, 7-25 cs/w death, cs/w Fulton
(Age 36) Aggravated Murder Ohio County cases.
with specifications
(Instant Offense)

DISMISSED/NOLLIED AND/OR UNKNOWN DISPOSITION CHARGES:

On 11/25/64, the subject was arrested by Bay City, Michigan on a charge of uttering, publishing forged instruments/documents but was acquitted on 2/18/65. On 11/25/64, the subject was arrested in Bay City, Michigan on a charge of armed robbery but was acquitted on 2/18/65. On 4/29/69, the subject was arrested in Toledo and later indicted for forgery, but the case was dismissed following his arrest by Kentucky authorities for willful murder. On 7/9/69, the subject was arrested for felonious assault in Flint, Michigan and had an unknown disposition.

INSTITUTIONAL ADJUSTMENT:

Mr. Spirko has spent approximately 21 years on Death Row. He has demonstrated an overall good institutional adjustment and has had one ticket for a Rule 19 which involved an attempted escape on October 30, 1983. Mr. Spirko was not prosecuted in an outside court for this violation and subsequently spent 15 days in disciplinary control for his actions. It appears that Mr. Spirko also enjoys a good rapport with correctional officers and other institutional staff.

COUNSEL'S ARGUMENTS FOR CLEMENCY:

In opening arguments Attorney Thomas Hill stated the John Spirko was "...innocent, unjustly convicted, and unjustly sentenced." His rationale for this statement was that the State of Ohio failed to disclose exculpatory evidence during the trial process. The Board was asked to grant Clemency on behalf of John Spirko, the victim's family, and for the citizens of Ohio in the form of a full pardon and/or in the form of a reprieve to allow the ongoing judicial process to be completed.

Much weight was also given to both the written and oral testimony presented by Mr. Steven Drizen, Legal Director for the Northwestern University School of Law's Center on Wrongful Convictions,

regarding the reliability of eyewitness testimony and false confessions. In his conclusion, Mr. Drizen urged the Board to grant John Spirko a stay of execution.

Additional information was also considered by the Board following the testimony of Bill Latham, Investigator for Wyandot County, as to why the Board should grant John Spirko clemency in this matter. Mr. Latham states the following summation to his statement: "A fundamental principle in criminal investigation that I have followed throughout my career is that a criminal confession only has value if it is corroborated by some other form of reliable evidence. Additionally, confessions from suspects should almost always reveal some information about the crime previously not known by the Investigator. In this case, to my knowledge, no substantive physical or forensic evidence ever linked Mr. Spirko to these crimes. What the State of Ohio presents in large part, as its only corroborative evidence is eyewitness testimony which is ultimately undermined by evidence that excludes Delaney Gibson from being involved in the crime."

Testimony from Mr. Cathy Bailey, the sister of John Spirko, via video-tape was viewed during the clemency hearing by Board members. She maintains that John Spirko was innocent, that they were together on the day that the Mottinger murder took place, and that it would have been impossible for her brother to have committed this crime.

Please note that countless numbers of letters and phone calls were received by the Parole Board as to why the death sentence should not be carried out against John Spirko.

MAJORITY OPINION: This section includes the views of the six (6) Board members who are providing an unfavorable recommendation for a commutation, pardon and/or a reprieve:

Counsel for Mr. Spirko asserted the following arguments in support of mitigation against the imposition of the death penalty in this case.

The State Proceeded at Trial with an Untrue and Incorrect Theory.

Following the argument presented on behalf of the State of Ohio at John G. Spirko's Clemency Hearing, the majority of the Board arrived at the following conclusion: The prosecution DID NOT knowingly advance a theory or argument or material evidence which it knew to be untrue in securing their conviction. In fact, just the opposite was found to be true. Sufficient investigatory information related to the possible exculpatory evidence of Delaney Gibson was indeed given to Mr. Spirko's trial counsel prior to his trial during the discovery process. The Board was provided with legal documents listing the items that were available during the discovery process to Spirko's trial counsel. Specifically included were the Bentley's address and interview and the fact that pictures were purported to have been taken by them showing Delaney Gibson during the weekend in question. Also referenced in the discovery document, was the interview that was completed with Margie Gibson that pointed to a possible alibi for Mr. Gibson. For whatever reason, Spirko's trial counsel **did not** choose to follow up on any of the "possible" exculpatory information.

No Physical or Forensic Evidence Linking John Spirko to the Crime.

The majority of the Board was not concerned about the lack of physical or forensic evidence connecting John Spirko to the murder of Betty Mottinger. These members of the Board recognize that it is not unusual for a jury or a judge to convict a defendant based solely on circumstantial evidence.

A Reprieve Should be Granted to Allow the Process Pending in Federal Court to be Completed in an Orderly Manner.

The State of Ohio points out in their application and testimony that this case has been examined by every level of both the state and federal courts for over two decades of judicial scrutiny. In affirming Spirko's conviction and sentence, these courts have all noted that Spirko's guilt was established beyond a reasonable doubt by **his** own description to investigators of details concerning the crime that only the murderer or someone present when the murder was committed would know. The majority of the Board also examined the "new" post 2004 claim and the fact that counsel for Mr. Spirko had not demonstrated by clear and convincing evidence that a reasonable fact-finder would not have found Spirko guilty or that a reasonable fact-finder would not have found Spirko eligible for the death sentence.

Assuming some aspects of the "new claims" presented by Mr. Spirko may be constructed to be favorable to him, it is NOT the type of outcome-altering evidence sufficient to warrant a new evidentiary hearing on the validity of his conviction; nor is it the type of "fundamental fairness" evidence sufficient to warrant ANY form of clemency. With regard to the alleged "new" claims of prosecutorial misconduct and fraudulent evidence, the majority of the Board finds that Mr. Spirko's attorneys has failed to demonstrate a reasonable probability that the jury would have returned a different verdict as to his guilt or as to his eligibility for a sentence of death.

Mr. Spirko's attorneys request a reprieve to allow the U.S. District Court for the Northern District of Ohio more time to decide a pending motion. However, the subject of the motion concerns allegations of misconduct at a prior hearing and that an investigator's lies to a reporter and others supports their contention that the prosecution proceeded to trial with a known false theory of the crime. **Nothing pending in the motion directly concerns the applicant's innocence or matter in the mitigation of his punishment.** Additionally, this motion is to be decided by Judge Carr on September 2, 2005 and the execution of John G. Spirko is not set to move forward until September 20, 2005.

The State's Trial Theory, Evidence, and Argument: Spirko and Gibson Together Committed the Mottinger Crime & The fact That Delaney Gibson Had Nothing Whatsoever To Do With The Mottinger Crime, And The State Knew It At The Time of the Spirko Trial.

Mr. Spirko's own testimony at trial did far more to advance the prosecution's theory that Spirko and Gibson together committed the crime than did any argument or evidence offered by the prosecutor. The majority of the Board believed that it was in Spirko's best interest to keep the name Delaney Gibson in the case. The prosecution's theory of "Spirko and Gibson did it together" was no more fraudulent than Mr. Spirko's defense strategy of "Gibson gave me the nonpublic details". It should also be noted that Mr. Gibson, when speaking to investigating authorities, never brought up his own alibi.

Spirko's Own Conclusive, Independently Corroborated Alibi Places Him In The Toledo Area At The Time of the Mottinger Abduction

The majority of the Board believed that Mr. Spirko's own alibi defense was thoroughly presented at trial. No credible testimony was presented at the clemency hearing to persuade the Board to substitute its own judgment contrary to the jury's assessment of credibility and determination of this claim.

The Principal State Witness At Trial and Lead Investigator, Postal Inspector Paul Hartman, Has Lied.

Thomas Strausbaugh, Retired Postal Inspector, came back to Ohio to testify at John Spirko's clemency hearing. Mr. Strausbaugh made it clear to the Board that he, in fact, was the "lead investigator" on this case. Furthermore, Strausbaugh made it known that he, too, was present during several of the interviews that took place with John Spirko. Not only was Strausbaugh the lead investigator, but he was also the team leader for the entire taskforce set up to solve this case. This testimony alone was enough for the majority of the Board to conclude the Paul Hartman was NOT the lead investigator as Spirko's counsel asked us to believe and that Paul Hartman's **recent** statements to the press and others should be given little weight in terms of John Spirko's conviction.

Additionally, the State recently deposed nine (9) witnesses in over 47 hours of testimony. All of those deposed individuals believed John Spirko is guilty. One of the individuals included Paul Hartman. There was absolutely zero new information that was learned in these depositions. Additionally, the State pointed out that Paul Hartman never told anyone his opinion prior to trial with regard to Delaney Gibson's involvement in this case. The State also referenced a 52-page presentation letter to the prosecutor that was completed by Thomas Strausbaugh and Paul Hartman prior to Spirko's trial. At no point in time was it EVER mentioned that they believed that Delaney Gibson was not involved.

The State Cannot Rely Exclusively On Spirko's Alleged Statements To Hartman To Support The Death Sentence.

Again, the majority of the Board does not believe that John Spirko was convicted on the sole basis of Paul Hartman's statements made to the jury. In fact, Spirko's own words got him convicted. Mr. Spirko, during his interviews with authorities, shared information about this crime that only someone who was present or involved in this crime would have known. In fact, the petitioner does not dispute the State's contention that these details could only be known to a participant in or an observer of the killing. Mr. Spirko's counsel now argues, unconvincingly, that all such details were in fact published in various newspapers prior to trial. Counsel's argument in this regard are of a complete contradiction to the findings of Chief Judge Carr in denying Mr. Spirko's federal habeas petition in the following particulars:

"At trial and in its return of writ, the State asserts that the petitioner told investigators details about the murder that were not public knowledge. These details included: 1) the location of the stab wounds in Mrs. Mottinger's body; 2) a description of Mrs. Mottinger's clothing; 3) knowledge that a

stone had been pried from a ring worn by Mrs. Mottinger; 4) a description of the ring; 5) the type of shroud and specific method used to enwrap Mrs. Mottinger's body after death; 6) a description of Mrs. Mottinger's purse into which the perpetrators placed the fruits of the Post Office robbery; and 7) a description of what was stolen in the robbery."

The State of Ohio also presented the Board with an 11-page letter dated January 13, 1983 in which John Spirko wrote to his girlfriend Luann Smith. This letter was also introduced at Spirko's trial. In this letter Spirko writes the following: *"Paul knows that I know something about this case, there are some things that I know that only the persons who did this shit know, there are no ifs and ands about that, he knows I know."*

The Jury's Decision to Impose The Death Sentence Was Made On A Fraudulent and Incomplete Trial Record.

The majority of the Board did not find that the jury's verdicts as to guilt and as to the imposition of the death sentence were made based upon fraudulent or incomplete trial record. State's counsel presented a **compelling videotape** [and written transcript] of Mr. Spirko's trial testimony. Mr. Spirko's own self-incriminating testimony alone gave the jury sufficient evidence to find him guilty. However, the jury had more reliable evidence of Mr. Spirko's guilt than just his testimony. The jury's verdict of guilt and recommendation for death sentence were neither fraudulently induced nor the result of prosecutorial misconduct and both decisions remain credible and reliable today. It should also be noted that John Spirko's current counsel objected to Judge Carr reviewing the video of John Spirko's trial testimony.

VICTIM/SURVIVOR STATEMENTS :

Much consideration was given to the written and oral statements made by the victim's own family, friends, and community members both before and after John Spirko's clemency hearing. Particular attention was given to an oral statement made to the Board by Ken Mottinger who is the adult son of Mrs. Betty Mottinger. Kent Mottinger stressed to the Board the emotional impact that this crime has had not only on himself, but his entire family. He pointed out that he had to seek out counseling approximately two years ago to deal with the aftermath of his mother's death. He further pointed out that "8,410 days ago," his mother was murdered. He pointed out that her death was 100% preventable had John Spirko not been released onto parole from a Kentucky prison for another murder he was convicted of in 1970. He urged the Board not to grant clemency and to consider the "disgusting delay of justice" that has taken place in this case.

Mrs. Mottinger's daughter, Kay Varley, attempted to read a statement to the Board, but was unable to complete this task due to the fact that she became very emotional and was unable to proceed. Her statement was then read by another family member. In her statement, Mrs. Varley made it clear as to the negative emotional impact that her mother's death has had on her life. She, too, would like to see John Spirko's death sentence carried out. Following the testimony presented on behalf of the victim/survivor Kay Varley she was asked directly by a Board member as to what her impressions were of her step-mother (Connie Mottinger) who was referenced continuously by the defense in this case. Her answer was that we should not believe anything Connie Mottinger has to say.

DISSENTING OPINION: This section includes the views of the three (3) Board members who are providing a favorable recommendation for a reprieve:

It is not unreasonable to ensure that every defense is pursued and fundamental fairness applied before a person is put to death.

The defense counsel of John G. Spirko presented extensive testimony and exhibits that the State's theory and evidence were untrue and incorrect and that the State knew they were untrue at the time they presented its case to the jury. Mr. Spirko's counsel claim that the prosecution knew prior to trial that co-defendant Delaney Gibson had an alibi substantiated by Postal Inspector Paul Hartman and that precluded his participation in the crime, and thus extinguishing any confidence in or reliability on the correctness of the jury's verdict. Mr. Hartman has now recently stated on at least three occasions to three different groups of people that based upon the evidence he had accumulated during his investigation, he had concluded prior to Mr. Spirko's trial that the State's theory and evidence were untrue and; furthermore, he had shared that information with the State. Additional questions have been raised about Mr. Hartman's truthfulness and misrepresentation of testimony under oath. Brought into question was if the State's theory that Mr. Spirko and Mr. Gibson committed this crime together was based on valid information. It was first determined that all the statements concerning the crime made to the "principle investigator", Mr. Hartman, could only have been known by the person that committed the crime or was present when the crime occurred. That appeared to have been the same conclusion of Judge James G. Carr, U.S. District Court for the Northern District of Ohio, when he set aside his earlier ruling in which he denied Mr. Spirko's habeas claims. The defense states, and the State now agrees, that many of the facts were in the newspaper. The source of the two remaining issues, (1) the description of the purse, and (2) the ring were also brought into question before the Parole Board.

If one reviews Mr. Spirko's direct and cross-examination testimony, you will find that it was purely an acknowledgment or confirmation of the many lies he had originally told investigators in order to raise the ante and allow him to negotiate a deal to avoid charges, and also allow his then girlfriend, LuAnn Smith, to be released as she was facing charges on an unrelated case. We are 100% sure that Mr. Spirko is a liar, but like Mark Lewis, only 70% sure he was there. The fact that Mr. Gibson was 100% identified as being present; and, the fact that Mr. Spirko and Mr. Gibson are friends and, therefore, did the crime together is more than "guilt by association" but rather "death by association". Now it is being called into question whether the State's team had information that led them to believe that it was possible that Mr. Gibson was not there. Judge Carr's review of this matter would be able to determine if this is of such material import that it undermines the evidence presented to the jury.

Chief Judge Carr has now characterized Mr. Spirko's motion as bona fide and genuine. He has ordered discovery be taken on these allegations. Judge Carr has indicated that he fully expects the Sixth Circuit to review these matters, and he has expressed his desire to give the Sixth Circuit as full and complete a record as possible upon which to base its review. Judge Carr has asked the State to join Mr. Spirko in a request to the Ohio Supreme Court to lift the execution date so that he would have time to resolve the matters pending before him in an orderly fashion; however, the State has declined to do so.

It should be noted that on August 25, 2005, the Ohio Supreme Court, by a 5-2 decision, refused to delay Mr. Spirko's September 20, 2005 execution date. What is particularly significant in this vote is that Chief Justice Thomas Moyer and Justice Paul Pfeifer supported a stay.

Additionally, four distinguished retired Federal Judges including a former Director of the FBI, William S. Session, the Honorable John J. Gibbons, the Honorable Timothy K. Lewis, and the Honorable Thomas P. Sullivan, filed an Amicus Curiae brief in favor of further review of Mr. Spirko's case. Further, Judge Gilman in his dissenting opinion, in which the Sixth Circuit Court of Appeals affirmed the denial of Mr. Spirko's habeas petition, expressed "considerable doubt to whether Mr. Spirko has been lawfully subjected to the death penalty in light of the State's alleged Brady violation". While the dissenting Parole Board Members recognize that the State prevailed in that 2-1 decision, we, nonetheless, give great weight to Judge Gilman's dissenting opinion.

If there is even the slightest possibility that errors were made in a conviction where the sentence is death, then that possibility is too great. Ohio is a State in which we cross our "t's" and dot our "i's" and do not rush to judgment. And while we know that twenty-three years of anguish by the victim's survivors; twenty-three years of court proceedings; much manpower exhausted on this case is not "rushing"; in the final analysis, after Judge Carr's careful and thorough review, we can rest assured that justice is done. In the case of James G. Spirko, there is reasonable ground to believe that if he were granted a reprieve, it would further the interest of justice and be consistent with the welfare and security of our society.

COMMUNITY ATTITUDE:

Charles Kennedy, Prosecuting Attorney for Van Wert County, became involved in the Spirko case at the post-conviction level. He provided the Board with written statements and oral testimony as to why he believed that there is no reason as to why John Spirko should not face the death penalty.

Judge Bumb of the Fulton County Court of Common Pleas waived his right to be notified of any of the Spirko proceedings. Roger Nagel, current Fulton County Prosecutor, stated he could offer no opinion in this case since he had no knowledge of the matter. However, he did attach a letter from William Swigart who was the previous Fulton County Prosecutor. In his letter to the Board dated November 24, 1994 Mr. Swigart pointed out that he was involved in the prosecution of the two Fulton County felonious assault cases in which John Spirko is currently serving time. Swigart stated, "No favorable consideration should be given to this dangerous criminal."

CONCLUSION:

The Board members who voted **UNFAVORABLE** acknowledge the following mitigating factors:

1. Mr. Spirko has demonstrated overall acceptable conduct and adjustment within a structured prison setting;

2. The testimony presented by Mr. Steven Drizen, Legal Director for the Northwestern University School of Law's Center on Wrongful Convictions regarded the reliability of eyewitness testimony and false confessions

After careful, extensive deliberation and discussion, the majority of the Board finds that the aforementioned mitigating factors do not outweigh the aggravating circumstances surrounding the death of Mrs. Betty Mottinger.

The Board members who voted **FAVORABLE** concluded that Mr. Spirko's attorneys offered credible arguments to support a need for further review by the court. Judge Carr has alluded to such a request for additional time. Therefore, the dissenting Ohio Parole Board Members respectfully recommend to the Governor of the State of Ohio, the Honorable Bob Taft, that he grants a Reprieve in this matter to accommodate Chief Judge James Carr's thorough review of recent claims.

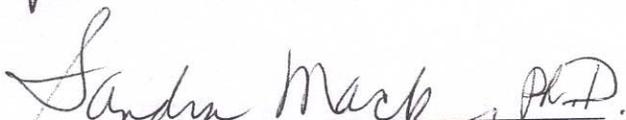
RECOMMENDATION:

The Board deliberated extensively upon the propriety of clemency in the form of commutation, pardon and in the form of reprieve. After careful, extensive deliberation and discussion, the majority of the Board finds that the aforementioned mitigating factors do not outweigh the non-impulsive aggravating circumstances of Mrs. Mottinger's prolonged victimization. A sufficient justifiable basis for mercy cannot be found. There is no manifest miscarriage of justice in the imposition of sentence. *With nine (9) members participating, the majority voted to provide an UNFAVORABLE recommendation for any form of executive clemency, to the Honorable Bob Taft, Governor of the State of Ohio.*

Ohio Parole Board Members
Voting **Favorable**



Jim Bedra

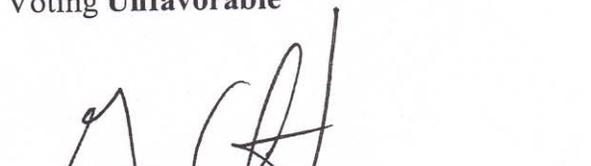


Sandra Mack, Ph.D.



Ellen Venters

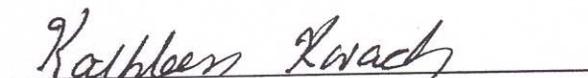
Ohio Parole Board Members
Voting **Unfavorable**



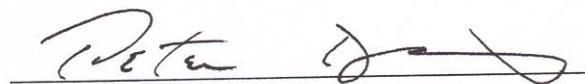
Gary Croft, Chairperson



Betty J. Mitchell



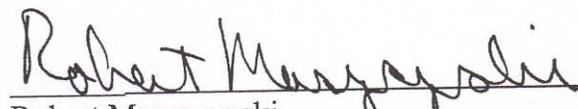
Kathleen Kovach



Peter Davis



Cynthia Mausser



Robert Maszczyński