

DATE TYPED: October 18, 2005
DATE PUBLISHED: October 19, 2005

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

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

Date of Meeting: October 12, 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 ATTORNY:

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 October 5, 2005, Parole Board Member Cynthia Mausser interviewed Mr. Spirko at the Mansfield Correctional Institution in the presence of Mr. Spirko's counsel Mr. Thomas Hill.

The clemency hearing was then conducted on October 12, 2005. Mr. Spirko was represented by Mr. Thomas Hill, Mr. Alvin Dunn and Ms. Ashley McDonald Delja of the Pillsbury, Winthrop, Shaw and Pittman law 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.

Arguments in opposition to clemency were advanced by Senior Deputy Attorney General Tim Pritchard, Assistant Attorney General Chuck Wille and retired Postal Inspector Thomas Strausbaugh. Survivors of the victim also spoke in opposition to clemency.

On October 13, 2005, the Board reconvened in executive session for deliberation and vote. The Board carefully discussed and reviewed the arguments advanced at the hearing, all written materials submitted by all parties, as well as the statements made by Mr. Spirko when interviewed. With nine (9) Board members participating, six (6) Board members voted to provide an UNFAVORABLE recommendation as to any form of clemency. Three (3) Board members voted to provide a FAVORABLE recommendation of a commutation of Mr. Spirko's sentence from DEATH to LIFE WITHOUT the POSSIBILITY of PAROLE 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.

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 evaluation (Age 10)	Larceny	Toledo, Ohio	Psychiatric
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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 (Age 10)	Larceny	Toledo, Ohio	Probation
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Details: The subject stole a carton of cigarettes from a grocery store.

3/26/58 (Age 11)	Conduct injurious to health and morals	Toledo, Ohio	Continued probation
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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 (Age 11)	Larceny	Toledo, Ohio	Probation
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Details: The Subject stole items from a local grocery store.

John G. Spirko
Clemency Report
Page 9 of 25
12/30/58
(Age 12)

Larceny

Toledo, Ohio

Pending placement

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

1/31/59
(Age 12)

Larceny

Toledo, Ohio

Continued probation

Details: The subject stole items from a local store.

4/14/60
(Age 13)

Conduct injurious to health and morals

Toledo, Ohio

Placed in child custody

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

8/18/60
(Age 14)

Probation Violation

Toledo, Ohio

Committed to BIS

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

2/21/62
(Age15)

Probation Violation

Toledo, Ohio

Restitution & parole

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

5/2/62
(Age 16)

Parole Violation

Toledo, Ohio

Continued on parole

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

7/19/62
(Age 16)

Parole Violations

Toledo, Ohio

Returned to BIS

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
<u>Details:</u> Unknown			
3/8/65 (Age 18)	Interstate Transport of a Stolen Vehicle	Detroit, MI	Found guilty, 4 years prison.
<u>Details:</u> Unknown			
7/3/69 (Age 24)	Willful Murder (Case # 1483)	Covington, KY	Found guilty, Life sentence

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 (Age 36)	DUI	Lucas County, Ohio	Pled no contest, found guilt.
<u>Details:</u> Unknown			
10/9/82 (Age 36)	Felonious Assault (Instant Offense)	Fulton County, Ohio	5-15 years in ODRC
10/27/82 (Age 36)	Felonious Assault (Instant Offense)	Fulton County, Ohio	5-15 years cc/w above
9/13/83 (Age 36)	Kidnapping/ Aggravated Murder with specifications (Instant Offense)	Van Wert County, Ohio	7-25 cs/w death, cs/w Fulton County cases.

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.

PROPOSERS TO CLEMENCY:

An Application for Executive Clemency was submitted by the applicant through counsel and on October 12, 2005, a hearing to consider the application was held. Mr. Thomas Hill and Mr. Alvin Dunn, counsel for Mr. Spirko, provided arguments in support of the granting of executive clemency for Mr. Spirko. Their arguments are summarized herein:

THE PAROLE BOARD SHOULD NOT DEFER TO THE JURY'S VERDICT OR TO THE VARIOUS STATE AND FEDERAL DECISIONS UPHOLDING THAT VERDICT.

Counsel argued that the Parole Board should not defer to the jury and all subsequent reviewing courts' decisions regarding the imposition and confirmation of Mr. Spirko's conviction and death sentence, as the record upon which Mr. Spirko was convicted is completely different today, and new evidence continues to be discovered that raises doubt as to Mr. Spirko's guilt and the propriety of the death sentence. Counsel contended that the Parole Board should conduct an independent analysis of the complete record as it exist today, and should render its own determination whether Mr. Spirko is guilty and whether the death penalty is appropriate. Counsel asserted that the state relied on uncorroborated oral statements of Mr. Spirko allegedly made to Postal Inspector Paul Hartman, and the Parole Board should determine whether those statements were made at all and under the circumstances the state contends, and whether they are sufficient to support a guilty verdict and death sentence. Counsel argued that the record as it exists today will reveal that Mr. Spirko is innocent and should receive a pardon, or minimally a review of the current record will cast serious doubt and will convince the Parole Board that a commutation is deserved. In addition, concerns regarding the propriety of Mr. Spirko's conviction and death sentence have been raised by a number of parties reviewing the record, including a former FBI Director, a sitting jurist, journalists, Wyandot county investigator Latham, a former colleague of Paul Hartman and the victim's niece.

FAR TOO MUCH DOUBT EXISTS TO PERMIT SPIRKO'S EXECUTION TO BE CARRIED OUT.

Counsel argued that the jury that convicted Mr. Spirko of the Aggravated Murder of Betty Jane Mottinger in 1984 was misled for a number of reasons. No physical or forensic evidence exists that links Mr. Spirko or his alleged co-defendant Delaney Gibson to the crime. Fingerprints recovered from the scene were not left by Spirko or Gibson and have never been identified. Keys that were recovered at the scene could not be linked to either Spirko or Gibson. In addition, counsel argued that requests to have the shroud that Mrs. Mottinger's body was wrapped in tested for DNA have been fought by the state. In addition, during all of his statements, Mr. Spirko was unable to provide investigators with any details regarding physical evidence of which they were not already aware.

Counsel asserted that the jury was further misled in that it has now been determined that the state's theory of the case was untrue. The state alleged at trial that Spirko and Gibson committed the crime together. Counsel argued that Postal Inspector Paul Hartman determined prior to trial and advised the prosecutor that Gibson was in North Carolina when the crime occurred. The prosecutor disregarded Hartman's opinion and proceeded with a theory of the case that he knew to be untrue, thereby prohibiting the jury from considering the Gibson alibi information. Counsel contended that it would be extraordinary for a prosecutor to proceed with a theory against the advice or opinion of its lead investigator.

In addition, counsel argued that Opal Siebert was mistaken in her identification of Gibson, which the state knew, but offered to the jury as they needed to link Gibson and Spirko together on the day of the crime to bolster their theory. Opal Siebert never made an in court identification of Gibson as the state never intended to prosecute him. Upon his arrest, Gibson was returned to Kentucky to face non-capital charges, another extraordinary occurrence, which permitted the state to bury the exculpatory evidence that existed regarding Gibson.

Regarding the various statements Spirko made to investigators, counsel argued that Spirko had a real motive and willingness to lie about his knowledge and or involvement in the kidnapping and aggravated murder of Betty Jane Mottinger. Spirko was attempting to prevent himself from being returned to Kentucky to face revocation of his parole, and was attempting to broker a deal for his girlfriend who attempted to help him escape from county jail. His statements are not confessions as they have been characterized by the state, but are consistent with his attempt to try to convince investigators that he knew who committed the crime. The statements he made to investigators never resulted in any discovery of evidence by the state that they did not already have which would or should have been expected. In addition, counsel argued that there is considerable doubt whether the information Spirko revealed was public knowledge, as many of the facts were reported by the media. Counsel called into question the interviewing tactics used by investigators, particularly Paul Hartman. The interviews were never tape recorded and Spirko was never asked to sign a statement. In addition, a review of interview notes

reveals that some notes were added and other details that were asserted at trial were omitted.

Counsel maintained that in addition to Spirko's motivation and willingness to lie about his knowledge and/or involvement in the kidnapping and aggravated murder of Betty Jane Mottinger, what we now know about Inspector Paul Hartman's credibility lends further discredit to those statements. Counsel pointed out that Hartman made no mention of the Gibson alibi in his presentation letter to the prosecutor, thereby perpetuating the untrue theory of the case. In addition, much of the exculpatory evidence was not present in the investigative file that independent counsel reviewed to determine what evidence should be given to the defense. Also, Paul Hartman has admitted that he intentionally misled a journalist and counsel for Spirko, and has recently lied and made misrepresentations under oath. Further, a letter was just recently received from fellow Postal Inspector Gregory Duerr who expressed concerns that Spirko would be executed based on the statements of Hartman. Mr. Duerr claims that Hartman engaged in behavior as a Postal Inspector that was "bordering on criminal". Counsel argued that Hartman's statements and testimony at Spirko's trial cannot now be relied upon to uphold his conviction and death sentence.

Counsel argued that the state has never offered a credible time line in which the crime could have occurred as they presented at trial. However, Spirko has asserted an alibi regarding his whereabouts the day the crime occurred, with much of his time accounted for and documented. In addition, the possibility exists that the crime was committed by others unknown and unrelated to Spirko. John Willier, an initial suspect and witness at trial revealed many years later that Spirko had nothing to do with the crime, and that his boss Dale Dingus was the real killer. The state has failed to thoroughly investigate this information. Counsel contended that both jail house snitches that testified at trial that Spirko admitted involvement in the crime to them have since stated that they testified falsely. Counsel argued that all of this information that is now known provides significant doubt as to the propriety of Spirko's conviction and death sentence.

Counsel further argued that at Spirko's initial clemency hearing, representatives of the Attorney General's office made numerous misstatements and misrepresentations to the Parole Board. Counsel asserted that the Attorney General's representatives relayed misleading information regarding Margie Gibson's initial interview with authorities, newspaper reports of the torn or cut curtain, the independent counsel review, the description of the victim's purse and the presence of a polygraph examiner during statements given by Spirko.

Counsel concluded that this case boils down to Spirko's statements made to Paul Hartman that are uncorroborated. All other evidence has been refuted, and given Paul Hartman's lack of credibility, serious doubt exists as to the reliability of Spirko's conviction and imposition of the death sentence. Counsel urged the Parole Board to recommend clemency to the Governor, given the record of Mr. Spirko's cases as it exits today.

In addition to arguments asserted by counsel, testimony was heard from the following supporters of clemency on behalf of Mr. Spirko:

Professor Steven Drizin of the Northwestern University School of Law's Center on Wrongful Convictions stated that after reviewing the record in Mr. Spirko's case, he is concerned that an innocent man may be executed. Professor Drizin expressed concern regarding the means by which the statements used to convict Mr. Spirko were obtained and documented. In addition, Mr. Spirko was unable to lead investigators to any physical evidence of which they were not already aware. He further indicated that the evolution of Mr. Spirko's statements was unnatural in that a confession is usually obtained within 4-6 hours of interviewing a suspect. Mr. Spirko's interviews occurred over a period of several months. Professor Drizin stated that clemency is appropriate in this case as the statements obtained from Mr. Spirko are unreliable and should not form the basis of a conviction and death sentence.

Investigator William Latham of the Wyandot County Prosecutor's office also expressed concern that Mr. Spirko may be executed for a crime he did not commit. Mr. Latham relayed information regarding an interview he conducted in 1997 with John Willier on an unrelated criminal matter. Mr. Latham stated that Willier revealed to him that his boss in 1982, Dale Dingus, admitted killing Mrs. Mottinger and that Mr. Spirko had nothing to do with the crime. Mr. Latham stated that he provided this information to federal authorities, and is unaware that any further investigation was conducted. Mr. Latham stated that he has concerns regarding the possibility that someone other than Spirko committed the crime.

Cathy Bailey, Mr. Spirko's sister stated that she is certain that her brother did not kidnap and murder Betty Jane Mottinger as he was with her at the time the crime occurred. Mrs. Bailey gave an accounting of Spirko's whereabouts beginning at 7:00 a.m. on August 9, 1982. Mrs. Bailey pleaded for clemency for her brother as she is convinced that he is not guilty of this crime.

In addition to the written application and the testimony offered at the hearing, an interview of Mr. Spirko was conducted on October 5, 2005 at the Mansfield Correctional Institution. Mr. Spirko stated that he is an innocent man and is requesting a full pardon or at minimum, the ability to stay alive long enough to prove his innocence. He stated that he would like the Parole Board to review the entire record and give him a fair review of the evidence. Mr. Spirko stated that he knows that he has no credibility, but Paul Hartman is also a liar. Mr. Spirko stated that all the information he gave to Paul Hartman was obtained from the media or was fed to him by Hartman. Mr. Spirko stated that he never thought the interviews he was participating in would result in the authorities considering him as a suspect, and he certainly never thought that the interviews would result in an indictment for Aggravated Murder. Mr. Spirko stated that he was simply trying to get his girlfriend out of trouble for helping him try to escape from county jail. Mr. Spirko stated that he has never been to Elgin, Ohio, other than to view the crime scene at trial and had never met the victim in this case. He maintained his alibi of being with his sister and visiting his Parole Officer in Toledo at the time the crime occurred.

When questioned as to why he asked the jury to sentence him to death, Mr. Spirko stated that he was angry that they found him guilty and was not going to beg for his life. When also questioned regarding the letter he wrote to his girlfriend wherein it appears that he confessed or admitted involvement in the crime, Mr. Spirko stated that it was not a confession or admission. However, Mr. Spirko stated that he does not know why he wrote the line regarding knowing information that only the perpetrator of the crime would know, and he has been asking himself that same question for 20 years. Mr. Spirko stated that he feels that the Attorney General's office is trying to protect the prosecutor and the postal inspector, but they all know that he is innocent.

OPPONENTS TO CLEMENCY:

Appearing on behalf of the state and in opposition to Mr. Spirko's application for clemency were Senior Deputy Attorney General Tim Pritchard, Assistant Attorney General Chuck Wille and Retired Postal Inspector Thomas Strausbaugh.

Mr. Pritchard addressed the claims made upon completion of the initial clemency hearing conducted on August 23, 2005, that he provided the Parole Board with misleading information. Mr. Pritchard played portions of a video tape of the previous hearing to demonstrate that he did not in fact make misleading statements. He argued that much of what the defense and media claimed were misstatements or misrepresentations were actually arguments regarding the facts of the case which were properly made in the clemency hearing. Mr. Pritchard further argued that the only new information presented at the instant clemency hearing were four (4) affidavits of jurors who decided Mr. Spirko's case. Those jurors indicated in their affidavits that had they known at trial the information recently reported on Mr. Spirko's case, they still would have found him guilty and recommended the death sentence.

Mr. Wille argued that Mr. Spirko's guilty verdict and death sentence should not be commuted as it was lawfully imposed, has withstood over 20 years of judicial review, and no new facts or compelling evidence have been presented that would warrant disregarding the jury verdict. Mr. Spirko's defense at trial was the claim that he was innocent because Delaney Gibson committed the crime and was the source of the information Mr. Spirko had regarding details of the crime. Twenty years later, Mr. Spirko is attempting to argue that he is innocent because Gibson is innocent due to the alibi information. Mr. Willie argued that Spirko cannot have it both ways. At trial, Mr. Spirko testified the way he did because he needed to explain his knowledge of the details of the crime to the jury. In that testimony, he implicated Willier, Seek and Gibson. However, the state has maintained that Willier and Seek had nothing to do with the crime.

Mr. Wille further argued that over the years, myths have developed regarding the case that are contrary to the facts and evidence. Mr. Wille summarized these myths as follows:

THE DETAILS

Mr. Wille argued that Spirko's claims that he received all knowledge regarding the details of the crime from the media and investigators is not supported by the evidence. Mr. Wille argued that Spirko's letter to his girlfriend is clearly an admission that he committed the crime. The explanation that it was written as a means to assure his girlfriend that he would be successful in obtaining probation for her is a recent version drafted by his attorneys, and contrary to the statement given to Parole Board Member Mausser during his interview.

Mr. Wille further argued that the results of the review of the investigative file by independent counsel prior to trial were that Spirko's knowledge of the crime came from his direct participation in the crime or his presence at the scene of the crime while it was committed or a close association with the actual perpetrators.

Mr. Wille asserted that two details, the description of the purse and the missing stone from the victim's ring were facts that even the authors of the amicus brief filed on Spirko's behalf conceded could not be found in the media. Spirko revealed facts that were not published because he knew he had to reveal information to investigators that was not reported in order to obtain what he wanted from them. At trial, Spirko admitted stating that the purse was cream colored with brown trim. In regards to other details, Mr. Wille argued that it was reported that the victim was wearing a light or white blouse, however, Spirko told investigators it was yellow. Spirko also knew that the body was wrapped "end to end" which was not reported. Finally, Mr. Willie asserted that Spirko's counsel conceded at 2002 oral arguments in the Sixth Circuit Court of Appeals that Spirko spoke to someone who knew details of the crime.

DELANEY GIBSON

Mr. Wille stated that much has been made regarding Delaney Gibson and the alibi information. Mr. Wille argued that Gibson was not the key to the state's case and that Spirko's trial counsel was aware of the information regarding the presence of Gibson in North Carolina the weekend prior to the crime, including the interview notes of Juan Flores, Gibson's employer at the time. Mr. Wille stated that the parties stipulated that Gibson was with the Bentleys the weekend prior to the crime and that pictures were taken, and the reviewing courts have determined that Spirko's counsel knew of this information. Spirko's defense counsel had their own investigators who intentionally did not investigate the Gibson alibi as it contradicted Spirko's defense that Gibson committed the crime. Judge Carr's recent ruling indicated that the failure to present Gibson's alibi information to the jury was a strategic decision made by the defense.

PAUL HARTMAN

Mr. Wille argued that at trial, there were no arguments made regarding the validity of the notes Postal Inspector Paul Hartman made of the various interviews with Spirko. In addition, Judge Carr found that Hartman's recent statements are not evidence that he lied

at trial. Regarding the recent letter received by Postal Inspector Gregory Duerr, Mr. Wille argued that Mr. Duerr has no first hand knowledge of the investigation of the crime and his only knowledge comes from newspaper accounts. Mr. Wille indicated that Mr. Duer worked for Paul Hartman for one year and thought Hartman was out to get him, however, he admitted never making a formal complaint against Hartman. Mr. Wille argued that Mr. Duerr's recent allegations are also not evidence that Hartman lied at Spirko's trial in 1984.

THE OTHER SUSPECTS

Mr. Wille asserted that none of the information presented regarding other suspects is new information, and that no credible evidence has ever been presented linking anyone other than Spirko to the crime. Mr. Wille stated that at trial, Spirko testified that John Willier was one of the perpetrators of the crime along with Gibson and Seek. Spirko now argues that Willier has information that Dale Dingus committed the murder. Mr. Wille contended that this is not credible new information.

DNA

Mr. Wille stated that Spirko's case was reviewed to determine if it met the criteria for DNA testing, and it was determined that it did not. The case was reviewed to determine if there was biological matter that could identify the perpetrator and exculpate Spirko. Mr. Wille stated that any lack of Spirko's DNA on the shroud that the victim was wrapped in does not establish that he did not commit the crime and would not in and of itself exonerate Spirko. Mr. Wille argued that in all likelihood, any blood on the shroud belongs to the victim.

KEYS

Mr. Wille asserted that there was no indication during the course of the investigation that the keys found at the post office from where the victim was kidnapped were connected to the perpetrators.

FINGERPRINTS

Mr. Wille argued that the lack of Spirko's fingerprints at the post office is not indicative of his innocence and it is not an unusual occurrence for unidentified prints to be obtained from a public place.

Mr. Wille concluded by reiterating the state's position that clemency be denied to Spirko due to the fact that the conviction and death sentence were lawfully imposed, have withstood significant judicial review and that no new evidence has ever been presented to disturb the verdict and sentence.

Retired Postal Inspector Thomas Strausbaugh stated that he was the lead investigator for the Postal Service regarding this offense and is offended by many of the claims asserted

regarding that investigation. Mr. Strausbaugh stated that he always considered Paul Hartman an excellent investigator. Mr. Strausbaugh stated that Paul Hartman was the recipient of 4 or 5 merit increases. Regarding the recent allegations made by Gregory Duerr, Mr. Strausbaugh stated that Mr. Duerr was never part of the investigation of this crime. Regarding the keys found at the post office, Mr. Strausbaugh stated that it was not unusual for items to be left at the post office, as it was a public place. The keys could have been left there by anyone and were old and rusty and determined to not be of any probative value as it was unlikely that they would have worked. Mr. Strausbaugh stated that other suspects were fully investigated which was presented at trial. Finally, Mr. Strausbaugh stated that the assertion that he or any of the investigators fed information to Spirko is without merit as it would have served no useful purpose. Mr. Spirko contacted the authorities indicating that he had information about the crime. Mr. Strausbaugh stated that they treated him as a witness and accepted him into the Witness Protection Program. Mr. Strausbaugh stated that suggesting information to Spirko would have tainted him as a witness and would have prevented him from gaining acceptance into the Witness Protection Program through the U.S. Marshall's Service. Mr. Strausbaugh stated that he remains convinced of Spirko's guilt regarding the kidnapping and murder of Betty Jane Mottinger.

Appearing on behalf of the victim Betty Jane Mottinger were family members Jane Varley, John Varley and John Schroeder. They requested that the Parole Board consider the testimony provided by other family members at the previous clemency hearing who were unable to return for the rehearing. They are all convinced that Mr. Spirko is guilty of the murder of their loved one, but have also believed that others were involved in the crime. They relayed to the Parole Board the extreme harmful effect this crime, the trial and 20 subsequent years of judicial review have taken on their family, as well as the intense media coverage. They are firmly in opposition to the granting of clemency for Mr. Spirko and would like to see the death sentence carried out.

COMMUNITY ATTITUDE:

Charles Kennedy, Prosecuting Attorney for Van Wert County previously provided the Parole Board with a statement that his office is opposed to clemency regarding Mr. Spirko as the conviction by the jury and imposition of the death penalty were lawfully imposed.

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 Parole Board dated November 24, 1994, Mr. Swigart indicated that he was involved in the prosecution of the two Fulton County Felonious Assault cases of which Mr. Spirko was convicted. Swigart stated, "No favorable consideration should be given to this dangerous criminal."

CONCLUSION:

MAJORITY OPINION:

A majority of the Parole Board Members participating in the clemency hearing of John Spirko on October 12, 2005 voted to make an UNFAVORABLE recommendation to the governor regarding the exercise of executive clemency. This recommendation is based on the following:

- The majority does not accept the argument that the state proceeded at trial with an untrue theory and intentionally withheld exculpatory evidence regarding the presence of co-defendant Gibson in North Carolina the weekend prior to the crime. The record clearly indicates that Spirko's trial counsel was provided with sufficient information regarding the potential presence of alibi evidence relating to co-defendant Gibson. The reviewing courts have consistently held, and again as recently as last month, that the decision to not present the Gibson alibi information to the jury was a strategic decision made by the defense which benefited the defense theory at trial as much as the prosecution theory. Mr. Spirko explained his knowledge of the details of the crime by testifying that he received the information from Gibson who he claimed actually committed the crime. Had the defense presented alibi evidence regarding Gibson, they would have been left without an explanation for the jury of Spirko's knowledge of the details. To now assert that the information was intentionally withheld and proves his innocence is without merit.
- The majority also rejects the argument that all the details of the crime Mr. Spirko revealed to investigators were obtained from media reports or were fed to him by investigators. It is clear that at a minimum, details Mr. Spirko provided regarding the victim's purse and the missing stone from a ring the victim was wearing were not published in the media. The majority also finds persuasive the findings of Chief Judge Carr in denying Spirko's federal habeas petition wherein he lists seven (7) details that the state asserts were non-public information. Judge Carr then states: "The petitioner does not dispute the state's contention that these details could only be known to a participant in or observer of the killing." Mr. Spirko's current assertions are completely contradictory to Judge Carr's findings.
- The information presented regarding the credibility of Postal Inspector Paul Hartman was not persuasive enough to convince the majority that any falsehoods he may have recently uttered tend to prove that he fed information to Mr. Spirko, added false information to his interview notes or lied during his testimony at Mr. Spirko's trial in 1984. Therefore, the majority cannot conclude that the jury's verdict was based on fraudulent evidence as it relates to Paul Hartman.
- The jury considered Mr. Spirko's alibi evidence, the lack of physical evidence and the procurement and content of the various statements Mr. Spirko made to

investigators. The majority finds that the jury was in the best position to assess credibility regarding this testimony. No persuasive information was presented to convince the majority of the Parole Board that it should substitute its own judgment contrary to that of the jury.

- The jury's verdict as to guilt and its recommendation of the death sentence at Mr. Spirko's trial were not made based on a fraudulent or incomplete trial record. Mr. Spirko's own self incriminating trial testimony alone gave the jury sufficient evidence to convict him. Mr. Spirko's current claims of new evidence do not rise to the level of outcome-altering evidence in regards to the jury verdict. In fact, four jurors have indicated that they would not have changed their verdict and recommendation of the death sentence if they knew the information recently reported regarding Mr. Spirko's case. In addition, Mr. Spirko's claims of new evidence do not rise to the level of "fundamental fairness" evidence such that warrant any form of clemency, as was present in and formed the basis of this Board's previous recommendation for a commutation in the Jerome Campbell case.
- After a careful review of all testimony and written information provided to the Board, a majority of the Board finds that Mr. Spirko's arguments in favor of clemency are not persuasive and are insufficient to make a recommendation of any form of clemency to the Governor. The majority is not convinced that any manifest injustice occurred in Mr. Spirko's case. The aggravating factors surrounding this crime clearly establish that the death penalty was a proper sentence and should not be disturbed.

DISSENTING OPINION:

This section includes the views of the three (3) Ohio Parole Board members who are providing a favorable recommendation for a commutation of sentence from death to a sentence of life without the possibility of parole. This decision was reached after careful review, consideration and discussion to all testimony, all available facts pertaining to the crime, and voluminous supplemental materials submitted by State Attorney Generals Office, Van Wert County Prosecutor and counsel for Mr. Spirko.

The dissenting members reached their conclusion on no single factor alone, but rather on a cumulative body of compelling factors, when considered in totality, results in a favorable recommendation for clemency. The most significant of those compelling factors will be highlighted in this report, while keeping in mind that Spirko's counsel provided extensive mitigating factors to which we determined to have merit in varying degrees.

- Dissenting members of the Board are perplexed by the Gibson/Spirko trial theory. The State presented its case to the jury on facts that both men committed the crime. We acknowledge that Gibson's inclusion into the fact pattern of the crime was equally beneficial to both the State and in Spirko's defense. In fact, his trial lawyers maximized Gibson's role in their defense of Spirko suggesting that he obtained details of the crime directly from Gibson. However, when looking at the case today using a more complete body of information than was available at the time of trial, the accuracy of the Gibson/Spirko theory ultimately causes residual doubt as to its legitimacy.
- The State claims that all exculpatory evidence was provided to Spirko's defense. Yet, it appears that some crucial evidence was not made available. For example, none of the 50 plus photos collected by the postal inspector that showed Gibson in North Carolina on the weekend of August 7-8, 1982, depicting him with a full beard were found in the investigative files. Those photos are significant as they contrast with Opal Seibert's eyewitness testimony that the man she identified as Gibson on August 9th was clean shaven. Eventually the photos were made available years after the trial. Also not found in the investigative file was an auto parts receipt evidencing a purchase made by Gibson on August 7, 1982. Additionally, the evidence resulting in the recovery of keys found at the scene of the Elgin post office and the investigators failed efforts to link those keys to either Spirko or Gibson was not found in the investigative file. Related to these omissions, the argument has been made that this body of evidence still would have had no value in Spirko's defense because the defense trial strategy had an interest in implicating Gibson in the crime. That may have been true at the time of trial; however, today we cannot ignore the possibility that Gibson was 600 miles away when the offense was committed. This possibility causes residual doubt in the minds of the dissenting members of the board.
- The State's indictment of Gibson on capital charges was a clear indication of their intent to fully prosecute him on those charges. However, the lack of action by the state during the 20 plus intervening years between indictment and dismissal in 2004, raise concerns in the minds of dissenting board members. Gibson was available to the state for prosecution while serving time on convictions in Kentucky. The State now contends Gibson's prosecution was not pursued as he was serving a substantial sentence for Murder in Kentucky. Furthermore, cost and diminishing evidence due to the passage of time were also a consideration. Additionally, of significant consideration was the subsequent death of witness Opal Siebert. We would point out that Opal Siebert's death did not occur until some 10 years after the Spirko trial, allowing ample time to bring Gibson to trial. Furthermore, standard prosecutorial practices consider capital charges more urgent than non-capital charges. Apparently this was not the case regarding Gibson. If the State concluded that both

men were culpable in the Mottinger crime, then simply put, both men should have been fully prosecuted in the furtherance of justice and with respect to fundamental fairness and parity. Spirko's counsel suggests the state has never had intentions to prosecute Gibson. We do not fully accept that assertion. However, it is factual that Gibson remained under indictment on capital charges for over 20 years and was never brought to trial. We are only left to speculate as to why he was not fully prosecuted. The State's failure to do so gives pause when considering counsels assertions; thus, causing residual doubt. Also, at the time of trial, by the prosecutor forwarding arguments that Gibson was 100% identified as being at the post office and that Spirko was 70% identified, and because they were best friends, then they must have committed the crime together, once again causing residual doubt.

- Postal inspector Paul Hartman's credibility has been brought into question by Spirko and his counsel. They have criticized his investigative conduct and intentions. They suggest that much of his testimony cannot be relied upon because he lied in many instances. They claim that Hartman misrepresented investigative findings and withheld significant facts from the prosecutor. The dissenting members of the board cannot judge the numerous claims of alleged misconduct against Hartman. We do, however, question his recent conducts which give reason to more fully consider the claims made by Spirko's counsel and others. It is well documented that Hartman on three recent separate occasions to three separate groups of people, stated he never believed that Gibson was involved in the Mottinger crime. At the clemency hearing held on October 12, 2005, the Parole Board heard this assertion directly from Hartman in his taped interview with a reporter from the Cleveland Plain Dealer. Inexplicably, Hartman later claimed, during sworn deposition, that he made that statement to mislead people. Again, we are left to wonder to what end were his actions intended. His apparent deceitful conduct at this critical juncture in the process is reprehensible and further amplifies the claims made by Spirko's counsel suggesting a history of Hartman misconduct. Again, we cannot judge the total claim with certainty, yet his recent actions give some legitimacy to their assertions. We are once again wrought by residual doubt.
- Spirko and his counsel suggest a plausible alibi that includes a timetable which, if true, would have made it impossible for him to have committed the Mottinger crime. In contrast, the State contends that only a portion of the alibi could be corroborated and, therefore, Spirko's involvement could not be ruled out by his alibi. What the Board is left with are two verifiable facts to Spirko's alibi. One, he did see his parole officer sometime on August 9, 1982, at an unspecified time. And two, Spirko did make a phone call on August 9, 1982, at 2:14 p.m. to a Kentucky prison. We are then left to consider the testimony of Spirko's sister, Cathy Carpenter. In her video recorded testimony, which was presented at the clemency hearing on

October 12, 2005, Ms. Carpenter provided a plausible alibi with a timetable of Spirko's day on August 9, 1982. Without going into details about her testimony, we can say that she appeared sincere and credible. If she is to be believed, then Spirko could not have been two hours away at the Elgin post office at 8:30 a.m. on August 9, 1982. In contrast, the State suggests that the alibi is flawed and nothing more than an effort by Spirko and his sister to cover up his whereabouts that morning. Yet the state offers no timetable of events. We cannot truly know which scenario is accurate, but without a timetable offered by the state and with a plausible timetable offered by Spirko with at least some corroboration, we are again left with residual doubt in this matter.

- The dissenting Board Members have considered assertions made by Spirko's counsel suggesting that others may have been involved in the kidnapping and murder of Mrs. Mottinger. Exhibit 58 of their October 7, 2005 application is of particular interest as it furthers that assertion. Contained therein is a sworn affidavit from William Latham who has been an investigator for the Wyandot County Prosecutors office since 1990. In his sworn affidavit he relates that in a 1997 interview with John Willier during an investigation on an unrelated case, Willier spontaneously shared information about alleged perpetrators in the Mottinger crime. He told Latham that he wanted to tell him some things that he had never told investigators for either the defense or the prosecution regarding the Mottinger crime. He provided names of the alleged offenders and location of the murder scene. Mr. Latham attests that he forwarded the information to the FBI and was; subsequently, referred to U.S. Postal Service. He was then contacted by postal investigator, Paul Hartman at which time they had an extensive conversation about Willier's information. However, there was no follow up interview with Willier by either federal or postal investigators. Mr. Latham's statement appears to be highly credible evidenced by his sworn affidavits, his testimony at both clemency hearings and by his video taped statement. This lack of action causes great concern to the dissenting members of the Board considering that there is no statutory limitation in bringing a charge in a capital murder case; especially, where it has been confirmed that more than one perpetrator participated in the crime. It is inexplicable as to why the 1997 lead was not pursued. The State offered that Willier's assertions were already investigated in 1982, which resulted in clearing those he implicated. However, it appears that Willier in his 1997 interview with Mr. Latham had offered new detailed information. Without an investigation of Willier's 1997 interview, we are again left to suspect that others, possibly unrelated to Spirko, played a role in the Mottinger crime. Mr. Latham's statement about the Willier interview lends itself to residual doubt about Spirko's guilt.

- The State has not presented any forensic evidence of any kind to associate Spirko to the Mottinger kidnapping and murder. While latent fingerprints were found at the Elgin post office, they were not the prints of either Spirko or his alleged co-defendant Gibson. Counsel for Spirko states that to date, those prints have not been processed for analytic comparison to determine possible hits matching potential suspect. We are left with a case based on circumstantial evidence and questionable eyewitness testimony. Again, this elevates the cause for residual doubt.

CONCLUSION:

DISSENTING OPINION:

When imposing the death penalty the State should proceed cautiously. It is not unreasonable to ensure that every defense is pursued and fundamental fairness applied before a person is put to death. In our effort to proceed cautiously, we find that the evidence presented by Spirko's counsel is sufficiently persuasive to warrant a favorable recommendation for clemency. The cumulative factors cited in our dissenting report are the foundation of our recommendation; however, they are not all inclusive of additional factors that cause doubt, many of which have been offered by Mr. Spirko's counsel in their application for clemency.

We do not stand alone in our doubt. Four distinguished retired Federal Judges including a former Director of the FBI, William S. Sessions, the Honorable John J. Gibbons, the Honorable Timothy K. Lewis, and the Honorable Thomas P. Sullivan, have offered their opinions suggesting consideration for Spirko. 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 considerable weight to Judge Gilman's dissenting opinion. Additionally, numerous letters, e-mails and petitions have been received, to a degree unprecedented in any other Ohio death penalty case, calling for restraint in executing Mr. Spirko.

Our recommendation for clemency is in no way an effort to exonerate Mr. Spirko as we are not totally convinced of his innocence. Nor should our recommendation for clemency be construed as a diminishing of the horrific crime against Mrs. Mottinger and her family. They have provided the board with heartbreaking testimony and it is clear they continue to suffer. Their lives will never be the same having been forever affected by Mrs. Mottinger's senseless murder.

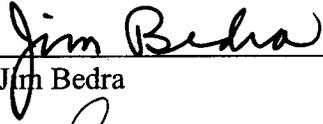
Finally, there is too much residual doubt to execute John Spirko. The integrity of the death penalty process depends on the most stringent test of due process. We are left to wonder if that threshold has been met in Spirko's case. Therefore, the three dissenting members of the Ohio Parole Board vote to recommend to the Honorable Bob Taft, Governor of the State of Ohio, a FAVORABLE grant of clemency. Justice is best served in this matter by commuting John Spirko's sentence from death to life without the possibility of parole.

RECOMMENDATION:

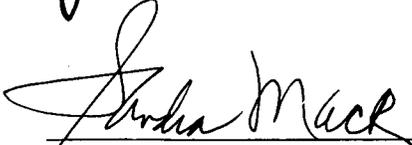
The Ohio Parole Board, nine (9) members participating, by a vote of six (6) to three (3), recommends to the Honorable Bob Taft, Governor of the State of Ohio, that Executive Clemency be denied in the case of John Spirko #171-433.

John G. Spirko
Clemency Report

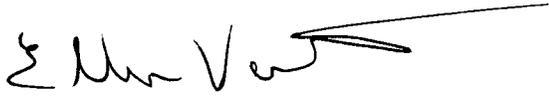
Ohio Parole Board Members
Voting **Favorable**



Jim Bedra



Sandra Mack, Ph.D.



Ellen Venters

Ohio Parole Board Members
Voting **Unfavorable**



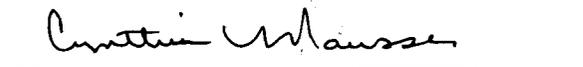
Gary Croft, Chairperson



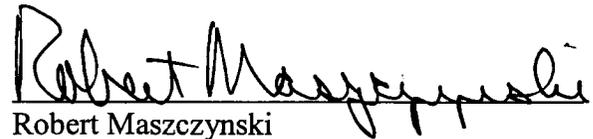
Betty J. Mitchell



Peter Davis



Cynthia Mausser



Robert Maszczyński



Kathleen Kovach