

**PUBLIC**

**AI Index: AMR 51/210/2005**

**22 December 2005**

**Further Information on UA 221/05 (AMR 51/133/2005, 24 August 2005) and follow-ups (AMR 51/144/2005, 09 September 2005; AMR 51/173/2005, 1 November 2005; AMR 51/182/2005, 10 November 2005) – Death Penalty**

**USA (Ohio)**

**John Spirko (m)**

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John Spirko is scheduled to be executed on 19 January. He was sentenced to death in 1984 for the kidnap and murder of Betty Jane Mottinger in August 1982. He denies carrying out the murder and no physical or forensic evidence links him to the crime. Concerns about Spirko's guilt have been raised by the courts considering his case and by members of the Ohio Parole Board considering a clemency petition.

Spirko had two execution dates postponed by Governor Taft in 2005, each time only days before he was due to be put to death. The first time was in September at the request of the Ohio Parole Board, which wanted more time to consider a clemency petition; the second was in November, to allow time for DNA testing of evidence from the crime scene, after the Board had voted against a clemency recommendation.

The DNA testing is now in progress, and Spirko's attorneys are attempting to get more information on this. The state has now found fingerprint evidence from the crime scene, which it had lost, and Spirko's attorneys are urging the authorities to check these prints against the national database of criminal suspects' fingerprints.

Prosecutors at John Spirko's trial are alleged to have knowingly presented a false case against him, linking him to the crime through the involvement of a co-defendant, Delaney Gibson, who they had evidence to suggest was 500 miles away at the time of the crime. Delaney Gibson was charged but never tried in the crime, and all charges against him were dropped in May 2004. One of the original state investigators was recently reported to have stated that he told prosecutors at trial that he believed Delaney Gibson did not take part in the murder. Spirko's attorneys have argued that this casts doubt on John Spirko's conviction and warrants reopening of the case. An appeal to review the case in US District Court was denied in October 2005. The US Court of Appeals for the Sixth Circuit is now considering a further appeal.

The Ohio Parole Board voted 6-3 against making a clemency recommendation to the Governor in October 2005. The three dissenting members reportedly concluded that there was too much doubt to allow the execution to go ahead, expressing concerns about these issues.

Writing a dissent to the majority opinion in May 2004 which dismissed John Spirko's appeal for an evidentiary hearing on claims that the prosecution at trial knowingly presented false evidence, federal judge John Gilman said that "the case against Spirko was far from overwhelming" and left him with "considerable doubt as to whether he has been lawfully subjected to the death penalty." He noted, "a striking fact about the record in this case is the complete absence of any forensic evidence linking Spirko to the crime," and said that the state's case against John Spirko was built on "three shaky pillars" with "a foundation of sand".

Former federal judge William Sessions, who has been active in an initiative to promote procedural safeguards in death penalty cases, two retired federal judges and a former federal prosecutor have reportedly raised concerns about John Spirko's conviction and death sentence.

Betty Jane Mottinger, the postmistress of Elgin, a small town in Ohio, was kidnapped and murdered in August 1982. John Spirko contacted police two months later, offering to trade information about the murder

in exchange for help with charges he was facing in another, unrelated case. He reportedly gave a series of differing accounts of the murder, according to one of which his best friend and former cellmate, Delaney Gibson, had admitted to him that he had carried out the murder. Prosecutors at trial argued that Gibson and Spirko committed the crime together, saying that the information John Spirko had provided could only be known by the murderer, and relying on the testimony of an eyewitness who testified that she was "100 percent sure" that she had seen Delaney Gibson outside the post office the morning Mottinger disappeared. The prosecution allegedly had evidence that Gibson was actually 500 miles away at the time.

## **BACKGROUND INFORMATION**

Amnesty International opposes all executions, regardless of issues of guilt or innocence. This is a punishment that is an affront to human dignity and a part of a culture of violence rather than a solution to it. It has not been shown to deter crime more effectively than other punishment, and denies the possibility of rehabilitation and reconciliation. In the US the capital justice system is marked by arbitrariness, discrimination and error, and the US authorities have frequently violated international standards in their pursuit of judicial killing of prisoners including people whose guilt remained in doubt.

## **RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language.**

- expressing concern that John Spirko is scheduled to be executed in Ohio on 19 January;
- expressing sympathy for the family and friends of Betty Jane Mottinger, explaining that you are not seeking to excuse the manner of her death or to minimize the suffering caused;
- expressing concern at reports that prosecutors are alleged to have presented a false case against John Spirko at trial;
- noting the dissenting opinions of the courts and the three members of the Ohio Parole Board, relating to doubts about John Spirko's culpability, and the lack of forensic evidence linking Spirko to the crime;
- calling on Governor Taft to grant clemency to John Spirko.

## **APPEALS TO:**

Governor Bob Taft  
30th Floor  
77 South High Street  
Columbus, Ohio 43215-6117  
USA

**Fax:** +1 614 466 9354

**Email:** (via website) <http://governor.ohio.gov/contactinfopage.asp>  
[Governor.Taft@das.state.oh.us](mailto:Governor.Taft@das.state.oh.us)

**Salutation:** Dear Governor

**COPIES TO:** diplomatic representatives of the USA accredited to your country.

**PLEASE SEND APPEALS IMMEDIATELY.** All appeals must arrive by 19 January 2006.