

JUSTICE DENIED

Justice: Denied
Begins
Its Seventh Year!



The Magazine for the
Wrongly Convicted

ROLL CALL OF INNOCENT PEOPLE EXONERATED OR PARDONED IN 2004

Laurence Adams	MA	30 yrs.	Louis Greco ³	MA	27 yrs.	Ken Marsh	CA	21 yrs.	Rick Tabish ⁹	NV	4
Timothy Bailey	WA	1	Harold Hall	CA	19	Ryan Matthews	LA	7	Angel Toro	MA	21
Dennis Brown	LA	19	Ahmed Hannan	MI	3	Brandon Moon	TX	17	Frederick Weichel	MA	23
Robert Coney	TX	40	Clarence Harrison	GA	17	Sandy Murphy ⁶	NV	3	Arthur Whitfield	VA	22
Kenneth Conley ¹	MA	0	John Harvey	TX	12	James B. Parker	NC	14	Ernest Willis	TX	17
Stephan Cowans	MA	6	Crystal Holliday ⁴	PA	0	Anthony Powell	MA	13	David Wong	NY	18
Michael Cristini	MI	13	Darryl Hunt	NC	18	Jesse Reynolds	IN	3	See Roll Call notes on p. 7		
Susan Cummings	WA	20	Juan Johnson	IL	11	Adam Riojas	CA	13	51 PEOPLE WRONGLY IMPRISONED 656 YEARS		
Wilton Dedge	FL	22	David Jones	CA	12	Juvenile Rogers ⁷	MD	0			
Elizabeth Ehlert	IL	13	Karim Koubriti	MI	3	Lafonso Rollins	IL	11	 <p>Louis Greco 1968 Convicted of murder in MA and sentenced to death. 1972 Death sentence commuted to life in prison. 1995 Died at 78 in prison hospital of colon cancer and heart disease. 2000 Dept. of Justice discloses documents proving the FBI knew at the time of their trial, that Greco and three co-defendants were innocent. 2004 Conviction posthumously vacated in September. See page 24</p>		
Abdel-Ilah Elmaroudi	MI	3	Barry Laughman	PA	16	Peter Rose	CA	10			
Alan Gell	NC	9	Chief Leschi ⁵	WA	2	Sylvester Smith	NC	20			
Thomas Goldstein	CA	24	Nathaniel Lewis	OH	5	Gordon Steidl	IL	17			
Bruce Goodman	UT	19	Antonino Lyons	FL	3	John Stoll	CA	20			
Cordez Graham ²	PA	0	Steven Manning	MO	14	Reshenda Strickland ⁸	WA	1			

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Convictions Tossed For Two Innocent "Terrorists" In Detroit!

Study Reveals False Confessions Fuel Wrongful Convictions!

Tulia Travesty's Tom Coleman Convicted of Perjury!



120 miles from the crime scene - John Spirko was convicted of murder and sentenced to death by what a federal judge described as a case built on a "foundation of sand" and a "complete absence" of physical evidence. After 20 years on Ohio's death row he is running out of appeals... and time.
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On August 9, 1982 at about 8:30 am, the Elgin, Ohio Post Office was robbed of stamps and money orders, and Postmaster Betty Jane Mottinger was abducted.

Elgin, Ohio was a rural town with a population of approximately 50 people. U.S. Postal Inspectors took charge of the case that afternoon and set up a Task Force to solve the crime. The physical evidence recovered, a few fingerprints lifted from the safe and surrounding area, gave investigators few leads.

The postal inspectors and local Van Wert County police interviewed two "eyewitnesses" several times. One of the witnesses was Opal Seibert, a 65 year-old woman who wore heavy rimmed glasses. She said she was drinking coffee on her back porch that morning and that her husband was with her. She stated that she saw Betty drive up in her car at about 8:20 am and park near her house, just as she did each morning. Seibert said Betty got out of her car and started across the street, but then came back to the car to retrieve something. She then walked across the road to the post office, unlocked the door, entered the building, and then closed the door and locked it.

Seibert said that at exactly 8:30 am she saw a man drive up to the post office. He got out of the car and looked all around. Seibert stated that she had never seen the man before. She said she watched as he stood between the car and the open door with his arm on the car's roof. She was certain there were no other cars or people in front of the post office. The postal inspectors interviewed Seibert several times and had her describe this man to a sketch artist. She gave the initial description of a lean, clean-shaven man, 6'-4", who had heavy, dark eyebrows and dark hair that was combed straight back. He was wearing a blue long-sleeved shirt with the sleeves rolled up, and he wore glasses. However, in subsequent interviews her descriptions of the man's height went from 6'-4", to 6'-2", then 6'-0", and finally, she said he was 5'-8".

Seibert also said she had a clear view of everything in front of the post office. The only traffic was a semi-truck that came from the north at about 8:35 am. Seibert said that as soon as the truck passed, the man who had been standing by his car drove off at a high rate of speed heading south across the railroad tracks.

The other eyewitness was Mark Lewis, a truck driver for the Elgin Grain Company, located behind the post office. When

Ohio's largest circulation newspaper, Cleveland's *The Plain Dealer*, published an editorial on February 3, 2005 concerning John Spirko's case. Titled *Lying Isn't A Capital Offense*, that editorial stated in part:

The 201 wretches who currently populate Ohio's death row are, without a doubt, troubled people. ... In at least one case, the state is prepared to kill a man even though a compelling body of evidence indicates that he literally lied his way into a death sentence.

In a three-part series last week, *Plain Dealer* reporter Bob Paynter meticulously detailed the web of lies, deception and stunningly inane logic that Spirko used to convince law-enforcement authorities that he was an eyewitness to a 1982 murder in Van Wert County.

The evidence, however, is overwhelming that Spirko had absolutely nothing to do with the murder of Betty Jane Mottinger, who ran a post office in tiny Elgin, Ohio. But using the impenetrable logic of a classic bumbling criminal, Spirko told authorities he was present at her murder, hoping to parlay a web of lies into a deal that would lessen the penalty he and a girlfriend faced in a unrelated assault case.

There was no physical evidence that he was present at Mottinger's brutal slaying, and his stories - contradictory and constantly changing - made no more sense then than they do now.

Yet, with the help of a zealous postal inspector investigating the case of a lifetime, Spirko managed to get himself not only convicted, but sentenced to die. A number of courts have upheld the conviction, and Spirko is down to his final appeal with the U.S. Supreme Court.

Nor is he the only one involved in this case who is guilty of shading the truth. The Van Wert County prosecutors office failed to share with defense counsel compelling evidence that would have seriously damaged the case against Spirko.

Failing a Supreme Court stay, Gov. Bob Taft should weigh the evidence and decide whether an execution would be an injustice.

Case Based On "Foundation Of Sand" Enough To Send Man To Death Row - The John Spirko Story

By John Spirko

Edited by Sheila Howard, JD Editor

he returned to the grain elevator on the afternoon of August 9th, Lewis was told of Mottinger's disappearance and gave a statement. Lewis recalled he left that morning for Toledo at about 8:20 am and noticed a man standing between the car and the open door with his arm on the roof of the car. Lewis said the man wore dark glasses, weighed about 240 pounds, had a potbelly, wore a short sleeve green shirt with orange stripes, and had sandy brown or reddish hair and a light mustache. Lewis said he drove by this guy heading north and only had a quick look at him -- no more then two or three seconds. Lewis could not remember if he stopped his truck to get cigarettes. However, he did say that Betty Jane Mottinger crossed the street in front of him that morning.

It is worth noting that the only similar aspect of Seibert and Lewis' description of the stranger is that he wore glasses. Both witnesses later underwent hypnosis in an effort to gain more insight into what they saw that morning.

The Task Force's investigation involved scores of state and federal law enforcement officers, who conducted thousands of interviews spanning 38 states. Six weeks after the crime, Betty Jane Mottinger's skeletal remains were found in a Hancock County bean field wrapped in a paint-smear drop cloth. She was fully clothed and had been stabbed more than a dozen times.

The postal inspectors intensified their manhunt after Betty's remains were found. Lewis was shown a photo array and picked out a photo of a man he said looked like the stranger. This man had been paroled from a federal prison for robbing post offices in the general area of Elgin. After a nationwide manhunt, the man was located in Texas. He was later cleared of involvement in Mottinger's murder by a girlfriend's alibi.

Ruse To Spring LuAnn Smith From Jail

On July 9, 1982, I was paroled after serving 13 years of a life sentence for a murder in Kentucky. I went to live with my sister and her husband in Swanton, Ohio.

On October 9, 1982, I was arrested for a parole violation related to a barroom brawl with three bikers. The next day I went looking for the bikers. One of the biker women said I assaulted her and tried to make her tell me where the bikers lived. I was arrested and charged with a parole violation. I was to be sent back to Kentucky to serve more time.

While in jail, I talked my girlfriend LuAnn Smith into bringing me in several hacksaw blades so I could escape. She did. I then tried to escape, but in the process, I injured two deputies. I was caught before I ever made it out of the jail.

I was then sent to the Lucas County jail in Toledo and charged with offenses related to the escape attempt. I was transferred to a high security area with just four cells and cameras watching me 24 hours a day. I learned that my girlfriend had been arrested and charged with aiding my escape. I was sick that I had gotten LuAnn into serious trouble, so I began to think of a way to help her.

There was a television in the block, and one day I saw a news story about the Betty Jane Mottinger case. The FBI and postal inspectors were looking for leads concerning her murder. I then had the idea that I could claim I had information about the case, and work out a deal for LuAnn. My problem was I didn't know anything about the case. So I got all the articles I could find about the Mottinger case and I watched the TV for new developments in the investigation. I then had my brother-in-law call the FBI to tell them I wanted to discuss the Mottinger case. Several days later, a postal inspector came to see me. He asked what information I had. I told him I was not going to say anything until I had a deal for all charges to be dropped against LuAnn. He said he could not do that, but that he would pass the information on to his boss.

About a week later, I was taken to Fulton County to answer to the new charges against me. After the hearing, I was taken into a room with seven or eight law enforcement officers, including FBI agents and postal inspectors.

In May 2004, Judge Ronald Lee Gilman on the Federal Sixth Circuit Court of Appeals voted to grant John Spirko an evidentiary hearing, writing that the case against him was built on a "foundation of sand," and that the "complete absence" of physical evidence raised "considerable doubt" that he had been lawfully convicted. Judge Gilman was outvoted 2 to 1.

The head of the Task Force was there and he asked me what information I had. I said I was not going to say anything until I had a deal for my girlfriend's release, and I also included myself in the deal. He said he couldn't make a deal, but if my information was good, he would talk to the people who could. He then asked me what I knew. I told him I saw a mailbag with money orders and change in it while I was at a party with some bikers, and they told me they robbed a post office in Elgin. He asked me if I would meet with a member of his team for additional information while he tried to get a deal for me. I said I would.

In late November, while I was in the Lucas County Jail, I first met with a US Postal Inspector Paul Hartman. During the course of a month or so, I gave him 12 to 15 different stories that I had made up. I made up names like Rooster, the Dope Man, Dirty Dan, Spooky, and Swartz weaving stories involving conspiracies and drugs. I did not sign anything, nor were any of the interviews recorded or witnessed by anyone, although Hartman took notes of what I said. I finally entered into a plea agreement. I agreed to plead guilty to two state charges of assault in return for two sentences of 5-15 years in prison, to be served in a federal prison. I believed my girlfriend would be given probation for her actions in the failed escape. In December 1982, I was transferred to the federal penitentiary in Leavenworth, Kansas.

When Hartman tried to verify my many stories, he found I had been not been truthful. He interviewed me again and told me he was aware of my lies, but I just fed him new lies. When he came to see me again in January 1983, he threw a mug shot of Delaney Gibson on the table. He said he knew Gibson was the person I was protecting with my lies. He said an eyewitness had made a positive ID of Gibson, placing him in front of the Elgin Post Office the morning Mottinger disappeared. I told him he was nuts to think I was protecting Gibson because I had not seen him in years.

Hartman told me that LuAnn was due for sentencing in March, and unless he had something to take to his boss her deal was off and she would go to prison. I was very upset about that, since all my lies up to that point had been to try to help LuAnn. Thus, I told him, "Yes, I saw Gibson and he told me about this crime." I then gave yet another false story about what I knew.

John Spirko continued on age 22

John Spirko continued from page 3

In March 1983, LuAnn was sentenced to 1-to-5 years in prison; I was shocked and very upset about that. I called the postal inspectors and they came to see me. However, this time they brought a tape recorder with them. I told them if they would let LuAnn out of prison, I would tell them what they wanted. They said they didn't know if they could do that, so I told them to turn off the tape recorder. After the recorder was off, I stated if they couldn't help LuAnn, I couldn't help them. They asked me about Gibson. I told them I didn't know anything about Gibson because I had not seen him in a few years and they left.

In September of 1983, I was flown to the state prison in Columbus, Ohio. The next day I was served with a state indictment for aggravated murder and kidnapping. Gibson was indicted as my co-defendant for the same charges. The State's theory was that Delaney Gibson and I robbed the Elgin Post Office, abducted Betty Jane Mottinger, then killed her and disposed of her body.

July 1984 Trial

Gibson was at large after having escaped from a jail in Kentucky, so I went to trial alone in July 1984. The state's case tying me to the crime was my statements to Hartman, and two jailhouse snitches that were given sweetheart deals by the prosecution to testify that I confessed to them about Mottinger's murder. We found out later that one snitch had 85 years knocked off his sentence for testifying to those lies, while the other one had a deal with the prosecutor to be given an early release from prison for his perjurious testimony. Their favorable treatment was the quid pro quo for telling the lies the prosecutor wanted the jury to hear. Both of those snitches later directly or indirectly recanted their testimony.

The State's two eyewitnesses, Seibert and Lewis, testified about what I described earlier in this article, with two exceptions: Seibert swore she was 100% certain the man she saw was Gibson, who she described as clean-shaven; Lewis testified he was "70% sure" he saw me! To substantiate Seibert's identification of Gibson, the prosecution put on evidence that he was in Elgin on the morning of August 9, 1982.

From their opening statement to their closing argument, the prosecution's case was that Gibson and I kidnapped and murdered Betty Jane Mottinger together. Yet there was no physical evidence that identified either Gibson or me as perpetrators of the crime. There was no physical evidence, at either the post office or the site where Mottinger was found, that even sug-

Men Do The Darnedest Things For Love!

In 1956, 18 year-old Robert Williams was convicted in California of first-degree murder and sentenced to life in prison. Williams' conviction was based on his confession to the crime. Two years later, Williams was convicted of a second murder that he had also confessed to committing. He was sentenced to a second life term.

However Williams protested his innocence before his first trial and conviction, claiming he only confessed to impress his girlfriend who he thought was interested in marrying someone else. Williams also protested his innocence before his second trial and conviction, claiming he only confessed to prove it was possible to be convicted based on a false confession.

After 19 years imprisonment, Williams was released on parole in 1975. Three years later a judge ordered Williams' release from parole when he was able to prove through police records that he was in custody at the time of the first murder he was convicted of committing, and that he was imprisoned at the time the second murder was committed.

Williams served 19 in prison and 3 years on parole because of what in hindsight was a foolish act for love.

Source: *In Spite of Innocence*, Hugo Adam Bedau, Michael Radelet, and C. Putnam, Northeastern Univ. Press, 1992, p. 354.

gested Gibson or I were involved. Though the victim was stabbed multiple times, searches of my belongings turned up no blood or even trace evidence. Furthermore, none of the fingerprints found in the post office matched either Gibson's or mine.

Before the trial, my defense filed 26 motions for discovery. In spite of this, the prosecution and U.S. postal inspectors denied us access to many of the investigation records. Without the potentially exculpatory evidence in those files, I was forced to go to trial and make a defense for myself.

At my trial I tried to show that I could not possibly have committed the crime because on the morning of August 9, 1982, I was 120 miles away sitting in my parole officer's office in Swanton. Since it was impossible for me to be in two places at the same time that are several hours distant from each other by car, I was obviously innocent.

My parole officer testified that I was in his office on August 9, 1982, and that the interview took anywhere from 45 minutes to an hour and a half. Although he said he could not remember what time of day it was, he did remember that my sister was with me. He recalled he had asked her a couple of questions, that he did not notice anything unusual about her, and she seemed coherent and alert. You'll see shortly why her alert state of mind when he saw her is important.

My sister testified that she was with me at my parole officer's office, and we were there at 9:30 am. She also said there was a slip in the door from the Swanton Post Office when we returned home, informing her of packages at the post office. The packages were my personal belongings that were mailed from the prison in Eddyville, Kentucky. I went to the post office and picked up both packages myself, I signed a slip acknowledging receipt of the packages, and the post office clerk also signed the slip that indicated the date - August 9, 1982, and time - 2:17pm. I took the packages to my sister's house and discovered that my television set was not in either package, so I called the prison and spoke with a mailroom staff person. The phone bill shows that call was made from my sister's home to the prison the afternoon of August 9th.

I then took my sister to the doctor. She received a shot of a very powerful narcotic to counter severe migraines attributed to a car accident several years earlier. She had received the same treatment many times, and the doctor testified that he would not give the injection to her unless she had someone to drive her home. My sister testified that I drove her home after she was given the shot. She was not "alert" after this appointment, and would not have appeared "alert" to anyone, including my parole officer.

An old girlfriend of mine called me after we returned to my sister's house, and we spoke for around 20 minutes. The phone records again verify the call, and that it was on the afternoon of August 9th.

However, the jury chose to believe the prosecution story of what happened and the obvious lies I had told investigators to try and help LuAnn: I was convicted on Aug. 22, 1984, and sentenced to die.

Exculpatory Evidence Turned Over After My Trial

After years of fighting, my attorneys finally gained access to the U.S. Postal investigation documents related to Betty Jane Mottinger's disappearance and death. It was a "limited review" and done "under seal," which meant that we could not discuss anything in the records - and I was not allowed to see them. In those records we found the State and postal inspectors hid evidence from my defense and they knew Gibson was not involved in the crime. On the morning of August 9, 1982, Gibson was in Asheville, North Carolina working on a farm over 500 miles from Elgin, Ohio.

My prosecutors also knew that Gibson was not clean-shaven on August 9th, but that he had a full beard. The state concealed 58 photographs from my defense and the jury that Gibson's

Spirko Concocted Murder Confession in 1969!

"Thirteen years earlier, while in custody in Flint, Mich., after another barroom brawl, a 23-year-old Spirko embarrassed a veteran homicide detective by concocting a detailed, convincing and altogether phony confession to a series of coed murders then filling the local newspapers. Spirko simply wanted to get out of his jail cell for a few hours of coffee and conversation, he later admitted. Further investigation showed that he had nothing to do with what came to be known as "The Michigan Murders.""

A Cold-Blooded Liar, by Bob Paynter, *The Plain Dealer*, Cleveland, January 23, 2005

wife had turned over to investigators before my trial. Among them were photos taken of Gibson in North Carolina on August 8th, with a full beard. His presence in North Carolina on August 9th was confirmed by eyewitnesses, including his boss.

The withheld exculpatory evidence proves that my prosecutors presented a case to the jury they knew was false. The lynchpin of their case was that Gibson was the man seen outside the Elgin Post Office on the morning of August 9, 1982 - when they knew all the while he was over 500 miles away in a different state!

There was also a confession by another man who admitted to the crime. That was never turned over to us. Also withheld from me were witness interviews of other people who were in front of the post office at 8:20 to 8:25 am. One witness in fact had a brown and white Monte Carlo that was parked in front of the post office at 8:25 am that morning. She, and several other people, were at the post office that morning waiting to pick up their mail. They even leaned against the woman's car waiting for the post office to open.

Another witness was driving his daughter to the doctor's office that morning and saw Mark Lewis park his truck. The witness claimed that Lewis got out of the truck and waved at him that morning. The witness also said that as he drove by the post office he saw Betty Jane Mottinger put her key in the door, and there were no cars in front of the post office.

Investigators made a sketch of the crime scene. However I did not see that sketch until after I had been on death row for 12 years. After comparing that sketch with the testimony of Seibert and Lewis, there is no way - in fact it is impossible - for either of those two alleged eyewitnesses to have seen *anything*. Their testimony was false. Based on the information provided my attorneys after my trial, there is reason to believe the prosecutors knew it was false at the time it was given in the courtroom.

The state has argued that I knew details of the crime that were not public knowledge, and that only a person involved in the crime could know those details. They argue that none of these details, the victim's purse, her clothing, the way in which the body had been wrapped, was ever made public. That is a bold-faced lie. The fact of the matter is that every so-called detail I told investigators was published in newspapers in the days after the crime. We included several newspaper clippings of those articles as exhibits to our briefs. We proved these details had been made public, yet the courts still choose to ignore the facts. I continue to be denied relief by every court and they have denied the truth for twenty years.

Delaney Gibson Was Never Prosecuted

In the 23 years since Betty Jane Mottinger disappeared and I was found murdered, the State of Ohio has never made any effort to put Delaney Gibson on trial. Why? Because they know he is innocent, and they know he can prove his innocence! Although he had been indicted in the Mottinger case, Ohio never placed a detainer against him during the 17 years he spent in a Kentucky prison for two unrelated murders. Consequently, Gibson was paroled in 1998, returned to prison

John Spirko continued on next page

John Spirko continued from page 22

on a parole violation, and paroled again. He was repeatedly released from prison even though there was an outstanding warrant for his arrest and he was under indictment in Ohio for capital murder with death penalty specifications.

There is something very wrong when Delaney Gibson was freed from prison while under indictment for the same capital crime that I was convicted and sentenced to death for. However, as I've explained the reason is simple: the State knew Gibson was innocent of any involvement in Betty Jane Mottinger's abduction and murder. Yet the prosecution argued to my jury that Gibson and I committed this crime together. My prosecutors did nothing less than present false evidence and a false case to my jury, knowing it was false at the time of my trial.

May 2004 Appeals Court Denial

On May 17, 2004, a three-judge panel in the Federal Sixth Circuit Court of Appeals voted 2-1 to deny my habeas petition. (*Spirko v. Mitchell*, 368 F.3d 603 (6th Cir. 05/17/2004))

On the same day, the Van Wert County prosecutor dropped all charges against Delaney Gibson. He is now a free man.

The Sixth Circuit's majority decision ruling was based on consideration of only one of my appeal issues: my claim that my due process rights were violated by the prosecution's failure to disclose exculpatory information, information that could have altered the jury's decision to convict me – which is known as a Brady violation. The Court did not address my claim of actual innocence, or my claims that I was denied due process by the prosecution's willful presentation of a false case that was based on false evidence.

The two appeals court judges who voted to deny my petition cited my knowledge of facts of the crime as a reason why I was guilty, and thus they didn't even consider my other issues. They ignored that we proved those "facts" were published in newspapers and were available to anyone who read a newspaper in the days after the crime occurred. Concerned people all over Ohio, in cafes, taverns, court-houses, and other public places, undoubtedly discussed the same facts in the days after the crime that I knew. Our proof conclusively undermined the State's unsupported claim that those facts were not publicly available.

Judge Ronald Lee Gilman was the dissenter to the Sixth Circuit's decision. He wrote in part,

"John Spirko lied." This incontestable conclusion is well-documented in the majority opinion's recitation of the many inconsistent stories that Spirko told to Inspector Hartman. *But lying is not a capital offense.* And while the record leaves no doubt about Spirko's falsifications, it leaves me with considerable doubt as to whether he has been lawfully subjected to the death penalty in light of the state's alleged Brady violation. *Spirko v. Mitchell*, 368 F.3d 603 (6th Cir. 05/17/2004); 2004.C06.0000143 ¶67 <<http://www.versuslaw.com>> (emphasis added)

The case against Spirko is far from overwhelming. It is substantially based upon three evidentiary pillars: (1) an eyewitness who was "100% sure" that Spirko's best friend, Delaney Gibson, was at the Elgin, Ohio post office when the postmistress was abducted, (2) another eyewitness who was "70% sure" that Spirko was also at the scene, and (3) Spirko's knowledge of factual details concerning the murder that were not known to the general public. *Each of these pillars, however, has a foundation of sand.* The "certain" identification of a clean-shaven Gibson is cast in grave doubt both by photographs and receipts in the possession of the state, but not disclosed to the defense, indicating that Gibson had a full beard immediately before the date of the abduction, and by statements

made to investigators by several people who said that Gibson had a full beard during the entire summer of 1982. As for Spirko's presence at the scene, a confidence level of only 70% is far from "beyond a reasonable doubt." Finally, *Spirko's knowledge could have come from second-hand repetition rather than first-hand participation.* *Spirko, Id.* at ¶68 (emphasis added).

A striking fact about the record in this case is the complete absence of any forensic evidence linking Spirko to the crime. There are no fingerprints, footprints, fibers, blood, or stolen items to bolster the state's case. Nor is there any written or recorded confession of guilt by Spirko or incriminating testimony by a witness who turned state's evidence. (Although two of Spirko's former cellmates testified at trial that Spirko admitted to them that he murdered Mottinger, *those cellmates have subsequently recanted their testimony*, either directly or indirectly.) We are thus left with nothing other than the three shaky pillars described above. *Spirko, Id.* at ¶69 (emphasis added).

For all of the reasons set forth above, this court should remand the case to the district court for an evidentiary hearing on Spirko's Brady claim. Under pre-AEDPA law, which we must follow in this case, a habeas petitioner is entitled to an evidentiary hearing if "for any reason it appears that the state trier of fact did not afford the habeas applicant a full and fair fact hearing." (citation omitted) *Spirko points out that, despite his requests, he has not received an evidentiary hearing on his Brady claim in any state or federal court.* An evidentiary hearing would allow the district court to determine whether the state in fact violated Spirko's constitutional rights by not turning over to the defense the photos and receipts in its possession. Accordingly, this court should vacate the judgment of the district court and remand the case for an evidentiary hearing on Spirko's Brady claim. *Spirko, Id.* at ¶96 (emphasis added).

Judge Gilman's dissent was well reasoned. It indicated an understanding of the underlying issues in my case that support my innocence, and the State's denial of due process and a fair trial to me.

As I write this, a petition to the U.S. Supreme Court is my last hope to have a court review my case. Filed in January 2005, I am requesting that the Court grant a new trial, or alternatively, an evidentiary hearing in the U.S. District Court. The Court could make its decision about whether it will accept my case for review by late March 2005.

If the Supreme Court denies my petition, then Ohio Governor Bob Taft will have to grant clemency to avert my execution for a crime I did not commit, and a crime that my prosecutors know I did not commit.

The one or more people who murdered Betty Jane Mottinger have not been brought to justice. Yet as I write this I am on track to be killed by the State of Ohio for that crime. If that happens I will not be the only person to suffer an injustice, but so will Betty Jane Mottinger - because my execution will ensure that her killer or killers will never be held responsible for murdering her.

Information about my case is on my website: www.johnspirko.com

I can be written at:
John Spirko A-171433
Mansfield Correctional Institution
P.O. Box 788
Mansfield, Ohio 44901

My outside contact is Tracy Smothers. Her email is: justiceforjohn@aol.com



Wrongful Conviction Lawyer In Hot Water For Criticizing Judges "who don't know what they are doing."

Attorney Jerome Kennedy is Newfoundland's representative for Canada's Association in Defence of the Wrongly Convicted. Kennedy was a key person in the exoneration of Gregory Parsons and Ronald Dalton. Parsons' 1994 conviction of murdering his mother was quashed in 1998 when DNA evidence proved his innocence. Dalton's conviction of murdering his wife was quashed in 1998 when forensic medical evidence established that she had not been strangled, but had died from choking on a piece of food. He was acquitted after a retrial in 2000.

In July 2003 Kennedy gave a speech prior to the convening of an inquiry into the reasons for the wrongful conviction in Newfoundland of three people - Parsons, Dalton, and Randy Druken. Kennedy expressed the opinion that every aspect of the legal system should come under scrutiny during the inquiry to determine what caused the convictions - including the role of the judges and jurors involved. He said that was important because one reason for wrongful convictions are trial judges "who don't know what they are doing." Kennedy identified that "Part of this is as a result of political appointments." He also said, "Part of it is as a result of intentional or unintentional biases -- in other words, the forming of a belief in guilt before all the evidence is in."

Kennedy's speech was reported in the media. Chief Justice Derek Green of the trial division of the Newfoundland Supreme Court responded by filing a complaint with the Law Society (Bar Association) of Newfoundland, claiming that Kennedy's comments could reduce public confidence in the judiciary. Justice Green wrote,

"These imputations strike directly at the heart of the judicial oath. If true, they would be grounds for removal from office of every judge affected by the allegations. My concern with Mr. Kennedy's comments is that they appear to be a generalized condemnation of the judges of the Supreme Court, reflecting on their general competence as well as suggesting not only inherent and systemic bias, but also deliberate -- i.e. intentional -- partiality and close-mindedness."

Several lawyers in Canada have defended Kennedy, pointing out that some of his statements were matters of fact, such as the appointment of judges, and others were expressions of opinion protected by freedom of speech.

The Law Society's disciplinary hearing to determine if Kennedy's comments constitute professional misconduct was held in January 2005. A decision is expected within several months. If the decision goes against Kennedy, his maximum penalty would be disbarment, however commentators have said he would more likely be given a reprimand or period of suspension.

Source:

Newfoundland lawyer accused of misconduct, by Kirk Makin, *Globe and Mail, Toronto*, January 15, 2005, pg.A12. Free speech in the public interest, Michelle Mann, *CBC News Viewpoint*, January 24, 2005.



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