

Before the
GOVERNOR AND THE BOARD OF EXECUTIVE CLEMENCY

IN RE: FREEDOM AND RESTORATION OF FULL RIGHTS OF CITIZENSHIP
FOR JOSEPH ROBERT SPAZIANO

APPLICATION FOR EXECUTIVE CLEMENCY
AND IMMEDIATE RELEASE FROM CUSTODY

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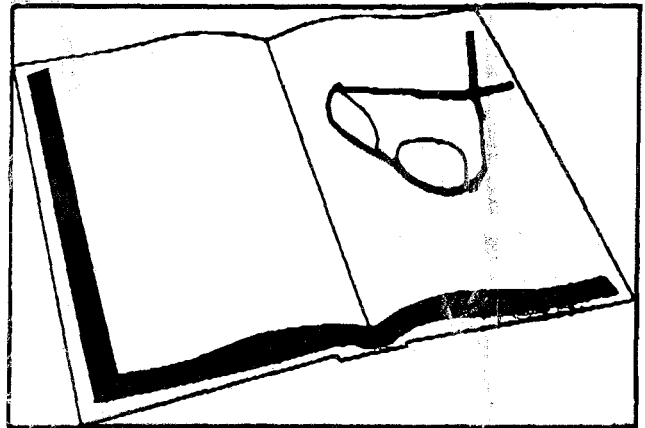
This is
a go to
1) Jeff
2) Kelly

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MESSAGE

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DRAFT

June 25, 1995

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weight or stop smoking. The ideas that occur during the trance seem remarkably firm and vivid.

Nonetheless, nothing that happened to Tony Dilisio on the state's couch — and thus none of what he parroted later, under oath — is what rational people mean by "testimony." Some other descriptions come to mind: suggestion, prompting, manipulation. But Dilisio, who has grown into a man of straight talk, now prefers the blunt term "brainwashing." Seems as good a word as any.

On the strength of this hocus-pocus — and on the basis of no other evidence whatsoever — that state of Florida is about to electrocute a human being. You and I will provide the electricity and the authority by which it is administered. We will kill Joe Spaziano without any rational belief that he is guilty of murder.

Governor Chiles can prevent that by withdrawing the death warrant and seeking a vote of clemency from the Florida Cabinet. If he does not, the switch that kills Joe Spaziano on June 27 will at the same instant deprive us all of our innocence.

Mr. Spaziano's conviction and sentence are bottomed on the testimony of a sixteen year old young man, who was vulnerable to chemical dependency and to police manipulation and "brainwashing," and who at the time hated Mr. Spaziano, and who was granted immunity before he "remembered" a bizarre and inconsistent tale about Mr. Spaziano allegedly taking him to a body and making inculpatory statements about ^{Laura Herbert's} ~~the victim's~~ death. The witness is Anthony Dilisio, and all agree that without his testimony there was no case against Mr. Spaziano. In an extraordinary act of Christian faith and courage, Mr. Dilisio, through his counsel, has joined in this petition for clemency for Mr. Spaziano.

As the state argued to the jury in closing, if they did not believe Mr. Dilisio, they had to acquit Mr. Spaziano. This closing argument proved to be prophetic. After considerable deliberation, the jury expressed that it was having trouble reaching a verdict. The jury was then told by the court that it was their duty to try to agree upon a verdict. They tried again

unbelievability of the hypnotically refreshed testimony of Anthony Dilisio. **Indeed, the Florida Supreme Court has held that hypnotically refreshed evidence is so unreliable as to be inadmissible in Florida, but this decision came too late for Mr. Spaziano. Stokes v. State, 548 So. 2d 188 (Fla. 1989); Bundy v. Dugger, 850 F.2d 1402 (11th Cir. 1987).**

Mr. Dilisio's crucial testimony was that Mr. Spaziano took him to a dump where a dead human body was located, indicated to Mr. Dilisio that he, Spaziano, had killed the person, and described how he did so. Mr. Dilisio also testified about his recollection of the condition of the body. Further, Mr. Dilisio testified at trial that photographs of the location where Laura Harberts' body was found looked like the area where he had allegedly gone with Mr. Spaziano.

It was a powerful yarn, and it was the alleged trip to where the body was located which convicted Mr. Spaziano and which resulted in the judge's disregard of the jury recommendation of life. The problem is that *it wasn't true*. On this point Mr. Dilisio is clear and emphatic. There was a trip to a dump, but it was with the police — not with Joe Spaziano.

In June 1995, Anthony Dilisio, ^{NO ITALICS} the State's only meaningful witness against Joseph Spaziano at the original trial, agreed to join in this petition for clemency. At the time of the trial, Dilisio was a confused kid who was manipulated by the police. He has matured into a responsible adult, now working to the best of his ability to save the life of the man the police used him to frame two decades ago.

We are united in ^{their} ~~our~~ belief that *no* person — not even an Outlaw — ought to be killed on the basis of the testimony of the 1975 and 1975 Anthony Dilisio. Mr. Dilisio has said

Mr Spaziano
+ Mr Dilisio stand 8

some inconsistent things in his unaccustomed and newfound celebrity of late, but his bedrock conviction has never wavered: No person should be executed because of his youthful testimony two decades ago.

The state of Florida cannot elide the simple fact that it has tried to execute a man — four times in 20 years, so far — based on testimony that was either (1) perjured, or (2) the product of the pseudoscience of "repressed memory" and the warping effects of hideously suggestive hypnosis sessions with ~~[The rest of insert A]~~

Clemency therefore is not dependent on believing what Dilisio now says. If one *does* believe Dilisio the man — as opposed to Dilisio the scared, vulnerable and manipulated kid — then the state clearly has no case against Mr. Spaziano. But even if one *doesn't* believe the Dilisio of today, it is further evidence of the unreliability of *all* of his testimony that was the product of police manipulation — by means of the pseudoscience of repressed "memory," grotesquely suggestive hypnotism sessions with a montebank police "ethical hypnotist" who has a track record of railroading at least two other men — Pitts and Lee — onto death row. Mr. Dilisio in 1995 said it best: "I'm appalled that a man could be executed on the basis of my testimony when I was a terrified kid."

II. THE HOMICIDE

Starke, Florida — "Crazy Joe" Spaziano — biker, doper, and the most popular guy on death row — is scheduled to be executed in 16 days. But now the witness whose testimony convicted him can't remember a thing.

He [Anthony Dilisio] can't remember Crazy Joe's taking him out to a back woods dump 22 years

a police hypnotist whom -- at
the time of Mr Spoziano's
Trials -- had already been
exposed as a charlatan whom
had with a track record of
sending INNOCENT MEN TO
Florida's death row Either
way, the execution of Joseph
Spoziano on the basis of
unreliable
such useless testimony would
offend the evolving standards
of decency that mark the
progress of a maturing society.

The answer, Mr. Spaziano submits, is that the jury override in his case was the result of pincer-like constraints on the jury's ability to exercise its decision making power in a reasonable manner. On one hand, the jury was deprived of the ability accurately to gauge the weight of the evidence against Mr. Spaziano because of the failure to charge lesser included offenses at the guilt-innocence phase of the trial. On the other hand, the jury's apparent attempt to proportion its verdict to Mr. Spaziano's culpability at the sentencing phase was overridden by the judge.

Mr. Spaziano has argued in the courts that doubt about guilt is a matter calling for a life sentence in his case. But the law of Florida is clear that such doubt is *not* a matter for the courts to consider in deciding penalty. *E.g., Buford v. State*, 403 So. 2d 943, 953 (Fla. 1981). This position defies common sense and reality, but it is the law in the Florida courts. For this reason, it falls to this Board as the entity of Florida government able to consider the essential facts of this case: that the state's case of guilt was weak, and that such weakness formed a *reasonable* basis for the jury's life recommendation.

^{A FEW}
Three brief observations about the timing of this clemency application are in order. First, Mr. Spaziano's case has languished for two decades in the courts. The courts have deployed an army of procedural technicalities to avoid confronting the core legal — and moral — issue in this case: that Mr. Spaziano did not murder Laura Lynn Harberts, nor did he rape and slash Vanessa Dale Croft. Enough is enough. He seeks clemency now in order to avoid a last minute, eleventh hour clemency process; the issues he raises are grave, and the Board should have sufficient time to consider them carefully. Second, Mr. Spaziano has before unsuccessfully petitioned for clemency. However, the postconviction investigation

undertaken by counsel has revealed a wealth of previously unknown information about this case. Investigations — our own; the *Miami Herald's*; FDLE's — are ongoing, and, as new information reaches us, we will provide it to this Board.

Whatever faith we possessed initially in the objectivity or integrity of the Florida Department of Law Enforcement investigation into what actually happened in this case in the mid-1970s has evaporated. The "investigation" is beginning to smell more like a whitewash. First, FDLE's institutional and bureaucratic bias in favor of validating the earlier state governmental actors — police and prosecutors — is too obvious to require much comment. In this "investigation," Florida governmental agents are investigating ~~the~~ alleged misconduct of other Florida governmental agents, and the outcome of such an "investigation" may be expected to be thuddingly predictable. Such bias in favor of the police and prosecutors in 1975 and 1976 is the simplest explanation for the way in which FDLE has carried out its "investigation." For example: Second, FDLE initially said that it was anxious to polygraph Dilisio; but when we insisted that such a polygraph ought to be reliable and professionally done, the FDLE lost interest. Third, the thrust of FDLE's investigation to date appears to be an attempt to smear and discredit Anthony Dilisio, by interviewing his friends and his family members, apparently with an eye to discrediting Anthony Dilisio's memory of today, as opposed to attempting to ascertain why and under what circumstances Dilisio and Mr. Spaziano were manipulated by the police in the mid-1970s. ~~Third~~ ^{Fourth,} two weeks have now gone by since FDLE videotaped its interview with Mr. Dilisio, and the repeated requests by counsel for Mr. Spaziano and Mr. Dilisio for a copy of the videotape have been met with a stone wall of silence. Rather, state officials have selectively leaked supposed information

supposedly said by Mr. Dilisio on the supposed videotape. ^{F.F.T.H.1} Fourth, the Governor's general counsel has been quoted in the media as stating that he sees "nothing new here", notwithstanding the ongoing *Herald* and FDLE investigations. These facts — and the logical inferences about the quality and the integrity of FDLE's "investigation" do not inspire confidence that the FDLE'S agenda is] to provide political cover for the signing of another death warrant. ^{anything more than a maneuver designed}

B. The Evidence At Trial

We are convinced that Mr. Spaziano is innocent, but we can't prove it with forensic certainty. We have no compelling physical or testimonial evidence proving that Mr. Spaziano did not commit the crime for which he is condemned to die. What our investigators have done is more a matter of vaporizing the state's case of guilt than proving his innocence, which, we know, isn't the same thing.

No trail of blood led from a white Ford Bronco to Mr. Spaziano's front door; no physical evidence whatsoever linked Mr. Spaziano to the victim — no DNA, no fingerprints, no blood type matching, no ballistics. Mr. Spaziano was accused of murdering Laura Lynn Harberts, a vibrant young woman whose body was discovered in a garbage dump in Seminole County, Florida, on August 21, 1973. She was identified by dental records, and was last seen alive on August 5, 1973.

Beverly Fink was Laura Harberts' roommate in Orlando. According to Ms. Fink, the last time she saw Ms. Harberts was on a Sunday afternoon, about August 5, 1973. The previous night, Ms. Fink and her boyfriend, Jack Mallen, were preparing to leave their apartment. At that time, Ms. Harberts was on the phone and, as Fink and Mallen were

The jurors' life recommendation in the face of this horrible crime reflected their lingering doubt about Mr. Spaziano's guilt for first-degree murder. Recourse to the Florida courts on this issue is not available, because the Supreme Court of Florida has not unequivocally ruled that, as a matter of law, lingering doubt about guilt cannot be considered as a mitigating circumstance in setting penalty. *Buford*, 403 So. 2d; *King*, 514 So. 2d. This doubt becomes overriding when one considers facts *not* before the jury: manipulation by the police of young Anthony Dilisio and the personal history of Joseph Spaziano.

1. Information Disclosed Subsequent to Trial Further Undermines the State's Case of Guilt

a. The Pseudoscience of "Repressed" Memory "Released Through Police Hypnosis: "Nonsense on Stilts" ✓

The theory of "repressed memory" is breathtakingly simple — and breathtakingly idiotic: The best evidence that you ^{suffered extreme trauma} were abused, long, long ago — is that you have no ^{traumatized} memory of being ^{abused} long, long ago. This is a circular tautology worthy of Orwell. And the criminal justice system's acceptance of such nonsense in this capital case could have been scripted by Kafka ^{on a bad day}

^{under signed counsel} Two weeks into the most recent death warrant, I realized that this was a repressed memory case. ^{Dr.} tracked down Richard Ofshe, ^{a professor at Berkeley and} the national expert on the subject, at his vacation in the Bahamas. Ofshe put his vacation on hold for about 27 straight hours, and he wrote a report on Mr. Spaziano's case.

The bases for his opinions were: the review of transcripts of two of Mr. Dilisio's hypnosis sessions with Joe McCawley; the written reports of Dr. Bernard Diamond and Dr. Robert Buckhout, *Miami Herald* articles published by Lori Rosza on June 11, 1995, and

No set of behavior or psychological symptoms has been reliably shown as probative of the accuracy of the "recovered memories" of trauma.¹⁸ This view has also been supported by an American Psychological Association Working Group which reported "there is no single set of symptoms which automatically means that a person was a victim of childhood sexual abuse."¹⁹

Symptoms such as depression, anxiety, sexual dysfunction, eating disorders, or low self esteem are not specific in etiology to sexual abuse. They may be caused by a history of sexual abuse or they may stem from other sources. Empirical findings, therefore, do not support a strong causal link from known trauma to any specific set of symptoms.²⁰

Dr. Richard Ofshe, in his review of the use and misuse of popular and clinical "symptom lists" explains:

Even though some of the disorders listed can result from abuse, it does not mean that someone with these symptoms can be expected to have experienced abuse. Depression, self-destructive behavior, anxiety, feelings of isolation and stigma, and poor self-esteem do not result only from child abuse but from a large number of experiences, chemical imbalances, genetic factors, behaviors, or combinations of these factors The notion that psychiatrists, because of

HEAL: WOMEN HEALING FROM SEXUAL ABUSE, Harper and Row, New York, simply say, "If you think you were abused and your life shows the symptoms, then you were."

¹⁸Lindsay and Read (1994).

¹⁹American Psychological Association (1994).

²⁰THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, published by the American Psychiatric Association to aid professionals in identifying mental disorders, almost completely omits any discussion of underlying causes of syndromes. Dr. Robert L. Spitzer, task force chairman for the DSM is quoted as saying, "The emphasis is on description of the problem, not the why and how, because in most cases we don't really know." in Slovenko, R. (1984) "Syndrome evidence in establishing a stressor," JOURNAL OF PSYCHIATRY AND LAW, p. 447.

true feelings about the case." He discovered that he believed Freddie Pitts and Wilbert Lee were guilty.

Following Willie Mae Lee, Judge Fitzpatrick took the witness stand for the state. He told how he had interviewed Freddie Pitts and Wilbert Lee in the privacy of his chambers during his first encounter with them and how they said they had not been mistreated. It was an intriguing assertion: How could the judge have questioned only Freddie Pitts and Wilbert Lee at that time? Why not Lambson Smith, Jr., as well? Smith was before him at the same hearing.

All three had been charged with first-degree murder at the time. Block, however, deemed it unwise to cross-examine Judge Fitzpatrick aggressively. Embarrassing him before Judge Holley, Block felt, would reap only harm. He let the matter slide.

Judge Fitzpatrick also testified that he had told both defendants that they did not have to testify at the mercy hearing.

"And if the trial transcript does not reflect that, could it possibly be that you think you did it but it might not have happened?" Block asked politely.

"If it's not in the transcript, then I can't explain why it's not," Judge Fitzpatrick said. It wasn't. He was mistaken.

David Carl Gaskin, the lawyer from Wewahitchka; County Judge Sam Husband; George Y. Core, the court clerk; Robert Sidwell, the volunteer Civil Defense chauffeur, all took the witness stand to say they never saw anyone mistreat the defendants in 1963 and that they never saw any signs of a beating. Joe Townsend and Deputy Wayne White also testified, asserting that the 1963 confessions had been free and voluntary.

b. Hypnosis in Florida Courts: You Are Getting Sleepy . . .

Subsequent to Mr. Spaziano's trial and direct appeal, the Florida Supreme Court decided *Bundy v. State*, 471 So. 2d 9 (Fla. 1985), holding that hypnotically-refreshed testimony, such as Dilisio's, would be *per se* inadmissible. The Florida Supreme Court in *Bundy* surveyed the analyses of the hypnotism question made by courts of other jurisdictions and concluded:

Mr. Spaziano was an incriminating piece of circumstantial evidence militating conviction. Indeed, the state has consistently argued that this evidence is highly incriminating throughout the various state court proceedings.

Yet, we now know from review of the recently disclosed police files that the police had determined that the caller was indeed Joe Suarez *and* that the state failed to disclose this fact. Suarez was connected to five sexual assaults in the area around the time of this murder. Indeed, the first was on *the day of Laura Harberts' the decedent's* disappearance. Several of the victims made positive identifications. After he was interviewed by the police, Suarez left town. Attempts by counsel to locate Suarez have, to date, been unsuccessful.

(2) Joe Suarez and The Victim Were Together On the Night of Her Disappearance

Joe Suarez denied to the police that he had been with Ms. Harberts on August 5, 1973. Yet, in an undisclosed documented interview, the police were able to conclude that Suarez was with Ms. Harberts on the night of her disappearance.

(3) The Lynwood Tate Information

During the investigation, the state believed that the decedent's killer was Lynwood Tate, although none of the documents suggesting Mr. Tate's guilt were disclosed to the defense. Mr. Tate was given several polygraph tests about his role in the killing and *failed*. He was a known rapist in the area and all of the investigators involved concluded that Tate had committed the murder. Tate told the investigators "on several occasions" that "he didn't know whether he committed the murder" and "that if he did, he would like to know it." At one time, "an indication was made [by Tate] that there was a possibility that he may have done this and did not know it." Most important, the police located an eyewitness, Mr.

Affidavit of Ida Spaziano.

III. THE BRUTAL RAPE AND MUTILATION OF VANESSA DALE CROFT

In May, 1975, Mr. Spaziano was charged in a three count information with forcible carnal knowledge in violation of § 794.01, Florida Statutes (1973), assault with intent to murder in violation of § 784.06, Florida Statutes (1973), and with aggravated battery in violation of § 784.05, Florida Statutes (1973). The case was tried before a jury in the Circuit Court of the Ninth Judicial Circuit, Orange County, Florida. On August 13, 1975, Mr. Spaziano was convicted of forcible carnal knowledge and aggravated assault, for which he was sentenced to life imprisonment and to five years, on each charge respectively.⁵² The conviction and sentence were affirmed by the Florida Second District Court of Appeal. *Spaziano v. State*, No. 75-1610 (Fla. 4th DCA 1977).

On July 24, 1989, Mr. Spaziano filed his petition for writ of habeas corpus in federal district court. The petition *only* raised the tattoo issue, discussed below. The district court issued a show cause order and the State responded. Mr. Spaziano then filed a reply memoranda attaching additional affidavits and exhibits.

On May 11, 1990, the district court denied relief, holding that Mr. Spaziano's claims were procedurally barred and, alternatively, that he had not established his claims on the merits. On May 23, 1990, the district court issued a supplemental order to correct an error in its final order. The Eleventh Circuit affirmed the district court's order denying relief.

A. Dilisio Redux: Anthony Dilisio — Again

FF The only way to appreciate the importance of Dilisio's

⁵²Mr. Spaziano's motion for judgment of acquittal was granted as to court II, assault with intent to murder.

testimony at the rape trial is ¹¹² to read it in full:

Q: You say you have no further indication in your notes, so you are not certain, then, whether or not she made an answer and said, "I don't recall," or whether anything was said or any remarks made at all?

A: The only thing I can say for sure is that if she had made this statement, I would have noted it.

Q: If she had said something about tattoos, it would have been in there?

A: Or scars, or any other identifying information.

Q: But, if she had said, "I don't know, don't remember," you wouldn't have put it down?

A: I probably would not have.

(T 336-338).

Theresa Frederick, a friend of the victim testified that Ms. Croft indicated to her that she consumed marijuana on the night in question (T-342, 348-349). Ms. Croft also told her that one of Ms. Croft's assailants had reddish-blond hair (T 358). Ms. Frederick also testified that Ms. Croft did not mention any tattoos (T 357).

Dr. Guillermo Ruiz, a medical examiner for Orange County, examined the victim on February 10, 1974 and found lacerations in the area of the eyes (T 370). He also tested for spermatozoa in the genital area, but the tests indicated that the victim had not had intercourse for three weeks (T 374-375). Dr. Ruiz stated that, in his opinion, Ms. Croft did not have intercourse with any person within a period of twenty-four hours prior to his examination (T 376-377).

B. The Rape Victim Flunked a Polygraph

For two decades, the state sandbagged Mr. Spaziano's attempts to ascertain whether the prosecution lawlessly withheld exculpatory evidence. In June 1995, the state informed

from pp 136-37

MEMORANDUM

TO: Michael
FROM: Laura
DATE: June 26, 1995
RE: Clemency

They can't
read this
too many times

[This is the revised page 9 — including the completion of insert A. Your telephone dictation insert seems to be repetitive.]

Mr. Spaziano and Mr. Dilisio stand united in their belief that *no* person — not even an Outlaw — ought to be killed on the basis of the testimony of the 1975 and 1976 Anthony Dilisio. Mr. Dilisio has said some inconsistent things in his unaccustomed and newfound celebrity of late, but his bedrock conviction has never wavered: No person should be executed because of his youthful testimony two decades ago.

Clemency therefore is not dependent on believing what Dilisio now says. If one *does* believe Dilisio the man — as opposed to Dilisio the scared, vulnerable and manipulated kid — then the state clearly has no case against Mr. Spaziano. But even if one *doesn't* believe the Dilisio of today, it is further evidence of the unreliability of *all* of his testimony that was the product of police manipulation — by means of the ^{garbage} ~~recovery~~ science of repressed "memory," grotesquely suggestive hypnotism sessions with a mountebank police "ethical hypnotist" who has a track record of railroading at least two other men — Pitts and Lee — onto death row. Mr. Dilisio in 1995 said it best: "I'm appalled that a man could be executed on the basis of my testimony when I was a terrified kid."

The state of Florida cannot elide the simple fact that it has tried to execute a man — four times in 20 years, so far — based on testimony that was either (1) perjured, or (2) the

product of the pseudoscience of "repressed memory" and the warping effects of hideously suggestive hypnosis sessions with a police hypnotist whom — at the time of Mr. Spaziano's trials — had already been exposed as a charlatan with a track record of sending innocent men to Florida's death row. Either way, the execution of Joseph Spaziano on the basis of such useless and unreliable testimony would offend the evolving standards of decency that mark the progress of a maturing society.

1. THE HOMICIDE