

EXTERNAL (for general distribution)

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EXTRA 68/95

Death Penalty

8 June 1995

USA (Florida)

Joseph SPAZIANO

Joseph Spaziano, white, is scheduled to be executed in Florida on 27 June 1995.

He was sentenced to death in July 1976 for the murder of a white woman on 6 August 1973. The jury which tried him recommended life imprisonment, but the presiding judge at trial overruled their recommendation and passed the death sentence.

According to information from Joseph Spaziano's attorney, Joseph Spaziano was convicted on the testimony of a 16-year-old drug addict, Anthony Dilisio, who had been hypnotized twice before testifying to "refresh" his memory. The state has admitted it had no case against Joseph Spaziano without this testimony.

It is reported that an expert in hypnosis who has reviewed the case concluded: "it is my opinion that Anthony Dilisio, to a high degree of probability, had his memory permanently distorted by these hypnotic interrogations, and that it is probable that considerable portions of what he claimed to have remembered might well be fantasy." Several years later, the Florida Supreme Court ruled that hypnotically refreshed evidence is so unreliable that it is [now] inadmissible by law in Florida.

According to information from Joseph Spanazio's attorney, one of the jurors has said: "Nine or ten jurors felt as I did: that we did not want to see this man die. One of the major reasons for most of us favouring a life sentence was our doubts about whether Mr. Spaziano was guilty of the crime as charged... Had we known [Dilisio's] testimony was prompted by hypnosis, I believe it would have made a difference."

Amnesty International opposes the death penalty in all cases as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment as proclaimed in the Universal Declaration of Human Rights.

BACKGROUND INFORMATION

Florida is one of only four US states which permit the trial judge to overrule the jury's sentencing recommendation. Florida's "override" provision was upheld as constitutional by the US Supreme Court in 1984. In more than 100 capital trials since 1973 judges in Florida have ignored the jury's recommendation of life imprisonment and imposed the death penalty (judges have overridden toward mercy in only one-tenth as many cases).

Amnesty International takes no position on whether sentencing decisions should rest with judges or juries. However, the overriding of a recommendation of life imprisonment by a consensus of jurors, reached after their consideration of the facts, undermines the principle that death should not be imposed as a penalty where there is any doubt as to its appropriateness in a particular case.

In Florida, the Governor has sole power to grant clemency, although a decision to commute a death sentence must have the approval of at least three members of the cabinet. The Governor holds a clemency hearing in each case after a

death sentence has been affirmed by the Florida Supreme Court. If clemency is denied, no reasons need to be given.

As of 31 January 1995, there were 350 prisoners under sentence of death in Florida. The most recent execution in Florida was Ray Stewart, on 22 April 1994.

RECOMMENDED ACTION: Please send telegrams/faxes/express and airmail letters in English:

- expressing concern that Joseph Spaziano is scheduled to be executed in Florida on 27 June 1995;
- urging that Joseph Spaziano's death sentence be commuted;
- acknowledging the seriousness of the crime for which Joseph Spaziano was convicted but expressing deep concern that he was sentenced to death despite a jury's recommendation that he be sentenced to life imprisonment.

APPEALS TO

The Honourable Lawton Chiles
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Salutation: Dear Governor

COPIES OF YOUR APPEALS TO:

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and to diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.