IN THE SUPREME COURT OF FLORIDA

No. 85,439

KRISHNA N. MAHARAJ, Appellant

v.

STATE OF FLORIDA, Appellee

BRIEF OF AD HOC BIPARTISAN PARLIAMENTARY GROUP AS AMICUS CURIAE IN THE CASE OF STATE OF FLORIDA v. KRISHNA MAHARAJ, A BRITISH CITIZEN

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The Ad Hoc Bipartisan British Parliamentary Group respectfully submits the following amicus curiae brief in support of the Appellant's Appeal of the Circuit Court's denial of his Petition for Post-Conviction Relief pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure.

AMICUS CURIAE

The following elected Members of Parliament have formed an **ad hoc** bi-partisan committee to request that this Court grant British Citizen Krishna Maharaj a hearing on newly-discovered evidence casting doubt on his guilt:

Diane Abbott MP	Labour	Hackney North & Stoke New
Nick Ainger MP	Labour	Pembroke
Graham Allen MP	Labour	Nottingham North
Clive Betts MP	Labour	Sheffield Attercliffe
David Blundett MP	Labour	Sheffield Brightside
Paul Boateng MP	Labour	Brent South
Peter Bottomley MP	Conservative	Eltham
Keith Bradley MP	Labour	Manchester Withington
Richard Burden MP	Labour	Birmingham Northfield
Stephen Byers MP	Labour	Wallsend
Anne Campbell MP	Labour	Cambridge
Dennis Canavan MP	Labour	West Falkirk
Jamie Cann MP	Labour	Ipswich
Alex Carlile QC MP	Liberal Democrat	Montgomery
Anne Coffey MP	Labour	Stockport
Harry Cohen MP	Labour	Leyton
Frank Cook MP	Labour	Stockton North
Robin Corbett MP	Labour	Birmingham Erdington
Jean Corston MP	Labour	Bristol East
James Couchman MP	Conservative	Gillingham
Jim Cousins MP	Labour	Newcastle Central
Lawrence Cunliffe MP	Labour	Leigh
Jim Cunningham MP	Labour	Coventry South East
Ron Davies MP	Labour	Caerphilly
Frank Dobson MP	Labour	Holborn & St Pancreas
Brian Donohoe MP	Labour	South Cunningham
Derek Fatchett MP	Labour	Leeds Central
Paul Flynn MP	Labour	Newport West
George Foulkes MP	Labour	Carrick & Cumnock
John Fraser MP	Labour	Norwood
Rt. Hon. Derek Foster MP	Labour	Bishop Auckland
Mike Gapes MP	Labour	Ilford South
Neil Gerrard MP	Labour	Walthamstow
Roger Godsiff MP	Labour	Small Heath

John Gunnell MP	Labour	Morley & South Leeds
Peter Hain MP	Labour	Neath
Mike Hall MP	Labour	Warrington South
Harriet Harman MP	Labour	Peckham
John Heppell MP	Labour	Nottingham East
Keith Hill MP	Labour	Streatham
Alan Howarth CBE MP	Conservative	Stratford-on-Avon
Dr Kim Howell MP	Labour	Pontypridd
Doug Hoyle MP	Labour	Warrington North
John Hume MP	SDLP	Foyle
Glenda Jackson MP	Labour	Hampstead & Highgate
Helen Jackson MP	Labour	Sheffield Hillsborough
Sir Geoffrey Johnson Smith DL MP	Conservative	Wealden
Dr Lynne Jones MP	Labour	Birmingham Selly Oak
Nigel Jones MP	Liberal Democrat	Cheltenham
Peter Kilfoyle MP	Labour	Liverpool Walton
David Knox MP	Conservative	Staffordshire Moorlands
Joan Lestor	Labour	Manchester-Eccles
Ken Livingston MP	Labour	Brent East
Rt Hon Peter Lloyd MP	Conservative	Fareham
Diana Maddock MP	Liberal Democrat	Christchurch & E. Dorset
Robert Maclennan MP	Liberal Democrat	Caithness & Sutherland
Dr John Marek MP	Labour	Wrexham
John McFall MP	Labour	Dumbarton
Alan Meale MP	Labour	Mansfield
Mr Menzies Campbell CBE QC MP	Liberal Democrat	Fife North East
Bill Michie MP	Labour	Sheffield Geeley
Austin Mitchell MP	Labour	Great Grimsby
Dr Marjorie Mowlem MP	Labour	Cleveland
Paul Murphy MP	Labour	Torfaen
Edward O'Hara MP	Labour	Knowsley South
Bill Olner MP	Labour	Nuneaton
Peter Pike MP	Labour	Burnley
Greg Pope MP	Labour	Hyndburn
Bridget Prentice MP	Labour	Lewisham East
Dawn Primarolo MP	Labour	Bristol South
Tim Rathbone MP	Conservative	Lewes
Geoffrey Robinson MP	Labour	Coventry North West
Jeff Rooker MP	Labour	Birmingham Perry Barr
Ernie Ross MP	Labour	Dundee West
Dennis Skinner MP	Labour	Bolsover
Andrew Smith MP	Labour	Oxford East
Llew Smith MP	Labour	Blaenau Gwent
George Stevenson MP	Labour	Meir
Rt. Hon. Jack Straw	Labour	Blackburn
Rt. Hon. Sir Harold Walker MP	Labour	Doncaster Central
Gary Waller MP	Conservative	Keighley
Malcolm Wicks MP	Labour	Croydon North West
Brian Wilson MP	Labour	Cunninghame North
Tony Wright MP	Labour	Cannock & Burntwood

INTEREST OF AMICUS

1. *Amicus* is an *ad hoc* group of Members of Parliament formed solely for the purpose of petitioning this Court on behalf of Krishna Maharaj, a British citizen currently under sentence of death at Union Correctional Institution at Raiford, Florida. Each member of the group is duly elected by his or her constituency to a seat in the House of Commons, which together with the House of Lords forms the British Parliament.

2. Amicus is non-partisan, and its guiding principle is the belief that no person should be punished for any crime except after a trial and appeals process which accords with the highest standards of fairness and the rule of law. Although Great Britain (along with every other European country) no longer uses capital punishment, it is not the purpose of this brief to challenge the right of the United States to implement capital punishment in a manner consistent with common law notions of justice and fairness. Rather, amicus seeks an opportunity to be heard on behalf of a British citizen about whose guilt there now exists serious doubt but who nonetheless awaits death in Florida's electric chair.

3. Amicus does not abrogate to itself any particular insight into the facts of this case or any superior right to instruct the courts of a highly competent and advanced jurisdiction as to the law which should apply to determine the outcome of the request for an evidentiary hearing. For that reason this brief will not develop in any detail the facts of the case or the relevance to them of the fresh evidence, and will not seek to argue extensively the appropriate law of the State of Florida. Amicus entirely respects both the law and the court which must apply it in this case. Where, however, amicus hopes to assist the court is in relation to international standards which have developed in relation to cases of this kind and which would be dispositive of the request for an evidentiary hearing if it were made in the U.K. It may be that the standards are already reflected in the law in Florida, but the amicus humbly requests the opportunity to elaborate on them in the case of Krishna Maharaj, a British citizen by birth who lived most of his adult life prior to the date of the alleged offence in the United Kingdom. He must, of course be judged both substantively and procedurally by the law of Florida, but to the extent that this law, like law in all common law jurisdictions, is open to progressive judicial interpretation and development, amicus hopes that the precedents and perspectives it brings through international, English and British Commonwealth sources may be of assistance to the Florida courts.

4. Against this background, it is respectfully submitted that this Court should admit this brief in support of the Appellant for the following reasons:

a/ Krishna Maharaj was born in Trinidad on January 26th, 1939, when Trinidad was still subject to British rule. As such, he was born with British nationality. He moved permanently to England in 1960, and lived there exclusively until 1985. In that year, he began to spend time in Florida, since he had investments in real estate in the Fort Lauderdale area. He maintained his British nationality and sought no other. He was not a citizen of the United States at the time of his arrest on these charges in Miami, Florida, on October 16th, 1986. He remains a foreign national, subject to all the rights and benefits of a British national abroad.

b/ Mr. Maharaj's case has received considerable media attention in Britain. In particular, on 14th August 1995 Channel Four (a national television network), aired a documentary called *Murder in Room 1215*. As part of this production, programme researchers interviewed important witnesses in Mr. Maharaj's trial for the murders of the Moo Youngs in Room 1215 of the Dupont Plaza Hotel, in Miami, on October 16, 1986 and discovered matters which undermined their trial testimony and the State's theory of the case. The programme caused members of the British public to write to their Member of Parliament in order to register their concern and disquiet over Mr. Maharaj's conviction. These M.P.'s, by joining this amicus group, thereby fulfil their duty to democracy.

c/ **Amicus** is of the view that it would be preferable for the Florida authorities to undertake a thorough review of Mr. Maharaj's conviction in order to obviate the need later for any official intervention on his behalf by the British Government and to remove what may become a potential area of conflict between the citizens of Britain and Florida.

The close and harmonious links between these two states is apparent in travel, tourism and investment, and amicus submits that it is therefore appropriate that the elected representatives of British visitors to Florida should be heard when one such visitor is in danger of losing his life at the instance of the State.

d/ The comity of the common law nations makes the experience of each persuasive to the other. Amicus is concerned that evidence has surfaced which casts doubt upon the validity of the Appellant's conviction, and it therefore asserts an interest in the outcome of the proceedings.

e/ The United States Government has ratified the International Covenant on Civil and Political Rights, effective from June 8th 1992, thus evincing a sincere concern for the norms of international law. This is discussed further below.

II. GROUNDS PRESENTED IN THE BRIEF

5. Amicus seeks to supply support to the constitutional challenges contained in the Appeal,and in particular the Appellant's claim that he is entitled to an evidentiary hearing, by setting out the applicable standards of international law, as derived from international instruments and treaties, the decisions of the courts of common law countries, and the Judicial Committee of the Privy Council in London, which acts as the final Court of Appeal for many countries in the former British Empire. It respectfully submits that the behaviour of the prosecution in withholding evidence, the inept performance of Mr. Maharaj's trial counsel and the refusal of the Florida courts thus far to grant Mr. Maharaj a meaningful evidentiary hearing in respect of the fresh evidence discovered since his conviction violated these principles, and that unless Mr. Maharaj is given an opportunity to demonstrate by the presentation of evidence that there now exists real doubt as to his guilt, there is a danger that he will go to his death an innocent man.

6. Amicus seeks to be heard in order to argue the international law which is relevant to this application. That law is generally expressed in Article 6(1) of the International Covenant:

> Every human being has the inherent right to life. This right shall be protected by the law. No one shall be arbitrarily deprived of his life.

Amicus is concerned that unless an evidentiary hearing is granted to Mr. Maharaj, he will be in fact deprived of his life arbitrarily, according to the evolving canons of international law, if he is executed in consequence. It is now clear that the definition of 'arbitrarily' includes the breach of standards of fairness in the appellate process.[1] These standards are collected in the "Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty" adopted by the Economic and Social Council of the United Nations and endorsed by the General Assembly in 1984.[2] These standards are collected in the "Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty" adopted by the Economic and Social Council of the United Nations and endorsed by the General Assembly in 1984.[3] It is significant to note that the United States, when it ratified the Covenant in 1992, entered a reservation to Article 6 only to preserve its right to inflict capital punishment on persons under 18 years of age: it did not enter any reservation to the duty to avoid arbitrariness in capital cases, or to the ECOSOC standards which define the term.

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1. The authorities for this proposition are set out in William A. Schabas, "The Abolition of the Death Penalty in International Law" (Grotius, 1993), p.99-103

2. ECOSOC resolution 1984/50, 25th May 1984, endorsed by the General Assembly resolution 39/118, 14th December 1984.

3. ECOSOC resolution 1984/50, 25th May 1984, endorsed by the General Assembly resolution 39/118, 14th December 1984.

7. The ECOSOC standards require that capital trials be scrupulously fair and that capital convictions require "clear and convincing evidence leaving no room for an alternative explanation of the facts" (Standard 4). It is the contention of amicus that this standard would plainly be breached by the refusal of an evidentiary hearing, as there is now a credible, alternative explanation of the murders that provides strong doubt that the conviction against Mr. Maharaj is safe.

8. Standard 6 is also relevant, in that it requires a right of appeal of a capital conviction to a higher court empowered to review its merits as well as the technical defects of the trial. This standard must be applicable even after an initial direct appeal rejection, where fresh evidence is subsequently uncovered which transforms the nature of the case. Refusal of a hearing as to the merits of this fresh evidence would be an effective breach of this standard.

9. In addition, international law requires that the "due process" standards in Article 14 of the Covenant shall be scrupulously observed in capital cases. There must, for example, be an "equality of arms" between the prosecution and the defence, and the capital sentence must be vacated where the defence counsel is incompetent.[4] Equally, it is vital that the defendant should have a realistic opportunity to present his own evidence to the Court, and that the judge should be independent and impartial.[5]

ARGUMENT

I. THE COURT SHOULD DIRECT A HEARING SO THAT MR. MAHARAJ IS AT LEAST ALLOWED THE CHANCE TO PRESENT EVIDENCE THAT CASTS A PALL ON THE RELIABILITY OF THE CASE AGAINST HIM

10. Krishna Maharaj has spent nine years either facing Death Row or actually under sentence of death in the State of Florida. Since his conviction, he has spent most of his life in a single cell, never going outside for weeks at a time. During the last several years, evidence has come to light, some of which was known to the prosecution at the time of trial, that casts serious doubts on the validity of his conviction. Nonetheless, Mr. Maharaj has not been allowed an evidentiary hearing at which such evidence could be assessed and he would have the opportunity to prove that there has been a fundamental miscarriage of justice in his case.

A. THE EVIDENCE THAT KRISHNA MAHARAJ MAY HAVE BEEN THE VICTIM OF A MISCARRIAGE OF JUSTICE

11. Amicus will not detail the evidence which has emerged since the conviction which casts doubt upon it. This, it is understood will be treated exhaustively in the Appellant's brief. However, it must be said that it is peculiarly striking to unbiased international observers that the evidence generated by the law firm of **Shutts & Brown** both before and after the trial in relation to the insurance claim of Shaula Ann Nagel has never been properly assessed by any court, and goes to the heart of the case. It seems astonishing to independent observers that the deep involvement, at the time of the deaths, of the victims (the Moo Youngs) in multi-million dollar fraud and narcotics trafficking (there being no evidence of any such involvement against Mr. Maharaj) was never considered as a possible reason for the killings. The tenor of the **Shutts & Brown** investigation is that this was a more likely reason than the motive alleged against Mr. Maharaj, and more recent evidential material discovered by the defence confirms that this may well be the actual reason, and indicates the likely suspects who may have committed the crime. For so long as this remains a possible--even probable--"alternative explanation of the facts" in terms of ECOSEC Standard 4, and while no curial assessment of the evidence has taken place, that international law standard will be breached in the event of Mr. Maharaj's execution.

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4. See judgement of U.N Human Rights Committee, Robinson v Jamaica H.R.Doc A/44/40.

5. See the U.N.H.R.C decision in Mbenge v Zaire

12. This alternative explanation now garners further support from evidence as to the unreliability of the only eyewitness to the murders, Neville Butler, who appears deeply implicated in them himself and appears also to be "covering up" for the true instigators. It is obvious to any person who conscientiously reads the record that Eddie Dames, the man who occupied Room 1215, was so central to the instigation of the killings that he had to construct for himself an alibi for the time of the murders. His machinations are now revealed by his accomplice, Tino Geddes. The only other accomplice of significance, in that he tried to destroy Mr. Maharaj's alibi in his trial testimony, Geddes is shown to have had that testimony "purchased" by the prosecution, which provided him with protection at his own trial in Jamaica. These and other fundamental flaws which opened up in the prosecution case undermine it to such an extent that the "alternative explanation of the facts" as a reprisal killing arising from the Moo Youngs' criminal activities now appears to be the most likely scenario.

13. Mr. Maharaj has consistently maintained his innocence, and in 1987 passed a lie detector test.[6] While amicus is aware of the controversy surrounding the use of polygraphs, and is also aware that under Florida law such evidence is generally (but perhaps not invariably) inadmissible, amicus nonetheless finds it troubling that the jury which condemned Mr. Maharaj was unaware that while Mr. Maharaj passed a polygraph test, Neville Butler, the key prosecution witness, failed such a test in significant part,[7] and that his failure was misrepresented to the defence by the prosecution.

14. The jury never heard compelling evidence that Mr. Maharaj did not commit the crime and perhaps could not have committed it.[8] The prosecutor put his case at trial that the murder happened between 11:00 a.m. and 12:00 noon on 16th October, 1986. Neville Butler said that he had set up the meeting for 11:00 a.m. (Tr. 3054) and that the crime lasted for about half an hour. (Tr. 2830). However, Mr. Maharaj had witnesses, none of whom has been substantially impeached, demonstrating that he was a 45 minute drive away in the Fort Lauderdale area ten or fifteen minutes before noon on that day. At some time before noon, Mr. Maharaj arrived at a real estate appointment with one George Bell. (See Exhibits D & F). Mr. Bell estimates the time of his arrival to have been 11:50 a.m., and Douglas Scott, who was also present. estimates that he arrived at around 11:45 a.m. The men had lunch in a nearby restaurant (Exhibit F at 4). This evidence, if believed, absolutely rules out Mr. Maharaj as the murderer. Neville Butler, whom the prosecution described at the trial as their "eyewitness" to the crime, stated that he sat outside the hotel with Mr. Maharaj for three hours after the murders. The alibi witnesses were never heard by the jury or the sentencing judge.[9]

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6. On 30th January 1987 Mr. Maharaj passed a lie detector test given by George Slattery, a respected expert in the field of polygraphy. Mr. Slattery asked Mr. Maharaj: "At the time [the Moo Youngs] were shot and killed were you in Room Number 1215 at the Dupont Plaza Hotel?" and "Did you kill them?" He concluded that when Mr. Maharaj denied involvement "It was the opinion of this examiner that Mr. Maharaj did truthfully answer those questions."

7. On 2nd March, 1987, the prosecution commissioned a polygraph of Neville Butler. This was performed by Dudley H. Dickson. On the 20th March, 1987, Assistant State Attorney Kastrenakes wrote to defence counsel that Butler had "passed with regard to the questions asked of him as to your client participating in the shootings of the Moo Youngs." In fact, the government polygrapher reported that in his opinion, Mr. Butler had been falsifying information and had not been truthful. (Record on Appeal, p112).

8. It is amicus' submission that because Mr. Maharaj's trial counsel knew of many of these matters he must be faulted for failing to present them to the jury. Further, amicus believes that the prosecution may have been aware of other facts which were not revealed to the defence, in which case the prosecution must be faulted for its failure to disclose them. There is, in addition, evidence which has surfaced independently of either the prosecution or the defence, as a result of the efforts of those representing Mr. Maharaj on appeal. It is amicus' submission that the source of the evidence is less important than the ultimate question: Is there a possibility that Krishna Maharaj has been the victim of a miscarriage of justice?

9. There was other crucial evidence that was not presented to the jury. For example, Lt. Buzzo of the Miramar Police Department testified in deposition that Mr. Maharaj's gun was taken from him at the traffic stop in July. (Tr. 99).

(continued...)

15. It is notable that there was no physical evidence inconsistent with Mr. Maharaj's version of events. Mr. Maharaj admitted that he had been in Room 1215 that morning. Amicus submits that the fact that he took no steps to disguise this fact is cogent circumstantial evidence of innocence and wholly inconsistent with the plot outlined in the unreliable "purchased" evidence of Tino Geddes. While it is true that Mr. Maharaj's fingerprints were found in the room, in the light of his admission of his earlier presence there this proves little or nothing.[10] Furthermore, after the crime no one noted anything abnormal about Mr. Maharaj's appearance and nobody noted blood or marks on his clothes. This contrasts with the blood that Prince Ellis reports seeing on the clothes of Neville Butler (Tr. 2288-89).

16. Amicus further submits that this is a case where the prosecution case simply does not make sense. The suggested motive, namely the litigation brought by Mr. Maharaj against the Moo Youngs, is simply risible given that Mr. Maharaj had been told by his lawyer that he would win such litigation when it came to court several months later. Moreover, Mr. Maharaj regularly used the Dupont Plaza Hotel for business meetings in Miami and knew it well. He would have expected to be recognised there--and indeed the prosecution alleged that he was recognized when he made his only visit at 8:00 a.m. that morning. Moreover, Room 1215 was booked in the name of Eddie Dames. Various witnesses placed Mr. Maharaj in the room at around 8:00 a.m. This strikes amicus as odd behaviour for a man planning to commit a double murder, as it gave potential witnesses plenty of opportunities to notice Mr. Maharaj, as indeed they did. According to the prosecution witnesses Mr. Maharaj was calmly sitting reading the newspaper for a long time waiting for his "victims" to arrive. (Tr. 2413). This behaviour is wholly inconsistent with a plan on Mr. Maharaj's part to commit a murder. It is consistent with the theory that the real killers arranged for him to be seen there so that suspicion would fall upon him and not them. It was, after all, Eddie Dames who had lured him to the room and Neville Butler who went to the police to point the finger of suspicion at him.

17. It is now clear that the key prosecution witnesses told demonstrable untruths and/or had motives for lying which were withheld from the court. This has emerged from the Channel 4 documentary referred to at 4(b) above which has developed important evidence pointing to a miscarriage of justice. It is within the power of this Court to remand this case for the development of the additional evidence that the television documentary has developed; in a case where there has been a potential miscarriage of justice, such action is morally mandated.

18. As Prince Ellis, a major prosecution witness said on tape in this documentary:

> I always believe that there could be somebody, or it's probably happened before, where someone was sent to the electric chair or was hanged and could have been totally innocent. And I am a firm believer that before one is sent to the electric chair or sent to the gallows that all avenues should be explored and all possible opportunities should be given [to prove the truth] . . . I was very much concerned about Kris' guilt because after learning about the character of the individual I found out that he was not . . . don't appear to be the person he was made out to be. And it concerned me because it seems as if there could be a possibility of an innocent man being sent to the electric chair.
>
> Ch. 4 PE at 64.

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9. (...continued)
Such an officer would clearly have been a very credible witness for the defence. This testimony would have rendered impossible the prosecution's theory that Mr. Maharaj used the same Smith & Wesson to commit the crime. However, again, it was never heard by the judge or jury.

10. Although the prosecution made much of the fact that his fingerprint was found on the "Do Not Disturb" sign, they did not address the fundamental question--when was it placed there?

19. Mr. Ellis has good reason to have developed his doubts about Mr. Maharaj's guilt. When the researchers for the Channel 4 programme came to interview Mr. Ellis they found that Eddie Dames had already contacted him. Dames wanted Ellis to listen to a tape of his conversation with the researcher and tailor his own answers to fit in with what Dames had said; in other words, Dames wanted Ellis to lie. Ellis refused:

> But that's not the way it went . . . he was telling a lie to some of the questions you [Channel 4] asked him.
>
> Ch. 4 PE at 46.

When asked why he would share this with British television Ellis replied:

> I am here as a concerned individual who feels like in the interests of justice that this matter may some way bring to light the true murderer involved in this matter after studying the case and after listening to the things that Dames said and the number of lies that he had told involving myself and also the incident that took place in the car and at Sizzlers it led me to think and wonder who really pulled the trigger.
>
> Ch. 4 PE at 52.

20. Amicus contends that the truth of the matter is that Dames met with Ellis on 16th October, 1986, and spent the late morning and early afternoon shopping with him at Ace Music in order to provide himself with an alibi. Ellis said in the programme:

> I just though maybe I was being used at that time as Eddie's alibi, because of his reaction at Ace Music Studio.
>
> Ch. 4 PE at 34.

He bases this conclusion in part on the fact that it was obvious that Eddie Dames knew what was going on:

> There is no doubt in my mind that Eddie was involved in the meeting and what went on in the room.[11]

21. Amicus submits that Ellis' suspicions about Dames are lent considerable weight by the fact that on one occasion Dames took Ellis on a boat ride which turned out to be a drug run. Also, a conversation he witnessed between Butler and Dames seemed to be a dispute over drugs. (Ch. 4 PE 2, 38-40).

22. When Ellis saw Butler later on the day of the murders he saw that his shirt was torn and that his watch had broken off from his watchstrap. (Ch. 4 PE 22, 57). A broken watch was found near Room 1215. Ellis also casts doubt on Butler's story that there was only one person shooting, allegedly Mr. Maharaj. As Butler discussed the murder with Dames, with Ellis sitting nearby:

> Neville was saying something to the effect that they just went crazy and that bullets were flying all over the place. They just started shooting.
>
> Ch. 4 PE at 24.

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11. Detective Buhrmaster has said that he "had no indication, and especially from Neville Butler that he [Dames] was ever there, ever involved in it." (Ch. 4 PE at 49). This suggests that he did have such an indication from someone else, and that Prince Butler was that other person.

Over and over again Ellis emphasised that Butler used the word "they":

> Q. Are you sure [Butler] said "they"?
>
> A. He said "they just went crazy". I don't know who they was. But he said "they just went crazy and they was shooting all over the place".
>
> Q. Are you absolutely sure he said "they"?
>
> A. I'm positive he said "they".
>
> Ch. 4 PE at 26, 56.

The passage from the television programme which amicus is concerned to examine is this statement by prosecution witness Ellis:

> I am here because I feel like this chap who I never met, who I do not know, never had any affiliation with could very well be innocent. During my conversation about the entire scenario I never heard them say that this gentleman [Maharaj] pulled the trigger.
>
> Ch. 4 PE at 52.

23. Amicus finds it difficult to accept that Neville Butler can be considered a reliable witness. He still lies about the polygraph test that he failed, telling Channel 4 researchers that the came out "clean". (Ch. 4 PE at 43). Butler lied in his depositions and then concededly told lies in the course of the trial. (e.g., Tr. 3116, 3117, 3120).[12] Amicus submits that there are further lies which are now apparent from his testimony. For example, he insists that he could not leave the room for fear of Mr. Maharaj. However in his trial testimony he said that he was standing at the bottom of the stairs while Mr. Maharaj was interrogating the younger Moo Young upstairs. (Tr. 2824). When Channel 4 visited Room 1215 however it is obvious from the physical layout that Butler could easily have just stepped outside into the corridor. What, to British eyes, is frankly incredible is that Butler has not been prosecuted for his aiding and abetting the offence, or at least given a formal plea bargain for turning State's evidence. On his own testimony, he was an accomplice yet no "accomplice warning", as it is known in the common law, was ever given to the jury. The failure of the State to prosecute Butler for any offence reeks of bad faith.

24. At the trial the prosecution made great play of the fact that one of the hotel staff purported to remember Mr. Maharaj reserving Room 1215, on the basis that this showed that he was involved in some kind of plot. However, Butler now confesses that he booked the room in the name of Eddie Dames. (Ch. 4 NB at 6).

25. It is not the purpose of amicus to detail all the frailties in the prosecution's case. During the investigation for the Channel 4 programme it became apparent that Tino Geddes, another prosecution witness has, since Mr. Maharaj's conviction, been the beneficiary of favours and assistance from the prosecutors of Mr. Maharaj in connection with other arrests and detention for drug related crimes, including false testimony at a Jamaican trial in which he was the defendant. It is also clear that there has been collusion between Geddes and Butler since each was able to quote the other's version of events to the researchers. (Ch. 4 NB at 85).

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12. Even one of the prosecutors now concedes that Butler eventually gave "a confession . . . that he in fact had perjured himself in aspects of his testimony." (Ch. 4 JSK at 19). Certainly Butler had "fabricated . . . his knowing that Krishna Maharaj would be at that room on that fateful day and being involved in the plan to have these people come together." Id. at 11.

B. THE EVIDENCE THAT WAS EITHER SUPPRESSED BY THE PROSECUTION OR NOT KNOWN TO EITHER PARTY AT THE TIME OF THE TRIAL LEAVES LITTLE CONFIDENCE IN THE RELIABILITY OF THE VERDICT.

26. Amicus recognises that Mr. Maharaj did not present any evidence at his trial, and did not give evidence until the penalty phase of the trial, by which time it was too late. It seems apparent that these decisions were made, incompetently, by his trial counsel. However it is clear that there is a great deal of evidence which could have been presented to the court had it been available, and amicus respectfully submits that notions of fundamental fairness demand this evidence be taken into account in assessing the reliability of Mr. Maharaj's conviction and sentence of death.

27. It is now apparent that there were numerous people with a motive to kill the Moo Youngs. Firstly, unknown to the defence at the time of the trial, and apparently suppressed by the prosecution[13], Derrick Moo Young had been in Panama shortly before their deaths. There he had conducted an illegal "business deal" (which can reasonably be supposed to have been drug related) using a $100 million fraudulent letter of credit.

28. The Moo Youngs were also apparently aware that there were several people with a motive to kill them. They had each taken out life insurance policies for $1 million shortly before their deaths. The civil proceedings launched by the beneficiaries under the policies uncovered a web of shady dealings by the Moo Youngs, including several aliases and tax returns which were suspiciously low when they were compared with the Moo Youngs' lifestyle. The insurance companies spent several hundred thousand dollars on defending the claims. Despite the fact that the evidence which the insurance companies discovered pointed away from Mr. Maharaj it was never made known to the defence, apparently because the prosecutor, Mr. Kastrenakes did not consider it to be relevant. (Ch. 4 JSK at 32). This was disgraceful behaviour on the part of the prosecution, as the evidence--to any honest independent observer--was plainly relevant, because it undermined the prosecution's whole theory and supported that of the defence.

29. The money laundering/drug dealing involvement seems to amicus to be a far more cogent motive for a double murder than that offered for Mr. Maharaj, namely that he had been involved with the victims in hostile litigation (which, in any event, his attorney had told him, he was about to win.) In the course of researching the Channel 4 programme, a statement was secured from another impartial person (Ch. 4 GA at 1, 16) who revealed that a man named Adam Hosein was a drug distributor for the Moo Youngs and owed them a great deal of money and thus had the most to gain from having them killed. Further, this informant related how Mr. Hosein had taken a gun and silencer out of his desk on the morning of the 16th October, 1986, and told him that he was going to the Dupont Plaza Hotel, but that if anyone asked, he was to say that he wasn't there.[14] This is crucial and direct evidence as to the identity of the real killer. It is an admission by Hosein which implicates him in the murder. (The silencer is especially significant in view of the evidence that thirty workers near Room 1215 failed to hear the shooting.)

30. The alternative plot thickens as a result of evidence that Mr. Dames was at the time a drug dealer with connections to Hosein and the Moo Youngs. Indeed, amicus understands that his partner, Nigel Bow, is currently serving a sentence in federal prison for drug offences.

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13. Buhrmaster admitted to Channel 4 that "extensive checks were carried out through [Jamaica and Panama] yes . . . I know that the two prosecutors involved in this case did quite extensive checks as far as what they could--and back in the past of drugs, money laundering, and things like that." (Ch.4 JB at 52, 56).

14. There were many fingerprints found in the room that were not linked to Mr. Maharaj or to Neville Butler. The prosecution failed to test for Mr. Hosein's fingerprints.

31. Eddie Dames denied to the television researchers that he knew or knew of Adam Hosein (Ch. 4 ED 13, 33)--a demonstrably false statement the making of which invites an inference as to guilty participation with Hosein.

32. The prosecution's ballistics expert testified at trial that it was very possible that more than one gun could have been used in the murders. (Tr. 393). Nonetheless, the prosection failed to reveal to the defence that Neville Butler had made statement to Prince Ellis in which he identified more than one killer.

33. Amicus does not seek to propose or adopt any one version of the truth in this case. It submits that there is now enough doubt in this case to render Mr. Maharaj's continued incarceration on death row without any curial investigation of those doubts a violation of the ECOSEC standards set out above.

34. The failure of the prosecution to disclose highly relevant evidence is set out in the Appellant's brief. Most worrying is the withholding of details of the **Shutts & Brown** investigation and the ongoing involvement of the victims in fraud and drug trafficking although many other instances are given of the deliberate withholding by the prosecution of evidence which could have undermined its case theory or supported Mr. Maharaj's innocence.

C. INCOMPETENCE OF DEFENDING COUNSEL

35. The examples of inadequate or incompetent representation are set out in the Appellant's brief. Amicus is astounded in particular at three examples, namely:

a. the failure to apply to discharge the jury after the first judge was taken away in handcuffs to face bribery allegations;

b. the failure to advise Mr. Maharaj that it was vital to his acquittal to offer testimony in his own defence;

c. The failure to call alibi witnesses, or indeed any witnesses on his own behalf.

These failures defy rational explanation other than on grounds that Mr. Maharaj could only offer to pay around $30,000 and hence obtained a lawyer who wanted the trial to end as soon as possible so that he could move on to more lucrative work. His lawyer showed no familiarity with capital litigation in jury selection, his opening speech to the jury demonstrated an obvious lack of any grasp of the case, and his closing remarks were little better. His cross-examination of Butler was inept, and his failure to object to inadmissible evidence was remarkable. In a capital case it becomes a matter of utmost anxiety when a credible defence is not put forward until the sentencing proceedings, when it is too late.

D. GLARING PROCEDURAL DEFECTS

36. Amicus is frankly astonished at the behaviour of the court system in not requiring a retrial when the presiding judge was arrested after three days of testimony. Given the number of important witnesses who had already passed through the witness box, no reasonable observer could believe that a new judge intervening at that stage could qualify himself merely by "reading the record". Moreover, it must be accepted that consciousness of imminent arrest accounted for the first judge's bizarre decisions to order the jury to sit until 9:00 at night, by which time they would not be in a fit state to consider the evidence. Another, later irregularity occurred in allowing Judge Leonard Glick to sit on the 3.850 petition: his involvement in the prosecutor's office meant that justice was not seen to be done.

II. THE NORMS OF INTERNATIONAL LAW AND PRACTICE MANDATE THAT MR. MAHARAJ BE GIVEN AN OPPORTUNITY TO PRESENT THE EVIDENCE THAT SUGGESTS HE MAY NOT HAVE COMMITTED THE CRIME

A. THE INTERNATIONAL PERSPECTIVE ON INNOCENCE

37. International laws' insistence on ensuring procedural fairness in death penalty cases means that there must be appellate review of conviction and sentence. For example, in India, Justice Sarkaria has noted that mandatory review by the High Court of any sentence of death imposed by a trial court is one of the valuable additional safeguards of the life and liberty of the subject in cases of capital sentences. State of Maharashtra v. Sindhi A.I.R. [1975] S.C. 1665. The reason for this is that such a review gives the defendant an opportunity to present evidence which might point to innocence. This reasoning was amplified in Bachan Singh v. State of Punjab A.I.R. [1980] S.C. 898, when the Supreme Court of India held that Article 21 of the Indian Constitution requires that a person not be deprived of life except after a fair, just and reasonable proceeding established by a valid law, and after the courts have had regard for every relevant circumstance about the crime as well as the criminal. The court held that the mandatory appellate review, including reception of new evidence where necessary, provided the ample safeguards for the rights of the subject under the Indian Constitution.

38. The fundamental principle of the rule of law discernible in the case law of those countries with the death penalty and written constitutions (in particular India) is that reasonableness and fairness are the touchstones of the constitutionality of the death penalty, and the decision to execute must be based upon reason rather than caprice emotion. Rajendra Prasad v. State of Uttar Pradesh [1979] 3 S.C.R. 78. Amicus submits that to execute Mr. Maharaj without first considering the evidence which now exists pointing to his innocence would violate this fundamental principle.

B. ARTICLE 6 OF THE EUROPEAN CONVENTION OF HUMAN RIGHTS

39. Article 6(1) explicitly lays down the right to a fair hearing, and the right to be heard is an intrinsic part of the fairness aspect of this standard. In Brandstetter v. Austria (1991) 15 E.H.R.R. 378 at 413 the court said that "the right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of any comment on the observations filed and the evidence adduced by the other parties." This is precisely the same requirement that was so forcefully set out by the Supreme Court in Goldberg v. Kelly 397 U.S. 254, 267 (1970): "The fundamental requirement of Due Process is the right to be heard."

40. The right to be heard guaranteed by Article 6 does not cease with the decision of the jury. Where fresh evidence shows that the verdict may have been incorrect then the Article requires that the case be re-opened. In Edwards v. United Kingdom (1992) 15 E.H.R.R. 417 the court said at page 431:

> The court recalls that the guarantees in Article 6(3) are specific aspects of the right to a fair trial contained in paragraph 1 . . . the Court must consider the proceedings as a whole including the decisions of the appellate courts.

On the particular facts of the case the court held that there had been no violation of Article 6 because of the full appeal hearing which the defendant had been granted in the Court of Appeal, which had included the right to call fresh evidence and to cross-examine witnesses. The court's reasoning suggests that the result would have been different had the defendant not been afforded this opportunity.

41. In Ekbatani v. Sweden (1988) 13 E.H.R.R. 504 the court considered a complaint relating to a conviction at first instance which was upheld on appeal without a hearing. The court held at page 511:

> Here the Court of Appeal was called upon to examine the case as to the facts and the law. In particular it had to make a full assessment of the question of the applicant's guilt or innocence . . . In the circumstances of the present case that question could not, as a matter of fair trial, have been properly determined without a direct assessment of the evidence given in person by the applicant--who claimed that he had not committed the act alleged to constitute the criminal offence--and by the complainant. Accordingly, the Court of Appeal's re-examination of Mr. Ekbatani's conviction at first instance ought to have comprised a full rehearing by the applicant and the complainant.

Mr. Maharaj is not simply presenting constitutional challenges to his conviction and sentence of death. The issue in his case is that he charges that he is not guilty of the murder of Derrick and Duane Moo Young. As a matter of European human rights law therefore he ought to be entitled to a full evidentiary hearing in order that he could put forward the mass of fresh evidence pointing to his innocence.

C. THE FAILURE OF THE PROSECUTION TO DISCLOSE CRUCIAL EVIDENCE

42. The failure of the prosecution to reveal vital evidence to the defence prior to trial has been referred to above. Amicus submits that on this basis alone the principles of fairness mandate that Mr. Maharaj should be afforded the relief he seeks.

43. In R. v. Ward (1993) 96 Cr.App.R.1 the English Court of Appeal considered the prosecution's duty of disclosure in criminal cases. It held that it was the duty of the prosecution to keep in mind its duty to the court to ensure that all relevant evidence of help to an accused is either used by them at trial or made available to the defence, and that judges should make sure that the prosecution gets no advantage from any neglect of this duty by the prosecution. The court quashed Judith Ward's convictions on 12 counts of murder because of the failure of the prosecution to disclose evidence which would have affected the jury's view of the confessions which she made while in custody, and also its failure to disclose scientific evidence.

44. This decision is in accordance with the interpretation which the European Court of Human Rights has placed upon Article 6 in relation to the prosecution's duty of disclosure. Fundamental to Article 6 jurisprudence is that there must be "equality of arms." In other words, the case must not be conducted so as to place one party at a disadvantage vis-a-vis the opposing party. X. v. Sweden (1958-9) Yearbook II 354. In particular, the parties must have the same access to the records and other documents in the case. Lynas v. Switzerland (1977) Yearbook XX 412.

45. Amicus therefore submits that there has been a clear breach of the provisions of Article 6 in this case.

D. THE PERFORMANCE OF MR. MAHARAJ'S TRIAL LAWYER

46. Amicus finds it extremely disturbing that in a trial where the success of the defence depended largely upon its ability to show that there were other people who had the motive and the opportunity to kill the Moo Youngs, very little evidence was led on Mr. Maharaj's behalf and he did not testify in his own defence.

47. Amicus submits that in assessing the trial attorney's performance the court should not approach it as a semantic exercise by trying to assess the qualitative value of counsel's performance, but rather it should assess what effect the

performance had upon the course of the trial. This is the approach taken by the Judicial Committee of the Privy Council in Sankar v. State of Trinidad and Tobago [1995] 2 All E.R. 236, where it was held that in a case where counsel had failed to give the defendant strong advice to give evidence where this was essential to his or her defence then the conviction would be quashed. This approach was also the one taken by the English Court of Appeal in R. v. Clinton [1993] 2 All E.R. 998, and by the New Zealand Court of Appeal in R. v. McLoughlin [1985] 1 N.Z.L.R. 106 when the Courts held that because the trial attorney had improvidently conducted the trial in the way which he thought was best, the conviction had to be quashed. Underpinning these decisions is the principle that a defendant should not be allowed to suffer for the errors of his or her trial counsel.

E. THE APPEARANCE OF BIAS

48. Amicus understands that at an earlier stage of these proceedings the lower court judge, His Honour Judge Leonard Glick denied an evidentiary hearing on the new evidence which Mr. Maharaj sought to present. It further understands that Judge Glick was not only a prosecutor with the State Attorney's Office at the time of Mr. Maharaj's trial, but also that he was the senior supervising attorney to the two prosecutors who tried the case. Amicus is concerned that this violates one of the twin pillars of natural justice--nemo in causa sua--no one should be a judge in their own cause.

49. Amicus does not suggest that Judge Glick was consciously biased against Mr. Maharaj. However, the European Court of Human Rights has held that the fair trial requirements of article 6 of the Convention requires that any semblance of bias or dependence must be avoided. In Sramek v. Austria (1984) 7 E.H.R.R. 351 the court held:

> Litigants may entertain a legitimate doubt about his independence. Such a situation seriously affects the confidence which the courts must inspire in a democratic society.

It is amicus' submission that the facts of this case are sufficient to raise a legitimate doubt about the independence of Judge Glick. Certainly, they are stronger than those which existed in the European cases of Piersack v. Belgium (1983) 5 E.H.R.R. 169 and Hauschildt v. Denmark (1990) 12 E.H.R.R. 266, where apparent or potential judicial bias was held to vitiate the convictions.

F. PROCEDURAL IRREGULARITIES DURING THE TRIAL

50. Article 6 requires that trial be held before an independent and impartial tribunal. Independence requires the tribunal to be free to base its decision on its own opinion about facts and legal grounds, without any commitment either to the parties or the authorities. The court must be entirely free from outside pressure and must conduct the trial having set aside its own opinions. Boeckmans v.Belgium Yearbook VI (1963). This means that the court must be able to set aside all external influences and decide the issues before it solely on the basis of arguments before it. The European Courts have accepted that although judges will have personal opinions drawn from their own life experiences, and will inevitably have been drawn from different streams of life, this in unobjectionable provided that it makes no difference to the defendant whether he is tried by one judge or another. Crociani v. Italy (1981) 22 D & R 147. A further important element of a "fair hearing" is that the defendant knows the basis upon which the court makes decisions.

51. These principles were violated by the continuation of the trial after the arrest of Judge Gross on bribery charges after several days of testimony. It is readily apparent from the record that during these opening days Judge Gross was conducting the trial in such a way as to stave off his own inevitable arrest. It would most probably appear to any outside observer that the judge's motivation for sitting until 9:00 p.m. was his belief that so long as he was sitting in court he was safe from arrest. The Appellant can only guess at the effect the judge's impending arrest had upon his decisions. He does not know whether the judge's rulings in favor of the prosecution were based upon his perception of the merits of the legal arguments presented to him by the prosecution and defence, or whether they were motivated by a desire to

curry favour with the prosecution in order to ward off his own arrest. He does not know whether the judge's attention was entirely focused upon the arguments being presented to him, or whether he was so preoccupied with his own problems that he failed to listen to what was being said to him. According to the principle that all semblance of unfairness must be avoided, the Appellant should be entitled to the hearing he seeks.

H. THE DOUBTS RAISED BY THE NEW EVIDENCE

52. In seeking an evidentiary hearing on the new evidence, the Appellant is effectively seeking under Florida law what under English law is known as a reference back pursuant to Section 17 of the Criminal Appeal Act 1968. This is the procedure whereby a defendant who has managed to gather sufficient evidence may ask that his or her case be referred back to the Court of Appeal for reconsideration in the light of this fresh evidence. In R. v. Chard [1984] A.C. 279 the House of Lords held that on a reference back under Section 17 the whole case was to be considered as being referred back, and so the Appellant was free to raise any matter of law or of fact as he or she saw fit. It is even open to the Appellant to reargue grounds of appeal that have been previously unsuccessfully argued.

53. In considering such a reference the Court of Appeal must ask itself what is essentially a subjective question, namely whether there is a "lurking doubt" that an injustice has been done. R. v. Cooper [1969] 1 Q.B. 267.

54. As an outside observer, amicus respectfully submits that there is now sufficient material to raise such a doubt. Had the jury which condemned Mr. Maharaj been aware of the Moo Youngs' criminal activities, their involvement with Eddie Dames, the actions of Eddie Dames in constructing an alibi for himself for the day of the murders, and the unimpeached evidence of those who were with Mr. Maharaj miles from the Dupont Plaza Hotel at the time of the murders, then there is a distinct possibility that it would have come to a different verdict.

CONCLUSION

55. It is amicus' understanding that this court may reach beyond the scope of the federal constitution to recognise common sense and common law rights under the laws of the State of Florida. Amicus sincerely hopes that the court will do this in light of the fact that there is no greater horror than the execution of a potentially innocent person.

56. Amicus is aware that this court previously ordered that a hearing take place on some of the evidence that was apparently suppressed by the prosecution at trial. However, Mr. Maharaj did not have counsel at this time, and consequently never secured the hearing ordered by this court.

57. Amicus would submit that the decisions of the United States Supreme Court show that a death sentence is a denial of the rule of law or due process of law if it is imposed in a cruel manner; if it is arbitrarily inflicted; if it is mandatory; if it is grossly disproportionate to the offence or if in any other respect it is based upon caprice. In accordance with the foregoing argument, amicus would submit that it is also a violation where the defendant has been denied an opportunity to demonstrate his innocence. The history of capital punishment in Great Britain and the United States is littered with tragic examples of justice miscarrying with fatal effect through the court's failure to allow the defendant to present his case on the merits. Amicus would respectfully urge the court to act now to prevent the possibility of another case being added to this list.

58. For these reasons, *Amicus* respectfully urges this Court to reverse the lower court, and order that an evidentiary hearing be held to air the various challenges to the conviction and death sentence imposed upon Krishna Maharaj.

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of the foregoing document has been served by first class mail on the Hon. Robert Butterworth, Attorney General for the State of Florida, this 28th day of September, 1995.