IN THE SUPREME COURT OF FLORIDA

KRISHNA MAHARAJ **Appellant,** **v.** **STATE OF FLORIDA,** **Appellee.**	)	**CASE NO: 91,854**

BRIEF OF AMICUS CURIAE, AD HOC CROSS-PARTY GROUP OF THE HOUSE OF LORDS, IN SUPPORT OF THE APPELLANT

HOUSE OF LORDS *AMICUS CURIAE* BRIEF

2 March 1999

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CERTIFICATE OF TYPE STYLE AND SIZE

This brief is typed in 12 points COURIER NEW proportional space font.

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INTEREST OF AMICUS

1. The Court should be advised that counsel in London, rather than local counsel, prepared and drafted the amicus brief filed on behalf of the House of Lords ad hoc group. However, local counsel has carefully read the amicus brief, and believes that the points made therein on behalf of representatives of a foreign sovereign are entitled to be brought to the attention of the Supreme Court of Florida. In order to facilitate that end, local counsel has signed the brief of the ad hoc group of the House of Lords and files it as a member of the Florida Bar. The amicus brief complies with Florida Rule of Appellate Procedure 9.370 and all other relevant rules.

2. Amicus is an ad hoc, non-partisan, cross-party group of the House of Lords formed for the purpose of petitioning this Court on behalf of Krishna Maharaj, a British citizen who stands convicted of murder in the State of Florida. The House of Lords, together with the House of Commons, forms the British Parliament and constitutes the upper or second legislative chamber. The House of Lords, by means of a Judicial Committee made up of Law Lords, also carries out a judicial role acting as the highest court of appeal. The cross party group consists of both hereditary and life peers who sit in the House of Lords. A complete list of the

hereditary and life peers who have formed this ad hoc group is appended to this brief.

3. The guiding principle of Amicus, in filing this brief, is 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, both procedurally and substantively.

4. Although the United Kingdom (along with every other member of the European Union) no longer uses capital punishment, it is not the purpose of this brief to challenge the United States' use of capital punishment. Rather, Amicus seeks an opportunity to be heard on behalf of a British citizen, Mr. Krishna Maharaj. Mr. Maharaj's trial and subsequent appeals contained many irregularities raising questions as to whether the process accorded with the highest standards of fairness and the rule of law. As a result, he has been imprisoned and on death row since 1987, a period of some 11 years. This long period independently raises the issue of inhuman and degrading treatment contrary to English law.

5. Amicus does not assert 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 this appeal. Amicus simply requests the opportunity to elaborate on the

international standards developed in cases of this kind which may assist the Court in reaching its decision in this case.

6. Amicus is, of course, aware that Mr. Maharaj must be judged both substantively and procedurally by the law of Florida. However, 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 European sources may be of assistance to this Court.

7. Against this background, it is respectfully submitted that Amicus has an interest in Mr. Maharaj's case for the following reasons:

A) Krishna Maharaj was born in Trinidad on January 26, 1939, when Trinidad was a British Possession. As such, he was born with British nationality and has maintained exclusively British citizenship throughout his life. He moved to England in 1960, and lived there until 1985. During 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 16, 1986. He remains a British national, subject to all the rights and benefits of a British national abroad.

B) Mr. Maharaj's case has received media attention in Britain and there is a great deal of support for his case amongst the British public. Much of this support has grown out of a concern that, for whatever reasons: 1) the jury that initially sat in judgment of Mr. Maharaj did not hear critically important evidence that casts doubt on the reliability of his conviction; 2) Mr. Maharaj did not have a fair and impartial trial; and 3) concern as to the length of time he has spent on death row in Florida. Amicus believes that its duty to the British public, whom Amicus serves, supports its request to make representations to this Court.

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.

D) The comity of common law nations makes the experience of each persuasive to the other. Indeed, the Courts of the

United States and Great Britain have often looked to each other for guidance.[1] In the case of *In re* Code of Judicial Conduct 643 So. 2d 1037 (Fla. 1994), this Court acknowledged the influence of English standards of judicial ethics, quoting from Lord Hale's Rules for Judicial Guidance - Things Necessary To Be Continually Had In Remembrance.[2]

E) The United States Government has ratified the International Covenant on Civil and Political Rights (the I.C.C.P.R.), effective from June 8, 1992, thus evincing a sincere concern for the norms of international law in the field of human rights.[3]

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[1] For example, the Supreme Court in Edmund v. Florida, 458 U.S. 782 (1982), specifically recognized the influence of "international opinion" on the development of American law, in ruling that the death penalty was not available for those who did not kill, attempt to kill, or intend to kill. Indeed, the Court noted that the felony-murder doctrine had been abolished in England.

[2] Of particular interest in this case is point 16: "To abhor all private solicitations, of what kind so ever, and by whomever, in matters depending." In this case, it seems that the solicitations were made by Judge Gross to the litigant before him; and then by Judge Solomon to the prosecution.

[3] In submitting his proposal for the ratification of I.C.C.P.R. to the Senate for its advice and consent, President Bush argued that ratification of the I.C.C.P.R. reflected the role that he saw the United States as a leader among nations. President Bush stated that the "United States' ratification of the Covenant on Civil and Political Rights at this moment in

F) The House of Lords has a unique status. Apart from its legislative role, it acts institutionally, through the Judicial Committee, as the highest court of appeal in Britain. Many of its individual members have a depth of legal and judicial knowledge and experience furthering its collective sensitivity on, and awareness of, the issues of fairness and the rule of law which may be relevant to the issues before this Court.

7. For all of these reasons, Amicus urges this Court to accept this brief and the representations made herein.

SUMMARY OF THE ARGUMENT SUBMITTED BY AMICUS

8. English, European and International law all recognize the right of a defendant charged with a criminal offense to a fair and public hearing by an independent and impartial tribunal. Moreover, it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

9. The European Court of Human Rights (hereafter referred to as the European Court) has held that in order for a waiver of a right under the European Convention of Human Rights and Fundamental

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history would underscore our natural commitment to fostering democratic values through international law." Letter from President George Bush to Senator Claiborne Pell, Chairman, Senate Foreign Relations Comm. (August 8, 1991, 31 I.L.M. 660 (1992)).

Freedoms 1950 (hereafter referred to as the Convention) to be effective, it requires minimum guarantees commensurate to its importance. A right such as the right to an independent and impartial tribunal is of essential importance. The exercise of this right cannot depend upon the parties alone.

10. European Community law, which is supreme in all member states (including the United Kingdom), as interpreted by the Court of Justice of the European Communities, incorporates general principles of law, including those of Human Rights law, and the Court of Justice will look to the decision of the European Court as legal authority in this area.

11. Furthermore, The Human Rights Act 1998, passed on November 9, 1998 though not yet implemented, will specifically incorporate the Convention into UK law by, *inter alia*, requiring that UK courts interpret all legislation in a way compatible with the Convention and that UK public authorities do not act in ways incompatible with the Convention.

12. The Judicial Committee of the House of Lords has determined that confinement on death row for protracted periods not caused by delaying tactics by the defendant can itself constitute inhuman treatment leading to commutation of sentence.[4]

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[4] Pratt v. Attorney General for Jamaica [1994] 2 A.C.1.

STATEMENT OF FACTS

13. Amicus' understanding of the relevant facts is as follows (Amicus will not review in detail the facts of this case, since the details are not relevant to the general submissions that it seeks to make).[5]

A. CHARGES

14. Mr. Maharaj was charged by an indictment dated November 5, 1986, with two counts of first degree murder and related offenses (Transcript, 1-5a), arising from the deaths of Derrick and Duane Moo Young in the Dupont Plaza Hotel on October 16, 1986.

B. MR. MAHARAJ'S COUNSEL

15. Several weeks after being arrested Mr. Maharaj retained Eric Hendon, who was Counsel at trial. Counsel was a sole practitioner and had no assistance from a second lawyer or any support of any kind in preparing this case.

C. ISSUES ARISING AT TRIAL

16. Mr. Maharaj pleaded not guilty and was tried by a jury from October 5 to October 19, 1987.

17. On the fourth day of Mr. Maharaj's trial, the trial judge, Judge Howard Gross was removed from the case. He was

[5] The statement of facts below is drawn from the proceedings in the trial court on Krishna Maharaj's post-conviction hearing.

arrested, in the midst of Mr. Maharaj's trial on charges that he solicited a bribe to act favorably in another criminal case. Judge Gross was subsequently disbarred. This Court has held, in other proceedings, that the evidence supported the finding that Judge Gross had lowered a criminal defendant's bail in return for a bribe; there was "strong circumstantial evidence of guilt." The Florida Bar v. Gross 610 So. 2d 442 (1992);[6] also see The Florida Bar v. Swickle 589 So. 2d 901 (1991).

18. However, the Maharaj trial continued. Judge Gross was replaced by Judge Harold Solomon, mid-trial. Judge Solomon had not heard the previous three days of important evidence, in particular the evidence of two main witnesses against Mr. Maharaj.

19. Moreover, during the initial phase of the procedure of this case, Judge Gross had also attempted to solicit a bribe from Mr. Maharaj, through a third party. Mr. Maharaj was outraged and rejected this advance. Judge Gross then allegedly reacted with hostility towards the defense. Mr. Hendon has conceded that he believed he was treated unfairly in the pre-trial proceedings and the first three days of the trial as a result of Mr. Maharaj's

[6] Judge Gross was charged with certain Rules Regulating The Florida Bar including rule 4-8.4(a), (c) & (d) (violating the rules of professional conduct; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and engaging in conduct prejudicial to the administration of justice).

declining Judge Gross' offer of a bribe.

20. However, Mr. Hendon did not bring this to his client's attention at the time. When first advised by Mr. Maharaj that the approach had been made, Mr. Hendon did not take steps to protect his client. He notified the prosecution, Mr. Maharaj's adversary, but did not contact law enforcement. It subsequently transpired that the Florida Department of Law Enforcement was even then conducting an investigation into similar allegations against Judge Gross. In particular, the person who had solicited the bribe from Mr. Maharaj had then been a member of the Office of the State's Attorney. However, Mr. Hendon did not confirm this for his client or discuss its implications.

21. It came to light in recent appeal hearings that the trial prosecutors knew of the allegations, knew that the third party was a member of their office and clearly appreciated their significance when the judge was later arrested.

22. Mr. Maharaj was offered a mistrial but, on advice from Mr. Hendon, purportedly waived that right. (Tr. 2852-2858) Counsel's contention was that he felt the trial was going well at that time, but he did not consider, nor did he discuss, the implications of the earlier bribery attempt.

23. Counsel for Mr. Maharaj and the State failed to inform

Judge Solomon of Judge Gross's approach (through the third party) to Mr. Maharaj.

24. The Jury returned verdicts of guilty as to the two counts of first degree murder, two counts of kidnaping with a firearm, and unlawful possession of a firearm while engaged in a criminal offense. (Tr. 4184-4187)

25. Judge Solomon solicited an order from the prosecution imposing a sentence of death *before* the judicial sentencing hearing began. Amicus understands that it is alleged that he apparently had more than one *ex parte* contact with the prosecution, as part of the drafting process.

26. After a brief penalty phase, the jury recommended life imprisonment for the murder of Derrick Moo Young and the death penalty, by a vote of 7 to 5, for the murder of Duane Moo Young. (Tr. 4498-4499).

27. On December 1, 1987, the trial court imposed the death penalty for the first degree murder of Duane Moo Young. (Tr. 1783-1784).

D. ADDITIONAL EVIDENCE

28. Amicus understands that there was considerable evidence that the jury did not hear before it convicted Mr. Maharaj and recommended a death sentence.

A) The prosecution was in possession of a large amount of evidence that strongly impeaches the witnesses against Mr. Maharaj and undermines their testimony.[7]

B) Mr. Hendon failed to call alibi witnesses at trial, who would have placed Mr. Maharaj forty miles away, in another city, at the time of the crime.

C) The prosecution told the jury at Mr. Maharaj's trial that he was the only one with the motive to kill the two victims - because they had stolen over $400,000 from his business. The prosecution apparently knew this to be false as they were in possession of evidence that the victims were heavily involved in laundering and defrauding other people out of millions of dollars. As the prosecution also knew, but did not disclose to the defense, the victims knew that they were in danger and had recently taken out one million dollar life insurance

[7] Amicus is aware that there are some issues where there would be a question of admissibility of the evidence. For example, Mr. Maharaj passed a lie detector test performed by a highly respected expert. It was the conclusion of this expert that he was not responsible for the deaths of Derrick and Duane Moo Young. Mr. Maharaj's main accuser, Neville Butler, failed a lie-detector test on substantial portions of his testimony, yet the prosecution represented to the trial court that he had passed. It is not Amicus' intention to debate the admissibility of this evidence, but it does add to the serious questions concerning Mr. Maharaj's guilt.

policies on themselves.

E. POST-CONVICTION PROCEEDINGS

29. Judge Leonard Glick was appointed to the case in post-conviction proceedings. Judge Glick denied an evidentiary hearing on issues that included allegations that the State had presented perjured testimony and suppressed evidence favorable to the defense.

30. It subsequently came to light that Judge Glick had been a supervising trial prosecuting attorney in the Office of the State's Attorney at the time of Mr. Maharaj's trial. As a result of his failure to reveal his prior potential involvement in the case, this Court ordered Judge Glick to be excused from hearing the case.[8]

31. On appeal, this Court ordered an evidentiary hearing held in September 1997, before Judge Jerald Bagley. Mr. Maharaj did not have proper finance for legal representation and, owing to lack of funds, was unable to prepare and present a large proportion of the evidence that would prove his innocence. At the evidentiary hearing, Judge Bagley did not order a new trial but temporarily suspended Mr. Maharaj's death sentence for the first degree murder of Duane Moo Young pending a new sentencing hearing. Judge Bagley

[8] See Maharaj v. State, 684 So. 2d 726 (Fla. 1996).

made this decision after finding that Judge Solomon, in *ex parte* communications with the State's Attorneys, had allowed the prosecution to write his sentencing order for him before the jury had considered the evidence and returned their recommendation. The State is seeking the reimposition of the death sentence.

I. THE RIGHT TO AN INDEPENDENT AND IMPARTIAL TRIBUNAL UNDER ENGLISH, EUROPEAN AND INTERNATIONAL LAW

32. English law attaches great importance to the principle that justice must not only be done, but must also be seen to be done. This maxim is derived from the jurisprudence of the English courts, in particular the judgement of Lord Hewart, the Lord Chief Justice, in R. v. Sussex Justices, *ex parte* McCarthy [1924] 1 KB 256. He stated that:

> "It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."

33. In following this judgement, Lord Denning, Master of the Rolls, said in Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon [1969] 1 AB 577:

> "It brings home this point: in considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal, or whoever it may be who sits in a judicial capacity. It does not look to see if there

> was a real likelihood that he would, or did, favor one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as he could be, nevertheless if right-minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit. And if he does sit, his decision cannot stand"

34. The House of Lords, through Lord Goff, has more recently re-emphasized the importance of the appearance of impartiality in the effective administration of justice in R. v. Gough [1993] AC 646 HL:

> "... I prefer to state the test in terms of real danger rather than real likelihood, to ensure that the court is thinking in terms of possibility rather than probability of bias."

35. The failure of a judge to withdraw in such circumstances will render any decision the Court arrives at liable to be quashed through an application for judicial review and certiorari. The effect of certiorari is to quash the inferior tribunal's decision. When it grants the remedy, the Appellate Court also has supplementary powers of: (a) remitting the case to the inferior tribunal with a discretion to reconsider it and reach a decision in accordance with its findings; and (b) replacing an unlawful sentence which it has quashed with the sentence it considers fit (Supreme Court Act 1981, Sections 31(5) and 43).

36. A defendant can also rely on such procedural errors in

the course of the trial as a ground for appeal against his conviction if he can prove that the procedural errors made in the trial rendered the conviction unsafe (Section 2(1) of the Criminal Appeals Act 1968, as amended by the Criminal Appeals Act 1995). If the Court of Appeal finds that the conviction is unsafe it must allow the appeal and quash the Appellant's conviction (Criminal Appeals Act, Section 2(2)). The Court of Appeal has the discretion to order a re-trial should it consider that the interests of justice so require. However, if the Court of Appeal does not do so, the effect of quashing a conviction is that the trial court is directed to record an acquittal instead of a conviction, and that the Appellant is treated just as if the jury had found him not guilty (Section 2(3)).

37. The jurisprudence of the European Court has developed along the same lines as that of the English Courts. Article 6(1) of the Convention states:

> "In the determination of his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time **by an independent and impartial tribunal** established by law." (Emphasis supplied)

38. In Hauschildt v. Denmark (12 E.H.R.R. 266) the European Court stated:

> "The existence of impartiality for the purpose of Article 6(1) must be determined according to a subjective

> test, that is on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that is ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect."

39. The European Court added that if there was a legitimate doubt as to a judge's impartiality, he must withdraw from the case. The European Court has found such a legitimate doubt in a number of cases outlined below which are factually similar to the present case.

40. In Borgers v. Belgium (15 E.H.R.R. 92) the Procureur General of the Belgian Court of Cassation was allowed to state his opinion in open court as to whether the appellant's appeal in a criminal case should be allowed. He was then allowed to retire with the Court and take part in its private deliberations on the appeal (although he could not vote). This is to say that a person who was effectively the prosecutor had been permitted to take part in deciding the verdict. This is much the same as happened in Mr. Maharaj's case when Judge Solomon and the Office of the State's Attorney entered into *ex parte* communications to decide sentence *before* the sentencing hearing began.

41. The European Court noted that to give a restrictive interpretation to the right to a fair trial in a democratic society, particularly in regard to observance of the fundamental

principle of impartiality, would not be consonant with the object and purpose of Article 6(1) of the Convention. The European Court held that the wider concept of a fair trial had:

> "undergone a considerable evolution in the [European] Court's case law, notably in respect of the importance attached to appearances and to the increased sensitivity of the public to the fair administration of justice."

The European Court held that there had been a violation of Article 6(1) of the Convention.

42. In Piersack v. Belgium (5 E.H.R.R. 169), the presiding trial court judge had earlier been the head of the section of the public prosecutor's department that had investigated the applicant's case and instituted proceedings against him. This is much the same as happened in Mr. Maharaj's case when Judge Glick, who had been a supervising prosecutor in the office of the State's Attorney at the time of the trial, was appointed to the case in post-conviction proceedings. The European Court, in holding that there had been a violation of Article 6(1), stated:

> "If an individual, after holding in the public prosecutor's department an office whose nature is such that he may have to deal with a given matter in the course of his duties, subsequently sits in the same case as a judge, the public are entitled to fear that he does not offer sufficient guarantees of impartiality."

43. In De Cubber v. Belgium (7 E.H.R.R. 236), the European Court extended this reasoning to the case of an investigating judge

who, although independent from the prosecution, had links with the public prosecutor's department. The European Court made it clear what the cost to the judiciary would be if appearances of impartiality were allowed to seep into judicial decision-making:

> "What is at stake is the confidence which courts in a democratic society must inspire in the public and above all, as far as criminal proceedings are concerned, in the accused."

44. The approach taken by the English Courts and the European Court of Human Rights is consistent with well established principles of International Law. Article 10 of the United Nations Universal Declaration of Human Rights of 1948 declares that:

> "Everyone is entitled in full equality to a fair and public hearing **by an independent and impartial tribunal,** in the determination of his rights and obligations and of any criminal charge against him." (Emphasis supplied.)

45. Also highly relevant to Mr. Maharaj's case is Article 14 of the International Covenant on Civil and Political Rights of 1966:

> "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, **independent and impartial tribunal** established by law." (Emphasis supplied.)

46. This approach is consistent with the laws in legal systems of civilized jurisdictions throughout the world and, of particular relevance to Mr. Maharaj's case, in jurisdictions which

retain the death penalty. For example, in India (another Common Law jurisdiction) the Supreme Court held in Bachan v. State of Punjab (A.I.R. [1980] S.C. 898), 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.

47. In Prasad v. State of Uttar Pradesh [1979] 3 S.C.R. 78 the Supreme Court of India stated that:

> "Deprivation of life under our system is too fundamental to be permitted save on the gravest ground and under the strictest scrutiny if justice, dignity, fair procedure and freedom are creedally constitutional;" and
>
> "Legal justice must be made of surer stuff where deprivation of life may be the consequence."

This enunciates clearly the necessity for procedural fairness in death penalty cases.

48. As the brief factual summary set out above shows, from Mr. Maharaj's trial and post-conviction proceedings right through to the hearing before Judge Glick, there are issues which--irrespective of the integrity of the individuals involved, of any conclusion that was actually reached and of the reasons underlying the acts that took place--raise enormous doubts as to whether these legal tests were satisfied in the administration of this particular case and, in particular, as to whether justice was seen to be done

to the necessary standard.

49. It is Amicus' respectful suggestion that, in these extraordinary circumstances, this Court must act to protect the integrity of the rule of law and the high reputation of due process. When all of these factors are read together, there is a manifest necessity to order a retrial.

II. WAIVER OF RIGHTS – LIMITED CIRCUMSTANCES UNDER EUROPEAN LAW

50. The European Court has consistently held that the waiver of a right guaranteed by the Convention--insofar as it is permissible--must be established in an unequivocal manner.[9] This indicates that there are certain circumstances where a waiver will not be permissible and even where a waiver is permissible the standard will be a rigorous one.

51. In Pfeifer and Plankl v. Austria (14 E.H.R.R. 1992) both judges in a case were disqualified by law as they had been investigating judges in the same case. The judges pointed this fact out to the Defendant and asked him if he would like to lodge a plea of nullity. The Defendant did not do so and the State argued that he had thereby waived his right to have the Court

[9] Oberschlick v. Austria (A 204 (1991)), Pfeifer and Plankl v. Austria (14 E.H.R.R. 1992).

composed differently. The European Court, in dismissing the purported waiver as invalid, stated that in the case of procedural rights, a waiver, in order to be effective for Convention purposes, requires minimum guarantees commensurate to its importance. Further, a right such as the right to an independent and impartial tribunal was of "essential importance" and the exercise of such a right *cannot depend upon the parties alone*. Indeed, commentators have suggested that the impartiality (or independence) of the courts is a structural matter of general public interest which a particular party to court proceedings should not be permitted to waive.[10]

52. The reasoning of the Pfeifer judgment indicates that judges should not be too ready to accept the decisions of parties in the case, especially when they are not appraised of all the facts. The court placed particular emphasis upon the fact that the question put to the Defendant in that case was essentially one of law and that the Defendant as a layman was not in a position to appreciate fully the consequences of his decision. Although in the present case Mr. Maharaj was represented by Counsel, the evidence suggests that Counsel omitted to appraise Mr. Maharaj of important

[10] Law of the European Convention on Human Rights, Harris, O'Boyle, Warbrick, 1995.

facts relating to his decision to "waive" his right to an independent and impartial tribunal.

53. It was apparently the view of the lower court that Mr. Maharaj's decision was knowing, intelligent and voluntary when he relinquished his right to ask for a mistrial at the time of Judge Gross' arrest. However, it is Amicus' concern that such a decision cannot be said to be valid.

54. Mr. Maharaj was a businessman. There is no evidence that he had ever been tried in a criminal court for any offense let alone stood at the dock on trial for his life. He was not trained in the law. He had passed a polygraph where he asserted his innocence, and perhaps underestimated the precarious quality of his predicament. He was faced in mid-trial with the extraordinary arrest for bribery of the trial judge.

55. Counsel for Mr. Maharaj apparently did not discuss the interrelation of all the facts at his disposal.[11] There is no evidence that Counsel knew the basis for Judge Gross' arrest, or made the link between this and the earlier effort to bribe Mr.

[11] There was a suggestion in the lower court that defense counsel did not wish to provoke a mistrial because of the limited retainer that he had been paid, and because a retrial would cut substantially into his fee. Obviously, had counsel had such a motive, the client could not be held to counsel's questionable advice.

Maharaj. There is no evidence that Counsel advised Mr. Maharaj that Judge Gross had shown direct disfavor to him and the defense because of Mr. Maharaj's rejection of the bribe.

56. Counsel for the prosecution did not disclose to Mr. Maharaj that the person who had solicited a bribe from him, was then a member of the Office of the State's Attorney. Mr. Maharaj did not know that the prosecution had learned of these advances, or that they only took them seriously upon Judge Gross' arrest.

57. While this was not known to any party at the time of the purported waiver, Mr. Maharaj also had no knowledge that the new judge assigned to the case would meet *ex parte* with the prosecuting attorneys in imposing a death sentence.

III. INHUMAN AND DEGRADING TREATMENT

58. Amicus is also concerned about the length of time that this matter has taken to be resolved: the events with which Mr. Maharaj has been charged took place in October 1986, 12 years ago; his trial took place in October 1987, 11 years ago. Since then he has been under sentence of death (save only since September 1997, when the sentence was suspended, while still subject to an application to be reimposed).

59. There is jurisprudence in England which considers whether

delays of this order in connection with death sentences can, of themselves, constitute inhuman and degrading treatment, justifying a commutation of the sentence. This authority has arisen in a different (but still Common Law) jurisdiction which is subject, ultimately, to appeal to the Judicial Committee of the Privy Council (which is constituted by members of the House of Lords). Amicus would like to draw this material to this Court's attention as an example of the approach taken in other Common Law jurisdictions where the death sentence is also a part of the penal system, permitted by the constitution.

60. The principal authority is Pratt v. Attorney General for Jamaica ([1994] 2 A.C. 1) in which the Judicial Committee of the Privy Council exhaustively reviewed English jurisprudence on this issue, taking account of accepted international standards. It concluded that:

A) prolonged delay in carrying out a sentence of death could amount to 'inhuman or degrading punishment or other treatment'; so that

B) if a state adopted capital punishment, it had to accept the responsibility of ensuring prompt judicial processes; but that

C) vexatious, frivolous or delaying tactics by the defendant

should not advantage the defendant.

61. This represents the current law in this jurisdiction, and in regions of the world subject to it, and, in the view of Amicus, is compatible with international standards in this area. In Pratt, the guideline set for an acceptable delay was 5 years.

62. Amicus does not seek to fetter in any way the proper legal consideration of the issues arising in this case by the Court of Florida. On the contrary, it is fundamental to this brief that there should be proper legal due process and observance of the rule of law, as measured by the best international standards. However, it respectfully asks this Court:

A) To bear in mind the length of time involved in this case and its impact on Mr. Maharaj; and

B) To have regard to this jurisprudence as an indication of the way in which other courts have approached this issue; when exercising its jurisdiction and any associated discretion in this case.

CONCLUSION

63. For these reasons, Amicus respectfully urges this Court to reverse the lower court, and vacate the convictions.

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Certificate of Service

I hereby certify that I have served a copy of the foregoing document upon Anita Gay, Assistant State Attorney, 1350 N.W. 12th Avenue, Miami, Fla. 33136-2111; on the Office of the Attorney General, Department of Legal Affairs, Rivergate Plaza Suite 950, 444 Brickell Avenue, Miami, Florida 33131; on Benedict P. Kuehne, Sale & Kuehne, Nationsbank Tower, Suite 3550, 100 S.E. 2nd Street, Miami, Florida 33131-2154; and on Clive A. Stafford Smith, Louisiana Crisis Assistance Center, 636 Baronne Street, New Orleans, Louisiana 70113, this 2nd day of March, 1999.

IN THE SUPREME COURT OF FLORIDA

KRISHNA MAHARAJ **Appellant,** **v.** **STATE OF FLORIDA,** **Appellee.**	**CASE NO: 91,854**

APPENDIX I TO
HOUSE OF LORDS *AMICUS CURIAE* BRIEF

2 March 1999

House of Lords
London SW1A OPW

Paul Lomas
Freshfields
65 Fleet Street

Sylvia Walbolt*
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Barnett Tower
One Progress Plaza
200 Central Avenue, Suite 2300

London EC4Y 1HS

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* *Local counsel*

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5. Lord Razzall
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7. Lord Goodhart QC
8. Lord Meston QC
9. Baroness Miller of Chilthorne Domer
10. Lord Thurso
11. Baroness Thomas of Walliswood
12. Lord Taverne QC
13. Lord Tordoff
14. Lord Geraint of Ponterwyd
15. Lord Alderdice

16. Lord Dholakia
17. Lord Avebury
18. Lord Hampton
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20. Baroness Nicholson of Winterborne
21. The Earl of Carlisle
22. Lord Steel of Aikwood
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28. Earl Russell FBA
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36. Lord Dormand of Easington

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38. Lord Bragg

39. Lord Judd

40. Lord Sawyer of Darlington

41. Lord Ahmed of Rotherham

42. Lord Molloy of Ealing

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44. Lord Ashley of Stoke

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54. Lord Astor of Hever

55. The Viscount Astor

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57. Bishop of Bradford

58. Lord Blease (William John Blease)
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