IN THE SUPREME COURT OF FLORIDA

KRISHNA MAHARAJ **Appellant,** **V.** **STATE OF FLORIDA,** **Appellee.**	**CASE No: 91,854**

BRIEF OF *AD HOC* BIPARTISAN PARLIAMENTARY GROUP (HOUSE OF COMMONS) AS *AMICUS CURIAE* IN SUPPORT OF APPELLANT

HOUSE OF COMMONS AMICUS CURIAE BRIEF

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A. INTEREST OF *AMICUS*

1. This brief is submitted by an *Ad Hoc* group of Members of the British Parliament as *Amicus Curiae* in support of the Appellant's appeal against the refusal of the trial court of the 11th Judicial District (the Honourable Jerald Bagley) to order a new trial. Each signatory is a duly elected member of the House of Commons which, together with the House of Lords, constitutes the British Parliament. The group is non-partisan; it has been formed solely for the purpose of petitioning this Honourable Court on behalf of the Appellant, who is a British citizen.[1] It is not the purpose of this Brief to challenge the right of the State of Florida to implement capital punishment in a manner consistent with common law notions of justice and fairness. Rather, *Amicus* seeks an

[1] This Court has previously accepted a brief submitted by *Amicus* and granted English counsel the right to make oral submissions on behalf of the Appellant: *Krishna Maharaj v. State of Florida*, *Amicus* brief in support of 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 (1996).

opportunity to be heard on behalf of a British citizen about whose guilt there now exists serious doubt and who is at risk of being sentenced to death once again.

2. A complete list of the Members of Parliament who have formed this *ad hoc* group is appended to this brief and can be found at Appendix I.

3. *Amicus* does not consider itself as having any particular insight into the facts of this case, or any superior right to instruct the Court as to the law which should apply to determine the outcome of the case. This brief will not therefore develop in any detail the facts of the case, and will not seek to argue extensively the appropriate law of the State of Florida. Instead, *Amicus* hopes to assist the Court in relation to international standards which have developed in relation to cases of this kind, and in relation to human rights standards generally. It may be that the standards are already reflected in the law of Florida, but *amicus* 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. The laws of Florida are open to progressive judicial interpretation and development, and *Amicus* hopes that the precedents and perspectives it brings through international,

English and British Commonwealth sources may be of assistance to the Court.

4. It is respectfully submitted that the Court should accept this brief for the following reasons:

(i) The Court has accepted a brief from *Amicus* during earlier proceedings.

(ii) The Appellant is a British citizen. He was born in Trinidad on 26th January 1939, when Trinidad was subject to British rule, and as such was born with British nationality. He moved to England in 1960 and lived there until 1985 when he moved to the Fort Lauderdale area. The United Kingdom therefore has a direct interest in his welfare and in the outcome of these proceedings. The Appellant therefore retains all the rights and benefits of an English national abroad.

(iii) The British government has taken an active interest in the Appellant's case and has offered limited financial support, to be repaid in the future, to assist with the costs of his defense.

(iv) The Appellant's case has received considerable media attention in Britain. In particular, on 14th August 1995 a national television network (Channel 4) aired a

documentary entitled 'Murder in Room 1215'. As part of this production, program researchers interviewed important witnesses in the Appellant’s trial for the murders of the Moo Youngs in Room 1215 of the Dupont Plaza Hotel, Miami, on 16th October 1986, and discovered matters which undermined their trial testimony and the State's theory of the case. The program caused many members of the British public to write to their Member of Parliament in order to register their concern and disquiet over the Appellant’s conviction, and these MPs, by joining *amicus*, thereby fulfilling their duty to democracy.

(v) 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 Appellant's conviction, and it therefore asserts an interest in the outcome of the proceedings.

(vi) The United States Government has ratified the International Covenant on Civil and Political Rights (‘ICCPR’) with effect from June 8th 1992, thus evincing a sincere concern for the norms of international law.

These are developed below.

B. SUMMARY OF THE ARGUMENTS OF AMICUS

5. *Amicus* seeks to supply support to the constitutional challenges mounted by the Appellant by setting out the applicable standards of international law, as derived from decisions of English courts, international instruments and treaties, and the decisions of the European Court of Human Rights.

6. *Amicus* will make submissions on (i) the behavior of the trial judge (Judge Gross) and the links of the judge appointed to hear the post-conviction proceedings (Judge Glick); (ii) the behavior of the prosecution in withholding evidence; (iii) the inept performance of Mr Maharaj's trial counsel, in the light of these international standards.

C. RELEVANT INTERNATIONAL LEGAL STANDARDS

7. The principal relevant international standards are as follows.

(i) Article 6(1) of the ICCPR provides:

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

(ii) Article 14 provides:

(a) 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. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

(b) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

(c) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

> (i) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
> (ii) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;
> (iii) To be tried without undue delay;
> (iv) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be

> informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
> (v) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
> (vi) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
> (vii) Not to be compelled to testify against himself or to confess guilt.

8. Articles 4 and 8 of the American Convention on Human Rights (*ACHR*) provides:

> Article 4. Right to Life
> (i) Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
> (ii) In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply 3. The death penalty shall not be re-established in states that have abolished it.
> (iii) In no case shall capital punishment be inflicted for political offences or related common crimes.
> (iv) Capital punishment shall not be imposed upon persons who, at the time the crime was

committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.

(v) Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

Article 8. Right to a Fair Trial

(i) Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

(ii) Every person accused of a criminal offence has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

(a) the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;

(b) prior notification in detail to the accused of the charges against him;

(c) adequate time and means for the preparation of his defense;

(d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

(e) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself

> personally or engage his own counsel within the time period established by law.

9. The following Articles of the American Declaration of the Rights and Duties of Man, (O.A.S. Res. XXX), adopted by the Ninth International Conference of American States (1948) are relevant:

> Article I.
> Every human being has the right to life, liberty and the security of his person.
> Article XVIII.
> Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.
> Article XXVI.
> Every accused person is presumed to be innocent until proved guilty.
> Every person accused of an offence has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre- existing laws, and not to receive cruel, infamous or unusual punishment.

10. Article 6 of the European Convention on Human Rights provides:

> Article 6
> Right to a fair trial
> (i) In the determination of his civil rights and obligations or of 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. Judgment shall be pronounced publicly but the press and public

> may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
> (ii) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
> (iii) Everyone charged with a criminal offence has the following minimum rights:
>
> > (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
> > (b) to have adequate time and facilities for the preparation of his defense;
> > (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
> > (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
> > (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

11. The Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty adopted by the Economic and Social Council (ECOSOC Resolution 1984/50) of the United Nations and endorsed by the General Assembly in 1984 set out the procedural protections for the accused which the international community

regards as essential for the fair imposition of capital punishment:

> Safeguards guaranteeing protection of the rights of those facing the death penalty
> (i) In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.
> (ii) Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby. 3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.
> (iii) Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.
> (iv) Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.
> (v) Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.

> (vi) Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.
> (vii) Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.
> (viii) Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

12. 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)

13. International law requires that the "due process" standards in Article 14 of the ICCPR be scrupulously observed in capital cases. There must, for example, be an "equality of arms" between the prosecution and the defense, and the capital sentence must be vacated where defense counsel is incompetent. 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.

14. It is *Amicus'* principal submission that these standards were violated because the Appellant did not receive a fair trial, in violation of Article 14 of the ICCPR, Articles 4 and 8 of the ACHR, Article 6 of the ECHR, Article XXVI of the American

Declaration and ECOSEC Standards 4 and 5, because of:

(i) the arrest of the first trial judge;

(ii) the failure by the prosecution to disclose relevant evidence;

(iii) the performance of trial counsel.

Amicus also submits that there is now so much doubt about the Appellant's conviction, as a result of evidence not heard by the jury, that a new trial ought to be held to prevent a possible miscarriage of justice.

I. THE BEHAVIOR OF THE TRIAL JUDGE AND PROCEDURAL IRREGULARITIES DURING THE TRIAL RENDERED THE TRIAL FUNDAMENTALLY UNFAIR ACCORDING TO INTERNATIONAL HUMAN RIGHTS

15. Article 6 of the ECHR, Articles 4 and 8 of the ACHR and ECOSOC Standard 4 require that a criminal 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. 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 is unobjectionable provided that it makes no difference to the defendant whether he is tried by one judge or another. A further important element of a "fair hearing" is that the defendant knows the basis upon which the court founds its decisions.

16. This principles were violated by the continuation of the trial after the arrest of Judge Gross on bribery charges after three days of testimony. It might well be believed 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. 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 favour of the prosecution were based upon his perception of the merits of the legal arguments presented to him by the prosecution and defense, 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 focussed upon the arguments being presented to him, or whether he was so pre-occupied 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 a re-trial.

17. Furthermore, it came to light at the recent evidentiary hearing, held on the 3.850 petition of Mr. Maharaj, that Judge Gross, through a intermediary from the State's Attorney's Office, attempted to solicit a bribe from Mr. Maharaj to allow his release on bond. (3.850 Tr. 223-244, 348-383, 432-433) An outraged Mr. Maharaj rejected the advances of the corrupt Judge Gross and thus suffered the biased rulings of a judge who sought to punish the propriety of Mr. Maharaj. Mr. Maharaj's trial counsel made several references at the evidentiary hearing to his perception that he felt that the defense received vastly more harsh treatment at trial than that of the State (3.850 Tr. 237-238, 351-352), but he says he failed to make the connection between the attempt by Judge Gross to solicit a bribe from Mr. Maharaj and the reaction of the judge at trial. (3.850 Tr. 235) Despite the fact that Mr. Maharaj informed his trial counsel of this approach by Judge Gross, and trial counsel then informed the Assistant State's Attorneys prosecuting Mr. Maharaj, nothing was done by either of these parties to ease Mr. Maharaj's awful predicament. (3.850 Tr. 225, 228, 230-232, 240-244) It is the contention of *Amicus* that there exists a pervasive air of impropriety and bias that continues to shroud this case;

only by ordering a retrial can this be remedied.

18. *Amicus* is surprised at the failure of the court system to require a re-trial in these circumstances. The international standards set out above are consistent with requiring that a criminal trial be fair. Given the number of witnesses who had already given important evidence, no reasonable observer could conclude that a new judge could become qualified to continue with the trial merely by "reading the record".

19. The question of disqualification of a member of the judiciary from hearing a case because of potential conflicts of interest was recently considered by the House of Lords in R. v. Metropolitan Stipendiary Magistrate ex parte Pinochet Ugarte (No. 2) [1999] 2 W.L.R. 272. The former president of Chile, Senator Augusto Pinochet Ugarte, is currently on bail in the United Kingdom, pending the determination of a request for his extradition to Spain, for human rights abuses allegedly perpetrated by his regime in Chile following the *coup d'etat* in 1973. He challenged his arrest on the grounds that, as a former head of state, he is immune for acts done as head of state. The lower court held that he was immune as a former of state, and Spain appealed to the House of Lords. The international human rights organisation Amnesty International were given leave to intervene in the appeal, and

strongly argued that Senator Pinochet should not have immunity. By a 3-2 decision, the House of Lords held that he was immune and ordered that the extradition process should continue: [1998] 3 W.L.R. 1456. One of the judges in the majority was Lord Hoffmann. Following the appeal, Senator Pinochet and his lawyers discovered that Lord Hoffmann is the Chairman of the charitable arm of Amnesty International, and they therefore petitioned the House of Lords to have the decision set aside because there were grounds to believe that Lord Hoffmann had manifested bias. On 17th December, 1998, a different panel of judges voted 5 - 0 to set aside the earlier decision and ordered a re-hearing on the grounds that Lord Hoffmann ought not to have heard the case because of his links with Amnesty International.

20. The speeches delivered by the Law Lords are definitive statements of the role and duties of members of the judiciary, and are extremely relevant to the issue of whether the behavior of Judge Gross rendered the Appellant's trial unfair.

Lord Browne-Wilkinson said at 281:

> The fundamental principle is that a man may not be a judge in his own cause. This principle, as developed by the courts, has two very similar but not identical implications. First it may be applied literally: if a judge is in fact a party to the litigation or has a financial or proprietary interest in its outcome then he is indeed sitting as a judge

> in his own cause. In that case, the mere fact that he is a party to the action or has a financial or proprietary interest in its outcome is sufficient to cause his automatic disqualification. The second application of the principle is where a judge is not a party to the suit and does not have a financial interest in its outcome, but in some other way his conduct or behavior may give rise to a suspicion that he is not impartial, for example because of his friendship with a party. This second type of case is not strictly speaking an application of the principle that a man must not be judge in his own cause, since the judge will not normally be himself benefiting, but providing a benefit for another by failing to be impartial.

Lord Hope said at 288:

> One of the cornerstones of our legal system is the impartiality of the tribunals by which justice is administered. In civil litigation the guiding principle is that no one may be a judge in his own cause: *nemo debet esse judex in propria causa*. It is a principle which is applied much more widely than a literal interpretation of the words might suggest. It is not confined to cases where the judge is a party to the proceedings. It is applied also to cases where he has a personal or pecuniary interest in the outcome, however small ...
>
> ... everyone whom the prosecutor seeks to bring to justice is entitled to the protection of the law, however grave the offence or offences with which he is being prosecuted.

Lord Hutton made clear (at 294) that, where a judge's behavior was being considered, an important consideration was the public perception of the behavior concerned:

> ... I consider that the links, described in the judgment of Lord Browne-Wilkinson, between Lord Hoffmann and Amnesty International, which had campaigned strongly against General Pinochet and which intervened in the earlier hearing to support the case that he should be extradited to face trial for his alleged crimes, were so strong that public confidence in the integrity of the administration of justice would be shaken if his decision were allowed to stand

20. The European Court of Human Rights has held that the fair trial requirements of Article 6 of the Convention require 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 [the judge's] independence. Such a situation seriously affects the confidence which the courts must inspire in a democratic society.

21. It is *amicus*' submission that the facts of this case are sufficient to raise a legitimate doubt about the independence of Judge Gross. Certainly, they are stronger than those which existed in the European Court 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.

22. *Amicus* is aware of the trial court's ruling that the Appellant is barred from raising this issue on the grounds that

there was a "clear and informed intelligent waiver of his right to a mistrial" (3.850 Tr. 1154). However, *Amicus* submits that a mistrial, in these truly extraordinary circumstances, should have been ordered *sua sponte as* the requirements of a fair trial are so fundamental that a defendant ought not to be permitted to waive his right to a fair trial. *Amicus* further contends that even if this right could be waived, it was not waived knowingly, intelligently or voluntarily by Mr. Maharaj. Mr. Maharaj's trial counsel failed to understand the full implications of Judge Gross' arrest, failed to make any connection between his attempt to solicit a bribe from his client and the defense's subsequent rough treatment (3.850 Tr. 235) and failed to furnish himself with the complete facts surrounding the arrest beyond "the information that had been disseminated by the news media." (3.850 Tr. 239) Consequently, his advice to Mr. Maharaj, who has no legal training and had no experience of criminal proceedings, was almost useless and certainly not a sufficient groundfor Mr. Maharaj to make a valid waiver of such a crucial right.

23. *Amicus* submits that applying these criteria there can only be one conclusion, namely that a re-trial should be ordered. To send a man to the electric chair at the conclusion of a trial in the course of which the judge had been arrested would shock the

conscience of any reasonable and rational person. It is clear that the Appellant's trial was not fair by the norms of international law and for that reason a new trial should be ordered.

II. THE APPELLANT SHOULD BE GRANTED A NEW TRIAL BECAUSE OF THE NEW EVIDENCE WHICH SERIOUSLY UNDERMINES THE RELIABILITY OF THE CASE AGAINST

24. The Appellant has spent nine years either facing Death Row or actually under sentence of death in the State of Florida. During the last few years evidence has come to light, some of which was known to the prosecution at the time of the trial, that casts serious doubts on the validity of his conviction. None of these doubts have been dispelled by the 3.850 evidentiary hearing in the Trial Court. The only proper way to resolve these doubts is to order a re-trial before an unbiased judge and a jury.

25. *Amicus* will not detail the evidence which has emerged since the conviction which casts doubt upon it. It is understood that this will be treated exhaustively in the Appellant's brief. Save to say that it is peculiarly striking to unbiased international observers that the evidence generated by the law firm of Shutts & Bowen, 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 potential involvement, at the time of their deaths, of the victims (the Moo Youngs) in multi-million dollar frauds or money laundering (there being no evidence of any such involvement against the Appellant) was never considered as a possible reason for the killings. The tenor of the Shutts & Bowen investigation is that this was the most likely reason, and more recent evidential material confirms that it was the actual reason, and indicates the likely suspects. (Exh. OB-OW) While this remains a possible - even probable - "alternative explanation of the facts" in terms of E.C.O.S.E.C. Standard 4, that international legal standard will be breached in the event of the Appellant’s execution.

26. This alternative explanation now gathers further support from evidence as to the unreliability of the only eyewitness to the murders, Neville Butler, who appears deeply implicated 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, Prince Ellis. Another witness of significance, Tino Geddes, in that he contested the Appellant's

alibi in his jury testimony, had his testimony "purchased" by the prosecution by providing him with assistance at his own trial in Jamaica. (Exh. M, RA 115) These and other fundamental flaws which have opened up in the prosecution case undermine it to such an extent that the "alternative explanation of the facts" (E.C.O.S.E.C. Standard 4)as a reprisal killing arising from the Moo Youngs' criminal activities now appears to be the most likely scenario.

27. The Appellant has consistently maintained his innocence, and in 1987 passed a lie detector test (Appendix 2 Exh-I). While *Amicus* is aware of the controversy surrounding the use of polygraphs, and is also aware that under Florida law such evidence may not be admissible, it nonetheless finds it troubling that the jury which condemned the Appellant was unaware that while the Appellant passed a polygraph test, Neville Butler, the key prosecution witness, failed such a test, and that his failure was misrepresented to the defense by the prosecution. (Appendix 2 Exh. IA)

28. The jury never heard compelling evidence that the Appellant did not commit the crime and perhaps could not have committed it. The prosecutor put his case at trial that the murder happened between 11:00am and 12 noon on 16th October, 1986. Neville Butler said that he had set up the meeting for 11:00am (Tr. 3054) and that

the crime lasted for about half an hour. (Tr. 2830) However, the Appellant had witnesses available to demonstrate 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, the Appellant arrived at a real estate appointment with a Mr. George Bell. Mr Bell estimates the time of his arrival to be have been 11:50am (Appendix 1 Exh. F), and Douglas Scott, who was also present, estimates that he arrived at around 11:45am (Appendix 1 Exh. D). The men had lunch in a nearby restaurant. This evidence would absolutely rule out the Appellant as the murderer. Neville Butler, whom the prosecution described at the trial as their 'eyewitness' to the crime (Tr. Volume A), stated that he sat outside the hotel with the Appellant for three hours after the murders (Appendix vol. 18 SNB(A)-SNB(D)). The alibi witnesses were never heard by the jury or the sentencing judge.

29. It is notable that there was no physical evidence inconsistent with the Appellant's version of events. The Appellant 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 the Appellant's fingerprints were

found in the room, in the light of his admission of presence this proves little or nothing. Furthermore, after the crime no one noted anything abnormal about the Appellant'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).

30. *Amicus* submits that the prosecution case simply does not make sense. The suggested motive, namely the litigation brought by the Appellant against the Moo Youngs, is simply risible given that the Appellant had been told by his lawyer that he would win this case when it came to court several months later. Moreover, the Appellant 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 recognised when he made his only visit at 8am that morning. Moreover, room 1215 was booked in the name of Eddie Dames. Various witnesses placed the Appellant in the room at around 8:00am. This strikes *Amicus* as odd behavior for a man planning to commit a double murder 3 or 4 hours later, as it gave potential witnesses plenty of opportunities to notice the Appellant, as indeed they did. According to Neville Butler the Appellant was calmly sitting reading the newspaper for a long time waiting for his "victims" to

arrive. (Tr. 2413) This behavior is wholly inconsistent with a plan on the Appellant's part to commit a murder. It is consistent, however, 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.

31. 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 television documentary referred to above which has developed important evidence pointing to a miscarriage of justice (Appendix volume 6-7 HA-HQ).

32. As Prince Ellis, a major prosecution witness said on tape in the British 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.
> (Appendix Vol. 7 Exh. HO PE at 64)

33. Mr Ellis has good reason to have developed his doubts about the Appellant's guilt. When the researchers for the program 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.
> (Appendix Vol. 7 HO, PO at 46)

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

> I am here as a concerned individual who feel 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.
> (Appendix Vol. 7 Exh. HO PE at 52)

35. *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 program:

> I just thought maybe I was being used at that time as Eddie’s alibi, because of his reaction at Ace Music Studio.
> (Appendix Vol. 7 Exh HO PE at 34)

36. 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.
> (Appendix Vol.7 Exh HO PE at 34)

37. *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. (Appendix Vol. 7 Exh. HO PE at 27-40)

38. 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(Appendix Vol. 7 Exh. HO PE at 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 the Appellant. 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 (Appendix Vol. 7 Exh. HO PE

at 24).

39. 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".
> (Appendix Vol. 7 Exh. HO at 56)

40. The passage from the television program which concerns *Amicus*, 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.
> (Appendix Vol. 7 Exh. HO PE at 52)

41. *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 he came out "clean" (Appendix Vol. 7 Exh. HP NB at 43). Butler lied in his depositions and has admitted telling lies in the course of the trial (Tr. 3116-3120). *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 the Appellant. However in his trial testimony he said that he was standing at the bottom of the stairs while the Appellant was interrogating the younger Moo Young upstairs. (Tr. 2824) When Channel 4 visited the Room 1215 however it is obvious from the physical layout that Butler could easily have just stepped outside into the corridor. *Amicus* believes that it is frankly incredible 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.

42. The prosecution, in front of the Grand Jury made great play of the fact that one of the hotel staff purported to remember the Appellant reserving Room 1215, on the basis that this showed that he was involved in some kind of plot. However Butler confesses that he registered and paid for the room in the name of Eddie Dames (Tr. 2769)

43. It is not the purpose of *Amicus* to detail all the frailties in the prosecution's case. During the investigations for the Channel 4 program it was apparent that Tino Geddes, another prosecution witness has been the beneficiary of favours and

assistance from the prosecutors of the Appellant in connection with other arrests and detentions for drug related crimes, including testimony at a Jamaican trial in which he was the defendant (Appendix Vol. 18 STG-D) 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. (Appendix Vol. 18 SNB-D NB at 85).

III. 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

44. *Amicus* recognises that the Appellant 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. These decisions were made -- incompetently, it is respectfully suggested -- 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 the Appellant's conviction and sentence of death.

45. It is now apparent that there were numerous people with a motive to kill the Moo Youngs. Firstly, unknown to the defense at the time of the trial, and apparently suppressed by the

prosecution, 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 (Appendix Vol. 8 IBK-IBL).

46. 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 (Appendix Vol. 9 Exh OB). Despite the fact that the evidence which the insurance companies discovered pointed away from the Appellant it was never made known to the defense, apparently because the officer in the case, Detective Buhrmaster did not consider it to be relevant (3.850 Tr. p 619). This was disgraceful behavior 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 defense.

47. The money laundering/drug dealing involvement seems to *Amicus* to be a far more cogent motive for a double murder than that offered for the Appellant, 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 program, a statement was secured from another impartial person who revealed that a man named Adam Hosein was a drug distributor for the Moo Youngs and owed them a great of money and thus had the most to gain from having them killed (Appendix Vol. 7 HT). Further, this person 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. 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.)

48. 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 associate Nigel Bowe is currently serving a sentence in federal prison for

drugs offences (Appendix Vol. 3 EA p15).

49. Eddie Dames denied to the television researchers that he knew or knew of Adam Hosein - a demonstrably false statement the making of which invites an inference as to guilty participation with Hosein (Appendix Vol. 6 HE at p.33)

50. 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 prosecution failed to reveal to the defense that Neville Butler had made statements to Prince Ellis in which he identified more that one killer (Appendix Vol. 7 HO PE at 56).

51. *Amicus* does not seek to propose or adopt any one version of the truth in this case. The material set out above is there to make good *Amicus'* submission that there is now enough doubt in this case to require that the new evidence be properly investigated and the case decided afresh by an impartial jury and an impartial judge.

52. 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 & Bowen investigation and the ongoing involvement of the victims in fraud and drugs 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 the Appellant's innocence.

53. The common law on this issue is consistent and clear. 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 defense, 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.

54. This decision is in accordance with the interpretation which the European Court of Human Rights has placed upon Article 6 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-à-vis* the opposing party. In particular, the parties must have the same access to the records and other documents in the case: Edwards v. UK, (1992) 15 E.H.R.R.

417.

IV. THE INCOMPETENCE OF TRIAL COUNSEL

55. 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 arrested mid-trial to face bribery allegations;

(b) the failure to advise the Appellant to offer testimony in his own defense; and

(c) the failure to call alibi witnesses, or indeed any witnesses, at the guilt phase, on his own behalf.

57. These failures defy rational explanation other than on grounds that the Appellant 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 in his opening speech to the jury an obvious lack of any grasp of the case and his closing remarks were little better. His cross-examination of Butler was inept, and failure to object to inadmissible evidence was remarkable. In a capital case it becomes a matter of utmost anxiety when a credible defense is not put forward until the sentencing proceedings, when it is too late.

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

59. *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 affect the performance had upon the course of the trial. This is reflected in Standard 5 of the E.C.O.S.E.C. standards:

> Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.

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 defense 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 it held that because the trial attorney had disregarded his client's instructions and 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.

SUMMARY

60. As an outside observer, *Amicus* respectfully submits that there is now sufficient material to raise doubts about the Appellant’s guilt. Had the Appellant been defended by competent counsel, had the trial been presided over by a judge who was not biased, and had the jury, which condemned the Appellant to death, 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 some of those who were with the Appellant 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.

61. 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.

62. *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 offense 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 courts' 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.

IN THE SUPREME COURT OF FLORIDA

KRISHNA MAHARAJ	)	
Appellant,	)	
V.	)	**CASE No: 91,854**

STATE OF FLORIDA,)
)
)
Appellee.)
)

APPENDIX I TO
HOUSE OF COMMONS AMICUS CURIAE BRIEF

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