JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NOS: 106 & 107/2005

BEFORE:	**THE HON. MR. JUSTICE HARRISON, P.** **THE HON. MR. JUSTICE COOKE, J.A.** **THE HON. MRS. JUSTICE HARRIS, J.A.**	
BETWEEN	**LEEBERT RAMCHARAN**	**APPELLANT**
AND	**THE COMMISSIONER OF CORRECTIONAL SERVICES**	**1ST RESPONDENT**
AND	**DIRECTOR OF PUBLIC PROSECUTIONS**	**2ND RESPONDENT**
BETWEEN	**DONOVAN WILLIAMS**	**APPELLANT**
AND	**THE COMMISSIONER OF CORRECTIONAL SERVICES**	**1ST RESPONDENT**
AND	**DIRECTOR OF PUBLIC PROSECUTIONS**	**2ND RESPONDENT**

Lord Gifford, Q.C., & Hugh Thompson instructed by **Gifford, Thompson & Bright** for Ramcharan

Frank Phipps, Q.C., Miss Kathryn Phipps & Wentworth Charles instructed by **Wentworth Charles & Co.,** for Williams

Patrick Foster, Dep. Solicitor General & Miss Annaliesa Lindsay instructed by **Director of State Proceedings** for 1st respondent

Kent Pantry, Q.C., Director of Public Prosecutions & Miss Winsome Pennicook, Crown Counsel for 2nd respondent

5th, 6th, 7th, July 25, 26, 27, 28th, 29th September
6th, 7th, 8th, 9th, November 2006 & 16th March 2007

HARRISON, P.

These are appeals by Leebert Ramcharan and Donovan Williams from a decision of the full court of the Supreme Court (Wolfe, C.J., Dukharan, Hibbert, JJ) on 6th October 2005 dismissing the application of each appellant for a writ of habeas corpus.

An extradition treaty signed on 14th June 1983 by the United States of America and Jamaica, came into force by ratification on 31st May 1991 and as a consequence the current Extradition Act came into force in 1991.

On 2nd March 2004 by diplomatic notes to the Ministry of Foreign Affairs and Foreign Trade of the Government of Jamaica, the United States of America ("the Requesting State") sought the extradition of the appellants. The Senior Resident Magistrate for the Corporate Area Criminal on 2nd March 2004 issued provisional warrants pursuant to section 9(1)(b) of the Extradition Act ("the Act") for both appellants. They were arrested on 3rd March 2004 on the said warrants by Sgt. Glenford Buckle of the Jamaica Constabulary Force at the New Horizon Remand Centre where they were in custody. At the time of such arrest each was shown a photograph of himself and asked if it was his. Ramcharan said "Yes officer". Williams said "It look like mi."

On 28th April 2004 the Requesting State forwarded to the Foreign Affairs Ministry in Jamaica ("the Requested State"), in respect of each appellant, a

bundle of documents containing an affidavit of Joseph A. Cooley, Special Assistant United States Attorney for the Southern District of Florida, sworn to on 19th April 2004 before Peter R. Palermo, United States Magistrate Judge of the Southern District of Florida.

In his affidavit, he stated the charges filed against each appellant and the relevant United States legislation, explained the Federal Grand Jury process giving rise to the issue of the indictments and warrants, and summarized the facts of the case. Exhibited to each of these affidavits were:

1. copies of the Federal Grand Jury indictment and US warrant of arrest dated 30th January 2005,

2. copies of extracts of the US legislation which the appellants allegedly breached,

3. penalty sheets listing the sentences on conviction of the several offences charged,

4. an affidavit of Dennis Hocker, a Special Agent employed to the Drug Enforcement Administration ("the DEA") sworn to before the said Peter R. Palermo on 10th April 2004, detailing his investigations in respect of the charges against the appellants,

5. an affidavit sworn to on 2nd April 2004 before Theodore Klein, United States Magistrate Judge for the Southern District of Florida by an affiant described as a "Confidential Informant," and whose name and signature were obliterated from the affidavit.

This latter affidavit was "certified to be a true and correct copy of the document on file" by one Clarence Maddox, Clerk, U.S. District Court Southern District of Florida on 4th February 2004.

On the 11th May 2004 two further bundles of documents were received by the said Ministry of Foreign Affairs, each containing an affidavit of William H. Bryan, III, Assistant United States Attorney for the Southern District of Florida, sworn to on 5th May 2004 before William C. Turnoff, United States Magistrate Judge for the Southern District of Florida. Exhibited to each of these affidavits was the affidavit of Alexander Young also sworn to before William C. Turnoff, on 5th May 2004.

The affidavits of the confidential informant and Alexander Young both give accounts of their meetings and drug dealings with the appellants, thereby providing the evidence to substantiate the charges contained in the indictments, dated 30th January 2004, as required by section 8(2) of the Act.

On 30th April 2004 the Minister issued his authority to proceed under section 8(1) of the Act authorizing the Resident Magistrate to commence committal proceedings. Committal hearings were held on the 19th and 28th May 2004 and on 7th June 2004 the Resident Magistrate granted the United States' extradition requests by issuing a warrant of committal for each of the appellants Ramcharan and Williams, ordering that they be remanded in custody to await their extradition to the United States of America. They were committed to be tried on two counts, namely:

(1) Conspiracy to import a mixture and substance containing cocaine into the Unites States, and

(2) conspiracy to possess with intent to distribute in the United States of America, a mixture and substance containing cocaine.

Previously, on 1st June 2004 George W. Bush, the President of the United States of America, designated the appellant Leebert Ramcharan a "narcotics Kingpin" under the powers granted by the Foreign Narcotics Kingpin Designation Act ("the Kingpin Act") of 1999.

Section 3 of the said Act describes its purpose. It reads:

> "**3.** The purpose of this Act is to provide authority for the identification of and application of sanctions on a worldwide basis to, significant foreign narcotics traffickers, their organizations and the foreign persons who provide support to those significant foreign narcotics traffickers and their organizations whose activities threaten the national security foreign policy, and economy of the Unites States."

Consequent on the committal orders made on 7th June 2004 the appellants applied for writs of habeas corpus to issue for their release from custody. On 6th October 2005 the full court of the Supreme Court refused each application. That resulted in this appeal.

The appellant Ramcharan filed eight grounds of appeal and the appellant Williams filed nine grounds of appeal. Common to the appeal of each appellant were grounds (a) to (e). They read:

> "(a) The Full Court erred in law in holding that the affidavits relied on by the Requesting State were duly authenticated in accordance with section 14(1)(a) of the Extradition Act; since the said affidavits were not certified to be either originals or true copies as is required by section 14(2)(a) of that Act.

(b) The Full Court erred in law in holding that the document purporting to be testimony given by a person whose name had been obliterated was admissible as a true copy of an original affidavit, since it was plain on the face of the document that it had been altered since it was originally created.

(c) The Full Court erred in law in holding that it could properly determine by an examination of the affidavit of Alexander Young that it was an original affidavit, when it was not certified so to be by any appropriate officer.

(d) The Full Court erred in law in holding that the photograph relied on by the Requesting State as identifying the Appellant was duly authenticated in accordance with section 14(1)(b) of the said Act, since it was not certified to be either a photograph received in evidence or a true copy thereof as required by section 14(2)(b) of that Act.

(e) The Full Court erred in law in holding that the Resident Magistrate could consider testimony coming from a person described as a confidential informant whose name was not supplied, in the absence of any evidence that the said person had any good reason for withholding his name."

The grounds of appeal argued, exclusive to the appellant Ramcharan, were grounds (f) to (h). They read:

"(f) The Full Court erred in law in construing section 7(1)(c) of the Extradition Act is (sic) meaning that the Appellant was required to establish that he might be denied a fair trial as a result of his race, religion, nationality or political opinions; and in not holding that the denial of a fair trial for any reason would

require the refusal of extradition under that section.

(g) The Full Court erred in law in not holding that the designation of the Appellant by the President of the Requesting State under the Foreign Narcotics Kingpin Designation Act, being an Act applicable only to non-nationals of the United States, discriminated against the Appellant on the grounds of his nationality, so that if such designation prejudiced his right to a fair trial in the United States, the prejudice arose by reason of his nationality.

(h) The Full Court erred in law in (sic) holding that the evidence adduced on behalf of the Appellant, including the expert evidence of Professor Bruce Winick as to the likelihood of jurors knowing of the said designation and its likely effect on their minds, had demonstrated that he might, if extradited, be denied a fair trial."

These grounds of appeal argued exclusive to the appellant Williams were grounds (f) and (h). They read:

"(f) The Full Court erred in law in holding that the Appellant could be extradited on count 2 of the indictment, which was described in the authority to proceed as conspiracy to posses (sic) with intent to distribute in the United States of America a mixture and substance containing cocaine, and in not holding that such offences were not offences under Jamaican Law.

...

(h) The Full Court erred in law in holding that the evidence adduced at the Committal hearing taken at its highest proved that the Appellant had been party to an agreement to possess

> cocaine or to import it into the Unites States of America."

Ground (g) in respect of the appellant Williams was abandoned.

Ground (i) for which leave was sought, reads:

> "(i) The Extradition Act of 1991 is inconsistent with section 16(1) of the Jamaica [Constitution] providing immunity from expulsion from Jamaica and as a consequence made void by section 2 of the Constitution."

Grounds (a) (b) and (c) of each appellant Ramcharan and Williams challenge the authentication of the affidavits of Young and the confidential informant in that they did not conform to the requirements of section 14(1)(a) of the Act, that the affidavit of the confidential informant had been altered and thereby rendered inadmissible and that the full court could not itself determine by its examination that the affidavit of Young was an original, in the absence of the statutory certification.

Section 14(1)(a) of the Act require that documents purporting to contain sworn testimony tendered with the extradition request must be "duly authenticated" in the manner set out under section 14(2)(a). The latter section reads:

> "(2) A document shall be deemed to be duly authenticated for the purposes of this section –
>
> (a) in the case of a document which purports to set out testimony given as referred to in subsection (1)(a), if the document purports to be certified by a judge, magistrate or officer of the Court in or of the approved State in question ..."

Authentication under the Act is therefore a dual process, namely:

> (a) certification, by the relevant judicial or diplomatic authority of the Requesting State, vouching for the genuiness of the documents as being either originals or true copies of originals, and
>
> (b) authentication, by the oath of the witness or the formal affixing of a seal by the relevant Minister in the Requesting State. This is in essence a subsidiary authentication.

Both Lord Gifford, Q.C., for the appellant Ramcharan and Mr. Charles for the appellant Williams argued that the affidavit of Joseph A. Cooley, which was certified by Lystra G. Blake as his original affidavit "with supporting documentation", did conform with section 14(1)(a) and section 14(2)(a). But however, the documents attached to Cooley's affidavit namely the affidavits of Dennis Hocker, the confidential informant, Glenford Buckle and Marcia Dunbar, did not satisfy the statutory requirement because they were not described by Cooley as being either "... the original document ... or ... a true copy of that original document," and therefore were inadmissible as evidence before the Resident Magistrate. A similar argument was advanced by both counsel in respect of the affidavit of William H. Bryan III which was certified by the said Lystra G. Blake, as his "supplemental affidavit ... with supporting documentation." The affidavit of Bryan recited in paragraph 5:

> "I have attached to this affidavit the affidavits (sic) of the witness Alexander Young..."

but did not state whether or not it was "... the original document ... or a true copy of that original."

Both counsel relied on ***Prince Anthony Edwards v D.P.P. & Director of Correctional Services*** [1994] 31 JLR 526, in which Downer, J.A. observed that all the affidavits and exhibits were referred to as either "originals or a certified true and correct copy" by the official certification of the U.S. official, and ***Oskar v Government of Australia and Others*** [1988] 1 All ER 183, in which the documents certified were identified as "the original documents."

Although the provisions of section 14 of the Act are mandatory, the compliance therewith is not restricted by a single inflexible method of proof or style of authentication. The purpose and intention of the section are to ensure that the documents relied on by both the Requesting and the Requested States are genuine and authentic as originating from official sources and not contrived and falsified in order to procure the transfer of its nationals by devious means.

The reference to "a document" in section 14 of the Act, can be taken to mean a single paper writing. However, several documents tied together making a single bundle have been construed as "a document" for the purposes of the provisions of the said section.

In the case of ***Prince Anthony Edwards*** (supra) the point arose, to determine whether the documents submitted were properly authenticated. Downer, J.A. held that the documents together under the seal of the Department of Justice, at page 529:

> "... from the method of sealing ... are properly regarded as a document."

He concluded that:

> ... these documents were certified by a district judge, a notary public, an officer of the court and authenticated by two Ministers of the requesting state..."

The "document" was, as a consequence properly authenticated in accordance with section 14 of the Act. The learned Judge of Appeal noted however that the certification of the Deputy Director of the Office of International Affairs, Criminal Division, of the affidavit of the US Attorney described in the affidavits attached thereto, as original affidavits.

In the instant case, the description of the affidavits attached to the affidavits of Cooley and Bryan, were not specifically described as "originals" nor "true copies of original documents." A different method of identification was employed by Lystra Blake, Associate Director, US Department of Justice. Having certified that the original affidavit of Joseph A. Cooley, attached, was accompanied "with supporting documentation", she stated immediately following:

> "True copies of the original documents are maintained in the official files of the United States Department of Justice in Washington, D.C." (Emphasis added)

The purpose and intent of the legislative provisions must be considered in construing the contents of the documentation in extradition proceedings. The provisions of section 14(2)(a) of the Act cannot therefore be given an overly technical degree of construction. In considering the adequacy of the subsidiary

certification, Langrin J, in ***Coke et al v. The Superintendent of Prisons et al*** [1991] 28 JLR 365 at 372 said:

> "The role of the Court is confined to ascertaining from the words that Parliament has approved as expressing its intention, what that intention was, and to giving effect to it. Further the statute should be construed as to provide the general legislative purpose."

The learned judge was construing the provisions of the 1870 Extradition Act which were in terms similar to our current Act. Lord Ackner in ***Oskar v. Government of Australia et al*** (supra) commenting on the legislative provision concerning certification, in terms similar to section 14(2), at page 190 said:

> "I agree with the Divisional Court that the section does not require each statement to carry on its face a certificate from the magistrate. Such a requirement would be highly artificial. The section is complied with if there is a separate certificate, which sufficiently identifies all the statements which it certifies, as in the instant case, where they are all tied together."

The "original documents" referred to by Lystra Blake, inferentially, can be construed as a further reference to the "supporting documentation" referred to in the preceding paragraph. She was accordingly verifying that the "supporting documentation" to the affidavit of Joseph Cooley, namely the affidavits of Dennis Hocker, the confidential informant, Glenford Buckle and Marcia Dunbar, were associated with the "true copies of the original documents" maintained in the files in the office of the Department of Justice, in which office she was the Associate Director in the Office of International Affairs Criminal Division.

Inelegant though her certification may be described, the paragraph must be construed in the context in which it was being used by Lystra Blake and not in isolation. The paragraph, "True copies of the original documents are maintained in the official files of the United States Department of Justice in Washington, D.C.," is properly read as meaning:

> "[These are] True copies of the original documents, [several of which copies] are maintained in the official files of the United States Department of Justice in Washington, D.C."

By this construction the paragraph would be relevant and intelligible, to give effect to the requirements of section 14(2) of the Act.

Even copies of true copies are themselves true copies of the original document.

Furthermore, in the instant case, we observed that the documents were bound together in one bundle tied together with official tape and sealed with the original seal of the Department of Justice. The certification of Lystra Blake was itself certified by the Attorney General of the United States of America, John Ashcroft. The entire "document hereunto annexed" was further certified by Colin L. Powell, Secretary of State and the seal of the Department of State was duly affixed with the notation that:

> "... such seal is entitled to full faith and credit."

This construction also applies to the authentication of the document received on 11th May 2004, tied in a single bundle, and containing the "supplemental" affidavit of William H. Bryan III, attached to which was the

"supporting documentation" namely, the affidavit of Alexander Young. The affidavit of Byran was certified by the said Lystra Blake, whose affidavit was itself certified by John Ashcroft, the Attorney-General of the United States of America, and sealed with the seal of the Department of Justice. The document was authenticated also by the signature of Colin L. Powell, Secretary of State and that of the Assistant Authentication Officer and sealed with the seal of the said Department of Justice. Section 14(2)(a) of the Act was complied with.

For the above reasons, I agree with both counsel for the respondents, that the full court was correct in holding that the documents were properly authenticated and admissible in accordance with the provisions of the Act.

The affidavit of the confidential informant was sworn to on 2nd April 2004 before Theodore Klein, US Magistrate Judge Southern District of Florida. The name of the deponent was obliterated at the heading, in the opening recital, in the jurat and where the applicant's signature would have been.

Both Lord Gifford, Q.C., and Mr. Charles argued that the affidavit evidence of the confidential informant is inadmissible because the affidavit was tampered with by the obliteration of the name and signature. It was therefore not a true copy of the original, despite the certifying stamp of the Clerk of the US District Court. There was no evidence of the reason why the name of the applicant was removed nor was it stated to have been removed through fear.

The jurat endorsed on and signed by Theordore Klein on the affidavit of the confidential informant reads:

> "On the 2nd day of April, 2004 ... personally appeared before me and after being sworn by me, signed this affidavit."

This clearly indicates that a known individual appeared in person before the said Magistrate Judge took the oath and signed the affidavit, in person.

On the same day, the affidavit was affixed with a certifying stamp and signed by the Clerk. It reads:

> "Certified to be a true and correct copy of the document on file. Clarence Maddix, Clerk, US District Court Southern District of Florida.
>
> By .....
> Deputy Clerk
>
> Dated 4/2/04"

The "document on file" inferentially, is the affidavit which was personally signed before the said Magistrate Judge Klein. The Clerk's certificate was therefore a sufficient certification of the said affidavit to satisfy the provisions of section 14(2) of the Act. In any event, the latter certification along with the certification by Lystra Blake, as stated above were comprehensively effective to satisfy the provisions of the Act.

However, in agreement with Lord Gifford, Q.C., the "alteration" of the affidavit by the obliteration would have reduced it to less than a "true" copy of the original. Consequently, the "alteration" not having been initialed by the applicant and Klein, the affidavit may ordinarily seem to be inadmissible in view of Rule 30.3(4) of the Civil Procedure Rules 2002. Clearly, the substance of the affidavit detailing the evidence concerning the appellants remained the same as

when it was sworn to and signed before Theodore Klein. Despite this, the said affidavit was properly admitted by the Resident Magistrate. The reason for which I will hereafter give.

The legislative intent of section 14(2)(a) of the Act is to ensure the genuineness of the documentation in order to maintain the authenticity of the substantive contents of the evidence contained in those documents. The integrity of the substantive content of the affidavit of the confidential informant had not been altered. The body of the affidavit contained no alterations. The obliteration did not therefore alter the evidence. The reasonable and practical construction of section 14(2)(a), in view of the sufficiency of the certification of Miss Blake is, that the affidavit of the confidential informant may properly be treated as a true copy of the original, as stated by Miss Blake.

The issue of the admissibility of an affidavit containing alterations was considered by Smith, J.A. in the case of ***Trevor Forbes v The D.P.P and the Commissioner of Correctional Services*** SCCA No. 9/04 dated 3rd November 2005. In that case there were alterations in the body of the affidavit containing evidence in support of the US extradition request. The alterations were initialled by the deponent but not by the judge before whom it was sworn to. Counsel for the appellant argued that the affidavit was thereby rendered inadmissible. Smith, J.A. at page 24 said:

> "It is in my judgment, for the Court of committal to decide what weight to attach to such evidence in light of the alterations. In this regard, as Miss Larmond submitted, the nature of the alterations is important.

> I agree ... that an examination of Miss Savell's affidavit will show that the alterations are not unduly prejudicial to the appellant. They certainly would not 'outrage civilized values'."

In the instant case, there was no alteration of the evidential content of the affidavit. In that respect therefore there was no prejudice to the appellants. Its authenticity was assured by the signature of Theodore Klein in the jurat and the certifying stamp of the clerk and the overall certification by Miss Blake. In that regard therefore, the mere obscuring of the name of the deponent, following the rationale of Smith, J.A., in the ***Forbes*** case (supra) did not thereby render the said affidavit inadmissible.

The affidavit of Alexander Young certified and exhibited to the affidavit of William Bryan III and deemed admissible by the full court as an original, was challenged by counsel for both appellants as inadmissible, not having been described as "the original" or "a copy of the original". The finding of the full court, in the judgment of Hibbert, J., in that respect, at page 20 of the judgment reads:

> "William Bryan III in his affidavits at paragraph 6 states – Exhibit 1 is the affidavit of Alexander Young. The submission that the absence of the word original in this description is fatal, finds no favour with me. An examination clearly shows that the affidavit of Alexander Young is an original affidavit. I therefore find that this affidavit was properly certified."

Counsel argued that the full court could not by examination determine that the affidavit was an original. I do not agree. In ***R v Jones et al*** RMCA No. 1/87 dated 18th January 1998 this Court of Appeal referred to the caution against

leaving to a jury the task of resolving questions of authorship of handwriting without expert guidance. The Court referred to ***R v O'Sullivan*** [1969] 3 Cr. App. R. 274 and ***R v Rickard*** [1918] 13 Cr. App. R 140, and proceeded to examine three sets of documents. The Court found that the documents "show a marked consistency in all the signatures ... the inference is inescapable that he [the appellant] signed the cheques as drawer ...".

It is not without significance that the bundle of documents authenticated by the seals of the Department of State and the Department of Justice, contains the affidavit of William Bryan III which is described, in the certification of Lystra Blake as:

> "... the supplemental affidavit of William Bryan III."
> (Emphasis added)

The affidavit of William Bryan III, recites in paragraph 5,

> " ... I have attached to this affidavit the affidavits (sic) of the witness, Alexander Young ..." (Emphasis added)

in paragraph 6:

> "Exhibit 1 is the affidavit of Alexander Young ... The affidavit of Alexander Young was sworn to ..."
> (Emphasis added)

and in paragraph 7:

> "I have ... received the affidavit of Alexander Young."
> (Emphasis added)

The draftsman of the affidavits in this bundle employed the use of the definite article "the", consistently, to differentiate it from the indefinite "a copy of ...". The affidavits of Alexander Young and William Bryan III are therefore the original affidavits, satisfying the provisions of section 14(1) and (2) of the Act, and its intendment, despite the omission of the word "original."

Consequently, it was permissible, as the full court did, to examine the said affidavit of Alexander Young in confirmation of its status as the original affidavit of Alexander Young. As counsel for the second respondent, the Director of Public Prosecutions observed in submitting that the said affidavit was correctly examined by the full court, the signatures of Alexander Young and William C. Turnoff were both written in ink.

Counsel for the appellants were incorrect to place too narrow an interpretation on the purpose and intention of the Act.

There is no merit in grounds (a), (b) or (c) in respect of each appellant.

Ground (d) in respect of each appellant complains that neither of the photographs identifying each appellant was authenticated in accordance with section 14 (1)(b) and (2)(b) of the Act. I agree with the finding of the full court that the photographs were so authenticated. The section reads:

> "**14.** – (1) In any proceedings under this Act, including proceedings on an application for *habeas corpus* in respect of a person in custody under this Act –
>
> ...
>
> (b) a document, duly authenticated, which purports to have been received in evidence, or to be a copy of

> a document so received in any proceedings in an approved State shall be admissible in evidence;
>
> ...
>
> (2) A document shall be deemed to be duly authenticated for the purposes of this section -
>
> ...
>
> (b) in the case of a document which purports to have been received in evidence as referred to in subsection (1) (b) or to be a copy of a document so received, if the document purports to be certified as aforesaid to have been, or to be a true copy of, a document which has been so received; ..."

The photographs purporting to be that of the appellants were exhibited to the affidavit of the confidential informant. They were not tendered as documents "...received in evidence... in any proceedings in an approved State..." The proceedings in an approved State are properly referable only to the Grand Jury hearing on 30th January 2004. The confidential informant's affidavit was sworn to on 2nd April 2004 and the said photographs were identified and signed by the said deponent on 2nd April 2004. Strictly construed, the photographs were not admissible as documents "... received in evidence ... in any proceedings in ..." the Requesting State, in compliance with the provisions of section 14(1)(b) and 14(2)(b) of the Act. However, the said photographs were exhibited to the affidavit of the confidential informant, who identified them as the photographs of the appellants with whom he was personally acquainted and interacted with previously.

Rule 30.5(1) of the Civil Procedure Rules provides:

> "(1) Any document to be used in conjunction with an affidavit must be exhibited to it."

The confidential informant, at paragraphs 10 to 12 of his affidavit dated 2nd April 2004:

> "10. I would describe Leebert RAMCHARAN as being a black Jamaican male, approximately 50-55 years of age, 5'3" – 5'5" tall, weighing approximately 180 to 200 pounds. I know Leebert RAMCHARAN referred to himself as an Indian.
>
> 11. I would describe Donovan WILLIAMS as being a black Jamaican male, approximately 35-40 years of age, 5'7" – 5'9" tall, weighing approximately 180 to 200 pounds.
>
> 12. On April 1, 2004, S/A Dennis Hocker showed me an unmarked/unlabeled two separate sets of photographs ..."

The affidavit evidence of Dennis Hocker confirms this in his affidavit dated 10th April, 2004. At paragraph 13, he said:

> "13. Everett Donovan WILLIAMS is believed to be a citizen of Jamaica. His date of birth is believed to be November 02, 1961, and his place of birth is Jamaica. He is described as a black male, approximately 5'4" tall, medium build, with brown eyes. A Confidential Informant has identified in my presence on April 2, 2004, a photo, Exhibit 1 to Confidential Informant 's Affidavit, as Leebert RAMCHARAN. On the same date, the same Confidential Informant also identified in my presence, a photo, Exhibit 2, to Confidential Informant Affidavit, as Everett Donovan WILLIAMS. I signed both Exhibit 1 and 2 to reflect that I witnesses (sic) the Confidential Informant's identification."

The said photographs, which were exhibited to the affidavit of the confidential informant and identified to Dennis Hocker, were therefore sufficiently linked to and identified with the appellants. They were therefore

admissible as documents being a part of the confidential informant's sworn testimony under sections 14(1)(a) and section 14 (2)(a) of the Act. They were incorporated in the bundle of documents tied together with the ribbons and authenticated by the Department of State and the Department of Justice and the certification of Lystra Blake.

For the above reasons, this ground is without merit and fails.

Ground (e) is a complaint that the full court was wrong to find that the evidence of the confidential informant was properly admitted, without any evidence that there was any reason why his name was not disclosed.

One of the prevailing principles in the criminal law is that a man has a right to be able to confront his accusers. This rule may however be departed from if the witness is in fear of his life or the circumstances indicate possible harm or bodily injury.

This Court considered that point in the case of ***Vivian Blake v The D.P.P. et al*** SCCA No. 107/96 dated 27th July 1998 in which Forte, J.A. examined the factors governing the admissibility of the evidence of an anonymous witness as outlined in ***R v Taylor*** (1994) TLR 484. The principle is outlined in the headnote to ***R v Taylor,*** (supra) It reads:

> "A defendant in a criminal trial had a fundamental right to see and know the identity of his accusers, including witnesses for the prosecution. That right should only be denied in rare and exceptional circumstances; whether such circumstances existed was pre-eminently a matter for the exercise of the trial judge's discretion."

Evans, L.J. in detailing the factors that should influence the reception of the evidence, as one of the factors, said:

> "There must be real grounds for fear of the consequences if the evidence were given and the identity of the witness revealed. ... but in principle it might not be necessary for the witness himself to be fearful or to be fearful for himself alone. There could be cases where concern was expressed by other persons, or where the witness was concerned for his family rather than for himself."

The ***Taylor*** case (supra) demonstrates that the fear need not be expressed by the witness himself, but may emanate from others or be gleaned from all the circumstances of the case. But, in addition, ultimately, it is a matter for the trial judge. Forte, J.A. in ***Vivian Blake v The D.P.P. et al*** (supra), noting that Evans, L.J., in listing the relevant factors was referring to the exercise of the judge's discretion in the context of a trial, said:

> "... the ultimate trial of the appellant if he fails on this appeal, and is eventually extradited at the instance of the Honourable Minister will be governed by the procedures of the Requesting State."

The issue of the anonymous witness also arose in ***Regina (Al-Fawwaz) v Governor of Brixton Prison et al*** [2002] 1 All ER 545, in the context of extradition proceedings. Lord Hutton delivering the judgment of the House of Lords on that point at page 570 said:

> "... the authorities emphasise that the decision whether to admit evidence from an anonymous witness is a matter of deciding where the balance of fairness lies between the prosecution and the accused

> and that it is preeminently a matter for the discretion of the magistrate or judge conducting the hearing. ... in some cases the balance of fairness may come down in favour of the prosecution notwithstanding that the circumstances could not be described as rare and exceptional."

The learned Resident Magistrate, in the instant case, was entitled to exercise his discretion by looking at all the evidence, and decide how best he could achieve that balance of fairness between the appellants and the prosecuting authorities. The affidavit of Alexander Young, would have provided the learned Resident Magistrate with evidence of the appellants' dealings in the drug smuggling operations as well as the element of danger and ultimate fear that may be instilled. Paragraph 8 reads:

> "Toward the end of 2001, Leebert RAMCHARAN told me about a multi-million dollar (U.S.C.) seizure by Jamaican police. Leebert RAMCHARAN explained that the money was from drug sales and was transported from Miami, Florida, through the Bahamas, into Jamaica to his night club 'Caribbean Show Place' located in Montego Bay. Leebert RAMCHARAN said that once the money was delivered to the club, the police arrived and seized the money. Leebert RAMCHARAN told me that he paid off Jamaican police in Kingston and learned the name of the person that provided information that led to the seizure of the money. Leebert RAMCHARAN stated that he confronted an associate known as 'Campo,' a Colombian national, who had the same name as the person Leebert RAMCHARAN was given by the police. Leebert RAMCHARAN told me that 'Campo' denied providing the information to police, but later fled to Colombia. Leebert RAMCHARAN told me that he had persons in Colombia looking to kill 'Campo'. Approximately a month later, I was with Leebert RAMCHARAN when another drug associate told us that he located 'Campo' in Bogota, Colombia and had

> him shot and killed in front of 'Campo's' wife and children." (Emphasis added)

Although the latter evidence was not contained in the affidavit of the confidential informant, it provided the learned Resident Magistrate with relevant information of the facts and circumstances which could create life threatening danger to those who co-operate with the law enforcement officials. He was entitled to consider this evidence in the balance of fairness, and could draw the inference that the withholding of the name of the confidential informant was based on real grounds of fear and not on improper motives. As a consequence, the exercise of his discretion in accepting the importance of this evidence to the due administration of justice was reasonable. Lord Diplock in ***Attorney General v Leveller Magazine Ltd et al*** [1979] 1 All ER 748, expressed the proper manner of the exercise of the discretion. At page 749 - 750 he said:

> "As a general rule the English System of administering justice does require that it be done in public: ***Scott v Scott*** [1913] AC 417, [1911-13] All ER Rep. 1. If the way that courts behave cannot be hidden from the public ear and eye this provides a safeguard against judicial arbitrariness or idiosyncrasy and maintains the public confidence in the administration of justice. ...
>
> However, since the purpose of the general rule is to serve the ends of justice it may be necessary to depart from it where the nature or circumstances of the particular proceeding are such that the application of the general rule in its entirety would frustrate or render impracticable the administration of justice or would damage some other public interest for whose protection Parliament has made some statutory derogation from the rule. Apart

> from statutory exceptions, however, where a court in the exercise of its inherent power to control the conduct of proceedings before it departs in any way from the general rule, the departure is justified to the extent and to no more than the extent that the court reasonably believes it to be necessary in order to serve the ends of justice." (Emphasis added)

In the circumstances of this case the learned Resident Magistrate was not incorrect to accept the fact of the danger to a witness who was closely associated with the operations of an international drug smuggling operation. This would be even more apparent if the witness Alexander Young and the confidential informant was one and the same person. This ground also fails.

Mr. Charles also argued that the learned Resident Magistrate should have held that the affidavit of Alexander Young was unreliable and inadmissible, because if he and the confidential informant were the same person he was a witness of convenience who had added further details to his previous affidavit without explaining the reason for the earlier omissions. Furthermore, if he was not the same person, Alexander Young had copied into his affidavit large parts of the confidential informant's affidavit and therefore Young's affidavit should not be believed.

The record reveals that paragraphs 1 to 4 of the confidential informant's affidavit sworn to on 2nd April 2004 and Alexander Young's affidavit sworn to on 5th April 2004 are identical – word for word, except that in the latter affidavit, in paragraph 4, the words "United States currency ('U.S.C.')" are included in line 8

and the sentence "I was charging Donovan Williams approximately $5,000.00 (U.S.C.) a kilogram" was added at the end of that paragraph.

Paragraphs 8, 10, 11 and 12 of Young's affidavit do not appear in the confidential informant's affidavit.

Paragraphs 7 and 9 of the confidential informant's and Young's affidavit respectively, are almost identical, except that phrases are added to paragraph 9.

Paragraphs 8 and 9 of the confidential informant's affidavit are identical to paragraphs 13 and 14 of the Young affidavit.

Paragraphs 15, 16 and 17 of the Young affidavit do not appear in the confidential informant's affidavit.

The final paragraph of the confidential informant's affidavit reads:

> "On April 1, 2004, S/A Dennis Hocker showed me an unmarked unlabeled two separate sets of photographs."

The final paragraph of Alexander Young's affidavit reads:

> "On April 1, 2004, S/A Dennis Hocker showed me an unmarked/unlabeled two separate sets of photographs. On April 2, 2004, I provided a sworn affidavits that the attached photographs of those affidavits were that of Leebert RAMCHARAN and Donovan WILLIAMS."

Those two final paragraphs, reciting the activity on that date, would attract an inescapable inference that the confidential informant and Alexander Young are one and the same person. That inference was probably drawn by the learned Resident Magistrate. Nor could it have escaped the learned Resident Magistrate that on a broad reading of both affidavits, the events and the

occasions ordered to, are almost identical and reveal a composite picture of joint participation in an on going drug related operation. The significant confirmation lies in the similarity of the grammatical error in paragraph 1 of each affidavit, namely:

> "1. I am currently reside in the Unites States."
> (Emphasis added)

The affidavit of Alexander Young, far from conveying a dubious motive, was a forthright and clear account of events, clarifying in greater detail areas already referred to in the confidential informant's affidavit. It was an affidavit supplemental to the confidential informant's.

The circumstance of both being the same person elicited from Mr. Charles a complaint that such evidence of Young was incompetent and as an accomplice was inadmissible, in that it was not corroborated. I do not agree.

The witness, Assistant District Attorney Cooley stated that the "confidential informant is a charged co-conspirator of this organization". Consequently, Young was also "a charged co-conspirator." It was argued that Young was incompetent because he had proceedings pending against him, he had an interest to serve and so had a motive to fabricate evidence in order to earn the favour of the official authorities.

Whenever a witness properly described as an accomplice, is to be called as a witness for the prosecution, the practice is, if he has been charged, to take his plea of guilty and offer no further evidence or enter a nolle prosequi. In this way, an outstanding criticism of him awaiting a lenient treatment because of his

evidence assisting the prosecution would have been deflected. However, the learned trial judge has a duty to warn the jury of the danger of acting on the uncorroborated evidence of an accomplice. (See ***R v Turner*** [1975] 61 Cr. App. R 67). The editor of Phipson on Evidence, 14th edition [1990] paragraph 14 – 10 states:

> "An accomplice who is separately indicted, or who, if jointly indicted, has either pleaded guilty, been acquitted, or had his trial postponed, is a competent witness *against* his fellows; but one who is jointly indicted and jointly tried is, as we have seen, altogether incompetent for the prosecution. In the latter case, therefore, it is usual, when the accomplice is to be called for the prosecution, to take his plea of guilty on arraignment or before calling him either to offer no evidence and permit his acquittal or to enter a *nolle prosequi."*

In extradition cases, the evidence relied on is usually that of accomplices, who having acted along with the person sought to be extradited, have an intimate knowledge of the activities and material details of the unlawful exercise. Being aware of the nature of such evidence, the judge at trial would have to warn a jury of its dangers, if it was to be acted upon, without corroboration. Such accomplice evidence is not inadmissible. (See ***Vivian Blake v The D.P.P et al*** (supra) and ***Armah v Government of Ghana and Another*** [1968] A.C. 192).

The hearing before the Resident Magistrate is governed by the provisions of the Extradition Act. The Resident Magistrate's principal concern is not the credibility of the witnesses, though important, but the ascertainment of whether

a prima facie case has been made out against the person sought. Section 10(1) requires the Resident Magistrate to conduct the hearing –

> "... as if he were sitting as an examining justice and as if that person were brought before him charged with an indictable offence committed within his jurisdiction."

Section 10 (5) provides:

> "(5) Where an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied, after hearing any evidence tendered in support of the request for the extradition of that person or on behalf of that person, that the offence to which the authority relates is an extradition offence and is further satisfied –
>
> (a) where the person is accused of the offence, that the evidence would be sufficient to warrant his trial for that offence if the offence had been committed in Jamaica;
>
> ...
>
> the court of committal shall, unless his committal is prohibited by any other provision of this Act, commit him to custody to await his extradition under this Act;"

The standard by which a Resident Magistrate sitting "...as an examining justice ..." in extradition cases is required to act in respect of the evidence is that provided by section 43 of the Justices of the Peace Jurisdiction Act. It provides that the examining justice may commit a person to stand his trial in the Supreme Court, where the evidence is –

> "... sufficient to put such accused party upon his trial for any indictable offence, such Justice or Justices shall forthwith order such accused party, if in custody, to be discharged as to the information then under

> inquiry; but if, in the opinion of such Justice or Justices, such evidence is sufficient to put the accused party upon his trial for an indictable offence, or if the evidence given raise a strong or probable presumption of the guilt of such accused party, ..."

Consequently, in the case of ***Brooks v D.P.P. et al*** [1994] 31 JLR 16 at page 23, the Privy Council, referring to the treatment of evidence by a Resident Magistrate holding a preliminary enquiry, said:

> "Questions of credibility, except in the clearest of cases, do not normally result in a finding that there is no prima facie case. They are usually left to be determined at the trial."

See also ***ex parte Osman*** (supra) as to the functions of the Magistrate at a preliminary enquiry.

In the instant case, the learned Resident Magistrate was entitled to act on the uncorroborated evidence of Alexander Young, having reminded himself of the dangers of doing so. The evidence was sufficient to make out a prima facie case for the extradition of the appellants. This ground also fails.

Ground (g), argued by Lord Gifford, Q.C., on behalf of the appellant Ramcharan, complains that the full court erred in not holding that the designation of the appellant by the President of the United States of America under the Foreign Narcotics Kingpin Designation Act ("the Kingpin Act") an Act applicable to non-nationals only, was a discrimination against the appellant by reason of his nationality.

The ground was argued in view of the provision of section 7 (1)(c) of the Extradition Act which reads:

> "**7.** (1) A person shall not be extradited under this Act to an approved State or committed to or kept in custody for the purposes of such extradition, if it appears to the Minister, to the court of committal, to the Supreme Court on an application for *habeas corpus* or to the Court of Appeal on an appeal against a refusal to grant a writ of *habeas corpus* –
>
> ...
>
> (c) that he might, if extradited, be denied a fair trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions;..."

He submitted that the appellant was singled out and discriminated against because of his nationality, because the Act does not apply to American nationals. Even if nationality is but one of the reasons, it is a discriminatory designation which might by itself prejudice a fair trial, then the prejudice would be by way of nationality which would attract the provisions of section 7(1)(c). Learned Queen's Counsel relied on ***A and others v Secretary of State for the Home Department, X and Another v Secretary of State for the Home Department*** [2005] 3 All ER 169. The appellants, non-British nationals, challenged the lawfulness of their detention under the Anti-terrorism, Crime and Security Act 2001 enacted pursuant to the Human Rights Act 1998 (Designated Derogation) Order 2001, as suspected internationally associated terrorists . The Act did not address such threats by United Kingdom nationals. The appeals were allowed and the Order 2001 was quashed. Lord Bingham, at page 212 said:

> "Any discriminatory measure inevitably affects a smaller rather than a larger group, but cannot be

> justified on the ground that more people would be adversely affected if the measure were applied generally. What has to be justified is not the measure in issue but the difference in treatment between one person or group and another. What cannot be justified here is the decision to detain one group of suspected international terrorists, defined by nationality or immigration status, and not another."

Baroness Hale also agreed that the Order was discriminatory and should be quashed.

In that case the detention of the appellants was directly as a consequence of the 2001 Order itself, which discriminated against non U. K. nationals.

In the instant case, learned Queen's Counsel failed to show that the request for extradition of the appellant was as a consequence of the Kingpin Act. In that respect the case of ***A and others*** (supra) cannot assist him.

The Federal Grand Jury's decision and indictment to bring proceedings against the appellant were dated 30th January 2004 long before the Presidential designation on 1st June 2004. The request for extradition of the appellant was received by the Government of Jamaica on 2nd March 2004. Such request therefore originated not out of the Kingpin Act but from wholly unconnected treaty obligations. The appellant's prosecution was not because he was a Jamaican nor because he was a non-national of the United States of America but because of his alleged involvement in the drug trafficking activities charged in the indictment and affecting the sovereign territory of the United States of America.

This ground also fails.

Grounds (f) and (h), also argued by Lord Gifford, Q.C., on behalf of the appellant Ramcharan, maintained that the full court erred in not finding that the pre-trial publicity created by the Presidential designation would prejudice the trial of the appellant in the Requesting State and the evidence led confirmed that the minds of the potential jurors would be unalterably prejudiced. In addition, the said court should have held that the provisions of section 7 (1)(c) should be construed to mean that the denial of a fair trial to the appellant for any reason, even exclusive of race, religion, nationality or political opinions, should attract the issue of habeas corpus.

The argument advanced in support of ground (h) was that the said designation aimed at foreign nationals would have created in the minds of the potential jurors perceptions of guilt and consequently the appellant would be denied a fair trial if extradited. In accordance with section 7 (1)(c) habeas corpus should issue. The affidavit evidence of Professor Bruce Winick was relied on by learned Queen's Counsel for the appellant to demonstrate, as an expert in the area of jury selection, that the processes available to the courts in the United States are inadequate to dispel the prejudice which would operate in the minds of the potential jurors. Such a juror aware of the Presidential designation should be disqualified from jury service. The publicity in newspapers formerly, which created prejudice was further increased by the public access to the internet,

which, according to Professor Winick, is used by 56.2% to 59% of residents in Florida in 2003.

The Presidential designation under the Kingpin Act on 1st June 2004 named the appellant among ten (10) persons classified as "foreign narcotics trafficker(s)" and whose –

> "activities ... and ... organizations ... threaten the national security, foreign policy and economy of the United States."

The designation resulted from information provided to the President of the Untied States from the Secretaries of the Treasury, Defence, State, the Attorney General and the Director of the Central Intelligence Agency. The consequence of this designation was the public identification of the individual, the blocking of his assets and the prohibition of such persons to transact business with United States citizens.

Pre-trial publicity is not a phenomenon of recent times. Illegal activities are usually of public interest and modern technology has ensured that information of whatever nature is accessible to the public, almost instantaneously. The internet phenomenon has further ensured this. Despite this, it does not necessarily mean that the judicial process and the prosecution and fair trial of an individual for criminal activities is irretrievably compromised and made impossible because of media publicity.

Lord Gifford, Q.C., for the appellant Ramcharan, to support his argument that the Kingpin designation would prejudice his client if he was extradited to the

United States of America, relied on the Bahamian Court of Appeal decision in ***The Government of USA et al v Knowles*** (unreported) Common Law Appeal No. 48/04 dated 11th May 2005, in which the issue of whether the respondent Knowles would obtain a fair trial in the United States of America if he was extradited was considered. On 31st May 2002 the President of the United States of America had designated him a drug Kingpin under the Foreign Narcotics Kingpin Designation Act. Small, J had granted a writ of habeas corpus having found that the extradition of Knowles would result in his unfair trial because of the designation which was referable to nationality. The Bahamian Court of Appeal reversed the decision on the basis that there was no evidence from Knowles' witness, a member of the bar of the State of Georgia, USA, of the impact of the publicity of the designation which was published on the website. The Court, inter alia, at paragraph 14 of the judgment, held:

> "We are not ourselves persuaded that the designation of the respondent as a foreign drug kingpin under American law is a matter which should result in a loss of confidence in the fairness of the American justice system. The conclusion that there is doubt as to whether the voir dire process will protect the respondent from the presumed prejudicial effect of the presidential designation seems untenable. Indeed, it is a notorious fact, of which we can take judicial notice, that the American Justice system of jury selection is by far more intensive in investigating possible prejudice against an accused person than our own system. ... In short, the designation appears to have been a consequence of his perceived criminality by the U.S. authorities and not as a consequence of his nationality."

The Court examined section 7(1)(c) of the Bahamian Extradition Act, which is similarly worded as the Jamaican section 7(1)(c), and found that in order to avoid extradition, based on the denial of a fair trial, an applicant had to show that he fell within one of the factors of race, religion, nationality or political opinions. Lord Gifford, Q.C., in embracing the ***Knowles*** case, sought to distinguish the decision of the Bahamian Court of Appeal, preferring instead the reasoning of Small, J. Based as it was on the absence of evidence, the decision of the Bahamian Court of Appeal cannot assist learned Queen's Counsel for the appellant. The said Court expressed its faith in the American Justice system to secure a fair trial to the respondent Knowles and in addition refused to view its section 7(1)(c) in a wide ambit, as Lord Gifford, Q.C., argued before us.

The Judicial Committee of the Privy Council in ***Heath et al v The Government of the United States of America*** (2005) P.C. Appeal No. 58/04 dated 28th November 2005, considered on appeal from the decision of the Court of Appeal of St. Christopher and Nevis ordering the issue of habeas corpus for the extradition of one Heath and another to the United States of America for trial for conspiracy to supply and import cocaine into the United States. On 2nd June 2000 they also were designated global drug traffickers by the President of the United States under the Foreign Narcotics Kingpin Designation Act. It was argued that there was a real risk that they would not get a fair trial due to such a designation. Their Lordships rejecting the argument as impossible referred to

Lord Mustil's words in ***Nankissoon Boodram v Attorney General and Another*** [1996] 47 WIR 459 at 495:

> "The proper *forum* for a complaint about publicity is the trial court ..."

and adopted the approach of Lamer, J in the Supreme Court of Canada in ***The Republic of Argentina v Hector Mellino*** [1987] 1 SCR 536. At page 558, he said:

> "Our courts must assume that [the defendant] will be given a fair trial in the foreign country. Matters of due process generally are to be left for the courts to determine at the trial there as they would be if he were to be tried here. Attempts to pre-empt decisions on such matters, whether arising through delay or otherwise, would directly conflict with the principles of comity on which extraction is based."

Their Lordships concluded that the evidence did not establish that the appellants would be at risk of suffering a flagrant denial of justice if they were extradited, and maintained at paragraph 26:

> "Rather the United States courts must be trusted to secure them a fair trial."

In the instant case the designation of the appellant as a drug Kingpin was based solely on his activities in the drug running exercise and not because of his nationality or race or religion or political opinion. The publishing of his name on the internet, a comparatively recent medium, cannot be viewed as more pervasive in itself, to be exclusive of the accepted safeguards which courts employ to effect a fair trial in the face of media publicity. The evidence of Professor Winick, in his affidavit dated 18th November 2004, in his expert

opinion, as Professor of Law of the University of Miami School of Law and a member of the bar of the State of New York, regarded the designation of the appellant as a newsworthy event available to all potential jurors in the Southern District of Florida. He gave his opinion of the voir dire safeguard in the United States of America. At paragraph 21 he said:

> "21. The voir dire process is the process by which prospective jurors who are empaneled to try a criminal case may be questioned with a view to eliciting whether they may be affected by bias. I believe that there is no safeguard built into the voir dire process in United States District Court to adequately protect a foreign national such as Mr. Ramcharan from prejudice that may occur from potential jurors gaining access to information from the world wide web or news media concerning Mr. Ramcharan's designation as a drug kingpin. Even if the judge were to admonish the jurors not to use the internet to learn about a defendant, as a practical matter there is no way that this could be enforced short of sequestration of the jury, which virtually never occurs. Moreover, my extensive experience in the area of psychology and law leads me to conclude that an admonition of that kind would, if anything, so spark the curiosity of jury members that they probably would do precisely what the judge asked them not to do."

The Kingpin designation, unflattering though it may be, has not been shown to be of such a dimension that it will affect the trial process. The cases re-inforce that the question of whether or not a fair trial can be achieved is essentially for the trial court. Although Professor Winick, a national expert on jury selection in the United States of America, has given his opinion on the probable effect on jurors of designation as it appeared on the internet, he

accepts that the trial court will embark on the voir dire, in case of perceived juror prejudice, and has the discretion to determine the extent of counsel's participation in the process. Nowhere does he state that the federal courts will not permit measures to be taken to ensure a fair trial in view of pre-trial media publicity. He did however state that "... cases permit the trial judge to retract enquiries into bias to the ultimate disqualifying question ... and to disallow more specific inquiries and detailed probing into the ... person's answer."

In my view the courts in the United States of America have consistently sought to protect the accused from the denial of a fair trial due to media publicity. In the case of ***Sheppard v Maxwell*** [1966] 384 U.S. 333, based on which the popular television series "The Fugitive" was later produced, the appellant Dr. Sam Sheppard was convicted after extensive nationwide media publicity. He had been charged with the murder of his pregnant wife who had been found beaten to death in their bedroom in July 1954. He had been interrogated but not charged. After a news campaign of front page editorials, with headlines such as "Why isn't Sam Sheppard in jail?" and "Quit stalling. Bring him in," he was charged and convicted in the State of Ohio. During the trial, the news media was unrelenting in publicizing the case. However, the Supreme Court reversed his conviction on the ground that the "massive, persuasive and prejudicial publicity ... prevented him from receiving a fair trial." He was tried anew and acquitted. The first amendment right of freedom of the press was

being balanced against the sixth amendment sacred right of a defendant to a fair trial.

As a result of the ***Sheppard*** trial the American Bar Association instituted certain measures, essentially common law measures, calculated to assure to the accused a fair trial once he has been subject to an excessive amount of prejudicial media publicity. Some of the remedies are, (1) change of venue (2) postponement of the trial until public sentiment, if existing, has subsided (3) voir dire examination (4) sequestration of the jury and (5) contempt of court punishment.

In the case of ***Nebraska Press Association et al v Stuart et al*** [1976] 427 U.S. 539, a Nebraska State trial judge, in anticipation of a trial of an accused of the multiple murder of six members of a family and which had attracted widespread news coverage, made a restraining order which was modified by the Nebraska Supreme Court. The U.S. Supreme Court reversed the order stating that while the guarantees of freedom of expression "was not an absolute prohibition under all circumstances the barriers to prior restraint remain high." Chief Justice Burger, referred to the case of ***Sheppard v Maxwell*** (supra) and several other cases in which the trial court failed to exert measures "to insulate the trial and the jurors from the deluge of publicity" and observed that:

> "The extraordinary protections afforded by the First Amendment carry with them something in the nature of a fiduciary duty to exercise the protected rights responsibly – a duty widely acknowledged but not always observed by

> editors and publishers. It is not asking too much to suggest that those who exercise First Amendment rights in newspapers or broadcasting enterprises direct some effort to protect the rights of an accused to a fair trial by unbiased jurors"

It is therefore unquestionable that prejudicial pre-trial publicity is essentially an issue for the court of trial. The U. S. Courts, based on its decisions, including that of the Federal Supreme Court, employ and adopt acceptable procedures to ensure to the accused, such as the appellant, a fair trial, in the face of pre-trial media publicity. In ***Grant and Others v D.P.P.*** (1981) 30 WIR 246, the Privy Council, did not disapprove of the "common law remedial measures" of change of venue, postponement of trial and the exercise of the trial judge's discretion to allow jurors to be challenged for cause, endorsed by the Jamaican Court of Appeal, in an effort to ensure a fair trial.

The proper forum therefore to raise an issue of pre-trial prejudicial publicity is the trial court. The Kingpin designation accessible on the internet, which is in the nature of a news medium, is and can be properly dealt with in the trial forum of the United States of America.

Ground (h) therefore fails.

Ground (f) as argued by learned Queen's Counsel, on behalf of the appellant Ramcharan, complains that the full court was in error to construe section 7(1)(c) to mean that the denial of a fair trial in order to avoid extradition, must be proven within the context of discrimination in respect of his race, religion, nationality or political opinions. In advancing this argument he said that

the preferred interpretation is that, whereas the circumstances of being "punished, detained or restricted in his personal liberty" will avoid extradition, if such treatment is meted out because of his "race, religion, nationality or political opinions", the denial of a fair trial simpliciter, is wider in ambit. That denial should attract, a refusal of a court to extradite, without any necessity of proof that it is because of the discriminating reasons of "race, religion, nationality or political opinions." He did concede that either interpretation was possible. The section, inter alia, reads:

> "**7.** (1) A person shall not be extradited under this Act to an approved State or committed to or kept in custody for the purposes of such extradition, if it appears to the Minister, to the court of committal, to the Supreme Court on an application for *habeas corpus* or to the Court of Appeal on an appeal against a refusal to grant a writ of *habeas corpus* –
>
> (a) that the offence of which that person is accused or was convicted is an offence of a political character; or
>
> (b) that the request for extradition, though purporting to be on account of the extraditable offence, is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or
>
> (c) that he might, if extradited, be denied a fair trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions; or
>
> (d) that the offence of which that person is accused is statute barred in the approved State that has requested his extradition; or

(e) that his extradition is prohibited by any law in force in Jamaica." (Emphasis added)

Lord Gifford, Q.C., relied also on an extract from Halsbury's Laws of England, 4th edition, Reissue Volume 44(1) paragraph 1456, at page 890. It reads:

> "It is a principle of legal policy that a person should not be penalised except under clear law, or in other words should not be put in peril upon an ambiguity; so the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, should presume that the legislator intended to observe this principle. It should therefore strive to avoid adopting a construction which subjects a person to any detriment where the legislator's intention to do so is doubtful, or penalises him in a way which was not made clear by the legislation in question."

He cited in support of his contention ***Fernandez v Government of Signapore and others*** [1971] 2 All ER 691, in which section 4(1)(c) of the Fugitive of Offenders Act, which is similar to section 7(1)(c) of the Jamaican Act, was relied on by the appellant. However, learned Queen's Counsel readily accepted that if the subject can show that he "might" be denied a fair trial it is sufficient for a court to deny extradition. Their Lordships stated that "a reasonable chance "or" substantial grounds for thinking" or "a serious possibility" would be sufficient proof that he "might" be denied a fair trial. The ***Fernandez*** case (supra) cannot support the arguments on behalf of the appellant, in learned Queen's Counsel's interpretation of section 7(1)(c). The

appellant therein did not contend that he should not be extradited because he might be denied a fair trial, without more, as advanced by Lord Gifford, Q.C. The appellant contended that his extradition was prohibited under section 4(1)(c), in that if returned he "might be detained or restricted in his personal liberty by reason of his political opinions." (Emphasis added)

I do not agree with Lord Gifford's interpretation of section 7(1)(c) of the Extradition Act (Jamaica).

In the interpretation of statutes the particular statute must be read as a whole, not in segments. The Extradition Act was enacted to provide the procedure, inter alia, to give effect to the treaty provisions between treaty states. Section 7 provides some of the bases under which extradition might be denied. An examination of the section reveals that extradition might be refused in certain circumstances:

> (i) in section (1) (a), if the accusation or conviction is, of a political character, or
>
> (ii) in (1)(b), if the request, is in reality, for the purpose of presenting or punishing him, on account of his, race, religion, nationality or political opinions, or
>
> (iii) in (1)(c), if extradited, he might be denied a fair trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions. (Emphasis added)

Each of the above referred to in (i), (ii) and (iii), is drafted, detailing the disadvantages of accusation or conviction, prosecution or punishment, denial of a

fair trial, punishment detention or restriction of liberty – a range of adverse conditions to which the accused could be subject. In each case, the discriminatory basis, which could attract the refusal to extradite and the consequential issue of habeas corpus, is correspondingly stated. It is less than rational to accept and unlikely that a draftsman would expect that only the disadvantage of "denied a fair trial", could be construed as not being subject to the discriminatory features, but all the others are. The section cannot be so interpreted, as drafted, in the context of the intention of the statute.

Section 7 (1)(c) clearly provides that if the appellant seeks to rely on the denial of a fair trial under the Act, he must satisfy the Minister or the judicial authorities, that he would be so denied on the basis of race, religion, nationality or political opinion. The applicant in the instant case has failed to do so.

If he wishes to rely on the complaint of denial of a fair trial generally, based on the media publicity and exclusive of the complaint of race, religion, nationality or political opinion the appellant may do so, but he must do so in the trial court of the Requested State. The request for the extradition of the appellant Ramcharan was not based on his nationality.

For the above reasons grounds (f),(g) and (h) fail.

Lord Gifford, Q.C., sought leave to argue the ground following –

> "(1) Further or in the alternative the extradition of the Appellant would constitute a violation of his right under section 20 of the Constitution of Jamaica to a fair hearing within a reasonable time by an independent and impartial court established by law, in that:

(a) the evidence adduced before the Full Court demonstrated that there was a real risk that the Appellant would be denied a fair trial by an impartial court in the United States as a result of his having been designated as a 'Kingpin';

(b) on a proper interpretation of the Chapter III of the Constitution of Jamaica, the rights therein guaranteed should be protected from violation in any part of the world;

(c) this Honourable Court has therefore the duty to refuse the extradition of the Appellant to a place where there is a real risk that his right to a fair trial would be violated and thereby a flagrant denial of justice would occur."

He sought to argue this ground, as an alternative argument to that put forward in respect to section 7(1)(c) of the Extradition Act. He maintained that the Presidential Kingpin designation, would create to the appellant "... a flagrant denial of justice", in that his constitutional rights under section 20 of the Constitution would be infringed, if he was extradited to face trial in the United States of America.

Both Mr. Foster and Mr. Pantry, Q.C., for the respondents raised preliminary objections to this application. This Court upheld the objections and refused leave to argue this alternative ground.

This point has been considered by this Court in several cases. Section 63 of the Criminal (Justice) Administration Act requires an applicant to state all the grounds on which he relies on his application for habeas corpus (section 63(1)),

and may not raise a new ground, unless fresh evidence is provided (section 63(2)). This Court in ***Vivian Blake v D.P.P. et al*** (supra), ***Desmond Brown v The D.P.P. et al*** (unreported) SCCA 91/2000 dated 2nd April 2004, ***Trevor Forbes v The D.P.P. et al*** (supra) and ***Shervin Emmanuel v The Director of Public Prosecutions et al*** (unreported) SCCA 100/04 dated 8th March 2007 so decided.

The Court permitted the constitutional point to be argued in the ***Trevor Forbes*** case (supra) because it went to the jurisdiction of the court, which latter point may be raised at any stage.

Additionally, it is clear, contrary to the submissions of Lord Gifford, Q.C., that section 7 (1)(c) of the Act provides ample means of relief to the appellant in his complaint of a denial of a fair trial due to the Presidential designation. No one is permitted to rely on a constitutional relief when other means are available under any law. Consequently, he is precluded from seeking relief for a perceived breach under section 20 of the Constitution, his resort to section 7 (1)(c) having failed. In addition, such a complaint, being of a civil nature may not be joined with an application for habeas corpus, in the same proceedings the latter being criminal proceedings the latter being criminal proceedings - see ***Mitchell v United States Government*** [1990] 27 JLR 565. For those reasons we refused the application.

Ground (f) argued on behalf of the appellant Williams complained that the full court was wrong to hold that he could be extradited in respect of count 2 of

the indictment which charged a conspiracy to possess and distribute cocaine, in that such offences are not recognizable under Jamaican law.

Section 5 (1)(b) of the Extradition Act acknowledges the concept of reciprocity between treaty States in respect of extraditable offences. It reads:

> "(1) For the purposes of this Act, any offence of which a person is accused or has been convicted in an approved State is an extradition offence, if –
>
> ...
>
> (b) in the case of an offence against the law of a treaty State –
>
> (i) it is an offence which is provided for by the extradition treaty with that State; and
>
> (ii) the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of Jamaica if it took place within Jamaica or, in the case of an extra-territorial offence, in corresponding circumstances outside Jamaica."

Clearly therefore, if "the equivalent act or omission" would constitute an offence in Jamaica, such act or omission would be an extradition offence. The statutory provisions and the corresponding treaty are aimed at the substance of the offence or offences, as distinct from their similarity of formulation.

Under Jamaican Law, it is an offence without being authorized by a licence or regulations, to possess cocaine (section 8B(1) of the Dangerous Drugs Act) or to distribute cocaine (section 8A(1)(a) of the said Act). Both the possession and distribution of cocaine, as recited in count 2 of the indictment are substantive offences under Jamaican Law, although not worded as in count 2.

In addition, to engage in a course of conduct involving the commission of any offences is a conspiracy at common law punishable on indictment, (see ***R v Connolly*** 3 Cr. App. R. 27).

The wording of count 2 of the indictment, namely, "conspiracy to possess with intent to distribute," though worded differently from the approach in Jamaica, recites offences which are recognizable in Jamaican law, and are acts which if committed in Jamaica would constitute offences for the purposes of section 5(1)(b)(ii) of the Extradition Act.

Mr. Phipps, Q.C., for the appellant Williams, as a further point in support of this ground, submitted that the evidence related to the conduct of the appellant Williams in Jamaica and did not relate to offences committed in the United States as alleged, and therefore there could be no extradition to the United States. The appellant was never in the United States and therefore even the common law would not permit such a person who had made an agreement outside the United States to be extradited to United States to give its courts jurisdiction without relevant treaty obligations between Jamaica and the United States. Learned Queen's Counsel relied on the case of ***Liangsiriprasert v United States Government and another*** [1990] 2 All E.R. 866 in support of his argument.

The jurisdictional point was also raised by the said counsel before us in the ***Shervin Emmanuel*** case, (supra). Learned Queen's Counsel, also relying on the ***Liangsiriprasert*** case (supra) argued that the appellant Emmanuel

indicted on several counts of "aiding and abetting" the commission of the offences of importing cocaine into the United States of America, could not be indicted because the activity of "aiding and abetting" took place in Jamaica and therefore was only justiciable in Jamaica. He said "This must be distinguished from a charge of conspiracy where the overt acts committed abroad are justiciable in the jurisdiction where they are intended to result in a crime."

We said in the ***Emmanuel*** case (supra) at page 26:

> "... while we admit that the classic example of aiding and abetting presupposes presence as a component element in establishing a charge of aiding and abetting, nevertheless, applying the same spirit behind the reasoning employed in ***Liangsiriprasert*** (*supra*) and ***Re: Al-Fawaaz*** (sic) (*supra*) we find that the perimeters of aiding and abetting are rightly extended in the context of extradition cases. This expansive approach has regard to the unique features and dimensions of inter-jurisdictional offences as well as the purpose behind the extradition treaty between the United States and Jamaica, namely 'to serve the purpose of bringing to justice those who are guilty of grave crimes committed in either of the contracting states'.
>
> Consequently, it is our view that the alleged acts of aiding and abetting of which the appellant in this case stands accused, formed part of a chain of events which culminated within the United States. As such the relevant acts of aiding and abetting, charged in Counts 2, 3, 4 and 5 of the U.S. indictment dated December 12, 2002 are within the juridical jurisdiction of the United States of America."

The ***Liangsiriprasert*** case (supra) involved a conspiracy formed outside of the Untied States of America involving the appellant to import illegal drugs into the United States from Thailand through Hong Kong. The Privy Council expressed

the view that the matter was justiciable in the United States because the conspiracy was ultimately to have effect in the United States. The rationale in relation to extradition treaties was to give them a more expansive interpretation, not confined to territorial limits, to give effect to the mischief they were intended to address. Lord Griffiths at page 872 said:

> "As a broad general statement it is true to say that English criminal law is local in its effect and that the common law does not concern itself with crimes committed abroad. The reason for this is obvious: the criminal law is developed to protect English society and not that of other nationals, who must be left to make and enforce such laws as they see fit to protect their own societies. To put the matter bluntly, it is no direct concern of English society if a crime is committed in another country. It was for this reason that the law of extradition was introduced between civilized nations so that fugitive offenders might be returned for trial in the country against whose laws they had offended."

and at page 878:

> "Unfortunately in this century crime has ceased to be largely local in origin and effect. Crime is now established on an international scale and the common law must face this new reality. Their Lordships can find nothing in precedent, comity or good sense that should inhibit the common law from regarding as justiciable in England inchoate crimes committed abroad which are intended to result in the commission of criminal offences in England. Accordingly, a conspiracy entered into in Thailand with the intention of committing the criminal offence of trafficking in drugs in Hong Kong is justiciable in Hong Kong even if no overt act pursuant to the conspiracy has yet occurred in Hong Kong." (Emphasis added)

In ***Re Al-Fawwaz, Re Eiderous et al*** (supra) the appellants were indicted in respect of a conspiracy hatched outside of the United States of America to murder U.S. Citizens in other parts of the world, not including the United States. The United States sought their extradition from England, where they had been arrested, to be tried in the United States. Their Lordships in the House of Lords took the view that in the particular extradition treaty the concept of jurisdiction was wider than territory. Lord Slynn, at page 555, explained:

> "When the 1870 Act was passed crimes were no doubt largely committed in the territory of the state trying the alleged criminal but that fact does not, and should not, mean that the reference to the jurisdiction is to be so limited. It does not as a matter of the ordinary meaning of the words used. It should not because in present conditions it would make it impossible to extradite for some of the most serious crimes now committed globally or at any rate across frontiers. Drug smuggling, money laundering, the abduction of children, acts of terrorism, would to a considerable extent be excluded from the extradition process. It is essential that that process should be available to them. To ignore modern methods of communication and travel as aids to criminal activities is unreal. It is no less unreal to ignore the fact that there are now many crimes where states assert extra-territorial jurisdiction, often as a result of international conventions."

By their very nature, extradition offences are oftentimes extra-territorial, in that they may not physically have been committed within the territorial boundaries of the requesting state. However, because of the purpose of the relevant treaty, the crimes which it is designed to treat with, and the effect the offences would

ultimately have within the territorial area of the said state, the spirit of the law in its enlightened thinking, highlighted in the recent cases referred to above, will permit a more purposive interpretation.

In the instant case, the full court was correct to have found that the conspiracies participated in by the appellant in Jamaica were of such a nature to compel his extradition to the United States of America. This ground also fails.

In support of ground (h) Mr. Phipps, Q.C., argued that the full court was wrong to find that the evidence at the committal proceedings was sufficient to prove that the appellant Williams had been a party to an agreement to possess and import cocaine into the United States of America.

In my view the full court did not err.

The affidavit of the witness Alexander Young tendered before the learned Resident Magistrate provided ample evidence of the involvement of the appellant Williams in such activities over a period of several years. It reads, inter alia:

> "1. I am currently reside (sic) in the United States
>
> ...
>
> 3. In 1998, I met Leebert RAMCHARAN and Donovan WILLIAMS. ... In approximately 1998, I traveled to Jamaica and began to work with William VALENCIA, a/k/a 'Cachete,' a Colombian national. ... Later in 1998, I was introduced to a person by the name of 'Donovan', whom I later learned was Donovan WILLIAMS.
>
> 4. In 1998, I and my partner William VALENCIA, a/k/a 'Cachete,' were importing cocaine into Jamaica from Colombia. ... Also, in 1999, I

was supplying 10 to 50 kilograms of cocaine to Donovan WILLIAMS in Jamaica. I was charging Donovan WILLIAMS approximately $5,000 (U.S.C.) a kilogram.

5. I know an associate Donovan WILLIAMS was sending their cocaine to the Miami area using Air Jamaica Airlines Flights via Trinidad to Miami, Florida. During this time, Donovan WILLIAMS would tell me that he was waiting for money from previous sales of cocaine to be delivered in Miami, Florida, before he could receive more cocaine. Upon receiving the money in Miami, Florida, Donovan WILLIAMS would contact me. The payment of the cocaine was always in the United States currency, 100 dollar bills. I was receiving between $50,000 and $250,000 (U.S.C.) from Donovan WILLIAMS' associates. I would first confirm the money was ready, and then I would have the cocaine delivered to him.

...

11. As in the past, Donovan WILLIAMS told me he was selling the cocaine he was receiving from Gabriel ZUNIGA in the United States. During this time, Donovan WILLIAMS told me he was shipping his cocaine with Mickey MORRIS. Donovan WILLIAMS and Mickey MORRIS told me they were receiving their cocaine payments from Miami, Florida. Upon receiving the payments, Donovan WILLIAMS and Mickey MORRIS would give me the money they received. Normally they would pay me between $100,000 and $500,000 (U.S.C.) at a time.

...

17. In addition to the above activity, in 2002, I was contacted by an associate in Miami, Florida that was looking to buy 100 kilograms of cocaine in Jamaica that he intended to

> transport into the United States for resale. I asked Donovan WILLIAMS to supply this associate with the 100 kilograms in Jamaican so that the person could transport it to the Unites States. Donovan WILLIAMS was reluctant to sell the cocaine in Jamaica. From previous conversations, I knew Donovan WILLIAMS was concerned about low profit. As a favour to me, Donovan WILLIAMS sold my associate the 100 kilograms of cocaine for $6,000 (U.S.C.) a kilogram. My associate told me he successfully transported the 100 kilograms and sold it in the Unites States and asked that I approached Donovan WILLIAMS a second time. I spoke to Donovan WILLIAMS and I asked him to sell my associate another 100 kilograms of cocaine in Jamaica so that he could sell it in the United States. Donovan WILLIAMS agreed."

In view of the above extracts of the evidence, there is no merit in this ground.

Mr. Phipps, Q.C., sought the leave of this Court to argue ground (i), namely, that the Extradition Act was in breach of section 16 of the Constitution of Jamaica. We refused the application for leave. This Court dealt with this same point in ***Shervin Emmanuel v. The Director of Public Prosecutions et al*** (supra). We said, inter alia:

> "Section 16 expressly permitted the Jamaican Parliament to make an exception to the guaranteed freedom of movement, if he is lawfully detained (Section 16(2)), or a law provides for his removal from Jamaica ... 'to be tried outside Jamaica for a criminal offence...' (Section 16(3)). The Extradition Act is such a 'law.' We refused leave ... for the above reason and also because of the prohibition contained in section 63(1) and (2) of the Criminal Justice (Administration) Act – See ***Vivian Blake v The D.P.P. et al*** SCCA 107/96 dated 27th July 1998.

This point was also dealt with in ***Trevor Forbes v The D.P.P.*** SCMA 9/04 dated 3rd November 2005."

We maintain our views expressed then.

For all the above reasons, the appeals should be dismissed and the order of the Full Court for the extradition of the appellants affirmed.

COOKE, J.A.

1. On the 7th June 2004 the appellants were, in the Resident Magistrates' Court for the Corporate Area Criminal, committed to custody to await their extradition to stand trial in the United States of America (the requesting state). They were to face two counts of an indictment. These counts were compendiously stated by the Full Court to be:

> "(1) conspiracy to import a mixture and substance containing cocaine into the United States; and
>
> (2) conspiracy to possess with intent to distribute in the United States of America a mixture and substance containing cocaine."

On 6th October, 2005 the Full Court dismissed their application for habeas corpus. It is from this dismissal that this appeal now arises.

2. Both appellants had common grounds of appeal in respect of the issue of authentication. These were:

> "(a) The Full Court erred in law in holding that the affidavits relied on by the Requesting State were duly authenticated in accordance with section 14(1)(a) of the Extradition Act; since the said affidavits were not certified to be either originals or true copies as is required by section 14(2)(a) of that Act.
>
> (b) The Full Court erred in law in holding that the document purporting to be testimony given by a person whose name had been obliterated was admissible as a true copy of an original affidavit, since it was plain on the face of the

document that it had been altered since it was originally created.

(c) The Full Court erred in law in holding that it could properly determine by an examination of the affidavit of Alexander Young that it was an original affidavit, when it was not certified so to be by any appropriate officer.

(d) The Full Court erred in law in holding that the photograph relied on by the Requesting State as identifying the Appellant was duly authenticated in accordance with section 14(1)(b) of the said Act, since it was not certified to be either a photograph received in evidence or a true copy thereof as required by section 14(2)(b) of that Act.

(e) The Full Court erred in law in holding that the Resident Magistrate could consider testimony coming from a person described as a confidential informant whose name was not supplied, in the absence of any evidence that the said person had any good reason for withholding his name."

3. The relevant portions of the Extradition Act 1991 are set out below.

"14—(1) In any proceedings under this Act, including proceedings on an application for *habeas corpus* in respect of a person in custody under this Act —

(a) a document, duly authenticated, which purports to set out testimony given on oath in an approved State shall be admissible as evidence of the matters stated therein;

(b) ...

(c) ...

(2) A document shall be deemed to be duly authenticated for the purposes of this section—

(a) in the case of a document which purports to set out testimony given as referred to in subsection (1) (a), if the document purports to be certified by a judge, magistrate or officer of the Court in or of the approved State in question or an officer of the diplomatic or consular service of the State to be the original document containing or recording that testimony or a true copy of that original document;

(b) in the case of a document which purports to have been received in evidence as referred to in subsection (1) (b) or to be a copy of a document so received, if the document purports to be certified as aforesaid to have been, or to be a true copy of, a document which has been so received; or

(c) ...,

and in any such case the document is authenticated either by the oath of a witness or by the official seal of a Minister of the approved State in question."

4. The substance of the evidence against the appellants submitted by the requesting state was contained in two affidavits. One was by a confidential informant and the other by Alexander Young. If there are deficiencies as regards the statutory requirements pertinent to these two critical affidavits the appellants would be entitled to succeed in their application for habeas corpus. There is no

question as to the authentication, "by the official seal of a Minister of the approved State in question."

5. I will deal firstly with the affidavit of the confidential informant. This was contained in a bundle of documents dated 2nd April 2004, which was submitted by the requesting state. There can be no doubt that an affidavit of the confidential informant purports to set out testimony on oath in an approved state section 14 (1) (a) of the Act. The requisite statutory certification as set out in section 14 (2) (a) of the Act demands no more than a declaration, by one of the designated persons, that the document containing the testimony is an "original document containing or recording that testimony or a true copy of that original document." This is to ensure the integrity of the process. Immediately after the document which purported to set out the testimony of the confidential informant was stated:

> "Certified to be a true and correct copy of the document on file.
> Clarence Maddox, Clerk U.S. District Court, Southern District of Florida."

This was followed by the signature of the Clerk dated 2nd April 2004. The testimony on oath by the confidential informant was sworn before Theodore Klein, United States Magistrate Judge, Southern District of Florida on the 2nd April 2004. It was sought to argue that since the Clerk on these circumstances did not specifically refer to the affidavit of the confidential informant, then the certification was less than is required by the Act. This finds no favour with me.

The inference in these circumstances that the certification purports to be a true copy of the affidavit of the confidential informant is quite compelling. Accordingly I hold that there has been proper certification by Clarence Maddox who is an officer of the Court. He certified that the document submitted was a true copy of the original document which contained the testimony on oath of the confidential informant. Therefore, ground 2 (a) fails.

6. I now turn to the affidavit of Alexander Young. It is convenient to discuss grounds 2 (a) and (c) together. Let me state, at once, that certification does not demand a formal declaration to that effect. It is unnecessary for there to be the words "I certify". It is sufficient if the impugned document evidences the appropriate insignia which can properly be regarded as statutory certification. The Full Court having examined the document containing the testimony of Alexander Young concluded that it was an original document. That court said:

> "An examination clearly shows that the affidavit of Alexander Young is an original document."

The affidavit of Young was in a bundle of documents dated 7th May 2004 which was submitted by the requesting state. This affidavit was sworn to before William C. Turnoff, United States Magistrates Judge, Southern District of Florida. The signature of this Magistrate Judge was adequate insignia which declared the fact of his certification – the certification required by the Act. So the only question is as to whether that certification was as to an original document or a true copy of that original document. To resolve this issue attention must be paid

to the relevant wording of section 14 (2) (a) of the Act. The essential criterion is if the document "purports" (emphasis mine) to be the original "document ... of that original document." I cannot perceive how there could be a determination of what the document "purports" to be without an examination of that document. The Full Court was therefore not in error in conducting an examination of the impugned document. Further, the testimony of Alexander Young was properly certified.

7. In respect of ground 2 (b) which pertains to the obliteration of the name of the affiant, what the Act requires is that the testimony either in an original document or a true copy of that original document be certified. I have already determined that the Committal and Full Courts had a certified copy of the original document which contained that testimony. The obliteration of the name of the affiant is quite distinct from the testimony he gave. There is no statutory stipulation pertaining to the certification of the name of the affiant. There was no obliteration as regards to the testimony. This ground of appeal fails.

8. Ground 2 (d) pertains to the photographs of appellants which were exhibited as part of the testimony of the confidential informant. Therefore, these photographs would have fallen under the umbrella certification of the testimony of the confidential informant. As such they would have been properly certified.

There is really no need to have reference to section 14 (2) (b) of the Act. This ground of appeal, therefore, fails.

9. There is no common law or statutory prohibition (particularly in the Act) against the reception of the testimony of an anonymous witness put forward by the prosecuting authority. If there is an objection as to the admissibility of such testimony in the particular circumstances of the specific case, then it falls to the tribunal, having heard the rival contentions, to exercise its discretion as to that issue. In **R. v. Taylor** (1994) T.L.R. 484 the Court of Appeal of England proffered factors which would be relevant to the exercise of that discretion. Because of the view I have taken of this issue I find it unnecessary to list these factors. Suffice it to say that in the exercise of its discretion, when an objection is taken the tribunal should heed the words of Lord Hutton in **Regina [Al – Fawwaz] v. Governor of Brixton Prison and another** [2002] 2 WLR 101 at para. 85 which are:

> "Therefore the authorities emphasize that the decision whether to admit evidence from any anonymous witness is a matter of deciding where the balance of fairness lies between the prosecution and accused and that is pre-eminently a matter for the discretion of the magistrate or judge conducting the hearing."

In this case the record does not indicate that there was any objection to the reception of the testimony of the confidential informant. My understanding is that at the hearing before the Magistrate, the appellants were concerned to find

out if the confidential informant and Alexander Young was one and the same person. The prosecuting authority was, it said, unable to say whether it was so or not. The quest of the appellants at that stage was, if both affiants were the same person, to discredit the overall testimony, to I suppose, rendering such testimony entirely worthless. This would have been a quite daunting task for in **Lloyd Brooks v. Director of Public Prosecutions** 31 J.L.R. 16. Their Lordships' Board of the Privy Council held:

> "Questions of credibility, except in the clearest cases, do not normally result in a finding that there is no prima facie case. They are usually left to be determined at trial."

As to the approach of the Magistrate in extradition proceedings see **Boyd v. The Commissioner of Correctional Services and The Director of Public Prosecutions.** SCCA No. 47/2003 unreported, delivered on February 18, 2004. However, perhaps I have digressed. To put it bluntly since there was no application to exclude the testimony of the confidential informant this complaint does seem rather curious. As this ground is formulated it can only be that the appellants are implicitly contending that on its own motion the Committal Court should have rejected the testimony of the confidential informant. There was no warrant for the Magistrate so to do. It is true that the Magistrate had a duty to see that the hearing was conducted fairly. As such if there were, for examples, a clear irregularity or that some evidential principle was definitely being contravened or a statutory prerequisite was obviously being trampled upon then, that would demand his intervention. None of these circumstances or any other

circumstance beckoned his intervention. There was nothing to indicate that the reception of the evidence of the confidential informant would so adversely affect the appellants in that there would be a deviation from the balance of fairness. I should add that when the confidential informant was sworn in respect of his affidavit his identity was known. No doubt, unless for good and sufficient reasons the identity, will be revealed at their trial. Accordingly ground 2 (e) fails.

THE APPEAL OF RAMCHARAN

10. The appellant Ramcharan on the 1st June 2004 was designated as a "Narcotics Kingpin" by the President of the requesting state. This was at a time during which the Committal Magistrate had reserved his decision. The President in making the designation did so by virtue of the Foreign Narcotics Kingpin Designation Act and the procedures set out therein. This designation is reserved for those persons "whose activities threaten the national security, foreign policy and economy of the United States" (section 3 of Foreign Narcotics Kingpin Designation Act). There were various sanctions imposed consequent on this designation in respect of financial transactions in which a kingpin was a party. It is this designation which has triggered the following grounds of appeal on behalf of Ramcharan.

> "(f) The Full Court erred in law in construing section 7(1) (c) of the Extradition Act is [sic] meaning that the Appellant was required to establish that he might be denied a fair trial as a result of his race, religion, nationality or political opinions; and in not holding that the

denial of a fair trial for any reason would require the refusal of extradition under that section.

(g) The Full Court erred in law in not holding that the designation of the Appellant by the President of the Requesting State under the Foreign Narcotics Kingpin Designation Act, being an Act applicable only to non-nationals of the United States, discriminated against the Appellant on the grounds of his nationality, so that if such designation prejudiced his right to a fair trial in the United States, the prejudice arose by reason of his nationality.

(h) The Full Court erred in not holding that the evidence adduced on behalf of the Appellant, including the expert evidence of Professor Bruce Winick as to the likelihood of jurors knowing of the said designation and its likely effect on their minds, had demonstrated that he might, if extradited, be denied a fair trial".

11. Section 7 (1) (c) of the Act states:

"7–(1)A person shall not be extradited under this Act to an approved State or committed to or kept in custody for the purposes of such extradition, if it appears to the Minister, to the court of committal or to the Supreme Court on an application for habeas corpus ...

(a) ...

(b) ...

(c) that he might, if extradited, be denied a fair trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions; or

(d) ...

(e) ...."

It was submitted in respect of the construction of this section (7) (1) (c) that:

> "(2) Under the Act it is not necessary for the appellant to show that the denial of a fair trial is 'by reason of his race, religion, nationality or political opinions'; since those words refer only to the preceding words 'punished, detained or restricted in his personal liberty'. It is sufficient simply to show that the appellant 'might, if extradited, be denied a fair trial'. (Ground (f))
>
> (3) Alternatively to (2), it is established that the denial of a fair trial would arise by reason of the appellant's nationality; since only non-nationals of the United States can be designated as 'kingpins'. (Ground (g))."

These two submissions can be shortly rejected. It is plain that the words "by reason of his race, religion, nationality or political opinions" are equally applicable to the issue of (a) fair trial and (b) punished. To make a distinction between 'a fair trial' and 'punished' in the context of this section is unmeritorious. As to the alternative submission, as the Full Court pointed out, the Kingpin designation arose from the real or perceived illegal drug activity. The fact that Ramcharan is of Jamaican nationality is quite incidental. Of the 10 persons designated as kingpins on the 1st June 2004, 5 were Mexicans, 2 were Jamaicans and 1 each from Peru, India and Afghanistan. These two grounds of appeal (f) and (g) are without merit.

12. The appellant in ground (h) sought to rely on the "expert evidence of Professor Bruce Winick" to substantiate his contention that the overwhelming adverse publicity occasioned by the kingpin designation by the President of the requesting state would be such as to preclude Ramcharan from receiving a fair trial. Among his ample credentials Professor Winick was positioned as an expert on jury selection in the requesting state. The Full Court had scant regard for this submission and disposed of it in this way.

> "Having found that the kingpin designation was not based on nationality, I need not embark on an in depth analysis of the evidence presented in respect of fair trial. Having examined the evidence, however, I am of the view that on the basis of the elaborate jury selection process in the United States the applicant, if extradited would be afforded adequate protection against an unfair trial."

It is my view that section 7 (1) (c) of the Act limits the issue of a fair trial to considerations of race, religion, nationality and political opinions. I suspect that it is the view of the Full Court which prompted the filing of a supplementary ground of appeal which was as follows:

> "(1) Further or in the alternative the extradition of the Appellant would constitute a violation of his right under section 20 of the Constitution of Jamaica to a fair hearing within a reasonable time by an independent and impartial court established by law, in that:
>
> (a) the evidence adduced before the Full Court demonstrated that there was a real risk that the Appellant would be denied a fair trial by an impartial court in the United States as a result of his having been designated as a 'Kingpin';

(b) on a proper interpretation of the Chapter III of the Constitution of Jamaica, the rights therein guaranteed should be protected from violation in any part of the world;

(c) this Honourable Court has therefore the duty to refuse the extradition of the Appellant to a place where there is a real risk that his right to a fair trial would be violated and thereby a flagrant denial of justice would occur."

It would appear that this appellant, perhaps recognizing that there would be no little difficulty in disturbing the finding of the Full Court as to the construction of section 7 (1) (c) of the Act as regards fair trial, sought to seek the aid of section 20 of the Constitution. The respondents took a preliminary objection on the basis that this submission invoking the provision of section 20 of the Constitution was not advanced in the Full Court. Therefore, Ramcharan was barred from arguing this supplementary ground. The Respondents relied upon sections 63 (1) and (2) of the Criminal Justice (Administration) Act.

"63.– (1) An application for a writ of *habeas corpus* shall state all the grounds upon which it is based.

(2) Where an application for a writ of habeas corpus in a criminal cause or matter has been made by or in respect of any person, no such application may again be made in that cause or matter by or in respect of that person whether to the same court or to any other court, unless fresh evidence is adduced in support of the application."

The respondents further demonstrated that this section had received the attention of this court in **Vivian Blake v. The Director of Public Prosecutions and The Superintendent of Prisons** SCCA No. 107/96 dated 27th July, 1998; **Desmond Brown v. The Director of Public Prosecutions and The Director of Correctional Services** SCCA No. 91/2000 dated 2nd April, 2004; **and Trevor Forbes v. The Director of Public Prosecutions and The Commissioner of Correctional Services** SCCA No. 9/2004 dated 3rd November, 2005. In each of these cases this court effectively decided that it is impermissible to raise in this court a ground that had not been previously canvassed "unless fresh evidence is adduced in support of the application." Not surprisingly the objection to the arguing of this supplementary ground succeeded.

THE APPEAL OF WILLIAMS

13. Williams in his ground (f) complained that:

> "The Full Court erred in law in holding that the Appellant could be extradited on count 2 of the indictment, which was described in the authority to proceed as conspiracy to posses [sic] with intent to distribute in the United States of America a mixture and substance containing cocaine, and in not holding that such offences [sic] were not offences [sic] under that Jamaican Law."

The submission in respect of this ground was that:

> "The charge in count 2 of the indictment alleging a conspiracy to possess with the intent to distribute cocaine in the USA is not known to the laws of

Jamaica — i.e. a conspiracy to commit more than one charge."

An extraditable offence for the purposes of this case is set out in section 5 (b) (i) and (ii) of the Act which states:

> "(b) in the case of an offence against the law of a treaty State —
>
> (i) it is an offence which is provided for by the extradition treaty with that State; and
>
> (ii) the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of Jamaica if it took place within Jamaica or, in the case of an extra-territorial offence, in corresponding circumstances outside Jamaica."

In so far as it is relevant Article II of treaty states:

> "Extraditable Offences
>
> 1. An offence shall be an extraditable offence if it is punishable under the laws of both Contracting Parties by imprisonment or other form of detention for a period of more than one year or by any greater punishment.
>
> 2. The following offences shall be extraditable if they meet the requirements of paragraph (1)—
>
> (a) conspiring in, attempting to commit, aiding or abetting, assisting, counseling or procuring the commission of, or being an accessory before or after the fact to, an offence described in that paragraph: or

(b) impeding the apprehension or prosecution of a person charged with an offence described in that paragraph."

I now reproduce hereunder Sections 8 and 8A of our Dangerous Drug Act:

"8. Every person who imports or brings into, or exports from, the Island any drug to which this Part applies except under and in accordance with a licence, and into or from prescribed ports or places, shall be guilty of an offence against this Act.

8A. —(1) Every person who, save as authorized by a licence or under regulations made under this Act—

(a) sells or distributes any drug to which this Part applies; or

(b) being the owner or occupier of any premises uses such premises for the manufacture, sale or distribution of any such drug or knowingly permits such premises to be so used; or

(c) uses any conveyance for carrying any such drug or for the purpose of the sale or distribution of such drug or, being the owner or person in charge of any conveyance, knowingly permits it to be so used,"

shall be guilty of an offence".

The essence of count 2 is a conspiracy to distribute cocaine in the requesting State. Count 1 is concerned with importation and count 2 with distribution after that importation. Viewed in this light the counts are complementary to each other. The use to the word "possess" in count 2 is incidental to the charge as a conspiracy to distribute cocaine must necessarily contemplate the aspect of

possession of that drug. I do not agree that the count charges "a conspiracy to commit more than one charge". I would add that in our law under section 8A (1) (a) of the Dangerous Drug Act it is an offence if a person sells or distributes cocaine. Accordingly count 2 is in harmony with sections 5 (b) (i) and (ii) of the Act and Article II of the Treaty. The charge is a conspiracy (Article II (a)) to commit an offence that was permissible under law of both contracting parties (Article II (i)). This ground fails.

14. Williams also complained in his ground (h) that:

> "(h) The Full Court erred in law in holding that the evidence adduced at Committal hearing taken at its highest proved that the Appellant had been party to an agreement to possess cocaine or to import it into the United States of America."

The Full Court addressed this issue thus:

> "In **ground 9** Mr. Charles on behalf Williams submits that taken at its highest, the evidence adduced against Williams was not sufficient to make out a prima facie case against him in relation to the charges for which he was committed to custody to await his surrender. This also I find to be without merit. An examination of the affidavits of the confidential informant and Alexander Young reveal allegations of a drug dealing network of which they were a part and of which Williams was also a part. It was further alleged that Williams would receive, in Jamaica, cocaine from Colombia and then transship it to the United States of America, in keeping with his involvement."

I have no reason to differ from the conclusion of the Full Court. The Full Court, no doubt had regard to the totality of the testimony of the confidential informant and Alexander Young. I will just refer to paragraphs 9, 10 and 11 of the affidavit of Young.

> "9. Starting in approximately the end of 2001, Donovan WILLIAMS began to receive shipments of cocaine in Jamaica from Colombia from a transporter Gabriel ZUÑIGA, a/k/a "Ito." Donovan WILLIAMS would charge 5% of the load for payment for receiving the load into Jamaica. In addition, Donovan WILLIAMS would also receive a share of the remaining load. These loads were at least 600 kilograms of cocaine. Donovan WILLIAMS would then distribute the remainder of the loads to me and others. William VALENCIA and Leebert RAMCHARAN told me that they were receiving a portion of the loads Donovan WILLIAMS was receiving in Jamaica from Gabriel ZUÑIGA. Gabriel ZUÑIGA and Donovan WILLIAMS also told me that Leebert RAMCHARAN and William VALENCIA were receiving a portion of the loads that Gabriel ZUÑIGA as shipping to Donovan WILLIAMS.
>
> 10. Leebert RAMCHARAN told me that he would ship his cocaine together with William VALENCIA's cocaine together to the United States, via the Bahamas. During this time, he also would commonly ship between 5 and 10 kilograms of my cocaine with their shipment. The cocaine would be sold for approximately $16,000 (U.S.C.) a kilogram in the United States. We were responsible to the suppliers in Colombia for approximately $5,200 to $6,000, United States currency, a kilogram of cocaine.
>
> 11. As in the past, Donovan WILLIAMS told me he was selling the cocaine he was receiving from

> Gabriel ZUÑIGA in the United States. During this time, Donovan WILLIAMS told me he was shipping his cocaine with Mickey MORRIS. Donovan WILLIAMS and Mickey MORRIS told me they were receiving their cocaine payments from Miami, Florida. Upon receiving the payments, Donovan WILLIAMS and Mickey MORRIS would give me the money they received. Normally they would pay me between $100,000 and $500,000 (U.S.C.) at a time."

15. For the reasons given in this judgment I would dismiss the appeal of both appellants. The appellants should pay the costs of their appeals.

HARRIS, J.A:

These appeals are against an order dated October 6, 2005 of the Full court comprising Wolfe, C.J., Dukharan, Hibbert, JJ., dismissing claims brought by the appellants for Writs of Habeas Corpus.

Both appellants are Jamaican Nationals. The appeals have their genesis in requests by the Government of the United States of America for their extradition to that country. These requests were made pursuant to the preferment of Grand Jury indictments against them for certain offences.

On January, 30, 2004 a warrant of arrest for Williams was issued by the Government of the United States of America and on January 31, 2004 a warrant for the arrest of Ramcharan was also issued. By letters of request the Government of the United States of America, through its Embassy in Jamaica , sought the provisional arrest of the appellants for the purpose of their extradition. As a consequence, on March 2, 2004 provisional warrants of arrest were issued for them.

Pursuant to the extradition request, on April 30, 2004, an Authority to Proceed against the appellants was issued by the Minister of Justice to the Resident Magistrate for the corporate area, for the following which were the subject of three counts of the Grand Jury Indictment :

Count 1

Conspiracy to import a mixture and substance containing cocaine into the United States.

Count 11

Conspiracy to possess with intent to distribute in the United States of America a mixture and substance containing cocaine.

Count 111

Attempting to import into the United States a mixture and substance containing cocaine.

This was followed by the institution of extradition proceedings culminating into the issuance of warrants, by His Honour Mr. Martin Gayle, who, on June 7, 2004, dismissed the third count against the appellants. He however, committed them into the custody of the first respondent to await extradition in respect of the first and second counts.

Fixed Date Claim Forms were filed in the Supreme Court by both appellants for *habeas corpus* seeking their release from custody. The claims for habeas corpus were refused by the full court.

Several grounds of appeal were filed by each appellant. The following grounds of appeal were essentially the same:

"(a) The Full court erred in law in holding that the affidavits relied on by the Requesting State were duly authenticated in accordance with section 14(1)(a) of the Extradition Act; since the said affidavits were not certified to be either originals or true copies as is required by section 14(2)(a) of that Act.

(b) The Full court erred in law in holding that the document purporting to be testimony given by a person whose name had been obliterated was admissible as a true copy of an original affidavit, since it was plain on the face of the document that it had been altered since it was originally created.

(c) The Full court erred in law in holding that it could properly determine by an examination of the affidavit of Alexander Young that it was an original affidavit, when it was not certified so to be by any appropriate officer."

The following grounds were also filed by Ramcharan:

"(d) The Full court erred in law in holding that the photograph relied on by the Requesting State as identifying the Appellant was duly authenticated in accordance with section 14(1)(b) of the said Act, since it was not certified to be either a photograph received in evidence or a true copy thereof as required by section 14(2)(b) of that Act.

(e) The Full court erred in law in holding that the Resident Magistrate could consider testimony coming from a person described as a confidential informant whose name was not supplied, in the absence of any evidence that the said person had any good reason for withholding his name.

(f) The Full court erred in law in construing section 7(1)(c) of the Extradition Act is (sic) meaning that the Appellant was required to establish that he might be denied a fair trial as a result of his race, religion, nationality or political opinions; and in not holding that

the denial of a fair trial for any reason would require the refusal of extradition under that section.

(g) The Full court erred in law in not holding that the designation of the Appellant by the President of the Requesting State under the Foreign Narcotics Kingpin Designation Act, being an Act applicable only to non-nationals of the United States, discriminated against the Appellant on the grounds of his nationality, so that if such designation prejudiced his right to a fair trial in the United States, the prejudice arose by reason of his nationality.

(h) The Full court erred in not holding that the evidence adduced on behalf of the Appellant, including the expert evidence of Professor Bruce Winick as to the likelihood of jurors knowing of the said designation and its likely effect on their minds, had demonstrated that he might, if extradited, be denied a fair trial."

The undermentioned supplementary ground was also filed by Ramcharan:

"(i) Further or in the alternative the extradition of the Appellant would constitute a violation of his right under section 20 of the Constitution of Jamaica to a fair hearing within a reasonable time by an independent and impartial court established by law, in that:

(a) the evidence adduced before the Full court demonstrated that there was a real risk that the Appellant would be denied a fair trial by an impartial court in the United States as a result of his having been designated as a 'Kingpin';

(b) on a proper interpretation of the Chapter III of the Constitution of Jamaica, the rights therein guaranteed should be protected from violation in any part of the world;

(c) this Honourable Court has therefore the duty to refuse the extradition of the Appellant to a place where there is a real risk that his right to a

fair trial would be violated and thereby a flagrant denial of justice would occur."

The undermentioned grounds were also filed by Williams:

"(d) The Full court erred in holding that the photograph relied on by the Requesting State as identifying the Appellant was duly authenticated in accordance with section 14(1)(b) of the said Act, since it was not certified to be either a photograph received in evidence or a true copy thereof as required by section 14(2)(b) of that Act.

(e) The Full court erred in law in holding that the Resident Magistrate could consider testimony coming from a person described as a confidential informant whose name was not supplied, in the absence of any evidence that the said person had any good reason for withholding his name.

(f) The Full court erred in law in holding that the Appellant could be extradited on count 2 of the indictment, which was described in the authority to proceed as conspiracy to posses (sic) with intent to distribute in the United States of America a mixture and substance containing cocaine, and in not holding that such offences were not offences under Jamaican Law.

(g) The Full court erred in law in holding that the learned Resident Magistrate had Jurisdiction to conduct the Committal Proceedings notwithstanding that the authority to proceed issued by the Minister of Justice failed to identify the corresponding offences in terms of Jamaican Law."

This ground was not pursued.

"(h) The Full court erred in law in holding that the evidence adduced at the Committal hearing taken at its highest proved that the Appellant had been

> party to an agreement to possess cocaine or to import it into the United States of America."
>
> (i) The Extradition Act is inconsistent with and in contravention of section 16 of the Jamaica Constitution and therefore void by section 2 of the said Constitution. Section 16 of the Constitution is a "constitutional provision" as defined in the Jamaica Independence Act and can only be altered by the method set out in the Constitution. Further, and in addition, the right in section 16 is a fundamental right in Chapter III of the Constitution that is entrenched in section 49 and can only be altered or modified by the procedure in sections 49 and 50 of the Constitution and so declared in section 61 (4)."

Before embarking on the appeal, it would be appropriate to make reference to the supplementary ground of appeal. This proposed ground, Lord Gifford, Q.C., on behalf of the appellant Ramcharan, unsuccessfully sought leave to argue on the basis that extradition of the appellant to the United States would be a violation of the rights guaranteed him, under section 20 (1) of the Constitution.

An objection was raised by the respondents to the appellant being allowed to introduce a new or additional ground. Mr. Foster argued that the proposed ground, having not been advanced before the full court, the appellant would be precluded from placing reliance on it at this stage by virtue of section 63 (1) and (2) of the Criminal Justice (Administration) Act.

The proposed supplementary ground was not included in the claim before the Full court nor was leave sought to argue it before that court. Lord Gifford, Q.C., contended however, that a constitutional point, if relevant to an issue, may be raised either upon motion before the full court of the Supreme Court or directly before the Court of Appeal. In this case, he argued, it would have been inappropriate for such point to have been raised before the Full court. He contended that section 63 (1) of the Criminal Justice (Administration) Act could not prevail against the rights bestowed on the appellant by section 25 (2) of the Constitution.

Section 25 (2) of the Constitution would not avail the appellant. This section is only applicable in circumstances where a party has no recourse to any other remedy save and except by means of the Constitution. It is without doubt that the complaint of the appellant had perpetually been one of violation of his right to a fair trial should he be extradited. This complaint is anchored in a breach of his fundamental rights. The Extradition Act offers the protection which he seeks. In extradition proceedings, an applicant who registers a complaint of an infringement of his constitutional rights may pray in aid section 7 (1) (c) of the Extradition Act by virtue of which he is entitled to be accorded redress commensurate to that which is afforded him under the Constitution.

Grounds (a), (b) and (c) - Challenge to the authenticity and admissibility of the documents submitted by the Requesting State.

Grounds (a) and (c):

It is the appellants' contention that the affidavits upon which the learned Magistrate relied were inadmissible in evidence as they were not duly authenticated in accordance with subsections 14 (1)(a) and 14(2)(a) of the Extradition Act. The affidavits before the Magistrate, they contended, were not certified to be either originals or true copies of originals. The certificate of Lystra G. Blake, they argued, did not identify all the affidavits except that of Joseph A. Cooley, and although the certification mentioned the "supporting documentation", the full court erred in holding that these words were tantamount to proper certification. It was a further submission of the appellants that the affidavit of Alexander Young was not certified to be an original affidavit and the Full court also erred in so holding.

Section 14 of the Extradition Act provides :

> "14.- (1) In any proceedings under this Act, including proceedings on an application for *habeas corpus* in respect of a person in custody under this Act -
>
> (a) a document, duly authenticated, which purports to set out testimony given on oath in an approved State shall be admissible as evidence of the matters stated therein;
>
> (b) a document, duly authenticated, which purports to have been received in evidence, or to be a copy of a document so received

in any proceedings in an approved State shall be admissible in evidence; and

(c) a document, duly authenticated, which certifies that -

(i) the person was convicted on the date specified in the document of an offence against the law of an approved State; or

(ii) that a warrant for his arrest was issued on the date specified in the document;

shall be admissible as evidence of the conviction or evidence of the issuance of a warrant for the arrest of the accused, as the case may be, and of the other matters stated therein.

(2) A document shall be deemed to be duly authenticated for the purposes of this section -

(a) in the case of a document which purports to set out testimony given as referred to in subsection (1) (a), if the document purports to be certified by a judge, magistrate or office of the Court in or of the approved State in question or an officer of the diplomatic or consular service of that State to be the original document containing or recording that testimony or a true copy of that original document;

(b) in the case of a document which purports to have been received in evidence as referred to in subsection (1) (b) or to be a copy of a document so received, if the document purports to be certified as aforesaid to have been, or to be a true copy of, a document which has been so received; or

> (c) in the case of a document which certifies that a person was convicted or that warrant for his arrest was issued as referred to in subsection (1) (c), if the document purports to be certified as aforesaid,
>
> and in any such case the document is authenticated either by the oath of a witness or by the official seal of a Minister of the approved State in question."

The documents submitted by the Requesting State which were before the Committal Court included the affidavit of Joseph Cooley, United States Assistant Attorney for the State of Florida to which were exhibited: the indictments containing the charges against the appellants; copies of the statutory provisions relating to the charges; the affidavit of a confidential informant, who was charged as a co-conspirator, which outlined testimony in respect of his complicity with the appellants in overt activities with them relating to the importation of cocaine into the United States, and to which photographs of the appellants were exhibited; an affidavit of one Glenford Buckle relating to his personal knowledge of the seizure of 725 kilograms of cocaine as well as to the seizure of certain documents; an affidavit of Marcia Dunbar a chemical analyst showing that the substance tested was cocaine and an affidavit of Dennis Hocker, a Special Agent summarizing the investigation into the activities of the appellants and other co-conspirators. There was also before the court, an affidavit of William Bryan III Assistant United States Attorney, exhibiting an affidavit of one Alexander Young outlining the involvement of

himself, the appellants and others in overt activities to import cocaine into the United States.

The affidavits of Cooley, Hocker, and the confidential informant were sworn to before Peter R. Palermo United States Magistrate Judge of the Southern District of Florida, while the affidavits of William Bryan III and Alexander Young were sworn before William C. Turnoff who is also a Magistrate Judge of the Southern District of Florida.

The affidavit of Cooley was certified by Lystra Blake as follows:

> "I, Lystra G. Blake, Associate Director, Office of International Affairs, Criminal Division United States Department of Justice, do hereby certify that attached hereto and prepared in support of the U.S. request *for* the extradition of EVERETT DONOVAN WILLIAMS, a/k/a "Donovan," a/k/a "Dono," from Jamaica is the original affidavit of Joseph A. Cooley, Special Assistant United States Attorney for the Southern District of Florida, sworn to on April 19, 2004, before Peter R. Palermo, United States Magistrate Judge for the Southern District of Florida, with supporting documentation."

"True copies of the original documents are maintained in the official files of the United States Department of Justice in Washington, D.C."

A certificate by Miss Blake was also attached to Bryan's affidavit which had Young's affidavit exhibited thereto. This certificate reads:

> "I, Lystra G. Blake, Associate Director, Office of International Affairs, Criminal Division, United States Department of Justice, do hereby certify that attached hereto and prepared in support of the U.S. request for the extradition of EVERETT DONOVAN WILLIAMS from Jamaica is the supplemental affidavit of William H. Bryan, III, Assistant United States Attorney for the Southern District of Florida, sworn to on May 5, 2004, before William C. Turnoff, United States Magistrate Judge for the Southern District of Florida, with supporting documentation."

"True copies of the original documents are maintained in the official files of the United States Department of Justice in Washington, D.C."

Attached to a bundle containing Cooley's affidavit with exhibits thereto and Bryan's affidavit exhibiting Young's affidavit, were, (a) Miss Blake's certificate, (b) a certificate of the Attorney General John Ashcroft bearing the seal of the State Department of the United States of America attesting to Miss Blake's designation, and (c) a certificate of Colin Powell, the Secretary of State certifying the authenticity of the seal.

The validation process under the Extradition Act speaks to certification and authentication. The challenge by the appellants is as to certification in that the documents purported to be certified were neither originals nor true copies thereof. This fundamental requirement was lacking, they contended, and hence, Lystra G. Blake's certification did not meet the criterion as propounded in

Prince Anthony Edwards v The Director of Public Prosecutions and Director of Correctional Services (1994) 31 J.L.R. 526.

In ***Prince Anthony Edwards*** (supra), although, reference was made by Downer J.A. to the affidavits and exhibits before the court as being certified as originals or true and correct copies, the court did not implicitly find nor was it held the documents containing witnesses' testimonies must be expressly identified as originals or true copies, in order to attain validity. Authenticity is assigned to documents containing evidence on oath once they are duly sworn, certified by a Magistrate judge, or officer of the court of the Requesting State and made legitimate by the oath of a witness or the approved seal of a Minister of that State.

In ***Coke & Morrison v The Superintendent of Prisons – General Penitentiary & The Attorney General*** (1991) 28 JLR 365 the question of the adequacy of certification and authentication of documents tendered under an extradition request by the United States of America was considered. The full court of the Supreme Court held that:

> "(i)The role of the court in interpreting a statute is confined to ascertaining from the words that parliament has approved as expressing its intention what that intention was, and to giving effect to it. The statute should be construed so as to provide the general legislative purpose;

> (ii) the intention of the legislature in the Extradition Act is to provide machinery whereby if it can be shown by sufficient evidence to the proper tribunal in this county (sic) that a person who has committed an offence in another county (sic) has come here to escape the ends of justice such person may be committed until there is an opportunity of surrendering him to the proper authorities of that other country. In the present case, the applicants were properly committed to custody pending their being surrendered to the United States government;
>
> (iii) Under the provisions of the Extradition Act, 1870, the seal or certificate of a stipendiary magistrate, a minister of state or the Attorney-General placed upon an entire set or bundle of documents bound together for the purposes of the Act is legally presumed to vouch for the genuineness of each of the documents comprised in the bundle. ... Accordingly, all the documents are to be regarded as authenticated by the single seal of the Attorney-General and of the Secretary of State."

It is not a statutory requirement that statements of each witness should contain a certificate depicting that the contents of each statement had been certified. The case of ***Oskar v Government of Australia and Others*** [1988] 1 All ER 183 demonstrates that, in extradition proceedings, certification of documents is satisfied by a single certificate of a duly authorised official, endorsed on a bundle of documents, identifying all the statements therein. In dealing with the question of the certification of documents in extradition proceedings, at page 190, Lord Ackner said:

> "I agree with the Divisional Court that the section 11 (*pari materia* to section 14 of the Extradition Act 1991) does not require each statement to carry on its face a certificate from the magistrate. Such a requirement

> would be highly artificial. The section is complied with if there is a separate certificate, which sufficiently identifies all the statements which it certifies, as in the instant case, where they are all tied together."

The individual certification of each document is not a mandatory requirement of the Extradition Act. Nor is it a requirement that specific words must be expressly used identifying the documents as certified to be originals or true copies. It must have been in the contemplation of the legislators that, once affidavits are duly sworn to and such affidavits together with other documents are contained in a bundle , the certification of that bundle of the duly authorized officials as prescribed by section 14 (2)(a) of the Act confirms their integrity.

It follows that the certification of the affidavits of Cooley and Bryan acknowledges that the documents exhibited thereto are the supporting documents which are either originals or true copies thereof. The use of the words "the supporting documentation" must be construed to mean originals or true copies in light of the fact that it has been expressly stated in Miss Blake's certification that true copies of the originals were deposited in official files in the United States Department of Justice. It can reasonably be inferred that Miss Blake, an official of the United States Department of Justice, would have examined the documents and would have been satisfied that they were true

copies of the originals sworn by the deponents. The failure to specify that the documents are originals would not invalidate the certification.

Cooley's affidavit was certified as an original. The fact that the exhibits attached to the affidavit of Cooley and that of Bryan exhibiting Young's affidavit are not certified to be either originals or true copies would not impugn their integrity. The certification of the affidavits and exhibits recognises that they are true copies of the originals. The affidavits of Cooley and Bryan and all other documents exhibited thereto were intrinsically a part of the bundle referred to as certified and sealed with the seal of the Department of State of the United States of America. The certification by Miss Blake is adequate and in compliance with section 14 (1) (a) and accordingly with section 14 (2) (a) of the Extradition Act. The documents were properly admitted in evidence.

These grounds are devoid of merit.

Ground b - Challenge to the Authentication and Admissibility of the Confidential Informant's Affidavit

Lord Gifford Q.C., on behalf of the appellants, argued that the affidavit of the confidential informant was not in compliance with section 14 (1) (a) of the Extradition Act and that its alteration subsequent to its swearing rendered it inadmissible as a true copy of an original affidavit. In further assailing the

validity of the document, he also contended that the affidavit offends rule 30 (5) (4) of the Civil Procedure Rules.

The affidavit of the confidential informant was part of a bundle of documents exhibited to Cooley's affidavit. The name of the deponent to the confidential informant's affidavit was deleted by a mark obscuring it. The signature of the deponent was expunged. An obliteration also appears in the jurat. The question therefore is whether the effacing of the document invalidated it, rendering it inadmissible.

The issue as to the validity of unattested alterations in affidavits was considered in the case of ***Trevor Forbes v The Director of Public Prosecutions and the Commissioner of Corrections*** (supra). In that case, extradition proceedings were brought against the appellant. An affidavit before the committing magistrate contained alterations which were initialed by the deponent but not by the magistrate judge before whom the document was sworn. This court held that the affidavits containing the alterations were admissible under section 14 of the Extradition Act, as, it is not a requirement of the Act that they should be initialed before the person before whom they were sworn. Smith, J A said:

> "Section 14 of the Act has been described as an enabling provision - see ***Saifi v The Governor of***

> ***Brixton and the Union of India*** (supra) at para.43. It enables the Magistrate to receive a deposition or affidavit in evidence 'thus obviating the necessity to call the maker'. It does not require that any alterations in an affidavit should be initialed by the person before whom it is sworn in order for it to be admissible."

In the present case, the confidential informant's affidavit was sworn before a United States Magistrate/Judge and was subsequently certified by Clarence Maddox, the Clerk of the United States District Courts to be a true copy of the original. It was an integral part of the bundle of documents which had been properly certified and authenticated. The evidence contained in the affidavit remained in the same form before and after its execution before the Magistrate/Judge. No changes are evident in the testimony contained in the affidavit. It is obvious from inspection of the document that only the deponent's name had been obliterated. This in itself would not alter the evidential value of the contents of the affidavit. The affidavit, having been duly authenticated, was admissible as evidence before the committing magistrate.

I now turn to the question as to whether the obliteration is in breach of Rule 30.5 (4) of the Civil Procedure Rules 2002.

Rule 30.5 (4) states:

> "Each exhibit or bundle of exhibits must be -
>
> (a) accurately identified by an endorsement on the exhibit or on a certificate attached to it signed by

(b) the person before whom the affidavit is sworn or affirmed; and

(c) marked

(i) in accordance with rule 30.2(e); and

(ii) prominently with the exhibit mark referred to in the affidavit."

These are extradition proceedings which are criminal in nature and governed by the Extradition Act. In assessing the validity of an affidavit which is tendered in extradition proceedings, a court must be guided by the provisions of the Extradition Act and not the Civil Procedure Rules 2002 which governs civil proceedings. The Civil Procedure Rules being inapplicable, would therefore be of no assistance to the appellants. This ground is unmeritorious.

Ground (d) - Identification of Appellants by Photographs - Re: Ramcharran and Williams.

It was also the contention of the appellants that the full court had fallen into error in holding that the photographs relied on by the Requesting State as identifying the appellants was duly authenticated in accordance with subsection 14(1)(b) of the Act. They argued that there was no valid identification of the appellants as the photographs were uncertified and therefore not in compliance with the provisions of sections 14 (1)(b) and 14 (2) (b) of the Extradition Act. It was further contended that even if the affidavit, to which the photographs was attached, was admissible in establishing a prima facie case against the appellants

the verification of the persons before the Committing Magistrate, had not been established.

The photographs of the appellants exhibited to the confidential informant's affidavit did not contain a certificate demonstrating that they were true photographs of the appellants. However, they had been included in the bundle of documents which have been deemed authenticated and was therefore admissible in evidence. The full court was therefore correct in finding that the photographs were duly authenticated.

If, on the contrary, the absence of certification of the photographs rendered them inadmissible, this would not be an impediment to the Magistrate being able to determine whether the correct persons were present in court. Both appellants were brought before the court on warrants. Before their attendance in court, they were shown photographs of themselves by the police to whom they admitted that they were the persons depicted in the photographs and that they were Leebert Ramcharan and Donovan Williams. There can be no doubt that, on viewing the appellants, the Magistrate would have been convinced that they were the persons who were subject to the extradition requests.

This ground fails.

Ground (e) - Admissibility of The Confidential Informant's Testimony - Re: Ramcharan and Williams

Mr. Charles, on behalf of the Appellants, argued that the full court and the Magistrate erred in law in holding that it was permissible for the Committing Magistrate to have considered testimony coming from a person described as a confidential informant whose name was not supplied. It was further contended by him that, in the absence of any evidence showing good reason for withholding the name, the affidavit of the confidential informant was inadmissible. In support of his contention, he cited the cases of ***Vivian Blake v Director of Public Prosecutions & Another*** (supra), Re (***Al-Fawwaz) v Governor of Brixton Prison and Another*** [2002] 2 WLR 101 and ***R v Taylor*** (1994) T.L.R. 484.

In ***Vivian Blake v The Director of Public Prosecutions and Another*** (supra), evidence before a Committing Magistrate in extradition proceedings were given by two anonymous deponents, "John Doe 1" and "John Doe 2'. Fear for their security was given as the reason for their anonymity. This Court, having found that the affidavits of the anonymous informants purported to set out evidence given on oath and were duly authenticated, deemed them admissible in evidence under section 14 (1)(a) of the Extradition Act. It was held that the admission of the evidence of the confidential informants is a matter within the discretion of the Committing Magistrate.

The question of the anonymity of a witness and the reception of his evidence being at the discretion of the Magistrate, the exercise of such discretion would only be disturbed if it is shown that his application of the discretion was so unreasonable that no Magistrate properly directing himself could have concluded that the evidence is admissible. See ***Vivian Blake*** (supra).

In ***R v Taylor*** (supra), an anonymous witness, using a screen, gave corroborative evidence against the appellant. He was convicted for perverting the course of justice. He appealed on the ground that he had a right to know the identity of the witness.

It was held that the witness was entitled to give her evidence anonymously.

In ***R v Taylor*** (supra) Evans L.J., observed that the fundamental right of a witness to know his accuser should only be denied in rare and exceptional circumstances and the matter was pre-eminently one for the exercise of the Judge's discretion. In addressing the factors relevant to the exercise of the Magistrate's discretion in cases of anonymity of a witness stated at page 484, he said:

> " 1. There must be real grounds for fear of the consequences if the evidence were given and the identity of the witness revealed ...

> 2. The evidence must be sufficiently relevant and important to make it unfair to make the Crown proceed without it. A distinction could be drawn between cases where the creditworthiness of the witness was in question rather than in accuracy.
>
> 3. The Crown must satisfy the court that the creditworthiness of the witness had been fully investigated and disclosed.
>
> 4. The court must be satisfied that there would be no undue prejudice to the accused, although some prejudice was inevitable, even it was only the qualification placed on the right to confront a witness as accuser. There might also be factors pointing the other way, for example as in the present case where the defendants could see the witness on a video screen.
>
> 5. The court could balance the need for protection of the witness, including the extent of that protection, against unfairness or the appearance of unfairness."

The case of ***Re Al-Fawwaz***, (supra) shows that a Magistrate, in assessing the evidence, is entitled to carry out a balancing exercise of fairness between the prosecution and the accused. In that case, Lord Hutton, in dealing with the question of admission of evidence of confidential informants at page 127 and 128 said:

> "I would add that there is a degree of inconsistency between the statement of the Court of Appeal in ***R v Taylor (Gary)*** The Times, 17 August 1994 that the accused has a fundamental right to see and know the identity of his accusers save in rare and exceptional circumstances and its statement of the factors which the judge should balance in the exercise of his discretion, some of which point to the preservation of

> the anonymity of a witness. The later judgments in ***R v X*** 91 Cr. App. R. 36 and Ex p Lenman [1993] Crim. LR 388 lay emphasis on the magistrate or judge having to strike a balance of fairness between the prosecution and the accused, in which process the importance of the accused knowing the identity of his accuser is a factor of great weight, but I think that in some cased the balance of fairness may come down in favour of the prosecution notwithstanding that the circumstances could not be described as rare and exceptional."

In the instant case the anonymous witness' affidavit advanced no reasons showing the need for anonymity, argued Mr. Charles, as, there was no expression of fear or threat of bodily injury on the part of the deponent to the affidavit to warrant the concealment of his identity and as a consequence, no evidence was before the Magistrate upon which he could have exercised his discretion to admit the affidavit.

It does not appear to me that the factors listed in ***R v Taylor*** (supra) are restrictive and as such, binding on a court, particularly in extradition proceedings. These factors, though persuasive would not amount to an inflexible rule. They seem to be merely guidelines for the benefit of a magistrate in deciding whether the testimony of an anonymous witness should be accepted or rejected.

The question as to whether the identity of a witness should be concealed is for the Magistrate's discretion. A Magistrate, being armed with the

testimonies of the witnesses, upon careful assessment of the evidence, is at liberty to determine whether a prima facie case had been made out against an accused, provided he is satisfied that the affidavit containing the evidence is authenticated.

The Magistrate did not give reasons for the committal of the appellants. However, as an examining Magistrate, he is not required to give reasons. It is also true, as the appellants contend, that no reason was given in the confidential informant's affidavit for his anonymity. A Magistrate, in the exercise of his discretion, would be required to strike a balance of fairness between the protection of the prosecution witness and the protection of an accused. However, in some cases, in the preservation of the anonymity of a witness, the pendulum of fairness swings in favour of the prosecution notwithstanding the absence of a reason for the anonymity. Such circumstances are not rare or exceptional as Lord Slynn observed in ***Al-Fawwaz*** (supra). It can reasonably be inferred that the Magistrate would have weighed up the evidence before him and would have been satisfied that the confidential informant's name was concealed by reason of fear on the part of the informant.

At the committal hearing, counsel for the appellants endeavoured to ascertain from the Crown whether the confidential informant and Alexander Young was one and the same individual. The Crown was unable to supply the

information. In these circumstances, the appellants questioned the credibility of the witnesses Young and the confidential informant. Questions as to credibility of witnesses are usually reserved for determination at trial, as, they do not, save and except in obvious cases, result in a finding that a prima facie case has not been made out against an accused. See ***Lloyd Brooks v Director of Public Prosecutions*** 31 J.L.R 16.

At this juncture it is necessary to make reference to the affidavits of the confidential informant and Young. The contents of the confidential informant's affidavit were essentially rehearsed in Young's affidavit. The affidavits disclose the meeting of the deponents with the appellants in 1999 and the appellant Ramcharan informing them that Williams and himself were engaged in the shipment of cocaine to the United States and also that Williams told him that he was selling cocaine he received from Colombia in the United States. Young's affidavit goes on to give additional information as to his interaction and involvement with the appellants and others regarding agreements to ship cocaine from Columbia to Jamaica and ultimately for sale in the United States.

The case against the appellants essentially rested on the evidence of Alexander Young, a co- conspirator but he was not charged on any of the indictments with the appellants. In the circumstances, Mr Charles submitted, Young being an accomplice , his evidence was uncorroborated and was

therefore inadmissible. With this submission I am constrained to disagree. The uncorroborated evidence of a witness who is an accomplice is admissible provided that a warning is given by the Tribunal. See ***R v Atwood and Robbins*** 1 Leach 464; 168 E.R. 334.

It is reasonable to infer that the committing magistrate would have considered the dangers of acting on the uncorroborated evidence of Young and of that of the confidential informant. At the trial, the appellants will have an opportunity to raise objections as to the concealment of the name of the confidential informant. Further, it is obligatory on the part of the trial judge to issue a warning to the jury of the risk of acting on the uncorroborated evidence of an accomplice. See ***Davies v D.P.P.*** [1954] 1 ALL E R 507 and ***R v Turner*** [1975] 61 Cr. App. R. 67.

The Magistrate, as an examining justice may commit a person to stand trial where there is sufficient evidence to "put the accused person upon trial for an indictable offence or if the evidence given raises a strong or probable presumption of the guilt of such party". See section 43 of the Justices of the Peace Jurisdiction Act. He had adequate evidence before him to warrant committal of the appellants.

The Magistrate properly exercised his discretion in admitting into evidence the affidavit of the confidential informant.

This ground is unsustainable.

Grounds (f) (g) and (h) Re: Ramcharran:

(f) Full court erred in its construction of section 7 (1) of the Extradition Act.

(g) Full court erred in not holding that the kingpin designation discriminated against the appellant by reason of his nationality.

(h) Full court erred in not holding that the evidence adduced demonstrated that the appellant would be denied a fair trial, if extradited.

Lord Gifford, Q.C., argued that the appellant Ramcharran, if extradited to the United States, will be denied a fair trial, by reason of his designation by the President of the United States , as a "Kingpin" by virtue of the Foreign Narcotics Kingpin Designation Act 1999, as such characterization discriminated against him because of his nationality and section 7 (1) (c) of the Extradition Act ought to enure to the appellant's benefit.

It is of importance, at this stage, to refer to the Foreign Narcotics Kingpin Designation Act. On June 1, 2004 ten persons including the appellant were designated 'kingpins' under the Foreign Narcotics Kingpin Designation Act. Section 2 of the Act makes it a policy to apply economic sanctions to foreign

narcotic traffickers whose activities threaten the United States' foreign policy and economy.

Under section 4 (b) of the Act the President, after receiving information from certain officials, namely, the Secretary to the Treasury, the Secretary of Defence, the Secretary of State and the Director of Central Intelligence , in a report to various committees of Congress, identifies publicly the designated persons who he determines are appropriate for sanctions.

It is also essential to refer to section 7(1) of the Extradition Act. The section reads:

> "(1) A person shall not be extradited under this Act to an approved state or committed to or kept in custody for the purposes of such extradition, if it appears to the Minister, to the court of committal, to the Supreme Court on an application for habeas corpus or to the Court of Appeal on appeal against a refusal to grant a writ of Habeas corpus –
>
> (a) that the offence of which that person is accused or was convicted is an offence of a political character; or
>
> (b) that the request for extradition, though purporting to be on account of the extraditable offence, is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or

(c) that he might, if extradited, be denied a fair trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions;"

It is also of importance to make reference to the Treaty obligations between Jamaica and the United States. The Bilateral Treaty, Article III section 2(c) states:

"(a) ...

(b) ...

(c) the person sought is by reason of his race, religion, nationality or political opinions, likely to be denied a fair trial or punished, detained or restricted in his personal liberty for such reasons."

Lord Gifford, Q.C., submitted that section 7 (1) (c) of the Extradition Act ought to be construed as meaning that the court should not extradite if the subject might, if extradited be denied a fair trial, or be punished by reason of his race , religion, nationality or political opinions.

Mr. Foster argued that the interpretation to be given to section 7(1)(c) of the Extradition Act is that a person ought not to be extradited if that person can establish that he/she will be denied a fair trial or that he/she is likely to be punished, detained or otherwise restricted as a result of his race, religion, nationality or political opinions. It was further argued by him that there must be a direct causal link between the appellant's nationality and the fact that he will be denied a fair trial for that reason.

The full court, in dealing with the issue as to whether the appellant would be denied a fair trial in the United States, at page 106 of the record said:

> "The appellant would have to show that he might be denied a fair trial because he is a Jamaican. This he has failed to do. It is quite clear that the designation did not come about because of his nationality but because of his perceived involvement in trafficking of Narcotics."

The provisions of section 7 (1) (c) of the Extradition Act and Article III section (2) of the Bilateral Treaty must be read conjunctively in order to ascertain the intent of the legislators. An extradition treaty, being a contract between two countries must be interpreted as such. It cannot be construed as if it were domestic law. See ***R v Governor of Ashford Remand Centre, and Another ex parte Postlewaite and Others*** [1988] 1 A.C. 947.

A request for extradition would not be barred by Article III (2) (b) of the Treaty unless it is established that extradition is sought to punish a person for his race, religion, nationality or political opinion. Under section 7(1) (c), to avoid extradition, a person must show that he will be denied a fair trial or he will be punished or subject to detention or otherwise restrained due to his race, religion , nationality or political opinions. The spirit and intent of the legislation was to grant protection from extradition to persons who could

establish that their right to a fair trial may be compromised by reason of their race, religion, nationality or political opinions.

In ***Fernandez v Government of Singapore*** [1971] 2 All E.R 691 cited by Lord Gifford, Q.C., the House of Lords was concerned with the construction of section 4 (1) (c) of the Fugitive Offenders Act which is *pari materia* to section 7 (1) (c) of the Extradition Act. The appellant, in that case, a national of Singapore, contended that if he were returned to Singapore he might be restricted or detained because of his political opinions. He was unsuccessful in resisting a request for his extradition to Singapore from England. Their Lordships declared that there must be proof that a person might, if extradited be denied a fair trial. This they said would be established where it is shown that there is "a reasonable chance" or " a serious possibility" or there are "substantial grounds for thinking" that if the appellant is extradited he might not receive a fair trial by reason of his " political opinion".

A person who contends that he will be exposed to an unfair trial if extradited must adduce cogent evidence to support this contention. It is not sufficient to show that a person "might if extradited be denied a fair trial." There must be evidence to establish that there is a reasonable chance or substantial ground for his belief that his trial would not be fair because of his race, nationality, religion or political opinions.

The appellant, in the instant case, is required to demonstrate that he will be denied a fair trial by reason of his nationality. The evidence on which he places reliance is that he has been designated a kingpin because he is a non United States national. There is no evidence supporting his assertion that the designation is as a consequence of his nationality and hence he would not secure a fair trial. His designation as a kingpin originated in allegations of his involvement in the narcotics trade. The designation excludes non-American citizens. This however, cannot be regarded as having any discriminatory effect on him as a Jamaican.

Publication of the persons designated kingpins is a requirement of the Foreign Kingpin Designation Act. The designation of the appellant as a foreign narcotics 'kingpin', Lord Gifford, Q.C., argued, would operate adversely on the minds of any juror who should become aware of it thus resulting in prejudice which is grounded in a substantial or discernible risk of pre-trial publicity of the appellant.

An affidavit of Linda Wright shows that the designation of the appellant as a kingpin had been posted, and remains posted, on the internet. Professor Bruce Winick, a professor of law at the University of Miami School of Law and a legal expert, in an affidavit, disclosed that a search of the internet revealed 50 references to the appellant's designation as a kingpin.

Professor Winick cited statistics showing user of internet being enjoyed by over 50 per cent of persons in Florida. In his opinion, the overwhelming pre-trial publicity to which the appellant will be exposed would result in his denial of a fair trial by reason of bias on the part of jurors. It was also his view that the ordinary safeguards guaranteed at a trial would not protect him. In my view his opinion is merely a projection of what could probably occur at the trial of the appellant. His views do not amount to evidence as to what will happen at the trial. The Full court was correct in rejecting his evidence.

It is perfectly true, as maintained by the appellant, that the internet is a medium through which the jurors can secure information about the appellant's designation. However, the trial court is the proper forum for complaints touching matters relating to pre-trial publicity. See ***Nankissoon Boodram v Attorney General and Another*** 47 W.I.R. 459.

The United States Courts must be trusted to guarantee the fair trial of the appellant. In ***Heath and Matthews v The Government of the United States*** Privy Council Appeal 58 of 2004 delivered on November, 28 2005 the appellants were designated kingpins by the President of the United States of America. They argued that their designation as foreign narcotic kingpins, its publication on the United States Government website and in the press, showed that there was "a real risk that they would suffer a flagrant denial of justice."

The Privy Council dismissed the submission as being unmeritorious. Lord Brown of Eaton-under-Heywood in delivering the advise of the Board said:

> "In their Lordships' view, the evidence comes no where near establishing that the appellants would be at risk of suffering a flagrant denial of justice were they to be extradited. Rather the United States courts must be trusted to secure them a fair trial."

The judicial system of the United States of America has in place adequate safeguards to ensure that the presumption of innocence redounds which to an accused is secured. There are measures which can be implemented by the trial court to insulate him from any form of prejudice. First and foremost, is the scrupulous inquisitorial system in the jury selection which is well known in the United States Federal Courts. The process is a highly detailed procedure.

The exposure of a juror to matters which are adverse to an accused is always a distinct possibility in any trial. However, there are channels available to protect an accused against injustice notwithstanding Lord Gifford's, contention, that the ordinary safeguards *as* pronounced in ***Grant and Others v The Director of Public Prosections*** (1981) 30 W.I.R. 246, namely, change of venue, postponement of the trial, examination of jurors were inadequate. These he submitted would be ineffective in disabusing the minds of the jurors. The most effective process is that of a *voir dire.* The *voir dire* is conducted by

the trial judge. There can be no doubt that the judge, at the time of trial, through this process, would ensure that no juror who had knowledge of the appellant's designation is empanelled.

The full court had not fallen into error in holding that the appellant would have to show that he might be denied a fair trial because he is a Jamaican. This he has failed to do. It is quite clear that the designation of kingpin did not have its genesis in his nationality but because of his alleged involvement in the trafficking of narcotics. This ground also fails.

Ground (f) - Offence in Count 2 of Indictment not Cognizable in Jamaica - Re Williams.

Mr. Phipps, Q.C., contended that the offence outlined in count 2 of the Authority to Proceed is unknown to the laws of Jamaica and is not one for which the Appellant can be extradited. The full court had fallen into error, he contended, when they held that the appellant could be extradited on count 2 of the indictment.

The offence in Count 2 of the Authority to Proceed is framed thus:

> "Conspiracy to possess with intent to distribute a mixture and substance containing cocaine."

In deciding whether an offence is extraditable recourse must be had to the Extradition Act and to Article II (1), (2) and (3) of the Extradition Treaty.

Section 5 of the Act places an onus on the Requesting State to extradite persons charged with extraditable offences. So far as relevant reads:

> "5. (1) For the purposes of this Act, any offence of which a person is accused or has been convicted in an approved State is an extradition offence, if-
>
> (a) in the case of an offence against the law of a designated Commonwealth State –
>
> ...
>
> (b) in the case of an offence against the law of a treaty State -
>
> (i) it is an offence which is provided for by the extradition treaty with that State; and
>
> (ii) the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of Jamaica if it took place within Jamaica or, in the case of an extra-territorial offence, in corresponding circumstances outside Jamaica."

Article II (1) and (2) and (3) of the Extradition Treaty, so far as is relevant, reads:

> "1. An offence shall be an extraditable offence if it is punishable under the law of both Contracting Parties by imprisonment or other form of detention for a period of more than one year or by any greater punishment.
>
> 2. The following offences shall be extraditable if they meet the requirements of paragraph (1) -

(a) conspiring in, attempting to commit, aiding or abetting, assisting, counseling or procuring the commission of, or being an accessory before or after the fact to, an offence described in that paragraph; or

(b) impending the apprehension or prosecution of a person charged with an offence described in that paragraph.

3. For the purposes of this Article an offence shall be an extraditable offence-

(a) whether or not the laws of the Contracting Parties place the offence within the same category of offences or denominate the offence by the same terminology; or

(b) ..."

It is also essential to refer to sections 8 and 8A of the Dangerous Drugs Act, which provide:

"8. Every person who imports or brings into, or exports from, the Island any drug to which this Part applies except under and in accordance with a licence, and into or from prescribed ports or places, shall be guilty of an offence against this Act.

8A. – (1) Every person who, save as authorized by a licence or under regulations made under this Act –

(a) sells or distributes any drug to which this Part applies; or

(b) being the owner or occupier of any premises uses such premises for the manufacture, sale or distribution of any

such drug or knowingly permits such premises to be so used ; or

(c) uses any conveyance for carrying any such drug or for the purpose of the sale or distribution of such drug or, being the owner or person in charge of any conveyance, knowingly permits it to be so used,

shall be guilty of an offence.

(2) Every person who contravenes subsection (1) shall be liable -

(a) on conviction before a Circuit Court to a fine or to imprisonment for a term not exceeding thirty-five years or to both such fine and imprisonment;

(b) on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment."

Although the description of the offence in the indictment does not mirror the language of a corresponding offence under the laws of Jamaica or under the treaty, it is sufficient if the charge is with respect to an offence known to the laws of Jamaica. It is unnecessary that an offence, known to a Requesting State, when translated into the language of the Requested State should exactly correspond with the statutory definition of the Requested State. If a precise correspondence of the relevant laws were required, this would create manifest

perplexity in determining what, if any, crimes could become subject to extradition.

The essence of count 2 is conspiracy to distribute a dangerous drug. This offence falls within the ambit of Section 8 and/or 8A of the Dangerous Drugs Act. The offence is extraditable within the context of section 5 (1) (b) of the Extradition Act and in keeping with the provisions of the treaty. There is no mandate for the count of the indictment to be in the language of section 8 and/or 8A of the Dangerous Drugs Act. This being so, the complaint is unsustainable.

Ground (h) - No Evidence to Show that Williams was Party to Any Overt Act to Found Conspiracy in the United States.

It was submitted by Mr. Phipps, Q.C., that counts 1 and 2 of the indictment charged the appellant Williams with conspiracy committed in Miami the Southern District of Florida yet there is no evidence of the appellant's involvement in any overt act in the United States to found a charge of conspiracy. He argued that, a person entering an agreement outside of the United States could not be extradited to that country unless there is reciprocal treaty agreement between Jamaica and the United States.

The appellant, through this complaint, challenges the jurisdiction of the United States Courts over him. It is therefore apt to allude to sections 5 and 6

of the Extradition Act and Articles I and II of the Extradition Treaty. Section 5 of the Act makes provision regarding extraditable offences.

Section 6 of the Act provides for persons liable to be extradited. It reads:

> "6. Subject to the provisions of this Act, a person found in Jamaica who is accused of an extradition offence in any approved State or who is alleged to be unlawfully at large after conviction of such an offence in any such State, may be arrested and returned to that State as provided by this Act."

Article I of the Extradition Treaty provides:

> "1. The Contracting Parties agree to extradite to each other, subject to the provisions of this Treaty:
>
> (a) persons who the competent authorities in the Requesting State have charged with an extraditable offence committed within its territory: or
>
> (b) ...
>
> 2. With respect to an offence committed outside the territory of the Requesting State, the Requested State shall grant extradition, subject to the provisions of this Treaty, if there is jurisdiction under the laws of both States for punishment of such an offence in corresponding circumstances."

Article II outlines the circumstances under which an offence is extraditable by naming conspiracy among other offences and by specifying that an offence is extraditable if it is punishable under the laws of both Contracting Parties by

imprisonment or other form of detention for a period of more than one year or by any greater punishment.

Count 2 of the indictment contains allegations of conspiracy. The evidence in the instant case reveals that the appellant, together with others was engaged in activities pursuant to a scheme to import cocaine into Jamaica for its ultimate importation into and sale in the United States.

In extradition proceedings, a liberal approach has been adopted by the courts, in dealing with conspiracy committed outside the territorial boundaries of a Requesting State. In recent times, on a charge of conspiracy, the common law has widened its scope to make acts committed outside a Requesting State justiciable in a jurisdiction in which they are designed to be executed. In recognition of the scope and extent of the common law in matters of this nature, Lord Griffiths, in the case of ***Liangsiriprasert v Uinted States Government and Another*** [1990] 2 All E R 866 at page 878 said:

> "Unfortunately in this century crime has ceased to be largely local in origin and effect. Crime is now established on an international scale and the common law must face this new reality. Their Lordships can find nothing in precedent, comity or good sense that should inhibit the common law from regarding as justiciable in England inchoate crimes committed abroad which are intended to result in the commission of criminal offences in England."

In ***Liangsirirasert*** (supra) the appellant, in Hong Kong, was engaged in a conspiracy to import illegal drugs via Thailand into the United States. In its Judgment, the Privy Council observed, among other things, that the ultimate destination of the conspiracy being the United States, the offence was justiciable in that country.

In further recognition of the spirit of the common law, in ***Al- Fawwaz***, (supra) the United States sought and obtained the extradition of appellants who had plotted outside the United States to murder United States citizens who were outside of the United States. Lord Slynn of Hadley, in recognizing that States can assume extraterritorial jurisdiction over offences committed abroad, at page 555, said:

> "When the 1870 Act was passed crimes were no doubt largely committed in the territory of the state trying the alleged criminal but that fact does not, and should not, mean that the reference to the jurisdiction is to be so limited. It does not as a matter of the ordinary meaning of the words used. It should not because in present conditions it would make it impossible to extradite for some of the most serious crimes now committed globally or at any rate across frontiers. Drug smuggling, money laundering, the abduction of children, acts of terrorism, would to a considerable extent be excluded from the extradition process. It is essential that that process should be available to them. To ignore modern methods of communication and travel as aids to criminal activities is unreal. It is no less unreal to ignore the fact that there are now many crimes where states assert extra-

territorial jurisdiction, often as a result of international conventions."

The United States is the ultimate destination of the conspiracy planned in Jamaica. Jamaica, by virtue of its contractual obligation under its treaty with the United States, is required to permit the extradition of a person charged with a corresponding offence known to the laws of Jamaica punishable by imprisonment exceeding one year under the laws of both countries. The offences named in the counts of the indictment relate to the offence of conspiracy to commit offences under the Dangerous Drugs Act, a reciprocal law. These offences are punishable by a period of imprisonment exceeding one year.

The appellant has been charged with conspiracy, an extraditable offence. Reciprocity exists between the laws of Jamaica and those of the United States with respect to that offence. In obedience to the requirements of sections 5 and 6 of the Extradition Act and Articles I and II of the Treaty, the Magistrate was correct in committing the appellant for his submission to the jurisdiction of the United States courts. This ground fails.

Ground i - Unconstitutionality of section 16 (1) of the Extradition Act - Re: Williams

It was submitted by Mr. Phipps Q.C., that the Full court was in error in finding that the appellant was liable for extradition from Jamaica to the United States for trial in their Courts in respect of the conspiracies charged in the

indictment, which were allegedly made in Jamaica. The Extradition Act of 1991, he contended, is inconsistent with section 16 (1) of the Jamaica Constitution which provides immunity from expulsion from Jamaica and as a consequence made void by section 2 of the Constitution.

This issue has previously been adjudicated upon by this court in the case of ***Trevor Forbes*** (supra) which clearly demonstrates that section 16 (1) of the Extradition Act does not alter or modify section 2 of the Constitution. Immunity from expulsion from Jamaica under section 16 (1) is not absolute. The section is not inconsistent with section 2 of the Jamaican Constitution. This ground lacks merit.

I would dismiss the appeal with costs to the respondents.

HARRISON, P.

ORDER:

The appeals are dismissed.

The order of the full court for the extradition of the appellants is affirmed with costs to the respondents to be agreed or taxed.