



**Human Rights: Why defence lawyers defend criminals, those who had been proved guilty of charge?**

**An interview with a British Civil Rights Lawyer Clive Stafford-Smith**

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**Abstract:**

The reasoning behind, why certain lawyers defend clients who have been proven guilty of their crimes. A frequently asked question – *why*- do defence lawyers defend their clients at all, particularly if the judiciary have already declared them guilty? Is it for financial gain or for more altruistic reasons? As the UN Declaration of Human Rights Article 11 reminds us that an individual is ‘innocent until proven guilty.’

Clive Stafford- Smith is a civil rights lawyer, human right activist, a multi- award-winning, author, and a founder of multi-non-profit organisations of international lawyers and investigators most well-known being Reprieve<sup>1</sup>. He is most known for his specialisation in defending people accused of the most serious crimes, predominantly those in Death Row held in secret prisons around the world. To date Clive has represented over thousand detainees and has secured the release of over five hundred prisoners from Guantanamo Bay, and continues to act for over hundred more.

**Derechos Humanos: ¿Por qué los abogados defienden a criminales, a los que se ha demostrado que son culpables de los cargos?**

**Una entrevista con el abogado británico Clive Stafford-Smith, especializado en derechos civiles**

**Resumen:**

El razonamiento de por qué algunos abogados defienden a clientes que han sido declarados culpables de sus delitos. Una pregunta frecuente: ¿por qué los abogados defensores defienden a sus clientes, sobre todo si la justicia ya los ha declarado culpables? ¿Es por un beneficio económico o por razones más altruistas? El artículo 11 de la Declaración de Derechos Humanos de la ONU nos recuerda que una persona es "inocente hasta que se demuestre su culpabilidad".

Clive Stafford-Smith, abogado de derechos civiles, activista galardonado en múltiples ocasiones, es autor y fundador de organizaciones sin ánimo de lucro de abogados e investigadores internacionales, la más conocida de las cuales es Reprieve. Es más conocido por su especialización en la defensa de personas acusadas de los delitos más graves, sobre todo de los condenados a muerte recluidos en prisiones secretas de todo el mundo. Hasta la fecha, Clive ha representado a más de mil detenidos y ha conseguido la liberación de más de quinientos presos de la Bahía de Guantánamo, y sigue actuando para más de cien más

**Interview script:**

Indira: Clive, thank you very much for the opportunity to speak with you.

Clive: My absolute pleasure to be here.

Indira: Respectful protocols will be observed under the General Data Protection Regulation (GDPR), and you are free to withdraw from the interview when you decide. An hour has been allocated; may we proceed?

Clive: Yes, sure! I understand.

Indira: My first question has probably been asked often. As a champion of human rights, how can you justify defending criminals, some of whom have committed appalling crime such as child rape and wanton murder?

Clive: Mmm... are we talking about the current definition of human rights or the real definition of human rights? Because the real definition of human rights says to not send anybody to prison which personally, I think prison is an entirely pointless process. The Article 9 on Human Rights Declaration exclusively points that 'no one shall be subjected to arbitrary arrest, detention or exile'. However, it is happening in daily bases across the world.

Indira: There are a variety of definitions. The Universal Declaration of Human Rights as put forwards by the UN defines Human rights as 'the freedom and legal rights accorded to every individual, regardless of background.'  
The Equality of Human Rights Commission, declares that 'these rights can be restricted if one has broken the law.'

Clive: The latter is incorrect. There is no such clause stating that law breakers should have restricted rights. No individual or organisation is entitled to remove the rights and dignity of anyone, criminal or not. Again, citing one of the Human Rights declaration Article 2 which states 'everyone is entitled to *all* the rights and freedom set forth in the declaration, without distinction of any kind'. So, when we come to discuss about crime, first, we must understand that crime is a relative concept that can be interpretive in many ways. Look at Russia for instance, it just made illegal to vote for Mr. Alexei Navalny the opposition leader. It does not mean the human rights of the Russian people are being destroyed only that the Russian government is behaving incredibly badly.  
Human rights acts are being expanded, and in the future people will encounter more rights such as economic rights where everybody will have a better standard of income, and it will be great.

Indira: Please, can you explain how the Russian people's human rights are not affected by the prevention of being able to vote freely?

Clive: Well, the law in Russia has been expanded making legal the illegal. Today, preventing voting is not illegal in Russia, therefore the Human rights within their laws is not being denied. Here in England and in America is illegal because the law continues the same.

Indira: I understand the concept of relativity, yet Russian government has signed and ratified the European Convention on Human Rights, and there are numerous reports of human rights violations, and the prevention of voting is one.

Clive: In Russia the prevention of voting used to be illegal before the extension. Let us take a step back on this topic of violation of law. Firstly, there is no such thing as a violation of law. As I mentioned before, I do not believe in the institution of prison. I do not think any family, such as father or mother, son, daughter, or any other family member or even a good friend would send or would like to see the person they love going to prison. Some people believe they have the right to invade into someone's rights and send the person to prison only because some law says because he or she behaved badly, they should be sent to prison.

Indira: But these people have themselves committed a violation by raping, beating, and killing others, which is likewise invading other people's human rights. Some of the clients you represent have raped and killed small children. How must their families feel?

Considering that the victims are likewise someone's family, friends, and loved ones. No mother, father or even siblings wanted their loved ones violated as in the ways your clients did.

Clive: Prison is not the solution. We must dig deeper – why was the crime committed in the first place? What led these people to their actions?  
Only then can we begin to see the person being charged as deserving of justice. Labelling people as criminal insights society to treat them as such.

My task as a defence lawyer is to make sure that the justice system does not inflict abuse, that the rights of the guilty are acknowledged and protected. Not to prove or disprove innocence but to ensure a fair trial.

Let me explain:

There are three steps when it comes to defence:

The first step is the viridity:

It does not mean much because the legal system is fundamentally faulty. So, the person may or may not be guilty.

The government are the first one to violate the law by labelling people as a criminal and inciting the society to see and treat them likewise.

The second step is the nature of punishment:

I deal with mostly death penalty cases. It is of no consequence to me if they are guilty or not; I feel no one deserves being killed despite the reason.

The third step is the concept of the death penalty:

It is an utterly barbaric concept. The structure we implement at present involves torture, severe physical and psychological pain. How can this be justice as it is a severe abuse of human rights?

This is not the way to achieve justice.

Indira: What do you suggest as an alternative to imprisonment?

Clive: I recommend a rehabilitation center. This way justice is promoted as no laws are being broken and prisoners are encouraged to conduct themselves better. Do not forget that many prisoners are *not* guilty. Many have been convicted and after the time of their death, evidence has been uncovered to prove their innocence. Too late to bring these people back to life and return them to their families and society. Often prisoners have remained on Death Row for over 20 years as the government refuses to recognise their error.

Indira: I suppose a rehabilitation center sounds a feasible alternative. But do the aggrieved families of the victims of the crimes ever believed that the punishment is sufficient?

Clive: People seek justice not punishment. Punishment is related to revenge. A vicious circle will prevail if we believe punishment leads to justice.  
As lawyers we seek to educate- understand the cause for the crime, see the ‘offenders’ as a fellow human being, and ignore the label society has given. They too are mothers, brothers, parents.  
Violence begets violence and our duty is to reduce that by insuring justice is served. Condemning someone as a criminal is tantamount to being racist or sexist. The mindset is identical, only the terminology differs.

Indira: Have you ever represented someone you believed to be guilty of the charges laid against them?

Clive: I have, indeed.

Indira: As you never get paid for defending any client, its obvious money is not the driving force. So, why defending those who you truly believe to be guilty of charge?  
Does it not vilify the victim’s human rights?

Clive: Defending the guilty party does not affect the rights of the victims. Punishing the offenders does not result in making the victim or victims’ families feel better – this is a lie punted by the government to justify appalling treatment in prison and, often, the death penalty sentence. In fact, it fosters a determination to commit the crimes again. Rather, teach the right thing to do.  
A case involving a six-year-old boy raped by a client of mine. The child’s mother, Lauren Hyde which I have her as my heroine. She wanted to understand why Larry Lonchar committed the crime. Lauren spent time learning about his case and situation, reaching the conclusion that he was insane. She saw it unnecessary for him to endure a brutal punishment of imprisonment and instead be referred to a mental institution.

The government, however, wanted Lauren to testify that Larry be executed, the most extreme punishment there is. Yet by learning the reason of the crime, Lauren came to understand why her poor child has been killed, and it was equally good for her to come into the position, not of forgiveness but of understanding and mercy. This is what made the person she is today, a true empathetic human being and a hero.

I do not think there is a dilemma between representing the offender and the victims because the victims are not benefited by the legal systems and nor affected by us representing the offenders.

One way to investigate it could be by asking modern parents if they would beat their child. Some older folks would say, ooh yes, it is part of education or upbringing - but we now know better, of course not. And by the same token we would not punish another person's child.

No one want their children to be punished, let alone being sent and or killed in prison. What we want is to encourage people to emulate Lauren Hyde and in that way the world would be a little better.

I always try to talk to the other side and invite them to talk to my clients. And when it happens people come to understand the real factor of the crime not what the government incites them to believe. They come to see the detainees in a human eye and support the right way of having a fair trial, and it is what make us human.

Indira: But Larry Lonchar was insane. What of those who have no trace of insanity yet perpetrate violent crimes?

Clive: Everyone deserves the right to be treated humanely, insane or not insane the law is the same. We protect human rights by being kind to one another; being less judgemental, more understanding and this in turn makes us less vulnerable to the manipulative actions of the government. If we focus on kindness being a force for good, surely everyone wins. Right? So, when we have a system whereby people try to take control by themselves, we lose out.

Indira: How is your relationship with the lawyers who disagree with your cases? And is it possible for you to mention some incident where you were criticising for representing people on Death Row?

Clive: The death sentence is a controversial issue. Some genuinely believe that executing people makes the world a better place and this can cause hostility. Otherwise, lawyers are supportive of the work I do.  
A case in point is the War on Terror – some believe in just locking people up and throwing away the key – fortunately this is a small minority.  
Due to legal constraints, I am not at liberty to name names.

Indira: Thank you very much, just a brief recap:  
The reason you defend ‘criminals’ is to defend human rights; ensuring they have a fair trial and because you do not believe in prison or any type of punishment as it incites further violence.  
Rehabilitations centres are one of the closest substitutions to ensure justice and a better version of the ‘offenders. Also, by defending them, serves as a re-education to society to see the human being behind the alleged label stated by the government, criminal. That way encouraging people to be less judgemental and question the government that manipulates how we perceive justice.

Clive: That is correct. In fact, most of us break the law on a regular basis, particularly in today’s situation with COVID 19 pandemic. Many guidelines are ignored. Many people ignore wearing face masks, little evidence of hand washing, social distance and more. In the government’s eyes, these people are dangers to society, yet none are sent to jail. Instead, they are treated kindly in hospitals. So, why not treat everyone kindly?  
We live in a democracy, our law declares no one should suffer ill treatment. Not torture or degrading punishments.  
In Guantanamo Bay Detention Camp for instance, the wild iguanas are protected by law, it being illegal to kill, harm or eat them, while only recently have detainees been given the rights to legal representation and only American lawyers.

How can one justify the ongoing violation of human rights? Mass arrest, extrajudicial killings, rape, torture, sleep deprivation and waterboarding. These are few of the abuse prisoners tend to face on a regular basis.

I refer to Article 5 of the Universal Declaration of Human rights – ‘No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment’. Yet this persists in many countries, including the US, UK and other countries that signed and ratified the United Nation Convention Against Torture.

The governments refuse to acknowledge complicity and holding states to account. This encourages a culture of impunity, allowing torture to persist. This takes place in police stations, prisons, and other establishments.

In Nordic countries for instance such as Norway, police authorities and detainees coexist in mutual respect, addressing one another by name. No uniforms, no punishment. The rate of crime is low from 100 percent who leave, less than 20 percent return and seldom for a third time.

Indira: I understand. Have any of your clients displayed changed behaviour or aspired to be a better citizen?

Clive: As I have said, many are innocent, already good people. I have had challenging clients. One is currently writing a cookbook in prison, naming dishes after torture inflicted on him. He aims to be a professional chef on his release. Just one of the examples of individuals who were already good citizens.

Indira: Is it due to the attention you offer them?

Clive: Not really, the social environment is what really contributes to one’s personality. A fair and respectable treatment is generally rewarded by socially acceptable behaviour.

Indira: I have a few last questions which diverts a little from the topic in course.

Clive: Go ahead.

Indira: Thank you!  
The first one is:  
How do you make a living if you only represent clients who are usually without the funds to pay?

Clive: Just through raising funds charitably. There is not an alternative since the people who most need a lawyer cannot afford one.

Indira: Can you name any donors?

Clive: I am afraid. I am not at liberty to mention their names due to legal reasons. However, I don't mind where funds come from so long as there is no limitation on how we spend it for the good of the beneficiaries.

Indira: Have you represented any detainees who could pay a lawyer? If so, why?

Clive: No. None of my clients can pay, and even if they could I would not accept it because we owe it to them to get them justice. They did not choose to be rendered illegally halfway around the world.

Indira: Would you represent anyone with means to pay for your service?

Clive: Yes, but I would not accept a fee.

Indira: Why not?

Clive: I stand for those unable to pay for lawyers and most of my clients come from the minority group or from very poor background. By taking fees from them I would not be representing the targeted clients and I would be standing away from my principles. Besides, most lawyers work for fees, so those able to pay would have no restraint to find a representative, which is the opposite to the free lawyers that are in scarcity.

Indira: Clive, it is time to end our interview, interesting and insightful!

Thank you very much for your time.

Clive: It has been my pleasure.

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