

Clive Stafford Smith:

The Death penalty in the US: Poverty, Prejudice and Politics

Clive Stafford Smith, a British born lawyer, has worked on death penalty cases in the southern US for the past 17 years, representing over 200 people on death row. Stafford Smith is Director of the Louisiana Crisis Assistance Centre (LCAC) the Justice Centre the not for profit law office in New Orleans, and also works with Reprieve, a UK based human rights charity. Reprieve which was launched by Stafford Smith in 1999 has assisted numerous volunteers to attend the Southern United States to work on Death Penalty cases. Stafford Smith has represented all the Britons who have been sentenced to death in the States in recent years.

Debating the death penalty has always seemed to me a profoundly unnecessary thing to need to do. For this reason, today I would like to approach this subject in a slightly different way; I want to talk about Krishna Maharaj, and his case, as a metaphor for a number of other issues in life, including the post-September 11 attitudes we are witnessing today. And I want to do this in t because there is no point in giving a talk if it does not help someone; and Kris desperately needs all the assistance we can muster. So whatever you do, please don't come here today thinking we are holding a polite discourse about a philosophical dilemma. We are not. It is a desperate discussion of Kris' terrifying plight.

The death penalty is not just about taking a few young black people and killing them in the south of the United States; it is a reflection of the way in which our society functions. The politics of hatred--which is the root of capital punishment -is also, perhaps, an explanation for what is going on in Afghanistan.

First, we must talk first about Arrogance. Arrogance is entwined with the death penalty, because the notion that you somehow have the right or the ability to decide whether people live or die or whether people deserve to be killed requires a monumental degree of arrogance. Yet there are very specific ways in which arrogance is reflected in Kris's case.

Yesterday was the fifteenth anniversary of Kris's arrest on October 16 1986. After that, it took the State of Florida about a year to send him to death row, yet the whole time he has been seated under the damoclean sword of the death penalty. I want you to think for a minute what that means--think back to when you were fifteen years younger than today, and then try to imagine living for those last 15 years (more than 5000 days and nights) in a room the size of your toilet.

If that puts a little bit of perspective in to what we are talking about. For fifteen years, Kris has suffered under the weight of America's arrogant disregard for international law; for the past 15 years America has steadfastly refused to conduct itself according to the international conventions it has signed up to. When we ask the question that should have been on everyone's minds since September 11 -- "Why is it that so many people hate the United States?" -- one response involves this hypocrisy when it comes to international law. The United States likes to laud itself as the centre of Jeffersonian democracy and an example to the rest of the world. Indeed, in between referring to the "tribes " of Afghanistan, and bombing the Afghans to keep them in the Stone Age, the Americans speak of bringing democracy to that country, as the harbinger of civilization.

To be sure, in 1789, when the American Constitution was adopted, it was a document of tremendous force. But how can we chastise the rest of the world for failing to meet the high ideals of the Constitution when the United States insists on abrogating every democratic norm in the international arena. In the United Nations, both the U.S. and Britain insist on a veto power on the Security Council -- what kind of democracy is that? The U.S. then refuses to pay its bills to the UN because the majority vote sometimes goes against what the U.S. would like to see. It is difficult to think that a citizen could refuse to pay taxes to Uncle Sam and expect to get away with such a defence.

Meanwhile, the U.S. refused to sign the Genocide Convention for 40 years because it might be used against them for their terrible treatment of minorities; the U.S. continues to refuse to sign the convention on the

rights of women at all because of deep inequalities on gender. The U.S. will not even sign up to the Covenant on Civil and Political Rights because it might be used to stop them from executing children.

It is not surprising that others are unwilling to accept American protestations as sincere when democracy is only touted when it is convenient to American interests. And this, sadly, is the approach to international law that has been taken in Kris Maharaj's case and for fifteen years, no one has called them to task, least of all our government.

I sometimes think when you go to America, as well as needing health insurance because the health system is so abysmal, and travel insurance because you're going to get robbed, you should also get death penalty insurance in case you are arrested and charged with some capital offence and then given a lawyer who sleeps throughout the trial. Kris was arrested and the authorities never complied with the Vienna Convention, never told him he could have consular assistance, or the British authorities that a citizen had been taken into custody. Indeed, even after we pointed this out in court to them, they still did not bother to comply with obligations that they assumed by international convention forty years ago. Such flouting of the law is pure arrogance - power presuming that it can simply get away with it.

Second, after Arrogance, we must consider the question of Condemnation. That's what the death penalty sets in stark relief: our right to judge and our right to condemn. I have been struggling with a personal dilemma recently: How can I expect the fact that I am standing in front of twelve jurors, knowing far more about my client than they ever will, convinced to the ultimate degree humanly possible that my client is innocent, and yet those twelve people decide "beyond a reasonable doubt" that he is guilty? There is an extraordinary dissonance in this picture, and it cannot be excused solely in terms of the acceptance of authority. After all, it is an equal challenge to expect why an educated and informed prosecutor would be seeking the death penalty against someone who I am so sure to be innocent.

It is worth testing our own prejudices when it comes to condemnation. Perhaps we can try to quantify what we mean by doubt or certainty. When you think someone is guilty beyond a reasonable doubt what percentage proof do you want to be sure? A little more than 50%? What's the lowest you would go? 80% 95%? Again, let me put this in the perspective of reality: I was talking to a very liberal, very enlightened federal judge recently and she said she thought that proof "beyond a reasonable doubt" was about 75%. Consider what that means; there are 2 million people in American prisons, and if you aim to get it right 75% of the time, then you

aim to have 500,000 innocent people in prison. Even if you aim for 95% you aim to have 100,000 innocent people in prison. If you aim for 99% you are still shooting for 20,000. And there are two glaring problems beyond these mere figures: One, if you aim for so miserable a target, you are doubtless going to miss and make even more mistakes. Two, each of those people is not a statistic, but is an individual who only has one life.

It is frightening to say that, whatever the American target of the moment, they are missing it. In New Orleans recently, we started a project to try and represent everybody who gets arrested on capital charges. New Orleans is only a city of half a million people, but in the last two and a half years we have concluded 119 death penalty cases where people have been arrested for first degree murder. Of those 119, an incredible 100 have been proven innocent. That is 84%. It is perhaps even more frightening that before January 1 super

st, 1999, when we began this project and started a vigorous investigation the moment that someone was arrested, the conviction rate on such charges was over sixty percent. Imagine the number of people falsely convicted before that time. Indeed, while numbers can never tell you the whole story, in this case they do paint a terrifying picture of the judicial system and all those people who were freed to say, beyond a reasonable doubt, "we have the right to take your life." That's why when you are looking at capital punishment it's not the death penalty we need to question--we all know that is wrong--it is how we judge our fellow human beings. Every day, we judge those around us. We are either harsh or understanding when we do this. The consequences of each judgment may not be as significant as a capital trial, but our accumulated condemnation over a lifetime may be even more severe.

The next issue which is epitomized by Kris Maharaj's case, and which is endemic in U.S. society, is racism. The death penalty is a privilege of the poor and a disproportionate privilege of minorities. Some of the stories I get to tell about my clients are very dramatic--indeed one of the things I love about doing capital cases is that as a lawyer you have an incredible power to try and rectify the imbalances of power. I was doing a case in Alabama where seventeen black people came up on jury selection and the prosecutor, sure enough, used seventeen strikes to get rid of these black jurors. I always like to draw on my dubious background in mathematics to use statistics, and I said the probability that this prosecutor is not a bigot is one-in-ten to the power of 35 (10 super 35). I got called on that by the Judge who said, "I know the prosecutor, and I know the probability of him striking seventeen black jurors is not one-in-10 super 35, it's one-in-one - he always does it. " I don't think he quite got the point.

There is no doubt in my mind that if Kris Maharaj didn't have the name Maharaj, and he was a little white girl, he would be getting a lot more support from our media and our government. Unfortunately, of course, it is not just capital cases where racism exists. Racism is about hatred.

Religious intolerance is also about excluding others, and about hatred. Religious fanaticism is another theme in the death penalty. The U.S. is very quick to criticize the brutality of so-called religious extremists from the Middle East, yet we kill in the name of religion in the U.S. I cannot tell you how often "An Eye for an Eye " has been invoked in my capital trials. In Scotty Loyd's case, more than two thirds of the people called for jury duty said they would kill Scotty without a trial, based merely on the fact that he had been convicted of a murder. Whosoever sheddeth Man's blood, by Man shall his blood be shed.

And we would be hard-pressed to argue that the end result of the US judicial system is less barbaric than those we criticize. Kris has now spent 15 years and one day facing execution. One of his good friends was Jesse Tafero; the State of Florida killed Jesse by torturing him to death in the electric chair. Jesse's case became famous because his head caught on fire while they were doing it.

After that, I sued the state of Mississippi over the use of Xyclon B gas that had been used by the Nazis. Mississippi was still planning to gas people with it. When the Politics of Hatred is allowed to hold sway, it tends to identify similar groups for extermination. The human beings on Mississippi's Death Row who were going to be gassed were more than half black, mostly mentally retarded or mentally ill. We sued them on the 50th Anniversary of the liberation of Auschwitz because it seemed symbolically appropriate. So, I think that before we criticize other religions and cultures we have to take a long look at ourselves.

Of course, many people on Death Row suffer from mental illness. Kris is an individual person, not a statistic, who has had to sit there all these years waiting to be electrocuted. The thing that always amazes me is that people on death row aren't absolutely insane. When I met Kris in 1993, he was some way down the path to losing his mind, pretty paranoid about everything. There are some really dreadful aspects of Life on Death Row that you may not consider if you're not there. For instance, once a week they test the electric chair to make sure it is still working and when they are doing that the lights throughout the cells dim so everyone on death row knows exactly what's going on. And of course, every now and then they take some one out of death row and kill them.

Yet -and this is a tribute to the human spirit - Kris is more at peace today than he was five years ago. The difference for Kris is having friends in this country. People who have written to him and supported him make such a difference. Not everyone has even this sliver of light shining into his Death Row cell. The play that we are putting on currently is based on the words of Howard Neal. Howard Neal has been on Death Row for 20 years for a crime where there is tremendous doubt as to his guilt. The only evidence is a confession that a police officer say she took from him after 17 hours of interrogation. Howard's IQ is 54. You get 45 points just for taking the test, so that placed him nine points above this podium. I've talked to Howard and I've got him to confess to assassinating President Lincoln and President Kennedy because he'll say anything if you ask it in the right way. He wants to say things to please people. I told him I was coming hereto promote his play and he doesn't know where Britain is or what it is, but he did not want me to think he was ignorant. So when I asked him how to get to Britain, he said you take a big black bird with a saddle and ride past Bluetone. That's, I eventually worked out, was Pluto. He said we have horses called

intercorns here, with spikes on their heads. He told me there are Risorises, which I finally figured out were dinosaurs.

This is because Howard is 52 years old and has the mind of a 6 year old. And yet, the state of Mississippi desperately wants to kill him. I get all of my clients to write an autobiography because it is an intriguing exercise and you are always surprised by what you learn. Howard can't really write so he dictated it to the guy in the cell next to him. When I read it was so powerful, far more so than anything I could ever say on his behalf. He is not smart enough to lie, and it all came from the depths of his heart. Even if Howard were guilty, and I very much doubt he is, you have to wonder about the mind set of a State that wants to execute Howard when Howard doesn't even know what execution means.

Ultimately, one reason we are so quick to condemn is that we have been taught to hate. And before we, in Britain, get Holier-than-Thou about the United States, I am afraid we must admit to sharing some of the bigotries that we should rather reject. Indeed, each generation has its bigotry and I would hazard a guess that the uage that we use about the people that we call criminals is awfully similar to the uage that the Ku Klux Klan use about black people. This, again, is the Politics of Hatred. Government is the Great Teacher, and our governments tend to tell us we can look down on somebody else in order to validate ourselves. Because nobody ever calls them on it, the Great Condemnation comes at little political cost to the politicians.

Just as the Death Penalty is meant to be a panacea that solves the crime problem in America, so in Britain our politicians say that we can blame "criminals " for the faults of society. This saves Government from having to accept that more complex solutions are required.

The politicians and the press get away with talking about criminals in these terms because the "criminal " is a dehumanized statistic. When you meet "criminals ", they turn out to be human beings, people very like ourselves. I think it is crucial to consider in this whole debate to consider whether you could ever feel justified, in any circumstances, to send your own brother or sister to prison for a long time. If you say, "Yes, " the chances are that the person sitting next to you will think you utterly heartless. And yet if we are not willing imprison our brother or sister, why are we willing to do it to someone else's brother or sister? It comes down to dehumanization. He can only do the barbaric things we do, because we have convinced ourselves that we are dealing with people (or, more honestly, cardboard figures) who we do not consider human on the same level as ourselves. This poses a profound question about why we approach criminal justice the way we do, a question that is posed by death penalty issue, but is a very real one for us here in Britain as well.

To finish I want to tell you some of the extraordinary facts about Kris's case. When Kris was convicted in 1987, the jury heard the following "facts ": Neville Butler, a witness who had passed a lie detector test, watched Kris shoot two totally innocent people, businessmen who had an income according to the tax man of \$20,000 a year. Kris told the police and said he had never been in Room 1215 of the Dupont Plaza Hotel where the crime took place -- an obvious lie since they found his fingerprints all over it. So the thinking went ihe was lying so he's guilty. And the jury found him guilty beyond a reasonable doubt, and decided that he should die, despite the fact that he was, and remains, indisputably innocent.

Only after the trial did other facts start to come to light. Butler had actually failed the lie detector test and Kris had passed one. The detective lied when he said Kris denied being in Room 1215 -- another police report reflected that Kris said this from the start. He had been invited there for a meeting, waited an hour for Eddie Dames to show up, and left (three hours before the victims' deaths). There is a witness who says he saw another known drug dealer going to commit this homicide. There are half a dozen alibi witnesses who say that Kris was in another city at the time.

The victims had taken out life insurance shortly before their deaths for a \$1million. Fortunately, the insurance company defended the litigation and spent \$600,000 on an investigation. They were not the innocent people portrayed at trial. they were laundering money around the Caribbean to the tune of five i billion dollars.

So the prosecution's case has turned out to be a pack of lies. But Kris has been in prison for 15 years. What is the UK government doing about this? Tony Blair only needs to say the word to save Kris and three other Britons on Death Row; Tracey Housel in Georgia, Kenny Ritchey in Ohio, and Jackie Elliott in Texas. Why is our great ally in the post-September 11th world executing our citizens? And why is our government not doing anything about it? It is our moral obligation to ensure that the Government pays attention to this. Please do not simply leave here today and go about your lives. Kris Maharaj needs your help.

For each of us, our vocation should be the same. Our job is to stand between power and those who are most hated; to stand between those who hate, and the victim of that hatred. That applies to all works of life, and the death penalty is only an extreme example. And let us not believe that this is a difficult burden. It is a wonderful thing to be able to stand between the people who hate and their victim. Of course, as we get more people to stand with us, we'll gradually work our way out of a job. And then, perhaps, we will have begun to learn about the Politics of Decency.