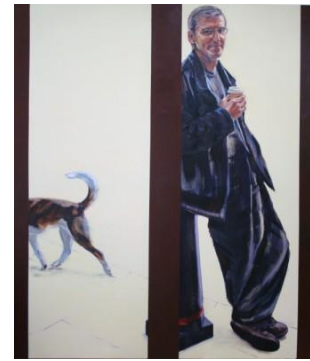


## Interview Transcript

### **Clive Stafford Smith - *Capital Case Lawyer***

**Clive:** I got this opportunity to go study in America when I was eighteen. I was on this incredibly generous programme in North Carolina, where they let you do whatever you wanted to do, so they funded me to go down and work in Georgia on death penalty. And it was astounding to me to discover that these people had no right to lawyers. You know, here you are in the richest country in the world and someone sentenced to death doesn't have the right to a lawyer.



**Claire:** Is that still the situation, that they don't have the right to a lawyer once they're sentenced?

**Clive:** there is only one state in the US that recognises the constitutional right to a lawyer, which I'm proud to say, is Mississippi.

**Clive:** it was May 21st 1987 they killed Edward Johnson. And yes, I qualified in 1984, and his was the first case I'd lost, you know, with the arrogance of youth, I never thought...but there you have it. I mean, you look back on it and you know, certainly, if I knew then what I know now I don't think he would have died. Um...it's very sad. You know, I'd just sat in the execution chamber and watched them gas the poor guy to death! And whatever theoretical view one might have about the death penalty become very much humanised when you meet the people involved, when you watch some guy dying in front of you, who you actually rather like – it's obscene. So yeah, I was angry and there are other things too, I had just come from talking with the family and I had to tell these poor people who had been trodden on all their lives, that the government had just done it to them again. And one of the fascinating things about having the BBC there, was it actually injected such a level of unreality – you kept thinking that someone was going to call 'cut' and it was all going to be over. And thankfully, for Edward's sake, he believed that too. When I went into the...I actually walked with him into the gas chamber and he said to me, 'is there something you know that I don't know?' and I didn't quite understand what he meant to begin with, but I figured it out – that he really thought they weren't going to do it. And in that sense it was good to have the journalists.

It was horrendous for him, you know. It's frustrating later to discover this woman who had been with him at the time of the murder, who could have said that he couldn't have done it. But, you know, when I talk to her about why she didn't do anything, it actually illustrates the total powerlessness of someone in Edward's position and many of these other guy's position. She said, 'who am I gonna call? I can't call the FBI, it's not like in the movies where the FBI come swooping in to do the right thing.' And she said, 'Look, I went to the police, I told them he hadn't done it, and they told me to buzz off and mind my own business.' And that's the ultimate powerlessness and, of course, it's true of so many poor people in Mississippi and else where.

Well, it took forever. I mean, one thing is people always act like this is over instantaneously, its absolute nonsense! They had him sitting in that chair for fifteen minutes. And if you think how long a minute can be if we just sit here in silence for a minute right now. You imagine if those was the last fifteen minutes of your life, it just when on and on and on. And it was about half way through that poor old Edward finally worked out that no one was going to call him. And, you know, he said, 'well, lets get it over with'. And then what he goes through, you know, you always have these perverse discussions where the doctors say, 'oh, don't try and hold you breath that just makes it more painful'. Well, that's just not a human reaction, of course. And so, it took forever!

We'd raised a legal issue in Edward's case which the courts rejected, and then about ten years later the Supreme Court said we were right. And the Supreme Court said, 'well, the best we can see is ...*(inaudible)*...were simply wrong in Edward Jonson's case'. But, you know, that's not much consolation because the guys cold in his grave.

Well, I very rarely discuss why the death penalty's wrong, because it seems to me that is the wrong question. The real issue is - why is the death penalty right? What does it achieve? And, you know, when I've watched people die, it's always at night and you come out of the execution chamber, and you look up at the stars and you say, 'well, you know, how did that make the world a better place?' and it didn't, and it achieved absolutely nothing positive. So we can argue about all these different things, about, you know, whether it's a deterrent or not – and of course it's not, my clients...*(inaudible)*... don't know what the word deterrent means. Is it a way to save money – no it's more expensive. Are we going to make mistakes – of course we make mistakes. I mean there are hundreds of intellectual arguments about why it's wrong, but I just think we don't need to go that far because no one can justify why it's right.

The worst experience I had of ...*(inaudible)*... by far was Niki Ingram. I mean Niki Ingram was very different from everyone else because represented Niki for twelve years. Niki and I were born in the same hospital in Cambridge and he and I were very close friends. I went through a divorce while I was representing him – he was a very good friend through that and we used to talk about it a lot. And the way they tortured him to death, with the electric chair, was shocking. You know, we got a stay on the Thursday evening at 6:15 for a seven o'clock execution and they didn't tell them, and they went ahead and shaved his head anyhow. And they did that intentionally and then they boasted about it. And then they lifted the stay that afternoon.....*(inaudible)*.....that evening, and it was the electric chair, no matter what people say, and you do end up dead regardless, the electric chair is still a thousand times worse than anything else. And then I can still see in sort of, very vivid black and white in the back of my mind, the images of them electrocuting him and those don't go away, but on the other hand, you have two solutions, one is to say, 'oh I can't deal with that!' and the other is to get annoyed and make sure it doesn't happen again. You know, I think our obligation is to remember in that situation that the person who is really suffering is the person who they kill.

**Claire:** There seems to be an issue over there, that if you don't have evidence at the trial your not allowed to bring it in after a certain period – new evidence?

**Clive:** Ah yeah, well that's certainly true. The US Supreme Court said that because nowhere in the US constitution does it say, 'thall shalt not execute an innocent person' there is no constitutional right not to be executed if you're innocent. Therefore, logically, proof of whether you're innocent or not, is not legally relevant under the US constitution to whether you should be executed. You know, if you're at trial and you have a really bad lawyer, like Linda Carty for example, and you get a terrible trial, you don't have a real chance at trial. But then you don't have a chance on appeal either because your lawyer didn't object to anything so when you get time for appeal.....(*inaudible*).....because your lawyer didn't give you a decent trial. So it's this system which is, almost inevitably designed to make sure it makes mistakes.