

EXHIBIT A



salon.com

Thursday, Apr 16, 2009



Search

Go!

Salon The Web

powered by YAHOO! SEARCH

A&E Books Comics Environment & Science Life Movies News & Politics Ope

Glenn Greenwald

TUESDAY APRIL 7, 2009 11:32 EDT

Salon Radio: Binyam Mohamed lawyer Clive Stafford Smith



Glenn Greenwald's Unclaimed Territory

I was previously a constitutional law and civil rights litigator in New York. I am the author of two New York Times Bestselling books: "How Would a Patriot Act?" (May, 2006), a critique of the Bush administration's use of executive power, and "A Tragic Legacy" (June, 2007), which examines the Bush legacy. My most recent book, "Great American Hypocrites", examines the manipulative electoral tactics used by the GOP and propagated by the establishment press, and was released in April, 2008, by Random House/Crown.



[updated below - Update II (w/transcript)]

My guest on *Salon Radio* today is Clive Stafford Smith. He is an international human rights lawyer and legal director of the UK branch of the human rights group Reprieve, and has represented numerous Guantanamo detainees over the years. One of Smith's

clients is Binyam Mohamed, the British resident who was released last month from Guantanamo after many years in American captivity and returned to Britain, where he has been publicly describing the well-documented, brutal torture to which he was subjected at the hands of the U.S.

The public disclosures of Mohamed's treatment has sparked intense political controversy in Britain, a major court ruling concluding that Mohamed has the right to obtain from the British Government still-secret CIA documents detailing his torture (a decision that was reversed once the U.S. threatened to terminate intelligence-sharing activities with Britain if that evidence was disclosed), and has also led to formal criminal investigations to determine the extent of the British Government's participation with the U.S. in torturing Mohamed. And it was Mohamed's lawsuit against the Boeing subsidiary which helped abduct and "render" him that the Obama administration sought to have dismissed on "state secrets" ground.

In his quest to obtain key documents proving that his client was tortured at the hands of the Bush administration, Smith is now involved in a truly bizarre though revealing controversy, first reported last Thursday by *The Guardian*. In February, Smith wrote a letter to

President Obama urging Obama to authorize the release of evidence relevant to Mohamed's torture so that Obama does not become complicit in covering-up crimes of torture (which is itself a crime). Smith attached to his letter to Obama a 2-page memo detailing the facts proving his client's torture. But under the rigid rules of Guantanamo, all lawyers for detainees are barred (under threat of criminal penalties) from disclosing any information they learn from their clients -- even if the subject of the communication is the torture to which their clients were subjected -- without first obtaining the approval from something called the "Privilege Review Team," a secret tribunal of Pentagon officials who monitor and censor all communications from Guantanamo lawyers.

As a formality, Smith submitted his letter to President Obama to this Privilege Review Team, naturally assuming (since Obama obviously has full security clearances) that it would be passed on to Obama without any problems. Instead, the letter was sent back to Smith **with the entire body of the memo -- every word -- redacted with black blocks**, with only the "from" line left (see the unbelievable redacted memo here -- .pdf). In other words, the Privilege Review Team **blocked Smith from communicating to President Obama the facts surrounding his client's torture at Guantanamo**. Smith then sent that redacted memo directly to Obama along with a new cover letter informing Obama of the "bizarre reality" that "you, as commander in chief, are being denied access to material that would help prove that crimes have been committed by US personnel. This decision is being made by the very people who you command."

As a response to that new letter, Smith and a colleague of his have now been **summoned to appear before a Washington court on May 11**, to answer a criminal complaint filed by the Privilege Review Team, alleging that Smith -- merely by sending Obama the redacted memo -- has violated the secrecy terms to which he is bound. He faces up to six months in prison if found guilty.

Just think about that: these Pentagon officials -- who have long been accused of using their censoring powers to hide evidence of torture at Guantanamo -- first blocked Smith from sending Obama any information about his client's torture, and now seek to **criminally punish him** merely for notifying Obama of how extensively his letter to Obama had been redacted by that Pentagon agency. If that isn't the behavior of a lawless and tyrannical government completely out of control, it is hard to know what is.

Today I discuss with Smith the details of Mohamed's case, the nature of the political controversy and criminal investigations pending in Britain, and the recent dispute surrounding his letters to Obama. The discussion is roughly 20 minutes and can be heard by clicking PLAY

on the recorder below. A transcript will be posted shortly.

* * * * *

On an obviously related note, McClatchy has the story of a new court ruling finding that Bush officials purposely hid evidence of the mental illness of a key witness it used in its prosecutions of various Guantanamo detainees, leading the federal judge to ask: "How can this court have any confidence whatsoever in the United States government to comply with its obligations and to be truthful to the court?"

UPDATE: In comments, Jeffrey Kaye, who has covered this controversy extensively on his excellent blog, reminds me that the Bush administration actually offered to release Mohamed from Guantanamo -- on the condition that he agree to remain silent about the treatment to which he was subjected. Mohamed refused, and his detention thus continued. Prior to that, the U.S. released Australian David Hicks from Guantanamo only on the condition that not only he, but also his lawyers and family members, agreed to a similar gag order. Look at the desperate means our Government is resorting to in order to keep concealed what it did to those detainees -- including putting them in cages without charges and then agreeing to release them only if they remain silent (and if they don't agree, keeping them engaged to ensure that both they and their lawyers are barred from speaking with the outside world about what was done to them).

On a related note, Scott Horton notes that the Pentagon's Privilege Review Board is "faceless" -- that its composition is itself a secret -- and asks anyone who knows who sits on it to contact him:

So, the faceless Privilege Review Team strikes again, trying to exact revenge for the public exposure of their petty manipulations in which, among other things, they concluded that the commander-in-chief was not entitled to review materials they considered too sensitive. Anyone with information as to the identity of any members of the Privilege Review Team is asked to please be in contact. I am looking for names, and information about the team members' claims to have graduated from law schools or to have membership in bar associations. They're long overdue for a privilege review of their own.

Anyone who knows can also contact me and I'll pass it on to Scott as well.

(0006)

UPDATE II: The transcript for this discussion is now posted, here.



Share | Print

-- **Glenn Greenwald**
Permalink

Read comments (125)

Currently in Glenn Greenwald's Blog

Obama's huge test today: do we believe in secret law?

Whether the remaining Bush-era torture memos are released in full today will say much about the new administration.

Thursday, Apr 16, 2009 15:51 EDT

The NYT's predictable revelation: new FISA law enabled massive abuses

The 2008 Democratic Congress gutted eavesdropping safeguards and thus made spying abuses inevitable.

Thursday, Apr 16, 2009 12:57 EDT

The ultimate reaping of what one sows: right-wing edition

Conservatives suddenly embrace Terrorist Rights now that they are no longer in power.

Tuesday, Apr 14, 2009 21:42 EDT

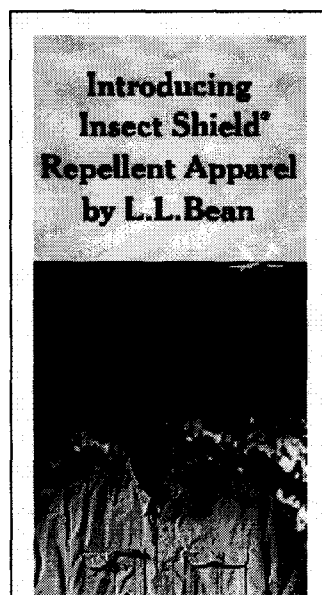
The differing views of the "rule of law" in Spain and the U.S.

Spanish prosecutors decide to fulfill their legal obligations by commencing war crimes investigations of six key Bush officials.

Tuesday, Apr 14, 2009 17:00 EDT

Archives

Sadly, No
Stephen Bainbridge
Talk Left
Taylor Marsh
Tbogg
The Agonist
The Carpetbagger Report
The Left Coaster
The Moderate Voice
The Sideshow
The Unapologetic Mexican
Tom Tomorrow
Wired's 27B Stroke 6



[Salon](#) | [About Salon](#) | [Contact & Help](#) | [Corrections](#) | [Advertise in Salon](#) | [Salon Personals](#) | [Salon Premium: Premium log in](#) | [What is Salon Premium?](#)

[A & E](#) | [Books](#) | [Comics](#) | [Community: Table Talk](#) | [& The WELL](#) | [Life](#) | [News & Politics](#) | [Opinion](#) | [Investor Relations](#) | [Privacy Policy](#) | [Terms of Service](#)

Copyright ©2009 Salon Media Group, Inc. Reproduction of material from any Salon pages withc registered in the U.S. Patent and Trademark Office as a trademark of Salon Media Group Inc.



salon.com

Thursday, Apr 16, 2009

ONLINE SAVINGS ACCOUNT
We'll help pump up yo
Capital One Direct Banking
Get a \$50 bonus.
Offer code: OFFERS0

Search

Go!

Salon The Web

powered by
YAHOO! SEARCH

A&E Books Comics Environment & Science Life Movies News & Politics Ope



Glenn Greenwald's Unclaimed Territory

I was previously a constitutional law and civil rights litigator in New York. I am the author of two New York Times Bestselling books: "How Would a Patriot Act?" (May, 2006), a critique of the Bush administration's use of executive power, and "A Tragic Legacy" (June, 2007), which examines the Bush legacy. My most recent book, "Great American Hypocrites", examines the manipulative electoral tactics used by the GOP and propagated by the establishment press, and was released in April, 2008, by Random House/Crown.

Glenn Greenwald

TUESDAY APRIL 7, 2009 11:32 EDT

Salon Radio: Binyam Mohamed lawyer Clive Stafford Smith

Glenn Greewald: My guest today on Salon Radio is Clive Stafford Smith, who is the human rights lawyer who has represented numerous Guantanamo detainees -- including Binyam Mohamed. He's also the legal director of the UK branch of the human rights organization Reprieve and has worked as much as anybody on protecting the rights of Guantanamo detainees over the last several years. Thanks so much for joining me today.

Clive Stafford Smith: My pleasure, thanks.

GG: I wanted to begin by asking about the release of Mr. Mohamed and his return to Great Britain, where ever since his release last month, he's been detailing, quite publicly, the torture to which he was subjected while in US custody in various locations including Guantanamo. And his doing that has created a pretty intense political controversy in Britain, and even the commencement of some investigations.

I wanted to begin by asking you, how serious is the political controversy that has arisen in Britain over his treatment and the role of the British government in it, and how serious are the investigations that the government was pressured into commencing?

CSS: Well, I think it's hugely significant. Actually, Binyam's case is the first ever, that I'm familiar with, and that I think anyone is, where British intelligence are now facing a criminal investigation. Now, how serious that investigation is going to be is going to be dependent on who does it. And the Metropolitan Police are meant to do it, but they've already expressed some qualms because they are accused of being involved in this process also. It could be that have conflicted

interests. Certainly get some sort of independent person doing this investigation. And then the next question will be how much cooperation will that person, with the British police, get from the people who need to pony up the evidence. Obviously, we'll cooperate, the defense will, but will Number Ten Downing Street, and will the United States officially cooperate to provide evidence of criminal activity committed by them?

GG: Is it true that one of the primary pieces of evidence that demonstrates that British intelligence knew that he was being mistreated and attempted to take advantage of that by submitting interrogation questions and the like, are CIA reports detailing what it was that was being done to him? I mean, are there these documents that are in the hands of British intelligence from the US government detailing the abuse to which he was subjected?

CSS: Well, you're on some slightly delicate ground, there. All I can tell you is what's public. I can't tell you what I've seen, it's classified, okay; I want to be very clear on that. It is clear from British judges who have reviewed the same evidence have said in public documents, it is clear that there are CIA or US intelligence reports that detail that the abuses that Binyam Mohamed had been committed by the United States, by US officials or by their proxies in Pakistan and elsewhere, that were in the hands of the British. Now, what's in those reports, precisely, has not been made public, and that's part of the battle that's going on in Britain right now. Certainly British police have seen those reports, there's a team that has the right, has the security clearance to see them. But whether people like yourself or the general public or American folks who are concerned about their own officials committing criminal acts, whether they'll be able to view these documents is pretty much still up in the air.

GG: As I'm sure you know, one of the predominant features of the American debate over investigations into detainee mistreatment is this notion, and it's pretty pervasive among the political class, among mainstream political pundits and leaders of both political parties, is that it's more important that we move forward and get things right in the future than it is that we look back to the past, and that even if our government leaders engaged in illegal interrogation techniques and torture, they were doing it with the best of motives and therefore to prosecute them for it would be wildly misguided.

I've followed the British debate over these issues, especially since Mr. Mohamed's release, and it seems across the political spectrum there's the opposite view, that if crimes are committed in the British government, and agents of it were participants in it or complicit and culpable in it, that it's imperative that they be investigated. Is that accurate, that the US and British debates have diverged in terms of how political elites and the citizenry sees the need for investigations

and prosecutions?

CSS: I hope to goodness that not all Americans share what you're recounting as the American impression of the debate, because it's so bizarre. Consider this. I spent most of my career representing people in death penalty cases, in criminal cases. You know, if one of my clients is, say, a wife beater, and says, "Look, I beat my wife with all the best of intentions, I just wanted to make her better. Let's look forward rather than backwards and let's ignore the fact that I beat her for the last ten years," you'd laugh at me and you'd be quite right to do that.

The idea that Binyam Mohamed, who is the victim of torture, should be told that we should look forward not backwards and he should ignore the fact that he had a razor blade taken to his genitals, for goodness' sake, by people at the behest of the American state, is just shocking to me.

Now, look, Binyam would be the first to say that he's not interested in persecuting people. What he wants is he wants the truth to come out so that no-one else gets to be in his position. So whether be it a truth and reconciliation commission, whether it be whatever, he doesn't mind as long as people learn from the horrors that he went through. The concept that we should cover this up - I'm sure Richard Nixon had violated the rights of people in Watergate with the best of intentions, but the idea that you should cover that up is just horrifying and certainly the British don't believe that should happen.

GG: Right. And I didn't mean to suggest that citizens of America believe that. In fact, polls show that large factions, in fact majorities, believe in investigations and the need for prosecutions are warranted. It's really the prevailing view among mainstream political pundits and unfortunately the leadership in both political parties.

CSS: ...the case in Britain.

GG: I think a lot of people agree with that. Now, I wanted to ask you about a controversy that arose as a result of the proceedings in the British court, which you referenced earlier, where lawyers on behalf of Mr. Mohamed were seeking to get the British court to order the disclosure of evidence that Mr. Mohamed claims proves that he was subjected to torture and there was a notion on the part of the British court that although these documents ought to be released, and he has every right to have them, that there was apparently some pressure put on the British government by the US -- first by the Bush administration, then by the Obama administration, in which there was in essence a threat made to the British government that if these documents are released that it could jeopardize intelligence sharing between the United States and Great Britain and the court cited that threat as a reason why disclosure of these documents might harm

(0006)

British national security.

Now, there is some dispute as to whether there was really that sort of pressure put on the British government, or whether that was an excuse concocted by the British government as a reason why these documents couldn't be released. What's your view, if you have one, about what actually happened there between the United States and the British government?

CSS: I think there's no doubt that neither the British government nor the Americans wanted this material released, and indeed the British kept very quiet about it for six years. It wasn't until we sued them and had a British judge order the release of these documents and we finally got them as part of our defense of Binyam. So I think there is a certain level of hypocrisy on the part of the British. And I think they're probably really happy because we only got the one time.

On the other hand, it is clear that there has now been a threat, and indeed the judges say eight times in the latest opinion, that the British government was threatened with sanctions if they were to release evidence of torture. And this needs to be put into perspective. Actually covering up evidence of torture is a criminal offense for which you can go to prison here in Britain, and I imagine in the US but I'm not quite sure about that. And the idea that the British government would conspire with the US or be threatened by the US to do this is again an independent violation of the law.

And it's not something that we should countenance. I don't think the British judges will. There's going to be another hearing in London next week actually where the British government and British courts are going to decide whether they're going to accept this reason for not disclosing the evidence of torture. And I'd be surprised if they don't make it public.

GG: Now, one of the reasons why Mr. Mohamed's release caused such a controversy is because the Bush administration had done such an excellent job of silencing Guantanamo detainees, not only by preventing them from speaking with the outside world about the treatment to which they were subjected, but also by imposing very rigid and stringent limitations on the ability of the lawyers for detainees to speak to the outside world about what they were told by their own clients, about the treatment to which they were subjected.

Can you describe, since obviously you were subjected to those limitations, what system was put in place to gag you and prevent you from telling the world about what you learned about the treatment that your client was subjected to at Guantanamo?

CSS: Well, it's changed over the years, but essentially the process is censorship, where every single word that your client says to you in

Copyright © 2009 Salon.com

Guantanamo Bay is considered classified until it has passed through the classification review process, and until you're told that you can speak about it publicly. So in the early days, for example, you had this terribly frustrating situation that I interviewed one of my clients (*unintelligible*) in which 30 pages of how he had been abused while in US custody including discussion of two homicides that this kid had watched in their (*unintelligible*).

And I submitted that to review and it was all classified. And it was classified on the basis that this was evidence of how the US intelligence operated and their methods and means of getting information from people, and how a homicide is part of that is beyond me. Anyway, so we had a big battle over that, and finally, they changed the rules a bit and that particular evidence can come to light. But there is still an awful lot out there, which obviously I can't speak about publicly, I'm not going to, to violate the law, but they are immensely frustrating. We're talking about, in Binyam Mohamed's case, for example, as identified by the British judges, is there is this documentary evidence out there that Binyam was tortured in US custody that the British courts have reviewed but has been suppressed because it's supposedly a threat to national security to reveal it.

Whereas what they're really doing here is they're conflating national security with national embarrassment. So, they're saying that something is so embarrassing to us and to America as a nation, because our personnel committed criminal offenses, it's therefore national security material and that's just wrong. And it's a really unique claim.

GG: There was an article I think this week or late last week, in *The Guardian*, the British daily newspaper, detailing the controversy that arose as a result of a letter that you sent to President Obama detailing the torture to which your client was subjected and that letter ended up being heavily redacted, I think in fact redacted in full other than the "from" line.

Can you talk about the circumstances surrounding that letter to the extent that you can consistent with your legal obligations and what happened?

CSS: Well what happened with that was this. I wrote a letter to President Obama and then from the place where all the censorship happens...

GG: What was the purpose of that letter? Why did you decide to write it?

CSS: The purpose is this. The British courts are saying that the British government relied on President Obama's view that this material about torture shouldn't be released to the public. It became clear to us in

Britain that actually President Obama had never made that decision and that the British government had somewhat misrepresented his position to the courts. And what I thought was only fair and appropriate was for President Obama to make a decision himself: Do you, President Obama, I voted for you and I think he's a good man, do you really, really tell your officials to cover up evidence of torture committed by US personnel?

And so I wrote him this letter, with a cover letter saying what the situation was, and then we requested that this memorandum, which is a couple of pages which details the factual evidence of torture within these memoranda discussed by the British courts, and we wanted to send that memorandum to the president, to have it reviewed to determine whether he really does want to take this position in the British courts.

Now, all of the evidence of torture as you say was redacted out of the memorandum. In the end, all I was able to send the president was the cover letter, then with this two-page memo totally blacked out from beginning to end.

GG: This is the part I find baffling, and I just want to make sure that I understand it. Obviously, if you want to make public statements, to the media or otherwise, you're required to submit whatever information you want to disclose to this privilege office, that reviews what it is you want to say, and it either gives you permission to say it or tells you it's classified and you're not allowed to. That, I understand.

But here you are, not making a public statement per se, you were writing a letter to the President of the United States, the Commander-in-Chief of the armed forces, who has complete security clearances. You were required even in that case to submit your letter for approval to this privilege agency within the Pentagon?

CSS: Well, yes. There's only two alternatives. They could pass it along to him sealed, as a classified document, which would be fine by us, but they're not willing to do that. So the alternative is that they review it and determine whether we're allowed to send it to him another way. And all I'm trying to illustrate through this process is how the system is absurd in this context. It just doesn't allow for meaningful decisions to be made by the Commander-in-Chief, who, as you say, has a higher security clearance than anybody, so how can it be that this man is not allowed to make the right judgment?

What I really want to do here is bring the issue to his attention so that he instructs the people who are working for him, instruct them to do their jobs differently, and to stop covering up this evidence of torture, because that's the government - we shouldn't be covering up evidence of criminal offenses.

GG: So, you got this letter back, and it was completely blacked out except for your name at the top, "from Clive Stafford Smith," and I think maybe the date. And, what did you do then with that letter?

CSS: I just sent it with my cover letter to the president, in hopes of getting a response from him at some point. They covered this in the British media and the *New York Times*. So on one level the only way to get our attention, certainly from the Obama administration right now, it's very busy trying to deal with so many political challenges inherited from the Bush administration. But you've got to get their attention somehow on this issue, and I'm afraid at the moment the Obama administration is not paying attention to this very important issue.

GG: So, now, the article in *The Guardian* reported that, as a result of what you did -- namely, sending a cover letter to President Obama, and attaching the redacted letter -- that you were notified by this agency within the Pentagon that you face some sort of potential disciplinary or even criminal sanction for allegedly having violated the commitments that you made with regard to secrecy at Guantanamo. Talk about what it is that you were told, and what that proceeding might entail.

CSS: Well, none of this should actually be public. It should have been filed under seal, and I'm not sure why it was filed publicly, because it is after all a privilege - in Britain, these are privileged issues.

But on the other hand, be that as it may, it's now public, and there's a contempt citation against me, alleging that somehow I've committed something wrong. Nowhere in the government's claim does it say what rule I'm meant to have disobeyed, because of course, I hadn't revealed any evidence that is classified. My position certainly is they should reveal it, because there's evidence of torture, and they're under an obligation to make it public.

GG: Now, last question. After the British court ruled that it would not disclose this evidence of torture, on the grounds that doing so would harm national security, because the US would terminate or reduce its intelligence-sharing activities with the British, the Obama administration issued a statement in Obama's name, essentially praising the British court for having done that, and essentially reaffirming as a result the US and the British can continue to fully cooperate in intelligence-sharing activities. Did you understand that to be an endorsement on the part of either Obama or his administration of the British court's decision?

CSS: No, that was a muffle statement. What that statement says was we're really grateful to the British for sharing information with us and keeping it all classified as they always did. But nowhere did it address

the real issue, which is they're really grateful to the British for suppressing evidence that our personnel committed criminal offenses around the world. And that was a statement, it was in the classic diplomatese and what we want is for President Obama to answer a very, very simple question. Do you, as president of the United States, want to suppress evidence that your personnel have committed crimes, the crime of torture against Binyam Mohamed, yes or no. If you say yes, then we've got some other arguments we'd like to have. I would like to think that President Obama would make public this evidence.

GG: I think a lot of people would like to think that as well, and I guess it remains to be seen whether that will happen.

Well, Clive Stafford Smith, thanks so much for taking the time to talk to me today. It's been very interesting and I appreciate it, and your efforts as well.

CSS: Thank you Glenn.

[Transcript courtesy of Thames Valley Transcribe]



Share | Print

-- **Glenn Greenwald**
Permalink

Read comments (125)

Currently in Glenn Greenwald's Blog

Obama's huge test today: do we believe in secret law?

Whether the remaining Bush-era torture memos are released in full today will say much about the new administration.

Thursday, Apr 16, 2009 15:51 EDT

The NYT's predictable revelation: new FISA law enabled massive abuses

The 2008 Democratic Congress gutted eavesdropping safeguards and thus made spying abuses inevitable.

Thursday, Apr 16, 2009 12:57 EDT

The ultimate reaping of what one sows: right-wing edition

Conservatives suddenly embrace Terrorist Rights now that they are no longer in power.

Tuesday, Apr 14, 2009 21:42 EDT

The differing views of the "rule of law" in Spain and the U.S.

Spanish prosecutors decide to fulfill their legal obligations by commencing war crimes investigations of six key Bush officials.

Tuesday, Apr 14, 2009 17:00 EDT

Archives

[Salon](#) | [About Salon](#) | [Contact & Help](#) | [Corrections](#) | [Advertise in Salon](#) | [Salon Personals](#) | [Sal](#)

[Salon Premium: Premium log in](#) | [What is Salon Premium?](#)

[A & E](#) | [Books](#) | [Comics](#) | [Community: Table Talk](#) | [& The WELL](#) | [Life](#) | [News & Politics](#) | [Opinio](#)

[Investor Relations](#) | [Privacy Policy](#) | [Terms of Service](#)

Copyright ©2009 Salon Media Group, Inc. Reproduction of material from any Salon pages with registered in the U.S. Patent and Trademark Office as a trademark of Salon Media Group Inc.