

Thomas Bingham

Born 1933.

Autobiographical life story.

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Contents

1. My Parents
2. Preparatory School
3. Sedbergh School
4. National Service
5. Oxford University
6. Becoming a Barrister
7. Life as a Barrister
8. Becoming a Judge
9. The Iraq War
10. Reflections

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1. My Parents

I was born in London in 1933. My father's parents lived in Belfast and had three daughters and a son. My grandfather was an unqualified solicitor's clerk; my father left school at fourteen and became a pupil teacher, which was a way of continuing your education in return for teaching younger children. After a couple of years he decided he did not want to be a teacher, but a doctor. He needed to matriculate and to pass in Latin, both of which he did phenomenally quickly.

He qualified in medicine at Queens University where to study was cheap. He later went back and got a doctorate in medicine and a diploma in public health at the same time. He went to Wales to work and met my mother there. She was the youngest of four daughters. Her father had gone out to California and started ranching in the High Sierra; it was a big ranch and the four girls were born there. The family tradition was that he had the first herd of Herefords west of the Rockies. The family had come from the Isle of Man to which they returned in 1903 when my grandfather's health failed - he died the following year. The ranch was passed to a younger brother who ran it until the 1930s when the Owens River was blocked to provide water for Los Angeles, and the valley turned into desert.

My mother was brought up in the Isle of Man and went to school in Liverpool. She also qualified in medicine and dentistry and went to Swansea to work where she met my father. I have no drop of Welsh blood but when I became Lord Chief Justice, I found myself being asked to open a new county court in Swansea. At that time devolution was a hot topic; they asked me to approve a plaque which said opened by the Lord Chief Justice of England. That seemed to me a grotesque insult to the Welsh so I approached the Lord Chancellor to add Wales to the title, which was agreed. In Welsh this reads 'of Wales and England'.

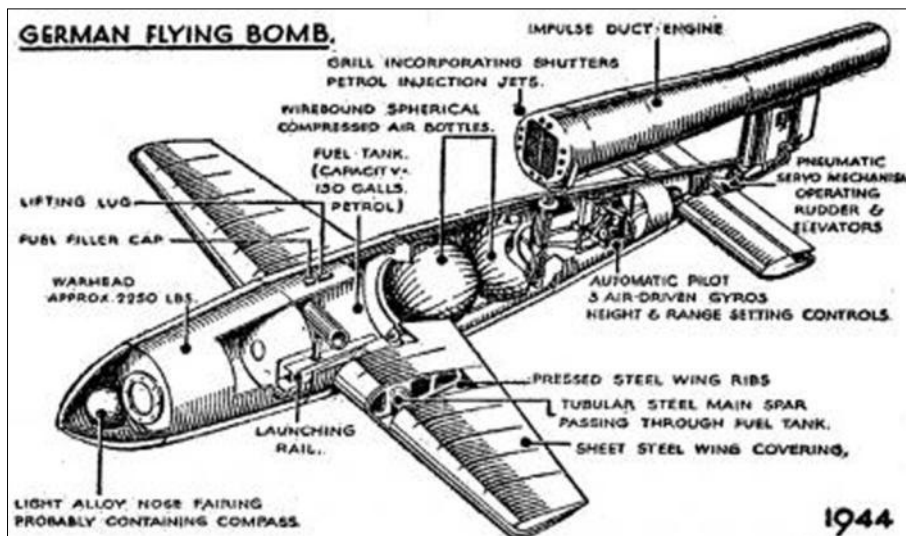
I was much closer to my mother as our tastes and interests were similar. She liked reading and was interested in history although her education had been primarily scientific. I had an elder sister who died about twenty years ago; her husband was at one stage a fellow of King's College Cambridge - Robert Burridge, a mathematician.

My father became the Medical Officer of Health for Reigate, Surrey, in 1931 so this was where I grew up. I went to a kindergarten there but don't remember a great deal about it except that we had an extra term in the summer of 1940 because nobody could go away on holiday. We were affected by the War as we were only twenty miles south of London so were on a flight route from Europe. We slept in the scullery of the house which was fortified with pillars, and doors which swung over the windows to prevent flying glass; my father wasn't usually there, but my mother, sister, the maid and I slept on mattresses there. At that time I neither had any particular hobbies nor read a lot.

2. Preparatory School.

My preparatory school was called 'The Hawthorns' and was in Redhill, about four miles away. It was a large yellow-brick house with quite extensive grounds which had been started in 1926. It had about seventy pupils, all boys. I was a weekly boarder. I went there in September 1941 and earlier that year a bomb had landed in the grounds.

This was a large event in the life of the boys who were either pre-bomb or post-bomb. We all used to sleep in the cellars, certainly for a couple of years. It was humane; they lacked able-bodied young men to teach so had some women and colonial veterans. I remember in 1944 when playing cricket, a V1 appeared overhead and the engine cut out which meant it would nose dive and explode. We looked around apprehensively and the old colonial who was supervising, waved his stick and told us to play on. There was corporal punishment but the Headmaster used it rarely; I was very bad at games and the school was not much better. We lost more matches than we won.



The V1 Flying Bomb.

3. Sedbergh School

I went to Sedbergh largely because my parents did not want me to go to the school the Headmaster recommended. I did the scholarship exam for Sedbergh which was a week before. In those days the schools were all divided into two and scholarships were taken for each group a week apart. The school the Headmaster favoured was in the second group, so my parents said I should do a practice run in the first group. My mother selected Sedbergh from the list as she had friends whose brothers had been there. I first saw it when I went to do the scholarship exam and we stayed in the sanatorium.

I was struck by the attractiveness of the place and how large everybody seemed to be. I remember my interview with J. H. Bruce Lockhart in his garden where he asked questions about the independence of India, which was a live topic in the summer of 1947. I was actually spending a term at a co-educational school at Robin Hood's Bay and he asked how I liked it. I said it was alright but not very civilized. He hoped I did not think that all schools in the north of England were uncivilized.

I got to know Bruce Lockhart better over time as I was in his French set in the lower sixth. He was so horrified by my accent that he asked me to go to School House to have private lessons with him. Actually he was hardly ever there so it was not very successful.



Ivan Christopherson.

From the outset I was in the classical stream. Of teachers, I remember Christopherson with great affection. I found myself in his form the second term and one did school certificate that summer. It was a very good learning environment and everyone was very competitive. I remember doing some American history and he said he would give thirty marks to anybody who could learn the Gettysburg speech by heart. Some of us duly did so.

I became a runner although I was not a natural one, but was certainly not a rugby football player. If you did not play that each day, you ran. I actually got to like it and you could achieve reasonable success by trying. I ran in the ten mile run twice but did less well than expected.

I did not fish; it was quite a tough regime but I just accepted it. I was beaten; I think almost everybody was and I did administer beatings in due course. One just treated it as part of life.

I was discouraged from taking music by Peter Newell, one of the school Chaplains, who saw all bright boys as his pedagogical constituents and discouraged them from doing too much. Neither my wife nor I are musical in any way.



Sedbergh School.

I went through a highly pietistic phase and had ambitions to take holy orders. On the day I left school I went off with Peter Newell to spend the night with an old Salopian friend of his who was then the Bishop of Wakefield. It rather faded during national service. I continued to be a believer but did not see myself becoming a clergyman. I am still an Anglican church-goer.

I was in the history sixth, Clio, for a very long time, nearly three years. Andrew Morgan was my teacher throughout that time; Christopherson also taught some English history. Bill Long taught English although his degree was in French, so it was a joint learning experience. I realize now that Andrew Morgan was very close in age to the people he was teaching.

He had come straight from Oxford as senior history master, having been recommended by John Prestwich his history tutor at Queen's, who had also taught at Sedbergh. He arrived as a hugely ambitious, alert, vibrant man, rather challenging everybody's opinions. I found these years hugely exciting. I read original texts for the first time and he was brilliant at making history come alive. He was certainly further to the left than most of the teaching staff in his thinking.



Andrew Morgan.

After taking Higher Certificate, went to take an Oxford scholarship two terms later. Rather to everyone's surprise I got one but stayed on a further couple of terms to try for a better one, unsuccessfully. It did mean that I was there for five terms after the equivalent of A level. Andrew planned that I should go to his old college, Queen's, but my housemaster, largely on grounds of alliteration, was keen that I should go to Balliol.

4. National Service

National service was a curious experience because the standards were so different. Partly out of loyalty to my paternal roots I applied to join the Royal Ulster Rifles whose headquarters were in Ballymena in County Antrim. I remember at the medical being asked if I could read and write. Most of the recruits were from London as there was no conscription in Northern Ireland. After a month there, the practice was that anybody from one of the four rifle regiments went to the Green Jackets depot at Winchester. The barracks combined a very high standard with a lot of intelligence, a rare mixture in the army. I spent a couple of months there then went before the selection board; as a potential infantry officer. I was then sent to Eaton Hall, just outside Chester. I had joined this regiment partly because it was in Korea at the time and I thought it would be exciting to go to war.

By the time I was commissioned they were out of Korea and in Hong Kong; I took out a draft of sixty men on a boat and it took nearly a month to get there, which was a wonderful way of spending time, sitting on the deck reading Russian novels for hours. Hong Kong was curiously remote; we were up near the border of the New Territories and we only got down to the bright lights about once a month. It was extremely hot and really quite primitive, and everyone suffered from skin diseases.



Major-General 'Bala' Bredin, who died in 2005 aged 88, was awarded an MC and Bar when serving with the Royal Ulster Rifles in Palestine in 1938 and a DSO in Italy in 1944. He preferred wearing a beret to a helmet.

I enjoyed the experience enormously and very nearly stayed in the army. I was only in Hong Kong from May to October and then we had another wonderful journey home by sea. For the remainder of the time we were in Colchester. I served under a charismatic, highly decorated man called Bredin; he rather wanted me to continue in the army but I thought it sensible to go to Oxford.

5. Oxford University



Balliol College, Oxford.

I went to Balliol in 1954. I was taught by Dick Southern, Christopher Hill, A.B. Rodger, the senior history tutor who never published very much during his lifetime, and John Prest. They did all the College teaching; Christopher Hill (right) was a good teacher. Later on he was accused of having indoctrinated his pupils with his Marxist views, but this simply couldn't have been less true. He did have greater sympathy for some of students than others, Keith Thomas and Raphael Samuel. I was never in that network.



I started off reading PPE and decided I wasn't any good at it so switched back to history. Dick Southern was also good but operated at an abstruse level. We had a vibrant life inside the College; we had a rather drunken debating club, and there were lots of things like that.

I never participated much in the Oxford Union and did not pursue politics; we were a slightly inbred society. Maurice Keen was a close friend of mine, and there were some extremely interesting and attractive people there. Other contemporaries were Robert Oakeshott and Peter Brooke, later Northern Ireland Secretary

I got a first; but I did not see myself as an academic historian, partly because I thought Maurice would be much better.

6. Becoming a Barrister

My mother suggested the Bar, so I joined an Inn which meant starting to eat some dinners. It is a relic of the days when students lived together; three dinners a term was the rule and I found it rather tiresome having to go up from Oxford. In those days if you were doing a degree in another subject the simplest thing was to go to a crammer to pass the Bar Exam. One was just expected to learn, not to understand; it was quite quick in those days.

I knew somebody who had done both parts 1 and 2 in five months. You then became a pupil to somebody who was an active practitioner; one had already fixed that up on a sort of college basis. Nowadays it is much more open to competition. I always preferred history to law and I enjoy the historical aspects of law; it is a weakness that I probably shouldn't confess, but I have always found it hard to get excited by legal questions that aren't related to the solutions of a particular case. A debate on an abstract legal principle leaves me rather cold.

Denning used to say that he didn't understand jurisprudence, and I think there are a lot of us who could say that, but there are some philosophers who can. The people at the crammers were able and intelligent people; John Widgery, later Lord Chief Justice, was once a partner in a crammer. I rather overdid myself and came out at the top of the list, and the partners at the crammer gave me lunch at the Charring Cross Hotel.

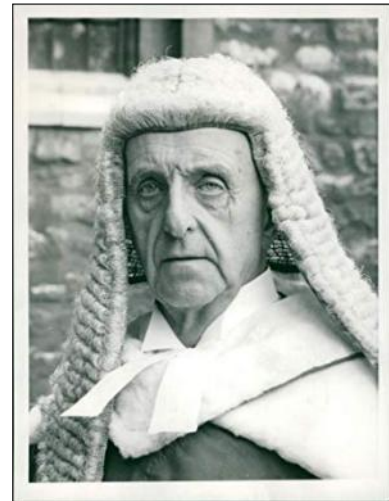
The ordinary drill was, and still is, that you spent a year with an active practitioner whose practice you shadowed. You go with him or her to court and read all their papers and have complete access to all their conferences. In those days you paid a fee of 100 guineas. I think that now a pupil is not allowed to do any work of their own but in those days you could. I began with a very engaging character called Owen Stable in January 1959. The head of the Chambers was Leslie Scarman, and a very good chambers to be in; actually called Mr Scarman's Chambers and he became a judge about a year later. At Easter he gave a party and Scarman's wife told him I should join the chambers. I did a certain amount of work during the year for Owen Stable on civil cases. During my pupillage we visited courts at every level in the land.

During the period of qualifying for the Bar I spent three months marshalling for a judge; he was travelling the North-Eastern Circuit that winter and we began in Newcastle in January and went on to Durham, York, Leeds, and Sheffield where we finished at Easter.

The marshal lives the life of the judge, stays with him in the judge's lodgings, is present at all the meals, sits with him on the bench, and discusses the case with him. I saw criminal and civil cases being tried; I found it hugely instructive and educative because you could form judgements on whether a person was doing well, and more significantly, you got the judge's reactions to everything. The judge I was with appeared a very austere teetotal Baptist with a rather forbidding appearance. Actually he was the most compassionate, delightful and generous man. I found it reassuring at the outset of one's career to find a human being to whom one could

relate perfectly easily. His name was Donald Finnimore (right). He was a very good Queen's Bench judge, if a bit lazy.

Judges have gone on circuit since the time of Henry. The system has survived partly because there was a very strong feeling that if you had stationed a high court judge in Durham or Newcastle, he or she would not have the same chances of promotion as judges who were sitting in London. I once proposed that you should station high court judges round the country but this was very unpopular



Judges do have a sense of belonging to a very small elite; we have a tiny judiciary compared with most; there are about a thousand paid judges in this country compared with thirty-five thousand in the United States; think that because it is a small, carefully selected number, contributes to the fact that its record of behaviour is extraordinary; there has been a power since the Act of Settlement of 1701 to dismiss a judge by both Houses of Parliament; this has never happened to an English judge though it did happen in relation to an Irish one; means there is no history of corruption or anything like it; the small size of the judiciary is possible because of the lay magistracy, a hugely important part of the judicial system; one of the functions of a Lord Chief Justice is to go round and address magistrates; I saw it important to maintain the self-belief of the magistrates and to make them feel appreciated.

7. Life as a Barrister

I did marshalling before pupillage, then I became a Member of Chambers and did whatever work came along. In my chambers in those days we had a very wise and un-mercenary clerk who was the presiding providence in chambers and guided everybody's career. He was a great judge of form though he could be a severe critic. I remember him coming out of court having watched me and asking me whose side I thought I was on. When the time came he said it was a good idea to apply for silk, and one followed his advice. He always made decisions in one's own interest rather than his own. He did have an interest as he was entitled to 10% of whatever you earned.

To apply for silk in those days meant that you put in an application to the Lord Chancellor to indicate you wanted to become a Queen's Counsel; it has become hugely more complex since, but then you had to get a couple of judges to support you. I was thirty-eight when I applied, which was pretty young. Melford Stevenson, previous Head of Chambers, and another judge gave their support. Hubert Parker, Lord Chief Justice, said he never supported anyone but would remember the name.

As a Q.C. you didn't settle pleadings any more but had a junior to do it; as it meant you had to go into court with a junior, you were only instructed in cases which were sufficiently important to pay. I was still mainly engaged in civil cases; in my chambers we used to do criminal work at the beginning but it was poorly paid, and the practice was to give it up as soon as you could, usually after the first five years/

I was a silk for eight years. I acted for the Government quite a lot; I had been standing counsel to a department as a junior which meant that you remained in private practice but did some government work. Any litigation that the department was engaged in, they instructed you. I did have quite a close link with the Department of Employment. In the early 1970's with the Industrial Relations Act, the turmoil associated made it quite a lively area. I got involved in a lot of high profile work which led to Government connection.

I also spent a year as a silk investigating how oil got to Rhodesia during the United Nations sanctions. David Owen, when Foreign Secretary, was prevailed on later to establish an enquiry to ascertain how the oil had got there. I and a chartered accountant were given this task. There were five companies potentially involved, two of which were American - Mobil and Exxon, one French - CFP, two British - BP and Shell. The Americans and French refused to be investigated so it ended up with the two British companies. It became clear there was no collusion between them in the inquiry.

8. Becoming a Judge

The next stage was to become a Queen's Bench Judge. Nowadays you apply, but in those days there was the system of the tap on the shoulder by the Lord Chancellor who invited you to become a judge.

There were always some who refused but most said yes. It meant that you spent part of the time sitting in London; in my case it was usually in the Commercial Court, having latterly done a lot of commercial work in shipping. I would also spend some time travelling round the circuits doing quite a lot of criminal work.

I enjoyed this period; the Commercial Court was a small body of about six judges with a very strong esprit de corps, and a very successful court. It is quite a dollar earner for the country as over half the cases involve no British company. These people are choosing to litigate in this country to the considerable benefit of the profession. There is no jury system in that court but there was on circuit. Almost every judge is a strong proponent of the jury system; the public have enormous confidence in juries, and would much rather be tried by their fellow citizens than by a single judge. It is not my experience that juries come up with absurd verdicts. I don't recall cases where they convicted people whom one thought should have been acquitted. The tendency is to slightly lean in favour of the accused, but this would depend on the crime. I did make myself very unpopular at one stage over cases where the defendant has the choice of being tried in a magistrate's court or by a jury trial, at great expense. I proposed that this decision should be taken by magistrates, subject to appeal, but this has not happened.



I have never conducted a long fraud trial; I have been impressed by the argument of some judges who have that the sheer physical difficulty of managing such a trial makes the whole thing inappropriate. You get perhaps dozens of bundles of files and it is a problem of how you accommodate these in front of a jury. There is another school of thought that in the end the question is a simple one of honesty or dishonesty, and that is probably true. I have some sympathy that fraud trials cannot be very well managed in front of juries, but I wouldn't want to extend that very far. I would be very resistant to such things as trying terrorists without a jury

I went to the Court of Appeal after six years on the Queen's Bench and I spent six years as Lord Justice. During this period I spent another year investigating the Bank of Commerce and Credit International (BCCI) which crashed rather spectacularly, and its supervision by the Bank of England. On that occasion I was on my own with no co-investigator. This was in 1991-2 before I became Master of the Rolls. I was investigating BCCI as a tribunal, this was not a judicial proceeding. I was calling all the witnesses and questioning them, and it was all in private.

9. The Iraq War

Dicey's 'Law of the Constitution' is important and easy to read; he coined the expression 'the rule of law'; I have just written a book on the subject; I gave the Sir David Williams's Lecture in Cambridge on 'The Rule of Law' as I didn't think people thought about what was meant by it. This has been expanded for publication by Penguin Books though it has yet to come out. I suggest that the rule of law requires compliance with obligations binding on the State in international law as well as national.

Obligations in the making of war and the United Nations Charter are an aspect of the rule of law. I kept off the subject of the Iraq War in the lecture as I was a serving judge at the time. I have given a lecture since which is actually a chapter in the book and I certainly made the suggestion that international law was broken. I think the United Nations Charter is clear in that you can go to war in self-defence or if authorized by a resolution of the Security Council. There is a third, rather disputatious possibility, that you can go to war to prevent a major humanitarian catastrophe.

Nobody has plausibly suggested that there was any question of self-defence in March 2003 or that it was necessary to prevent a major humanitarian catastrophe. The only question is whether it was authorized by the Security Council; my view is that it was not. The argument of threat was not there as Saddam Hussein was not threatening to use weapons at the time, and had not used weapons of mass destruction against his own population since 1991. In March 2003 there were United Nations weapons inspectors crawling all over Iraq, who hadn't found anything and were to complete their investigations within months.

Certainly the Attorney General in his advice did not suggest self-defence. Peter Goldsmith was a member of my old Chambers so was not very pleased by what I have said; his argument was that there was authorization in Resolution 1441. In his first advice he canvassed this authority being revived by Resolution 1441 but said that the matter had to go back to the Security Council to be considered. What Resolution 1441 said was that Saddam Hussein should have one final opportunity to comply.

But the question was who was to judge whether he had availed himself of that opportunity; the answer in my view could only be the Security Council. It was not open for the United States or Britain to say that they didn't think he had. Peter never would accept that there was any difference between these two advices, but they don't lie happily together in my opinion. A lawyer is not usually in the position to say what the facts are so will often say to a client that if these are the facts then as a matter of law it follows. That is what Peter was trying to do with the Prime Minister. If he was satisfied that there had been a material breach, then it was legitimate to go to war. He left it to Blair to say whether there was a material breach or not. We may get to know this when there is an enquiry, if there is.

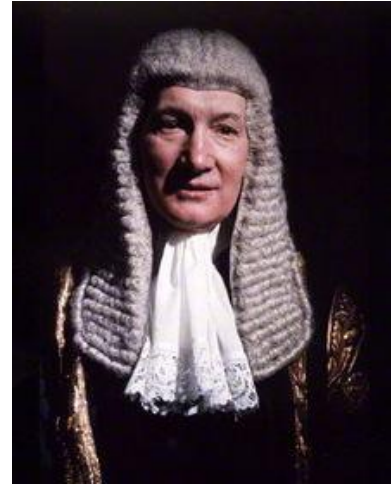
I am not at all sure to what extent Tony Blair applied his mind to this. Peter Goldsmith was emphatic in his advice that regime change was not a legitimate object of the invasion. I myself find it very hard indeed to think that Tony Blair did

not appreciate that regime change was what the Americans wanted because they never made any bones about it. I think it may be that any enquiry would have to go into camera for some bits because there may well be very sensitive intelligence and operational information that would be damaging; I think it may depend on which Government is in power.

10. Reflections

Judges

Like a lot of advocates of my generation, I loved to appear in front of Tom Denning (right) because he was very un-pompous and willing to listen. He did not reject arguments because they were unusual or contrary to authority. There were other figures like Charles Bowen who died young at the end of the nineteenth century, who was not only a very good judge but a great humorist.



The Surveillance Society

A few years ago the Information Commissioner talked about sleepwalking into a surveillance society;

I don't think that is an exaggeration, indeed almost every day that passes produces some new means of tracking what we all do. We have more CCTV cameras than any country in the world and much the biggest DNA database. Clearly it would be absurd to say that no information should be held about anybody, but we should be very jealous of allowing intrusions into our privacy unless they were absolutely justified.

I think that arguments about administrative efficiency relating to databases is rather unpersuasive, as the main feature seems to be that everybody loses them. On terrorist threat - I think we tend to lose a sense of proportion on these occasions. In our lifetime we have faced much more serious threats than Al Qaeda is actually likely to impose and we did not resort to measures of this draconian nature.

Torture

I consider the prohibition of torture to be an absolute with no permissible exceptions allowed; as a result of this particular appeal I learnt that historically, both in this country and continental Europe, there was trial by ordeal. This was declared by the Lateran Council of 1215 to be unacceptable. The continental countries reverted to the old Canon Law model that if you wanted to convict somebody of a crime you needed two witnesses.

The problem was there very often were not two witnesses and then a confession would do. So they resorted to torture in order to get a confession. In this country we reacted the other way and the Common Law courts from certainly the fourteenth century simply said that it was not acceptable and would not look at evidence that had been produced by torture. They gave three reasons, the cruelty of the practice involved, the unreliability of much of the evidence, and that it defiled any court that received such evidence. There was torture inflicted by the Prerogative courts - Star Chamber and High Commission pursuant to royal warrant, so people like Guy Fawkes were tortured.

This was regarded by Common Law lawyers as an unacceptable residue of royal power; just about the first thing that the Long Parliament did in 1641 was to abolish those courts and with it the power to torture in England and Wales. Almost the first act of the united parliament after the Act of Union of 1707 was to abolish torture in Scotland. The suggestion that we now alter that position is turning the clock back 350 years and seems totally unacceptable. The ticking bomb situation has never occurred; what we did concede in our case is that if, contrary to law and the convention, torture is inflicted on somebody, and as a result of that torture the police learn that there is a ticking bomb, then they are entitled to go and remove it.

That still doesn't excuse the torturer who has committed a very serious crime. I am the Chairman of 'Reprieve' the body of which Clive Stafford-Smith is the Director, which has represented Binyam Mohammed and has been largely responsible for getting him out. I went to a breakfast meeting that was addressed by his extremely forceful black American lawyer, Colonel Bradley. Clive Stafford-Smith is an American lawyer but he is in the difficult position of knowing a certain amount of classified information that he is not permitted to divulge. He respects that, but he is certain that there was complicity on the part of the British authorities, not in the sense that they were inflicting torture or present at the time, but knew that torture was being inflicted and were supplying questions.
