

Speech by Jonathan Goldberg QC

Royal Marines Rally in support of Alexander Blackman (Marine A)

Parliament Square, October 28th 2016.

Ladies and gentlemen, Royal Marines,

When I was a young barrister with a modest practice I used to defend in many courts martial for the then British Army of the Rhine. I must have done over 2 dozen of them in Germany and they were invariably fascinating cases, and to tell you the truth at the risk of immodesty, I never lost one.

This was not I think due to my own brilliance. It was down to the fact this is essentially a very fair mode of trial. Just as fair when it works properly in fact as the jury system within the UK. I found that if the man on trial was a good soldier and if a proper defence was vigorously presented for him, the court martial would bend over backwards to acquit him and keep him in the army.

Thus, when my old friend, the author Frederick Forsyth first rang me 18 months ago and told me he was deeply troubled by the case of Alexander Blackman, which he viewed as a miscarriage of justice, a case which of course I had seen in the press and on television like everyone else, my first reaction was sceptical. Freddie is an old-fashioned English gentleman and patriot, of the kind they just do not make any more.

Every so often he will find a cause in which he believes and he will then throw all his prestige into righting a wrong. We have worked together on such cases in the past, where the system has simply failed, as it sometimes does. But my initial reaction was to think how can it possibly have gone wrong in this case, where the Judge

Advocate General himself presided, and a QC defended, and even, a film of the incident existed?

Well how wrong I was. How wrong I was Ladies and Gentlemen. Freddie put his own hand deep into his pocket to get this ball rolling, and before long he had got me transcripts of the court martial. And when I read those transcripts my hair stood on end. It seemed to me that fundamental mistakes of judgment had been made by all 3 parties who are most responsible for ensuring a fair trial, the defending and prosecuting lawyers and the judge himself. And all this under the relentless glare of the world's media, where you might have thought they would have spared no effort to get it right.

I brought in two brilliant younger lawyers to read it and if necessary criticize my own judgement -which by God they are never slow to do. Let me introduce to you at this point my juniors Jeffrey Israel and Senghin Kong. A QC and his juniors is a bit like the General and his troops. If it goes right I intend to get all the glory and if it goes wrong, they can take the blame. But to be serious, these two have done a fantastic job. They read every word, and they told the old man that he was right, and found more points to criticize in the way this case had been handled previously.

But Freddie and I disagree on one point. He is inclined to believe in conspiracy, but I believe in Cockup. Either way of course, the problem now is, as with every organization and every system God ever created, those responsible will be straining every sinew to deny they behaved otherwise than in the best of all possible ways, in the best of all possible worlds.

But if our Report receives fair and impartial consideration from the Criminal Cases Review Commission, and if they will only please now hurry up and get a move on, and when thereafter we receive a

full new hearing by new appeal judges, then I believe a grave miscarriage of justice will at last be righted.

Our report to the CCRC took over 3 months to write and has undergone 19 different drafts and is 44,000 words long. It occupies 7 ring binders. Every word in it was carefully weighed and measured by my 2 juniors and myself.

We have identified 8 separate areas in which we say the court-martial fell into error.

I won't give you a law lecture today but I do want you to know the headlines, because this is not just some whining or grandstanding by a convicted murderer. It is a weighty appeal based on completely new evidence and arguments which were never raised below, as they should have been.

Sgt Al Blackman shot once in the chest a Taliban insurgent, who was undoubtedly within moments of dying anyway, because an Apache helicopter gunship had fired 139 high explosive rounds at him after his failed attack on a nearby command post. He had gaping wounds to his back, chest and sides. Now in law there is no such defence as mercy killing, despite the fact that for centuries mortally wounded soldiers have begged their own comrades- and often the enemy soldiers- to finish them off, as an act of mercy. Contemporary accounts of the Battle of Waterloo for example are full of this. It is still technically in law murder. Before our own age of wondrous political correctness of course, prosecuting authorities knew better than to bring murder charges in such circumstances. But those days are gone. On today's battlefield as you know, a soldier would be well advised to ring his solicitor before firing his rifle.

Let me digress for a moment here. One of the many great new friends I have met because of this case is retired Colonel Ewen

Southby-Taylor, whom you all know to be a living Royal Marine legend. He was so angry about Al Blackman`s case that he wrote to the newspapers admitting that in 1968 when he fought the insurgency in Dhofar in the Persian Gulf, he had to put out of his misery his own dying regimental sergeant major. When I saw Ewan at the last rally he asked me how I was feeling, and I told him I had the flu, and felt like death. Imagine my surprise when he whipped out a revolver and asked me if he could lend a hand!

The rules of engagement under which Al and his comrades were forced to fight in Afghanistan with one hand tied behind their back, were called Card Alpha. Al has told me that if a Taliban threw a grenade at them, or fired his AK-47 and was running away, they were not allowed to shoot him because his back was now turned, so he no longer posed a threat supposedly. And of course, a wounded Taliban was entitled to the selfsame standard of medical treatment as our own dear Marines. A helicopter evacuation and perhaps who knows, treatment in Harley Street on Bupa or PPP, so that he could be fighting fit before he tried it again. Only Sasha Baron Cohen and Borat could find words fit to describe all this! So I will not attempt it.

The only defence Al ran at his court martial, was to say that he believed the Talib was already dead, and that to let off steam he was desecrating his body by firing at it. You might have thought the defence team would first call a pathologist of their own to challenge the prosecution pathologist, who spoke of the tiny signs of life that he said he could detect on the film. But none was called to support Al`s defence. And the Panel disbelieved him.

We now have a report from one of the country`s best pathologists, who gives medical reasons having viewed the film why the insurgent would have appeared dead to a layman, and why it might have taken a trained doctor to realise otherwise. Next, whenever murder

is charged it carries within itself rather like a Russian doll, the ability for the court to say not guilty of murder but guilty of manslaughter. Manslaughter is a lesser offence and the critical distinction is that it does not carry the automatic mandatory life sentence, which murder does. In this case with its extraordinary mitigating facts one could have expected at worst a short prison term.

There were 4 possible valid routes to this lesser manslaughter verdict in this case. None of them was raised or explored at trial, which is frankly inexplicable. The 1st was what we call loss of control manslaughter. This arises where the defendant has been subjected to such provocative circumstances over a period of time that he snaps and loses his self-control, where another reasonable man in his position might do the same. Al's horrific daily experiences for the previous 6 months in this hellhole of Helmand, being shot at daily and comrades blown up and even skinned alive, and the fact he said 4 times in evidence explicitly that he had lost his self-control when he fired, meant that this defence should have been left to the panel to consider. It never was.

Next, in admitting that he fired to desecrate a body he wrongly believed to be already dead, Al was admitting what we lawyers call unlawful act manslaughter and/or gross negligence manslaughter. Those manslaughter options cried out also to be left to the Jury and yet there was not a word about them from first to last.

The final route was diminished responsibility. The previous legal team did not even obtain a psychiatric report until after conviction, when it was of course too late to avail. That late opinion nonetheless diagnosed that Al was suffering from an illness, combat stress disorder, when he fired. At our request Professor Neil Greenberg, the top military psychiatrist in the country and himself a former commando by the way, has written a new report on Al, after

unearthing a mass of contemporaneous evidence about his behavior. He concludes that Al should have had available to him at trial the defence of diminished responsibility.

If we succeed eventually with the Court of Appeal substituting, as we invite, a manslaughter verdict instead of the murder conviction, it will mean the life sentence falls away and we can all hope for Al's immediate release from prison due to the years he has already served.

We have unearthed important new evidence moreover, concerning the stresses placed upon the shoulders of this brave soldier who finally snapped under intolerable combat pressures. There is the top secret Telemeter Enquiry report, which has been released to us by the government for the purpose of this appeal. There are new witness statements, one from that outstanding Marine officer Col Oliver Lee who resigned his commission and sacrificed his highflying career, because of his burning sense of injustice at not being allowed to give evidence for Al in this case. And another from his own regimental Sergeant Major, Steph Moran. The burden of this new evidence is to show that Al and his men were failed badly at the time by their own higher chain of command, making another of the cumulative factors which caused Al to snap that day.

Ladies and Gentlemen, the work which I do in court is never an exact science. I can never guarantee a result. Indeed, when I am asked to advise for appeal purposes on a case which has already been lost by others, I often use this analogy. I say, imagine if you go to a 2nd plastic surgeon however brilliant he is, and ask him to make you beautiful again after the 1st plastic surgeon has ruined your face; it is always 10 times more difficult than if you had come to me in the 1st place. Nevertheless, I am going to stick my neck out today and say that if this case is not sent back for a full new appeal

hearing I will eat my wig. Or at least my two juniors will. So, fingers crossed Marines.

In conclusion, you know the paintings or statues of the Goddess of justice, which always depicts the lady holding the scales of justice in one hand and the sword of justice in the other. And she wears a blindfold -to show that justice is blind. But I must tell you that in my experience, her blindfold is made of thin gauze, and that she takes a jolly good peep through it sometimes to see what's really going on.

By which I mean, the CCRC and the politicians and the judges are all watching here today. They know the way you feel about this case. They know the way the British public feels about this case. Thanks not least to the Daily Mail for that. And they know that you Royal Marines and your wives, are the salt of the year, the finest people in this land. In this age of Isis, who will protect us if not people like you? And how will your children ever volunteer for military service in future, if they are to be treated like Al?

In 45 years of defending in the criminal courts I have experienced all kinds of cases. Over 100 murder trials, gangsters, rapes, drugs, such awful things sometimes that you can hardly imagine. But it has also been my privilege sometimes to defend wonderful individuals for whom life has gone wrong by a sudden unforeseeable roll of the dice, or lightning stroke of ill fortune. Royal Marine Sgt Alexander Blackman is one of those.

I and my juniors will spare no effort to secure the release of this fine man.

In conclusion, *“Justice, and only justice, shall you pursue”* says the book of Deuteronomy. We ask for no special favours today but we do demand justice for Sgt Blackman the last casualty of the failed war in Afghanistan. And we demand it more speedily please, you Commissioners of the Criminal Cases Review Commission !

