

## **Sergeant Alexander Blackman, Royal Marines: “Options and Observations”**

By Lt Col Ewen Southby-Tailyour

Putting aside, for a moment, Sergeant Blackman’s defence team failing to ask for the alternative charge of manslaughter to be brought, the rumour that members of the court martial’s panel were old to find him guilty, coupled to the alleged suppression of evidence for his defence, there is another factor in this unique and disturbing case. Quite simply, what else was Sergeant Blackman supposed to do with a mortally wounded terrorist? Very few have condemned Sergeant Al Blackman while many, many thousands are supporting his bid for a review yet no one (on either 'side') has been prepared to say what he should have done. A number have commented adversely on his actions but unless they can answer this question their statements are shallow to the point of being meaningless.

So, let me as, then, the Second in Command of 3 Company, the Desert Regiment, the Sultan of Muscat’s Armed Forces (on loan from A Company, the Northern Frontier Regiment - which I was commanding) offer a few suggestions based on my own experience. On 11th January 1968 during the Dhofar War and in the middle of a fire fight (the first of three that day, of many days) I put to sleep my mortally wounded Arab (Muslim) Sergeant Major with an overdose of morphine. On reflection I had roughly the same choices available to me in 1968 as, I would suggest, Sergeant Blackman had on 15th December 2011 in Helmand. His were these:

First. Prevent the terrorist from dying through the application of first aid. The terrorist was dying if not already dead so why prolong the inevitable at further risk to oneself. The patrol had nothing with which to do this. The only morphine ampoules available were individual ones, strictly not to be used on anyone else. His back wound (courtesy of an Apache helicopter) was, simply, untreatable.

Second. Call in a Chinook with an on board Medical Emergency Response Team. By the time it would have arrived the terrorist, if not dead already, would certainly have died. This would have been an unacceptable risk of an invaluable asset with no likelihood of a positive outcome. One of my nieces was a ‘MERT medic’ in Helmand and would have been appalled had she been asked to fly into a killing zone to ‘rescue’ a dead Taliban. I don’t suppose the gallant RAF aircrew would have been too chuffed either.

Third. Drag him to safety. Safety from what? It might have been safe for the terrorist in his dying moments, while the team held his hand, but it would still keep Sergeant Blackman’s patrol in the general killing zone; an area best left as soon as possible. If that means leaving a dying enemy behind then so be it as the safety of Blackman’s men took priority. It was vital to get away from the area as soon as possible to regroup elsewhere so that the enemy could then be engaged on Blackman’s own terms.

Fourth. Put the dying terrorist out of his misery quickly so that the patrol could leave the killing zone and continue with meeting the aim: a choice used down the centuries for friend and foe alike with, until now, little or no retribution. How? Three more choices were available to Sergeant Blackman.

One. Crack on with the patrol and let the terrorist die in his own time: an inhumane act that would bring opprobrium.

Two. Administer an overdose of non-existent morphine: peaceful but with the risk (these days) of a charge of murder.

Three. Fire a single 9 mm bullet direct to the heart: instant but with the risk (these days) of a charge of murder. In other words the choice was obvious and Blackman made the correct moral and military decision if not the correct legal one...or are there any others that I have failed to spot? Sadly, though, it strikes me that Blackman was convicted largely on his own evidence recorded on a 'helmet cam' and yet I firmly believe that the "patois of an infantry battle", no matter how obtained, should "never" be produced as evidence in a trial. Things are said before, during and after a fire fight - for bravado, for effect, for release of tension through black humour, for encouragement - that should be inadmissible as evidence in the calm of a court; particularly so if that conversation can then be used for the very public damnation of the accused by the non-cognoscenti. Blackman's words might have seemed 'chilling' to a Judge Advocate with no infantry battle experience but to those of us who do have such experience they were perfectly normal; indeed, in most respects, rather mild. Added to that, and against the view of the prosecuting QC at Blackman's court martial, the heat of battle, most emphatically, does "not" evaporate away the moment the last round has been fired for it is then that the adrenaline, the fear and the nervousness often become far, far more intense...until the enemy is once more engaged and we, again, become too occupied to be frightened.

There is perhaps a precedent for the exclusion of evidence. In the case of Regina versus Litchfield for manslaughter following the defendant's ship hitting rocks off the north coast of Cornwall on 30th May 1995 with the loss of three lives, the High Court Judge, Mr Justice Butterfield, instructed the jury to disregard any decisions taken by Litchfield after his engines had failed, since these were decisions taken "in extremis".

Another thought, relevant to this case, has to be at what stage, in legal terms, does a fatally wounded, possibly armed or booby-trapped terrorist become a prisoner of war? The answer is "never" if you are an Apache pilot but the niceties are not so clear if you are an infantryman on the ground mopping up after an aerial rocket attack while constantly fearing deadly retaliation.

Finally I do not accept that Sergeant Blackman's action put at risk other coalition personnel, as claimed at his court martial, by lowering himself to the level of the Taliban. He fired one shot: he did not torture, he did not maim, he did not disembowel, he did not behead, he did not dismember and he did not put his handiwork on display. The Taliban's reaction would not have altered one jot as the result of Blackman's actions from that that they were already exercising, and as we expected would happen to us in Dhofar in the 1960s: beheading and dismemberment. It could not have got any worse.

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