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'We Need to Talk About Marine A'

Constant War, Diminished Responsibility and
the case of Alexander Blackman

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ACSACS Occasional Paper No. 6 : *'We Need to Talk About Marine A' Constant War, Diminished Responsibility and the Case of Alexander Blackman* written by Lieutenant Colonel Tom McDermott DSO MA and edited by Dr Rita Parker (2017).



In his recent War on the Rocks article '[The Very British Affair of Marine A](#)', Anthony King brought the case of Sergeant Alexander Blackman into the wider arena.¹ This was the right thing to do. The story of 'Marine A' is one that should be considered deeply. This is not just a tale about a soldier's decision to pull a trigger on a bright Afghan morning. Nor is it just about justice and the vagaries of a military legal system. Blackman's case is instead a microcosm of the human and societal impact of fifteen years of persistent war - a tragic theatre of lessons that reaches in 'breadth, width and depth'² from the hidden ethical risks of Counter Insurgency (COIN) tactics, through the psychological influence of constant combat, and as far as strategy and the relationship between a society and its military.

We all need to talk about 'Marine A'. The piece below seeks to take Anthony King's start point and broaden it. Using the Supreme Court documents and open-source information it provides the bones of a case study, along with a series of legal, tactical and cultural questions that might be asked. It leaves it to you and your colleagues to consider the answers.

The Case of 'Marine A'

Who was Alexander Blackman in 2011? Many would recognise him as typical of a warfighting generation. Blackman was a 37 year-old elite Royal Marine commando with thirteen years' experience. He was combat hardened, having served in Iraq three times (2003 for the invasion, and again in 2004 and 2006), and Afghanistan once before (2007). The Supreme Court would later describe his service prior to the incident as 'exemplary'. With over a decade under his belt, Blackman had been appointed as a Troop Sergeant in J Company, 42 Commando Group (42 Cdo). He landed in Helmand Province facing a challenging tour - deploying to an isolated Check Point, CP Omar, in a highly contested and kinetic area.

On 15 September 2011, five and a half months later, Blackman was [filmed](#) deliberately killing a wounded Afghan insurgent by firing his pistol into the man's chest.³ When the film was inadvertently discovered by the Military Police (there was no 'whistleblow' in this case), Blackman and others were charged with murder. It was decided that the soldiers should be tried at court-martial, although civilian courts had jurisdiction. In November 2013 Blackman (known at the trial as 'Marine A') was convicted of murder; the others were acquitted. A psychiatric defence was not pursued by Blackman's legal team, but basic psychiatric analysis was submitted as part of mitigation for sentencing; successfully influencing the leniency of the Court. Blackman was sentenced to life with a minimum term of ten years, and dishonourable discharge from the Royal Marines. A 2014 appeal to the Supreme Court, based on the extreme stress that Blackman was under at the time of the killing, reduced this minimum term to eight years.⁴

1 Anthony King, 'The Very British Affair of Marine A', online article found at <https://warontherocks.com/2017/04/the-very-british-affair-of-marine-a/> (accessed 9 Aug 17).

2 Michael Howard, 'The Use and Abuse of Military History', *The RUSI Journal*, Vol 138, Issue 1, 1993, p. 26-30.

3 The UK Guardian, 'Moment Marine Shoots Dead Wounded Taliban Fighter', online article found at <https://www.theguardian.com/uk-news/video/2017/feb/02/moment-marine-shoots-dead-wounded-taliban-fighter-video> (accessed 9 Aug 17).

4 A summary of the background of the Blackman case, including Blackman's prior service, can be found in Supreme Court Judgement, *Regina and Alexander Wayne Blackman* (2017) EWCA Crim 190 found at <https://www.judiciary.gov.uk/wp-content/uploads/2017/03/r-v-blackman-judgment-150317.pdf> (accessed 9 Aug 17).

What Happened Next

Between 2013 and 2016 a major [public campaign](#) was run in the UK for Blackman to be released.⁵ In 2016 the Criminal Cases Review Commission (CCRC) was asked to consider the strength of the conviction, based on voluminous further information collated by Blackman's family and new defence lawyer (an eminent QC). This included a classified UK Ministry of Defence internal investigation into the incident called the '[Telemeter Report](#)'.⁶ The CCRC concluded that the Supreme Court *should* review the conviction as it was potentially unsafe. The key influence was new psychiatric evidence, which showed that at the time of the killing and at the court martial Blackman was suffering from an 'adjustment disorder' - a recognised medical condition that might reduce his responsibility for his actions. The veracity of this new psychiatric evidence was not contested by the prosecution.

On 15 March 2017 the Supreme Court dramatically [quashed](#) Blackman's conviction for murder, elected to substitute the conviction with one of '*manslaughter by reason of diminished responsibility*'.⁷ On 24 March 2017 Blackman was [re-sentenced](#) to a determinate sentence of seven years. Under a 'determinate' sentence he was eligible for release at the half-way point of his new sentence, and thus he walked out from prison just over a month later. The Supreme Court elected for the 'dishonourable' element of his initial discharge to be removed. With his revised conviction, Blackman has now been dismissed honourably from service with the Royal Marines.⁸

Why was the Conviction Quashed and Substituted?

The decision to quash the conviction was based principally on the evidence from three expert psychiatrists, whose evidence was not contested by the prosecution. The three psychiatrists agreed that Blackman was suffering at the time of the killing from an '*adjustment disorder of moderate severity*'; a recognised medical condition.⁹ They agreed that this disorder was '*capable of substantially impairing [Blackman's] ability to form a rational judgement or exercise self-control*'.¹⁰ Critically, the diagnosis was based on evidence of the *change* in Blackman character before and after the *stressors* of combat.

Evidence suggested that, prior to 2011, Blackman was an exemplary soldier well in control of his actions. *Stressors* on him during and around the tour were then multiple. Blackman's father had died just before his deployment; indeed he returned from Afghanistan during the tour to

scatter his father's ashes. His Troop Commander had been killed in May 2011, three and a half months before the incident, leaving him in command of the CP. CP Omar was felt to be under constant threat, with no ability to determine friend from foe: a constant, grinding pressure on those manning the post. It was undermanned and environmental conditions were harsh. Blackman was significantly deprived of sleep. The threat of IEDs was endemic (with an explosion detonating every 16 hours), and insurgents had hung the limbs of killed Marines from trees. Blackman himself had almost been killed in a grenade attack a month before the incident, and had developed a deep paranoia about his own safety. Importantly, the psychiatrists concluded that Blackman also perceived a lack of support from his Commanding Officer (CO) and the Chain of Command (CoC). Whether real or not, this heightened his sense of vulnerability. The *change* in Blackman was tangible. He was described by a Warrant Officer colleague as a '*husk of his former self*' as a result of these stressors, and the soldiers at the CP said he had withdrawn into himself as a commander. He exhibited obsessive behaviour when home on R&R (constantly looking for IEDs), and reacted adversely to loud bangs. As a symptom of the adjustment disorder he had developed a deep hatred for the Taliban and a desire for revenge.¹¹

All put together, the Court concluded that his decision to kill was '*probably impulsive, and the adjustment disorder had led to an abnormality of mental functioning that substantially impaired his ability to exercise self-control*'. In addition, it had impaired his '*ability to form a rational judgement about the need to adhere to the standards and the moral compass as set by HM Armed Forces*'. As such he could not be guilty of murder, and had to be found guilty of '*manslaughter by reason of diminished responsibility*'.¹²

Why Should This Matter to Anyone Other Than Blackman?

Blackman's trial, as is right in any proper justice system, focussed on his individual actions as a defendant. But there is far more to this story. Blackman's decisions that day were not just a product of his own 'disordered' psychology; they were borne of a complex mass of systemic, environmental and group-psychological influences. It is the combination of these that needs broader examination. Yes, the [video evidence](#) from the trial condemned Blackman, but perhaps more importantly it also gives a stark view into the behaviours of an elite group engaged in modern, persistent irregular combat. In addition the vagaries of the court-martial and appeal process provide valuable insights into the challenges of military justice. Any country that shares military, societal and legal similarities with the UK can learn from what happened around Alexander Blackman. These lessons might be usefully split into three areas: legal, tactical, and cultural.

5 The heart of the Blackman public campaign was a group called 'Justice for Marine A' with a website found at <http://www.justiceformarinea.com/> (accessed 9 Aug 17).

6 The UK Secretary of State for Defence elected to release to the public a redacted version of the Executive Summary and recommendations Telemeter Report. This can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/576817/Op_Telemeter_internal_review_-_Executive_summary_and_recommendations_-_Appended.pdf (accessed 9 Aug 17).

7 Regina v Alexander Blackman (2017) 190 EWCA para 80.

8 Regina and Alexander Blackman (2017) EWCA Crim 325 found at <https://www.judiciary.gov.uk/wp-content/uploads/2017/03/sentencing-re-marks-lcj-r-v-alexander-blackman-20170328.pdf> (accessed 9 Aug 17).

9 Regina v Alexander Blackman (2017) 190 EWCA para 32.

10 Regina v Alexander Blackman (2017) 190 EWCA para 38.

11 Regina v Alexander Blackman (2017) 190 EWCA paras 29 – 35.

12 Regina v Alexander Blackman (2017) 190 EWCA paras 112 – 114.

The Legal: 'Diminished Responsibility' and Juries of Peers

1. Combat and 'Diminished Responsibility'

The Blackman case is a notable development in the discourse around combat stress and responsibility. Interestingly the legal argument that personal responsibility can be diminished by the stress of combat has not been significantly tested in recent years. Three US cases stand out. In 2006 five young US soldiers premeditatedly [murdered](#) 14 year old Abeer al-Janabi and her family in Mahmudiyah, South Baghdad. The impact of combat stressors on their actions, examined in detail in the book [Black Hearts](#) by Jim Frederick, did not play a crucial role in their trial. Four of the five pleaded guilty, and thus no defence was offered. Private First Class Stephen Green, the protagonist, pleaded not guilty but no version of 'diminished responsibility' seems to have been offered in his defence (although his psychiatric state was used in sentencing mitigation to successfully avoid the death penalty).¹³ In the 2012 Panjwai Massacre SSgt Robert Bales murdered sixteen Afghan civilians, including children. Again, [despite significant stressors](#), his psychological state was not critical to the outcome of the trial. Bales pleaded guilty on a plea bargain to avoid the death penalty; thus no defence was offered, and his medical records remain classified.¹⁴

In 'lesser' crimes, Professor Phillip Zimbardo (of the Stanford Prison Experiment) famously offered 'situational influences' in mitigation of the sentencing of Sgt Ivan 'Chip' Frederick, the Shift Commander of Tier 1A at Abu Ghraib (who had also pleaded guilty). This defence was rapidly dismissed by the military judge.¹⁵ Up to this point the argument that 'I was stressed by combat' has not held much water.

Blackman's conviction rejects this. It now adds weight to the argument (in the UK at least) that a psychological condition, *directly* resulting from combat conditions, can successfully engage a limited defence of 'diminished responsibility' for murder.

In terms of legal precedence the impact is probably minimal outside of the UK (although the Supreme Court judgement will influence common law in Commonwealth nations like Australia). What militaries should note deeply, however, is the analysis presented to the Court of the prevalence of mental health issues in Afghanistan and Iraq. Professor Greenberg, an expert military psychologist with operational experience, gave evidence that '20-25% of combat troops deployed to Iraq and Afghanistan at some point suffered from a mental health difficulty' and that in his experience, in 2012 and 2013, 'about a third of those diagnosed were [suffering from] adjustment disorders'. Greenberg concluded that while 'all elite troops are trained to withstand stress ... everyone has a breaking point'.¹⁶ Crudely analysed for the

UK in Helmand, this might suggest that hundreds of troops could be viewed as holding 'diminished responsibility' for their actions. The *stressors* Blackman was subjected to (i.e. those that caused his 'adjustment disorder') were common in Afghanistan between 2009 and 2011. They were even more extreme for other coalition partners serving longer tours. They are unlikely to be different in the future. We have to ask ourselves: what does this judgement imply for the legal accountability of our soldiers?

2. Courts Martial, Pressure for Expediency and 'Juries of Peers'

The British Supreme Court is careful in its judgement not to criticise the conduct of the original court martial as chaired by the Judge Advocate General. They state that the Judge Advocate 'left the issues which had been raised by the prosecution and defence ... to the Board in an entirely fair and proper manner'¹⁷. They do, however, make criticism as to the failure to obtain full psychiatric assessments of Blackman at the initial trial. They cite that 'it is an important contribution ... that every person charged with murder is routinely assessed by a psychiatrist'. They condemn that this was not the case, and observe that this may have been down to the 'very real delay that obtaining such a report incurs along with the increasing cost involved'. They cite that this was 'particularly unfortunate in any case involving conduct entirely inconsistent with prior character' and that 'there is a real responsibility placed upon the armed forces in respect of the mental health and welfare of their troops'.¹⁸ They are clear that, had the expert evidence of the psychologists been available to the original court martial, the defence of 'diminished responsibility' would have been considered. This is the central point in their decision to quash the conviction.

The criticism of both the prosecution and Blackman's original defence is subtle, but explicit. The court is clear that sufficient care was not taken, nor time allocated, to the conduct of a proper psychiatric assessment of Blackman prior to the court martial (a requirement given heavy weight by established case law). Due to this, he did not receive a proper defence. Questions abound as to this failing. Why was the time not taken to obtain this assessment by either legal team at the original court martial? Did a desire for expediency play a role in the haste (linked to the political implications of the charge, and the potential pressures of international law)?

There is also a deeper question. In the end, how does a nation find a 'jury of peers' in cases like this: an unbiased panel who can project themselves into the fires of combat and understand the *intentions* (or *mens rea*) of those involved? Was a court-martial the right place to try Blackman for such a serious crime? Civilian courts had jurisdiction and a military court, although perhaps better informed, would come with its own inherent biases about acceptable behaviour. The answers to these questions may be key in treading the fine line between a legal system and a 'justice' system.

13 For an investigative journalist perspective of the incidents in Muhmadiyah, see Jim Frederick, *Black Hearts* (New York: Broadway Paperbacks, 2010). A description of Steven Green's court proceedings is at *United States v Steven D. Green* (2011) 11a0221p.06 at <http://www.opn.ca6.uscourts.gov/opinions.pdf/11a0221p-06.pdf> (accessed 14 Aug 17).

14 The background of the Panjwai Massacre is well (if journalistically) covered in the GQ magazine article 'Robert Bales Speaks: Confessions of America's Most Notorious War Criminal' at <https://www.gq.com/story/robert-bales-interview-afghanistan-massacre> (accessed 14 Aug 17).

15 Philip Zimbardo, *The Lucifer Effect: How Good People Turn Evil* (New York: Random House, 2008).

16 *Regina v Alexander Blackman* (2017) 190 EWCA paras 29 – 35.

17 *Regina v Alexander Blackman* (2017) 190 EWCA paras 29 – 35.

18 *Regina v Alexander Blackman* (2017) 190 EWCA para 79.

The Tactical: COIN, Behaviours and Leadership

3. The Behavioural Risk of Persistent COIN

Many of the factors deemed to have caused Blackman's 'adjustment disorder' reflect the character of recent, persistent COIN operations. It was not a mistake that Blackman was placed in a small, isolated detachment: it was part of a careful, doctrinal, 'ink blot' style approach to the region that sought to dominate a wide area with a tightly-capped number of troops. His isolation, instrumental in his actions, was deliberate. The nature of the insurgency, which blended seamlessly into the 'sea' of the local population, implied a constant, grinding and undefinable threat. The inability to discriminate local national from insurgent fostered a culture of dehumanisation and moral disengagement. Kinetics were constant, with little break, and casualty levels were high. Environmental conditions were harsh. The insidious presence of IEDs imposed a constant fear of death or injury.¹⁹ After so many years in a campaign that could be seen as 'sub-strategic', it was doubtlessly difficult for Blackman to define 'success' in an existential sense. What is of note is the strong correlation between such conditions and deviant behaviour. Similar stressors are also present in the Muhmadiyah Murders, the Panjwai Massacre, Abu Ghraib, and as far back as My Lai. It seems increasingly clear that the character of current, persistent COIN operations carries high behavioural risk for those deployed. So, how do we mitigate this risk?

4. Tactics to Mitigate this Risk

The Blackman case can teach us much about the development of tactical measures to protect our soldiers from persistent stressors, while balancing their capacity to conduct COIN. Decisions about the laydown and connectedness of isolated detachments must be carefully considered — not just in terms of military efficacy, but also in terms of the resilience and combat fitness of those isolated. Resourcing must be balanced; the manning of CP Omar was reduced from 25 to 16 for 42 Cdo, which increased patrolling tempo and isolation.²⁰ Field defences must be sufficient to not only provide basic security; they must provide a sufficient 'sense' of security to those stationed there — a factor that was deemed in the trial as central to mental health and combat endurance. Rotations from a '360 degree front line' to a place of safety must be carefully considered, in order to sustain combat fitness. The Court noted that pastoral care had not been provided to the troops at CP Omar due to it being too dangerous to be visited, and that Blackman (who had not been trained in Trauma Risk Management (TRiM) pre-deployment)²¹ had no peer-support network. These measures are just a start point for consideration. In the longer term, do we need to develop a tactical framework for sustaining the combat fitness of troops involved in persistent, high-threat COIN operations?

5. The Centrality of Coherent Leadership

The fracturing of coherent leadership played a critical role in the Blackman case. There is a trend of this across similar case studies. In Black Hearts, the platoon leadership team of those who murdered Abeer al-Janabi had been

replaced more than once due to injury and death. Sgt Bales was [deployed](#) as support staff to a Special Forces base, with an incoherent CoC. Much has been written about the lack of investment in leadership structure at Abu Ghraib.²² This trend should not be ignored. The death of Lt Alexander, Blackman's Troop Commander, placed Blackman in a sophisticated COIN command role for which he was potentially ill-prepared. Evidence suggests that this responsibility weighed heavily on his psychological state. J Coy's commander, Major Fisher, had joined the unit late in the pre-deployment training after the Company Commander was injured; another fracturing of coherence. The Supreme Court speaks at length about the leadership support that Blackman did or did not receive; this remains a point of contention that I do not attempt to address here. What is important is the Court's conclusion that it was his perception of a lack of support that was relevant. Whether support existed or not, Blackman perceived himself to have been abandoned and this was critical to his mental state. Evidence suggests that Blackman's decline was reflected in worsening discipline and conditions at CP Omar, but there was insufficient leadership oversight to recognise these signs.²³ Leadership coherence played a major role in setting the conditions for, and failing to prevent, this incident. Could the cracks in the leadership foundation have been identified in advance? Could they have been mitigated? Or were Blackman's actions just an unfortunate outcome of the realities of war?

The Cultural: 'Virtue Ethics' and Mental Health

6. The 'Group Ethic' of CP Omar

Placing Blackman's individual actions to one side, the incident poses many questions about the group ethic at CP Omar. Paras 20 – 22 of the [Supreme Court judgment](#) describe the video of the incident in detail.²⁴ The conduct of the 'multiple' of Royal Marines is highly disturbing. Other marines collude with Blackman to move the injured insurgent to a place out of view of the surveillance cameras and the air support. The insurgent is treated roughly, and the marines seek to avoid giving him first aid. They dismiss shooting him in the head as it would be 'f***ing obvious'. One of them suggests Blackman should strangle him, or 'pump one in his heart'. After Blackman shoots the insurgent, he turns to his team and says 'obviously this doesn't go anywhere, fellas ... I've just broken the Geneva Convention', to which one replies 'yeah, roger mate'. In all, the video paints a picture of a group culture that accepts and indeed encourages the battlefield execution of a wounded combatant. This is deeply troubling for such a an historic and well-regarded organisation as the Royal Marines. The [Telemeter Report](#) was originally commissioned to examine the cultural and ethical causation behind this. The summary suggests that the overall culture in 42 Cdo was overly aggressive, and that this had been identified (but not acted upon) by the CoC. It highlights Blackman's own rank and leadership, and his previous 'exemplary conduct', as a significant contributory factor in the conformity of the group to Blackman's actions. It highlights 'moral disengagement' as key. The influence of 'group ethos' on individual actions, particularly in elite forces, is worthy of deeper examination. In an argument

19 *Regina v Alexander Blackman* (2017) 190 EWCA paras 29 – 35.

20 *Regina v Alexander Blackman* (2017) 190 EWCA para 99 (ix).

21 *Regina v Alexander Blackman* (2017) 190 EWCA para 99 (ii).

22 See Janis Karpinski and Steven Strasser, *One Woman's Army: the Commanding General of Abu Ghraib Tells Her Story* (New York: Miramax, 2005).

23 *Regina v Alexander Blackman* (2017) 190 EWCA para 99 – 103.

24 *Regina v Alexander Blackman* (2017) 190 EWCA paras 20 – 22.

that goes back to My Lai and the Holocaust, can group ethos influence individual behaviour so much as to 'diminish responsibility'? To what extent does this mitigate the actions of the individuals involved?

7. The Stigma of Mental Health

Linked to the aggressive culture within some elite forces is the impact of the stigma about mental health. Such a stigma seems to have played a key role in the Blackman case. Given the hyper-masculine nature of the Royal Marine ethos, it is unlikely that Blackman would have 'self-flagged' as a mental health concern. This would likely have been the case right from the death of his father, through to the loss of his young officer, and down to the lack of pastoral /peer support he received as the situation worsened. Equally, in his isolated and hyper-masculine situation, Blackman may have struggled to find peer-support. Once the incident had taken place, the stigma of mental health continued to play a prominent role in his initial court martial. The Supreme Court is clear that Blackman did not wish to pursue a psychiatric defence at court martial 'because of the stigma that was perceived to attach to it', a 'perception of weakness' and the 'likely end of a career'.²⁵ The cultural stigma within the Royal Marines is likely to have played a major role in this incident, and in the flawed outcome of the trial that followed. Would a different approach to mental health have worked to mitigate the terrible final outcome of the Blackman case? Would the warning signs have been recognised?

8. The Military / Societal Relationship

A broader analysis of the Blackman case is instructive in the relationship between the British military and UK society. There is limited research into how societies view those who commit crimes during war. Traditionally, there is a sense that societies have been broadly forgiving. For example there were significant (and eventually successful) [calls](#) for Lt William Calley of My Lai to be released.²⁶ Since 9/11 views have somewhat hardened. There were no notable campaigns for clemency for the Muhmadiyah murderers, for Sgt Bales, or for those involved in Abu Ghraib; all of whom were seen as 'bad apples' that deserved to be punished. With this hardening in mind, the [public campaign](#) in support of Blackman is of note. Many retired star-ranked officers publicly stated support for Blackman, believing him to be an excellent NCO 'hung out to dry' by the Royal Marines and the MoD. National newspapers (notably the Sun and the Daily Mail) ran public campaigns to raise money to fund his appeal. Thousands marched publicly in support of him, and petitions were submitted to Parliament; garnering the influential support of Members of Parliament.²⁷ The impact of this campaigning should not be under-estimated. The money secured by 'crowdfunding' helped pay for the services of the eminent QC who defended Blackman, successfully bringing over 1,000 pages of new evidence to the CRCC. Public pressure may have had an impact on the decision by the MoD to release the 'Telemeter Report' to the

new defence team. The Blackman case offers a valuable insight into the military / societal relationship in the UK. It is worth asking to what extent we, as military officers and policy makers, are cognisant of how this relationship is developing over time?

Conclusion – Combat, Murder, Justice, Honour?

It is without doubt that Sgt Alexander Blackman, an experienced Royal Marine of thirteen years 'exemplary service', deliberately killed an injured insurgent in Afghanistan. However the highest court in the UK has now found, after exhaustive appeals, that he did so while suffering from a diagnosable 'adjustment disorder' that inhibited his ability to form a rational judgement. As such, he is not guilty of murder. He remains, however, responsible for his actions and is guilty of '*manslaughter by reason of diminished responsibility*'. Upon his release, he will have served three and a half years in prison for his crime.

Whether one agrees with the Supreme Court is a matter of one's faith in the UK's justice system. Parking this to one side, it is clear that Blackman's case has far-reaching lessons for militaries with comparable cultural, societal and justice systems to the Royal Marines and the UK. Much could be learned from a deep study of this focussed case: from legal precedent, to the tactical risks of persistent COIN, and through the group culture that opened the door to the incident. Questions are numerous. Should we give weight to the idea that the stresses of current combat reduce individual culpability for actions? How can we sustain and protect the fighting power of our force against the current, ethically-risky character of conflict? To what extent is a military, as an organisation, responsible for the mental health of those who serve?

You might think that the most pertinent query would be: could this all have been prevented? This is a good question, but sadly it quickly ends in the mired and murky world of counterfactuals. Yes, additional 'risk mitigators' could have been applied that might have helped Blackman. The impact of his father's death might have been taken into account in considerations about his suitability for operational service. The subtle symptoms of his adjustment disorder might have been noted during R&R, and someone could have stepped in. But in reality the warning flags were not flying too high, and no one single influence drove Blackman to his actions. For me this incident is best described by a phrase I heard at an inquest: a 'concatenation of events' that ended in tragedy. I doubt a single action or influence could have stopped it.

25 *Regina v Alexander Blackman* (2017) 190 EWCA para 67.

26 For the level of congressional interest in Calley's conviction, see CQ Almanac article '*Calley Conviction*' from 1971 found at <https://library.cqpress.com/cqalmanac/document.php?id=cqal71-1254423> (accessed 14 Aug 17).

27 For an example of the levels of public support for Blackman, see the Justice for Marine A flyer for a protest in Parliament Square on 28 Oct 2016 at <http://www.justiceformarinea.com/wp-content/uploads/2016/10/Order-of-Service-28-October-2016-final-2.pdf> (accessed 14 Aug 17). Speakers include Maj Gen John Holmes DSO OBE MC, former UK Director Special Forces, Richard Drax MP, and Maj Gen Malcolm Hunt OBE (former Royal Marine commander in the Falklands conflict).

But if the Blackman case was not preventable, it should at the least be instructive. Policy makers and military professionals can learn much from this story. Three things stand out. Firstly that the ethical and behavioural risks (particularly in COIN) are very real, and are being amplified in this era of long, irregular wars. They need to be considered in advance and mitigated in reality. As Nancy Sherman wrote in her excellent book *Stoic Warriors*, 'a large part of evil consists in its novelty ... if evil has been pondered beforehand the blow is gentle when it comes'.²⁸ Incidents like Blackman's should be included in training programs and exercises (particularly for command elements), and tactics should perhaps place a greater emphasis on mitigating the risks outlined above. Secondly, it needs to be recognised that incidents like Blackman's have an impact that goes far beyond the protagonists. In our era where moral authority is a necessary precursor for the use of force, the breaching of IHL becomes a truly strategic issue: remember that the US's moral authority in Iraq arguably died in the dungeons of Abu Ghraib. Incidents like Blackman's must be prevented not just because of Blackman or the unnamed insurgent, but because of strategic necessity. Finally, we need to realise that the Blackman incident was like a rock in a societal pond. The ripples went far; indeed all the way to the highest courts of the land, and to the evolving relationship between the military and society. The incident itself may not have been preventable, but the Supreme Court is clear that the botched trial was. Military professionals, rightly, need to focus on *in bello* considerations. It is up to policy makers to make sure we are just as prepared *post bellum* to deal with the almost inevitable outcomes of war, and their deeper impact on society.

For military readers perhaps the final point to consider is one of 'honour'. Sgt Blackman's wife consistently made it clear to the Courts that the '*cruellest punishment that [Blackman] considered he had suffered was his dismissal with disgrace*'. It is therefore of especial note that the Supreme Court saw fit to remove this label from his discharge. Why did they do this? Due to his '*outstanding service prior to the killing*' and his '*diminished responsibility*'.²⁹ This deliberate protection of Blackman's honour speaks volumes of the views of the Supreme Court on some of the questions we have asked above. Were his actions criminal? Yes. Were they dishonourable? The Court's answer is firmly 'no'. Whether you agree with this or not is worth pondering.

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28 Don Carrick, James Connelly, and Paul Robinson (eds), *Ethics Education for Irregular Warfare*, Military and Defence Ethics (London: Ashgate, 2009), p. 20.

29 *Regina v Alexander Blackman* (2017) 325 EWCA paras 18 – 21.

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