

Family Justice in the Falkland Islands

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Adventure, excitement and anticipation were my initial thoughts when it was confirmed I was to lead a team out in the Falkland Islands; a place that had been described variously in books and documentaries as the “forgotten islands”.

Nothing, in my view, could be further from the truth.

Having experienced this majestic yet simple place, I feel these are islands with much more depth than meets the eye. The community operates in a micro fiscal climate that is essentially so small that one could imagine just how sensitive it would be to sudden increases or decreases in the population. The legal system operates in a simple tier, with Magistrates followed by the ‘Senior Magistrate’ (who is in fact a Circuit Judge) and then the Supreme Court. Our trial was to take place in front of the Senior Magistrate, the resident Judge of the Islands who has to carefully navigate his presence and interaction with society given just how small the population is. Having spent time on the island I can now appreciate just how challenging and indeed isolating that might be at times.

So here is my short story of three weeks in the remote South Atlantic, in a place I grew to love, that touched me both professionally and personally. An experience of history, natural beauty and a stellar example of the importance of judicial impartiality, the rule of law and the administration of Justice.

I have been told anecdotally it was a case of many firsts for the system; including being the first family case to have a co-counsel team, whether that is entirely accurate or not I will have to leave to artistic licence.

Whilst there is no permission to publish the Judgment, again as a consequence of the impact of doing so in such a small community, I can say that this was a complex case with serious allegations litigated in the positive and also that they had been falsified.

I was struck when on the Island, by how welcoming and warm the court staff were. It became quickly apparent that if Justice is to be done on the island, those who partake in its delivery must be robust, follow the courage of their convictions, recognise the closeness of the community and that decisions are being taken in a melting pot of proximity to everyone concerned.

As we set off from the UK, the team I led was intact, our forensic chronology of the thousands of pages that appeared within the bundle complete and notwithstanding the fact that we did not have much professional support for our case, we set off to the South Atlantic feeling buoyant.

We felt that provided we could fairly present our case, on the forensic development of the allegations, we had a strong case to run.

The departure from RAF Brize Norton came with a great sense of adventure, excitement, nervousness and regret for leaving my wife and family for such a long time.

Upon arrival on the islands having spent eighteen hours flying, with a refuelling stopover on Accession Island and then on to RAF Mount Pleasant, I remember looking out across the vast landscape and being overwhelmed by a feeling of utter bleakness. The sheer scale of the Islands is something that cannot properly be grasped by reading about them.

It rained and howled with wind and after making the hour-long journey into Port Stanley on a coach, through a landscape of rugged and harsh scenery, I was met with what at first looked like a small, isolated town, with very little to show for itself.

Again, I could not have been more wrong.

Having freshened up we headed to the bar in which I bumped into my instructing solicitor for the very first time, someone who appears to know most people on the Island. It is right to say that over the next few weeks, we would bump into many people involved in one way or another with the case whilst in Stanley. I even found myself, mid trial, in the hotel bar sat metres away from a witness I had cross examined a few days earlier who smiled and politely said 'hello'.

Prior to my arrival on the Islands, I had watched all the documentaries I could devour to prepare myself for what the experience would be like. I still find it, even having now returned, so challenging to put the experience into words to convey why the Islands are so unique.

The first days over the initial weekend I spent making final trial preparations, visiting Goose Green and also managing to squeeze in some fly fishing for Sea Trout.

The court sits at 9am on the Falklands and always rises at 12noon for lunch. We started on the Monday, had a short housekeeping hearing and were then released for the balance of the day to hold conferences and meet our clients in person for the first time.

We looked forward to the weekends, now having a rental car we managed to visit the beautiful sights the Islands had to offer.

We spent our Saturdays and Sundays moving around the Island; from the memorial to the sinking of HMS Sir Galahad at Bluff Cove near Fitzroy, to the remoteness and wilderness of Berthas Beach where we stood looking towards the Antarctic. From the huge elephant seals at Whale Point following an hour long off roading, to lunch at Darwin House, to coffee at Goose Green to the destroyed Argentine helicopters still lying in wrecks next to Mount Kent, to the beautifully moving cemetery at San Carlos and all the memorials recognising acts of bravery that are found dotted across the island.

We found two Sea-Lions sunbathing at Cape Pembroke below a stunning memorial to the 22 SAS soldiers who died in a Sea-King helicopter crash transiting half a mile from HMS Hermes to HMS Intrepid on 19th May 1982.

We discovered memorials to the Gurka Rifles, the Welsh Guards, 2 Para Group, the Royal Marines, the Parachute Regiment and 45 Commando Group.

We also observed silence at the beautifully kept Argentine cemetery.

I stood quietly on the spot where Lieutenant Colonel H Jones VC OBE, the commanding officer of the 2nd Parachute Regiment was killed in action on 28 May 1982 during the successful battle for Goose Green.

I stood inside the Village Hall at Goose Green and spoke to residents about the great number of hostages that were locked in there for weeks before Goose Green was liberated.

The experience leaves you recognising that these Islands are indeed full of Falkland Islanders, who seek to enjoy and protect the natural beauty of their home. They are people who take

great pride in recognising and remembering the sacrifices that were made by others, so that they have a home and a functioning society. When you are on the Islands there is simply nothing that is “forgotten” about them. The wildlife thrives; the people appear happy and content, life feels simpler yet harsher through the challenges of the weather, the landscape and the dependency on supply ships.

As the trial drew to a close and final submissions were made as to the complexities of the various orders that were sought which was followed by a written Judgment on the final Friday, we were pleased to see that our case had been successfully run and despite the initial odds we had made a difference on the other side of the world, that will likely last a lifetime.

I should also say that I have much admiration for the Judge, which I believe is shared by all the advocates, even though during the trial I did not speak to him outside of the court room. He appears to me to have and continues to steadfastly protect the fundamental pillars of our British Judicial system in almost impossible circumstances, that will no doubt require much self-isolation and purposefully distancing himself from interaction with the very society he is charged with serving.

Whilst writing this article somewhere over the South Atlantic heading North with the Royal Air Force, my opponents with me on the aircraft; we are all finally heading home having collectively all played a part in the administration of Justice.

Having visited almost every memorial I could find, I can't help but think of the British men who didn't go home 44 years ago to their families. All I can say is that I hope we have done those men justice these last few weeks. I hope that this article serves to remind us of them and gives a nod to an ongoing recognition that they fought for a free Falkland Islands, for the liberation of British people and ultimately for the continuation of a modern British democratic system throughout the Islands. The rule of law and the administration of justice, a cornerstone of any society, operates on these islands, despite the unique challenges, with real effectiveness. It is alive and well.

Finally, I want to conclude this article by repeating a poem I found on a plaque at the side of the British War Cemetery at Blue Beach, San Carlos. The cemetery is remote, it lies on the west coast of East Falkland, some 2 hours drive over rough track terrain from Stanley. It marks the location of the amphibious landings by the British to re-take the Islands in 1982. As I stood there, the sun shining beautifully across the water onto the immaculate cemetery, the trial completed and now days from returning home, I was moved to tears by words that really

brought home the importance of remembering those sacrifices and always remaining fearless in the pursuit of justice.

“Stay a while my Bootneck friend”

Hello my friend how are you?
Good to see you, despite the pain
We few men, well we’re still here
Thorough the dark the wind and the rain

Please stay a while and talk with us
The banter we still crave
Come over here my Bootneck friend
Place your hand upon my grave

Tell us what you’re up to
About your family and your friends
These guys here are all I have
The anguish never ends

We wonder round these Islands
From San Carlos to Mount Kent
Protecting all before us
The reason we were sent

Although we never questioned
Why we’re here today
When I came South in 82
I didn’t know I’d stay

I see your pain it’s in your eyes
Your dreams are scary too
Remember when the darkness comes
We’re watching over you

For you my friend your life goes on
Back home to those held dear

Remind them of our sacrifice
The few still left down here

It will be forever
That we lie upon this land
Be sure to come back soon my friend
And offer me your hand

‘Hammy’

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