

Male liberation

By Roger Marshall

During 2002 a junior member of the New South Wales Bar, Lewis Tyndall, worked to secure the release of an Australian prisoner from incarceration in an Indian Ocean republic. It proved a formidable, but satisfying task that involved making representations to many levels of government, both here and abroad.

In April 2002, Lewis Tyndall went for a 10 day visit to the Maldives, an island group in the Indian Ocean a few hundred kilometres south of Sri Lanka. A keen surfer, Lewis was on an organised trip to surf the coral reefs. Yet this was to be no ordinary surfing holiday, since he also went to represent an Australian who had been sentenced to life imprisonment for the importation of 57 grams of hash oil. That prisoner had been held without access to legal representation for about two years in prison on an island in the South Mali Atoll.

The prisoner was Mark Scanlon. In the 1970s he was shipwrecked in the Maldives when the yacht on which he was sailing struck a coral reef. At that time he was a young travelling surfer. That is how surf was discovered there. Later he helped establish a surf tourism business in the Maldives.

Tyndall was met by Scanlon's wife on arrival in Male. 'She provided me with documents relating to his case' said Tyndall. 'That night, I started reading those papers with a colleague of mine at the Bar and a member of our tourist party, David Elliott.'

Together they made arrangements to have the New South Wales Bar Association forward letters to the Attorney-General's Department of the Maldives, confirming that they were members and requesting the Attorney-General's Department to lend them whatever support it could in the Maldives.

Next, they met the Attorney-General of the Maldives, Mohammed Munavar. 'He was sympathetic and did give us some names of further contacts. I met with the Director-General of Home Affairs, met with the Attorney-General again and met with various people from the Corrections Department', Tyndall said.

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The impromptu defence team had four short term goals. The first was to see Mr Scanlon, because he had never been seen by a lawyer. The only person who had seen him during two years of incarceration was his wife, who was allowed to see him once a month.



Surfing in the Meldives. Photo: Roger Marshall.

The second aim was to get some English literature for Mark and some writing material. The third aim was to have him fed fresh fruit and vegetables. The last was to give him the privilege to receive and send mail.

Tyndall and the others were shocked by the conditions in which Mr Scanlon was being detained. 'I went to see him on the island prison. It is a cross between Devil's Island out of the movie *Papillon* and the jail in *Midnight Express*. He lived in a tin shed. It had no light. In it there were 200 men sleeping inches away from each other on mats. There were three holes in the ground for their ablutions and a salt water shower. His diet consisted of fish curry, even though he is allergic to fish. There were no other westerners in the prison. He didn't speak the local language. All the other prisoners were Muslim. He is not. He was in pretty bad shape when I saw him. He was depressed.'

Despite their endeavours, and lots of promises, Tyndall and the others were not able to do anything about Mr Scanlon's living conditions whilst they were there.

On arrival back in Australia, Tyndall put together a 'conspectus': a brief that was presented to the Australian Government at ministerial level. It contained a profile of Mark, a background of the events surrounding his arrest and the options for getting Mark out of the Maldives. It also gave information on the Maldives including the amount of aid that Australia provides. With the assistance of that document, Tyndall set about making representations to parliamentarians and ministerial representatives.

'The early break was that a friend knew the campaign manager for Tony Abbott MP', Tyndall said. 'I sent the conspectus to Tony, Tony saw me, was immediately responsive and wanted to know about the prisoner. He was helpful. I ended up seeing Tony Abbott a number of times. Tony forwarded the conspectus to the Foreign Minister, Alexander Downer and the Minister for Justice and Customs Chris Ellison.'

Some representations were made by Mr Downer directly to the Maldivian Foreign Minister in Male. Mr Downer also saw the Maldivian President in New York at the United Nations. Unfortunately, these contacts amounted to nothing.

Undeterred, Tyndall opened another front in the battle to release Mark. He started to work on the Council of Europe Convention on the Transfer of Sentenced Persons Act. Australia has Commonwealth legislation called the *International Transfer of Prisoners Act 1997*, which, though passed, had not been proclaimed at the time he commenced lobbying.

'Whilst I was lobbying the government the legislation was proclaimed. I had assistance from the Attorney General's Department. A helpful solicitor called Kerin Lenard of that department worked with me on presenting the options to the government for having a transfer of prisoner effected under that legislation in order to bring Mark back to Australia.'

It was whilst they were progressing that action that Tony Abbott set up another meeting in Canberra. That meeting was attended by Tony Abbott, Senator Chris Ellison, Kerin Lenard and representatives of the Department of Foreign Affairs and Trade. During the meeting Tyndall and the others were advised that John Howard, the Prime Minister, was coming home from London via Male in the RAAF 737. The flight was scheduled to stop for two hours at Male for refuelling and he was actually en route as they spoke.

Tony Abbott and Chris Ellison instructed their aides to upgrade the brief on Mark Scanlon. The brief was already being carried with John Howard. The Prime Minister landed at Male Airport and he was met by the Maldivian Foreign Minister. That was the decisive moment. As a result of that meeting and the cumulative effect of the representations, the Maldivians decided to deport Mark.

Mark was escorted out of the jail. He kept very quiet for he was aware that there had been instances of prisoners being

bashed and of 'false starts', where the prison authorities pretend they are releasing a prisoner.

'They take the prisoner to the airport, make them wait awhile and then bring the prisoner back disappointed' said Tyndall. 'Anyway, he kept quiet. He was made to wait at the airport under guard for most of the day. He wasn't told what was going to happen to him. Then ultimately he was put on the plane. He was under guard at all times until he was taken on to the plane. He didn't believe he was free until he cleared the airspace of the Maldives.'

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Does Tyndall think it helped to be a barrister?

'Certainly something that you cultivate at the Bar is leaving no stone unturned. Having the imprimatur of the Bar Association in the initial approach assisted over there. I hope it gave Mark some comfort knowing he had a barrister representing him. Being a barrister gives one the persistence to address this problem at senior minister level, where these decisions are made. This approach to this problem is not dissimilar to the approach to any case. That is, use whatever resources we have got advocating the client's cause.'

Undeterred by his glimpse of the dark side of the Indian Ocean resort islands, Tyndall remains as enthusiastic as ever about surfing in the Maldives.

'Honkys is my favourite spot', he said. 'It is a left reef break that was breaking at about eight feet at times while we were there. It has a big bowl section in the middle that throws the wave over you.'

Pausing for reflection, he added, 'It is paradise - unless you are imprisoned for life.'



The local mode of transport. Photo: Roger Marshall.