

THOUGHT-CRIME AND PUNISHMENT

ONLY ABDULLAH MERHI will ever know what he was thinking when, at 19 years old, he had a ten-minute conversation that would two years later incriminate him. Shackled and imprisoned in isolation for more than a year, he's had a lot of time to think about it.

The newly-married apprentice electrician had time to ponder it two Christmases ago, when he sat alone in his cell while his 18-year-old wife Violet gave birth, 60 kilometres away, to their first child. He's now allowed to hold the little boy once a month, for an hour, which makes him "feel like only an uncle". Sometimes it's too painful to touch the tiny, soft person who doesn't recognise him and cries when handed to his father.

Merhi had time to ponder it on his twenty-first birthday. Not at the momentous celebration of hundreds planned by his family, but alone in a day-light-free cell. He's had time to discuss it through thick glass with Violet, whom he's not permitted to touch. She, a former South African estranged from her family for converting to Islam, finds it hard to take the hour-long trip to see her husband, shackled, in a steel-enforced room, where their conversation is watched and recorded.

Merhi had time to consider it during his three bail applications, refused because the offence with which he's been charged – unlike most criminal offences – requires 'exceptional circumstances' for bail. The Court found Merhi's mental deterioration (described by psychiatrists as "adjustment disorder" and "depressive illness with possible suicidal ideation") not an 'exceptional circumstance' for a prisoner.

Merhi's prison musings, says his brother Omar, run something like this:

If only I hadn't asked those questions. If only I hadn't said those stupid things. What do people think? How will Violet cope?

From his cell, Merhi wrote: "Her life has been turned upside down . . . my lovely wife is only 19". In isolation, relentless thoughts torment him. Frequently he wakes at 5 a.m. and springs up to don his overalls for the day's work, and then prison reality hits him, time and again. He re-tells this story – almost obsessively – through the thick wall of glass when Omar comes to visit. Then he waits seven days and nights for the next visit, the next re-telling.

"He lives for visits," Omar said in a whisper, as we sat in the domed reading room of the State Library of Victoria, wary of who was listening. Omar, like his brother, is lean, but with burly bouncer shoulders (he's a junior football coach). Also like his brother, he's a father and husband, working at the Electrical Trades Union. He speaks lightly in short bursts, his sentences trailing into incredulity. "Excuse me," he volunteers, after swearing.

We discuss the conversation, presented as evidence at Merhi's committal hearing. "It doesn't look good," agrees Omar. The incriminating conversation, secretly taped by police, was with notorious Muslim spiritual advisor Abdul Nacer Benbrika. Long forgotten, it preceded the sudden death of Merhi's father, and then Merhi's marriage to Violet, his new job, and the expectation of their first child. Life had moved on. The day Merhi was to sit for his electrician's exam, he was arrested, along with eight others, some of whom were in his prayer group.

The arrests were reportedly expected. Prime Minister John Howard pre-empted them by taking the unusual step of flagging the imminent arrests after rushing through an amendment to terror laws. “Police could arrest suspects under new terror laws as early as tomorrow after Australia’s spy agencies received specific information about a potential terrorist threat against the nation,” reported news.com.au on 2 November 2005. The Prime Minister, said the report:

today rushed an amendment to existing terrorism offences into parliament after the national security committee was briefed on a potential threat . . . Mr Howard said: “We have been given advice that if this amendment is enacted as soon as possible, the capacity of the authorities to respond will be strengthened”.¹

This fuelled criticism that Howard had coerced the police into action, and possibly jeopardised a more thorough investigation.

“At first we thought it was a mistake,” Omar told me. “They all thought it was a joke! They were laughing and doing high-fives in court!” In media accounts, the group was depicted as chillingly cheerful: as contemptuous of the charges as Bali bomber Amrozi, who reportedly displayed “‘delight’ at the carnage caused by his crime”.²

Omar said the federal police had raided the group before. “You’re kidding,” I said. How, then, could these new arrests have surprised them? “We thought they were just routine checks ASIO did on Muslims.” Routine checks on Muslims? “We thought they’d be released that day. We had no idea.”

But terror charges were laid, possessions confiscated and the transcript of Merhi’s conversation with the cleric was read out in court. It didn’t contain the words ‘suicide bomber’ as claimed outright by the prosecution, and as widely reported. But the alleged conversation, read with another conversation at the cleric’s home – is distasteful, if not disturbing:

Benbrika: To do a big thing.

Merhi: Like Spain.

It gets worse. Commonwealth prosecutor Nicholas Robinson told the **Melbourne Magistrates Court** that Merhi had asked the cleric: “For example if John Howard kills innocent Muslim families do we . . . do we have to kill him and his family . . . his people

like at the football?”

Benbrika allegedly told Merhi: “If they kill our kids we kill little kids.”

Merhi: Innocent ones?

Benbrika: Innocent ones . . . because he kills our innocent ones.

Merhi: We send a message back to them.

Benbrika: That’s it, an eye for an eye.

Merhi: I want in on everything . . . If there is anything you talk to me.

The Court was told Merhi also said: “Sometimes I have got doubts. If I do this, is it pleasing to Him?”

If found guilty, Merhi faces up to twenty-five years in prison, under new laws described by Liberty Victoria’s Chris Maxwell QC as “redolent of Stalinist Russia”.

HOW CULPABLE is a misguided 19-year-old who has since married, got a job and fathered a child, and was, at worst interpretation, discussing extremist answers to what he saw as extreme injustice? At best interpretation, the one favoured by his defence team, he was just mouthing off. Merhi’s teenage conversations were no more than “bravado”, says Omar. “I said to him, ‘Why did you say those things?’ and he said it was just the heat of the moment. He doesn’t even think it was thought-crime, because he didn’t even think it.”

Someone who regularly mouths off in seditious ways is Rod Quantock, the bearded erstwhile Captain Snooze, now famous for his political stand-up comedy. Quantock is also famous for his activism, and has won audience with politicians to discuss matters like police brutality. He speaks at rallies, motivating crowds and talking with police officers. On the ABC’s *Enough Rope* he said, “I’m Vera Lynn. That’s what I am. I entertain the troops.”

Quantock has a deep concern about how the new terror laws are eroding rights by incriminating political conversation. Given a transcript of Merhi’s recorded conversation, he told me:

I was very unformed [at Merhi’s age]. The things I [still] say in private from time to time, out of frustration, would not look good in a court transcript . . . I regularly – on stage and in private – call for John Howard’s assassination. Of course, I’m a long way from assassinating the PM. Occasionally I talk about

bombs. I try to drop ‘bomb’ regularly into phone conversations, but not being a Muslim, the federal police aren’t interested in me.

That, says Merhi’s lawyer Rob Stary, is the crux of this case. Muslim teenagers can’t say the bolshy things Anglo-Australians can. “They talk the talk, and it’s dangerous talk. But I can say whatever I like about who the real Iraq or Palestinian war criminals are, and how they should be brought to justice, and I won’t be imprisoned for it,” said Stary. “Not unless I convert to Islam.”

ON THE MORNING Australia’s radical WorkChoices legislation was introduced in parliament, nine Muslim men were arrested in Melbourne’s poorer northern and western suburbs, the police raids coinciding with arrests of seven Muslim men in Sydney.

Although Magistrate Reg Marron later said there was little evidence to connect the groups, police and politicians in both states announced an “imminent terrorist attack” had been thwarted, thanks to new terror-law amendments sewn up a few days earlier. Saturation news of “the biggest counter-terrorism operation in Australia’s history” eclipsed that of the new workplace laws.

But no weapons or plans were found among the nine, and they weren’t charged with planning any terrorist attack. (When invited by Magistrate Reg Marron to explain the imperative to arrest the Melbourne men on that of all days, the Commonwealth didn’t provide an adequate explanation, says Rob Stary. “They couldn’t point to any overt act.”)

Instead, the men were imprisoned in the maximum-security Acacia Unit at Barwon Prison, an hour’s drive from Melbourne, charged with membership of an unspecified, unnamed and unlisted terrorist organisation. “We thought: ‘What organisation?’” said Omar. It then emerged that the alleged organisation (hastily defined as such by the Attorney-General) was the accused men themselves. As Stary’s team mounted legal challenges, more young men were accused of belonging to the organisation, with another four subsequently arrested and imprisoned at Barwon. Now known as the Barwon 13, some of the men were then charged with supporting a terrorist organisation and providing funds to a terrorist organisation.

“One of the more controversial new amendments to the anti-terror laws is the new criteria for

proscribing, or banning, an organisation as a terrorist organisation,” said a statement issued by the Australian Muslim Civil Rights Advocacy Network. “The new laws do not specify what factors will be taken into account when proscribing an organisation under the new criteria.”

Some of the Melbourne men have also been charged with possessing a ‘thing’ connected to a terrorist act. (A ‘thing’, not specified under the *Anti-Terrorism Act*, can be anything.) The ‘things’ seized from Merhi’s home are not in and of themselves illegal. But lined up with the transcript, they don’t speak well of him. One of the ‘things’, evidence of internet access to *Vortex’s Cookbook*, “is freely available on the internet”, said Stary. “But if you access these ‘things’ in the context of terror charges, they’re incriminating.”

Still, *Vortex’s Cookbook* (Google it and there are several versions) – which contains recipes for explosives – doesn’t recommend Merhi as a nice character. In the context of terror charges, they don’t paint him as the peaceful, sweet-natured family man described by people who know him. (Omar describes him as “a kitten”.) Nor do the videos and Islamic books that were found at Merhi’s home, one of which allegedly contains footage of beheadings.

The unsavoury ‘things’ are almost certain to be presented as evidence against Merhi, and it’s likely the jury will be compelled to consider: ‘What sort of a weirdo would own and say such “things”? Is it too much of a stretch to imagine a slippery slope toward terrorism?’ And it’s likely the defence will go along these lines: Scrutinise the bedroom of any bolshy young man, and you’re bound to find incriminating ‘things’. “I completely understand how this must look,” said Omar. “I said [to Abdullah]: ‘What were you doing with that stupid stuff?’ But Abdullah explained everything straight, one two three. He used the cookbook for fireworks at Muslim festivals.” (Merhi has written a page-and-a-half of explanations, which cannot be reported for *sub judice* reasons.) “The other stuff he just found interesting. I don’t, but some people do.”

ON THE TRAIN LINE to Geelong are signs telling passengers to “Help protect Australia from terrorism”. The signs carry a map of Australia compiled of snapshots of ‘ordinary’ people. The ads are part of a campaign that cost taxpayers more than \$18.5 million (including fridge magnets), part of the \$20

billion spent on the war on terror since September 11. (Despite this, Australians are still no safer, according to ASIO.) In June 2006, Senate leader Nick Minchin admitted he was among the 99 per cent of Australians who didn't know the terrorism hotline number. Why should he? If a crime occurs, people can call the police.

But the train to Geelong is a tricky way to travel to Barwon Prison. Depending on where you get off and how far you want to walk, you then have to catch one or two buses, one of them infrequent and unreliable. It can take a good chunk of the day; difficult when access hours end at 2:30 p.m. If you have children, it's tough to get there and back during school hours. There's always Saturday, but you don't want to take children to a place like Barwon, where their bodies will be searched and where their fathers or older brothers are hinged in leg-irons and unhinged emotionally. People give up visiting. Some of the suspects, already ostracised from their community, have no visitors.

It's difficult for hard-up northern suburbs families to visit Barwon, but it's tough even if you're a lawyer with a comfy car, as you're usually in court in the morning and seeing clients in the afternoon. A two-hour return drive for a hurried client exchange on one of the three available days just isn't worth it. Especially if your client has no money to pay you. Especially as your meetings are recorded, and the prosecution can subpoena your conversations to use as evidence. "There's no professional privilege," says Sary. "This is peculiar to terror suspects."

Much is peculiar to those accused of terror offences. If you're an underworld figure or drug dealer with prior criminal convictions, you enjoy rights not available to the Barwon 13, most of whom have no criminal record (two with schizophrenia, and one other, have). Unlike the terror suspects, you will almost invariably get out on bail, as you rarely have to prove 'exceptional circumstances'. You won't, in most cases, be kept shackled in isolation. You enjoy the presumption of innocence.

Not so for those accused of terror crimes, says Vicki Sentas, from the Federation of Community Legal Centres. "To pre-emptively charge and imprison people for extended periods throws out the window 'innocent before being proven guilty'," she told reporters outside the men's committal hearing. Barwon's Acacia Unit, according to Supreme Court Judge Justice Eames, "is much more restrictive than

would apply elsewhere in the prison system . . . designed not for remand prisoners but for prisoners serving sentences". Outside the men's first committal hearing, Michael Pearce from Liberty Victoria told reporters: "Australia is experiencing the most sustained assault on civil liberties in fifty years and [the Barwon 13] are victims of that assault. Their treatment is an affront to the most basic principles of the rule of law. They have been charged under absurdly vague and general laws, are held in inhumane conditions and are effectively denied legal representation."

This means that people like Eman Abdou Kent, the wife of Merhi's co-accused 23-year-old Shane Kent, have to find legal assistance for their menfolk on a shoestring, having lost their family income with their husbands' imprisonment. "It's very hard," said Kent, at a gathering of activists outside the austere Barwon Prison.

It's very hard to imagine the men's life inside Barwon, or even to picture them. When I asked Omar Merhi for some photos of Abdullah to accompany this story, he sent me this email response:

ALL photos of Abdullah have been seized, confiscated or gone missing. I remember *Four Corners* went to all lengths (even his school) to get photos and failed. At that time I even approached all our relatives without luck.

Having applied months ago to visit Abdullah Merhi, I still don't have permission to go inside, where, I'm told, the inmates speculate about the new prison being built next door, which they believe to be less punitive and more attractive. Which is odd, because few of them can see it daylight, let alone the new prison. Barwon, from the outside, is striking in its stark lifelessness, but its units have teasingly florid names: Acacia, Banksia, Hoya, Cassia, Diosma and Eucalypt.

Eman Abdou Kent's husband Shane Kent, like Abdullah Merhi, has Sary handling his case, largely *pro bono*. The prosecution, meanwhile, spends an estimated \$10,000 a day on its legal team for bail hearings. There is lobbying, says Sary, to strip the wives of their rights to claim Centrelink payments. Kent, like many of the Barwon 13 wives, mothers and siblings, is guarded when talking. But she said the women's sons, brothers and husbands are kept in isolation up to 18 hours a day, shackled. The men are given their three daily meals "within a six-

hour period” and “go to bed very hungry”. Omar’s account is similar. “Abdullah has lost a fair bit of weight, dinner being the biggest meal for most people; for Abdullah and others it’s a small quantity of food at 3 p.m.”

The men, says Kent, have their cells raided by officers and dogs before court, and are brought out in the early morning to be strip-searched in cold cells, with arms shackled to their waist and feet. They are put into “noisy, over-air-conditioned vans” for the long journey to court in uncomfortable positions, to arrive “shivering”. Like the other suspects’ immediate families, Kent is allowed one non-contact (through



In a scenario reminiscent of Orwell’s ‘unpeople’, there are no photos available of Abdullah Merhi. Omar Merhi says other terror suspects imprisoned at Barwon have also had photographs confiscated. Pictured is a detail of a court illustration of the men on trial, which shows an artist’s impression of Abdullah.

glass) visit a week. “The men can’t hug their wives,” she said. “Most have lost weight and are sick.”

Civil Rights Defence, a brasher version of the states’ civil liberties lobbies, has called these conditions ‘Guantanamo-style’. The men have told lawyers they have been punched, pushed, called “pieces of shit”, and had their beards tugged hard by prison authorities. Some of their claims are consistent with a joint report by Monash criminologist Bree Carlton and PhD candidate Craig Minogue, serving life at Barwon. (If there is a certain ‘terrorist’ in this story, it is Minogue, who was convicted of the 1986 Russell Street bombings which followed warfare between armed robbers and police. The bombing killed 21-year-old Constable Angela Taylor, and Minogue also killed an inmate in prison, claiming it was self-defence. His scholarly work now focuses on social justice issues.) The two scholars describe Barwon as a “dehumanising”, “electronic zoo”. With rationalisation, they say, prisoners “now receive their three meals every 120 minutes and then they are locked in the cell”. Prisoners enjoy minimal human interaction, with “surveillance cameras, remotely controlled doors and gates, and glass boxes for staff to be stationed in with consoles of buttons to push”. Staff levels are “reduced by a third, one whole shift has been abolished because the prisoners are going

to be locked up longer with fewer services, and the hi-tech equipment is replacing” many staff. A “reactive goon squad” patrols the prison “in numbers with attack dogs”.³

Conditions are far from humane, says a report submitted to the United Nations High Commissioner for Human Rights. Prepared by Australia’s Human Rights Law Resource Centre, the report claims the Barwon 13 are suffering “serious ongoing human rights violations” contravening several international laws. The men’s mental health, “has been severely and deleteriously affected as a result of the conditions of their detention”.

Omar agrees with these accounts: “Abdullah’s confused and agitated. He struggles to sleep, has regular break-downs . . . he’s unsure of what tomorrow brings and unsure of life itself.” Getting a list of questions to Merhi is tricky, it won’t be allowed through if it asks anything deemed unsuitable, like a description of his surroundings. When Merhi wrote a description of his solitary cell, this, Omar told me, was destroyed by prison guards.

Corrections Victoria denies allegations of human rights abuses at Barwon. Minister for Corrections Tim Holding said in a letter:

It is denied that remand prisoners are receiving cruel, inhumane or degrading treatment or punishment . . . Having regard to the serious nature of the charges against the remand prisoners, and the need to maintain their safety and security at all times, their current classification and placement is considered appropriate.

The minister said conditions, including legal access, have improved, with the Barwon 13 now allowed “up to six hours” contact with another prisoner. Legal consultations are now permitted to occur by videoconference, and “are not audio-taped”. (Stary doesn’t agree, pointing to an instance where a suspect was informed he had immunity, only to have an interview recording subpoenaed by prosecutors.)

Former National Crime Authority Chairman Peter Faris QC (whose website states that “all Muslim immigration should stop immediately” and who reportedly said torture is acceptable in some domestic criminal situations) told me in an email:

I am sure that they are being treated in jail as the law provides. If not, Stary can and would challenge their custody in the courts. If you disapprove of the jail

regulations or the laws concerning terrorists then, as this is a democracy, you are free to campaign to have the laws changed. Perhaps you should consider standing for the upcoming election. This would demonstrate whether the community supports your views or the present laws.

Would ordinary Australians approve of conditions faced by the Barwon 13? During the bail hearing for one, Amer Haddara, Justice Osborne said: “These conditions, which I have personally observed, are not those in which ordinary Australians would expect any member of the public to be held on remand for extended periods of time when charged with no more than membership of an organisation.”

ONE OF THE MOST extraordinary features of the Barwon 13 case was that an undercover agent had infiltrated the group and influenced the men’s activities. The *Age* reported that an *agent provocateur* “of Middle-Eastern heritage” befriended the group “by pretending he shared similar beliefs”. The agent allegedly showed the men how to use explosives. The Melbourne Magistrates Court was told “that the only explosion connected to the group was detonated by authorities”.⁴ Deakin University criminologist Darren Palmer told the *Age* that “an undercover officer could unfairly shape or influence evidence by merely talking to a suspect. There is a problem with undercovers generally in the observing and participating in the development of a crime”.⁵

I emailed the Director of Public Prosecutions with Palmer’s remarks, and received a return email, in which an unnamed spokesperson said: “It would not be appropriate for the DPP to comment on the remarks of Mr Palmer”.

There’s a powerful argument that terror laws must allow for speculation. Peter Faris said: “Certainly our terrorist laws must be pre-emptive – we must stop the terrorist crime before it occurs”.

Merhi’s trial is still pending, but the bulk of evidence presented to date against the Barwon 13 is around thirty thousand hours of recorded conversation: an impossible load for a small staff of *pro bono* defence lawyers. Although they’re told which sections will be presented as evidence, it’s the context that’s important, says Stary. So when a passage like this is read out in court:

Merhi: We send a message back to them.

it might be important to learn, for example, that the two may have been staring at a computer screen, and that Benbrika, scrolling down a screen-page, may have pointed to a computer transcript of a passage in the Qur’an, and in reference to an earlier conversation, have said:

Benbrika: That’s it, an eye for an eye.

The jury will decide on the context. But this case rests largely on speculation. Even if this isn’t the kind of scenario in which Merhi’s fated conversation occurred, even if the scenario is the very worst imaginable, the laws that brought this case to trial should be scrapped, says Civil Rights Defence spokesperson Shannon Price. “We should be concerned when people are spending months in maximum security detention not for what they have done, but for what they think.”

Whether or not Abdullah Merhi really thought what he is accused of having thought, he’ll have a lot of time to ponder it in isolation before his trial. With incriminating evidence like the recorded conversations, accessing the recipe book, and the unsavoury video, he expects to be convicted, as it is far easier to convict under new terror law definitions than in traditional criminal law cases (like murder). But perversely, under terror laws, once you’re convicted you’re generally treated more humanely than when you’re a suspect. Before they were quashed, the terror convictions against Jack Thomas meant he was allowed out of shackled isolation and enjoyed rights of normal prisoners. If Merhi is found guilty, for up to twenty-five years he can enjoy the right to think his thoughts in the company of other Barwon inmates (gangland killers, drug dealers and a police bomber), and discuss them, like ordinary Australians, without being recorded.

1. 2 November 2005, news.com.au report, as cited in ‘Loose canons’, *GLW*, <www.greenleft.org.au/2005/648/33432>.
2. Wayne Miller & Darren Goodsir, ‘The laughing Bali bomber tells’, *Age*, 14 November 2002.
3. Bree Carlton & Craig Minogue, ‘Back to the Future: Have the lessons of Jika Jika been forgotten?’ available at <www.justiceaction.org.au/ICOPA/icopaXI/icopaXI_docs/pdfs/CritnB_Mino.pdf>.
4. Nick McKenzie, ‘Concerns over officer’s infiltration of Islamic group’, *Age*, 11 April 2006.
5. *Ibid.*

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