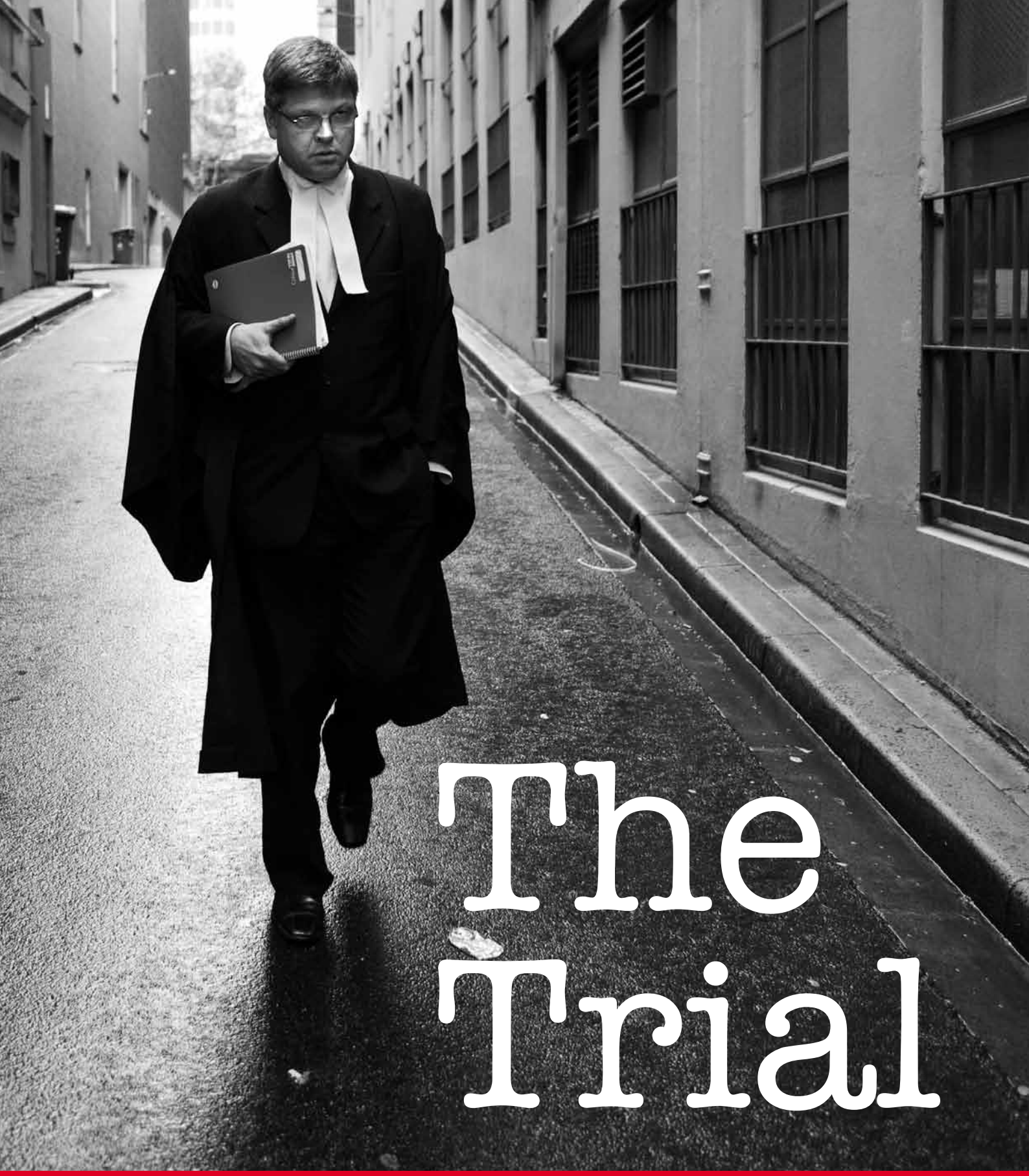

The Trial

A **STUDY GUIDE** BY MARGUERITE O'HARA

http://www.metromagazine.com.au

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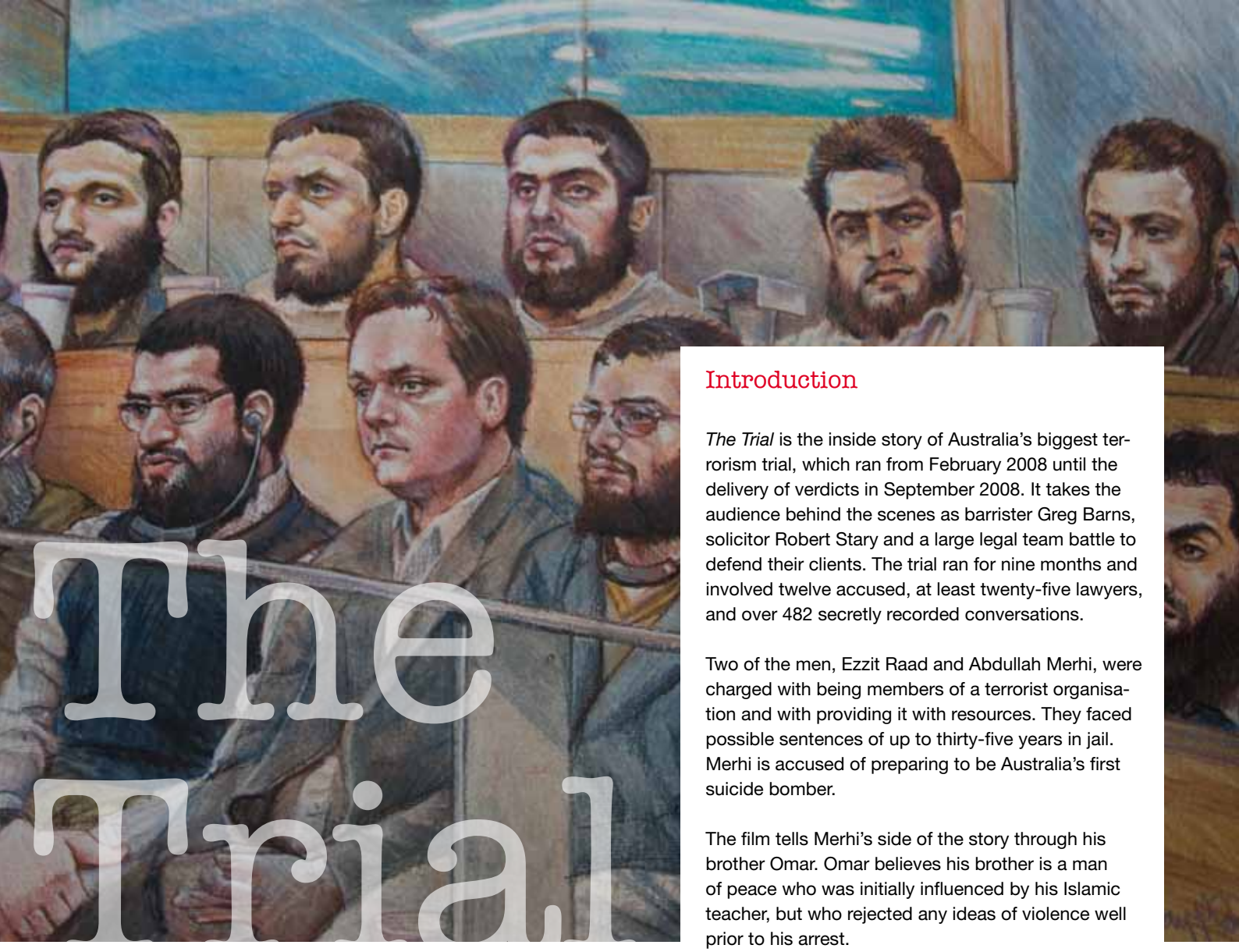


The Trial

Introduction

The Trial is the inside story of Australia's biggest terrorism trial, which ran from February 2008 until the delivery of verdicts in September 2008. It takes the audience behind the scenes as barrister Greg Barns, solicitor Robert Stary and a large legal team battle to defend their clients. The trial ran for nine months and involved twelve accused, at least twenty-five lawyers, and over 482 secretly recorded conversations.

Two of the men, Ezzit Raad and Abdullah Merhi, were charged with being members of a terrorist organisation and with providing it with resources. They faced possible sentences of up to thirty-five years in jail. Merhi is accused of preparing to be Australia's first suicide bomber.

The film tells Merhi's side of the story through his brother Omar. Omar believes his brother is a man of peace who was initially influenced by his Islamic teacher, but who rejected any ideas of violence well prior to his arrest.

The prosecution argues that the secretly recorded conversations prove the men were committed to violent jihad and that they planned to bomb a railway station or the Melbourne Cricket Ground. They played to the court recordings where some of the accused men discuss the terrorist bombings in London and Madrid, retaliation for the war in Iraq and killing John Howard. They show the court terrorist handbooks and beheading videos owned by some of the men.

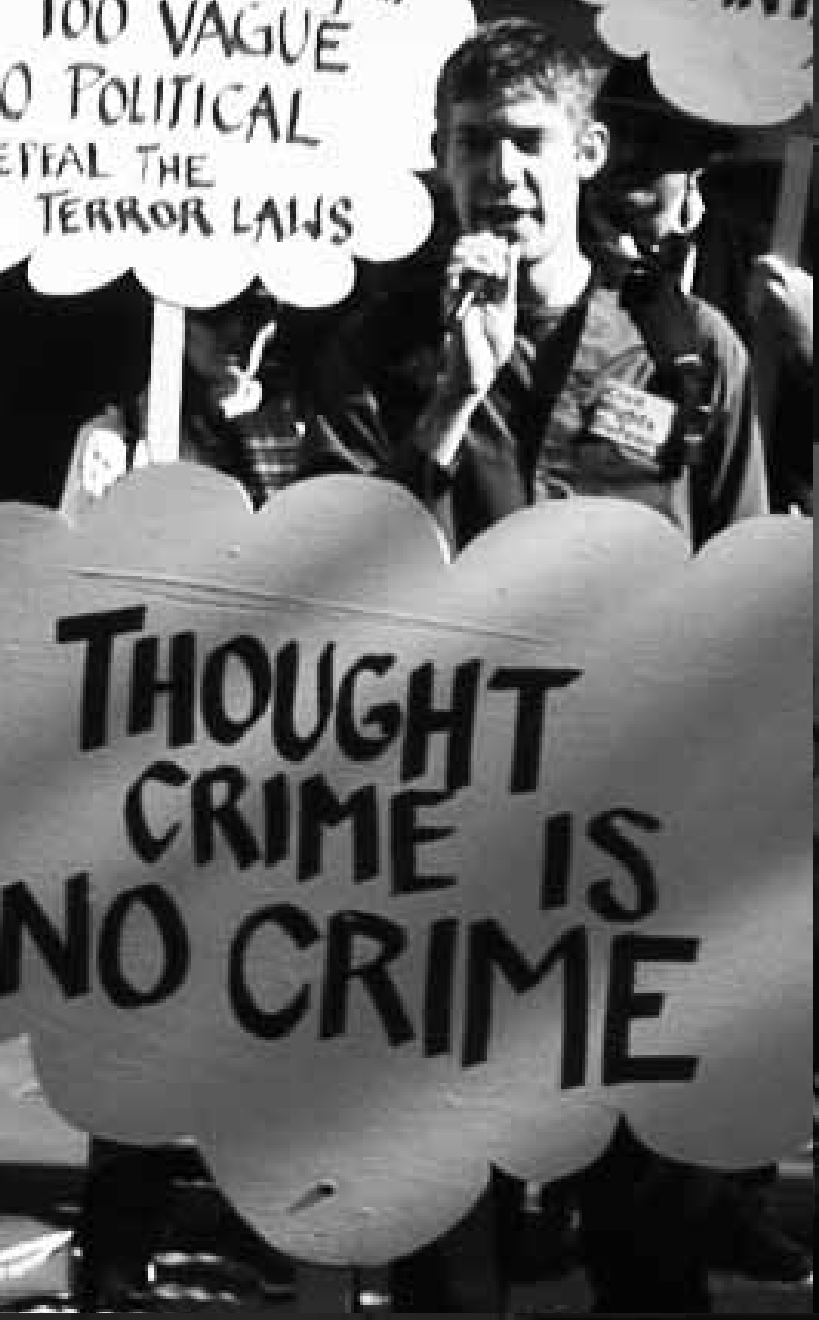
The defence team argues that the men were members of a religious group more concerned with knowledge of the Koran rather than mounting terrorist attacks. Greg Barns argues that his client only talked about the idea of terrorism. Barns calls it 'thought crime' and rails against the new laws that have criminalised what individuals say rather than what they do. The defence team argues that the threat of terrorism has been used by governments to extend the reach of the law into areas traditionally protected by the principles of freedom of speech and association. They believe the ambiguity of the laws could pose a bigger threat to our democratic values than the threat of terrorism.

This is an important film for everyone concerned about human rights and how Australia deals with the very real threat posed by Islamic terrorists.

'Any society that would give up a little liberty to gain a little security will deserve neither and lose both.'

– Benjamin Franklin

The Trial is a 360 Degree production, produced with the assistance of SBS TV, Film Victoria and Screen Australia. The documentary runs for fifty-two minutes. It was produced by John Moore and directed by Joan Robinson.



Curriculum guidelines

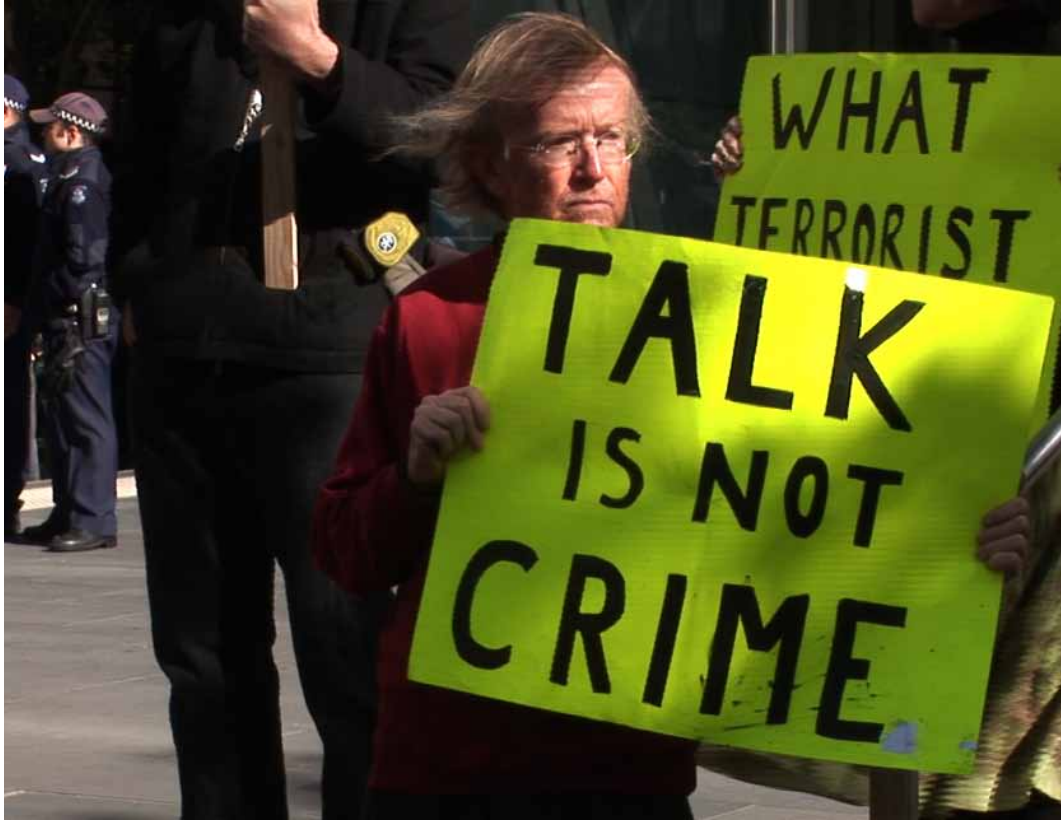
The Trial would be suitable for middle, senior and tertiary students of Legal Studies, Civics and Citizenship, Values Education, Politics and Society and English. It poses important questions about how our legal system deals with people believed to be a threat to our way of life. It also provides a fascinating glimpse into the complex working world of the legal profession.

We are asked to consider what the difference is between talking about the idea of planning a criminal act and committing such an act – can 'thought and speech' constitute criminal behaviour as opposed to committing or actually planning a criminal act?)

The program investigates what the anti-terrorism laws may lead to in relation to how accused people are treated while awaiting trial. This trial raises important questions about rights and responsibilities for all citizens in a post 9/11 world where governments are understandably determined to prevent terrorist attacks before they occur.

Some of the most important questions for students to consider as they watch the film are:

- What price are we prepared to pay for the curtailment of some basic liberties we may have previously taken for granted?
- Will the strengthened anti-terror laws make us safer from terrorist attacks?
- Is increased monitoring and covert surveillance of some people reasonable in light of the global reach of terrorists and their capacity to inflict terrible damage on civilian populations?
- What kind of surveillance of conversations and material on people's computers is justified by a fear of perceived threats posed by individuals and groups?
- Should we treat and try people accused of plotting to commit terrorist acts any differently to other accused individuals, both while they are awaiting trial and after sentencing?
- Could the new laws be used against any other groups or individuals the government may wish to silence?
- Does the targeted surveillance of people from a particular religious group, i.e. Muslims, have the potential to make all of us less safe by creating an 'us and them' environment, increasing security risks by isolating particular communities?
- Could the fear of being seen as a terrorist drive some groups underground, resulting in less open discussion and more disaffected young people joining extremist groups?
- Does Australian involvement in the wars against people in Muslim countries such as Afghanistan and Iraq make us more vulnerable to the resentment and threats of extremists in this country who are hoping to enact revenge by retaliating violently against Australians?



The film

The following program includes reconstructions performed by actors based on excerpts from court transcripts and police surveillance tapes. (On-screen text at start of program)

The trial concluded in August 2008 and verdicts and sentencing took place in September 2008. The men convicted and sentenced are appealing their convictions and sentences. The film uses dramatic reconstructions, with twelve actors playing the parts of the accused and several of the lawyers as well as the judge, Justice Bongiorno. Unlike the United States, cameras are not normally allowed in Australian court rooms while a trial is in progress.

As sometimes happens in the media, we see some courtroom-style sketches of two of the accused men – Ezzit Raad and Abdullah Merhi – but apart from some grainy long distance images of the Muslim cleric, the group's alleged leader, and a surveillance image from a camping trip, no photos of the accused men are shown in the documentary. The exeption to this is an image of Abdullah Merhi as a young footballer. The owner of the image allowed its use to show another side to Abdullah, to counter the mugshots published in the newspapers. Apart from this photo and the mugshots, very few images of the accused men were available for publication. The documentary follows the particular stories of two of the accused men (Raad and Merhi) and that of one of the barristers, Greg Barns, whose client is Ezzit Raad. We see some of the defence lawyers – both barristers and solicitors – at work outside the courtroom, but many of the lawyers involved in this case are played by actors. The courtroom reconstructions were filmed in the actual courtroom at the County Court where the trial took place. Although no cameras were permitted during the trial, the Supreme Court of Victoria gave permission for the reconstructions to take place. It's important to note that although the case was before the Supreme Court, the size of this trial required a larger courtroom. The biggest courtroom in Victoria is at the County Court and was able to fit all the lawyers required for the trial.

Apart from images, there is also the matter of the many hours of taped conversations used by the prosecution as the main evidence against the accused. The voices we hear in the film are those of actors, who voice conversations mostly between the Muslim cleric, the alleged leader of the group, and others including Merhi and Raad, the two men whose stories the film focuses on most closely.

We also see and hear from lawyers involved in the case or sharing rooms with Greg Barns, and from Peter Faris, a Melbourne QC who has a different view to that of Greg Barns and some of his legal colleagues on the defence team about the terrorism laws and how this case was conducted.

Guidelines for teachers

Background briefing

Before showing this film, it is important that students understand the difference in the work done by barristers and solicitors and by the prosecution and the defence teams during a criminal trial. Most students will probably have seen court cases in US television dramas or in other films, but the Australian legal system operates rather differently to that of the USA.

Secondly, much of what this trial is about is to do with language – who said what to whom, in what context and with what intent – to act or simply to express

frustrations, to 'big note' or 'beat his chest' as Omar Merhi describes his younger brother Abdullah's talk. It may be worth spending time discussing student understandings of the words 'jihad' and 'terrorism', definitions of which are provided here. Perhaps some word association work might help in understanding the connotations, implications and often highly charged emotional responses the use of such words often conveys, e.g. *The Herald Sun* headline FOOTY JIHAD published in the early stages of the trial is but one example.

Muslims in Australia

Muslim Australians are an extremely diverse group. At the 2006 Census there were more than 340,000 Muslims in Australia, of whom 128,904 were born in Australia, with the balance born overseas. This figure represents 1.5 per cent of the Australian population. In addition to migrants from Lebanon and Turkey, the other major source countries are:

Afghanistan 15,965

Pakistan 13,821

Bangladesh 13,361

Iraq 10,039

Indonesia 8656

In the last three decades, many Muslims have migrated to Australia under refugee or humanitarian programs, or from African countries such as Somalia and Sudan.

Australia's Muslim communities are now predominantly concentrated in Sydney and Melbourne. Since the 1970s, Muslim communities have built many mosques and Islamic schools and have made vibrant contributions to the multicultural fabric of Australian society.

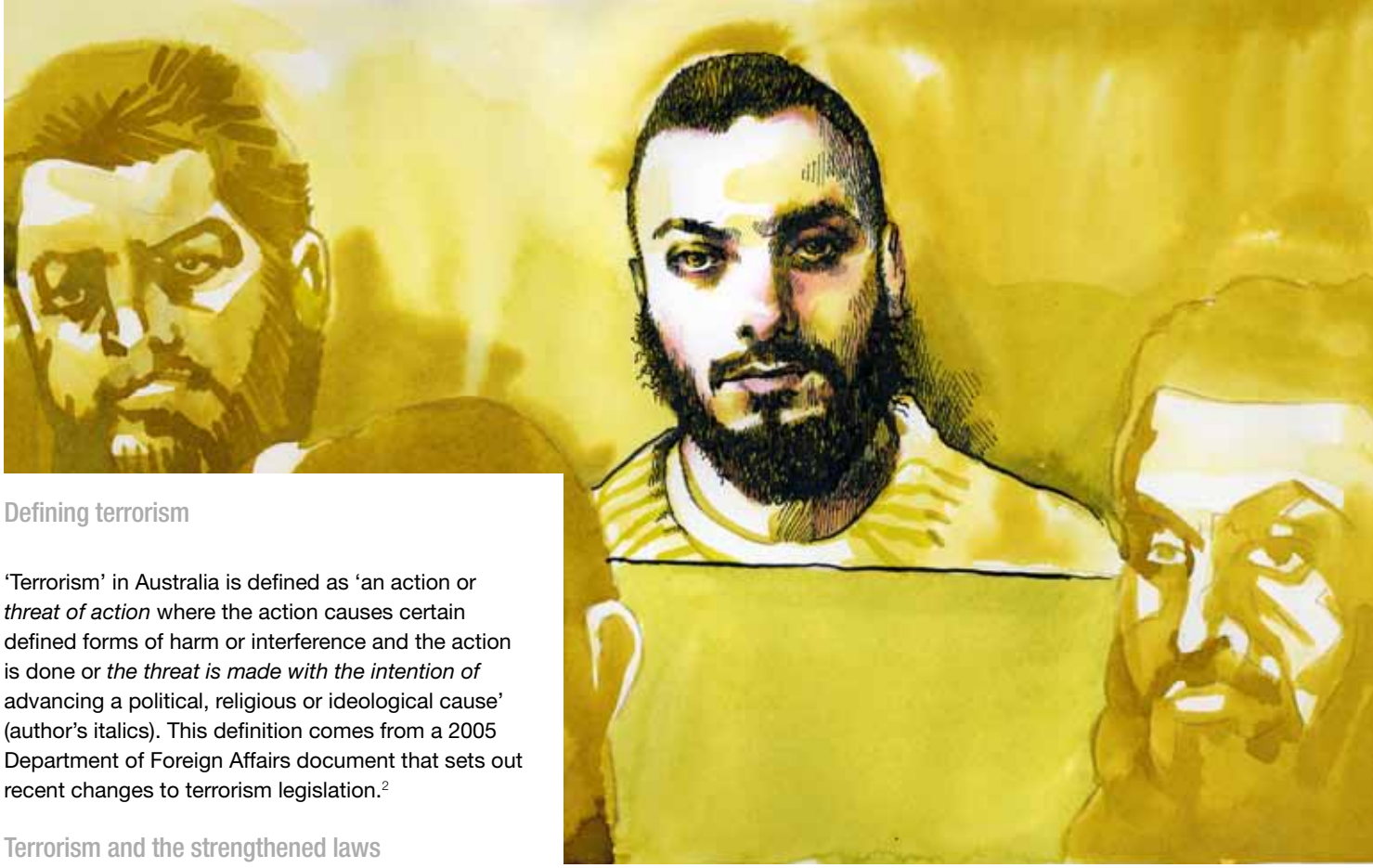
Perceptions

Since the events of 9/11 in 2001, and subsequent attacks in Bali, London and Madrid especially, Islamic militants are often seen as the 'new enemy of the West'. These militants are from a number of different countries, including Morocco, Pakistan, Saudi Arabia and Indonesia and some, like the British-born London bombers, come from Western countries. Some aim to bring the West under one Islamic state with no territorial boundary which naturally would be in conflict with Western interests. However, militant Islamic groups constitute a negligible minority among the 1.2 billion Muslims worldwide and the majority of Muslims are moderate people. The fact remains, though, that the radical members have contributed to a negative perception of Islam. They have declared a jihad (holy war) against the West and have used an extreme interpretation of the Koran for their own purposes. This is affecting Muslims in Australian society, the majority of whom have no interest in establishing or supporting a separate Muslim state. Simply by wearing the hijab or other distinctive clothing and headwear, Muslims are often lumped together as all being part of hostile attitudes to Westerners.

Defining 'jihad'

'Jihad' is the Arabic term for what can variously be translated as 'struggle' or 'effort', or 'to strive', 'to exert', 'to fight', depending on the context. In the West, the word is generally understood to mean 'holy war'.

However the Koran refers to jihad as an internal, individual, spiritual struggle toward self-improvement, moral cleansing and intellectual advancement as well as calling for jihad as a military struggle on behalf of Islam. However, it is said that Prophet Muhammad considered the armed-struggle version of holy war 'the little jihad', but considered the spiritual, individual version of holy war – the war within oneself – as 'the great jihad'.[1]



Defining terrorism

'Terrorism' in Australia is defined as 'an action or *threat of action* where the action causes certain defined forms of harm or interference and the action is done or *the threat is made with the intention of* advancing a political, religious or ideological cause' (author's italics). This definition comes from a 2005 Department of Foreign Affairs document that sets out recent changes to terrorism legislation.[2]

Terrorism and the strengthened laws

Since the events of September 11 2001, when Islamic extremists hijacked planes and crashed them into buildings in American cities, killing nearly 3000 people, many countries, including Australia, have introduced new anti-terrorism laws. At the time of 9/11, President of the United States George Bush stated that 'either you are with us or you are with the terrorists'. American troops (and troops from other countries, including Australia) were deployed in Afghanistan to flush out terrorists – including Osama bin Laden – who it was thought were operating from this part of the Middle East. In 2003, Australian, British and some European countries' armed forces joined in the American incursion into Iraq.

These military incursions in the Middle East into predominantly Muslim countries led to an escalation in terror attacks across the globe. Tougher and more wide-ranging laws have been enacted as governments attempt to keep citizens safe from the threat and reality of the kind of terrorist acts that have occurred in Bali, London, Madrid and in many parts of Asia, including Singapore and Pakistan, many of them believed to be targeted at Westerners in retaliation for their country's incursions into predominantly Muslim countries.

In Australia, since 2001, more than twenty new pieces of legislation have been enacted to enhance security. Some people believe that some of these laws curtail the rights and liberties of all Australians to an extent previously unseen. Crucially, police now have powers to charge individuals they believe to be informal members of a terrorist organisation that is involved in the very early stages of planning a terrorist attack, they have wide powers of electronic surveillance, and

they are able to impose control orders to hold people suspected of plotting or being involved in planning a terrorist attack without charge while further evidence is gathered.

The Trial deals with one such case, where twelve Muslim men were arrested and charged with a number of offences related to very early stages of plotting a terrorist attack. The charges include the offence of belonging to a terrorist organisation and of supplying resources to such an organisation.

Student Activities

Given the different strands this documentary encompasses, it may be useful to allocate different tasks to groups of students to focus on when watching the film.

Activity 1 – following the trial

There are six information boxes on the next few pages. Each one deals with particular aspects of what we see and hear in *The Trial* and the people involved. You could divide your class into six groups, with each group responsible for taking brief notes on the questions following each set of information. After watching the film, all groups can share what they have gleaned. There is some overlap in information and questions.

Box 1

ARRESTS AND DIMENSIONS OF THE CASE

In November 2005, Australia's new anti-terror laws were used when police raided homes across the northern suburbs of Melbourne. They believed there was sufficient evidence to charge the twelve men with being in the early stages of planning a terrorist attack. At the time of the arrests, then-chief police commissioner in Victoria, Christine Nixon, said on the television news:

We believe today's arrests have seriously disrupted the activities of a group allegedly making arrangements to carry out a terrorist attack in Australia.

The trial took place in Melbourne in the Supreme Court between February and September 2008.

The jury deliberated for twenty-one days before handing down twenty-seven verdicts against twelve defendants.

The evidence presented included over 482 taped conversations recorded over sixteen months.

This film focuses on two of the accused, their lawyers and the family of the youngest of the accused men, Abdullah Merhi.

It also looks at the terms and conditions under which the charged men have been held in custody.

- 'It is unquestionable that there will be injustices because of the breathtaking scope of these laws.'
  – Greg Barns, Ezzit Raad's barrister

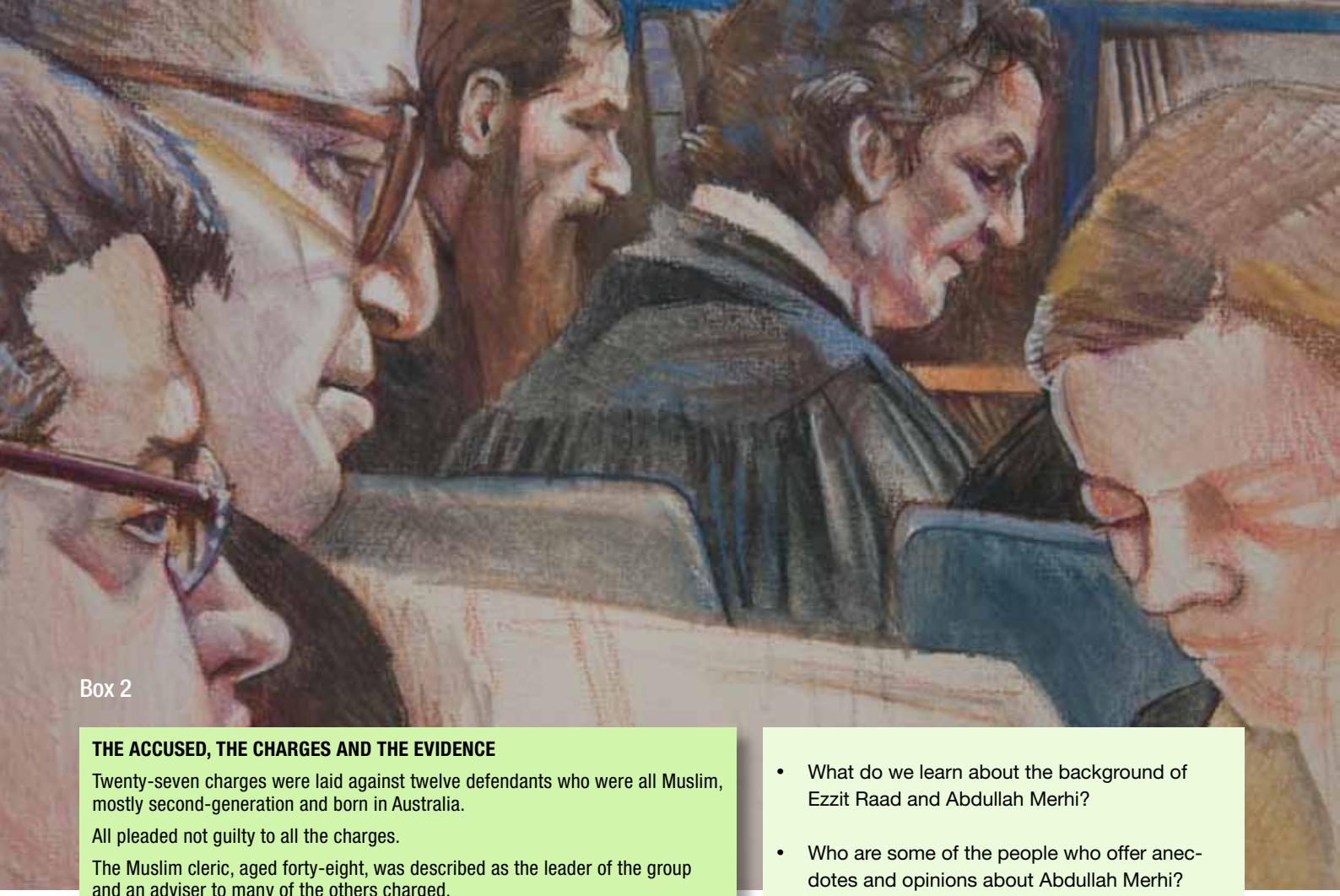
  Are you aware of any cases over the past few years, either in Australia or elsewhere, where an individual has been unjustly detained without charge or even killed because it was believed they were connected to a terrorist group through association?

  Are such mistakes just part of the price of keeping citizens safe from terrorist attacks?

- What is your view of covert surveillance, where conversations people assume are private are being listened to and recorded?

  Do you believe that recordings of phone calls you have made over the past twelve months would be able to be used to charge you with any acts of a criminal nature such as conspiring to take part in something illegal? When does 'loose talk' become 'conspiracy'?

- Why do authorities believe it is important to act against people who are thought to be plotting violence against others? Do you think being involved in talking about acts of violence should be a crime to which heavy penalties are attached?



Box 2

THE ACCUSED, THE CHARGES AND THE EVIDENCE

Twenty-seven charges were laid against twelve defendants who were all Muslim, mostly second-generation and born in Australia.

All pleaded not guilty to all the charges.

The Muslim cleric, aged forty-eight, was described as the leader of the group and an adviser to many of the others charged.

Ezzit Raad and Abdullah Merhi were two of the other men charged with a number of terrorism-related offences. Abdullah Merhi was the youngest of the men and still a teenager when the original offences occurred. He now has a wife and child.

Apart from the Muslim cleric, all the others are under thirty.

The men spent more than two years in solitary confinement in a maximum-security prison on the outskirts of Melbourne before the trial commenced.

The charges were all related to being part of a terrorist organisation, including intentionally being a member of a terrorist organisation and intentionally providing funds to support a terrorist organisation. In addition, Merhi was charged with being prepared to offer his body as a suicide bomber.

Much of the evidence tendered was over 482 taped recordings of conversations between the Muslim cleric and some of the other accused. These conversations were transcribed from thousands of hours of taped conversations. There was also a video film of the Muslim cleric with an undercover agent who had infiltrated the group and who had shown the Muslim cleric how to operate an explosive device.

- What do we learn about the background of Ezzit Raad and Abdullah Merhi?
- Who are some of the people who offer anecdotes and opinions about Abdullah Merhi?
- What does Abdullah say to his brother Omar in his letters from prison about his involvement in the activities with which he has been charged?
- What are some of the characteristics attributed to Abdullah Merhi?
- What do the images and words from the Muslim cleric convey about him?
- How difficult would it be for police and investigating officers to determine who key members of the group were and who was on the fringes and not so deeply involved, from listening to and reading transcripts of phone conversations?
- 'The key facts are not in dispute – it's what you make of them; what you make of all these conversations and activities that these people got up to … whether you say it's sinister or completely innocent.'
  – Greg Barns, barrister on the defence team

  How is the evidence tendered in this trial unlike that which is often presented in a criminal trial such as a murder case?

Box 3

FAMILY AND FRIENDS – BEING AN AUSTRALIAN MUSLIM

Omar Merhi is one of Abdullah's older brothers who has coached underage Aussie Rules football teams.

Amne Merhi is a widow. She feels both isolated and distressed by the accusations against her son and how this reflects on her family and community.

Abdullah Merhi is described by his older brother as being 'hot headed' and 'big noting himself'.

Abdullah's association with the Muslim cleric began after the death of his father.

- What is your impression of Omar Merhi, Abdullah's brother?
- What connections did barrister Lenny Hartnett have with the Merhi boys?
- How are the Merhi brothers described by others?
- What does Amne Merhi, Abdullah's mother, find most difficult about her son's long imprisonment while on remand awaiting trial?
- Is it only the non-Muslim community that has reacted with hostility to the families of the accused?
- Who are some of the groups offering support to the men's families?
- 'Feeling an affinity with their brothers and sisters does not make them un-Australian.'
  – Dr Nasya Bahfen, RMIT University
  Are you able to understand why Muslims would be upset about fellow Muslims in war-torn countries being subjected to violent attacks and ongoing warfare?
- 'I used to believe Australia was the greatest country in the world. For the whole of my life I've been trying to integrate into society only to be imprisoned over small talk.'
  – Abdullah Merhi in a letter to his brother Omar

  'He didn't kill anyone or hurt anyone, he just talked bullshit.'
  – Amne Merhi, mother

  How is what Abdullah claims to be 'small talk' and his family call 'bullshit' found to be something more serious by the jury?

Box 4

AWAITING TRIAL

The twelve men have been in a maximum security prison for two and a half years while awaiting trial. Because of the seriousness of the charges they were not allowed bail.

Now the trial has begun, they are strip-searched and shackled daily for the three-hour round trip to the courtroom in Melbourne. This has seriously affected the health of some of the men; two of them are so unwell that they are unable to attend court. This puts the future of the trial in jeopardy.

The defence team submits to the judge that this treatment impacts on their ability to defend themselves and infringes on their right to a fair trial.

Justice Bongiorno rules that their treatment is intolerable, that they are currently being subjected to an unfair trial because of the conditions under which they are being held and transported to and from court.

This forces the authorities to move the accused to a city prison. The judge rules that they are not to be treated any differently to other prisoners on remand.

- 'The right to a fair trial is a serious issue.

  Just because you're charged with a particular type of offence doesn't mean you should be treated inhumanely. Some people will say – 'oh, they're prisoners, who cares?' Well, the inherent dignity of everyone and the right to be treated compassionately applies to each and every one of us. These people are innocent until found guilty of the charges.' – Greg Barns

  Does the fact that the judge intervened to change the conditions under which the prisoners were held and transported suggest their treatment was unfair?
- Why is it important for all accused to be treated fairly?

Box 5

THE LAWYERS

Many of the large team of defence lawyers working on this case had previously worked on civil liberties cases. Some were themselves politically active.

Robert Stary, a Melbourne solicitor, led the defence team and Greg Barns, a barrister specialising in human rights law, acted for Ezzit Raad.

There were twelve barristers representing each of the accused men; their fees were paid by the government Legal Aid service. Each barrister had an instructing solicitor, and some of these solicitors are shown in the program working their way through the hours of taped conversations.

Richard Maidment SC led the prosecution team.

Peter Faris is a Melbourne QC who co-hosts a program on Channel 31, *Conflict of Interest*, with Greg Barns. They discuss legal issues and cases.

Lenny Hartnett is a criminal barrister who shares rooms with Greg Barns.

- 'I'm a firm believer in defending the rights of the individual against the state.' – Greg Barns
  What does Barns have to say about the relative legal resources available to the prosecution and the defence teams in these cases?

- What is the essence of barrister Peter Faris' view of how the trial is being conducted?

- How is Lenny Hartnett able to help Barns in his work?

- What were your impressions of the way the legal team went about their work?

- Do you think these men should have had access to Legal Aid lawyers? Explain your position on this.

Box 6

THE JURY, THE VERDICTS, SENTENCING AND APPEALS

The trial went for six months.

The jury deliberated for twenty-one days before delivering their verdicts on twenty-seven charges laid against the twelve defendants.

The Muslim cleric was found guilty on all charges. These included:

(1) Directing a terrorist organisation

(2) Being a member of a terrorist organisation and

(3) Possessing a CD connected with the preparation of a terrorist act.

He was sentenced to fifteen years in jail.

Six others were found guilty of various offences including:

Ezzit Raad who was found guilty of (1) 'intentionally being a member of a terrorist organisation' and (2) 'of intentionally making funds available to a terrorist organisation'.

Raad was sentenced to a maximum of seven and a half years in jail.

Abdullah Merhi was found guilty of (1) 'intentionally being a member of a terrorist organisation' but not guilty 'of intentionally providing resources to a terrorist organisation' and hence not guilty of 'volunteering to be a suicide bomber'.

Merhi was sentenced to a maximum of six years in jail.

The jury was unable to reach a verdict on one of the twelve men charged.

Four of the accused men were acquitted on all charges but will get no compensation for the three years they spent in jail prior to the trial and while awaiting verdicts.

All men found guilty are appealing their convictions and sentences. While awaiting the hearing of these appeals they remain imprisoned.

- Lenny Hartnett, Greg Barns' barrister colleague, advises him 'not to underestimate the capacity of a jury to gel together, to look at the evidence as individuals and to apply common sense'.

  How is this faith in the jury borne out by the careful delivery of the verdicts?

  What does the fact that the jury acquitted four men and were unable to reach a verdict on another tell us about how seriously they considered every bit of the massive amount of evidence and argument put to them during the trial?

Activity 2

What is said and in what contexts

Keep in mind that the lawyers' remarks quoted here are all carefully prepared, considered and delivered in a formal court situation to a large number of people. The words of the accused, by contrast, are extracted from secretly recorded 'private' conversations between individuals. This difference does not make any of these quotes any more or less true or significant, but context is everything in conversations and talk. Private and public speech is very different in content, style and tone.

From the lawyers

'This case is about what the Crown says is a home-grown terrorist organisation.'
– Richard Maidment, prosecutor

'This is a case where an understanding of global politics is probably useful. You will hear references to Chechnya, Fallujah, Afghanistan and Iraq – these are all things about which my client speaks. Ezzit Raad's worldview is very different from most of us.'
– Ezzit Raad's barrister, Greg Barns in his summing up to the jury

'The right to say or read unpopular things is a right we as Australians cherish and it's a right that sets our society apart from those of many others. It's a right we should not lose sight of in the course of this trial.'
– Mark Taft, Abdullah Merhi's barrister

'These are laws that have criminalised guilt by association.' – Defence barrister

From the recorded phone conversations between the accused

'If we want to die for jihad, we do maximum damage; damage their buildings, with everything, damage their lives; just to show them.'
– The Muslim cleric in taped conversation

'If you kill here 1000 the government will listen and stop sending the troops.'
– The Muslim cleric in taped conversation

'Look, if John Howard kills our kids, what should we do?'
– Abdullah Merhi to the Muslim cleric

'Well, if he kills our kids, we kill their kids. We kill the kids, the little kids.'
–The Muslim cleric's response

'You automatically know these things are wrong, they are evil.'
– Abdullah Merhi in conversation with a co-accused about the killing of civilians

- What do you make of these statements/observations/remarks/opinions/summing up from the lawyers and the accused?
- What other descriptors or explanations might there be other than 'sinister' or 'completely innocent' as Barns has suggested we can view these private conversations between the accused men?

Activity 3

Director and producer statements

Joan Robinson, the director of this documentary, believes that 'filming with lawyers like Greg Barns meant that many aspects of the law and court processes could be explained in a language most people could understand'.

She was disappointed not to be able to include the prosecution or the police viewpoint in the documentary, as 'the fears, motivation and viewpoint of the police would enhance the debate about Australia's approach to terrorism. For legal reasons both the prosecution and the police declined to participate'.

Robinson also expresses a hope

that people will empathise with the Merhi family who have endured a great deal of abuse and trauma following the arrest, trial and conviction of a family member. They've been treated as guilty by association by some. Omar and Amne Merhi aren't terrorists.

The filmmakers and co-writers of this documentary, Joan Robinson and John Moore, explain in their joint statement their reasons for making this documentary:

The Melbourne terrorism trial is a landmark in Australian legal history. It traversed uncharted legal territory and sets precedents for the trials and legal practice that follow. It also provides a clear cut example of how pre-emptive counter terrorism laws can be applied in practice and what human rights and freedoms are affected by them. We want this documentary about the Melbourne terrorism trial to generate public debate on these issues and the role of the law in preventing terrorism in Australia.

The outcome of the Melbourne trial will be tested on appeal and questions will be raised:

1. *Is it a just and appropriate outcome to convict otherwise innocent people in order to protect the wider community from possible terrorist attack?*
2. *As some advocates of the anti-terror laws ask, is it reasonable to crush a few people in order to send a message to the real terrorists that their actions will not be tolerated?*
3. *Will an outcome such as this one merely radicalise others?*

- Choose one of these three questions and give your opinions, either spoken or written, about the one you have chosen. Provide clear reasons for your opinions based on what you have seen and heard in this documentary and on your own knowledge.
- Do you think a documentary such as this will generate more informed public debate about the legislation and conduct of terrorism trials?
- Did you empathise with the Merhi family as they lived through the trial and felt it impact on their lives?
- What can we do as a society to help all minority groups feel a part of Australian society, so that young men in particular do not become involved in the kind of discussions that led to this trial?

Activity 4 – Bringing it together

Thought crime and talk crime – what are they?

'This is a serious trial – it's a case about democracy, freedom of speech, about whether you should criminalise thought and word.'
– Introductory narration to *The Trial*

'You could think someone is guilty because of what they read, see and watch, because of what they have on their computers … there is no law against what you think … you have to do something.'

– Julian McMahon, defence barrister for one of the accused men

'Thoughts are not crimes, never can be, never will be. If I walk down the street and think to myself I would like to blow up Parliament House that's never, ever, ever going to be a crime. And that is a thought. But it's when I take further steps towards that project that I start getting into the area of criminality.'[3]

– Peter Faris, Melbourne barrister and QC

During the program, there is talk among some of the defence lawyers about the dangers inherent in people being charged with thought crimes. George Orwell's 1949 novel *1984* talks about thought crimes where people's motives and thoughts can be presumed or guessed at and they can then be interrogated. Orwell wanted to warn people about the dangers of suppressing freedom of thought and expression by governments of all persuasions. In times of war many individual freedoms are curtailed in the interests of 'national security', foreign nationals are interned and life for recent immigrants gets difficult. But what constitutes a 'war situation'?

During the McCarthy hearings in America in the 1950s, people were accused of being Communist supporters on absolutely flimsy and often concocted evidence about their associations and what they might have said or meant in their films or their writing. Joseph McCarthy was a US senator for Wisconsin from 1946 until 1957. He is remembered for his demagogic crusade between 1950 and 1954 to root out alleged Communists and spies in American public life.

Many of those called up before McCarthy's Senate hearings were writers and artists who were suspected of having Communist leanings. The term 'McCarthyism' has come to mean the use of unscrupulous methods of investigation against supposed security risks and the creation of an atmosphere of fear and suspicion.

Respond to one or more of the following sets of questions in your class group. You could use them as the basis for an essay or an oral presentation to your class.

Set 1

- Are the defendants in this case being charged with having thoughts about committing a terrorist act or have they gone a step further down the path of planning such an act?
- Why do you think the wording of the charges includes the word 'intentionally'?
- How is the manner in which the accused men's views and schemes are being investigated different to the methods used during the McCarthy era in America at public Senate government hearings?
- Did what you saw of the legal processes in this trial seem fair to you?

Set 2

- Who can say what any of us might be thinking? If you are discussing a hypothetical act of theft with a friend, either face to face or on the phone, does this put you at risk of being overheard and even charged? What next stage needs to be taken before anyone can be charged with conspiracy to commit a crime?
- What do you think are the dangers to individual freedoms involved in telephone surveillance?
- What reasonable suspicions should police or any other security officers and investigators have before embarking on telephone or any other kind of surveillance?
- Do you think the widespread use of CCTV (closed circuit television cameras) breaches individual's privacy? What is the use of these cameras intended to prevent and capture?

Set 3

- Why do governments believe it is vital to legislate against apparent conspiracies to commit terrorist acts against a population?
- What do you believe should be the major concerns in framing such legislation?
- What would be some of the difficulties in framing anti-terror legislation that was strong but fair?
- Who should police the lawmakers and ensure such laws are regularly reviewed and appropriate to the situation?

Set 4

- Investigate the anti-terrorism legislation of another Western democracy such as Canada or Great Britain.
- What are some of the security changes now used in many countries throughout the world that have been instituted to improve security and safety?
- Do you feel safer now that preventive anti-terrorist legislation has been legislated for?
- How has the use of the Internet and other communications technologies such as mobile phones and tiny digital cameras and other recording devices presented great challenges (and sometimes opportunities) for authorities charged with protecting public safety?

KEY CHARACTERS

Greg Barns (barrister)

Greg Barns is a barrister, writer and commentator. He practices in the area of human rights and criminal law from chambers in Hobart and Melbourne. Greg is a former senior political adviser to a number of Liberal Party premiers and federal government ministers and worked closely with Malcolm Turnbull on the 1999 republic campaign. He left the Liberal Party in 2002 after he was dis-endorsed for his support of asylum seekers. He is a legal adviser to the Tasmanian lobby group Prison Action Reform and is a Director of the Australian Lawyers Alliance. Greg is the author of three books on Australian politics and writes regularly for several newspapers.

Rob Stary (solicitor)

Rob Stary runs his own private law firm, Robert Stary and Associates, one of the largest criminal law practices in Victoria with offices based in Melbourne, Footscray, Sunshine, Ringwood and Geelong. Rob led the defence team in the Melbourne terrorism trial. He also represented Jack Thomas at his terrorism trial. He has been president of the Criminal Defence Lawyers Association since 2004 and is a passionate advocate for human rights. Recently he received the Law Institute Human Rights Award.

Abdullah Merhi (accused)

Abdullah Merhi is the youngest of the twelve accused. He was twenty when he was arrested. He was born in Australia of Lebanese parents and worked as an apprentice electrician. Merhi is married with one child who was born after he went to prison. He has a reputation for being a considerate and thoughtful person who thinks deeply about his religion. He is a member of a large family whose religious beliefs vary from extremely devout to atheist. The Merhi family is a microcosm of Australian diversity.

Omar Merhi (brother of the accused)

Omar Merhi is Abdullah Merhi's older brother. He is a passionate advocate for understanding between Muslim and non-Muslim communities. He has participated in many media interviews since his brother's arrest, trial and subsequent conviction. Merhi is apprenticeship officer for the Electrical Trades Union and a passionate Aussie rules footy coach. Omar is married with three children and lives and works in the inner north of Melbourne.

KEY CREDITS

Director: Joan Robinson

Producer: John Moore

Writers: Joan Robinson, John Moore and Steven Robinson

SBS Executive Producer: John Godfrey

Editor: Steven Robinson

Composer: David Bridie

Director of Photography: Peter Zakharov

Director Photography Reproductions: Ian Jones

Production Manager: Lisa Horler

References and online resources

The Age Terror Trial website

http://www.theage.com.au/interactive/2008/national/terrortrial

This is an excellent website about the Melbourne terrorism trial. It includes information about the defendants, the trial timeline, the verdicts and links to news stories.

Australia's anti-terror laws

http://en.wikipedia.org/wiki/Australian_anti-terrorism_legislation,_2004

The Australian government introduced new laws in the Australian parliament in 2004. These anti-terrorism bills were enacted by a Coalition government with the Labor opposition's support.

Supreme court sentencing

http://www.austlii.edu.au/au/cases/vic/VSC/2009/21.html

Justice Bongiorno's summing up of the evidence and his sentences.

'Trial and error'

http://www.theage.com.au/national/trial-and-error-20080917-4imf.html

Excellent *Age* article by Karen Kissane summing up the case, September 2008.

http://www.theage.com.au/news/opinion/guarding-us-from-the-laws-that-guard-us/2008/03/16/1205602190306.html

Article by liberal party politician Petro Georgiou about the dangers inherent in the new anti-terrorism laws.

http://www.abc.net.au/rn/lawreport/stories/2008/2370384.htm

Transcript of an ABC Law report program about this trial, first broadcast on ABC Radio National on September 2008. Both Barns and Faris were part of the discussions.

http://www.theage.com.au/national/counterterrorism-raids-across-melbourne-20090804-e7i5.html

Age newspaper report about a 2009 counter-terrorism raid in Melbourne, some details of which were leaked to the media before it was completed.

http://www.abc.net.au/news/stories/2009/08/05/2646194.htm

ABC News story about police applying for more time to question suspects in an investigation into a possible terrorist attack on the NSW Holsworthy Barracks.

http://www.dfat.gov.au/facts/muslims_in_Australia.html

Information about the composition of Muslim population in Australia.

Bibliography

Andrew Lynch and George Williams, *What Price Security? Taking Stock of Australia's Anti-Terror Laws*, UNSW Press, Sydney, 2006.

Andrew Lynch, Edwina MacDonald and George Williams (eds), *Law and Liberty in the War on Terror*, The Federation Press, Sydney, 2007.

There are a number of documentaries and films about being Muslim in Australia and about how Australians perceive Muslims. They include:

- *Beyond Beliefs* (Sophie Hyde and Bryan Mason, 2007) about a forum held in Canberra between Muslims and non-Muslims (an ATOM study guide is available for this program)
- *Molly & Mobarak* (Tom Zubrycki, 2003), a film about Afghanis living and working in an Australian country town. The film offers a wonderful perspective on the complexities of cross-cultural relationships between young people. (An ATOM study guide is available for this program. There is also an essay on this film, written by *The Trial*'s director Joan Robinson, which appeared in *Screen Education* magazine. Both the study guide and the article are available from The Education Shop <http://www.theeducationshop.com.au>.)

Endnotes

1 About.com, <http://middleeast.about.com/od/religionsectarianism/g/me080122a.htm>, accessed 10 November 2009.

2 <http://www.dfat.gov.au/publications/terrorism/transnational_terrorism.pdf>, p.20.

3 'The Muslim cleric Terror Trial', *The Law Report*, Radio National, 23 September 2008, transcript <http://www.abc.net.au/rn/lawreport/stories/2008/2370384.htm>, accessed 10 November 2009.

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