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Terrorists on Trial

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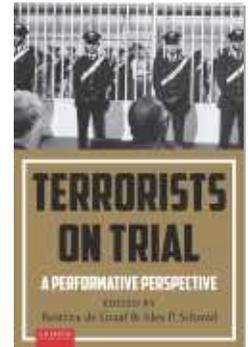
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11. Performing Justice, Coping with Trauma: The Trial of Anders Breivik, 2012

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11.1. Introduction

The sophistication behind the attacks, the extreme brutality, the number of victims and the fact that 33 of the 77 people killed were under the age of 18, made the 22 July 2011 attacks in Norway one of the major terrorist incidents in the history of terrorism. Compared to other acts of terrorism conducted by a single actor, they were unique in their destructiveness. The subsequent trial was also unique for the Norwegian judicial system and court administration.

At the same time, this was also a highly dramatic and explicit example of a terrorist suspect's attempt to turn his trial into a theatre. In the 1,500-page manifesto that Anders Behring Breivik posted on the internet, he wrote 'your trial will offer you a stage to the world'.¹ In addition, the Norwegian newspaper *Verdens Gang* published extracts of a letter Breivik sent from his cell in which he stated that the court case looked like a circus; 'it is an absolutely unique opportunity to explain the idea of 2083 [the manifesto] to the world'.² He described the attacks in Oslo and Utøya as only the first part of his 'operation'. With his trial, or what he called the 'propaganda phase', the time had come to convince the public of his narrative.

This chapter elaborates on the different strategies of some of the main actors in the Breivik trial, particularly the defendant and his defence team, and the Attorney General and the prosecution's team. The main sources are Breivik's compendium 2083: *A European Declaration of Independence*, an accurate word-for-word transcript of the court proceedings, the sentence handed down on 24 August 2012, as well as selected literature and media sources. The authors were also present in court during parts of the trial, conducted a survey amongst the population in- and outside the courtroom regarding their perception of the trial and the strategies of the actors involved and interviewed the main actors (but not Breivik himself).³ One of the authors of this chapter (Tore Bjørngo) also appeared as an expert witness in court.⁴

We will focus first on the attacks in Oslo and Utøya, Breivik's early life and the events leading up to these attacks. Important information on this pre-history has been gleaned from Breivik's manifesto and other open sources. The manifesto provides valuable insights into Breivik's underlying motives and the pathway to his atrocities. Then, we will discuss the course of the trial. Thirdly, we will focus on what happened outside the trial; for instance, what happened in Norwegian society after the attacks and during the trial. How did the population in- and outside the courtroom respond to the performative strategies of the actors involved? We will discuss the extent to which the trial affected coping mechanisms within Norwegian society and what classical goals of justice were served by it.

11.2. Before the Trial (the Attacks and the Manifesto)

11.2.1. *The Attacks*

The attacks on 22 July 2011 were the most extreme manifestation of violence in Norway since the Second World War. The fact that an act of terrorism of this magnitude could happen in a small, homogeneous, highly affluent and stable society of five million inhabitants was for many incomprehensible.

At 15.25 hours a bomb exploded in Oslo's government district. The blast damaged buildings and blew out windows over more than a half-mile radius.⁵ Closest to the blast was the 17-storey building where the Prime Minister had his offices. The explosion killed eight people and injured at least 209. At about 16.57, approximately 38 kilometres north west of Oslo city centre, a person dressed as a policeman asked a ferryman to transport him to Utøya Island where an annual youth camp organised by the youth wing of the Norwegian Labour Party was taking place. At that moment there were 564 people on the island. The 'policeman' told everybody that he had been sent there following the attacks in Oslo. But after coming ashore on the island, he opened fire, eventually killing 69 people. People panicked and fled into the woods or jumped into the cold water, trying to swim to the shore some 600 metres away. One of the survivors, who had been spared by the shooter because he resembled a right-wing supporter,⁶ reported the killer shouting 'I will kill you all' and 'today it is your time to die' when he was aiming at the swimming youths.⁷ The youngest victim was 14 years old.⁸

During the shooting the killer called the police saying, 'My name is Anders Behring Breivik, of the Norwegian anti-communistic resistance movement. I am at Utøya and

I wish to surrender.’⁹ The police arrived only after half an hour on the landside. It took another 35 minutes, and another phone call by Breivik himself, before the first police ct-team came ashore on the island. Breivik then surrendered, was arrested and his ‘operation’ brought to an end.¹⁰

For years, Breivik had been planning the attacks. He claimed to have studied over 600 bomb-making manuals,¹¹ among them al Qaeda’s tactics manuals (accessed by means of Google Translate). Breivik considered different scenarios for spreading his ideas. In the first instance, he intended to raise three million Euros in order to publish and disseminate his 1,500-page manifesto, ‘2083: A European Declaration of Independence’. After getting into financial difficulties, he embraced a much more violent ‘plan B’.¹² This plan involved detonating three car bombs at different locations in Oslo (amongst these the government district, the Labour Party’s office and the Royal Palace).¹³ Then, if he survived the explosions, he would carry out a shooting spree. This plan was discarded since building a bomb ‘took much more time than he expected’.¹⁴

Instead, he decided to deploy a vehicle-borne explosive device, containing a self-constructed fertiliser bomb, in Oslo’s governmental district, close to the offices of the Norwegian Prime Minister. The idea was ‘to bring the building down’, to destroy the ministry office and kill all those present there. When this did not happen, he chose to proceed with the shooting spree at Utøya. Breivik said, ‘If the building had collapsed then going onto Utøya would have been unnecessary and I would have driven straight to a police station and surrendered. I had thought of this in advance.’ At Utøya, his goal was to kill all the leftist youth politicians present at the political youth camp as well as the former Prime Minister, Gro Harlem Brundtland, who was visiting the camp on that day.¹⁵ His aim was to decapitate Brundtland while filming her, achieving maximum impact with his killings. However, the former Prime Minister had already left when he arrived.

11.2.2. *Manifesto and Motive*

Previously, Breivik had been a prolific internet debater, initiating discussions on the dangers of Islam and immigration. But only hours in advance of the attack, he announced his actions by sending his manifesto, written under the pseudonym ‘Andrew Berwick’, to thousands of people.¹⁶ He disseminated it amongst sympathisers and people whom he had randomly found on Facebook,¹⁷ and posted a twelve-minute video called ‘Knights Templar 2083’ on YouTube as well. The video presented an analysis of the imminent multiculturalist ‘threat’.

The manifesto offers some insight into what motivated Breivik.¹⁸ The manuscript contains a diagnosis of everything Breivik considered perverted in Western society, and at the same time offers a road map to overcome these ills. In his ‘compendium’ of documents, mainly composed by others, he first of all tried to demonstrate the rationality behind his fear of Muslim immigration. Islam, he wrote, posed a direct threat to the humanistic, Jewish and Christian cultural heritage of Europe, and European social democracy did nothing to prevent this, throwing the doors wide open instead. Hence, the whole European political system had failed in protecting the core values. Breivik then proceeded to outline a radical reform plan. In historical analogy to the Battle of Vienna of 1683, when the European powers joined forces against the Ottoman Empire and started the Great Turkish War, he proposes a similar campaign to fight the islamisation of Europe. An elite order called the ‘Poor Fellow-Soldiers of Christ and of the Temple of Solomon’, which he more often refers to as ‘The Knights Templar’, was to act as a vanguard force.¹⁹ Based on the crusader myth, Breivik claimed to have founded this order anew in 2002, and devised it to act as ‘leaderless network, made to be self-driven cells’. His Knights Templar were ‘to defeat the cultural Marxist/Multiculturalist Alliance of Europe, seize political and military control of Western European countries and implement a cultural conservative political agenda’.²⁰

According to the manifesto, the campaign consisted of three phases. The first phase (from 2009 to 2030) aimed ‘to take the “anti-Jihad movements” to a second level, approach, cooperate with and/or merge with Christian movements and other cultural conservative movements (who agree on a set point of principles)’.²¹ By means of ‘open source warfare’, combined with ‘military shock attacks by clandestine cell systems’, social unrest was to be fomented, leading to citizens questioning the state of their societies²²—a classical right-wing ‘strategy of tension’ approach. The second phase (2030–2070) projected an advanced status for the Knights Templars’ resistance front. Around this time, when 15 to 60 per cent of the European population would already consist of Muslims, resistance groups were to join forces with regular armies while preparing for ‘pan-European coup d’ états’.²³ The third phase (2070–2083) would culminate in the actual execution of multiple coups d’ état. A cultural conservative agenda was to be implemented. Deportation of Muslims would be initiated, and category A (political, media, cultural and industrial leaders) and category B (people who have actively supported or stimulated multiculturalism) traitors would be executed.²⁴ Breivik described his envisaged utopian end state as a society bearing a resemblance to the—in his words—monocultural, but highly developed and progressive ‘Japanese’ or ‘South

Korean' system.²⁵ Politically, a 'European Federation' should be created, based on national sovereignty and completely sanitised of 'multiculturalism or Marxist principles'.²⁶

11.2.3. Breivik's Life and Pathway towards the Attacks

The manifesto also contained autobiographical sketches. Breivik was born in Oslo on 13 February 1979 and lived the first year of his life in London. His father, Jens Breivik, worked as a diplomat at the Norwegian embassy in London (and later in Paris); his mother was a nurse. When Breivik was one year old, his parents divorced and he moved back to Oslo with his mother and half-sister. He visited his father and stepmother frequently until he was fifteen, when the contact was broken. According to Breivik, his father 'wasn't very happy about my graffiti phase from 13–16'.²⁷ Breivik's father, however, contends that Breivik himself broke off contact.²⁸

Although Breivik stated that he had not 'really had any negative experiences in my childhood in any way', psychiatrists concluded that he must have felt emotionally abandoned, and therefore missed an important part of childhood and adolescence.²⁹ In *A Norwegian Tragedy*, publicist Aage Borchgrevink revealed the conclusions of different reports from (child) psychiatrists who observed Breivik in 1983 after his mother had asked for their help. One expert noticed the peculiar way in which the four-year-old Breivik smiled, as if he understood how and when to smile, but without the actual emotional basis of joy.³⁰ Specialists also diagnosed his mother, Wenche Behring, as having an 'unstable personality'. She frequently hit her son, while at the same time sleeping in the same bed.³¹ Therefore, in 1983, psychiatrists advised the authorities to transfer Breivik to a different environment, advice that was ignored by the child protection services.

At a later stage in his life, Breivik attended the Hartvig Nissen High School in Oslo where he was described as an intelligent student. During this period, he developed his graffiti skills, which led to an arrest by the police when he was fifteen. He also started working out and used anabolic steroids.³² Since he was teased for having an 'Arab nose', he underwent a corrective nose operation when he was twenty.³³ In 1997 he joined the youth league of the *Fremskrittpartiet* (FrP), a conservative liberal political party known for its anti-immigration campaigns, and stood as a candidate in the local elections in Oslo. Breivik said, 'FrP appealed to me because I had experienced the hypocrisy in society first hand and I knew already then that they were the only party who opposed multiculturalism.'³⁴ Breivik was active for the FrP until 2006. He left when he realised that a 'democratic struggle against the Islamisation of Europe [...] was lost':

It is simply not possible to compete democratically with regimes who import millions of voters. 40 years of dialogue with the cultural Marxists/multiculturalists had ended up as a disaster. It would now only take 50–70 years before we, the Europeans are in a minority. As soon as I realised this I decided to explore alternative forms of opposition. Protesting is saying that you disagree. Resistance is saying you will put a stop to this. I decided I wanted to join the resistance movement. However, the main problem then was that there weren't any alternatives for me at all.³⁵

After dropping out from the Oslo Commerce School (1995–1998), he found a job at a customer service company before he started his own business in computer programming, allegedly in 2002. In his manifesto he claims to have expanded his firm to six employees and registered several offshore bank accounts. The money he made, and the funds he salvaged after his bankruptcy, were already at that stage intended to be spent 'on both writing the book and [...] the operation,' so he says.³⁶ All in all, he allegedly spent '130,000 Euros from his own pocket and 187,500 Euros for loss of income during three years'.³⁷

Breivik also went travelling, and describes how he (allegedly) visited the opening meeting of his Knights Templar in London, in April 2002—a meeting that could not be corroborated by any evidence:

There were only 5 people in London re-founding the order and tribunal (1 by proxy) but there were around 25–30 attending in Balticum during the two sessions, individuals from all over Europe; Germany, France, Sweden, the UK, Denmark, Balticum, Benelux, Spain, Italy, Greece, Hungary, Austria, Armenia, Lebanon and Russia. Electronic or telephonic communication was completely prohibited, before, during and after the meetings. On our last meeting it was emphasised clearly that we cut off contact indefinitely. [...] This was not a stereotypical 'right wing' meeting full of underprivileged racist skinheads with a short temper, but quite the opposite. Most of them were successful entrepreneurs, business or political leaders, some with families, most of them Christian conservatives but also some agnostics and even atheists [...] I was asked, not only once but twice, by my mentor; let's call him Richard, to write a second edition of his compendium about the new European Knighthood.³⁸

Data from the customs authority confirmed Breivik's visit to the United Kingdom, but the existence of this network could not be proven by anyone.³⁹ Breivik also went to Liberia, by his own account to meet a 'Serbian crusader and war hero who had killed many Muslims in battle.' According to the prosecution, Breivik went there only to

buy 'blood diamonds', and possibly even fell 'prey to a Nigerian internet scam'.⁴⁰ As for the other 24 countries, he allegedly visited several other countries (including China, Mexico, Malta, Cyprus and Nigeria), but not much information is available apart from his own statements. Flight records, for example, show that Breivik went to Malta with his mother for a holiday, although he himself claims to have gone there to study the forefront of 'Europe's defence from North Africa'.

In 2006, he moved back to live with his mother in Oslo to write his compendium while saving money for the attacks. During this period, friends testified, Breivik became more and more isolated, and addicted to Internet gaming.⁴¹ Breivik indeed considered his skills at 'Call of Duty: Modern Warfare 2' as 'part of [his] training-simulation', while 'World of Warcraft' helped him to detach him from his 'old life', most of his network and prepare him for his campaign.⁴²

In May 2009 he set up a new company, 'Breivik Geofarm', intended as a 'credible cover for [his] activities'.⁴³ Through this entity he would be able to obtain the supplies for the explosives he wanted to fabricate, such as fertiliser. Two years later, in April 2011, he rented a farm in a village called Åsta, about 2 1/2 hours from Oslo, to cultivate sugar beet. He started purchasing fertiliser, some six tons in total. During preparations he came close to the Norwegian Police Security Service's radar only once, after acquiring a 15-metre powder fuse worth less than 20 Euros through a Polish website.⁴⁴ The Norwegian custom authorities, participating in a transnational customs watch programme, sent a list of 41 names and suspicious money transactions (what the people had bought was not revealed) to the security service in December 2010, but this was not followed up.⁴⁵ In late August 2010 he went to Prague to buy weapons, stayed there for six days, but returned empty-handed. He then decided to register for a weapons permit in Norway and obtained both a Glock pistol and a .223-calibre Ruger Mini-14 semi-automatic carbine. According to the manifesto, he now entered the final preparatory stage, which lasted a few weeks, in which he read, wrote, radicalised further, collected supplies for the attacks, studied history, trained himself in shooting and learned how to manufacture a bomb.⁴⁶

After the massacres in Oslo and Utøya on 22 July Breivik was arrested and taken, through angry crowds, to a holding cell in Oslo. During one of the first interrogations he called 22 July 'the worst day of [his] life'.⁴⁷ He furthermore expressed surprise that he was not being tortured. 'It ought to be introduced in Norway', he added.⁴⁸ However, he did opt for making good use of the Norwegian legal order and prerogatives. Breivik specifically asked for and got lawyer Geir Lippestad.⁴⁹ The reason for this is probably connected to the fact that Lippestad ten years earlier had defended the neo-Nazi Ole Nicolai Kvisler who, together with two others, committed the racist murder of

15-year-old Benjamin Hermansen in 2001.⁵⁰ Breivik had then followed the attorney's performance and he actually, by coincidence, worked in the same building as Lippestad at the time.⁵¹ What Breivik probably did not know was that Lippestad as late as in 2010 was an active, leading member of a local branch of the Labour Party in Oslo, and as such a representative of the Cultural-Marxists that Breivik so very much hated and wanted to kill.⁵² When Lippestad in mid-August 2011 told Breivik about his affiliation with the Labour Party, Breivik responded very calmly, without surprise or anger.⁵³

Upon accepting Breivik's request, Lippestad himself received numerous threats. However, according to Lippestad, 'No matter how horrible the crime, a defendant has to be represented. This is just a vital brick in the wall of democracy, and I would say that 99 per cent of Norway understands that this is absolutely essential to a sound justice system.'⁵⁴

11.3. The Indictment

On 7 March 2012 the indictment was formally read out to Breivik in his cell at the Ila Prison, just outside the city of Oslo.⁵⁵ After some debate and pressure from the Norwegian public, the director of public prosecutions also included the full names of the victims and the details of their deaths.⁵⁶ The statement held Breivik responsible for:

Having committed a terrorist act in [...] bringing about an explosion whereby loss of human life or extensive damage to the property of others could easily be caused [...] and] premeditated murder where particularly aggravating circumstances prevail [...] with the intention of seriously disrupting a function of vital importance to society, such as the executive authority or seriously intimidating a population.⁵⁷

Norway had not experienced an offence of this magnitude since the Second World War, nor a perpetrator so fully committed to his crime as Breivik. The prosecutor therefore felt that 'new serious offences of the same nature may recur'.⁵⁸ The indictment further reiterated a forensic psychiatric statement from 29 November 2011 by Torgeir Husby and Synne Sørheim who had diagnosed Breivik as psychotic at the time of the criminal actions and during their observation after his arrest.⁵⁹ The prosecution adopted their conclusions that Breivik was suffering from the delusion that he was 'participating in a civil war where he is responsible for deciding who shall live and die, and that he expects a power takeover in Europe'.⁶⁰ Given this diagnosis, the experts assumed 'that

a similar scenario might unfold in the future, and believe that there is a significant risk that people in the subject's proximity, like prison or hospital employees, may also become part of his paranoid delusional world and included in his homicidal thoughts'.⁶¹ Breivik himself did not seem to have any insight into his illness.⁶² Consequently, 'the requirement that he be judged sane has not been fulfilled',⁶³ and the prosecution required 'a sentence ordering his transfer to compulsory mental health care'.⁶⁴

This conclusion became a bone of contention during the next weeks and throughout the period of the trial. Due to heavy criticism from many experts on forensic psychiatry as well as from experts on terrorism and right-wing extremism, the appointed judges decided in mid-January 2012 to order a second opinion, appointing a new team of psychiatrists to assess Breivik's sanity. They reached the opposite conclusion to the first psychiatric assessment, finding Breivik to be suffering from serious personality disorders but not insane. With two conflicting psychiatric assessments, it became up to the court to decide. Contrary to Breivik's wishes and strategy, it was not the attacks or his manifesto that was centre stage, but the trial gravitated around the question of his sanity.

11.4. The 22 July Trial

The extraordinary dimensions of the trial—the number of victims and relatives, and the global span of the media attention—took a heavy toll on the authorities. Presiding judge Wenche E. Arntzen admitted that the case raised both practical and legal dilemmas for the court system; the court had to acknowledge and illuminate the gruesome and brutal details, did not want to compromise the legal rights of the perpetrator, all while being respectful and considerate towards the victims and their relatives present. An almost impossible combination of objectives.⁶⁵

The trial started on 16 April 2012, lasting until 22 June. The main actors present were the court administration, the defendant and his defence team, the prosecutors, the two court-appointed psychiatric teams, as well as the legal representatives of the victims. Expert witnesses, police witnesses, victims and other witnesses prepared their performance, and both victims and national and international media institutions were given a number of seats in Courtroom 250 in the Oslo Court House, or in a number of television-linked courtrooms in Oslo and elsewhere in Norway. Parts of the proceedings were also broadcast on national television—unusual openness even by Norwegian standards.

As explained in this book's introduction and elsewhere, terrorist trials are often more about the performance than the verdict.⁶⁶ This was certainly true of the '22 July trial'—as the court sessions were labelled in public, in order to avoid honouring Breivik's name. Public tension and expectations around the trial did not relate to the question of guilt (contrary to other terrorism trials), as Breivik's culpability was undisputed. The debates and often emotional interventions concerned rather the organisation of the trial, the possible behaviour of the defendant in court, and the plight of the victims and relatives. Public debate, however, focussed predominantly on the question of Breivik's mental state. Would the defendant be found mentally accountable, or would he be ruled insane, and hence sentenced to compulsory mental health care—a prospect that inspired quite some public indignation?

The trial attracted massive attention, not only in Norway, but all over the world. Apart from Breivik's evidence and that of his witnesses and details about the individual killings, much of the court proceedings were broadcast live. Only the newspaper *Dagbladet* offered a 'Breivik free zone', where a click on a black button would conceal all Breivik related articles.⁶⁷ The Oslo District Court had estimated that the trial would attract 1,000–1,400 people on a daily basis and built a new high-security courtroom. In the main courtroom 190 places were reserved for the victims. About 2,500 people were able to follow the trial via a live-streamed video broadcast in 18 courts around the country.⁶⁸ In addition, facilities were provided for about 1,500 journalists. The total cost of these arrangements was estimated at 76 million Kroner (€10.5 million).⁶⁹ Breivik got the stage he was expecting.

11.5. Strategies in Court

On 16 April 2012 Breivik entered the courtroom, clenched his right fist, touched his heart and extended his arm. The salute was described in his manifesto:

The military salutation of the [...] Knights Templar is the clenched fist salute. The raised fist salute consists of raising the right arm with a clenched fist (preferably with a white glove). The clenched fist symbolizes strength, honour and defiance against the Marxist tyrants of Europe while the white glove symbolizes purity, duty, kinship and martyrdom. Using the right arm symbolizes the tradition of the 'Right Opposition'.⁷⁰

Public prosecutor Inga Bejer Engh responded by walking towards him and merely shaking his hand.⁷¹ Later that day Breivik made it clear that he did not acknowledge

the legitimacy of the court. 'I do not recognise the Norwegian courts. You have received your mandate from political parties which support multiculturalism.'⁷² He specifically denied the authority of presiding judge Wenche Elizabeth Arntzen, whom Breivik accused of partiality. Arntzen was close friends with the former Norwegian Prime Minister Gro Harlem Brundtland's sister, the same Brundtland whom Breivik had wanted to kill at Utøya. He however refrained from making a formal assertion. All in all, the first day already saw a number of highly performative strategies in the courtroom. We will discuss below the strategies adopted by the prosecution and the defence team, including Breivik's own performance.

11.5.1. *The Prosecution's Strategy*

The prosecution's strategy was threefold. First and foremost, Breivik's atrocious deeds had to be put before the judges in full detail. Second, justice should be administered as normal. And, third, Breivik had to be found insane and sentenced to mental health care.

The handshakes with Breivik initiated by prosecutors Engh and Holden illustrate the second point. Whereas international media reported it as 'a bizarre protocol',⁷³ a 'rare sight in the U.S., as well as in neighbouring Sweden and other Nordic nations',⁷⁴ Bejer Engh defended her gesture. 'My goal has been to treat him like any other criminal, and I think that's important', she said.⁷⁵

The prosecution's first goal, however, was to do justice to the victims, their relatives and their emotions as well. Therefore, a highly detailed account of the course of events was presented.⁷⁶ On the first day the names and causes of death of all of the 77 victims as well as the names and the injuries of the wounded were read out in court by prosecutor Inga Bejer Engh. Parts of this record were repeated and included by the judges in the final verdict. Engh and her colleague Svein Holden described the horrible circumstances of the attacks in full detail: 'He shot at people who were fleeing or hiding, or whom he lured out by saying he was a policeman.'⁷⁷

After that, security-camera footage and recorded mobile phone calls from victims in Oslo and Utøya were produced, such as the phone call Renate Tårnes made while hiding in the toilets and whispering to the emergency services, 'Come quickly [...] There's shooting all the time.'⁷⁸ Some of the victims and relatives left the courtroom; Holden himself later admitted that it had been almost unbearable to listen to these recordings. The prosecution asked different survivors and family members of victims to describe what they had endured and what the consequences of the attacks had been for them. Other stories were read out by the prosecution themselves.

The third aspect of the prosecution's strategy proved to be the most controversial. From the first days onwards, the prosecutors did everything to identify flaws and errors within Breivik's stories. By portraying his 'militant ultra-nationalist' narrative as a delusion, the prosecution wanted to convince the 'mainstream' Norwegian public of its point of view, while at the same time undermining Breivik's possible future martyr status for other right-wing radicals.⁷⁹

In line with this, the prosecutors repeatedly tried to refute the existence of the Knights Templar organisation. When Breivik refused to produce any detail of the founding session of the organisation in London in 2002, Bejer Engh questioned the whole meeting:

Engh: '[...] but what I think is important that you have in mind now is that you explain to the court what is true and how you have experienced it. That is what is important to get, not what you may remember and have told the police [or] not told the police, but you have to make a choice now to tell what you believe is true and how you experienced these events'.

Breivik:—'Mm. But ...'

Engh:—'This is your chance ...'

Breivik:—'I also understand the role of the police, versus my role. It's not my job to investigate this matter. It's not my job to provide information that leads to arrests. It is the police's job. And I do not want to contribute to that happening. And another thing that I also react to, I know how you and Holden have put up examination, and that is very special, then, that you and Holden ignore radicalisation points ... [inaudible] that you have found the reason why this has happened, rather than you have chosen a strategy of delegitimisation to try to strip me [of my] credibility. Instead of trying to find out the reasons ... you see, or what?'⁸⁰

Breivik's trip to Liberia, allegedly to meet a Serbian warlord, was questioned as well. According to the prosecutors, the only reason the defendant went to Liberia was to purchase so-called 'blood diamonds':

Breivik:—'I do not want to comment on Liberia or London.'

Engh:—'No ... Why did you try?'

Breivik:—'I'm not going to comment on it.'

Engh:—'What is the risk in saying something about this now, Breivik?'

Breivik:—'No, well, I do not want to make your [delegitimisation] efforts easier. But I may well help to clarify points related to radicalisation points.'

Engh:—‘We did a little bit yesterday, we walked a bit through it yesterday, and we can certainly come back to it later.’

Breivik:—‘It is well that it is essential in this case.’

Engh:—‘Yes, of course. It’s an important part.’

Breivik:—‘Do not try to ridicule me.’

Engh:—‘No, not trying to ridicule you. I am trying to shed light on the matter’.⁸¹

These two quotations illustrate that Breivik did see through the strategy of the prosecutors, and resisted their attempts. The prosecutors put him in a defensive position though, e.g. when Svein Holden revealed how Breivik sold fake diplomas and degree certificates and how he lost his long-term job.⁸² The question, however, remained whether Breivik really considered himself ‘master over life and death’ and believed in his own phantasies, or whether he was playing a game and following his own strategy of mobilising a potential core of followers.

Interestingly, Professor Einar Kringlen, one of the grand old men in Norwegian psychiatry who for months supported the first report, changed his view after seeing Breivik in court, concluding that he did not display any signs of being psychotic.⁸³ The first team of forensic psychiatrists who had found Breivik psychotic and suffering from paranoid schizophrenia did not change their assessment during the trial. When challenged by the judges on why they had not consulted external experts on right-wing extremism and terrorism when they, admittedly, had no knowledge of this, they stated, ‘If someone had claimed that he was Jesus or Napoleon, we would not have seen any need to consult a theologian or a historian.’⁸⁴

In their closing statement, the prosecution argued for a sentence of compulsory mental health care. They acknowledged that evidence presented during the trial could support the argument that Breivik was not psychotic on 22 July.⁸⁵ However, they reasoned that *the doubt* about his mental state, seen in the light of the existing legislation and practice, ruled out punishment, and so they called for compulsory mental health care. They argued that it would be far worse to give one psychotic preventive detention than force a non-psychotic to have psychiatric treatment.⁸⁶

11.5.2. Breivik’s Strategy

Before carrying out his attacks, Breivik was aware that a trial could provide him with a stage to the world. He wrote in his manifesto, ‘If you for some reason survive the

operation you will be apprehended and arrested. This is the point where most heroic Knights would call it a day. However, this is not the case for a Justiciar Knight. Your arrest will mark the initiation of the propaganda phase. [...] Your trial offers you a stage to the world.’⁸⁷

For his ‘propaganda phase’ it was not only the attacks, but even more so a subsequent trial that would enable him to communicate with like-minded people from all over the globe. Illustrative of this intention was his request to wear his self-made uniform covered with medals of honour, portraying himself as a military war-hero.⁸⁸ Breivik did not try to ‘win’ the trial in terms of avoiding imprisonment—after all, he did not deny perpetrating the attacks—but used the trial to win over more sympathisers to his mission. He wanted to generate a ‘maximum amount of sympathisers and supporters’.⁸⁹ The newspaper *Verdens Gang* published extracts of a letter Breivik sent from his cell in which the defendant underscored this point: ‘The process looks like a circus with 450 accredited journalists from all over the whole world. I cannot say I look forward to it, but it is certainly a unique opportunity to explain the idea of 2083.’⁹⁰

This was also reflected in the letter Breivik sent to Beate Zschäpe, who stood accused of acting as an accessory on ten right-wing extremist murder counts in Germany, in May 2012. The letter was intercepted by the authorities and was obtained by the German magazine *Der Spiegel*. It opened with ‘Dear sister Beate!’, and discussed what Breivik thought were the political motives behind the acts of which Zschäpe was being accused. In this letter he advised her to ‘reveal [her] political motives to the population’ and that she should use her impending trial ‘to spread right-wing propaganda’ as he had done as well.⁹¹

A Ruthless Hardliner with a Pompous Posture Meeting Psychiatry

For Breivik to use his trial as a podium he needed to avoid being labelled ‘insane’. From the moment Breivik was arrested he sought to reinforce the fear that he had caused by his gruesome actions. He did so by claiming that two other cells were ready to strike and that he was a Justiciar Knight Commander of the European Knights Templar network; presenting it as an elitist initiative for militant ultra-nationalists against the Cultural Marxists and the threat from Islam.

Breivik did nothing to moderate this impression for the following weeks and months. In the first remand hearing on 25 July he demanded that he be allowed to wear his self-made Commander uniform, but this was refused by the judge due to the seriousness of the case and because it would be disturbing, provocative and offensive.⁹²

His defence team, led by attorney Geir Lippestad, from the start had an agreement with Breivik that they would take care of the legal issues, while Breivik could do whatever he wanted with everything else, including the political dimensions.⁹³ Following this, the defence planned a strategy to go for a delusion plea that Breivik was mentally ill and not responsible for his actions, with compulsory mental health care as the outcome of the forthcoming trial. The defendant initially had no objections to this. At the same time, the court initiated a psychiatric evaluation of the perpetrator, and on 28 July the forensic psychiatrists Torgeir Husby and Synne Sørheim were given the task. Not surprisingly, the question of the mental condition of the perpetrator was of great public interest and it was widely covered in the media.

The two psychiatrists delivered their report on 29 November 2011, concluding that Breivik was suffering from *paranoid schizophrenia*, and that he was *psychotic* during the attacks and the period of observation afterwards. This assessment had a profound impact on the strategies of Breivik and his defence; as well as the Attorney General and the prosecution, represented in court by Svein Holden and Inga Bejer Engh.

For the prosecution, the report became the basis for the indictment drafted by the Attorney General, who concluded that they had no other alternative than to go for an insanity plea and that he should be sentenced to compulsory mental health care, which also meant that Breivik could not be held accountable or be punished for his acts.

For Breivik the report came as a disastrous shock. Even though he knew that the defence team was working for a compulsory mental health care verdict without objection on his part, he immediately characterised the first report as *the ultimate humiliation*.⁹⁴ This fear of being regarded as mentally ill is not uncommon in terrorists eager to communicate an ideological message. The Unabomber Theodore Kaczynski is another example in this regard.⁹⁵

Breivik was outraged by the first psychiatric report's conclusion that he was a paranoid schizophrenic. In a 38-page letter he wrote that it was the 'worst that could happen [...] as it would be the ultimate humiliation. [...] Sending a political activist to a mental hospital is more sadistic and cruel than killing him! It is a fate worse than death.'⁹⁶ If he wanted to inspire future generations of violent right-wing extremists he needed to be perceived not as a loony who should be locked up in a mental hospital but as a rational being who was not afraid to rise from the passive masses and express a widely-shared belief. Breivik therefore requested his lawyer Geir Lippestad from now on not to plead insanity as a strategy for escaping a long prison sentence. On the contrary, refuting the insanity imputation should be one of the main goals of the defence.

In response to the first psychiatric report Breivik claimed that 80 per cent of the information regarding the interviews which formed the basis of the report was ‘fictional, malicious or very sophisticated lies’.⁹⁷ He claimed to have found 200 errors in the report and questioned the integrity of the researchers, stating that ‘their political views made them obfuscate the accounts of their sessions [...]. Their aim was quite clearly to create the premises that support the diagnosis they reached early on.’⁹⁸

In addition to the first psychiatric report there were two other important factors that made a considerable impact on Breivik. Firstly, he was granted access to newspapers two weeks after the report, effective from 13 December 2011 onwards. The defence had collected newspapers from the time after the attacks and it is most likely that the news media’s description of him did not live up to his expectations. Secondly, he started receiving letters from sympathisers around the world who made the point that an insanity verdict would destroy his chances of being taken seriously and make him only a parenthesis in the history books. So in a few weeks the psychiatric report, the media access and letters from sympathisers affected Breivik profoundly. As stated by attorney Lippestad, to Breivik the insanity issue now became a question about politics and not his own personality.⁹⁹ He therefore decided to change the defence strategy; a message that Lippestad received on 23 December.¹⁰⁰ It seems that the strategy for a delusion plea was abandoned at this point, although the defence waited to announce this fact.

Towards a Second Psychiatric Evaluation

The first forensic psychiatric report was controversial from the day the main conclusions were made public in late November 2011. The report was highly confidential but was soon leaked to journalists who gave experts, and later the public, access to it. The report and its conclusions came under heavy fire from two different groups of experts. On one side, leading psychiatrists and psychologists claimed that the diagnosis of paranoid schizophrenia and psychosis was wrong and not documented in the material presented. From another perspective, experts on right-wing extremism (including Tore Bjørgo, one of the authors of this chapter) claimed that the psychiatrists clearly had no knowledge about the ideological context of Breivik’s acts and statements, and misinterpreted them as expressions of paranoid misconceptions, although they were quite mainstream among militant right-wing extremists.

In an newspaper article, Tore Bjørgo stated that the report reminded him of two Norwegian psychiatrists who went into the jungles of New Guinea to assess the sanity of the locals without any cultural knowledge.¹⁰¹ Both Breivik’s terminology and his world view were of a typical right-extremist nature. Lacking knowledge

about this ideological context, the forensic psychiatrists misinterpreted many of Breivik statements, such as assessing his claims that he was engaging in a civil war as ‘expressions of paranoid misconceptions’. Likewise, his suspicion that he was under security service surveillance, and the measures he took to avoid such surveillance, was interpreted as ‘expressions of paranoid misconceptions’. However, in this respect, Breivik was more reality-oriented than his psychiatrists—he *should* have been under surveillance by the security services and had every reason to believe that he was. The psychiatrists relied solely on a psychiatric frame of reference and did not consider any alternative hypotheses or interpretations.¹⁰² These points were later repeated and elaborated in Bjørge’s evidence as an expert witness during the trial.¹⁰³

The fierce public debate and the professional disagreement among leading psychiatrists in Norway about Breivik’s mental health led to an uncertainty the court was uncomfortable with. The judges in the case had also noted that the experienced staff at Ila Prison, who included one of Norway’s leading experts on forensic psychiatry, had not observed any signs of psychosis. The judges found no strong arguments against getting a second opinion, and in mid-January 2012 the court appointed psychiatrists Agnar Aspaas and Terje Tørrisen for a second evaluation and report.¹⁰⁴

However, this unusual move was not well received by the main parties, by the defence or the prosecution. The Attorney General and the prosecutors had already stated that the psychiatric report was ‘very thorough’ and had apparently committed themselves strongly to its conclusions. They saw no point in having a second psychiatric assessment. Even if it came to the opposite conclusion, the first assessment had already established sufficient doubt about Breivik’s mental health state for the court to have no other option than to sentence him to compulsory mental health care. The defendant should have the benefit of the doubt, and compulsory psychiatric treatment was considered lighter than a prison sentence and preventive detention. Breivik’s attorneys appealed the order for a second psychiatric evaluation all the way to the High Court, not knowing then that the result of the report would ultimately become one of their best arguments. The defence lost in the High Court on 15 February, and two days later Lippestad stated that they had abandoned the insanity plea strategy, and instead were going for a *criminally responsible* plea.¹⁰⁵ By the end of February the new psychiatric team had initiated a three-week long compulsory observation period of Breivik, who at this point had decided to cooperate, probably realising he had nothing to lose.

Another thing to note from this period is that the police team interviewing Breivik noted a clear shift from early March onwards in the way that he spoke about the Knights Templar and the compendium.¹⁰⁶ He altered the time when he started

planning the attacks, he changed parts of the terminology he used and he played down the importance of the Knights Templar during police interrogation.¹⁰⁷

In their report delivered on 10 April, less than a week before the trial began, Aspaas and Tørrisen concluded that Breivik was sane at the time of the attacks; in other words, that he was not suffering from paranoid schizophrenia and that he was not psychotic during the attacks. They found him to have a *dissocial personality disorder* and a *narcissistic personality disorder*, and concluded that Breivik was fit for a prison sentence.¹⁰⁸ This report was far better received in the media and among most experts.¹⁰⁹ Breivik was said to be ‘satisfied with the findings and had counted on it’.¹¹⁰ He felt, however, compelled to attune his previous ‘pompous’ posture to these new findings, as became clear during the first day of his stage performance.

Following the debate after the first report and the appointment of the second psychiatric evaluation team, the Attorney General and the prosecution could have changed their strategy. The Attorney General stated they would be open and dynamic in the process towards the trial, but stuck to the original path of an insanity plea anyway, partly in order to avoid a delay in the trial.¹¹¹ Critics claimed that the prosecution had put so much stock on the first psychiatric assessment and the delusion plea that it could not afford to change its position.

Breivik's Performance in Court

Breivik started his first day in court by making a form of fascist style salute.¹¹² He also took an hour for his opening statement (twice the time allocated to him), very much annoying the lawyers representing the victims. The speech was, however, not as offensive and far-fetched with regard to its content as what he had earlier produced for the police and in the remand hearings during the first months after his arrest. For example, he mentioned the Knights Templar network just once during the opening statement, clearly trying to play down its importance.¹¹³ Later during the trial he continued to downplay the elite impression of the network, although continuing to claim that it existed.

In general, Breivik tried hard to appear less fanatical and ‘pompous’—that was the word he used frequently—in the trial than he did earlier in the process, following a strategy that aimed to avoid being found deluded and sent to the ‘madhouse’. He explained why he previously had used a more pompous style:

If, let us say, you represent a group and want to communicate in a way that will optimise the propaganda effect, you communicate in a pompous way. Rather than telling about four sweaty guys in a cellar, you use other ways to describe it.¹¹⁴

He openly admitted that what he now said in court was influenced by the fact that there were four psychiatrists present in the courtroom. He wanted to avoid being sent to a madhouse.¹¹⁵ He argued that the prosecution wanted to make him look ridiculous, and he got irritated when titles and uniforms of the KT network were brought up again and again, as he wanted to play down this dimension.¹¹⁶ He also admitted that he initially *did* want to use the uniform in court, but that he realised it would be unwise due to the psychiatric assessment.¹¹⁷ In general, Breivik stayed calm throughout the trial, also during the only sequence with some drama, when an Iraqi present in the courtroom threw a shoe at him, hitting his assistant defence attorney.¹¹⁸ One of the few times he did seem disturbed was when victims and their families stood and marched out of the courtroom when he started giving his closing statement on 22 June.¹¹⁹ Another rare occasion was early in the trial, when he was moved to tears as his YouTube film was played. According to judge Arntzen, his ability to keep focus actually proved to be beneficial for him, because seeing his performance and hearing him speak and argue gave the court valuable information as to whether he was psychotic or not.¹²⁰

As described, the psychiatric evaluation and the fear of a delusion verdict were the main constraining factors for Breivik during the trial process; they are the most likely explanation for the change of behaviour compared to his posture during the autumn of 2011. We must also remember that Breivik had media access during the trial and that he could play to that as well.

In court, psychiatric experts testified and debated their findings. One of them, Professor Ulrik Fredrik Malt, told the court that Breivik did not appear to be suffering from the kind of delusions or hallucinations that indicate schizophrenia, therewith refuting the conclusions of the first report. However, he agreed that Breivik could not be treated as a criminal responsible for his actions. He said that he believed that '[Breivik] is suffering from something other than just political extremism'.¹²¹ Hearing this evidence, Breivik was clearly insulted. But at the end of the day when he was given the opportunity to comment he said that he 'want[ed] to congratulate Malt with a well-executed character assassination. At first I thought it was offensive, but eventually it was just ridiculous.'¹²² As with others who tried to validate his insanity, Breivik responded by questioning their professionalism.

Breivik lost much time and energy fighting the insanity charges, which inhibited his real aim, of presenting himself as a right-wing vanguard in 'the battle against Islamism and its defenders'. He felt compelled to upgrade his status as a political activist by calling upon different far-right activists as witnesses, like Tore Tvedt (Vigrid Group), Arne Tumyr (Stop Islamisation of Norway) and anti-Islamist blogger

Fjordman. Through these witnesses the defence tried to demonstrate that Breivik was not a lone lunatic, but indeed represented a broader current of political extremism.

It had become apparent that Breivik's strategy would consist of two intertwined parts. As described above, the psychiatric inquiry forced him to focus on convincing people of his sanity. But his primary aim was to convince as many people as possible to consider the plausibility of the ideas he had described in his manifesto, i.e. to convince others of the dangers of invading enemy Muslims and the ruling of spineless multiculturalists.¹²³ In other words, to be viewed as sane—by the judges but also by the general audience—was an important precondition for using his trial as a stage.

How exactly did he try to use the stage and reach his audience? A central part of this strategy consisted of repeatedly proclaiming the significance of the (future) number of adherents to his ideology. This tied in with his manifesto, in which he had constructed an audience, real or imaginative, to whom he could address his message. For example, Breivik frequently used the collective 'we' in his manifesto, and during his trial to refer to those who shared his right-wing ideas.¹²⁴ At the same time, he portrayed people he disagreed with as ignorant or weak. Breivik's narrative offered people an opportunity to belong to an alliance which would eventually win the 'European culture war'. In his final statement in court, Breivik once again appealed to his imaginary audience of potential supporters and sympathisers. With his statement of regret—cut short halfway through by an irritated judge Arntzen—he wanted to apologise to 'all militant nationalists in Norway and in Europe for not having killed more traitors'.¹²⁵

During the trial, Breivik regularly illustrated this point as well. His statements on, and direct salutations to, the Knights Templar are perhaps the most prominent examples. This alleged secret and exclusive organisation, with members' cells all across Europe, would stand by Breivik's side and would be responsible for future attacks. In the letter to Zschäpe he wrote for example:

If it is clear that you are indeed a militant nationalist that chose to contribute this way than you will be regarded in a lot of people's eyes as a courageous nationalist resistance hero who did everything you could and sacrificed everything to stop multiculturalism and the Islamisation of Germany. [...] We are both among the first rain drops which indicate that there is a massive purifying storm approaching Europe. And within the next decades more and more Europeans will acknowledge our sacrifice. Western European prisons will be filled by anti-communist/anti-Islamic resistance fighters like us. The treacherous cultural Marxists and multiculturalists will eventually lose

this European culture-war. In fact, they have already lost, they don't know it yet, because multiculturalism is in fact a self-defeating ideology. We are both martyrs for the conservative revolution and you should be extremely proud of your sacrifice and efforts. Know your sacrifice is being celebrated in northern-Europe by tens of thousands of cultural conservatives.¹²⁶

Breivik presented himself over and over again as the European hero who came to the rescue on behalf of a suppressed European people. He defended his attacks as the only way to prevent the Islamisation of the continent, saying he would do it all again, because he was 'trying to prevent civil war in Norway in the future. I and others in Europe are convinced we can avert a major civil war. If we wait another 20–30 years, ethnic Europeans will be in the minority'. In Breivik's opinion, his actions were 'based on goodness, not evil',¹²⁷ and he was acting 'out of necessity'.¹²⁸ Breivik acknowledged that the 22 July attacks were barbarian—but on only a limited scale compared to the acts of a future civil war as caused by Europe's inevitable Islamisation. He even went as far as to describe his deeds as 'gruesome but necessary'. He had 'acted against human nature', and he apologised for innocent casualties, referring to those without political connections. He also said that he understood the loss inflicted on the victims' families, as he had lost his friends and family after the attack as well.¹²⁹ At the same time, however, he did not show any emotion or remorse. During the first days of the trial, Breivik described his attacks as 'the most spectacular sophisticated political acts in Europe since the Second World War'.

Another example of Breivik's lack of anxiety in court was when he commented on the possible future verdict on the first day of the trial. In his opinion his trial could have only two possible outcomes: the death penalty or acquittal. A maximum sentence of 21 years would be 'pathetic'. The only exception to this posture of aloofness was his breakdown during the projection of the propaganda video he had made himself. When asked why he wept, he replied, 'Because I think that my country is dying and that my ethnic group is dying.'¹³⁰

Although the victims' and survivors' lawyers received many messages of protest from people who felt Breivik's statements were extremely offensive, and despite the fact that the judges tried to limit his rampages, Breivik demanded to continue in order to explain his motives. His legal counsel Geir Lippestad, acknowledged the victims' suffering, and understood that they did not want the court to turn into a theatrical performance. However, the defence team did not inhibit their defendant in voicing his claims, saying, 'he has a right as a defendant in Norwegian law to give a statement, and also a human right'.¹³¹

In his final statement Breivik again reiterated that he did not recognise the court because of its ‘mandate from political parties that support multiculturalism’. He added that:

By discarding my allegations of the principle of necessity and sentencing a representative of the Norwegian resistance movement you have sided with the multicultural majority in parliament and therefore you also expressed support for the multiculturalist ideology. Since I do not recognise this court I cannot legitimize the Oslo district court by accepting this sentence. In my view this sentence and judgment is illegitimate and at the same time I cannot appeal against the judgment because by appealing I would legitimize the court.¹³²

Based on his statements and behaviour in court, Breivik’s performative strategy was to rebel against the Norwegian judicial system in which he was forced to participate by means of his own trial. It seems clear therefore that delegitimising this system had become an integral part of his right-wing extremist communications.

Breivik’s Strategy: A ‘Self-evaluation’

After describing some features of the trial, it is interesting to have a look at what Breivik wrote in his compendium about trial proceedings and defence attorneys. There he states that a trial is an excellent opportunity and a well-suited arena the Justiciar Knight can use to propagate his case.¹³³ As such, he clearly sees the court as a theatre, where the defendant is playing the key role with a unique opportunity to present his ideology and views to a wider audience. In the compendium, Breivik is quite detailed about how the defendant should behave and present demands to the court, presenting the audience with a given scenario, and in so doing prepare both enemies and the public for what lies ahead, in what he describes as a not too distant future.¹³⁴ He especially gives a great deal of attention to the opening statement and the closing statement, and he provides ready-to-use scripts that any ultra-nationalist could use if arrested.¹³⁵

Breivik also devoted more than two pages to finding the right defence attorney for a trial, stressing that the defendant should reject any appointed public attorney and search for a patriotic-oriented one.¹³⁶ He lists three primary tasks with regard to what to expect from a well-suited defence attorney:¹³⁷

1. Willingness to facilitate you logistically.
2. Willingness to facilitate you ideologically.
3. Willingness to facilitate you to build a case against the regime.

As described, Breivik's priority was to find a lawyer who shared his ideas and ideology, rather than focusing on professional skills. He acknowledged that finding such a lawyer might be difficult, but emphasised that it was absolutely necessary in order to achieve a proper defence.

This begs the question: did Breivik himself act in accordance with the compendium? In some ways he did and in some ways he did not. First of all, even after declaring that he did not recognise the legitimacy of the court in itself, the defendant gave a great deal of attention to the proceedings, was well prepared for the meetings, following every sequence closely and made use of his right to comment on statements made by witnesses and expert witnesses. He used the opening and closing statement rounds as expected, but the content was not the same as in the compendium, but rather adjusted to his situation. As such, the static and descriptive nature of the manuscripts in the compendium did not work, due to the dynamics of the trial. It is like wars, they tend to take on a life of their own when first set in motion. Likewise, he did not foresee that he would have to concentrate on avoiding a delusion verdict, and this constrained him significantly in court.

Secondly, Breivik also recommended in his compendium appointing a defence attorney who endorses the defendant's political agenda. Indeed, Lippestad performed his duty as a defence attorney in a highly professional manner, actually receiving a good deal of public credit for his handling of the difficult task, even from the surviving victims and family members. Very much so because he did not defend the actions of the perpetrator, but focused on his legal rights in a clinical fashion, in order to uphold the values of a society governed by law and justice—precisely the values Breivik tried to defeat. In other words, Breivik did not at all get the collaborating type of lawyer he described and recommended in his compendium. The only thing that really corresponded is that he could choose his own lawyer, but the irony was, as mentioned earlier, that Lippestad turned out to be an active member of the Labour Party.

Another irony: one of Breivik's first demands when he was arrested at Utøya was that torture and the death penalty should be reinstated in Norway. A couple of months after he started serving his prison term, he complained about the prison conditions, among other things that he had to write with a soft rubber pen. According to him,

this pen he was given was ‘an almost indescribable manifestation of sadism’, and that it represented a breach of the European Convention on Human Rights and the UN Convention against Torture.¹³⁸

11.5.3. *The Verdict*

As for the court itself, presiding judge Arntzen kept the leash tight from day one, signalling authority over the courtroom and the parties. She continued to do so for the duration of the trial and succeeded in keeping an independent and objective position, not afraid of correcting or asking critical questions to any of the parties involved, including correcting the media. Her firm and focused performance probably contributed to the public acceptance of the trial process and final verdict and sentencing as being just and credible.

The court found Breivik guilty of the attacks carried out on 22 July. He was sentenced to 21 years’ preventive detention in August 2012, with 10 years minimum. In practice this sentence of 21 years may mean that Breivik will be in prison for the rest of his life. His sentence will be reviewed for the first time after ten years but could last his life out (*forvaring*: preventive detention) if he is still deemed to be a danger to society, in which case a sentence can be extended every five years. There is no limit to the number of times the five-year timeframe can be extended. In general, detention can be prolonged by an unlimited number of additional five-year periods as long as the court finds that the convicted person still constitutes a danger to society. In the end, Anders Behring Breivik got the result he hoped for, as his status as a political militant was confirmed, and he avoided the ‘madhouse’ he feared. It was not an option for him to appeal, since he would then risk a different outcome in a subsequent trial. Accordingly, he had to forego a second chance to hold an ideological show-down in court.

11.6. Outside the Courtroom and the Aftermath of the Trial

De Graaf has argued that terrorism trials offer an exceptional opportunity for understanding and countering terrorism, because they are the only place where all actors involved meet: terrorists, state representatives, the judiciary, the audience, surviving victims, terrorist sympathisers, etc.¹³⁹ Furthermore, the media will analyse and broadcast their performances. As a nexus of terrorism violence, law enforcement and public opinion, terrorism trials thus offer an ideal opportunity to showcase justice

in progress and demonstrate how the laws of the country deal with terrorist suspects. A trial provides a theatre, inviting various actors to play out their roles and convince and mobilise the public to advance their narratives of (in)justice.

The judicial objectives refer to the classic principles of a fair trial: doing justice and upholding the rule of law, as laid down in the two penal goals of 1) rehabilitation, 2) prevention¹⁴⁰—and the three informal goals of a trial: 3) truth finding, 4) re-establishing stability in society and restoring the democratic rule of law and 5) providing the need for closure. There are many reasons for this research to focus on the ‘performative effect’—particularly the various performances of the actors in the courtroom—on public opinion. Breivik’s trial provided him with a global stage and was a media spectacle which involved and mobilised many Norwegians as well as spectators abroad.

It would therefore be relevant not only to map the strategies of different actors, but also to investigate how these strategies affected the coping mechanisms in society. Coping is defined as the thoughts and behaviour that people use to manage the internal and external demands of situations that are appraised as stressful.¹⁴¹ Coping is a complex, multidimensional process that is sensitive to the environment and its demands and resources, to personality dispositions that influence the appraisal of stress and resources for coping, and the relationship between these. A trial is thought to assist coping mechanisms as it is a means of truth finding; it also helps to re-establish stability and helps those involved to come to terms with the legal offence perpetrated. It is thus justified to explore how a trial like this affects coping mechanisms within the public domain. The Breivik trial is an excellent example to test this hypothesis as it was clear from the start what happened, how it happened and who the perpetrator was. For research purposes, the public space was narrowed down to the participants present in and around the courtroom in Oslo during the days before and after the trial.¹⁴²

First, for this chapter, quantitative research was undertaken by distributing surveys inquiring about people’s opinions and attitudes towards the Breivik trial. The surveys were distributed on the streets of Oslo for two days, 23 and 25 August 2012, the day before and the day after the final verdict in the trial.¹⁴³ The total number of respondents was 246 of which 124 (50 per cent) were female and 91 (37 per cent) were male (the remaining 13 per cent did not specify gender). The participants’ average age was 30 and they were approached at several locations: in a central square in Oslo, at a subway station, at the central railway station, in a mall, in a park and on the campus of Oslo University. Qualitative interviews with parties directly involved in the trial, such as victims, expert witnesses, members of the 22 July Commission,¹⁴⁴ which was set up

to review and learn from the attacks, and journalists were also conducted. We selected these respondents based upon their expertise either from our own networks or via a snowball-sampling methodology. During these interviews, a number of general questions relating to the strategies in court and the effects of the trial on society were asked.

Those surveyed were asked to indicate whether they were present at Utøya or in Oslo or whether they knew friends/family who were present (most involved) or whether they learned about the attacks through the media (least involved) to establish their level of involvement. The results indicate how intensely penetrating the Breivik attacks were for the respondents in our sample. But also from a macro perspective: a country with a relatively small population (5 million) had to deal with so many people being killed (77) or injured (242) in the attacks. The responses indicate that many people in our sample personally knew someone who was present at and/or suffered as a result of the attacks.

11.6.1. Perceptions regarding the Prosecution's Strategy

The respondents in our sample did not appear to accept the prosecution's insanity plea strategy: a large proportion of the respondents disagreed with the idea that Breivik should receive psychiatric treatment instead of a prison sentence (see table 11.1).

	Agree	Disagree
I believe Breivik is sane.	24 per cent	42 per cent
I believe Breivik is accountable.	60 per cent	30 per cent
I agree with the prosecution's strategy	16 per cent	59 per cent

Table 11.1. Opinion on Breivik's sanity/Accountability

In an interview with journalist Ben McPherson, editor of the newspaper *The Foreigner*, prosecutor Bejer Engh responded to this public sentiment by saying that she understood that people had strong feelings about how to react to Breivik, but that the prosecution's strategy needed to relate to the Norwegian legal framework: 'Otherwise he's won. And you know, he wanted to change Norwegian society and I'm sure he'd feel it was a victory if we gave up our principles. Right at the moment we're being tested—can we hold on to our principles?'¹⁴⁵ She also suggested that even though many

Norwegians disagreed with the prosecutors about how Breivik should be punished, that should not influence their work, saying, ‘then we could just as easily have put it to a public vote’.¹⁴⁶ Therefore, selling this idea to the public had become a part of the strategy. Bejer Engh, one of the prosecutors, argued, ‘We have murderers who have been sentenced to a psychiatric facility who will probably never get out again.’¹⁴⁷ The prosecutors, however, also emphasised that they were committed to human rights and that serious doubt as to a defendant’s mental health should not lead to a prison sentence. The prosecution thus stuck to their argument that Breivik was a delusional lone operator and should be convicted accordingly.

The prosecutors felt that they had sufficiently responded to the victims’ needs and the gravity of the attacks by positioning the victims’ stories centrally in their arguments. Although 59 per cent of the respondents did not agree with the prosecutors’ final argument (the insanity plea), an impressive 74 per cent of the participants surveyed indicated they felt the general prosecutors functioned well.

In short, when relating the prosecution’s strategy back to the goals of a fair trial, it can be argued that the prosecution adhered to the goal of truth finding, spending much time reconstructing Breivik’s crimes. Concerning the goal of retribution, an interesting tension emerged: in a way, trying to have Breivik declared insane and sent to a mental institution would have been ‘the ultimate humiliation’, as Breivik himself admitted. Thus, the insanity strategy could have served the goal of retribution in the sense that Breivik would have received exactly what he did not want. However, Norwegian society strongly objected to the insanity claim and most people felt Breivik knew exactly what he was doing when he carried out his acts and therefore deserved the longest sentence possible, carrying full responsibility for his actions. As for the goal of restoring social peace, the prosecution seemed not to consider this, given the widespread objection in Norwegian society to the insanity plea strategy. However, regarding the goal of upholding the democratic rule of law, the prosecution’s adherence to fair trial standards was shared and respected by the majority of the respondents in our sample. In the end, the collective feeling was that despite the prosecution’s strategy, the trial itself and the way in which Breivik was treated were the ultimate counter-narrative to Breivik’s acts of violence.

11.6.2. Perception of Breivik’s Strategy

The survey asked participants whether they thought the media paid too much, enough or too little attention to Breivik during the. The results (see table 11.2) indicate that most people in this research felt that the media paid enough attention

to Breivik's perspective. Nonetheless, almost a third of respondents felt they paid too much attention to his perspective.

The media paid ...

Too little attention	0 per cent
Little attention	2 per cent
Enough attention	32 per cent
Much attention	35 per cent
Too much attention	31 per cent

Table 11.2. Opinion on the media attention to Breivik's perspective

One specific response to Breivik's performative strategy was the reaction of the public in the square in front of the court building. During the trial, many people gathered to sing the Rainbow Song,¹⁴⁸ a song that Breivik had referred to in court as an example of how Norwegian students were being brainwashed by Marxist propaganda.¹⁴⁹ Displays of collective mourning and the direct response by the general public to Breivik's statements during the trial also demonstrated the involvement of the Norwegian public in the trial. This could be interpreted as society trying to send a message to the government, Breivik and his possible (future) followers. It seemed to stress, in line with the argument put forward by Prime Minister Jens Stoltenberg, the need for a democratic response to the attacks. Similarly, the survey indicated that respondents wanted a structured and inclusive debate about the Norwegian democratic system and refuted the exclusion of certain extremist groups from society or from public debate.

Breivik's aim to use the trial to further his own extremist motives was recognised by the public present in and outside the courtroom. Throughout the trial, the amount of time Breivik was given to make his own statements was a contested issue in the Norwegian media. The discussion centred on the possible effect: it could both inspire and put off potential followers or adherents to right-wing extremism. The copycat effect of Breivik's performative strategy became apparent in the aftermath of the trial when a series of events were in one way or another connected to Breivik. First of all, Breivik's manifesto was translated into many languages, including Russian, Dutch and German. Also, 13 months after Breivik's attacks, a 'Russian Breivik' was arrested in Moscow for shooting and killing six colleagues and releasing a hate manifesto

online.¹⁵⁰ Only a week later, a 29-year-old man in the Czech Republic was charged over a Breivik-style plot, using the name Breivik online and planning a major attack with explosives.¹⁵¹ In November of that same year, Polish authorities arrested a radical nationalist who was planning to blow up the Polish parliament building and who linked himself to Breivik.¹⁵²

Finally, Breivik received many love letters,¹⁵³ as well as correspondence and drawings from children.¹⁵⁴ In a letter he wrote to Tania, a woman who had written to him, he says, 'A lot of people around the world have expressed their support for me, in summary, I have received over 250 letters, most of which are bills, LOL [laughing out loud, social media speak]. About 60% of the letters is positive, 10% is from people who want me to find Jesus, and 30% from those who hate me.'¹⁵⁵

However, overall it seems Breivik's propaganda has led to different outcomes. Major newspapers rejected his articles, and several anti-Islamic ideologues he admired, such as Peder Are Nøstvold Jensen (known as Fjordman), refused his proposals for cooperation.¹⁵⁶ Also, rather than inspiring a new generation of followers or sparking a far-right-extremist revolution in Europe, his public performance during the trial appears to have had the opposite effect. Although European white nationalist movements, of which Breivik represents an extreme fringe, have been on the rise in recent years, the popular backlash against Breivik and his ideology has put them on the defensive. Far-right movements such as the English Defence League denied links to Breivik and dismissed any alleged ideological connections or overlap.¹⁵⁷ When far-right parties held a mass rally in Denmark in April 2012, opposing protesters actually outnumbered them.¹⁵⁸

Finally, the trial was viewed by many as not sending Breivik's message but, instead, effectively demonstrating the quality of the Norwegian criminal justice system to the world. Professor Thomas Mathiesen of Oslo University was quoted as saying that 'the Norwegian system is not about revenge, but sober, dignified treatment' of even the worst criminals.¹⁵⁹

In short, Breivik's performative strategy was immediately recognised as such and vehemently rejected by society at large. The singing of the Rainbow Song and national discussion in the media regarding the amount of attention focussed on Breivik during the trial underscored and defended the importance the Norwegian people ascribe to the democratic system and the rule of law. Both respect for a fair trial, as a cornerstone to a functioning democratic system, and for an inclusive debate demonstrated the Norwegian public's prioritisation of the judicial goals of stabilisation and upholding the democratic rule of law, much more than a plain yearning for retribution or general prevention.

11.6.3. The Breivik Trial as a Coping Mechanism?

How has the trial helped the Norwegian people present in and outside the courtroom in coping with the grief and stress caused by Breivik's attacks?

Our questionnaire asked which goals of a fair trial people find important, and whether they feel these were attained in the Breivik trial. The hypothesis is that if an important goal has been attained by the trial that this then may have helped respondents to cope better. The goals listed in the survey were more detailed than the five classical (formal and informal) goals of criminal justice with additional specifications added:

1. Revenge;
2. Preventing the suspect from committing another crime (specific prevention);
3. Preventing others from committing such a crime (general prevention);
4. Truth-finding;
5. Enabling all the involved parties to present their perspectives;
6. Restoring stability in society;
7. Reaffirming the rule of law and democratic values; and
8. Providing closure.

The outcomes are presented in table 11.3.

	Important	Attained
Revenge	8 per cent	4 per cent
Prevention	75 per cent	56 per cent
Symbolic function	56 per cent	22 per cent
Truth finding	49 per cent	39 per cent
Present perspectives	40 per cent	49 per cent
Restore stability	43 per cent	29 per cent
Democratic values	61 per cent	57 per cent
Provide closure	56 per cent	44 per cent

Table 11.3. Judicial goals: important and attained

One interesting result is the very small number of 18 participants (8 per cent) who viewed *revenge* as an important goal in a fair trial. Even though revenge, or retribution, is one of the classical goals upon which criminal justice in the Western world is based, it appears that for most of the participants in this research, this judicial goal was not that important. Laila Bokhari, a member of the 22 July Commission¹⁶⁰ that investigated the Breivik attacks and the government's performance, commented upon this lack of a perceived need for revenge in Norwegian society:

If you look at the wording in court from the victims, it is not about him [Breivik] or about revenge. In a sense, this is not about Breivik himself. People do not want him to have a role in society. The word revenge has very seldom come out. So retribution in this trial is not so much about revenge, but more about putting back what is right and wrong and focussing on how can we prevent something like this from happening again in the future. And that is also part, I think, of the coping mechanism: looking forward, and not looking back.¹⁶¹

Specific prevention (preventing Breivik from committing another crime) and *democratic values* (restoring the rule of law and democratic values) were viewed as the most important goals of a fair trial. The latter was also confirmed by many of the interviewees. In general, the trial itself was viewed as society's answer to Breivik's (undemocratic) principles and worldview. Most participants (57 per cent) felt that the goal of upholding democratic values through the trial had been achieved. The trial ended with a verdict that declared Breivik sane and legally responsible for his acts. He was sentenced to 21 years in prison but with a 'preventive detention' clause allowing for his time in jail to be extended as long as he is deemed a threat to society.

Regarding *general prevention*, the trial also served an important purpose. On a (inter-)national policy level, the developments and the concerns relating to 'lone-wolf' terrorists like Breivik revealed the need for serious scrutiny of national security strategies. The 22 July Commission had already concluded before the end of the trial that 'All in all, 22 July revealed serious shortfalls in society's emergency preparedness and ability to avert threats [...] The challenges turned out to be ascribable to leadership and communication to a far greater extent than to the lack of response personnel.'¹⁶²

The idea that (right-wing) lone wolf terrorism posed a new serious threat led to an increased emphasis, both inside and outside Norway, on communication in times of crisis, the monitoring of right-wing extremists, but also on the policies that relate to the purchasing and possessing of certain accessories that could be used for terrorist attacks. Janne Kristiansen, former head of the Police Security Service—Norway's

domestic intelligence branch—said that Breivik represented a new paradigm, ‘A lone wolf who has been very intent on staying under the radar of the security services by leading a lawful life’, adding that the unconnected terrorist is ‘one of their biggest worries’.¹⁶³ In the United Kingdom, public figures like Home Secretary Theresa May and one of the founders of the Centre for Fascist, Anti-Fascist and Post-Fascist Studies at Teesside University, Matthew Feldman, highlighted the growing threat of a Breivik-style attack in Britain. May stated that there had been an ‘increased focus on Right-wing groups in the last year or so, particularly since the Breivik incident in Norway. [...] It’s still the case that we’re likely to see a lone actor on the basis of Right-wing extremism.’¹⁶⁴ Feldman concluded that someone like Anders Breivik will be on the radar ‘sooner or later’.¹⁶⁵

However, the most important goal the trial appeared to serve in the eyes of the respondents—something corroborated by reporting in the media—was the goal of closure, closely connected to the trial as a symbol for the defence of the Norwegian democratic system. One of the interviewees, Laila Bokhari, said:

There has been a lot of discussion in the media whether Breivik’s trial was actually preventing or inspiring others and about the role the media has played. What words did they use to describe him, what pictures did they show, etc. In a way, a lot of people argued that just by hearing his words, he would actually fall from his platform because everyone could see for themselves that his statements do not make sense. At the same time, there has been a rising awareness that we as citizens need to be engaged in that discussion, in the media, in political parties, in youth groups, to counter his principles. For example: he used the children’s song, the Rainbow Song, to show his disgust with multiculturalism and what was our reaction? Everyone met up in the square and sang that song. Maybe that is a crazy thing for people to do but I think it is also part of our coping mechanism and saying: ok, we have given him his platform but at the same time, that demands us to be active citizens and respond to his views.¹⁶⁶

So, the trial did produce closure, but did not end the debate. Some open questions as to the quality of the Norwegian approach to right-wing extremism and terrorism remained.

First of all, several experts on right-wing extremism pointed to Breivik’s growing status of hero within right-wing extremists groups, especially if he were allowed to communicate his ideas by writing books and corresponding with like-minded extremists from his prison cell. For example, this was illustrated by the praise Breivik received during a neo-Nazi march in Germany¹⁶⁷ and at several right-wing extremist

festivals.¹⁶⁸ Breivik indeed continued to communicate from his cell. Various letters sent from his prison cell to sympathisers have been published,¹⁶⁹ and in February 2013 he filed a complaint over the prison conditions, which he said were akin to ‘aggravated torture’—prolonged isolation, limited time outside his cell and lack of movement opportunities.¹⁷⁰ From a performative perspective this could be explained as an attempt to fuel support for his case from other right-wing extremists.

Secondly, on a (inter-)national policy level, the developments and the concerns about lone wolf terrorists like Breivik revealed the need for serious scrutiny of national security strategies. In the short run, justice minister Knut Storberget and chief of security services (PST) Janne Kristiansen, both in charge at the time, resigned—but for reasons other than their responsibilities for the 22 July failures. In the longer run, the trial, its ensuing discussions and conclusions led to an increased emphasis, both inside and outside Norway, on effective crisis communications, the monitoring of right-wing extremists, but also on the policies that relate to the purchasing and possession of certain materials and substances that can be used for preparing terrorist attacks. One example is the European regulation which obliges citizens to obtain a permit for purchasing materials like fertiliser and nail polish remover that could be used for making explosives.¹⁷¹ The risk of right-wing extremism, or other brands of lone wolf terrorism, was placed higher on the political agenda, but at the same time many feared that the outcome of this renewed political interest could have a major impact on their privacy and personal freedoms.

11.7. Conclusion

This chapter analysed how the Breivik trial was used by the parties involved to further their performative strategies. All in all, Breivik and his defence team achieved only partial success. The defendant avoided being sent for compulsory mental health treatment and managed to regain his position as a militant activist (terrorist). To some extent he was also able to use the courtroom as a stage, but in a more limited way than he initially thought would be possible. Breivik also missed the opportunity for a second trial show, as he then again would run the risk of being sentenced to compulsory mental health treatment. This illustrates that the static strategy regarding trials and defence procedures prepared in Breivik’s compendium did not foresee the dynamics of a terrorist trial.

The prosecution apparently put too much stock on the first psychiatric report, and did not adjust its strategy significantly in the months before or during the trial. The

prosecution's firm stance did not lead to a conviction in accordance with their primary view, but at the same time the prosecutors did acknowledge in their closing statement the difficult nature of the case and that there were numerous complicating factors to take into consideration. They claimed they were in serious doubt about his sanity and this doubt necessitated that they went for an insanity verdict. Regarding forensic psychiatry, the court clearly put more trust in the second report. An extensive debate on the subject ensued, both inside and outside the professional circles of psychiatry and psychology.

In our survey, we also asked how these strategies related to classical judicial goals, how this relationship was perceived within Norwegian society and how the trial helped society in coming to terms with what had happened on 22 July. It can be concluded that the trial did indeed influence the coping mechanisms of our respondents in a positive way and that most viewed the trial as part of their answer to Breivik's acts, perceiving the trial as a counter-narrative to Breivik's story. Overall, the trial was viewed as an example of a quality performance of justice and as a trial that focussed on the democratic values of Norwegian society—contrary to Breivik's values. One survey respondent summarised this in the following words, 'Don't let one terrorist take our rights.'¹⁷² Paradoxically, Norwegians largely supported the prosecution's strategy, with the major proviso that they did not want Breivik to be declared insane.

The prosecution's strategy to try and have Breivik declared insane and be sent to a mental institution provoked a variety of reactions in Norwegian society and revealed a tension between the prosecution's strategy and the goals of retribution and/or truth-finding. As Breivik himself had said, having him declared insane would have been 'the ultimate humiliation', and therefore that strategy could have served the goal of retribution in the sense that Breivik would have received exactly what he did not want. However, despite the prosecution's strategy, the collective feeling was that the trial itself was fair, as was the way in which Breivik was treated—this being the ultimate answer to Breivik's acts. In spite of their diverging opinions, the prosecution's adherence to fair trial standards was respected by the majority of the respondents to this research. Norway's open and respectful attitude was reflected in the respondents' views on the importance of judicial goals: prevention and democratic goals were seen as the most important objectives of the trial, while rehabilitation was the least important goal for the respondents. The reaction of media around the world to the trial and in particular to the prosecutor's handshake with Breivik showed that Norway may be a unique country in this respect.

Breivik's strategies received widespread attention in the media: both the defence's initial plea for insanity, to escape a lengthy prison sentence, and his strategy to

escape the insanity label in order to be perceived as a rational role model for right-wing extremists were covered by news media. Many (international) commentators questioned whether Breivik exerted too much communicative power during the trial. A substantial number of our respondents (37 per cent) agreed that Breivik received too much attention—in terms both of the amount of time he was given to present his perspective in court and the attention he received from the media. On the other hand, many respondents felt that this attention did not elevate his status, but in fact undermined his position in the sense that anyone could now see that his statements were incoherent and nonsensical, as Laila Bokhari has argued. These results again show that Norwegians trusted that Breivik's opinions would be overruled by moderate opinions and behaviour, leading terrorism researcher Tore Bjørgo to say in an overall assessment of the trial that 'we don't think that the trial has or will produce copy-cats, but we hope that it will instead produce copy-cat trials'.¹⁷³

The influence of a criminal trial on coping is a highly under-researched topic in general, but the influence of a *terrorism* trial on coping with the initial attack is a virtually unexplored issue. Our survey provides some preliminary evidence for a positive relationship between a fair trial—with respect to classical judicial standards—and coping mechanisms in society. When focussing on individuals, a mild positive influence was found: 32 per cent of the interviewees responded that the trial helped them to cope better with their feelings. This might constitute an under-estimation because people are not aware of a direct positive influence of the trial on their feelings, whilst a negative impact would probably have caused a much higher negative result. It can be concluded, therefore, that a fair and transparent trial with enough opportunities for all actors to demonstrate their viewpoints is a necessary condition for strong coping mechanisms in society. However, more research is needed to verify these preliminary findings.

All in all, the Breivik trial could be considered a 'performance of justice', in the broadest, not just formal, but also social sense of the word. As Bokhari points out:

It helped us in the process of understanding what really happened. It put things in perspective. In one way the trial gives Norwegian society a chance to show its values as a response to Breivik and in another way it gives people a chance to understand, gain insight and deal with what happened. In a way we have been forced to ask—and answer—the question of guilt.¹⁷⁴

Notes

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