Terrorists on Trial

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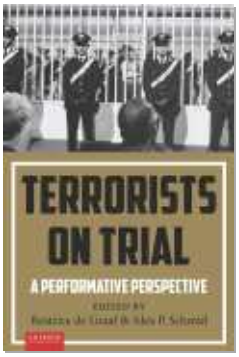

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9. The Hofstad Group on Trial: Sentencing the Terrorist Risk, 2005–2014[1]

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9.1. Introduction

'Our legal system is the "sharia". That is the only system we acknowledge', one of the defendants stated during the trial of Dutch jihadi radicals, a network the secret service internally dubbed the 'Hofstad Group'. At that time, the defendants wore *djellabas*, refused to stand up in court and were visibly encouraged by a number of burqa-clad friends from the public gallery.[2] A distinct performative strategy aimed at rejecting the democratic rule of law guided their behaviour. In terrorism trials, the actors involved often deploy performative strategies intended to mobilise or convince their target audience(s) of their vision of justice and injustice. While the public prosecutors try to invoke the reality of potential terror as allegedly inflicted by the defendants, the defendants may adhere to a completely different set of beliefs, directed against the democratic society or rule of law as such.

In this chapter, we will analyse how conflicting strategies, performances and outcomes of the three subsequent trials against the so-called 'Hofstad Group', between 2005 and 2006 (appeals are included up to 2014) developed over time. While the trial avoids easy characterisation, we discern elements of (1) a virtual trial, (2) a show run by the prosecution, and (3) a media show (with sideshows) that evolved over the years. In this analysis, three trials are discussed, which were closely linked through 'fictive kinship', friendship and the prosecution's projections of guilt: the trial against Mohammed Bouyeri, the trial against the first set of Hofstad Group defendants (the 'Arles' case) and the trial against the second group of suspects (the 'Piranha' case).

9.2. Theory and Method[3]

The trial against the Hofstad Group turned out, for most of the suspects, to be a protracted battle between defendants and public prosecutors about the meaning of texts, the nature of the Hofstad associates' network, the future possibility of terror

attacks and the level of radicalisation, rather than about actual acts of terrorism (Mohammed Bouyeri's murder of Theo van Gogh was the only violent act actually committed). Taking centre stage was not a concrete terrorist attack, nor even a defined plot of preparation, but the question of jihadi innuendo in speech and in writings, in phone calls, in chats and in text messages as well as the question of the organisational nature of jihadist activities in the Netherlands. Therefore, large parts of the trial could be defined as 'virtual trials'. To elaborate on this element of 'virtual reality'—i.e. simulated or imagined reality—it is necessary to point to the concept of 'premediation', that, in the words of Marieke de Goede, enables the virtual or precautionary turn when trying suspects of terrorism.[4]

De Goede and De Graaf have argued[5] that new anti-terrorism legislation since 9/11 has propelled the development of 'anticipatory prosecution',[6] the phenomenon of anticipating and preparing cases based on indication, allegations or even rumours of preparatory deeds, far in advance of projected attacks.[7] This tendency has been identified and analysed before from legal,[8] criminological[9] and political[10] perspectives. We added to that body of literature the observation that *terrorism trials* function as a highly effective performative space where the 'spectre of catastrophe'[11] is invoked, where potential future deeds of terror are projected, contested and adjudicated on—and hence made real.[12]

Here we will analyse the court cases of Mohammed Bouyeri and the two trials against the Hofstad Groupdefendants from the perspective of premediation, as described above and introduced before by Richard Grusin.[13] De Goede (see references above) and Grusin have analysed some of the techniques that have been used to imagine potential future scenarios, to bring them into the present and to make them 'real'. Although these mediated future attacks will never become reality, since the suspects have already been apprehended, and the status of the anticipated attacks will remain virtual forever, they are configured into charges and turned into judgments. Thus, the trials against the Hofstad Group present exceptional cases of virtual adjudication; or, as Claudia Aradau and Rens van Munster have coined it, theatres of a 'conjectural style of reasoning' which 'constructs an explanation out of apparently insignificant details. It links the smallest and most inconsequential facts to a larger context that cannot be directly observed or experienced.'[14]

We will describe and identify how during these trials real or future terror scenarios were mobilised and visualised, how evidence was used, and how these bits, pieces and imaginations were incorporated in the charges and final verdict. At the same time, we will address how the audience, the media, other stakeholders (victims or victims' relatives), and the defendants themselves responded to this virtual or premediative

turn in the criminal justice system. Was this premediated scenario accepted, did the defendants resist it, and in what ways did they try to argue against a strategy that deals with allegations and associations projected onto (merely) future scenarios? In short, we will discuss how these terrorism trials functioned as a site for terrorism risk management such that, in the latter two Hofstad trials, not the attack but the premediated risk of an attack stood trial.

In asking and responding to these questions, we pay tribute to the 'productive power of legal arguments' and the manner in which 'legal arguments are embedded in and reproduce deeper-lying social and symbolic structures'.[15] Terrorism trials are key opportunities to legitimise the scope and substance of post-9/11 terrorism legislation, which is simultaneously implemented, contested and performed. By distinguishing instruments and techniques in courtroom proceedings, we are able to contribute to wider debates on precaution in counter-terrorism, and to analyse the ways in which the logic of what Michael Power calls 'secondary risk management' can function. This kind of risk management strategy is not geared towards actually preventing a calculated catastrophe, but towards addressing explicitly or implicitly the question of political responsibility. Secondary risk management techniques are intended to avert or displace the responsibility and to prevent reputation damage in cases of 'decisions which must be made in potentially undecidable situations'.[16] We will see how the three trials discussed here could indeed be considered sites of anticipatory prosecution and secondary risk management techniques.

9.3. Context of the Trial: The Emergence of the Hofstad Group

9.3.1. The Emergence of the 'Hofstad Group' as a Threat to National Security

From 2002 on, the Dutch intelligence and security agency, AIVD (Algemene Inlichtingen- en Veiligheidsdienst), monitored a group of jihadi radicals; a network which the service dubbed internally 'the Hofstad Group', since it operated partly in the nation's capital, The Hague (*Hofstad* translates as 'capital city'). Except for Mohammed, the murderer of the journalist Theo van Gogh, whose case is discussed later, its alleged core members were under surveillance. Even before December 2001, the AIVD had kept a close eye on the radical Salafist El Tawheed Mosque in Amsterdam-West, looking for any suspicious Egyptian or Saudi influences (the mosque had financial relations with a Saudi non-governmental organisation, Al Haramein International).[17] In the summer of 2002 the secret service identified a group of Muslim young people who met

in and around the mosque and gathered around Redouan al-Issa (then 43 years old), also named 'Abu Khaled' or 'the Sheikh', who had ties to radical Muslims in Spain and Belgium.

Abu Khaled, a former member of the Syrian Muslim Brotherhood, came to the Netherlands in 1995 as an illegal immigrant from Syria. He became a mentor to a number of radical Muslims.[18] He inspired, amongst others, 17-year-old high school student Samir Azzouz, of Moroccan origin, but born and raised in the Netherlands. Samir Azzouz came to the attention of the AIVD in January 2003 when he, together with his friend Khalid (or Hussam, age 17), took the train to Berlin, bound for Chechnya, to join local jihadists in their fight against the Russian forces. At the Ukrainian border, they were arrested and put back on a train to Western Europe. The media described their adventurous journey as an amateurish endeavour, but the two young Islamists had prepared for their trip thoroughly. The police found night vision goggles and a GPS system (which turned out to have been used in Russia) at Samir's residence after their return. The police suspected that the two students were recruited by Redouan al Issa. After his return Azzouz's status rose; he started his own Islamic book company and began only associating with Moroccan young people.[19]

Ismail Akhnikh was another alleged core member of the Hofstad Group, who had international aspirations. The Dutch-Moroccan Akhnikh, born in Amsterdam in 1982, regularly attended the El Tawheed Mosque in Amsterdam where he became acquainted with Azzouz and was believed to have helped him establish the Hofstad network in the autumn of 2002. In the summer of 2003, he may have travelled with Azzouz to Barcelona to meet there with Abdeladim Akoudad for guidance and instructions. This Abdeladim Akoudad (or 'Naoufel'), a Moroccan national living in Spain, was suspected by the Moroccan security services to be involved in the Casablanca terror attacks of 16 March 2003.[20]

In October 2003, Akoudad and Azzouz discussed over the phone 'shoes, first and second rate, coming from Greece or Italy and that will do well in Spain', and 'documents'. At this point, the Spanish authorities intervened and arrested Akoudad on 14 October 2003.[21] Two days later, the AIVD alerted the National Terrorism Prosecutor that Azzouz and other members of the Hofstad Group, all regular visitors to the El Tawheed Mosque and a phone shop in Schiedam which also functioned as a place to meet were probably preparing a terrorist attack. On 17 October arrests were made in several Dutch cities: Samir Azzouz, the Syrian 'Abu Kahled' (or Redouan al-Issa), Jason Walters, Ismail Akhnikh and Mohamed Fahmi Boughaba were apprehended. Apartments, including the house of Mohammed Bouyeri in Amsterdam, were raided.[22]

However, because the allegation of terrorism could not be substantiated, the Hofstad Group members were released after eleven days. Even though a supermarket bag, filled with goods resembling ingredients for constructing explosive devices, including six security glasses, fertiliser, power tape, distilled water, liquid ammonia, hydrochloric acid, batteries, a timer, kitchen gloves, halogen bulbs and chemical cleaner, was retrieved by the police from Mohamed Fahmi Boughaba's apartment, where he had allegedly kept it on Azzouz's instructions, this was not enough evidence to keep the men in custody. Neither a direct link to a terrorist organisation nor any specific terrorist intent could be substantiated.[23]

After their temporary detention in October 2003, Akhnikh, Azzouz and Walters continued to collaborate and urged other Muslims to go abroad to wage jihad.[24] Akhnikh went to Pakistan that year, as did Zakaria Taybi and Jason Walters (who went twice, in July and December 2003). Walters and Akhnikh even bragged about contacts with Maulana Masood Azhar, a core Al Qaeda member—something they later downplayed in court. In June 2004, Nouriddin el Fatmi went to Portugal with other members of the group, among whom was Mohamed El M. The AIVD warned the Portuguese authorities, out of fear that the members were planning to kill José Manuel Durao Barroso (the then president-designate of the European Commission) and other guests during a reception in Oporto, which was organised in honour of the European Soccer Championship that took place in Portugal. The three were arrested and sent back to the Netherlands, where the AIVD and the special anti-terrorism unit of the National Police Services Agencies (KLPD) interrogated them. It finding no evidence of concrete preparations, the men were released.[25] Only when they felt that the security forces in Pakistan, Portugal and the Netherlands were closing in on them did they presumably begin to conspire and confine their scope to their local environment. The next time the security forces intervened to arrest them was after the murder of Van Gogh in November 2004.

The international inspiration and the impulse to organise were believed to have come from their mentor, Redouan al-Issa, who also acted as Bouyeri's mentor until October 2003. With his alleged experience as a martyr, he seemed to have functioned as the charismatic 'magnet' that bound the group together in the beginning, from 2002 onwards. In his seminal study *Leaderless Jihad*, Marc Sageman dismisses Al-Issa's role because 'he seemed to have simply disappeared from his group' and 'the remaining members of the Hofstad Group rarely mentioned him'.[26] Sageman correctly warns against viewing people like Al-Issa as hierarchical leaders or recruiters in the traditional sense of the word. However, precisely because terrorist networks are not static organisations, we should be careful not to dismiss him too soon from the picture.

Moreover, it is only logical that the remaining Hofstad Group members did not mention Al-Issa after their arrests in 2004, since all of them tried to escape conviction and did not confess to terrorist crimes. On the contrary, they denied being part of a terrorist organisation altogether.[27] It would therefore have been rather foolish to comment on their relationship with Al-Issa or to dwell on his role as inspirer of the Hofstad Group. There is another explanation for his disappearance from the scene as well. After the first arrests in October 2003, Al-Issa, as an illegal immigrant, was declared an 'unwanted alien' and deported. His role of inspirer, ideologist and proselytiser was assumed by other leader personalities such as Azzouz and Bouyeri.[28] Al-Issa did return in the course of 2004 (and had contacts with Mohammed Bouyeri), but had too little time to regain his former position or build another network. He fled the Netherlands again on the morning of 2 November when Bouyeri assassinated Theo van Gogh.

Al-Issa's real role within the network still remains vague (because group members remained silent and did not want to compromise their defence strategy) and changed over time (because of counterterrorism efforts). Nonetheless, he should not be underestimated. He was wanted by Morocco and by Spain for involvement in the 2003 Casablanca and the 2004 Madrid bombings. Additionally, he brought the Hofstad Group members together, first through meetings in the El Tawheed Mosque in Amsterdam and subsequently on a more informal basis, at Mohammed Bouyeri's apartment, where he inspired them with stories of international jihad and conducted Islamic marriages.[29] After his apprehension in October 2003, Abu Khaled compared himself to a 'Christian evangelist'. A witness in court, who attended the living room meetings at Bouyeri's home, saw him as a 'priest' and the young people surrounding him as 'disciples'.[30] Only in the course of 2004 did the remaining Dutch members of the network take over his role.[31]

In short, the Hofstad network was organised locally, without any demonstrable direction from an Al Qaeda command centre or from any other identifiable, pre-existing terrorist organisation.[32] It started with some individuals prone to radical jihadist philosophy. But they actively sought inspiration from international contacts, from a foreign preacher and from international Salafist texts. Some members were subsequently recruited to contribute to international jihad in Chechnya and established contacts with terrorists abroad. Only when these attempts in 2002–2003 were thwarted by the intelligence services and their mentor was expelled did they, in 2004, allegedly began to conspire against Dutch targets.[33]

9.3.2. The Murder of Theo van Gogh

On the early morning of 2 November 2004, Mohammed Bouyeri, a 26-year old Dutch-Moroccan, born and raised in Amsterdam, awaited journalist Theo van Gogh in an Amsterdam street, shot him off his bicycle and slaughtered him with a knife in the middle of the street in front of many witnesses.[34] This murder would tremendously affect governmental counter-terrorism efforts.

Bouyeri's action had taken the security services by surprise. From 2002, the AIVD had monitored 'the Hofstad Group', the network of jihadi radicals that Bouyeri was acquainted with.[35] Its core members were under surveillance, but Bouyeri was not viewed as one of them. He did not take part in the foreign trips made by some members and was not considered a main actor in the Dutch jihadi scene.[36] Bouyeri's radical texts calling for violent jihad, disseminated under the name 'Abu Zubair', were noticed only after the police and the AIVD stepped up their investigation into the Hofstad Group after the murder of Van Gogh on 2 November 2004.[37]

However, Bouyeri's radicalisation process had taken some time and was not a solitary process. He grew up in a dreary area in Amsterdam-West as the eldest son (after his sister Saïda) of eight children, but was able to pursue higher education and engaged himself in community development. From 1999 onwards, he rented his own apartment at the Marianne Philipsstraat and studied an accounting course at a college. He became more fundamental and aggressive; for example, he held his sister captive for having an affair. In the summer of 2000 he was involved in a pub brawl, and in the spring of 2001 he attacked his sister's boyfriend. In October, he was sentenced to 12 weeks in prison, where he studied the Koran intensively.[38]

At the end of 2001, when he was released, his father was declared disabled and his mother died of cancer. In 2002, Bouyeri's plans to set up a youth centre in his neighbourhood collapsed. He left college and began to live on unemployment insurance. He now devoted his time completely to studying radical Islamic texts and started wearing fundamentalist clothes. In the El Tawheed Mosque, which he visited frequently, he met with similar radicalising Muslim young people, and a preacher of Syrian descent, Redouan al-Issa, or Abu Khaled.[39]

Bouyeri invited his new soulmates to his apartment, where he organised so-called living-room meetings and listened to lectures by Abu Khaled. He also provided lodgings for one of the alleged key Hofstad Group members: Nouriddin el Fatmi. His mentor, Abu Khaled, taught him and the other members of the Hofstad Group about 'Tawheed' (the unity of Allah), and instructed them on how to live as radical Salafist Muslims. Bouyeri embraced these ideas.[40] After Abu Khaled was expelled from the

Netherlands in October 2003 as an illegal immigrant, Bouyeri took over Khaled's role as spiritual leader. As the ideologue of the Hofstad Group, Bouyeri wrote, translated and disseminated via the internet more than 50 texts, in which he increasingly called his brothers to arms against Dutch society, rather than on behalf of international jihad elsewhere.[41]

In May 2004 he abused an employee of the Social Services, and on 29 September 2004 the police arrested him because he resisted being fined for fare-dodging. The law enforcement officials found on him notes with telephone numbers and e-mail addresses of Hofstad Group members, which they sent to the AIVD. Since he had committed only a minor offence and was not on the list of approximately 150 jihadi radicals the AIVD had identified as a risk to security, Bouyeriwas released. At the time, neither the police nor the AIVD considered Bouyeri to be a serious threat, nor did they take seriously his participation in the jihadi network of the Hofstad Group.[42]

Secondly, although Bouyeri carried out the immediate preparations for his attack on his own initiative, he was continually surrounded by his jihadi associates during this preparatory stage. On 19 May 2004, Bouyeri received his last unemployment cheque. Between 19 May and 28 October he withdrew only €200 from his bank account (not an amount someone can live on for five months). On 28 October, he withdrew the rest of his savings, €930, and reached his maximum overdraft. That same day, he handed Rachid B. an envelope containing €1,650, intended for his family. Where did he find the additional €720? And how could he have afforded his firearm, a HS 2000 pistol, which costs approximately €1,000 to €1,500? It is therefore not unlikely that others—possibly the defendants—were involved in one way or another. No evidence, however, was found that supports this assumption.[43]

On Monday evening, 1 November 2004, during Ramadan, Bouyeri had a late supper together with his friends from the Hofstad Group. He also left behind some letters, discovered later to be his will. Early in the morning, Bouyeri prayed with his associates, had breakfast with them and left the house on his bicycle with his gun, a ritual Kukri Machete and a fillet knife in his backpack. His housemates denied having known anything about these weapons, despite the fact that they lived together in his cramped two-room flat (the living room measured 15 square metres, the single bedroom only ten), nor could they provide explanations about how Bouyeri could have purchased the gun.[44]

Bouyeri carefully planned the attack on the controversial publicist and film maker Theo van Gogh. Van Gogh was known, among other things, for his anti-Islamist statements for producing the provocative documentary *Submission* (an attempt to liberate Muslim women from their oppressive religion, broadcast in August 2004),

together with the Somali-born Member of Parliament Ayaan Hirsi Ali. Hirsi Ali was protected by Dutch security agencies at that time, but Van Gogh, who had rejected protection, seemed a good alternative. For weeks, Bouyeri observed Van Gogh's house and daily cycling routine and, in one of the most crowded streets on the route, spotted the place where he would kill his target. At 8:40 on Tuesday morning 2 November Bouyeri overtook Van Gogh on the Linnaeusstraat, shot him from his bicycle, followed him to the other side of the street, fired another round of bullets (eight in total), then slashed his throat with the machete, in front of 53 witnesses. With the smaller knife, he pinned an 'Open Letter to Hirsi Ali' to Van Gogh's chest and then fled the scene, fruitlessly shooting at some passers-by before engaging in gunfire with the police. He tried to kill the police officers that pursued him, planning to be killed himself in the process and become a martyr, but was shot in the leg and overpowered.[45]

The police found a farewell letter on him, entitled 'Drenched in blood'. This versed text read as an incitement to holy war and was signed Saifu Deen al-Muwahhied. At least according to Ruud Peters, a Dutch Islam expert and witness for the prosecution, these words are a combination of two Arabic terms 'sword of religion' (Saif al-Din) and 'confessor of Tawheed' (al-Muwahhid).[46] In the 'Open Letter', he directly threatened Dutch-Somali liberal politician Ayaan Hirsi Ali, and blamed politicians for allowing Jewish influences in politics. According to Norwegian researcher Petter Nesser, the conclusion of the letter reflects 'the essence of al-Qaedaism' by prophesying the defeat of the enemy on the individual, local, regional and global levels in order of priority:

> And like a great prophet once said: 'I deem thee lost, O Pharaoh.' (17:102) And so we want to use similar words and send these before us, so that the heavens and the stars will gather this news and spread it over the corners of the universe like a tidal wave. 'I deem thee lost, O America.' 'I deem thee lost, O Europe.' 'I deem thee lost, O Holland.' 'I deem thee lost, O Hirsi Ali' 'I deem thee lost, O unbelieving fundamentalist.'[47]

Since Bouyeri wrote these texts to provide spiritual support for this network, these two texts suggest that Bouyeri's attack was the result of an ideological turn to violent jihad against the Netherlands, which may have inspired the Hofstad Group network. One of Bouyeri's last writings was the 'Open Letter to the Dutch Population' dated 12 August 2004 (which he left on a USB stick for other Hofstad Group members to disseminate). For 'the Umma',[48] he announced attacks against Dutch public places, justifying the attacks by the support of the Dutch government for the United States and Israel. His

argument echoed a fatwa announced by dissident Saudi Sheikh Hamoud bin Oqlaa' al Sjou'abi, legitimising the September 11 attacks.[49] A translation of these and other texts was found on the computers of other members of the Hofstad Group.[50]

9.3.3. The Arrest

Bouyeri was arrested on the spot, but not before he tried to shoot some eyewitnesses and tried to carry out a 'suicide by cop' attempt. The public prosecutor charged him on 11 November with murder, attempted murder (of a police officer), attempted manslaughter (of by-standers and police officers), violation of the law on gun-control, suspicion of participating in a criminal organisation with terrorist aims and conspiracy with a terrorist purpose to murder Van Gogh, Hirsi Ali and others who were mentioned in his open letter and demanded a life sentence.[51]

The public prosecutor also set out to arrest the other members of the Hofstad network for taking part in a conspiracy to wage terrorism in the Netherlands. Most of the arrests went smoothly, but on 10 November 2004, a special arrest squad entered the apartment in The Hague where Ismail Akhnikh and Jason Walters resided. Walters threw a hand grenade, wounding four law enforcement officers, turning the arrest into a 14-hour siege and a national spectacle.[52]

9.3.4. The Remaining Hofstad Network Continues

In the meantime, two other leaders, Abu Khaled (who had illegally entered the country again) and Nouriddin el Fatmi, fled the country. Samir Azzouz, one of the other core members of the group, had been arrested on 30 June 2004 for his alleged participation in a shop robbery. While picking him up, the Special Forces retrieved a number of weapons, chemicals and maps from his apartment, signalling that he seemed to be preparing for a terrorist attack.[53] When Bouyeri committed his attack, Azzouz was thus stored away and could not be implicated in this first trial.

However, Azzouz and El Fatmi continued their attempts when Azzouz was released after his acquittal in April 2005. The judge had ruled, in a rather short trial, that the chemicals found in his apartment were not sufficient to assemble an explosive device.[54] Despite strong protests by a number of conservative and right-wing politicians, Azzouz was acquitted. As a law enforcement official who was involved in the case stated in an interview, 'From the moment Azzouz was acquitted due to lack of evidence, we were tasked to carry out an autonomous investigation. We knew there had to be more guns. We also found out that Nouriddin and possibly Azzouz had been in Brussels, probably

to purchase weapons. We tapped their telephones, did observations.'[55] Thus, in April 2005, the police immediately launched a second investigation, called 'Paling' (Eel), and later 'Piranha'. The police immediately started a new investigation.[56] Two months later, was spotted in The Hague and was arrested together with his wife Soumaya S. and friend Martine van den O. (a native Dutch Islamist convert) at Amsterdam Lelylaan railway station. After their arrest an automatic gun (a Croatian Agram 2000) with an unleashed firing pin (safety) lock was taken from El Fatmi's backpack.[57]

Together with two others, Azzouz continued his efforts to purchase arms; they made observations in and around Schiphol Airport and chatted about waging jihad.[58] According to the criminal intelligence units of the Utrecht and Amsterdam police forces, Azzouz and his comrades had set out to find ten AK-47 rifles, two guns with silencers and ten explosive belts.[59] The police and secret service also found recordings of a video 'will' or farewell message by Azzouz, in which he, with a 'baby Uzi' in the background, said goodbye to his family and friends and addressed the Dutch population, all in Arabic: 'We will spill your blood like you spilled the blood of our Muslim citizens in Iraq.' The will was not (yet?) intended for dissemination and was only later revealed to the public. For the police and intelligence services, this video triggered their arrest.[60] On 14 October 2005, Azzouz and Jermaine Walters (the brother of the aforementioned Jason Walters), who were suspects in the first Hofstad case but not detained, and five other co-conspirators were arrested on suspicion of preparing an attack against unnamed national politicians, the AIVD and other targets.[61]

9.4. Performative Strategies during the Three Hofstad Group Trials

9.4.1. The Trial against Mohammed Bouyeri, 11–26 July 2005 (the 'Fakir' case)

The Hearing

The trial against Bouyeri started on 11 July 2005 under massive media attention. The public prosecutor, Frits van Straelen, charged him with murder with terrorist intent, attempted murder (of eyewitnesses and police officers) and obstructing the work of a member of parliament (Ayaan Hirsi Ali). He demanded a life sentence and the withdrawal of his active and passive voting rights. For the prosecution the case was straightforward. The only question was how Bouyeri would defend himself. That answer proved to be anticlimactic.

Apart from using his right to the 'last word', Mohammed Bouyeri remained silent from 11 until 24 July (he spoke only during the last two days of the trial). During

this first trial, Bouyeri instructed his defence counsel[62] to be present in court but to remain silent. As he did not recognise the jurisdiction of the court, he did not want them to pursue an active defence on his behalf.[63] Even though the defence counsel obeyed his instructions, one of his attorneys, Mr. Plasman, did comment on the case in the media, thereby triggering a response from the judges: They felt that he/they should defend their client in court.[64]

Bouyeri's defence strategy basically entailed ignoring the court. He refused to appear and after being forced to be present he remained silent. From a perfomative perspective his refusal to engage was successful. It provoked a response from the court: The judges ordered him to be present. This inspired all sorts of legal debates. Were there actually legal grounds for this in Dutch—or international—law?[65] Furthermore, even though he remained silent, he expressed himself non-verbally; for instance, by appearing in a black-and-white 'keffiyeh' (a traditional Arab headdress), a long *djellaba* and holding a Koran.[66]

On 26 July, he demonstrated his contempt for the court by openly addressing his last word (which is a right of the defendant before the presiding judges close the trial) to the mother of his victim; this, while stressing that he did not feel obliged to address the court. He made his speech only, or so it seemed, to fend off the allegations that he was personally insulted by Van Gogh (and that the murder had thus been a personal vendetta rather than a religious statement in general), and to offer some sort of consolation to Van Gogh's mother. She was the only person in the courtroom to whom Bouyeri paid some respect, while acknowledging her grief and offering some apologies.[67]

By exercising his right to the last word in the manner that he did, one can conclude that he tried to persuade his target audience of the legitimacy of his cause. Among other things, he said:

> So the whole story that I was offended as a Moroccan because he called us 'Geitenneukers'[68] is in no way the truth. I did what I did because of what I believe. Even if it had been my father or my little brother I would have done the same thing .... I can ensure you that if I were released I would do it again .... The same law that obliges me to behead anyone who insults Allah or the Prophet does not oblige me to live in a country where, as the public prosecutor said, the 'freedom of expression' is preached.[69]

Thus he justified his crimes on the basis of his religion. His religious arguments were predominately inspired by several Salafist sources, which included the conviction that

true jihadists should hate those who threaten the Islam and should isolate themselves from the non-Muslim world.[70]

After challenging the judiciary so openly and stating that he, if given the chance, would do it again, the life sentence he received came as no surprise.[71] His behaviour seemed to suggest that this had been his aim all along. When he failed in committing suicide by cop and becoming a martyr in death, he now showed himself willing to become a martyr in life, thus possibly mobilising his sympathisers or other adherents to follow his steps, to renounce the laws and the institutes of 'non-believers' and to wage jihad against them.[72]

He might have succeeded in persuading a few regarding his (in)justice perspective and his religious motives. From a qualitative study done in Amsterdam we know that some radicalised young people described the murder of Van Gogh as a heroic and positive deed and argued that the violent Jihad was indeed the apt response to perceived injustices carried out against Muslims.[73] However, apart from the group of sympathisers on the court's public gallery (there were only a handful), Bouyeri did not seem to attract a crowd of followers at all; not at that time and not since. On the major religious social sites that were frequently visited by religious Muslim young people (notably marokko.nl), his trial was not a major topic of debate at all.[74]

Media Response

From the attack onwards, the nature and character of the terrorist threat captured Dutch public debate for many months to come. The attacks by Al Qaeda in New York had, of course, already shocked the Dutch government and sensitised the general public which, until then, had been rather indifferent to international terrorism. The murder of Van Gogh, however, triggered public and political vigilance vis-à-vis the terrorist threat within Dutch society. For example, the Minister of Finance, Gerrit Zalm, declared 'War' on Muslim terrorists.[75] The terrorist threat was enhanced by emerging fears of globalisation, immigration and Islam and transformed these fears into a state of moral panic. From that moment onwards, policy efforts, research projects and public debate centred on the question: was Bouyeri a lone wolf, or was it more likely that he was but one of the many more radicalised Muslim young people who were being recruited and organised to inflict more damage to Dutch society?[76]

However, it was significant that Bouyeri's murder was hardly cited or appraised on the dominant internet sites and fora on which Dutch Muslim youth expressed themselves.[77] Sections of his oral pleadings were taped by a tele-journalist of NOVA. As he had not given permission for this it caused a stir. The media focused on his

background, his radicalisation process, on the other Muslim youngsters that formed part of the group, and—during the last hearing—on the relatives of Van Gogh, his sister, parents and 15-year-old son who were present in the courtroom. Van Gogh's mother summed the national sentiment up in describing and dismissing Bouyeri as a 'loser' (*stakker*).[78]

The Verdict and the Aftermath

On 26 July, the judge issued the verdict.[79] Bouyeri received a life sentence, without parole—unusually harsh in Dutch judicial history.[80]

Neither the public prosecutor nor the defence counsel appealed the verdict. The judicial process was not over yet for Bouyeri. The national prosecutor announced that he would continue the prosecution of Bouyeri regarding his membership of the so-called 'Hofstad Group' organisation. That meant that Bouyeri would be heard as a witness and accused in a new trial that was scheduled for the autumn of that same year.

One particular consequence of this straightforward trial and verdict was the shift in attention of some of the public and commercial media from Bouyeri to the question whether Van Gogh's murder could have been prevented. Who was to blame? The AIVD revealed that Bouyeri did belong to a group of a few dozen young people that they considered to be radical Salafists. Why, then, for example, did a documentary presented by a national celebrity reveal that the security services had allowed Bouyeri roam freely? At this point, a conspiracy theory was introduced that surfaced from time to time: Bouyeri had been an agent of the AIVD and 'the government'. And that the 'government', e.g. the AIVD, had willingly sacrificed Van Gogh.[81]

9.4.2. The Hofstad Group Trial, February 2005–10 March 2006 (the 'Arles' Case)

The Hofstad (and Piranha) case in the Netherlands offers a set of conspicuous new premediation and risk management techniques, made possible by the implementation of the European Framework Decision within the Dutch legal framework in July 2004. Previously, Dutch legislation had not referred to or address any special terrorism-related criminal acts. The Act on Terrorism Crimes, proclaimed in the official government paper *Het Staatsblad* in June 2004,[82] added several new articles to the Dutch Criminal Code, namely articles 140a, 83a, and 96[2]: an article penalising membership of a terrorist organisation (140b), an article on 'terrorist aim' (83a) and an article on conspiring to commit terrorist crimes (96[2]).[83] The Hofstad and Piranha cases were the first overlapping cases in which these criminal offences were tested. Among others,

the six defendants were charged with belonging to and participating in a terrorist organisation (article 140a), recruiting for terrorist activities (article 205), possessing firearms and monitoring, preparing and conspiring (articles 96 and 46) to commit terrorist crimes (article 83a). The prosecution demanded considerable prison sentences: between eight and fifteen years.[84]

The case was highly interesting because of the risk management techniques applied. The first and most contested one, both by defence counsel and in the judicial commentaries on the case, pertained to the admission of *intelligence evidence* in court. As Eijkman and Van Ginkel point out:

> Traditionally, a distinction exists between collecting intelligence for national security purposes and gathering evidence for criminal investigations, as they serve different purposes. This distinction also translates into the allocation of powers to law enforcement officials and the specific powers allotted to the intelligence services. For the latter, it is crucial that the sources of the intelligence are kept secret, whereas the fair trial principle demands that during a criminal trial, the public prosecutor and defencecounsel enjoy equal access to the evidence. However, in specific circumstances, such as the prosecution of terrorist crimes, these two worlds meet and intelligence information is shared.[85]

Since 2004, terrorism cases have been carried out on an 'inverse investigation' basis. Not proof of evidence, but intelligence reports act as immediate cause to start the investigation. The use of intelligence material was thoroughly expanded. These reports made up for the lack of concrete evidence (a common element with preventive arrests) and furthermore admitted into the investigative process telephone taps, hearsay and other information the origin of which remained in the dark. Possible deeds and alleged future attacks that only exist in preparatory actions, such as conversations, telephone conversations or the purchase of completely legal goods, were accepted as evidence in court. Only the premediated use of these legal goods turned them into bona fide evidence of illegal conspiratorial acts.

This risk management technique reduced the discretionary competencies of the public prosecutor. After the perceived intelligence failure surrounding Van Gogh's death, where the murderer had been on an AIVD-list of second-rank jihadists, the service started to divulge a continuous stream of intelligence reports to the prosecution. Although public prosecutors have discretionary competences in deciding to launch an investigation, order an arrest or run a second check on the AIVD material, in terrorism cases they felt pressured to act much more quickly. In these instances

the highest counsel of the Prosecution Office, often also including the Minister of Justice, has a say in the matter, thereby reducing the autonomous function of the prosecutor of an individual case to one (lower) link in a set of politically sensitive deliberations. This centralised and politicised handling of terrorism cases went hand in glove with the tendency of the Dutch AIVD to dispatch their alerts much more quickly and based on much less evidence. In short, since Bouyeri's attack, the public prosecutors felt the pressure to act immediately after an official written report entered their e-mailbox.[86]

A conspicuous consequence of this risk management assemblage, dictating an increasingly heated prosecution cycle once the terrorism alert was signalled, was that the deliberations for commencing an investigation were shielded from the public. Intelligence briefs were characterised by their brevity, and more often than not did not reveal much about the background or the reliability of the sources. Defence counsel in the Hofstad and Piranha trials consequently accused the prosecution of discriminatory and selective investigation praxis. Why were some individuals subpoenaed? Were some merely interrogated as potential witnesses and others charged with jihadist crimes?[87] The reasons for incriminating some individuals and leaving others out remains hidden in the secret chambers of the security agencies.

In short, we will see that the new laws, the heated political climate and the pervasive sense of fear and terror (deliberately created by the defendants themselves, according to the prosecution) spurred the prosecution to follow a strategy of projecting 'virtual realities' into the trial.[88]

The Public Prosecutor's Strategy

In the 'Arles' investigation (the name that the national investigation squad gave the investigation into the Hofstad members after 2 November), contrary to the case, no defendant had committed or accomplished a physical attack, murder or other violent act. Therefore, the prosecution relied on the new legislation adopted after 2004 to charge the defendants with the crime of belonging to a terrorist organisation, preparing for a terrorist attack, recruiting others, inciting hatred and terrorism.[89] This indicated a completely different approach. The prosecution had to invoke the possible terrorist future based on preparations, intentions and associations only. That made the trial a highly interesting and novel proceeding; it was cutting-edge jurisprudence, also according to the prosecutors.[90]

In February and May 2005, two preliminary (*pro forma*) hearings took place in which the prosecutors, Koos Plooy and Alexander van Dam, announced that the

twelve (later thirteen) defendants were charged with being members of a terrorist organisation and that their custody would be extended by ninety days.[91] During the summer, the national investigation squad concluded its searches and observations and heard a number of witnesses, in particular female friends and (ex-)partners of the defendants. Rumours and stories about 'seduced' young girls, manipulated and recruited by Hofstad Group members to join their alleged jihadist cause, started to spread.[92] The spectacular arrest of El Fatmi (see below) and his wife Soumaya S. on 22 June 2005 further sparked the national debate and expectations as to the true terrorist nature of the defendants.

In September a fourth *pro forma* hearing was organised, after which two defendants were released due to lack of evidence. The prosecution further announced that they would also prosecute Mohammed Bouyeri for participating in the Hofstad Group. Bouyeri's counsel, Peter Plasman, accused the prosecution of turning the trial into a 'show trial'. 'The point is that the public prosecutor wants to mete out additional punishment to Mohammed B, although he has already received a maximum sentence. This only serves to make Bouyeri suffer more. That is something the criminal law does not allow for.'[93]

Notwithstanding these protests, on 5 December the trial against the 13 defendants commenced in the heavily guarded Amsterdam-Osdorp courtroom, 'the Bunker', a venue far from the city centre, in an industrial area that is very difficult to access by public transport. The group of defendants consisted of Mohammed Bouyeri, three other alleged core group members (Nouriddin el Fatmi, Jason Walters and Ismail Akhnikh) and nine others. Jason Walters and Ismail Akhnikh had been arrested after heavy resistance (Walters threw a hand grenade at the police on 10 November 2004), which gave them special status, since they could be charged under the regular criminal law with attempted murder as well.

The prosecution initiated the hearing with Professor Ruud Peters, an Islam expert from the University of Amsterdam, who commented on the ideology that the Hofstad Group adhered to, as deduced from the numerous texts and videos the police and security services had found on the members' computers. Although Peters made clear that such an ideology, albeit fundamentalist and radical, need not necessarily lead to concrete acts of jihadism, the prosecutor took his statements as an argument to underpin the innate violent character of the Hofstad Group. Other witnesses were summoned to substantiate this allegation. Sixteen-year-old 'Malika', who had left home to enter into an 'Islamist marriage' with Nouriddin el Fatmi and who had spilt the beans on how El Fatmi and the group recruited new members, was summoned to explain her experiences to the court. She however refused to talk in court; it turned

out that she had received threatening letters. Her story as it leaked out to the press, however, made a great impression on the public and the court.

In his final plea on 23 January 2006, public prosecutor Alexander van Dam made it clear that it was his aim to identify the network as a terrorist organisation, based on two arguments:

Step 1: The binding agent [of the group] is the radical political ideology [...], characterised by hatred against the western, in particular also the Dutch democratic rule of law, directed against people who think differently, who may and must be killed as apostates and nonbelievers. It is an ideology aimed at the violent destruction necessary to erect an Islamist state.

Step 2: What is pursued from that ideology (the intent) are criminal acts. We have seen with Bouyeri, Walters, Akhnikh, El Fatmi and Azzouz, based on the evidence, that their convictions cannot have another outcome than to commit *acts of violence*. Their ideology *obliges* them to violence against anyone who insults their prophet, against non-believers and apostates. There is no room for a peaceful way. Since voting is prohibited according to various writings, a political movement that disseminates its principles through dialogue or legal action is thus unthinkable. The writings, videos and recordings found at their places glorify and call to violence, as a means to reach the ultimate goal. And thus, we have proved the criminal intent for the core members of this organisation.[94]

With this argument, the public prosecutors invited the judges and the public at large to take into account the potential future if the suspects had *not* been disrupted and apprehended (which happened shortly after the murder in 2004). Later on in the trial, the prosecutors posed the rhetorical question: who knows where this group of suspects would have stood if [Mohammed Bouyeri] had not murdered Van Gogh but had continued its ideological and practical formation? And the briefing went on to speculate:

> Fanaticism and extremism make one blind. Driven by a strong sense of connection people can be moved to conquer heaven. By limiting themselves to talking, sometimes open recruitment, and doing very little substantially to come to an attack, their intent developed itself insidiously and perhaps all the more dangerously .... It is our conviction that this group of and around the core members was undergoing this transformation.[95]

Through these speculative moves that were repeated in the appeals sessions, the potential terrorist scenario of the Hofstad Group became configured into the court documents and was a basis for evidence.

Moreover, the defendants were charged not only with participating in a terrorist organisation, aimed at committing violent attacks, but also with aiming *to commit preparatory activities for enabling such attacks in the future*. 'It may seem strange, an organisation that has the commitment of preparatory acts as its aim. However, it is feasible that a group occupies itself on a frequent basis with the preparation of crimes that might be committed by others, or by that same organisation, but in a later stage. [...] Although we claim enough evidence for the aim of concrete violent or other acts, the ancillary acts or preparatory aim can be determined as well.'[96]

The artefacts supporting these precautionary charges were mainly evidence from the aforementioned female friends and texts and recordings, as interpreted by Islam expert Ruud Peters. The other charges, murder and attempted murder, against Walters and Akhnikh weres much more straightforward, and based on solid evidence of the thrown hand grenade.

The Defence Strategies

Overall, the performative strategies differed from defendant to defendant during the successive Hofstad trials and changed over time.[97] Some clear strategic positions were visible. First of all, the most important difference existed between Bouyeri's trial and those of the rest. Bouyeri had of course accomplished his acts, but while the prosecutors tried to argue that the accused had together committed major acts of preparing for terror attacks themselves, they all, except for Bouyeri, categorically rejected this charge.

The second issue on which the defendants showed different strategies was their attitude towards the court and the rule of law as such. Some engaged with the court, while others refused to show 'respect for the laws of non-believers'.[98] This refusal was symbolised by not rising when the magistrates entered the courtroom, which is a custom in the Netherlands. Key Hofstad Group suspects such as Bouyeri, Akhnikh and Jason Walters refused to rise before the judges, thereby signalling that they indeed did cherish other opinions on justice and injustice. Although Walters, Azzouz and Akhnikh did not plead guilty to terrorist attacks, they did accept the radical Islamist attribution as formulated by the prosecution. Others, including Rachid B. and Nadir A., seemed to distance themselves not only from the charges but also from the alleged ideology the group supposedly adhered to, and they showed every conformity and deference in responding to the court.[99]

During the first trial, the court dealt with the fourteen defendants (one at a time), commencing with Bouyeri, whom the prosecution identified as the leader of the group.[100] As in his first trial he was ordered by the court to be present. Even though on the first day he wore a red-and-white 'keffiyeh', this changed over the course of the trial. He began to wear western-style clothing.[101] This time he reluctantly responded when questioned by the judges and the public prosecutor. Furthermore, instead of his defence counsel, who were present in court, he delivered his oral pleadings in person. To do so is uncommon in the Netherlands. His oral pleadings lasted three hours, during which he confessed he was filled with 'joy and pride' that the prosecution compared him to Osama bin Laden. He also explained that he had killed Theo van Gogh because he had insulted 'the Prophet'.[102]

Most of the other defendants distanced themselves from Mohammed Bouyeri's violent act and the association with terrorism. Stating that although they—occasionally—had visited his house, received religious instruction and watched videos of beheadings, they had been unaware of his plan to kill Van Gogh. Rachid B., for example, a childhood friend, who met with him the night before the murder, and approximately one week before had been given some personal belongings (four letters), stated that he had been ignorant of Mohammed Bouyeri's intentions.[103] He also made clear that he was not an extremist, was cooperative in responding to the questions of the judges, emphasised he held a steady job and did not share the radical ideology of some of the other defendants.[104] In the context of the Hofstad Group trial this strategy of showing respect for the court was distinctive. It communicated that Rachid B., in contrast to some of the others, wanted to communicate that he was an ordinary person who due an unfortunate course of events was mixed up in the Hofstad Group affair. Additionally, most suspects denied being terrorists. Jason Walters, for example, defended himself by explaining that he only acted with the Hofstad Group to 'look cool' (for social status).[105]

Because radical and/or extremist religious ideology and activities played an important role in the allegation that the Hofstad Group was a terrorist organisation, several defendants were cross-examined by either the judges or the public prosecutor about their extremist or radical convictions. Some, like Bouyeri and Jason Walters, were explicit about their orthodox beliefs; others including Rachid B. and Mohammed el B. emphasised that although they were 'Muslim' they were not extremists.[106]

Nonetheless, among those with extremist religious beliefs there were differences in defence strategies. Even though both Bouyeri and Jason Walters explicitly renounced the Dutch legal system, Walters, in contrast to Bouyeri, stressed that he would defend himself. Jason Walters stated, 'Our legal system is the "sharia". That is the only system

we acknowledge.' Subsequently a judge verified whether or not he would defend himself. He then responded with the words, 'I will defend myself, because this is a non-Muslim state … and there is no "sharia".'[107]

As noted earlier, the performative strategies differed for each successive Hofstad trial and were not static.[108] Jason Walters, for instance, adapted his defence strategy a number of times. During his first trial he engaged to some extent; he would not rise before the judges, but responded to their cross-examination. Yet in appeal he refused to respond to the judges' questions.[109] During the partial retrial, however, he explicitly stated that he was convinced he would receive a fair trial and remained engaged.[110] Furthermore, he first appealed his case and then filled a request not to, but ultimately had to because the public prosecutor stuck to his request for an appeal.[111] During his second appeal, he changed his performative strategy again; expressing a revolutionary turn in his behaviour and speech and affirming his belief that his trial would be fair and just.[112]

Finally yet importantly, defence counsel played a crucial role in the performative strategies of the defendants. Some were extremely vocal, both in court and in the media. For example, a prominent Dutch newspaper, the NRC *Handelsblad*, quoted Ms. Böhler and Mr. Koppe, who represented Ahmed A. and Zakaria T., as saying 'this trial is a classical witch-hunt'.[113] In the same interview, both criticised the public prosecutor and the judges for focussing too much on religion rather than on concrete activities.

In court, defence counsel's strategy differed from client to client. However, at times they did collaborate with each other. In an effort to emphasise that the Hofstad Group trial was severely politicised, suggestions of conspiracies, including the possibility that the police and secret service had set their clients up, were inserted in their pleas and communicated to the press. During the first trial, the lawyers requested to hear in person the law enforcement officials who had taken statements from their clients; a highly unusual request in the Netherlands because it suggests that the law enforcement officials might have been biased in their interrogations.[114] Moreover, on appeal, two defence counsel questioned the neutrality of the judges and demanded a *wraking*, a special request to replace one or more trial judges. Their rationale was that by hearing a witness behind closed doors, the judges had given the impression of no longer being objective and were giving in to the whims of the prosecution and intelligence services.[115]

Although the particular request was denied, it fuelled suspicions of a tainted investigative procedure. Counsel's strategy was obviously intended to discredit the security and police forces, to raise suspicion as to their integrity and thus to raise doubts about the defendants' access to a fair trial as such. However, contrary to some

of their defendants (Bouyeri, Walters and Akhnikh), and contrary to strategies adopted by their forebears in the 1970s, the defence lawyers did not reject the legal system as a whole. On the contrary, they operated according to the same core principles of Dutch and human rights law (fair trial, *habeas corpus*, freedom of speech and religion) that they claimed the judicial and police forces were denying their clients.

The Verdict

On 10 March 2006, the District Court of Rotterdam convicted Jason Walters, Akhnikh and El Fatmi and sentenced them respectively to fifteen, thirteen and five years in prison. Nine suspects were convicted of being members of a criminal terrorist organisation, whereas five others were acquitted of that charge. The Hofstad Group was also placed on the European Union's blacklist of terrorist organisations.[116]

However, on 23 January 2008 the Appeals Court of The Hague overturned the sentences of seven defendants in the Hofstad Group case who had appealed the verdict at first instance. They ruled that there was too little evidence to define the Hofstad Group as a terrorist organisation that shared an ideological viewpoint, and that conspired and associated on a regular basis.[117] According to the judge, 'the Hofstad Group displayed insufficient organisational substance to conclude the existence of an organisation as laid out in articles 140 and 140a of the Criminal Code'.[118] Only the sentences of Jason Walters (fifteen years for attempted murder for throwing the hand grenade), Akhnikh (fifteen months for possession of illegal firearms and munitions), El Fatmi (five years for possession of illegal firearms) and his wife Soumaya S. (nine months, same charge) were upheld on appeal.[119]

The Dutch court acquitted the Hofstad Group in reference to articles 9 and 10 of the European Convention on Human Rights (freedom of religion and freedom of speech). The court concluded that the prosecution's dependence on ideological writing did not provide sufficient evidence for labelling the Hofstad Group as a terrorist organisation. It also underlined that it attached great importance to religious pluralism and the freedom of speech, even if this pluralism included fundamentalist and anti-democratic opinions, such as expressed by the members of the Hofstad Group.[120]

This verdict, however, did not mark the end of the Hofstad Group saga. The public prosecution filed for cassation and on 2 February 2010 the Dutch Supreme Court, which only overturns the decisions of lower courts when their judgment is not in accordance with the applicable law or on procedural concerns, ruled that a partial retrial should be held.[121] According to the Supreme Court's judgment, the Appeals Court of The Hague had too narrowly interpreted the legal definition of what constitutes a terrorist organisation and should bring the definition more in line with

jurisprudence on cases of group coherence of criminal organisations engaged in stock fraud of money laundering.[122] Henceforth the suspects' organisation might not be too loosely structured to merit the conviction Therefore, the case was referred to the Amsterdam Appeals Court for partial retrial.[123]

In December 2010, the Appeals Court ruled that the Hofstad Group was a terrorist organisation and sentenced seven defendants for participating in a terrorist and criminal organisation; five of them received a fifteen-month sentence, one 38 months and one thirteen years.[124] Henceforth, the Hofstad Group network was labelled as a terrorist organisation, aimed at inciting hatred, violence and intimidation, partly with a terrorist intent.[125] This ruling of the Amsterdam Court of Appeals had a strong effect on legal counterterrorism instruments, since it legitimised the lowering of the standards to classify a group as a terrorist organisation.

Public Debate

The defence strategies and verdicts differed during the successive Hofstad trials, a shift that was also linked to the waxing and waning tides of media attention. The initial setting of the trial in 2005 was polarised—the prosecution opened with an exposé on fear and intimidation on the one hand, and defence counsel claimed that the trial was a show trial or witch-hunt. The tension was caused in part by the extraordinary socio-political context of the trials and the extensive media coverage in the immediate aftermath of the Van Gogh murder, and the revelations about 'Islamic lover boys' within the Hofstad Group during the first half of 2005. Moreover, the Hofstad trial was the first one that made great use of the new terrorism legislation, involving suspects charged with non-violent preparatory crimes.

The heavy public, political and judicial pressure put the defendants in a very defensive position. It was hard to argue against 'conjectural reasoning' and invoked and premediated terrorist futures; the London bombings of July 2005 and other terrorist attacks carried out by 'home-grown radicals' elsewhere in Europe made it all sound so feasible. Defence counsel had to argue to contradict these fearful images and associations. They did so by explaining to the media how their defendants, in their view, were already demonised in the press and were being sentenced based on public fears and anti-Muslim sentiments alone. The only crimes the prosecution held against them were their religious convictions, according to defence counsel, Ms. Böhler, Mr. Plasman and Mr. Koppe.[126]

Initially, these pleas were not well received in mainstream Dutch society. Increasingly, however, their calls on behalf of their clients for freedom of religion, tolerance for extremist religious ideologies and the phenomenon of immigrant youth culture

became part of the public and political debate.[127] Their arguments were to some extent supported by the emerging conspiracy theory mentioned above. If one were to accept these conspiracy theories, the prosecution was thus busy shifting the blame from the AIVD by implicating defendants in omissions committed by the government. Thus, the debate evolved from a discussion about the intrinsic violent nature of Islam or Salafism to whether the notion of a 'War on Terror' itself constituted a threat to the rule of law and to the principle of a fair trial.[128]

In later years, when the Hofstad Group trial was rehearsed in a first and second appeal, not the purported future attacks, but the boundaries of freedom of expression were what was subjected to greater scrutiny. Politicians, journalists and social media websites alike commented on the trial, and it appeared to some as if the defendants, especially those who had not committed acts of violence, were primarily convicted on the basis of their radical beliefs. National celebrity, parliamentary representative and the addressee of Bouyeri's warning letter, Ayaan Hirsi Ali herself stated that radical ideologies such as those of the Hofstad Group defendants formed part of the freedom of expression, and should be engaged through debate and not by the criminal justice system.[129]

9.4.3. The Second Hofstad Group Trial: The Piranha Case, 2005–2006

The Prosecution's Strategy

While the Hofstad Group trial was already under way with the first preliminary hearings, a second investigation started in April 2005 against the remaining members of the group. This investigation, called the 'Piranha' case by the police forces, came out in the open through the arrest of Nouriddin el Fatmi, who had been a fugitive since 2 November 2004.

On 22 June 2005, a Special Intervention Unit rushed onto the platform of the Amsterdam Lelylaan railway station and fought two jihadist suspects to the ground, Nouriddin el Fatmi, aged 22, and his wife Soumaya S., aged 21. Both were connected to the Hofstad Group network to which Mohammed Bouyeri, the murderer of Theo van Gogh, belonged. El Fatmi had a firearm, an Agram 2000, in his backpack. In the end, El F. was sentenced to five years in prison for illegal possession of a firearm and membership of a terrorist organisation. Soumaya S. spent six months in jail for complicity in the possession of the weapon and was released on 20 December 2005.[130]

Meanwhile, on 14 October 2005, Samir Azzouz (who had been released in April 2005) and two others were arrested and charged with preparing to commit an attack on politicians, government buildings and an El-Al aeroplane. In August 2006, Soumaya S.

was thought to belong to this group and was taken into custody again. Apparently, new evidence had emerged.[131] All in all, the group of defendants included five young males and one female (all of Dutch-Moroccan descent), connected in some way or another to the defendants of the Hofstad Group trial.

For the prosecution, this time represented by Alexander van Dam and Bart den Hartigh, this case was much easier to make. In the Piranha case, the prosecutors could prove that the suspects possessed illegal firearms and munitions and had collected names and addresses of politicians and were therefore in a much later stage of preparation than the suspects in the Hofstad case.[132] However, in April 2004, Azzouz had been acquitted of a terrorist crime because the preparations were found to lack focus and the chemical ingredients did not yet make for a real bomb. This time, the prosecution did not want to obtain convictions based on the Weapons and Munitions Act only, but intended to get Azzouz for terrorism as well. Therefore, they presented some convincing attempts at conjectural reasoning.

Van Dam had already made the connection between the murder of Van Gogh, the Arles case and the Piranha case. In his statement during the Arles trial in February 2006 (before the Piranha trial had started), he invoked the potential disastrous future towards which Samir Azzouz (who was not a defendant in that trial at all, but who was called as a witness) was heading:

> The intended crimes [of the Hofstad Group, including both the defendants in the Arles and the Piranha investigation] are located in the future. The group of defendants was heading toward something, they felt they had to do it. Azzouz was probably the first (at least according to the OM) to capitalise on this future; despite his acquittal [in April 2005] his behaviour was drenched in a terrorist ideology. But Bouyeri [Van Gogh's murderer] set the tone, as host and (co-)director of the meetings and by his writings in which he was writing towards a violent climax. Then by embarking upon the road towards jihad and martyrdom. A road that begged for future imitation.[133]

Thus, the murder of Theo van Gogh on 2 November 2004 (when Samir Azzouz was still in detention) was viewed as the inevitable outcome of a process of home-grown radicalisation in which also the other defendants, both in the Arles and the Piranha cases, were involved.

In the Piranha trial, which started in April 2006, AIVD intelligence information constituted the hard core of the evidence presented by the public prosecutor. One of the most convincing and vivid pieces of evidence was a CD-ROM, collected by the AIVD, on which Samir Azzouz had videotaped several versions of a farewell message. Azzouz

had not dispatched this video 'will' to his friends, relatives or the media. The various versions were retrieved from his home computer. However, the prosecutor argued that the will was concrete proof of a pending attack. During the trial, the public prosecutor gave a presentation of thirteen minutes in which he first showed a message by Bin Laden, followed by footage of Al Zawahiri, and some parts from the suicide message of a Pakistani suicide terrorist responsible for the London attacks. Then again a message by Al Zawahiri and finally (a version of) Samir Azzouz's taped will (in Arabic)—all provided with Dutch subtitles. The prosecutor wanted to demonstrate that this was no 'joke', that Azzouz' will resembled other jihadist messages *broadcast after an attack*, and it was thus immediate proof of 'a deed that was to be carried out in the Netherlands'. The will, furthermore, was 'obviously intended to be made public after Azzouz had committed this act'.[134] By showing the videotape and images from the websites maintained by the defendants, the prosecution effectively coloured the mind-set of the audience in and outside court and made it almost impossible to refute the power of this sequential imagery (Bin Laden—Al Zawahiri—the London Bombings—*Samir Azzouz*—Al Zawahiri).[135]

This very visual and compelling premediation technique was flanked by a subtler one. Apart from Samir Azzouz, four other male suspects, including Nouriddin el Fatmi, were included, and after some months one female suspect, Soumaya S. She was implicated in the charge based on intelligence evidence as well. In her case, it became plain how intelligence evidence can be transformed into incriminating evidence by lifting snippets of conversation out of their original context, thereby stripping it of its original meaning and opening the door to other, more sinister meanings. In the Piranha case, one of the two key arguments for charging the female defendant, Soumaya S., with membership of a terrorist organisation and conspiring to commit terrorist crimes was supported by playing excerpts of a taped telephone conversation with her sister Hanan. In the recordings, the defendant asked the sister, who worked at a pharmacy close to the Dutch parliament buildings, for addresses of centre-right and liberal politicians. According to the defendant, she only meant 'to make dawah to them'—as stated in the phone conversation.[136]

For the prosecution, the conversation implied a target-identifying process; the remarks on 'dawah' were only meant to deceive the sister. By lifting the conversation out of its context and connecting it to a jihadist website maintained by another group member and to jihadist texts stored on their computers, the prosecution used the technique of premediation: the defendants were already suspected of being members of a terrorist group, therefore inquiring after names and addresses of Dutch politicians could only have been made for that reason, notwithstanding other explanations

being available.[137] By omitting the conversation's context defence counsel turned an innocent exchange into a threatening phone call. To be sure, the prosecution did in fact ask the AIVD for more contextual information, but it drew a blank.[138] The AIVD refused to meet the demand. The prosecution therefore stuck to its charge. (Note, exactly this refusal of the AIVD to disclose the rest of the conversation prompted the Dutch Supreme Court in 2011 to overrule this verdict and to call for a new trial. In March 2014, the Amsterdam Court confirmed the terrorismsentence of three years for Soumaya S.)[139]

A final way in which potential violent futures were interpolated into the present terrorist trial revolved around introducing a vignette of the brainwashed female jihadist into public discourse. In February 2005, just before the investigation into the Piranha case started, two prominent Dutch journalists published a book on 'Female Warriors of Allah',[140] in which they stated that the Dutch judicial and intelligence authorities had severely underestimated the threat of female jihadists within the Islamist networks in the Netherlands. The tabloid press branded the converted jihadist women as seduced, brainwashed and repressed by the male terrorist suspects in supporting their radical activities. *De Telegraaf* wrote about 'Preaching and porn: Young women abused by Islamic "lover boys"'. The 'Hofstad Group network'—the name an invention by the AIVD connecting a disparate group of individuals and friends surrounding Mohammed Bouyeri—had been extended to include 'mentally unstable young women falling for the lures of radical "lover boys"'. The handful of women were even described as 'Muslim groupies'.[141] Debates on television, in parliament and plenty of research projects followed. The defendants' counsel condemned the trial as political justice; anti-Islam parties complained about police and judicial indolence, raising the stakes for trials to come.

The defendant Soumaya S. did not quite fit into this passive frame, since she impressed the prosecution and the audience alike with her eloquence, intelligence and bravado in court and during her arrest. She was arrested twice, first for co-possession of a firearm with her husband (in October 2005) and secondly for conspiring to commit a terrorist attack. Already during the first trial, on 18 and 19 October 2005, public prosecutor Koos Plooy deplored the fact that he could not charge her with membership of a terrorist organisation, even though she was assumed to be 'a potential instrument in the hands of her husband'. He motivated his demand for a twelve month prison sentence accordingly:

> She followed him [her husband] blindly, but with eyes wide open. That turned her into a *potential instrument* in the hands of this man.[142]

In other words, although public prosecutor Plooy was only able to charge her with co-possession of a firearm, admitting that he could not file a terrorism charge against her based on her association with her husband and the conversational stub mentioned above, he positively identified her as a 'ticking bomb', a potential, powerful and willing instrument in the hands of a bunch of terrorists. In August 2006, Soumaya was arrested a second time, based on roughly the same evidence as before, but this time the prosecutor felt he could charge her with membership of a terrorist organisation. This second time, the prosecutor rejuvenated his 'old' evidence by reminding the public of the London bombings and Al Qaeda videos:

> Fanaticism and extremism make blind. Driven by a common basic feeling people can turn into zealots, sparing nothing and no one. And that might lead to bizarre offences, from unexpected angles. No one had expected the perpetrators of the London attacks [7 July 2005] to carry out such acts. Likewise, no one would possibly expect some of the defendants here today capable of participating or carrying out an attack. However, this has been proven. There is therefore no room for underestimation.[143]

The Defendants' Strategy

Like Mohammed Bouyeri, Samir Azzouz also explicitly rejected the Dutch rule of law. Since 2003, he had been suffering from a chronic illness and inflammation of his intestines, but often he did not receive his medication and was not allowed transport to the hospital. His lawyer, Victor Koppe, wanted to enforce his treatment through a court order. Azzouz, however, refused to use the Dutch legal system, because he only respected the laws of Allah. 'We reject you', he stated on 21 December 2005 during the Hofstad Group trial, where he was summoned as a witness, 'we denounce your system. We hate you. That's about it.'[144]

On the other hand, Azzouz vigorously denied being a terrorist or having prepared for terrorist attacks, and together with his co-defendants aggressively countered the prosecution's charges. He tried to discredit some key witnesses by implying that they were even more fundamentalist in their beliefs than he was. His defence counsel also tried to trivialise the farewell video by portraying it as try-outs during some severe feelings of frustration.[145] Nouriddin el Fatmi also played down his radical behaviour, even claiming the he only carried the Agram 2000 with him to protect himself against Soumaya's angry ex-husband.

The only female suspect, Soumaya, followed a different performative strategy. She tried to tone down her image as a 'dangerous woman'. She did not deny that the other defendants, notably Samir and Nouriddin, might have been radicalised, but

she clung to her statement that she had more or less tumbled into the whole affair; explaining that she became affiliated with Nouriddin in the spring of 2005 and had only spent six weeks with him before they were arrested, not knowing what he was up to. She claimed ignorance regarding the gun he was carrying with him. Soumaya also felt that her lawyers held her hostage within this group of defendants, lest she make incriminating statements about Nouriddin and the others. She felt caught between two stools. Her angry ex-husband sat in the public gallery accompanied by her relatives.[146] The public prosecutor wanted to get her convicted for terrorism this time.[147] And she was flanked by her co-defendants, including her Islamic husband, and lawyers who were pressuring her to adhere to their performative strategy of rejecting the charges as a collective.[148]

Soumaya, however, initiated attempts to detach herself from the group. On 20 October, she testified against Imam Fawaz Jneid, revealing that he had delivered a sermon a few weeks before Bouyeri's attack in which he had cursed Van Gogh and others. Bouyeri was in attendance as well. 'It was awful what I heard', she confessed. 'Fawaz constantly makes you feel that you are lacking in zeal and activity on behalf of the defence of Islam'. With this confession, she detached herself from the 'father figure' who had drawn her into Salafism's lure. Fawaz, who was heard as a witness, protested and provided the opposite story. He had 'rapped Soumaya's knuckles' and had warned her against continuing down a 'path of mortal peril,' only to see her 'throw dirt' at him now. Soumaya started sobbing. 'He only warned me about the secret service. He is denying everything now, I feel betrayed.' In addition, a copy of the sermon surfaced, confirming Soumaya's earlier testimony.[149]

On 1 November, she took the stage again and proclaimed her divorce from El Fatmi. Her father, another defendant and her counsel had acted as witnesses, as was required under Islamic law for undoing a marriage. The presiding judge Koning questioned Soumaya on her relations with Fatmi. Had she been obedient to him, followed him on his paths? 'I am not good at obeying a man, so we just had to let that go', Soumaya explained. 'You seem so cheerful and spry when saying that', remarked the judge. 'Did your father not say "no" to you often enough? … Were you spoiled as a girl? I can see your mother and sister nodding vigorously.'[150] Despite this almost fatherly conversation, the court was not impressed by Soumaya's performance, as she acted erratically and capriciously in their eyes. 'Did Soumaya do this [the divorce] to belatedly distance herself from her "God-fearing" husband, who made her a radical, and, in doing so, from the remaining defendants as well?', the public prosecutor wondered in his oral pleadings. 'We believe that this gesture comes too late. For us, it is beyond doubt that she belongs to the same organisation as her now ex-husband.'[151]

On 6 November 2006, the public prosecutor, Alexander van Dam, submitted the sentences he was requesting to the court. Fatmi, Azzouz and another defendant, Mohammed C., were believed to have been the 'core members', 'inspirators and initiators', and 'Soumaya S. and Mohammed H. allowed themselves to be inspired by them and actively got involved in their activities'. And what did these activities involve? 'It is our conviction that only through intervention of the police and judicial authorities has an actual terrorist attack been prevented. Although this attack was still in a preparatory stage, the plans and means were abundantly present.' Since the 'danger of recurrence was very high', the prosecutor demanded heavy sentences. Against Azzouz, the public prosecutor demanded fifteen years, against Nouriddin twelve (since he already had been sentenced in the first Hofstad trial for five years) and against Soumaya ten years.[152]

The requested sentence for Soumaya startled most of the spectators. According to her defence counsel, Yasser Özdemir, it was 'absurd' that the public prosecutor had hardly made any distinction between core members and the others, like Soumaya. In the fifty or so investigation files, her name did not appear in connection with any of the preparatory activities for terrorist attacks. Soumaya was 'shocked to pieces'. According to the defence counsel 'the Zeitgeist [i.e. the prevailing culture of fear, caused by the terrorist attacks] had driven this trial' and its severe sentences. During the final hearing, on 10 November, Soumaya addressed the court one last time. In her view, 'the blind hatred against Muslims' from the crusaders' times had returned in this trial and in the anti-terrorism campaigns the Dutch government was waging. She compared the special unit for terrorism suspects in the high security prison in Vught with the Nazi concentration camp that had been located on that same spot during the times of the German occupation. She wished the court good luck and wisdom in deciding upon the sentence, although, ultimately, what would happen to her was 'Allah's will'. Samir Azzouz also proclaimed his 'surprise' over the severe demands by the prosecution; he felt he 'was being punished for being a Muslim and hating the democratic rule of law'.[153]

The Verdict

A note of caution has to be added to the above-mentioned techniques of risk management and premediation deployed by the prosecutors. Although their pleas sometimes made for an impressive display of conjectural reasoning and compelling images, the Dutch inquisitorial system as such does not make for a 'good show'. The oral pleadings of the public prosecutor and defence counsel are rather lengthy, very detailed and difficult to understand for those without legal training. No television coverage

is allowed in court either to record their arguments. Moreover, the prosecutor's risk management techniques were new to the Dutch judicial system. They gained credibility through the context of the heightened awareness for terrorist attacks in 2004 and 2005, but when no new attacks occurred, the waves of public indignation and outrage over the Hofstad Group's purported terrorist intentions waned a little.

On 1 December 2006, the court reached its verdict. In his verdict the judge accepted some of the prosecution's charges, but not all. The court acquitted the defendants of membership of a terrorist organisation out of lack of evidence of a structured association. The charge of inciting hatred and recruiting for jihad was dismissed as well.[154] The activities of the group had not been structured enough to meet the conditions for constituting a real terrorist organisation. The judge moreover criticised the way the prosecution had based its case on official notifications of the AIVD (the so-called *ambtsberichten*); the judge even excluded some reports from the case altogether. He also expressed his doubts about the evidence of the prosecution's crown witnesses.

However, the judge accepted the prosecution's argument that Azzouz and the others had planned for a terrorist attack in the near future, on an individual basis. He especially saw Azzouz as someone 'who wanted to attack the heart of the Dutch democracy and inflict fear on the Dutch population by committing attacks that might kill numerous persons'. Azzouz' videotaped message to his next of kin and to the Dutch population proved that intent.[155] The imagery was hard to reject and impossible to downplay, even if it had only been a private attempt. Moreover, Azzouz had a track record of strange behaviour; he had tried to purchase arms and amassed a number of maps and details on critical infrastructure. According to the judge, the prosecution had rendered plausible that the defendant had conspired to bomb the headquarters of the Dutch security service, thereby killing many people or harming high-ranking politicians.[156] Even if the preparation had been insufficient and amateurish, the court took into account the purchase of a number of professional firearms, the use of which could have resulted in a high number of casualties.[157]

Ultimately, the six defendants were thus convicted of conspiring to commit a terrorist offence, but not of constituting a terrorist organisation. They received lesser sentences than the prosecutors had argued for: Soumaya S. received a prison sentence of three years, her husband Nouriddin four years, Samir Azzouz eight years[158] and the three others some minor sentences.[159]

Response and Aftermath

In the media, criticism came from all parts of the political spectrum. 'Frustrated youngster, but terrorist?', the Amsterdam newspaper *Het Parool* wondered.[160] 'Bunch

of guys or terrorist organisation', doubted the regional papers. *Trouw* suggested that the defendants had been convicted on their extreme convictions rather than on their actual deeds. Soumaya was portrayed as a 'frail young woman', devastated by the verdict.[161] Even Ayaan Hirsi Ali, who had been on a list of alleged targets, came to the rescue. Hirsi Ali described Soumaya as our 'hope for the future'. Clever girls like Soumaya, who could think for themselves, were sorely needed in the struggle against radicalisation.[162]

Many politicians, ranging from social-democrats, Christian-democrats to liberals, were glad Samir Azzouz had been convicted. 'It is good news that the court managed to convict Samir this time, before an attack occurred', according to CDA representative Sybrand van Haersma Buma. 'This shows our legislation is in order.' Right-wing Member of Parliament Geert Wilders, who participated in the elections for the Second Chamber for the first time with his new 'Party for Freedom', thought otherwise, finding the prison sentences 'ridiculously' short. The defence counsel and the prosecution were dissatisfied as well. The defence counsel Mr. Koppe characterised the verdict as 'shoddy'; the public prosecution held the same opinion, but for opposite reasons: they would file an appeal to question the acquittal of being a terrorist organisation.[163]

Around that time, Samir Azzouz' Dutch-Moroccan wife, Abida, started to campaign in the media for her husband's plight. She tried to raise sympathy for the severe circumstances under which he was held prisoner. On 14 October 2006, in a television documentary about Azzouz, she characterised the charges as 'bizarre'. She suggested that his case was used by the authorities 'to terrorise the Dutch population'.[164] Her mother, a Dutch female convert, also gave her opinion: 'They scare the population with terror threats to push their repressive measures in parliament.' Abida: 'They would have preferred an attack in the Netherlands. The secret service tried to sell weapons to Samir via an informer, but he refused. After an attack they could have further tightened the laws.' Samir was treated 'inhumanely', he was held in isolated captivity even in youth detention (during his first arrest, he had been only sixteen or seventeen-years-old). She was not allowed to visit him at first and only after heavy public pressure did he receive the right medication. 'We are heading in the direction of a Guantánamo Bay.'[165] Abida's main argument was, however, that Samir and she did indeed adhere to the sharia and believed in solidarity for the 'oppressed ummah', even if that required the use of violence, and that the Dutch freedom of speech and expression allowed for that. She compared their fate to the Dutch resistance to Nazi rule. Fighting jihad from a defensive position was legitimate. Confronted with the question whether she and her husband renounced violence in the Netherlands, she

evaded a straightforward answer, although she tried to make a distinction between living in a peaceful society and joining the jihad elsewhere—a more quantitative and gradual distinction than a qualitative one.[166]

In March 2008 the appeal commenced. Under heavy security and blindfolded, the defendants were escorted to the Osdorp court in Amsterdam. Media attention was high for a last time. Defence counsel Bart Nooitgedagt stated on television that the trial was 'false and constructed'. In June 2008, a member of the European Committee for Prevention of Torture (CPT), who had visited the terrorist high security wing in Vught and De Schie the year before, criticised the 'irresponsible' circumstances under which the youthful detainees were held in prison, especially pointing to the plight of the sole female detainee, Soumaya S. She had been in total isolation for ten months now, and her health was deteriorating. 'We will call upon the Dutch government to deal with this', according to CPT member Marc Nève.[167]

This international criticism regarding the circumstances of the detention had its effect. Soumaya was relocated to a regular women's prison in Zwolle. She enjoyed the advantage of all the social contacts there, engaged in a dialogue with the prison's rabbi, Aryeh Heintz, whom she had met during her first detention in 2005 and joined an Evangelical church choir. In August 2008, Heintz wrote the court a letter, wanting to 'counterbalance, as a sort of *character witness*, the negative image the prosecution had projected of Soumaya'. 'To me, she appears honest and reliable.' Soumaya had been drawn into 'the wrong circles', by a 'hate mongering imam'. While that imam, Fawaz Jneid, is still allowed to incite hatred, this 'orthodox, but tolerant Muslima' is being held in captivity. 'I believe that she can act as a role model for other girls that are on the verge of radicalisation. She can show them how to be an orthodox Muslim without having to turn against society.'[168]

This was to no avail. On 18 September 2008, the court issued its shocking verdict. This time, the judge identified the 'Piranha' group as a real terrorist organisation. The judge hardly responded to Soumaya's pleas, nor did the arguments put forward by defence counsel regarding the conjectural reasoning based on intelligence reports that lacked context impress him. The judge recognised that the AIVD might have tampered with the telephone conversations of Soumaya and her sister, but he did not draw any consequences from that, apart from warning the prosecution to treat such evidence 'carefully'. The court moreover acknowledged some 'irregularities' during the investigation, but found that the prosecution had put them right during the hearings. On 2 October, the Appeals Court of The Hague pronounced the sentences.[169] Azzouz was sentenced to nine years' imprisonment, Nouriddin el Fahtmi to eight years, Mohammed C. to six years, Soumaya S. four years (one year in addition to the

initial sentence) and Mohammed H. to three months. The sentences were higher, since the judge included their involvement in real criminal acts (possession of firearms, etc.) in the criminal act of constituting a terrorist organisation.[170]

Samir applauded upon hearing that the court considered him the 'leader of a terrorist organisation'.[171] Soumaya's counsel, Bart Nooitgedagt, was 'livid', branding it 'political justice'. Soumaya had, 'bluntly stated, been screwed'.[172] The lawyers immediately announced their intention to refer the case to the Supreme Court. Advocate General Leo Hollander did not see their problem. 'In terrorist cases we operate with relatively new legislation, causing prosecutors to test its boundaries.' For the public prosecutors, the verdict was 'a boost'. The newspapers were hesitant. 'A terror group after all?' the regional media asked, or rather 'a political verdict'? *De Telegraaf* called Soumaya a 'terrorist sweetheart'. Even conservative *Elsevier* warned that the rule of law was balancing on a thin line. 'In the end, it boils down to the difference between thought and action', a difference which was increasingly difficult to distinguish with the new antiterrorism legislation. The Supreme Court therefore first had to check carefully 'whether the trials functioned according to the rules', and to establish 'how tight a group had to be organised to justify a conviction [as a terrorist organisation]'.[173]

The extent to which the perceived terrorist threat had been a product of the imminent post-Van Gogh years became clear after 2008. Azzouz' wife Abida was invited to share her story on national talk shows.[174] In 2011, the Supreme Court critically reviewed the Piranha case: the Appeals Court of The Hague had not sufficiently reasoned its refusal to question the context and content of intelligence reports that were used as evidence, and had to partly re-try the case in 2012.[175]

9.5. Conclusion

In this chapter, we have tried to analyse the trials against Bouyeri and the Hofstad Group defendants from a performative perspective, thereby focusing upon how future terror scenarios were mobilised and visualised and on the extent to which they were incorporated in the judgments (terrorist risk sentencing). It has become clear that only Bouyeri followed a clear strategy aimed at mobilising his perceived target audience to accept his vision of justice and injustice. To a lesser extent Samir Azzouz also stuck to his extreme perspective, ventilating in court and (via his wife) on television, that waging jihad on behalf of oppressed Muslims was a noble and righteous cause. He, however, rejected the charges of preparing a terrorist attack. In his case, the line

between legitimate war and non-violent protest was not as clear-cut as he portrayed it to be. Neither he nor his wife renounced violence as such; for them, their Islamic consciousness and solidarity with the oppressed ummah had priority over protecting the Dutch rule of law.

On the other hand, the prosecution made clear that between 2004 and 2006 the willingness to charge potential terrorists based on projected risk scenarios increased. We maintain that since 2004 the appetite for sentencing 'individuals at risk to become involved in terrorism' (terrorist risk sentencing) increased in the Netherlands. Courts showed significant willingness to entertain the likely and possible effects of inchoate plots and they delivered sentences based on potential violence. We have established that performative strategies by the prosecution, where pre-emption and premediation replace retribution, challenged basic fair trial standards. We have identified and examined various ways in which the public prosecutors interpolated potential disastrous scenarios as a reality in court and made full use of the associative, preparatory and precautionary elements in the new Dutch anti-terrorism legislation; this, even though the Dutch inquisitorial system does not offer the best opportunities for this.

More than a purely judicial shift, these findings can be related to shifting notions of public and political responsibility. They can be understood in terms of what Michael Power has called 'secondary risk management'. For Power, risk management professionals are not solely concerned with managing the primary risk they are responsible for—this being, in our cases, the risks of terrorism and grave security threat. They are also and in fact increasingly so, according to Power, 'preoccupied with managing their own risks'.[176] Secondary risk management, as discussed by Power, arises as an asymmetry appears between risk appetite on the one hand, with the authorities more prone to act on future risks, and a responsibility-taking aversion on the other, with authorities more worried about being held responsible for actual disasters by the media, their constituencies, parliament, etc.[177] As such, Power's argument has affinities with that of Aradau and Van Munster,[178] for whom 'The rationality of catastrophic risk translates into policies that actively seek to prevent situations from becoming catastrophic at some indefinite point in the future' (emphasis in the original). In Aradau and Van Munster's formulation, however, the responsibility aversion of secondary risk management itself becomes an important knowledge practice and spur to action.

The cases analysed in this chapter illustrate how practices of primary and secondary risk management have entered the judicial domain. The incorporation of precautionary counterterrorism into criminal legislation is not just a matter of

juridical change, but plays out in the performative dynamic between the police, the public prosecutor, defence counsel and the judges. After the Van Gogh murder, the security and intelligence services were quick to provide their early warnings, prompting public prosecutors to launch investigations into possible terrorist attacks before actual preparations had begun and based only on fragmented and inconclusive evidence. Security agencies and politicians responsible for these 'inverse investigations' (initiated with a highly condensed intelligence alert, focussing on a certain individual, and then developing into the search for a corresponding crime) legitimised it on the basis of 'the will of the people' and 'dangerous times'.

In the Dutch Hofstad case, the implementation of significant legal reform, and the increasingly active role of the security services in bringing cases to prosecutors' attention, produced a situation in which public prosecutors were not satisfied with the acquittal of a suspect, felt heavy political and public pressure and proactively made use of sparse intelligence alerts to launch pre-emptive investigative operations. They subsequently rehearsed the AIVD evidence to demonstrate the potential volatility of the suspects (by showing a home-made video 'will' or by referring to the new vignette of the brainwashed female terrorist). They moreover actively sought to test and expand the reach of new terrorism laws.

For the defendants, it was very hard to argue against such instances of precautionary and premediated charges that could very well have been true in their anticipative dimension. In the cases discussed above, only Bouyeri—who did commit a murder—accepted the charges. Although all other defendants rejected the terrorist charges, the mediated nature of the trial, the broadcast farewell video, the lively images of burqa-clad female friends and partners and the lists of chemicals presented by the prosecutors made it very hard, if not impossible, to counter these projected terrorist associations. Some of them, including Bouyeri and Azzouz, tried to raise their own radical narratives of injustice (oppression of the Ummah; the Dutch democratic rule of law) and justice (legitimate jihad). Lack of sympathisers within the larger Muslim community and of an organised 'Umfeld' meant that they were not able to mobilise much support. The strategy of their defence counsel, however, in pointing to the inherent contradictions to compliance with human rights in the adjudication and investigative process, achieved some results, not leading to acquittals, but in the case of Soumaya S. to a partial retrial.

After a number of years the assessment of the Hofstad Group's activities boiled down to what they really were: chats, boasts and flawed attempts to draw maps and to purchase weapons. Since then, Soumaya S. and Jason Walters have distanced themselves completely from the rest and proclaimed their belief in the rule of law.

The terrorist intent, their membership of a terrorist organisation, was overturned in appeal, then upheld again, overruled by a higher court, confirmed by another, and some defendants in this process still have appeals filed as of September 2014. In large part, the Hofstad Group trials thus have been virtual, invoking possible futures and transforming security considerations and risk management approaches into acts of adjudication. For Bouyeri and Azzouz the trials were about conflicting systems of justice, whereas the other defendants were nailed down and locked up in their own nightmarish but inchoate deliberations. Performing and sentencing with imagined reality remains a risky business for the public prosecutors, but even more so for the defendants.

Notes

1 The author wants to thank Quirine Eijkman, Bart Schuurman and Marieke de Goede for their advice and input into this chapter.

2 Emerson Vermaat, *De Nederlandse Jihad: Het proces tegen de Hofstadgroep* (Soesterberg: Aspekt, 2006), p. 33.

3 This paragraph is based on the methodological paragraphs in: Marieke de Goede and Beatrice de Graaf, 'Sentencing Risk: Temporality and precaution in terrorism trials', *International Political Sociology*, 7:3 (2013), pp. 313–331.

4 Marieke de Goede, 'Beyond Risk: Premediation and the post-9/11 security imagination', *Security Dialogue*, 39:2/3 (2008), pp. 155–176.

5 De Goede and De Graaf, 'Sentencing Risk', pp. 313–331.

6 Robert Chesney, 'Beyond Conspiracy? Anticipatory prosecution and the challenge of unaffiliated terrorism', *Southern California Law Review*, 80:3 (2007), pp. 425–502.

7 Matthias Borgers and Elies van Sliedregt, 'The meaning of the precautionary principle for the assessment of criminal measures in the fight against terrorism', *Erasmus Law Review*, 2:2 (2009), pp. 171–195.

8 E.g. Robert Chesney, 'The Sleeper Scenario: Terrorism-support laws and the demands of prevention', *Harvard Journal of Legislation*, 42:1 (2005), pp. 40–44; Maartje van der Woude, *Wetgeving in een Veiligheidscultuur: Totstandkoming van antiterrorismewetgeving bezien van maatschappelijke en (rechts)politieke context* (Den Haag: Boom Juridische Uitgevers, 2010); Laura K. Donohue, 'Terrorism and Trial by Jury: The vices and virtues of British and American criminal law', *Stanford Law Review*, 59 (2007), pp. 1321–1364.

9 Lucia Zedner, 'Security, the State, and the Citizen: The changing architecture of crime control', *New Criminal Law Review*, 13 (2010), pp. 379–403; J. McCulloch and S.J. Pickering,

'Pre-crime and Counter-terrorism: Imagining future crime in the "War on Terror"', *British Journal of Criminology*, 49:5 (2009), pp. 628–645.

10 Ronald Kessler, *The Terrorist Watch: Inside the desperate race to stop the next attack* (New York: Crown, 2007).

11 Lawrence Douglas, Austin Sarat and Martha Merrill Umphrey, *Law and Catastrophe* (Stanford: Stanford University Press, 2007), p. 7.

12 De Goede and De Graaf, 'Sentencing Risk', pp. 313–331.

13 Richard Grusin, *Premediation: Affect and mediality after 9/11* (London: Palgrave 2010); Richard Grusin, 'Premediation', *Criticism*, 46:1 (2004), pp. 17–39.

14 Claudia Aradau and Rens van Munster, *Politics of Catastrophe: Genealogies of the unknown* (London and New York: Routledge, 2011), p. 31.

15 Wouter Werner, 'The Use of Law in International Political Sociology', *International Political Sociology*, 3:4 (2010), pp. 304–307, there 305.

16 Michael Power, *The Risk Management of Everything: Rethinking the politics of uncertainty* (London: Demos, 2004), p. 10.

17 NCTb [Nationaal Coördinator Terrorismebestrijding], *Salafisme in Nederland* (The Hague: NCTb, 2008), p. 25; 'De omstreden El Tawheed-Moskee', NOVA broadcast (9 November 2004), http://www.novatv.nl/page/detail/uitzendingen/3011. Retrieved 1 June 2009. According to NOVA, Saudi businessman Aqeel Alaqeel financed the El Tawheed Mosque with 1.3 million Euro. Al Haramein was blacklisted as an Al Qaeda charity, but the accusations were not substantiated, and the mosque continued to operate. I am grateful to Dennis de Widt for these references.

18 'Feitenrelaas', attachment to the Letter to Parliament (ministers of the Interior and Justice), 10 November 2004, Handelingen van de Tweede Kamer, No. 29854.

19 For an account of this story, see 'Samir A.: Staatsvijand nr. 1', KRO *Reporter* (1 October 2006), http://reporter.incontxt.nl/seizoenen/reporter-2006/afleveringen/01-10-2006. Retrieved 1 June 2009. The documentary includes interviews with Azzouz and his wife; Eric Vrijsen, 'Hofstadgroep: Van Samir A. tot Marad J.', *Elsevier* (5 July 2005); Arjan Erkel, *Samir* (Amsterdam: Balans, 2007).

20 Petter Nesser, *The Slaying of the Dutch Filmmaker: Religiously motivated violence or Islamist terrorism in the name of global jihad? FFI report* (Kjeller: FFI, 2005), pp. 17–19.

21 Nesser, 'Slaying of the Dutch Filmmaker', 17–19; 'Spanish link to Dutch film-maker's killing is probed', *El País* (9 November 2004); Craig S. Smith, 'Dutch Look for Qaeda Link After Killing of Filmmaker', *New York Times* (8 November 2004); 'Muslims arrested in Van Gogh murder belong to militant group', *Haaretz* (13 November 2004).

22 Emerson Vermaat, *De Hofstadgroep: Portret van een radicaal-islamitisch netwerk* (Soesterberg: Aspekt, 2005), pp. 76–77.

23 Siem Eikelenboom, *Niet bang om te sterven: Dertig jaar terrorisme in Nederland* (Amsterdam: Nieuw Amsterdam, 2007), pp. 81–83; National Prosecutor's Office, *Requisitoir in de strafzaak tegen de verdachten van de Hofstadgroep*, Part I, Amsterdam (23 and 25 January 2006); interview with the national terrorism prosecutor Polyan Spoon (Rotterdam, 7 September 2009).

24 National Prosecutor's Office, *Repliek van de officier van justitie in de strafzaken tegen Nadir A.*, p. 7, 13.

25 'Dutch radical Islamic group planned Euro 2004 attack in Portugal', AFP press release (15 November 2004); 'Dutch Islamists Planned Barroso Attack,' *Reuters* press release (15 November 2004); Ministry of Justice, *Letter to Parliament, With a Report on the Assassination of Theo van Gogh* (10 November 2004). Handelingen van de Tweede Kamer (HTK) 2004–2005, 29,854, No. 3; see also the parliamentary debate on this report on November 11, 2004. HTK 2004–2005, No. 22, pp. 1278–1332.

26 Marc Sageman, *Leaderless Jihad: Terror networks in the twenty-first century* (Philadelphia: University of Pennsylvania Press, 2008), p. 79; see also Lorenzo Vidino, 'The Hofstad Group: The new face of terrorist networks in Europe', *Studies in Conflict and Terrorism*, 30:7 (2007), pp. 579–592, there pp. 585–587; Sageman, 'Hofstad Case Study & The Blob Theory', *Theoretical Frames on Pathways to Violent Radicalization*. Artis Research and Risk Modelling (August 2009), p. 14; http://www.artisresearch.com/articles/ARTIS_Theoretical_Frames_August_2009.pdf. Retrieved 1 June 2009.

27 See their defence in the court cases in Rotterdam and Amsterdam, 2006; 'Hofstadgroep bestaat helemaal niet', NRC *Handelsblad* (1 February 2006).

28 National Prosecutor's Office, *Requisitoir van de officier van justitie*, pp. 44–45. For the role of Al-Issa see also Vermaat, *De Hofstadgroep*, pp. 69–74.

29 Ruud Peters, 'Dutch extremist Islamism: Van Gogh's murderer and his ideas', in: Rik Coolsaet (ed.), *Jihadi terrorism and the radicalisation challenge in Europe* (London: Ashgate, 2008), pp. 115–130, here: p. 118.

30 Verdict in the case of the Hofstad group, paragraph 109.

31 At present, Al-Issa is supposedly detained in Syria.

32 See also Vidino, 'The Hofstad Group', p. 585.

33 National Prosecutor's Office, *Requisitoir van de officier van justitie*; *Verdict in the Hofstad Group case*; 'The "Hofstad Group"'.

34 A highly informative account of the assassination of Van Gogh and the development of the Hofstad Group can be found in Albert Benschop, 'Jihad in the Netherlands: Chronicle of a political murder foretold', *Universiteit van Amsterdam* (2 November 2004) http://www.sociosite.org/jihad_nl_en.php. Retrieved June 2009.

35 The description of this case is based, amongst others, on the oral pleadings of the National

Prosecution in the Hofstad Group case. National Prosecutor's Office, *Requisitoir van de officier van justitie*, part I, 23 January 2006 and part II, 25 January 2006; District Court of Amsterdam, *Verdict against Bouyeri*, LJN AU0025, 13/129227-04, 26 July 2005. Verdict, LJN AV5108, District Court of Rotterdam, 10/000322-04;10/000328-04;10/000396-04;10/000393-04;10000325-04;10/000323-04;10/000395-04, 10 March 2006; LJN: BC2576, Appeals Court of The Hague, 23 January, 2008 (appeal). Verdict in appeal, Appeals Court of The Hague, 2 October 2008, no.2200734906; LJN: BK5172, Supreme Court, 2 February 2010 (cassation); LJN: BO7690, Amsterdam Court of Appeals, 17 December 2010 (retrial on appeal); 'The "Hofstadgroep"', *Transnational Terrorism, Security & the Rule of Law*, Working Paper (April 2008) www.transnationalterrorism.eu/tekst/publications/Hofstadgroep.pdf. Retrieved 1 June 2009.

36 The Review Committee on the Intelligence and Security Services officially concluded in March 2008 that this had been a serious intelligence failure, as evidence surfaced prior to the attack that Bouyeri was at least affiliated with Dutch jihadist groups. See the official report: 'Toezichtsrapport inzake de afwegingsprocessen van de AIVD met betrekking tot Mohammed B.', *Commissie van Toezicht betreffende de Inlichtingen- en Veiligheidsdiensten* (CTIVD), 17 (March 2008).

37 Siem Eikelenboom, *Niet bang om te sterven: Dertig jaar terrorisme in Nederland* (Amsterdam: Nieuw Amsterdam, 2007), pp. 23–27; see also National Prosecutor's Office, *Repliek van de officier van justitie in de strafzaken tegen Nadir A. etc.*, Amsterdam (6 February 2005), pp. 4–5, 9–10, 17–23.

38 'De wereld van Mohammed B.', NRC *Handelsblad* (9 July 2005).

39 Jutta Chorus and Ahmet Olgun, *In godsnaam: Het jaar van Theo van Gogh* (Amsterdam/Antwerpen: Contact, 2005), p. 64, 200.

40 Ruud Peters, 'De ideologische en religieuze ontwikkeling van Mohammed B.: Deskundigenrapport in de strafzaak tegen Mohammed B. in opdracht van het Openbaar Ministerie opgesteld voor de arrondissementsrechtbank Amsterdam' (2005), p. 8; see also 'Verdict in the Hofstad Group case', paragraph 109, p. 116.

41 For his religious and ideological ideas and their development, see the report of Ruud Peters, who was an expert witness for the prosecution during the trial, http://www.sociosite.org/jihad/peters_rapport.pdf. Retrieved June 2009.

42 Statement of the Minister of the Interior and Kingdom Relations, Johan Remkes, during the parliamentary debate on the murder of Theo van Gogh. House of Representatives of the States General, 11 November 2004, Parliamentary Papers, No. 22–1303, 11 November 2004; Chorus and Olgun, *In godsnaam: Het jaar van Theo van Gogh*, p. 200.

43 National Prosecutor's Office, *Requisitoir van de officier van justitie in de strafzaak tegen Mohammed B.* (Amsterdam, 12 July 2005), pp. 7–8.

44 Ibid., p. 7.

45 Ibid., pp. 10–26.

46 Peters, 'Dutch Extremist Islamism', in: Rik Coolsaet (ed.), *Jihadi terrorism and the radicalisation challenge in Europe: European and American Experiences* (London: Ashgate, 2011), pp. 115–130.

47 Nesser, *The Slaying of the Dutch Filmmaker*, p. 25.

48 National Prosecutor's Office, *Repliek van de officier van justitie in de strafzaken tegen Nadir A.*, pp. 31–32.

49 A Dutch biography of this Sheikh is available on the website of 'Marokko Community', in which references to the 11 September fatwa are found: 'Sheikh Hamoud bin Uqla as-Shu'aybi. De levensloop van een groot geleerde' (24 July 2008) http://forums.marokko.nl/showthread.php?t=2092457. Retrieved 11 July 2009.

50 National Prosecutor's Office, *Requisitoir van de officier van justitie in de strafzaak tegen Mohammed B.*, p. 43.

51 Ibid., p. 49; District Court of Amsterdam, *Verdict against Bouyeri*, LJN AU0025, 13/129227-04 (26 July 2005).

52 'Gewonden bij politieactie in Den Haag', *De Telegraaf* (10 November 2004).

53 National Criminal Investigation Service ('Dienst Nationale Recherche'), RL 8026; KRO-Reporter, 'Samir A.: staatsvijand nr. 1' (broadcast on 1 October 2006).

54 'Het vonnis in de zaak-Samir A. verklaard', *Elsevier* (16 April 2005).

55 Interview team leader National Criminal Investigation Service (Houten, 16 August 2011).

56 Interview team leader National Criminal Investigation Service (Houten, 16 August 2011).

57 'Een afgeluisterd gesprek over VVD'ers', NRC *Handelsblad* (20 July 2005).

58 'Terreurverdachte Samir A. schrijft boek', NOVA (24 January 2006). http://www.novatv.nl/page/detail/uitzendingen/4069/Terreurverdachte+Samir+A.+schrijft+boek. Retrieved June 2009.

59 Politieverslagen; interview met de teamleider van de Nationale Recherche (Houten, 16 augustus 2011); KRO-Reporter, 'Samir A.: staatsvijand nr. 1' (1 October 2006).

60 Janny Groen and Annieke Kranenberg, *Strijdsters van Allah: Radicale moslima's en het Hofstadnetwerk* (Amsterdam: Meulenhoff/De Volkskrant, 2006), p. 208.

61 Verdict on appeal, Appeals Court of The Hague, 2 October 2008, no. 2200734906.

62 He had two defence counsel: Mr. Plasman and Mr. Sarikaya.

63 *Netwerk* (28 July 2005), http://www.netwerk.tv/node/2723#. Retrieved 27 August 2012.

64 'Mohammed B. spreekt in de rechtzaal', NOVA (12 July 2005); 'Laatste Woord Mohammed B.', *De Volkskrant* (9 August 2005).

65 Hattum, W.F., van and Jong, de, W.H. 'Twee Kwesties Naar Aanleiding van het Vonnis Tegen Mohammed B.', *Nederlands Juristenblad*, 8 (2005), pp. 246–252.

66 'Eerste dag rechtzaak tegen Mohammed B.', *ÉénVandaag* (11 July 2005).

67 District Court of Amsterdam, *Verdict against Bouyeri*, LJN AU0025, 13/129227-04, July 26, 2005; 'Laatste Woord Mohammed B.', *De Volkskrant* (9 August 2005).

68 Term of abuse, literally translated 'goat fuckers'.

69 District Court of Amsterdam, *Verdict against Bouyeri*, LJN AU0025, 13/129227-04, July 26, 2005; 'Laatste Woord Mohammed B.', *De Volkskrant* (9 August 2005).

70 Beatrice de Graaf. 'The Nexus between Salafism and Jihadism in the Netherlands', CTC *Sentinel*, 3:3 (2010), pp. 17–22; Joas Wagemakers, 'A Purist Jihadi-Salafi: The ideology of Abu Muhammad al-Maqdisi', *British Journal of Middle Eastern Studies*, 36:2 (2009), pp. 287–297; Joas Wagemakers, 'Framing the "Threat to Islam": Al-walaʾ wa-l-baraʾ in Salafi Discourse', *Arab Studies Quarterly*, 30:4 (2008), pp. 1–22; Joas Wagemakers, 'Abu Muhammad al-Maqdisi: A counter-terrorism asset?', CTC *Sentinel*, 1:6 (2008), pp. 7–9.

71 District Court of Amsterdam, *Verdict against Bouyeri*, LJN AU0025, 13/129227-04, 26 July 2005.

72 'Hofstadgroep de dag voor de moord vooral bezig met trouwerij', *De Volkskrant* (25 July 2005); 'De bode wordt er kwaad om, de rechter niet', *Trouw* (5 January 2006).

73 Marieke Slootman and Jean Tillie, *Processes of Radicalisation: Why some Amsterdam Muslims become radicals* (Amsterdam: Institute for Migration and Ethnic Studies, 2006), p. 99.

74 Martijn de Koning, *Zoeken naar een 'zuivere' Islam: Geloofsbeleving en identitietsvorming van jonge Marokaanse-Nederlandse Moslims* (Amsterdam: Bert Bakker, 2008), pp. 379–386.

75 'Zalm: we zijn in oorlog! Regering: terrorisme met wortel en tak uitroeien', *Algemeen Dagblad* (6 November 2004); 'Terroristen met dubbele nationaliteit raken Nederlands paspoort kwijt. Kabinet verklaart de oorlog aan terreur', *Het Parool* (6 November 2004); 'Overheid wil meer armslag: anti-terreurmaatregelen', *Trouw* (6 November 2004).

76 See, for example, Ron Eyerman, *The Assassination of Theo van Gogh: From social drama to cultural trauma* (Durham/London: Duke University Press, 2008); Ian Buruma, *Murder in Amsterdam: The death of Theo van Gogh and the limits of tolerance* (New York: Penguin, 2006).

77 De Koning, *Zoeken naar en 'zuivere' Islam*, pp. 379–386.

78 'Mohammed Bouyeri wil de doodstraf', *Elsevier* (11 July 2005).

79 District Court of Amsterdam, *Verdict against Bouyeri*, Case Number LJN: AU0025, 13/129227-04, 26 July 2005.

80 In the Netherlands, life sentences are very rare. Bouyeri was the 28th person to receive such a sentence since 1945, war criminals included. Capital felonies, such as murder, usually result in sentences of ten to fifteen years. The new terrorism law, however, states that if there is a terrorist motive for a crime the sentence may be increased by half. Imprisonments ordinarily in excess of fifteen years can be upgraded to life imprisonment, as was the case with Bouyeri.

81 Stan de Jong, *Prettig weekend ondanks alles* (Amsterdam: Xtra, 2005); Stan de Jong, 'De moord op Theo van Gogh: wie wist wat', *De Nieuwe Revu*, 44 (2006), pp. 18–23.

82 'Wet Terroristische Misdrijven', *Staatsblad* (24 June 2004).

83 Cf. for the decision making process and parliamentary discussion regarding this new law: Maartje van der Woude, *Wetgeving in een veiligheidscultuur: totstandkoming van antiterrorismewetgeving in Nederland bezien vanuit maatschappelijke en (rechts)politieke context*. Leiden University Docteral Thesis (2010), pp. 204–231.

84 Public Prosecution (OM), *Requisitoir van de Officier van Justitie in de zaak 'Piranha'*, Part I & II, 3 & 6 November 2006, here: Part II, 'Eisen'.

85 Q.A.M. Eijkman and B. van Ginkel, 'Compatible or Incompatible: Intelligence and human rights in terrorist trials', *Amsterdam Law Forum*, 3:4 (2011), pp. 3–16, here: p. 4.

86 Interviews with public prosecutor Koos Plooij (Schiphol: 5 October 2011).

87 'Pleitnota' (Defence) in the Piranha-case, 8 November 2006; interview with defence counsel Bart Nooitgedagt (October 2011).

88 National Prosecutor's Office, Requisitoir van de officier van justitie in de 'Arles' zaak, Part I (23 January 2006), pp. 2–4.

89 Cf. for the new Dutch anti-terrorism legislation Maartje van der Woude, Wetgeving in een Veiligheidscultuur; Marianne Hirsch Ballin, *Anticipative Criminal Investigation: Theory and counterterrorism practice in the Netherlands and the United States* (The Hague: T.M.C. Asser Press and Springer, 2012).

90 Interview with Koos Plooy (Schiphol, 5 October 2011).

91 'Leden Hofstadgroep blijven vastzitten', *Elsevier* (7 February 2005).

92 'Bewijs tegen Hofstadgroep stapelt zich op', *Elsevier* (20 September 2005).

93 Ibid.

94 National Prosecutor's Office, *Requisitoir van de officier van justitie* (Part 1), 'Arles' case (23 January 2006), p. 47.

95 Verdict in appeal, Appeals Court of The Hague, 23 January 2008, LJN BC 2576 no. 220061897o6.

96 National Prosecutor's Office, *Requisitoir van de officier van justitie* (Part 1), 'Arles' case, 23 January 2006, pp. 47–48.

97 At first instance in 2005 and 2006, on appeal 2007, and during the partial retrial in 2011. The 'cassation' procedure at the Supreme Court is mostly a written procedure in the Netherlands. Sometimes, as was the case with Piranha, defence counsel plead their case orally before the Supreme Court, but this is an exception.

98 'Hofstadgroep de dag voor de moord vooral bezig met trouwerij', *De Volkskrant* (25 July 2005); 'De bode wordt er kwaad om, de rechter niet' *Trouw* (5 January 2006).

99 Groen and Kranenberg, *Strijdsters van Allah*; 'Hofstadgroep de dag voor de moord vooral

bezig met trouwerij', *De Volkskrant* (25 July 2005); Maurits Berger, 'Nieuwe Spelers, nieuwe regels', *Tijdschrift voor Religie, Recht en Beleid*, 1:1 (2010), pp. 3–4; 'Je bent als Hofstadter een held in de gevangenis', *De Volkskrant* (27 January 2006); Vermaat, *De Nederlandse Jihad*, p. 137.

100 On appeal he was a witness and no longer a defendant.

101 'Bouyeri: Mijn ideologie is niet van belang', *Elsevier* (2 December 2005); Vermaat, *De Nederlandse Jihad*, pp. 23–24.

102 'Bouyeri: Vergelijking met Bin Laden te veel eer', *Elsevier* (2 February 2006).

103 Vermaat, *De Nederlandse Jihad*, pp. 137–146; 'Rechter laat weer Hofstadverdachte vrij', *Elsevier* (22 December 2005).

104 Vermaat, *De Nederlandse Jihad*, pp. 137–146.

105 'Jason W.: Ik wilde interessant doen', *Elsevier* (9 December 2005); Vermaat, *De Nederlandse Jihad*, pp. 35–36.

106 Vermaat, *De Nederlandse Jihad*, pp. 170–173.

107 Ibid., p. 33.

108 In first instance, nine of the fourteen defendants were convicted. In seven cases the verdict of the District Court of Rotterdam was appealed (both by the defendants and the public prosecutor).

109 'Hofstadverdachte Jason W. wil niet meewerken', *Trouw* (23 July 2007); 'Jason W. zwijgt in hoger beroep' *Trouw* (24 July 2007).

110 'Jason W. werkt mee aan berechting', *De Telegraaf* (16 July 2011), author was present on 16 July 2011 in the Appeals Court of Amsterdam.

111 'Advocaat Jason W. niet in beroep, Openbaar Ministerie wel om helderheid terroristisch oogmerk', *Nederlands Juridisch Dagblad* (9 February 2007).

112 'Jason W. zwijgt in hoger beroep' *Trouw* (24 July 2007); 'De bode wordt er kwaad om, de rechter niet' *Trouw* (5 January 2006).

113 'Dit proces is een klassieke heksenjacht', NRC *Handelsblad* (7 January 2006).

114 'Hofstad-advocaten willen verhoor verbalisanten' *Trouw* (6 December 2005).

115 'Rechters hoger-beroep Hofstad niet vervangen' *Trouw* (8 November 2007).

116 Verdict, LJN AV5108, District Court of Rotterdam, 10/000322-04;10/000328-04;10/000396-04;10/000393-04;10000325-04;10/000323-04;10/000395-04, 10 March 2006.

117 'Hofstadgroep vrijgesproken van terrorisme', *De Volkskrant* (23 January 2008).

118 Appeals Court of The Hague's decision in the appeal of Jason Walters, LJN: BC2576, 2200189706, 23 January 2008.

119 Interview with Polyan Spoon (Rotterdam, 7 September 2009).

120 Verdict in the Piranha case. LJN: AZ3589, 10/600052-05, 10/600108-05, 10/600134-05, 10/600109-05, 10/600122-05, 10/600023-06, 10/600100-06.

121 'Hoge Raad vernietigt vrijspraken in de Hofstadgroep zaken', Press Statement *Hoge Raad* (2 February 2010).

122 Verdict, LJN BK5196, Supreme Court of the Netherlands, 08/00740, 2 February 2010.

123 'Hoge Raad vernietigt vrijspraak Hofstadgroep', NRC *Handelsblad* (2 February 2010).

124 Verdict, LJN: BO7690, Court of Appeals Amsterdam, nr. 23-000751-10, 17 December 2010.

125 Verdict, LJN: BO9018, BO9017, BO9016, BO9015, BO9014, Court of Appeals Amsterdam, 23-000748-10, December 17, 2010; LJN: BO8032, Court of Appeals Amsterdam, 23-000747-10; 17 December 2010; LJN: BO7690, Court of Appeals Amsterdam, 23-000751-10; 17 December 2010.

126 Irene Frankhuijzen, 'The Hofstadgroep in beeld', Student Master thesis (Rotterdam: Faculty of History and Art, Erasmus University Rotterdam, 2006); Britta Böhler, *Crisis in de rechtsstaat: Spraakmakende zaken, verborgen processen* (Utrecht: Arbeiderspers, 2004).

127 Vermaat, *De Nederlandse Jihad*, pp. 291–377; Groen and Kranenberg, *Strijdsters van Allah*, pp. 233–235, 251–254; lecture by Bart Nooitgedagt, *De rol van de advocaat* (The Hague: Leiden University, 15 September 2011). The author was present.

128 *Netwerk*, 'Verdachten Hofstad: Beweren: AIVD-informant leverde handgranaat Laakkwartier' (28 October 2005); 'Samir A: Saleh B. was wel informant van de AIVD', *Elsevier* (21 December 2005); Vermaat, *De Nederlandse Jihad*, pp. 63–65; 'Dit proces is een klassieke heksenjacht', NRC *Handelsblad* (7 January 2006); For more information see Quirine A.M. Eijkman and Bibi van Ginkel, 'Compatible or Incompatible: Intelligence and human rights in terrorist trials', *Amsterdam Law Forum*, 3:4 (2011), pp. 3–16.

129 Groen and Kranenberg, *Strijdsters van Allah*, pp. 255–259; 'Radicale Moslims woedend over de uitspraak Hofstad-zaak', *De Volkskrant* (13 March 2006); 'Breedveld/Politici begrijpen niets van eigen anti-terrorisme wet', *Trouw* (14 March 2006).

130 Rotterdam District Court, Verdict LJN: AU4531, 19 October 2005.

131 National Prosecutor's Office, *Requisitoir van de officier van justitie in de zaak 'Piranha'*. Part I & Part II (3 and 6 November 2006), Amsterdam-Osdorp.

132 Interview with Polyan Spoon, the public prosecutor for terrorism (Rotterdam, 7 September 2009).

133 National Prosecutor's Office / Koos Plooy and Alexander van Dam, *Repliek van de officier van justitie in de zaak 'Arles'* (24 February 2006), p. 10.

134 National Prosecutor's Office /Alexander van Dam and Bart den Hartigh, *Requisitoir van de officier van justitie in de zaak 'Piranha'*. Part I (3 November 2006), pp. 84–85.

135 The video had already been broadcast on a national news show; *De Volkskrant* (14 September 2006), http://www.volkskrant.nl/vk/nl/2686/Binnenland/article/detail/814966/2006/09/14/Video-testament-Samir-A-op-televisie.dhtml. Retrieved July 2009.

136 Cf. Requisitoir Part I, p. 61. While still in custody, the defendant phoned a radio

programme to refute the allegations made by the prosecution; 'Terreurverdachte Soumaya S. ontkent aantijgingen', *Business News Radio* (3 Augustus 2005).

137 See the excerpt and argument of the prosecution: (Oral pleadings) Requisitoir in the Piranha case, Part I, pp. 59–63.

138 Interview with Alexander van Dam, public prosecutor in that particular case (28 January 2011).

139 See verdict of the Amsterdam Court against Soumaya S., 25 March 2014. Case no. 23-005455-11. http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHAMS:2014:905&keyword=jihad Retrieved 2 September 2014.

140 Groen and Kranenberg, *Strijdsters van Allah*.

141 'Preken en porno', *De Telegraaf* (16 July 2005).

142 'Soumaya weet niets van jihad', BN/*De Stem* (5 October 2005); interview with Dutch Federal Prosecutor Koos Plooy (Schiphol/Amsterdam, 5 October 2011).

143 Requisitoir, Part II, pp. 45–46.

144 'Samir A. ernstig ziek en sterft van de pijn', *Elsevier* (22 December 2005).

145 'Terreurgroep doet aangifte tegen rechercheur', *Elsevier* (31 October 2006).

146 Interview with Soumaya S. (9 June 2011).

147 Interview with the team leader of the Nationale Recherche (Houten, 16 August 2011).

148 Interview with Soumaya S., The Hague (9 June 2011).

149 'Imam vervloekte Van Gogh vóór moord', *De Volkskrant* (31 October 2006); Report of the hearings, 30 October 2006, Rotterdam; cf. for the text of the sermon Groen and Kranenberg, *Strijdsters van Allah*, pp. 331–332.

150 'Justitie pakt ons vanwege ons geloof', *Trouw* (1 December 2006).

151 National Prosecutor's Office, *Requisitoir van de officier van justitie in de zaak 'Piranha'*, Part II, 6 November 2006.

152 Ibid.

153 'OM eist tot vijftien jaar tegen terreurverdachten', *Het Parool* (7 November 2006); 'Terreurverdachte Samir A. wil snel "weg uit dit zieke land"', *Trouw* (11 November 2006).

154 'Netwerk rond Samir A. geen terreurorganisatie', *Elsevier* (1 December 2006).

155 National Prosecutor's Office /Alexander van Dam and Bart den Hartigh, *Requisitoir van de officier van justitie in de zaak 'Piranha'*. Part I, 3 November 2006, pp. 84–85; The video was broadcast on television: 'Videotestament Samir A. op televisie', *De Volkskrant* (14 September 2006).

156 LJN:AZ3589, District Court of Rotterdam, 10/600052-05, 10/600108-05, 10/600134-05, 10/600109-05, 10/600122-05, 10/600023-06, 10/600100-06; 1 December 2006, 'Samir A.: acht jaar cel voor terreurplannen', *Elsevier* (1 December 2006).

157 LJN: AZ3589, District Court of Rotterdam, 10/600052-05, 10/600108-05, 10/600134-05, 10/600109-05, 10/600122-05, 10/600023-06, 10/600100-06; 1 December 2006.

158 'Samir A.: acht jaar cel voor terreurplannen', *Elsevier* (1 December 2006).

159 Verdict in the Piranha-case, LJN: AZ3589, Rotterdam District Court, 10/600052-05, 10/600108-05, 10/600134-05, 10/600109-05, 10/600122-05, 10/600023-06, 10/600100-06, 1 December 2006; 'Samir A. veroordeeld tot 8 jaar cel', *De Volkskrant* (2 December 2006).

160 'Gefrustreerde jongere, maar terrorist?', *Het Parool* (28 November 2006).

161 'Justitie pakt ons vanwege ons geloof', *Trouw* (1 December 2006).

162 'Hirsi Ali: Soumaya S. biedt hoop', *De Volkskrant* (18 November 2006).

163 'Kamer blij met vonnis', *De Volkskrant* (2 December 2006).

164 KRO-Reporter, 'Samir A.: staatsvijand nr. 1' (1 October 2006).

165 'Wat heeft mijn zoon nou misdaan?', NRC *Handelsblad* (14 October 2006).

166 Marion van San, Stijn Sieckelinck en Micha de Winter, *Idealen op drift: Een pedagogische kijk op radicaliserende jongeren* (Amsterdam 2010), pp. 50–51; 'Wat heeft mijn zoon nou misdaan', NRC *Handelsblad* (14 October 2006); KRO-Reporter, 'Samir A.: staatsvijand nr. 1', broadcast 1 October 2006; interview with Abida at the daily show *De Wereld Draait Door* (9 September 2011).

167 'Nederland in de fout met isoleren terreurverdachte', *De Volkskrant* (5 June 2008); cf. Council of Europe, *Report to the authorities of the Kingdom of the Netherlands on the visits carried out to the Kingdom in Europe, Aruba, and the Netherlands Antilles by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in June 2007*, Strasbourg (5 February 2008), pp. 24–30.

168 'Rabbijn steekt nek uit voor verdachte moslima', *De Volkskrant* (19 August 2008).

169 LJN: BF3987, Appeals Court of The Hague, no.2200734906, 2 October 2008/ LJN: BF5225, Appeals Court of The Hague, no.2200735006, October 2, 2008/ LJN: BF4814, Appeals Court of The Hague, no.2200735106, 2 October 2008/ LJN: BF5180, Appeals Court of The Hague, no.2200738406, 2 October 2008.

170 Appeals Court of The Hague's decision in the appeal in the Piranha case (2 October 2008), no.2200734906.

171 'Samir A. veroordeeld tot 9 jaar', NOS-item (2 October 2008); Gerechtshof 's-Gravenhage, LJN: BF5225, 2 October 2008.

172 'Advocaat woest over arrest "Piranha"', ANP (2 October 2008); 'Verbijsterde advocaten, glunderend OM', *De Volkskrant* (3 October 2008); 'Veroordeling van terroristenvrouw is politiek vonnis', *Algemeen Dagblad* (3 October 2008).

173 'Advocaat woest over arrest "Piranha"', ANP (2 October 2008); 'Verbijsterde advocaten, glunderend OM', *De Volkskrant* (3 October 2008); 'Veroordeling van terroristenvrouw is

politiek vonnis', *Algemeen Dagblad* (3 October 2008); 'Beleefdheid', *De Telegraaf* (9 October 2008); 'Koorddansen', *Elsevier* (11 October 2008).

174 Interview with Abida at *EenVandaag* (6 Augustus 2011); interview with Abida at the daily show *De Wereld Draait Door* (9 September 2011).

175 LJN: BP7544, Supreme Court, CPG 08/04418, 15 March 2011; LJN: BP7585, Supreme Court, CPG 08/04272 15 March 2011; Supreme Court, 'Hoge Raad beslist in de terroristenzaken Nouriddin el F. en Soumaya S.' (15 November 2011).

176 Power, *The Risk Management of Everything*, p. 14.

177 ibidem, p. 10.

178 Claudia Aradau and Rens van Munster, 'Taming the future. The dispositif of risk in the war on terror'. In: Louise Amoore and Marieke de Goede (eds), *Risk and the War on Terror* (London: Routledge, 2008), pp. 23–40, here: p. 32.