Norwegian Press Complaints | Norske Presseforbund (PFU) Confirmation of Receipt of Complaint Against News with Views / News in English: Editor: Nina Berglund: Re: Breivik's alleged established guilt.

From: klage@presse.no [mailto:klage@presse.no]
Sent: Wednesday, August 01, 2012 1:59 PM
To: jmcswan@mweb.co.za
Subject: Ny elektronisk klage fra pfu.no

Navn / firma / organisasjon:
Lara Johnstone

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Samtykke er::
Ikke fC%tt samtykke fra direkte berC8rt part

Elektronisk samtykke (innskannet dokument):
Hentes her
(http://ezcust0003.web1.dedicated99.no.webdeal.no/var/norskpresse/storage/feedbackcollectorfiles/8d449e779a59bc37515b16e1a8f2c296.pdf)

Medium/redaksjonens navn:
Nina Berglund

Publiseringsdato(er):
24 July 2012

Tittel pC% artikkel / innslag / program:
Breivik Moved t o New Prison

Klagen gjelder ...:

bare nett

Kopi av papirartikkel (scannet dokument):
Hentes her
(http://ezcust0003.web1.dedicated99.no.webdeal.no/var/norskpresse/storage/feedbackcollectorfiles/b737d42bae3bc75c8ab7cc4ef109d71c.pdf)

Lenke til nettartikkel / innslag / program (tv/radio):
http://www.newsinenglish.no/2012/07/24/breivik-moved-to-new-prison/

Dersom klagen gjelder et radio- eller tv-program, vennligst oppgi sendetidspunkt::

Begrunnelse for hvorfor du mener publiseringen bryter med god presseskikk:
Reasons detailed in attached document:
12-07-31__LippestadReqConsent_PFU-Complaint_N&VNO_Nina-Burgland__Encl-Comp+NVNO

Jeg/vi mener publiseringen bryter med fC8lgende punkter i VC&r Varsom-plakaten:

Dersom du/dere ogsC% mener publiseringen er i strid med Tekstreklameplakaten eller RedaktC8rplakaten, spesifiser dette her::

Andre dokumenter som er relevant for klagen:
Hentes her
(http://ezcust0003.web1.dedicated99.no.webdeal.no/var/norskpresse/storage/feedbackcollectorfiles/8d449e779a59bc37515b16e1a8f2c296.pdf)

Kort beskrivelse av eventuelle dokumenter som ettersendes:
Complaint against Nina Berglund, Editor: News & Views from Norway: Violation of 3.1, 3.2, 4.5 of Code of Ethics of the Norwegian Press in Article: Breivik Moved to New Prison

This complaint relates to the following statement made by Ms. Berglund in her article: Breivik Moved to New Prison:

"Breivikb □s trial ended in late June and his guilt was established long ago, but the court will rule on whether heb □s sane and able to be sentenced to prison, or whether heb □s insane and must be committed to psychiatric care instead."

Summary of Argument:

It is my argument that only persons who (A) are totally ignorant of objectively applying the principles of b □innocent until proven guiltyb □ in accordance to rules of evidence and due process; and/or (B) endorse the denial of the principles of b □innocent until proven guiltyb □ in accordance to rules of evidence and due process to Mr. Breivik; could make the statement that: Breivik has been found guilty in a court of law.

The prosecutorb □s irregular decisions to b □refuse to touch Breivikb □s invocation of

Necessityb does not:

(a) have the power to nullify Breivikb s invocation of necessity;
(b) grant the court the authority to b refuse to touch Breivikb s invocation of necessityb ;
(c) grant the media the authority to find Mr. Breivik b guiltyb in a b trial by media ignorance of the lawb .

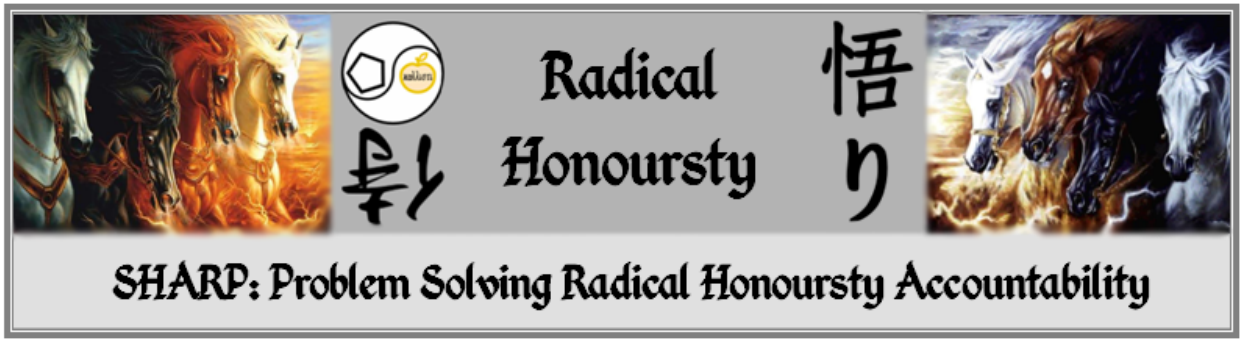
Please find complete complaint in attached PDF.

Relief Requested:

I accordingly request News with Views: Ms. Nina Burgland to be ordered to:

(A) Correct the error of her statement that b Breivikb s guilt has been established (long ago)b ; and/or provide the source for her statement of alleged fact.
(B) Confirm that Anders Breivikb s is entitled to due process, including the right to be considered b innocent until proven guiltyb in accordance to the rule of law; and that no court of law has yet found Anders Breivik Guilty of any crime, and;
(C) Apologize to Mr. Anders Breivik for violating his right to the presumption of innocence, and;
(D) Apologize to her readers, for encouraging them to participate in the process of trial by media to violate Mr. Breivikb s right to the presumption of innocence.

Kontaktperson (Ditt navn):
Lara Johnstone



P O Box 5042
George East, 6539
Cell: (071) 170 1954

31 July 2012

Mr. Anders Breivik
c/o: Lippestad Attorneys

CC: Press Complaints Commission (PFU)
Box 46 Sentrum, 0101 Oslo
Email: pfu@presse.no

CC: Editor: Nina Berglund
News and Views from Norway
Email: nina@newsinenglish.no

Request for Consent to file Complaint against Nina Berglund, Editor: News & Views from Norway: Violation of 3.1, 3.2, 4.5 of Code of Ethics of the Norwegian Press in Article: Breivik Moved to New Prison[1]

Please find attached the complaint filed with the Press Complaints Commission (PFU), which requires your consent, related to the arguments made therein.

It is my allegation that Ms. Berglund's statement that Mr. Breivik's 'guilt was established long ago' is not factually or legally correct.

It is my argument that only persons who (A) are totally ignorant of objectively applying the principles of 'innocent until proven guilty' in accordance to rules of evidence and due process; and/or (B) endorse the denial of the principles of 'innocent until proven guilty' in accordance to rules of evidence and due process to Mr. Breivik; could make the statement that: Breivik has been found guilty in a court of law.

The prosecutor's irregular decisions to 'refuse to touch Breivik's invocation of Necessity' does not:

(a) have the power to nullify Breivik's invocation of necessity;
(b) grant the court the authority to 'refuse to touch Breivik's invocation of necessity';
(c) grant the media the authority to find Mr. Breivik 'guilty' in a 'trial by media ignorance of the law'.

Relief Requested:

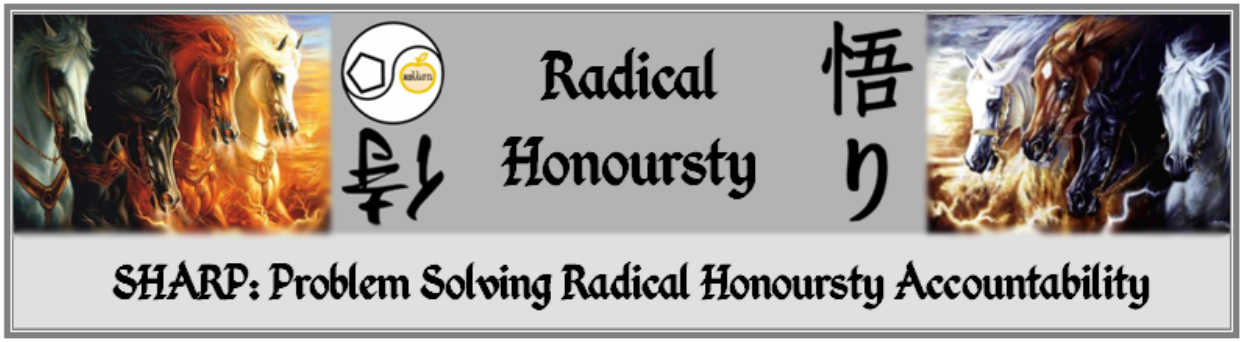
[1] http://www.newsinenglish.no/2012/07/24/breivik-moved-to-new-prison/

I accordingly request News with Views: Ms. Nina Burgland to be ordered to:

(A) Correct the error of her statement that "Breivik's guilt has been established (long ago)"; and/or provide the source for her statement of alleged fact.
(B) Confirm that Anders Breivik's is entitled to due process, including the right to be considered 'innocent until proven guilty' in accordance to the rule of law; and that no court of law has yet found Anders Breivik Guilty of any crime, and;
(C) Apologize to Mr. Anders Breivik for violating his right to the presumption of innocence, and;
(D) Apologize to her readers, for encouraging them to participate in the process of trial by media to violate Mr. Breivik's right to the presumption of innocence.

Respectfully Submitted

Lara Johnstone
Habeus Mentem: Right 2 Legal Sanity
Norway v. Breivik :: Uncensored
http://norway-v-breivik.blogspot.com/



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31 July 2012

Press Complaints Commission (PFU)
Box 46 Sentrum, 0101 Oslo
Email: pfu@presse.no

CC: Editor: Nina Berglund
News and Views from Norway
Email: nina@newsinenglish.no

Complaint against Nina Berglund, Editor: News & Views from Norway: Violation of 3.1, 3.2, 4.5 of Code of Ethics of the Norwegian Press in Article: Breivik Moved to New Prison[1]

Please Note: Attached is a letter submitted to Mr. Anders Breivik, via his Legal Representatives: Lippestad Attorneys, requesting his consent, related to the arguments made in this complaint.

This complaint relates to the following statement made by Ms. Berglund in her article: **Breivik Moved to New Prison**[2]**:**

> Breivik's trial ended in late June and **his guilt was established long ago**, but the court will rule on whether he's sane and able to be sentenced to prison, or whether he's insane and must be committed to psychiatric care instead.

Code of Ethics: 3.1: No Source for Alleged Facts

> The source of information must, as a rule, be identified, unless this conflicts with source protection or consideration for a third party.

Ms. Berglund does not identify her source of information that confirmed that Mr. Breivik's 'guilt was established long ago', to clarify whom exactly established Mr. Breivik's guilt, according to what legal – innocent until proven guilty - procedures?

Code of Ethics: 3.2: Inaccurate Information.

> Be critical in the choice of sources, and make sure that the information provided is correct. It is good press practice to aim for diversity and relevance in the choice of sources. If anonymous sources are used, or the publication is offered exclusivity, especially stringent requirements must

[1] http://www.newsinenglish.no/2012/07/24/breivik-moved-to-new-prison/
[2] http://www.newsinenglish.no/2012/07/24/breivik-moved-to-new-prison/

> be imposed on the critical evaluation of the sources. Particular caution should be exercised when dealing with information from anonymous sources, information from sources offering exclusivity, and information provided from sources in return for payment.

It is my allegation that Ms. Berglund's statement that Mr. Breivik's 'guilt was established long ago' is not factually or legally correct.

The evidence I herewith argue shows that only persons who (A) are totally ignorant of objectively applying the principles of 'innocent until proven guilty' in accordance to rules of evidence and due process; and/or (B) endorse the denial of the principles of 'innocent until proven guilty' in accordance to rules of evidence and due process to Mr. Breivik; could make the statement that: Breivik has been found guilty in a court of law.

On 16 April 2012, Ms. Berglund wrote the following in **Terror trial gets underway in Oslo**[3]

> When asked by Arntzen whether he would plead guilty to all or any of the charges, **Breivik** responded by saying he **acknowledged the factual evidence <u>but declared himself innocent of punishable crimes, adding that he acted out of necessity and could justify his attacks</u>**.

Oslo Court: Breivik Defence of Necessity:

On 17 April 2012, the Oslo Court tweeted[4] to Journalists attending the Breivik trial:

> Wrong translation in the 22-7 trial yesterday: Breivik said "nodrett", Correct translation: "Principle of Necessity", not "self defence".

The principle of Necessity is enshrined in Norwegian Law in Section 47 of the Penal Code[5]:

> "No person may be punished for any act that he has committed in order to save someone's person or property from an otherwise unavoidable danger when the circumstances justified him in regarding this danger as particularly significant in relation to the damage that might be caused by his act."

The Necessity Defence:

> The rationale of the necessity defense is not that a person, when faced with the pressure of circumstances of nature, lacks the mental element which the crime in question requires. Rather, it is this reason of public policy: the law ought to promote the achievement of higher values at the expense of lesser values, and sometimes the greater good for society will be accomplished by violating the literal language of the criminal law.[6]

The principle of the necessity defence is rooted in common law[7] and any accused pleading to necessity argues that their actions were justified or an exculpation for breaking the law. Defendants who plead to necessity – whether common law necessity, political necessity (civil disobedience) or military necessity - argue that they should not be held liable for their actions as being criminal, because their conduct was necessary to prevent some greater harm.

Most common law and civil law jurisdictions recognize this defense, but only under limited circumstances. Generally, the defendant must affirmatively show (i.e., introduce some evidence) that (a) the harm he sought to avoid outweighs the danger of the prohibited conduct he is charged with; (b) he had no reasonable alternative; (c) he ceased to engage in the prohibited conduct as soon as the danger passed; and (d) he did not himself create the danger he sought to avoid.

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[3] http://www.newsinenglish.no/2012/04/16/terror-trial-gets-underway-in-oslo/
[4] https://twitter.com/#!/Oslotingrett/status/192198581803945984
[5] http://www.ub.uio.no/ujur/ulovdata/lov-19020522-010-eng.pdf
[6] WAYNE R. LAFAVE, CRIMINAL LAW, § 5.4, at 477 (3d ed. 2000).
[7] http://en.wikipedia.org/wiki/Common_law

> [..]The doctrine of necessity, with its inevitable weighing of choices of evil, holds that certain conduct, though it violates the law and produces harm, is justified because it averts a greater evil and hence produces a net social gain or benefit to society.[8] Glanville Williams expressed the necessity doctrine this way: "[S]ome acts that would otherwise be wrong are rendered rightful by a good purpose, or by the necessity of choosing the lesser of two evils."[9] He offers this example:
>
> > Suppose that a dike threatens to give way, and the actor is faced with the choice of either making a breach in the dike, which he knows will result in one or two people being drowned, or doing nothing, in which case he knows that the dike will burst at another point involving a whole town in sudden destruction. In such a situation, where there is an unhappy choice between the destruction of one life and the destruction of many, utilitarian philosophy would certainly justify the actor in preferring the lesser evil.[10]

Military Necessity and International Humanitarian Law:

Crimes of War[11] and Diakona[12]:

> Military necessity is a legal concept used in international humanitarian law (IHL) as part of the legal justification for attacks on legitimate military targets that may have adverse, even terrible, consequences for civilians and civilian objects. It means that military forces in planning military actions are permitted to take into account the practical requirements of a military situation at any given moment and the imperatives of winning. The concept of military necessity acknowledges that even under the laws of war, winning the war or battle is a legitimate consideration, though it must be put alongside other considerations of IHL.

Prosecutor Engh and Holden 'Refuse to touch Breivik's Principle of Necessity':

The following reports indicate that Prosecutor Engh and Holden violated their duty of objectivity in terms of (a) impartially enquiring into and/or responding to the Accuseds' Defence; and (b) providing the court with the Prosecution's evaluation and conclusion of the evidence for and against Breivik's invocation of his Necessity Defence.

In her closing statement, Prosecutor Engh acknowledge's that:

(1) Norwegian prosecutors have a duty to conduct their investigation with objectivity;
(2) Norwegian law allows for an accused to plead to necessity and/or self defence,
(3) Where an accused does invoke necessity, it is the court and prosecutor's duty to investigate the accused's necessity defence arguments and evidence;
(4) If an accused successfully invokes a necessity defence, this can and must result in either mitigation of sentence and/or a verdict of innocence;
(5) Breivik invoked the defence of necessity;
(6) Despite the fact that Breivik invoked the necessity defence, both Prosecutor Engh and Holden 'refuse to touch the principle of necessity'.

Document.NO: **Inga Bejer Engh Procedure Part I (Inga Bejer Engh Procedure Part I)**[13]

I Norge har vi fire vilkår for at noen kan straffes	In Norway, we have four conditions that someone can be punished
Det må foreligge en handling som rammes av et straffebestemmelse, det må ikke foreligge nødrett, det må foreligge subjektiv skyld og	There must be an act within the scope of a criminal provision, there must be no necessity,

[8] See Joseph J. Simeone, "Survivors" of the Eternal Sea: A Short True Story, 45 ST. LOUIS U. L.J. 1123, 1141 (2001).
[9] GLANVILLE WILLIAMS, THE SANCTITY OF LIFE AND THE CRIMINAL LAW 198 (1957).
[10] GLANVILLE WILLIAMS, THE SANCTITY OF LIFE AND THE CRIMINAL LAW 198 (1957). At 199-200
[11] http://www.crimesofwar.org/a-z-guide/military-necessity/
[12] http://www.diakonia.se/sa/node.asp?node=888
[13] http://www.document.no/2012/06/inga-bejer-engh-prosedyre-del-i/

gjerningsmannen må ha vært tilregnelig.

Jeg vil i min prosedyre ta opp faktum, min kollega vil ta opp tilregnelighet. Ingen av oss vil berøre nødrett. Til tross for at det var det han påberopte seg.

there must be subjective guilt and the perpetrator must have been sane.

I want my procedure to record the fact, my colleague will address accountability. None of us will touch the principle of necessity. Despite the fact that it was what he claimed.

NRK: **Rettssaken - dag 42 (The trial - day 42)**[14]

kl. 12.15
Engh: - I Norge har vi fire vilkår som må foreligge for at noen kan straffes: det må foreligge objektiv sett en handling som rammmes av et straffebud i straffeloven, det må ikke foreligge nødverge eller nødrett, og det må forligge subjektiv skyld hos gjerningsmannen.

at. 12.15
Engh: - In Norway, we have four conditions that must exist that someone can be punished: it must be objectively seen an act rammmes of a penal provision in criminal law, there must be no self-defense or necessity, and it must forligge subjective guilt of the perpetrator.

VG: **Ord-for-ord - dag 42 prosedyren til aktoratet (Word-for-word - day 42 procedure for prosecutors)**[15]

Nå skal jeg gå over til å si litt om hvordan vi har delt inn prosedyren, slik at det skal være lettere å følge I Norge har vi fire vilkår for at noen skal kunne straffes. Disse vilkårene vil danne grunnlaget for strafferammen. Fir det første må det foreligge en handling som rammes av et straffebud i straffeloven.

- For det andre må det ikke foreligge nødverge eller nødrett. For det tredje må det foreligge subjektiv skyld hos gjerningsmannen. Og sist, men ikke minst det vanskeligste: gjerningsmannen må ha vært tilregnelig når han begikk de straffbare handlingene. Jeg vil i min del av prosedyren går gjennom del én og tre. Og gå gjennom de lovbrudd som er gjenstand for vurderiung. Min kollega Holden vil ta for seg spørsmål om tiltalte er tilregnelig eller ikke, om vilkåret er tilstede.

- Når det gjelder villkår nummer 2, nødrett eller nødverge. Hverken jeg eller Holden vil berøre temaet nærmere. Dette til tross for at tiltalte påberopte seg dette for sin frifinnelse.

Now I'll go over to say something about how we have divided the procedure, so it will be easier to follow Norway has four conditions for someone to be punished. These terms will form the basis for the penalty. Fir the first there must be an act within the scope of a penal provision in criminal law.

- Second, there must be no self-defense or necessity. Thirdly, there must be subjective guilt of the perpetrator. And last but not least, the most difficult: the perpetrator must have been sane when he committed the offenses. I want my part of the procedure goes through part one and three. And go through the offenses that are subject to vurderiung. My colleague Holden will address the question whether the defendant is sane or not, whether the condition is present.

- When it comes to Conditions No. 2, necessity or self-defense. Neither I nor Holden will touch the topic further. This despite the fact that the defendant claimed that for his acquittal.

NRK: **Rettssaken - dag 43 (The Trial – Day 43)**[16]

kl. 09.10
Lippestad: - Spørsmålet som tiltalte har reist, er om det finnes straffefrihetsgrunner. Han sa innledningsvis at han påberopte seg nødrett.

kl. 09.29
Lippestad: - Så kommer jeg til å se på metodebruk og drøfte litt av de andre sakkyndige som har vært inne i saken. Så kommer helt kort

at. 09.10
Lippestad: - The question that the defendant has raised is whether there is impunity reasons. He said initially that he invoked the principle of necessity.

at. 09.29
Lippestad: - So I'm going to look at the methodology and discuss some of the other experts who have been inside the case. Then comes the

[14] http://nrk.no/227/dag-for-dag/rettssaken---dag-42-1.8216159
[15] http://www.vg.no/nyheter/innenriks/22-juli/rettssaken/artikkel.php?artid=10066042
[16] http://nrk.no/227/dag-for-dag/rettssaken---dag-43-1.8218343

litt om nødrett og til slutt litt om forvaring.

kl. 10.21
Bistandsadvokat John Christian Elden til NRK i pausen: – Jeg synes prosedyren er god fordi den fokuserer på det som er interessant for retten. Lippestad har sagt han ikke vil bruke så mye tid på nødrett og frifinnelse, men argumenterer tilregnelighetsspørsmålet.

kl. 11.28
Lippestad: - Helt kort til slutt, og av rent formalistiske grunner: Breivik sa selv at han skjønner at han blir starffet for disse handlingene, men han påberoper seg av formelle grunner nødrett.

kl. 14.45
Breivik: - Dommerne som sitter her i dag, kan dømme meg som de selv føler for. Hvis dere velger å anerkjenne min påstand om nødrett, vil dere på en svært effektiv måte sende sjokkbølger til alle de legitime regimer i Europa.

kl. 14.51
Breivik: - Jeg kan ikke anerkjenne straffeskyld. Jeg påberoper meg nødrett for å ha kjempet for mitt folk, min kultur og mitt land.

kl. 14.51
Breivik: - Angrepet 22. juli var et preventivt angrep til forsvar for det norske urfolk.

kl. 14.51
Breivik: - Jeg krever derfor at jeg blir frifunnet for de aktuelle anklager.

very short bit about the necessity and finally a little bit about detention.

at. 10.21
Lawyer John Christian Elden to NRK during the break - I think the procedure is good because it focuses on what is of interest to the court. Lippestad has said he will not spend as much time on the principle of necessity and an acquittal, but argues sane safety issue.

at. 11.28
Lippestad: - Completely cards at the end, and of pure formalistic reasons: Breivik said that he realizes that he is starffet for these actions, but he invokes the principle of necessity formal reasons.

at. 14.45
Breivik: - The judges who sit here today, you can judge me as they feel. If you choose to acknowledge my claim of necessity, you will in a very efficient way to send shock waves to all the legitimate regimes in Europe.

at. 14.51
Breivik: - I can not acknowledge guilt. I claim necessity for having fought for my people, my culture and my country.

at. 14.51
Breivik: - The attack on 22 July was a preventive attack in defense of the Norwegian Indigenous Peoples.

at. 14.51
Breivik: - I require that I be acquitted of the charges in question.

Onus of Proof: Norwegian State or Breivik to Prove Necessity?

In South African law the Onus of Proof lies on the State in a defence of necessity, to rule out the reasonable possibility of an act of necessity.

In ***S v Pretorius 1975*** (2) SA 85 (SWA) Judge AJ Le Grange found that 'Despite the accused's plea of guilty, it appears from all the evidence on the record that an offence was not committed. In the result, the conviction and sentence, must, be set aside.'

> [87] The accused who had no legal representation, referred, despite his plea of guilty, to circumstances which materially gave rise to the defence of necessity. This defence made it necessary for the magistrate to decide in the first instance not what the accused's frame of mind had been, but whether necessity was present and whether it justified the accused's conduct. .. The Judge 'could find no cases and the Court did not refer to any where the question had been finally decided whether the test for necessity relates to an objective emergency or to a subjective frame of mind (or fear)…..
>
> [88] There is, however, nothing in my humble opinion, in the cases referred to or in any other cases, which I could find, which could serve as authority for the proposition that necessity cannot also be viewed as "a ground of justification". The question whether the defence of justification amounts to a ground of justification or to a circumstance excluding fault, has been thoroughly canvassed by De Wet and Swanepoel in their said work as well as by Burchell & Hunt in their revised edition of S.A. Criminal Law and Procedure, Part 1….

> [89] The *onus* of proof in a defence of necessity as in self-defence rests on the State to rule out the reasonable possibility of an act of necessity. It is not for the accused to satisfy the court that she acted from necessity (p 293). **[**(proceed) by gathering an objective view of the circumstances from the evidence itself, and the magistrate's finding whether the prevailing circumstances were 'alarming' if viewed objectively…. Viewed objectively… was the accused confronted with a situation that …… lives were in danger….
>
> [90] [If the evidence gives a picture of threatening danger and fear, which gave rise to necessity and which would have justified the accused's conduct, provided the accused did not exceed the limits of necessity…. Proceed to consider whether the proven circumstances satisfy the tests for necessity set out by B & Hunt at p. 285 of their work: (a) the threatening disaster endangered the accused's legal interests. This in fact gave rise to a duty to act. (b) the danger was threatening and imminent. The fact that symptoms relating to the danger may only appear later does not detract from the situation… if it cannot immediately be ascertained whether or not the symptoms are dangerous, necessity arises… (d) the chances that harm would have resulted and it would have been of a serious nature.. the greater the harm, the greater the necessity…

If Norwegian law also places the Onus of Proof lies on the State in a defence of necessity, to rule out the reasonable possibility of an act of necessity; it would appear that the Prosecutor's decision to 'refuse to touch the principle of necessity' should weigh heavily in Breivik's favour.

Even if Norwegian law places the Onus of Proof on Breivik in a defence of Necessity, to prove the reasonable possibility of an act of necessity, the Prosecutions decision to 'refuse to touch the principle of necessity' should again weigh heavily in Breivik's favour; unless the Prosecution could and did provide a reasonable argument for their failure to uphold their duty for impartial objectivity to enquire into the evidence for the Defendant's Necessity defence.

Common Law Necessity Defence Cases Resulting in Innocence Verdicts or Severe Mitigation of Sentencing:

In ***Regina v Dudley and Stephens*** (1884) 14 QBD 273, three crew members and a cabin boy escaped a shipwrech to spend eighteen days on a boat, over 1,000 miles from land, with no wanter and only two one pound tins of turnips. After four days, they caught and ate a small turtle. That was the only food that they had eaten prior to the twentieth day of being lost at sea. Ultimately, two of the crew members killed the ailing cabin boy and "fed upon the body and blood of the boy for four days." Four days later, they were rescued. Two of the men were charged with murder. The court found that the cabin boy would likely have died by the time they were rescued and that the crew members, but for their conduct, would probably have died as well. The Queen's Bench Division Judges held that the defendants were guilty of murder in killing the cabin boy and stated that their obvious necessity was no defence. The defendants were sentenced to death, but this was subsequently commuted to six months' imprisonment.

In ***Spakes v. State***, 913 S.W.2d 597 (Tex. Crim. App. 1996), the Texas Criminal Appeals Court allowed the jury to be instructed on the necessity defense before deliberating the verdict for an inmate whose three cellmates had planned an escape and threatened to slit his throat if he did not accompany them. The defendant inmate argued that because of the terribly violent crimes of which his cellmates had been convicted (one had bragged about chopping his girlfriend up with an ax), it was a necessity that he break the law, by accompanying them in their escape.

In ***United States v. Ashton***, 24 F. Cas. 873, 873-74 (C.C.D. Mass 1834) (No. 14,470), sailors prosecuted for mutiny were found not guilty, after arguing the necessity for their mutiny based upon the dangerously leaky ship and that this danger had been concealed from them until after they left port. Circuit Justice Story found them not guilty of mutiny.

In ***United States v. Holmes***, 26 F. Cas. 360 (E.D. Pa. 1842) (No. 15,383), Holmes was involved in a shipwreck, where the crew were charged with manslaughter for throwing sixteen passengers overboard in a frantic attempt to lighten a sinking lifeboat. The Prosecutor argued the

passengers should be protected at all costs, whereas the Defence placed the jurors in the sinking lifeboat with the defendant. The Defendant was found guilty, but the jurors requested leniency, to which the court complied by sentencing the defendant to six months in prison and a fine of twenty dollars.

In the 1919 Arizona decision of ***State v. Wooten***, commonly referred to as the Bisbee Deportation case, Professor Morris[17] describes the acquittal of a Sherrif based upon the 'necessity' for committing Kidnapping as follows:

> On April 26, 1917, soon after the United States entered World War I, the Industrial Workers of the World (IWW) called a strike of copper miners in Cochise County, Arizona. On July 12, 1917, the county sheriff led a posse that rounded up and deported over 1,000 members of the IWW. One of the posse was brought to trial on charges of kidnapping. He offered to prove that the strikers were trying to obstruct the war, had stored up a large amount of ammunition, and had threatened citizens; that help from federal troops had been sought to no avail; and that the leader of the local strike had told the sheriff he could no longer control his men. On these facts, he asserted the defense of necessity.
>
> The judge recognized the defense. He ruled that evidence of necessity could be excluded only if it were completely inadequate as a matter of law to establish the defense, and that the weight and sufficiency of the evidence were for the jury to decide—even in a case which "aroused great public interest."
>
> The jury heard the evidence, deliberated for fifteen minutes, and returned a verdict of "Not Guilty" on the first ballot.

In ***Surocco v. Geary***, 3 Cal. 69 (1853), a large fire threatened the unburned half of the then small town of San Francisco. A public officer ordered the destruction of houses to create a firebreak and was subsequently sued by one of the owners. On appeal, the California Supreme Court held that the action was proper because:

> The right to destroy property, to prevent the spread of a conflagration, has been traced to the highest law of necessity, and the natural rights of man, independent of society and the civil government. "It is referred by moralists and jurists as the same great principle which justifies the exclusive appropriation of a plank in a shipwreck, though the life of another be sacrificed; with the throwing overboard goods in a tempest, for the safety of the vessel; with the trespassing upon the lands of another, to escape death by an enemy. It rests upon the maxim, *Necessitas inducit privilegium quod jura private*." [Necessity leads to privileges because of private justice].

Civil Disobedience Political Necessity Defence Cases Resulting in Innocence Verdicts or Severe Mitigation of Sentencing:

According to ***Civil Disobedience and the Necessity Defence***[18]:

> [If] the [necessity] defense is allowed, the jury is called upon to weigh controversial political issues and to function as the "conscience of the community." "Reflected in the jury's decision is a judgment of whether, under all the circumstances of the event and in the light of all known about the defendant, the prohibited act, if committed, deserves condemnation by the law."[19] In cases **where judges have been persuaded to allow the necessity defense, juries have, often enough, delivered not guilty verdicts**.

[17] Norval Morris, The Verswami Story, 52 U. CHI. L. REV. 948, 989 (1985); see also The Law of Necessity as Applied in the Bisbee Deportation Case.
[18] http://www.scribd.com/doc/20520106/
[19] Everett v. United States, 336 F.2d 979, 985–86 (D.C. Cir. 1964) (Wright, J., dissenting).

> [..] When **judges have allowed the necessity defense to go to a jury in civil disobedience cases, more often than not the defendants are acquitted.**[20] There are a number of cases in which **charges were dropped after the judge announced that the necessity defense would be permitted.**[21]

In ***State v. Mouer*** (Columbia Co. Dist. Ct., Dec. 12-16, 1977), dozens of protestors in Oregon who were conducting a civil disobedience sit-in at a nuclear power plant were arrested and charged with criminal trespass. At trial, the judge allowed the defendants to raise the state necessity defense (called the choice of evils defense) and the defendants were acquitted by the jury.

In ***People v. Brown*** (Lake County, Jan. 1979), protesters in Illinois blocked the entrance to a nuclear power plant and were charged with criminal trespass. Relying on the defense of necessity, they argued that they had not created the situation that they had sought to correct and had reasonably believed that their conduct was necessary to avoid the harm of a nuclear accident. A doctor testified for the defense about the damaging effects of low-level radiation. All of the defendants were subsequently acquitted.

In ***People v. Block*** (Galt Judicial Dist., Sacramento Co. Mun. Ct., Aug. 14, 1979), eleven California protestors were charged with trespass and resisting arrest in connection with a March 31, 1979 demonstration at the Rancho Seco Nuclear Power Plant. The defendants had climbed over a fence and staged a sit-in on the grounds of the plant. At trial, the judge allowed the necessity defense to be presented to the jury. "After seven weeks of trial, nine of the defendants received a split jury verdict and one was acquitted, apparently because he had a long history of activism and had convinced the jury that he had exhausted all legal means to stop the harm" posed by the power plant. The cases against those defendants who received a split jury verdict were eventually dropped.

In ***California v. Lemnitzer***, No. 27106E (Pleasanton-Livermore Mun. Ct. Feb. 1, 1982) the trial of a protestor who condemned the development of nuclear weapons at the Lawrence Livermore Lab in California ended in a hung jury after the court allowed the presentation of evidence supporting the necessity defense. On retrial, the protestor, John Lemnitzer, was acquitted.

In ***Vermont v. Keller***, No. 1372-4-84-CNCR (Vt. Dist. Ct. Nov. 17, 1984) protestors staged a sit-in at the Vermont office of United States Senator Robert Stafford in an effort to get a public meeting about American policy in Central America. These actions resulted in their arrest on trespass charges. At trial, the court allowed the defendants to raise the defenses of necessity, international law, including the Nuremberg principles, and the First and Fourteenth Amendments. The court allowed a number of impressive experts[22] to testify about human rights atrocities in El Salvador and Nicaragua, as well as the important role of protest in American foreign policy. The defendants further testified they had attempted "every reasonable manner to communicate" with the Senator.[23] The jury acquitted all of the defendants.

In ***Michigan v. Jones et al.***, Nos. 83-101194-101228 (Oakland County Dist. Ct. 1984) the State of Michigan held nine separate trials prosecuting fifty-one defendants who blocked access to a plant where cruise missile engines were being manufactured. The defendants were charged with trespass, disturbing the peace, blocking access, and conspiracy. In a trial where the necessity defense was allowed, the jury acquitted the defendants of all charges except failure to obey a traffic officer. In other cases where the necessity defense was allowed, the juries acquitted the

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[20] When the necessity defense is actually submitted to the trier of fact in civil disobedience cases, defendants have usually been acquitted. See Bernard D. Lambek, Necessity and International Law: Arguments for the Legality of Civil Disobedience, 5 YALE L. & POL'Y REV. 472, 475 (1986), note 7, at 473.

[21] People v. Gray, 571 N.Y.S.2d 851, 853 (N.Y. Crim. Ct. 1991).

[22] The expert witnesses included: Sonya Hernández (political violence in El Salvador), Janet Shenk (human rights in El Salvador), Phil Bourgois (Salvadoran refugees), Shaila Sherwin (refugees), David Rosenberg (United States/contra war on Nicaragua), David McMichael (contra aid), Richard Garfield (health programs of Nicaraguan Government), John Stockwell (CIA activities), Howard Zinn (history of American protest movements), Matthew Countryman (American military aid to Central America), Gladys Sánchez (government repression of Salvadoran churches), Richard Falk, and Ramsey Clark (citizens' role in American foreign policy). See also National Lawyers Guild 1985 Convention Workshop, Creative Defenses in Civil Disobedience Cases, 42 GUILD PRAC. 97-98 (1985)

[23] People v. Gray, 571 N.Y.S.2d 851, 861 (N.Y. Crim. Ct.1991) quoting Keller, No. 1372-4-84-CNCR.

defendants on all charges. In trials where the judge did not allow necessity defenses, the defendants were convicted on several counts.

In ***Michigan v. Largrou***, Nos. 85-000098, 99, 100, 102 (Oakland County Dist. Ct. 1985), three protestors at a Michigan cruise missile plant were charged in 1985 with trespass and criminal damage to a fence. The court found that although the defendants willfully violated the law, they did so without malice and for the public purpose of protest. All three were acquitted.

In ***People v. Jarka***, Nos. 002170, 002196-002212, 00214, 00236, 00238 (Ill. Cir. Ct. Apr. 15, 1985), an Illinois jury acquitted twenty defendants who protested against the American military invasion of Central America by conducting a sit-in which blocked the road to the Great Lakes Naval Training Center. The protestors successfully invoked the doctrine of necessity and were allowed to put eight expert witnesses on the stand to offer evidence of the effect of nuclear weapons, American intervention in Central America, and international law. The trial judge gave the jury an instruction[24] that stated that the threat and use of nuclear weapons violated international law.

In ***Chicago v. Streeter***, Nos. 85-108644, 48, 49, 51, 52, 120323, 26, 27 (Cir. Ct., Cook County Ill. May 1985), a jury was faced with eight protestors who were charged with trespass for refusing to leave the office of the South African consul. The jury was allowed to hear expert evidence about the defense of necessity and international crimes committed by the apartheid policies of South Africa. It took the jury two and a half hours to acquit the defendants.

In ***Washington v. Heller*** (Seattle Mun. Ct. 1985), eight doctors were charged with trespassing for protests staged on the porch of the home of the South African consul. They were allowed to raise the defense of necessity and admit expert testimony about the medical and other effects of apartheid. The Seattle jury acquitted after little more than an hour and made a post-trial statement supporting anti-apartheid protests.[25]

In ***Colorado v. Bock*** (Denver County Ct. June 12, 1985), twenty-two Pledge of Resistance members were charged with trespass for occupying the office of a United States Senator from Colorado to protest American policy in Central America. The jurors, who were allowed to hear evidence of necessity, were instructed that the defendants could use civil disobedience only as an "emergency measure to avoid imminent public or private injury" but that the injury did not have to be directed against the defendants. The jury acquitted all of the defendants.

In ***Massachusetts v. Carter***, No. 86-45 CR 7475 (Hampshire Dist. Ct. 1987), the daughter of former President Jimmy Carter, Amy Carter, was arrested with fifty-nine others and charged with trespass and disorderly conduct at Central Intelligence Agency (CIA) recruitment activities on the campus of the University of Massachusetts at Amherst. The fifteen defendants were allowed to present evidence to support the necessity defense, international law, and the Nuremberg principles. The defendants argued that the crimes they committed were of far lesser harm than those being committed by the CIA in Central America and offered testimony by a former contra leader and former CIA and government officials. The judge instructed the jury that they could acquit the defendants if they concluded that the defendants acted out of a belief that their protest would help stop the clear and immediate threat of public harm. The jury acquitted them in three hours.

In ***Washington v. Bass***, Nos. 4750-038, -395 to -400 (Thurston County Dist. Ct. April 8, 1987), several dozen students of Evergreen State College sat in the Washington State Capitol in support of an anti-apartheid disinvestment bill. Seven students refused orders to leave and were arrested and charged with trespass and disorderly conduct. At their trial, the defendants were

[24] The jury was instructed: "The use or threat of use of nuclear weapons is a war crime or an attempted war crime because such use would violate international law by causing unnecessary suffering, failing to distinguish between combatants and noncombatants and poisoning its targets by radiation." FRANCIS ANTHONY BOYLE, THE CRIMINALITY OF NUCLEAR DETERRENCE 41 (2002).
[25] In post-trial comments, the jury stated: "only when arrests made in protests against apartheid were efforts made to reform the system." Val Varney, Eight Apartheid Protestors Win Acquittal, SEATTLE TIMES, Aug. 8, 1985, at D2.

allowed to admit statistical and expert evidence of necessity, international law, and the Nuremberg defense about the situation in South Africa. The jury acquitted all of the defendants.

In ***Illinois v. Fish*** (Skokie Cir. Ct. Aug. 1987) twenty-six people were arrested for trespassing at the Arlington Heights Army Reserve Training Center. The trial court allowed the jury to hear evidence about the necessity defense. All of the defendants were acquitted.

In ***State v. McMillan***, No. D 00518 (San Luis Obispo Jud. Dist. Mun. Ct., Cal. Oct. 13, 1987), fourteen protestors blockaded Diablo Canyon Nuclear Power Plant to prevent the loading of fuel rods. The trial judge allowed fourteen expert witnesses to offer testimony about related potential harm for the area and allowed the defendants to testify about their own related fears. The judge applied the necessity defense and acquitted the defendants.

In 1988, a North Carolina court acquitted two Tuscarora Indians of charges in connection with their taking of twenty hostages at the office of a local newspaper to protest the alleged corruption of county officials.[26]

In ***Massachusetts v. Schaeffer-Duffy*** (Worcester Dist. Ct. 1989), five defendants tried to pass out leaflets to employees at a GTE nuclear weapons facility and prayed outside the building when they were denied entry. The judge denied the prosecutor's motion in limine to prevent evidence of necessity. The jury was allowed to hear the defendants' testimony about their personal efforts to stop nuclear weapons and their religious beliefs, and expert testimony about the threats of the MX missile, religious teachings against nuclear weapons, and the historical effectiveness of civil disobedience. The jury acquitted the defendants of trespass.

In 1990, in Omaha, Nebraska, a jury acquitted seventeen anti-abortion protestors because of the necessity defense. The trial judge relied on the defense to overturn the trespassing convictions of an additional eighteen defendants.[27]

IN ***West Valley City v. Hirshi***, No. 891003031-3 MC (Salt Lake County, Ut. Cir. Ct., W. Valley Dept. 1990), protestors were charged with criminal trespass after entering property on which Trident II nuclear missile engines were being manufactured in Salt Lake City. The trial judge permitted evidence and instructed the jury on defenses based on necessity, international law, the First Amendment, and the Nuremberg Principles. The jury acquitted the defendants.

In ***People v. Gray***, 571 N.Y.S.2d 851, 861-62 (N.Y. Crim. Ct.1991), a two-day bench trial resulted in the acquittal of six protestors for disorderly conduct because of the necessity defense. The protestors had blocked traffic in Manhattan to protest the opening of a bike and pedestrian lane to vehicular traffic. Judge Laura Safer-Espinoza issued a forty-two page decision reviewing dozens of decisions involving the necessity defense and provided the most extensive judicial overview of the necessity defense in state courts to date.

In 1991, a Chicago jury acquitted a Catholic priest of criminal charges for damage to the inner-city neighborhood where he was pastor after he admitted painting over three tobacco- and alcohol-related billboards. The defendant argued he should not be convicted because of the necessity defense. The jury deliberated ninety minutes before acquitting the defendant.[28]

In 1993, a jury acquitted a Chicago AIDS activist charged with illegally supplying clean needles because of the necessity defense.[29]

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[26] Two Carolina Indians Acquitted in Hostage Taking, N.Y. TIMES, Oct. 15, 1988, at 9.
[27] Judge Says Actions of Anti-abortionists at Clinic Justified, OMAHA WORLD-HERALD, July 17, 1990. In a seventeen-page order discussing necessity and the priority of life over property rights, District Judge Robert Burkard reversed the convictions for trespassing. An additional seventeen abortion protestors were acquitted by a jury on similar grounds in June 2000.
[28] Terry Wilson, Acquittal Answers Pfleger's Prayers, CHI. TRIB., July 3, 1991, at 3.
[29] Andrew Fegelman, AIDS Activist Found Innocent of Charges in Needle Exchange, CHI. TRIB., Jan. 28, 1993, at 4.

In ***California v. Halem***, No. 135842 (Berkeley Mun. Ct. 1991), the jury came to the same conclusion after hearing evidence that dispensing clean needles without a prescription, though illegal, was necessary to protect people from the spread of the AIDS virus.

In ***Washington v. Brown***, No. 85-1295N (Kitsap County Dist. Ct. N. 1985), twenty-four protestors held a vigil in Washington State in protest of a "white train" carrying nuclear weapons. The state arrested twenty of the protestors and charged them with criminal trespass and conspiracy. The defendants filed extensive briefs on the right to present particular defenses to the jury, in support of their motion to dismiss conspiracy charges, and in opposition to the government's motion in limine. The judge dismissed the conspiracy charges and did not admit evidence on the necessity defense, but it did allow Daniel Ellsberg to testify as an expert on why first-strike nuclear warheads on a train are a potential threat to peace. One defendant pled guilty to both charges. The jury acquitted the remaining nineteen defendants.

In ***Washington v. Karon***, No. J85-1136-39 (Benton County Dist. Ct. 1985), four defendants blockaded a federal Plutonium-Uranium extraction facility at Hanford Nuclear Reservation. They were arrested and charged with disorderly conduct and failure to disperse. The defendants filed motions in limine to raise necessity, Nuremberg principles, and the Geneva and Hague Conventions as defenses. The trial judge allowed Nuremberg and necessity defenses, permitted expert testimony regarding radiation contamination, and refused expert testimony regarding nuclear war. The court agreed to give international law instructions to the jury. Immediately after the court ruling permitting scientists to testify on radiation contamination, the prosecution moved to dismiss the case and the court granted the motion.

In ***United States v. Braden*** (W.D. Ky. 1985), twenty-nine demonstrators entered the office of a United States senator as part of the Pledge of Resistance. At their arraignment, the defendants announced their intent to use Nuremberg, necessity, and First Amendment defenses (freedom of speech includes freedom to be heard; today the only way to be heard is to act). The government dropped all charges prior to trial.

In ***California v. Jerome***, Nos. 5450895, 5451038, 5516177, 5516159 (Livermore-Pleasanton Mun. Ct., Alameda County, Traffic Div. 1987), more than thirty protestors blocked the main gate to the Lawrence Livermore Nuclear Weapons Lab in a nonviolent sit-in. They were arrested for traffic offenses of blocking and delaying traffic. The Traffic Commissioner agreed to consider expert testimony on the necessity defense and international law (including Nuremberg Principles, Geneva Protocols, and the Hague Convention) via affidavits. The defendants filed affidavits for Daniel Ellsberg (on the effectiveness of nonviolent protests in arousing citizen action), Frank Newman (on international law) and Charles Schwartz (on the role of Livermore Lab in promoting the arms race). Before trial, the judge granted the prosecution's request to drop all charges.

Conclusion:

Either way, only persons who are (A) totally ignorant of objectively applying the principles of 'innocent until proven guilty' in accordance to rules of evidence and due process; and/or (B) endorse the denial of the principles of 'innocent until proven guilty' in accordance to rules of evidence and due process to Mr. Breivik; could make the statement that: Breivik has been found guilty in a court of law.

Code of Ethics 4.5. Presumption of Innocence:

> In particular avoid presumption of guilt in crime and court reporting. Make it evident that the question of guilt, whether relating to somebody under suspicion, reported, accused or charged, has not been decided until the sentence has legal efficacy. It is a part of good press conduct to report the final result of court proceedings, which have been reported earlier.

In accordance to aforementioned argument is consequently clear that the prosecutor's irregular decisions to 'refuse to touch Breivik's invocation of Necessity' does not:

(a) have the power to nullify Breivik's invocation of necessity;
(b) grant the court the authority to 'refuse to touch Breivik's invocation of necessity';
(c) grant the media the authority to find Mr. Breivik 'guilty' in a 'trial by media ignorance of the law'.

Code of Ethics 4.13: Correction of Incorrect Information:

4.13. Incorrect information must be corrected and, when called for, an apology given, as soon as possible.

Relief Requested:

I accordingly request News with Views: Ms. Nina Burgland to be ordered to:

(A) Correct the error of her statement that "Breivik's guilt has been established (long ago)"; and/or provide the source for her statement of alleged fact.
(B) Confirm that Anders Breivik's is entitled to due process, including the right to be considered 'innocent until proven guilty' in accordance to the rule of law; and that no court of law has yet found Anders Breivik Guilty of any crime, and;
(C) Apologize to Mr. Anders Breivik for violating his right to the presumption of innocence, and;
(D) Apologize to her readers, for encouraging them to participate in the process of trial by media to violate Mr. Breivik's right to the presumption of innocence.

Respectfully Submitted

Lara Johnstone
Habeus Mentem: Right 2 Legal Sanity
Norway v. Breivik :: Uncensored
http://norway-v-breivik.blogspot.com/

Views and News from Norway

Breivik moved to new prison

July 24, 2012

Confessed terrorist Anders Behring Breivik has been transferred from his high-security set of cells at the Ila Prison just outside Oslo to temporary quarters at Skien Prison in the county of Telemark, south of the capital. The move was spurred by a need to rebuild the area at Ila where he's expected to remain in custody.

Breivik's defense attorney Geir Lippestad confirmed a TV2 report on Breivik's transfer, telling Norwegian Broadcasting (NRK) that his client was moved to Skien on Monday, the day after Norwegians nationwide had marked the first anniversary of his attacks that killed 77 persons last summer.

Bomber and gunman Anders Behring Breivik has had a change of lodgings. PHOTO: NRK screen grab/Views and News

Breivik will be surrounded by a special security team and won't be allowed any contact with other prisoners in Skien. He's also been kept separately from other prisoners at Ila, not least out of concerns for his own security.

Prison director Knut Bjarkeid told NRK that Skien also has a high-security division. In addition to rebuilding at Ila, he said there was a need to replace his prison guards with others. "We have also chosen to swap prison personnel by swapping prisons," he told NRK.

It's expected that Breivik will be held at Skien for around 10 weeks, meaning that he'll be there when his sentencing is announced on August 24. Breivik's trial ended in late June and his guilt was established long ago, but the court will rule on whether he's sane and able to be sentenced to prison, or whether he's insane and must be committed to psychiatric care instead.

In either case, however, he's likely to remain at Ila because of a lack of adequate security at Norwegian psychiatric hospitals.

Views and News from Norway/Nina Berglund

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Jim Kendall

It is wholly appropriate that Breivik should be defined and confined as the Madman that he has allowed himself to become; as he put it, it's "a fate worse than death." He had sought a glorious incendiary death; again, he'd stated that he'd assumed the police would have killed him on Utoya.
All the rest of the "right-wing"/anti-multiculturalism-Garble is just rationalization of a lunatic, intend upon supplying "logic" to the acts he was carrying out simply because he wasn't getting-laid; and wanted to go out with a bang - preferably to his chest or his head - whilst paying-back society for not attending to his self-isolation.
When they didn't follow through his plan by killing him - and in aftermath now internally-ruing his mania - he then garbles out the rhetoric about "doing the country a favor," etc.
Mad As A Hatter.

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Ulrik

Excellent comment. Couldn't agree more.

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