

## Proved Right Through Appeal

**The Hamburg-based defense attorney Gerhard Strate has ambitiously set his sights on bailing out Alexander Falk following the crash of New Economy**

*by Anna v. Münchhausen*

Frankfurter Allgemeine on Sunday, 05/12/2004, No. 49, p. 61

Even he predisposed to success may suffer a loss. To this day, Gerhard Strate can precisely pinpoint his greatest disappointment. One sunny morning in Cape Town, a Hamburg-based attorney jogs along the beach – resplendent scenery, electric blue skies. His cell phone tolls. It is his office in Hamburg with word of the Federal Court having rejected his appeal of the conviction of Monika Weimar. Finito, end of the line, curtains. The closing remarks on a trial which in several instances cemented Strate's repute as the man for the job as regards hopeless cases. He lights up a cigarette, indulging a brief spell of hypnosis before the ebb and flow of the tide, and continues jogging. "You can't let disappointments get to you," he remarks, fishing another Camel from his pack, and within the sonorous timbre of his voice betrays a nuance that can only contain his one-time chagrin upon hearing the court's decision.

Shelves bustling with subject literature, open-air roses clad in dark purple before them, large-scale pieces by an American photorealist spanning the walls: Strate's chambers yield the impression of one having finally found his place. He knows, however, to eschew the image of the glib lawyer steeped in the consequence of his own persona. To be sure, he cuts the perfect form of an articulate advocate, but he speaks softly and takes the liberty of bating his responses by a measure now and again. "Cases such as Weimar enhance one's profile because one becomes prepared to exercise forbearance. Even so, on occasion the case almost brought me to the brink of destruction: innumerable trips, preparations – and all for a nominal fee of 500 Marks per day."

This was Strate's most eminent case to date. The case that currently finds the 54 year-old defense attorney's name bandied about in the headlines is the exact opposite. This time the client is not a mother of lower middle-class pedigree, but indeed Alexander Falk, 35 year-old heir to a publishing company and dot-com entrepreneur. This time the charges do not interest a family drama, rather market rigging, grievous fraud, and tax evasion. And this time Falk, the "King of Pöseldorf," fondly called Sascha, who once loved to be seen about on his yacht, certainly has not evoked the public's sympathies. So many years ago, the lion's share of the media expressed misgivings concerning Weimar's guilt, a circumstance which doubtless pumps wind into an advocate's sails.

American star attorney Alan Dershowitz once submitted, “the worse the image of the accused, the more interesting the case.” Does Strate concur? “Of course a negative image lends a certain thrill. In the case of Alexander Falk, however, I am unable to discern anything negative in his image. He is one of the most intelligent people I have ever met. He is extremely motivated and exceptionally well prepared.” This is hardly newsworthy, given the accused has been detained under investigative custody for the past 18 months. The prosecution figures thus: After Alexander Falk sold off his father’s city map publishing company to Bertelsmann, he acquired an unspectacular web-hosting enterprise named Ision; its purpose was to generate portals for third-party users. Hardly a bad idea – but Falk was thinking bigger. Along with five other partners, each currently a defendant in his own right, investigators allege Falk doctored the sales figures, escalating the price of shares, which he followed up on by ultimately vending the company in the amount of 762 mil. Euro to the British Energis, which interminably overstretched its bounds in the deal and has since claimed indemnities of Falk under civil law.

Meanwhile, the investigation’s dossier comprises 700 folders and the bill of indictment 288 pages. Falk hired on Hans-Hermann Tiedje, former editor-in-chief of “Bild”, as his PR advisor; countless letters were exchanged, some sinister even, and the co-defendants consequently no longer treat with one another so gingerly. Gazing out from Strate’s office at Holstenwall, one may barely perceive yonder within the fog the brick building of the detention center at Holstenglacis. Any and all bids by the defense to suspend the arrest warrant against its client have been so far ineffectual. The reasoning thereto: hazard of flight. “In my opinion, the Hamburg judiciary has gotten carried away with itself here,” adjudges the attorney. He who was simply party to New Economy’s demise must yet pay its penance. Conceivably even for those damages borne by judge and lawyer alike as private small-time investor.

Colleagues characterize Strate as “an abiding agitator” – he is patient, assiduous and evidently exceedingly gifted when it comes to anatomizing discrete details into legal ramifications and mellowing these into striking significances. Documents pertaining to the Falk case are primarily stored in electronic media – printed out, these 18 million pages would be enough to level any jurisprudence professional. Only two to three percent of these, however, are materially pertinent or interesting even to the case. But how does one distinguish what is pertinent? The prosecutors had to comb through the data searching for common keywords – password-protected files and Excel data sheets remained untapped. “Here”: a brief foray into the shelf’s contents and Strate produces a printout from the file numbered xyz, a business plan “of greatest consequence,” which the prosecution had on hand only in the form of an illegible facsimile. Not only criminal intuition alone, but also an American password-recovery program aided the defense in accessing the encrypted data. Sometimes it took up to three hours for a file to finally render itself available. What did Albert Camus say again? One must imagine Sisyphus happy.

One must also allow oneself to imagine how Strate relates findings of this nature to the courtroom. He certainly has a facility for waxing loud and emotional – some would say melodramatic – at just the right moments. In some instances, he has been known to petition for a recess in order that he might collect himself once more. An endearing example from within a lawyer’s bag of tricks. On one hand, this generates an opportunity for him to revise his arguments, and on the other, it generally resonates positively with the court that a defense attorney overwhelmed by his emotions should have the presence of mind to call himself back to order.

Legal finesse is likewise required, as is evidenced by the case of another of Strate’s clients, Islamic fundamentalist Mounir al Motassadeq, who was arraigned before the Hamburg High Court of Appeals as an accessory to murder in connection with the September 11 attacks. Another open-and-shut case. Indeed, there was exculpatory testimony from Al Qaida mastermind Ramzi Binalshibh – but how did this testimony make it to America? Would it be permissible for use?

Pulling a fast one on the investigators, beating them to the punch, exposing weaknesses – here and there the romantic impetus of Strate in his youth shines through. That being said, his accoutrements (dark business suit, richly red tie) no longer have much in common with the parka-sporting law student affiliated with the mid-70s’ Communist Student Union. On occasion of a demonstration against increases to fares, he tangled with police while trying to help a handicapped classmate. An arrest, a trial for resisting the authority of the state – and his first successful appeal.

This he will certainly never forget. By and large, however, he is under no illusions while making his deductions. “A defense lawyer has ninety losses to every ten wins. It is not the case that everywhere only the innocent are being persecuted.” In the meantime, the Hamburg judiciary stands to gain from learning a bit of fear, he contends. He still remembers certain judges’ personalities from his early years practicing: “knotty, willful characters, who held the sovereignty of not being deterred, either by the defense or by the tropes of the prosecution.”

Perhaps all would be better if judicial reform, which the Federal Minister of Justice currently champions, first found passage. Intended, among other initiatives, is an abbreviation of the judicial process to two instances of appeal. Strate, who exults in the elaboration of all possibilities for appeal, is skeptical: “I maintain that this would overextend the justice apparatus currently in place because there are not enough judges to verify that all subsequent decisions would be free from legal error.” The right to appeal is, alas, a case for specialists.

Precisely specialists like Strate. So much is certain: should his client Falk not be acquitted, the tenacity of the Hamburg “appeal terrier” will be put to the test anew.

**Boxed text:**

“A defense lawyer has ninety losses to every ten wins,” says Strate.

### An Abiding Agitator

Gerhard Strate was born the son of an engineer in Thüringen in 1950. The rest of his biography, however, is purely of Hanseatic mint: he grew up in Schwarzenbek near Hamburg, went to school in Geesthacht, and attended the University of Hamburg. As a member of the Communist League of West Germany—still a student—he logged his first experience with practical jurisdiction – in the role of the accused. He has never been radical, notes the defense attorney today, “it was always my sole conviction, however, that one must defend the rights of citizens with the utmost urgency”. And that it is incumbent upon the judiciary to accept that its decisions will be scrutinized scrupulously. This has secured his reputation as a star lawyer.

His clients include such prominent figures as Monica Seles, furnisher of Hitler’s diaries Gerd Heidemann, as well as RAF member Henning Beer. On three separate occasions he was able to obtain a retrial for clients already having been given a final sentence—a rarity in Germany’s judicial system. In the best known of these cases, the accused was named Monika Weimar. At its conclusion, following a spectacular appeal, she was nevertheless convicted of murdering her daughters. The hearing of his current number-one client Alexander Falk began the day before last.