

Rede von Mr Jeroen Brouwer

Opening of exhibition 'Anwalt ohne Recht – Das Schicksal jüdischer Anwälte in Deutschland nach 1933' [Lawyer without Law – The Fate of Jewish Lawyers in Germany after 1933] /

13 May 2008

Welcome

Willem Bekkers, General Dean of the National Bar Association

Ladies and Gentlemen,

It is an honour and a pleasure to welcome you, on behalf of the National Bar Association, to this outstanding location: the Netherlands Institute for War Documentation of the Royal Netherlands Academy of Arts and Sciences, on this special occasion: the official opening of the Anwalt ohne Recht exhibition. I welcome in particular Ms Els Swaab, chair of the 4th and 5th May Committee. A special welcome too to our highly regarded friends from the Bundesrechtsanwaltschaft and the Deutschen Juristentag. A special welcome also to the President of the Israeli Bar: Yori Geiron.

Ladies and Gentlemen, a warm welcome to you all.

On behalf the Association I thank the Netherlands Institute for War Documentation for the cooperation and hospitality afforded to us today and for the Anwalt ohne Recht exhibition.

I first met Dr Norbert Westenberg in San Francisco in the summer of 2007. We understood each other – as it were – immediately. The topic of conversation soon came round to the impressive initiative of the Bundesrechtsanwaltschaft and the Deutschen Juristentag: the exhibition. The Association is honoured that the Netherlands is the second country in Europe, after Germany, to present this exhibition.

In the Netherlands, the first days in May are still emotionally charged, but partly owing to the contribution of the 4th and 5th May Committee the nature of the commemoration of WO II has changed. Certainly initially, the commemoration of the victims of the Second World War was not seldom accompanied by the demonization of Germany and the German people. Us and them. As a result, we perhaps sometimes forgot to look at home for causes and – even more important – to ask ourselves whether the body of thought which at that time could lead to a world war and the Holocaust is not still lurking. There is every reason to be vigilant.

The study, commissioned by the National Bar Association, which the Netherlands Institute for War Documentation has been carrying out since 2006 into the role and position of Dutch lawyers in the Second World War, more particularly the role and position of Jewish lawyers, also fits within that

context. An important initiative, the Association considers. Late, perhaps, but not too late. The initiative is important above all as a learning process. That process must never cease, nor does there seem to be any evidence of that. A number of interesting publications have recently appeared regarding the legal practice in the Netherlands during the Second World War. I refer to the thesis on 'Courts in Time of War' by Venema which gained him his doctoral degree in Nijmegen at the end of 2007 and was discussed by Gradus Vrieze in *Trema* no. 4 2008, and the article by Marcel Verburg on the President of the Supreme Court in time of war which appeared in the *Nederlands Juristenblad* [Netherlands Lawyers' Journal] of 2 May 2008. 'Right or wrong' does not depend on being anti- or pro-German, on having patriotic leanings, but on whether or not you are disposed towards the Nazis. Vrieze points out that Dutch resistance newspapers such as *Je Maintiendrai*, *Het Parool*, *Trouw* and *Vrij Nederland* attacked not the Germans but Nazis and their ideology and they identified the excesses to which this led. The individual is not unique but a replaceable partner in a nation. 'A living national organism whose members do not survive if they do not put themselves at the service of a greater whole, which isolates and deters elites and minorities as viruses.' Venema shows how, in the criminal law, that led to:

1. The preference for general prevention as the aim of punishment;
2. A Law of Intent which does not wait for deeds but punishes erroneous inclinations;
3. Retrial of criminal cases already disposed of, even if this is to the detriment of the convicted person, 'so that evil gets its desserts';
4. Group punishments for all those who can be held responsible for another person's crime;
5. Aversion to the exoneration of a person guilty of an offence;
6. Aversion to reminding a person of his right to remain silent;
7. The popular interpretation of classical legal concepts such as self-defence; in other words the view that it would be better if the restrictive definition in Section 41 of the Penal Code were to disappear.

Vrieze writes: 'The door had to be wide open to popular sentiment manipulated – less than nowadays – by the mass media, which no longer needed to be filtered by official caution and representative democracy.'

Some years ago Professor Quant called on lawyers vigorously to guard the rule of law like ‘Capitol geese’. I am not sure whether we did that in the Second World War and whether we are doing it enough nowadays. Enough said about this for now. In 2010, when the final report of the Netherlands Institute for War Documentation on the legal profession in the Netherlands in the Second World War will be published, the Association will pay detailed attention to it and I hope that the Dutch legal profession will learn from it in the future, just as it does today.

Ladies and gentlemen, again I wish you a warm welcome.

Thank you for your attention.

Willem Bekkers

Utrecht, 8 May 2008