The Legal Profession in Europe: Achievements, Challenges and Chances

By Hans-Jürgen Hellwig,

Vice President of the Deutsche Anwaltverein and Head of the German Delegation to the CCBE at the 50th Annual Meeting of the Netherlands Bar Association Amsterdam, September 25, 2002

President Guensberg, Ladies and Gentlemen, dear Colleagues!

First of all I want to express my deep gratitude for having been given the honour to speak to you today. A lawyer from Germany addressing the 50th birthday celebration of the Nederlandse Orde van Advocaten - that would have been inconceivable back in 1952 when the Dutch Bar was founded. This inconceivable idea has become reality thanks to the rule of law. After all, the rule of law has been the fundament on which the treaties establishing the European Union of today have been based. Incidentally, the first such treaty, the European Coal and Steel Community Treaty dates of the same year 1952. We all, and in particular we foreign lawyers, should pay tribute to Hugo de Groot (Hugo Grotius), this magnificent Dutch lawyer, who centuries ago has laid the theoretical bases therefor.

The legal profession in Europe - achievements, challenges and chances

As regards achievements I would like first of all, in tribute to the Dutch Bar, to refer to the decision of the European Court of Justice of February 19 this year re Wouters versus Nederlandse Orde van Advocaten, internationally called the NOVA I case. This decision is truly a landmark decision, and with the tireless work on this case the Dutch Bar has indeed prepared the ground for a wonderful present for its own birthday. This court decision in the meantime has been analysed by many authors. To me it is the most significant decision ever of the European Court of Justice as far as the legal profession is concerned.

The Court has clarified the relationship between professional rules adopted by bars and laws societies on the one hand and the competition articles of the EC Treaty on the other hand. The Court distinguishes between two categories of rules. The first category includes those professional rules where a Member State has granted regu-

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latory powers to a professional association and has defined the public interest criteria and the essential principles with which the rules must comply and where the Member State has retained its power to adopt decisions in the last resort. The rules so adopted by a professional association remain Member State measures and do not fall under the competition articles of the EC Treaty. The second category covers those rules adopted by a professional association that are attributable only to the association.

Analysis in the CCBE has shown that there may, in fact, be more categories than just these two, in particular there may be categories in between. However, we need to ask whether this really matters. It is probably fair to say that whenever professional rules adopted by a professional association do not fall into the first category they cannot be considered a matter of the Member State and therefor must comply with the competition articles of the EC Treaty. It does not matter in such a case whether the rules in question would fall into the second category or into any other category. Decisive is they do not fall into the first category. If this correct then it is fair to say that the right of self-regulation has its price, namely compliance with the competition articles of the EC Treaty. Thus the alternative, in simple words is as follows: Either there is a commitment to public interest criteria and essential principles defined by the Member State plus supervision by the Member State, or there is competition supervision by the European Commission.

There is a second aspect of the NOVA I case which I find even more important. With its ban on partnerships between lawyers and accountants the Dutch Bar wanted to protect the secrecy/confidentiality obligation and the independence of lawyers which are core values of the legal profession not only in the Netherlands but also in the rest of Europe. The Dutch Bar has done so against the opinion of most of the media and of most of the public. The Court has accepted the arguments of the Dutch Bar why the protection of these core values should be given priority over the negative competitive effects. Seen from that angle the Dutch Bar has been fighting a court case not only on its own behalf but also on behalf of the entire European legal community, and by winning this case in its jubilee year the Dutch Bar has presented a treasured gift to the legal community in Europe. The European lawyers owe the Dutch Bar a big thank you, a thank you in particular to all who worked on this case throughout its court history. I would like to specifically mention NOVA Presidents Tom de Waard, Tony Huydecoper and Peter von Schmidt and in particular Secretary General Frederic Hemskerk, standing like a rock in rough sees, whose work I had the privilege to witness over the years.

Another important achievement for the legal profession in Europe have been the directives on cross-border work of European lawyers. Liberalisation has begun with the Service Directive of 1977 which enables a lawyer from one country to prac-

tice on a temporary basis in another country. Statistics on the success of this Directive in actual practice do not seem to available. In any case the Service Directive marks the beginning of a fundamental change of mind of the lawyers in Europe concerning cross-border activity.

The 1988 Directive on the Mutual Recognition of Diploma went one step further by easing the way for a lawyer from one country to become a full member of the bar in another country. Quantitatively speaking this Directive which covers also other professions has not been an overly great success as far as we lawyers are concerned. Here again, however, there was a positive impact on the thinking within the legal profession.

A truly gigantic step forward has been the Establishment Directive which enables a lawyer under his home title to establish an office in another country and to become a member of the host country bar, to practice not only home but also host country law in such office and to acquire the title of a lawyer in the host country after three years of effective and permanent work in the host country law (including European law). This Directive was adopted in 1998 after many years of controversial discussions within the legal profession in Europe. Although the ultimate decision in the CCBE was not unanimous it is fair to state that this Directive today has been accepted by the entire legal profession.

For completeness sake I should also briefly mention the General Agreement on Trade in Services (GATS) of 1994 which has led to a liberalisation of legal advice in Europe by lawyers from outside the European Union and the European Economic Area.

All of this liberalisation has led to a significant increase in cross-border activities of lawyers throughout Europe, be it cross-border work of a travelling lawyer, be it the opening up of offices in other countries, be it the membership of foreign lawyer partners in national law firms, be it the merger two or more law firms from different countries. Today our profession is the most liberal of all so called liberal professions in Europe. Compared with us lawyers the accountants in particular are considerably less liberal. They largely follow the network system where separate national firms cooperate under a common name. As a result the accountancy markets in the various countries remain largely national markets with little direct, non-referral cross-border activity.

With the ever-growing increase of legal cross-border activity in whatever form there is a growing importance of the fact that the professional rules, and by this term I mean any form of rules, ranging from national legislation to bar and law society rules - there is growing importance of the fact that the professional rules

governing cross-border activities and cross-border law firms in many aspects show significant differences and even outright contradictions. Concerned is primarily not litigation work but legal advice work which is why in the following I will concentrate on the latter. The problem is primarily a problem of conflict between home country rules and host country rules. This problem of differences and contradictions has not been resolved in the Service Directive nor in the Establishment Directive. To the contrary, both Directives call for the simultaneous application of both home and host country rules which is the so-called double deontology. The CCBE Code of Conduct has identified the problem but due to its very nature has not been able to resolve it.

Let me first give you an explanation for such differences and contradictions in professional rules in Europe and let me then give you some examples. In simplified terms we are faced in Europe with two fundamentally different positions on what a lawyer is.

The English legal tradition which distinguishes between litigation work (barristers) and legal advice work (solicitors) focusses, as regards advice work, on the contractual client lawyer relationship. As a consequence the professional duties of a solicitor in the United Kingdom - like for example the rules concerning conflicts of interest and confidentiality - are in principle at the client's disposal. Only a barrister, as regards his litigation work, is recognized as an officer of the court. The concept of service provider which underlies the role of solicitor, is followed essentially by the Scandinavian countries as regards both legal advice and litigation work.

In the Roman tradition countries (especially in France but also in Belgium, Italy, Spain and Portugal) the lawyer's duties do not only derive from the client-lawyer relationship but mainly, as professional rules, from the lawyer's position and functions in the administration of justice. This holds true for both litigation and legal advice work. In these Roman tradition countries the lawyer's professional duties because of their institutional foundations are not at the client's disposal. Germany and Austria by and large follow the approach of the Roman law countries. All in all the crucial question is whether a lawyer is only a service provider or - in German terminology - an instrument in the administration of justice.

Now a few examples of the differences and contradictions in professional rules in the various countries in Europe.

Conflicts of interest: In English law the concept of "conflict of interest" is relatively broad and includes constellations involving interest of a purely economic nature or the protection of confidential client information. As a form of counterbalance to this

broad definition, clients are given the possibility to release the lawyer from his duty to stop acting from them on account of the conflict of interest.

Under German law, a conflict of interest only arises where a lawyer is acting or was acting for both parties involved in one and the same case. The concept of "conflict of interest" is thus very restricted. Where a conflict arises, the lawyer is obliged to cease all activities. Since this prohibition is based on the lawyer's role in the administration of justice, the parties cannot renounce it.

French law largely follows the German definition of conflict of interest (same matter), but differentiates between current and past cases or clients. The prohibition definitely applies when two current clients simultaneously entrust a lawyer or law firm with a case. Where two cases are not concurrent (earlier case from one client, current case from another client), the lawyer is prohibited from acting for the current client in the same matter only if the confidentiality of the information conferred to the lawyer by the earlier client is at risk, or if the lawyer's knowledge obtained because of his activities for the earlier client benefits the current client in an unjustifiable way. Unlike in the case of concurrent cases French law in the case of non-concurrent cases does not provide for an automatic extension of the prohibition to the entire law firm. In addition, French law has the principle of "delicatesse", according to which in a number of cases the lawyer has to cease his activities for a particular client, even if there is no conflict of interest in the strict legal sense.

In Austrian law, the definition of "conflict of interest" is much broader than in German law. The individual lawyer must not act for a client in one case and act against him in another, even if the two legal matters are completely different. At least as far as concurrent cases are concerned, the scope of the Austrian prohibition of conflict of interest corresponds not to German but rather to French law.

Confidentiality: In the United Kingdom, the client may release his lawyer from the obligation of confidentiality. In France and Belgium a release from the secret professionnel is not possible. In Germany, the client may give a release. The difference between France and Belgium on the one hand and Germany on the other hand is surprising, considering that in all three countries the lawyer has a similar function as an instrument in the administration of justice. In France and Belgium this functional position of the lawyer always takes priority over the client's wishes. In Germany it does not since German law assumes that there is no type of information in the lawyer-client relationship that by its very nature requires confidential treatment, confidentiality rather results from the fact that is prescribed by the client. Thus the client is the master of information and decides if it is to be kept confidential or not.

There are many other areas where considerable differences from country to country are to be found. I just mention two, namely designations of specialities and the position of in-house lawyers.

How can the problems that follow in particular from the differences of rules on conflict of interest and on confidentiality/secrecy be resolved in the daily work of lawyers from different countries who cooperate in a given mandate, or in the daily work of a lawyer who does cross-border work under the Service Directive or under the Establishment Directive? The question becomes even more difficult if you look at a law firm with lawyers from, and/or offices in, several different countries.

Even more critical for the daily work of a lawyer or of a law firm is the contradiction between confidentiality/secrecy obligation on the one hand and reporting obligations on the other hand. Lawyers in the United Kingdom have been obliged for several years now to report clients to the authorities in case of suspected money laundering or other crimes. A London solicitor established in Frankfurt or Vienna therefor has been subject to the reporting obligation under English law as home country law on the one hand, and has been subject to the obligation of confidentiality/secrecy under German or Austrian law as host country law on the other hand. Or vice versa: A German Rechtsanwalt established in London where he practices law, has the duty to report under English law as host country law, and to observe confidentiality/secrecy as a German Rechtsanwalt under home country law. To make matters worse: All obligations are enforced by disciplinary and in part even criminal sanctions. Truly a catch 22 situation!

Of course, this contradiction will be reduced by the new Money Laundering Directive. However considerable contradictions will remain, due to the fact that the Member States are making different use of the various options that they have been granted in the Directive. In particular, the definition of serious crimes that are to be reported is left to the Member States, and it is also up to the Member States to decide for which types of information they want to provide an exemption from the reporting obligation (litigation related work, work ascertaining the legal position and legal advice work). Lastly it should be remembered that all Money Laundering Directives are so called Minimum Standard Directives which means that the Member States are free to impose additional reporting obligations as they deem fit.

The risk potential from the conflict between reporting and confidentiality/secrecy obligation is alarming. A friend of mine, German Rechtsanwalt and English solicitor practising in London, in a court hearing in London in 1997 preceded by many written briefs refused to give information requested by the court because the information pertained to his capacity as Rechtsanwalt and therefor fell under his German secrecy obligation. Thereupon he was threatened by the judge with imme-

diate arrest and detention in jail. What saved my friend from this truly remarkable experience was a letter of invitation to lunch at the German Embassy right after the court hearing. This letter made the judge afraid of diplomatic troubles and therefor he adjourned the hearing. The German secrecy obligation had not mattered a penny with him when imposing upon my friend a disclosure obligation under English law and threatening to send him to jail. As for my friend, the next hearing was conducted by a different judge who had more respect for my friend's secrecy obligation and lifted the information request order, and in addition several other orders that had been issued by the first judge in the direction of the English post office and the London telephone company - in other words, the incoming mail and all telephone communications of my friend had been put under surveillance and control! The legal profession urgently needs a solution to these problems before lawyers have been disbarred or even been jailed, and before law firms have been dragged through the media.

The best solution would be a full harmonisation of existing national rules by means of an EC Directive. However, we must remember that these problems are based on a fundamental difference in the understanding of what a lawyer is, service provider or instrument of justice. Therefor full harmonisation can be aimed at only for the medium and long term future.

A short term solution however could be the introduction, by means of a new Directive, of clear conflict rules, to the effect, that cross-border work under the Service Directive is governed by home country rules and cross-border work under the Establishment Directive is governed by host country rules. The home country rule principle has already been accepted in the E-Commerce Directive, and the extension of this principle to cross-border activity in the form of travel would be a natural consequence. Inversely, host country rules should apply where the lawyer is working from a foreign office under the Establishment Directive.

When listening to these proposals some of you may say that the lawyers dealing with cross-border cases represent only a minority and that they should see for themselves how to solve their problems which do not affect the vast majority of lawyers acting at the national level. Those who think that way would be overlooking the fact that the current situation in cross-border activities is already leading to an uncontrolled erosion of national professional rules, similar to the erosion that we have witnessed over the years in many European countries in connection with multidisciplinary partnerships (MDPs). This erosion will increase in the future unless cross-border practice is consciously and appropriately directed by means of clear conflict rules. Such erosion would also affect law firms acting at purely national level - also in law bad examples corrupt good customs.

I realise of course that my proposal to introduce clear conflict rules would eliminate the problems of double deontology only for some kinds of cross-border work, not for all. In particular it would bring no immediate solution to the double deontology problems that exist in case of cross-border cooperation of several law firms in a given mandate. The same would hold true with the cross-border cooperation of several offices of the same law firm which is a particular concern to the international law firms.

At stake is in particular the issue of conflict of interest. "No man can serve two masters" is stated in Matthew 6,24. Some law firms suggest to solve this problem by client consent and Chinese Walls. Client consent - with or without Chinese Walls - has been developed under the lawyers as service provider concept of English law, and it happened primarily in the confidentiality context. The famous case Prince Jefrey Bolkiah versus KPMG of 1998 is first of all a confidentiality case. To extend this approach into situations which in the understanding of many countries in Europe are clear cut conflict of interest situations, is a difficult matter. It should be remembered that Advocate General Léger in the NOVA I case as expressed serious doubts whether Chinese Walls can at all be suitable to solve confidentiality and conflict of interest problems. If you really have Chinese Walls that go through the entire law firm, including canteen and men's rooms, some countries in Europe may say that this is no longer one law firm but a floating combination of several firms operating under the same name and pooling profits.

As for now there are some international law firms that take the conflict of interest problem very seriously and respect the differences from country to country. Clifford for instance have four Conflict of Interest Centers throughout the world, with 45 employees, working on several hundred clearance requests every day. Yet there are others that seem to take this issue rather lightly by following only the conflict of interest rules under their head office jurisdiction or by following rules that have been defined by the firm itself.

I would urge these firms not to indulge in the expectation that because of their economic muscle the professional rules will at least factually move into their direction. What we all need is not a factual development but a conscientious handling of the problem. To that end we need to take into account the interests not only of the international firms but also the interests of firms with purely national work. After all we do not want to have different rules for national firms and for international firms, just like we do not want to have different rules for litigation lawyers and for lawyers acting outside the court room. In both respects we lawyers from continental Europe wish to maintain the unity of our profession. Most important, however, we need to take into account the interests of society at large in particular in those

countries where professional duties are not contract based but stem from the function of a lawyer in the administration of justice.

There is a lot of stake in this issue for the entire legal profession when you consider what the consequences have been for the accountants when they more and more moved into non-audit services without giving the necessary regard to issues such as independence and integrity of their audit work which are important to society at large. This development which was legal, ultimately has contributed to the collapse of Andersen and has prompted the almost total prohibition of non-audit services in the Sarbanes-Oxley Act of this July which undoubtedly will thoroughly change the accountancy landscape also in Europe.

I have the impression that in many countries in Europe opposition among the smaller law firms against the gradual erosion of professional rules that is going on at present is growing. Also there seems to be a growing awareness of the conflict of interest issue by the public at large both in the US and in Europe. Media coverage of conflict of interest problems, including injunctions and criminal convictions, is growing. The public has become more and more concerned with conflict of interest situations also in the banking and financial markets area (in particular investments banks and analysts), regardless of the fact that the conflicts had been disclosed or that the Chinese Walls had even been requested by law. The non-audit work of Andersen for Enron that like a conflict of interest endangered professional independence and integrity, had been transparent and legally permitted, too. Nevertheless it was not accepted by the public.

Some observers in this context also from another aspect have begun to speak of a parallel between the accountancy profession and the legal profession. The problems of differences in deontology that the big international law firms have to struggle with, are seen by these observers as self-inflicted problems that follow from the business philosophy of such firms, similar to the one stop shop philosophy of the Big Accounting Firms. This view indeed has some merit. On the other hand, we should recognize that the international law firms do have a valid case, namely that harmonisation of the professional rules in Europe is in fact needed, and in this respect they should find the support of the smaller law firms, too. The real problem thus seems to be that some firms appear to favour a de facto harmonisation by means of factual erosion, and that is dangerous.

With my last remarks I have begun to embark on the fundamental issue of commercialism versus ethics - an issue to which the International Bar Association (IBA) has given much attention since 1999, i.e. prior to the Enron/Andersen collapse. Of course, a law firm should be operated in a commercial manner which is in an effective, professional, service oriented manner. However, the spirit, in which the firm is

operated is something different, and it is the spirit that counts. Even in those countries which follow not the instrument of justice but the service provider concept which however have a regulated legal profession, the spirit should be a spirit not of commercial attitude but of responsibility for the law. In the very end this is not only a European issue, it is a global issue.

How far the positions can be away from one another became apparent at an IBA discussion a few years ago. The panel members were discussing cross-border alliances and cooperations of law firms. The common view on the panel was: We compete, in particular with the big accounting firms, and therefor we must be free to operate internationally, free in any respect, also as regards regulatory impediments. The first speaker from the floor was an old lawyer from Jamaica, slim, tall, deep black his skin, silvery-white his curled hair, a truly impressive figure and personality. He said to the panelists: "Shame on you! You betray the law. You are not lawyers, you are traders, traders who sell their knowledge of the law like a commodity." Stunned silence was the reaction. Then came the comment from the chair, a London lawyer: "Thank you for this voice from the wilderness." I shall never forget this incident. It shows how far we are already apart in our profession!

Many legal articles have been written on "Which lessons to learn from Enron/Andersen". If we are honest we ought to confess that we lawyers have been fortunate that the accountancy profession, and not the legal profession, was up for public grilling. The forthcoming civil and criminal cases against the law firms advising Enron and Andersen, I am afraid, will change the picture and will rather negatively affect the reputation of the legal profession in the eyes of the American public. This development will have repercussions in Europe.

We should derive little comfort from the fact that excessive commercialisation is to be found not only in law and accounting but also in other areas of human life such as sports, medicine and culture. If we want to live up to our responsibility for society we should rather ask for the reason why. The social sciences for each country define society as a system that is composed of many different sub-systems. One such sub-system is the economy. The legal system is another. The health system is a third one. Other systems are education, culture, sports etc. Each sub-system has its own so-called valuation code, namely

- Economy: profit and shareholder value,
- Legal system: justice and the core values of our profession,
- Health system: the patient's health as so well described in the oath of Hipprokrates,
- Culture: liberty and quality of art, and so on.

In each country the functioning of each sub-system is controlled by the political system which is in itself in another sub-system.

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Ideally there ought to be a balance of power between all these sub-systems and their respective valuation codes. This balance in the last years has become imbalanced. The equilibrium has been disturbed, and that, in a nut shell, is the reason of the problem. The economic sub-system has been overpowering the others. Its valuation code, i.e. profit and shareholder value, has penetrated the sub-systems and has pushed aside their valuation codes. Profit and shareholder value are replacing social values, cultural values and, as for our topic, the core values of legal profession.

Also the political sub-system has been so infected however that seems to begin to change, there seems to be growing awareness that the pendulum of greed has been swinging too far.

What do we learn from this analysis? As lawyers we have a special responsibility for the administration of justice and for society. If the administration of justice is to follow the principles that are specific for the justice system, then we, the lawyers, must live up to these principles in the conduct of our practice, in our day-to-day work. Our valuation code is justice not money. Of course, this does not mean that we work for free. But it does mean that we recognise our obligations to the system of justice and that we place justice and our core values higher than our profit. Money should not be the purpose of our work but its consequence.

In this respect, it is already 5 minutes before 12. There is, as we all know, a growing trend in the European Commission and in the national competition authorities to attack the size of legal fees on grounds of competition law. There are even more serious signs on the wall. Legal fees have become a major problem for the civil right of fair access to justice. As result there is a growing trend in the EU Commission to bypass the legal profession by introduction of non-lawyer mediation or by removing existing monopolies of lawyers where they exist in the first place. Similar trends can be noticed in the Members States. Legal or factual monopolies that are not continuously justified by reasonable cost and high quality of work never survive for long. In Germany the cost of legal aid represent already 28 % of all justice budgets, and in the Netherlands, I was told, about 50 % of the population qualifies for legal aid, and the percentages are going up. On the other hand, the spread in the quality of work between the high-end law firms that can afford high salaries for the best associates, and the rest is constantly widening. I have more than once heard the bitter statement that good lawyers are for the rich and bad lawyers for the poor. And the question begins to be asked: Do high-end law firms not have a social conscience?

We should not forget that in the US the problem of cost and quality of legal work is solved to a small extend by pro bono publico work of lawyers, including high-end law firms which is so important for the reputation of the legal profession, and to a large extent by contingency fees. The legal profession in Europe does little pro bono publico work which I regret, and is much opposed to contingency fees at least in litigation which opposition I support. However, what will be our contribution to the solution of this access to justice problem? If nothing happens we lawyers may eventually be seen not as the door, but as the obstacle to access to justice.

All of us in the last two or three years have witnessed a growing restriction of civil rights and liberties not only in Europe but throughout the world. Lawyers are now under criminal penalty required to report suspected money laundering and other serious crimes of their clients to the authorities. Their confidentiality/secrecy obligation has simply been set aside, to the point that they are even forbidden to inform the client. The terroristic attack of September 11, 2001 has led to one anti-terror legislation package after the other, from one country to the other. Individual rights and liberties have been lightly sacrificed on the altar of collective security. The legislative reasons for one of the anti-terror legislation packages in Germany had 37 times the word security and only once the word liberty.

Of course it is the duty of a state to protect its citizens. But everybody according to Article 6 of the Charta of Fundamental Rights of the European Union has the right not only to security but also to liberty of person. That means that we must find the right balance between individual civil rights and liberties on the one hand and public security on the other hand. Civil rights and liberties are a core element of the rule of law. There cannot be a free democratic society without the rule of law, without civil rights and liberties. Democracy and the rule of law are based on conditions that they cannot create by themselves but that must be created, again and again, by the society at large. An overemphasis on public security will reduce civil rights to an unacceptably low level. Orwell would become a reality.

Already today in many if not all European countries our mobile phones are constantly taped and every word we say can be overheard by governmental bodies. How long will it take until the same happens with normal telephones? How long will it then take until politically undesirable statements will be followed up by the authorities?
Democracy lives from the freedom of speech. This fundamental civil right, and ultimately all other civil rights, will suffer from a climate of total surveillance and control that seems to be creeping upon us like a cold weather front.

The right balance between individual liberties and public security cannot be found without looking to the roots of the development of terror and violence that we are

witnessing in so many places and that endanger our security. Studies carried out by the University of Harvard have shown that not poverty nor illiteracy but rather the experience of humiliation is the most important factor for violence and terror. If this is correct, then more modesty and more tolerance may be the best medium and long-term remedy.

To me as a German lawyer the historic dimension is quite clear. Democracy and civil rights were achieved in Germany in the 19th century largely by the efforts of lawyers. This is why the German Constitutional Court, the highest court in the country, has defined the principle of "free advocacy" and has given it constitutional rank. In other countries in Europe the situation is similar. Today we are faced with the risk of a movement backwards, a growing erosion of civil rights. Therefor the task before us lawyers today truly has a historic dimension.

Money laundering and other crime reporting obligations, anti-terror legislation packages, European public prosecutor, European arrest warrant, and and and - we lawyers have protested on grounds of principle and on ground of details. Why were our warning voices given so little or no attention at all?

Our image in the eyes of legislators and of most parts of the public has severely suffered. In their eyes we apparently are no longer the trustworthy guardians of civil rights and liberties. For too long have we spoken of legal privileges of the lawyers rather than of legal privileges of our clients. A Committee of the US Congress is presently investigating the question whether the ethical rules of the legal profession, in particular on secrecy, adequately serve the interests of society. "If you behave like businessmen we shall treat you like businessmen" - that was the message driven home by many speakers. This is for the US exactly the situation that I have warned in the IBA and the CCBE would come if the legal profession is seen to be soft on its core values.

Once we are seen by the public in Europe as businessmen we will have no standing anymore to speak up on civil rights issues. This would be particularly disastrous in view of the position of the European Commission that society in the 21th century, given the unprecedented terroristic risks, needs a complete redefinition of individual civil rights and liberties - this was the recent unequivocal message of Commissioner Bolkestein to the CCBE.

It is urgent that we, the lawyers, do everything possible to re-establish our reputation and credibility with our society. This is the greatest challenge and the greatest chance before us. What can we do to achieve this goal? Let me give the answer by quoting Niels Fisch-Thompson, a former CCBE president, who said: "We lawyers must make up our mind whether we are children of Pallas Athene or of Hermes."

Dear Colleagues, Pallas Athene in ancient Greece was the goddess of justice and wisdom, Hermes was the god of commerce and trade. Let's be for Pallas Athene!

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