

No Man for Every Case: The Defense Attorney Gerhard Strate

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When the defense attorney Gerhard Strate who is specialized in aspects of points of law and retrials, starts to talk about his job it often sounds like a kind of detective story of course, but with a reversed perspective: The story does not end with the case being solved and the conviction of the culprit, but with doubts about the guilt of the defendant or the convicted and in uncertainty about how the deed happened, briefly: The case remains unsolved which is sometimes hard to bear.

Let's take for example the case of a client who had been sentenced to eight years' imprisonment for smuggling of drugs. The version of the deed on which the judgment was based seemed to be conclusive. There was one witness whom the court deemed entirely credible and the convicted had at least once before organized a similar hashish transport. That transport was not the subject of these proceedings, but the presumption of innocence of the defendant is not much strengthened if he has a dubious past in a similar area. Man is, after all, a creature of habit, every one of us is, in a more or less harmless way, an habitual offender. Hence an obvious case?

Loophole in the jungle of regulations

Not for Gerhard Strate. By painstaking and detailed work he manages to find new facts and criminal evidence showing that major findings of the court are wrong and that the "nice" story which resulted from these assumptions, as one has to call them now, at best deserves the title of a free variation on some motives from reality.

Perhaps just this much: Close to the city of Kiel, Strate gets hold of the caravan in which the hashish (almost 200 kilograms) was assumed to have been hidden and which had been resold by then. In Helsinki, he manages to find the container in which the caravan was allegedly imported into Germany. A comparative examination of the evidence with the measuring tape follows, and it is revealed that the caravan does not fit into the container at all.

Result: It cannot have happened the way it had been assumed to have happened. What really happened, however, remains unclear: Defense attorneys do not design stories, they pull them to pieces. Like literary critics whom they resemble in many ways. Or like the defenders in soccer who do not play their own game, but destroy that of the opposing team. A profession *ex negativo*, Hence the reserve of the public.

Strate does not tell the story of the caravan and the container which fitted so badly that his client had to be released from custody, in a triumphant way, but amused (and never "reserved" as the press likes to characterize him, because he obviously does not feel intoxicated by victory or boastfully proud; okay, this case did not happen yesterday). Not only is this amusement a sign of distance and professionalism, but it also shows the warmth of a prevailing mood of mildness, love - if this high-ranking word is admitted - for reality which is quite unconditional because it is based upon the conviction that even in a tight situation there will always be a way out, a loophole. Shrewdness, and not just his own, means a lot to Strate.

We are sitting in front of the bay window in the visitors' and relaxation area of Strate's study. In a corner, next to the piano, which he only plays once in a quarter and which then remains untouched again for several months, are the bows and quivers of the amateur archer Gerhard Strate. But he also plays down his archery at once and relates that a colleague whom he filled with enthusiasm for this sport has joined a club by now, but that he himself, because he does not like to have regular dates, continues to shoot at the target only now and then in the small strip of garden behind the house. In fact, it becomes obvious very quickly that he prefers a "low profile" in everything that is not connected with legal matters. Once asked by a reporter how he could be described, he replied: "Rather not at all." Non-stylization as a principle of style. Strate does not even use smoking for a self-portrayal: He does not smoke the pipe, cigars or cigarillos, but simply cigarettes and also this just moderately, so that he is not even a real cigarette smoker. To keep fit he goes jogging at the river Alster close by whenever his dates permit it. The villa dating from the end of the last century in which Strate works and also lives with his wife and son is not situated in one of the elegant and fashionable boroughs near the river Alster, but at the busy, slightly vulgar Grindelallee, at the edge of the University district, where the constantly changing generations of students suffice to ensure that time does not stand still and thicken in a Hanseatic way. Besides, this would not be Strate's world. He grew up in the small town of Schwarzenbek at the edge of the Sachsenwald. the fifties, lower middle-class background, no incidents of any particular note. He had to use public transport to get to his secondary school in Geesthacht upon Elbe. Both towns are in the catchment area of Hamburg where Strate later went to University. When asked about his days at school, he remembers a primary school report showing good results, but also containing the comment that he had often been inattentive and dreamy. On press photographs from the mid-eighties when the public started to become aware of the attorney Strate, he still seems as small and wiry as the child on an old photograph with his classmates. Now, approaching fifty, his body has become a bit broader and more massive. This is not a disadvantage for an attorney who also argues by body language. Between somebody who is as thin as a rake and quickly seems crafty and the jovial heavyweight who rather makes a rough impression, Gerhard Strate keeps the decent mean: resourceful.

Attorney of the convicted

Today, he can hardly be called dreamy and inattentive any more. But in spite of his acuity and alert sense of reality there is still a kind of introversion, a natural reserve which is a strange contrast to the openness Gerhard Strate shows in talking to someone once this person has been critically examined by him in a brief preliminary discussion. It is a self-confident, powerful, outgoing trust which he seems to enjoy and which suddenly explains the seemingly stereotyped answer he already gave years ago to the question about the secret of his success: It's quite simple: I must be convinced of the innocence of my clients."

This, however, does only apply to the retrials, those almost hopeless cases which one cannot even tackle, let alone see them through without this fundamental conviction which is based on personal impression, on the trust of one's own ability to judge character and on the right instinct. In the history of the Federal Republic, there have only been seven retrials of people sentenced to imprisonment for life - three of them with Gerhard Strate as attorney. Holger Gensmer had been imprisoned for sixteen years for sex murder of a child, Jürgen Auer for more than seven years for murder and Monika Böttcher, divorced Weimar, for eight years for murder of her two children before Strate achieved a retrial. Gensmer who had confessed was finally acquitted after proof that he was not guilty, Auer was sentenced again (however not to life, but to thirteen years); the retrial of the Böttcher case has only just started.

An eye for small details

In every case, the small details made the former judgment shake. In the Gensmer case, Gerhard Strate discovered three names on a measurement sheet of the place where the corpse was found, which were not

mentioned in any of the files. Upon inquiring at the police, Strate brought an alibi record to light that proved the convicted man's innocence but which had never even reached the records. In the case of Monika Böttcher, according to a new opinion, the traces of fibers from a blouse of the convicted woman on the T-shirt of one of the murdered girls need not necessarily have got there during transport of the body - as the law court had assumed - but could also stem from washing the clothes together in the washing machine.

Of course one could argue that Gerhard Strate uses these lengthy proceedings with an uncertain ending - which yet might also lead to all the more spectacular successes - as some kind of PR in order to attract other, more lucrative cases (and this is indeed the effect of his achievements), and Strate is certainly a shrewd professional who, if necessary, shows the characteristics of a manager, looking after press relations just as after the financing of the defense. However, there is something deeply romantic in the way of attempting to achieve the improbable, of waging a fight with very little prospect of success from a statistical point of view.

Yet Gerhard Strate does by no means believe that he always deals with innocence personified. He agrees with a chuckle when he reads a quotation from Alan M. Dershowitz' book on the O.J. Simpson case in a New York Times review which says: "Almost all criminal defendants - including most of my clients - are factually guilty of the crimes they have been charged with."

Time and again we talked about Alan M. Dershowitz, the famous American defense attorney, and the US legal system where the trial, much more than in Germany, is a battle between the counsel for the prosecution and the defense counsel. When we first met, Gerhard Strate recommended Mr. Dershowitz' novel "The Advocate's Devil" as an introduction into an attorney's ethics. "The Advocate's Devil" is a legal thriller in which the defense counsel blind in his thirst for fame to the facts which speak against his client - gets the famous basket-ball player charged with sex murder off the hook and, in the end, can only just prevent his own daughter from becoming the next victim. Hard stuff. It is true that Strate had to realize that his client Holger Gensmer, whom he succeeded in getting released, was later arrested for a sexual offense. Nevertheless, his conscience is clear because, in the retrial, Gensmer was acquitted after proof that he was not guilty, and this judgment was not challenged afterwards. Yet a feeling of uneasiness persists; Gerhard Strate thinks so, too.

Anyhow, the ethical matters which a case as unlikely as the one in the novel raises can only be answered hypothetically (and this is something Strate does not even start discussing). Thus, the ethics of everyday business are much more interesting. What struck me most when I studied his cases was the fact that Gerhard Strate, the attorney, does not seem to care about "guilty" or "not guilty", which is the only thing the layman is interested in, but is occupied with circumstances, trivialities and procedural questions. Let me give you two examples: In 1984, Strate brought the lawsuit against a group of Hell's Angels to a temporary standstill by reprimanding the composition of the jury. The group were charged with bodily harm, procuration, racketeering, the possession of drugs and weapons and the establishment of a criminal organization. (This case caused a sensation because Strate's reprimand led to many other criminal proceedings in Hamburg being interrupted. Although the Federal Supreme Court later did not confirm Gerhard Strate's legal opinion, the case was included into the Federal Supreme Court's law reports.) In one of the Pinzner-connected trials (Pinzner was a confessed professional killer who shot the public prosecutor Bistry, his girlfriend and himself during interrogation), Gerhard Strate, at the very beginning of the trial, demanded the release of his client, the red-light district baron Reinhard "Ringo" Klemm, who had been charged with aiding a murder, arguing that the repatriation of the defendant from Costa Rica to where he had taken refuge was unlawful, since the airplane in which Klemm had been taken home had stopped over in Panama without the transit approval of the competent authorities, which made the procedure a false imprisonment violating international law,

Protection of animals applied on moths

Are these the procedural, formalistic tricks of a shady, incompetent lawyer? "Only someone who is incompetent himself can develop such an idea", says Gerhard Strate with indignation. For the attorney does not defend the crime that his client might have committed, but the rights that the culprit, too, enjoys. Surprisingly, we find that Nietzsche's judgment that someone "pays for being an artist with the price of feeling that something all non-artists call form is indeed content, the thing itself", is *mutatis mutandis* also true for lawyers.

When "self-confident people" (as Gerhard Mauz of *Der Spiegel* once wrote), like to state that it is "protection of animals applied on moths if certain people are provided with the rights of the Code of Criminal Procedure" and that the lawyer, with his opposite point of view lives in a "topsy-turvy world", as Nietzsche comments on his remark upon the artist, it is because the nonlawyer - who, as a non-specialist, claims to be unfailing - generally views criminal cases from the victim's perspective and his judgment is correspondingly passionate. In an essay on dealing with state security service files, Gerhard Strate once phrased where that leads to: "When the victims pass the judgment on the perpetrators, barbarism begins."

A placid remark from a lawyer who probably first had to acquire the inner detachment which is part of the advocate's territory, as Mr. Dershowitz puts it in a slightly distorted metaphor, since his decision in favor of that profession was a matter of passion: Feelings of revenge governed the law student when he decided to become a defense attorney. In the middle of his final examinations, Gerhard Strate himself was for the first time confronted with criminal justice, namely as a defendant.

At that time, i.e. in the mid-seventies, Strate was a member of the *Kommunistischer Studentenverband KSV* (communist student association), a Maoist faction. With the words "Leave that man alone! Don't you see that he can hardly walk?" he had, during a demonstration against an increase in fares, come to a fellow student's assistance. Gerhard Strate knew that he had spent many years in a wheelchair and could move only slowly and with difficulty, when the police arrested the invalid who was unable to run away like all others. As Strate took the policeman by the arm, they arrested him, too, and accused him of attempted rescue of an arrested person and obstructing public authority. And as if it were not enough to call an act of sympathy a punishable crime, the judge declined Strate's request for postponing the trial until he had written his paper for the first of his final university examinations, arguing that he had, after all, six weeks to write it.

Anarchist of reconciliation

The point of the story, which turned out not to be too bad (Strate wrote his first notice of appeal on his own behalf) is that the son of the policeman who then arrested him also became a lawyer and defense attorney and today works as Gerhard Strate's partner in their joint office. A strange coincidence, a turn of destiny for the better, for reconciliation, and Strate, whose anger has long since calmed down, likes such things. The fact that annoyed himself and the other students considerably at that time (who interpreted the accusation as a case of political justice) has by now become a nice curio which he enjoys telling when asked, still amused.

What has become of this radical political commitment, what has it turned into? For the first time, Gerhard Strate seems to be at a loss. Just so as to say something at all, he tells me that, as a member of the KSV, he learned above all to speak in public without feeling inhibited and to withstand opposition. Yet, he concedes, this is certainly not an answer to my question. Maybe it is the wrong question, aiming too short, because this political radicalism was just the manifestation of something more basic, more personal, like the urge to appear in public and to move something, cease to be a private individual. Strate's political activities came to an end when the KSV expelled him, accusing him of "reconciliationism" and "anarchism", thus showing more farsightedness than the narrow viewpoint seems to admit, which is, of course, meant to be strictly political. The reconciliatory and the

anarchic: two poles between which his personality is held in tension. Indeed, not a bad characterization of Gerhard Strate. Reduced to another formula, we could say: loyalty to himself, not to someone's line.

As a well-known defense attorney (who, just incidentally, is a VIP lawyer, since the cases which have made him famous did only become spectacular cases through him, through his work) he does not come up to a common picture either. That begins with clothing - sometimes jeans, sometimes smart suit; no jewelry - and the seemingly improvised design and furniture of his office and home, but does not end with his preference for the various fields of work associated with the profession of a lawyer: solitary office work, workout of strategies, files studies, legal investigation; and writing, which he does not look upon as an unpleasant duty, is as important to him as the public appearance in court. And what is most important to him is the fact that this profession encompasses both and never risks getting drowned in routine. The way in which Gerhard Strate practices the profession of a lawyer it really is an "independent" profession; with him you feel an affinity between jurisprudence and the liberal arts (as a student, Strate really considered becoming a film-maker).

Taking pleasure in mysteries

The freedom and pleasure which other people try and find on their motorbike, a sailing yacht or a climbing trip in the high mountains to counterbalance the constraints of their professional life, Gerhard Strate finds in work itself. That, of course, is also connected with the fact that his success enables him to choose the cases he takes on and drop everything to go away for a few days between two cases. Saturday belongs to the family anyhow. Yet on Sunday afternoon he starts preparing for the forthcoming working week when he gets out the necessary files. By the way, Gerhard Strate does not at all make the impression of being a "workaholic" consumed by his work; on the contrary, it is obviously a stimulant and source of power for him.

During our first meeting, Strate read to me a passage from "The Advocate's Devil" about each attorney's dream of winning a really big case one day which will go down in the text-books studied by law students, thus becoming one of the famous names among the defense attorneys. Now referring back to that passage and to the fact that he has already achieved this dream, I ask him what there will be afterwards, what goals there are - and I expect as an answer some version of the old jack-of-all-trades dream so many indulge in who have won fame and reputation. But Gerhard Strate tells me straight-away about a new case. Not the least bit self-satisfied, not the least bit tired.