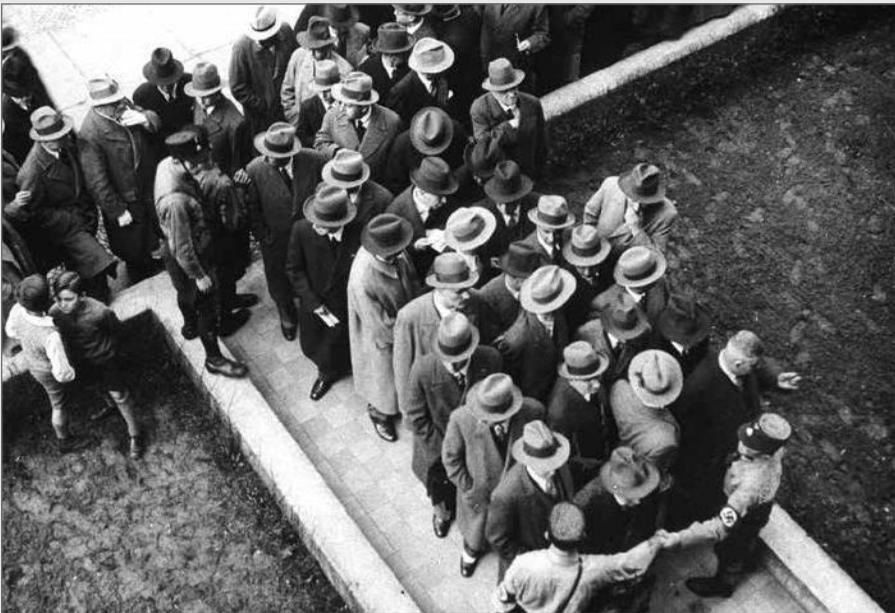


# Exclusion after the Seizure of Power



## The first Wave of Exclusion: Terroristic Attacks Against Jewish Attorneys

After (Adolph) Hitler was appointed Reich Chancellor and a coalition government was formed that included German nationalists, the National Socialists increased the level of national terror. The Reichstag fire during the night of Feb. 28, 1933 served as a signal to act. It provided the motive to arrest more than 5,000 political opponents, especially Communist officials and members of the Reichstag, as well as Social Democrats and other opponents of the Nazis.

The Dutch Communist Marinus van der Lubbe, who was arrested at the scene of the crime, was later sentenced to death and executed. It was for this reason that, on March 29, 1933— afterwards—a special law was enacted that increased criminal penalties, because up to then the maximum punishment for arson had been penal servitude. The other four accused, three Bulgarian Communists (among them the well-known Georgi Dimitroff) and a German Communist, Ernst Torgler, were acquitted by the Reichsgericht, the Weimar Republic's highest court, in Leipzig.

On the day of the Reichstag fire, Reich President von Hindenburg signed the emergency decree "For the Protection of the People and the State." This so-called "Reichstag fire decree" suspended key basic civil rights: personal freedom, freedom of speech, of the press, of association and assembly, the confidentiality of postal correspondence and telephone communication, the inviolability of property and the home. At the beginning of February another emergency decree was promulgated that legalized "protective custody," which then proceeded to be used as an arbitrary instrument of terror. In Berlin, the wave of arrests following the Reichstag fire caught up the attorneys Alfred Apfel, Ludwig Barbasch and Hans Litten. Apfel was released after 11 days, Barbasch after six months. Litten remained in prison until his suicide.<sup>83</sup>



Carl von Ossietzky (1932) together with his defense attorneys  
Rudolf Olden (left) and Alfred Apfel (right)

Alfred Apfel fled to France after he was set free. His photo was published in 1933, together with those of many others, on a poster under the caption “Traitors to the German people.” At the same time, his German citizenship was revoked. Apfel died in 1940 at the age of 58 in Versailles under unknown circumstances.

Another lawyer who was imprisoned after the Reichstag fire was the rather inconspicuous attorney Fritz Ball. Yet, he was still arrested at the end of March 1933. He recorded his experience and impressions together in a haunting report. Fritz Ball relates:

“Frightening rumors about a torture chamber are circulating ... One hears about these things with increasing frequency. Colleagues who have vanished are sought after. Sometimes they are found alive, sometimes dead. Those who were politically active against the Nazis and are able to, flee.

On March 30, 1933, Fritz Ball was arrested at his law firm on Viktoria-Luise-Platz in Schöneberg, which he ran together with his brother. It was at 4 o’clock during office hours that the SA men arrived. Ball heard the noise and came out of his consulting room. He reports:

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# Volksverräter

## ausgestoßen aus der deutschen Volksgemeinschaft!

Auf Grund des § 2 des Gesetzes über den Widerruf von Einbürgerungen und die Aberkennung der deutschen Staatsangehörigkeit vom 14. Juli 1933 bei der Reichsmiester des Innern im Einvernehmen mit dem Reichsminister des Auswärtigen durch eine im „Reichsanzeiger“ veröffentlichten Bekanntmachung vom 23. August 1933 zunächst folgende im Ausland befindliche Reichsangehörigen der deutschen Staatsangehörigkeit für verliert erklärt, weil sie durch ein Verhalten, das gegen die Pflicht zur Treue gegen Reich und Volk verstoßt, die deutschen Belange schädigt haben:

					
Philipp Scheibmann	Otto Heils	Wilhelm Pies	Dr. Robert Weilmann	Dr. Rudolf Weisfeld	Georg Werner Krausmann
					
Albert Gerschlaff	Bernhard Weiß	Dr. Joh. Werthauer	Dr. Alfred Apfel	Friedrich Stamper	Ruth Biber
					
Dr. Friedr. W. Grottel	Emil Wambel	Edmund v. Gerlach	Leopold Schwarzchild	Dr. Kurt Tuschke	Max Oehl
					
Willi Künzberg	Emil Toller	Georg Bernhardt	Alfred Herr	Heinrich Mann	Egon Fleischmann

*Illustrierter Beobachter*, supplement of the *Völkischer Beobachter* 1933, part 3b, p. 1176. The Berlin attorneys Bernhard Weiß, Johannes Werthauer and Alfred Apfel are in the second row.

“The office secretaries immediately whisper to him: “Your brother has been arrested.” My brother is a member of the board of the bar association and this exposes him more than me. I enter the hall. It is also full of SS men. A *Sturmführer* (SA rank equivalent to a second lieutenant in the army), as was apparent from his uniform, is engaged in a conversation with my brother. ‘Get

dressed and come with me,' he tells my brother. My brother responds with: 'Do you have an arrest warrant?' The gruff Nazi then issues the order: 'Shut up and put on your coat.' My brother reaches for his coat and hat. Then I say to him: 'There are two attorneys named Ball here, Kurt and Fritz Ball. Who are you looking for?' He pauses, takes a small slip of paper out of his pocket and then says: 'Fritz.' I grab my coat and hat. I say, 'That's me.' I can hear my office secretaries sobbing behind me. At that moment, a client appears who seems shocked at the sight of the SA and the weeping women.

"My wife emerges from our private apartment. I kiss her goodbye, but we don't say a word. While standing in the doorway. I call out to my office manager: 'Immediately call Minister Hugenberg to tell him that I have been arrested.' An open van is waiting outside the house. It is the type the SA uses to transport prisoners."

Ball is brought to one of the improvised concentration camps and placed in the basement of the barracks on General-Pape-Street.

"I am immediately surrounded by a dozen of quite young SA people. I am interrogated as to what my name is, where I live, what political party I belong to and how I voted in the elections. Questions pop out from everywhere. 'What did you do to try and prevent the fact that so many Eastern European Jews have come to Germany since the last war?' This question is posed by the person who seems to be in charge in the office. 'Are you a Jew?'—'Yes.'—'Your profession?'—'Attorney at the Berlin Court of Appeals and Notary.' 'That's something you have been for a long time,' someone screams out behind me in front of the crowd. 'Tomorrow you Jewish pigs will all be driven out of the courts. You have our Führer to thank that you are still alive today.' 'We will say,' someone behind me replies, 'that he lived up to today'—speaking with a very serious voice. 'We could have done away with you long ago.' Then question after question comes for half an hour. Confused, disconnected, totally senseless questions. I answer as well as I can."

Ball is thrown into a basement room further down below.

"A wooden door slams shut behind me. It is as black as night around me. I slowly feel my way forward, then I feel a bench. From behind my left side four little glowing lights shine on me. They look like lightning bugs. I suddenly become totally calm and just have one thought: If they would just simply shoot me

in the chest with a pistol and not subject me to long torture. It is strange how calm I feel in this eerie situation. Then I hear a human voice: 'Don't be afraid. We are four officers of the Ehrhardt Guard. We have been sitting here for 36 hours. I've got matches with me, I'll light one for you, so that you will be able to orient yourself...' On the bench there is room for three people to sit. They bring me over there to sit, then offer me water. They ask me questions and then they speak about themselves. I tell them what I already have said 10 times in the office, that I have never been politically active, that I am an attorney and notary and that I spend my free time in the appreciation of good art. I tell them that I don't have any idea why I have been arrested and that there has to be some mistake."

Later on, the four confide the addresses of their families to Ball. During the course of a new interrogation, Ball is asked about his car. However, because he did not own a car and because his law office was not located, as had been assumed, on Bendlerstraße, it then is apparent that he has been confused with another person of the same name. He is then informed that he is to be released on the next day. He once again returns to the dark basement cell and attempts to sleep while sitting. Fritz Ball continues:

"I am really able to nod off a little. I wake up in shock. It becomes louder in the hall. Apparently, the officers are away and the rank and file are now left to their own devices. The door is flung open. The SA storm into our partition. The hall is suddenly brightly lit. They grab me and pull me out. The door of the cell slams shut behind me.

"They drag me into a corner. I see a big bull whip, they bend me over, but they don't strike me, they raise me back up and let me fall back on a chair. They tie my arms behind my back. They scream and howl like they are extremely drunk. One encounters many intelligent faces among them. I even think I know some of them. All of them are young fellows between 18 and 25 years of age. They call out to me, ask questions, crack jokes, scream at me. Then one of them places himself before me and says: 'At 6 am. you will be shot.' My response is: 'I don't believe that. I think that I will be released tomorrow morning. You wouldn't shoot someone who is innocent.' 'What a fine suit the young man has on.' They touch the fabric of my jacket, my pants. One of them attempts to touch me in an unseemly fashion. He asks, 'Are you also gay?' "No, I am married, I have a wife and three children,' I answer. And then I think, but most of you beasts

are gay. Suddenly I hear the word 'hello.' A giant pair of scissors is brought in and then things get going. They tug at and cut my hair, which is fairly long. They attempt to cut a swastika on my head. They cut me, I bleed. They push and shove me back and forth in order to get a better look. The noise and yelling becomes increasingly worse... 'He's got to look at himself in the mirror.' They hold a mirror in front of me. I see my mutilated hair and say, although I can barely speak after this virtual scalping: 'I thank you, sirs, that you have given me a haircut for free, otherwise I would have to go to the barber, who charges me double because of my thick hair.' "

Then Ball is once again left alone. At some point the SA man shows up, who threatens him with a bull whip. A man is brought into the cell. He is bleeding and his teeth have been knocked out. A gunshot goes off in the neighboring cell. There are recurrent screams; at one point, Ball thinks he recognizes a female voice. Later, an SA guard tells him of the death of the attorney Günther Joachim. The Social Democrat, who acted as a defense attorney for the Red Cross and who was a Jew, had been tortured and mistreated for so long in another SA prison (on Jüdenstraße) that he died of his injuries. Fritz Ball continues to record his experiences:

"Then suddenly somewhere in the compound music is being played. They are playing hymns on accordions and concertinas. We can only hear the music faintly in the basement we are locked up in, but I can clearly make out each sound ... an eerie and tense mood holds sway in our chamber. Everyone listens with horrified expressions. My young neighbor and I are the only ones who don't know what is happening. However, this is soon explained to us. Whenever they are beating a man to death above, they play hymns as an accompaniment in order to drown out his screams.'

Ball loses his sense of time. It is only due to the light that enters the cell that he becomes aware that morning is approaching.

"Finally, my name is called out. One of the two officers who had interrogated me in the corridor during the night in regard to my car and many other matters is standing before me ... 'I can release you,' he says in a manner that is not unfriendly. 'You have to wait until 11 am, until the second lieutenant is here. You really caused us a lot of work. Because of you six cars waited in front of the door until late in the night. The telephone was ringing off its hook. My boys had a little bit of fun with you. They do that here with everyone, when we are not here. I am

glad to see that you are still in a good mood. The remarks about the haircut really pleased me.' Finally, the clock chimes 11 am and I am called up. The second lieutenant is standing before me. 'I had to make a lot of phone calls because of you. Never before have I received similar responses about someone from everyone questioned. Everyone said that you have never been involved in politics and that you are a respectable fellow. This is certainly no Hotel Adlon, but I hope you didn't have too bad of a time.'"

Ball was in fact released, but only after the three gold pieces he had had amongst his valuables were taken away from him. At home he was confronted with the fact that one of his stenographers had been arrested. She had become extremely upset over the arrest of her boss, which then caused the 16-year-old apprentice to report it to the police. The same SA troop that had arrested Ball came back again later to pick her up. It was her screams that he had heard during the night.

In April 1933, Ball lost his license as both an attorney and as a notary. In order to support his family, he became a soap salesman. Shortly before the war broke out he fled to Great Britain and later went to the U.S. His brother Kurt managed to reach Palestine. After the founding of the state of Israel, he helped build the national memorial Yad Veshem under the name Kurt-Jacob Ball-Kaduri.

Just like Joachim, Apfel, Barbasch and Litten, the attorney Arthur Brandt was also arrested in 1933. They were first and foremost political opponents of National Socialists. Above all, the fact that they were also Jews was given emphasis in the propaganda relating thereto. These attorneys had made personal enemies, who were now cruelly testing out their newly found power. As members of an organized resistance, they were to be put out of action.

The young attorney Hans Litten also became a victim of such "personal settling of scores." Hitler was unforgiving and after being summoned to appear in the Eden Trial, Hitler became irascible just at the men



Dr. Kurt Ball 1931

tion of Litten's name. Litten, the son of a Christian mother, was classified as a "half-Jew." This rage was not only directed against him as an attorney, but especially against him as a "Jewish attorney." Nazi propaganda had generally settled upon this formula even before the seizure of power. In 1933, the agitation became completely unrestrained and did not hold back from sinking to the lowest level. For example, Kurt Rosenfeld was accused of having mocked the German judiciary because it was said that at the end of March he had hung a picture in his reception room showing the rape of Justitia by a judge. Rosenfeld avoided arrest by fleeing to Prague, and then later fled to the U.S. where he died in 1943.

Another person who nearly escaped arrest was Rudolf Olden. In contrast to Litten, who was more of a Franciscan ascetic, Olden loved people and sought out their company. For him the struggle for social justice was always associated with the emphatic feeling of being uplifted by a group of like-minded people. Whereas Litten took his commitment to an ideal with deep seriousness, Olden instead had a tendency towards playful light-heartedness, although he nonetheless kept his eye on the goal. Humor and charm accompanied Olden's nonetheless sincere and



"Judge and justice,"  
contemporary graphic art

constant political commitment. For example, he was one of the organizers of the gathering of 900 politicians and intellectuals under the slogan “free speech” that took place on Feb. 19, 1933, at the Kroll Opera House — only a few days before the Reichstag fire. The rally was broken up by police after three hours. It was the Kroll Opera House that would function, just a little later, as the replacement building for the Reichstag that had been burnt down.

Olden was warned of his impending arrest and was able to escape across the Czechoslovakian border. After a temporary stay in Paris, he made his way to Great Britain. In 1936, his German citizenship was revoked (on the same list as Thomas Mann). After the beginning of the war, the British government declared him, as a stateless person, to be a “dangerous foreigner” and had him interned. Without income and without nationality he rather reluctantly accepted an appointment at the New School of Social Research in New York although he would have rather stayed in England. In 1940, during the trip to North America, the boat he was on was torpedoed by a German U-boat; Olden and his wife Ika died together with many others during the attack.



Rudolf Olden (right) in conversation with attorney Gerhard Wilk, 1931