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FROM THE EDITOR

It is the 12 July 2021 as I write, and today South Africa feels like it is on a rule of law precipice. Former president Jacob Zuma was taken into custody on Wednesday night, unleashing a wave of across KwaZulu-Natal and Gauteng.

Today, as trucks burned and shops were looted, eight justices of the Constitutional Court listened to advocates argue about whether it should rescind its order that sent Mr Zuma to prison for contempt of court.

In this edition, our forum section opens with the events of an appeal by the Caymen Islands to the Privy Council involving an English QC I had never heard of before and who is the president of a college at a rarefied English university. In all the turmoil of today, it feels remote and obscure. But the debate raised by the cab-rank rule, and the principles it serves, have never been more important to us, right here and now in SA.

At some point in the five days between the ConCourt judgment and the arrest of Mr Zuma, a well-known supporter of the former president and ANC leader Tony Yengeni posted on Twitter a photograph of Tembeka Ngcukaitobi SC and captioned it "This man prayed for Zuma's imprisonment".

The tweet is a particularly odious example of what happens when counsel are identified with their briefs. Similarly, Dali Mpofu SC has been subjected to abuse for representing Zuma. The abuse may, for the most part, be confined to social media. But if you've ever been really trolled or doxed on social media, you will know it is horrible and scary. This is not an academic or abstract debate.

The articles we have collected in this edition about the cab-rank rule have been, for me, incredibly thought provoking. Each one has made me want to argue with its author, even as they take different views.

Not being a member of the advocates' profession, I am probably ill-placed to make any contribution on the very real moral and ethical dilemmas posed by this debate. But let me tell you what I see from the outside, as someone who watches what advocates do every day and writes about it for the public.

What lawyers often do not realise is how little most of us know about courts. It is only in the last few years that ordinary people have been able to watch live court proceedings. Before, courts were mysterious places that most people tried to avoid at all costs. The idea that an advocate can stand up and brilliantly argue for the EFF one day, and then stand up and brilliantly argue for the ANC the next day, is something we are still getting used to.

We know that no matter how bad a person's cause is – the racist, the abuser, the politician who has stolen from the nation – that person has a right to be legally represented. We must still get used the idea that if that person has that right, someone must do it.

It is not second nature to us, the way it is to lawyers, that it is judges, not lawyers, who decide who wins the case. The role of the advocates is to help the judge make the best decision by making the best argument they can; and fighting as hard as they can for their client (within the bounds of the other ethical rules).

I have watched many court cases and I have seen that when a litigant is not represented, or there is inequality of arms, it is not just the litigant that suffers but also the court. Justice is served by both sides to a case being represented. Equally. And well.

Someone must do it.

And here's where I come unstuck with the argument that the rule must be qualified. It seems to me, from the outside, that once one advocate can get out of taking a brief for reasons of conscience, the gaze of public judgment will only turn with more force on the next advocate to take the brief. And if that advocate does the same, on the next. It's a slippery slope.

It seems to me that only a strict, almost puritanical, adherence to the cab-rank rule will serve the bigger rule of law rationale. And from where I'm standing now, looking at South Africa on a precipice, the bigger rule of law rationale is more important.

From the outside, it matters not what an advocate thinks of the cause he is fighting. What matters is that the court gets to the right outcome. Perhaps there may be that one case where the moral question is so overwhelming that you will have to either to leave the profession or tell your attorney you are busy or make another excuse. But otherwise, my view, from the outside, is that you need to suck it up and get on with the job. And serve justice and South Africa.

To add: This edition has been put together during the height of the third wave, which hit us in Gauteng particularly badly. It was not easy. To all those who are experiencing pain and loss, our thoughts are with you. A

The editor contributes to *Advocate* as an autonomous author. The views she expresses are entirely her own, and do not purport to represent any view or position of *Advocate* or of the GCB.