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# advocate

Iphhephabhuku labameli basemajajini baseNingizimu Afrika  
Dzhenala ya dzangano la vhaadivokati vha Afrika Tshipembe  
Die Suid-Afrikaanse Balietydskrif ■ The South African Bar Journal  
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## FROM THE EDITOR

There was a freedom song sung in Umkhonto weSizwe training camps in Angola in the 1980s: “Yibambeni webafana! Izibham zaba bafana, zindikhumbuzo uBram Fischer”. Loosely translated into English, these lyrics meant: “settle down lads! The guns of these young men, they remind me there is a Bram Fischer ...”

This year marks 20 years since Bram Fischer was readmitted to the roll of advocates. In this edition we publish the papers delivered in tribute to him at the University of the Free State by his biographer, Stephen Clingman, and by Tembeka Ngcukaitobi SC. Their essays are themed around the question: What happens when the world becomes inhospitable? They look to Bram Fischer’s extraordinary life to answer that enduring question.

We also have the address given by Justice Owen Rogers to pupils at the GCB’s advocacy training course at Mabula Lodge. In his address, Justice Rogers gives four attributes he thinks make for a good advocate: creativity, restraint, courage and humanity. He gives examples of people through history exemplifying these qualities: the artist William Kentridge, his father the advocate Sir Sydney Kentridge, Bram Fischer and the advocate Fritz Krause.

On Fischer, Rogers describes his decision to abscond from his criminal trial and skip bail – leading to his being struck off the advocates’ roll – as an act of extraordinary courage. Faced with a choice between law and justice, he chose justice, a choice he knew would lead him ultimately to exile or imprisonment.

Ngcukaitobi recounts another episode, which to me, exemplifies an even greater act of moral courage: During the Rivonia Trial, even as he defended Nelson Mandela and his co-accused, successfully saving them from the gallows, he was covertly rebuilding Umkhonto weSizwe.

Stephen Ellmann described it thus: “While defending the Rivonia accused against charges of sabotage, [Fischer] was in fact conspiring to commit more sabotage. He conspired with the defendants in his case to continue committing the crimes for which they were on trial. He took advantage of his access to the accused in jail to relay information that would further this conspiracy. And he used documents to which he had easy access, due to his position in the case, to promote these crimes.”

To me, this exemplifies why Fischer was not only a brave advocate but a hero of the liberation struggle; and why the name of Bram Fischer was exalted in song by young freedom fighters, decades later and miles away, in the ANC’s guerilla camps of Angola.

In the moving tribute to the late Judge President Friedman, also published here, Jeremy Gauntlett SC recounts how Friedman answered the question: “Should anyone have accepted judicial appointment under apartheid?” Friedman chose a different path to Fischer and became part of a group of judges that applied common law rights “in the narrowest gaps left between the hard stones of statute”. His submission to the TRC, which Gauntlett describes, is thoughtful and reflects a sincere wrestling with this complex question. A compelling argument for me on this issue has always been the perspective from the other side of the bench: for those arrested for political crimes, the fervent wish was for a judge like Friedman.

Recently, I had the privilege of addressing legal journalism students at Wits University together with retired Justice Johann Kriegler. I’ve always admired Justice Kriegler’s knack of saying the most profound things in very few words. When asked, rather diffidently, by a student on how he chose to be a judge during the apartheid years, his answer was: “You do the best you can.” I thought about that for a long time.

I am grateful to all those who dedicated their lives, in their different ways, to make South Africa more hospitable – so that I never had to be a lawyer or a journalist in a time when there was a death penalty, when there were apartheid laws, where there was no freedom of expression. I do not have to face their choices.

But there are new moral choices to be made now. As Clingman and Ngcukaitobi say, the world is still inhospitable. As I write, over 10,000 people have been killed in just over a month in Gaza and Israel, including over 4000 children. The number is climbing daily. This morning, I read that the Israeli ambassador to the United Nations claimed that UN workers were members of Hamas – to justify their killing by Israel’s defence force. My stomach turned when I saw him wearing a yellow star on his chest – a grotesque reenactment of the identifiers Jews were forced to wear in Hitler’s Nazi Germany. It was a cynical abuse of a symbol that is loathed by all right-thinking people but deliberately aimed at deepest fears of Jews.

I know what’s coming my way by condemning him, standing in solidarity with the people of Palestine, and calling for an immediate ceasefire. I am not Fischer or Friedman or Kriegler. But I draw courage from their example. I think particularly of Fischer, who was so despised by his own people that when he died, his ashes were claimed by the prison authorities and his family were not allowed to have them or even know what happened to them – an unspeakable act of cruelty.

In the bigger scheme, writing this is a small thing, I know. I am doing the best I can. **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.