

Honoré Daumier, *Plea for the Defense* (early 1860s).

BEYOND THE RULES OF ENGAGEMENT: ATTACK ON THE FRONT LINES

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I was a third-year LLB student when I first heard a silk describe litigation as “legalised warfare in the courtroom”. It was offered as a metaphor, and one I immediately recognised. The language of armed conflict or war (strategy, territory, engagement, and restraint), familiar to me, provided a precise and intelligible way of understanding what advocacy entailed and the role an advocate was required to fulfil.

The metaphor was compelling: step into your robes, enter the courtroom, and fight (forcefully, fearlessly, but lawfully) on behalf of your client. Like any war, litigation has *rules of engagement*.

In armed conflicts, *rules of engagement* are issued by competent authorities. *Rules of engagement* delineate the circumstances and limitations within which force may be used to achieve legitimate objectives. They appear in doctrines, operational orders, deployment directives, and standing instructions. Whatever their form, they authorise and constrain conduct: the use of force, the positioning of forces, and the employment of specific capabilities. In some jurisdictions, *rules of engagement* are guidance; in others, they carry the force of lawful command.¹ Their purpose is not to assign missions or tactical

tasks, which is done through operational orders, but to define the boundaries of permissible conduct.

The parallel with litigation is striking. In court, we too operate under carefully delineated *rules of engagement*. We are bound by ethical rules, codes of conduct, rules of court, practice directives, and professional standards issued by the Legal Practice Council, the General Council of the Bar, and our respective bars. We are governed by written and unwritten norms: how to address the court, how to conduct oneself towards opponents, what may be said, how it may be said and (just as importantly) what may not. There are rules about dress. Rules about tone. Rules about respect. Rules about restraint.

Judges guide us. Heads of court guide us. Bar councils guide us. These rules do not tell us what arguments to make or how to run our cases tactically. That is left to professional judgement and forensic skill. They do, however, define the battlefield and the limits within which the battle may lawfully be fought.

Our weapons are logic, precedent, principle and persuasion. The creative and disciplined use of language and law. The lawful deployment of argument within a defined territory – the courtroom.



And when we leave that courtroom, the battle ends. An armistice enters into force. Like fighters who shake hands after a bout, we leave it in the ring. We remain colleagues. The conflict does not follow us into the street, our homes, or our private lives. Or so we believed.

What we are witnessing today is something fundamentally different. We have moved beyond the *rules of engagement* as we have always understood them to be. Beyond “legalised warfare in the courtroom”. Beyond the recognised territory of conflict. Advocates are no longer only engaged in legal battles before judges; they are being emotionally and physically targeted outside court.² The same is increasingly true for members of the judiciary.³ They are threatened, publicly vilified, ridiculed, intimidated, assaulted and in the most extreme of cases they are shot at – assassinated.

This is not metaphorical violence. It is real. It is deeply traumatising. It is lethal.

Fear is sparked not only by bullets and bombs, but also by disinformation and the persistent erosion of personal safety, professional dignity and public trust.

Groups and individuals weaponise violence to intimidate and silence those who oppose their interests. These acts are calculated. Their purpose is not merely personal retaliation; it is institutional intimidation. It is intended to force officers of the court, including advocates and members of the judiciary, to abandon their duties. It seeks to hollow out the administration of justice through fear; and to demean, discredit and delegitimise judicial officers so that their authority is questioned and their independence weakened.

Such conduct undermines the administration of justice and the rule of law itself. It strikes at the rule of law and, ultimately, at our constitutional dispensation. When advocates and members of the judiciary cannot discharge their professional obligations without fear of reprisal, access to justice is bound to become illusory. This is an attack on the front lines. And yes, *we* are on the front lines.

Advocates may be the combatants in the arena, but judges are not mere spectators. They are referees. They do not step into the ring, yet they carry the responsibility of enforcing the rules, maintaining order, and delivering outcomes that may profoundly affect powerful interests. Their impartiality and restraint do not shield them from risk.

As legal practitioners, we are trained to be strategic. Like combatants, we are taught to identify strengths and weaknesses, both our own and those of our opponents, and to act accordingly. We are taught to advance arguments, exploit vulnerabilities in reasoning, and press advantages where the law permits. But always within a confined and lawful space. The courtroom. The papers filed. The record.

We are never called upon to attack beyond the matter. Beyond the mandate. Beyond the court. The *rules of engagement* are clear

about this. Yet today, these rules are being violated in the most profound way imaginable.

What we, as legal practitioners, as well as members of the judiciary, face now includes:

- Vilification;
- Sustained emotional and reputational attacks driven by disinformation, amplified through social media;
- Physical targeting and assault;
- Threats to life, to loved ones and to personal safety;
- Threats to income and livelihood;
- Assassination attempts; and
- Shootings and killings.

None of this was ever part of the bargain.

Advocates accepted the duty to represent clients fearlessly and to the best of their abilities, always within the confines of ethical rules and the rule of law. Judges accepted the duty to adjudicate impartially, independently, and without fear or favour. We accepted the obligation to uphold the constitutional guarantee of access to justice. None accepted that their lives, or the lives of their families, would be placed on the line for doing so. And yet, many continue. Despite threats. Despite fear. Despite real danger. Despite the emotional toll.

To those advocates and members of the judiciary who continue to do what is right, even when it places them and their loved ones at risk, this profession owes more than quiet admiration. It owes protection, solidarity and resolve. If violence, intimidation and vilification are permitted to redraw the *rules of engagement*, then the battlefield has already been lost. That is a war none of us can afford to lose. **A**

Notes

- 1 For a full explanation on the rules of engagement, see Gary D Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (1st edn, Cambridge University Press 2010) <<https://doi.org/10.1017/CBO9780511757839>> accessed 4 February 2026 Chapter 13; JFR Boddens Hosang, *Rules of Engagement and the International Law of Military Operations* (1st edn, Oxford University Press Oxford 2020) <<https://doi.org/10.1093/oso/9780198853886.001.0001>> accessed 4 February 2026; Alan Cole and others, *Sanremo Handbook on Rules of Engagement* (International Institute of Humanitarian Law 2009).
- 2 Similar threats and acts of violence have affected attorneys and other legal practitioners. The concern is therefore one that extends across the legal profession. Jenni Evans, ‘Well-Known Cape Town Lawyer Pete Mihalik’s Killers Sentenced to Life Imprisonment’ *News24* (12 August 2023) <<https://www.news24.com/southafrica/news/well-known-cape-town-lawyer-pete-mihaliks-killers-sentenced-to-life-imprisonment-20230812>> accessed 3 January 2026; Riaan Marais, ‘Breakthrough Arrest in Gqeberha Prosecutor’s Murder Case’ *Daily Maverick* (24 December 2025) <<https://www.dailymaverick.co.za/article/2025-12-24-breakthrough-arrest-in-gqeberha-prosecutors-murder-case/>> accessed 5 January 2026; ‘Assassination Attempt on SARS Advocate Coreth Naude: An Egregious Attack on the Rule of Law and Constitutional Democracy’ *Polity* (19 July 2024) <<https://www.polity.org.za/article/assassination-attempt-on-sars-advocate-coreth-naude-an-egregious-attack-on-the-rule-of-law-and-constitutional-democracy-2024-07-19>> accessed 5 December 2025; Tiaan Herbst, ‘Bouwer van Niekerk: Remembering a Lawyer Killed for Doing His Job’ *Moneyweb* (16 September 2025) <<https://www.moneyweb.co.za/financial-advisor-views/bouwer-van-niekerk-remembering-a-lawyer-killed-for-doing-his-job/>> accessed 17 December 2025.
- 3 Kabous Le Roux, ‘MANDY WIENER: Act before Judges and Journalists Are Next’ *Eyewitness News* (12 September 2025) <<https://www.ewn.co.za/2025/09/12-mandy-wiener-act-before-judges-and-journalists-are-next>> accessed 12 December 2025; Tania Broughton, ‘Judge Denise Fisher Succeeds in Clearing Her Name’ *GroundUp* (5 November 2025) <<https://groundup.org.za/article/judge-succeeds-in-clearing-her-name/>> accessed 1 December 2025; ‘Judges Matter Condemns Outrageous Attack on the Constitutional Court Building’ *Judges Matter* (5 January 2022) <<https://www.judgesmatter.co.za/opinions/judges-matter-condemns-outrageous-attack-on-the-constitutional-court-building/>> accessed 29 December 2025.