Remediation

Peter Goodrich

An ardent advocate of argute alliterations and the habile silent 'p', as in raspberry and rhubarb, Peter Goodrich perturbs the Panglossian portals and protocols of paromoion legalities and other plagiarisms with the pataphysical portents of posthuman sciences and their paromion postulates. A practitioner of widdershins in the circulus disciplinarum, he is author, recently and most compositely, of Advanced Introduction to Law and Literature *(Edward Elgar) and the forthcoming* Vision and Decision: On the Judicial Uses of Images *(Oxford University Press). Chef, filmmaker, and olericulturalist, he is currently working on a project entitled* Laugh and Critique.

The will to transparency, the scopic drive to see through, to scrutinise naked truth, encounters a significant impediment in the dead letters, the *literae mortuae*, of law. The puppet show of juridical interpretation, the marionettes that are pulled as heavy signifiers, gothic black-letter dogmas from the pickle jar of precedent, perform a spectacle that is always a trope and costume, a stage and screen away from the viewing subject. As the pop philosopher and 'narcotheorist' Laurent de Sutter observes of a prime example of this paradox—the new Palais de Justice, the judicial city and island of law designed by Renzo Piano on the outskirts of Paris entirely in glass façade—it is the opposite of transparent.[1] The intimidating size, the insular location, the monumental aura, and the nomothetic lines of the rectangular structure suggest, at best, a juggernaut of justice. It appears open to the lines of sight but closed and excluding of any miniature mortal who might wish, in some unauthorised fashion, to enter and somehow animate the dead letters or lost epistles of what is to all appearances an instance of *vox Dei suprema lex esto*. Neither missive nor monumental building was authored in any recognisable manner by the populace.

The megalith that replaces the classical architecture, highly symbolic designs, and artwork of the old Palais on Île de la Cité suggests, in more quotidian terms, a vast office building, an indistinct corporate structure not so dissimilar to a rectangular and stacked version of the World Trade Center. There is nothing legal, no symbol of jurist or justice, in the plain glass façade. The use of windows reverses the traditional windowless spaces of judgement, the subtly in camera character of the courthouse, and suggests the appearance of an interior, a window into the beating heart of legality, *figura fenestris* appearing in law. The glass, however, is more panopticon and occlusion than it is, in any sensible concept of appearance, likely to be entered by the viewing eye. The passing subject will have their eye deflected to the building as a structure, a scalar manifestation of *forensis* as a faceless leviathan, a supraterrestrial but blankly uniform front. The other irony is that if the gaze is focussed beyond the reflections in the panes to pierce the wall of glass, what is visible is primarily a corporate space of passages, corridors, stairs and benches for waiting.[2] The juridical interior is not open to view, and so the eye that penetrates the windows will see only a labyrinth of nondescript open spaces leading inexorably to the closed doors and opaque walls of the inner sancta, the temples of judgement, the hotwired, multiply screened, media-saturated courts. Where earlier legal architecture, replete with columns, classical statuary, and monumental inscriptions in archaic languages, invited attention to the façade, to the appreciation of an illocutionary presence and civic message, a symbolic spectacle of justice and law, the glass façade acts more as a mirror deflecting sight to the presence and size of this particular space station.[3]

The visible leviathan perhaps makes its optical case too vehemently, a hyperbole that often signals decay and demise—but such proleptic prognostications are for other occasions. The paradox to be pursued here is rather the tension between the purported transparency of the exterior, the sense of remediation from stone to glass, and the visually desipient opacity of the interior. An installation of the juridical in the remediated form of a monumental, quadripartite glass structure creates an impermeable visibility, a faceless mausoleum of legal acts that effectuates the trompe-l'œil of being a window into invisible proceedings. The trick and trope of the design is to create the appearance of transparency, the illusion of exposure of the physical presence and public accessibility of the juridical, to make it ordinary, popular, recognisably corporate, while creating a site on the periphery of the city that discourages both viewing and visiting. The apparent is never simply appearance, and to look into is also always a matter of looking away, of noticing and of overlooking, as the expression goes. Law is no different in its scopic choices, its rules of seeing, as also in its blindspots and scotomising aspects.

1 Laurent de Sutter, *Post-Tribunal: Renzo Piano Building Workshop et l'Île de la Cité Judiciare* (Éditions B2 2018).

2 In opposition to the legalistic truncation of 'judgement' to the excised 'e' of 'judgment', I have spelled the reference to the manifestations of the mind of the judge with the additional fifth letter. For a digression upon the hubris of excision, see Peter Goodrich, 'Weird Judgment: Agon, Omniscience and the Absence of an "e"' in *Ordine internazionale e diritti umani* ('International Legal Order and Human Rights') (2021, forthcoming).

3 See Linda Mulcahy and Emma Rowden, *The Democratic Courthouse* (Routledge 2020). Mulcahy and Rowden place commendable emphasis on the interior of legal architecture, patterns of circulation, spaces of interacting, but scale again renders these sites imposing sights in the *Palais*.

Scopic desires

Juridical optical desire, by which I mean no more than the institutional regulation of appearance and disappearance, and most specifically, the rules that control looking and being viewed, is strictly regulated. When cameras were allowed for the first time into a terrorist trial in the new Palais, they were prohibited from filming anyone other than the speakers.[4] The lens was blinkered, the images were to be restricted to the orators and the dialogue. Discourse governed sight. Filming in the UK Supreme Court has similar rules, and static cameras that relay bench and advocates. At common law, the regimen of lines of sight, spaces of audition, and optical scrutiny is surprisingly limited, as also are the means of looking, the lenses, ocular and artificial, that are permitted and those that are forbidden. This dates back to section 41 of the Criminal Evidence Act 1925, which makes it an offence to 'take or attempt to take in any court any photograph, or with a view to publication make or attempt to make in any court any portrait or sketch, of any person' participating in the proceedings. This statute against visual representation of parties was pitched against the social media of the era, the so-called 'yellow press', the legislation responding most directly to popular criticism of a death penalty decision and the wide circulation of a photograph of the judge, a black cloth over his bewigged head.[5] Thenceforth, the *tableau vivant* of judicial determinations could only be seen in the minimalist sense of attending the trial, and the viewing cannot be shown to the public in any other form of direct visual reportage. A variety of later criminal laws of procedure further restrain the modes of viewing and relaying proceedings.

Despite the near universality of cameras, phones, and computers, it is deemed a crime—contempt of court—to raise a camera in the courthouse or look through any photographic lens. In the first case directly concerning mobile phones to be decided by the Court of Appeal, the defendant had taken a picture of the canteen area of the Liverpool Crown Court. A second photo was of the court and witness box, but the quality of the image was such as to make the subject in it unrecognisable.[6] The third photograph showed the defendant's brother sitting in the secure dock. The crime was not, however, in the content of the images but in the fact of 'illegally photographing', and a sentence of 12 months' imprisonment was confirmed. What the eye can see and record in memory, the camera lens is censored from viewing, and although 'the judge noted that there were no authorities on the approach to this type of contempt of court ... he indicated that a message should be sent out that illegal photography in court would be met by a sentence of imprisonment.'[7] The draconian penalty for remediation of the performance of justice was supported at trial by the judge's view that mobile phone cameras were a 'chilling' development, and in the Court of Appeal by the argument that photographs could promote harassment of witnesses and intimidation of juries. How that is so, or why drawing a veil over the proceedings is the appropriate response, was neither addressed nor, indeed, undressed.

The point can be made even more distinctively with reference to later case law. In *R v Ann Smith* the defendant, who was a visitor to the courthouse, was asked by four strangers who were due to appear in court to take a photograph of them on a bench in the front lobby of the courthouse.[8] They handed her a mobile phone, and while she found her view they made gestures of defiance. She took the photograph and handed the phone back. Ironically, CCTV captured her taking the photograph and the Criminal Division of the Court of Appeal upheld a sentence of three weeks' imprisonment. In *HM Solicitor General v Cox and Parker-Stokes*, a friend and fellow gang member photographed and took a video of the sentencing of his 17-year-old colleague for murder. The initial pictures, taken in the morning, were of his friend appearing in court, relayed by internal video-link. Already filmed and relayed, it was the filming of the film that was at issue, as well as live photographs from the public gallery taken in the afternoon.[9] The court also notes that the video included part of the notices prohibiting the use of mobile phones. The images were later posted on Facebook along with comments the court deemed derogatory. As the photographs were taken of the defendant in transit, on video screen, or during the sentencing proceedings in which the Judge was sitting alone, it was hard to argue that the photographs interfered in any direct way with the due administration of justice. The court overcomes this justificatory obstacle by stressing that although it did not interfere with any proceedings, this conduct fell within the category of 'interfering with justice as a continuing process'.[10]

I will not belabour the examples. All that merits brief addition is that the parallel and even more bizarre prohibition on audio recording contained in section 9(1) of the Contempt of Court Act 1981 is similarly directed at the auditory sanctity of proceedings, the closure of the walls, glass or stone, to any remediation of the in vivo performance, the classical form of juridical theatre, and is enforced in similarly draconian style. Sound, colour, motion, still photographs, audio recordings, found sounds and clips, bites and nibbles, gifs and memes cannot leave the courthouse. Even sketching in court is prohibited, the artist being required to draw from memory, and outside the building: before the law, but with the doors of justice closed to any more direct medium of relay and record. As with the symbolism of glass as a window into the Palais de Justice, so too with the rules of contempt of court constraining any extraction of sound or image of judicial process and courthouse activity, whether commented or unremarked, accurate or edited, and whether or not the relevant events and encounters are still sub judice.

'A fertile imagination creates the case'

The juridical control over what can be seen and heard in the networked environments and virtual relays of social media and streaming platforms has become ever more anachronistic in the imaginal domains of contemporary politics and law. The compelling issue is that of the openness of the juridical and, in this instance, of

4 It is far from alone in this general characteristic. The relatively new Singapore Supreme Court looks like a flying saucer. For alternative architectural schema, see the excellent discussion of the South African Supreme Court in Eliza Garnsey, *The Justice of Visual Art* (Cambridge University Press 2020). I have commented on forensic and legal architecture at greater length in: Peter Goodrich, 'International Legal Emblems' in *Max Planck Encyclopedia of International Procedural Law* (Oxford University Press 2022, forthcoming).

5 Christian Delage and Martine Sin Blima-Barru, 'Pour la première fois, des caméras filmeront un procés pour terrorisme en France' *Le Monde* (Paris, 2 September 2020).

6 The Seddon trial is well scrutinised in Suneel Mehmi, *Law, Literature and the Power of Reading: Literalism and Photography in the Nineteenth Century* (Routledge 2022, forthcoming). See also Lynda Nead, 'Visual culture of the courtroom: reflections on History, Law and the Image' (2002) 3 Visual Culture in Britain 119.

7 *R v Vincent D* [2004] EWCA Crim 1271.

8 ibid 1273.

9 *R v Ann Smith (Amanda Ann)* [2016] EWCA Crim 1562.

10 *HM Solicitor General v Cox and Parker-Stokes* [2016] EWHC 1241 (QB) [4].

the role of the image in the depiction and transmission of rule and precedent, governance, and the more subtle *oikonomia*—dispositif or disposition—of administration. 'Open justice' is both a figure of jurisprudential speech and itself an image, a depiction of the performance of trial that is encountered in drama, photograph, and film—overwhelmingly in fictional remediated forms rather than in direct relay. The legal fiction, the 'as if' of the agon of trial, is mirrored but not depicted directly in the public fictions and social media relays of fictive—because unseen and unheard—patterns and processes of law. Trial, precedent, encounter, and event matter but also appear not to matter, neither immediately nor effectively for those not actually there. Justice is open but also more and more extensively closed—aesthetically, visually, sonically, and in public remediation.

To open, as the art historian Georges Didi-Huberman usefully and lengthily traverses, is to allow in, to enfold, and in aesthetic concept it involves a breaking of the skin—in biblical terms a wounding: *videbunt in quem tranfixerunt*—an opening of the mouth, a raising of the penthouse lids of the eyes as projection into, as well as response to, that which is viewed.[11] To open is to embrace the materiality and temporality of viewer and viewed, to understand the image as alive to the life of the subject created by the act of looking. The micro-ontology of images is the corporeographic impact generated by the encounter and remediation, the dialogue of visual interaction and exchange, the metamorphosis—affective and intellective—that is inherent, in openness, to the Dasein and transitivity of viewing.[12] To open is, in sum, to change, to suspend the categories and accept that spectral life and imaginal politics are imbricated in every glimpse and whisper of law. The image has to be allowed to appear, to open, a facet of apparition that in biological argot leads the imago, the cocoon, to unfold and engage its imaginal discs and so to fly.

It is not my argument that law should fly—according to Joubert, to fly is to escape the clutches of law—but rather that the medium of opening the juridical, the generally windowless forums of court and archive, is the modality of its incarnation as imaginal life, as intellective form and social presence. That is also to say that closure, exclusion of visual relays, retraction and restraint of sight are potentially retinal injustices, a stilling of life and collapse of the imaginal into the dead spaces, confined roles, and performances of the juridical. To open is to risk, and it is that prospect of exposure, and specifically that unveiling of law to criticism, to affective responses, to scandal sheets, that motivated the initial ban on photographs and continues to justify the protection of the 'continuing process', the aura of justice, and the anachronic image of judgement 'having been' done, past-tense, dead and buried, no longer in view. Some stronger justification than 'we told you not to' is needed, not only to generate parity with the fact that CCTV films everyone in the courthouse, but also in recognition of the now fully mediated, multiply networked character of the courtroom, chambers, and doctrinal precincts of legality. If the process of trial is not disrupted, and few of the instances cited involved any actual interference, it is the phantasm of a tear, a rend in the rendering of justice that is always the driving aggravating factor from the judicial point of view.[13] As Montaigne would have it, *fortis imaginatio generat casum*—'a fertile imagination creates the case'.

The performance and generally textual relay of the images of legal process, the prohibition of unauthorised remediation and transmission, restrict the relevance of law as a publicly visible presence. It is also

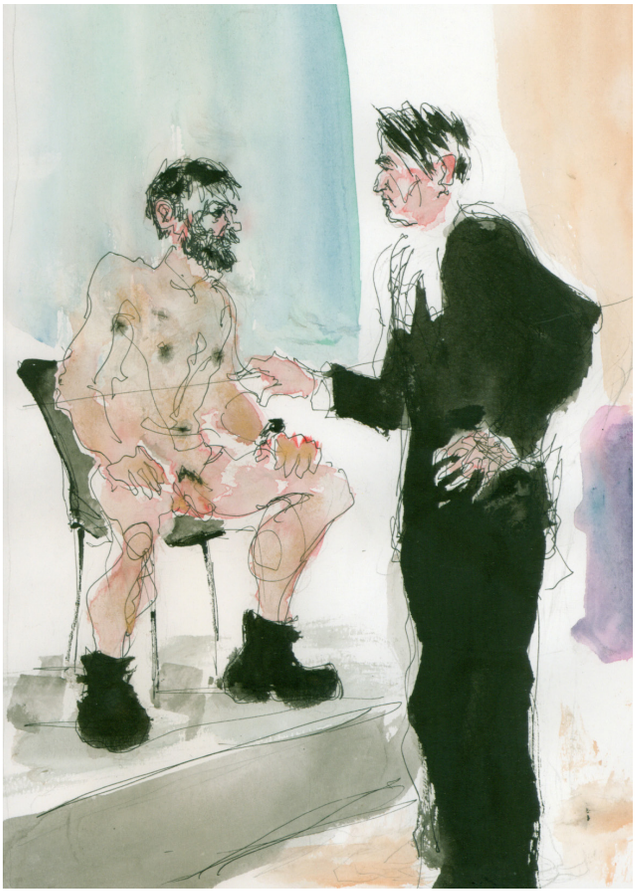

Fig 1. Naked Rambler Seated *(Isobel Williams). Courtesy of Isobel Williams. <http://isobelwilliams.org.uk/>.*

curiously out of synchrony with contemporary communication media. The prohibition on painting, drawing, sketching, cartooning, as well as photographing, filming, and audio recording, dramatically limits encounters with law. This censorship of modes of perception and the scotomising of public viewing suggests the extreme value placed upon the image as bearer of a theological force—*imago haec*—of law, jealously protected by the affective rules of contempt and on the reverse side, the phantasms of calumny, harassment, interference, meddling even, in the image of law. Rather than elaborate the arguments *pro et contra* such screening of the juridical, it is the abstraction of events into dead letters, law reports, monochrome pages of silent, colourless, and motionless text, that is the greater aesthetic and political concern. Refusal of visual relay and publication of pictures substitutes a different image, an interior phantasm and fictive theatre, the fragmentary and irreal imaginal relays of socially invented spectacles for the persons, things, and actions that in fact appear in law. But it gets worse: the judiciary and personnel of the courts, chambers and chanceries, the clerks and stenographers, become an unworldly guild, an office without any expertise or capacity to view and interpret imagery in a critical and coherent, let alone juridically apposite and visually focussed, fashion. They proceed *ad apparentiam* but, to coin a phrase, they know not what they see. For now, to extend the basely Christian metaphor, they see 'through a glass darkly', in large part because they pose and play their role as enigmas in the viewing eye of the public. Their image, being both elaborately staged and vigorously protected, remains dead, the visual formula of precedential formulae. To control how an institution is viewed, to ordain the licit and illicit modes of looking and relaying the image, is to engage creatively in the construction of an aesthetic. The rules of contempt open the

11 *HM Solicitor General v Cox and Anor* [2015] HQ15X02223 [4] (Irwin J).
12 Georges Didi-Huberman, *L'Image ouverte* (Gallimard 2007) 49.
13 See Georges Didi-Huberman, *Confronting Images* (Pennsylvania State University Press 2005).

juridical process to a narrow and decorous perception while closing it to depictions, visual relay, and commentary that might question or undermine such décor. The scopic constraint also deflects from an unmediated viewing to legal self-representation in a dual and chronologically ordered modality. It allows cameras outside court so that there can be reports of the spectacle of enforcement, of uniformed officials leading the accused into the ornate portals of the law's inner sanctum, its cochlear openings. What emanate after that are linear written reports, monochrome accounts of trial, and later still the tombstone of decision—headnote as headstone—the precedential official report, dressed up in the spectacular language, the argot of judgement. What is at issue in this dialectic of the visual is the judicial self-image. The control over viewing, the sanctity of the performance and the restraint on relay, is a mode of fashioning the self-portrait of the juridical, of its figures and personnel. It is law's desire—that of legislators and judges—to be seen in propria persona, as they see themselves, that drives this tunnel vision. It also constitutes the sense and appearance of the other, the citizen, the viewer, the gallery or pit, that looks on the jurists' puppet show of hierarchical roles, ritual patterns, costumed and uniformed positions, prescripted discursive places, and routinised dialogues. Self-image, the shadow of a reflected shadow, determines both the subject viewing itself and how that subject is formed, how she looks out.

'Straunge habiliment'

The regulation of audio-visual recording, and even of live graphic depiction, acts as a scopic frame that functions more to close than to open the image of legality. It covers rather than exposes. By the same token, the constraint upon looking in also indicates a limit on how judges view not only themselves but also that which they look upon, the other of law that enters their view in the assemblage of subjects, appearances, and apparels that come 'before' the law. What does a judge see? What do they prohibit and banish from view—what cannot be seen and so is blinded from vision? I am asking a question about the outer reaches of the visible juridical universe, the end of sight itself. It has elements of a pataphysical question, but it can be given a concrete elaboration in terms of the apparent impossibility of a naked image and, in full complementarity, an image of nakedness. I will start with the only image of the relevant trial scene, sketched from memory at Winchester Crown Court by poet, author, scholar, translator, teetotaller, and artist specialising in live drawing (depicting things as they happen), Isobel Williams (fig 1).

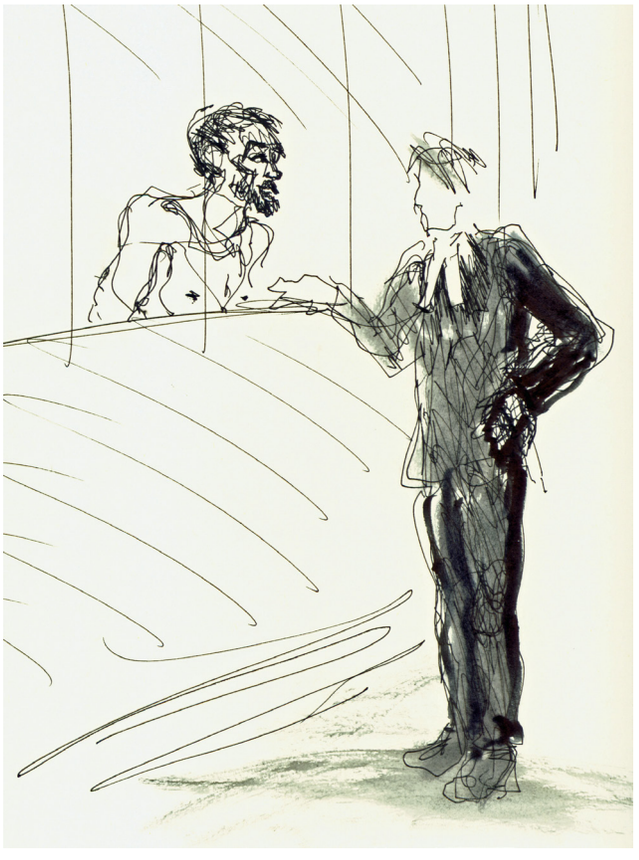

Fig 2. Rambler Seated *(Isobel Williams). Courtesy of Isobel Williams. <http://isobelwilliams.org.uk/>.*

The saga of the 'Naked Rambler', this strange window onto the scopic world and visiocratic regime of law, has been relayed many times. Gary Watt gracefully discusses Eureka moments requiring dishabiliment, and also the paradox of Michelangelo's naked David being a very public image, much frequented and much viewed.[14] He makes the point that the nude is not the naked, but a representation of it, an art form, an acceptable remediation. Isobel Williams, who trained with live models—but always with warning signs outside the doors—tends to agree.[15] Stephen Peter Gough does not. For Gough, a nude with a cause, appearing naked in public, nude in court, nude in court behind a screen, taking tea naked in a suburban garden, has led to multiple convictions for diverse offences, and over a decade in prison. The shifting fog of crimes actually committed range from breach of the peace, to 'threatening, abusive, or insulting behaviour' under the Public Order Act 1986—'An Act to abolish the common law offences of riot, rout, unlawful assembly and affray'—and multiple counts of contempt of court. In the European Court of Human Rights, the convictions were upheld on the grounds that there was a pressing social need to limit his freedom of expression under the European Convention art 10 para 2.[16] He has also been issued with an Antisocial Behaviour Order and subsequently been imprisoned for failing to comply, a sentence upheld by the Court of Appeal, in which case the unapparelled appellant did appear in Court, but only by video-link, the video of the nude subject obscured because, as remarked by Lady Justice Rafferty, his nether self or 'person' was covered by a table.[17] *o tempora, o mores, o mensa.*

Isobel Williams, an artist of considerable *imaginosum*—she is a translator of Catullus—took a break, perhaps from her live drawing of Japanese rope bondage clubs, to address the undressed and sketch the proceedings in court.[18] She has followed the case and blogs about the comedy of court deliberations. In Winchester, the courthouse boldly fronted by proudly phallic abstract sculptures, Gough was prohibited from appearing after a barrister's pupil had sat in the jury box to see if, when the defendant rose to his feet, his lower parts would be visible. It was determined that a standing Stephen would be covered by the front of the dock and only the very top of his pubic hair would be public, or vice versa. Nonetheless, he was banned from the court and appealed the decision. This landed him in prison but also, as adverted, in the Court of Appeal via video-link, where his sentence to 30 months was upheld. The specific question I wish to raise is that of the scopic regime of law, specifically and restrictively

14 Gary Watt, *Dress, Law, and Naked Truth* (Bloomsbury 2012).
15 Gary Watt, 'Dress, Law and Naked Truth: Some Further Coverage' (2016) 7(1) Critical Studies in Fashion and Beauty 109, 116–17.
16 *Gough v United Kingdom* [2015] 61 EHRR 8.
17 *R v Stephen Gough* [2015] EWCA Crim 1079.
18 Isobel Williams, 'The Naked Rambler: AND SITTING' (*Drawing from an uncomfortable position*, 19 December 2015) <http://isobelwilliams.blogspot.com/2015/12/the-naked-rambler-and-sitting.html>.

in the court, at trial, away from the public eye, where it is possible to look on accidents, victims, death, bodies, genocide, and loss, but not on a naked man. Most of the more graphic representations of violent crime and cataclysmic torts will be remediated in photograph and film and yet are seen, but no such direct or, in the instant case at Winchester Crown Court, indirect imagery is permitted. This follows the trail of earlier cases and catapults one question to the fore. What is the fear of seeing the body, an Edenic rustic figure, in the highly confined and regulated space of a courtroom?

Video, photographs, and drawings of Gough walking dressed only in socks, boots, hat, and rucksack are freely available online, and Isobel Williams has produced many colourful sketches of our man in the buff in court, yet she is still not allowed to sketch the sketches in vivo in the trial chambers. Her depiction of the naked rambler seated, from memory, from one of the many earlier trials, recreates the stark contrast between the costumed barrister in formal attire and the starkers defendant seated but not in visible nakedness. The artist has rather drawn away the curtain, the architectural clothing of the front of the witness box, to reveal what the eye will have seen only in the substituted form of imagination. The colour and contrast, the hair and beard, watch, and boots of the defendant, the thin wire upon which the barrister's extended finger rests, combine to suggest a reality, a visceral, incarnadine presence in court, for which Gough has been campaigning. His argument, and I have seen him make it nakedly online, is that it was only when he got undressed, when he normalised being without clothes, that he discovered who he was. For him his nature is naked, his body is the opposite of shameful, a gift of a beautiful kind.

What is most intriguing is that his argument is his body, his writing his naked passage in the world. It is that argument that the court would not allow, that image that it could not tolerate or see. A common law predicated upon exemplars was unwilling to view the exemplum. In the words of Brian Gill as Lord Justice Clerk, after the extraordinary projection of labelling Gough 'an incorrigible exhibitionist', he proceeds to extrapolate that: 'If he seeks to express the view that an individual has the right to be naked at all times and in all places, there is nothing to prevent his doing so orally or in writing while remaining properly dressed.'[19] Anything else, in Clerk's view, is contemptuous behaviour. He seems to have missed the point that Gough did get dressed—he put on socks and shoes and stopped there, omitted to go further in sartorial habiliment. It is not that he is partially attired but that he is engaged in performance art, post-dramatic theatre, and exemplification of a specific cause in a specific location. I am not arguing that Gough should necessarily be allowed, or not allowed, to roam unannounced and naked, but rather the more restricted point that his genital liberality or lack of loincloth is his expression, his cause, and his argument. Whatever view the instant Court might take of the behaviour out of court, it is the refusal to look, the censorship of the visual argument, that is most striking. He can say, the Judge seems to imply, anything he wishes, but he cannot show it, not even here, in a court, before a blindfolded justice and judges en banc. Where Phryne won her case by throwing off her cloak and appearing naked before the judges, Gough loses his appeal for not getting dressed.

There can be no question that dress is an addition—a covering, tegument, carapace of clothing. Images are added to the epidermal facia and a cloak or curtain is hung to hide the frons of being. Isobel Williams captures this well by removing the veil and contrasting form to sartorial costume, similarity of extended fleshy outstretched fingers and hirsute head, to the literal *sedentariam vitam* of the appellant. She reveals the image, the nude, that imagination otherwise is forced to project. Rafferty LJ admits as much in the appellate judgement when she remarks of Gough's video-link appearance:

> There was on the nursery slopes of the trial dialogue about whether if he were in court he would sit or stand. We are grateful to Mr Scott (who did not appear below) for explaining to us that any point arising from it falls away. By videolink from prison today he sat unclothed from the torso upwards, his lower body obscured by a table. For all we know he was clothed other than above the waist.[20]

Gough does not get to appear, save in remediated form, and Rafferty LJ makes a point of noticing that he cannot be seen in full. Any point arising falls away through being distanced by video and obscured by a table. The 'nursery slopes' of dialogue and the implicit infantilisation of the naked *in cathedra* appellant are legally irrelevant and yet incorporated into the judgement by reference and by video-linked live performance. The Court is concerned with pronouncing a verdict, with speaking the truth, but it does not wish to look at the truth or confront the real. To say that 'for all we know he was clothed' is to mark a looking away, a stalling of vision and rejection of the image that is condemned—imprisoned—without being seen in full or in glory.

Williams makes the point quite brilliantly in a second sketch (fig 2). Recall that this is itself a censored drawing from memory, as she dare not sketch in Court for fear of imprisonment. She has to remember, she has to use the interior image, the memorised imprint, and it loses its colour and force. Now it is lines, the linearity of law's self-image and reports. Only Gough's face, the Christian *imago haec*, appears over the bar of the witness box that he was not allowed to enter. He is smaller, somehow more frail, less real, and the barrister, the amicus curiae, is in the pit, lower, distanced, having faded into indistinction, features fallen away, an actor going through the motions. Considering the contrast, witnessing the two images and their difference—as if colour didn't matter—we realise that vision was stopped on the nursery slopes of viewing. What could be seen was left to the indeterminacy of 'for all we know', the scopic drive halted as the judge looks away from the screen in exact replication of the trial court's looking away from the defendant who cannot appear.

To the classical maxim and foundational principle audite et alterem partem, the case of Stephen Peter Gough suggests that we now need to add, in the modern tongue, the principle that one see the other side. In a French motto, *gardez un œil pour l'accusé*. In court, in camera if need be, but before the law, even if only temporarily—a screen can be provided, the defendant can be ordered to sit after making their stand—the image has a right to appear. Gary Watt, following the thesis of Norbert Elias who argues that civility is measured by our distance from the animal, argues for law as dress, a sartorial *ars iuris*. The armamentarium of cloth and clothes is the image that we are used to, the fashion that governs the manners of most public appearances, and ironically it is fashion, clothes, that remain, that survive the body that inhabits the habits. But that is not all. It is also necessary and lawfully desirable to see the other side, to remember the monkey that holds our coat tails, the bare being and vulnerability, the innocence and intransigence of being there. In the old language, *intellegere est phantasmata speculari*, which means that to think is to look, to speculate in and with images, and to perceive with your eyes. To look away removes the embrace of justice, the eye of ius imaginum, and substitutes the disaffection and cold unseeing gaze of law, ius strictum, which the Palais de Justice so brilliantly instantiates as a faceless 'juridism', a generic gaze overlooking the overlooked.

19 *Gough v HM Advocate* [2007] HCJAC [76].

20 *R v Gough* (n 17) [7].