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Bantu in the Bathroom

Jacqueline Rose on the trial of Oscar Pistorius

ON 3 MARCH 2014, the first day in the trial of Oscar Pistorius for the killing of Reeva Steenkamp, Judge Thokozile Matilda Masipa made her way across courtroom GD at North Gauteng High Court in Pretoria slowly and haltingly. She suffers from severe arthritis and for the duration of the trial she sat on an orthopaedic chair, much smaller than the vast leather seats of the two assessors on either side. Judge Masipa's entry couldn't have been more different from that of the defendant she was there to judge. According to one observer, Pistorius 'strode' up to the dock. 'I execute each stride with intent' is one line of a verse from Corinthians that Pistorius has tattooed across his shoulder.

Depending on your opinion of her final judgment, Judge Masipa was either uniquely qualified for or unsuited to her task. As is well known, she found Pistorius not guilty of murder but guilty of culpable homicide – the equivalent of manslaughter in Anglo-American law. After the judgment, she became the target of misogynistic and patronising vitriol; she was called 'an incompetent black woman', taunted with being 'blind and deaf', and required round-the-clock house protection. Many of those accusing her spoke in the name of justice for

women. The appeal against her verdict was heard before South Africa's supreme court last week, and a finding is expected soon.

Judge Masipa is a latecomer to the law, having undertaken her pupillage in her forties. Admitted as an advocate in 1991 as one of only three black women at the Johannesburg bar, she was appointed judge in the Transvaal Provincial Division of the High Court of South Africa in 1998, the second black woman to be appointed to the bench. Despite her ruling in the Pistorius case Judge Masipa is known for the maximum sentences she metes out in cases involving violence against women. In 2009 she gave a life sentence to a police officer who had shot and killed his estranged wife: 'You deserve to go to jail for life,' she said in her sentencing, 'because you are not a protector, you are a killer.' In May 2013 she sentenced a serial rapist to 252 years – 15 years on each of 11 counts of robbery, 12 years for attempted murder and life sentences for each of three rape charges. Judge Masipa knows about violence. She was born in Soweto, in a family of ten children, four of whom died young, one of them stabbed to death by unknown perpetrators when he was 21.

As with many characters in this story,

Judge Masipa's life has followed violence from apartheid to its aftermath, and is revealing of the reality of South Africa's hidden and unhidden crimes. She has, as one could say, done her time. She knows what it means to be on the wrong side of the law (even if the law itself in apartheid South Africa was wrong). In the 1970s she was a crime reporter for the *World*, a paper banned in 1977 by the justice minister Jimmy Kruger, and then for the white-owned newspaper the *Post*. There, she marched in protest with female colleagues against the arrest of black male reporters. When five of the women, including Masipa, were detained, locked in a cell and taken to court, they refused to enter a plea on the grounds that they didn't recognise the authority of the apartheid state. Before releasing the prisoners for a court appearance, four white court wardens demanded they clean out their toilets – shoving their faces in it, as one might say (they refused).

Judge Masipa is 'compassionate' – her word. She brings her history, the racial history of South Africa, into court. You look at the law, she said in one interview, 'with different eyes . . . because you're compassionate'. If a black woman is on trial, she continued, 'you might make things easier for her by explaining things and not being too hard on her. But not everyone understands that.' Not everyone understands the racially inflected care which, as one of South Africa's first black women judges, Masipa has brought to the law. In another of her judgments she found in favour of a group of Johannesburg squatters on the grounds that the city had failed in its duty of care:

the city, she said, was trying to 'distance itself' from the squatters. 'I sort of can identify with what these youngsters are going through,' she has said of the young offenders who have passed through her court, 'because this is where I come from.' Just how remarkable this statement is can be gauged when you compare it with the instruction given by Susan Shabangu, minister of mines at the time of the 2012 Marikana mine massacre, to a meeting of police officers on the subject of how to deal with offenders: 'You must kill the bastards if they threaten you or your community. You must not worry about the regulations. That is my responsibility.'

Some have argued that Masipa's compassion clouded her judgment: that she empathised too closely with Pistorius and his disability. Like a psychoanalyst, she should have put her empathy, her preferences, even her own history to one side (though it is arguable whether this is what a psychoanalyst can, or should, do). Throughout the trial, Masipa's voice was steady, unlike that of the defendant, who fell apart and broke down at every turn. But what does it mean to talk of the still, calm voice of the law in conditions of rampant racial and sexual violence and inequality?

EVERY four minutes in South Africa a woman or a girl – often a teenager, sometimes a child – is reported raped and every eight hours a woman is killed by her partner. The phenomenon has a name in South Africa: 'intimate femicide', or, as the journalist and crime writer Margie Orford calls the repeated killing of women

across the country, 'serial femicide'. On 2 February 2013, less than two weeks before Reeva Steenkamp was killed, a 17-year-old girl, Anene Booysen, was raped and murdered in Western Cape. If the two deaths are mentioned together it is mostly in terms of the cruel disparity between the neglected black woman's body and that of her glamorous white counterpart. Steenkamp saw things rather differently. For her, violence against women knew no racial bounds. A week after Booysen's murder, she retweeted a report of her funeral, and posted on her Instagram feed a graphic of a man's hand silencing a screaming woman with the words: 'I woke up in a happy safe home this morning. Not everyone did. Speak out against the rape of individuals.' The day before she died she was polishing a speech to be delivered at a school in Johannesburg in honour of Anene Booysen and in support of the Black Friday campaign for Rape Awareness.

In the final year of her law degree, Steenkamp broke her back in a riding accident. On recovery, she returned to complete her degree and resolved to pursue her dream of becoming a model in the big city. 'I believe,' she said in an interview, 'I have the ability to fall back into my legal mind under the pressure of my will to succeed.' Her legal mind would always be there, even if on the surface she would start to look like and then be treated as a model and nothing else. The law would become the invisible companion of her ambition, the joint riposte to a life that could have been – nearly was – spent in a wheelchair. This wasn't her first brush with brokenness. According to

her cousin Kim Martin, who spoke at Pistorius's sentencing (the only time during the whole trial that the Steenkamp family got a hearing), when Reeva was a young girl the family's pet poodle became paralysed and was going to have to be put down. Reeva saved the dog, 'became its legs', as Martin put it, carrying the animal everywhere. Was Steenkamp prey to a fatal identification? Did her compassion for the underdog – 'underdog' literally in this case – play its part in what killed her? One of the most striking things about this trial is that wherever you look you see bodies that are broken. Near the end of the trial, before the closing arguments, Pistorius's older brother, Carl, was involved in a head-on car collision which crushed both his legs below the knee – the link to his brother was glaring – leaving it unclear whether he would live or ever walk again. In fact, he recovered speedily enough to make it into the courtroom in a wheelchair in time for the verdict.

Judge, victim, perpetrator: the lines of the case couldn't be more clearly drawn. It was never in question that Oscar Pistorius had fired the four shots that killed Reeva Steenkamp. He had. In Masipa's account the question was entirely 'subjective'. What was going on inside the mind of Pistorius when he shot through the bathroom door? Everything hung on that question. Did he know he was shooting Reeva Steenkamp? Or did he believe it was an intruder, as he claimed more or less from the moment it happened, including to the friends and the police who were the first at the scene of the crime? And if we believe him, then did he

know he might kill the person on the other side of the door and shoot anyway? In Masipa's words, 'Did the accused foresee the possibility of the resultant death and yet persisted in his deed reckless whether death ensued or not?' If he did, he would be guilty of what South African law calls *dolus eventualis*, a category of criminal intent that falls short of premeditation but which still implies murder because the possibility of death is foreseen. The lesser charge of culpable homicide, killing through negligence, of which Pistorius was found guilty, stands only if we agree it can't be proved that Pistorius knew his bullets might kill. Masipa's dismissal of the charge of *dolus eventualis* is at the heart of the legal disputes around her verdict and was the basis for the current appeal.

IHAPPENED to be in Cape Town a week after the killing of Reeva Steenkamp. At the time I was reading *A Bantu in My Bathroom*, a book of essays by Eusebius McKaiser, a South African political and social theorist and radio talk show host. He is known for being provocative and likes to challenge South Africans to confront their darkest thoughts. (His collection is subtitled 'Debating Race, Sexuality and Other Uncomfortable South African Topics'.) In 2012, 18 years after the end of apartheid, he was looking for a room to rent and lighted on an advertisement from a woman willing to share her house but only, the ad stipulated, with a white person. On the phone, McKaiser got her almost to the point of sealing the deal before announcing that he wasn't white (she hung up when he sug-

gested her choice might be racist). When he related the incident to the audience of his weekly radio programme, *Politics and Morality* on Talk Radio 702, two responses predominated. Either the listeners sided with the owner of the house (her property, her preference, no different from 'only non-smokers need apply'), or they made a more subtle but disquieting distinction: if the room was in a cottage in her backyard, the choice would be racist, but she clearly had the right to share her house, or not, with whomever she pleased.

'Reasonable' as the second preference might seem, McKaiser concedes in his essay, it is still 'morally odious', still 'the product of our racist past'. 'This viewpoint,' he elaborates,

is an acknowledgment (indeed, an expression) of a deep racial angst. Why else would you be fine with Siphon [the name McKaiser gives the fictional black tenant] sleeping in the flat outside but heaven forbid that you should wake up in the morning and the first thing you see on your way to the bathroom is the heart attack-inducing spectacle of Siphon smiling at you, a horror that just might elicit a scream of apartheid proportions: 'Help! There is a Bantu in my bathroom!'

'Not one listener,' McKaiser writes, 'grappling with how it is that 18 years after our democratic journey . . . racialism's reach and endurance inside their homes and hearts dare not be spoken about.' Not one avoided the cliché – indeed they all rehearsed it to perfection – that your private life is private and it is up to you what you do in your own home (a cliché whose potentially lethal consequences were of course

long ago dismantled by feminism). In failing to do so, they 'betrayed dark secrets about themselves and our country'. In another essay McKaiser refers to the Coloureds of Cape Town – he himself is a Coloured – as 'the dirty little secret' of the city: 'Cape Town, you see, treats Coloured people like dirt.' 'The dirty secrets of both Jozi [Johannesburg] and Cape Town are a stain on both cities' images, like mud on a kid's new white pants.'

IT SOON became clear that a strange, racially charged and legally confused distinction would be at the heart of the trial. If Pistorius didn't fire the shots through the toilet door in the knowledge that Steenkamp was inside, then he believed he was shooting at an intruder, in which case the charge of premeditated murder wouldn't hold up. There was no doubt that the second possibility was seen – or rather would be presented by Barry Roux for the defence – as the lesser offence, and not just because the legal category of 'putative private defence' (defending oneself against a presumed attacker, even if the presumption was wrong) could present the shooting as a legitimate response to fear. What was largely unspoken was that in the second case we can be more or less certain that the person killed in the bathroom would be – could only be – imagined as black. 'As the judge will not have failed to register,' the journalist John Carlin writes in *Chase Your Shadow: The Trials of Oscar Pistorius*, 'if his story were true – and even if it were not – the faceless intruder of his imagination had to have had a black face, be-

cause the fact was that for white people crime mostly did have a black face.'¹

Margie Orford was one of the few to draw out the racist implications. 'It is,' she wrote in an article for South Africa's *Sunday Times*, 'the threatening body, nameless and faceless, of an armed and dangerous black intruder . . . the contemporary version of the laager'; it is 'nothing more than the reclaiming of the old white fear of the *swart gevaar*' – the black peril. For Orford, there is something profoundly amiss – morally, for sure, and perhaps legally – if this is Pistorius's main defence. 'If Pistorius was not shooting to kill the woman with whom he had just been sharing a bed,' she continues, 'those four bullets indicate that there is still no middle ground. Because whoever Pistorius thought was behind that door, firing at such close range meant that when he finished there would be a body on that bathroom floor.' A Bantu in the bathroom. Or to elaborate McKaiser's point: in the white racist imagination, the only Bantu permitted in a white bathroom is a Bantu who is dead. Depending on how you look at it, the killing of Reeva Steenkamp was either a sex crime or a race crime.

If Orford's reasoning is correct, what this also means is that the charge of *dolus eventualis* – proceeding with a violent act in the knowledge that death might ensue – would stand (Pistorius would be guilty of murder). In fact, Masipa's dismissal of the charge of *dolus* hangs on a distinction she herself is not quite able to make: 'How,' she asks in her judgment, 'could the accused reasonably have foreseen that the shots he fired would kill the deceased? Clearly he did

not subjectively foresee this as a possibility that he would kill the person behind the door, let alone the deceased, as he thought she was in the bedroom at the time.' For me the issue here is not that she chooses to believe his claim that he thought Steenkamp was still in bed – as she rightly points out in law, the contrary can't be proved. Rather it is the slippage between intruder and Steenkamp that is for me the giveaway: it is indeed clear that he couldn't have foreseen that he might kill Steenkamp if 'he thought she was in the bedroom at the time,' but how can that also apply to 'the person behind the door', whoever it was, given that he was shooting at that door with a 9mm handgun? According to Masipa, however, if he didn't know he was killing Steenkamp then he wasn't guilty of murder, regardless of who might have been in the bathroom. The bantu slips syntactically under the bathroom door.

EUSEBIUS MCKAISER'S essay set me thinking about the trial – and about bathrooms – in the context of South Africa's past. Under apartheid law, the rules for white private residences were explicit: servants' quarters had to be across the yard, 'mean little rooms with a sink and a toilet'. No shared walls between white master and black servant, above all no shared ablution facilities across racial lines, which suggests that, for apartheid, it is above all the races' body fluids and matter that must not mix, especially if you also bear in mind apartheid's ban on cross-racial sexual intercourse – a ban that is far better known, probably because it is eas-

ier, as in cleaner, to talk about. McKaiser's fastidious respondents, who consider a white racist's bathroom preferences no more than a matter of personal liking and etiquette, are therefore enacting a form of memory as buried as it is historically precise. The white world, the South African journalist Mark Gevisser writes in his memoir *Lost and Found in Johannesburg*, was defined 'by what it had been walled against'.² To illustrate the insane lengths to which this project could be taken, Gevisser gives the example of the ten-foot-high fence built by the apartheid authorities across the rocky promontory off the shore of Johannesburg where gays of different races would congregate in the 1960s. To make sure that Coloureds couldn't cross into the white residences at Clifton where his family lived, they extended the fence twenty feet into the Atlantic Ocean.

There is a politics of water and there is a politics of shit. In the black township of Alexandra, where there was no sewage, residents had to leave their shit outside their doors every night for collection (the basis of a protest poem by Wally Serote – 'What's in This Black "Shit"?'). All the more remarkable, then, as Gevisser observes, were those who carried their anti-apartheid struggle not just into the privacy of their homes, but into the water, allowing bodies to swim, touch and mix against the brute, squeamish hand of the law. There was Bram Fischer's pool on Beaumont Street, legendary for its parties of blacks and whites, photographed lovingly by *Drum* magazine in the 1960s, when Fischer was presenting the concluding arguments in

the famous Treason Trial of 156 members of the ANC. And the home offered by one of Gevisser's acquaintances, Roger, and his black lover, for the use of interracial gays, a house protected from the prying eyes of the law by soaring cypresses, where the bath was always filled so you could wash off someone else's bodily fluids if there was a raid. The Pistorius trial, Gevisser writes, 'coursed through the electoral season like a foul river carrying the country's legacies of fear and violence on its currents'. The analogy is eloquent. Like a foul river, bringing pestilence, the killing in the bathroom both enacted and drew to the surface of the national psyche its deepest racial fears. 'What,' Orford asks, is this 'irrational fear that has sunk deep in to the psyche'? Or in McKaiser's words, 'mud on a kid's new white pants'.

Pistorius was surely not aware, at least not consciously, that, when he insisted the person he shot in the bathroom was an intruder, he was re-enacting one strand of his nation's cruellest past. Some excuse, we might say. At the very least, even if this defence stands, he can hardly be held to be innocent. As Margie Orford says, 'whoever Pistorius thought was behind that door, firing at such close range meant that when he finished there would be a body on that bathroom floor.' Pistorius's gun was loaded with Black Talon expanding bullets, which mushroom on striking human tissue: as Mandy Weiner and Barry Bateman point out in their book on the case, 'killer ammunition designed to cause as much damage to the target as possible'.³

So did Pistorius know that it was Steenkamp in the toilet? It is here that we move into the realm of speculation and dream, where the law hits the buffer of what is at once screaming out for our attention and cannot be known. When I suggested to the writer Rachel Holmes, for decades my main informant on South Africa, that this was a case where knowing and not-knowing collide – we know he knew it was Steenkamp in the toilet, only of course we don't, we can think we know but our knowing has its limits; our knowledge, we could say, is not flush with our desire – she suggested that the correct and far simpler distinction in this case is between knowing and having no proof. Legally she is of course right, as Masipa dismissed the charge of premeditated murder on the grounds that his intention to kill Steenkamp had not been proved beyond reasonable doubt. But, whichever way you read it, it is clear that, in Masipa's words, 'there are a number of aspects in the case that do not make sense.' In her judgment she then listed a series of questions which, she stated, would 'unfortunately remain a matter for conjecture'. Why, when Pistorius heard the bathroom window opening, as he claimed, did he

not ascertain from the deceased, when he heard the window open, whether she too had heard anything? Why did he not ascertain whether the deceased had heard him since he did not get a response from the deceased before making his way to the bathroom? Why did the deceased, in the toilet and only a few metres away from the accused, not communicate with the accused, or phone the police as requested by the accused?

'It makes no sense,' Masipa observed, to say she did not hear him scream 'Get out,' since 'it was the accused's version that he screamed on top of his voice.' Why did the accused fire not one but four shots before he ran back to the bedroom to try to find the deceased? To which we can add the questions of Gerrie Nel, leading for the prosecution, and those of the judge at the original bail hearing. Why would someone who slept with a firearm under his bed, and was apparently fearful of crime, fall asleep with a sliding door to the balcony wide open? Although Pistorius claimed he had been the victim of violence and burglaries, there was no police record of his ever opening a case where he was the victim of a crime. Why did he not see that Steenkamp wasn't in the bed at the time he unholstered his weapon? Why did the accused not ascertain the whereabouts of his girlfriend when he got out of bed? Why did he not even try to find out who exactly was in the toilet?

None of these questions was ever fully answered (though Pistorius's defence worked hard to take them down one by one). The police who arrived on the scene made no bones about the fact they believed the intruder story to be fake. The story doesn't make sense, as Masipa conceded, even while arguing that Pistorius's confused, contradictory, evasive and unreliable testimony was not in itself a proof of guilt. Pistorius's former girlfriend, Samantha Taylor, put it most simply: 'It definitely didn't make sense to me. I would . . . I don't know, I find that kind of weird, I definitely wouldn't close the door, especially if it's not

even connected to the bedroom. I don't know why someone would lock the door, even if they are at their boyfriend's house.' Her comments have all the force of high-risk empathy: she is willing to imagine herself where she might have ended up – in Reeva Steenkamp's place.

For anyone who reads this killing through the prism of domestic violence, and on behalf of the legions of women who have been its target, one question surely stands out from all the rest. Why – as Pistorius always insisted – did Steenkamp not speak or cry out, not from the bedroom if that is where she was, or from the toilet? Why, the whole time he was screaming, even when he was in the bathroom, did she not utter a word? This is Pistorius in his final statement: 'I got to the entrance of the bathroom, at the end of the passage, where I stopped screaming . . . At this point I started screaming again for Reeva to phone the police . . . I kept on screaming . . . I shouted for Reeva . . . I kept on shouting for Reeva.' Why didn't she answer or call out? A dead woman becomes a silent witness in the courtroom, voiceless now, voiceless then. Twice over, Pistorius silenced Reeva Steenkamp, turned her into a ghost.

This question of voice produced one of the most extraordinary and unanticipated turns of the trial. Four neighbours – Estelle van der Merwe, Johan Stipp, Michele Burger and her husband Charl Johnson – testified that they heard the unmistakable voice of a woman before the shots were fired: a woman, more than one of them insisted, who sounded as if she feared for her life. On the witness stand, each of

them was adamant that the voice of the person 'screaming hysterically' was a woman's voice. Their testimony was finally dismissed as inconclusive (largely owing to inconsistencies in timing). The argument for the defence was that the cries they heard came after, not before, the fatal shots were fired, and were those of Pistorius as what he had done dawned on him: establishing the timeline between screaming and shooting was crucial to the argument, as was the assertion that Steenkamp would have been so badly – probably fatally – wounded after the first shot that she would have been incapable of making any sound.

Masipa didn't seem to register the fact that Pistorius's own claim that he was screaming 'on top of his voice' as he made his way along the corridor towards the bathroom was inconsistent with the defence's argument that the cries heard by the witnesses came after the shots were fired: 'It was the accused's version that he screamed on top of his voice, when ordering the intruders to get out.' When you read Pistorius's statement it seems pretty clear that his repeated insistence that he was shouting out was his means – under legal instruction, no doubt – of countering the witnesses who claimed to have heard a woman's screaming voice before the shots were fired.

But if there was screaming before the shots, how to see off the charge that it could have been her voice? At this point the trial suddenly turned on its head the perfect heterosexual narrative which accounts for so much of the seductive pull of this case. When he screams, the defence claim-

ed, Oscar Pistorius – blade runner, stud, hero – sounds like a woman. At one point, in support of this argument, Roux asked two female witnesses to demonstrate the crying they had heard: unsurprisingly, they sounded like women (he didn't repeat the experiment with any of the male witnesses, who presumably would have sounded like men). He also announced that decibel tests and an expert witness would establish that when Pistorius is anxious, he screams like a woman. In fact no such testimony was ever laid before the court and no audio of Pistorius screaming was ever played. Samantha Taylor testified that when Pistorius screamed 'it sounded like a man,' but Roux dismissed her evidence on the grounds that she had never heard him in situations where he perceived his life to be in danger, which she had to concede.

Better to sound like a woman than to have murdered one. Better a cross-gender identification than a killing masculinity (on that much, feminism, and not only feminism, would surely agree). To save his skin, Oscar Pistorius ventriloquised a woman, or was led by his legal team to do so. He took her place. Behind what might be seen as a moment of unanticipated and welcome gender confusion – since gender confusion is always, or nearly always, to be welcomed – we might also, or rather, see a man going to the furthest lengths he can go, including sacrificing the image of himself as a man, to make absolutely sure that no one hears the voice of a woman crying out in fear for her life.

GENDER TROUBLE has become one of the theoretical mantras of our time. But there are forms of gender uncertainty which add insult to injury and one of the most glaring instances I have come across was on display at this trial. We know that for the ANC women protesting outside the court and for women the world over, this case bore the unmistakable signs of lethal domestic violence (even if Steenkamp and Pistorius did not strictly share a home). We know that what often appears to be, indeed might be, the most intimate, loving relationship can fail to protect women. We know that passionate attachment can involve hatred, that, as many women discover too late, sex is often the bedfellow of crime – though I am not a feminist who believes that all men, simply by dint of being men, are violent towards women. We also note, as Suzanne Moore pointed out, that Pistorius got less for killing Reeva Steenkamp than he would have got for killing a rhino: a poacher was recently sentenced to 77 years' imprisonment; Pistorius was sentenced to five years with parole possible after ten months (in the event he served 12).

But the fact that this was a case where a man had killed his girlfriend didn't stop the defence from arguing – incredibly – that when Pistorius shot through that door he himself could best be understood, because of his disability, by being compared with an abused woman, who, after years of pressure, finally snaps and kills her abuser. When, as one would expect, the analogy was challenged by Masipa – 'How does [the situation of an abused woman] apply to the

accused in this case?' – Roux, as I see it, only makes matters worse:

I am not talking about abuse here. You know I cannot run away. I cannot run away. I do not have a flight response . . . His experience with that disability, over time you get an exaggerated fight response . . . That is the 'slow burn' effect. Not abuse . . . That constant reminder . . . I am not the same . . . He can pretend . . . he can pretend that he is fine . . . because of the anxiety . . . it is in that sense that I say the abuse is different, but it is the same. Without legs, abuse, abuse, abuse. So ultimately when that woman picks up that firearm . . . we can use the common word, I have had enough, I am not shooting you because you have just assaulted me, not because of one punch with a fist in my face. I would never have shot you because of one punch with a fist in my face, but if you have done it sixty, seventy times, that effect of that over time it filled the cup to the brim that is . . . in that sense, My Lady.

So Pistorius doesn't just sound like a woman, he is a woman. This almost defies comment but not quite. This claim yet again to be speaking in a woman's voice – 'I have had enough' – the voice of a woman who, we are to imagine, has just been, for the sixtieth or seventieth time, the target of physical abuse – while clearly beyond the pale, might at the same time be read as a veiled confession, an unconscious acknowledgment by the defence of the very version of the story they are exerting their utmost to repudiate: that this is a case of a man enacting violence against a woman, a woman who (if statements by Steenkamp's friends and family are anything to go by) had had enough.

Here is part of a 516-word WhatsApp

message Steenkamp sent Pistorius 18 days before she died, as read out in court in one of the few moments when her own words were heard: 'You have picked on me incessantly since you got back from CT and I understand that you are sick but it's nasty . . . I am scared of U sometimes and how you snap at me and of how U will react to me . . . I am not some other bitch you may know, trying to kill your vibe.' 'Normal relationships,' Masipa commented in her judgment, 'are dynamic and unpredictable most of the time, while human beings are fickle. Neither the evidence of a loving relationship, nor of a relationship turned sour can assist this court to determine whether the accused had the requisite intention to kill the deceased. For that reason the court refrains from making inferences one way or another in this regard.' Again she is right – certainly about relationships. Yet for me this is perhaps the darkest moment in the judgment, when the law, when a woman judge, fails to give due weight to another woman, one who didn't survive. I don't believe that all women are at risk from all men but I do believe that a woman doesn't say she is scared of a man without cause and that when she does we must listen. It is the fear in the future tense – 'I am scared of you sometimes . . . and of how you will react to me' – that, for me, most loudly calls for our attention.

None of which excludes the presence of love, as any abused woman will testify (her fear isn't incompatible with her leaving him a Valentine's card). For the same reason, Pistorius's grief at Steenkamp's death – which must include the repeated moments

of his weeping, retching and vomiting in the courtroom – surely can't be taken as proof that he lacked the requisite intent to kill her. As if guilt can't intensify grief, as if you can't regret with all your heart what was your most fervent wish only seconds ago, as if love and murderousness are incompatible. But Masipa argued instead that Pistorius's grief would have to be fake if he had wanted to kill his girlfriend, which it clearly wasn't – one moment in the proceedings where we badly needed Freud. Here is another. Interrogated by Nel as to why he thought Steenkamp didn't cry out, Pistorius replied: 'I presume that she would think that the danger was coming closer to her. So why will she shout out?' Another veiled confession – though the moment appears to have received no commentary – in which Pistorius, trying to wriggle out of one corner (why did she not cry out?), lands himself in another by correctly, if unintentionally, identifying himself as the approaching danger against which Steenkamp was protecting herself ('the danger was coming closer'). And another: cross-examined by Nel on why he was screaming after firing the shots, Pistorius said, 'I wanted to ask Reevea why she was phoning the police.' Amazingly, this choice of wording – 'why she was phoning the police' – wasn't picked up by the prosecution or anyone else.

SEX, race, disability, and that's not all, even if it's more than enough. So let's return to Roux's comment: 'He can pretend that he is fine.' Pistorius and Steenkamp were of course the perfect couple. They both honed their bodies. On her left

ankle, Steenkamp had a tattoo of the word 'Lioness' (she was a Leo), which she explained on Twitter: 'Abundance and power are yours, for you are the lioness.' She had trained herself to 'flawless super-fitness', Hagen Engler, editor of *FHM* magazine, recalled in a column days after she was killed. The full citation from Corinthians tattooed on Pistorius's upper back reads:

I do not run like a man running aimlessly;
I do not fight like a man beating the air;
I execute each stride with intent;
I beat my body and make it my slave
I bring it under my complete subjection
To keep myself from being disqualified
After having called others to the contest.

The line about making my body my slave is not in most translations from Corinthians, nor is subjection described as 'complete'. Pistorius was raising the stakes. He was also punishing, or even indicting, himself. 'To keep myself from being disqualified' is also telling. In 2007, Pistorius was under investigation by the International Association of Athletics Federations to determine whether his prosthesis gave him an unfair competitive advantage. (He eventually won his case and was allowed to compete in the Beijing Olympics in 2008.) The lessons his mother imparted to him, John Carlin observes in his book, commenting on an interview he conducted with Bill Schroeder, headmaster of Pretoria Boys School, 'all boiled down to the same thing . . . to run as fast as he could'. We don't need Freud's help to perceive the ambiguity and weight of that demand, a demand which he then made, unerringly, of himself: running as fast

as he could as in winning, but also fleeing, running away. Schroeder recalls that when he tentatively asked Pistorius's mother about her 13-year-old son, 'But . . . is he going to cope?', referring to his prosthetic legs, she exchanged glances with her son and shrugged, 'I don't think I follow. What are you saying?' and then observed: 'There's no problem at all. He's absolutely normal.' On the first page of his autobiography, written before the killing of Steenkamp, Pistorius explains the attitude integral to his family's philosophy: 'This is Oscar Pistorius, exactly as he should be. Perfect in himself.' In fact his mother was a depressive who died of alcohol poisoning when Pistorius was 15. As Carlin points out, Pistorius said 'my mother' more often than anything else in his testimony. (Like his mother, Pistorius slept with a firearm under his pillow.)

Many people involved in disability studies would hold that Sheila Pistorius's description of her son, and the Pistorius family philosophy, is correct, that all bodies are as they 'should be'. In Britain today, with a government whose reasserted harshness towards disability seems to know no limits, it may be more important to insist on this than ever before. As Cora Kaplan observed 15 years ago, the discourse of fiscal responsibility in both the US and UK has long had disability in its sights as an intolerable economic burden on 'normal' citizenry. Sheila Pistorius's 'he's absolutely normal' could be read as a necessary riposte. The only response to bureaucratic inhumanity must be to argue that need or frailty must be recognised, but so must the dignity – indeed 'normality' – of the disabled. We are

talking about justice and human rights, which are the terms in which recent disability studies defines its task. But this is something of a double bind. When you insist on dignity and normality the risk is that both physical and psychic suffering become invisible, denied, and then have to deny themselves ('he is perfect'). Worse, such a denial veers dangerously close to the repudiation of weakness and suffering that has historically licensed the sometimes genocidal cruelty directed towards the disabled: because you suffer, because we have to see your suffering, we will not suffer you. The poet and critic Nancy Mairs, who was struck down with multiple sclerosis at the age of 28, made the strongest alternative case in her 1986 essay 'On Being a Cripple' (now an unspeakable word but one which she reclaimed for herself): 'Society,' she wrote, 'is no readier to accept crippledness than to accept death, war, sex, sweat or disease.' For Mairs it is emancipatory not oppressive, and the opposite of inhuman, to speak openly of a body that fails.

Merryll Vorster, the forensic psychiatrist called by the defence, was in no doubt that the amputation of both of Pistorius's limbs as a pre-verbal child, before he was one, would have been experienced as a traumatic assault, that the family attitude had meant he was never allowed to see himself as disabled, and that this had a significant detrimental impact on his development: 'By concealing his disability, this rendered him less able to access the emotional support he required.' In a vicious cycle, she argued, his physical vulnerability made him more anxious, which then made him more

intent on concealing his physical vulnerability from the world. We could say that his disability became the encrypted secret of his body and his life.

When the prosecution saw that Vorster's comments might lead to a defence based on Generalised Anxiety Disorder, Nel immediately demanded that Pistorius undergo a full psychiatric assessment. It was a moment of high drama, leading to a one-month suspension of proceedings. Nel had taken a risk. Hoping to rule out a possible defence for Pistorius, he might instead be opening the door to his being acquitted on grounds of mental incapacity. When the court reconvened, however, the decision was unequivocal: Pistorius suffered no form of mental debility, showed no lack of criminal capacity; there was nothing to prevent his knowing the consequences of his act or distinguishing between right and wrong. 'There was,' Masipa remarked in her judgment, 'no lapse of memory or any confusion on the part of the accused.'

The battle in the courtroom was now repeating the internal dilemma of Pistorius himself, as it split down the middle between the two ways we have of seeing disability: Pistorius as crippled and vulnerable, Pistorius as perfect and empowered. If the first, then he shot Reeve Steenkamp out of his deep-seated fears; if the second, he shot her because his physical prowess, and the acclaim that followed, had allowed him to nurture the illusion that he ruled the world and could take the law into his own hands. Ironically, it was the prosecution that had to believe unreservedly in Pistorius on his own terms, had – in effect – to

side with him. 'For the prosecution to succeed,' Carlin writes, he 'needed Pistorius to be regarded by the judge as he had always portrayed himself prior to the trial . . . Nel had to deny the existence of the secretly vulnerable and fear-plagued amputee as vigorously as the Blade Runner himself had sought to do all his life until the night of the shooting.' The defence, in turn, could only proceed by ruthlessly dismantling his lifelong, carefully nurtured image of himself: 'Without legs, abuse, abuse, abuse.'

It was therefore the defence that mutilated Pistorius's own defences, as it proceeded to uncover his disability in the eyes of the world. On two occasions he was obliged to reveal his stumps to the courtroom (one might also see his weeping, retching and vomiting in court as his body spilling over its borders and revealing itself). In fact he himself was more than ready to follow this line: 'The discharging of my firearm was precipitated by a noise in the toilet which I, in my fearful state, knowing that I was on my stumps, unable to run away or properly defend myself physically, believed to be the intruder or intruders, coming out of the toilet to attack Reeve and me.' Note 'the discharging of my firearm was precipitated' – as if the gun had gone off all by itself.

Banners at the 2012 Olympics read: 'Paralympics. We are the superhumans.' Not cripples but gladiators, as one commentator observed. Pistorius, as the strapline on his official website declared, was the 'bullet in the chamber'. Between Pistorius, his father, two of his uncles and his grandfather, his family owned 55 guns. In one notorious episode, Pistorius fired through

the open sunroof of a car after an altercation about his gun with a police officer who had pulled the car over for speeding: 'You can't just touch another man's gun,' he offered by way of explanation for his rage – his gun a body part, the most intimate piece of himself. Samantha Taylor spoke about his gun as a 'third party' in their relationship. A 9mm Luger bullet sat upright on his kitchen counter. At the time of the killing, he was waiting to take delivery of six firearms, including a semi-automatic of the kind used by the South African Police Service, and 580 rounds of ammunition.

THESE IS, again, a history of South Africa to be told here. The Afrikaners conquered the southern tip of Africa with guns, a heritage of which, Carlin observes, the Pistorius clan was proud. In Zakes Mda's most recent novel, *Black Diamond*, a white magistrate is under threat for her crackdown on crime. When she insists to the black protector assigned to her that she doesn't want guns in her house, he replies with a smirk on his face: 'You don't want guns? What kind of Afrikaaner are you?' As Gillian Slovo put it in a lecture at the LSE in May, the guns that supported and opposed apartheid are still too present in South Africa today. Pistorius was fearful of crime, but then no white South African, indeed no South African, can avoid being fearful of crime: robberies in residential properties increased by 70 per cent between 2003 and 2012, although in 90 per cent of cases the victims of such burglaries are unharmed and it is the poor who are most often the victims. In fact, only 5 per cent of

South Africans own firearms.

On this Masipa was unhesitant. Pistorius's actions couldn't be justified by his fears. 'I hasten to add that the accused is not unique in this respect,' she said in what for me was one of the best moments in her judgment. 'Women, children, the elderly and all those with limited ability would fall under the same category.' 'But,' she asked, 'would it be reasonable if without further ado they armed themselves with a firearm if threatened with danger? . . . Many have been victims of violent crime but they have not resorted to sleeping with firearms under their pillows.' Vulnerability is no licence to violence. You think you are unique in this regard. Think again. Disability or weakness is something you can suffer, but never own. It is no excuse. For that reason I'm not persuaded by those who argue that Masipa's sympathy for Pistorius's disability swayed her judgment, though it is surely true that she refused to join in the hatred directed at him. She is a universalist, moved by a compassion that manages at once to be specific to South Africa while taking in the vulnerable – women, children, the elderly, all those with limited ability – everywhere. Nor am I convinced that she was above all driven by the desire to avoid being seen as enacting revenge justice on a rich white man (though it is surely the case that, as a black judge, she too was on trial).

SEX, RACE, DISABILITY, what's left? What's left is the life of the mind, the limits of knowledge, the psychic and political imperative of thought. There are guns, and there is thinking. In his test-

imony, Pistorius repeatedly insisted that he wasn't thinking when he fired four shots through the door: 'That split moment I believed somebody was coming out to attack me. That is what made me fire. Out of fear. I did not have time to think.' And: 'I did not shoot at anyone. I did not intend to shoot at someone. I shot out of fear . . . I fired my firearm before I could think.' Or, as Masipa put it in her summary of what she heard him say, 'I am a gun enthusiast. I did not have time to think.'

But if he didn't intend to shoot anyone and wasn't thinking, then he can't rely on the argument of putative private defence (that he shot in response to a perceived threat). If he shot because he thought he was in danger of being attacked, then he clearly had time to think. Had he wanted to kill an intruder, he explains, he would have shot higher up towards the chest. 'I pause to state,' Masipa commented, 'that this assertion is inconsistent with someone who shot without thinking.' Pistorius's 'plethora of defences', as Masipa described them, obey the logic of the unconscious, each one cancelling out the next. He was judged partly according to whether his behaviour was that of a 'reasonable person', but it was something beyond reason that the law found itself up against. Not thinking doesn't render you innocent, any more than fear does. It is in the split second between thought and non-thought that you kill. Recall that in her dismissal of *dolus eventualis*, Masipa argued that Pistorius could not 'reasonably have foreseen' that the shots he fired could kill 'the person behind the door, let alone the deceased, as he thought she

was in the bedroom at the time.’ And yet, finding him guilty of culpable homicide, she asked: ‘Would a reasonable person in the same circumstances as the accused have foreseen the possibility that, if he fired four shots at the door of the toilet, whoever was behind the door might be struck by a bullet and die as a result? Would a reasonable person have taken steps to guard against that possibility? The answer to both questions is yes.’ This is reason straining at its own leash: the accused could not reasonably have foreseen the death of the deceased, yet a reasonable person would have taken steps to guard against the death of the person behind the door. Who is this reasonable person? If Masipa was wrong – and it will be clear by now that I think she was on this issue – it might be because the law can’t take full measure of the human complexities to which we, unreasonably, expect it to be equal. It might also be because its category of reason, not least in the realm of violent crime, is a shape-changer. ‘The reasonable man,’ Masipa observed in a citation from a preceding judgment, ‘of course evolves with the times. What was reasonable in 1933 would not necessarily be reasonable today.’

There is also an issue of language involved, as the attribution of guilt hangs on the finest linguistic discriminations, in particular on auxiliary verbs. Some examples: ‘I am not persuaded that a reasonable person with the accused’s disabilities in the same circumstances *would have* fired four shots into that small toilet cubicle.’ Criminal liability is attributed according to whether ‘he *ought to have* foreseen the

reasonable possibility of resultant death.’ The court, Masipa commented, citing another preceding judgment, ‘should guard against proceeding from “*ought to have foreseen*” to “*must have foreseen*” and thence to “by necessary inference in fact foresaw” the possible consequences of the conduct being inquired into.’ The inference of ‘subjective foresight cannot be drawn if there is a reasonable possibility that the accused did not foresee, even if he *ought* reasonably to *have done so* and even if he probably did so.’ At which point, we appear to have entered the world of that first great experimental novel, *Tristram Shandy*. How, asks Tristram’s Uncle Toby, can someone speak about a white bear if he never saw one? Whereupon Tristram’s father produces this paean to the auxiliary verb and its power to conjure what isn’t there:

A WHITE BEAR! Very well. Have I ever seen one? Might I ever have seen one? Am I ever to see one. Ought I ever to have seen one? Or can I ever see one?

Would I have seen a white bear (for how can I imagine it?)

If I should see a white bear, what should I say? If I should never see a white bear, what then?

If I never have, can, must or shall see a white bear alive; have I ever seen the skin of one? Did I ever see one painted? – described? Have I never dreamed of one?

Did my father, mother, uncle, aunt, brothers or sisters, ever see a white bear? What would they give? How would they behave? How would the white bear have behaved? Is he wild? Tame? Rough? Smooth?

Is the white bear worth seeing?

Is there no sin in it?

Is it better than a BLACK ONE?

This is language as speculative decay, losing its grip on reality which – as we have known since Saussure (and Sterne) – it has never had anyway.

‘WHAT IS this irrational fear that has sunk deep into the psyche?’ Margie Orford asked. Let’s return to the subject of bathrooms. After all, it isn’t just in the South African imagination that they are the scene of the crime – the shower scene in *Psycho* most obviously comes to mind. In one famous passage in Proust, the narrator – at no small physical risk – hoists himself onto a ladder and peers through a fanlight into the shop into which the Baron de Charlus and the tailor Jupien have disappeared after a mutual seduction in the courtyard. There he hears sounds so violent that ‘had they not constantly been taken up an octave higher by a parallel moaning, I might have thought that one person was slitting another’s throat close beside me, and that the murderer and his resuscitated victim were then taking a bath to wash away the traces of the crime.’ A bathroom is a place of purity and danger. Not just the scene of a killing, but the first place you go in order to wash away the traces of the crime.

In Western culture bathrooms are places where we submit the roughage of our inner and outer worlds to the regimen of the controlled and the clean. ‘There is no denying the cleanliness,’ Junichirō Tanizaki laments of the Western toilet in his 1977 meditation *In Praise of Shadows*, ‘every nook and corner is pure white.’ Yet ‘the cleanliness of what can be seen only calls up the more clearly

thoughts of what cannot be seen . . . I suppose I shall sound terribly defensive,’ he continues, ‘if I say that Westerners attempt to expose every speck of grime and eradicate it, while we Orientals carefully preserve and even idealise it.’ In *Purity and Danger* (the first and still the last word on these matters), Mary Douglas writes about the Nyakyusa, who ‘venerate their own detritus and sweep rubbish onto mourners, their ritual of mourning being to welcome filth’. An obsessional culture on the other hand – Western culture – is guilty, unsettled in the discriminations it most earnestly wishes to police (the distinction between men and women, or between black and white). As Douglas also points out, it is only around norms and behaviours that are contradictory or unstable – for instance, the attempt to subordinate women in a culture which partly recognises their autonomy as human – that pollution fears tend to cluster, and they are rarely independent of sex (she gives the example of the husband ‘needing to be convinced of his own masculinity and of the dangers thereof’). In the case of Pistorius, it wasn’t just his body – ‘I beat my body and make it my slave’ – but also his mind that he wanted to subordinate: ‘Every race is won or lost in the head, so you have to get the contents of your head right,’ he responded to a question about his obsessional note-taking in an interview with the *Financial Times*. ‘Writing things down helps you to control your thoughts.’

But there is a limit to such control. When Mark Gevisser was attacked in a private home with two close women friends, he

started by believing their lives were saved by the respect they paid to the black intruders. But then he came to see things rather differently: 'You have no control over what will happen to you. It is random and it is chaotic, and even if your reasonable behaviour lessens the odds of your being hurt or killed, it guarantees you nothing. You have no control over when, and how, you will die. Once you understand this, you accept that life is a gift.' This is the opposite of obsessional thought, which, as Freud puts it, endlessly returns to 'those subjects upon which all mankind are uncertain and upon which our knowledge and judgment must necessarily remain open to doubt' – a form of thought which can't bear human ambivalence. On this, Gevisser's story is exemplary. He felt genuine empathy with his intruders, but that didn't stop him pursuing one of them to court, a Zimbabwean migrant whose story of barely surviving in the city he writes about with the utmost care. But he also hates him: 'I hated him for having made me hateful and I hated myself for hating him.' This tale bookends *Lost and Found in Johannesburg* and its complexity is surely the perfect counterfoil to the idea that the only way to deal with an intruder in today's South Africa is to shoot four times through a locked door.

More than twenty years after the end of apartheid, South Africa is riddled with violence, still suffering the legacy of its history, 'the unfinished business buried in the South African body politic', which the Paralympic hero Oscar Pistorius was called on to help the nation deny and transcend. We could say that it was his tragedy, al-

though far more the tragedy of Reeva Steenkamp, that, prey to a fantasy of omnipotence in which the whole world colluded, he tried to take control of whatever he could: his body, his mind, his women, his guns. If there is a lesson I take from all this, it is that we should not expel our own hatreds in a futile effort to make ourselves, to make the world, clean. 'The dark hole in the floor,' Rebecca West observes of a toilet in old Serbia on her extraordinary 1930s journey through Yugoslavia, 'made it seem as if dung, having been expelled by man, had set itself up as a new and hostile and magically powerful element that could cover the whole earth.' Expelling dirt is as self-defeating as it is murderous. Someone – a race, a sex – has to take the rap. □

Oscar Pistorius was tried for the murder of Reeva Steenkamp in South Africa in 2014. His trial was broadcast live, after media agencies applied to the court for comprehensive access to the courtroom. The decision to broadcast the trial followed a careful and deliberative court ruling about the constitutional principles of human dignity, freedom and equality. South Africa's post-apartheid Constitution provides a framework for achieving social transformation, and open justice plays an important role in it. Despite concerns about sensationalism and voyeurism, the broadcast of the Pistorius trial The trial of Oscar Pistorius for the murder of Reeva Steenkamp and several gun-related charges (The State vs Oscar Pistorius) in the High Court of South Africa in Pretoria opened on 3 March 2014. On 11 September 2014, Judge Thokozile Masipa delivered a verdict that Pistorius was not guilty of murder, but guilty of the culpable homicide of Steenkamp and reckless endangerment with a firearm at a restaurant. On 21 October 2014, Pistorius received a prison sentence of a maximum of five years for