

Questions of Guilt and Innocence in the Victorian Criminal Trial of Robert Farquharson and the Fact Before Theory Internet Campaign†

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Abstract

This article follows the Victorian trial of Robert Farquharson for the murder of his three sons who drowned after the car he was driving veered off the road into a dam on Fathers Day 2005. It discusses the implications of the use of forensic photographs by the prosecution at the trial, which supported the jury's finding of guilt, on the Fact Before Theory website launched by an anonymous supporter of Robert Farquharson in the trial's aftermath. This discussion is situated in light of recent work that considers how user generated technologies (blogging, social networking etc.) are fast becoming a key way for family and friends of victims of crime to intervene in the legal process of deciding questions of guilt and innocence. Drawing on the Internet Campaign to free Robert Farquharson as a case study, the author concludes that the narratives and representations of justice and injustice that are being mobilised by the public in this new 24/7 media landscape present a major challenge for the courts.

Introduction

On 5 October 2007, a Victorian Supreme Court jury convicted Robert Farquharson of three counts of murder for killing his three sons – Jai, aged 10, Tyler, aged 7, and Bailey Farquharson, aged 2. The three boys drowned after the car their father was driving veered off the Princes Highway and into a dam 7 kilometres north of Winchelsea, country Victoria,

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during an access visit on Father's Day 2005. Robert Farquharson was later sentenced to three life sentences without any minimum term (*DPP v Farquharson*).

Throughout the police investigation, the committal hearing and the trial, Robert Farquharson strongly denied that he deliberately killed his children by driving his car into a dam with his three boys trapped inside (Anonymous 2005d). When arrested on suspicion of murdering his children, Robert Farquharson is reported to have been 'dumbfounded' at the charges laid against him (Silvester & Adams 2005; see also Tkaczuk-Sikora 2006). In order to counter the murder charges, he volunteered to take a lie detector test, which apparently failed to produce a definitive result (Anonymous 2005c; Buttler 2005b, 2005c, 2005d; Silvester 2005). He claimed the boys' deaths were the result of his lost consciousness, due to a coughing fit, resulting in the loss of control of his vehicle (Silvester 2005a; Anonymous 2005c, 2006d, 2006e).

In a public declaration of support, Cindy Gambino, Farquharson's estranged wife from whom he had been separated for almost a year and mother of the dead children affirmed shortly after his arrest: 'he's no killer', he is a 'loving, doting dad' (Buttler 2005a; Buttler & Cunningham 2005a; Uebergang 2006). When the jury announced its verdict that Farquharson was guilty on all three counts of murder (Cooper 2007d, 2007h), Cindy is reported to have 'screamed' before collapsing in court. Both she and her mother, also present in the courtroom that day, required sedation before being rushed to hospital (Cooper 2007e, 2007f, 2007g; Houlihan 2007).

A number of close family members of Robert Farquharson including members of the Winchelsea community also reported feeling 'devastated' upon hearing news of the jury's decision to convict Robert Farquharson of murder (Prytz 2007; Lannen 2007; see also earlier reports by Buttler, Ife & Anderson 2005a, 2005b). Surprisingly, some of the support shown towards Robert Farquharson has come from those within the legal profession itself.¹ According to one journalist, 'Farquharson's guilty verdict' had 'shocked many in the legal community'. The article went on to quote 'renowned Melbourne barrister, David Galbally QC' (Anonymous 2007c) as stating it is 'the considered belief of many barristers that Defence counsel had produced enough evidence to constitute reasonable doubt' in this case. He further predicted that the 'raging debate in relation to the forensic side of it all' that emerged during the trial would produce 'a number of consequences ... that in all likelihood' would mean 'there would be a re-trial'.

In the trial's aftermath, Farquharson's defence team lodged an appeal against conviction and sentence that outlined 31 reasons why they believed the jury's verdict to be both 'unsafe' and 'unsatisfactory' (Fogarty 2008; Kissane 2008). The appeal document raises a number of concerns about the validity and reliability of the 'evidence' used in the prosecution case that supported the jury's finding of guilt. Given that these issues have yet to be decided by the Court of Appeal (Devic 2009a; Hagan 2009b; Devic 2009b),² it is

¹ Among Farquharson's supporters is Dr Robert Moles, a former Senior Lecturer in Law at the Australian National University, and founder of the website Networked Knowledge, which specializes in the study of miscarriages of justice. Dr Moles joined a list of legal professionals concerned with the outcome of Robert Farquharson's trial. See, for example: <http://factbeforetheory.net/2007/12/12/networked-knowledge-onboard/>

² In particular, the appeal document takes issue with the testimony provided by a family friend, Gregory King (Anonymous 2009b), who is disparagingly referred to in the Internet campaign as the prosecution's 'star witness' (extonmarks 2007c; 2007d). King testified that a few weeks prior to the children's deaths a conversation took place between himself and Robert Farquharson outside a fish-and-chip shop during which Farquharson told him he would kill his kids on a special occasion like Father's day as a form of 'payback'

beyond the scope of this article to deal with these here. While there was other evidence that contributed to the circumstantial case made against Robert Farquharson (e.g. audio/visual evidence, witness testimony, expert opinion evidence etc.), it is an interesting development that some of the images that were used by the prosecution at the trial to establish the legal requirement to provide evidence of guilt have since been redeployed in the Internet campaign and appeal for Farquharson's innocence. This article considers the cultural significance of the redeployment of what are essentially legal images in a cultural context (e.g. on an Internet site) to generate a narrative of injustice as a kind of extra-legal proof of Farquharson's innocence. This discussion is situated in light of recent work in Australia and overseas that sees the interplay of high-speed digital communications and user-generated technologies (e.g. blogging, social networking sites such as Facebook and Twitter etc.) as becoming more and more integral to social existence. The narratives and representations of justice and injustice currently being generated by family and friends of victims of crime (and of the offender as this article argues) are fast becoming key to calls by members of the public for 'online justice' (Greer et al. 2008:6; see also Greer 2004; Ferrell et al. 2008). While there is increasing focus in recent criminological scholarly inquiry on the virtual networks through which victims of crime seek to renegotiate and, in so doing, achieve a redefinition of the meanings of crime and criminality (see, e.g., Greer 2004:112-113), less has been said about the deployment of user-centred on-line technologies by family and friends of the alleged offender to articulate concerns over alleged miscarriages of justice.

A Tragic Accident or an Act of Wicked Revenge?

When news of the children's deaths first came to the media's attention, the event was initially communicated as a 'tragic accident' in which the three brothers had died after 'futile' attempts to save each other (Buttler & Cunningham 2005b; Cunningham, Buttler & Dowsley 2005a; Dowsley 2005; Nolan & Duncan 2005a, 2005b, 2005c, 2005d; Medew 2006b). The State's emergency workers who first attended the scene, including a number of police officers who were accident specialists from the Major Collision Investigation Unit (MCIU) in Glen Waverley, were told to respond to a call about a fatal accident in which a car had driven off the road, into a dam, with three children trapped inside. A few hours later as police investigations progressed, the circumstances surrounding the deaths of the three children were thought to be suspicious, and the case was referred to the homicide squad (Anonymous 2005a, 2005b; Cunningham & Buttler 2005b). In December 2005, Robert Farquharson was charged with three counts of murder for deliberately driving his car into the dam in order to kill his children (Buttler, Metlikovec & Cunningham 2005).

In the Farquharson case there was no dispute as to cause of death. This was later confirmed by a pathologist who examined the bodies and testified at the trial (*R v Robert Donald William Farquharson* Transcript of proceedings, Supreme Court of Victoria, Australia, 21 August – 3 October 2007:1104-1107, hereinafter *Farquharson* trial transcript 2007). In order for the prosecution to fulfil the legal requirement to provide evidence of guilt, the contextualisation and interpretation of visual images (or their absence) of the

against his former wife (Hunt 2005; Lahey 2006a; 2006b; Medew 2006a). On the day the jury was to deliver its verdict, it was revealed that Gregory King had pleaded guilty to one count of recklessly causing injury following an altercation in the Barwon Hotel in Winchelsea on Christmas Eve the year before (Matthews 2007). The view that police had delayed filing charges against Gregory King because he was a key witness in the Farquharson case are amid concerns raised by Farquharson's appeal (Anonymous 2009a; 2009b).

geographical environment near where the bodies of the three children were recovered from the dam was a crucial component of their case (e.g. tyre marks in the aggregate, rolling tyre prints in the grass etc.). The trial, however, took place amid concerns that police officers from the Major Collision Investigation Unit (MCIU), who investigated the circumstances of the deaths of the children and who were involved in the photographic documentation of markings and other details observed at the scene, had deliberately tampered with crucial crime scene evidence in an attempt to conceal a ‘botched’ or ‘bungled’ investigation (Bice 2007a, 2007b; Cooper 2007a, 2007b, 2007c).

At his trial, Farquharson’s story was that when driving the car he suddenly experienced a coughing fit – a rare disorder known as cough syncope – which caused him to ‘lose consciousness’. He claimed he woke to find himself submerged in water still in the driver’s seat and, unable to save his children, was forced to swim to the edge of the dam to safety (*Farquharson* trial transcript 2007:314).³ In contrast, the prosecution’s medical experts testified that it was highly unlikely that Farquharson suffered from the onset of cough syncope in the moments before the accident (Associate Professor Matthew Naughton, *Farquharson* trial transcript 2007:1595-1669; see also King 1571-1591 and Yip 534). As illustrated by his opening remarks to the jury, the prosecuting counsel described the event of the children’s deaths as ‘a shockingly wicked and callous act’ committed on Father’s Day 2005, one ‘which completely turned on its head the notion that a father would do almost anything to protect and to nurture his children’ (*Farquharson* trial transcript 2007:276).⁴

As with the medical evidence, the forensic scientific evidence was divided on the issue of whether or not Farquharson deliberately drove his car into the dam with the intention of killing his three children. The prosecution’s vehicular accident reconstruction experts testified that Robert Farquharson was conscious, rather than unconscious, when his car went into the dam. The prosecution’s reconstruction evidence included photographic documentation of markings made by police officers from the MCIU who investigated the circumstances of the deaths of the children (e.g. ‘yellow paint marks’ that overlaid tyre

³ A doctor who testified for the defence declared Farquharson’s symptoms to be ‘classic’ of cough syncope (Bruce Hilton Bartley, *Farquharson* trial transcript 2007:1145-61), and Farquharson’s own doctor, Christopher Lewis Steinfort, also testified that it was ‘highly likely’ that he suffered from the condition on the night (*Farquharson* trial transcript 2007:2122-2185).

⁴ Although this article isn’t concerned primarily with the media representations of the case, a significant feature concerns the ways in which the prosecution case was supported by the narrative of the vengeful father (e.g. as illustrated by media reports by Kissane 2007b, 2007c in the wake of the jury’s verdict). This construction and representation of Farquharson’s character was derived from the testimony of witnesses and police who were among the first people to encounter Robert Farquharson by the side of the road near the dam on the night in question (see, e.g., Anonymous 2006b; 2006c; 2007a; 2007b). According to a number of witness reports, Farquharson’s behaviour (his ‘dam side conduct’ as it later became known) after the accident contravened that expected of a genuinely distraught father suffering from shock after the sudden and unexpected death of his children. For a discussion of the view that this criticism was unfounded, see the post ‘Undue Criticism’ in the archive for January 2008 on the *Fact Before Theory* website (extonmarks 2008a). As the remarks of the sentencing judge illustrate, when Cindy Gambino returned to the dam with Robert Farquharson, Farquharson’s reaction was deemed to be that of a self-interested and thoroughly reprehensible individual on the basis that he ‘did not join any of the desperate attempts to find the children’. Farquharson’s failure to conform to normative expectations of fatherhood were compared to the reactions of Stephen Moules, Cindy Gambino’s new partner, whose heroic efforts to ‘repeatedly div[e] into the dark waters to seek to find the children’ were accepted as the acts of ‘a brave and good man’ (*DPP v Farquharson* per Cummins J at 3206). A discussion of the media depictions and narratives of parental failure – community loss, tragedy and the inexplicable failure of the father to save his children from drowning – that were mobilised in the Farquharson case is the topic of a companion article by the author which is in progress.

marks in the aggregate, rolling tyre prints in the grass etc.). At least three police video recordings of a policeman in a dissimilar vehicle driving along the road in the same direction as Farquharson's vehicle, and a number of police video re-enactments based on a computerised simulation using software PC Crash of a dissimilar vehicle veering left, not right, off the highway where Farquharson's car is believed to have left the road, were also key to the prosecution case. The testimony of a number of vehicular reconstruction experts who interpreted the computerised re-enactment footage formed the basis of what came to be known as the prosecution's 'three steer theory' (Cooper 2007g). While there was other evidence that contributed to the circumstantial case made against Robert Farquharson, the interpretation of this forensic scientific evidence was a crucial component of the prosecution case. As illustrated by his opening remarks to the presiding judge in the absence of the jury, the prosecuting counsel, Jeremy Rapke QC, declared: 'this is a case which at the end of the day rests upon forensic ... and medical science' (*Farquharson* trial transcript 2007:521).

In contrast, counsel for the defence, Peter Morrissey QC, urged the jury to 'stick to the facts' (e.g. that facts come 'first, and theories later', *Farquharson* trial transcript 2007:312). He then told the jury that defence counsel would dispute the Crown's theory about how the car went off the road 'as interpreted and theorised by an expert reconstructionist' (Acting Sergeant Urquhart, a senior constable of police with expertise in accident investigation and reconstruction stationed at the MCIU in Brunswick) (*Farquharson* trial transcript 2007:318). During the process of cross-examination, a number of different and competing interpretations were able to be mobilised by defence counsel about what, precisely, had produced the various marks in the aggregate and in the grass (tyre marks or someone's boot). Although these competing interpretations enabled an air of doubt to be cast on the prosecution case, it didn't persuade the jury to find Robert Farquharson not guilty of three counts of murder.

What interests me about this case is that these concerns surrounding the integrity of the police investigation and particularly, the reliability of the police 'reconstruction evidence' have continued into the appeal and through to the Internet campaign to free Robert Farquharson (see, e.g., *extonmarks* 2008b; 2008c). It is ironic that a key strategy deployed in the Internet campaign is the redeployment of some of the same forensic images used by the prosecution to establish his guilt. Such a move invites the question, how are user-centred online technologies (e.g. blogging, social networking sites such as Facebook, MySpace and Twitter etc.) being utilised by members of the public in ways that actively intervene in the legal process in deciding questions of guilt and innocence? The representation of injustice being mobilised on the user generated website to free Robert Farquharson draws explicitly on the 'fact before theory' narrative mobilised by Robert Farquharson's defence team at his trial in a bid to launch a counter or extra-legal narrative capable of achieving a different end (e.g., an acquittal should he be granted a re-trial).

The Fact Before Theory Internet Campaign and Quest for Online Justice for Robert Farquharson

It was always going to be a matter of when. When would the media turn their spin on Robert Farquharson's trial from Evil man to wrongly accused. Today can be penciled in as day 1

...

There is having an opinion and there is having an opinion with reason. Many have claimed she clings to the belief he is innocent because she cannot accept that he is guilty... **Theory Alert!! Theory alert!!**

She believes he is innocent because he was a 'kind, loving dad'. **FACT.**

Cindy has said there was no animosity in their relationship at the time of the deaths. **FACT'** (extonmarks 2007b 'The Truth Begins to Emerge' Robert Farquharson – Fact before Theory <http://factbeforetheory.net/2007/10/22/the-truth-begins-to-emerge/>)

In the aftermath of the trial a group of 16 supporters of Robert Farquharson used social networking site Facebook to upload 'intimate family snapshots' in a 'push for his freedom' (Smith 2008). The article on the homepage of the Facebook site invites users to consider that Farquharson 'is nothing more than a grieving Father who has been wrongly convicted' (extonmarks 2008d). A number of photographs showing Robert Farquharson enjoying special times with members of his family (e.g. his sisters, his estranged wife, Cindy Gambino, and particularly, his children), have been posted on the Facebook site. One photograph is of Robert Farquharson with his boys opening presents on Christmas day and the caption of another photograph posted on the site reads: 'Bailey fast asleep cuddly with Robbie. So cute!' (extonmarks 2008d). What is significant about the deployment of these particular images is that they are offered as a kind of popular or extra-legal proof of Farquharson's innocence. The story that these images are assumed to tell is: this is what a happy family looks like; Robert Farquharson is a happy, family man.

At the time of writing this article, the group's members had increased to 85. As illustrated by one media report, it is noteworthy that 'the group has no wall activated' most likely, the journalist surmises, arising from well founded concerns over the need to deter visitors from wanting to join the group and post slanderous material about Robert Farquharson (Smith 2008). Such a situation occurred recently when Victorian Brendan Sokaluk accused of lighting a fire in Churchill, Victoria, that killed at least 11 people, became the focal point of on-line calls for 'vigilante' justice (Moses 2009a).⁵ Users of the Supporters of Robert Farquharson Facebook site are advised therefore that if interested in 'more information' or to be involved in 'discussion' about the case, they should click on the link provided, which takes them to another 'pro-Farquharson' website where they are invited to 'leave a response' via email.

The 'pro-Farquharson' website was established by an anonymous supporter who wasn't a family member or necessarily a close friend of Robert Farquharson prior to the event of the boys' deaths, but a sympathetic follower of the case (McNamara 2008; Smith 2008). The website advocates that Farquharson is innocent of the crimes for which he was charged and convicted and promises users that by 'showcasing the reasonable doubt evident in the trial', 'the truth will begin to emerge' (extonmarks 2007a). A close-up image of a cluster of badges worn by family and friends on the day the jury delivered its verdict, and on which are written the words 'Robbed', 'In Rob we Trust' and 'The truth will set him free' (Bice 2007c; Matthews 2007), are key to the website's public outreach initiative, which is to free Robert Farquharson. Key to the Internet campaign and appeal for Farquharson's innocence is the redeployment of what are essentially legal images in a cultural context (e.g. on a user

⁵ The group encompassing in excess of 2,000 members used social networking site Facebook to post photographs and other personal details including Sokaluk's home address in a bid for the arson suspect 'to be burnt at the stake' (Andersen 2009). This move came in defiance of a suppression order that was issued by a Magistrate prohibiting such personal details from being made public (Collins 2009; Hagan 2009a; Iaria et al. 2009; Moses 2009b).

generated website). Such a move can be understood as taking place in the midst of what Greer recently referred to as a 'volatile climate', one in which victim's families and friends are finding ever new ways to articulate the grief and trauma produced by crime, but also, and perhaps more importantly, issues of crime and justice (Greer et al 2007:5). Moreover, these issues of guilt and innocence are being produced '[i]n the midst of rapidly developing technologies across a 24/7 mediascape, and multiplying screens and surfaces' (Greer 2007:5). This interesting development invites the question whether, and to what extent, the courts themselves ought to be more attuned to the proliferation of user generated technologies such as blogging, social networking etc. in the public's calls for 'on-line' justice.

One of the fascinating features of the Internet campaign is the website's slogan. The website, aptly named *Fact Before Theory* (extonmarks 2007a), draws on the defence counsel's opening remarks to the jury who were told to have regard for the 'facts first, theories later' (*Farquharson* trial transcript 2007:311), and were further instructed 'to focus on facts before feelings' (*Farquharson* trial transcript 2007:319).⁶ In drawing on this legal frame, the website creates an opportunity for the mobilisation of a new (counter- or extra-legal) narrative and representation of crime and justice, one that seeks to reposition Robert Farquharson not in the role of the father who failed to save his children from drowning, but as a happy, dedicated, family man who doted on his children.⁷ To achieve this end, the website operates as a blog giving users access to 'recent posts', updated 'blog statistics' replete with links, arranged according to month and year including archival material pertaining to the case. Some of these links take users to key media articles that were published about the case, while the content of others are essentially legal materials such as the Full Statement of Grounds of Appeal in the matter of *The Queen and Robert Farquharson*, which lists the 31 points for argument against the conviction (extonmarks 2008h).

In the opening posts of the blog, users are advised that 'grave doubt' in the trial of Robert Farquharson exists. In another strategic move that makes an obvious appeal to what one journalist writing about the McCann case recently described as the 'sleuthing instinct' or 'Miss Marple' that resides 'inside all of us' (Macintyre 2007), each 'post' to the site canvasses issues of concern to Farquharson's defence counsel. It is in this way that users are encouraged (even expected?) to become personally involved in what might be described as a kind of virtual (quasi?) adversarial process. As the opening quote to this section illustrates, users are told there is a difference between 'having an opinion and ... having an opinion with reason'. Clearly, the website's author is seeking to draw attention to the disputed expert evidence at Farquharson's trial, but it is not my intention to canvass these issues here. Rather, what interests me are the strategies used to raise public awareness about the case. In a manner similar to the ways in which a jury are instructed by legal counsel to distinguish 'fact' from 'fiction', 'opinion' from 'reason' etc., users are given 'theory alerts' so they too are able to separate out which statements can count as 'true' and which are deemed a 'falsehood'.

⁶ When giving his opening address to the jury, defence counsel told them 'don't feel that you're going to have to go into your shell and just be pushed around by experts. You're not. You will be able to assess them if you pay attention to the detail, that's why I say facts before theories. The facts come first (Defence counsel's opening address to the jury *Farquharson* trial transcript 2007:314).

⁷ Hence, the objection taken by the author of the *Fact Before Theory* website to the release of a book by true crime writers Lindy Cameron and Fin J. Ross called *Killer in the Family* that features Robert Farquharson and his children on the cover (Anonymous 2008; see also extonmarks 2008g).

A specific example can be found on the homepage of the Fact Before Theory website where it is revealed that the statement, ‘She believes he is innocent because he was a “kind, loving dad”’, is ‘fact’ as are the words ‘Cindy has said there was no animosity in their relationship at the time of the deaths’. Whereas, the view that ‘she [Cindy] clings to the belief he is innocent because she cannot accept that he is guilty’ is tagged: ‘Theory alert!!’, ‘Theory alert!!’. While I am supportive of public initiatives to identify potential miscarriages of justice (on the ground of, for example, police misconduct, corruption or abuse etc.), it is well to ask, what might be the implications, if any, of such user-generated on-line communications of injustice? For what is at stake in the mantra, ‘fact before theory’, is an assumption that ‘facts’ come before theory as if somehow prior to, and independent of, the event of their narration. My discussion of the Fact Before Theory website attempts to highlight, therefore, the role that user-generated technologies can play in re-presenting legal issues of guilt and innocence. Critical attention to the idea of law as a site for the production of competing narratives illustrates the ways in which the evidence (whether in the form of testimony or images) that is presented in a criminal trial doesn’t simply ‘speak for itself’ (Biber 2007:10-11). Rather, as Sarmas explains, ‘[t]he emphasis on narrative rather than “facts” or “rules” ... problematises the distinction between them’ (1994:702) and reveals the ways in which the statement of the facts are reformulated by legal counsel into recognisable story forms.⁸ The Fact Before Theory website itself highlights, therefore, crucial issues and prejudices regarding the relationship between ‘fact’ and ‘theory’ and in so doing denies or at least devalues the act of interpretation (narration) that, as Biber reminds us, necessarily accompanies the act of looking at images to prove something (2007:5). Consider, for example, the furore surrounding what came to be somewhat disparagingly referred to throughout the Internet campaign as the ‘Extonmarks’.

The ‘Extonmarks’

It is worthwhile providing some brief background details concerning the debate about what, precisely, could be seen in the forensic photographs used by the prosecution at the trial to build a case against Robert Farquharson. These concerns surrounding the use of forensic photographs of the geographical environment to establish the legal requirement to provide evidence of guilt were first raised at the trial by Farquharson’s defence counsel and have continued through to the Internet campaign and appeal for Farquharson’s innocence. The forensic photographs in question showed a number of yellow marks made by Geoffrey Wayne Exton, a Sergeant with the Major Collision Investigation Unit (MCIU) at Glen Waverly, who was among the first of several investigating officers to check the scene for clues left by Farquharson’s vehicle. Sergeant Exton testified for the prosecution that he made markings with a spray can of yellow paint to show tyre marks he observed on the aggregate surface of the highway that indicated the point and angle Farquharson’s vehicle left the highway, and the arc or path the vehicle travelled before it went into the dam (*Farquharson* trial transcript 2007:618-732). Based on additional observations of the grass between the highway and the dam, he also testified to a lack of marks indicating that grass had been disturbed as a result of the car locking up and skidding (e.g. there was no evidence of braking) (*Farquharson* trial transcript 2007:618-732).

⁸ There is a diverse and growing literature dedicated to analysing legal storytelling, the relationship between law and narrative and ‘law and literature’ approaches. For some compelling examples of that extant literature, see: Scheppele (1989), Jackson (1990), Papke (1991), Morgan (1997), Puren & Young 1999; Philadelphoff-Puren & Rush (2003). See more recently: Eades (2008), who advocates a sociolinguistic approach to analysing the ways in which stories are mobilised in the courtroom.

The photographs taken of the ‘yellow marks’ were made under less than optimal conditions given that it was dark, around 9.45 p.m., and the only lighting in the area was that provided by the State Emergency Services and the use of a torch by an investigating officer, Senior Constable Kok, also a police officer from the MCIU (*Farquharson* trial transcript 2007:441). Senior Constable Kok was questioned at length during cross-examination by defence counsel concerning his role in assisting Sergeant Exton when making the ‘yellow marks’. SC Kok testified that he assisted Sergeant Exton to identify the significant marks, but that he didn’t actually make any marks himself (*Farquharson* trial transcript 2007:551). He was then shown a photograph depicting a close-up image of some yellow marks (Photograph No. 4) and asked to comment whether, in his view, the marks in the photograph (made by Sergeant Exton) were drawn with ‘mathematical precision’. He said he didn’t know (*Farquharson* trial transcript 2007:567).

SC Kok was next invited by defence counsel to speculate further about the manner in which the yellow marks were produced by Sergeant Exton, whether the marks were made with a kind of ‘kush, kush, kush’ action implying perhaps haphazard (even sloppy) police practice. SC Kok reluctantly agreed. He was then shown another photograph depicting the same yellow marks (Photograph No. 3) and invited to compare it to the close-up images of the yellow marks shown in the earlier photograph (Photograph No. 4), which he did. He was then asked whether he could see in Photograph No. 4 ‘an area of possible disturbance of the ground between those yellow marks’ (*Farquharson* trial transcript 2007:568) to which he responded, ‘they’re the marks that I pointed out to Sergeant Exton’ (*Farquharson* trial transcript 2007:569). Changing tact in an effort to induce uncertainty in the minds of the jury about what, precisely, could be seen in the photograph, the defence counsel reasoned that ‘just observing it’ (Photograph No. 4) you are ‘unable to make any comment about whether that was one hour, two hours, six hours or 12 hours old, or more, is that correct?’ The witness replied in the affirmative (*Farquharson* trial transcript 2007:570).

It is perhaps a moot point that the role of cross-examination within the adversarial trial is to seek to draw attention to problems of validity and reliability by inviting witnesses to explain their evidence, to challenge them about the interpretation of that evidence or by calling another witness (who may or may not be an expert) to rebut the evidence.⁹ From defence counsel’s point of view, in the *Farquharson* case the purpose of cross-examination was to create reasonable doubt in the minds of the judge and jury by demonstrating that competing interpretations could be mobilised about what had produced the various marks in the aggregate, in the grass etc.

Defence counsel was again able to cast doubt on the prosecution’s ‘reconstruction evidence’ during cross-examination of Sergeant Exton who was also challenged at length about what could be seen in the forensic photographs showing the yellow marks and particularly, about what, precisely, had produced the presence of other marks in the aggregate (a policeman’s boot, for instance). Like SC Kok, he was shown Photograph No. 3 and asked by defence counsel if he could see ‘a mark underneath one of the yellow bits of paint’ (*Farquharson* trial transcript 2007:645). He said he could. He was then shown Photograph No.4 and asked to point out for the jury ‘where the bit is that you drew yellow paint over’. He replied that it wasn’t in Photograph No. 4 and motioned towards Photograph No. 3 instead. Insisting that the witness ‘have a look at the mark in Photograph 4’, defence counsel asked him to confirm the presence of ‘some visible disturbance to the surface of the

⁹ For a recent discussion on the limitations with incriminating expert opinion evidence and adversarial criminal trial, see: Edmond et al. 2009:362.

aggregate', which he did (*Farquharson* trial transcript 2007:646). He was next asked whether or not 'the edges' of the 'disturbance' were 'defined' whereupon Sergeant Exton replied, 'I would say it's each side of the mark'. When asked again to look at Photograph No. 4 and speculate about what, precisely, had made the 'disturbance in the aggregate', Sergeant Exton declared that he had 'just answered the question'. Trial questioning continued along similar lines for some minutes until defence counsel insisted that Sergeant Exton 'just deal with [his] question'. At this point, Sergeant Exton turned to His Honour, in apparent exasperation, and explained:

[A] photograph and flash can take away what you can see from different angles, as has happened in this particular area. And as I indicated before, standing above it you couldn't see it, but I knew exactly where it had left the road and I've put the yellow paint mark on the wrong angle (Cross-examination of Sergeant Exton *Farquharson* trial transcript 2007:648).

As the above quote illustrates, Sergeant Exton conceded he knew where he was supposed to make the yellow paint marks - it was just that he put the paint on the 'wrong angle'. Just as Sergeant Exton is asking the judge and jury to believe him when he says he 'knew exactly where it [Farquharson's vehicle] had left the road', it is just that he made a 'mistake', so the author of the Fact Before Theory website explicitly refers to the 'mistake' as proof that Robert Farquharson is innocent. It is at this point that the narrative of injustice being mobilised by the author of the Fact Before Theory website gains critical traction.

Included within the archive for May 2008, for example, is a post with the title 'Police theory smashed, what really happened' (extonmarks 2008b). Some of the same forensic photographs used by the prosecution at the trial to fulfil the legal requirement to provide evidence of guilt have also been posted on the site. The story that is attached to what are essential legal images (albeit redeployed in a cultural context, on the Internet) is quite simply the opposite to that mobilised by the prosecution at the trial. In order to 'show very simply just how wrong they [the Police] were', for example, users are invited to speculate on the dubious nature and quality of the images beginning with the author's 'personal favourite', 'Extonmarks'. A total of five images are included in the May 2008 archive. It wasn't until I saved a copy of each of the images to my office computer that I realised that the forensic photographs had been given titles. The forensic photograph showing the 'yellow marks' is renamed: 'Incompetent'. The titles of the other jpg files read: 'Majorstuff', 'damn-copy', 'grass-copy' and so on. The accompanying text operates to deliver a narrative which tells a story of police incompetence and 'tunnel vision'. It is somewhat ironic that the website's author feels the need to apologise on a number of occasions for the poor 'photo quality' of one particular image and to ignore Robert Farquharson's head, which is in the way (extonmarks 2008b). This narrative of police incompetence gains momentum in claims advanced on the Fact Before Theory website concerning the prosecution's 'three steer theory'.

The 'Three Steer Theory'

Acting Sergeant Urquhart gave evidence for the prosecution based on his 'initial conclusions' about the path or 'arc' travelled by Farquharson's vehicle. These conclusions were that the driver of the vehicle was conscious (rather than unconscious) when the vehicle veered off the road and went into the dam. This interpretation was formed on the basis of 'physical evidence' he observed at the scene and his observations of the car: that is, that 'there was no physical evidence on the surface [on the grass] that indicated an emergency application of the brakes causing the wheels to lock and causing the tyres to skid' (*Farquharson* trial transcript 2007:1821), that the 'keys were in the ignition and the ignition had been turned to the off position', that the 'handbrake was not engaged', and 'the

headlight switch was in the off position', as was the heater (*Farquharson* trial transcript 2007:1833).

Acting Sergeant Urquhart also testified that his role in the investigation was to make 'an independent assessment of any marks that [had] been made prior to his arrival'. On the basis of this assessment, Sergeant Urquhart affirmed the presence of 'the two sets of [yellow] paint marks' (made by Sergeant Exton) and conceded that while '[i]t was quite obvious [to him] that the angle that they'd been marked out on was incorrect' he 'certainly concurred with the position of them' (*Farquharson* trial transcript 2007:1830). Sergeant Urquhart then explained to the jury how he conducted three tests involving the driving of a red 1990 Holden VN Commodore along the same road that Farquharson's vehicle travelled at different speeds (the first test at a speed of 64 kilometres per hour, the second at 82 kilometres per hour and the third at 101 kilometres per hour). He further told the jury that he concluded on the basis of these tests that for the car 'to diverge sharply off to the right towards the dam', there would have had to have been 'a steering input to the right by the driver' (*Farquharson* trial transcript 2007:1846).

Sergeant Urquhart then explained how he was responsible for the creation of a scale plan, which is typically used to reconstruct the scene of an accident in those instances where the investigator does not attend the site. He offered that a scale plan allows survey data of the scene (the geographical environment) to be captured by an instrument known as a Geodimeter or RiScan 3D laser scanner (and downloaded onto a computer with the aid of computer modelling software (*Farquharson* trial transcript 2007:1838). Sergeant Urquhart said he inputted the data showing the 'yellow marks' made by Sergeant Exton and used the computer modelling software PC Crash to 'prepare various simulations to assess the vehicle's speed and steering input required to simulate the vehicle path that was travelled' (*Farquharson* trial transcript 2007:1850). Using three different simulation speeds (60 kilometres per hour, 80 kilometres per hour and 100 kilometres per hour), he stated that a separate 'simulation was undertaken whereby the path that the vehicle would have followed was replicated' (*Farquharson* trial transcript 2007:1850-1851). The DVD showing the computer generated simulation of a dissimilar vehicle veering left, not right, off the highway where Farquharson's car is believed to have left the road was next shown to the jury (*Farquharson* trial transcript 2007:1857).¹⁰ It was on the basis of the computerised simulation ('Exhibit O – Computer simulations of vehicle paths') that Sergeant Urquhart formed the opinion that 'there were three distinct steering inputs causing the vehicle to follow the path that it has followed' (*Farquharson* trial transcript 2007:1870-1871).

Having pledged to dispute the opinion evidence given by Acting Sergeant Urquhart, counsel for the defence sought to rebut his testimony by calling another expert witness, David Axup, a Former Police Superintendent and independent traffic analyst, who contradicted what was posed by the 'engineering evidence' led by the prosecution about the path and steering inputs of the car as it left the road (Cooper 2007i; *Farquharson* trial transcript 2007:2184-2311). David Axup testified that the aerial photos depicting 'the rolling tyre prints' ('the Peters photographs')¹¹ left by Farquharson's vehicle in the grass

¹⁰ The police video evidence was also published in the media (see Cooper 2007d).

¹¹ 'The Peters Photographs' is a reference to the discovery of a second set of photographs that were taken by Sergeant Bradford Peters, a police officer from the MCIU, a few days into Farquharson's trial. Sergeant Peters testified for the prosecution on the basis of his observations of 'rolling tyre prints' left by Farquharson's vehicle that he saw no 'signs of the application of emergency braking by the driver of the vehicle' (*Farquharson* trial transcript 2007:897). Sergeant Peters was also responsible for the production of a set of photographs taken on the night in question (on Monday 5 September around 11:00pm), which he subsequently

showed a constant arc to the right (and not to the left as Urquhart presupposed above) that could conceivably require no steering input whatsoever (*Farquharson* trial transcript 2007:2199-2200). Just as defence counsel was able to mobilise competing interpretations about what conclusions, if any, could be drawn from the 'reconstruction evidence' presented by the prosecution at the trial,¹² this same strategy underscores the narrative of injustice mobilised in the Internet campaign and appeal for Farquharson's innocence. As illustrated in the archive for October 2007, for example, the post with the headline, 'Food for thought', 'makes special note of the evidence given by David Axup' that 'found ... that it was likely the car curved on an arc' (exonmarks 2007f). The article goes on to list 'other facts' that 'also help Axup's version of events'. Among these is 'Police mistake number 2', an explicit reference to Exton's admission that he made 'major mistakes when marking what he believed were tyre prints [from Farquharson's vehicle] with his now infamous yellow paint'.

Conclusion: Guilt and Innocence in a New Media Age

In the midst of rapidly developing production technologies across a 24/7 mediascape, and multiplying screens and surfaces, the visual becomes paramount. In a reference to the work of Stuart Hall, Greer et al. note that while there is no escaping the 'politics of representation', a scholarly engagement with it demands more than merely accounting for the visual; it requires theorising the complex construction and dissemination of visual media and carefully unpacking their connections to crime and crime control (2007: 5).

At one level, this article has canvassed a number of challenges facing the police investigation in the Farquharson case that suggests a clear need for future research that systematically examines police practices surrounding the capturing of evidence of the geographical environment that is later relied on in court to provide information and insight

downloaded onto a CD-Rom, labelled, and also copied onto his hard drive at the Major Collision Unit (*Farquharson* trial transcript 2007:897). Following a briefing informing him that the investigation of the scene was to be taken over by the homicide squad, he was requested to return to the site the next day with Senior Constable Curtis, also from the MCIU, to take a number of measurements of the scene using what's called a RiScan 3D laser scanner' (*Farquharson* trial transcript 2007:897-899). Sergeant Peters was also responsible for the production of a second set of photographs of markings observed at the scene – rolling tyre prints – during daylight rather than night time the following day. 'The Tuesday photographs', as they came to be described, referred to a booklet containing 29 photographs (*Farquharson* trial transcript 2007:900). Following his return from the scene to the MCIU in Melbourne, Sergeant Peters testified for the prosecution that he did the same with these photographs as he did the day before with the earlier set of photographs. That is, downloaded them onto a CD, created a directory within the job file on the hard drive, and then copied the photographs on the CD into that directory (*Farquharson* trial transcript 2007:903). When cross-examined by Defence counsel, however, it emerged that these images had 'mysteriously' remained in that file in the office computer for two years, only to emerge a few days into the trial (Tuesday 28 August 2007) as 'evidence' (*Farquharson* trial transcript 2007:905). When asked during cross-examination by Defence counsel about what, precisely, could be observed in these photographs, Sergeant Peters affirmed that there had been some degradation in terms of the clarity of the 'yellow paint marks' (*Farquharson* trial transcript 2007:909) but that he was unable to comment whether it looked like 'someone has scrubbed those marks with a boot' (*Farquharson* trial transcript 2007:910).

¹² At one point during the trial, Acting Sergeant Urquhart conceded that 'the scale plan' was inaccurate and that 'the Peters photographs' more accurately represented what was visible at the scene (*Farquharson* trial transcript 2007:1875). This concession enabled Defence counsel to make an overall incriminating point; that is, that the road tests performed by Sergeant Urquhart (e.g. 'driving his vehicle down [the road] three times') were of 'no value whatsoever', a proposition the witness 'strongly' disagreed with (*Farquharson* trial transcript 2007:1879).

into culpability for homicide.¹³ As highlighted above, lighting provisions at the scene were somewhat inadequate and due to less than optimal circumstances it took several hours for the case to be handed over to the homicide squad, resulting in a delay of the crime scene log detailing the comings and goings of investigators and vehicles to and from the site near where the bodies of Jai, Tyler and Bailey Farquharson were recovered from the dam (*Farquharson* trial transcript 2007:441, 897-899). In light of this it could be argued if the police investigators in the Farquharson case had access to more resources (or even more sophisticated resources) a more definitive reading of the scene could have been achieved. As cultural and legal theorist Alison Young commented in her 1996 study *Imagining Crime*, the promise of technology is that it ‘can overcome geographical limits (through the immediacy of the telephone, the television, the Internet). It can photograph the invisible and the unknowable (the endoscope, ultrasound, the infra-red camera)’ (Young 1996:20; see also Biber 2007:114-115).¹⁴ The point I have sought to emphasise here is less concerned with whether, and to what extent, the ‘evidence’ adduced by police officers from the MCIU who investigated the circumstances of the children’s deaths was created under ‘proper’ conditions or even according to ‘standardised protocols and procedures’ (as, for example, argued by Spring 2001:282). By successfully making visible the constraints, uncertainties, competing interpretations and indeed ‘mistakes’ when making markings at the scene of the boys’ deaths, this article makes a small but significant contribution to long held debates in criminology and law about the limits of photography as a ‘technology now utilised in everyday police practice around crime scene examination’ (Scott Bray 2006b:5; see also Biber 2007). As Scott Bray reminds us, when ‘[l]oosened from their legal context as forms or evidence or identification, the images must be coupled with other facts or knowledge’, which dissolves the possibility of ‘any definitive reading of “crime” or “criminality”’ (2006b:5).

For the cultural criminologist interested in the interconnections between user generated technologies and other forms of digital media and the meanings of, and responses to, crime (see, e.g., Young 1996; Biber 2002; Greer 2004; Ferrell et al. 2004; Biber 2006; Scott Bray 2006a; 2006b, forthcoming; Biber 2007; Greer et al. 2007; Ferrell et al. 2008; Young 2008; Hayward & Presdee 2009), it is certainly significant that in the Farquharson case one forensic technique (accident investigation) has been recorded by another technique (photography). To assume, however, that meaning has somehow been ‘lost’ or ‘distorted’ during the process of translation from one forensic technique to another would, as one commentator recently remarked, simply leaves the ‘truth-value’ of the photograph intact only to repeat the ‘worn-out struggle between truth and falsity or between image and reality’

¹³ While there is a growing body of research that focuses on traffic accidents and how accident reconstructionist’s decide issues of culpability and non-culpability (see, e.g., Mitchell 1997; Wählberg & Dorn 2007), there are few, if any, studies that consider what proportion of crash investigations are deliberate and give rise to charges of culpable homicide or murder made against the driver of the vehicle. The Farquharson case, therefore, offers rich and absorbing material for an analysis of this kind.

¹⁴ This assumption underscores initiatives taken by Victoria Police to confront the challenges posed by the introduction of new technology and the rise of widely available digital visual devices (particularly since the demise of analogue technology). According to an editorial in the recent issue of *Police Life* magazine, such developments need to be met with new and more sophisticated methods to enable police to more readily identify an offender captured on CCTV footage, or to respond to ‘a new type of victim’ in cases where ‘evidence’ of the alleged offender’s identity or alleged criminal behaviour has been recorded with a camera phone (Broom & Henshaw 2008).

(Young in Biber 2007:viii, ix).¹⁵ This leads me to a related point that has gained traction in critical attention to the relationship between crime and its images; that is, images are intertextual; texts, whether written or visual, are read and interpreted in light of other texts (Werner 2004:1).

A brief example to illustrate this concluding point can be found in the archives of the Fact Before Theory Internet campaign that promises to ‘showcas[e] the reasonable doubt that exists in the case’. A number of posts have been given titles ‘Walking a Thin Blue Line’ (extonmarks 2007e), ‘Ordinary Police Integrity’ (extonmarks 2008e) and ‘Policy Theory Smashed, What Really Happened...’ (extonmarks 2008b). The strategy being utilised by the website’s author here is one that makes an allusion to another text primarily, I would argue, for its affective content. The intertextual reference to the 1988 documentary film directed by Errol Morris with the same name, *The Thin Blue Line*, represents an attempt on the part of the author of the Fact Before Theory Internet campaign to evoke the affective response that is delivered through the narrative of the film. This is a narrative and representation of crime and injustice. Originally, Morris was intending to produce a documentary about a prosecution psychologist, Dr James Grigson, also known as Doctor Death. The director’s investigations for the documentary film, *The Thin Blue Line*, led to the unravelling of a ‘tunnel vision’ mentality on the part of police and the revelation that a ‘miscarriage of justice’ had occurred, by claiming to have similarly uncovered ‘tunnel vision’ on the part of police in the Farquharson case.¹⁶ In the same way, the author of the Fact Before Theory website can be seen to be capitalising on the emotional catharsis that the film delivers – when it is revealed that a number of witnesses had perjured themselves when giving their testimony. This is somewhat ironic given that on the one hand users are warned:

Waging a war of sympathy or of anger only gets people believing one side of the story based purely on their emotion. You should believe something because that’s what the facts indicate, not because of sympathy or hatred that has no basis (extonmarks 2007f).

Yet elsewhere, the website’s author takes specific issue with what is construed as an excessive emotionalism on the part of media in its pre-trial publicity (extonmarks 2008f).

One can only speculate about the likely impact, if any, of the counter-narrative and representation of crime and injustice mobilised in the Fact Before Theory Internet campaign on a jury should Robert Farquharson be granted a re-trial. It is hoped that this article has made a useful contribution to discussions about the role of new media in bringing questions of guilt and innocence, crime and justice or injustice as the case may be to the attention of the legal and wider community. As recently noted by Lumby (2008), in 2005, Chief Justice of NSW, Jim Spigelman, canvassed the issue of whether, and to what extent, the internet

¹⁵ This is the purported view adopted by Associate Professor Gale Edward Spring (2001), Program Leader of Scientific Photography at RMIT University, whose testimony at the Farquharson trial also sought to cast doubt on the Crown’s ‘three steer theory’ (*Farquharson* trial transcript 2007:2311-2330). Discussing the challenges posed by ‘transient evidence’, evidence that exists for only a short period of time, according to Spring, if a photograph is to have some basis in science, it must be created as accurately as possible, and ‘the original photographs [should] be of the highest quality’, particularly if the significance of the evidence is not known when first witnessed by the investigating officer (Spring 2001:282). Thus he concludes that ‘[i]f done properly, the photograph needs little or no explanation. It can tell the complete story’ (2001:282). Yet, as numerous cultural scholars on the use of photographic evidence in court have made clear, law has yet to develop an adequate jurisprudence of the image (see in particular: Young 1996; Biber 2007; Edmond et al. 2009; Scott Bray forthcoming).

¹⁶ See, for example, ‘Reconstruction’ Archive for January 2008 *Fact Before Theory* <http://factbeforetheory.net/2008/01/29/reconstruction-page-new/>

poses a significant challenge to conventional criminal trials. He concluded that the internet posed very real challenges for the administration of justice. This view certainly renders such warnings given to the jury by the presiding judge at the commencement of a criminal trial somewhat futile. Addressing the jury in the Farquharson case, Justice Cummins commented on the likelihood of there being 'a fair bit of media attention given to the case' (*Farquharson* trial transcript 2007:263). He then instructed them that although they were entitled 'to look at' that media coverage, they should not treat what they see or read as 'the evidence' in the case. Rather, 'the evidence is what you hear in court' (*Farquharson* trial transcript 2007:264). If we are to follow Lumby, increasingly 'media consumers have become media producers. How do you quarantine jurors in this new media age', be it downloads, Google searches, social networking sites or blog posts (Lumby 2008; see also Lumby 1999)? Lumby's concerns about the capacity of the internet to undermine a court's ability 'to control what opinions, factoids or facts jurors have access to' (Lumby 2008) are echoed in my discussion of the Farquharson case. As such, courts could be far more attuned to how issues of guilt and innocence are being renegotiated in this 24/7 new media landscape not only by family and friends of victims of crime, but also the (alleged) offender.

A perhaps minor point also highlighted by the discussion above is that 'a photograph's relationship with truth is a troubled one' (Biber 2007:19; see also Edmond et al. 2009:364). Rejecting law's claim of possessing an impartial eye in which 'nothing impede[s] its capacity to see', Biber explains how '[i]n most cases':

where a photograph is clear, its evidentiary capacity seems assumed. At Mundarra Smith's trial and appeals, where the photographs are unclear, instead of scrutinising the place of photographs in the evidentiary canon, the courts devoted all their attention to determining who is permitted to look at and speak about an unclear image (2007:7).

Whereas in the Smith case discussed by Biber, the issue for the court was a question of who has the requisite expertise to look at and interpret an image for the purpose of establishing guilt or innocence, my discussion of the Farquharson case points to an implicit awareness on the part of defence counsel that sometimes photographs are 'manifestly inadequate' for deciding whether or not a person is guilty of a crime. If we take the point made by Biber, among others (see also Scott Bray 2006a; 2006b), that there are real dangers and limits in the assumption that 'we can look at a photograph and draw a conclusion' (2007:xi) (about guilt or innocence in a trial context), then what are we to make of the reliance on these same forensic photographs in the Fact Before Theory Internet campaign to draw the opposite conclusion (e.g. that Robert Farquharson is innocent, not guilty)?¹⁷

A few weeks after the jury delivered its verdict, Cindy Gambino (Farquharson's estranged wife) agreed to be interviewed by Peter Overton for Channel 9's *Sixty Minutes*

¹⁷ Notwithstanding the contradictions highlighted in the public appeal and Internet campaign for Farquharson's innocence, I do not wish to imply that this was anything but an extremely sad and tragic case. The case's prominence among family and friends, including institutions such as the police and the media, and also the wider community stemmed from an absence of reason that could immediately explain why a loving, doting dad would want to harm his three children (Burstin 2007). This point that the separation between Robert Farquharson and Cindy Gambino was by all accounts an 'amicable' one was emphasised in the media (Hunt 2005). Also of note was that, the more typical warning signs, such as the presence of a prior history of child abuse or domestic violence on the part of the perpetrator, or a dispute over custody of, and access to, the children of the relationship (see, e.g., Alder & Polk 2001; Johnson 2005; Cavanagh et al. 2007), were not apparent in the Farquharson case. The event of the deaths of the three children was shocking and tragic precisely because it was both difficult to locate it within a credible narrative of events and because no-one predicted that the children might be in danger.

program (Pike 2007). When asked about her reaction to the verdict, including what she thought about the forensic scientific evidence presented by the prosecution, she said she ‘wailed [for both Robert and the kids] – the honour of my children’. She said she didn’t want her ‘boys to be remembered as those Farquharson boys who were murdered by their father’. She then further reflected that the jury’s verdict was ‘not the one [she] wanted’, that the evidence meant ‘nothing’ to her; as far as she was concerned, Rob was ‘innocent’ and her children died as a result of ‘a tragic accident’ (*Channel 9 ‘Sins of the Father’ 2007*; see also Kissane 2007a). If we are to take up the insights of Greer et al., clearly the launch of the Fact Before Theory Internet campaign represents one clear example of how issues of crime and justice are being re-negotiated in the midst of a ‘volatile climate’, one in which the public are finding ever new ways to articulate the grief and trauma produced by crime and justice (Greer et al. 2007:5). To this, I would add the articulation of issues of injustice. As Greer reminds us, ‘while whole categories of individuals are stigmatised, criminalised and excluded on the basis of their look, their style, their demeanour – their perceived “risk” or “dangerousness”, both old and new media technologies present an opportunity to engage collectively in virtuous identities through the generation of a shared or “imagined” sense of community (through insisting on the non-identity of those “not like us”)’ and also, as this article has explored, through insisting on the identity of those, like Robert Farquharson, who are imagined to be just like the rest of us.

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