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THE MEDICO-LEGAL SOCIETY OF VICTORIA

THE ATHENAEUM CLUB

MELBOURNE

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Expert Evidence - A Cautionary Tale

PRESENTED BY: The Hon Mr Frank Vincent AO QC

MERRILL CORPORATION AUSTRALIA
4/190 Queen Street, Melbourne.

Telephone: 8628 5555
Facsimile: 9642 5185

1 "Expert Evidence - A Cautionary Tale"

2 MR MOLONEY: Members and guests, welcome to the second General
3 Meeting of the Society for 2012 and to the first meeting
4 to be held at the Athenaeum Club in many years and may I
5 add my appreciation to the members of the club for the
6 privilege of returning to these wonderful surroundings.

7 Tonight's presentation is entitled "Expert Evidence
8 - a Cautionary Tale" which had not actually been committed
9 by anyone. Our speaker tonight is well placed to speak
10 with authority on this case and its ramifications
11 concerning the use of medical and scientific evidence in
12 the courts.

13 The Honourable Mr Frank Vincent has had a very
14 distinguished career in the law and in academia. He
15 signed the Roll of Counsel of Victoria in 1961 and was
16 appointed Queen's Counsel in 1981. In 1985 he was
17 appointed to the Supreme Court of Victoria and was later
18 principal judge of the Criminal Division and member of the
19 Court of Appeal from 2001 to 2009. Justice Vincent (as he
20 then was) served as Chair of the Victorian Adult Parole
21 Board from 1987 to 2001.

22 He has taught subjects relating to the
23 administration of criminal justice and evidence at the
24 University of Melbourne, Monash University and Victoria
25 University and was Chancellor of Victoria University from
26 2001 to 2009. He was appointed an Officer of the Order of
27 Australia in 2006 for services to the law, education and
28 the indigenous community. Of particular relevance to his
29 address tonight Mr Vincent was appointed to conduct an
30 inquiry into the wrongful conviction of Mr Farah Java in
31 December 2009.

1 Amongst his many current roles, he is a
2 distinguished Fellow of Victoria University, Professorial
3 Fellow of the Faculty of Social Sciences and Law in the
4 University of Melbourne and Chair of the Victorian Chapter
5 of the Australian Academy of Forensic Science. Please
6 welcome Mr Frank Vincent.

7 MR VINCENT: When I hear that narrative of my background it
8 reminds me how bloody long I've been around and how old I
9 am getting. In some ways it sounds nice and in other ways
10 it is intentionally depressing. But I thank you for the
11 invitation to speak to you this evening and concerning a
12 single case which arose in Victoria.

13 It was, as you will appreciate from the few comments
14 that have already been made, a quite extraordinary one. A
15 young man was convicted of the crime of rape, sentenced to
16 a term of six years with a minimum non-parole period of
17 four for a crime of which he was not only innocent but
18 which had never been committed by anyone at all. How
19 could that occur and what did it represent to our
20 community and our legal system were questions that I had
21 to consider in the course of the review that I conducted
22 on behalf of the Victorian Government.

23 My involvement in the matter arose because of
24 concerns that had been expressed by Professor Stephen
25 Cordner from the Victorian Institute of Forensic Medicine
26 about the attribution of responsibility for what had
27 occurred to the forensic medical officer who had conducted
28 an examination of the alleged - and in fact as a
29 consequence of our handling of the system - real victim of
30 an offence that had never been committed.

31 At that time and now the Chair of the Council of the

1 Institute was my good friend John Coldrey who recommended
2 that I should be asked to look at the matter on behalf of
3 the Institute. We then sought some approval from the
4 Attorney-General for that process to be undertaken and it
5 was decided that what should occur was that I conduct a
6 full inquiry into the matter.

7 This was quite interesting because it was the first
8 time in my entire involvement with the law that I had
9 actually had the opportunity to examine the entirety of
10 the documentation of the case from every perspective. I
11 had all of the laboratory material; I had all of the
12 police material including those memos and bits and pieces
13 that never other wise see the light of day. I had the
14 entirety of the working documents within the Office of
15 Public Prosecutions and, of course, all the material
16 relating to the trial processes themselves. So I was in a
17 position where it was possible to look at a case from the
18 beginning to the end and to see how this absurdity could
19 have occurred.

20 As it transpired it became patently obvious very
21 early in the piece that Farah Jama could never have been
22 convicted unless everybody involved in the process got it
23 wrong - everyone. All it required was that at one point
24 along this sorry saga that someone came to grips with the
25 reality of the case and maybe something could have been
26 done to avert what eventually occurred but that never
27 happened.

28 It is interesting that none of the mechanisms with
29 which our system is equipped and, indeed, replete and
30 against which the community often rail because they see
31 those protections as being too supportive of criminals and

1 those who may breach the law. None of those mechanisms
2 operated to protect an innocent man. That is very very
3 strong language. It is clear in my mind that it is
4 justified. What happened? I ask you to consider for
5 yourselves.

6 On 14 July 2006 Farah Abdulkadir Jama was a
7 secondary student in his final year. He was of Somali
8 origin, tall, thin and very dark. Now that is relevant in
9 the circumstances of this case. He lived with his Muslim
10 family in Preston. On that night Farah Jama went with
11 some of his companions to a pool hall in Reservoir. They
12 there encountered a young lady who (to put it mildly) was
13 behaving in a very silly way. She said that she had not
14 had the experience of sex with a black man before and
15 wondered what that might be like. I suspect, though I do
16 not know, that she might have been affected by some
17 substance or another at the time and certainly displayed
18 no judgment about the entirety of the evening.

19 Jama was not prepared to have penile/vaginal
20 intercourse with her but he did engage in oral sex in the
21 course of which he ejaculated into her hair. Now that is
22 a nasty little aspect of the case but it is vital in
23 looking at the totality of what occurred. She became
24 upset about that and told her girlfriend who reported it
25 to the police as a sexual assault. They interviewed the
26 girl. They took her to a crisis care unit situated in the
27 Austin Hospital. That crisis care unit was under the
28 control of a body known as the Northern Centre against
29 Sexual Assault. It is not under hospital control although
30 it is within the hospital. Cleaning 919.26.40)an
31 operation of that unit are essentially the responsibility

1 of this volunteer organisation.

2 Forensic samples were taken which essentially
3 consisted of hair clippings although other swabs were
4 secured. That is on the night of 14 July. The particular
5 examination was conducted at somewhere in the region of
6 three o'clock on the Saturday morning. Enquiries were
7 then undertaken by the police and they took a certain
8 amount of time to go through until eventually the
9 realities of what occurred were established; no charges
10 were ever laid against Mr Jama; the young woman recanted
11 the story that she had told because it didn't correspond
12 with what her companions on that night had said had
13 happened in any event and so that disappeared.

14 But that took time. Jama was contacted, as a young
15 man in the pool hall, and what is termed a buckle swab was
16 taken from him for the purpose of DNA identification. On
17 that very same night - because, as I said, this has all
18 happened at about three o'clock on the Saturday morning -
19 on that very same night a 48 year old woman went to a
20 nightclub in Doncaster. It was an over 28s nightclub.

21 I had the opportunity or, indeed, the necessity to
22 examine the video recording, the security camera recording
23 of people entering and leaving that nightclub on that
24 night. I can tell you, without any hesitation at all,
25 that there is no problem that everyone there was over 28.
26 There was not one single 19 year old tall, thin black man
27 or any other shape, size or age of black man in that
28 nightclub in Doncaster. This, you will recall, is quite
29 away from Reservoir and Preston and not only
30 geographically but in terms of the community itself.

31 She entered the nightclub at 10.20. She had been

1 drinking from a bottle of Frangelico that she had taken
2 with her in the car to the nightclub. She had gone there
3 with two relatives. I had my own personal views about
4 drinking Frangelico at any time but drinking it out of
5 tumblers in the carpark has not a lot of appeal. But she
6 entered the nightclub at 10.20.

7 At approximately 10.50 on that night, a half an hour
8 later, she was found unconscious in a locked toilet
9 cubicle, locked from the inside in the female toilets of
10 the nightclub. When she was found to extricate her from
11 that place a member of the nightclub staff had to climb
12 over the top of the toilet cubicle to get to her. She was
13 heavily built and it took two people to transport her to a
14 place where she could be examined.

15 So that is her position. What had she done in that
16 half hour? She had entered the nightclub with her
17 companions. They had gone off to dance. She sat on a
18 lounge for about ten to 15 minutes, according to her
19 estimate; she had another Frangelico while she was there.
20 At the end of that ten or 15 minutes she got up, walked
21 around, was approached by a couple of characters, guests
22 or patrons or whatever you might call them of the
23 nightclub who she rejected and then went over, got herself
24 another glass of Frangelico and was engaged in
25 conversation for a few minutes with other people in the
26 nightclub and that is the last of her recollection.

27 On any version of it she must have had approximately
28 20 to 25 minutes of her time accounted for of the half
29 hour. Well, there she is found unconscious. There was
30 one other piece of information that you need to know about
31 her state on that night and that is that she had taken

1 that day a prescribed dose of Tegretol which she had been
2 taking for some years for a mood disorder. So this
3 material is contraindicated in the presence of alcohol and
4 is capable of producing unconsciousness. She was aware of
5 that but was of the view that providing that she kept her
6 alcohol consumption within a reasonable limit then this
7 was not going to be a problem.

8 Whether she had overstepped it on that particular
9 night because she was drinking her Frangelico out of
10 tumblers is a moot point. The point about it all is that
11 there was an explanation for her presence and her state
12 which did not require the commission of any offence by
13 anybody.

14 She was taken to the Austin Hospital because she was
15 unconscious and they wanted to check her over. When she
16 got there she said "Maybe someone had spiked my drink".
17 As a consequence of that query it was felt that they
18 needed to be careful and so the matter was handled as a
19 possible sexual assault. She was then taken to the crisis
20 care unit in the hospital, the very same unit to which the
21 other person had been taken and at about ten o'clock on
22 the Sunday morning she was examined by the same forensic
23 medical officer who was on call over the weekend and who
24 had examined the young lady on the Saturday morning.

25 The consequences of that turned out to be very
26 dramatic for Farah Jama because when forensic samples were
27 taken from her and subsequently analysed lo and behold a
28 microscopic amount of DNA was found on one of four swabs.
29 It was minute and, indeed, in the context of a
30 penile/vaginal rape the finding of a single sperm ought to
31 have been regarded as somewhere problematic. So that was

1 the situation.

2 A young policewoman had been called to the hotel on
3 the night. She had examined the scene and she reported
4 that there was no sign of any offence having been
5 committed but lo and behold suddenly there is a match on
6 the swab which was said to have been obtained from this
7 particular woman. This set off a process that turned out
8 to be an absolute absurdity.

9 Several other things I ought to tell you just to
10 make it perfectly clear how crazy all of this was. The
11 police were never able to identify a location within the
12 nightclub at which the sexual assault could possibly have
13 occurred. They excluded the prospect that it might have
14 occurred within the toilet block. That was just totally
15 unrealistic. It involved him getting the woman into the
16 toilet block, raping her, replacing her clothes, locking
17 the door of the toilet cubicle from the inside, climbing
18 over the top and escaping from the premises undetected.
19 That didn't happen. There was no other location that they
20 were possibly able to identify where he might have taken
21 her.

22 You have got to realise that the allegation is that
23 somehow or other he has either drugged her or grabbed a
24 semiconscious woman of heavy build and somehow or other
25 moved her to some unidentifiable location, committed the
26 act of rape and escaped and no one saw it. There was no
27 sign anywhere - no one had seen a black person of any age
28 or description in the premises on that night. I had, as I
29 have told you, the interesting experience of observing the
30 culture of these premises and getting an idea of who went
31 there and I don't want to be disparaging of them but some

1 of them looked pretty desperate, let me tell you.

2 Putting it bluntly, what were the odds to a 19 year
3 old black kid from Preston turning up there on a Saturday
4 night on his own and just the sheer likelihood of that as
5 an event raised a number of questions that you might have
6 thought someone would have asked. There was no known
7 connection ever established between Jama and that part of
8 town at all. The police did search for this kind of thing
9 but they found absolutely nothing and there is no reason
10 that there ever would have been.

11 So, I have told you that there was a video
12 surveillance camera at the entrance to the nightclub. You
13 wouldn't want to believe it but there were two periods
14 that night where this camera failed. It failed at the
15 moment - at the time - a half hour period during which he
16 might have entered and it failed at a later point when he
17 might have left and that extraordinary situation. He has
18 got to get in there, the camera has got to fail exactly as
19 he comes in and he has got to do all this and he has
20 actually got to carry out a rape within at most a matter
21 of few minutes and that means locating the victim, getting
22 her to the location, which was unidentifiable, committing
23 the act and then getting away. She, of course, never
24 claims to have seen anything like that.

25 The sheer absurdity of this version you would have
26 thought might have triggered some concerns in the minds of
27 someone but a report came to the police that there had
28 been a DNA match secured. The policewoman in charge of
29 the matter was troubled by that because she couldn't see
30 how this could be right and raised the query with the
31 laboratory. The answer which was given by the laboratory

1 was that there was no contamination of the sample. What
2 they were saying was actually correct but they were
3 confining their assessment to what had happened within the
4 laboratory.

5 No one ever thought of the potential for
6 contamination at any other point. No enquiry was made
7 about it. No full report was ever given in relation to it
8 and, accordingly, that became the absolute infallible
9 mystically profound truth. We cannot know how, when or
10 precisely where this rape was committed but we do know,
11 because the DNA sample tells us, that it has been. The
12 possibility that that piece of evidence itself might lie
13 never entered the mind of a person through the entirety of
14 the case and no challenge was ever made to it on that
15 basis, that it could not be right.

16 In the report that I wrote I said that it reminded
17 me of Ozanam Diaz's statue: there it was alone in the
18 desert, everything around it belied the truth of the
19 inscription on it but that didn't register. But what was
20 even more profoundly significant was that not only was it
21 Mr Jama's DNA but it could be attributed to him with a
22 likely ratio of 800 billion:1. So, it was necessary to
23 get Mr Spock and go into another galaxy before you were
24 likely to be able to get any kind of comparison.

25 So there we go. So what happens with this? In
26 spite of the fact that this does not make sense, the case
27 goes forward to the Office of Public Prosecutions. It is
28 their process in a standard way, although again no one is
29 ever in a position to explain how these things could
30 possibly fit together. One of the more disappointing
31 features that I came across in my examination of the

1 materials was that there was no query ever about any of
2 that and although this was a very special case in another
3 sense there was no query about this special aspect of it
4 either.

5 DNA and other forms of evidence very seldom
6 constitute the entirety of a case. They may constitute
7 the central proof but this case was special. The fact of
8 a rape depended entirely upon the finding of the DNA on
9 the swab taken from the victim but it also identified the
10 perpetrator. How often would you see the single piece of
11 evidence which did both. Did this pose any problems with
12 respect to the use of DNA? How did you apply concepts of
13 reasonable doubt and circumstantial evidence to a case
14 such as this? Was there any learning that might be gained
15 from perusal of reports and other jurisdictions or the
16 literature generally about this subject? Yes, there was
17 but there was not the slightest reference to any of it in
18 the documentation. Nobody ever seemed to look at it at
19 all. There was not one single word or sign that anybody
20 had researched how this evidence of a forensic character
21 ought to be handled.

22 So, the case goes forward. It went through
23 directions hearings. At the direction hearings the
24 defence conceded that there was no contamination of the
25 DNA. Somehow or other they seemed to have totally missed
26 the point and had regarded what was said by the laboratory
27 as definitive of the issue. There was just nothing to be
28 said in relation to that. They did raise an issue at the
29 trial with respect to DNA and arguing somewhat implausibly
30 that the analysis of the findings had been misread by the
31 examining scientist at the laboratory. I mean this was

1 really not a realistic prospect and they called no
2 evidence from any experts to present an alternative
3 position.

4 Although, again, no explanation could be given as to
5 how or when this rape could have been committed there was
6 no instruction with respect to the use of DNA by the trial
7 judge; no reference made to how you relate these kinds of
8 evidence to circumstantial evidence cases which this was.
9 In other words, again total silence with respect to the
10 central issues in it. There had been ultimately a
11 processing, a carrying through without any apparent
12 understanding of the case that was being considered.

13 The jury retired and returned with a verdict of
14 guilty. The evidence given in the defence was that of
15 Jama's Muslim family. They handled themselves very badly
16 in the witness box. There is no great surprise about
17 that. They were saying "Yes, he was at home with us on
18 that particular night" but that was discounted. That was
19 discounted because it didn't matter what the situation was
20 the forensic evidence tells us infallibly that he is
21 guilty of the crime of rape. The prosecutor referred to
22 it as "rock solid".

23 Well, everybody got it wrong all the way through and
24 it was very fortunate that when an appeal was to be heard
25 the matter was referred to a particular person within the
26 Office of Public Prosecutions who suddenly said "Barley,
27 this really can't stand up. It doesn't make sense".
28 "Tell me," said this person "what do we know about the
29 examination that had been carried out in relation to the
30 events of the night before?" Again, there was no clear
31 reference, no particular attempt to look at that. That

1 also I found absolutely amazing.

2 If the allegations were right this young man had
3 committed two sexual offences of a serious character
4 within a period of 24 hours. You would have thought alone
5 that would have involved someone conducting a proper
6 analysis of the two cases. If that had been done maybe
7 the connection between them would have emerged. But that
8 didn't happen. It didn't happen until a very very short
9 time before this matter to come before the Court of
10 Appeal. When it did, the Director of Public Prosecutions
11 moved very quickly to make sure that the hearing date was
12 advanced and that the situation was addressed.

13 There were a couple of victims in this case: the
14 young man Jama, he was unable to pursue his studies and so
15 forth. He then spent almost 18 months in gaol before
16 ultimately he was released and it has made a dramatic
17 difference to his life. Think also about the unfortunate
18 woman involved in it. She was told and came to believe
19 that she had been raped - drugged and raped whilst
20 unconscious. She experienced all the humiliation, all the
21 distress that that would naturally be expected to bring.

22 The end of the process, the appeal is allowed, she
23 was provided with almost no support at that stage and no
24 clear explanation of what had happened. All she knew was
25 that somehow or other her rapist had been released. As it
26 transpired, it wasn't until I was in the course of my
27 inquiry and contacted her to see whether or not she wanted
28 to speak to me that she was given the opportunity of
29 hearing the thing right through.

30 She has been a real victim. She has experienced all
31 the trauma of rape and now she has to adjust to the

1 consequences of the fact that there was nothing ever
2 happened at all and that all of this distress that she has
3 experienced and all that has happened to Jama have been a
4 result of a system that just simply did not work well at
5 all.

6 The case to that extent is alarming in its own
7 right. It is alarming because of what happened to that
8 particular young man but it is also alarming because it
9 raises some very serious questions about the care and the
10 general approach that seemed to have been adopted with
11 respect to that matter. This was a dramatic example for
12 miscarriage of justice. It was able to be exposed
13 basically because of its absurdity but it would have
14 required only a very slight shift in the evidentiary
15 background and perhaps Jama might still be in prison.
16 That, I think, carries a lot of implications for our
17 criminal justice system.

18 How did the contamination occur? Initially,
19 responsibility was attributed to the doctor who took the
20 forensic samples. I was quite satisfied that that was
21 really quite ill-founded. The doctor had taken samples
22 from the first person at about three o'clock on a Saturday
23 morning then gone home, showered, changed her clothes at
24 least twice before she returned to conduct the examination
25 on the next occasion.

26 There was absolutely no reason to suppose that she
27 did not comply with the normal protocols in relation to
28 the conduct of examination and particularly that inference
29 could hardly be drawn in circumstances where it was
30 apparent that the arrangements made for the taking of such
31 examinations were quite unsatisfactory. It was a distinct

1 possibility, in fact a likelihood that there had been no
2 cleaning of the examination room between the two
3 examinations over that period of a busy week, a normally
4 busy weekend one would expect within a hospital like that.

5 The responsibility for cleanliness in hospitals, as
6 people here are well aware, is essentially directed to
7 infection control and not to DNA contamination and so
8 forth and a very different set of protocols is required to
9 ensure that those samples that are taken are in fact
10 reliable.

11 I was quite satisfied that there had been a problem
12 at that level and an almost inevitable consequence given
13 the right combination of circumstances as such as occurred
14 here. The laboratory did their work properly, there is
15 absolutely no challenge to that, but they viewed
16 themselves as being responsible only for what occurred in
17 the laboratory even though some alarm bells might have
18 been ringing when the quantity of material which was
19 located was actually seen and when a query was made the
20 response that was given by the laboratory was effectively
21 that "We didn't do anything wrong. There is no problem
22 here".

23 The police didn't know any better with respect to
24 the potential for contamination in the collection of
25 evidentiary material so they didn't get on to the
26 possibility that there could be a problem. They knew no
27 better because their training was inadequate in relation
28 to that. The knowledge of those within the Office of
29 Prosecutions was clearly as limited and, regrettably, not
30 only was it limited but there was no indication, as I
31 said, that they did what one might reasonably anticipate

1 would be done and that was to conduct an investigation of
2 their own into the way in which evidence of this kind
3 could sensibly be used before it was put before a court.
4 The case went before the jury on this extraordinary basis
5 without being challenged effectively by anyone and,
6 accordingly, you finish up with a catastrophe.

7 A lot has happened since that case. A lot of work
8 has been done to try and improve the situation. The
9 protocols which were then adopted with respect to the
10 collection of samples have been changed and additional
11 protections put in there. There have been additional
12 steps taken with respect to police training and the
13 responsibility for determining whether a case will proceed
14 on the basis of DNA evidence mainly or alone is now in the
15 hands of the Director of Public Prosecutions personally.

16 So there have been quite a few shifts but one still
17 wonders about how carefully some of these matters are
18 processed. Are people being worked under too much
19 pressure or is there maybe an attitudinal thing which
20 arises with respect to someone in the position of a man
21 like Farah Jama? I don't know the answer to those
22 questions and I could only just wonder about them.

23 I hope that this narrative will give you some idea
24 of the significance of this particular miscarriage of
25 justice. It is not just a problem that arose in a single
26 case and I hope that it is not indicative of a far greater
27 malaise within the way in which we deal with our criminal
28 law. Thank you.

29 MR MALONEY: A truly extraordinary case, I am sure you will
30 agree. Mr Vincent has kindly agreed to take a few
31 questions from the floor. We have time for I think two or

1 three.

2 DR BOWCREST: Thank you for that, that was extremely
3 informative and very interesting. My name is Michael
4 Bowcrest and I will preface this by saying I am a medical
5 practitioner and know very little about the law. I just
6 wonder though what the role of this fellow's advocate, his
7 defence attorney or his defence lawyer was and what you
8 think about the performance of that individual or that
9 team, whatever it may have been, in doing their job and
10 their role in being an advocate for this man.

11 MR VINCENT: That's not a bad question, is it? I think the
12 comments that I've made in relation to the prosecution and
13 the system generally must apply to them because it is
14 terribly difficult to understand why if there was any
15 greater knowledge that a concession was made in the
16 hearings at all stages that there was no contamination of
17 the samples. To my mind that was another element. When I
18 made the comments earlier that nobody behaved at the
19 standard that I would have expected, I wasn't really
20 excluding any aspect of it.

21 QUESTION: (Off mic.)

22 MR VINCENT: One of the limitations on the inquiry I had was,
23 of course, I did not have access to the defence material,
24 I had everything else, as I have indicated. But what
25 reasoning they applied was something that was a matter of
26 privilege, I wouldn't be able to get into that. But you
27 will understand that I had my own impressions about all of
28 that but it could only be impressions. I would have
29 thought that there would have been a different kind of
30 examination. If you accept that Jama was not there and
31 you've got this sanity of a case which - and I think I

1 have explained sufficient of the circumstances to make it
2 clear that all you had to do was stand back from this and
3 say "Could this have happened?" and the answer was "No, it
4 couldn't have" and somehow or other you've got this piece
5 of evidence.

6 You would have thought that some - whether you're
7 talking about the prosecution or the defence or the judge
8 or whoever - somebody is going to say "This does not make
9 sense. Where do we go from here?" How can it be that
10 this piece of evidence which stands in stark contrast to
11 everything else known can be right. Not only does it
12 stand in stark contrast to everything else known but when
13 you look at the totality of the circumstances it must be
14 wrong and you'd say "Where could it be wrong? What could
15 be the origin of this problem?" and you don't get that
16 just as a matter of reasoning by looking at one tiny
17 fragment of the process.

18 QUESTION: Thank you very much, Mr Vincent, that was
19 fascinating. Did Jama get any compensation, any apology?
20 What kind of provision formally was there for any such
21 compensation or apology and to what extent did the
22 authorities, as from your story they should have, seek to
23 go beyond what might have been formally available to them
24 which mightn't have been very much to give this man the
25 humble apology and much else that he deserved given what
26 had happened to him.

27 MR VINCENT: Yes, they did. There is, of course, no formal
28 process for this kind of situation and sometimes the
29 consequences of errors in the system can be absolutely
30 horrific and with people with no compensation being
31 recoverable. In Jama's case, as I said, one of the really

1 good features about the whole thing was that when it was
2 apparent that there had been a problem the Attorney-
3 General was concerned to ensure that it was fully examined
4 and compensation was paid to Mr Jama. Whether that
5 represents his life or whatever, I don't know, but it was
6 done that way. I must say that there have been cases
7 where people have been incarcerated for very very long
8 periods without any compensation being payable, in fact
9 that is the norm.

10 QUESTION: Thank you very much for the intriguing talk. I am
11 just interested for - well, as a non-criminal lawyer and I
12 don't understand the criminal process but how did the
13 police link the sample back to the accused in the
14 circumstance because I'm assuming that the samples were
15 taken and then the police made the decision as to whether
16 they - they made the enquiry and then made the decision as
17 to whether - - -

18 MR VINCENT: No, what occurred was that when they took the
19 samples on the first occasion and the inquiry is being
20 conducted those samples go into a database. So when the
21 second inquiry was undertaken and samples then the match
22 came up in the system and then went back to the police so
23 the police at that point of time would have had no ongoing
24 investigation into the matter at all. It started with
25 this particular report of a DNA match.

26 QUESTION: Would the police have seen the earlier match? So
27 would they have been able to identify that the one
28 individual would have committed potentially two crimes
29 within 24 hours?

30 MR VINCENT: Yes, they would. Obviously, he is on the database
31 because there's an ongoing enquiry and so that enquiry was

1 put in there and then there is this other one, so that
2 would have been apparent. But I do understand that once
3 that first matter disappeared in the circumstances that
4 I've outlined - and I thought it was worthwhile outlining
5 those to show that he's been pretty unfortunate in every
6 possible way this young fellow. But once the other one
7 disappeared presumably the defence didn't want any
8 reference to it at all and everybody pushed it to one
9 side, whereas it actually contained the clue as to how the
10 matter could have gone off the rails.

11 QUESTION: Yes, the commonsense test would have won out at the
12 beginning I think. Thank you.

13 MR VINCENT: Yes.

14 QUESTION: Was the young man charged on the first offence?

15 MR VINCENT: No, he was never charged with anything in relation
16 to that because what had occurred was that when he was
17 interviewed he gave a version of events which corresponded
18 with the version of events given by other people including
19 companions of the young woman who were there at the time.
20 So when that version of events was put to the young woman
21 she effectively recanted what she said in the first
22 instance. So at no stage was he charged with an offence
23 in relation to it. But we are talking about a period
24 during which there were two investigations being
25 undertaken.

26 PROFESSOR WELLS: Frank, thank you for revisiting a case that
27 has caused me many sleepless nights over the years. My
28 question to you is that I, like probably a number of
29 people in this room, appear in court on a regular basis as
30 a witness and in the last two weeks I have appeared in two
31 cases giving evidence in rape trials. I could count on

1 the thumbs of one hand the number of times that either
2 prosecution or defence barristers have sought to speak to
3 me about the issues prior to the court hearing and I
4 wonder about this process, that there is no desire or
5 interest in delving into some of these issues prior to the
6 hearing and, secondly, in this matter if the witnesses -
7 and particularly the medical witness - had been put the
8 question "Is it possible that contamination had occurred?"
9 what that response might have been. For my own part, I
10 would have said - and I have no doubt that that doctor
11 would have said exactly the same - "Absolutely". That was
12 never raised.

13 MR VINCENT: No. Of course you are right and it is extremely
14 disturbing from any perspective that there is this
15 incredible lack of preparedness or something - I don't
16 know quite how it arises - to pursue these matters
17 appropriately. But it is a common complaint - and
18 particularly those involved in the forensic criminal area
19 - that they are not approached. Again, I have referred to
20 Professor Cordner and of course yourself David, but the
21 reality is that they, for some reason best known to
22 themselves, the lawyers do not seek that kind of
23 information and witnesses are put in very very difficult
24 situations in court as a consequence. They are regularly
25 asked the wrong questions or questions to which they would
26 like to give quite elaborate and complex answers but they
27 are not given that kind of opportunity. It is an aspect
28 of the system which does need to be very seriously
29 addressed.

30 MR MOLONEY: Dinner awaits, so it remains for me to call upon
31 Mr Darren Bracken, member of the Committee and the

1 Victorian Bar to give the vote of thanks.

2 MR BRACKEN: Ladies and gentlemen, can I suggest if you have
3 the opportunity that you have a look at the Department of
4 Justice website and read the report that the judge wrote.
5 It is a remarkably thorough - a surprisingly thorough
6 analysis of the process and, I have to say, a real page
7 turner. It would seem it is only a matter of time I think
8 before it is turned into a movie and I understand Daniel
9 Craig has actually been approached and is prepared to play
10 the judge in the movie, so we all look forward to that.

11 Would you join with me in thanking His Honour for
12 what can only be described as a truly terrifying speech in
13 many ways.

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