I ACCUSE (J'ACCUSE to quote Emile Zola in 1898) the Law Society of Tasmania of failing, or refusing, to examine specific details I provided in late September, which establish that Mrs Neill-Fraser's conviction for murder should have been overturned because of the mistakes & omissions of a number of Tasmanian Legal Practitioners.

Then President, Simon Gates had an article in the Mercury in August expressing concern at the risks of undermining confidence in our criminal judice system, stressed that people should "consider the evidence as a whole" and ended with the wish that "all Tasmanians have access to adequate legal representation when they encounter the justice system."

I fully support these views of the Society of which I was a proud member for most of the years since my Admission to the Bar in 1967. For some of those years I voluntarily paid to remain a member. My experience included being a Crown Law Officer for over 30 years, signing thousands of Indictments, prosecuting 100's of trials including about 30 murder trials & High Court appearances.

As requested by Simon, I have read the entire 1,550 page trial transcript, the 2012 Appeal Court decision, the 18 page High Court transcript, the 544 para November 2021 Appeal Court decision, the decision of Justice Brett & several other things; several more than once.

I challenge the Law Society who voluntarily entered this debate to show me that I am wrong or have the courage to say that they agree with me. All I can get from Simon is that he has a lot of things to read & has "peeked" at my letter.
Simon worried about wasted millions on a Commission of Enquiry. Law Society examination should cost nothing. My 9 page letter set out everything in an easy to follow manner. As I have said to Simon & the Executive Officer-if they can show that I am wrong, I'll be delighted & sleep easier.

A summary of my letter (which I am happy to supply in full to anyone) is that:-

1 Problems arose from the outset because of the failure of the DPP, Mr Ellis, to fulfill his obligation to disclose 3, potential decisive, pieces of evidence:-
A) That FSST had an electropherogram of the area of Ms Vass's DNA sample [Item 20] which showed "an unambiguous single source", "no significant evidence of stochastic variation", high "allele peak heights" & "molecular weight loci" & that the deposit was strongly inconsistent with a touch scenario.
B) That forensic scientist, Carl Grosser, who was called as a witness, had told a Detective that Item 20 was unlikely to be a walked on sample, &
C) That Ms Vass was on 26/01/2009 living at Mara House, a Colony 47 residence in Forster St, New Town for females under 20 & that she was recorded in their diary as has having informed them that she was staying the night at an address in Mt Nelson, which address Police had found non- existent.

Mr Ellis clearly seems to have failed this duty because of a strong belief that the issue was irrelevant & that accordingly he'd not looked into it. At p.608 he said he'd asked Mr Gunson "if this is in issue?" & having been told that the defence wanted called Ms Vass, who had refused to make a statement, he said he would, but went on to say "there's no reason to think she's able to provide an explanation (for her DNA being on the boat), frankly, you know, she could have spat, someone walked on it & it came off their shoes".
In his Closing Address p.1408 in 2 of about 20 references to "red herrings" he said very forcibly-
"Megan Vass was a red herring, a red herring; should not have been pursued I suggest".
He also claimed that the DNA sample could have been transferred on the foot of a person who had "acquired it anywhere in Hobart."
Mr Ellis, the Judge & Mr Gunson seemed to have been unaware that the evidence of Forensic

Scientist, Ms D. McHoul p.672 that sample 20 was 260mm x 210mm meant that it was about 26 x 21 cm or 10 1/4 x 8 ¼ inches; the width of an A4 sheet of paper & much wider than any footprint.

The above facts including the opinions that it could not be a "walked on" sample & the fact that if you have something under your shoe it just does not just walk onto one spot led to a new DPP in the 2021 proceedings abandoning the "walked on" theory so strongly put by Mr Ellis for a 'might have trespassed on the boat' theory. That, if correct, meant that Ms Vass committed perjury.

Bizarrely, much of the evidence in C) came out in cross-examination but then Mr Ellis successfully objected to it being led through cross examination of the Detective notwithstanding that it was admissible through anybody who had seen the Mara House Diary; a copy of which I suggest should have been in the Crown court Papers. The Judge then directed the jury to ignore that evidence.

The Judge even added p.766 (in the jury's absence) "it all sounds very intriguing but i don't see a great deal of relevance at this point if it were established that Meghan Vass was at a particular place in the metropolitan area on the night in question or that she was not at a particular place...on the night in question".

I remind my colleagues in the Law Society that we are talking of this very large bodily fluid deposit at a murder scene the evening of which Ms Vass claimed to not remember, but which coincided with this potential sign post of the non-existent Mt Nelson address.
And, Simon referred all to the decision of Wood J in late 2021.
I refer him to these passages from her judgement:-
-para 84-the prosecution has a duty to the Court to disclose all material relevant to an accused's defence, it can include an obligation to make enquiries...& it may extend to material known to the Police but not known to the prosecutor,
- at para 80 she quoted from Sir Garfield Barwick in Ratten's case- Defence Counsel is entitled to assume that the prosecution will disclose relevant evidence & material.
Pearce J @ para 522 said "compliance with the prosecution duty of full disclosure is a fundamentally important aspect of a fair criminal trial."

2. The Judge told the jury just after lunch at p.1530 of his Summing Up that stretched from p 1491-1532 – "Now if Megan Vass was homeless in the northern suburbs one of the possibilities that I'd suggest you ought to be considering is whether she'd spat-it's not a delicate subject, but had urinated or something like that somewhere where a Policeman had trodden & then that officer had walked onto the deck or got into the car & driven to the boat & walked onto the deck. Is it possible that that's the mechanism by which her DNA got there & that she wasn't there."

A quick check reveals scientific facts such as "urine does contain small amounts of DNA but not nearly as much as saliva" & "DNA "deteriorates more quickly in urine making it difficult to extract."

The Judge also erred on a less fundamental issue re her being homeless in the "northern suburbs." As above she was living in a Colony 47 residence in Forster St, New Town.

3. The 3rd matter that should have led to the conviction being overturned was the flagrant incompetence of her Counsel, Mr D. Gunson. Flagrant incompetence is a very high bar. It was breached & a re-trial ordered in the Victorian case of Knowles [1984] VR 751 where the Defence Counsel failed to call an ex-husband & an ex-boyfriend in the murder trial because of his mistaken belief that there evidence of the dead woman's aggressive & violent behaviour when drunk was inadmissible. I set out examples from this trial:-

i) Not taking the opportunity, in this trial, to accept the standard offer, made in 2 FSST reports to visit by arrangement & discuss the issues with the scientists,
ii) Failing to establish in cross examination that a "walked on" sample was very unlikely,
iii) Failing to cross examine Megan Vass as to the names of her companions, associates, people who sometimes gave her transport in early 2009 & of the young male who accompanied her to Court,
iv) Not exploring with Police whether DNA samples had been sought from such people & checked against 3 DNA samples on the boat from unknown people,
v) Not exploring the details of the alleged stealing she was charged with-from a shop/ a car/a boat?
vi) In a cross examination that lasted only about 2 minutes, being nasty to Ms Vass about an irrelevant matter that opened the door for Mr Ellis to blacken Mrs Neill-Fraser's case with the jury, saying in his Closing Address:-
- "we've had Meaghan Vass a 16 year old homeless girl, bullied & chased around by Mr Gunson",
- "treated ferociously, treated ferociously..." &
- "why was this girl pursued? Why was she bullied & argued with so ferociously."
vii) Having thus put his client in this position of possible intense dislike by jurors, saying nothing in his subsequent Address by way of apology, or absolving the accused for his attack on Ms Vass,
viii) Failing to object to evidence inadmissible in re-examination that Ms Vass had told a detective she "believed she may have been hanging around the Goodwood area" [vicinity of Police Marine}.
ix) Failing to ensure that the evidence in 1C) was before the jury. Someone who had read it could have been called, or the diary could have been produced but I expect that Mr Ellis would have co-operated with a Statement of Agreed Facts as often happens these days,
x) Failing to request that Ms Vass be recalled following the evidence in viii) being heard by the jury. And as to the evidence in 1 C). I strongly believe that Mr Ellis would have fulfilled his obligation to recall her but if he did not then Mr Gunson should have called her, relying on Police to serve a Summons, and then savagely attacked the prosecution in his Closing Address for a fundamental breach of an Australian justice principal which the Judge must surely have supported.
xi) Failing to refer in his Closing Address to Ms McHoul's evidence of the size of the DNA sample. He did say there was a "significant amount of DNA" but the 26 x 21 cm or 10.25 x 8.25 inches diameter seemed to be beyond him. It's size surely required something like vomiting or substantial bleeding, xii) Failing to refer in his Closing Address to the evidence of the deceased's sister, Mrs Sanchez who stayed with them regularly & was doing so at the time that "they seemed supportive & devoted," particularly after Mr Ellis had made forceful references to the ending of the relationship. Xiii) Failing to mention in his Closing the sorrow & stress his client may well be suffering due to the loss of her partner & the real culprit being undetected, xiv) Failing to call evidence from family &/or friends of the close &/or loving relationship that has oft since been claimed, particularly after the Crown had called several witnesses to the contrary, And, although I don't purport to know the details-xv) Apparently agreeing that a jury inspection of the boat was unwarranted. In her extensive 2021 Judgment to which Simon Gates referred us all, Wood J made a series of excuses for some of Mr Gunson's failings: - Para 207 - he "was very experienced & would have been alert to secondary transfer", Para 210 - "there may have been a tactical reason why this general probing & exploration of the DNA profile was not done", Para 210- "the strategy may have been not to seek additional information in case it brought to the prosecution's attention evidence unfavourable to the defence",
Para 210- it may have been thought that resources were not warranted (as the report was helpful), & Para 216-his decision to decline the Judge's offer to delay his cross examination of Mr Grosser (so

he could check re transmission evidence) "may have been because of a strategic advantage in appearing to the jury to be unfazed by new evidence & being seen to be robust".
I suggest that Mr Gunson who I appeared against several times, the man who loved to say "I enjoy pulling the wings off butterflies," was simply out of his depth.

4. The injustice caused by the above serious errors should have ended at the 2011 Appeal.
Why didn't her Appeal lawyers raise the above failures of prosecutorial disclosure obligations & Mr Gunson's incompetence?
They Appealed several aspects of the Judge's Summing Up but why not my point 2?
Each of these 3 mistakes alone were, I suggest, sufficient to overturn the conviction.
Did they read the whole transcript? They certainly should have.
I suggest that they should also have gone to FSST & found the electropherogram.

5. Yet another Tasmanian lawyer, now a member of State Cabinet, brought the 2012 High Court Appeal. Let's get clear what that & the 2022 hearing involved. Each was before 2 Judges, took minutes only & concluded with them ruling that no point of law had been raised that was worthy of consideration by the Full Court.
I direct the same questions to her. Did she thoroughly read & consider all the transcript?
Surely lodging a murder Appeal, especially to the High Court, requires great diligence.
The Tasmanian Appeal Court has power to itself add Appeal points & sometimes does. The Court was aware of the paucity of the questioning of Ms Vass, Chief Justice Crawford noting in 2012 at para 87 that neither Counsel asked anything of her concerning whether she had been in the vicinity of Marieville Esplanade on 26th January or any other day & at para 99 that neither had she been asked as to any knowledge of what happened on the boat.
The Court dealt with an explicit Appeal point as to an application by Mr Gunson to have the Judge recall Ms Vass. At para 95 they said this application was unclear & at 96 that the clear law was that a Judge had no such power.
So, the basis for claiming that the Court should itself have raised incompetence was there.

As the Law Society said, the jury "considered all the evidence adduced". But as I've set out the jury were not adjudicating a trial run according to the high standards required. The proceedings in 2021 dealt with "fresh & compelling" evidence issues. The above failures were never before the Courts.

The Attorney General has informed me that "Tasmania & Australia's highest courts have now considered Mrs Neill-Fraser's case in great detail." As regards the High Court that is, as above, false. The Tasmanian Appeal Court has twice spent a lot of time on it but as clearly set out above the failures by lawyers in both Appeals from 2010 meant these errors were never considered.
I suggest that Mrs Neill- Fraser has effectively been in a Catch 22 situation. The evidence that was not before the Court in 2010 was available but not presented to the jury. It was clearly significant but not raised by her Appellate lawyers. She was in 2021 constrained by those inactions.
And, then there's the matter of the Judge's scientifically incorrect, but uncorrected statement.

These types of issues are unknown to many lawyers, let alone the general public.
If I'm correct surely the legal profession, particularly those involved in litigation in our Tasmania well into the 21st Century must speak up for justice as did Emile Zola for Alfred Dreyfus & the Britons who secured Timothy Evans a Royal Pardon in the 1960's about 20 years after his execution.

I've done the ground work. I challenge the Law Society & members of our profession- show me where I'm wrong or show fortitude & stand up for justice in Tasmania by notifying your agreement.

Tony Jacobs, Hobart. November 2022; jacobshobart@bigpond.com