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REPORTER: Fran Abrams

PRODUCER: Gail Champion

EDITOR: David Ross

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THE ATTACHED TRANSCRIPT WAS TYPED FROM A RECORDING AND NOT COPIED FROM AN ORIGINAL SCRIPT. BECAUSE OF THE RISK OF MISHEARING AND THE DIFFICULTY IN SOME CASES OF IDENTIFYING INDIVIDUAL SPEAKERS, THE BBC CANNOT VOUCH FOR ITS COMPLETE ACCURACY.

“FILE ON 4”

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ABRAMS: Forensic scientists help solve some of Britain’s most serious and high profile crimes. But after a seventy year history, the government body that does the work is cutting a third of its jobs. It’s losing business fast, to private sector firms who can do it cheaper. Many scientists believe commercialisation’s undermining the system.

TAUPIN: The police force want minimal cost for the minimal amount of time, and that results in a bargain basement type of situation. I don’t think that justice really should have a price.

ABRAMS: File on 4’s heard claims police attempts to drive down forensic costs could be putting the wrong people in prison.

LUKE: I have been a victim of miscarriage of justice, and it has not only affected the three years that I have been under a prison sentence, but it has affected my life and it will do for the rest of my time.

ABRAMS: And we ask why the Government’s own Forensic Science Service failed to blow the whistle on a miscarriage of justice.

FREDERICKS: Why would a national crime lab stay quiet when they had reason to believe that an innocent person was in jail? It's extraordinary – I've never seen that by a forensic organisation before.

SIGNATURE TUNE

ACTUALITY IN LAB

ABRAMS: In this forensic laboratory, toxicology cases are coming in from some of the biggest police forces in the country. There's a huge machine analysing body fluids found at the scenes of rapes and murders. But the surprising thing is this isn't actually a police lab. It's one of the biggest private providers of forensic science and it now serves no fewer than 42 of the 43 police forces in England and Wales.

ACTUALITY CHANGING INTO ROBES

ABRAMS: We've been asked to change out of our clothes into these blue robes so that we are clean, we're not leaving too many traces of ourselves in the labs.

At LGC Forensics, the country's largest private forensic provider, Chloe Tyler is examining a vest top for blood stains.

What are you adding?

TYLER:, which is just a chemical test reagent, hydrogen peroxide.

ABRAMS: Hydrogen peroxide. Oh yes, you can see, the colours change. There's a pink blob in the middle of the paper. So what does that tell you?

TYLER: This colour change indicates that this stain is blood, because we've got a pink reaction on the paper.

ABRAMS: Because, of course, she did uncover a vital piece of evidence which led to the solving of the crime which, had she followed her instructions, she wouldn't have discovered.

MCMAHON: No, that's quite right. Yeah, I mean, you will get very early on perhaps requests to forensic providers for some very quick work to be done, and sometimes, you know, in the cold light of day those decisions might be open to interpretation. Any provider has the option of speaking to the SIO, because they work together on incidents. And clearly at that stage, GMP had just started to change its tendering and contracting process. I am aware of one or two issues that did come up in relation to the working practices settling in and the relationship forming between GMP and these other companies. I can only reiterate that in this force we certainly do not scrimp on spending money on forensics.

ABRAMS: It isn't just private sector scientists who say the new commercial environment's affecting their work. Four years ago, the government-owned Forensic Science Service, FSS, became an independent company, competing for contracts with private companies. Caroline Eames is a senior scientist who's worked for FSS since 1987, and a union rep. She says she regularly faces the sort of dilemma that confronted Jane Taupin – in fact she had one recently.

EAMES: I was concerned that in a particular scene I'd gone to, there was an absence of blood. There had to be a reason, so I wanted to look at some extra items which may have been in that area, but I felt as though I had to beg with forensic submissions to look at those items, just to do my job. There's a conflict in my mind between what the police are asking me to do and what I feel I should be doing as a forensic scientist.

ABRAMS: Does that matter?

EAMES: Yes, it does, because you stop thinking like a forensic scientist and you just do what the police tell you to do, and I think there is a danger of missing something vital if you do that.

ABRAMS: But that's a pretty shocking state of affairs, isn't it, when a scientist's judgement is impaired or she feels that she can't exercise her judgement because of the cost implications?

EAMES: I'm afraid that's where we are at the moment in this country.

ABRAMS: So there will be other cases where these sort of things have happened and where the work's not been done?

EAMES: Most certainly.

ABRAMS: Take your mind back ten years, let's say, how would it have been dealt with?

EAMES: Well, in the first place, ten years ago, all the items would have been sent in at the beginning of the case, the police would have come to the lab and we would have a number of chats and I would have had the freedom just to examine what I thought fit in the case.

ABRAMS: The Government does recognise that having a free market in forensics carries risks. Recently it appointed a new forensic science regulator, Andy Rennison. It's his job to ensure that standards go up, rather than down. We asked him what he made of the examples raised by Jane Taupin and Caroline Eames.

RENNISON: Well, that is the system not working, and the police wouldn't want that to happen either. If you talk to the police, they would say no, we expect the scientist to refer these issues back to us and there's the mechanisms to do that. If the scientists feel they can't, then I think we really need to question the policies within their organisation. And if the police submissions department have said no, stick with what we've said, then that is clearly clearly wrong and inappropriate, and that's exactly the sort of thing I shall step in and deal with, and if there's evidence of that then we'll deal with it.

ABRAMS: Is there a wider risk that giving the police control of the purse strings can be damaging to the criminal justice system?

RENNISON: But that has always been the case. The police have always, ever since I can remember, have been holding the purse strings on the cost of forensic science, because they drive the investigation. Commercialisation of forensic science has achieved some significant and good results. I do have people from other countries talking to me about this because they are jealous of the excellent turnaround times that we achieve. The police and the prosecutors in the English and Welsh courts are able to deliver the evidence far far quicker, which is good for justice.

ABRAMS: But at the end of the day, I mean, scientists – particularly those in the Forensic Science Service – have said to us, well in the old days we worked for the Home Office and we felt like we served the criminal justice system, we served the defendant as well as the victim as well as the courts. Now we serve the police.

RENNISON: Well, you're challenging cultures here. Those were the old days that actually led to the complaints that led to my role being created. Harking back to the old days isn't the solution here because there were bigger risks then actually.

ABRAMS: Everyone agrees budgets need to be controlled, whether or not the money's being spent in the private sector. But sometimes those controls can have a real, lasting effect on people's lives.

ACTUALITY IN JOB CENTRE

LUKE: Sales advisor, numerous people of all levels, entry level would be customer service with an element of sales.

ABRAMS: Luke lives in South Wales and he's looking for a job. He's got years of experience as a bar manager, but now no employer wants to touch him. The reason's simple: he's been in prison.

LUKE: My first night in prison was the worst. Locked in a tiny room with a guy that I had never met before, knowing that I would spend the next eighteen months of my life behind that door, away from my partner, my family and my friends, it scared the living daylights out of me.

ABRAMS: Luke, who asked us not to use his real name because he fears for his safety, maintains he never committed a crime. He simply found himself in the wrong place at the wrong time. It all happened after a rugby international, while he was having a few drinks at his sister's house. A fight erupted outside. Luke knew one of those involved – he'd just been into the house and was clearly looking for trouble. Luke says he went out to break it up.

LUKE: My sister then, after hearing the shouts from outside, asked me to move it away from the house to try and keep the peace. So as I was going out and looked up the street, I've seen the chap who'd come into the house fighting with another man. I pulled him off and I carried on dragging him down the street. He was shouting and bawling and the other guy was still on the floor. The victim had cuts and bruises all over his face and also he complained of a perforated eardrum following the attack.

ABRAMS: So a very nasty attack?

LUKE: Oh indeed yeah., it was horrendous. Like nothing I had ever seen ever before. It sickened me.

ABRAMS: Had you kicked or hit this person?

LUKE: No, all I'd done out there was to keep the peace.

ABRAMS: But Luke was arrested and taken to a nearby police station. His clothes were removed for forensic examination. The only clear evidence that implicated him was a couple of spots of blood on his shoe. The police sent it to the government-owned Forensic Science Service to try to discover whose blood it was. A DNA test confirmed it was that of the victim.

LUKE: It put me at the scene of the crime, which I never denied from day one anyway. They used that evidence to tell the jury that I was there and I had kicked this chap on the floor. I was found guilty of GBH with intent, the judge sentenced me to three years imprisonment.

ABRAMS: But Luke's family didn't believe he was guilty. They paid another forensic science provider - Forensic Access - to look at the evidence. Had Luke really 'kicked the other man's head like a football,' as had been said in court? Dave King is the business manager with the company. He says the blood on the shoe only revealed part of the story.

KING: It's evidence that he was in the vicinity of the crime that took place. If he was close to the affray itself, it could have been splashed on him. In a violent assault blood does get thrown quite a distance. There's one part of forensic science is actually finding evidence, but much more important almost is the interpretation of that evidence and what it says about the crime that actually took place.

ABRAMS: They did an additional test called a blood pattern analysis. And it confirmed Luke's story.

KING: We can see from the photographs in front of us in the case file that there is only a small amount of blood. The blood pattern analysis just does not support the hypothesis that this shoe was in contact with a head, in fact being kicked around like a football.

ABRAMS: Yes, I mean, you can see where the blood stains are marked on the shoe, it's on the top of the shoe, quite a long way away from the toe. Even as a complete amateur I would have said to you, if he'd kicked somebody's head like a football, there would have been blood around the toe of that shoe and it would have sprayed backwards, wouldn't it?

KING: Absolutely. I mean, the pattern is just not at all consistent with a serious contact of that piece of footwear with somebody's head.

ABRAMS: And File on 4's discovered something more. The government scientist who did the DNA test did raise concerns about whether a blood pattern analysis should be done. We've seen his report to the police - and it specifically highlighted the omission. Luke didn't know about it until we told him.

LUKE: I wasn't aware of that and I am shocked that, even with a note on the file, that no action was taken by anybody.

ABRAMS: Why do you think they didn't commission the analysis of the blood spatter on your shoe?

LUKE: Possibly the financial side of things. They obviously believed that they had a concrete case without chasing those avenues. The system has failed. I have been a victim of miscarriage of justice, and it has not only affected the three years that I have been under a prison sentence, but it has affected my life and it will do for the rest of my time.

ABRAMS: At Forensic Access, Dave King was less surprised the police didn't order more tests.

What would be the relative costs of doing first the DNA analysis or second, a blood pattern analysis?

KING: The examination of the item and then the DNA profiling and the comparison to the victim would be of the order of a few hundred pounds. To carry out the blood pattern analysis would probably be about the same amount of money, so I think it's probably doubling the cost of the case.

ABRAMS: Would cost be a factor, do you think?

KING: Cost is always a factor now in forensic science. Police have very tight budgets. The times that forensic scientists have to perform their work have been radically reduced. This particular case exemplifies perfectly what's happening in forensic science at the moment. Over the last two or three years, the procurement services have taken over in awarding contracts for forensic science. Those contracts have put intense

ABRAMS: The police spend £170 million a year on forensic science – more than on anything else apart from salaries. The Forensic Science Service is now forced to bid against private providers for a share of that budget. And questions are being asked about whether that means they may put commercial interests before justice. Ian Kelcey is the chair of the Law Society’s Criminal Law Committee. He believes the relationships between police forces and bodies like the Forensic Science Service have been undermined by the introduction of a commercial element.

KELCEY: When I started in criminal law, the Forensic Science Service was Home Office run, Home Office funded. They had a recognition of being unbiased. I think the problem you now have is that you’ve created a master/servant relationship whereby experts now have to have an eye as to whether they are keeping their masters happy with what they do and what they say and what they disclose sometimes to the defence, and that, I think is a very worrying and concerning aspect.

ABRAMS: And when you say the masters in that context, who do you mean?

KELCEY: Oh, I think the masters in that context are the commissioning police forces. It means that the Forensic Science Service or whatever forensic science agency is being used is always having to have regard to the commercial aspects. We have to bear in mind that what we’re dealing with here is the liberty of the individual, and you cannot put a price on that.

ACTUALITY OF RECORDING OF PHONE CALL TO POLICE

OPERATOR: Good evening, Bedfordshire Police control room.

MAN: There’s a brand new pair of trainers and a very good condition coat and a scarf. They’re definitely not thrown away ...

ABRAMS: This call to Bedfordshire Police sparked an investigation that was to throw these corporate relationships into sharp focus. It would change forever the life of Nico Bento, who’d come to the UK from Portugal to find work.

ABRAMS cont: He'd been here a couple of years when he met Kamila Garsztka and they started going out.

BENTO: We met at work, and she was a very funny person, beautiful. I liked her straightaway and we became friends. We were together, my life was comfortable and I was really happy.

ABRAMS: Then one night she disappeared – leaving her favourite white handbag in his flat.

BENTO: I was just worried because she had nothing with her, her documents, her phone. I was just concerned about her. I was doing everything I could to find her, I was begging help from the police and trying to help the police in everything I could.

ABRAMS: Six weeks later Kamila's body was recovered from a lake in Bedford. The clothes that were found there by a passer-by the night she disappeared turned out to be hers. Nico heard the news through the media.

BENTO: I went to the lake, and the police told me that they couldn't say if it was her or not. They told me to go home and I went home, and when I was there I was watching the news and I saw it on the television. I needed answers. My girlfriend was dead. I needed to know what happened. I never got those answers.

ABRAMS: The police investigation soon turned into a murder inquiry – with Nico the prime suspect. A grainy CCTV film showed Kamila walking by the lake on the night she died. Mr Bento's lawyer is Peter Hughman.

HUGHMAN: The first still we're looking at is a still from the CCTV that recorded Kamilla at 7.46pm. There's an image that you can see, a person is walking along the embankment, it's difficult to tell whether it's a man or a woman, you wouldn't be able to describe them further.

ABRAMS: The crucial question for the police was whether Kamila was carrying her handbag. If she was, the suspicion arose that Nico had killed her and then taken it to his flat. The officers approached the Forensic Science Service for advice. They were told the CCTV film was of very poor quality and they should be careful of using it. Instead, they were told to do a carefully controlled reconstruction, called a reverse projection. But the police failed to act on that advice and sought another expert from America instead. His name was Casey Caudle.

FREDERICKS: What he did is he examined the video images of the woman walking down the embankment and compared those images with other images of her in the town centre earlier in the day. And the earlier images showed her carrying a large white handbag over her right shoulder, and the images were not supportive at all, they were quite the opposite.

ABRAMS: Grant Fredericks, who teaches video analysis to the FBI, has worked for the defence on the case. And he says that as well as giving flawed evidence, Mr Caudle lied to the court.

FREDERICKS: The most troubling thing that we found was that he provided evidence that he had been employed as a forensic video analyst since 1997, and that was not truthful. It's very important when an expert testifies that they accurately represent themselves, and this was perjury, false evidence. An innocent person was convicted and sentenced to life in prison.

ABRAMS: As it turned out, Mr Caudle had only been working with video evidence for a few years and most recently had been employed by a supermarket chain. When all this came out, his evidence was completely discredited and he committed suicide. Grant Fredericks was also in touch with the Forensic Science Service expert who'd warned the police against relying on the CCTV. He was the UK's leading authority in the field, John Kennedy. As Nico Bento began a life sentence for murder, Mr Kennedy tried to raise his concerns with his employers.

FREDERICKS: Mr Kennedy made it very clear that there was no support for Caudle's testimony and that if Mr Caudle was wrong, then Mr Bento was an

READER IN STUDIO: The idea of a reconstruction had been mentioned by Mr Kennedy, but the investigation team were told by counsel that conditions could not be satisfactorily replicated and that this was therefore unnecessary.

ABRAMS: But the reconstruction did lead to the conviction being quashed, and in July this year the Lord Chief Justice announced there would be no retrial. Mr Bento was free to go home to Portugal. But he still wants answers from the Forensic Science Service.

BENTO: How could they allow the justice to keep me in prison for two and a half years, something that they could stop? I am a nobody and there are a lot of nobodies like me. How many more are in prison like I was – innocent?

ABRAMS: In its statement to us, the FSS said neither the Law Society nor the regulator had raised any issues about the Bento case. But we've discovered that both do have concerns. Ian Kelcey, the chair of the Law Society's Criminal Law Committee, says there's a real need for a thorough investigation.

KELCEY: I'm deeply concerned by the case of Nico Bento. Frankly it is scandalous. I would have been hoping that an organisation like the Forensic Science Service would now be looking at that matter in some detail and giving some serious consideration as to whether their procedures were correct in this case.

ABRAMS: If they're not addressing it internally seriously, what should be done externally?

KELCEY: If it comes to the issue that it's a forensic aspect, then it's a matter for the forensic regulator, I would venture to suggest. Otherwise what is he there for? He is either a guardian of justice or a poodle of the prosecution.

ABRAMS: Surprisingly, the forensic science regulator, Andy Rennison, didn't know about the case until we raised it with him. It seems the Forensic Science Service actually prevented a senior scientist from raising the alarm about a miscarriage of justice. Would that concern you?

RENNISON: Yes. If what you have described to me is correct, then I'm shocked. That shouldn't happen.

ABRAMS: The Law Society said that they felt, given what's happened, that you should be investigating.

RENNISON: That's not within my remit. I can investigate complaints around quality standards. If that's a failing of quality then I'd happily step in and look at it. If there's a potential miscarriage of justice, that might be a police investigation. I doubt it though. When I do talk to senior friends and colleagues in the likes of the Criminal Cases Review Commission, they say, 'Well actually, if you do need legislation, Andrew, the one place you probably need it is how to investigate complaints, etc.' It's not proved necessary at this stage, but the case you mention has never been referred to me.

ABRAMS: Somebody should be looking into that, shouldn't they?

RENNISON: I agree and I think there's a gap there at the moment. My remit stops at addressing quality standards issues.

ABRAMS: Since we spoke to Mr Rennison, he has arranged to meet John Kennedy to talk about his concerns. But at the moment, the fall-out from the Nico Bento case isn't the biggest problem facing the Forensic Science Service. It's also in financial trouble. Its accounts show its turnover dropped by £70 million in the year to March 2008 – that's a third of the total. And that was before the loss of some big police contracts. This autumn the Government announced the FSS was closing three of its main labs, with the loss of seven hundred jobs. Jim Fraser's a Professor of Forensic Science at Strathclyde University. He thinks the Government's approach hasn't been properly thought through.

FRASER: I've never seen and I don't believe exists a document which sets out the benefits to the criminal justice system that a private market will provide.

ABRAMS: The key to a lot of this is how the police procure forensic science, how has that changed?

FRASER: It's the amalgamation of services into very very large packages, which are essentially boom and bust for suppliers. You either win the entire package, in which case you're fine and your future is reasonably steady for the period of the contract, or if you don't win it then plainly you're into major contractions, lay offs. The issue is the uncertainty and inconsistency there and the potential for it to lead to a major supplier going bust - essentially dysfunctional consequences.

ABRAMS: His fears are well founded. We've discovered the Government's seriously worried about the potential collapse of the Forensic Science Service. We've seen a letter written in July by the Home Secretary, Alan Johnson. In it, he admits the service is in a parlous financial state:

READER IN STUDIO: The company is currently losing significant amounts of money. It cannot survive unless it alters its business model, its ways of working, its costs and its facilities. It is in no-one's interests to allow it to wither, or to give indefinite financial support to maintain its current uneconomic form.

ABRAMS: The Forensic Science Service is supposed to be a fully independent company operating in a competitive market. But File on 4 has discovered it was quietly rescued earlier this year by the Government with an injection of £50 million. The details were in a document lodged six months ago at Companies House, but it's never been publicly announced. Private providers, like Dave King at Forensic Access, say such Government support puts them at a disadvantage.

KING: The forensic market is an extremely difficult market to operate in. It's a high risk market, obviously, because of the type of work it does, and it's financially a difficult market. A grant, or however this money has been made, it gives surely the Forensic Science Service a greater competitive edge in terms of what it can deliver. And if they're supposed to be acting as an openly competitive company with the rest of us, that doesn't seem quite right. I would have almost expected that money to be made available to all companies in that sector to help with obviously raising the quality and the provision of forensic science in the UK.

ABRAMS: When we asked the Forensic Science Service about the grant, they referred our questions to the Home Office, but no one there was available for interview. In a statement, they said:

READER IN STUDIO: This investment was not a bail-out. It was a three year investment agreed as part of a business plan, to radically transform its business in order to ensure its long term sustainability. We are satisfied that, with the right level of shareholder support, the FSS remains a strong business with a bright future.

ABRAMS: But there's growing concern about shaky finances of the Forensic Science Service – and about the way the Government's handling the issue. David Davies is the MP for Monmouth. He recently chaired a Home Affairs Select Committee inquiry into the future of the service.

DAVIES: Instead of addressing the problems, they are running the whole thing down, getting rid of people who've got the core skills that they're going to need. They're talking the whole thing down, telling everyone how bad it all is. If they do go ahead and privatise it, as I think they will, who's going to want it? You know, it's not going to be worth anything like as much as it should be. I just don't think they've grasped some of the fundamental principles of the market. The downside of this is that we possibly undermine confidence and maybe even undermine the delivery of justice in this country, which is absolutely a key fundamental right for all of us. To me organisations like this are sacrosanct and shouldn't just be messed around with for the sake of saving a few quid.

SIGNATURE TUNE