



EVERY FAMILY'S
NIGHTMARE

LIES, DECEPTION AND THE HIGH COST OF JUSTICE



TEACHERS NOTES

EVERY FAMILY'S NIGHTMARE

LIES, DECEPTION AND THE HIGH COST OF JUSTICE

Synopsis

This is the shocking inside story of a family's fight to free their 15-year-old son after he is wrongly accused of rape.

A horrifying tale of lies, deception and the high cost of justice, *Every Family's Nightmare* raises questions about systemic, procedural and cultural flaws in Australia's criminal justice system by investigating the case of Perth schoolboy Patrick Waring.

Patrick was jailed for a year while his family battled to prove his innocence.

From the time he was accused of raping a teenage girl on 30 March 2006, the Western Australian police were convinced Patrick Waring was guilty. His family knew they were wrong.

Over the next year, the Waring family assembled an international team of experts to help defend their son, exposing deep flaws in the police investigation and the legal battle that followed.

Every Family's Nightmare uses observational footage, reenactments and interviews with key participants to document the Warings' ordeal from the time the allegations were made to the outcome of the trial.

But while Patrick is eventually acquitted, his life will never be the same. The fight to clear his name and regain his freedom has cost his family everything and Patrick has lost a year of his childhood while in jail.

Alarming, experts say that the same situation could arise at any time, involving any family, in any Australian state.

Curriculum links

This program will have interest and relevance for teachers and students at secondary and tertiary levels. Curriculum links include English, Drama, Media Studies, SOSE/HSIE, Science, Legal Studies, Justice Studies, Forensic Studies and Law.

Prologue and background

Carry out the following activities designed to set the scene of events, personalities, conflict dramas, revelations, denouements and outcomes presented during *Every Family's Nightmare*.

- The program is not entirely presented in the order in which all the events take place. Many events, or situations, are also mentioned, either

by direct interview or the narrator's voiceover commentary, but are not shown on-screen directly or as re-enactment. On poster paper or a wall chart construct a timeline of all events as they occurred in the correct time order, or chronology. Consider carefully your timeline starting point, as this activity refers to more than the events known by Patrick Joseph Waring to have taken place.

- Carry out research if necessary, then discuss in class the laws in Australia concerning the ways in which the news media may report a crime, the name of a suspect and the nature of the charge being laid by police. Are they substantially different from state to state? Consider in particular the following issues:
 - What special laws are in place, concerning the reporting of arrests and police charges laid against 'minors' or juveniles (those under 18 years of age), and why?
 - Are these same considerations also applicable to minors who are complainants or victims of crime? Explain.
- Throughout Australia there is the presumption that all citizens are innocent until proven guilty in a court of law. Taking this into account, what is vitally important about the use of terminology, in news reports about crimes, such as the words, 'allegation', 'alleged' and 'allegedly'?
 - Write one sentence about a suspect's arrest, ensuring you include the word 'allegedly' in its appropriate usage and context. Write the same sentence without the word 'allegedly' in it. Add a short discussion on the difference in meaning between the two sentences.
 - In referring to crimes and to people who have been charged with committing them, at what point is it legally permissible for media outlets to omit the use of such terms as 'alleged' in their news reports and other media commentary (such as satirical comedy, radio talkback and chat programs)?
 - Discuss why the complainant's name is not mentioned at any point during *Every Family's Nightmare*, and why she is not visually identified (except as an actor in re-enactment scenes).
- Following from the previous activity, imagine that you are a police reporter for a newspaper, radio station or TV channel. Your job is to prepare a

EVERY FAMILY'S NIGHTMARE

LIES, DECEPTION AND THE HIGH COST OF JUSTICE

report of a crime, and the arrest of a suspect for that crime, who is being held for questioning. The person arrested is under 18 years of age, as is the supposed victim. Prepare your report in 100-200 words in such a way that you do not break any Australian laws. You may use the Waring case as a starting point for your report, or you may invent your own.

The 'players'

The program presents us with many participants who are deeply affected one way or another by the events narrated throughout *Every Family's Nightmare*. (For an examination of how the filmmakers themselves may have been affected, view the Media Studies section of this study guide.)

- Write a short description of the importance and relevance of each of the following participants to our understanding of the central events and concerns of the program, and the roles and relationships to each other they provide. Comment on whether it is advisable to discuss these participants as protagonists and antagonists, as in narrative drama.
 - Patrick Waring (accused)
 - Michael and Danielle Waring (siblings)
 - Marie and Terry Waring (parents)
 - Robin Napper (forensics investigator)
 - Professor David Barclay (forensic scientist)
 - Tom Percy QC (barrister)
 - Jonathan Davies (barrister)
 - Robert Cock QC (Director of Public Prosecutions)
 - Brian McDonald (DNA consultant)
 - Unnamed complainant
- Jonathan Davies is a barrister. Tom Percy is a barrister and a QC. In class carry out research if necessary, and answer the following questions:
 - What kind of lawyer is a barrister? What do the letters 'QC' stand for? What is a QC? What qualifications and experience are required for a lawyer to be elevated to the status of QC (or 'SC')?
- Following from the above, describe the position, responsibilities and work of a Director of Public

Prosecutions (DPP) such as Robert Cock.

- We are informed during the program that Robin Napper has been involved in some very high profile police investigation and legal cases. Some of these are mentioned during the program. Carry out research then prepare a newspaper or magazine profile article about Robin Napper, looking at his career and the cases in which he has been involved. Consider the 'generalist' nature of the media outlet you are writing for, and the assumed reading audience, and tailor your style appropriately. Include illustrations as required. (See 'Robin Napper' in website references.)

Arrest and detention

After rape allegations have been made against Patrick Waring, a chain of events initiated by the police, their investigations and the judicial system are set in motion, all moving towards one conclusion, long-term incarceration and the stigma of guilt. These events seem unstoppable, with Robin Napper comparing them to a 'runaway train'.

- From the program discuss in class and write your own report of the incriminating evidence claimed and used by the police at the time of Patrick's arrest and interviews to suggest his likely guilt in the alleged rape of the complainant. In what sense might the evidence of likely guilt be 'by association' rather than by direct proof? Describe the possible discrepancy between the evidence and Patrick's explanation of events. Explain whether the evidence as presented warranted Patrick being charged and then refused bail by a judge. Why was Patrick refused bail? If Patrick had answered all police questions honestly, speculate whether events may have turned out differently.
- When Patrick was arrested, questioned, charged, and remanded in custody, his parents were absent, although having been informed were quickly on their way to the police station from 400 kilometres away.

Carry out research and write a commentary on whether the laws throughout Australia affecting minors allow these police and judicial actions to take place before the parents arrive to be present with their children during these proceedings. Did the police have an obligation to wait for Marie and Terry Waring to arrive? Note that as an adult,

EVERY FAMILY'S NIGHTMARE

LIES, DECEPTION AND THE HIGH COST OF JUSTICE

Patrick's older brother, Michael, was present when Patrick was questioned both at home and later in the police station (as shown on the police video recordings, which appear in the program). As a minor, do you think the presence of an older brother offers enough protection to someone in Patrick's position? Should the police have waited anyway, for Patrick's parents to arrive? You may wish to examine the program's footage of Patrick's interview at the police station to ascertain the roles of those present. One of those present is Patrick's brother, Michael.

- In pairs or small groups plan a radio script based on Marie and Terry Waring's flight back home from their interrupted holiday, beginning from the time they receive the first phone call about their son's arrest, and then, as they journey back, receive subsequent calls, as events worsen for them. As this activity is to be written for sound only, and takes place only where the two parents are, you should consider on-location and phone dialogue by a range of character voices, sound effects and music. Rehearse a reading of the script, revise and edit, then either present a reading to the class or produce and record a presentation that could be uploaded to your school's intranet as a sound file.

Crime scenes, forensic evidence, police investigations

A central argument of the program revolves around the 'contamination' of evidence, and the role and methods of the investigating police in gathering what they believe is the required evidence to prove the guilt of a suspect.

- Define in class the meaning of the term 'forensic evidence'. Carry out relevant research then plan and create an illustrated display poster of the type and range of work carried out by a forensic scientist. What qualifications and training are required to be a practitioner in this field?
- From the program discuss in class and write your own notes on what Robin Napper means when referring to forensic science as 'neutral', 'independent' and a 'silent witness'. Also explain Professor David Barclay's views that forensic scientists have '... got no vested interest. They don't care who did it.' What is 'contaminated' evidence, and why should it not be used in an attempt to prove a suspect's guilt or innocence in

a court of law? (Note that activities on the *Silent Witness* TV drama, and also the *CSI* franchise, are in the section titled 'The *CSI* effect'.)

- Following from the previous discussion, in your own words list all the ways claimed by Napper in which the police investigating the Waring case 'had broken every forensic rule in the book'. Is he fully correct? Comment on the explanation presented by the DPP, Robert Cock, and argue whether his views are valid.
- Comment on the essential differences between the way in which forensic scientists are employed in the investigation of police cases in the United Kingdom, and the way they are used in Australian cases. Napper suggests the Australian methods are 'really back to front completely'. Explain what he means.
- Putting everything together from the activities so far in this section on forensics, plan and write a short fiction story set anywhere in Australia about a police investigation of a crime, involving suspects, crime scene itself, the investigators, and maybe even witnesses, where possible evidence is compromised or contaminated. Consider the range of characters, the story plotting, the narrative viewpoint, and whether the story will be a serious 'issue' drama, a detective genre tale or even a comedy.
- Forensic scientist Professor Barclay refers to two distinctly opposing methods of police crime investigation and the questioning of suspects and witnesses. One is the 'eliminative' system of investigation; the other is the 'nominative' system. In class define and write notes on the characteristics of, and methods used by, each system. Which of the two is currently considered superior, and why?
- Taking into account the previous activity, write a commentary as to whether the Patrick Waring case was conducted by police in an eliminative or nominative way. Also discuss what steps the police might have taken, the procedures they may have used, and the possible outcomes of the investigation, had they followed the alternative approach.
- Professor Barclay draws upon a quotation from 18th century author Laurence Sterne: 'Once you think you know what's happened,' paraphrases Barclay, 'it's the nature of man [sic] that they make

EVERY FAMILY'S NIGHTMARE

LIES, DECEPTION AND THE HIGH COST OF JUSTICE

everything fit. From that moment on, everything you see, read, hear or understand goes to reinforce your preconception'.

Discuss in class what Barclay means about the 'nature of man', and offer examples from your own experience, or from incidents you may have observed in the media, of where, how and why this has happened.

- In groups prepare two short drama scenes, or set of scenes, using the same basic story event. One example may be the disappearance of money or jewellery from a room in which there are four of five suspects, or a scenario of your own invention. In one storyline the investigating police take an eliminative approach to examining the suspects and solving the crime. In a second storyline they take a nominative approach to the same suspects. Plan and write the scenes. Rehearse a reading and revise if necessary, then give a reading to the class.

Corroborating evidence

As we see in the program, the role of forensic scientists also involves collecting and testing corroborating evidence, particularly DNA samples, important in including or excluding potential suspects from criminal investigation.

- Define and write your own explanation of what the narrator refers to as 'corroborating evidence'. What is the situation in Australia, concerning the use of corroborating evidence in deciding whether a criminal case should lead to a court trial? What is valuable about information derived from DNA samples, and why are the findings of forensic DNA tests regarded as examples of corroborating evidence? Discuss whether the results of DNA tests are always totally accurate and conclusive.
- Terry Waring, and barrister Tom Percy QC, are both critical of the system surrounding the testing of DNA samples, especially in their home state, Western Australia.
- Explain their criticisms, and whether you think their comments are justified. Does the system need improvement, and if so, what would be required to achieve this?
- DNA consultant Brian McDonald refers to three possible outcomes that can be derived from the forensic testing of DNA samples, in deciding

whether a suspect in a criminal investigation should be arrested and charged. One of these outcomes is: to 'include someone'. What does he mean by this? The other two are: 'to exclude' and 'not to exclude'. Discuss in class the wording of these possibilities. Is there a difference in meaning between 'to include' and 'not to exclude'? What might be the dangers that may arise when this terminology is used in a criminal investigation?

- Following from the previous activity, write your own commentary on the results of DNA testing of 'intimate samples' taken from both Patrick Waring and the complainant. (You may have to define what is meant by 'intimate samples'.) What do the results of the testing suggest as corroborating evidence about Patrick's innocence or guilt, and the complainant's testimony to police?
- Discuss in class then write your own notes about the problem Robin Napper has with the appearance on both Patrick's and the complainant's mobile phones of each other's names and phone numbers. What might this indicate? Discuss whether the details held on both phones would be classified as 'corroborating evidence'. How might the prosecution lawyer use this information in court, and how might Patrick's lawyer respond to it, also in court?
- Deriving from the previous activity, plan and write an imagined court trial dialogue of questioning, cross-questioning and answering involving the lawyers, defendant and complainant. Read your 'court transcript' out loud to yourself or to someone else, then redraft and edit as required.
- Plan and create either an illustrated display poster or an informational web page for an education site designed for children 10-14 years old, about the use of corroborating forensic evidence as a means of criminal investigation. Consider your audience in ensuring the display is accurate, factual, yet of interest to the target group.

The 'CSI effect'

The *CSI* franchise series is a popular American TV crime investigation drama series. During the program DNA consultant Brian McDonald raises the issue known as the 'CSI effect'.

- In class discuss and write your own notes on what

EVERY FAMILY'S NIGHTMARE

LIES, DECEPTION AND THE HIGH COST OF JUSTICE

McDonald means by the 'CSI effect' in deciding the outcome of criminal court trials. Do you think his comments are valid? What, in fact, is the alternative reality to the 'CSI effect' in the testing of DNA samples? (See 'The CSI effect' in website references)

- View an episode of *CSI: Crime Scene Investigation*, or one of the CSI spin-offs such as *CSI: Miami*. Write an analysis of the episode, examining it for the ways in which crime scenes are investigated, and evidence is collected, tested, and used as proof of guilt or evidence. Is the episode realistic and believable or does it conform to Brian McDonald's comments? Explain whether the plot draws on an 'eliminative' or 'nominative' method of crime investigation.
- Following from the previous activity, you may also wish to examine and comment similarly on an episode of the British crime investigation TV series, *Silent Witness*. In its plot treatment of forensic investigations comment on whether it is substantially different from those in the CSI franchise.

Justice for all?

Drawing from Patrick Waring's story, *Every Family's Nightmare* critiques the ways the police in Western Australia investigate crime scenes, interview suspects and collect forensic evidence, and the ways in which the evidence is tested. The program also, though, raises other issues of broad significance to the maintenance of a fair and workable system of justice.

- Discuss in class the 'critical turning point' that prompts Patrick's legal defence team to apply to the court for 'special permission' to question the complainant 'about her prior sexual activity'. Why do you think 'special permission' is required?
- Debate in class then write your own objective commentary as to whether the defendant's lawyers in a rape case have any right to question a complainant in court about her (or his) sexual history, when the complainant is not the person on trial, even if the questioning is held *in camera*. (*In camera* means that a courtroom trial is at least partially conducted without the presence of the media and the general public.) What are the possible negative and positive consequences of such a procedure? Should trial transcripts of

in camera proceedings ever be available to the public at a later date?

- Write a short commentary discussing why Patrick's parents are very hesitant to allow him to be released on bail before his court appearance. Are their concerns justifiable?
- Robert Cock, DDP, maintains that if his conviction rate is '...above the national average, it seems to me that my office is properly evaluating those cases that are worthless'. Discuss in class whether a high conviction rate is valid and acceptable as a marker of success.
- Following from the previous discussion, carry out research to define the meaning of the Australian 'adversary' system of justice. What are the strengths and weaknesses of this system? Are there any alternative, workable systems of justice? (See 'Adversary system of justice', website references.)
- View the sequence in the program where Patrick, his family and legal team nervously await the jury's verdict. Plan and write a short story drawing from this, primarily set during that waiting time, where the cost of justice weighs heavily on everyone. Consider the point of view: will it be narrated in the first person? If so, who will be the narrator?
- Draft a newspaper account of the result of Patrick Waring's trial. Ensure you follow the laws as to whether you may identify anyone by name. Use desktop publishing software to present your report in newspaper column format.
- Discuss in class and write notes on the cost of justice to Patrick and his family. Elaborate on the emotional aftermath. Imagine you are in Patrick's situation; plan and write a sequence of personal diary entries one year after the court verdict.

Media studies

Carry out the following activities.

- Explain the meaning and purpose of the program's title. Provide a suitable alternative title, and offer a justification for it.
- Filmmaker Julia Redwood says, 'We took great care to ensure that the focus remained on the big picture and not on the minutiae of why the complainant lied'.

EVERY FAMILY'S NIGHTMARE

LIES, DECEPTION AND THE HIGH COST OF JUSTICE

In the context of the program explain what she means by 'big picture' and 'minutiae'. Do you think it was an appropriate approach to the subject matter?

- Discuss in class then write your own commentary on the purpose, validity and worth to the audience of the re-enactment scenes. Provide evidence to support your comments. For example, note the shots of the prosecution barrister preparing herself for the trial.
- Discuss, with examples to support your views, whether you think *Every Family's Nightmare* is objective in its presentation.
- Immediately prior to the closing credits there are two screen captions: one refers to the West Australian police, the other refers to the Waring family. As a member of the audience, comment on the appropriateness of these captions. What is your reaction to them?
- In pairs or small groups plan and create the script for a 30-second promotion, to be aired on radio, for *Every Family's Nightmare*. Consider your approach, the style of narration, the theme, and the use of sound effects, music and 'sound grabs' from the program. You may wish to produce and record your promotion.
- Plan and write a review of the program in 300-350 words, aimed at readers of a weekly TV magazine.

References and further resources

Books and newspaper articles

Jay D Aronson, *Genetic Witness: Science, Law, and Controversy in the Making of DNA Profiling*, Rutgers University Press, New Brunswick, 2007

Amanda Banks, 'DNA lab admits rape case bungle', *The Australian*, 16 March 2006

Don Chalmers (ed), *Genetic Testing and the Criminal Law*, UCL Press, London, 2005

Justin Healey (ed), *Crime and Justice*, Spinney Press, Rozelle, NSW, 2001

Justin Healey (ed), *Juvenile Crime*, Spinney Press, Thirroul, NSW, 2008

Robert N Moles, *A State of Injustice*, Lothian Books,

South Melbourne, 2004

David E Newton, *DNA Evidence and Forensic Science*, Facts On File, New York, 2008

Liz Porter, *Written on the Skin: An Australian Forensic Casebook*, Pan Macmillan Australia, Sydney, 2007

Helen Stacy and Michael Lavarch (eds), *Beyond the Adversarial System*, Federation Press, Leichhardt, NSW, 1999

Stuart Taylor Jr and KC Johnson, *Until Proven Innocent: Political Correctness and the Shameful Injustices of the Duke Lacrosse Rape Case*, St Martin's Press, New York, 2007

Film/TV

Janine Cohen (producer), 'A Black Day for Justice', episode of *Four Corners*, ABC TV, 18 March 2002

Robert Mulligan (director), *To Kill a Mockingbird*, Universal, 1962

Michael Muntz (director), *Saving Andrew Mallard*, ABC TV, 2006

Aviva Ziegler, *Secrets of the Jury Room*, 220 Productions, 2004

Websites

Adversary system of justice:

https://en.wikipedia.org/wiki/Adversarial_system

<http://www.lrc.justice.wa.gov.au/default.aspx>

<http://www.onlineopinion.com.au/view.asp?article=268>

David Barclay:

<http://www.rgu.ac.uk/?q=David>

+Barclay&type=searchParser&view=displayPageStandard

<http://www.abc.net.au/austory/content/2006/s1704843.htm>

The CSI effect:

<http://www.abc.net.au/stateline/wa/content/2006/s1743372.htm>

http://en.wikipedia.org/wiki/CSI_effect

EVERY FAMILY'S NIGHTMARE

LIES, DECEPTION AND THE HIGH COST OF JUSTICE

DNA testing:

<http://www.abc.net.au/rn/lawreport/stories/2003/901320.htm>

<http://www.utas.edu.au/tiles/research/current-projects2/the-effectiveness-of-forensic-science-in-the-criminal-justice-system>

<http://www.theaustralian.com.au/news/health-science/genetic-experts-slam-dna-ancestry-testing/story-e6frg8y6-1111115438332>

<https://www.parliament.nsw.gov.au/researchpapers/Documents/dna-evidence-wrongful-convictions-and-wrongful-a/DNA%20EvidenceFINALINDEX.pdf>

Robin Napper:

<http://netk.net.au/Experts/Napper.asp>

<http://netk.net.au/Experts/Napper1.asp>

<http://www.abc.net.au/catalyst/stories/s1199805.htm>

Patrick Waring:

<http://www.perthnow.com.au/news/innocent-boys-jail-nightmare/story-e6frg12c-1111113259916>

<http://www.smh.com.au/entertainment/tv-and-radio/a-parents-worst-nightmare-20100602-wyxx.html>

Every Family's Nightmare

A Screen Australia National Documentary Program in association with Prospero Productions. Produced with the assistance of ScreenWest, Lotterywest and SBS.

A film by Michael Muntz, Ed Punchard, Julia Redwood.

Producers: Julia Redwood, Ed Punchard

Writers: John McCourt, Julia Redwood, Rhian Skirving

Executive Producers: Ed Punchard, Julia Redwood (Prospero Productions); Penny Robins (Screen Australia)

Narrator: Pamela Rabe

Year: 2009

Duration: 52 Minutes

Teachers notes written by Roger Stitson.
Images courtesy of Prospero Productions

For further information contact:

National Film and Sound Archive of Australia
Sales and Distribution

PO Box 397 Pyrmont NSW 2009

T +61 2 8202 0144 | F +61 2 8202 0101

E: sales@nfsa.gov.au | www.nfsa.gov.au

