

# Hey hey, it's a very sad day for justice

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Patrick Waring who spent a year in jail after being falsely accused of raping a girl pictured at home with his dad Terry Waring and sister Danielle Waring.

The documentary on SBS, *Every Family's Nightmare*, showed just how police and prosecutors can be dedicated to the cause of getting it thoroughly wrong.

If you were glued to Nine's *Hey Hey it's Saturday* (on Wednesday) and missed the program, here's the outline. Patrick Waring, 15, was accused of rape. The rape was supposed to have taken place several times in a busy Perth park in broad daylight close to the WA police academy. He was arrested in the middle of the night while his parents were away, and locked up. He was denied bail and kept in prison for almost a year.

The evidence was that Waring tried to chat up the young woman who made the allegation against him and saved her mobile number in his phone. This was something that initially he denied doing. However, the forensic side of the case was a shambles. The accused's clothing, which the police used as evidence, was contaminated. The crime scene wasn't immediately secured and it became contaminated. The pathology reports showed an absence of young Patrick's DNA in the complainant's intimate samples, and vice versa.

Still the police and the prosecution insisted, despite the lack of DNA, it wasn't possible to exclude Waring. The fact he wasn't excluded meant a jury could infer there must be grounds for his inclusion. It took five months to get the pathology report from the police, even though it could have been completed in 48 hours. The report did reveal the DNA from a saliva mouth swab of a completely different male. That was not reported to the defence team.

In view of this, Waring's defence team was given an opportunity to interview the "victim". Up to that point she had maintained that before being raped by Waring she had been a virgin. Now she said that was not so and just hours before being raped by Waring she had been raped by another man. Despite the discrepancies in her numerous versions of the supposed event the West Australian DPP pressed on with the case. The Crown opened with a statement that all of the claims by the complainant would be corroborated. None were. After a three-week trial and jury deliberations of 10 hours the verdict came back: Not guilty. The complainant cannot be named and cannot be questioned as to why she concocted her story.

Apart from the personal devastation for the Waring family, this case has once more opened up the problem that besets policing techniques in Australia. Among the "stars" of the documentary were two forensic experts. Robin Napper is a former British detective. He has worked with the NSW police and now lives in WA, where he has worked on the Perth Mint swindle, the Rory Christie conviction, the Phillip Walsham murder and the Andrew Mallard case. He was also involved in getting the Graham Stafford conviction in Queensland set aside. He was also hired by the Waring defence team. An interview with Napper appeared in the *Herald* last Saturday.

One of the important developments in England in the 1990s was the formal adoption by police and investigators of what is known as the "eliminative" approach. This followed a couple of high-profile miscarriage cases, the Guildford Four and the Birmingham Six. The eliminative approach requires evidence be applied in a way to eliminate people from the pool of suspects.

Police forces around Australia, and certainly in WA and NSW, use a "nominative" approach. A suspect is nominated and a case built around that person. This can and does mean evidence is used selectively. In England and Scotland the nominative approach is regarded as discredited. Not here, which may explain why Napper is on the nose with police in a number of Australian states.

Also appearing in the documentary was Professor David Barclay, a Scottish forensic scientist, who led the reforms in Britain that place the forensic people in control of the crime scene. British forensic scientists are independent of the police and prosecutors, and call a lot of the shots in criminal investigations. Here the police run the whole show.

Napper says in Australia the police are missing key forensic evidence in every crime and that practices and procedures are decades out of date.

Barclay also worked on the famous Andrew Mallard case in WA. Mallard was accused and found guilty after making a false "confession" of the murder of the Perth jeweller Pamela Lawrence. It was Barclay who discovered the palm print of the real murderer kept in police files for 15 years. He also uncovered other evidence pointing to Mallard's innocence, which either had never been pursued by the police or covered up.

The journalist Colleen Egan was a leading campaigner seeking justice for Mallard. Her book about the case is just out. Napper is also writing a book about NSW criminal cases on which he worked. The former WA DPP Robert Cock is now an adviser to Premier Colin Barnett on terrorism legislation.

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