

# Ripples across the pond: global implications of the Heiner Affair

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*The Heiner Affair has global implications for archivists and records managers. This article examines North American responses to the Heiner Affair and its legacy regarding recordkeeping and political pressure. The events of the Heiner Affair followed earlier recordkeeping scandals in North America, and subsequent scandals in South Africa and the United States showed the extent of improper records destruction. The global legacy of Heiner highlights these problems, including political pressure on archival processes and concerns for protecting whistleblowers. It must be understood in the international context of such issues as accountability, open government, and social justice.*

Far beyond the Australian recordkeeping scene, the Heiner Affair has awakened North American archivists and records managers to the

harmful effects of improper recordkeeping policies and procedures, the dangers of political pressure, and the need for accountability through reliable recordkeeping systems. Although the details of the Heiner case are still not widely known and understood by the majority of American and Canadian archivists and records managers, it has had a significant impact among those on the east side of the Pacific who are actively engaged in archival teaching, research, and writing. This has given the case at least a strong indirect impact on North American thinking about archival concerns. Far from being an internal matter for Australians to consider, the Heiner Affair has gained recognition as a recordkeeping crisis with global implications.<sup>1</sup>

During the 1980s American archivists devoted a significant part of their attention to preservation concerns and to the continuing search for a clear public identity for archivists. Machine-readable cataloguing began to dominate professional discussions by mid decade. These were inwardly-directed concerns. Professional standards emphasised technical concerns, while discussions of professional identity began within the profession's own perspective and then sought to project a more positive image outward, towards resource allocators and the public. In the 1990s North American archivists remained, to a large extent, focused on the twin challenges of responding to the proliferation of electronic records and of developing descriptive standards for computer-based access systems.<sup>2</sup> By the mid-1990s, North Americans began to hear rumblings from Australia about recordkeeping scandals and concerns for accountability. The essays in *Archival documents: providing accountability through recordkeeping*, edited by Sue McKemmish and Frank Upward, brought these concerns into focus for many North American archivists.<sup>3</sup> However, these concerns seemed distant (both geographically and intellectually) from the pressing needs confronted by North Americans in their daily archival endeavours. The Heiner Affair thus emerged only gradually and quietly as a topic of any concern.

If it were an isolated incident of improper recordkeeping procedures and political interference, the Heiner Affair perhaps would be better known worldwide, but its impact would not have been as great. A single episode can be dismissed as an aberration, an exception to normal

practices. Occurring in the wake of several recordkeeping scandals and being followed by others, the Heiner case fits a pattern of abuse, mis-management, and corruption that highlights the importance and impact of recordkeeping throughout society. Often overshadowed by similar scandals closer to home, the impact of the Heiner Affair in North America has been significant more as an example of the global impact of recordkeeping than as a single event capturing the attention of archivists and records managers.

### **Before Heiner: recordkeeping scandals in North America**

Before the Heiner Affair began, the United States and Canada already had their own fair share of political scandals involving questions of documentation, improper recordkeeping policies and procedures, and abuse of government power. Three examples of national headline-grabbing scandals represent problems that infected the body politic at all levels, from national to state/provincial, and local/municipal jurisdictions. These scandals are not, of course, unique to North America, as examples from around the globe could prove.<sup>4</sup> Yet a sort of parochial myopia might be sensed in the North American lack of awareness or concern regarding the early stages of the Heiner Affair. It was as if we were saying, 'You think you have problems? You should see what *our* political leaders have been up to!'

The American political scandal that most prominently engaged public attention was the Watergate crisis of the mid-1970s. In addition to providing journalists and pundits with the convenient '-gate' suffix, which they could attach to any future whiff of impropriety, Watergate focused public attention on the importance of records in discovering political crimes and holding public figures accountable for their actions. Richard Nixon's presidential career likely would have survived the allegations of improper activities without the disclosure of the 'smoking gun' provided by the secret tape recordings of Oval Office conversations. These so-called Watergate tapes revealed the true story of the Nixon administration's abuses of power and its obstruction of justice through a systematic cover-up. This led directly to the House of Representatives' impeachment proceedings and the president's resignation. In response to Nixon's abuses of power, Congress passed

the Presidential Records and Materials Act 1974 (USA) and other legislation to establish the principle of public ownership and access to presidential records.<sup>5</sup>

Control over presidential records surfaced again with the Iran-Contra hearings in the mid-1980s. These investigations disclosed an attempt by officials of the George HW Bush administration to destroy computer tapes of electronic mail that contained explosive revelations of illegal activities of the Reagan-Bush administrations regarding the Iran-Contra affair; investigations of Panama's leader Manuel Noriega; and billions of dollars loaned to Iraq before the first Gulf War. A separate legal challenge regarding allegations of improper records destruction of email (on the IBM PROFS software system) became known as the PROFS case. 'What the Nixon and the PROFS case[s] demonstrate is that the archival community, and indeed all its allied professions, must be ever vigilant in helping to ensure that American citizens have all the requisite information to make informed decisions regarding the activities of their government', Bruce Montgomery concludes. 'Archivists have always played an important, albeit obscure, role in the enterprise of promoting the public's right to know. But this role is also contingent on the need to speak out on issues of vital historical concern.'<sup>6</sup>

In November 1986 Lieutenant Colonel Oliver North erased 736 incriminating email messages and National Security Advisor John Poindexter deleted 5,012 messages relating to the scandal. Despite their zealous efforts to destroy and alter records, North and Poindexter overlooked crucial back-up tapes, which allowed investigators to recover emails that provided evidence of illegal activities. Independent counsel Lawrence Walsh concluded that the central participants in this scandal 'were reluctant to provide truthful information unless they were confronted with difficult-to-refute documentary evidence'. As David Wallace concludes, 'aggressive oversight and power to seize the documentary record provides one of the few means by which democratic accountability can be secured in a national security context'.<sup>7</sup> To ensure accountability it is critical to establish clear recordkeeping requirements, to protect important records from destruction, and to understand and value proper recordkeeping practices.

The United States did not monopolise the field of improper recordkeeping, of course. In Canada in 1982 a request from the West German government for extradition of a notorious Nazi war criminal revealed that records necessary to investigate these charges had been improperly destroyed. When publicly disclosed three years later, this raised outcries against Canada's alleged willingness to harbour Nazis living quietly in the country.<sup>8</sup> Central to this scandal was the fact that the Canadian national archives had previously destroyed immigration application forms and case files, presumably because they did not seem to have significant value for historical research. The potential for such files to be used as legal evidence apparently had not been considered while following routine and authorised recordkeeping procedures. Yet in retrospect this was a crucial error. As one investigator charged, the loss of these immigration records 'has seriously impaired the ability of Canadian authorities, notably the RCMP [Royal Canadian Mounted Police] to investigate and take effective action against war criminals in Canada'.<sup>9</sup>

Public hearings and investigations continue for several years. This incident led Canada's national archives to re-evaluate its records appraisal and retention policies, to ensure that sensitive records that might have legal implications or value in protecting citizens and the public interest would be preserved. In responding to the charges against the national archives, Terry Cook declared that the controversy had brought 'into the public spotlight the usually quiet work archivists do in deciding which records will survive as the basis of our collective historical knowledge and which will go into the shredders'.<sup>10</sup> As Cook concluded later, in reflecting upon the lessons from this incident, 'Despite the passage of time, accountability is required; there is no statute of limitations for crimes against humanity. The archival record remains central to such accountability.' Furthermore, this showed the critical importance of 'the existence of reliable records as evidence of human and organizational activity'.<sup>11</sup> The destruction of records needed to provide critical information about alleged former Nazi criminals thus demonstrated, by their absence, the societal and political importance of archives. Decisions about recordkeeping policies could play a significant role in protecting the public interest through accountability, social memory, and even national identity.

Records often provide essential evidence needed for legal purposes, to protect the rights of citizens, and to bring criminals to justice.

Collectively, these three cases raise many of the recordkeeping issues later highlighted in the Heiner Affair. Records provide essential evidence needed for legal, political, genealogical, and historical purposes. Improper destruction of such records may result in a cover-up of wrong-doing or prevent citizens from achieving justice. Archivists thus perform a function of central importance to society and to individual citizens. In addition, government officials themselves may abuse their power through control of records and self-interested decisions about their preservation or destruction.

### **North American responses to the Heiner Affair**

The Heiner Affair became an international *cause célèbre* largely through the persistent efforts of Kevin Lindeberg, the union representative for Peter Coyne, the disgraced former director of the John Oxley Youth Detention Centre. In defending Coyne's legal right of access to documents from the inquiry led by retired Magistrate Noel Heiner into Coyne's management of the detention centre (which were later discovered to involve the abuse of children at the centre, including a sexual assault incident of a 14 year-old Indigenous female minor by other male inmates), Lindeberg discovered that they had been destroyed by the Queensland State Archivist, Lee McGregor. Although it still remains unclear what McGregor knew and when, more senior officials did know that these records were relevant to an impending court case involving Coyne and others. This act of shredding therefore suggested a potential breach of section 129 of the criminal code<sup>12</sup> against all those involved, which included the entire Queensland Cabinet and certain senior bureaucrats who ordered the documents destroyed to prevent their known use as evidence. Lindeberg's role as a whistleblower in this case is too well-known in Australia to require elaboration here, except for a few telling details. In defending McGregor's actions, Michael Allen Barnes, official spokesman for the Queensland Criminal Justice Commission, stated, 'The archivist's duty is to preserve public records which may be of historical public interest; her duty is not to preserve documents which other people

may want to access for some personal or private reason.’<sup>13</sup> Although Lindeberg knew that this statement was not correct, based on the law, he had no standing or authority regarding recordkeeping policies. He needed the support of recognised professionals who could ‘expose the nonsense regarding the role of the State Archivist’ being presented by the CJC.<sup>14</sup> Lindeberg appealed first to the Australian archives and records management community to determine if this narrow definition of the archivist’s role met professional standards. In 1996, after American recordkeeping expert Rick Barry made a keynote presentation to the Records Management Association of Australia (RMAA), Lindeberg sent him an email message asking whether international recordkeeping best practices would support destroying a small group of incident-specific government records because the government considered them of no historical value.<sup>15</sup> ‘Needless to say, I confirmed his suspicions that it was definitely out of practice’, Barry later recalled.<sup>16</sup> Lindeberg sent similar requests to Terry Cook and John McDonald, two archivists from the Canadian national archives who also had participated in professional conferences in Australia, and to the International Council on Archives (ICA).<sup>17</sup> Thereafter, the Heiner Affair assumed broad international significance as a test case of both professional recordkeeping standards and the defined role of the archivist.

It is worth noting that Lindeberg’s ability to contact international experts on recordkeeping and archives matters benefited greatly from the new Internet technology available in the 1990s. As Lindeberg himself declares, ‘we were at the dawn of modern communications and it allowed me (and my then barrister) to go into cyberspace to seek out friendly liberating international voices to put down angry oppressive voices at home’.<sup>18</sup> Through email and Internet searches, Lindeberg was able to identify and contact potential North American allies in his quest for answers to the recordkeeping questions raised by the Heiner Affair. This made it possible for him, as a whistleblower, to make direct contacts with recordkeeping professionals in other countries. As he stated in a January 1997 letter to Terry Cook, ‘with the aid of modern technology, my six year struggle for justice in Queensland has brought these important principles ... to centre stage for archives and archivists everywhere’.<sup>19</sup> In Rick Barry and Terry Cook, Lindeberg

found sympathetic ears; he could pour out his story to them while also seeking expert advice on archival and recordkeeping standards and best practices. Barry, Cook, and McDonald had each visited Australia and spent time meeting with archivists and records managers there. They had also followed discussions on the Aus-Archivists listserv and remained interested in the Australian recordkeeping scene. As North Americans familiar with the Australian archival landscape but not constrained by personal attachments and loyalties to individuals and institutions potentially implicated in the Heiner Affair, both Barry and Cook could speak out on the professional and ethical aspects of the case.

As of 1996, Barry sensed that Chris Hurley was the principal advocate urging ASA to weigh in on the Heiner case. Hurley's heavy and unrelenting efforts made him a controversial figure, who seemed to many too emotionally involved because of his own dismissal, under analogous circumstances, from the position of Keeper of Public Records (the state archivist) in Victoria. However, Barry now recalls, 'It was refreshing to me to see an archivist get emotional about an egregious violation of everything archivists stand for'.<sup>20</sup> Cook had also heard the other side of the debate over the role of Lee McGregor. One Australian archivist pointed out to him that McGregor had been forced to provide the response demanded by a Cabinet minister. As a public servant, her choices were to obey or risk losing her job.<sup>21</sup> After supervising the document shredding, in fact, McGregor received commendations and a promotion. Despite their general support for the concerns raised by both Lindeberg and Hurley, neither Barry nor Cook could offer a formal endorsement of their position regarding the Heiner case. Lindeberg's appeal to the ICA likewise failed to achieve a positive response.

In January 1997 Lindeberg sought to gain support for his position on the Heiner Affair by appealing to the National Archivist of Canada, Jean-Pierre Wallot. His barrister, Roland D Peterson, sent a lengthy letter to Wallot on behalf of Lindeberg, whom he characterised as 'a public lobbyist for accountability in government through sound record-keeping and archival practices'. Peterson stated that Lindeberg 'seeks international archival opinion ... to support the position that



no document shall be destroyed particularly when the documents are likely to be used in future legal proceedings'. The Heiner Affair had clear international implications, he argued, because it threatened to undermine principles and standards regarding 'the proper role of archivists in democratic societies'. Citing Chris Hurley's March 1996 testimony that the Queensland Government's official position 'cannot be allowed to stand', Peterson declared that the precedent set by the Heiner document shredding 'undermines the profession and mission of archives universally'.<sup>22</sup> Lindeberg made many of the same points in a separate letter to Terry Cook. He declared that the failure of the Queensland State Archivist to stand up for proper archival standards added 'a professional and legal international dimension to this affair' since such standards are 'essential for good government and safeguarding democratic societies'.<sup>23</sup> This seemed to Lindeberg and his barrister sufficient to overcome any reluctance that the National Archivist of Canada might feel to intrude in the internal affairs of a sister country within the Commonwealth. The Heiner Affair might seem to be a local matter, but it had international implications for the archival and recordkeeping profession.

As expected, Wallot turned to Cook and McDonald, his two staff members most familiar with the Heiner Affair and the Australian archival profession, to draft a response and write a background paper. As the heads of the national archives' divisions of appraisal and recordkeeping systems, respectively, Cook and McDonald were internationally-recognised experts with the prestige that would be needed for Lindeberg to substantiate his claims regarding professional standards and the proper role of archivists in a situation such as that presented by the Heiner case. They drafted a 'sympathetic response' supporting Lindeberg's position, as Cook now recalls, but it was vetoed by Wallot. As a mid-level executive manager Cook could not commit the Canadian archives to take a stance on such an issue. 'Only Wallot could do that, and he refused', Cook states. After the negative publicity surrounding the earlier Nazi war criminals scandal in Canada, Wallot may have been 'gun-shy' about making public statements.<sup>24</sup> Cook thought that Wallot, representing national authority in Canada, could comment on the substantive recordkeeping issues raised by Peterson and Lindeberg 'without crossing the line ... of condemning

or interfering in the internal archival affairs of another country'.<sup>25</sup> Instead, Wallot issued a supportive but bland letter to Peterson, stating his own responsibilities under the National Archives of Canada Act, but declining to interfere in the archival affairs of another country. He concluded by providing the address for the ICA Secretariat in Paris, in effect passing the buck to the international body which he had previously headed.<sup>26</sup> Thus began a pattern of international responses to the Heiner Affair, in which archival institutions and professional associations would decline to take strong positions regarding this Australian incident. Only a few individuals in North America took an interest in the case and spoke out publicly about its international implications.

The most prominent North American voice speaking about the Heiner case in the 1990s was Rick Barry. Having followed the *Weekly Independent* coverage of the Heiner Affair since June 1996, Barry entered the Aus-Archivists listserv discussion in March 1997. As an 'uninvited foreigner' in this ongoing debate, he expressed his hope that 'an uninvolved point of view' might help move the discussion from ad hominem exchanges to a stronger focus on the underlying recordkeeping issues arising from the Heiner case. Compared to the library profession, which 'screams murder, publicly, whenever it sees threats to free access to information', Barry said that he did not recall the archives profession in the United States, Canada, Australia, or the UK taking public stands and demanding to be heard, to 'bring to greater public awareness the importance of the inviolability of archives'. He then listed the key substantive issues, questions, and lessons to be learned from the Heiner Affair. Of particular interest, his final two questions articulate the central ethical dilemmas faced by archivists asked to violate their professional principles and standards: 'To what extent should archivists be guided by the strict limits of the law versus ethical standards that may exceed the requirements of the law and what protections are in place or needed to encourage archivists to invoke such standards? What organizational arrangements might help to insulate archivists from political pressure?'<sup>27</sup> Barry saw the Heiner case as part of a broader problem of political pressure, lack of public awareness, and neglect that fostered an atmosphere in which improper recordkeeping procedures and unwarranted destruction of

records had emerged in several recent public scandals. In April 1997 he posted a notice to the US-based electronic records listserve (ERECS-L), in which he compared the Heiner Affair to the Nazi gold case and a US news story about illegal destruction of records by the Internal Revenue Service, the federal agency charged with tax collection. In such cases, Barry stated, national and state level archives organisations sometimes were parties to cases of alleged recordkeeping abuses or even defendants in lawsuits filed in the public interest. This meant that leadership would have to come from professional associations or from 'individuals who enjoy a high reputation in their field'.<sup>28</sup> Once again Barry was concerned more with the ethical implications and lessons regarding public advocacy than with the specifics of cases such as the Heiner Affair. In particular, he thought it counter-productive to focus on assigning blame for prior actions.

Another American who had spent considerable time with Australian archivists and records managers was Richard Cox, an archival educator from the University of Pittsburgh. Responding to Barry's 17 March 1997 Aus-Archivists posting, Cox commented, 'I really believe that all the professional standards and principles are for naught if archivists and their professional associations cannot figure out a way to make more forceful statements supporting the importance of records in the public forums at our disposal'. Cox expressed his frustration that professional associations were 'slow moving and conservative' in their actions regarding charges of professional wrong-doing. He stated, 'it is time for individual archivists to break ranks' and assume leadership roles by writing letters to newspaper editors, issuing papers on their websites, and writing articles for popular news magazines. 'If more archivists were willing to speak out, the professional associations and key institutions would probably be more inclined to be activist.'<sup>29</sup> With the reluctance of the Canadian national archives and ICA to address the Heiner Affair, individuals such as Cook, Barry, and Cox remained relatively isolated voices calling for greater advocacy.

Kevin Lindeberg continued to seek greater involvement from international and foreign archival organisations. Following the polite rebuff from the National Archives of Canada, he prepared a detailed 55-page submission to the ICA Committee on Electronic and

Other Current Records, for consideration at its inaugural meeting in The Hague in June 1997. This report, entitled 'The Lindeberg Declaration in Respect of the Shredding of the Heiner Inquiry Documents and Related Matters', provided extensive documentation and arguments concerning the details of the Heiner Affair, the role of Queensland State Archivist McGregor, and the alleged legal violations regarding the improper destruction of records. Among the requested recommendations, this report asked the ICA to reject the Queensland Criminal Justice Commission's public assertion regarding 'the proper role of State/Federal Archivists' in regard to the shredding of Heiner Inquiry documents; declare that public records that could be foreseen as evidence in pending or impending court proceedings should not be destroyed; and 'exercise appropriate sanctions in order to protect the integrity of the world mission of archives'.<sup>30</sup> Lindeberg sent this appeal to the ICA in Paris on 7 May 1997. Two weeks later, ICA General Secretary Charles Kecskemeti referred the 'Lindeberg Declaration' back to Australia to be considered by the Australian Society of Archivists (ASA). The ICA considered this to be an internal affair for Australians to resolve, and did not take the actions Lindeberg requested in regard to the Heiner case.<sup>31</sup>

Under continuing pressure from Lindeberg and Hurley, the ASA issued a public statement about the Heiner Affair in June 1997. While not clearly stating its views about specific allegations relating to the Heiner incident, the ASA affirmed important archival principles:

The operation of a free and democratic society depends upon the maintenance of the integrity of the public record. Public records are a key source of information about government actions and decisions. They provide essential evidence of the exercise of public trust by public officials. This in turn helps ensure public accountability and protection of the rights of citizens.<sup>32</sup>

The ASA statement declared that the Heiner Affair 'has revealed serious shortcomings in the management of public records in Queensland at that time'. The ASA also placed on record its 'absolute rejection' of the argument 'that archivists should only consider the historical significance of records when reaching a disposal decision'.

Other factors should include the value of records for financial evidence, and to ensure the protection of citizens' rights, among other considerations. Further, 'Any indication that records are likely to be required in future legal proceedings should, by itself, be sufficient justification to warrant the retention of the records in question.' The ASA therefore called for new archival legislation in Queensland to address these concerns. This statement was adopted by the ASA in June 1997, and was endorsed a month later in July by the Records Management Association of Australia.

Meanwhile Lindeberg had also approached the Society of American Archivists (SAA), seeking endorsement of the 'Lindeberg Declaration' which the ICA had refused to act upon. In July 1997 several SAA Council members exchanged emails concerning this request. The SAA Executive Director Susan Fox, herself not an archivist, later stated that when she first received information about the Heiner Affair, she immediately forwarded it to Nancy Bartlett, then chair of the Committee on International Affairs, who recommended that the SAA should not endorse Lindeberg's statements or become involved in the political affairs of another country, especially since the ICA had not done so.<sup>34</sup> Thus, when the SAA Council formally considered responding to the 'Lindeberg Declaration' in August 1997, Treasurer Lee Stout 'said that the Australian Society of Archivists ... had already spoken to the issue and he saw no need for U.S. involvement'. The SAA Vice President William Maher agreed that 'it was not an American issue' and that the SAA Council 'did not have enough information to come to a coherent decision on it'. It should be left to the ASA to respond, as the professional society in 'the country of its jurisdiction'.<sup>35</sup> The SAA thus repeated a response similar to the reactions of the National Archives of Canada and the ICA. None of these organisations wanted to engage in a controversy seemingly internal to the affairs of the Australian archives and recordkeeping community.

However, following Lindeberg's effort to gain the SAA's endorsement for his declaration, the ASA approached its American counterpart in October 1997, asking the SAA to endorse its own public statement on the Heiner Affair. The ASA President Kathryn Dan wrote to the SAA president asking the society to endorse 'the statement which expresses

our position concerning the proper role of the archivist'.<sup>36</sup> Thus the SAA Council reconsidered the Heiner Affair at its January 1998 meeting. Despite strong requests from Rick Barry for SAA to take a position on the issue,<sup>37</sup> Council reiterated its decision 'not to become involved', but decided to send a letter to the ASA 'commenting on the relevant archival principles relating to the case'.<sup>38</sup> William Maher, having by then taken office as the SAA President, drafted a letter to the ASA for Council comment and approval. Maher's formal response to Dan, in a letter of 28 February 1998, stated that the SAA Council had to be strategic in selecting issues on which to take public advocacy positions, and that 'our primary focus should be American issues on which we have standing and can speak most authoritatively'. He expressed the SAA Council's 'strong support of many of the fundamental archival principles' in the ASA statement, listing six of the key arguments made by the ASA. Although not formally endorsing the ASA statement, Maher declared that SAA's perspectives on the role of the archivist in decisions regarding public records, as expressed in the SAA's own previous policy statements, 'should be supportive for ASA's concerns in the Heiner case, as we understand it'. He concluded by wishing ASA 'success in its efforts to educate the public about the importance of the archivist's role in ensuring the accountability of society's organizations and institutions'.<sup>39</sup> In effect this non-endorsement provided a de facto endorsement of the ASA position statement regarding Heiner.

This cautious response by the SAA Council did not please Rick Barry and others who sought a stronger advocacy position from the society. He continued to argue that even if the SAA would not 'take a strong stand on the Heiner case', it should spark serious discussion within the American archival profession. 'What can we learn by openly debating the Heiner case (and others) that will help guide us as and when we face the same problems here?', he asked. Although he had hoped that the SAA would seize this issue as an opportunity for a strong public advocacy initiative, he acknowledged that the 'SAA serves a wide variety of members and that membership is down and we can't afford to offend too many people'.<sup>40</sup> However, his frustration at the society's relative complacency remained palpable. The Heiner Affair had raised challenges to vital, bedrock archival principles. It threatened to marginalise archivists as a group with no political

power, little public recognition, and scant resources of indignation or energy to tackle public controversies. These truly were fundamental threats to the viability of the archival profession, the stability of archival repositories, and the authority of archivists even within their recordkeeping domain.

The reluctance of North American archival associations to respond more forcefully to these vital concerns raised by the Heiner Affair requires some explanation. Compared to the American Library Association, which frequently issues strong position statements regarding such public interest concerns as open access, censorship, and the personal privacy of library patrons, the SAA has typically shied away from controversy. Part of this has been due to an apparent reluctance to criticise fellow archivists, particularly those working in government archives or agencies. Lacking resources for potential legal challenges, such as suits for libel or defamation, the SAA as an organisation has often refrained from criticising individuals or organisations charged with improper recordkeeping activities. In cases such as Heiner, the SAA could also legitimately argue that foreign controversies were outside its sphere of interest or influence. This does not mean that the SAA has always avoided public policy issues. It has taken stances supporting archival programs threatened by external forces, and has even adopted resolutions supporting such member concerns as equal rights for women. However, the SAA has typically been cautious in the face of public policy controversies. Over the past decade there have been some encouraging signs that this is changing. In the years since declining to address the Heiner Affair, the SAA has increasingly begun testing its organisational clout by joining public interest lawsuits, issuing policy statements, and adopting a stronger advocacy role.<sup>41</sup> This has not been enough to satisfy some activist archivists, but it seems to be a step in the right direction.

Rick Barry continues to cite the Heiner Affair as a symptom of deeper problems within the international archival profession. In October 1999, for example, he presented a seminar for staff of the US National Archives and Records Administration, using the Heiner case as an illustration of ongoing crises in recordkeeping, public trust, and accountability.<sup>42</sup> When a new listserve for Progressive Archivists

debuted in 2000, he declared that it was an important and timely initiative, since there are 'too many cases in which records are being manipulated or destroyed illegally or unethically in countries all over the world', and professionals should not ignore these problems. Once again he deplored 'a void in professional leadership in such cases'. Barry remains the strongest persistent voice in the United States in calling attention to the global implications of the Heiner Affair.

Among Canadians, Terry Cook has played a similar role. In September 2000 Cook and Barbara Reed presented keynote addresses at the ASA Queensland Branch conference on 'Recordkeeping in the Information Age: blind spots and hot spots'. Cook's overview of appraisal and recordkeeping issues focused on three topics, as described in the conference program brochure:

- Irresponsible records destruction and [the] lack of effective penalties where unauthorized destruction has occurred
- Application of inappropriate secrecy provisions for closure of public records
- Knowledge management – Canadian experiences and what is the place of recordkeeping in the 'knowledge regime'<sup>44</sup>

As Cook now recalls, under the first of these three bullet points, 'I let it rip on Heiner'. His purpose was to 'take the international notice of and indignation over Heiner right back into its heartland in Queensland'.<sup>45</sup> While he was in Brisbane, ABC radio interviewed Cook concerning the Heiner Affair and his criticism of the Queensland Government's role in the scandal.<sup>46</sup> After continuing to follow the Aus-Archivists listserv discussion of Heiner, in 2002 Cook encouraged Kevin Lindeberg to submit an article about the legal ramifications of the case and possible legislative remedies. He also provided valuable advice and editing support to Lindeberg.<sup>47</sup>

In 2004, ABC-TV presented a program in the 'Australian Story' series that focused exclusively on the Heiner case. This program featured interviews and comments from Kevin Lindeberg, Terry Cook, Bruce Grundy, senior law lecturer Alastair MacAdam, Queensland Premier Peter Beattie, Senator the Rev John Woodley, and former Queensland Police Commissioner Noel Newham. Lindeberg's wife Irene and



daughter Naomi testified to the personal toll the case had had on their family. As the only non-Australian on the program, Cook was identified as 'Prof. Terry Cook – International Archivist'. Cook directly linked the Heiner Affair to scandals that had occurred around the globe: 'This is like Watergate. This is like apartheid police in South Africa destroying records to hide their racial regimes. This is about Nazi gold issues. And those are the kinds of cases that Shreddergate is compared to. And it's right up there as one of the worst scandals in 20th century recordkeeping.' He also deplored the 'systemic cover-up' of the Heiner document shredding, which he predicted 'is going to be a running sore in Australia, and a kind of international embarrassment'.<sup>48</sup> Cook continued to agitate for a stronger professional response to the Heiner Affair and related recordkeeping scandals. As recently as August 2010 he commented on the Aus-Archivists listserve that such cases provide 'an opportunity for archivists to have a societal impact' through lobbying. 'I would suggest that you have your issue. Recordkeepers need now to make it go "viral", so that not just the issue of Heiner is fully and finally addressed, but so that society sees that recordkeeping and archives are central and integral to democracy and accountability, and thus worthy of sustained support.'<sup>49</sup>

### **Published comments about the Heiner Affair from North America**

Despite the ongoing efforts by Rick Barry, Terry Cook, and a handful of other North American archivists, the Heiner Affair did not engage the broader archival profession in Canada and the United States until relatively recently. Apart from some discussion of Heiner on the Archives & Archivists listserve, one looks in vain for any published comments in North American archival literature prior to 2002. 'I don't think it has made much of an impact on American archivists, but then we don't pay much attention to stuff outside of the US, do we?', comments former SAA President (2002–2003) Peter Hirtle.<sup>50</sup> Mark Greene, who served as SAA President in 2007–2008, recalls, 'I do remember being a bit surprised when I did become aware of the case, after subscribing to the Australian archivists' discussion list, many years after the incident, that I'd never heard of it before'.<sup>51</sup> North American archival and recordkeeping problems – including resources and funding, the challenges of electronic records, and the development

of standards, among others – seemed to keep archivists from adopting a more international outlook during this period. One Canadian archivist offers another intriguing hypothesis. ‘It is interesting that people seem to have been quite reticent to confront the Heiner Affair’, she observes. ‘There is a line of psychological thinking that suggests that we all want to believe that we live in an essentially just world, and if we are faced with evidence that it is not, we may try to right wrongs, to restore justice, or to blame the victims ... or just ignore the offending information, so there isn’t a problem.’<sup>52</sup>

For most North American archivists – beyond the few who had followed the Australian discussions or participated in SAA or ACA leadership responses – the first clear understanding of the importance of the Heiner Affair came with Chris Hurley’s 2002 essay, ‘Records and the public interest: the “Heiner Affair” in Queensland, Australia’.<sup>53</sup> Hurley presented a brief summary of the case, including excerpts of hearing transcripts, memos, and other documentary evidence relating to the case. He highlighted the role played by Kevin Lindeberg in pursuing his allegations of official misconduct, focusing on his charges of illegal destruction of records, political pressure placed on the Queensland State Archivist, and misunderstanding of the role of recordkeeping and archival functions. Hurley argued strongly that the Heiner case revealed, by its violations, the significance of ‘the role of an independent archives authority in preventing the untoward destruction of evidence of government corruption and wrongdoing by establishing a regime of records management that supports the public interest in government accountability’.<sup>54</sup> He concluded that the ‘value added’ by archives lies in the external security they provide as a safeguard for the public interest in ensuring that governments cannot ‘cover up’ their actions, thereby also protecting individual citizens in conflict with government agencies. Establishing clear policies regulating records disposal also ‘provides the public servants who are records creators with some measure of protection from undue political interference in the process of keeping and destroying “full and accurate” records.’<sup>55</sup> Thus, Hurley’s case study of the Heiner Affair showed the importance of proper archival and recordkeeping systems and regulations by exposing the damaging consequences of a lack of such protections for the public interest.

Interestingly, the North American reviews of *Archives and the public good* diverged in the attention paid to Hurley's essay on the Heiner Affair. The lengthy review in the *American archivist*, by historian Roy Rosenzweig, failed to mention Hurley's article – one of only three of the 14 essays not covered.<sup>56</sup> However, across the border, *Archivaria* carried an even more lengthy review article by Candace Loewen in which she observed that accountability 'seems to be on every archivist's mind these days', and had gained further prominence as the theme of the Association of Canadian Archivists (ACA) 2004 conference in Montreal. Loewen devoted three full paragraphs to Hurley's essay on the Heiner Affair, focusing on his arguments concerning the need for an active archival mission, the importance of moral as well as legal accountability, and the lessons learned from 'the professional errors of archives and archivists'.<sup>57</sup>

Hurley remained the primary source of information about the Heiner Affair for most North American archivists. In July 2003 he presented a paper on the Heiner Affair at the Liverpool conference 'Political Pressure and the Archival Record'. This essay also reached a North American audience when the Society of American Archivists published it, along with other conference papers, in a volume edited by Margaret Procter, Michael Cook, and Caroline Williams.<sup>58</sup> Sponsored by the Liverpool Centre for Archive Studies, the conference focused on:

- The use of records as a tool of government
- The destruction of records as a political act
- The effects of corruption or ideology on the record
- Secrecy and accountability
- The nature and use of records resulting from repressive policies.<sup>59</sup>

Hurley's article covered both the Heiner Affair and the Nordlinger Affair, in which he had been directly involved in a similar dispute over the cover-up of unauthorised destruction of records in Victoria. As Keeper of Public Records, his refusal to back down from investigating these charges against the Chairman of the Victorian Public Service Board brought political pressure. Forced to choose between remaining silent or lying and disobeying a lawful order, Hurley refused to back

down and was subsequently removed from his position as Keeper. From this personal experience, he wrote that the case showed the necessity of keeping full and accurate records of public business in order to sustain accountability, and the need for an audit function to enforce this obligation.<sup>60</sup> Turning to the Heiner Affair, he outlined the charges it raised concerning improper records destruction, focusing on the failure of the Queensland State Archivist to defend the public record from political pressure. A central problem, he argued, was the lack of a clear appraisal policy to serve as an effective accountability tool for judging the archivist's decisions. Hurley concluded that 'individual judgment must be circumscribed by standards' because 'in order to be trusted with autonomy, archival judgment must first be professionally constrained'.<sup>61</sup> Implicitly, he contrasted his own role as a whistleblower in Victoria with the Queensland archivist's compliance with political demands.

At the Liverpool conference Rick Barry also evoked the ghost of Heiner as a significant international recordkeeping scandal. Among the 'catalogue of ethical challenges' raised by the Heiner case, Barry cited allegations of inappropriate and illegal destruction of public records, the request to destroy records because they lacked 'historical value', the ad hoc decision-making regarding disposal of records, and 'political interference with the inviolate nature of public records'. He also expressed concern about the reluctance of both professional associations and individual archivists to speak out on controversial recordkeeping issues.<sup>62</sup> The Liverpool conference proceedings, published by the SAA, thereby significantly elevated North American awareness of the international significance and professional implications of the Heiner Affair.

John Dirks of the Archives of Ontario noted in 2004 that there had been 'a groundswell of demand for greater accountability'. For organisations this meant a need to meet their political mandates, whereas for the public it had led to demands for greater transparency, freedom of information, and protection of privacy.<sup>63</sup> In one of the first references to the Heiner Affair in a North American archival journal, Dirks stated, 'The words Heiner Affair, Watergate, Iran-Contra, Enron, Canadian Blood Committee, and the Somalia inquiry are virtually synonymous

with actions of erasure, deletion, and shredding.<sup>64</sup> In addition to holding accountable those leaders in politics, business, academics, and other fields whose records they manage, today's archivists themselves, Dirks cautioned, 'will be held accountable by tomorrow's users, who depend on our making well formulated, professional decisions that can stand the test of time. Indeed archivists are vital players, not passive observers, of the relationship between history, memory, and accountability'.<sup>65</sup> The Heiner Affair has thus assumed international significance in the archival literature.

### **After Heiner: ongoing recordkeeping challenges**

The two volumes in which Chris Hurley examined the Heiner Affair represent a significant turn in North American archival perspectives regarding the societal significance of archival records and the connection between recordkeeping and social justice. In their introduction to *Archives and the public good: accountability and records in modern society*, editors Richard Cox and David Wallace contended 'that the chief value of records is, in fact, a broad accountability binding individuals with each other and with governments, organizations, and society across space and time'. Many of the articles in this important volume addressed the need for more forceful action by archivists to promote the importance of records for accountability in government agencies and other organisations.<sup>66</sup> These prominent scandals brought archives and documentary evidence to public attention. 'It isn't often that "archives" make the front pages', Rick Barry had commented. 'And, unfortunately, it usually happens in the context of some scandal or tragedy.'<sup>67</sup> The Heiner Affair needs to be considered in its international dimensions as one of these prominent examples of the dangers of political pressure and the importance of proper recordkeeping and archives standards.

In South Africa documents became tools of control used to prosecute those who opposed the apartheid regime. We may never know the full extent of injustices committed under apartheid because, as the South African Truth and Reconciliation Commission reported, 'the former government deliberately and systematically destroyed a huge body of state records and documentation in an attempt to remove incriminating

evidence and thereby sanitise the history of oppressive rule'.<sup>68</sup> Historian Helena Pohlandt-McCormick discovered 'that the South African state archives, charged with minding the documentary records of the nation, had instead engaged in their systematic destruction during the apartheid years'. Archivists had also 'carefully controlled access to the records that remained in the archives according to strict rules and pro-government biases'.<sup>69</sup> However, Verne Harris stood up against such practices. In July 1993 he heard that junior officers in several government departments had received instructions to conduct a 'large-scale destruction of sensitive public records' in violation of South Africa's Archives Act.<sup>70</sup> Harris disclosed the unauthorised destruction of records to a journalist and to Lawyers for Human Rights, becoming a whistleblower as had Chris Hurley in Victoria. From his experience Harris drew the lessons archivists should learn include 'the necessity for transparency and accountability in government'; 'the public right of access to information, particularly that held by the state'; the need for clear archival selection procedures, 'choosing what to remember and what to forget'; and, 'the need for a democratic state to take appropriate measures to prevent the sanitizing of official memory resources'.<sup>71</sup> These same guidelines could be applied equally well to the Heiner Affair.

In the United States a recordkeeping scandal in the national government came to light at the same time that the SAA was being asked to respond to the Heiner Affair. When the SAA Council declined to comment on events in Australia, some members pointed to a domestic issue on which the SAA was taking an advocacy role. As the *Washington Post* reported in February 1997, the SAA had joined the American Historical Association and the Organization of American Historians in a lawsuit alleging that the federal Internal Revenue Service (IRS) had been 'tossing out, shredding or failing to keep safe thousands of documents that could have historical significance', including electronic records. The lawsuit also charged the National Archives and Records Administration (NARA) with failure to meet its mandate to ensure compliance with recordkeeping requirements.<sup>72</sup> Rick Barry cited this as evidence that NARA lacked the power to force federal agencies to comply with the government's own recordkeeping laws. It was again largely through the efforts of a whistleblower, IRS historian

Shelley Davis who went public with evidence of improper recordkeeping, that the matter was brought to public scrutiny. In doing so she demonstrated 'enormous perseverance and courage', according to Barry, by taking a strong stand regarding recordkeeping misdeeds even though she was not a records management professional.<sup>73</sup>

Hired in 1987 as the first historian of the IRS, Davis attempted to locate historical records for her research. She found few such records, because the IRS routinely destroyed most of its records, without proper authorisation.<sup>74</sup> 'The IRS shredded, burned, trashed, and destroyed nearly their entire record path', Davis discovered. Trying to prevent future loss of records, she found NARA impotent to act. 'The IRS had the power to pick and choose what it would let the National Archives look at – a power not even allowed the Central Intelligence Agency!'<sup>75</sup> She reported this to proper officials, becoming a whistleblower because the US Records Act 'declared it illegal for a federal employee not to take action to save records that were known to be in danger of destruction'. This earned Davis a 'verbal reprimand' for acting outside her chain of command, and she eventually resigned from the IRS.<sup>76</sup> Throughout her struggles within the IRS, neither the historical community nor NARA offered support or assistance. The problems with IRS recordkeeping, Davis concluded, would not change until 'the National Archives becomes more proactive in demanding that the IRS open its records'.<sup>77</sup> As she later stated to Rick Barry, she was saddened by 'the deafening silence' from both NARA and the archival community toward her book revealing these problems in the IRS.<sup>78</sup>

As in the Heiner Affair, the IRS case illustrates the dangers of an unchecked government agency when the archival authority is unable to enforce proper recordkeeping procedures to prevent unwarranted records destruction due to political pressure. The inability of NARA in ensuring that the IRS follows legal requirements illustrates the weakness of national recordkeeping laws. Rick Barry argued that the IRS case demonstrated the need for 'legislative change to give NARA some teeth to go after agencies that ignore the law'. Because of its significant implications regarding government accountability, Barry hoped that the IRS case would prompt even stronger action from the SAA. This would both serve the public interest and allow

the archival profession to 'get some very positive mainstream media attention which it rarely if ever has been able to do'.<sup>79</sup> This difficulty of positioning an archival or recordkeeping professional association for positive mainstream media attention marks another similarity between the IRS and Heiner cases.

The Enron–Arthur Andersen scandal, exposed in 2001, presented another instance of illegal and improper destruction of records to avoid legal liability in anticipated litigation proceedings. As concerns mounted about Enron's financial future, auditors at Arthur Andersen received a memo directing them to destroy all but routine auditing records relating to Enron.<sup>80</sup> Enron falsified records and Arthur Andersen 'provided dubious retention schedules that would cover the matter up', according to Rick Barry.<sup>81</sup> Andersen was found guilty of obstruction of justice with criminal intent for allowing Enron's records to be destroyed, although the Supreme Court later overturned this conviction. This led the US Congress to pass the Sarbanes–Oxley Act (which tightens auditing and accounting requirements for any country trading with or selling stock in the United States) and the Securities and Exchange Commission tightened its own regulations. The Enron case is a cautionary tale of corporate power run amok and of the dangers of improper management of records. Yet it also shows that with regulation it is possible to assert professional records management and archives standards to protect the public interest.<sup>82</sup> Following public disclosure of wrong-doing at Enron and Arthur Andersen, the legal system eventually intervened to assert the necessity for proper recordkeeping policies and procedures.

These three examples illustrate the recordkeeping issues that link the Heiner Affair to a plethora of instances in which violations of proper recordkeeping procedures stand at the centre of public scandals, legal cases, and violations of the public trust. Although these are the 'top three' such cases, 'dishonorable mention' should be accorded several others. For example, the Australian lawsuit of lung cancer victim Rolah Ann McCabe against British American Tobacco resulted in a Victorian State Supreme Court decision in favor of the plaintiff, since she had been denied a fair trial as the result of the company's improper shredding of materials needed to make her case.<sup>83</sup> An



international investigation into the Nazi seizure of gold and other assets of their victims led a security guard to discover in 1997 that the Union Bank of Switzerland was actively destroying records from the Nazi era that might shed light on the Nazi gold issue. The bank's archivist had authorised this shredding in violation of a government ban and the bank's stated policy.<sup>84</sup> In addition to these scandals, Rick Barry also compares the Heiner Affair to controversies over control of the records of outgoing New York City Mayor Rudy Giuliani, abuses of state records by the Texas Legislature to gerrymander Republican-dominated Congressional districts, and the 'weapons of mass destruction' case that emerged during the American invasion of Iraq, among other scandals.<sup>85</sup>

The types of public policy issues raised by the Heiner Affair continue to emerge as major news stories. At the time of this writing, the WikiLeaks disclosures have been dominating international headlines and news broadcasts. American archival educator David Wallace argues that the WikiLeaks controversy shows the necessity to understand historical contexts in order to interpret the leaked documents and defends the disclosures as valuable in countering 'the political manipulations of the secrecy system' in governments. The damage caused by government secrecy, he states, 'hands down – historically and contemporarily – trumps the damage caused by transparency'.<sup>86</sup> Another current case in the United States, with even more direct parallels to Heiner, is the Central Intelligence Agency (CIA) destruction of records showing the torture of detainees at CIA black sites. In December 2010, the SAA joined the American Library Association, the American Civil Liberties Association, and more than thirty other organisations concerned with transparency and accountability to urge Archivist of the United States David Ferriero to re-open a NARA investigation of this illegal destruction of federal records.<sup>87</sup> The problems of ineffective enforcement of recordkeeping procedures, political pressure on archives, and improper destruction of records remain troubling. They require concerted action on the part of archivists, other concerned professionals, and citizens to prevent future abuses.

## The legacy of the Heiner Affair

More than twenty years after the shredding of the Heiner Inquiry records, the legal, political, and ethical issues it raised remain unresolved. The apparent violation of the law, which prevented the victims of the initial abuse as well as those harmed by its cover-up from receiving due justice, has never been properly explained or adjudicated. Queensland State Archivist Lee McGregor has never been given the opportunity to present her own story of the document destruction in a court of law. Kevin Lindeberg remains haunted by the knowledge of a grave injustice committed by powerful political leaders and by the devastating economic and psychological effects that he and his family have suffered as a result of his actions as a whistleblower. Lindeberg's accusations embroil all of the former Queensland Cabinet members and other senior officials in the scandal. Many of them are now leaders in the Australian Government, despite shadows cast by the Heiner Affair. These issues have been kept alive by the untiring efforts of Lindeberg and his supporters, including Chris Hurley, Rick Barry, Terry Cook, Adrian Cunningham, Bruce Grundy, and journalist Piers Ackerman, among others. After its initial wariness of entering the public controversy, the ASA issued public statements about the Heiner Affair in 1997 and 1999. In June 2010, the ASA and RMAA joined with former judges, academics and legal practitioners in signing a statement, 'The "Heiner Affair" - a matter of professional concern', calling for the appointment of a special prosecutor to thoroughly and independently examine the Heiner Affair so that the matter could be properly resolved. This is a festering sore in Australia, both on the body politic and on the recordkeeping profession. Without a proper public resolution, the accusations and aftershocks of this incident will continue to create problems of uncertainty and doubt.

The Heiner Affair initially seemed to represent a localised problem of improper recordkeeping and political pressure. Yet it has assumed much wider significance as a symbol of the political and societal significance of archives and public records, combined with harmful public ignorance and misconceptions about the role of archivists and recordkeepers. Particularly galling is the now-infamous assertion by the Queensland Criminal Justice Commission's spokesman

Michael Allen Barnes that, 'The archivist's duty is to preserve public records which may be of historical public interest; her duty is not to preserve documents which other people may want to access for some personal or private reason.'<sup>89</sup> For archivists and records managers, this public misunderstanding (perhaps willful) of the purpose of archives and recordkeeping systems should be as troubling as the abuse of power it abets. Most of the scandals described above, including the Heiner Affair, involved both a violation of the law – such as money laundering, abuse of power, or child rape – as well as a recordkeeping offence. The media and the public focus their attention on the initial legal violation, without recognising the serious nature of improper control over the records necessary to hold public leaders accountable or to reconstruct an accurate understanding of what actually occurred. The power of archival records to enable accountability, diversity, public memory, and social justice requires public acceptance and recognition of these essential societal values. If archivists and records managers lack the authority to ensure proper recordkeeping systems, the power of records remains latent and ineffective.

Recordkeepers must accept this responsibility and demand recognition for the proper role of archival records in society. The Heiner Affair provides a chilling example of the fundamental problems caused by a breakdown in proper recordkeeping. This is a central reason that it has become a useful instructional case study, both for school classes in Queensland and for archival education classes in North America and elsewhere. To take one of many possible examples, students at the University of Manitoba every year read Chris Hurley's article in *Archives and the public good*, as well as the ASA's statements about the Heiner Affair, as a case study in the discussion of archives and public policy.<sup>90</sup> Discussion of this controversy in the classroom – whether in Australian schools or North American graduate schools – provides an excellent opportunity to demonstrate the importance of recordkeeping for public policy, protecting the rights of citizens, and promoting democratic values. For graduate school students engaged in archival studies, it encourages consideration of the societal benefits of proper recordkeeping and archival management – if only by showing the dangers when they are not properly followed. This encourages thinking about archives and recordkeeping not simply as technical or

managerial concerns, but as essential public policy activities with vital ethical considerations.

This is also the context in which I have cited the Heiner Affair, both in my own graduate classes in archives and records management, at Western Washington University, and in writing and lecturing about the significance of archives in society. Even though it provides a negative demonstration of a violation of archival principles and values, this episode highlights the essential values central to archives and archivists. In an article I published in 2007, 'Archives for all: professional responsibility and social justice', I refer to the Heiner Affair as an example that demonstrates the necessity to protect the integrity of recordkeeping systems so that organisations and individuals can be held accountable, and the importance of refusing to succumb to political pressure.<sup>91</sup> In expanding on these ideas in *Archives power: memory, accountability, and social justice*,<sup>92</sup> I devoted more than two full pages, plus several other references, to the Heiner Affair. It encapsulates many of the themes of the book, including the essential nature of public accountability, the importance of open government and access to information, our reliance on accurate records to ensure proper memory of events, the importance of public advocacy on behalf of archival and recordkeeping values, the need for stronger whistleblower protection laws, the essential role of archivists in society, the political and intellectual power of archival records, and the requirement for archivists to be able to act independently of political pressure. I have therefore presented my own North American perspective on the Heiner Affair in keynote lectures delivered to archival conferences in the United States, Brazil, New Zealand, Canada, the United Kingdom, and Norway. In all these venues the international implications of the Heiner case have been clear and compelling. As Kevin Lindeberg argues, the Heiner Affair demonstrates the importance of proper recordkeeping for the administration of justice. 'It doesn't get more important than that', Lindeberg declares. 'It puts proper recordkeeping at the epicenter of power.'<sup>93</sup> Because of its proximity to power, recordkeeping 'is not a task for the fainted hearted', he adds.<sup>94</sup>

The impact of the Heiner Affair in North America cannot be measured simply by the direct references to it. These are admittedly few.

Indeed, many North American archivists may not have heard about Heiner specifically, and may not even be able to identify or define the specific events of this case. However, as background for the thinking and advocacy of a small but growing number of North American archivists, the Heiner Affair has certainly had an important ripple effect. Some of us may wish that it had crossed the Pacific as an archival tsunami, with the powerful impact it should have had on the archives and recordkeeping community. For now, though, it is up to a small cadre of activist archivists to continue making known the global implications of the Heiner Affair. As we have seen throughout human history, it is often possible for a small group of committed activists to exert a powerful impact on public consciousness. In the United States, for example, the nineteenth-century abolitionist movement and the twentieth-century civil rights movement, sparked by a few dedicated agitators, eventually transformed national perspectives on slavery and race relations.

The ripple effects of the Heiner Affair have spread from Australia's shores across the Pacific to North America and beyond. It has become a key example of what can go wrong when political influence disrupts the proper management and protection of the public record. 'When the rule of law is seen to apply manifestly differently to rulers and ruled, democracy itself is severely threatened, as with Heiner', Terry Cook states.<sup>95</sup> The key issue raised by the Heiner Affair is the essential requirement to prevent the destruction of records that may be required for legal proceedings, regardless of any other appraisal considerations. This case also demonstrates the dangers of political pressure on archivists and the ethical dilemmas regarding whistleblowing and the archivist's responsibility for the moral and physical defence of archives. Because the Heiner Affair challenges our ability to act independently in fulfilling the archival mission, it symbolises a problem of massive international significance. In the outcome of such episodes across the globe we can see the ultimate fate of democratic accountability, the rule of law, and the future of the archives and recordkeeping profession. As archivists we must commit ourselves and our profession to the values of public accountability, open government, and social justice. Episodes of abuse of power and the abrogation of citizens' rights highlight the essential significance of proper recordkeeping and archival

documentation for everyone in society. These are among the lasting ripple effects of the Heiner Affair.

### Endnotes

<sup>1</sup> Note on methodology: although I believe that the Heiner Affair has implications for recordkeeping in all parts of the world, the focus in this essay is on North American responses. I should emphasise that this is a personal account rather than a full scholarly analysis of the impact of Heiner. In conducting research on this topic, I looked to the few published accounts in North American journals, including published minutes of Society of American Archivists (SAA) Council meetings. To supplement these, I sent an email request for information and comments to about two dozen North American archivists who were active in the profession – either by holding leadership positions in national archival organisations or by writing and speaking about the public policy implications of recordkeeping – at the time news of the Heiner Affair reached the United States and Canada. Several of these email correspondents sent both their own comments and observations, as well as copies of relevant public domain articles. Since my purpose in this essay has been to present a personal perspective on these matters, I did not conduct a full-scale scholarly research project for this essay. Those email authors cited by name either gave permission to be cited, or had posted their comments on a public listserve. I wish to thank the many individuals who provided assistance in my research, particularly Kevin Lindeberg, Rick Barry, and Terry Cook.

<sup>2</sup> These issues are discussed in more detail, with deeper historical context, in Randall C Jimerson, *Archives power: memory, accountability, and social justice*, Society of American Archivists, Chicago, 2009, pp. 112–129, and Randall C Jimerson, 'American archivists and the search for professional identity', in Randall C Jimerson (ed.), *American archival studies: readings in theory and practice*, Society of American Archivists, Chicago, 2000, pp. 1–17.

<sup>3</sup> Sue McKemmish and Frank Upward (eds), *Archival documents: providing accountability through recordkeeping*, Ancora Press, Clayton, Australia, 1993. In an *American archivist* review of this volume, Canadian archival educator Tom Nesmith argued that the concept of accountability needed to be applied not only to government but also to the private sector, and that accountability should encompass both legal and historical perspectives. See *American archivist*, vol. 58, no. 2, Spring 1995, p. 225.

<sup>4</sup> Numerous examples of such problems can be found among the essays in Francis X Blouin Jr and William G Rosenberg (eds), *Archives, documentation, and institutions of social memory: essays from the Sawyer Seminar*, University of Michigan Press, Ann Arbor, 2006, and in Antoinette Burton (ed.), *Archive stories: facts, fictions, and the writing of history*, Duke University Press, Durham, NC, 2005.

<sup>5</sup> Further information can be found in numerous sources, for example: Michael Schudson, *Watergate in American memory: how we remember, forget, and reconstruct the past*, Basic Books, New York, 1992.

<sup>6</sup> Bruce P Montgomery, 'Nixon's legal legacy: White House papers and the Constitution', *American archivist*, vol. 56, no. 4, Fall 1993, p. 609.

<sup>7</sup> David A Wallace, 'Implausible deniability: the politics of documents in the Iran-Contra Affair and its investigations', in Richard J Cox and David A Wallace (eds), *Archives and the public good: accountability and records in modern society*, Quorum Books,

Westport, Conn., 2002, pp. 105–106, 108, 112.

<sup>8</sup> Terry Cook, ‘“A monumental blunder”: the destruction of records on Nazi war criminals in Canada’, in *Archives and the public good*, pp. 42–3.

<sup>9</sup> *ibid.*, p. 46. This incident presents many interesting parallels to the nearly-contemporaneous United States controversy over allegedly improper disposal of FBI case files, which would have been important as evidence regarding previous civil rights violations and other allegations.

<sup>10</sup> *ibid.*, p. 55.

<sup>11</sup> *ibid.*, pp. 63–4.

<sup>12</sup> Section 129 (Destruction of evidence) of the *Criminal Code Act 1899* (Qld) states: ‘Any person who, knowing that any book, document, or other thing of any kind, is or may be required in evidence in a judicial proceeding, wilfully destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.’ Quoted in Kevin Lindeberg, ‘Where best practice recordkeeping ends, corruption begins: the Heiner Affair’, in Margaret Pember and Roberta A Cowan (eds), *iRMA: Information and records management annual 2009*, Records Management Association of Australasia, St Helens, Australia, 2009, p. 65.

<sup>13</sup> Australia, Senate Select Committee on Unresolved Whistleblower Cases, *Transcript of evidence*, Brisbane, 23 February 1995, p. 108.

<sup>14</sup> Kevin Lindeberg, email to author, 11 January 2011.

<sup>15</sup> Rick Barry, ‘Ethics issues for creators, managers, and users of records,’ in Margaret Procter, Michael Cook, and Caroline Williams (eds), *Political pressure and the archival record*, Society of American Archivists, Chicago, 2005, p. 134.

<sup>16</sup> Rick Barry, email to author, 12 January 2011.

<sup>17</sup> Terry Cook, email to author, 30 December 2010. Confirmed by Lindeberg, email to author, 28 December 2010.

<sup>18</sup> Kevin Lindeberg, email to author, 31 December 2010.

<sup>19</sup> Kevin Lindeberg, letter to Terry Cook, 7 January 1997.

<sup>20</sup> Rick Barry, email to author, 19 December 2010.

<sup>21</sup> Terry Cook, telephone interview, 30 December 2010.

<sup>22</sup> Roland D Peterson, letter to Jean-Pierre Wallot, 21 January 1997.

<sup>23</sup> Lindeberg, letter to Cook, 7 January 1997.

<sup>24</sup> Cook, telephone interview, 30 December 2010; Terry Cook, email to author, 15 January 2011.

<sup>25</sup> Cook, email to author, 30 December 2010.

<sup>26</sup> Jean-Pierre Wallot, letter to Roland D Peterson, 5 February 1997.

<sup>27</sup> Rick Barry, posting to Aus-Archivists listserv, 20 March 1997.

<sup>28</sup> Rick Barry, posting on ERECS-L listserv, undated [circa 6 April 1997], copy of message provided by Rick Barry. For more discussion on these related cases, see below.

<sup>29</sup> Richard Cox, posting on Aus-Archivists, 20 March 1997.

<sup>30</sup> Kevin Lindeberg, ‘The Lindeberg Declaration in respect of the shredding of the Heiner Inquiry documents and related matters’, Submission to the Committee on

Electronic and Other Current Records, International Council on Archives, Alexandra Hills, Queensland, 7 May 1997, pp. 42-3.

<sup>31</sup> Kevin Lindeberg, email to author, 30 December 2010.

<sup>32</sup> Australian Society of Archivists, Inc., 'The "Heiner Affair" – a public statement by the Australian Society of Archivists', Canberra, 1997, p. 1.

<sup>33</sup> *ibid.*, pp. 1-2.

<sup>34</sup> Susan Fox, email to SAA Council, 1 August 1997, and Susan Fox, email to Peter Hirtle, 21 January 1998.

<sup>35</sup> SAA Council meeting minutes, 26 August 1997, in *American archivist*, vol. 61, no. 2, Fall 1998, p. 481.

<sup>36</sup> Kathryn Dan, letter to President, Society of American Archivists, 18 October 1997.

<sup>37</sup> Rick Barry and SAA President William Maher exchanged several email messages about this in January 1998; William Maher, email to author, 3 January 2011.

<sup>38</sup> SAA Council meeting minutes, 23-25 January 1998, in *American archivist*, vol. 61, no. 2, Fall 1998, p. 489. This is essentially the same response that the Association of Canadian Archivists (ACA) gave to the Australian Society of Archivists (ASA); the ACA Board of Directors referred the request to support the ASA statement on the Heiner Affair to one member for investigation in 1998, but subsequently deferred further discussion and the issue faded away. Duncan Grant (ACA Executive Director), email to author, 12 January 2011.

<sup>39</sup> William Maher, letter to Kathryn Dan, 28 February 1998.

<sup>40</sup> Rick Barry, email to Luciana Duranti, 12 February 1998.

<sup>41</sup> Some account of this can be found in Jimerson, *Archives power*, pp. 110-12, 228, 332-3; Thomas James Connors, 'The Bush Administration and "information lockdown"', in *Political pressure and the archival record*, pp. 204-208; and Richard J Cox, *Closing an era: historical perspectives on modern archives and records management*, Greenwood Press, London, 2000, pp. 230-37.

<sup>42</sup> Rick Barry, 'The Heiner case: Queensland's shame: how about us?', U S National Archives and Records Administration, College Park, Maryland, National Archives Assembly Archives Week Conference, 15 October 1999.

<sup>43</sup> Rick Barry, posting to Archives & Archivists listserv, 5 September 2000.

<sup>44</sup> 'Recordkeeping in the Information Age: blind spots and hot spots', ASA Queensland Branch conference brochure.

<sup>45</sup> Cook, email to author, 30 December 2010.

<sup>46</sup> Lindeberg, email to author, 30 December 2010.

<sup>47</sup> See Kevin Lindeberg, 'The rule of law: model archival legislation in the wake of the Heiner Affair', *Archives and Manuscripts*, vol. 31, no. 1, May 2003, pp. 91-105.

<sup>48</sup> 'Australian Story' transcript, 17 May 2004, 'Three little words', available at <<http://www.abc.net.au/austory/content/2004/s1111173.htm>>, accessed 21 December 2010. The title comes from the phrase 'they've been shredded', which Lindeberg described as 'Three little words [that] changed my life'.

<sup>49</sup> Terry Cook, posting to Aus-Archivists listserv, 27 August 2010.

<sup>50</sup> Peter B Hirtle, email to author, 15 December 2010. Hirtle adds, 'I believe that we should be learning from our colleagues abroad ... [but we] have an uphill fight to get



Americans to pay attention to the good work being done in Australia, the Netherlands, and the UK (not to mention Sweden or the Germanic countries)'. Peter B Hirtle, email to author, 6 January 2011.

<sup>51</sup> Mark A Greene, email to author, 15 December 2010.

<sup>52</sup> [Name withheld on request], email to author, 15 December 2010.

<sup>53</sup> This important article was featured as the final essay in Cox and Wallace (eds), *Archives and the public good*.

<sup>54</sup> Hurley, 'Records and the public interest', in *Archives and the public good*, p. 309.

<sup>55</sup> *ibid.*, p. 313.

<sup>56</sup> See *American archivist*, vol. 66, no. 2, Winter 2003, pp. 325–9.

<sup>57</sup> See Candace Loewen, 'From keep and destroy to remember and forget: dimensions of accountability value', *Archivaria*, no. 58, Fall 2004, pp. 201–209.

<sup>58</sup> See *Political pressure and the archival record*.

<sup>59</sup> Margaret Procter, 'Introduction', in *Political pressure and the archival record*, p. x.

<sup>60</sup> Chris Hurley, 'The role of the archives in protecting the record from political pressure', in *Political pressure and the archival record*, pp. 156–9.

<sup>61</sup> *ibid.*, pp. 169–70.

<sup>62</sup> Rick Barry, 'Ethics issues for creators, managers and users of records: key cases', which is available at <<http://www.mybestdocs.com/>>, accessed 16 December 2010, pp. 135–7.

<sup>63</sup> John M Dirks, 'Accountability, history, and archives: conflicting priorities or synthesized strands?', *Archivaria*, no. 57, Spring 2004, p. 32.

<sup>64</sup> *ibid.*, p. 44.

<sup>65</sup> *ibid.*, p. 49.

<sup>66</sup> Cox and Wallace, 'Introduction', in *Archives and the public good*, pp. 4, 7.

<sup>67</sup> Rick Barry, posting to ERECS-L listserv, 2 February 1997.

<sup>68</sup> Truth and Reconciliation Commission of South Africa, Report, vol. 1, Grove's Dictionaries, Inc., New York, 1998, p. 201, quoted in Helena Pohlandt-McCormick, 'In good hands: researching the 1976 Soweto Uprising in the State Archives of South Africa', in *Archive stories*, p. 299.

<sup>69</sup> Pohlandt-McCormick, 'In good hands', pp. 299–300.

<sup>70</sup> Verne Harris, 'Ethics and the archive: "An Incessant Movement of Recontextualisation"', unpublished paper presented at University of Wisconsin-Milwaukee Conference on Archival Ethics, 30 November 2007, p. 12.

<sup>71</sup> Verne Harris, '"They should have destroyed more": the destruction of public records by the South African state in the final years of apartheid, 1990–1994', in *Archives and the public good*, pp. 224–5.

<sup>72</sup> *Washington Post*, 11 February 1997, as cited in Rick Barry, posting to ERECS-L listserv, 12 February 1997. The SAA later withdrew from this lawsuit.

<sup>73</sup> Rick Barry, posting on ERECS-L listserv, undated [circa 6 April 1997], copy of message provided by Rick Barry.

<sup>74</sup> Shelley Davis, 'The failure of federal records management', in *Archives and the public good*, p. 115. For a more detailed account of Davis's experiences, see her book, *Unbridled power: inside the secret culture of the IRS*, HarperBusiness, New York 1997.

- <sup>75</sup> Davis, 'The failure of federal records management', pp. 117, 120–21, 124.
- <sup>76</sup> *ibid.*, pp. 127–8.
- <sup>77</sup> *ibid.*, pp. 132–3.
- <sup>78</sup> Rick Barry, 'Thinking about accountability, recordkeeping and Shelley Davis' *Unbridled power: a commentary*', available at <<http://www.mybestdocs.com/barry-r-on%20sdavis.html>>, accessed 14 January 2011.
- <sup>79</sup> Rick Barry, email to Luciana Duranti, 12 February 1998.
- <sup>80</sup> 'Who's accountable? Inside the growing Enron scandal: how evidence was shredded and top executives fished for a bailout as the company imploded', *Time*, 13 January 2002, available at <<http://www.commondreams.org/cgi-bin/print.cgi?file=/headlines02/0113-02.htm>>, accessed 12 May 2007.
- <sup>81</sup> Barry, 'Ethics issues for creators, managers, and users of records', p. 139.
- <sup>82</sup> Patrice Davis, 'Some much deserved respect: the impact of the Sarbanes–Oxley Act from a records management perspective focusing on small businesses', Master of Arts thesis, Western Washington University, 2006, pp. 62–5.
- <sup>83</sup> Chris Hurley, 'Recordkeeping, document destruction, and the law (Heiner, Enron, and McCabe)', [revised version of an article originally published in *Archives and manuscripts*, vol. 30, no. 2, November 2002, pp. 6–25], available at <<http://www.mybestdoccs.com/>>, accessed 16 December 2010.
- <sup>84</sup> Barry, 'Ethics issues for creators, managers, and users of records', pp. 132–3.
- <sup>85</sup> *ibid.* The Texas legislature scandal, for one, finally led to a guilty verdict against former United States House of Representatives leader Tom Delay, see *Washington Post*, 10 January 2011, p. 1.
- <sup>86</sup> David Wallace, email to author, 20 December 2010.
- <sup>87</sup> 'Groups ask NARA to pursue CIA's destruction of records', available at <<http://www2.archivists.org/news/2010/groups-ask-nara-to-pursue-cia%25E2%2580%2599s-destruction-of-records>>, accessed 7 January 2011.
- <sup>88</sup> 'The "Heiner Affair" – a matter of professional concern', 22 June 2010, available at <[http://www.archivists.org.au/sitebuilder/advocacy/knowledge/asset/files/12/theheineraffair-amatterofprofessionalconcernversion1\\_201000626.pdf](http://www.archivists.org.au/sitebuilder/advocacy/knowledge/asset/files/12/theheineraffair-amatterofprofessionalconcernversion1_201000626.pdf)>, accessed 15 January 2011.
- <sup>89</sup> Australia, Senate Select Committee on Unresolved Whistleblower Cases, *Transcript of Evidence*, Brisbane, 23 February 1995, p. 108.
- <sup>90</sup> Tom Nesmith, email to author, 16 December 2010.
- <sup>91</sup> Randall C Jimerson, 'Archives for all: professional responsibility and social justice', *American archivist*, vol. 70, no. 2, Fall/Winter 2007, pp. 49–78.
- <sup>92</sup> See Jimerson, *Archives power*, cited earlier.
- <sup>93</sup> Kevin Lindeberg, email to author, 16 December 2010. There is a large and growing literature on the power dimensions of archives and recordkeeping. For example, see Verne Harris, *Archives and justice: a South African perspective*, Society of American Archivists, Chicago, 2007; other titles include books already cited in this article including: Cox and Wallace (eds), *Archives and the public good*; Procter, Cook, and Williams (eds), *Political pressure and the archival record*; and Jimerson, *Archives power*.
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