The Secretary
Senate Community Affairs References Committee
Suite S1 59
Parliament House
Canberra ACT 2600

Dear Sir/Madam,

Please find enclosed a range of materials that may assist the Committee of Inquiry into Children in Institutional Care in its deliberations. In addition a great deal more material (particularly more recent material on the John Oxley Youth Detention Centre in Brisbane) resides at the Web site I have created to investigate the matter of child abuse in Queensland institutions, www.eastes.net/justiceproject.

Should you wish me to provide this material as separate page attachments, please advise.

I should point out that at the time I wrote much of the hard copy material contained in this submission, the victims involved preferred that I protect their anonymity. I suspect that today they would be happy to have their identities revealed and would probably be prepared to tell their stories in person (rather than through me and the conduit of the stories I wrote at that time).

If I may be of any further assistance, please do not hesitate to contact me.

Yours faithfully,

Bruce Grundy
Journalist in Residence
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The University of Queensland 4072

8.9.03

The material that follows has been extracted from The Justice Project site www.eastes.net.justiceproject where additional materials including original letters and documents may be found

Welcome To The Justice Project

Although it was without a name at the time, The Justice Project had its beginnings in May of 1992.

The University of Queensland's Journalism School (of which I was Head) was about to produce the first edition of what became a most important newspaper -- *The Weekend Independent.*

For this edition we attempted, unsuccessfully as it turned out, to produce a story about the new Queensland government, for spurious and obviously unsustainable reasons, closing down an investigation into what was going on in a local youth detention centre, and shredding all the evidence that investigation had gathered.

We may not have had a story for our first edition but as the years went by we returned to this story and for at least seven years now have peeled away the deceit, duplicity and cover-up associated with the closing down of the Heiner Inquiry and the shredding of all the material it had gathered -- "Shreddergate" we called it , and the word has now entered the Australian lexicon.

Because we (and a tireless citizen, Kevin Lindeberg) have continued to pursue the story, we now know a great deal more about what was going on in the youth detention centre concerned, but we also know much more about the operations of government, politicians, bureaucrats, so-called watchdog agencies, professional bodies and even academics.

We know much more about their capacity to cover up, to look after their mates, and to look the other way.

We also know that a good deal of what was shredded was about the abuse of children in the care, control and custody of the State. This abuse involved torture, rape, pack rape, improper relationships between

staff and residents, and actions on the part of some which even placed the very lives of the residents at risk.

Most of what has been discovered has been revealed with minimal assistance (and often outright opposition and hostility) from the local media. But this response does not deter us. The wonderful thing about working with young people is their sense of outrage at what has happened in this case. And so the efforts of all those who have worked on this story over the years are acknowledged with gratitude. But we have not yet reached the end of this story, and much more remains to be done.

What has been done is set out on the site.

Stories we have written on this matter are now on the reading lists of an unknown number of tertiary courses into archives practice, records management and journalism in various parts of the world. What we have discovered has been drawn on by academics and others for the production of scholarly articles and media stories. And we are grateful that our work has been recognised in this way.

What we have done, and what we continue to do, is in the best traditions of both journalism and the academy -- that is, the search for truth. The sentiments that guide us are expressed below.

And so the search goes on.

In addition, we reproduce here the shocking stories we wrote about Neerkol (stories that went round the world), and Nazareth House, and Silky Oaks, and other institutions in which children suffered unspeakable torment and terror and abuse. Hopefully gathering all this material together in one site may help ensure nothing of the kind ever happens again.

We trust that through the links associated with this site, readers will be able navigate their way through the stories and understand the importance of what we have done.

Bruce Grundy

19.07.2003.

"GREAT IS TRUTH AND MIGHTY ABOVE ALL THINGS"

Esdras
(Inscription on Law School Building, The University of Queensland)

THE TRUTH SHALL MAKE YOU FREE"

St John
(Inscription over entrance, Kings College, University of Queensland)

"ALL THAT IS NECESSARY FOR THE TRIUMPH OF EVIL

IS THAT GOOD MEN [AND WOMEN] ***DO NOTHING"***

Original attributed to Edmund Burke (1729-1797)

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Former Associate Professor and Foundation Head, Department of Journalism, The University of Queensland (including 20 years tertiary teaching experience). Former Faculty of Arts Sub-Dean and Academic Adviser and member of the Academic Board and the Social Sciences Group Council, The University of Queensland. Forty years' experience in journalism and the media including: reporter, producer, anchor (ABC Radio), reporter, producer, anchor, associate producer and executive producer (ABC Television Current Affairs and Radio Australia); editor and editor-in-chief *The Weekend Independent* newspaper; publisher and writer *Bruce Grundy's Inside Queensland*). Former judge Graham Perkin National Journalist of the Year Award, Gold Coast Media Awards and North Queensland Media Awards. Former President Journalism Education Association. Contributor and commentator *Australian Journalism Review*, *Australian Studies in Journalism*, ABC Radio. Presents in-service editorial training programs for journalists and researches and writes investigative stories for publication.

Shredding Story Overview

One Law For Us, Another For Them

You cannot have an administration of justice that has to back away from something, either because of the size of it, the cost of it, or the profile of some of the people involved. If you do that, you don't have a community...

West Australian Crown Prosecutor Ron Davies who successfully prosecuted two prominent individuals involved in the Rothwells Bank collapse.

On 5 March 1990, the Queensland State Cabinet authorised the destruction of all evidence taken by an inquiry into a State-run youth detention centre (for some inmates it was a prison, for others, a controlled environment).

The documents involved were all shredded 18 days later.

At the time Cabinet made its decision it was aware that the documents were being sought by a firm of lawyers for legal action. The responsible department

had been advised via no less than 13 separate communications that the documents were required by the lawyers (and even advised that the material should not be destroyed). A District Court action was specifically mentioned and indeed there were, potentially, four different kinds of actions that might have been pursued by those seeking access to the documents.

According to one former Minister, at the time the decision was made to destroy the material, Cabinet had been aware "in broad terms" that the documents contained information about child abuse, and because the matter had reached the level of Cabinet, the matters must have been serious.

Indeed we now know they were serious and included, at least, information about the orchestrated pack-rape of a 14-year-old girl in care* and the torture of a 15- year-old girl.

The Premier at the time, the Attorney-General and another member of Cabinet were qualified lawyers.

(Subsequently, another set of related documents, which had escaped the original destruction, were destroyed by senior public officials in secret).

Several years later Queensland's watchdog standing Royal Commission on corruption and crime, The Criminal Justice Commission (CJC), told a Senate Committee inquiring into the shredding that the destruction of the documents had been legal, because at the time of the destruction, no court action relevant to them was actually underway.

Section 129 of the Queensland Criminal Code, Destruction of Evidence, says:

Any person, 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 to prevent it from being used in evidence, is guilty of a misdemeanour and is liable to imprisonment for 3 years.

The CJC advised the Senate it had contracted a member of the private bar to look into the matter and he had advised that since no legal proceeding had been commenced at the time of the destruction, there had been no breach of the law. The CJC has maintained this position ever since.

This view was subsequently echoed by a former Director of Public Prosecutions who told the Shadow Attorney at the time: *... It is my view that there must be on foot a legal proceeding before this section [129] is cable [sic] of application.*

Further, the CJC's Chief Complaints Officer at the time (and now State Coroner) reiterated this view in a national television interview.

The reality that the law can be interpreted one way in favour of politicians and senior public officials and in another way for ordinary people emerged in early 2003 when a citizen was committed to stand trial on a charge under s 129 (Destroying Evidence) or alternatively s 140 (Attempting to Pervert Justice).

He had destroyed some pages of a diary. There was no legal action underway at the time. Indeed the relevance of the destruction did not emerge for five years (when another person was brought before the courts).

And another matter had arisen to focus even more attention on the opinions of those in Queensland who had said the shredding of the detention centre material was legal.

A Supreme Court Judge in Victoria threw out the defence of a tobacco company that was being sued by a dying woman because the company's "document retention policy" had resulted in the destruction of material likely to have been important to the woman's case.

An appeal subsequently overturned the decision in favour of the woman. Nevertheless the Appeal Court judges made a notable distinction between the legality of destroying documents when no legal was known to be pending and doing so in the knowledge that documents were required for legal action.

The family of the woman has since sought to appeal the Appeal Court decision to the High Court of Australia. The Victorian Attorney-General has said he wishes to seek leave to intervene in the case to address the Court on the serious issue of lawyers not destroying documents. He has asked the other states and the Commonwealth to join him in that action.

Others problems emerged. Former Queensland Supreme and Appeal Court Judge James Thomas told The Justice Project he could not imagine how the authroities mentioned above could have reached their interpretations of s 129 since the wording of the law specifically contemplated that a legal action did not have to be underway for that section to operate. Other prominent lawyers agreed with the former judge's view.

So the questions emerge. Firstly, how do politicians and important public officials escape (for doing something much more serious) while an ordinary citizen goes to trial?

And, secondly, how will Queensland support the position (of Victoria and New South Wales at least) that lawyers (and others) should not destroy documents to prevent their being used in a legal action?

For details of the above, and much more, follow the links to the Heiner Affair and The Shredding via The Abuse of Children in Care and The John Oxley Youth Detention Centre links.

* It should be noted that apart from what happened to the Aboriginal girl involved, the place where she was taken and left alone with a group of boys, is, and was, "taboo" to Aboriginal people, and in particular, Aboriginal women, who, custom and culture demand, are not to go there.

Abuse of Children In Care

Crimes Against Humanity

The stories of what happened to children in the institutions in Queensland that were supposed to look after them, in the name of God, or the State, remained locked up in the minds and memories of those children for decades.

Despite the depravity they had suffered, or the brutality, or the inhumanity, they kept their counsel. Few , hardly any, spoke publicly about what they had suffered or witnessed. Few even told their families. Who would believe them? And, if they did speak out, there would surely be more embarrassment, more humiliation and shame. Some took up the matter with the institutions responsible and got nowhere. The ranks were closed. Rock solid.

Eventually, thirty, forty, even fifty years later, some began to talk about what had happened to them. And the cracks in the wall of silence and suffering began to open up. Particularly in the case of the Church institutions. In our experience Silky Oaks was first. Then Neerkol. Then Nazareth House and Riverview. By the late 1990s the cracks had split wide open. The stories were starting to tumble out.

And then the stories of the State-run institutions (the children's detention centres) began to emerge - Westbrook, Sir Leslie Wilson, and of course John Oxley, in which we already had a special interest. And that interest continues - for the complete John Oxley story has not yet been told.

Because of that reality, we are focusing our early attention on that institution. We will add the wretched stories of the other places we have covered as time goes by.

John Oxley Youth Detention Centre

Care, Custody ... And Control

On 13 August 1998 the state government established a Royal Commission into the abuse of children in State and church institutions in Queensland. It was headed by former Governor, Ms Leneen Forde.

The inquiry's report presented nine months later does not explain why it was established. It is as if one day the relevant Minister simply decided it might be a good idea if such an inquiry were held. But such was not the case. As is usual in these matters, the inquiry was set up because there was no option. The stories that had been appearing in the media (many of which can be accessed on this site) could not be ignored.

The John Oxley Youth Detention Centre was one of the institutions investigated by the Forde Inquiry. The following observations about the John Oxley Centre are summarised from that report.

It was opened in February 1987 to cater for children placed in the care and control of the State and those committed to the custody of the State.

In other words, serious offenders (including those awaiting trial for. or sentenced for, murder or other serious crimes were held in the same facility and shared accommodation with children who were simply unruly, difficult or disturbed.

There were three residential wings. Boys and girls had separate rooms but lived together in the same wings. It is hard to believe such an arrangement could ever be considered, but it was a reality at John Oxley. The report notes: " ... the Centre experienced disciplinary problems involving sexual misconduct and activities resulting from teenagers 'showing off'".

The issue of sexual assault at John Oxley is covered in one brief paragraph in the report and refers to a matter in 1995 involving "two reported allegations of sexual assault by a child on another child" , a claim by a staff member that a "female resident complained of rape during an outing" and two staff members "complained about possible sexual assaults by the older, bigger residents on the younger, more vulnerable ones. Another indicated that the opportunity for sexual abuse existed, particularly when residents were doubled up in cells".

There is no mention in the report of the matters that follow, despite (it transpired many years later) a substantial file on what had happened having been in existence for ten years. Now read on.

What They Did To A Girl In Care

On 3 November 2001, Brisbane's *Courier-Mail* newspaper ran two stories about an incident that had been hidden in the bowels of the Queensland bureaucracy for 13 years.

The stories revealed for the first time what had happened in 1988 when a 14-year-old female detainee in Brisbane's infamous John Oxley Youth Detention Centre was taken on a day's outing by a group of non-custodial officers.

The stories (**Rape News Story 1**, **Rape News Story 2**) were based on the recollections of some former members of staff of the centre and those of the victim (by this time a 27-year-old woman) who told of what had happened to her on that day.

The girl, the stories said, had been raped by some of the boys who had been taken on the excursion with her, and the matter had been hushed up.

Over the next few weeks there were a number of follow-up stories in the newspaper.

One revealed that a little more than a year after the incident, during a short-lived inquiry into what had been going on in the John Oxley Centre, the man conducting the investigation had questioned at least one staff member about the rape (**Rape News Story 3**).

His inquiry, however, was throttled.

On attaining office a new government shut the inquiry down shortly after it had started.

Not only was the inquiry aborted, but all the evidence it had gathered during its short life was shredded.

A recommendation to destroy all the documents, tapes and disks that had been produced by the inquiry was agreed to by the Queensland State Cabinet - despite its being aware that the material was being sought by a firm of lawyers, and others, for foreshadowed legal action.

The Cabinet took this decision, according to one former Minister who was at the meeting concerned, in the knowledge that the shredded documents were "in broad terms" about child abuse.

The state's archivist gave her approval and the inquiry documents were destroyed.

Following the publication of the newspaper stories mentioned above, Queensland's Families Minister called on the state's Criminal Justice Commission to investigate the rape allegations.

Some weeks later the Commission issued a press release saying it had investigated the matter and had found there had been no cover-up and no misconduct on the part of either the John Oxley staff or the police, because, CJC Chairman Brendan Butler said, the police had been called in over the matter and the girl had been examined by a paediatrician.

That was all Mr Butler said.

The Director-General of the Families Department then went public with a press release welcoming the CJC's statement clearing his department of any cover-up.

What follows will provide readers with an opportunity to make up their own minds about the CJC's finding, and to consider the extent to which the Director General's comment is justified.

It should be noted that the Criminal Justice Commission has for years claimed that the shredding has been exhaustively investigated. "To the nth degree" it said - over and over.

Apart from shedding some light on the Commission's finding, the material that follows may also throw some light on why a government would want to shred documents gathered by an inquiry into a youth detention centre - particularly when that government had been given notice that the documents might be needed for court action, and when it knew the documents were broadly about child abuse.

It may not come as a surprise to hear that what follows is not very comforting.

And what was my part in the publication of the newspaper stories mentioned above?

I wrote them.

Here then is the story of what happened on the day in question - just to help fill in the detail the CJC did not provide when it sent out its press release saying there had been no cover-up and no misconduct by anyone.

The story of what happened that day and in subsequent days has been compiled from official records gathered before and after the original rape stories were published, from interviews with the girl, from interviews with those few former staff who have been prepared to talk about the incident, and from interviews with other people who have knowledge of the events that took place.

An educational outing

On Thursday 19 May 1988, a proposal was put before the John Oxley Youth Detention Centre Programs committee requesting that approval be given for an educational outing to be undertaken by a group of residents.

School attendance would be the selection criteria.

Approval was given.

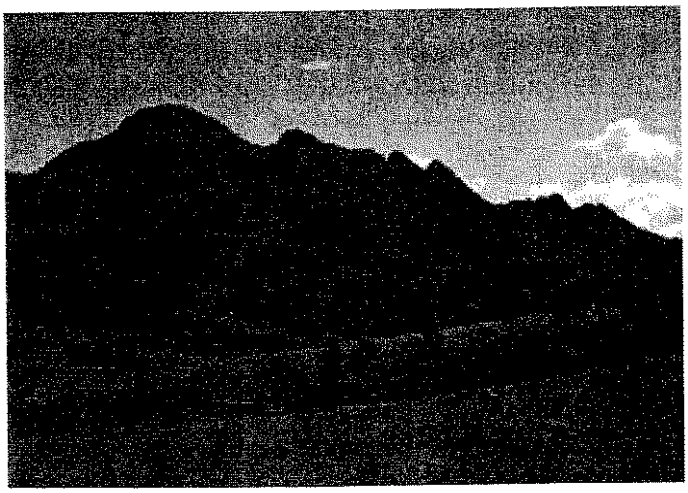
An interesting title had been chosen for this particular activity. On the form that set out the detail of the proposal it was described as "Socialisation in a natural environment". This would turn out to be a most prophetic choice of words, not to mention something of an understatement.

Day One (Tuesday 24.5.1988)

The following Tuesday morning, five members of John Oxley's non-custodial staff set off on the excursion. Accompanying them in two vehicles were six male residents of the centre and one female resident - a slightly built 14-year-old girl. Just to set the scene, the girl was a little over 40 kilos or six stone, and about 158 cms - 5 foot 2. One little girl and six adolescent boys, none of whom, according to former staff, might have been accurately described as Santa's little helpers. On the contrary, they said, some were very serious offenders. Two of the staff at least were aware of matters that ought to have required them to have carefully considered whether taking the girl on such a trip was a good idea at all - and certainly would have demanded that she be given careful protection during such an outing. One had noted only three weeks before the outing that the girl needed "to be aware of the necessity of birth control". Why she should have such a need in secure custody is unclear but at least the man was of that opinion when he accompanied the girl on that excursion.

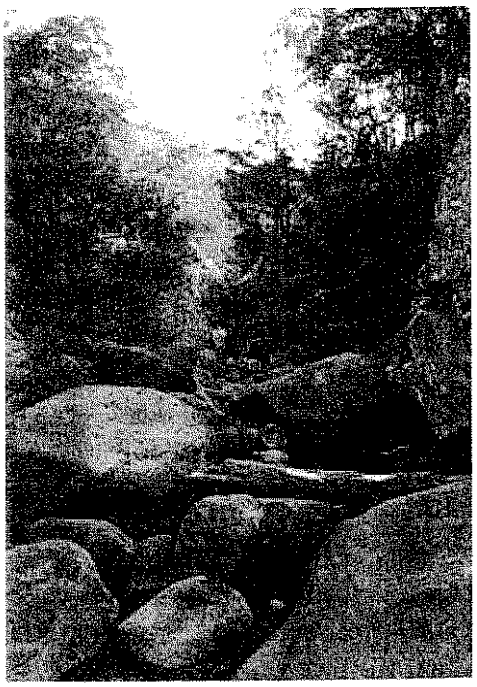
The record also shows that another staff member on the outing was aware of other very serious matters connected with the girl's past that ought to have been of grave concern to him on such a trip. But it does not appear to have been the case.

The destination chosen for the outing was a secluded and remote spot in the bush known as The Lower Portals in the Mount Barney National Park not far from the state border with New South Wales.



It was an extraordinary place to take such a group. For those who have seen the movie, this is real "Picnic at Hanging Rock" country - just a thousand times worse.

Someone I know who has made the trek to the Lower Portals described the terrain and countryside as "hostile". He was right. It is. The silence is as brooding as the tips of the ridge tops of Mount Barney one glimpses from time to time along the way. And anyone can trudge up Hanging Rock. But not everyone could make the trip to The Portals.



The car park entrance to the national park is 110 kilometres from John Oxley Youth Centre via the town of Beaudesert and the village of Rathdowney.

But that is only the start of the journey. One of the bushwalking sites on the Internet describes what follows after you arrive at the car park as a 3.7 kilometre trek that "will feel more like 10". And it does. The sign at the car park says it all. "Round trip three hours, grade moderate to steep."

The track is rough and the going very tough - up and down, ridge after ridge. No one who is not reasonably fit should attempt it. A sprain or an injury, or a heart turn, on this walk would be a real problem. It would take quite a large party of bearers to get a stretcher patient out - unless you had a chain saw to clear a pick-up zone for a chopper.

The walk proved to be a difficult proposition for some of the visitors that day. Not only did the party soon split into different groups, three of the staff got lost - or at least took a wrong turn, they said, and did not arrive at their destination

until an hour after the others - which means that for a significant period of time the number of staff supervising the youngsters was reduced from five to two.

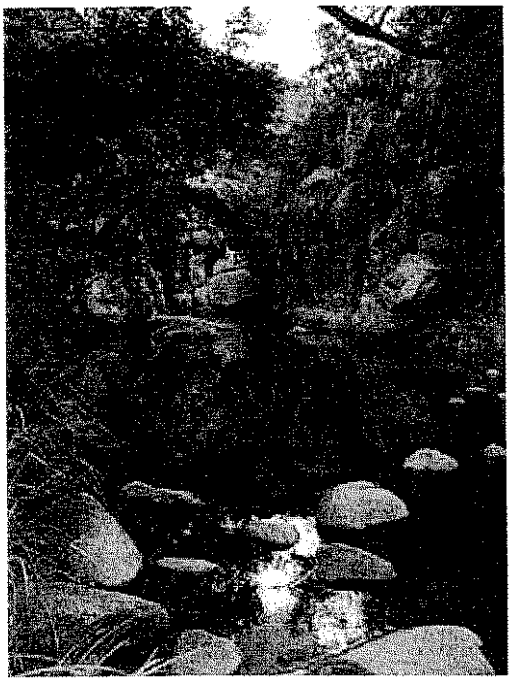
The surrounding terrain is not the only matter that makes the Lower Portals an extraordinary place for a visit from such a party.

The ridges are well- to heavily-timbered and anyone who wanted to head off into the bush, rather than make the trip, could get away without the slightest difficulty. No one could catch you if you made such a move, and if you were serious about it, no one would then ever find you.

The exact detail of what happened on the walk in to the Portals is a little difficult to reconstruct because the stories of those involved either differ or are, in certain respects, sketchy, but it seems that the girl, five of the boys and two of the staff arrived ahead of the others.

It also appears the sixth boy left the three other staff members he had been with and arrived separately, and then the last group of three staff members, the two women and one of the men, who had taken a wrong turning, arrived an hour later. For much of the time then, the "children" were without most of their supervisors.

Two people could not properly supervise seven youngsters in that place. The Lower Portals is a rock strewn creek bed where the rock formations and boulders have dammed up two distinct pools - one, where the walk ends, relatively small, the other, up stream, much bigger.



The bigger pool is dominated by the steep cliff fac of the canyon from which it emerges. There are bi boulders and rocks all around, the vegetation is thick and only a matter of metres away one could l out of sight - either behind one of the umpteen-ton boulders, or in the bushes and overhanging branches.

There is nowhere that has a clear view of the whol place and the only area of flat ground, where the visitors that day had lunch, is a spot near the lowe pool with little or no view of either of the waterhole

A very strange choice indeed for such a group tha day.

After arriving at their destination, the first group se off with just one of the staff to explore.

What happened during this part of the outing is not clear but the girl apparently slipped on the rocks, which is not hard to do I discovered, and fell into the water. She says despite her objections she was repeatedly told to take her wet clothes off - which in the end she did because they went on and on about it!

So the girl was now in this quite extraordinary place wearing just "a long 'T' shirt and panties" and, according to another staff member, "a jumper wrapped around her waist".

The first group had lunch and were off exploring again by the time the second group (the two women and one man) arrived. They too had lunch.

Some time later it was noticed that all but one of the "children", if that is the right word, were missing.

The exact sequence of events from then on is a little confused but it appears that some of the men set off to search for their charges. One began to whistle, something he had done on the way up, he said, to try to keep the group together.

Whistling seems and odd thing to do, if you are searching for someone who has gone missing, but there you go. How long the boys and the girl were out of sight is not known exactly but it may have been "15 to 20 minutes" - a very considerable length of time for such a group to be without surveillance in a place such as that. In 15 seconds one could vanish and never be found again. Or to put it another way, in that time, a single, small, 14-year-old girl in just a tee shirt and her undies, would be an appallingly easy target for group of adolescent boys.

One of those who went looking for the children said he and another male member of staff "scaled a nearby small hill". The man he went with described it as a "steep hillside", which, given what I saw on two visits to the place, is the

only way the terrain in the vicinity of the waterholes could be described. There are no "small hills".

Eventually they found the missing boys with the girl. The man who first located them immediately became suspicious that there had been "sexual contact between the children". He rounded them up, "admonished" them for "disappearing" and "mustered" them back to where the rest of the party was waiting.

The party then set off on the return journey.

The trek back seems to have been uneventful, although along the way the walkers again split into two groups. The man who had earlier found the children was with the four boys who had gone missing, and they were in the lead.

Eventually they got back close to the car park and waited for the rest to catch up. The man whose suspicions of "sexual contact" had been aroused later reported that: "During this pause the 4 boys were talking about sexual activity with [the girl]. Whilst this talk was similar to the talk that these boys would engage in, in their normal conversation, combined with the fact that they had spent some time missing, my suspicions were further aroused".

These suspicions were of such a magnitude that he questioned the boys who had been with the girl about what had happened, but they declined to answer.

When the others caught up and the party reached the car park he discussed his "suspicions" with the rest of the staff.

It seems that something may have been bothering the four boys who had been questioned about what had happened to the girl. They went to visit the small bush toilet there while the rest of the group began to load up the vehicles for the drive back to John Oxley. When one of the staff went to see why the boys were taking so long at the toilet, he found they were missing - again - "absconded".

The girl remembers the commotion the "absconding" caused and recalls one of the staff chasing one of the boys through the bush but being unable to get anywhere near him.

It appears the boys may not have gone all that far because they could be heard, if not seen, in the bush, and given the vegetation and terrain there, it would not be all that hard to imagine such a situation. The area around the car park is, however, probably the most lightly timbered on the whole trip.

So four of the boys, about some of whom at least, there are suspicions of a serious nature, are now at large in the bush, several kilometres from civilisation, and many more from the nearest telephone or police station.

It was decided to send some of the staff and the remaining children off in one of the vehicles to contact the police and then to go on back to John Oxley. The remainder of the staff would stay behind to look for those who had "absconded" and to be there when the police arrived.

One former John Oxley officer who was on duty that day remembered the incident when I phoned him. I asked if he had any recollection of a girl being sexually abused on an outing from the centre, and, 13 years later, he was able to say he was always troubled by that matter. He was also able to name the girl and place the locality where the group had gone. There had been panic on the bus, he said, and panic back at the centre.

"They called in from a phone box", he said.

"Their story was the girl had egged them [the boys] on."

Some hours later he rang me back. He was wrong about the sexual assault matter he said.

I pointed out he had told me the staff had claimed the girl had "egged" the boys on. He said he had been wrong. The boys had absconded and that was all that had happened.

For some reason the man had had second thoughts - or in the intervening hours between or conversations someone had suggested he have second thoughts.

Exactly what happened when the girl arrived back at John Oxley isn't clear. But nothing appears to have been done to deal with the possibility that she had been sexually assaulted.

She was returned to John Oxley just after 5pm. However, it was not until after 7pm, when the others returned with the boys who had absconded, that the manager was called in.

The runaways had been gathered up and were returned to the Centre via a secure area. For some reason they were "actively provoking a physical confrontation" with the staff. And these were the same boys who, earlier that day, had been left alone with a small girl wearing nothing but a tee shirt and panties!

On arriving at the centre the manager "went to the admission area to find the children yelling, swearing, banging walls and doors as well as whistling on high note. They were still trying to provoke the two staff in the admission area ... into a physical confrontation".

The manager decided "not to enter the room for fear that it may escalate the situation and in the hope that in time the children would tire, relax and voluntarily go to their rooms".

He then met with the man who had been concerned about what had happened to the girl and with the two women who had gone on the trip.

He later reported: "They were most concerned about a suspicion that [the girl] may have been sexually assaulted. We spoke for over an hour and agreed a meeting should be held at 9am the next day. The purpose of the meeting was to analyse the program, debrief staff, gather information for future planning and to

develop a strategy for investigating the concern about [the girl] being sexually assaulted".

Aware of what may have happened to the girl, the manager went to her room to see her, but she was asleep. He did not wake her, it seems, and went home.

Just what procedures or protocols were in place at John Oxley at that time for the appropriate handling of cases of suspected sexual assault is not known. But the police handbook (which had been prepared eight years earlier) was quite clear on the matter. It says, in part: "Upon receiving a complaint of rape for investigation, bear in mind that swift, accurate, tactful and thorough handling is required. Indispensible evidence may be irretrievably lost if time is allowed to drag; the alleged offender must be located a soon as possible, and speedy examination of the persons of both complainant and assailant may produce vital evidence".

But the police were not called. And no effort was made to have the girl examined or for any investigation to be commenced. Whether the girl showered, which seems likely given the gruelling walk involved that day, is unknown. The demands of proper procedure for the handling of rape cases or allegations specifically advise against showering (in case vital evidence is lost). The available record (i.e. documentation obtained through Freedom of Information processes and from other sources) makes no mention of anything being done to preserve whatever evidence might still have existed at that time.

End of day one.

Day Two (Wednesday 25.5.1988)

The next morning the meeting that had been agreed to the night before was held to review the previous day's events.

The "outcomes" to emerge from that meeting are interesting, to say the least. They were: 1. Organisation of an activity should include: (a) planning meeting (b) purpose of outing to be commonly known and agreed upon (c) team leader (d) discussion of individual roles of staff (e) knowledge of procedures to be followed if absconding occurs. 2. Should be thorough knowledge of location to be visited and assessment of its suitability. 3. Careful selection of young people and group dynamics. 4. Selection of staff in terms of skills and group dynamics. 5. Need for communication between staff to maintain the progress of the outing - team leader should take responsibility for the outing. 6. The activity/outing should be a group experience.

No mention was made of any "strategy" for investigating what might have happened to the girl. The manger reported, however, "Their [sic] was concern that [the girl] had been sexually assaulted but no direct evidence was available".

There is no mention made of any efforts undertaken to gather such evidence.

Shortly after the meeting the manager spoke with a member of staff who passed on some information the staff member later described as "startling". He

also informed the manager he was concerned for the girl's safety. He was immediately despatched back to the wings to see that nothing happened to her.

The manager then spoke with all the boys who had been involved in the excursion, and after lunch, with the girl. She told him some of the boys had had sex with her, that she had been under a lot of "pressure" from the boys (which the manager assumed to be "both peer pressure and psychological pressure") and when asked if she wanted the boys charged by the police she had "tentatively said yes".

The manager then contacted his immediate superior in the department (who told me recently the story of a girl being sexually assaulted on an outing from John Oxley was news to him). The purpose of this conversation was to advise the superior officer of the information the manager had obtained "and to seek his advice".

The manager and the assistant manager then had a meeting with the five members of staff who had been on the excursion and the manager advised them he believed the girl "had been sexually assaulted". He asked them to prepare reports of what had happened the previous day.

The girl was moved "to another living area". But the police were not notified and the girl was not examined.

End of day two.

Day Three (Thursday 26.5.1988)

The next morning there was a meeting of the "Review Team" and the manager reviewed the reports of the staff who had been on the trip. He then approached the five boys about being interviewed again, but they declined to take part.

Late that afternoon he advised a departmental officer (who was responsible for the region where the girl's parents lived) of what had happened on the excursion.

The officer concerned then contacted his boss and made a note of the conversation he had with her. There had been an outing to Mt Barney, he said, involving a girl and five boys from John Oxley and they had "disappeared into the bush". "In the course of events," the girl , he advised, had "apparently had sex with two of the boys" and while "there may have been considerable pressure put on her" there was "no allegation of rape".

Putting pressure on an under-age girl to have sex, I am told by contacts with legal and policing experience, does constitute rape. And if more than one individual were to be involved they said, the circumstance might be accurately described as "pack rape".

Then, according to the record, just after seven o'clock that evening the doctor who attended the residents of John Oxley "phoned in re [the girl]".

After ascertaining that the staff member on duty was aware of the situation concerning her, the doctor gave the officer " a list of contraceptive pills that could be taken by [the girl]".

The officer then checked the Medical Room and when the doctor rang back advised that he had "located a packet of Sequilar E.D".

At 8.45pm the manager "phoned back re approval for the contraceptive pills to be given to [the girl] as per [the doctor's] prescription".

That prescription was: two of the tablets to start and then two more "in 12 hours".

The doctor recorded in his notes that "This was ordered after telephone discussion with [the girl] and she was made aware of their purpose".

Their purpose was quite straightforward - in case there should be any chance of the girl becoming pregnant.

A prominent obstetrician told me that such a dose would have an effect similar to the so-called "morning after" pill. From what he said I took it to mean that a double dose of that product, followed by another double dose within 12 hours, would ensure a fertilised egg would not adhere to the lining of a womb.

End of day three.

Day Four (Friday 27.5.1988)

Exactly what occurred early on day four is a little confused. The record indicates that about 12.30pm the girl's mother went in to the centre and the manager and assistant manager spoke with her "at length". However, the girl's mother has consistently denied she was ever told of the matter, and the girl's stepfather flatly rejects those suggestions contained in the record that claim he was advised.

Whatever the truth of this aspect of the story, one thing is clear. The record says the mother and the girl "wanted a complaint made to the police" and the manager "immediately" contacted the head of the Juvenile Aid Bureau.

On the initiative of the police the girl was then taken to the Mater Childrens Hospital for examination. It was now three days after the incident had taken place. (And three weeks later the doctor who examined the girl advised the GP who had prescribed the contraceptive dosage some details of the examination she had conducted - but noted that at that time she wrote her report she was "not aware of the forensic swab results". There is no mention in the available record of what those results revealed).

The doctor's clinical examination notes, however, provide some very disturbing information.

They record that the girl had been on a "picnic", "had been swimming" and had been wearing only "tee shirt and pants".

Then, the notes say: "4 boys [whose names appear on the document] took [the girl's name] into bushes, took off pants, laid on top of her, penetrated vagina with penis, [the names of two of the boys], can't remember if ejaculated, semen present".

And later: "Says didn't want to have intercourse. Not physically held. Did struggle".

Clinical details then follow.

Former police officers have advised that while this information may not be that of "first complaint" and therefore might well be regarded as hearsay at any trial, it does add greatly to the notion of "consistency", that the girl's story is consistent with her other accounts, and would demand serious investigation.

That such investigation appears not to have taken place was described by one senior former policeman as "appallingly sloppy police work". Another suggested that on the basis of what was known it was clear that sufficient evidence might well have been obtained to charge the boys, and if necessary the girl could have been called "as a hostile witness".

End of day four.

Day Five (Saturday 28.5.1988)

Two women police officers arrived at the centre at about 9.20am. According to the record, neither the manager nor assistant manager were in attendance. Their visit would be handled by middle management, it seems.

The senior officer on duty had earlier advised the girl she could choose a member of staff to "sit in and support her".

She chose one of the female staff.

The interview with the police went ahead with the female officer in attendance.

Some time later the policewomen told the senior officer that the girl and the female officer were discussing the matter alone. The senior officer joined them.

Three to five minutes later the policewomen returned and the girl's earlier decisions to pursue the matter were reversed. She changed her mind. Her mother's wishes, as recorded the day before, were apparently of no consequence. Nor was the fact that as a minor the girl had no standing to make such a decision, and certainly no standing to tell the police service what it should and should not investigate. And nor had the mother for that matter, but she was not consulted.

According to the record the girl "implied that some of the reasons for not going ahead with the complaint were: a. the length of time for it to come to court (6-12 months);and b. the fact that she was receiving verbal abuse from some of the boys".

The interview was concluded at 10.48am and the girl was asked to read out and sign a statement written by one of the policewomen in her notebook "acknowledging that she would not make a formal complaint". The two John Oxley officers and the two policewomen also signed the statement.

The statement and the diary entries of one of the two policewomen are illuminating.

The statement said: 10.35 hrs 28.5.88. On Saturday 28ty May, 1988, I (girl's name) spoke with (policewomen's names) from ... Juvenile Aid Bureau in the presence of (two John Oxley officer's names) at John Oxley Youth centre in relation to a sexual type incident which occurred on Tuesday the 24 May at Mt Barney. I do not wish to make an official complaint to the police and am happy with police enquiries made in relation to the matter.

Five signatures appear on the document.

What happened at the Portals had now become a "sexual type incident". However, one of the two policewomen noted in her diary that the matter she had been called on to investigate was something a little more than that.

Her diary says: May Saturday 28. Rostered 8am - 4pm. Correspondence. To John Oxley Youth Centre re allegations of rape by (girl's name), 14 years, by 2 male persons, of the Centre. Alleged to have occurred on 24.5.88 at Gold Coast Hinter. during bush walk. She decided not to make an official complaint. Examined by a doctor on Friday afternoon. Withdrawal of complaint in notebook. N.F.A.D.

So the girl's thinking had been realigned. Intimidation and threats from the boys alone could be expected to have achieved that. After all, the girl might have to share accommodation with them for 6 to 12 months! Just who might have informed her of the time such a court process might take is not clear. But, one thing is certain - it is unlikely a 14-year-old would carry that information around in her head.

So by the end of the interview the girl decided she would not be proceeding with a complaint. No doubt this was a happy result for some people.

But not a proper one.

The girl, being 14, was a child and therefore not in a position to make such a decision. As well, the matter of rape is a very serious one. On the scale of penalties, it ranks just behind murder. And police do not need to have a complainant to pursue an investigation for such a crime. Nor to proceed to trial should there be sufficient evidence. And, as her guardian, it was her carers who made decisions for her - as they did when they gave her a pregnancy-preventing or abortion-inducing dose of medication.

And they could order a intrusive physical examination without fear of any accusation of assault. The girl did not have any say.

So the matter was closed - despite the possibility that a great deal of evidence could have been obtained.

There is nothing in the record seen to date to indicate that any of the staff on the excursion were interviewed by the police, nor any of the alleged perpetrators of the crime, nor the staff member who reported hearing something that was most disturbing, nor the manager, nor anyone at all. And what about the forensic swab results? And what of the doctor's interview with the girl?

So, with the complaint withdrawn, apart from some minor housekeeping, the matter could now be closed.

That minor housekeeping simply involved putting the best possible spin on it all for those up the chain of command.

Day Seven

Six days after the incident, 30 May, one of the department's Deputy Directors wrote to his boss to inform him of what had happened.

It says:

[The manager] *rang to advise that on Friday* [the girl] *was medically examined at the Mater Hospital. This was arranged with the police investigating the matter and on Saturday police again interviewed* [the girl] *who indicated that she did not wish to make a formal complaint.*

[The girl's] *mother was then contacted and brought to the centre where she spent a couple of hours with her daughter. Initially* [the mother] *was upset that her daughter had made this decision, but after spending a couple of hours with her daughter, she was interviewed by the training officer and advised that she was happy for her daughter not to make a complaint.*

[The manager] *advised that* [the girl] *had two main reasons for not wishing to make a formal complaint. These were: 1. The court process would take from six to twelve months. 2. Other children at the centre were teasing and threatening her.*

[The manager] *said he had spoken to the other children involved in the teasing and threatening, and had advised them of the outcomes should they continue in this fashion. Overall, everything has settled down at the Centre.*

[The manager] *also advised me that one particular staff member (that they have had a lot of trouble with) was saying that there had been a cover-up and a whitewash.* [The manager] *is having a talk to him this afternoon together with other staff where they will be advised that the complaint has been investigated properly and that all information has been passed on.*

[The manager] *also advised that there was very little chance of [the girl] becoming pregnant. The paediatrician had advised that she had started her*

period immediately after the incident and it was very unlikely that she would fall pregnant.

[The author of the letter was (as at April 2002) a senior bureaucrat in the Queensland public service].

Armed with this advice, the director-general (who has since died) sent a letter, dated 30 May, to the Minister.

He wrote:

I received word late on Friday afternoon that there was a problem during a recent picnic outing by a mixed group of children from the John Oxley Youth Centre. Apparently four boys interfered with one of the girls.

I suppose there is some possibility of this leaking to the media and a full report has been requested by Monday [which, presumably would be the following Monday, 5 June].

The girls [sic] *parents have been contacted and they are not placing any blame on the staff.*

This was "Yes Minister" correspondence of the highest order.

What's more the girl's parents categorically deny the content of these letters.

When contacted, the Minister at the time said he could not recall being advised of the incident, although the correspondence says he was. He did say, however, that he had been the victim of a great deal of "Yes Minister" treatment during his time in that particular portfolio.

In neither letter reproduced above did the plight of the girl, nor, given the threats made against her, her continuing welfare and safety, seem to be a matter of importance. Nor her rights.

The available record makes no mention of anyone being punished or censured for what happened (apart from possibly one staff member who suggested there had been a cover-up), nor if any of the perpetrators suffered any penalty. The only victim would appear to have been the girl.

And she continued to a victim for a very long time. As we will reveal as time goes by.

What's more, at the Centre, nothing appeared to have been learnt by the experience. Abuse of girls in the place did not stop - as we shall see.

The Criminal Justice Commission, however, says it investigated the matter and found there was no cover-up and no misconduct on the part of any departmental or police staff.

Others, including lawyers and former police I have questioned on the matters raised above, beg to differ.

They have described what I have outlined above as outrageous and a complete disgrace.

Curiousier and curiouser

1. Not more shredding - surely!

On the Monday morning after the first story appeared in The Courier-Mail I contacted the current Minister's office and asked a series of questions. I also contacted the Crime Commission, which had a standing reference to investigate matters of criminal paedophilia, and sought a response as to what they intended to do about the case.

One of the questions I put to the Minister's office was: What were the dates on which the girl in the story was admitted to and released from John Oxley?

That evening I received a reply.

When I looked at the dates I was concerned about their accuracy and next day contacted the Minister's office again and asked that they be checked. I was told they were correct.

I then faxed the Minister's office and asked that the dates I had reproduced on the fax be confirmed. I phoned again and was told if the dates were wrong I would be advised. There was no such advice.

The leader of the state Opposition subsequently asked a series of questions of the Minister on notice, including one which sought the dates between which the girl had been held in John Oxley.

A month later, at the end of the notice period, the answers came back.

Suddenly, one of the dates I had been given by the Minister's office was now missing. This was the date on which the girl had been released after the Portals incident. How odd that such a date could go missing in the space of a few weeks?

What was also noteworthy was the fact that other dates provided by the Minister were also wrong!

How a release date could go missing is something of a mystery. But what is most disturbing is, why did this particular release date go missing?

2. The Criminal Justice Commission

When I approached the Crime Commission after the publication of the first story about the rape allegations, they called back to say that the matter was one that was more appropriate for the Criminal Justice Commission to examine.

That was an interesting interpretation of the facts, given that the Criminal Justice Commission did not have a standing reference to investigate paedophilia and the Crime Commission did.

Furthermore, since the CJC had sought over many years to claim the John Oxley matter had been thoroughly investigated, I suggested, as the organisation itself had done in the case of the Connolly/Ryan inquiry into its operations, that there was the matter of public perception of bias if it touched the rape allegations.

Would it not be better if it stayed away from the case altogether? It was not necessarily that the CJC was biased, it was just a case of people perceiving it to be so.

I was not the only one to think such a case had been made - long ago. Both the former Minister who had set up the Heiner Inquiry, and the State Opposition leader said publicly, on radio and in the press, that the CJC was tainted and should not touch the rape allegations matter. One of the members of the 1995 Senate inquiry into unresolved whistleblower cases in Queensland, former Senator John Woodley, strenuously expressed a similar view in the press.

However, the logic of these arguments did not sway the Criminal Justice Commission. It went ahead and found there was no misconduct and no cover-up.

In the absence of any elaboration or qualification from the authorities, the inference a public official in Queensland might draw from the outcome of this case to date would appear to be as follows: it is quite OK to take a child in your care to a totally remote location, allow that child to be molested, to do nothing about it for three days, to leave the child in a situation where he or she clearly knows he or she can be intimidated and threatened for up to, possibly, several months, to arrange (in the case of a girl) for the administration of a pregnancy-preventing or abortion-inducing medication, and then to accept his or her decision (as a minor) not to want to take action against anyone.

It is to be hoped that there will a move to ensure such an interpretation of what has happened in this case is unacceptable and if so, to explain - given the actions of the relevant authorities to date - why such an interpretation might be misplaced.

3. The Queensland Crime Commission

The position of the Crime Commission is also interesting. I spoke with its former chairman some time after the organisation was wound up at the end of December 2001.

He said he remembered seeing my story in the paper but couldn't remember why the organisation had not investigated. He suggested I take the matter up with his former deputy who had become deputy to the head of the new Crime and Misconduct Commission.

Why I should want to do that was not clear to me. If they didn't investigate when they had a standing reference to do so, why would they investigate now when they did not have such a standing reference, and when their overarching authority (the former CJC) had already said there was nothing to worry about?

An interesting development on this aspect of the case occurred in April when a document prepared by the man who has achieved more than any other in cutting through the lies and deceit surrounding the Heiner document shredding, Kevin Lindeberg, was tabled in state parliament.

Lindeberg's contact with the Crime Commission only adds to the extraordinary intrigue that surrounds this story. The deputy chair of that Commission admitted in a letter to Lindeberg in December 2001 (quoted in *The 1997 Lindeberg Declaration Revisited in 2002*, pp110-111) that "*... it would seem that, in addition to constituting a major crime, the alleged rape of a fourteen year old girl would fall within the definition of 'criminal paedophilia' in section 6 of the Crime Commission Act 1997*".

So, not only might the pack rape of a girl in care be criminal paedophilia, for which the Crime Commission had a standing reference, but it might also constitute major crime, which the body was also set up to investigate. But, as far as we know, it didn't investigate, and hasn't - on either count. We might be wrong. We hope so. But we doubt it.

If it did not investigate, why could that be? If it did, what did it find?

4. The phantom complainant

There is no shortage of intrigue surrounding this story.

A document prepared within the Police Service in mid-2001 has recently come to light (April 2002).

It reveals that in August 2001, several months before my rape stories were published in The Courier-Mail, someone claiming to be the girl involved in the stories contacted the police alleging she had been raped whilst in custodial care in John Oxley in 1988.

An officer in the Sexual Offences Unit then wrote to the Department of Families asking if the department could provide any information about such an incident.

There are several disturbing aspects of this correspondence.

It was not the girl who was the victim of the rape at the Portals who contacted the police service about the matter. She would not contact the police service about anything!

So who did? Who could the mystery enquirer be? Who was it who contacted the police? And why?

Whoever it was knew the girl's name and birth date, but got her place of birth wrong. Such a mistake seems a little strange and might have alerted someone that the enquiry did not come from the right person (the victim does know where she was born!), but apparently no one saw anything unusual in the error.

And the enquirer gave no address where she (?) could be contacted. She (?) would call back, she(?) said, for a reply. That seems a bit odd too.

Somebody, however, was interested in what had happened to the girl. By August my activities would have become known to various people within the department and the police service. And someone was sufficiently spooked to undertake a fishing, not to mention very fishy, expedition.

Who are you and why were you prying?

I think I know. There are other matters connected with that bogus enquiry that are deeply disturbing and are the subject of continuing investigation by the writer. They will have to wait for another day.

What happened next is also very strange.

The department's response to the request from the police was intriguing to say the least.

Sorry, the department said, we know nothing of the matter (despite having access to, probably, a score or more of people still working in the department, and an unknown number of others elsewhere in the public service, even in senior positions, who would well remember the incident). And furthermore, the department replied, there were no records of such a matter ever taking place. Sorry, we can't help you.

However, several months later, when the first of my stories appeared in the press, the department suddenly located some documents about such a matter after all, and sent them off to the police. They were apparently about the incident at the Lower Portals.

What the police did with this information, is unknown. After all, by now the Criminal Justice Commission, Queensland's public sector watchdog, was on the case.

And we know what that organisation decided. I did contact the police media operation several times after my stories appeared and asked for a response from the Police Commissioner. To date there has been none.

For students of JOUR1021, interested in public administration, some interesting questions arise.

Where were these documents when the police asked for such material and nothing could be found? Where were these documents when they were found? Who had them? How is it that the existence of documents in the possession of the public service can be concealed from the police service and only turn up when a story appears in the media?

And where were these documents during the Forde Inquiry into the abuse of children in care? Did Mrs Forde know of this incident? It does not appear to be mentioned in her report although there is mention of an allegation of a staff member raping a girl in care.

If she did know about the incident, what did she do? If she didn't know, why not? She conducted public hearings into the matter of two residents being handcuffed in the open overnight. What might she do about a matter of rape or pack rape?

And were these documents made available to barristers Morris QC and Howard in 1996 when they were asked to investigate the paper trail involved in the shredding case? There is no mention of the incident in their report (although they concluded there should be a full and open public inquiry into the shredding matter. They also said prima facie evidence existed that a number of people involved in the shredding had breached various sections of the Criminal Code, the Criminal Justice Act and the Libraries and Archives Act, including perverting the course of justice. In responding to the barristers' report the Director of Public Prosecutions at the time was reported by the Premier of the day as wondering if there was any public interest to be served by raking over the John Oxley matter so many years later. I guess it depends on your view of public interest.)

Other Matters of Abuse

Apart from the possibility that such an investigation might have uncovered the pack rape matter, or allegations thereof, it might also have cleaned up John Oxley. Indeed, so might the Heiner Inquiry if it had not been shut down.

Sadly, the picture that emerges from the records of the girl who was taken to the Portals and left to her fate, is that of a "comfort kid" - a junior version, if you like, of the unfortunate women who were required to make themselves available to Japanese soldiers during World War II.

It is not just the documents relating to the incident at the Lower Portals that leaves the reader with that dreadful impression. There are any number of references in her records to sexual activity going on in the centre.

Former staff have told me that is exactly what did go on and the expression "comfort kid" is an appropriate description of the way some of the residents were regarded by some of the staff.

In other words, they said, there were those who were quite happy to encourage, to turn a blind eye, or to arrange the circumstances for the boys to have sex at the expense of the girls. Some of the "boys" were tough guys and it helped keep them quiet, I was told. It was a control measure.

The girl at the centre of this story says she was constantly pressured by boys in John Oxley for sex.

But it wasn't only the boys that you had to worry about.

One day, on a hunch, I took the girl (woman as she is now) to a picnic spot near the city and later to another on the shores of one of Brisbane's water storage dams.

Yes, she said, a member of the John Oxley staff had taken her in one of the Centre's vehicles to both places. At the dam, the best part of an hour's drive away he had suggested they go for a swim.

He had come prepared. There were towels in the back of the van.

She declined his invitation.

Which might have been just as well. The man was named by another former resident as one of three staff members who took two girls to the same dam some time later.

The following day, I was told, one of the girls complained about what had happened to her in the water. One of the men, I was also told, was not seen in the centre again.

On another occasion the man with the van and the towels took his passenger (the victim in this story) to the picnic spot involved in my hunch. Just him and the girl. He took her for a walk into the bush, she said, and "put the hard word" on her. She told him to leave her alone. She was supposed to be in secure custody.

I also took the girl to another place in the bush. What happened there is the subject of continuing investigation.

But other girls were sexually abused (raped) by staff. The story of one appeared in The Courier-Mail on 20 November 2001.

The then Criminal Justice Commission wrote to me saying the department had no idea who the girl could be and suggested I advise the girl to come forward - which I had already done anyway.

I pointed out to the CJC that the claim by the department that it did not know who the girl was, was nonsense.

In fact, about the very same time the department was not supposed to know who she was, the girl told me a senior public official had contacted her. The main message he delivered was, if she was thinking of suing, forget it. They would never pay.

Nothing changed because of the Lower Portals incident. And nothing changed when the ill-fated Heiner Inquiry was shut down and shredded.

Whether Heiner was told of what happened to this particular girl is unknown. But had he been allowed to do his job, what ultimately did happen to her, rape, may have been prevented.

She was not alone. The same thing happened to yet another girl - after the shutting down of the Heiner Inquiry. That makes three – just before or just after.

BAT, Clayton Utz, John Oxley and the Eames J decision

The following material may be of particular relevance to students of JOUR2311.

The circumstances surrounding the trip to the Lower Portals are serious enough.

And the shredding of documents collected by an inquiry which questioned John Oxley staff about the incident is also extremely serious.

But what can we now say of those who encouraged the shredding to be undertaken? And of those who authorised it?

In his recent judgment in a case in which a dying cancer victim, Rolah Mcabe, sought to sue British American Tobacco over what had happened to her because of her smoking addiction, Victorian Supreme Court Judge Eames said some things which may have one or two resonances in the Sunshine State (despite Mr Justice Eames' decision recently being overturned on appeal - the circumstances involved in the BAT case are different from those involved in the shredding matter):

Central to the conduct of a fair trial in civil litigation is the process of discovery of documents. That process is particularly important where documentary evidence is likely to be both voluminous and critical to the outcome of the case, and where access to documents is very much dependent on the approach adopted by one party and its advisers. For a fair trial to be assured in such circumstances the approach which that party must adopt may well conflict with its self-interest. The party which controls access to the documents must ensure that its opponent is not denied the opportunity to inspect and use relevant documents, and it must disclose fully and frankly what has become of documents which have been in its possession, custody or control ...

In my opinion, the process of discovery in this case was subverted by the defendant and its solicitor Clayton Utz, with the deliberate intention of denying a fair trial to the plaintiff, and the strategy to achieve that outcome was successful. It is not a strategy which the court should countenance, and it is not an outcome which, in the circumstances of this case, can now be cured so as to permit the trial to proceed on the question of liability. In my opinion, the only appropriate order is that the defence should be struck out and judgment be entered for the plaintiff, with damages to be assessed.

Given that:

- the Queensland government knew the Heiner documents were being sought by lawyers and individuals for foreshadowed legal action;
- that these requests had been communicated to the government in a variety of separate circumstances;
- that no less than four separate kinds of actions were possible;
- that the Office of Crown Law and the Crown Solicitor knew of these requests (that the documents were being sought for possible legal action);

- that, despite knowing of the requests and knowing that the documents were being sought for possible legal action, bureaucrats recommended their destruction;
- and also knowing why the documents were being sought and for what purpose, State Cabinet authorised their destruction (aware that they were broadly about child abuse),

how will the Eames' decision then impact on the matter of the shredding of the Heiner Inquiry documents?
The principles he espoused appear to be well known and understood in legal circles - except, curiously in Queensland, where it would appear, if Eames is correct, something else, rather than the demands of the law and legal practice, appear to have held sway.

6. Where to now?

Someone observed several years ago that "this story [Shreddergate] isn't going away and it only gets worse". Both were true at the time and they still are true. There is much more to be revealed and that will be done as circumstances permit.
But where does the reality of what happened to a girl in the care of the state, and the fact that had happened to her was known to the Heiner Inquiry, leave all those who have taken part in the process of securing or condoning the destruction of the Heiner Inquiry documents?
There are scores of people who now have questions to answer - over 60 when I last looked at the list.
And that should keep me busy for a day or two.
Your responses to what I have recounted here, particularly the responses of women, would be appreciated.
Your views of the decisions of the Criminal Justice Commission that there had not been a cover-up, nor any official misconduct (conduct that might involve disciplinary action or dismissal) and the decision of the then Crime Commission not to investigate, would be welcomed - as would any comments you might have about the standard of public administration and governance in the state of Queensland.
Email messages may be sent to b.grundy@uq.edu.au.

7. A few last words - for the time being

There is much more to say about the girl at the centre of this story and what happened to her … and it will be said one day. Until then …

Rape News Story 1

An "Educational Outing"

By Bruce Grundy (2 November 2001)

A young Aboriginal woman has confirmed claims by several former staff members of a Brisbane youth detention centre that she was gang raped while being held in the centre as a 14-year-old in care.

The woman, now in her mid-twenties, said she was gang raped twice on a supervised outing from the John Oxley Youth Detention Centre in the late 1980s.

Former members of staff at the centre have also claimed the matter was officially "swept under the carpet" and "quietly hushed up".

One former youth worker said if what had happened to the girl in question had happened to a white girl, " ... there would have been Hell to pay".

The woman, who cannot be identified under Queensland law, said she had been taken on a bus trip with a group of Aboriginal and white male inmates to an isolated spot in the country. One staff member had accompanied the inmates some distance into the bush and had left her with the boys. The man had returned to the carpark and to the other staff members.

The woman said the boys had begun to demand sex and started arguing about who would "go through her" first. She said she told them to leave her alone but they had forced her on to on a large rock and raped her.

The woman said what had happened to her on the first walk was repeated later in the day.

When contacted about the incident, one of those reported to have been in charge of the excursion said: "I'm not interested in talking about that."

The man, a Families Department public servant, then denied he was aware of the incident.

A woman who also supervised the excursion said she would prefer not to comment.

She said she knew "what was alleged to have gone on" although she had no direct knowledge of what had occurred.

"I know that the manager of the centre informed [the girl's] mother of the allegations, and she came in to the centre, and ... we were just told that when the mother was told all the alleged offences were committed by indigenous youth, they dropped it ... so that was it ... that was the end of whatever it was ... they did not proceed."

Former leading criminal lawyer and Director of Public Prosecutions at the time of the incident, Des Sturgess QC, said "unless the story was incredible" the outcome of the matter was not one for the mother to decide.

"That would be for the police to investigate and determine," Mr Sturgess said.

However, the girl's parents have strenuously denied ever being told of the incident. They said the first the first they had heard of the matter was when asked by this reporter why they had decided not to take any action over it.

Both have called for a full investigation.

The manager of the centre at the time did not respond to a request for an interview. However he said anyone with allegations about the abuse of children at the centre should take them to the department, to the police or to the Criminal Justice Commission.

"I would encourage anyone with such allegations to do so," he said.

The assistant manager at the time also declined to discuss the matter.

"I have no comment to make," she said. "How did you know I was here?"

The woman currently works in the Department of Families.

The Courier-Mail has been told by former members of staff they had "no doubt" the matter of the gang rape had been raised with the aborted 1989 Heiner Inquiry into the John Oxley Centre.

Following the closing down of the inquiry the manager of the centre was paid over $27,000 for "entitlements" to which he was not entitled and required to sign a secrecy agreement.

Rape News Story 2

The Search

By Bruce Grundy (2 November 2001)

It had just been a hunch – pretty much a stab in the dark – and it had turned up trumps. The odyssey had been worth it. Against goodness knows what odds I had found what I had been searching for - no golden fleece, just a large flat rock, in not quite the middle of nowhere, but almost.

This was no ordinary slab of sandstone or whatever; this rock had witnessed a wretched crime and I was taking the young woman next to me, step by step, through what had happened to her here.

At first she had been excited.

"This is it. This is the place. I know it. I know it. No doubt," she had said.

At the start her words had flowed freely as we talked it through.

Where were you? Who else was here? Where were they standing? What were their names? Where were those who were supposed to be in charge?

But as the questions continued and the crunch they were leading to approached, her words began to slow. Slight pauses followed questions. Answers were harder now. Her voice began to tremble. Just that little bit. And much softer. Then tears filled her eyes and streaked her cheeks. Her answers now were sobs. But she kept going. Until the questions stopped.

"I have to go now," she had said through her tears and crying she set off back down the path we had come to reach this place.

Twenty paces maybe and she sank to the grass beside the track and vomited until there was nothing left to lose.

She stood up and set off down the track again back towards the car park. Another ten paces and again she slumped to the grass and retched and retched – but there was nothing to bring up.

"I'm coming," I called out. "And I'm behind you."

She had asked me when we had first begun our search for this place not to walk behind her. Please. Please stay in front of me, she had said. I said I understood and wouldn't walk behind her. But now I was behind her.

I kept talking as I reached her so she would know where I was and not be startled. I put a hand, just a touch, on her shoulder (she had made it clear she did not like men touching her) and gave her my handkerchief to wipe her lips. I said I was sorry for what they had done to her here, and I said I was sorry that those who were supposed to look after her that day had not done their jobs. I said I hoped there would be justice for her in the end and that she might get the rest of her life back now.

But it was clear she wanted to be alone. I said I was going back to get some pictures – which is the sort of thing journalists do that puts other people off them. She stood up and set off down the track once more. No more vomiting this time. There was nothing left to vomit.

I took the pictures of where we just been and walked back to the car park. She was sitting at one of the rough bush tables there with her mother, somewhere in her thoughts, head bowed, hair covering her face. Crumpled. Almost doubled up as if she had been winded. Again I said something inadequate about being sorry. But I knew my words were little comfort.

Then, as journalists do, I asked the rotten question. Would she go back with me where we had just been and go through it all again – so I could record it – absolutely accurately? I said some day I feared some bastard would say she had made it all up, that she had never been to that place, that it didn't even exist and nor did she probably. Someone would try to confuse her and get her to say she had never been pack raped on the rock we had been looking for, and had just found – never been pack raped there or anywhere else for that matter.

It took lots of courage but she said she thought that was a good idea and she did as I asked. We went through it all again.

The place was just as she had described it to me the second time we had met. On day one she had said nothing. Even on day two she been very cautious and hesitant – telling some strange guy, in this case a strange white guy, what had been done to you was not something a woman would enjoy. She was really searching in her memory to call up the detail of what had happened. I did not give her any hints. I wanted to know from her if her story, and what I had been told by others, matched. Indeed they did match - and more. She remembered where the sun had been – shining through the treetops on her face; the geography and the topography and the vegetation of the place; and who was there. And then she even agreed to go with this strange white guy to try to find the spot again. A crazy idea really - a rock - one rock somewhere in the whole of South East Queensland! A rock in a few million hectares of bush and farms, and national parks, and mountains, valleys, ranges, etc. Crazy. But she agreed.

She had described the place again when I had taken her to where I thought it might have been but where it wasn't. No, Bwuce, she had said, (her "r" sounds always lost out to the "w" when she spoke). No. It's much further away. And the rocks aren't right. And the trees aren't right. And this isn't right and that isn't right either. I'm sorry but it is further out in the country somewhere.

Somewhere.

Perhaps there is a journalist's god because we finally found the place - the place where she had been raped all those years ago - as a 14-year-old in the care of the State. And it was just as she said it would be. The trees, the sun, the rock. The lot.

Then another bombshell. She said it had happened more than once.

More than once! Christ! Surely not! You were gang raped twice? Yes, she said. The sun had been high in the sky the first time and then much lower the second. But by now the memories were more than enough. Please, can we go, she had said.

When next we met I asked if she still wanted to go through with what would follow when the story appeared. There would almost certainly be cops, I said, and questions and God knows what else. She said she did. Absolutely. And now she had had her quiet breaks she wanted me to get on with it and get it over and done with. That was when I asked her, quite casually, when her little girl was born. And just as casually she answered. I scribbled the date in my notebook but was conscious of a sudden stillness that had come over her, one of those frozen moments when time stands still, when something seems to click in a person's head that had never occurred to them before. Almost to herself, but loud enough to hear, she said something about what if DNA tests were done.

We agreed to get on with it as soon as her Grandmother's birthday was over. I went home to check one of my notebooks. And indeed, as I had suspected, if

one of my contacts was right, there might well be a case for some DNA tests to be done.

Rape News Story 3

Inquiry Knew of Rape

By Bruce Grundy (4 November 2001)

The former magistrate who conducted the aborted 1989 inquiry into the John Oxley Youth Detention Centre was aware of an incident in which a 14-year-old Aboriginal girl being held in the centre was gang raped, a former member of the centre's staff has claimed.

Allegations that the management at the centre had known of the rape and that it had been covered up for 12 years, were raised in a story published in *The Courier-Mail* last Saturday.

A former youth worker at the centre told *The Courier-Mail* yesterday he had been interviewed by the person conducting the 1989 inquiry, Mr Noel Heiner, and had been specifically asked about the rape.

He said the interview "was about [the manager of the centre] bascially" but the rape "was one of the incidents that came out", the former youth worker said.

When asked if he had volunteered information about the rape or had been questioned about it, the man said: "He [Mr Heiner] asked ... he knew about it already."

The man said everyone in the centre knew about the rape.

"We all knew ... everybody knew," he said.

The Heiner Inquiry into the John Oxley Youth Centre was established in October 1989 by the-then National Party government.

It was abruptly shut down by the Goss Labor government when it came to power in December 1989.

Subsequently the Goss Cabinet approved all evidence gathered by Mr Heiner be examined by the state archivist who in turn approved its destruction.

A former minister in the Goss Cabinet, Pat Comben, said on television in 1999 that "in broad terms" the Cabinet had been aware that the shredded documents had contained information about child abuse.

Next day Mr Comben said his comments had been taken out of context.

When contacted yesterday about the claim that he had been aware of the pack rape allegation, Mr Heiner declined to comment.

A move by Families Minister Judy Spence to refer the pack rape cover up allegations to the Criminal Justice Commission for investigation was strenuously rejected yesterday by a member of the 1995 Senate Select Committee into Unresolved Whistleblower Cases in Queensland which examined the shredding of the Heiner documents.

Former Democrat Senator John Woodley said it would be inappropriate for the CJC to accept a reference to investigate the matter because at the time of the Senate Inquiry the CJC "clearly knew about cases of child abuse, and this was part of the material which was not disclosed to the Senate.

"Therefore, one has to wonder why, when they knew about child abuse, they did not disclose it at the time.

"That was an incredibly serious omission, and one can't have confidence that they will deal with it properly if it is referred to them again, " Senator Woodley said.

According to former members of staff and the girl concerned, the gang rape took place when she was taken on a supervised excursion with a group of male inmates to a remote location in the bush.

One More Rape

Another Story Of Abuse

By Bruce Grundy (November 2001)

A former inmate of the John Oxley Youth Detention Centre at Wacol has alleged sexual abuse by a male staff member.

The woman, now 30, said the man gave her extra cigarettes in exchange for having sex with him while she was detained at the centre in 1988.

She said she had also been exploited and raped by a male staff member in Brisbane's Sir Leslie Wilson Detention Centre just before she was transferred to the John Oxley centre.

The woman said the rape at the Sir Leslie Wilson centre was when she was 14.

Because of the rape, she had slashed her wrists and had been taken to the Royal Brisbane Hospital for treatment, she said.

The woman said she had decided to speak out after seeing reports in *The Courier-Mail* about the reporting and investigation of the alleged pack-rape of a 14-year-old Aboriginal girl at the John Oxley Centre, also in 1988.

She said a man on duty at John Oxley had let himself into her room one evening and said." You must be lonely, you can't go out, you can't get a man", and began massaging her. He then had sex with her.

His visits were repeated on a number of occasions.

The woman said she had been 17 at the time, an age when girls often had boyfriends and she thought the man must have had feelings for her because of what he was doing.

She said when she was nearing the end of her detention and was given weekend leave, the man would pay for a cab to take her to his place so that he could have sex with her.

She said she had told another staff member about these incidents and she believed others knew.

She said she told a staff member at the Sir Leslie Wilson centre what had happened there but nothing had been done about it.

The woman said she believed the man who forced himself on her at Sir Lesile Wilson had sex with several female residents.

She said her problems had started at the age of five when she was molested by her foster father. The abuse continued until she was 10.

Her sister had told the nuns at the orphanage where she had been living about the abuse but nothing was done.

The woman said that after her release from detention her problems had continued.

She had a job working on the roads.

But she said that being the only woman in the road gang meant she encountered unpleasant and distressing harassment and discrimination.

She said her lack of education, her background of abuse, and the pressures of her life eventually caused her to break down and her children had spent time in care.

She claims while her five children were in care, two of them, both boys, were raped.

She said despite repeated efforts on her part, as far as she knew nothing was done.

She said the children were now living with her.

Alleged Victim Sues State

Victim Lodges Abuse Claim

By Adam Hicks (The Queensland Independent, June 2002)

A former inmate of the John Oxley Detention Centre is suing the state of Queensland 14 years after she was allegedly abused, raped and assaulted while imprisoned in the centre.

The woman, now 28, lodged a claim in the Supreme Court three weeks ago seeking damages of $382,260 for pain, suffering, loss of amenities of life and economic loss suffered as a result of the alleged rape.

The woman is suing the state, claiming it was responsible for the operation of the juvenile detention centre and the care, safety and well being of the inmates.

The claim alleges the state breached its civil, fiduciary and statutory duty to the woman by failing to provide adequate supervision of administration and management or operation of the centre.

She is claiming negligence and unconscionable conduct against the state for the incident, which occurred in May 1988.

The woman alleges that she, then aged 14, was assaulted, sexually abused and raped when left unsupervised with six male inmates of the centre while participating in an excursion at a national park.

According to the claim, the centre required the woman to participate in the excursion in circumstances where authorities knew or ought to have known that she was at risk, and did not fulfil its obligation to provide a safe system of care.

The claim alleges the centre failed to take any measures to reduce the likelihood of assault or sexual abuse of the woman by the other inmates during the excursion.

The woman claims the centre failed to act appropriately and in her best interests after the incident when officials knew, or ought to have known that she may have been sexual assaulted during the course of the excursion.

In addition the claim stated the centre failed to provide adequate medical attention, counselling or rehabilitation to protect the rights of the woman after the incident

The claim also alleges the state failed to take an appropriate course of action to investigate the incident.

Former Detention Centre Resident Files Second Claim

By Bruce Grundy and Georgina Robinson

A former resident of Brisbane's John Oxley Youth Detention Centre has filed a second Supreme Court claim against the state government for compensation and damages arising out of an incident in which she alleges she was pack raped while held in custody in the centre.

The claim states that while being held in the John Oxley Centre the girl was taken on an excursion to an isolated national park where she was required to accompany a number of male inmates from the centre on a bush walk.

At the end of the walk, the claim alleges, the staff left her alone in the bush with the male inmates and she was then assaulted, sexually abused and raped.

It also alleges that later the same day the girl was again required to accompany several male inmates into the bush. She was again left alone with them and was again assaulted, sexually abused and raped.

The claim seeks compensation and exemplary damages for a range of matters involving breach of fiduciary duty, breach of statutory duty and/or unconscionable conduct on the part of the state and its employees.

The story of what had happened to the girl was first reported in *The Courier-Mail* [by Bruce Grundy] in November 2001.

Last May lawyers Shine, Roche, McGowan lodged a separate statement of claim in the Supreme Court seeking damages over a different incident in which the same girl was taken by several John Oxley staff members with a group of male inmates to the remote Lower Portals area of the Mt Barney national park near the New South Wales border.

The claim alleges the girl was assaulted, sexually abused and raped.

Departmental records relating to this incident reveal that despite being aware of what had happened to the girl and being asked by her to take action against the boys, her request was ignored for three days. In the meantime she was given a "morning after" dose of a contraceptive preparation and her accommodation arrangements were changed because of fears for her safety.

Official procedures in place at the time required that a medical examination of a suspected rape victim should be undertaken as soon as possible after the incident. This did not happen. The girl was not medically examined until three days after the incident occurred when the police were finally notified.

The police did not speak to the girl until four days after the incident. After interviewing her they noted that she had decided not to proceed with the matter. She was 14 years old and as a minor did not have standing to make such a decision.

The reasons for her change of mind were officially recorded by John Oxley staff as: the length of time court processes would take; and the fact that she was being abused and threatened by other inmates.

Despite numerous signatures of departmental officers and senior management figures appearing on the files relating to this incident, it remained a well-kept secret for 12 years.

The existence of the files was even denied to the police when a person purporting to be the victim asked about them in August 2001.

The Department of Families advised police there had been "a very thorough search" but no records of such an incident could be located.

When the story of what had happened during the escarpment incident appeared in The Courier-Mail in November 2001, two substantial files relating to the Portals incident were discovered by the Department of Families and were provided to the victim under Freedom of Information processes.

The-then Criminal Justice Commission subsequently examined the matter and determined that since the police had been notified (three days after the incident) and the girl had been medically examined (three days after the incident) none of the John Oxley staff, nor the police, was guilty of official misconduct over the incident.

A former employee of the John Oxley centre said at the time of the Portals excursion staff had been told not to discuss the incident. He described what had happened as a "whitewash".

The former officer said he had been asked about the incident by the retired magistrate who had been appointed by the National Party government in 1989 to carry out an investigation into the centre.

Shortly after it began the investigation was shut down by the Goss government when it came to power and all the evidence it had gathered was shredded on the authority of the Goss Cabinet.

A member of Cabinet at the time told Channel Nine's Sunday program in 1999 that when Ministers approved the shredding, they had been aware "in broad terms" that the material had included information about "child abuse".

Prior to authorising the shredding, Cabinet had also been told the documents created by the investigation were being sought by a firm of lawyers, and a decision relating to the disposal of them was a matter of "urgency".

Two barristers who subsequently investigated the paper trail involved in the shredding reported there no less than 13 communications on the record placing public officials on notice that the materials were being sought for potential legal proceedings.

The documents were shredded on 23 March, 1990.

What They Did To A Girl In Care 2

What They Did To A Girl In

Care (Two)

A sequel, many years later, to "What They Did To A Girl In Care (One)"

By Bruce Grundy (January 2003)

I arrived at the court on Monday morning as it opened. Inside I explained to the court support attendant that I wished to see the duty solicitor.

Some time later the attendant advised me she had spoken to the duty solicitor but he said he had been informed he would not be handling the matter. It was going to the District Court ... upstairs.

I went upstairs. There was no one around.

I asked a passing bailiff who directed me to the court registry where I was quite firmly told there was nothing listed in connection with the young woman I was enquiring about.

Back down the stairs to the magistrates court. Only to be told, again, that the matter was not going to be heard there. It would be in the District Court. Ask the man at the front desk, I was advised. I did.

The man at the front desk consulted his papers. Yes, in the District Court, he said, upstairs.

I went back upstairs.

Back at the registry I was again told quite firmly the matter was not, repeat not, listed for the District Court.

I explained that the man at the front desk said it was. He had it listed on his piece of paper.

The woman behind the counter went downstairs to see the man at the front desk.

By now, for all I knew, the person I was supposedly there to try to help may already have been processed somewhere else while I was off chasing my tail around the stairs and corridors of the building.

The woman came back upstairs. She made a phone call. No one told her, she said. Where was the file? What number? And so on.

She will be appearing in the magistrates court downstairs, the woman eventually said. I said downstairs they said she wouldn't be. The woman said she would be.

What did become clear through all this bureaucratic smoke and haze was that the young woman in the watch house was now facing a matter quite different from that for which she had been arrested.

I went downstairs. This time to the main court registry. The woman there was helpful, but I was not very confident her answers would sort out the matter for me.

In the end, after to-ing and fro-ing up and down the stairs and back and forth through the corridors, it turned out that the appearance would be in the magistrates court.

I asked a solicitor if he might possibly be representing the woman. He said he didn't think so. The duty solicitor would be.

I heard the duty solicitor say he didn't think he would be. He had nothing on the case.

Finally, after various conversations were held in various places and in the watch house, it was determined who would represent her.

I told the solicitor her story and her circumstances. There was no else to do it and I knew both better than anyone else.

He made notes.

He went back to the watch house and the court adjourned for lunch.

After lunch the solicitor returned, beckoned me into the court and told me the woman would be going straight into custody. There was an outstanding matter and that is what they were proceeding with.

The side door opened and she was led into the dock between two burly policemen, each twice her size.

They had her handcuffed, of course. Behind her back. A dangerous criminal, this girl, who, as the records had revealed, had been so appallingly treated by her carers as a child. A very dangerous criminal. They took away her last little bit of dignity.

She looked at me. Her face said it all. Why have you let me down?

There was no hearing, in that sense of the word. The magistrate looked at his papers. Remanded in custody, he said. No opportunity to say anything about her situation or on her behalf. That's it. The law is the law. End of story. Next.

They call it justice. And every other day you hear someone say "Justice? Bullshit".

Now I know why they say that.

The criminal was led away.

She called out to me as she went out through the door – the one with the heavy bars visible behind it.

What she said was kind. And generous. And that is how she had always been in the 20 months since I had found her … and discovered what her "carers" had done to her.

The prisoner who followed her, a large man, was charged with rape. His hands were secured in front of his body. That a woman in handcuffs, once a victim of rape, should be escorted only by men is troubling enough. That she should be handcuffed behind her back and escorted only by men is simply a profanity.

Her terrible past was not an issue. She was simply a criminal and had to be dealt with. Yet not one of those who took her into the bush, nor any of the boys involved were ever dealt with. When I raised the matter in the newspapers and on the radio the word was spread that it was all the girl's fault.

While those responsible for what had been done to her slept in their beds at night in their comfortable homes with the little nuclear families around them, she had had nightmares. Year after year. The place with the huge boulders and the water, in the middle of nowhere, and the thousand foot drop of the precipice on the escarpment they backed her up to … before leaving her by herself her for the enjoyment of the boys. Twice in the one day.

And what happened to the wretches who did these things?

Nothing. Nothing at all.

And where are some of the boys today? Some of them are in jail. They could have friends or family in the prison she will now be in. For all we know others in the system now controlling her life could be friends or family of those who took her on her visits to the bush.

But that's the law.

That's justice.

That's what we go on about when we talk of democracy and The Australian Way.

Except that it's not. That's not justice.

A woman who has serious matters to be dealt with in the Supreme Court, against the State, is now put back in custody by the State.

Does it not seem unjust, harsh, and unreasonable, for a lesser court to be seen to place a witness before the Supreme Court into an environment of disadvantage and distress (given what they did to her before), not to mention fear and possible intimidation, or even provocation, which may tend to prevent justice being done?

Without, at least, wanting to know of the matter?

Or providing some process to be informed of the matter?

Or without expressing concern to other authorities about the matter and her circumstance?

We accept that in a society governed by the rule of law, breaches of the law have to be dealt with. Breaches like hers.

Except that only some breaches are dealt with.

Those responsible for what happened to the woman were never dealt with by the criminal law. And now that the matter may be dealt with by the civil law, her capacity to pursue that matter may be compromised or placed in jeopardy.

And there is more. What happened to the girl was the subject of an elaborate cover-up by a long line of public officials (see The Shreddergate Archive).

An inquiry into the youth centre where she was held was told about at least one of the rapes she suffered. But all the evidence that inquiry gathered was shredded.

The woman was denied justice then … by the State itself.

And is it not reasonable to believe the State could do it again?

I am sure the man on the Clapham omnibus would say it was perfectly reasonable to believe that.

Justice must not only be done, they say, it must be seen to be done.

Hypocrisy.

And what went on along the way in her journey from arrest to prison wasn't justice either.

It was bluster, incompetence, and bureaucracy … plus the aloof, labyrinthine and impossible processes of the court system, and the exercise of power by those who have it over those who do not.

There was no detectable sense of concern, or compassion, or consideration for a person totally alone and isolated. If the law says you go to jail, you go to jail. No ifs or buts.

And no detectable concern or compassion or consideration that she might have some rights and some needs and some fears and even some human feelings.

No way. She was a criminal. A handcuffed-behind-the-back criminal.

The things we do to other human beings!

Outside the court I asked the solicitor how long the woman would have to serve. The magistrate didn't say.

The solicitor said it could be a fortnight or eight months – it all depended on how Corrective Services interpreted the law.

Corrective Services told me that's not so. They don't determine sentences. Magistrates and judges do.

The man at the court said he couldn't tell me. His Registrar took the view that kind of information was not to be made available. You had to be in the court to get that, he said. I was but why the girl was there and how long she would be remanded was not made clear.

And when I asked why she was in jail I was told different things. Parole breach. Remand over an offence. Bench warrant matter. Or get lost. How long will she be held? A fortnight or eight months. On remand to a date to be fixed. When is she to appear? We don't give out that information.

This is what is known as open justice. You get to find out how long you will be incarcerated when you get to jail. And the public doesn't get to find out at all.

The girl was raped yet again. This time by the system. The justice system.

The story of what they did and have done to this woman is a human rights disgrace.

Over the last few weeks I have seen the law and the legal system, and the criminal justice system, close up. It is frightening.

Be alert. Be alarmed. Be really alarmed. You might be next.

Heiner Inquiry

Suffer The Little Children

Named after the man (retired magistrate Noel Oscar Heiner) who conducted it, the Heiner inquiry was a short-lived investigation into complaints about what was going on in a Brisbane Youth Detention Centre in late 1989 early 1990.

Short-lived because a new government shut it down within weeks of coming to power.

Not only that. The new government, we now know, regardless (and aware) of the fact that the material the inquiry had gathered was being sought for legal action , and that it included information about child abuse, had the whole lot shredded.

Thus the name "Shreddergate" was coined for this infamous episode in the history of the State of Queensland.

What we have discovered over the years that the Heiner Inquiry heard and knew is revealed through the links on this site.

The cover-up has survived principally because of the failure of journalists to do the job they claim they do.

Other interests, or pressures, influenced them to look the other way.

The Shredding

Shreddergate

Throughout the material on this site, regular reference is made to "The Shredding".

For those unaware of its significance, here, briefly is the background to that event.

The saga of the shredding affair began in September 1989. The newly appointed Minister for Family Services, Beryce Nelson, acting on information she had received officially and unofficially, moved set up an investigation into what was happening in a youth detention centre under her control.

Members of staff had complained about the management of the facility, but in addition, as Ms Nelson later revealed, she had also been informed of serious issues of abuse of residents occurring at the John Oxley Youth Detention Centre.

A former magistrate, Noel Oscar Heiner, was asked to conduct the investigation. He began the task only a matter of weeks before an election which saw the National Party government turned out in a landslide and a Labor government elected.

Ms Nelson was no longer a Minister. Her place was taken by the only woman in the incoming Cabinet, Anne Warner. As well, the former Director-General of the Family Services department was moved to another job and his place was taken by a woman who had been a senior officer in the department.

Within a matter of weeks, Mr Heiner's inquiries were brought to a close. All the material he had gathered, including the transcripts of the evidence he had taken, were collected and shortly afterwards, shredded.

The reasons given by the government (to ensure people could not sue each other; because they had legal advice it was OK; it was done in good faith) did not, and do not, as they say, stack up.

They were, and are, nonsense.

So what did go down the shredding machine shute?

We don't know it all, but some of what we have discovered is contained in the pages of this site.

History Of Abuse

What Happened At John Oxley

From: *The Queensland Independent,* March 2003

Queensland Independent reporters have been looking back at the cases of abuse of children in John Oxley that we know were covered up by the shredding, and at other abuses that were very likely covered up, or might have been prevented had the Inquiry been allowed to run its course.

EVIDENCE of systemic abuse of children entrusted to the state's care was deliberately destroyed by the Queensland government 13 years ago last Sunday.

In one of its first acts in power, the Goss Labor administration in February 1990 shut down the Heiner Inquiry into the John Oxley Youth Centre.

The government then proceeded to shred all the evidence collected by the inquiry despite knowing not only that it was required for legal proceedings but also that it contained allegations of child abuse.

Two Senate Committees and two independent reports have since recommended the matter of the shredding be thoroughly investigated. And despite revelations of serious abuse residents in the centre, the Queensland Police, the Criminal Justice Commission (now Crime and Misconduct Commission), the Crime Commission, and three successive Queensland governments, have chosen to look the other way.

The 1999 Forde Report commissioned to examine the State's child protection record did not address the shredding, or examine the abuse (apart from one incident) that the shredding concealed.

So what was contained in the shredded documents -- more than 100 hours of taped interviews, transcripts and other materials - that the covered up?

And what is it that is so threatening about the John Oxley saga that has caused governments, and all manner of state agencies, to have endeavoured to bury the matter for over a decade?

In the 13 years since the shredding, details have emerged as to what life inside John Oxley was like and they have completely vindicated the decision of the Minister who established the Heiner Inquiry.

In a signed statement to former Police Commissioner Noel Newnham in 1998, former Minister for Family Services, Beryce Nelson, said she set up the inquiry when she became aware of allegations of, amongst other things:
· physical and sexual abuse of children by staff, including reports that children "...were being forced into sexual activity ... for the benefit of others";
· illicit drugs and prescribed medications provided [improperly] to children by

staff and other residents;
· an employee allowing a mixed group to spend a night together.

Internal documents have now confirmed the gang rape of a 14-year-old girl on a supervised excursion from the centre - and that nothing was done to address the matter for three days and that the police took no action.

Inquiries have also revealed the girl was the victim of two more pack rapes while being required to undertake excursions into the bush with male inmates.

Another girl has reported being raped by a male employee inside John Oxley and at his home, and internal and other documents have revealed a third was the victim of an improper relationship with a member of staff.

Girls were also taken by non-custodial staff on excursions (to Wivenhoe Dam, for instance) and allegations of sexual assault, or improper advances by the staff, during those excursions, have been made by former residents.

Three weeks before the shredding the-then Acting Manager at John Oxley, Anne Dutney, wrote in a memorandum to Director of Organisational Services, Gary Clarke, that.

· a youth worker had placed a suicidal child in shared accommodation with another child who was taunting her to kill herself;
· the same youth worker had rolled Panadol under a door to a child who was known to have previously overdosed by hoarding the same drug;
· a youth worker slept on duty and during training sessions;
· another youth worker was performing so poorly that she would be unlikely to be appointed on merit.

Concerns about staff selection and suitability were expressed by former John Oxley Manager, Michael Tansky, in evidence to the Forde Inquiry.

According to Mr Tansky at one stage criminal records checks revealed that 22 staff working in Queensland youth detention centres were found to have criminal histories; and one individual had been charged with the rape and abduction of a 16-year-old.

Mr Tansky was speaking about a time when the government claimed it had solved the problems that had existed at the John Oxley centre.

The Forde Report in 1999 revealed that:
· underqualified and vastly inexperienced staff who "resorted to … force…because they did not have the training to deal with problems in other ways…";
· an anal search of a 14-year-old boy by a staff member who joked and called him a "poofter" and "faggot";
· archival material and witness accounts indicating physical abuse of children by staff including cigarette burns and assault causing loss of consciousness and hospitalisation;
· violence between children at a "… significant level of frequency…" and "… a continuing failure to ensure that residents were protected from other residents".

· improper use of separation as a discipline technique in direct breach of Juvenile Justice Regulations;
· the handcuffing of children including one incident in which two teenagers were shackled in the open overnight. (Amberley air base recorded a minimum temperature of 2.9 degrees C on the night in question).
· While the Forde Inquiry was in progress, a resident committed suicide by hanging himself from a ventilation grille (a hanging point that had been identified ten years earlier at the time of the Heiner Inquiry but never rectified).

Former Goss cabinet Minister Pat Comben told the *Sunday* program in 1999 that at the time of the shredding "...we were all made aware that there was material about child abuse...".

He also said: "...it was accepted on face value that if this matter was of such concern to have got to a level of Cabinet decision then the ... allegations must have had considerable merit and substance."

Public Officials Can Still Be Charged

Public Officials Can Still Be Charged

By Georgina Robinson (The Queensland Independent, April 2003)

ONE of Queensland's most highly respected legal authorities has warned that senior public officials who destroyed documents being sought for legal action a decade ago could still face criminal charges.

Retired Supreme and Appeal Court Judge and author of the text *Judicial Ethics in Australia*, James Thomas QC, was commenting on a case in which charges were never brought against those who authorised and carried out the destruction of a large collection of records being sought for legal action in 1990.

Mr Thomas said it was incorrect to claim that a person could not be charged because at the time he or she destroyed documents no court action related to those documents was actually under way.

The retired judge specifically rejected the view taken by former Director of Public Prosecutions (DPP) Royce Miller QC who said those involved in the 1990 document destruction could not be charged.

Mr Thomas said action could still be taken against the public officials who took part in that destruction.

"There's nothing to stop the present DPP from instituting action if there's a complainant," Mr Thomas said.

"Any police officer could bring a charge if he or she has reason to believe there's been a breach of the law," he said.

In November 1995, Shadow Attorney-General Denver Beanland asked Mr Miller to consider prosecuting the public servants involved in the shredding.

In his reply, Mr Miller said: "It is my view that there must be on foot a legal proceeding before this section (s.129 of the Criminal Code) is capable of application".

But Mr Thomas said the section was never open to such an interpretation.

"I can't see how it is even arguable that a legal proceeding be on foot.

"The section itself contemplates that legal proceedings might not be on foot," he said.

There were some things in the law that were open to different interpretations, but due to the wording of the section, "this clearly isn't one," he said.

In the Brisbane Magistrates Court eight weeks ago a man who guillotined some pages of a diary at a time when no court proceedings relating to them had been commenced was committed to stand trial for destroying evidence (s.129) or attempting to pervert the course of justice (s.140).

Section 129 states that any person who renders evidence "illegible or indecipherable", knowing it is, or may be, required for a legal proceeding, is "liable to imprisonment for three years".

Former Police Commissioner Noel Newnham said since a member of the public was now facing trial for a similar offence, police should now "consider the wisdom of not laying charges" against public officials who had done the same thing.

Mr Newnham said the duty of the police service was plain.

"Sometimes it may be unpalatable, but that's beside the point," he said.

"The police oath says 'without fear or favour' and that means without regard to a person's social or political influence, wealth or power.

"It is simply beyond question that the Commissioner should see the members of his service apply the law," Mr Newnham said.

He also said the view attributed to the former DPP in relation to s.129 of the Criminal Code was "always nonsense".

"It's not what the law states," Mr Newnham said.

In early 1990 it was revealed that an inquiry into a Brisbane detention centre conducted by former magistrate Noel Heiner was shut down shortly after it began and all the documents it had gathered were shredded in secret.

The Labor Cabinet of the time ordered the destruction of the documents on March 5, 1990, despite the government receiving numerous communications from parties seeking access to them for legal purposes.

Officers of the State Archive and Family Services Department carried out the shredding two-and-a-half weeks later, on March 23, 1990.

Family Services officers carried out a further shredding of related documents on May 23, 1990.

In 1996 the Borbidge Coalition government commissioned an investigation into the matter.

In their report following the investigation, barristers Anthony Morris QC and Edward Howard said among other things it was "open to conclude that Section 129 of the Criminal Code was breached by an officer or officers of the Department of Family Services".

Cabinet's role in approving the destruction, despite being aware the documents were being sought by a firm of solicitors wishing to pursue court action, was not revealed until two years after the barristers had submitted their report.

In their report they had recommended the setting up of a public inquiry to fully investigate the shredding matter.

Instead, the Borbidge government sought advice from the Director of Public Prosecutions, Mr Miller.

According to a press statement released several months later by Premier Borbidge, Mr Miller had advised against charges being laid under s.132 (conspiracy) or s.140 (attempt to pervert the course of justice) and he had wondered if the public interest would not be better served if the matter were put rest.

No mention was made in the press statement of Section 129.

Mr Thomas said the legal system was a human system and, therefore, had its share of errors.

"The fact there was no further inquiry seems to have been based on bad advice from a public official," he said.

The retired judge's comments also raise serious concerns about the stand taken by the Criminal Justice Commission [now Crime and Misconduct Commission] on the matter.

In 1992 the CJC took advice on the matter from Brisbane barrister Noel Nunan.

Mr Nunan told the CJC a legal proceeding had to be "on foot" (begun) before a charge under s. 129 could be sustained.

Mr Nunan is now a Brisbane magistrate.

Following the Nunan advice, former Misconduct Division Chief Complaints Officer Michael Barnes told a Senate hearing in 1995 and the Sunday program in 1999 that court action had to be under way before a charge of destroying evidence could be sustained.

The organisation has maintained the same position since.

Mr Barnes is currently head of Justice Studies at the Queensland University of Technology. He has just been named as Queensland's first State Coroner.

Officials Could Have Been Charged

Heiner Shredders Could Have Been Charged

By Dao Thi Nga (12 May 2003)

Those responsible for shredding documents gathered by the 1990 Heiner Inquiry could have been charged with destroying evidence or attempting to pervert the course of justice, a former senior public prosecutor has said.

Associate Professor of Law at Bond University, David Field, who was Queensland's Solicitor for Prosecutions during much of the 1990s, was commenting on a decision not to prosecute senior public officials over the destruction of the documents gathered during an investigation into a Brisbane youth detention centre.

In 1995 the-then Director of Public Prosecutions (DPP) determined that because of the wording of a Supreme Court form, charges could not be laid against those involved because at the time of the destruction no court action connected with the documents was actually underway.

However, two months ago a man was charged and committed to stand trial under Section 129 of the Criminal Code for destroying material likely to be required in a judicial proceeding when no such proceeding was underway.

The conduct complained of in this case was essentially no different from that in the Heiner case, Professor Field said.

He said an offence under Section 129 did not require that the case be one which was destined for the Supreme Court.

"Given the restricted de facto jurisdiction of that Court to matters involving homicide and serious drug offences, it would clearly be a defective law were it so limited," Professor Field said.

Moreover, the wording of Section 129 was not capable of supporting an inference that the judicial proceeding must already be on foot when the document was destroyed before an offence might be committed, he said.

"This would be a most unfortunate interpretation", he said, "since it would result in a situation in which a person could escape all legal liability for destroying vital evidence against him, provided that he did so prior to any charges being laid."

Professor Field also said Section 140 of the Criminal Code ("attempting to pervert justice") which covered an alternative charge brought against the man committed to stand trial two months ago, was equally applicable in the Heiner case. He said apart from exceptional powers given to undercover police officers he was totally opposed to any arrangement under which a person was not prosecuted "for behaviour which would lead to the prosecution of anyone else who committed it".

Action Against Shredders Must Now Be Reconsidered

By Luke Pentony

A criminal law expert has said public officials involved in the shredding of the Heiner documents must still be considered for prosecution.

Solicitor and barrister, former Senior Crown Prosecutor and academic, and co-author of the biggest selling case book on evidence in Australia, Peter Waight, was commenting on the recent case in Queensland in which a citizen charged with an offence was sent to trial despite no action being taken against senior public officials who had earlier committed a similar act. (*For background see:* **Shredders Could Have Been Charged**; and **Public Officials Can Still Be Charged**).

Mr Waight said he disagreed with former Director of Public Prosecutions (DPP) Royce Miller's claim that for charges to be brought under section 129 of the Criminal Code [destruction of evidence] legal proceedings had to be "on foot".

Mr Miller made the claim in 1995 when he revealed why charges were not laid against those involved in the destruction of the so-called Heiner documents.

"My legal view is that [Mr Miller's interpretation of s.129] is not, in fact, correct ...a number of judges including High Court judges have commented on that in fairly recent times, and even expressed their views very clearly," Mr Waight said.

Mr Waight said charges laid in March this year against a man for destroying pages of a diary when no court proceedings relating to them had begun showed that the current DPP's interpretation of section 129 and that of Mr Miller's were "clearly in conflict".

"The two [DPP interpretations of s.129] are totally inconsistent; they can't have it both ways," Mr Waight said.

"Either they've got to drop the charges against [the citizen] on the basis that Miller's view is right and still adhered to, or if they say it's wrong, then they've got to re-examine whether the prosecutions arising out of the so-called "Heiner matter" should now be reconsidered," he said.

Section 129 of the Criminal Code states that any person who knowingly destroys evidence that is, or may be, required for a judicial proceeding, commits an offence.

Mr Waight said interpreting section 129 as requiring judicial proceedings to be "on foot" as suggested by Mr Millar, would cause problems.

"It reduces everything down to chance ...it seems totally absurd to me to say in one case there is an offence and in the other there can't be. I think the law would be open to serious reproach if that sort of distinction was brought on a charge," Mr Waight said.

He also said no time limits existed in criminal law and the DPP could still bring charges against the public officials involved in the shredding of the Heiner documents in 1990. He said this would be consistent with the DPP's stance in the recent Queensland case in which a man acquitted of murder in 1973 was subsequently charged with perjury in connection that matter.

"I don't think the DPP can say, 'Oh well, ten years, 13 years, has gone,' because why did they think it appropriate to bring a charge of a much greater time frame?" Mr Waight said.

He said, however, that prosecuting a matter a long time after it had taken place could be viewed as an abuse of the process of the court.

Mr Waight held the positions of Senior Crown Prosecutor in Papua New Guinea (which adopted the Criminal Code of Queensland) from 1969 to 1973 and Senior Lecturer in Law at the Australian National University between 1974 and 1996. The text on criminal law and evidence he co-authored with Monash University's Professor Bob Williams is now in is sixth edition.

Rule of Law and Destruction of Evidence

Equality before the law?

By Bruce Grundy (January 2003)

In the space of ten minutes just after noon on Wednesday 22 January, 2003, the fundamental notion that Queenslanders are all equal before the law and that there is only one law which applies to all of us, was alarmingly and starkly revealed to be otherwise.

What was finally revealed that day, after 13 years of denial, is that there is one law for the ordinary citizens of Queensland and quite another, much more lenient and accommodating, for public officials – particularly senior public servants and politicians.

On that Wednesday at a committal hearing in a Brisbane magistrates court a prosecutor from the Office of the Director of Public Prosecutions spelled out the charges being laid against a citizen of this state – charges under Section 129 or alternatively Section 140 of the Criminal Code. In essence the charges alleged that the citizen had destroyed evidence, or had attempted to pervert the course of justice, by guillotining material likely to be needed in a legal proceeding. At the time of the alleged offence there was no legal proceeding underway – that did not occur until many years later.

What is significant about this case is the fact that the citizen was charged – because in laying those charges and proceeding with them the Director of Public Prosecutions dropped a bomb into the middle of our legal system.

For more than a decade the agencies and authorities that administer the law in Queensland (the Office of Crown Law, the Office of the Director of Public Prosecutions and the Criminal Justice Commission, now the Crime and Misconduct Commission, for instance (see link to: CJC and destroying evidence) plus any number of Ministers, former Ministers and Members of Parliament, have relentlessly maintained in an untold number of circumstances that unless a legal proceeding has been actually commenced, destroying material that may be needed in such a proceeding is not an offence against the law (in particular Section 129 of the Criminal Code).

In the case against the citizen mentioned above, no legal proceeding had been commenced. But the case against him went ahead.

The matter of the citizen in court that day is in chilling contrast to what happened when a group of Ministers and senior public servants shredded (rather than guillotined, and dumped rather than returned) hundreds of hours of recordings and transcripts and other documents (rather than just a few pages) gathered by an inquiry into a youth detention centre.

The public officials were never charged. There was no legal proceeding underway it was said.

And what had happened in the case of the public officials was even more serious. What the public officials did was to destroy material that might not just have been needed in a legal proceeding, but material that was in fact required for a legal proceeding (see link to: Morris and Howard report extract).

Indeed, in their report to parliament two barristers who examined the matter said there were no less than 13 communications made to senior officials placing them on notice that the material was needed for potentially no less than four kinds of legal proceedings. The record also shows that the Cabinet Ministers of the day were informed that solicitors were seeking the material and that it was a matter of "urgency" that a decision be made as to the fate of the material.

Cabinet agreed, the State Archivist approved, and the material (what was going on in a youth detention centre) was shredded.

And, we have been told over and over, no one did anything wrong. Of course, it has been chorused, the material may have been needed for a legal proceeding, but as there was no proceeding actually underway, destroying the material was not a problem.

At the time the Director of Public Prosecutions (the same agency that brought the charges against the citizen four weeks ago) spelled out the law quite clearly – in writing.

In a letter dated 28 November,1995, to the shadow Attorney-General at the time, the Director of Public Prosecutions, Royce Miller QC, said: It is my view that there must be on foot a legal proceeding before this section [Section 129] is cable [sic] of application. The closing words of the body of the section namely " with intent thereby to prevent it being used in evidence" clearly indicates that there must [be] at the time the action is undertaken by the alleged culprit an impending proceeding ...

This position had earlier been taken by former Crown Solicitor Ken O'Shea and has been supported any number of times by the-then Criminal Justice Commission and others.

The basis for their view, it appears, is the wording of the Supreme Court form (Number 83) relevant to the application of Section 129.

Other lawyers have said anyone who would suggest that the wording of the law passed by parliament should be subordinate to the wording of an administrative legal form created by the judiciary would never pass first year law.

What is more, legal sources have said, the former DPP's view is even more difficult to understand since the Criminal Practice Rules (Chapter Two, Section 15) make it clear that the statement of an offence in an indictment in a case such as that raised by Mr Beanland may be in the words of the form or in the words of the Code or other Act creating the offence.

And since the citizen was charged alternatively with an offence under Section 140 of the Criminal Code (attempting to pervert justice) it is as well to remember that the two barristers who reported on the shredding said: ... we are of the opinion that it is open to conclude that offences were committed under s. 132 [conspiring to defeat justice] and/or s. 140 of the Criminal Code, in connection with the destruction of the Heiner documents ...

In this case, whether legal proceedings are underway or not is not an issue.

For instance, six judges of the High Court of Australia unanimously agreed in The Queen v. Murphy that ... at common law, and under the statutory provisions of Queensland, New Zealand and Canada, an attempt made to pervert the course of justice when no curial proceedings of any kind have been instituted, is an offence ... A similar position was taken by the High Court in The Queen v. Rogerson.

Which would appear to mean that the law is as the current DPP applied it in the case of the citizen four weeks ago. It's just that it wasn't applied that way a decade ago when politicians and high-level bureaucrats were involved.

What is also troubling about this matter is the reality that almost no one, apart from one whistleblower and a couple of brave souls at QUT, did anything about it.

Now a citizen is before the courts.

So who do you believe? Is it OK to destroy material up to the point of a legal proceeding being on foot, or isn't it?

Do you believe the High Court? Or the former DPP? Or the present DPP?

It would be as well to know because the penalty for getting it wrong could land you a few years in jail.

A Can of Worms for Queensland

Worms Turn And Chickens Come Home To Roost

By Bruce Grundy (27.7.2003)

Victoria's Labor government has opened up what could be a major a can of worms for its counterpart in Queensland.

The Victorian Attorney-General Rob Hulls' decision last week to seek to intervene in an appeal before the High Court has the potential to turn into a major embarrassment for the Queensland Beattie government.

Melbourne's *Age* newspaper led its front page on Saturday (26 July 2003) with the news that the Victorian government "wished to address the High Court" on the duties of lawyers to preserve documents that could be relevant in "anticipated legal proceedings".

The High Court is to consider an appeal against a decision of the Victorian Court of Appeal in a case in which a tobacco company was accused of destroying potentially damaging documents to prevent their being used in any legal action against the company.

A former high-profile executive of the company last week blew the whistle on the company's "document retention strategy" which he said was really designed to "get rid of everything that was damaging in a way that would not rebound on the company".

The problem for the Queensland government relates to a decision that has haunted Labor administrations in the state for over a decade.

Despite substantial legal opinion to the contrary, successive Labor governments in Queensland, **the former Criminal Justice Commission (now Crime and Misconduct Commission)**, a former Director of Public Prosecutions, a serving magistrate, and the newly appointed State Coroner (amongst others) have all claimed documents likely to be needed for a legal proceeding could be destroyed as long as no such proceeding had actually commenced.

In 1990 the State Labor Cabinet authorised the destruction of all evidence gathered by an inquiry into a youth detention centre knowing at the time that the material was being sought for legal proceedings.

Over the years since, a string of Ministers, various heads of the Criminal Justice Commission, and others (mentioned above) have all excused the destruction on the grounds that no legal action had actually been commenced when the destruction was approved.

Numerous other legal authorities have rejected such a view.

The issue, they have said, has always been not just whether material was needed for an action that was on foot, but whether it was likely to be needed for a foreshadowed or anticipated legal proceeding.

In March former Supreme and Appeal Court Judge **James Thomas told The Justice Project** that the wording of the law specifically made the destruction of material likely to be required for a legal proceeding an offence.

Mr Thomas said those involved in the 1990 destruction could still be charged. See also: **Action Against Shredders Reconsidered** and **Officials Could Have Been Charged**.

While no action has ever been taken against those who authorised and carried out the detention centre shredding, action has been taken against a citizen who destroyed material likely to be needed for a legal proceeding.

Three months ago a man was committed to stand trial on a charge of destroying evidence or attempting to pervert the course of justice for destroying some pages of a diary.

It was five years after the pages were destroyed before any legal action relating to them was commenced.

Politicians from all parties and senior public officials who have been questioned by The Justice Project about the double standards involved in these two cases have either declined to respond or have "flicked" the issue to someone else.

In the end, the Attorney, Mr Welford, said the Labor Cabinet of the day had acted "in good faith" and on the basis of "legal advice" when it authorised the destruction of the detention centre documents, despite being aware that they were needed for court proceedings.

A former Minister who took part in the decision has since revealed Cabinet was also aware "in broad terms" that the material destroyed concerned the abuse of children in the care and custody of the State.

In its story at the weekend *The Age* also reported the New South Wales government was considering whether it too could intervene in the matter before the High Court.

Comment

The Victorian Attorney-General has put the cat well and truly among the chickens in The Sunshine, sorry, Smart State.

The chickens make quite an interesting list and include: past and present Queensland Labor governments and past and present faithful and compliant bureaucrats and torch-bearers; Queensland politicians of all other political shades; the Sunshine State's legal profession (which has carefully managed to say nothing on the matter for 13 years); the state's Police Service; the Office of the Director of Public Prosecutions; the magistracy; the newly created Office of State Coroner; the Civil Libertarians; not to mention the so-called watchdogs of our democracy (the Crime and Misconduct Commission and the media).

Mr Hulls is suggesting lawyers have a duty not to destroy material likely to be needed for a legal action.

Which, since it is so self-evident, is like saying Mr Hulls believes the world is round.

But for 13 years the chickens mentioned above tried to make out it was flat.

Despite the explicit wording of Section 129 of Queensland's Criminal Code, for the most part they either said it was OK to destroy material needed for a court action as long as the action had not actually commenced,or they bravely said nothing and looked the other way.

Now what will they say?

Will they seek to join Mr Hulls and thereby damn themselves with their blatant hypocrisy?

Or will they hold the line and reject the view of Mr Hulls?

And if they do that, and claim that an action must be commenced before s 129 of the Criminal Code applies, what do they then say about the citizen who has been charged with destroying evidence when no relevant court action occurred until five years later?

And so, for starters, we ask the Premier, Mr Beattie, the Attorney, Mr Welford, the current Chair of the Crime and Misconduct Commission, Mr Butler, former Chairs of the Criminal Justice Commission, Mr Clare and Mr O'Regan, former

CJC Chief Complaints Officer and now State Coroner, Mr Barnes, and the others mentioned above plus the Opposition Leader, Mr Springborg, and Independent MPs Mr Wellington and Mrs Cunningham (plus any of the others who might care to answer) a couple of simple questions.

Do you support the action and views of the Victorian Attorney?

Do you oppose his action and views?

Will/should Queensland seek to also address the High Court on the duties of lawyers (and others) in preserving documents that are or may be required for legal proceedings?

It has taken a while, but for the chickens mentioned above, some others appear to be coming home to roost.

Bruce Grundy

Politicians Shy

Politicians And The Rule Of Law

By Bruce Grundy & staff reporters

Queensland MPs have reacted with caution or reluctance to questions about the status of the rule of law in Queensland and their understanding of it.

University of Queensland (UQ) students raised the issue with members of parliament following the committal of a man for trial last month for an action allegedly committed in 1995 while public officials who had done the same thing in 1990 did not face the courts.

Students participating in UQ's School of Journalism and Communications' justice project sought answers to questions about the rule of law and how it is applied to politicians and public officials in Queensland.

Extracts from recent speeches by the Chief Justice of the High Court Murray Gleeson and the Chief Justice of the Supreme Court of New South Wales James Spigelman about the rule of law were included with the questions sent to the state's MPs.

In the extracts from their addresses both Chief Justices said, in essence, that the law should apply equally to all, and that everyone, "the governors as well as the governed", were subject to the law.

In the light of these remarks by the two Chief Justices, MPs were asked if they had any response to the shredding case and whether they believed in the rule of law.

Fifteen members responded directly by letter and 30 replies in total have been obtained so far.

Many of the responses referred our request to the Attorney-General Rod Welford (including some who contacted Mr Welford asking that he respond directly to us).

We were told by his personal staff that some members had been advised to pass our request on to Mr Welford for his attention.

In the case of National Party members (and one Liberal) our correspondence was passed to Opposition leader Lawrence Springborg.

Of those who chose to respond independently, some said they were either not in a position, or were not competent, to answer the questions.

Other replies included: I do not intend responding to your letter; I do not give legal advice; the Minister thanks you for taking the time to write to her about this matter; I do not have the experience or sufficient information to make any comments on the matters you raise; I would need legal advice on the issue; the matter is sub judice; I did not receive your letter/email/fax; I am unable to comment on such a matter because of the demands of the separation of powers.

Three members said they were supporters of the rule of law.

Another arranged to meet with members of the project to discuss the issues involved.

One said he believed the wording of the law relating to the destruction of evidence was uncertain and under common law principles a person accused of an offence under such circumstances was entitled to the benefit of any doubt.

The Opposition leader Lawrence Springborg (and his chief of staff Kevin Martin responding on behalf of a National Party member) said no credible evidence had ever been obtained to justify the laying of charges "in the so-called Heiner matter". Both said if such "credible evidence" were obtained, they would expect prosecuting authorities to take appropriate action and lay charges.

None of those involved had ever denied the shredding of the Heiner documents had occurred and indeed the shredding had been admitted within weeks of it being carried out.

Credibility of DPP Office

MP Says Credibility Of Office Of DPP Now In Doubt

By Susann Kovacs

The objectivity and impartiality of the Office of the Director of Public Prosecutions in Queensland had been thrown into question, Independent member for Nicklin Peter Wellington said last week (for background, see accompanying stories: Public Officials Can Still Be Charged and Politicians and The Rule of Law).

Mr Wellington said the Office of the DPP had showed "inconsistency in dealing with what appear to be similar circumstances" and its conflicting legal advice had cast doubt on its credibility and core principle of impartiality.

He said the office was "supposed to be at arms-length from the government" but the accuracy of the advice the government had received was now questionable.

Mr Wellington said it was an "issue of concern" that the Office of DPP did not take any action over the Heiner shredding, as it now appeared there may have been grounds to do so.

He said it was a problem the evidence was destroyed in the first place.

Mr Wellington said he believed the law should apply to government officials and to other members of the community equally.

Access To Truth Denied

The Truth, Some Of The Truth, And Anything But The Truth

The Magistrates Courts And Freedom From Information

By Bruce Grundy

Without any basis in law a Queensland court administration official has again denied The Justice Project access to the public records of a court proceeding.

In addition he has seriously misrepresented the circumstances in which the hearing took place.

As well as wrongly claiming that the entire hearing concerned was the subject of a suppression order, the official has now claimed that the proceedings were held in camera and were closed to the public.

Neither claim is true.

A limited suppression order in place for some of the hearing was specifically lifted before the hearing was concluded, and the hearing was open to the public and was covered by the Brisbane news media.

The transcript being sought highlights the legal double standards that apply in Queensland which have seen an ordinary citizen treated differently before the law compared with the way in which with powerful public officials and politicians have been dealt with.

The Justice Project had sought the reversal of two decisions denying it access to Queensland magistrates court proceedings.

However, in determining to refuse access to the record of one of the hearings concerned, a court official said a "suppression order was in force for the entirety of the committal proceedings".

The Justice Project is aware that a suppression order (on just the publication of the name of one person) was lifted before the hearing was concluded.

The magistrate involved in the matter, Mr Bevan Manthey, told the court, emphatically: "The suppression order is lifted".

Despite this statement, The Justice Project's request for access to the court records was denied after a court official determined: "In accordance with s 154 Justices Act I am not of the opinion sufficient interest has been displayed and further a suppression order was in force for the entirety of the committal proceedings".

The official has also said the hearing was conducted "under the provisions of Section 70 of the Justices Act" thus precluding any entitlement on the part of The Justice Project to copies of the record of the proceeding concenred.

Section 70 covers the issue of closed courts and conducting hearings in camera.

The proceeding involved in this matter was not closed to the public. Various members of Justice Project as well as the public and the local media attended.

At the conclusion of the hearing three Brisbane news organisations reported that a man had been committed to stand trial on a charge under s 129 of the Criminal Code (destroying evidence) or alternatively s 140 (attempting to pervert justice).

However, they failed to report the fact that for years the public of Queensland had been told that in the circumstances of the case it was not possible to sustain a charge under s 129.

The man committed to stand trial had cut up the pages of a diary in which a young girl had written details of her molestation by another man.

Five years later she went to the police and the man who had interfered with her was dealt with by the courts.

The police then charged a second man over the destruction of the diary pages.

However, for over ten years authorities and agencies in Queensland have claimed a court action relevant to any material likely to be required as evidence had to be under way before a charge of destroying such evidence could be sustained.

In early 1990 a number of senior public servants and politicians authorised or carried out the destruction of public records knowing they were required for legal action.

They were excused by a range of other public officials on the grounds that no court action requiring the documents concerned was actually under way at the time.

In the case of the individual referred to above (who was committed to stand trial) no court action was under way at the time he cut up the pages of the girl's diary. That action did not occur for five years.

Because of the glaring discrepancy between the two circumstances, The Justice Project sought access under s 154 of the Justices Act to the transcript of the hearing before Mr Manthey.

Access has been now been denied by the official responsible for keeping the record -- twice.

However, The Justice Project is aware that contrary to the views of a former Director of Public Prosecutions, a currently serving magistrate, the former Criminal Justice Commission and the newly appointed State Coroner, the record reveals that the prosecutor in the case before Mr Manthey said a court action did not have to be under way (at the time materials likely to be needed in evidence were destroyed) for an offence under s 129 to occur.

In committing the man to stand trial, Mr Manthey clearly concurred.

In refusing The Justice Project's request for access to the record of that hearing, the court official concerned has chosen to ignore a vast amount of highly significant law clearly establishing that the courts and court proceedings should be accessible to the public.

These determinations include:

The landmark case, Scott v. Scott 1913 AC 417, including the words of Lord Shaw at pp. 476, 477 and in particular " ... Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the very spur to exertion and the surest of all guards against improbity".

Lord Hewart CJ in R v. Sussex JJ, Exparte McCarthy (1924) 1 KB 256 at 259 " ... justice should not only be done but manifestly and undoubtedly be seen to be done".

In Mahliklili Dhalamani v. The King (1942) AC, 583 at 590, the Privy Council pronounced: "Prima facie, the failure to hold the whole of the proceedings in

public must amount to such a disregard of the forms of justice as to lead to substantial and grave injustice".

And Lord Justice Bowen has made the point the "public" is meant to include "a portion of the public".

As well, The High Court of Australia has determined (in Lange v Australian Broadcasting Corporation, 1997) that the public has a right to be informed about the activities of government and its officials.

Further efforts are being made to have the decision of the court official overturned.

In a second case, the Justice Project was denied access to the record of a court appearance in which a young woman was returned to custody for a parole breach.

In particular, access had been sought to the warrant used to give effect to her return to jail.

An appeal against the ruling that access be denied has been submitted but no decision in this matter has yet been forthcoming.

The Rule of Law

The Rule of Law

... The first two of the three aspects of the rule of law ... regularity as opposed to arbitrariness or unconfined discretion, and equal subjection of all, the governors as well as the governed, to law, also reflect a view of the nature of law. Judgments in the High Court of Australia contain numerous assertions of practical conclusions said to be required by the principle of the rule of law. They include the following: ...that citizens are equal before the law; and that the criminal law should operate uniformly in circumstances which are not materially different.

From: *COURTS AND THE RULE OF LAW*
THE RULE OF LAW SERIES
MR JUSTICE MURRAY GLEESON
CHIEF JUSTICE, HIGH COURT OF AUSTRALIA
UNIVERSITY OF MELBOURNE
7 NOVEMBER 2001

... A State cannot claim to be operating under the rule of law unless laws are administered fairly, rationally, predictably, consistently and impartially. Improper external influences, including inducements and pressures, are inconsistent with each of these objectives ...

... Improper influence, whether political pressure or bias or corruption, distorts all of these objectives.

From: *THE RULE OF LAW IN THE ASIAN REGION*
THE HONOURABLE J J SPIGELMAN AC

CHIEF JUSTICE OF NEW SOUTH WALES
INTERNATIONAL LEGAL SERVICES ADVISORY COUNCIL CONFERENCE
SYDNEY
20 MARCH 2003

Relevant original documents and letters are available at:

www.eastes.net.justiceproject