
ETHICS AND THE GOVERNANCE OF CRIMINOLOGICAL RESEARCH IN AUSTRALIA

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Funded by the New South Wales Bureau of Crime Statistics and Research
with assistance from the
Regulatory Institutions Network at the Australian National University

New South Wales Bureau of Crime Statistics and Research

2004

Published by the NSW Bureau of Crime Statistics and Research
Attorney General's Department
Level 8
St James Centre
111 Elizabeth Street
Sydney

Phone: (02) 9231 9190
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Email: bcsr@agd.nsw.gov.au

ISBN 0 7313 2664 4
Website: www.lawlink.nsw.gov.au/bocsar

PREFACE

The human research ethics committee (HREC) process has often been a fraught one for criminologists. No one doubts the need for or the importance of the process itself. Criminological research often raises significant issues of privacy and civil rights. Some subjects of criminological research are people with very limited power and control over their lives. Others are the victims of serious crime. Criminological projects sometimes involve the linking of personal records or covert observation without the express consent of the individuals involved. In such circumstances it is right and proper that an independent body review the research being proposed with a view to protecting the rights and interests of those who are the subject of research.

The practice of research ethics review, unfortunately, is far more complex and contested than the principle itself. Researchers sometimes find themselves grappling with several HRECs, each of which has different views on the conditions under which a particular research project should be conducted. The conditions imposed on researchers by HRECs are sometimes based on false assumptions. HRECs are sometimes poorly placed to judge the merits of criminological research. The problems, of course, are not entirely one-sided. Criminologists sometimes make a poor fist of explaining the purposes and nature of their research. There are enough concerns among criminologists about the HREC process, however, to warrant systematic investigation of their interrelationship. The present report presents the results of such an investigation.

The object of the report is not simply to document the problems experienced by criminologists in dealing with HRECs, although that is one of its aims. The more important aim is to provide insights into how the HREC process might be improved. Professor Mark Israel has succeeded admirably in both respects. At the very least his report will be of great assistance in helping HRECs obtaining a better understanding of criminological research. However there is every reason to hope that, as a result of his efforts, some of the problems criminologists and ethics committees have encountered when dealing with one another might in future be avoided.

Dr Don Weatherburn

Director - New South Wales Bureau of Crime Statistics and Research

President - Australian and New Zealand Society of Criminology

December 2004

ACKNOWLEDGMENTS

Many criminologists have written reports for clients who have little intention of reading or making use of our work. This research was commissioned and funded by Don Weatherburn and John Braithwaite, which leads me to hope that this report will not meet the same fate. I consider it a privilege that I was asked to undertake this work and believe that the issues raised in this report by criminologists in Australia are too important to be ignored by those with any interest in the future of criminological research in Australia.

All interviews conducted in 2003 and an early draft report were completed by Adrienne Bailey and I thank her for her generosity in helping to hand the project over to me long after the end of her contract. Although responsibility for any errors and omissions in this final report remains mine, I have made use of some parts of Adrienne's draft report as well as her interview notes. Section three of my report draws on Israel and Hay (2005, forthcoming) *Research Ethics for Social Scientists*, constitutes 'pre-existing intellectual property' (with the exception of supplementary material on the National Statement and HRECs derived from interviews and e-mail contact with Australian criminologists), and appears in this report courtesy of Sage Publications. I am grateful for the help of a very large number of people:

Gary Allen, Gabriele Bammer, Elaine Barclay, Jenny Barga, John Beaton, Suzanne Birmingham, Lorraine Beyer, Bev Blaskett, Valerie Braithwaite, David Brereton, Scott Burns, Tony Butler, Sophie Cartwright, Janet Chan, Simon Chapman, Hilary Charlesworth, Kathleen Daly, Lynn Davie, Geoff Dean, Carol de Launey, Susan Dennison, David Dixon, Kate Dolan, Sally Doran, Barbara Dunlop, Sandra Egger, Chris Eskridge, Craig Fry, Loraine Gelsthorpe, Peter Grabosky, Anna Grant, Adam Graycar, John Henstridge, Samantha Jefferies, Pat Jobes, Susan Kippax, Abigail Kohn, Robyn Lincoln, Toni Makkai, Elena Marchetti, Gail Mason, Paul Mazerolle, David McDonald, David Moore, Jake Najman, Greg Noble, Russel Ogden, Cas O'Neill, Ted Palys, Carmen Parter, Ross Phillips, Sharon Pickering, Joycelyn Pollock, Scott Poynting, Tim Prenzler, Lynne Roberts, David Rounsevell, Rick Sarre, Stephen Seaton, Mary Sheehan, Kate Sinclair, Clive Small, Stephen Smallbone, Anna Stewart, Heather Strang, Julie Stubbs, Adam Sutton, Brendan Thomas, Colin Thomson, Stephen Tomsen, Chris Trotter, Tom Van Valey, Allison Wallace, Ania Wilczynski, Richard Wortley and those other colleagues who responded to requests for help, some of whom asked not to be named.

Australian criminologists will continue to grapple with the demands of ethical research and the bureaucratic burdens of research ethics. I would be very pleased to hear from colleagues who wish to comment on the report or who, in the future, can help identify further developments in the field.

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30 October 2004

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EXECUTIVE SUMMARY

Many criminologists have expressed serious concerns about the impact of research ethics governance on their work. Drawing on written submissions and interviews with criminologists and ethics administrators conducted in 2003 and 2004, this report examines:

1. the impact of research ethics governance on criminologists;
2. major ethical issues that criminologists encounter; and
3. strategies for improving criminologists' understanding of ethical matters and the system that regulates them.

ETHICS GOVERNANCE IN AUSTRALIA

Australian regulations to govern research ethics developed to meet the needs of medical researchers and the National Health and Medical Research Council (NHMRC). A medical model of research ethics was extended to non-medical research without considering what such a system might really need, without consultation and with little commitment to negotiation. Social scientists complained repeatedly. In 1999, a new National Statement (NS), drafted by the NHMRC, attempted to provide guidelines to cover all research including humans. Again, social scientists were inadequately consulted. The NHMRC insisted that universities establish local Human Research Ethics Committees (HRECs) to cover all research including humans by tying receipt of research funding to institutional compliance.

The Views of Australian Criminologists

Some criminologists reported that they found the process of ethical review to be constructive. Committees rarely rejected applications outright, although projects were withdrawn or abandoned in the face of conditions that researchers felt could not be accommodated. The more usual outcome was a process of negotiation between committee and researcher – sometimes protracted, occasionally fraught – after which approval was given, conditional upon modifications to the scope and/or methodology.

Despite this, criminologists criticised:

1. a National Statement that failed to consider the conditions under which criminologists operated; and
2. autonomous HRECs that regulated research on the basis of limited expertise, acting slowly, secretly, and arbitrarily, and exercising unfettered discretion according to their own interpretations of amorphously expressed standards.

MAJOR ETHICAL ISSUES FOR CRIMINOLOGISTS

Criminologists face significant ethical issues because of the:

- sensitive nature of subject matter;
- vulnerability of research participants;
- attitudes of criminal justice institutions;
- relatively powerful position of corporate and state bodies; and
- insensitivity of research ethics governance.

Criminologists reported that some HRECs are deeply distrustful of methodologies that have been employed by criminologists for decades without causing harm. Traditional avenues of research are being closed as a result of HREC decisions based on an uncritical application of principles associated with confidentiality, informed consent, harms and benefits, and relationships. This has meant in *some* cases that:

Confidentiality

- HRECs do not trust researchers to keep private information about individuals they may come across in studies of organisations;
- conditions placed on research by the HRECs themselves – such as the requirement that participants sign consent forms or receipts for payment – have jeopardised participants' anonymity;
- HREC requirements that researchers obtain statutory protection for data under current legislation cause, at best, increased expense and extensive delay; and
- HRECs have required researchers to offer limited assurances of confidentiality, within the limits of the law. This equates ethics with law, and rests on a naïve understanding of victims' needs, police and prosecutorial processes. Such a statement can have a chilling effect on research, inferring a higher level of risk than actually exists.

Privacy

- constraints by privacy legislation and policies on access to data are a major disincentive in establishing and maintaining longitudinal studies and using potentially valuable existing data sets;
- researchers and agencies find it difficult to interpret complex and evolving privacy law that operates according to different state and federal regimes and varies in impact depending on the source of the data. Such uncertainty makes it hard for researchers to design projects that HRECs will accept; and
- HRECs have prevented researchers employing active snowballing methods, making direct contact with potential respondents named by previous participants.

Informed consent

- current procedures protect powerful agencies from scrutiny by independent researchers.
- an artificial and culturally inappropriate bureaucratic process can prevent mutually beneficial research on vulnerable groups;
- HRECs have been reluctant to allow participants to indicate their agreement by returning a survey, or recording oral consent on audio or video tape;
- HRECs have insisted on standardised wording for consent forms even when forms would not be understood by participants;
- HRECs demanded signed consent forms from participants in environments where requirement was unnecessary and would jeopardise research, compromising assurances of anonymity and confidentiality, reducing response rates, or affecting the validity of a study;

- HRECs required researchers to obtain parental consent for research on children in situations where either researchers had not been asked to obtain such consent in the past or where it would prove impossible to obtain;
- HRECs have fixed policies on payment, creating inconsistency between the rulings in national studies; and
- ill-informed attitudes about uses to which payment might be put intruded into HREC consideration of the appropriate forms and levels of payment for certain types of participants such as drug users.

Harms and benefits

- if HRECs recognised commercial interests as a type of harm that should be avoided, we might lose the independent research base necessary to sustain evidence-based practice in justice;
- HREC discussions of risks occur in an empirical vacuum – imaginative and risk-averse committees can envisage a vast array of highly speculative harms, over-estimate risks, and require researchers to respond to subjectively-assessed worst-case hypotheticals;
- researchers examining more powerful parts of society may have to justify findings intended to undermine the privileged positions of such groups; and
- goals of beneficence and maleficence overstate ability and resources of researchers to achieve meaningful change for groups they study.

Relationships with vulnerable populations

Children and young people

- the National Statement can make it extremely difficult to gain approval for social research with minors;
- the need for parental consent causes major difficulties for many criminologists: young people may oppose any approach to either one or both of their parents; formidable practical difficulties can occur in distributing and returning parental informed consent material in manner prescribed by HREC; and
- HRECs conceptualised children in an idealised manner or relied on an amateur assessment of cognitive abilities of children of different ages, or the needs and experiences of adolescents.

Indigenous populations

- *Values and Ethics - Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research* (2003) requires researchers to use discretion and judgment with Indigenous people – in many cases the National Statement and HRECs have removed opportunities for researchers to do so.

Conflicts of interest

- ethically-acceptable research proposals can be blocked by the ethics review process because of a desire by the host institution to avoid legal action.

Researcher safety

- HRECs have little understanding of the magnitude or prevalence of the risks researchers face; and
- HRECs insist interviews should be conducted in public places or that the researcher should be accompanied by another person.

Transnational research

- The National Statement applies to research conducted outside Australian borders. Problems arise when:
 - no comparable ethical review structure exists in the overseas country;
 - the HREC has no understanding of local cultural values and norms impinging on the ethical conduct of research;
 - the researcher has, prior to entering the field, limited knowledge of circumstances in which research will be conducted;
 - potential for conflict exists between local and Australian law, and local laws and Australian ethical guidelines; and
 - HRECs in other countries reach different decisions.

STRATEGIES FOR DEVELOPING EXPERTISE IN ETHICAL MATTERS IN CRIMINOLOGICAL RESEARCH IN AUSTRALIA

Improve our ability to negotiate

Criminologists can help create an environment where researchers operate ethically, where review mechanisms are conducted by respected, knowledgeable and experienced people who can help researchers develop better practice. Some difficulties that criminologists have with HRECs are predictable and can easily be addressed.

Developing expertise

Collectively criminologists need to have either:

- knowledge of research practice, across a range of methodologies; knowledge of issues and debates in research ethics; and knowledge of the legal framework and the relevant guidelines and regulations within which research involving humans occurs; or
- know how to gain access to it.

We should:

1. integrate material on ethics and ethical governance into undergraduate and postgraduate courses;
2. encourage theoretically informed, self-critical and perceptive approaches to moral matters; and
3. generate resources to promote reflection on ethics through, for example, conference sessions, a special issue of the journal, a printed or electronic forum or an electronic ethics archive.

Lobbying for Structural Change

Criminologists working at national or local levels might advocate changes in the policies, procedures and systems adopted by HRECs.

The Role of ANZSOC

An ANZSOC ethics sub-committee could:

- monitor problems that members are having with the National Statement and HRECs;
- develop links with other Australasian social science professional associations with related interests;
- support criminologists in the region;
- lobby agencies to support the more appropriate ethical regulation of criminological research – the National Statement is currently under review;
- broker the development of resource materials to support the training of criminologists;
- exchange information and resources with other criminological associations outside Australasia either bilaterally or multilaterally;
- provide advice on research ethics to members of the Society; and
- work with the Australian Institute of Criminology to document innovative ethical strategies.

1. INTRODUCTION

Over the last few years, many researchers have expressed serious concerns about the impact of research ethics governance on the nature of social science research in general, and qualitative research in particular. Such fears have been expressed repeatedly in the United States (American Association of University Professors, 2001; Adler and Adler, 2002a; Bosk and De Vries, 2004) and Canada (van den Hoonaard, 2002; Haggerty, 2004a, forthcoming; Social Sciences and Humanities Research Ethics Special Working Committee, 2004) both of which have a longer history of national regulation than Australia.

...for those whose behavior the guidelines [Institutional Review Board (IRB) Best Practices in the Review of Social and Behavioral Research] seek to regulate, the mere existence of another document trying to get right the vexing question of how to assure the proper ethical conduct of qualitative researchers through organisational oversight is a symbol and symptom of a deep misunderstanding of the realities of ethnographic research and an even deeper misapprehension about how conduct is effectively governed. (Bosk and De Vries, 2004)

...social scientists... are no less concerned about ethics than their colleagues in other fields, but... any judgment of their work in terms of medical and natural-science research is inappropriate and disturbing. (van den Hoonaard, 2002 pp. 5-6)

In the United States, Cora Marrett (2002), Chair of the Panel on IRBs, Surveys, and Social Science Research complained to the Chair of the Committee on Assessing the System for Protecting Human Research Participants at the Institute of Medicine that:

IRBs appear to be increasingly applying review procedures that are appropriate for high-risk research to studies that are low risk, thereby placing unnecessary burdens on researchers, IRBs, and, sometimes, human participants...Full board review for such projects imposes delays and adds needlessly to the person-hours required for the review process. (p. 243)

In Canada, disquiet over the impact on social science and humanities-based research of the current regime of research ethics regulation led to a report being commissioned by the Interagency Advisory Panel on Research Ethics. Called *Giving Voice to the Spectrum*, this report was published in June 2004 (Social Sciences and Humanities Research Ethics Special Working Committee, 2004). The report received submissions from social scientists that recounted:

...stories in which Research Ethics Boards (REB) with no familiarity with the proposed methods and no experience with the research, research site or population, impose requirements that leave researchers frustrated because of what they view as impediments to ethical practice. Some students reportedly have ended up paying extra tuition because of semesters added to their programs while they underwent unnecessarily protracted ethics review. Students and faculty researchers have been told by their supervisors and REBs, or concluded on their own, that they should avoid certain well-established approaches and methods that their REB saw as threatening, presumably because of REB members' unfamiliarity with and/or lack of respect

for the epistemological traditions and relationships on which these approaches thrive. Other researchers reported they have changed research areas rather than engage in what they view as fruitless negotiations with REBs that impose solutions the researchers believe are unworkable and/or unethical.

The submissions suggest that the ability of social science and humanities researchers to engage in and fulfil their traditional mandate to gather information about and critically analyze all aspects of society is being threatened by a narrowing of permissible topics and approaches that has nothing to do with “ethics” and everything to do with non-ethics criteria such as liability management and other forms of “ethics drift”. This has infringed on academic freedom. They ask that bold steps be taken to safeguard the social sciences and humanities from a system of ethics review that was written with biomedical/experimental research approaches in mind and includes the rest of the social sciences and humanities merely as “other.” (2004 pp. 11-12)

Discontent has also surfaced in the United Kingdom (Lewis et al., 2003) and New Zealand (Casey, 2001) which have begun to move along a similar trajectory:

...an apparent recent increase in the extent and range of university bureaucratic controls over research with human subjects often conflicts with, and may unduly delimit, the academic imperative to pursue research. These incipient practices indicate a more pragmatic, political concern that is a means by which the university, as a bounded organisation, acts to protect itself from harm or risk of legal attack. (Casey, 2001 p. 127)

Few Australian criminologists have written about research ethics in general, or their experiences dealing with the regulatory structures in Australia – indeed this may be a common omission among social scientists in many countries (Oakes, 2002). Nevertheless, there is an oral tradition as criminologists – like most other researchers – swap stories about their dealings with various research ethics and research committees. Little time is spent describing positive interactions and not much systemic effort has been invested in exchanging models of good practice. Not surprisingly, given the purpose of these interactions, these accounts are dominated by horror stories or suggestions for ways of mollifying committees. This report documents some of these horror stories but recognises that they should be interpreted with caution. First, the complaints do not necessarily reflect current practices at the identified institution. Second, they reflect the perceptions of the researchers – it is quite possible that members of HRECs may have different understandings of the episodes. Nevertheless, even if the perceptions of the research ethics process held by criminologists were entirely unwarranted, research institutions should still be concerned that relationships between criminological researchers and the structures of ethics regulation have been so deeply troubled.

In 2003, Dr Don Weatherburn (President of the Australian and New Zealand Society of Criminology and Director of the New South Wales Bureau of Crime Statistics and Research) and Professor John Braithwaite (then, among other things, Chair of the Regulatory Institutions Network at the Australian National University) sought to identify whether criminologists were regularly experiencing difficulties obtaining ethical clearance for their research. They engaged a research officer, Adrienne Bailey, and invited criminologists to respond to a request for information that was distributed to members of the Australian and New Zealand Society of Criminology and to

subscribers to Crimnet, the electronic discussion forum for Australasian criminologists. They received 50 written comments, not all from criminologists. In addition, Adrienne Bailey interviewed almost 50 criminologists, other researchers and administrators by telephone or in person in Sydney, Canberra and Brisbane. Several of these criminologists had had experience as members of HRECs, including some who had chaired such committees. No ethics approval was sought for the project at this stage.

In 2004, after the fieldwork was completed, Adrienne Bailey left the project and I was engaged as a consultant to complete the report. I am a member of the Australian and New Zealand Society of Criminology's National Executive. I have had three years of uneventful experience as a member of the Social and Behavioural Research Ethics Committee at Flinders University between 1998 and 2000 and have had little difficulty negotiating approval for several of my own fairly small-scale empirical research projects.

More recently, I have started researching and publishing on ethical matters associated with criminological research in particular (Israel, 2000; 2004) and social science more generally (Israel and Hay, 2005, forthcoming). I also have an interest in the teaching of research ethics (Hay and Israel, 2005, forthcoming; Israel with Hersh, 2005, forthcoming). As part of my agreement to complete the report included a commitment to publish, I submitted an application for approval of the research to my university's Social and Behavioural Research Ethics Committee. Approval was granted in October 2004 (Project 3113) subject to some minor conditions, allowing me to follow up the research that had already been undertaken by the New South Wales Bureau of Crime Statistics and Research. The Social and Behavioural Research Ethics Committee at Flinders University has asked me to make clear in this report that it does not provide retrospective approval.

I contacted those people who had contributed material that I wished to use in the report to negotiate first their informed consent to the release of information obtained during the research and, second, the degree of anonymity that they wished to preserve. In general, the case studies at the end of this report were the result of a collaborative effort. In some cases, my drafts were either approved (Chapman, Tomsen) or revised (Daly, Kohn, Cartwright) by the research participant. In other cases, first drafts were provided by co-authors (Kippax, Braithwaite, de Launey, Birmingham), revised by me and then submitted to co-authors for approval. They represent a departure from the anonymity provided in many of the case studies published on research ethics in Australia (for example, Collyer, 2004). This has been a deliberate decision – it has been too easy to dismiss unattributed complaints as mere undocumented anecdote.

STRUCTURE AND PURPOSE OF REPORT

This report examines the nature of the structure of governance that regulates research ethics and considers its impact on criminological research. Second, it outlines some of the major ethical issues that criminologists encounter in their work. Finally, it identifies several strategies for improving both criminologists' understanding of ethical matters and the system that regulates them. Many Australian criminologists believe that considerable problems have existed and, perhaps to a lesser extent, continue to exist. No-one should be surprised. In Canada, the Panel on Research Ethics has adopted the principles of transparency, community engagement and consultation as part of its process of developing the statement that underpins research governance in that country. When the Canadian regulatory authority finally established a committee to ask social scientists what they thought about their national guidelines and local structures,

the Tri-Council Policy Statement (TCPS) and the Research Ethics Boards (REBs), they found that researchers were extremely unhappy. The working party concluded:

...the first five years of implementation of the TCPS have yielded negative consequences for them, in exchange for what they are convinced is no gain in the protection of research participants. (2004 p. 11)

In many ways, Australian criminologists share the views of their Canadian colleagues. Until now, they just have not been asked. It is unfortunate that changes are being drafted to our national framework for ethical governance before such consultation has taken place in Australia.

2. ETHICS GOVERNANCE IN AUSTRALIA

Unlike the United States, regulations to govern research ethics in Australia did not grow amid public scandal. Although Australian medical researchers and scientists had participated in experimentation for the military that exposed servicemen to serious risks and failed to obtain informed consent (McNeill, 1993), these experiments did not come to public attention. Instead, the growth of ethical regulation appears to have been a direct result of concerns expressed by medical researchers and the medical research body, the National Health and Medical Research Council (NHMRC).

The NHMRC first endorsed a Statement of Human Experimentation in 1966, revising it in 1973 and then again in 1976. Interestingly for criminologists, one reason for the 1973 revision was the need for an NHMRC subcommittee to assess the ethical propriety of research that sought to test the effects of marijuana on healthy volunteers. As part of its deliberations, the subcommittee resolved that there should be 'peer group assessment of experiments involving human subjects' (NHMRC Ethics in Clinical Research Subcommittee Minutes, 27 March 1973, cited in McNeill (1993)). The 1976 revision extended the remit of the NHMRC's Statement beyond medical research incorporating other experiments engaged in 'investigations on human behaviour', though without much discussion of what this might entail in terms of the kind of research that might be involved or the groups of researchers who would be needed to undertake peer review of non-medical research. As a result, McNeill concluded that the Statement remained 'obviously designed for medical research' (p. 72) as neither 'the extension of the jurisdictions of the Institutional Ethics Committees (IECs) nor their use by institutions was accompanied by a reconsideration of their membership or procedures' (Dodds et al., 1994 p. 21). If Australia diverged from the United States in avoiding scandal, it followed a remarkably similar path in extending a medical model of research ethics to non-medical research without considering what such a system might really need (Wax, 1985), without consultation and with little commitment to negotiation. Like the United States, this established a pattern that has continued to dog the governance of research ethics in Australia.

In 1983, an NHMRC Working Party report prompted a change in name for local ethics committees. Previously, they had been known as 'medical ethics research committees'. Now they were to be called 'institutional ethics committees' (IECs) reflecting the incorporation of psychological research. However, the NHMRC's own standing committee, the Medical Research Ethics Committee did not change its name despite deciding in 1985 that local committees should cover all research on human subjects. The NHMRC was able to insist that universities establish local committees by tying receipt of research funding to institutional compliance. Social science projects continued to be drawn into the NHMRC's ethics review structures and by 1988-89, behavioural and social science projects made up 20 per cent of the load covered by institutional ethics committees (McNeill et al., 1990). Despite this, research experience on these committees continued to be provided by medical graduates who also played the key role in decision-making (McNeill et al., 1996). Social scientists complained to the Australian Health Ethics Committee (AHEC) at IEC Workshops in 1991, 1993 and 1995 (Parker et al., 2003; NHMRC, 1996). A review prepared for the Commonwealth Department of Human Services and Health in 1994 found:

there was widespread concern expressed by social and behavioural researchers about the suitability of expertise of IECs, as presently constituted, for the

review of social research. The medical model of a research practice and problems was seen as inadequate. Many expressed the need for changed membership to reflect suitably the expertise employed in social research and for extensive information and education of IECs about social research methodology and the frequently more complex and sensitive ethical issues which arise... (Dodds et al., 1994 pp. 4-5)

In 1991, the Australian Commonwealth government combined the NHMRC's Medical Research Ethics Committee with the National Bioethics Consultative Committee to form the AHEC. AHEC's composition is stipulated under s.36 of the *National Health and Medical Research Council Act 1992* which makes it difficult for the Committee to claim the expertise necessary to understand the research practices that it has chosen to regulate. Currently, AHEC must contain someone with 'experience of social science research' but this is only one of 13 forms of knowledge, expertise, understanding or experience required and compares with four people who have experience in various forms of medical or health-related research, one with knowledge of the ethics of medical research and one with knowledge of the regulation of the medical profession. For the 2003-05 period, the social scientist on the panel is a psychologist with particular interest in women's health. Nevertheless, AHEC still has the opportunity to extend its expertise towards its regulatory reach by appointing two further members of the Committee.

In 1992, the NHMRC issued a Statement and Supplementary Notes for the review of all research involving human participants. Despite this, the Statement was entrenched in the language and practices of medical research many of which were 'simply inapplicable to social and behavioural research' (Dodds et al., 1994 p. 23). Worse still, some of the provisions might have been partly applicable to social research, but it was difficult to tell when or how when they were coupled with references to matters such as experimentation, clinical procedures and patients.

Not surprisingly, following the 1992 Statement, Susan Dodds noted that different institutions dealt with social science research in various ways:

Some IECs did not review research involving humans which was not health research, others reviewed social science and qualitative research, but evaluated the 'science' and merit of the research based on criteria which are appropriate to clinical trials, perhaps, but very poorly suited to many well-established methodologies in the social and behavioural sciences. Some university ethics committees established sub-committees for the review of 'non-health' research involving human participants; others expanded the membership of their IECs/HRECs to include members with an understanding of research methodologies outside of health and medical sciences. (Dodds, 2000 p. 11)

As a result, social science researchers in some institutions were excluded from review, while others had to deal with committees with little or no experience of non-medical research who insisted that research conform to the medical research paradigm (Bouma and Diemer, 1996). Only in some institutions were social scientists able to seek review from peers with appropriate expertise (Parker et al., 2003). This lack of consistency was also a feature of submissions to a 1996 Review of the Role and Functioning of Institutional Ethics Committees (NHMRC, 1996). Dodds et al. (1994) also found that researchers were concerned that the process of ethical review would be used as a form of gatekeeping, masking the true reasons that members of a committee might have for blocking research which might really involve personal distaste for the topic, lack of sympathy or ignorance of the proposed methodology, or even protection of vested interests.

In 1999, a new National Statement (NS) attempted to provide guidelines to cover all research including humans. Drafted by the NHMRC, the Statement was endorsed by the Australian Research Council, the Australian Vice-Chancellors' Committee, and endorsed or supported by the various Australian Academies including the Academy of the Social Sciences in Australia. The 1999 National Statement made several changes to the review process established by the 1992 NHMRC Statement. The 1999 Statement explored the use of deception and covert research and research involving collectivities, allowed expedited review for minimal risk research – though it provided mixed messages about the level of review required for different categories of risk (Parker et al., 2003) – and facilitated multi-centre research (Alderson et al., 1995). IECs were renamed Human Research Ethics Committees (HRECs). HRECs had to record their decisions and receive complaints. HRECs were also required to contain at least one member 'with knowledge of, and current experience in, the areas of research that are regularly considered' by that particular committee. While this meant that social scientists *could* be members of the committee, in practice many committees that were dominated by medical research paradigms could continue in that vein, doomed in the words of Lynn Gillam (1993) 'to the murky waters of trying to assess the methodology of projects that it does not really understand' (p. 12).

Although the National Statement covered social science research, social scientists were offered little opportunity to influence the content. Dodds has been extremely critical of both the final text and the process of drafting. She concluded that the National Statement 'retains the medical bias of the earlier NHMRC Statement' (Dodds, 2000 p. 5), with non-medical interests 'more or less tacked-on... in its final stages' (p. 19). Most obviously, all of the detailed examples provided in the document related to health and medical research. In 2002, AHEC developed a Human Research Ethics Handbook, available on-line, which provides a commentary on the National Statement. The Handbook does not necessarily express opinions that are shared by the NHMRC and was produced by an editorial committee comprised of ethicists and lawyers (Dodds, Komesaroff, McNeill and Skene), drawing on a group of consultant authors that contained few who might engage in social science. As part of its training for HREC members, AHEC produces a quarterly bulletin for HRECs and, in 2003, ran a national conference.

Under NS 2.1, 'Institutions and organisations in which research involving humans is undertaken must individually or jointly establish, adequately resource, and maintain an HREC composed and functioning in accordance with this Statement'. Not surprisingly, institutions have reached very different decisions about what constitutes 'adequate' resources and this may account for some of the variation in the quality of advice and feedback that researchers receive from ethics administrators and committees. Some universities see the role of ethics administrators primarily as processors of applications and recorders of committee decisions. While administrators may provide advice to applicants, it is difficult to expect relatively junior general staff to do much more than transmit information and refer to established committee practices. They are unlikely to be able to develop university-wide policies or maintain HREC compliance with the National Statement in the face of committee opposition. One study described the Ethics Officer as the recipient of complaints from researchers but who:

...is often not in position to deal with the person's problems or is not seen as having the authority to do so, and in fact often does not have the authority to deal with some of the issues. (Fitzgerald and Yule, 2004 p. 44)

In contrast, other universities have recruited ethics managers who have responsibility for developing institutional policy, sometimes in concert with senior administrators, as well as supervising the work of more junior ethics officers and general staff. In such a system, administrators have the authority to be proactive and can provide detailed and constructive advice to researchers and members of the committee. One ethics manager wrote:

Appointments at a 'policy' level can be important for the operation of expedited review arrangements, can be an invaluable resource to the executive of the HREC, and can play a key role in the conduct of communication strategies between the Committee and the research community within an institution. In addition to the potential efficiencies, improvements in client service and the quality of decisions, such appointments appear to play a key institutional risk management role in a context of increasing regulatory burden and institutional responsibility. The appointment of such a facilitating staff member is a positive trend that is evident domestically and overseas. (Gary Allen, e-mail to Mark Israel, 11 October, 2004)

The nature of regulation in the field of research ethics has attracted criticism in Australia from researchers and administrators. Even people who have played a key role in the development and review of regulatory structures have expressed their concerns publicly. For example, in a 1991 lecture, Philip Pettit (1992) counselled against the dynamics associated with the evolution of research ethics policy. He suggested that the growth of regulation might result in a reduction in the kinds of research sanctioned. If research ethics committees only attracted opprobrium when they made mistakes that allowed harmful research and if they did not have to face an appeals procedure they would inevitably increasingly err on the side of what they regarded as caution: 'as time passes, ethics committees are bound to take a more and more restrictive shape' (p. 11). Pettit warned that committees might feel the need to interfere in the conduct of research in order to justify their own existence. If there were no countervailing pressures, they would keep doing so, escalating their intervention, even if researchers censored their own proposals in order to avoid rejection. Pettit was particularly concerned that increased regulation would provoke resistance to research ethics among resentful and alienated researchers. Among other things, Pettit proposed that academic disciplines should develop a 'culture of research ethics' (p. 18) through education, discussion at professional gatherings and administrative procedures for addressing complaints that could exist independent of regulatory bodies.

Pettit was a member of AHEC between 1994 and 1996. In 1998, Pettit's ideas were developed further. This occurred in collaboration with the Chair of AHEC, Donald Chalmers, and with the approval of the entire Committee. Chalmers and Pettit (1998) argued that any system for the regulation of research ethics should have as its goal the facilitation and encouragement of ethically informed research 'generating an awareness of ethical concerns in the research community at large and... displaying a posture of trust in that community', working to support 'all those meritorious projects, and only those, that meet certain ethical standards'. Drawing on the work on responsive regulation by Australian criminologists such as John Braithwaite and Peter Grabosky, Chalmers and Pettit argued that any system that relied heavily on inspection and policing would fail to achieve these goals. As a result, they argued that regulators should be alert to the dangers of the following scenarios:

- Ethical reviewers see research as the concern of researchers, ethics as their own concern, and so do not worry about the effects of their reviewing on research activity.

- Ethical reviewers are unwilling to contemplate a 'steady state', in which research generally satisfies the accepted ethical standards and ethics committees play an ever more passive role.
- Researchers respond to this indifference, and this incremental creep, by adopting a resistant posture.

Drawing on his own experience on his university's ethics committee at Alberta, Haggerty (2004b, p. 402) has described this phenomenon in the Canadian context, calling it 'ethics creep':

...a dual process whereby the regulatory structure of the ethics bureaucracy is expanding outward, colonizing new groups, practices and institutions, while at the same time intensifying the regulation of practices deemed to fall within its official ambit.

In response to such incremental creep, Chalmers and Pettit suggested a series of possible strategies that included: inviting individuals and organisations to provide advice on the most important ethical issues in their areas; working towards the point at which committees are happy with almost all the proposals that they see; helping researchers resolve ethical problems; reducing delays in the review process; devising a process of monitoring that does not invoke suspicion and distrust among researchers. Chalmers and Pettit's final recommendation was that:

The professional bodies that represent research communities should take a much more active part in the business of ethical reflection and evaluation.

In 2002, the *Monash Bioethics Review* invited researchers to assess the strengths and weaknesses of the research ethics structure in Australia. By that time, there were over 220 committees containing over 2000 members (Breen, 2002; NHMRC, 2004). Once again, Dodds (2002) who was then chair of the university ethics committee at her own university, launched an attack on the AHEC-mandated structure, this time focusing on the workings of local committees which she portrayed as facing a 'resource crisis', operating with limited support from both their host institutions and AHEC. At the same time, HRECs were facing mounting workloads, the majority 'wilting under the mountains of paper' (p. 45). According to Fitzgerald and Yule (2004), meetings of some committees regularly last six to seven hours. Concerns about the heavy workloads faced by committees were also expressed by some local committee members in the NHMRC Stakeholder Evaluation of HRECs in 2002 (Taverner Research Company, 2002). Although Dodds' portrayal was contested by AHEC's Chair in 2002 (Breen, 2002), Kerry Breen did acknowledge at the NHMRC Ethics Conference in Canberra in 2003 that committee workloads had been subject to some criticism.

In the same issue of the *Monash Bioethics Review*, McNeill (2002) suggested that some committees had responded to these pressures by becoming more bureaucratic, 'blindly following rules, with little regard to whether or not the outcome is beneficial' (p. 72). Previously a supporter of the review process, McNeill warned that the process had shifted its attention from ethics to regulation and control, reflecting a need to meet institutional requirements of risk management.

Komesaroff (2002), Director of the Monash Centre for the Study of Ethics in Medicine and Society, explored a slightly different line of criticism. He applauded the flexible and context-specific nature of the local committees, noting that they enabled institutions to find ways of resolving disputes, allowing negotiated compromises, permitting decision-making to be responsive to specific cultural needs. However, these successes had been

attained at some cost. Komesaroff was troubled that researchers often felt 'alienated from the review process' (p. 69) and by the wide and apparently gratuitous variation in decisions between different committees (Jamrozik and Kolybaba, 1999). These failings, Komesaroff attributed to a lack of training for and communication between committees. He proposed that HRECs allow open access to meetings (see also Gillam, 2003) and create chat rooms and ethics archives.

Perhaps one of the bleakest pictures of the ethics of ethics committees was painted by a public health researcher and former member of a research ethics committee, Linda Shields, speaking on *Radio National* in 2002:

...imagine what a vagabond committee could do. It becomes an entity in itself, not there to consider the ethical effects of research on humans, but there to be a research ethics committee. Its *raison-d'être* becomes to criticise research proposals, to pick and pull them apart, to make the researcher dance to its tune so the committee becomes the power broker, the senior stakeholder in the exchange between committee and researcher... I suggest that the potential exists for them to overstep their responsibility, either passively, by rejecting proposals because they haven't read them properly, because they are poorly advised, or because they know little about the chosen method; or, and this is more sinister and worrying, actively, when personal agendas block research. Sounds dramatic, but it happens.

In 2004, the NHMRC invited AHEC, the Australian Research Council and the Australian Vice-Chancellors' Committee to create a joint working party which would review and, where necessary, revise the National Statement by the end of 2005. The working party included five people with social science or humanities backgrounds – Christopher Cordner (Chair), Doreen Rosenthal, Graeme Hugo, Elim Papadakis, and Joy Damousi and was to be supported by a 'broadly representative Advisory Committee' (*HREC Bulletin* 12) which, by mid-2004, was yet to be established.

THE VIEWS OF AUSTRALIAN CRIMINOLOGISTS

Some criminologists reported that they found the process of ethical review in Australia to be constructive. They appreciated the assistance of those committees that used their specialist knowledge of the research environment to draw attention to aspects of the design where amendments were desirable to protect participants from harm. Researchers rarely reported that committees had rejected their applications outright (according to the NHMRC (2004), only 232 out of 18,323 proposals were rejected by HRECs, between 2002 and 2003), although projects have been withdrawn or abandoned in the face of conditions that researchers felt could not be accommodated (and while many HRECs pride themselves in their ability to work with researchers, it is not obvious that HRECs are able to track the reasons for such failures to resubmit). The more usual outcome was a process of negotiation between committee and researcher – sometimes protracted, and at times fraught – after which approval was given, conditional upon modifications to the scope and/or methodology.

Despite this, many researchers identified what they saw as systemic difficulties in the process of ethical review. First, they were frustrated by a National Statement that did not seem to take into account the conditions under which criminologists tended to operate. Second, they were deeply troubled by the operations of some autonomous HRECs who seemed to be over-controlling on the basis of limited expertise, acting slowly, secretly, and arbitrarily, exercising unfettered discretion according to their

own interpretations of what some researchers saw as amorphously expressed standards. The combination of difficulties posed by the National Statement and HRECs meant that, even in institutions where HRECs were seen as supportive, researchers might still feel frustrated.

David Dixon chairs the University of New South Wales committee that deals with 'minimal ethical impact' research in humanities, social science and law. His views provide a fair summary of the objections that many other Australian criminologists have raised. He acknowledged that 'Some HRECs are recognising the difficulties encountered by social science researchers and are trying to be more open and responsive, however the problem may lie not in the approach of HRECs, but more fundamentally in the way that the role of ethics in social research is understood' (David Dixon, e-mail to Mark Israel, 19 October 2004). As a result:

...the current ethics process diverts attention from the key question of whether conduct of a research project is ethical. It does so by the bureaucratic apparatus of committee procedures, consent forms and information sheets which so consume and alienate many researchers that they see the ethics process as an unnecessary obstacle to doing research. Even turning from poacher to gamekeeper, I underestimated the antagonism felt by many researchers to the process. (David Dixon, e-mail to Mark Israel, 6 October 2004).

Level of intervention

Although researchers complained that HRECs were becoming more intrusive, there was little consensus on why this might be happening. Some criminologists and, indeed, some heads and former heads of HRECs were concerned that committees were losing their focus on ethics and were drifting towards increasingly conservative positions, over-rigidly applying poorly drafted rules in order to achieve technical compliance and risk management. In doing so, some HRECs appeared to be straying from the requirements of the National Statement. As a result, at various times some senior criminologists were able to place very little trust in the processes of the HREC at major research universities in almost every state.

Some researchers interpreted this as the growth of an ethics industry which was being used by some administrators to create power bases and mark out territory through their control of HRECs. Although this might promote a more professional review process, it might also mean that members of committees felt a need to challenge parts of each application. One criminologist remarked that the HREC at his university had to comment on every project: 'they can't help themselves'.

On the other hand, several researchers suggested that some HRECs might be acting idiosyncratically and were failing to set consistent standards. So, researchers concluded that the reactions of HRECs to some proposals were unpredictable and may be determined by the composition of a committee on any particular day. They also knew that committees were not developing a corporate memory which could make it difficult for researchers to be certain that they would be allowed to engage in follow-up studies that gathered compatible data using the same instruments.

Researchers were particularly concerned with the way that HRECs considered legal issues. Given that criminologists often deal with illegal activities, it is not surprising that they find themselves in disagreement with HRECs over how such matters should be handled. Where legal issues arose, some committees took very conservative approaches, acting, it seemed, to minimise the legal risk placed on both the university

and the members of the committee. In doing so, some criminologists suggested that HRECs were drawing on legal advice from lawyers who had no expertise in the particular area of law, or relied on advice that paid little attention to actual police or prosecutorial practice.

Alternatively, HRECs may rely on lawyers who are either briefed inadequately by the HREC or may strike an inappropriate balance between research benefit and risk management and inevitably advise caution (see Chapman case study, p. 57 below). In the United States and Canada, Adler and Adler (2002a) and van den Hoonaard (2002) have each warned against the dangers of relying on lawyers to make decisions about the appropriateness of research:

The inevitability of involving university lawyers and the police in reviewing research ethics is all too clear: the process becomes one about protecting institutions, fearful of lawsuits. (van den Hoonaard, 2002 p. 5)

After all, as Nelson (2004) pointed out, 'One of the duties of legal counsel is to generate accounts of hypothetical risk and advise how to avoid it' (p. 211). One interviewee noted that most research carried some risk. The question for an institution should not therefore be 'is there any risk associated with this project?', rather it should be 'is the level of risk acceptable?'

Some of the frustrations faced by researchers resulted from inappropriate use made of HRECs by other organisations. For example, the Australian Research Council has required researchers to obtain appropriate ethical clearances before a project is permitted to proceed (Large ARC 2001 Conditions of Grant, 15.2). Grant proposals that require ethics committee approval are not considered by the Criminology Research Council unless the approval, or evidence that it has been sought, is forwarded with the grant application (Criminology Research Council, 2004). In both cases, researchers have been asked by some universities to obtain ethical clearance for the entire project in order to release funds to support preliminary research that would not normally fall subject to HREC review (see Daly case study p. 58 below).

Levels of expertise

Some criminologists suggested that HRECs to whom they had submitted applications had lacked the specialist knowledge that would allow them to judge the appropriate methodologies that might be used by criminologists with particular populations. The issues here relate to the methodology, the subject matter and the research participants.

Sandra Egger, a criminologist and the Chair of the New South Wales Corrections Health Service HREC (now Justice Health HREC), argued that most methodologies employed by criminologists could be understood by researchers from a range of other disciplines. However, in some cases, HRECs lacked even the general expertise in data collection that would allow them to assess social science research methodologies. For example, one criminologist reported that, at one point, the HREC at a small private university did not include a social scientist engaged in empirical research. In these situations, researchers were troubled that a committee's intuition overrode the collective experience of researchers in the field. While several commentators have suggested that some HRECs might have a bias towards quantitative methodologies and may therefore have difficulty evaluating ethnographic and other qualitative studies (Qualitative Research Working Group, 1995), quantitative sociologists engaged in longitudinal work or analysis based on data linkage also raised the matter. Put more bluntly, one sociologist said that the HREC that he worked with had not seemed

'to know much about the realities of doing research' while another suggested that the comments that he had received from his HREC had 'displayed total ignorance' with respect to the use of snowball sampling in qualitative methodology.

These problems may be particularly acute in committees that are not constituted according to NHMRC requirements and fulfil a dual mandate of controlling research access to criminal justice institutions and approving the ethical propriety of research. For example, after discussing his research with the relevant research committee, one researcher seeking to investigate issues relating to Indigenous prisoners concluded that the committee had little understanding of the ethical issues that might be relevant to Indigenous people. It is possible that the problem is more widespread. Kelly and O'Faircheallaigh (2001) found that only 11 of the 36 Australian universities had formal arrangements to ensure that Indigenous staff were included on HRECs. Seven other universities had informal arrangements that allowed Indigenous staff to be consulted when relevant.

As a result, some HRECs were perceived as acting in an ill-informed and paternalist manner, drawing on stereotypes of research participants to raise objections or to require changes to methodologies. When Bammer wanted to observe the use of drugs in public spaces, the Australian National University HREC sought advice from external lawyers and the university's Occupational Health and Safety Committee on the basis of information contained in the ethics proposal submitted to HREC. The form had not indicated that this might happen and the advice was sought without the knowledge of the research team. Bammer objected to this process both on the basis that the ethics application form should be treated as confidential and that the form had not requested the information necessary for lawyers and Occupational Health and Safety personnel to reach informed decisions. If the HREC had asked the research team to brief lawyers and the Occupational Health and Safety Committee, the researchers would have provided information fit for those purposes.

HREC attitudes could become non-negotiable even when the applicant was an insider-researcher. An HREC at a different institution rejected a proposal on methodological grounds, concluding that the intended participants (senior justice system bureaucrats) would not be prepared to cooperate with the student researcher (who was himself a professional in that field) (see Tomsen case study, p. 65 below).

The New South Wales Department of Corrective Services' committee told Lorraine Beyer that it was concerned prisoners would be placed at risk by talking to researchers. It is difficult for committees who do not have experience in criminological research to assess these risks but, on this occasion, the HREC was satisfied when Beyer pointed out that this had not been a problem in previous research in the United States and Australia. Beyer's experience suggests that those researchers who can draw on past practice to inform their negotiations with some HRECs may be able to achieve a better informed outcome.

Of course, several HRECs did hold considerable experience in relevant fields. Some researchers compared the work of generalist HRECs unfavourably with that of more specialist ethics committees run by the Australian Institute of Criminology, New South Wales Justice Health or by the specialist drug research ethics committees at the National Drug and Alcohol Research Centre, the National Drug Research Institute or Turning Point. Some government departments such as the Queensland Department of Families were also unconvinced that generalist university-based HRECs had appropriate experience and had chosen to establish their own committees.

Unfair process

Administrative law requires decision-makers such as ethics committee members to act in accordance with the rules of natural justice and procedural fairness, conducting their proceedings with impartiality and fairness. While it would be undesirably heavy-handed, researchers dissatisfied with a decision may be able to seek administrative review in the courts. Consequently, HRECs ought to provide reasons for their decisions and conditions placed on the proposed research, and give the researcher a right to be heard before a negative determination is made. Unfortunately, the procedures adopted by some HRECs do not always guarantee that researchers are afforded natural justice (Van Essen et al., 2004).

Delay

Several researchers identified difficulties caused by delays in the approval of their projects. In several instances, researchers claimed that HRECs were unable to reach decisions in a timely manner (see Kohn case study, p. 65 below). Lorraine Beyer reported having to wait for first ten and then for 20 months (Beyer, 2003) to obtain approval for two projects. Another researcher at a university in Queensland described a process that took 18 months. In some cases, this was because committees met infrequently or proposal submission dates did not coincide with committee meeting dates, because committees raised objections to unaltered parts of submissions that had already been modified to meet an earlier set of objections, or because researchers had to shuttle between different HRECs.

It is not uncommon for researchers applying to our HREC to have to make applications to a further three or four committees. On occasions, the researchers have become embroiled in a loop when one committee required amendments to the design, instruments, information sheet or consent form. The changes then had to be reported to and approved by each of the other committees. (Sandra Egger, Chair of the New South Wales Corrections Health Service HREC, written submission to Adrienne Bailey, 2 April 2003.)

The workloads of some HRECs have been rising. For example, Hilary Charlesworth, Chair of the HREC at the Australian National University in 2003, reported that her committee received an increasing number of applications each year and found the workload very heavy. As chair, she spent the equivalent of one day per week on HREC duties. Other committee members would spend at least one day per month on HREC work.

In other cases, committees have found it difficult to cope with rapid rises in the number of applications made to them. In addition, the increasing responsibilities associated with membership of an HREC coupled with either insufficient administrative support or inadequate recompense for committee members are likely to discourage any but the most public-spirited of researchers from joining them.

It is possible that in some situations overworked committees have insufficient time to work through hard cases and are likely to favour less risky approaches. In some instances, research contracts were jeopardised with inevitable adverse consequences for research staff whose jobs were dependent on soft money. Lengthy delays and excessive scrutiny in the ethics approval process may also be having an adverse impact on the training received by a new generation of researchers. In the United States, an Institutional Review Board attempted in the late 1990s to shut down mid-term a research methods course taught by Yvonna Lincoln, a senior American writer on qualitative research (Canella, 2004; Lincoln and Tierney, 2004). In Australian

universities where individual coursework research projects are dealt with by an HREC, it has been difficult for some departments to provide students with practical research training (Collyer, 2004). For postgraduate students who may have limited time in which to complete their research, unnecessary delays can be particularly distressing (see case studies Birmingham, p. 62 and Cartwright, p. 66 below).

Provision for expedited review for minimal risk research is made in the National Statement (NS 2.27-2.29), and many university HRECs – and 52 per cent of all HRECs (NHMRC, 2004) – have implemented such processes. However, criminologists may find it difficult to take advantage of the process. Each HREC can adopt its own criteria for determining what constitutes minimal risk research, but the National Statement advises that research ‘exploring sensitive personal or cultural issues’ should not be considered for expedited review. The Social Sciences and Humanities Research Ethics Special Working Committee (2004), (hereafter referred to as the Canadian Special Working Committee), argued that ‘minimal risk’ was not a particularly useful concept in social science. The committee suggested that in the case of social science research ‘minimal risk’ be replaced by ‘identifiable harm’, pointing out that to the extent that risk occurs in some social science traditions, these risks are no greater than everyday risks faced by research participants.

Some Australian researchers saw some research committees, particularly those established by criminal justice agencies, using delays in the processing of applications as a way of maintaining control over work in their institutions by external researchers. Drawing on Brusten (1981), Walters (2003) outlined several reasons state agencies may offer for declining to allow researchers access to data. These explanations included constraints of resources and the potential for disruption to the department or clients of the department.

These types of responses to requests for information may be legitimate reasons for denying access to information or they may be orchestrated techniques to prohibit the gathering of data. Either way, the researcher will often be unable to deduce categorically the ‘real’ reasons for denied access. (Walters, 2003 p. 105).

It seemed to some criminologists that the discourse of ethical governance may be added to this list.

Lack of communication

Some researchers complained that HRECs had made insufficient or, indeed, no effort to communicate the reasons for their decisions. While researchers can overreact when committees fail to approve their projects, if decisions are communicated slowly or incoherently, researchers may have a legitimate grievance as they are left with little idea about how they might meet the objections of the committee or, indeed, insufficient time to do so before the committee meets again.

Some HRECs ask researchers to appear before the committee to discuss their proposal (Fitzgerald and Yule, 2004), a process allowed under 2.18 of the National Statement. As chair of an HREC, Sandra Egger reported that

It saves a great deal of time when members of the Committee have questions (often quite minor) which can be resolved on the spot, rather than waiting for a written request, reply and consideration at the next meeting. I try to predict applications which may raise questions and arrange for the applicants to be present. This is also done when I am advised that the researchers are under some time constraint. (Written submission to Adrienne Bailey, 2 April 2003.)

Many researchers who had been asked to appear before HRECs had found the experience to be useful. For example, Stephen Smallbone at Griffith University welcomed the ability to deal with actual concerns face-to-face rather than through a 'filter of duelling e-mails'. However, some researchers might find the process onerous, particularly if they have to appear, to little purpose, in front of a series of committees at various locations around Australia.

Unwillingness to enter into negotiation

Many interviewees suggested that committees and researchers should spend more time getting to know how each other works so that ethical review becomes part of an ongoing process in an institution rather than a game of cat-and-mouse between regulator and regulated. Egger believed that her HREC was 'happy to keep open a dialogue with researchers' and she noted that it had 'never refused outright to approve a project'.

However, several researchers reported that, for periods of time, they had given up attempting to negotiate with their HREC. For example, one criminologist considered that the HREC at his institution, Griffith University, at one point had had a tendency to 'dig its heels in'. Other researchers reported that they were too nervous or perhaps too inexperienced to confront an HREC if it had a reputation of being unhelpful to researchers. In her research on HRECs, Blaskett (1998) found that some HRECs did not respond well to her questioning.

The issues of unnecessary delay, poor communication and unwillingness to negotiate may be particularly acute in research that requires the approval of several committees. Criminologists may have to submit proposals to their institutional HREC and, depending on the participants, seek approval from the ethics or research committee in various government departments. Under the National Statement, cooperation between equal and autonomous committees is encouraged, but not mandatory, and while some committees have joined together (the Tasmanian statewide scheme is the obvious example) and others will defer to another HREC, not all will, and Breen and Hacker (2002 p. 523) have conceded that HRECs 'have been very slow to grasp the opportunities provided by the 1999 National Statement'. Criminologists commented on the logistical difficulties entailed in managing the application process which include preparing applications to comply with the format or idiosyncratic style of each committee, and resubmitting proposals containing amendments to the design, survey instrument, information sheet or consent form required by subsequent committees. Each HREC may interpret the relevant guidelines and law independently, so conflicting, sometimes irreconcilable, conditions may result.

The matter has attracted the attention of the *Medical Journal of Australia* (Carapetis et al., 2002; Whiteman et al., 2003; Roberts et al., 2004), and has been acknowledged by Chairs of the AHEC (Loblay and Chalmers, 1999; Breen and Hacker, 2002). It has also had an impact on the ability of criminologists to undertake their research. For example, two researchers at different universities were collaborating on research into discrimination. They intended reading the complaint files held by the Anti-Discrimination Board. The HREC at Melbourne University approved the application, commenting on the sensitivity the researchers had demonstrated in dealing with privacy issues. The HREC at Sydney University did not want to approve access to case files because researchers would then know the names of people against whom complaints had been lodged. This position was maintained even though the researchers had signed confidentiality agreements, and access had been approved by the Board's President (then also the New South Wales Privacy Commissioner).

In 2003, one university instituted an internal review of its regulatory process 'in response to mounting researcher disquiet' and perceived systemic problems (Allen, 2004). The report (Griffith University, 2003) was highly critical of its existing processes. In many ways, its findings locally mirror those of this report nationally:

The design of the current system for ethical review does not manage... risks in a systematic manner. This is not unique to Griffith or a reflection on any of the stakeholders. The current processes were conceived in a much less complex regulatory environment with emergent problems and perceived failings symptomatic of a process under substantial stress from an ever-increasing volume of projects requiring ethical review and an ever-increasing regulatory burden. Briefly, identified problems with the current system include:

- No explicit relationship between the level of ethical risk and the level of ethical review required other than for low risk Honours, Masters and Doctoral student projects which can be delegated to sub-committees of the HREC;
- High workloads for both researchers and administrators;
- Guidelines can be perceived as 'dictatorial' leading to an adversarial culture between researchers seeking approval and administrators seeking regulatory compliance;
- Communication of decisions from administrators to researchers has been perceived as personal and professional criticism;
- Increasing volume of reviews increases the risk of poor quality reviews and creates tensions between researchers and administrators;
- Researchers are supposed to use two sets of 'one size fits all' guidelines (Griffith's guidelines are 52 pages in length while the National Guidelines are 68 pages). Understandably, some researchers submit poor quality applications creating additional work for committee members, in particular the Chair and Deputy Chairperson of the HREC;
- Application forms are poorly designed and are frequently submitted incomplete;
- There are no 'in built' mechanisms for the evolution of research practice and the continuous improvement of review processes; and
- Training of researchers and administrators is inadequate.

In many institutions, criminologists have felt that the processes adopted by HRECs have been excessively bureaucratic and arbitrary. Committees have been found to be slow to respond or, even, entirely unresponsive to problems raised by criminologists. In addition, criminologists believe that some HRECs completely lack the expertise necessary to judge their work. These frustrations have been compounded by the belief that some HRECs are deeply distrustful of methodologies that have been employed by criminologists for decades without causing harm and that, as a result of HREC decisions, traditional avenues of research are now being closed.

3. MAJOR ETHICAL ISSUES FOR CRIMINOLOGISTS

Israel and Hay (2005, forthcoming) outline four of the major ethical issues that confront social scientists: confidentiality; informed consent; harms and benefits; and various relationships. Some of the following discussion is based on that text. However, while many of the issues that criminologists face are similar in type to those faced by sociologists, anthropologists, psychologists, qualitative health researchers and educational researchers, many of the most difficult issues that those researchers face only occasionally are a routine part of criminological research. These relate to the:

- sensitive nature of subject matter
- vulnerability of particular kinds of research participants (youth, Indigenous people, prisoners)
- attitudes of criminal justice institutions, who perform a role as gatekeepers, to research
- relatively powerful position of corporate and state bodies that make it particularly difficult to investigate their activities. Their work is complex, furtive and ideologically masked (Barak, 1990; Israel, 1998; Tombs and Whyte, 2003). In addition, there has been a tendency for criminologists to be co-opted by the state, and more recently by industry (Mathiesen, 1974; Barak, 1991; Tunnell, 1995).

It is not a surprise therefore that, in addition to the collections that focus on research methods and ethics in criminology-related areas (Schwartz, 1997; Lee and Stanko, 2003), criminology also features prominently in social science research methodology collections published over the last decade such as Renzetti and Lee's (1993) *Researching Sensitive Topics*, Ferrell and Hamm's (1998) *Ethnography at the Edge*, Miller and Tewksbury's (2001) *Extreme Methods*, and Lee-Treweek and Linkogle's (2000) *Danger in the Field*. As Johnson and Altheide (2002) concluded:

Those who find these matters [research ethics] the most problematic are those who study the police or other official control agencies..., criminal or deviant behaviour..., or covert political or other secretive groups... (p. 65)

CONFIDENTIALITY

When people allow researchers to investigate them, they often negotiate terms for the agreement. Participants in research may, for example, consent on the basis that the information obtained about them will be used only by the researchers and only in particular ways. The information is private and is voluntarily offered to the researcher in confidence. In criminology, the researcher approaches potential participants and asks for confidential information to be revealed in exchange for possibly not very much direct benefit. As two Canadian criminologists, John Lowman and Ted Palsy, have argued:

Since the interaction would not have happened if we had not initiated it, a tremendous ethical burden is placed on us to ensure no adverse effects befall the participant because of our entry into their lives. (Lowman and Palsy, 1999)

While social science research participants might be hurt by insensitive data collection, often a more significant danger is posed by what happens to data after it has been collected during the process of analysis, publication and, indeed, archiving. The National

Statement indicates that 'where personal information about research participants or a collectivity is collected, stored, accessed, used or disposed of, a researcher must strive to ensure that the privacy and confidentiality of participants and/or the collectivity are respected, and any specific agreements made with the participants or the collectivity are to be fulfilled' (NS 1.19).

Justifications for confidentiality are often inadequately elaborated within social science. However, working in the field of bioethics, Tom Beauchamp and James Childress (2001) identified three different arguments – consequence-, rights- and fidelity-based – that might justify maintaining confidentiality:

1. Participants might be reluctant to reveal secrets if they thought that the information might be freely disseminated to third parties (Van Maanen, 1983; Fitzgerald and Hamilton, 1997).
2. People should be able to maintain secrets, deciding who knows what about them.
3. Researchers should be faithful to the obligations relating to respect for autonomy, justice and utility imposed by their relationship with research participants, meeting those expectations that research participants might reasonably hold about researchers' behaviour.

Both Bok (1983) and Beauchamp and Childress (2001) concluded that obligations of confidentiality cannot be considered absolute and in some situations we should contemplate disclosing to a particular person or group information that we had received under an implied or explicit assurance of confidentiality.

In some research projects, negotiations around confidentiality may be fairly straightforward. Some researchers are able to operate in relatively predictable contexts where standardised assurances may be included in a covering letter with a questionnaire. However, other work takes place in informal and unpredictable environments, where agreements may need to be negotiated with individuals and groups and renegotiated during the course of lengthy fieldwork (Adler, 1985). Contracts with government and industry may also specify a range of provisions to uphold confidentiality and security and could indicate the penalties that may be imposed if a breach of confidentiality occurred.

Some HRECs seem to show a lack of trust in researchers to keep private information about individuals they may come across in studies of organisations. Attempts to access administrative files or court files are regularly met with such distrust. In 1997, the HREC at the University of Newcastle contacted Stephen Tomsen with urgent concerns about his intention to access court transcripts of homicide trials and other material that the State Director of Public Prosecutions might be willing to provide. The HREC were concerned that Tomsen would be gaining access to confidential information about people without their consent. Court transcripts are, in fact, public documents. Although the State Director of Public Prosecutions had been willing to accept a signed undertaking from the researcher that he would maintain confidentiality and preserve anonymity, the committee also required sensitive prosecution files relating to those same trials be anonymised before the researcher could access them. In effect, the Director of Public Prosecutions was prepared to place more trust in the researcher than Tomsen's own HREC. This gave the researcher the choice of abandoning his research or placing considerable burdens on the prosecutorial authorities. On other occasions, it has been the conditions placed on research by the HRECs themselves – such as the requirement that participants sign consent forms (see case studies Kippax, p. 59 and Kippax and Santana, p. 61 below) or receipts for payment (see de Launey case study, p. 64 below),

or even the need for a researcher to be chaperoned (see Kohn case study, p. 65 below) – that has jeopardised the anonymity of the participants (see section on informed consent).

In some cases, researchers may be forced by government officials or courts to disclose data, breaching assurances of confidentiality. Fitzgerald and Hamilton's (1996) work on illicit drug use in Australia was compromised when one researcher was approached by a police officer working undercover:

The undercover police officer suggested that a trade of information could be done: the undercover officer would introduce the ethnographer to drug users to interview in exchange for information that the ethnographer could pass on to the police. (p. 1593)

Fearing that police might seek access to their data by getting a warrant or by placing fieldworkers under surveillance, the researchers suspended their fieldwork while they sought to clarify their legal position. Fitzgerald and Hamilton (1997) argued that the inability to give assurances of full confidentiality may be undermining the ethnographic and longitudinal research on illicit drug use necessary to understand the spread of HIV in Australia. These extreme threats to the confidentiality of data may be rare but they are not so uncommon that they can be ignored by researchers. Consequently, researchers have developed a range of methodological and legal precautions (Israel, 2004).

Research contracts signed with enforcement agencies, such as police, customs or tax authorities, may contain mutual obligations of confidentiality, preventing disclosure or demands for disclosure (Strang, 2002). Other researchers have attempted to reach agreements with criminal justice agencies. In Western Australia, during her work on youth, AIDS and drug use, Wendy Loxley received assurances – though no guarantees – from the local drug squad that the police would neither search their offices nor keep their researchers under surveillance (Loxley et al., 1997). In addition, some researchers may receive statutory protection for their data. Various acts, including the *Epidemiological Studies (Confidentiality) Act 1981* (Cwlth) and the *Epidemiological Studies (Confidentiality) Act 1992* (ACT), impose a statutory duty to maintain confidentiality of any information concerning the affairs of another person where that information was gathered as part of a 'prescribed study' (Cica, 1994; Bronitt, 1995). However, the Commonwealth legislation can only cover prescribed epidemiological projects conducted by or on behalf of the Commonwealth government (Loxley et al., 1997). By 1988, ten studies had been listed, seven of which were being conducted by the National Campaign Against Drug Abuse. However, no studies were listed between 1988 and 2000, and by 1996, there was an 18-month waiting period for studies to be considered (Fitzgerald and Hamilton, 1996). Nevertheless, the New South Wales Corrections Ethics Committee withheld approval of Beyer's study of high-level trafficking of heroin until statutory protection was in place under the Commonwealth legislation.

Despite support from the highest levels of government and law enforcement agencies across Australia to do the research, it was rejected by the NSW Corrections Ethics Committee. Quite rightly the legal advice received by the ethics committee was that the researcher was unable to guarantee confidentiality of the research material or anonymity for the participants.

In order to be able to guarantee confidentiality an amendment to Commonwealth legislation was required. This was duly accomplished and the research became one of only a handful of studies ever to be 'prescribed'

under the provisions of the Commonwealth's *Epidemiological Studies (Confidentiality) Act 1981*. Primarily through our doggedness and determination was this achievement accomplished. This hugely cumbersome and time-consuming process was the *only* way in which this relatively simple research project was able to proceed. (Beyer, 2003 p. 3)

Similarly, feasibility research on the controlled availability of opioids by the National Centre for Epidemiology and Population Health and the Australian Institute of Criminology had to be prescribed under ACT legislation. This forced the researchers to secure support from the relevant administrations, leading to increased expense and extensive delay to commencement of the project. The heroin project finally started in 1991, three years after the researchers applied for funding. Since then, four other studies have been prescribed under the Act.

When HRECs consider the limits to confidentiality in relation to criminological research, a principal consideration is whether a subpoena might be issued for the production to a court of information a participant has given to a researcher about offences that have been committed. Alternatively, a search warrant could be issued, and similar considerations would apply. Even when there has been no statutory protection, several American and Canadian researchers have refused to reveal information to government investigators or to courts. The reasons for their decisions and the point at which they decided they could no longer co-operate with the legal system varied considerably (Israel, 2004). In Canada, one researcher successfully defended the confidentiality of his data (Lowman and Palys, 2001b) on the basis that the information had been obtained in confidence, confidentiality was essential to the research relationship, that the research was socially valuable, and that the harm of breaching confidentiality outweighed the benefit to be gained by disclosure (the Wigmore test). Unlike North America and the United Kingdom (Israel, 2004), in Australia, it seems that no criminological researcher has been issued with a subpoena covering research data. Nevertheless, anthropologists have faced the matter (Bell, 1986) and, on occasions, law enforcement authorities have shown interest in the conduct of criminological research (Fitzgerald and Hamilton, 1996). It is not possible to predict what an Australian court's attitude would be to enforcing a subpoena, as it is a matter to be determined in each case, according to its terms and any defence raised by a researcher. Whether courts would be prepared to uphold a common law privilege between researcher and subject on public interest grounds is also unknown. Some courts in the United States and Canada have been willing to protect research information (Palys and Lowman, 2000) by invoking the Wigmore criteria. However, these criteria are less likely to be invoked successfully in Australian jurisdictions.

While many researchers have sought to avoid releasing confidential information, there are some contexts where researchers have argued that it would be appropriate to breach confidentiality. In some situations, researchers may offer only *extended confidentiality*. Information disclosed to the researcher may be shared with other researchers and support staff within a research team. In other cases, researchers may agree to or even be required to deposit data in archives determined by funders, employers, governments or host communities (Ellen, 1983) and subject to privacy legislation. Some researchers offer *limited assurances of confidentiality* because they believe that they have an obligation to a third party (Zinger, Wichmann and Andrews, 2001). Palys and Lowman (2001) argued that Zinger's approach privileged institutional loyalties to correctional services in Canada over the interests of research participants. They also claimed that given that areas excluded from confidentiality were central to the research study, the limited assurance compromised the research to the point of

rendering the data obtained invalid. They suggested that the researchers should either have made an unlimited guarantee of confidentiality and stuck to that or not undertaken the research (Lowman and Palys, 2001a; 2001b).

However, recognising that full confidentiality may not be assured, some institutional ethics committees have required researchers to offer only limited assurances of confidentiality indicating to participants that they could be forced to hand data over to courts (Fitzgerald and Hamilton, 1997). Several HRECs required researchers to warn participants that there were limits to the confidentiality that would be offered. One criminologist was instructed by her HREC to include a statement in her information sheet warning participants not to tell her 'about criminal activity of which you are aware as it potentially exposes me to criminal prosecution if I don't report it to the police'. Given that she was interviewing victims of crime, many of whom had not reported the crime to the police, such a statement, if taken seriously, would have jeopardised not only that research but many other studies of victimisation. Gabriele Bammer indicated that it was standard practice for the Australian National University HREC to require a caveat that confidentiality would be only provided within the limits of the law. Bammer felt that it might encourage participants to infer that the research carried a higher level of risk than was actually the case. Not surprisingly, one American commentary suggested that a requirement to include such a warning might have a 'chilling effect' on research:

It cannot help but exacerbate the reluctance of respondents who worry that their revelations might be used against them or their friends, colleagues, or family members. (Adler and Adler, 2002b p. 518)

When Lowman and Palys opposed mandatory inclusion of such a warning on the basis that they might be willing to violate a court order, the university ethics committee at Simon Fraser University refused to approve their research on the Vancouver sex industry (Lowman and Palys, 2000a; 2001b), a decision that led to the intervention of the University President (see Lowman and Palys, 2000b; Palys and Lowman, 2000). Like Lowman and Palys, Fitzgerald and Hamilton (1996) were concerned that by such actions universities were abrogating ethical responsibility by assuming that law establishes ethics and that therefore it was acceptable to leave it to the courts to determine what should be primarily ethical questions.

On the other hand, some researchers are happy to comply with the inclusion of limited confidentiality clauses (Venkatesh, 1999) and several British researchers have warned that they would breach confidentiality in order to protect children from abuse (British Sociological Association, 2002; Barter and Renold, 2003; Tisdall, 2003).

It is worth pointing out that not every research subject wants confidentiality. During research on sexual abuse in Latin America, Lisa Fontes (1998) found that shantytown leaders were angry that they were not being given adequate recognition for their work, a matter acknowledged by the American Anthropological Association (1998; see also Szklut and Reed, 1991):

...the assurance of confidentiality seems to have contributed to participants' continued accurate perceptions that their labor and knowledge were being exploited by those in power, including academics like me. (Fontes, 1998 p. 56)

Most social scientists would accept that not every participant should be offered confidentiality. Oral historians engaged in gathering personal narratives for future researchers routinely do not offer anonymity or confidentiality, although restrictions on access may be negotiated (Boschma et al., 2003). Criminologists may feel that it is

inappropriate to offer confidentiality to people in public office who are speaking about their public work (Sudnow, 1965; Rainwater and Pittman, 1967), a situation recognised in some professional codes (British Sociological Association, 2002) and government regulations (United States Code of Federal Regulations 45 CFR 46.101, p. 3[iii]). However, this issue is not explored in the National Statement.

There are various situations where, in law, it might be permissible for researchers to disclose information that they had held in confidence. As Palys and Lowman have argued, this does not mean that it might be ethically acceptable for a researcher to disclose such information. However, it does mean that the research participant would be unable to take legal action for damages arising from breaches of confidence. First, a researcher can release confidential information if consent has been granted by a participant. Second, English and American case law has shown that a researcher would have a defence in law if he or she released information because it was in the public interest for the information to be disclosed. In Australia, the courts would accept that a duty of confidence is not breached by disclosure of iniquity to the proper authorities (Cica, 1994; McSherry, 2000; McKeough and Stewart, 2002). For example, a confidentiality agreement could be broken, in law, in order to protect the community from destruction, damage or harm. The information would have to be released to the proper authorities – the police in the case of criminal conduct, public authorities in the event of medical danger or, occasionally to the media or the general public. In *Smith v Jones*, Canadian courts accepted that a psychiatrist seeing a client for a pre-trial assessment could divulge to the court the client's revelation that he intended to murder Vancouver prostitutes.

In some instances, legislation or the courts may *require* information to be disclosed. For example, various jurisdictions have mandatory reporting requirements, requiring particular professionals to report a specific range of activities such as child abuse. Some HRECs' positions appear to be based on the belief that an obligation exists to report all illegal activity to law enforcement authorities. The NHMRC Human Research Ethics Handbook advises that HRECs ensure that researchers have taken account of the fact that they might uncover information about illegal conduct in the design of their research, have contemplated what their actions will be, and are aware of any legal obligations they may be under to report relevant information. It also recommends that HRECs should obtain legal advice.

However, the legal advice that HRECs are receiving on this matter appears to be conservative. Despite the suggestion of the Handbook, most jurisdictions no longer recognise the common law offence of misprision of felony, retaining the probably less relevant accessory-type statutory offences (New South Wales Law Reform Commission, 1997). In New South Wales, it is an offence under s.316 of the *Crimes Act 1900* not to report information about commission of a 'serious offence'. However, in the case of information obtained by a 'researcher for professional or academic purposes', a prosecution can only be launched for this offence with the approval of the Attorney General. This makes it less likely that a researcher will be charged. Other legislative prescriptions about reporting offending behaviour are rare.

In reality, when a researcher comes into possession of information about offences being committed, determining the ethically proper course of action is complex. It is necessary to consider the nature of police and criminal justice discretion, whether police would welcome researchers reporting vague, dated or unsupported accounts of illegal activity, and whether it may actually endanger the researcher, as well as the conduct of the research. Researchers who report offences to police may not necessarily be acting in the best interests of victims who have not themselves chosen to report.

In some situations, reporting to authorities crimes against vulnerable groups such as prisoners may place victims at further risk (Genders and Player, 2001). Criminologists are concerned that several HRECs do not take these factors into account when considering what might be an ethically acceptable course of action.

PRIVACY

Various State and Federal privacy laws attempt to protect the privacy of personal information. Tension is created when the opportunities presented by the availability of data and the possibilities for its analysis must be weighed against the need to respect the privacy of citizens about whom the data is recorded. While researchers may emphasise the need to ensure the flow of information, inevitably the methodologies of some research projects will need to be compromised to protect personal information while other projects will simply not be able to be conducted. So, criminologists have reported that privacy legislation has stopped proposed research in both the ACT and New South Wales.

Use of personal information for research held by government agencies is generally subject to the Information Privacy Principles (IPPs) developed under State or Federal privacy legislation. The National Statement requires that an HREC 'be satisfied that the research proposal conforms with all Commonwealth, State or Territory privacy legislation or codes of practice' (NS 18.1). It indicates that an acceptable standard of protection of personal information is conformity with the Information Privacy Principles of the *Privacy Act 1998* (Cwlth) (NS 18.2).

However, the right to privacy that HRECs are required to uphold is not absolute. In appropriate circumstances an HREC should consider the risk and magnitude of harm from what must often be technical breaches, and weigh that against the equally valid rights of others, and against matters that benefit society as a whole. HRECs have the power to approve research that infringes the IPPs of the *Privacy Act 1988* (Cwlth) in specified circumstances. Although this does not appear to apply to social and behavioural research, HRECs may approve medical and health research that does not conform with the IPPs if the research conforms to either *Guidelines approved under Section 95A of the Privacy Act* applying to information held by Commonwealth agencies or *Guidelines Under Section 95 of the Privacy Act 1988* applying to information held in the private sector (NS pp. 52-53).

Constraints by privacy legislation and policies on access to data are a major disincentive to establishing and maintaining longitudinal studies and using potentially valuable existing data sets. The National Statement stipulates that generally the consent of participants should be obtained for using their personal information by those or other researchers in future projects (NS 18.4), although this seems not to be an absolute requirement. Epidemiological research has the same stipulation, though HRECs can approve access without consent, subject to an overriding public interest in the research, if it is impossible in practice to obtain consent, or gaining consent would pose some risk to the people who would be approached, or prejudice the scientific value of the research (NS 14.4).

The usual scenario is that data collected, possibly some time ago, by a researcher with consent for one purpose could be re-analysed to provide valuable insights, perhaps into research questions that would not have been apparent when the data was originally collected. The participants are identifiable, though this is not necessary for the proposed new research. For very large population data sets, seeking consent would be prohibitively expensive or impractical. The costs for the data-holder in de-identifying can be similarly

prohibitive. Even so, many HRECs are reluctant to approve proposals to use data in these circumstances, though the risk of harm may be minimal, and the potential benefits could be significant.

Similar privacy considerations apply to research using data linkage. Access to identifying information is essential for analysis from different data sets, for longitudinal studies where participants are interviewed more than once over an extended period of time, or different variables are analysed as they become available. While technological advances make such research increasingly possible, current privacy legislation and codes make it increasingly difficult. Personal information may only be used to enable record linkage without consent if an HREC is satisfied identity is disclosed only for the purposes of linkage, and not retained once linkage completed, it is done with sufficient security and the research has public benefit (NS 18.5).

Researchers have been able to argue that such research does offer a public benefit, using data that can be obtained inexpensively and without placing further burdens on participants for its collection. The Sibling Study in Queensland, for example, was a multi-institutional project that used a body of information about adolescents to examine the psychological and social determinants of juvenile criminality.

Researchers and agencies find it difficult to interpret complex and evolving privacy law that operates according to different state and federal regimes and varies in impact depending on the source of the data. It is not surprising that HRECs have had difficulty understanding what satisfies the overlapping requirements under the National Statement, s.95 and s.95A Guidelines, privacy legislation and general ethical principles. As a result, HRECs are unlikely to be able to make confident judgments about the impact of privacy laws on an individual application in the way the National Statement requires and HRECs have adopted differing and inconsistent interpretations. Different regimes make nationwide research more complex to design and conduct and less reliable where data are not comparable.

Such uncertainty also makes it hard for researchers to design projects that HRECs will accept. In addition, several criminologists believed that HRECs were setting unrealistic standards, requiring extremely complex and expensive data management techniques and unreasonable accommodations to be made by agencies holding the data. So, some HRECs have placed obstacles in the way of researchers who wish to use or re-use administrative data, sometimes only because they were second guessing decisions that they believe would be made by the Privacy Commissioner. In many cases, HRECs have demanded that researchers destroy their data and identifiers which makes it difficult to check colleagues' analyses, stops reanalysis of the data for other purposes even when participants might be willing to sanction such work and can make it more difficult to replicate some research. Several criminologists believed that these standards were well beyond those that would be required by privacy commissioners. Obtaining a ruling from a Privacy Commissioner to clarify the position is not easy.

Some researchers working with agencies that operate under Federal jurisdiction have been able to take advantage of provisions in the *Privacy Act 1988* (Cwlth). Unlike some state legislation, the Commonwealth Privacy Act allows the Federal Privacy Commissioner to determine where the balance might lie in a particular research project. In the case of social research, applications must be made by an agency. On two occasions, the Commissioner has allowed personal information held by government agencies to be disclosed to the Australian Institute of Criminology for the purposes of research. In 1991, the Australian Federal Police was allowed to disclose

personal information relating to homicides in the ACT to enable research to be carried out under the national homicide monitoring program (Public Interest Determination No. 5). Although the Federal Privacy Commissioner did consider asking the police to cull or de-identify files, the Commissioner concluded that it would 'tend to defeat the objects of the research' (p. 4) and accepted that criminological research was 'an activity which can at least at times involve collecting data in a personally-identified form' (p. 3). The Institute's Director was reported as giving evidence that 'it was commonplace in criminological research for researchers to be given access to complete files and that important studies in relation to the causes of crime in such areas as sexual offences would have been impeded without access to personal particulars in the initial stages of the research' (p. 5).

Again, in 2002, the Commonwealth Director of Public Prosecution was authorised to disclose 28 Commonwealth files containing personal information relating to serious fraud to enable research to be carried out by Russell Smith (Public Interest Determination No. 8). The files contained psychiatric assessments of offenders, the names of accused persons, witnesses and police informants whose safety could be threatened by public disclosure. While the police in other jurisdictions had been willing to accept personal undertakings from the researchers that they would not record or disclose the identities of individuals or organisations named in the documents (Smith, 2003), such a decision was not open to Commonwealth agencies because of the 1988 Act. Again, the Commissioner considered asking the Director of Public Prosecution to cull or de-identify files, but the Commissioner concluded that it would 'be unreasonably resource intensive and would likely impede the objects of the research' (p. 8). He also accepted that there was no other way that the research could be conducted and that it would be impracticable to gain the consent of those people who might be affected by the decision.

In each case, the information to be disclosed, the means of disclosure, the use to which the information would be put and the person to which the information would be disclosed were all restricted, and the need for all published data to be anonymised was imposed (Smith, 2003). In the second case, the Commissioner placed a further restriction on the publication of the research – it had to be published 'in such a way as to prevent the information being used to inspire or facilitate the commission of crime' (p. 3). At the end of the process, Russell Smith (2003) concluded that:

Even with the cooperation of willing agencies, the expenditure of considerable resources, and plenty of time, carrying out research of this nature is not for the faint-hearted. (p. 10)

In Victoria, the Privacy Commissioner cannot authorise a breach of the Information Privacy Principles (IPPs). However, the Privacy Commissioner (Chadwick, 2003) has pointed out that agencies can register a code of practice covering particular types of research or certain data sets as a substitute for the IPPs. In addition, guidelines could be developed to ensure that the IPPs are consistently interpreted in commonly recurring research contexts.

Criminologists and sociologists have reported that HRECs at La Trobe and Sydney universities have prevented researchers making direct contact with possible respondents who had been referred to the researcher by previous participants (Collyer, 2004). This common research method is known as snowballing and has played a key part in the development of research in the sociology of deviance. Sydney's policy directs that 'Active snowballing when participants volunteer their friends/contacts directly to the research team is not acceptable.'

Objections to snowballing have continued at Newcastle since 1996. Some researchers believe that the policy has been implemented at some cost to participants. Believing that the HREC at Newcastle would not agree to snowball sampling, one postgraduate student examining violence in a small-tight-knit community (of which the researcher was a member) received permission to approach members of the community through intermediaries. The student's supervisor reported that members of the community were 'offended by the involvement of third parties approaching them, particularly when they learnt that the research was being conducted by a person they knew who could have asked directly'. In addition, participants 'thought being asked by a third party was surreptitious and a bit indiscrete (sic) as if they then agreed to be involved their participation would then be known about and perhaps discussed by that third party and whoever the third party might mention it to' (e-mail to Mark Israel, 19 October 2004).

Similar concerns about active snowball sampling were raised by the Social and Behavioural Research Ethics Committee at Flinders University in connection with the final stages of this research – the Committee's unease appeared to be related to the possibility that criminologists might tell me about the problems faced by their colleagues in obtaining research ethics clearance and that I might contact those colleagues directly. The harm that the Committee sought to avoid was not identified but I assumed that the issue was one of privacy. The HREC proved willing to let me continue when I pointed out that Australian criminology was a small world and many of these third parties would already be known to me, that criminologists were often public figures who regularly discussed their work with colleagues or had committed their views on research ethics to print and that I would approach postgraduate students through their supervisors.

Fitzgerald (1994) attacked the adoption of such a policy by Australian committees:

While it is clear that their concern is associated with the idea of coercion (a noble concern), they fail to appreciate that the use of a third party can often be more coercive and more confusing than dealing directly with a member of the research team. They do not seem to recognize that third party involvement has the potential to confound issues like anonymity and confidentiality. Nor do they appreciate the logistical, theoretical, and ethical problems of advised consent forms and third party interventions in some types of research design. (p. 4)

INFORMED CONSENT

In Australia, the National Statement requires researchers to obtain the informed and voluntary consent of participants except in specific, defined circumstances (NS 1.7). Researchers should ensure that participants have a substantial understanding of the research, the nature of the consent process and should negotiate consent for all relevant matters and, possibly, at all relevant times. The regulation of informed consent could operate in such a way that it protects the interests and autonomy of vulnerable groups. In some cases, the process has ended some appalling abuses of research participants, though few of the more notorious abuses were the responsibility of social sciences (Social Sciences and Humanities Research Ethics Special Working Committee, 2004).

Nevertheless, many social scientists have been concerned that the principle has been adopted uncritically by research councils, universities and professional associations well beyond the original area of biomedical research. Present requirements could prevent mutually beneficial research on vulnerable groups by creating an artificial

and culturally inappropriate bureaucratic process that cannot be met by, for example, qualitative researchers engaging in collaborative research with complex communities. Research in some areas is becoming too hard and gaps may be appearing in our knowledge of how some groups might be helped. In addition, current procedures for obtaining informed consent could also be protecting powerful agencies from scrutiny by independent researchers by robbing some researchers of the possibility of undertaking covert research.

The principle of informed consent rests on the basis that participants in research are entitled to know what they are getting themselves into. In most circumstances, researchers need to provide potential participants with information about the purpose, methods, demands, risks, inconveniences, discomforts, and possible outcomes of the research, including whether and how the research results might be disseminated. What is going to happen to them and why? How long will it take? What are the risks? What are the potential benefits? Who is funding the work? For Faden and Beauchamp (1986), a research participant can only make an informed decision if he or she has substantial understanding – an adequate apprehension of all information that, in the view of the participant, is material or important to his or her decision whether or not to grant consent. It may be difficult for a researcher to predict what a particular research participant might want to know. Faden and Beauchamp concluded that the researcher must therefore invite research participants to participate actively in the exchange of information in order to achieve effective communication.

Research participants may not know what is expected of them during this consent process, and researchers may therefore need to explain the nature of the informed consent process in an environment that is conducive to genuine discussion. In some cases, this may take considerable time and effort for both researchers and research participants, as both struggle to deal with complex risks, uncertainties, and problems of cultural and linguistic divides. In other cases, it may be sufficient to provide potential participants with a list of their entitlements and a range of possible information that they can choose to request from the researchers. Researchers are generally expected to record participants' agreement to take part, often by asking them to sign a form. The National Statement allows consent to be established using 'other sufficient means' (NS 1.9). While researchers have asked participants to indicate their agreement by returning a survey, or recording oral consent on audio or video tape, many HRECs have been reluctant to accept these options (see case studies Kippax, p. 59 and Kippax and Santana, p. 61 below).

Standard approaches to informed consent often require participants to have high levels of literacy and linguistic ability. While some people may have the competence to make independent decisions about involvement in a research project, this competence can be masked if written information is unclear or constructed without sensitivity. Roberts and Indermaur (2003), for example, reported that the forms used in their own institution, the University of Western Australia, required a reading level attained only by people who completed secondary education – beyond the comprehension of most juveniles and many offenders. Participants may also have difficulty demonstrating the extent of their understanding. The written consent form can be difficult to follow and may not be helpful in guiding queries. In the case of Janet Chan and Jenny Barga's research between 2000 and 2002 on the *Young Offenders Act 1997* (NSW) the University of New South Wales' HREC insisted on 'arm's length recruitment', which meant that the researchers were not allowed to contact subjects directly. The researchers believed that the HREC was concerned that direct recruitment would raise the possibility that researchers would place pressure on potential participants for them to take part.

Instead, the New South Wales Department of Juvenile Justice had to send letters to potential subjects (young offenders, their families and victims) to invite them to participate. The researchers were not to approach the subject until a signed consent form had been returned to the Department. This led to a considerable increase in the administrative costs incurred by the industry partner and the project, and discouraged participation since researchers were not able to explain the project to potential subjects directly. The project had to rely on the 'Subject Information Statement' (SIS) which contained compulsory disclaimers that were extremely formal and legalistic. These requirements had disastrous consequences for one component of the project:

The combination of the 'arm's length recruitment' policy and the formality of the SIS and consent form resulted in such low response rates that the data were meaningless (we're talking about 10% or less for young people and their parents). When dealing with people in conflict with the law, especially young people, the insistence on written consent, which in turn had to be witnessed and signed by an independent person, is quite unreasonable – it discourages participation and appears (at least to the subjects) to contradict the assurance of anonymity. (Janet Chan, e-mail to Mark Israel, 8 October 2004)

Nevertheless, apparently acting on legal advice, some Australian HRECs have insisted on standardised wording for consent forms even when researchers have indicated that the forms would not be understood by participants. This trend has also been noted in the United States where the Committee on Assessing the System for Protecting Human Research Participants noted that 'consent forms have been hijacked as "disclosure documents" for the risk management purposes of research organizations' (Federman et al., 2002 p. 92). In contrast, while mandating that certain information is included, the HREC at Sydney University acknowledged on its website that:

The suggested forms that have previously been distributed with guidelines for applying for ethics clearance are particularly cumbersome and somewhat threatening to potential research participants (or their parents, in the case of children). Consent forms should be in plain English and be written in a user-friendly (lay terms) manner rather than a formal manner. (Accessed 8 September 2004)

As Federman and his colleagues on the American committee affirmed, the role of the research ethics committee in this process 'should be as an advocate for the participant, not the institution' (p. 93).

Faden and Beauchamp (1986) depicted informed consent as a kind of autonomous action, an act committed intentionally, with understanding and without controlling influences resulting either from coercion or manipulation by others or from psychiatric disorders. However, researchers may find it difficult to assess whether potential participants do have freedom of action particularly in the context of research on or in institutions. For example, Clive Norris (1993) undertook participant-observation with British police officers on patrol. He was assigned to specific officers by their sergeants and felt that the issue of informed consent may have been 'fudged' (p. 130). Although he introduced himself to officers by stating that he would not go with them if they did not want him to, Norris still believed – at least early on in his research – that officers, particularly those on probation, might have considered that they had been ordered to take him. Chan et al. (2003) recorded a similar degree of uncertainty about the nature of the consent obtained from police recruits during the research conducted by her team into their training and apprenticeship.

In some cases, it may be necessary to obtain the consent of organisations, groups or community elders as well as the individuals concerned. For example, the NHMRC (2003) guidelines established standards for research involving Indigenous collectivities, stipulating that researchers had 'an obligation to the spirit and integrity of communities not just to individuals.' (p. 19). Working within Indigenous communities can be complex and a researcher's ability to undertake work may be jeopardised if the process of obtaining consent is handled insensitively. In some environments, there may be competing views as to whose consent might be required. For example, James Waldram (1998), a Canadian anthropologist, was invited by prison authorities to undertake research on Native American prisoners. Prison authorities appeared to believe that they were able to volunteer prisoners for research purposes. Waldram obtained consent from the authorities, Aboriginal Elders and from individual Indigenous prisoners:

It becomes both absurd and repugnant when the permission of the warden... takes precedence over that of the individual research participant who happens to be an Aboriginal prison inmate. (p. 243)

Waldram's experience is not unusual – many researchers have relied on consent from institutional gatekeepers, often senior management, and have not gone to the same lengths to obtain informed consent from other people present at the research site.

The principles of informed consent have been adopted slowly and unevenly by different parts of social sciences. Part of the resistance has been directed towards the method of obtaining informed consent prescribed by institutional ethics committees (Wax, 1995; Cribb, 2004). This, some qualitative researchers have claimed, has been biased towards quantitative research, in particular that based on formal hypotheses. In contrast, researchers using open, inductive, methodologies will not have an interview schedule, nor will it be immediately apparent what the risk of such research might be.

Van den Hoonaard (2001) attacked the way anthropological fieldwork had been distorted by the 'hard architecture' of ethics forms imposed by ethics committees. For example, some willing participants may be unwilling to sign a form:

One can imagine many instances where the insistence on a signed consent form may be unwise or tactless. In studies of street-corner men, poachers, prostitutes, fishers, drug users, professional thieves, the homeless and, in general, those with socially defined problems, this would simply elicit an angry response. (2001 p. 28)

Van den Hoonaard also noted that some Canadian researchers had felt that consent forms were obtrusive, turning an exchange based on trust into one of formality and mistrust (see also Sieber et al., 2002) – indeed some participants are likely to believe that researchers are trying to trick them by asking them to sign a form that participants cannot understand.

The Canadian Special Working Committee (2004) (see p. 15) identified a case where a research ethics committee tried to insist that a researcher undertaking fieldwork outside Canada obtained signed forms from participants who might be killed if their government discovered that they had cooperated with the researcher. This difficulty was explicitly recognised by the Canadian Sociology and Anthropology Association (1994) and it urged researchers 'to employ culturally appropriate methods to allow subjects to make ongoing decisions to participate or to withdraw from the research process' (s.15). Accordingly, Decker and van Winkle (1996) asked American gang members to sign a consent form using fictitious names. In order to preserve confidentiality, participants' real names were only recorded on a document that was sent out of the jurisdiction, beyond the reach of subpoenas (Israel, 2004).

Some Australian HRECs have demanded signed consent forms from participants in environments where criminologists thought the requirement was unnecessary. In some cases, criminologists believed that the requirement that they obtain signed forms would jeopardise the research, compromising assurances of anonymity and confidentiality, reducing the response rate, or affecting the validity of the study. For example, one HREC required police informants to sign consent forms. Another HREC sought signed forms from refugees and street kids, both groups of people likely to be frightened by formalised processes. The HREC at the University of New South Wales required street-level ethnographers to obtain written consent from drug users (see Kippax case study, p. 59 below). In such a case, the requirement that participants sign their name has the potential to remove the protection of anonymity from potential incriminating statements. But for the signed consent form, no identifying details would have been recorded. Instead of protecting participants, such a requirement places them at greater risk. A research committee (not established along NHMRC lines) imposed signed consent forms in a study where a significant proportion of research participants was likely to be illiterate. In such cases, it is easy to understand why some researchers interpreted HRECs' insistence on signed forms as evidence of legal risk management rather than a desire to protect research participants.

On the other hand, several HRECs in Australia have not insisted on signed forms. Criminologists reported that the HREC at Melbourne University's has been willing to forego the need for signed consent forms in studies on gay police as have those at University of Western Australia when researchers evaluated the work of the Drug Court (Roberts and Indermaur, 2003), Queensland University of Technology when Singaporean police studying offshore were interviewing illegal immigrants, the Australian Institute of Criminology (Makkai and McGregor, 2002; Makkai and Payne, 2003; Milner et al., 2004) and Macquarie University (see Bermingham case study, p. 62 below). In its section on qualitative research, the NHMRC Human Research Ethics Handbook now recognises that, as long as the researcher can justify it:

...in some qualitative studies it may be more appropriate to gain consent verbally rather than in writing. This is relevant where the participant may feel particularly vulnerable, as in research related to sexual issues or illegal or stigmatised activities. Here, written consent is likely to result in significant harm to the participant in that they are potentially identifiable.

Although she acknowledged that requiring signed consent could endanger the research in some cases, Sandra Egger, a criminologist and the Chair of the New South Wales Justice Health HREC believed that the impact of the requirement that participants sign forms has been overstated. She herself had experienced no difficulty obtaining signed consent in her interviews with sex industry workers and was unaware of any example where a prisoner had refused to sign a form for any of the studies that had been passed by her committee. Nevertheless, other criminologists do see this as a significant issue. David Indermaur (1995) reported a high refusal rate when he sought to interview violent property offenders and attributed this to the requirement that he obtain signed consent. In Canada, the Canadian Special Working Committee (2004) (see p. 15) also reported finding examples where research failed as a result of the need to obtain signed consent forms.

Some demands by research ethics committees may have led to significant gaps emerging in research. For example, there has been little empirical research on homeless adolescents in the United States. Levine (1995) argued that some adolescents over 14 years of age might be able to consent by themselves to research that poses minimal risk. Nevertheless, the Department of Health and Human Services in the United

States required a researcher to obtain consent from parents and an agreement to participate from children, before a child could be included in research (Office for Protection from Research Risks, 1993; Porter, 1999). However, the Department's regulations were unclear whether parental consent was required if there had been a breakdown in the relationship between minor and caregiver. Consequently, there has been little empirical research on the needs of runaway and homeless youth (Meade and Slesnick, 2002).

Several Australian HRECs required researchers to obtain parental consent for research on children in situations where either researchers had not been asked to obtain such consent in the past or where it would prove impossible to obtain. In one University of Queensland study, this skewed participation towards middle-class cohorts. In that case, parental consent was readily forthcoming, but in lower socio-economic groups, parents did not cooperate to the same degree. There was no evidence that their lack of cooperation had anything to do with potential harm to their children. Unfortunately, these children were the ones most at risk of the behaviour being studied. Other researchers have been able to negotiate with their HREC. Lorraine Beyer described how she had to educate health-based HRECs on the nature of research with juveniles in detention and how researchers had not been required in the past to obtain parental consent.

Other parts of the formalised process required by some HRECs can make the seeking of informed consent virtually impossible. For example, a senior researcher at the Australian Institute of Criminology reported that participants in Drug Use Monitoring in Australia were not impressed by the need for a ten minute consent process in order to set up a 15 minute interview in a police station with a researcher. University of New South Wales researchers could not understand why participants who withdraw from research after signing a consent form had to be asked to sign another 'Withdrawal of Consent' form saying that they did not wish to participate.

Institutional ethics committees do not need to view informed consent in this way. Certainly, many social scientists do not. For example, Fluehr-Lobban (2000) argued that anthropologists should not see informed consent in terms of forms but as offering an opportunity to initiate an open discussion with participants about the research.

In other contexts, researchers have suggested that consent should not be sought.

1. Those engaged in **passive observational studies** carried out in public spaces have argued that informed consent is simply not required (see Kippax and Santana case study, p. 61 below). When the HREC at the Australian National University asked a sociologist to obtain consent for an observational study, the researcher argued that this could invalidate the data by changing the behaviour of those observed (Collyer, 2004). Again, the NHMRC Human Research Ethics Handbook now accepts that:

...in participant observation studies it is virtually impossible to obtain consent from all observed individuals. Examples of such studies are ethnographic studies of particular settings; observing 'sun-smart' behaviours at a school or on a beach; 'social mapping' of the use of urban spaces; observations of eating and smoking patterns amongst social groups; and participant observation of self-help groups or national conventions such as Alcoholics Anonymous or Narcotics Anonymous. Indeed, obtaining consent would interfere with the strength of the 'naturalist' approach of ethnography. Seeking consent from participants in these situations may lead to behavioural changes that would invalidate

the research, while public observation that neither identifies a person nor intrudes into their daily activities may well be ethically justifiable.

Some researchers have extended these arguments to electronic public spaces, though others have concluded that consent is necessary there (Sixsmith and Murray, 2001).

2. Other researchers working with issues relating to criminology have engaged in **deceptive experiments** (Heussenstamm, 1971; Zimbardo, 1973; Marx, 1984).
3. Other researchers have argued that **covert** strategies may be justified in limited circumstances (Ditton, 1977; Bulmer, 1982). However, American researchers who covertly recorded the deliberations of juries in the 1950s and followed gay men have come under sustained criticism. Although he acknowledged powerful arguments against covert research and believed that the need for such research was frequently exaggerated, Bulmer (1982) concluded that some covert studies, voluntarily undertaken, *had* produced good social science. The American Sociological Association (1997) only authorises the use of deception in research where its use can be justified in terms of the value of the research, and there is no equally effective alternative that does not use deception (s.12.05a). The Association allows members to undertake covert activities only if the research involves no more than minimal risk to the research participants. It is unclear whether this might exclude the possibility of using covert or partially disguised research in institutions to expose, for example, state violence, corporate misconduct or discriminatory practices. The value of covert studies has been accepted by the NHMRC (NS 1.11) but only in exceptional circumstances where, among other things, the activity will not corrupt the relationship between other researchers and the general community, there are no alternative methods, participants do not face increased risks as a result of the covert research, 'adequate and prompt disclosure' and debriefings are provided 'as soon as practicable', and participants can 'withdraw data obtained from them... without their knowledge or consent' (NS 17.2).

There is some belated recognition in the section on 'Humanities and Social Science Research' in the Human Research Ethics Handbook that:

While the ethical issues involved in some social science research fit well within the emphases of this Handbook, other research – for example, research into political oppression, or research uncovering scandals of importance to public policy – do (sic) not fit as readily into the National Statement's principles. Generally, an HREC would consider the potential value of the research in furthering knowledge, in uncovering information and in social significance and weigh that against the potential risks and harms of the research.

In the case of humanities and social science research projects, where there is normally no risk of physical harm from the conduct of the research, HRECS should ensure that the primacy of protection of research participants is not overridden by the social value or contribution to knowledge that comes from having the research conducted and the findings published.

However, the National Statement does appear to close down the opportunity to use a range of methodologies that have traditionally been employed within criminology to investigate illegal and harmful behaviours. In the words of the Canadian Special Working Committee (see p. 15), biomedically-based codes relegate 'well-established and recognized methods of whole scholarly domains into ethical purgatory – virtually all inductive, collaborative and emergent field research, for example' (2004 p. 27).

In many cases, the line between overt and covert research may be difficult to delineate. In some instances, researchers may draw on observations made prior to formal research, perhaps undertaken before the researcher had entered a research career (Becker, 1963; Holdaway, 1983). In others, the researcher's role may be known to some participants but not to others. This might happen because the researcher does not or cannot explain the nature of the research and the form of analysis to be used in detail to everyone he or she meets (Bridges, 1989; Miller and Selva, 1994). On some occasions, the researcher may be drawn into covert observational roles by research subjects – Ken Plummer's (1975) work on gay men who concealed their sexuality could not be disclosed to the family and friends of research participants that Plummer met while carrying out observation of his subjects.

One Australian example where we may be losing the ability to undertake research involves investigations into racism and racist violence. Although racism is not overtly acknowledged by many people who exhibit it, the HREC at University of Western Sydney wanted a researcher, who was interviewing residents of areas with high levels of recent immigrants in order to identify levels of racism, to inform participants that he wanted to find out about their racial attitudes.

HRECs are also interested in whether monetary or other compensation is to be offered to participants, what, when and how, because payment has the potential to undermine their voluntary consent (NS 1.10). In some circumstances, payment can increase response rates or provide fair compensation. On the other hand, payment may also increase the possibility of bias. Some HRECs have fixed policies preventing payment, or some forms of payment. Others consider each case on its merits. Researchers were troubled by inconsistency between the rulings about the level of payments permitted in national studies; requirements that they obtain signed receipts for payment (see de Launey case study, p.64 below); and a belief that ill-informed attitudes about the uses to which money might be put were intruding into HREC consideration of the appropriate forms and levels of payment that can be approved for certain types of participants such as drug users.

HARMS AND BENEFITS

Researchers are normally expected to minimise risks of harm or discomfort to participants in research projects (the principle of nonmaleficence). In some circumstances, they may also be expected to promote the well-being of participants or maximise the benefits to society as a whole (the principle of beneficence).

Most research involves some risk, generally at a level that is greater in magnitude than the minimal risk that we tend to encounter in our everyday lives. Nevertheless, researchers are expected to try to avoid imposing the *risk* of harm on others, though the extent to which they must avoid risks may depend on the value of the action that causes the risk and the degree of the risk (prevalence) as well as the weight of the consequences that may flow from the risk (magnitude): 'It is commonly said that benefits and risks must be "balanced" and shown to be "in a favourable ratio"' (National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, 1978). Or, put another way, 'Grave risks require commensurately momentous goals for their justification' (Beauchamp and Childress, 2001 p. 118). Similar sentiments are evoked in the Preamble to the National Statement (p. 10) even if the benefits are skewed towards health matters (p. 9). Further, in research other than clinical the National Statement declares that 'the absence of intended benefits to a participant should justly be balanced by the absence of all but minimal risk' (NS 1.6).

Although the influence of bioethics means that harm is most often thought of in physical terms, in social science research it is more likely to involve psychological distress, discomfort, social disadvantage, invasion of privacy or infringement of rights. Ellsberg and Heise (2002) offered an example based on research on domestic violence in developing countries. For them, the major danger in research on abused women:

...is the potential to inadvertently cause harm or distress. Respondents might be vulnerable to physical harm if a partner finds out that she has been talking to others about their relationship. Additionally, there is the potential for respondents to become distressed by an insensitive interview, or from having to recall painful or frightening experiences. (pp. 1599-1600)

So, domestic violence victims in Mexico have been revictimised by partners because they participated in a survey that explored their experiences (Health and Development Policy Project, 1995; see also the guidelines devised by the World Health Organisation, 1999). Ellsberg and Heise also noted the physical and emotional risk faced by fieldworkers interviewing women who have been the victims of domestic violence. In Australia, in the field of Indigenous health, Anderson asked researchers to contemplate and respond to problems as wide-ranging as:

Is the process going to accentuate internal community conflict? What is the effect of asking questions about women's parenting skills on their self-esteem as mothers? How will published reports be interpreted by the mainstream press, and is there a risk they will be misrepresented to add currency to traditional colonial stereotypes? (Anderson, 1996 pp 162-163)

Some criminological research has the potential, either directly or indirectly, to affect the future economic interests of some participants. Criminologists may be evaluating the need for or the effectiveness of services provided by commercial entities such as private policing or private prisons. These topics have been the subject of heated political and intellectual debate and if HRECs were to recognise commercial interests as a type of harm that should be avoided, we might lose the independent research base necessary to sustain evidence-based practice in particular parts of the justice system.

I have already noted that criminologists have been troubled by the way that some HRECs appear to assess the magnitude and prevalence of risk. In the Canadian context, Haggerty (2004b, p. 402) notes that research ethics committee discussions of risks occur in an empirical vacuum. Committees:

...are not working within an actuarial framework and generally do not know the empirical likelihood of the potential untoward outcomes that they try and regulate.

As a result, well-intentioned, imaginative and risk-averse committees can envisage a vast array of highly speculative harms, over-estimate the risks, and require researchers to respond to 'subjectively-assessed worst-case' hypotheticals.

Researchers are normally expected to adopt risk minimisation strategies (NS 1.3) which might involve monitoring participants, maintaining a safety net of professionals who can provide support in emergencies (see Birmingham case study, p. 62 below), excluding vulnerable individuals or groups from participation where justifiable, considering whether lower risk alternatives might be available, and anticipating and counteracting any distortion of research results that might act to the detriment of research participants.

Debriefing has been used extensively within deception-based experimental research as a risk minimisation strategy. Once the data has been collected, the researcher explains

to participants the true nature and purpose of the research in the belief that drawing back the curtain on research can act 'as an eraser for emotional and behavioural residues' (Tesch, 1977 p. 218) as well as offering some educational benefit (Kimmel, 1996). However, the process of debriefing may suffer from several defects. In terms of wiping away the effects of manipulation, Warwick (1982) argued that the effects may extend well beyond a debriefing. Indeed, in some cases the debriefing may exacerbate any harm caused.

Another way of responding to the possibility of harming research participants is by incorporating in the planning and running of the research members of those communities who form the focus of the research (Bowman, 1983). A related criticism of traditional views of risk minimisation has emerged within anthropology. Graves and Shields (1991) argued that codes of ethics overstated the knowledge and autonomy of action available to social science researchers:

...in biomedical experimentation the research paradigm gives researchers both maximum control over subjects and maximum potential to harm them irreversibly... (p. 135)

...In contrast... it is not at all clear in most forms of social science research who we are protecting, how we are protecting them, what we are protecting them from, or what constitutes the limits of our capacity to protect... (p. 136)

Similarly, Christopher Kovats-Bernat (2002), an American anthropologist engaged in fieldwork with street children in Haiti, has criticised those who assume that ethnographers are powerful enough to control or negotiate danger on behalf of those with whom they are working. Kovats-Bernat suggested that such a belief was part of his discipline's 'colonial legacy' (p. 214):

...the ability to protect against harm or to offer aegis is not the exclusive domain of the anthropologist but, rather must be regarded as power shared among actors in the field toward the well-being of everyone concerned. (p. 214)

The principle of beneficence requires not only that we avoid harming others but that in some circumstances we should also act to benefit others. Undertaking research may impose duties and obligations on the researcher to act to the benefit of research participants. In addition, many researchers seek to provide some benefits to research participants either as individuals or as collectivities. Researchers in those parts of social science that regularly work with disadvantaged groups are particularly keen to achieve something for their research groups. Nevertheless, some of their colleagues have been concerned that these goals overstate the ability and resources of researchers to achieve meaningful change in the lives of the groups that they study. Others have noted that attempts by researchers to help are likely to be judged paternalist, misguided, partisan or simply incredibly stupid.

Researchers often claim that by contributing to a general body of knowledge, the class of people who make up the participants might eventually benefit from the research. Guidelines produced by Indigenous groups have called on researchers to maximise the benefits of research to Indigenous peoples:

Research in Indigenous studies should benefit Indigenous peoples at a local level, and more generally. A reciprocal benefit should accrue for their allowing researchers often intimate access to their personal and community knowledge (Australian Institute of Aboriginal and Torres Strait Islander Studies, 2000: Principle 9)

In the case of domestic violence research, Ellsberg and Heise (2002) maintained that interviews could provide an important opportunity for victims who might 'welcome the opportunity to share their experiences with someone who will not judge or condemn them' (p. 1600). Many studies try to provide emotional and practical support for victims, offering information about and organising access to formal and informal services (Richie, 1996; Fontes, 1998), providing feedback to the study community and relevant agencies and supporting or engaging in advocacy on behalf of abused women (Ellsberg et al., 1997; World Health Organisation, 1999; Usdin et al., 2000).

Contemporary debates in anthropology, however, suggest that we should be cautious. It may not always be easy to know how best we might support vulnerable populations. D'Andrade (1995), Kuper (1995) and Gledhill (1999) were all concerned that it was 'not always obvious that the oppressed constitute a clearly defined class with an unambiguous shared interest' (Kuper, 1995 p 425) that a researcher can support. Indeed, as Philippe Bourgois (1995) found in his study of the crack scene in Spanish Harlem, the attempts of a researcher to put something back into the community can be met with utter derision from research participants and may jeopardise the research project.

Much of the literature that has called for researchers to provide greater benefits to research participants has been based on work with disadvantaged, powerless communities in need of help. However, there has been little discussion of what researchers might owe powerful or unpleasant groups – should researchers be required to provide benefits to corporations or government departments who are not paying for their services, to racist political groups or to men who engage in sexual violence? In those cases, would it really be inappropriate for researchers who might otherwise have a commitment to emancipatory or activist research to undertake work on but not for or with these groups (Nelson, 2004)? In addition, who is to decide what constitutes a benefit – can we decide what is best for others? Given that the nature of many social science research projects may evolve during the course of the research, even researchers who enter the field intending to provide benefits may find that they reach conclusions that are quite critical of some participatory institutions – conclusions that may not always be welcomed by host organisations.

Many research projects do provide some benefit but at some cost. As a result, researchers may find that they have to assess the relative weight of a variety of potential harms and benefits. They may also discover that these harms and benefits have different impacts on and different meanings to different parts of a community, not all of which might be apparent to an HREC. Assigning financial values to each element may be attractive in some situations but, in others, such an exercise runs the risk of ignoring key non-financial matters and imposing the researchers' values on participants (Cassell, 1982; MacIntyre, 1982). MacIntyre argued that even in more predictable, quantifiable and definable experimental and quasi-experimental research projects, cost-benefit analysis could never by itself determine the appropriate course of action as it takes no account of matters of distributive justice – who receives the benefits and who bears the costs - and places no constraints on what costs might be morally intolerable.

It may be tempting to over-generalise obligations of beneficence and nonmaleficence on the basis of principles developed to meet the needs of medical research. Indeed, the National Statement is seen by many criminologists as a good example of a code that does just this. However, research undertaken in the social sciences may quite legitimately and deliberately work to the detriment of research subjects. So researchers uncovering corruption, violence, pollution need not be expected to work to minimise harm to the corporate or institutional entities responsible for the damage. As the Canadian Tri-Council Policy Statement (2003) acknowledged: 'Such research should not be blocked through the use of harms/benefits analysis' (p. i .7).

RELATIONSHIPS WITH VULNERABLE POPULATIONS

Much of the literature on research ethics in the social sciences is concerned with interpersonal relationships. Indeed, Kellehear (1989) suggested that ethical conduct was at its root 'a way of seeing and interpreting relationships.' (p. 71). The National Statement pays particular attention to various groups of research participants, some of whom play a crucial role in research undertaken by criminologists. While we have already considered some of the matters relating to researching vulnerable groups such as children and young people, Indigenous people and prisoners, some general points are worth making.

Children and young people

Research with minors often poses particular difficulties for researchers, partly as a result of the ambiguous legal and ethical status of adolescents. The National Statement (NS 4.1) stipulates that research involving children and young people should only be conducted where the research question is important to their health and well-being, their participation is indispensable, the methodology is appropriate and their safety is protected. The Statement outlines various consent requirements (NS 4.2). Finally, HRECs must not approve research contrary to the child's or young person's best interests (NS 4.3).

On a strict reading of the National Statement, it could be extremely difficult to gain approval for social research with minors. HRECs need to exercise their discretion to interpret 'well-being' widely, otherwise criminological research with children would be almost non-existent.

Special procedures are often adopted when attempting to obtain consent or assent from children. The British Educational Research Association (2004) concluded that 'Children should be facilitated to give fully informed consent' (p. 7). The Australian Association for Research in Education (1997) opposes research on minors that involves risks of harm that cannot be remedied, requires consent from both children and their guardians for allowable risks and will not allow any risks to be incurred by children who are too young to consent. The American Sociological Association (1997) requires its members to obtain consent from both children and their guardians except where the research imposes minimal risk on participants, the research could not be conducted if consent were to be required, and the consent of a parent 'is not a reasonable requirement to protect the child' as in, for example, cases where the child has been abused or neglected.

However, some institutions are less flexible and it can prove difficult to meet their requirements (Porter, 1999). There are, for example, many occasions when it is difficult to obtain parental consent. Formidable practical difficulties can occur in gaining the timely cooperation of parents and schools or other relevant organisations in the mechanics of distributing and returning the required parental informed consent material in the manner prescribed by the HREC.

On other occasions, young people may also oppose any approach to either one or both of their parents made by researchers. This may be the case when children are estranged from their parents, live in care, or when the matter being discussed is something that the young person might not wish to share with his or her parents. In the case of criminological research, this might happen if the young person is engaged in delinquent or anti-social behaviour, at risk of serious offending because of their life circumstances, or already in the juvenile justice system. For example, before being allowed to undertake work on juvenile gangs in St Louis, Decker and van Winkle (1996) faced opposition

from their university's research ethics committee which initially demanded that the researchers obtain permission not only from gang members but also from the members' parents:

We told the university's Human Subjects Committee that we would not, in effect, tell parents that their child was being interviewed because they were an active gang member, knowledge that the parents may not have had. (p. 52)

In an effort to maintain confidentiality, the researchers rejected this approach and appointed a university employee to act as an advocate for each juvenile participant. As advocate, the colleague made sure that the interviewee understood both their rights in the research process and the nature of the confidential assurances.

The National Statement requires that researchers obtain consent for children or young people's participation from the child or young person when he or she is sufficiently competent to make the decision, and either the parents or guardian in all but exceptional circumstances, or any organisation or person required by law (NS 4.2). The need to obtain consent from parents causes major difficulties for many criminologists and it seems that many HRECs would find it difficult to approve the kind of research on homeless youth undertaken by Hagan and McCarthy (1998) in Canada.

In making decisions about the appropriateness of research on children, Australian criminologists believed that some HRECs conceptualised children in an idealised manner or relied on their own amateur assessment of matters such as the cognitive abilities of children of different ages, or the needs and experiences of adolescents.

Indigenous populations

Undertaking research involving Indigenous peoples requires recognition of their distinct social and cultural values. For some researchers and disciplines, this can entail considerable changes to traditional research practices. For example, responding to strong criticism of the role played by an American anthropologist in research carried out since the 1960s on the Yanomami, a tribe living in Venezuela and Brazil, the American Anthropological Association commissioned a task force to review, among other things, how anthropologists had negotiated informed consent with Indigenous peoples (El Dorado Task Force, 2002). As part of this review, Watkins (2002) called for anthropologists involved in work with Indigenous peoples and related communities to move from research simply done with the consent of research subjects towards mutually beneficial collaborative models of research. The Task Force (2000) supported this argument defining such research as one where:

All parties are equal partners in the enterprise, participating in the development of the research design and in other major aspects of the program as well, working together toward a common goal.

The National Statement advises that researchers should take into account the cultural context of their work, and participants' customs and cultural heritage, both individual and collective (NS 2.22).

Recently, the NHMRC approved *Values and Ethics - Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research* (2003), replacing *NHMRC Guidelines on Ethical Matters in Aboriginal and Torres Strait Islander Health Research* (1991). It has the same status as the National Statement, but represents a non-traditional approach to ethical guidelines, establishing a set of issues relevant to systems of Aboriginal culture, concepts of ownership, use of intellectual

property, perceptions of individual rights about consent, and who can speak for whom. For example, the document states that:

Researchers need to consider, as an integral part of the research enterprise, that trust and ethical behaviour are not just about rules but also about discretion and judgement... (p. 3)

As I have already suggested, in many cases researchers have argued that it is the requirements of the National Statement and HRECs themselves that have removed the opportunities for researchers to show the necessary discretion and judgement appropriate to particular contexts. It is unclear how the 2003 document will be used by HRECs and the degree to which it might have an impact outside the health field.

Some institutions refer applications to their Indigenous unit, a practice that is not always appreciated by Indigenous units as it stretches their resources and may embroil them in community politics. Otherwise, where relevant, some HRECs co-opt an Indigenous person as a member. Some states have an Aboriginal HREC, to which research is referred by other HRECs in an ad hoc manner. These separate Aboriginal HRECs were established in response to a concern that research reinforced stereotypical attitudes, and was often conducted without benefit to the Aboriginal community. It is common for some health or criminal justice system HRECs to refer projects where they consider an element of the research should be reviewed for its ethical acceptability to Indigenous peoples. Their value to researchers lies in providing advice to researchers unfamiliar with the social and cultural conditions affecting the ethical conduct of research with Aboriginal people. However, Aboriginal HRECs may be susceptible to the same operational problems as other HRECs, such as delay, and poor communication between researchers and committee, and they have the same unchallengeable autonomy to determine what is ethically acceptable and what is not.

Criminologists raised few difficulties specifically related to the ethical review of research with Aboriginal participants, though it was generally acknowledged that showing proper respect for Indigenous people and their communities, respecting their principles and cultural values, and the practical matters of work in the field make its planning and conduct often more demanding than research with the general Australian community. Concerns voiced related more to the prescriptions of mainstream ethics committees. Lacking actual knowledge about the researcher's experience or the circumstances of the participants, HRECs may make paternalist and poorly informed assumptions about what is best making it even more difficult for researchers to negotiate with Indigenous research participants.

CONFLICTS OF INTEREST

Conflicts of interests occur when various personal, financial, political and academic concerns coexist and the *potential* exists for one interest to be illegitimately favoured over another interest that has equal or even greater legitimacy in a way that might make other reasonable people feel misled or deceived. Conflicts of interest may therefore arise even when there has not been research misconduct: 'Conflicts of interest reside in a situation itself, not in any behaviour of members of a research team' (Committee on Assessing Integrity in Research Environments, 2002 p. 38).

Such conflicts have been best explored in the biomedical literature where academics who obtain financial benefit from industry through research funding, consultancies, royalties or by holding shares in companies have been found to be more likely to reach

conclusions in their research that favour their corporate sponsor while, on some occasions, conducting research of lower quality and less open to peer review. In its report for the United States Institute of Medicine in 2002, the Committee on Assessing Integrity in Research Environments argued in favour of transparency and that therefore researchers should disclose conflicts of interest to their institution and also in all presentations and publications that arise from the research (see also American Sociological Association, 1997; Association of American Universities, 2001; National Health and Medical Research Council, 2001).

Although the chances that social scientists may have a financial stake in the area that they are studying may be less likely, there are still many issues that are relevant (see Clarke, 1986; Fuchsberg, 1989; Wheeler, 1989; Israel, 2000): what sort of financial arrangements should academics have with corporations or government agencies; should there be a limit on how much money an academic might receive from a private company or government agency; should academics let companies or government agencies pay for their trips; should academics disclose corporate or government affiliations when giving advice to the public or publishing research (Geis et al., 1999); should academics with consultancies be able to act as reviewers for grant-awarding bodies if the research that is being funded may provide other academics with the expertise to act as a commercial competitor or if the research might be critical of the reviewer's client; how should researchers distinguish between intellectual property that belongs to a client and that which belongs to the university; how is an academic society to deal with 'huckstering' by members who 'tart up or adulterate the goods in their shop windows' (Ziman, 1991 p. 54) to secure funds or support their sponsors? Ziman (1991) also noted the problems that might arise when the research specialists consulted in drawing up the specifications for tenders use this to gain insider advantages in the subsequent competitive tendering process.

According to Geis et al. (1999), one example reveals many of the problems of conflict of interest that worried Clarke, Wheeler and Fuchsberg. The University of Florida established a private prisons research unit headed by Professor Charles Thomas. The unit was partly funded by large corporations with interests in private prisons. Wackenhut and the Corrections Corporation of America (CCA) provided between US\$270,000 and US\$400,000 for the project (Prison Privatization Report International, 1997; Lilly, 1998). At the same time, Thomas worked as a paid consultant for Florida's Correctional Privatization Commission (CPC), a body created by the Florida legislature separate from the Department of Corrections to oversee the private prison system in that state. Under Florida law, CPC consultants were not supposed to have worked for the private sector in related fields within two years. However, Thomas provided advice for stock market analysts involved in advising firms developing private prisons and reportedly owned US\$660,000 worth of shares in companies involved in private prisons (Bryson, 1996; Driscoll, 1999). In May 1997, Thomas accepted a position on the board of CCA Realty Trust, a real estate investment trust established by CCA specialising in buying and leasing correctional institutions. The position provided an annual salary of US\$12,000 plus share options. In January 1999, he acted as a consultant on the merger between CCA and the Prison Realty Trust, apparently earning US\$3 million in the process (Driscoll, 1999).

In April 1999, Thomas admitted a conflict of interest and offered to stop his university research, pay a US\$2,000 fine and resign as director of University of Florida's Private Corrections Project (Driscoll, 1999). However, he maintained that he had never disregarded his public duties in order to obtain private benefit, nor had he acted with

corrupt intent or tried to hide his connections with the private corrections industry having made disclosures to both the CPC and his own university. This fine was rejected as too low by the state ethics commission and Thomas later offered to pay US\$20,000.

It is not only the individual researcher whose integrity may be compromised by sponsorship. Institutions are vulnerable to conflicts of interest because they also obtain financial and non-financial benefits from corporate sponsorship (Barnes and Florencio, 2002). There is some possibility that even if individual researchers are not directly compromised by corporate sponsorship, they may either 'be influenced by an awareness that their own institution's financial health may be affected by the results of their research' (National Human Research Protections Advisory Committee, 2001 p. 9) or, at the very least, be perceived as being influenced. It is difficult to avoid the conclusion that such a position may have an effect on the trust that the wider community is prepared to place in universities and in university-based researchers.

There are other ways that the relationship between researchers and their institutions might break down over ethical matters. While research ethics committees may play an important role in regulating unethical conduct, Lowman and Palys (2000a) were deeply troubled by the institutional conflict of interest that underlay the tendency of universities to use ethics approval processes to manage other risks to the institution. As a result, some ethically-acceptable research proposals might be blocked by the ethics review process because of, for example, a desire by the institution to avoid the possibility of legal action (Casey, 2001).

RESEARCHER SAFETY

Social scientists sometimes work in teams and senior researchers may have supervisory responsibility for junior colleagues. Not only must team leaders take responsibility for the ethical behaviour of members of their staff but they must also ensure their physical safety and emotional well-being (Paterson et al., 1999; Craig et al., 2000; 2001; Social Research Association, 2002). Yet there are many examples where researchers have found that there are no formal institutional support mechanisms (Kenyon and Hawker, 2000; Johnson and Clarke, 2003). Indeed, following their survey of 46 researchers, Kenyon and Hawker concluded that many 'individual researchers, project leaders and institutions appear to be in a state of denial' (p. 326) about researchers' safety. Such an attitude may have serious consequences. Some researchers have to spend considerable amount of time learning how to negotiate dangerous environments whether the danger be caused by other people or the environment or a mixture of the two.

Thankfully, some leaders do pay more attention to the needs of their research team. Williams et al. (1992) wrote how they provided training for their fieldworkers who while investigating crack distribution networks 'spent an average of 15-20 hours per week in several of New York City's most dangerous locales' (p. 346). Some projects require members of the research team to deal repeatedly with subject matter that might have a traumatic effect on researchers. Rebecca Campbell (2002) led a team that spent two years interviewing over 100 survivors of rape. Campbell suggested leaders needed to address the emotional needs of their research teams. First, team members should be selected for emotional maturity and self-awareness as well as for the kinds of demographic diversity that might allow the team to draw on different support strategies. Second, the team should be able to share any distress that they experienced, possibly through formal debriefing. Third, the team should be organised

so that staff can be rotated through the more stressful tasks. Finally, the departure of team members should be marked by an opportunity for 'final release, reflection, integration of what has been learned and witnessed' (p. 148) perhaps involving individual exit interviews or group writing projects.

In some cases, some HRECs have little understanding of the magnitude or prevalence of the risks that a researcher may be facing – Melbourne University HREC asked Lorraine Beyer if she was likely to be kidnapped during her interviews in Asia. In addition, there may be differences between the personal risks that researchers are prepared to take and those that will be countenanced by the HREC. According to Gabriele Bammer, at one stage in the history of the HREC at the Australian National University one member was concerned that observing drug users in public spaces in Canberra posed too serious a risk for female researchers despite the fact that the two senior women in question had each been working in this area and using similar methodologies for around ten years. While Bammer believed that this particular objection could have been overcome, the research did not go ahead because other HREC concerns – reflecting the moral opposition of one persuasive member of the HREC – proved insurmountable.

Many researchers prefer to interview research participants in their own homes because it can play an important part in gaining trust, can make it easier to interview different members of the same family, and can provide a better understanding of the participant's social context. Yet, several HRECs seem to have a habit or, indeed, a policy of insisting that interviews should either be conducted in public places or that the researcher should be accompanied by another person (Collyer, 2004; see Kohn case study, p. 65 below).

TRANSNATIONAL RESEARCH

Criminology is now paying greater attention to comparative and transnational research (Bennett, 2004). This is partly the result of increased interest in both the crimes of terrorism, money laundering and trafficking in people, drugs and arms as well as the criminal justice responses to these crimes and the problems of weak and failing states. Comparative and transnational research projects raise many of the issues discussed in this report. However, not only do they arise in differing ways in multiple jurisdictions but they may also occur within the context of political sensitivities generated by a focus on inter-state relations.

Though it currently applies to only a small proportion of criminological research undertaken by researchers working in Australian institutions, gaining approval to conduct research outside Australia presents problems both of principle and practice. It is an increasing problem for academic institutions with external students who must conduct research within courses usually taught by flexible delivery or at off-shore sites, for academic researchers conducting investigations in other countries, and for researchers who secure funding from external sources that require ethical review in accordance with the regime applying in the jurisdiction where the research will occur. Criminology research is caught up in all three.

The National Statement applies to research that is reviewable under its terms and conducted outside Australian borders. It recognises that its ethical principles are those of the 'dominant Western tradition', and that in non-Western societies the individual's rights and autonomy are conceptualised differently, frequently emphasising community values over individual (NS 5). It acknowledges circumstances where

collective values may need to be recognised, for example in obtaining consent (NS 1.9). Specifically, 'where research is conducted in an overseas country under the aegis of an Australian institution or organisation, the research must comply with the requirements of this Statement as well as the laws and guidelines of that country' (NS 1.21). The issues of principle are simply noted: how the ethical principles of the 'dominant Western tradition' are applied to research involving participants with different cultural and ethical values are not explored.

The practical issues are more readily identified. Among other matters, Australian criminologists identified problems where: no comparable ethical review structure existed in the overseas country; the HREC has no understanding of local cultural values and norms impinging on the ethical conduct of research; the researcher has, prior to entering the field, limited knowledge of circumstances in which research will be conducted; and the potential for conflict exists between local and Australian law, and local laws and Australian ethical guidelines.

One study by Goodyear-Smith et al. (2002) identified the difficulties that criminologists might face if they are required to obtain approval for the same study from ethics committees in different countries. Goodyear-Smith and four colleagues (including one criminologist) sought to study psychology students concurrently in five different Westernised countries – New Zealand, the United Kingdom, Israel, Canada and the United States. The study involved testing hypotheses about the believability of testimonies relating to child sexual abuse. The researchers believed that the study involved no more than minimal risk for participants. Among other things, the researchers found that different ethics committees relied on different guidelines as well as different interpretations of similar requirements in these guidelines to judge the potential risk. Not surprisingly, the conditions of approval varied between countries. In New Zealand, the University of Auckland Human Subjects Ethics Committee imposed conditions on the study that may have compromised the scientific validity of the study:

...the Israeli university considered that the research project posed no risk to the students. The UK and Canadian institutions considered that the risk was minimal. The US IRB members were divided in their opinion that the study posed no or only minimal risk. The Auckland ethics committee, however, had concerns that the research might cause significant psychological harm to some students. This variability in consideration of what constitutes minimal risk had implications with respect to the comparability of data across these countries. (Goodyear-Smith et al., 2002)

Not surprisingly, many criminologists have found it difficult to respond to these bureaucratic and ethical challenges.

4. STRATEGIES FOR DEVELOPING EXPERTISE IN ETHICAL MATTERS IN CRIMINOLOGICAL RESEARCH IN AUSTRALIA

In their critical review of the operations of Institutional Review Boards in the United States, Bosk and De Vries (2004) noted the scepticism maintained by their fellow social scientists towards the ethics review process. In response, they urged colleagues to expand their knowledge of and participation in the review process, undertake empirical investigations of the Boards, and educate Board members. Bosk and De Vries also called on the regulatory mechanisms to develop a faster appeals process and explore alternative review mechanisms. In his response, Canadian criminologist, Kevin Haggerty (2004a, forthcoming), argued that those who employed more strident criticism would

...serve the important function of shifting debate away from the consensus assumptions of the existing research ethics bureaucracy. They force officials to try and justify the system's existence, while demanding answers to difficult and important questions about whether the current system accomplishes any of its professed goals, what legal and bureaucratic factors are truly driving this system, whether its social and economic costs can be justified, and, most importantly, if it is possible to promote ethical research through a radically different structure of governance.

In Australia, a twin-track approach may be warranted which would involve working to reform existing guidelines and structures while, at the same time, arguing against the appropriateness of basing the need for and the development of ethical governance of social science on medical research malpractices.

IMPROVING OUR ABILITY TO NEGOTIATE

Many of our interviewees urged their colleagues to help HRECs and the AHEC appreciate the ethical difficulties associated with criminology. For example, Heather Strang (Australian National University) spoke of the need to promote 'a spirit of co-operation – not a cat-and-mouse game'. However, at present, in several institutions a new generation of criminologists is being trained to treat ethics as little more than a bureaucratic process to be negotiated with an antagonistic bureaucracy or evaded. The responsibility for this state of affairs is shared, though not necessarily evenly. Many researchers do not trust their committees. Adam Sutton, chair of the Criminology Department's Human Ethics Advisory Group at Melbourne University was concerned that once committee approval had been gained, researchers have been tempted to believe that they had finished with ethics. Some of the fault lies in the way that some HRECs have treated researchers.

Yet, criminologists can only benefit from contributing to the creation of an environment where researchers operate ethically, where review mechanisms are conducted by respected, knowledgeable and experienced people who can help researchers develop better practice. In this section, I explore the role that criminologists and our professional association might play in engineering such an environment.

There are several examples of textbooks and papers that give fairly straightforward advice to researchers submitting applications to HRECs (see, for example, Israel with Hersh, 2005, forthcoming). They recommend that applicants think strategically in

completing the application form by anticipating the likely concerns and objections of the HREC, explaining why the research is necessary, offering justification for the choice of methodology by reference to other studies, identifying the operational constraints and preferences of the organisation where the research will be conducted, assessing the potential risks for, and the likelihood that harm will occur to participants, considering the legal implications of the research design, the benefits of the research, and the risk to the outcomes if the design is not followed. Oakes' 15 tips (2002) provides one, more sophisticated, example of this approach. His tips were originally designed for an American audience. Adapted for Australia, they would read:

**Fifteen Tips for Improving Interactions with an HREC
(adapted from Oakes (2002))**

1. Carefully plan the ethical aspects of your study from the very beginning...
2. Attach to your [HREC] application a cover letter summarizing your study, with special attention to human subject interactions.
3. Examine university and [NHMRC] sites for examples and specific directions.
4. If you have questions, telephone and talk with your [HREC] administrator.
5. Ask yourself if you would honestly want someone you love to participate in your study.
6. Work hard to ensure that recruitment materials yield equitable and noncoercive results.
7. Write consent forms so that [someone who has completed only a year or two of high school] can understand them.
8. Overestimate risks and underestimate benefits.
9. Educate and debrief subjects on the nature, purpose, and findings of your study.
10. Establish procedures to delink identifying information from main data sets and sources.
11. Establish procedures to encrypt any and all identifying information and destroy it as soon as possible.
12. If you disagree with an [HREC] decision, read the regulations and then ask for an in-person meeting to discuss things.
13. Remember that research is not a right but a privilege and [HRECs] are peer review groups.
14. Educate your local [HREC] and then volunteer for it.
15. Never forget that [HRECs] did not spontaneously appear to frustrate scientists; they are a direct consequence of many documented violations of very basic ethical principles.

Of course, the cases discussed in this report raise far more complex issues than such hints and tips would allow and it would be easy for senior criminologists to feel patronised by such advice. Nevertheless, criminologists would probably accept the views of some members of HRECs that some applications by social scientists are underprepared (Fitzgerald and Yule, 2004). For example, the lay member of the Southern Tasmania Social Sciences HREC told the NHMRC Ethics Conference in Canberra in 2003:

...our rate of approval of initial applications is so low. Less than 10 per cent of applications have been given unqualified approval as first submitted, with perhaps another 10 per cent being approved subject to relatively minor amendments to the documentation and so on. To a large extent this is due to ill-prepared applications. (Lockett, 2003 p. 11)

In particular, qualitative researchers need to improve their ability to justify their methodologies and articulate the benefits of their research in terms that fit forms that may not be designed for the purpose and HRECs that have little experience in such methodologies.

DEVELOPING EXPERTISE

Collectively, Australian criminologists have considerable experience in negotiating both ethical dilemmas and HREC requirements. Several criminologists have served on committees. Indeed, several have extensive experience of chairing committees at departmental, institutional and regional level. In addition, several other researchers and administrators, who are sympathetic to the kinds of concerns raised by criminologists in this report, have chaired specialist ethics committees that regulate research on criminological phenomena. On the other hand, many criminologists do not have much experience or have little confidence in grappling with HRECs. It is not part of most criminologists' training. Unless we integrate material on ethics and ethical governance into undergraduate and postgraduate courses, these skills have to be learned on the job. Even those criminologists with vast experience can find it difficult to deal with a committee that is either new to them or newly constituted.

Gillam (2004) argued that those who claimed expertise in ethics needed to combine:

...knowledge of research practice, across a range of... methodologies; knowledge of issues and debates in research ethics; and knowledge of the legal framework within which research involving humans occurs... [and] sound knowledge of the relevant guidelines and regulations. (p. 61)

Obviously, not every criminologist needs to have such expertise – after all, Gillam was only arguing that these attributes were relevant for ethics consultants. However, collectively criminologists do need to have expertise in these areas or know how to gain access to it.

One strategy for providing training on ethics is to attempt to offer some clear, unequivocal directions by identifying the relevant provisions of the National Statement and considering how these provisions are likely to be interpreted by HRECs. In Canada, the Interagency Advisory Panel on Research Ethics' (PRE) has an on-line Introductory Tutorial for the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans* (<http://www.pre.ethics.gc.ca/english/tutorial/welcome.cfm>). A good example of this approach in Australia is the training seminar run by the Griffith University HREC. On its website, it provides a series of case studies – including one on research into child sexual abuse (2004b) and another on prisons and drugs (2004a). Each case study provides a brief overview of a proposed protocol and asks groups to imagine they are members of an ethics committee that has been asked to review the proposal. Participants are invited to consider the following:

1. Would you grant this project ethical clearance in its current form?
2. What clarifications would you seek from the applicant(s)?
3. What are some of the ethical issues/challenges raised by this proposed research?
4. What modifications to the project might address these ethical issues?

These case studies have been used at Griffith to provide training for discipline-specific research ethics advisors, and new supervisors, students and other researchers. One attraction of the case study approach is that it could allow participants to extend their discussion well beyond an examination of the requirements of the National Statement.

However, restricting guidance in ethics to bureaucratic compliance has serious limitations as prescriptive approaches to ethics and ethics education stand in fundamental opposition to moral *thinking* (Bauman, 1993). In addition, such approaches are fraught with practical problems (Hay and Israel, 2005, forthcoming):

First, the normative ethical positions from which incontrovertible moral and ethical guidance might be drawn often suggest irreconcilably different behaviors. Taking one basic example, in teleological, or consequentialist, approaches to ethics the morality of acts is evaluated by considering the balance of good over evil produced as a result of those acts. In contrast, deontological approaches view certain acts as good in themselves even if they do not promote the greatest good in a particular situation. A second reason for shunning prescriptive approaches in ethics education has to do with the non-universality of any 'rules' for moral and responsible behavior. Third, prescriptive approaches to ethics offer the potential for a contest between 'legalistic' interpretations of ethical behavior and the 'morality' of individual actions. When researchers look for ways to satisfy the letter of ethical rules rather than considering the morality of their behavior, can their conduct really be understood to be responsible? Finally, it is unlikely that ethical prescriptions can anticipate all possible moral dilemmas.

Rather than relying on the deceptive assurances of ethical codes, professional associations should encourage theoretically informed, self-critical and perceptive approaches to moral matters. According to the Hastings Center (1979) in the United States, an education in ethics should fulfil a number of important goals:

- *stimulating the moral imagination*: students' awareness of ethical issues in professional and day-to-day activity needs to be nurtured together with an appreciation that all human beings live in an interconnected web of moral relationships.
- *recognising ethical issues*: stimulation of the imagination needs to be accompanied by the ability to identify ethical issues in context. This requires the development of skills required to detect hidden value biases, moral logic and conflicting moral obligations.
- *developing analytical skills*: students need to develop means to make rational ethical decisions. How are they to determine what is 'right' or 'good'?
- *eliciting a sense of moral obligation and personal responsibility*: students need to develop considered positions on questions like: 'why should I be moral?' or 'why should I think about ethics?'. It is important too that they choose to do the right thing, not because someone is making them do it.
- *tolerating – and resisting – disagreement and ambiguity*: students should be encouraged to acknowledge but not accept blindly the uncertainties and ambiguities associated with ethical problems.

In addition, student-centred learning should provide students with the concepts and skills which will allow them to handle moral issues independently and competently (Israel, 1997).

A variety of interactive strategies such as lectures, role-playing, small-group discussion, debate, simulation, and field experiences might, of course, be used for introducing and dealing with ethical matters in criminology. Despite considerable disillusionment with the use of the case method approach within law (LeBrun and Johnstone, 1994; Penslar, 1995; Pimple, 2003), Hay and Israel (2005, forthcoming) argue that the case method approach does offer some considerable strengths in teaching ethics (see also Grace and Cohen, 1995). Cases may allow trainee researchers to be exposed quickly to a wide range of the types of scenes and conditions with which they might be confronted later. Cases can help students and junior researchers learn a range of skills such as problem solving, diagnosis, evaluation, decision making and may also be an appropriate means of conveying theory. They require students to see matters from a range of points of view and to consider each one critically and sympathetically. For example:

CASE AND COMMENT

You are engaged in observation of police officers when you see officers physically abusing a suspect. You take notes of the incident.

1. Would you intervene?
2. Would you report the matter to the police authorities?
3. If the victim sued the police and the victim's legal team attempted to subpoena your notes, would you hand them over?
4. If you were called to testify in court, what would you do?
5. Would your decisions be different if you research had been about offenders rather than police officers?
6. What are the legal consequences of your actions?
7. What, if any, are the ethical regulations that govern your conduct in this situation?

This example is based loosely on an episode that was witnessed by Van Maanen (1983). Comments on these matters would be invited from: criminologists, ethnographers, sociologists of policing, criminal lawyers, prosecutors, defence lawyers and bioethicists.

Other resources to promote reflection on ethics could be generated through conference sessions, a special issue of the *Australian and New Zealand Journal of Criminology*, or – more modestly and perhaps most usefully – through an electronic forum. Such a forum could be modelled on the case-and-comment format used by the American Anthropology Association in their handbook (Cassell, 1987; Jacobs, 1987). Although this material is now a little dated, the Association proposes to report more material through *Ethical Currents* on the Association's website and within *Anthropology News*. The Australian forum could be located or reproduced within a regional or international electronic journal that provided appropriate peer-reviewed recognition for editors and contributors who sought to meet Commonwealth Department of Education, Science and Training (DEST) requirements governing Australian academic publishing.

The development of an electronic ethics archive for criminologists is a further possibility that could be explored. Komesaroff (2002) described an Australian archive that had been set up to help bring consistency to decision making related to health research ethics (<http://www.ethics-archive.org/>).

INSTRUCTIONS TO CONTRIBUTORS TO HEALTH ETHICS ARCHIVE

Articles should conform to the following format:

Title: *(Should be descriptive, indicating research area and ethical concerns)*

Authors:

Name of ethics committee:

Type of ethics committee: *(E.g. hospital, university)*

Locality/legal jurisdiction: *(State and country)*

Date:

Researchers involved? YES/NO

Key words:

Subject headings: *(To be supplied by us)*

1. Background *(up to 300 words)*

Should contain a brief statement of the facts of the case, as far as possible in lay language.

2. Ethical concerns *(up to 500 words)*

A statement of the ethical issues raised by the case or, at least, considered in the article.

3. Arguments *(up to 500 words)*

A brief and balanced account of the arguments presented by the various contributors to the discussions.

4. Conclusions *(up to 200 words)*

An indication of how the matter was resolved. This may be inconclusive. Where clear conclusions are stated there should be some indication of why the committee adopted one point of view rather than another.

5. Additional points

This may include further information that could help readers apply the issues to their own contexts – e.g. distinctive features of the context of the particular ethics committee – or about subsequent developments, including outcomes of the decisions made or of the trial itself.

6. References

These should be the minimum necessary for the purposes of the report itself.

The archive has subsequently extended its remit beyond the health field but has struggled to attract contributions. It is possible that this platform could be used to host a criminology site. For criminologists, such an archive could contain examples of completed application forms plus correspondence with research ethics committees. It would need to be searchable by keyword. For such an archive to hold sufficient material to make it worth consulting, it would need to have the support of specialist ethics committees such as the ones used by the Australian Institute of Criminology and the Department of Criminology at Melbourne University as well as the criminologists who apply to those committees. Applications submitted to these committees could be automatically transferred to the archive after a suitable interval of, say, two years (in the case of the Australian Institute of Criminology, applications

are already held on an in-house formal electronic register that may be accessed by others at the Institute (Australian Institute of Criminology Research Ethics Committee 2003). Criminologists would, of course, retain the right to opt out of the Ethics Archive scheme or remove confidential sections. It is possible that contributions might be more forthcoming if access to the archive were password protected and limited to members of the Society.

LOBBYING FOR STRUCTURAL CHANGE

Some criminologists with experience working with HRECs might be able to play an important role in advocating changes in the policies, procedures and systems adopted by particular HRECs. This might happen at the national level – a criminologist, Ted Palys, was a member of the Social Sciences and Humanities Research Ethics Special Working Committee in Canada. It might also take place at a local level. For example, criminologists based in institutions where delays in processing applications are commonplace could put pressure on their institutions to adopt expedited review and risk-stratification procedures, at least so they match improved practices elsewhere.

Some of the problems that criminologists reported in this study no longer exist, at least not at the institutions where they were identified. Processes *have* improved in some institutions. Following a review of its ethics committees (Griffith University, 2003), Griffith University introduced three levels of ethical review of human research in 2004, with the application form and processing time matched to the ethical sensitivity and risk associated with a project. An on-line ethical review checklist was devised to guide researchers to the appropriate level of review (<http://www.griffith.edu.au/or/scoper/>). This allowed researchers to avoid answering unnecessary questions and provided them with hyperlinks to policies. Researchers engaged in work that raises no significant ethical issues or risks tick 24 boxes and provide short answers to six other questions. Such an application is dealt with by the Chair or Deputy Chair of the HREC and should be processed in five to ten days. Research where ethical risks are easily managed, where an application has already been approved by another HREC, or where the methodology has already been listed as acceptable by the Griffith HREC is handled by a panel of three, including a representative of the relevant discipline and should be processed in two to three weeks. Other research – in general, projects with significant ethical sensitivity, risk or legislative dimensions – is reviewed by a full meeting of the HREC which meets each month. Convenors of those parts of courses which require students to undertake research can obtain ‘umbrella clearance’ which would reduce the amount of information each student would have to provide when seeking ethical review for an individual project. According to the manager of research ethics, applications are processed faster and more efficiently. These changes have seen a reduction of 66 per cent in the numbers of applications being handled by a full committee (Allen, 2004) and, as a result, the committee can concentrate on the more serious matters. These kinds of changes may be resisted in organisations where institutional inertia and fear of liability dominate (Federman et al., 2002), however it is easier to argue for changes when there is evidence of successful reform elsewhere.

Again, researchers may be able to argue for systems to be introduced that improve relationships between researchers and the HREC. Following its review, Griffith University also developed proposals aimed at reducing the distance between researchers and committee members: each School and Centre has been asked to appoint a Research Ethics Advisor to provide advice to researchers in their areas and, it is hoped, this will

improve communication between researchers and the HREC. Some of the members of the HREC are drawn from this pool of advisors. Most promisingly, according to the HREC website, the new arrangements envisage that 'where a problem emerges for an area of the University', solutions 'will be workshopped, rather than mandated.'

Anna Stewart was the Research Ethics Advisor for the School of Criminology and Criminal Justice in 2004. When contacted for this study in 2003, she was highly critical of the process of ethics review at her university. In 2004, she reported that the new process was working well and that it was now 'transparent, accountable, logical, sensible' (telephone interview with Mark Israel, 6 October 2004). The university's investment in structural reorganisation, administrative expertise and policy development meant that researchers could expect the committee to behave in a consistent and predictable manner, with committee members acting in accordance with public policy documents. Criminologists were able to develop better applications in the knowledge that, after negotiation, they would be likely to be approved. In their ARC-funded investigation of the ethical review process, early findings from which were published in 2004, Fitzgerald and Yule noted that more HRECs were moving towards open processes. Fitzgerald and Yule supported such a trend on the basis that

An open, transparent, enabling situation is more likely to encourage researchers to engage in research, including research associated with delicate and sensitive issues and populations, rather than discouraging researchers or pushing them towards 'safe' research. (2004 p. 48)

THE ROLE OF ANZSOC

As we have already seen, Philip Pettit (1992) counselled academic disciplines to nurture a research ethics culture through education, discussion at conferences and the development of internal mechanisms for addressing complaints. Several disciplines have done just that. In 1999, the American Association for the Advancement of Science surveyed various scientific societies to discover what they were doing to promote ethics and, in particular, research integrity and assess their perceptions of how effective they thought their efforts had been (DuMez, 2000). They received 46 useable responses, including one from the American Sociological Association. The survey revealed that organisations engaged in a range of relevant activities that included: establishing ethics committees; arranging programs at annual or regional meetings; running workshops; mentorship programmes and discussion groups; publishing articles in professional journals and newsletters; producing resource materials; and inducting students. While societies suggested that ethics committees, resource materials and websites had been 'least effective', DuMez described these as 'seat-of-the-pants judgments' (p. 11) and noted that there had been no attempt either to define effectiveness or to evaluate success with any rigour. Given that it is not entirely clear from DuMez's account what different societies might have meant by each of these activities, it may be better to regard these as a series of possible options, rather than strategies that have proven to have been effective.

There are several organisations that are in a position to support better ethical practice within and more constructive regulatory regimes for criminological research in Australia. This report was commissioned by the President of the Australian and New Zealand Society of Criminology in his capacity as Director of the New South Wales Bureau of Crime Statistics and Research. The Society adopted a Code of Ethics that had been drafted by Russell Smith, at its Annual General Meeting in 2001. The stated purpose of the Code is to:

- (a) provide guidance to members of the Australian and New Zealand Society of Criminology Inc. ('the Society') on how to comply with the aims of the Society and how to maintain the highest ethical standards in criminological work;
- (b) provide a framework of principles to assist members of the Society in making appropriate decisions in the practice of criminological research, writing, administration, and teaching; and
- (c) raise awareness of ethical issues which confront criminologists in Australia and New Zealand.

At present, it falls to the National Executive to sanction a review of the Code, a task it has not yet performed. However, the Society has no other formal structure to consider ethics. Given that some commentators have already warned us of the consequences of establishing a professional ethics industry in Australia, perhaps such a position does have some advantages. Nevertheless, it does make it difficult for criminologists to respond collectively to threats by regulators to their work.

Several organisations have established ethics committees to police their code of ethics and act as a grievance body. This is probably what the respondents to the American Association for the Advancement of Science survey had in mind when they commented on the effectiveness of such a committee. For example, the Academy of Criminal Justice Sciences in the United States also has an Ethics Committee. Although the Academy has a Code, the Committee has yet to invoke its disciplinary process.

However, a sub-committee of the Australian and New Zealand Society of Criminology that had responsibility for professional ethics could play a different role, developing and co-ordinating the various activities that the Society takes up to support ethical practice. In the United States, the Academy of Criminal Justice Sciences' Ethics Committee also has responsibility for providing guidance on ethics issues and promoting ethical conduct among members of the Academy but there is little evidence that it has pursued this work beyond the development of the Code. The American Society of Criminology's Ethical Issues Committee has responsibility for 'developing educational programs, and dialogues among members of the Society regarding ethical issues of concern to criminologists', though this task does not appear to have been discharged. Instead the Society has spent the best part of two decades debating whether it will adopt a Code of Ethics. Having expended its energy creating drafts that have been rejected by the Board, the Ethical Issues Committee has drifted into dormancy and it seems that it may not survive for much longer.

The American Sociological Association (ASA) has established a Committee On Professional Ethics (COPE) which, among other things (which include enforcing its code of ethics), has a mandate to:

- (b) Educate the members of ASA and other interested persons concerning the ethical obligations of sociologists under the Code of Ethics through articles, seminars, lectures, casebooks, or other materials.
- (d) Provide to individual members of the ASA on an informal and confidential basis advice regarding their ethical obligations under the Code of Ethics. (Committee On Professional Ethics, 1997)

Although COPE co-sponsors workshops at the Society's annual meetings, the chair of COPE recognised that the committee did relatively little to educate the general membership. On the other hand, the Society's Executive Officer and the Chair of COPE did provide swift, informal advice to members on ethical matters (e-mail from Tom Van Valey to Mark Israel, 28 September 2004).

ANZSOC might be able to learn something from the United Kingdom where the British Society of Criminology has established a Professional Affairs and Ethics Sub-Committee chaired initially by Lorraine Gelsthorpe (Cambridge University) and now by Brian Williams (De Montfort University). Members of the British sub-committee offer an advisory service to all members of the Society regarding ethical issues and reviews and comments on research proposals. This service would probably be less valuable in Australia than in the United Kingdom where many universities have only recently established research ethics committees to cover criminology and some major institutions are yet to do so (Israel with Hersh, 2005, forthcoming). Perhaps more importantly, in the long-term, the British Society of Criminology's sub-committee has the potential to act as a forum where ethical matters may be aired, best practice disseminated (among academics, postgraduates, government and non-government organisations) and grievances with regulatory systems may be collected. It may also find itself in a position to act as an advocate for some of the methodologies adopted within criminological research that might be threatened by bioethics-derived regulation. At present, the existence of the Sub-Committee probably places the British Society in a better position than its Australasian counterpart to make representations to those bodies that are responsible for changes in national ethical regulation.

Over the next year, ANZSOC will have the opportunity to make submissions to the joint working party that is reviewing the NHMRC National Statement. A call for responses to a draft National Statement is likely to appear in December 2004 with submissions required within three months. Submissions will be called for once again when a second draft appears in 2005. By then, ANZSOC must improve its ability to contemplate ethical matters. Among the activities that the Society should consider include how to respond to the need to:

- **Monitor problems** that its members are having with the Statement and HRECs.
- **Develop links with other Australian social science professional associations** with related interests – sociology, public health and anthropology are obvious candidates.
- Discharge its responsibilities to **support criminologists in New Zealand** and, perhaps also, in the South Pacific.
- **Lobby agencies** to support the more appropriate ethical regulation of criminological research. Many government agencies use the research services of criminologists and must be equally dismayed to see research founder on inappropriate ethical regulations. Other bodies such as the Australian Vice-Chancellors' Committee – and, in the past, the Academy of Social Sciences – are expected to endorse NHMRC Guidelines. They need not do so if there is sufficient opposition from professional associations.
- **Engage with the processes of law reform** so that law makers consider the impact of new legislation on social research or develop statutory protection for the assurances of confidentiality required for social research.
- **Broker the development of resource materials** to support the training of criminologists. I have already discussed the potential value of an electronic forum. The Society might also be in a position to provide a small amount of direct financial support to create FAQs and other training material. Some materials could be adapted from this report. ANZSOC may also be able to

help negotiate financial support from other agencies such as the Criminology Research Council. The Criminology Research Council occasionally calls for tenders on particular projects. Perhaps it might be persuaded to sponsor strategic research in this area. Failing that, individual researchers can still apply for funding for particular projects – in 2004, I was fortunate to obtain a small grant from the Council to look at how the legal regulation of confidentiality might affect criminologists. Some of these materials could also be used to help educate HRECs about discipline-specific research ethics (Fitzgerald, 1994).

- **Exchange information and resources with other criminological associations** outside Australasia either bilaterally (developing existing links with British and American Associations) or multilaterally through the emerging International Consortium of Criminology Associations. The hypothetical case-and-comment format could be adopted at an international level. International exchanges would be particularly useful for researchers who operate in multiple jurisdictions (Freed-Taylor, 1994).
- **Provide advice on research ethics** to members of the Society. Such a service is provided by the British Society of Criminology.

Of course, ANZSOC is not a wealthy organisation. In addition, unlike its British and American counterparts, it has responsibility for more than one national jurisdiction and it will need to look to support from other criminological and non-criminological organisations. One criminological organisation that has considerable experience dealing with ethics, often developing new strategies in the Australian context, is the Australian Institute of Criminology. While a search of the Institute's website does reveal some of the methodologies developed by Institute members in response to ethical issues – the development of verbal forms of consent in the Drug Use Careers of Offenders (DUCO) by Toni Makkai and her colleagues and Russell Smith's struggle to negotiate the privacy legislation, for example, so much more mundane material is not published. The Institute has its own specialist ethics committee and it is possible that many other criminologists could learn lessons from its deliberations. If researchers, the Institute and the committee agreed, it would be worth documenting their encounters. In some cases, it might be appropriate for entire application forms to be made available to other researchers, perhaps after a suitable period of time has elapsed. In other cases, it might be preferable for particular problems and responses to be identified. These cases and decisions might then be used to persuade other HRECs to follow suit. Generalist HRECs might feel less exposed approving the use of verbal consent, for example, if they knew that the HREC at the Institute has already done so.

The Institute also has other fora that might be used to develop ethical reflexivity and resource materials. It runs Roundtable discussions – one could be run on research ethics. The *Trends and Issues Series* might also be a venue for discussion of some methodological responses to ethical matters.

CONCLUSION

Ethical behaviour assures trust and helps protect the rights of individuals and communities involved in our research. It fosters research integrity in its widest sense and, in the face of growing evidence of academic, scientific and professional corruption, misconduct and impropriety, there are now emerging public and institutional demands for individual and collective professional accountability. However, the practice of ethical research can be compromised by the bureaucratic demands of systems of research ethics:

Reflection on, and commitment to, ethical research go together. This process is jeopardised, when researchers see ethics and a combination of research hurdle, standard exercise, bureaucratic game and meaningless artefact. (Holbrook, 1997 p. 59)

Bosk and De Vries (2004) suggested that medical researchers in North America have responded to ethics oversight by adopting 'a policy of weary, self-resigned compliance coupled with minor or major evasion'. Haggerty (2004a, forthcoming) argued that social scientists in Canada and the United States had followed a similar pattern. We run the risk that Australian criminologists will also become part of this trend.

If some of the current regulatory practices continue, more researchers may either ignore HRECs or retreat into safe territories. Other forms of evasion may develop. There is already some evidence of forum shopping with some researchers choosing to submit applications to HRECs known to be more sympathetic to their kind of research. Research may be reconceived as consultancy or audit, escaping the attention of HRECs. In other cases, researchers may disguise their real intentions in their applications, or not alert HRECs to changes in their methodology that they make after they have received approval.

The last thing that will happen will be for a researcher to approach an HREC for advice on how to conduct ethical research. As David Dixon (University of New South Wales) noted, researchers may find it difficult to tell HRECs that their requirements are impossible to meet, for fear of meeting an even less sympathetic reaction.

These risks are particularly acute for students who have little time within which to complete their research and may not have anywhere between two and 20 months to spend on ethics approval. The more students are steered away from sensitive research, the more the future research capacity of the discipline may be threatened. The process is even more difficult for international students who are being taught offshore in countries where there is no equivalent review process.

Some researchers indicated that they had stopped applying for grants to undertake research that would require the researcher to apply for HREC approval, preferring to accept a more modest research profile in exchange for greater independence. If these individual decisions represent a collective response to ethical review processes, we risk a retreat from ground-breaking and innovative research.

In this report, I have advocated a twin strategy for criminologists and the ANZSOC. We should improve both our collective and individual expertise in ethical matters and our ability to negotiate with the research ethics bureaucracies. At the same time, we should lobby for structural change at the local and national level. We have already had some successes – the current review of the National Statement by the joint working party offers an opportunity to tell the NHMRC that current systems of research ethics governance are flawed and are undercutting the criminology research base of Australia. It would be a mistake to miss this opportunity.

5. CASE STUDIES

CHAPMAN

Authorities responsible for public health in the United States and United Kingdom have used 'sting' operations to gather evidence to prosecute people who sell tobacco to minors. These operations involve sending supervised, volunteer children into shops to purchase tobacco with the consent of their parents.

Health researchers in these countries have also used the technique within compliance monitoring studies and found that publicised prosecutions and compliance monitoring studies resulted in a dramatic decline in the illegal sale of tobacco to children albeit, it now seems, without yielding much impact on youth smoking. According to Chapman (1997), when Australian researchers attempted to replicate the technique in the early 1990s to investigate illegal sales of tobacco, they met with considerable resistance from the research ethics committees of various area health services, mostly in New South Wales. At least eight applications were rejected on eight different grounds. While the reasons advanced by committees reveal something of the idiosyncratic nature of decision-making at that time, the ways that **researchers mobilised support to oppose the decisions of the committees** may offer a useful guide to future collective attempts by researchers to challenge HREC practices.

Although it is not illegal for children to purchase tobacco – the offence lies in selling it to them, ethics committees objected to the exploitation of children to service the research. Alternatively, they cited the potential that the **children used in the research might be harmed**, either by angry shopkeepers or would graduate to smoking after discovering how easy it had been to purchase cigarettes. Individual members of committees were both critical of the practice of dobbing in shopkeepers who broke the law, and sought to protect their institutions from the possibility of negative publicity.

Further opposition to compliance monitoring studies was based on **mistaken beliefs about the laws** relating to entrapment, incitement, and misprision of felony. Chapman described some of these objections as 'pseudo-legal' (p. 60). The interpretation of the law favoured by the researchers has subsequently been supported by the Supreme Court of Victoria in *Rice v Tricouris* [2000] VSC 73 (14 March 2000) where Beach J also noted that the environmental health officer responsible for the sting operation had neither manipulated nor made insidious use of the child responsible for buying the cigarettes.

Chapman concluded that the process of decision-making by research ethics committees was at fault:

Most applications are routine and attract little if any discussion. Anything 'different' attracts more attention, can animate those present and allows members to voice their views which are seldom referenced against any formal ethical criteria. Rather, discussion is often ad hoc, reflecting often very minor reservations... these can be quite untethered from strictly 'ethical' objections, with idiosyncratic criticisms potentially sanctioned as ethics-based decisions. (Chapman, 1997 p. 59)

Although researchers were able to point to an international literature that at the time supported their claims that considerable benefit might derive from the studies and

that the **committees' fears of harms were misjudged**, this strategy had little success. Nevertheless, after 1993 compliance monitoring was allowed and Chapman attributes the change in the attitude of ethics committees to a series of **public advocacy strategies** adopted by the researchers. Researchers promoted their studies in the media, enlisted the support of the health sector and made compliance monitoring a routine part of bureaucratic intervention in another state in such a way that it did not fall within the ambit of ethics committees. In other cases, Chapman noted that researchers were **evading regulation** by using non-government organisations as 'silent partners' (p. 63) that would have responsibility for administering the research grant.

These efforts created a "turning back the clock" hurdle for New South Wales ethics committees to jump' (p. 65). When these studies were published, none of the difficulties predicted by ethics committees were found to have eventuated.

DALY

The difficulties that Kathy Daly faced in securing the release of Australian Research Council funding offers a good example of the ways that the **role of HRECs has been compromised** as it has extended well beyond that originally intended by the NHMRC.

The **Australian Research Council (ARC) requires researchers to obtain 'appropriate ethical clearances' before a project is permitted to proceed** (Large ARC 2001 Conditions of Grant 15.2) and places the onus on institutions to enforce this requirement. Similar clauses are contained in the 2005 Discovery Funding Agreements. This might be sensible if the term 'appropriate' is understood to mean appropriate to a particular stage of the research project. However, it can cause significant difficulties if all aspects of the project need to be approved. For many types of social science research, it is not possible to determine at an early stage how the research will be conducted and time and funds are needed to enter the field or develop appropriate methodologies and instruments, often in collaboration with research partners. An ability to demonstrate flexibility and responsiveness in the field is particularly important if the subject of the research is politically or emotionally sensitive. Indeed, the NHMRC Guidelines for ethical conduct in health research among Aboriginal and Torres Strait Islander people that were published in 2003 argued that:

Ethical research requires not only the limiting of inappropriate behaviour, but also that researchers develop an awareness of the settings that may lead unintentionally to imprudent or untrustworthy behaviours. (p. 4)

Forcing researchers to make applications to HRECs before they could possibly be ready to do so **encourages researchers to evade proper ethical review** by making, at best, intelligent guesses about what will happen in the field (Haggerty, 2004b, p. 402)) and then either sticking to what has been approved irrespective of conditions in the field, attempting to negotiate changes, or ignoring the agreement that they have reached with the HREC (Cribb, 2004). In Daly's words, 'the purpose of the ethics review therefore becomes meaningless, stripped of its ethical impulse'. Alternatively, if researchers attempt to develop their methodology before funds are released, they are left trying to support ARC-funded work from other sources, hardly the point of an ARC Large Grant.

Daly was awarded a Large ARC Grant for 2001-03 to study sexual assault and White-Indigenous justice relations in Australia and New Zealand. The proposal envisaged work at different research sites in South Australia (2001), Queensland (2002), and New Zealand (2003). Daly (2001) believed that working at each site would raise

different ethical matters that should be addressed in a series of ethics applications that would reflect the actual conditions at research sites just before she entered the field to make observations, interview people, and gather documents. As early as 2001, the relevant justice practices had changed and were continuing to change significantly from the time that Daly wrote her grant submission:

When I write an ethics application, I do so with the view of laying out as precisely as I can the set of people and research practices that will occur in the data gathering process. Indeed, writing the ethics application should be seen as an occasion to reflect on the actual conditions and ethical problems a researcher will confront, as much as this is possible. (Daly, 2001)

Acting on advice from its Senior Legal Officer and the ARC, Griffith University's Research Office decided that Daly was not permitted to use any grant funds at all until she had received ethics approval for her project. Daly interpreted her own university's caution as reflecting nervousness in the face of research on race and sex. She wrote to the ARC and suggested that such an interpretation would lead to 'perverse outcomes' for both the ARC and her university. She proposed that the ARC change its requirements so that only 'the portion of research involving human subjects will not be permitted to proceed without appropriate ethical clearances having been obtained'. HREC approval would occur before research on humans was actually conducted, but funding could be released for earlier phases of the research.

For year 1, my plan called for a literature review during the first part of 2001, for which I wanted to hire a research assistant. I also need to travel to South Australia to finalise the research plan for data gathering that will begin some time in September. I had planned to lodge my ethics application for consideration at the HREC's July 2001 meeting. But when I learned that *no grant money* could be spent on the research until I had ethics clearance, I was astonished. I wondered, what principle is ARC wishing to stand by here? What is its logic? (Daly, 2001)

Daly suggested that current practice would lead to poor ethics applications, where the research plan was vague and not responsive to actual field conditions.

Researchers should not be forced to write ethics applications before they can write a solid, honest, and clear application. Indeed, that itself would seem to be unethical. (Daly, 2001)

Subsequent changes in policy at Griffith University allowed Daly to put in an application during her first year outlining what she intended doing, but then submit variations for each of the next two years, as her understanding of the field research evolved.

KIPPAX

The Committee on Experimental Procedures Involving Human Subjects (CEPIHS) at the University of New South Wales has **insisted that researchers obtain signed and witnessed consent forms**. This has caused significant difficulties for the National Centre in HIV Social Research (NCHSR) since 1999. Susan Kippax, the Director of NCHSR, believed that the policy affected the quality of its research data as well as placing research participants at unnecessary risk. CEPIHS policy on the nature of expressing and documenting consent is a good example of the **extension of control of HRECs to areas where it does not have methodological expertise**. In the shadow of a National Statement that offered insufficient guidance

on when verbal consent procedures might be appropriate (NS 1.11), the HREC appeared to be developing policy based on analogies with medical research without considering the consequences for participants. Subsequent elaboration in the Handbook seems to run counter to the conclusion reached by the HREC.

The NCHSR had used the verbal consent procedures at Macquarie University for many years and had found that its research participants were comfortable with it. In the late 1990s, researchers interviewed 27 women living with HIV in Australia about their experiences of diagnosis, treatment, and the issues they faced in their everyday lives (Lawless et al., 1996). The NCHSR developed the following protocol:

1. The researcher clearly explains that the interview/focus group will be tape-recorded. The participant is asked if the informed verbal consent procedure can be tape-recorded. If the participant agrees then the procedure continues. If the participant disagrees the meeting is suspended.
2. The participant is given the study information sheet. The participant is given time to read the information sheet or given the option of having it read to him/her.
3. The researcher and the participant read and discuss the information sheet. The researcher explains the aims, method and the ways in which the findings of the research will be disseminated. The researcher also outlines the right of the participant to withdraw from the study at any time without prejudice.
4. The researcher outlines the process of de-identifying and making the data anonymous.
5. The researcher explains that depending on the nature of the research project that: (a) only members of the research team will have access to the de-identified data; or (b) only researchers who are bona fide researchers and have the permission of the research team will have access to the de-identified and de-personalised data; or (c) that the data may be archived under special conditions (which are spelled out).
6. The researcher explains once more the right of the participant to halt the interview or focus group process, and the right to withdraw consent to use the data at any time during the study.

When the NCHSR obtained NHMRC funding to examine the initiation and transition to injecting among young drug users (*Risks for Hepatitis C: Initiation and Transition to Injecting Drug Use among Youth in a Range of Drug User Networks, 1999-2001*), it proposed to use face-to-face open-ended interviews, where researchers asked injecting drug users about their drug use and the social contexts of such use. The University Committee ruled in 2000 that subjects had to print their correct names and sign consent forms, usually in the presence of a witness.

The NCHSR argued that procedures that ensured informed consent but that did not rely on signed and printed names, where the signing of forms and collection of names is likely to place research participants in danger of the law, offered better protection for research participants. Where researchers demanded signed consent, in Kippax's experience, many informants have chosen to use a pseudonym (and it is impossible for researchers to ascertain whether the name that is given is correct or not) or have declined to be interviewed. As a result, the NCHSR contended that verbal consent procedures would enhance the ethical standing of the research project:

Research that is *social* in nature and is not concerned with the individual *qua* individual but with social process and collective response does not in general need the same restrictions as research focused on the individual as it is highly unlikely if not impossible for individuals to be identified. Data derived from open-ended questions or taped accounts of particular events or particular life narratives of subjects are similar to data collected from surveys or other paper and pencil closed format questionnaire studies in the sense that they are collated and the patterning of the data interpreted. Furthermore, if names are not required for the questionnaire/survey studies (and they are not), we can see no reason for signed informed consent for the former studies. (Susan Kippax, e-mail to Mark Israel, 24 September 2004)

The University Committee's insistence on signed consent forms ran counter to the practice of at least one other committee in Sydney. For example, when reviewing the same NHMRC-funded research in 2000, the Central Sydney Area Health Service Ethics Review Committee, preferred 'that written consent was not obtained from participants, but that verbal consent be recorded on the audiotape, indicating that written information had been provided and an opportunity had been given for questions and discussion. In addition, the Committee considered that you would have more success with recruitment if the total anonymity of the subjects could be assured.'

The University Committee asked the NCHSR to inform the Central Sydney Committee that its decision was in conflict with that of the University Committee, and that the University Committee was the primary ethics committee for the NCHSR. The University Committee also asked the NCHSR to seek advice on how to proceed from the Central Sydney Committee, to forward the response to University Committee and suggested that the NCHSR request that the Chairs of the two Committees meet. The outcome was that witnessed signed consent forms were required.

In the end, Kippax reflected, 'we did the study. And we spent a great deal of time and effort trying to be all things to all people' (e-mail to Mark Israel, 28 September 2004).

KIPPAX AND SANTANA

The National Statement recognises that researchers undertaking **observational research in public places** could work ethically without obtaining informed consent from research participants (NS 1.11). However, some HRECs have struggled to define public places and have interpreted the section more narrowly than researchers. This case study is a good example of the difficulties that HRECs have faced putting the National Statement into practice in a way that makes sense to qualitative researchers. It may also reveal the tendency of some HRECs to **micro-manage** projects that a minority of members might find personally distasteful.

Ethnographic researchers based at the National Centre in HIV Social Research (NCHSR) at Macquarie University applied to their HREC in 1997-98. The research, *Sites of Sexual Activities among Men*, involved an investigation of the sexual behaviour of people at saunas and sex clubs. In their application, the researchers noted that one way of raising community awareness about the research would be to publicise the purposes and conduct of the research in gay newspapers before the research began. Macquarie University Research Ethics Committee expressed concerns about **anonymity, informed consent** and **nonmaleficence**.

As part of the negotiation process, the director of the research program, Susan Kippax, spoke to members of HREC about the project:

My memory is that I argued that saunas and sex clubs were semi-public places. I also argued that the public good outweighed any possible private harm; agreed that the NCHSR would on no account collect or keep material that could be used to identify any place or persons; and that as social researchers we were interested in social patterning of practice and not individual behaviour/s. No signed consent on the part of the venue attendees was required. The NCHSR agreed to obtain permission from the venue owners and to always inform them of the ethnographer's presence. The NCHSR also put procedures in place to cover the eventuality of the ethnographer being approached for sex: the ethnographer was told to inform the person who approached him that he was engaged in research and unable therefore to participate in any sexual activity. (Susan Kippax, e-mail to Mark Israel, 29 September 2004)

After some debate, the HREC approved the research. Approval was granted subject to the following conditions:

1. All publicity material for this project must be previewed by a sub-committee of the Ethics Committee before it is released. The subcommittee will be available to preview material during the months of December and January.
2. The supervisor of this research is required to submit monthly progress reports on this research during the data collection phase of the project. These progress reports should include details of any complaints or problems encountered in the conduct of the research, and any changes to the protocol of the research.
3. If any complaints are received by researchers from the owners or the clients of the participating sites during any observation period, the researchers should terminate the observation session and leave the venue.

Macquarie University HREC had expressed concern that the research represented an invasion of **privacy** for those people who attended the research sites. However, the conditions imposed on the research seem to extend well beyond this. One criminologist not involved in the research interpreted the conditions as a reflection of the socially conservative attitudes of some HREC members. One wonders what they would have made of the work of Styles (1979) who had found 'asexual observation' in bathhouses 'more and more tiresome' and 'gave up observing without sexual intent and plunged fully into the sex life of the baths' (p. 142).

Susan Kippax argued that any requirement that researchers obtain signed consent for observation of behaviours in public places would **render anthropological and other forms of observational research undoable**, a point that has now been acknowledged in the NHMRC's Human Research Ethics Handbook which recognises that in some situations (including schools, beaches, conventions, self-help groups) 'obtaining consent would interfere with the strength of the "naturalist" approach of ethnography'. Nevertheless, Kippax has suggested recently that 'In the current climate and the increasing bio-medical composition of many ethics committees, it is my opinion that... the ethnographic study of sex sites would not get ethics approval.' (Susan Kippax, e-mail to Mark Israel, 29 September 2004)

BERMINGHAM

Suzanne Bermingham is a doctoral student at National Centre in HIV Social Research (NCHSR) investigating people's experiences of assisting someone to die in Australia. Her study involved 62 in-depth interviews with people who had assisted someone to die, or had made plans for their own assisted death.

She applied for ethics approval in 1996 from what was then her local HREC, the Macquarie University Ethics Review Committee (MUERC), and the AIDS Council of NSW (ACON). ACON approved the proposal within two months but it took eight months to obtain MUERC's approval. The HREC raised three issues: the risk of harm to participants; the level of confidentiality that could be provided; and, Bermingham's legal liabilities if she did not report to authorities details of criminal behaviour that she discovered. Unlike the previous cases involving NCHSR at the University of New South Wales, the HREC at Macquarie University did not require signed consent forms.

Bermingham had offered to provide a list of counselling services at the end of the interview. Following discussions with her HREC, she also agreed to conduct initial interviews on premises where a registered professional counsellor would be available on site for backup. After ten interviews were conducted without incident, this requirement was dropped.

Like Lowman and Palys, Bermingham had wanted to offer participants an assurance of *absolute* confidentiality. MUERC insisted on an assurance of only *limited* confidentiality. The following paragraph was inserted in the informed consent form:

So as your consent can be fully informed we must stress that under most/all jurisdictions in Australia, those who are involved in euthanasia and assisted suicide remain potentially liable to prosecution. While we will be taking all steps necessary to remove any identifying information from both the tapes and the transcripts we must point out that we would be obliged to hand over these records if ordered to do so by a court or person acting within their lawful authority.

Many of the participants had assisted a friend or partner to die and saw little risk in disclosing to a researcher. Others, however, were extremely nervous about revealing previously undisclosed illegal behaviour. Bermingham was placed 'in the invidious position of inviting people to reveal criminal behaviour that may otherwise never come to light, yet, somewhat absurdly, warning participants this disclosure may ultimately be used against them':

For me, a conflict existed between the basic ethical principles of beneficence and non-maleficence (to do no harm) which guide research conducted on human subjects..., and the university's interest to uphold the law of the land. (Suzanne Bermingham, e-mail to Mark Israel, 25 October, 2004)

During her taped interviews with non-professionals who had assisted in suicides, Bermingham found it extremely difficult to avoid recording names, dates and locations pertaining to a death: 'the spectre of limited confidentiality was a very real stressor for me until tapes had been destroyed, and transcripts de-identified' (Suzanne Bermingham, e-mail to Mark Israel, 25 October, 2004). As a result:

Given the research methodology, it would be impossible to guarantee that the researcher would never gain information that could be of 'material assistance' in securing the apprehension of the offender. (Bermingham, 1997 p. 14)

The third of MUERC's concerns proved to be the most problematic, and took six months to resolve. Under s.316 of the *Crimes Act 1900* (NSW) a researcher with information about a serious offence could theoretically be charged with concealing this offence. A lawyer on ACON's ethics committee raised this issue, but concluded that this should not be seen as an impediment to conducting such valuable research, and that care be taken when conducting the interviews to avoid learning information that could be useful to a police investigation (see also Magnusson, 2003).

However, when MUERC became aware of this section in the Act, it rescinded the ethics approval that it had granted just weeks previously.

In the subsequent months, both the University and NCHSR obtained legal advice:

Both opinions argued that s.316 should not be an impediment to bona fide research, and that whilst most elements of s.316 would be satisfied (in that I would gain information about a serious offence, and that this information could be of material assistance in securing the apprehension of the offender), it could be argued that the undertaking of confidentiality given by me would constitute a 'reasonable excuse' not to report the matter. This argument rested on the following two points: firstly, the information would never be revealed without an undertaking of confidentiality on my behalf; and secondly, the research itself had a beneficial public purpose, and could not take place without this undertaking. The legal opinions concluded that it would be unlikely a prosecution would be launched under the Act. (Suzanne Bermingham, e-mail to Mark Israel, 25 October, 2004)

Following this advice, MUERC granted approval for the project in mid-May, 1997.

DE LAUNEY

Carol de Launey's survey of injectors in 1993 (de Launey, 1993; Reilly and de Launey, 1996) provides a good example of the ill-informed responses of a newly-established research ethics committee. However, it also suggests that some researchers are able to negotiate a successful outcome with some committees if they have the time and patience to do so and are prepared to show some flexibility.

De Launey's survey used questions from a national, government-sponsored, survey of drug injectors (ANAIDUS-Q). Participants were paid for their involvement using a grant provided by the regional health department. Payment was necessary to ensure that they would come back for the second administration of the questionnaire. De Launey's ethics committee at Southern Cross University insisted that she obtain details of ethics approval for the national survey, including an ethics approval number.

I found it difficult and embarrassing, and spent time 'educating' the committee during the early years... this was partly because the uni was a new one, and there were no drug experts on campus... (Carol de Launey, e-mail to Mark Israel, 9 October 2004)

The committee also initially required, as a condition of approval, that de Launey obtain the **signature of every participant** in her pilot study into illicit drug injecting. The committee placed the need to ensure de Launey's financial probity above the **risk to participant anonymity** or the **threat to participation rates**. Unlike the committee, the funding department did not require signatures. De Launey refused to obtain signatures, citing the methodology of the national survey – payment but no signatures – as an indication of contemporary standards. Instead, she offered to ask a worker from the New South Wales Department of Health needle exchange to counter-sign each payment.

I was able to respond to many of the ethics committee's concerns at various times by citing contemporary research standards, particularly government-commissioned research conducted by other Australian universities... although answering concerns in this manner took time and effort. On occasion I found it easier to change the research design, particularly if the change was minor... (Carol de Launey, e-mail to Adrienne Bailey, 27 March 2003]

TOMSEN

Some HRECs seemed to **overestimate** both the **magnitude and the probability of risks**. For example, in 2001 the HREC at the University of Newcastle asked Stephen Tomsen what actions he would take if the participants in a focus group in a study of security staff and young men became violent in the course of group interviews that were to be conducted in the function rooms of a licensed club. It is possible that the committee misunderstood what was meant by a focus group on violence. Tomsen reassured the committee that he would ask people not to be violent and, if necessary, would leave and ask for assistance from those responsible for the management of the premises. The HREC then asked Tomsen whether the researchers would be male or female as they thought that this would be 'very relevant' to the proposal. This matter had occurred to Tomsen, a researcher who had investigated masculinities, but he diplomatically replied that he could use researchers of either sex and would welcome the HREC's advice on 'the most ethical course of action in this regard'. He received no response. Tomsen's strategy for dealing with the concerns of the committee is an option that may be available to other researchers: **ask the committee for advice** until members end up patently out of their depth. Other researchers have reported some success when they **ask HREC members to justify their concerns** either with reference to the National Statement or to some specific harm that they seek to avoid. Rather than forcing an HREC into a corner by attacking it, it may be more effective to request that they explain the conditions that they seek to impose. One criminologist noted wryly that if HRECs left their comments at the level of advice, researchers could simply acknowledge the advice and thank the committee for its help.

KOHN

Some HRECs have adopted the practice of insisting that interviews should either be conducted in public places or that the **researcher should be accompanied** by another person. This runs counter to long-standing practices in parts of the social science, particularly in anthropology and family research. It also shows little sensitivity to the limited resources available for much social science research. It is difficult to imagine, for example, justifying salaries for two researchers on a research grant simply on the basis of **university research ethics policies that cannot be connected to the National Statement**. This case study also demonstrates some of the difficulties that researchers have faced responding to advice given by committee administrators who may have little or no experience of social science research.

In 2001, Sydney University's HREC attempted to stop Abigail Kohn, a postdoctoral fellow at the Institute of Criminology, interviewing legal gun owners in their homes despite the fact that she had successfully adopted this method with a similar group in the United States (Kohn 2000; 2004) and would have already met her interviewees at shooting competitions. Kohn's negotiations with the HREC ran from August to November 2001.

I had been frustrated because weeks had gone by while I waited for approval, in part because the Committee had initially sent me the wrong paperwork. They had mixed up my proposal with someone else's and sent me that person's paperwork. They also had trouble identifying which application was mine when I called to report the error and request my actual paperwork – another week went by before I had the correct paperwork in front of me for review. (Abigail Kohn, e-mail to Mark Israel, 6 October 2004)

According to Kohn, the HREC objected to the possibility that she might endanger interviewees and/or herself by going to interviewees' homes where their guns were kept. The committee was also troubled by the 'potential impropriety' involved if she visited interviewees on her own. The HREC's policy – possibly directed at students – advises that:

In most cases where there are such acceptable reasons [for researchers to visit participants at home] the subject should have a friend/chaperone present and so should the researcher. This is to protect both the subject and the researcher from any charge of impropriety.

<http://www.usyd.edu.au/ethics/human/pol/data.html#d>

Fitzgerald (2004) reported that several other universities have similar policies but found it difficult to identify the cause of the committees' concerns: 'This is not a policy handed down from the national level and is not in the published national guidelines' (Fitzgerald, 2004 p. 2).

Kohn interpreted the response of her committee as sexist paternalism – 'would they have raised this concern if I was a male researcher interviewing gun owners?'. On the basis of this policy, the answer appears to be 'yes'. Kohn believed that suggestions from the administrator of the committee that she ask a research assistant or a colleague to accompany her to each interview indicated how little some of those people engaged in the ethics review process knew about the realities of researchers' lives:

This shows a true ignorance about how research is conducted, how busy (and stressed) faculty are, and how out of touch the ethics committee is with regard to the dynamics of how faculties (and research) operate. If this is how research is supposed to be conducted, how the heck would anyone get any work done?... I actually found myself speechless on the phone, and then immediately angry that I had to explain to this Ethics Committee administrative contact how inappropriate and impossible it would be for me to ask my supervisor to accompany me on all my interviews. What if those interviews had to be conducted out of state, or even out of the country? Who would have been able to accompany me then? Unbelievable. (Abigail Kohn, e-mail to Mark Israel, 6 October 2004)

Although the committee issued a strong warning against Kohn visiting people's homes, she reduced the committee's concerns by taking a mobile phone with her and logging her interview schedule with her Institute's administrator, an arrangement that required Kohn to depend on the willingness of the administrator to take on a responsibility that fell well beyond her job description.

CARTWRIGHT

HRECs may possess very limited knowledge of the sensitivities of particular groups. As a result, members of the committee may become overprotective, making it difficult for researchers to talk to people about activities that form part of their everyday lives. The degree to which an HREC can intervene may be unpredictable even to researchers with significant experience of working with the National Statement.

Sophie Cartwright is a doctoral student at the Australian National University who was studying the rise of the illegal tobacco trade. Her proposed research included distributing questionnaires to school students in Years 10, 11 and 12 and running focus groups. She sought to reuse some of the questions contained in the Victorian Cancer Council's survey (1996) so that direct comparisons could be made across results.

The HREC at her university saw the use of illicit tobacco by minors as a sensitive topic and sought to protect children from harm. Cartwright was deeply concerned that the HREC appeared to want her to tell participants that she did not support the behaviour.

In addition, Cartwright believed the committee focused on different points in each subsequent submission. As a result, her application for ethics approval was subject to a lengthy process of revision as the committee balked at Cartwright's informed consent process, the questions that she was using, the possibility that participants might be incriminating themselves, and the generation of information about parental smoking patterns without their consent. This left Cartwright with the choice of either abandoning the project or changing the nature of the project to make it less controversial. Her submission went through five rounds of revisions and, although the process only took three months to complete, this meant that Cartwright had to wait for the beginning of a new school term in 2003, an additional delay of five months. While three months compares favourably with much longer processes identified by researchers in other universities, the additional postponement caused by the need to wait for the beginning of a new school term demonstrates the adverse impact on postgraduate research that any delays in approval might have.

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