

## STRICTLY CONFIDENTIAL?

*Integrity and the Disclosure of Criminological and Socio–Legal Research*

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*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. Researchers can justify protecting confidentiality by appealing to consequentialist-, rights- or fidelity-based arguments. Failure to respect confidentiality might not only affect one research project, but could have a ‘chilling effect’ on all criminological research. However, various researchers working in criminology, socio–legal studies and related fields have come under institutional, legal, physical and ethical pressures to disclose confidential information. They have been subpoenaed, imprisoned and have faced threats from armed drug dealers. To protect their sources, they have lied to correctional authorities, prosecutors and police (as well as to armed drug dealers). Drawing on an international literature, I examine some of the legal and methodological measures that researchers have taken to protect data, as well as some of the rationales that might justify disclosing information given in confidence by research participants.*

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 specific researchers and only in particular ways. The information is private and is voluntarily offered to the researcher in confidence.<sup>1</sup> In some research projects, negotiations around confidentiality may be fairly straightforward. Some researchers are able to operate in relatively predictable contexts, where standardized assurances about material 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.

Some forms of research may create significant risks for research participants. In criminological and socio–legal research, it is typically the researcher who approaches a potential participant and asks for confidential information to be revealed in exchange for . . . possibly not very much direct benefit (Robinson 1991). As two Canadian criminologists, John Lowman and Ted Palys, have argued:

Our research subjects divulge information in confidence about their own criminal activity . . . and sexual activity to a person who has asked them to divulge the information, with the full knowledge they are offering us ‘data’ that will at some point be compiled, analyzed and published. The researcher usually

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<sup>1</sup> There may a distinction between safeguarding information and protecting the identity of people who have offered confidential information. Sometimes, this distinction is characterized as the difference between confidentiality and anonymity (e.g. Bjarnason and Adalbjarnardottir 2000), although, like many writers, I describe both in terms of confidentiality.

initiates the interaction and, in our experience, the respondent divulges the information only on the condition that they are not named. 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 Palys 1999a)

Yet, in some instances, researchers may feel that information provided by participants in confidence should not remain confidential. In this paper, I explore the difficulties associated with maintaining integrity as a researcher, while deciding whether to disclose or protect information given to criminological and socio–legal researchers by research participants in three difficult cases: first, when put under pressure by third parties to disclose information; secondly, when the nature of the information disclosed reveals past injustice or future harm; thirdly, when it seems that some people do not deserve to be offered confidentiality.

The first case appears to be the most common for, and perhaps the most discussed by, researchers in criminology and socio–legal studies. Several criminologists have noted how they have faced pressure from criminal justice agencies to hand over confidential information (Polsky 1967). For example, 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. (Fitzgerald and Hamilton 1996: 1593)

Fearing that police might seek access to their data by obtaining a warrant or by placing fieldworkers under surveillance, the researchers suspended their fieldwork while they sought to clarify their legal position.<sup>2</sup>

The second issue has received attention as a result of a 1976 Californian case that explored the duties of a psychologist whose patient had told him that the patient intended to kill a particular woman.<sup>3</sup> Palys and Lowman (2001) described this problem as ‘heinous discovery’—what should researchers do if they discover that participants intend to harm either themselves or someone else? Similarly, what should researchers do if they find that someone has been the victim of injustice in the past and the researcher is now in possession of information that can ameliorate that injustice?

The third matter—to whom and to what extent should confidentiality be offered?—has rarely come under scrutiny, although a related matter of limited confidentiality was the subject of a recent debate in the *Canadian Journal of Criminology* and I shall return to this at the end of the paper. Although researchers seem to offer confidentiality routinely, not every participant needs to be offered confidentiality. Some researchers may feel that it is inappropriate to offer confidentiality to people in public office who are speaking about their public work. Neither Rainwater and Pittman (1967), in their work on St Louis housing projects, nor Sudnow (1965), in his research on public defenders, offered anonymity to the senior officials that they had investigated. Rainwater and Pittman argued that individuals engaged in roles for which they are socially accountable had no automatic right to anonymity, although there might be reasons for researchers’ granting it. Indeed, they called upon colleagues to ‘rethink our automatic

<sup>2</sup> For earlier American examples, see Carroll and Knerr (1977), reproduced, in part, in Bond (1978: 46).

<sup>3</sup> Tarasoffv. *Regents of the University of California* (1976) 551 P.2d 334.

assumption that we offer to maintain the privacy of our information' (Rainwater and Pittman 1967: 365). Their proposition in 1967 is perhaps equally appropriate today.

More controversially, some commentators and journalists have argued that some types of informant or information do not deserve to be offered protection. Recently, for example, Richard Yuill, a doctoral student in Glasgow, guaranteed confidentiality to men that he interviewed, who admitted to being involved in the sexual abuse of children (Mega 2002a). The work was described as 'perv research' by the British tabloid newspaper, *The News of the World* (Mega 2002b). Although Glasgow University concluded that its rules had not been breached (Mega 2001), the student was instructed to change his research methodology (Mackie 2001), although this proved insufficient to avert a police investigation into the student's conduct (Mega 2002a). Of course, not every research subject wants confidentiality. During research on sexual abuse in Latin America, Lisa Fontes (1998) found that shanty-town leaders were angry that they were not being given adequate recognition for their work:

. . . 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: 56)

As Kathleen Blee (1998) discovered in her research on white racism in the United States, some participants are prepared to threaten researchers in order to ensure that their names *are* used.

In this paper, I explore various justifications for confidentiality, and the legal and methodological measures that may be taken to protect confidentiality. I consider when disclosure might be legally and professionally permissible and draw on the concept of integrity to examine when it might be ethically defensible. Finally, I examine how such a notion of integrity might structure the kinds of promises of confidentiality that we might be prepared to make to research participants.

### *Non-Disclosure*

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.

Consequentialist arguments examine the results of an ethical practice and may consider what would happen if the practice did not exist. In medicine, patients who did not trust a doctor's assurance of confidentiality might not disclose important information. In relying on a doctor's trustworthiness, a patient may be making him or herself vulnerable, because 'when we trust another person we grant them discretionary powers, which include the power to help or harm the one trusting' (Rogers 2002: 77). Similarly, interviewees might be reluctant to reveal secrets to social scientists if they thought that the information might be freely disseminated to third parties (O'Neil 1996)—a point identified by both Australian and American researchers:

Where there can be no trust between informant and researcher, there are few guarantees as to the validity and worth of information in an atmosphere where confidence is not respected. (Fitzgerald and Hamilton 1997: 1102)

... if fieldworkers were to reveal their personal sources of information ... , it would not be long before they had no personal sources of information left. (Van Maanen 1983: 281)

These consequences seem to be particularly likely where the research topic is sensitive (Singer *et al.* 1995) and where dissemination of the information would have adverse consequences for the participant (see, e.g. Knox and Monaghan 2003).

Researchers who break confidences might not only make it more difficult for themselves to continue researching but, by damaging the possibility that potential participants will trust researchers, might also disrupt the work of other social scientists.

The second justification for confidentiality is rights-based. Allen (1997) maintained that everyone had a right to limit access to his or her person. Such a right encompassed informational, physical, decisional and proprietary privacy (property interests in the person). Beauchamp and Childress (2001) argued that our right to privacy rested on the principle of respect for autonomy. While some matters cannot or should not be concealed, people should have the right, as far as is possible, to make decisions about what will happen to them. In the context of research, they should be able to maintain secrets, deciding who knows what about them.

Finally, fidelity-based arguments rest on the view that researchers owe loyalty to the bonds and promises associated with research. They should be faithful to the obligations relating to respect for autonomy, justice and utility that are imposed by their relationship with research participants. Researchers should, for example, meet those expectations that research participants might reasonably hold about researchers' behaviour. By offering a promise of secrecy, researchers offered both to give and perform something. They offered to give allegiance and agreed, at minimum, to keep silent or, possibly, even to do more to guard a confidence. As Sissela Bok (1983: 121) noted, 'Just what performance is promised, and at what cost it will be carried out, are questions that go to the heart of conflicts of confidentiality'.

In some cases, participants may have commercial interests to protect and the resources and expertise to ensure that these protections are stipulated in any agreement. Consequently, research agreements may take the form of contracts. For example,

An agreement with a chemical company involved in an environmental clean-up or an insurance company involved in mass tort litigation may provide more rules governing confidential data and subpoenas than a short form of consent and confidentiality assurance that might be used in a study of mentally ill homeless persons or elderly medical patients. Such an agreement might require notification if a subpoena is served or the use of best efforts by the researcher to resist production of confidential data; it might limit the 'except as required by law proviso' to a court order, not merely a subpoena; and it might provide for return or destruction of the data at the conclusion of the study. (Traynor 1996: 122)

Contracts with government 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.<sup>4</sup> In their review of confidentiality issues arising as a result of

<sup>4</sup> It is not unknown for clients to require researchers to relinquish all printed and electronic copies of reports written as consultants. In some instances, this may be quite appropriate. However, some writers have suggested that such commercial-in-confidence clauses have resulted in the privatization of knowledge, limiting public access to information generated under research contracts. This not only restricts access to the research but also fetters what academics say and write about that work. As such, this may be portrayed as a serious threat, both to the free flow of information that is the backbone of the academic community and to independent scrutiny, one of the mechanisms for holding governments or other organizations accountable for their actions (Israel 2000).

sharing administrative data gathered as part of American welfare programmes, Brady and his colleagues (2001) provided a range of examples that they thought should be specified in any written contract (see Table 1).

If we are to protect the confidentiality of information—for whatever reason—we need to be aware of how we might best do so. Threats to the confidentiality of data may be rare but, as I illustrate in this paper, they are not so uncommon that they can be ignored by researchers. For example, during research with property offenders in rural east Tennessee, American criminologist Kenneth Tunnell discovered that an offender whom he had interviewed in prison had assumed a false identity before his arrest—an identity that allowed him to qualify for early release from prison to a halfway house. This information was leaked by a member of the research team and Tunnell was confronted by the director of the halfway house. Tunnell was concerned about the reaction of correctional authorities when they realized that the entire department ‘had been duped by a three-time loser’ (Tunnell 1998: 209): ‘I denied it was true and claimed he was misinformed. I lied. I lied and was glad that I did. I lied and today remain happy that I did.’ (Tunnell 1998: 209).

I shall return to Tunnell’s decision later in this article. However, there are two less controversial kinds of measures that can be taken to preserve confidentiality. The first is methodological, the second legal. Researchers have acted to protect the confidentiality of research participants and their activities by either not seeking or recording names and other data at all, or by removing names and identifying details of sources from confidential data at the earliest possible stage. These precautions offer the advantage of helping to guard data against theft or improper disclosure by other members of a research team. For example, in quantitative research on child abuse and neglect, a North Carolina research team (Kotch 2000) required participants to seal their responses to sensitive questions. These responses were then separated from other information that might have identified the respondent. During his qualitative research with property criminals, Tunnell also took a range of methodological precautions. He:

... never spoke participants’ names during the recorded interviews, which were themselves quickly transcribed and the tapes erased. Although I kept an identifier list and assigned numbers to pertinent information obtained from individuals’ case files, names were not connected to the information from the files or interviews. (Tunnell 1998: 208)

Working with street children in Haiti, Kovats-Bernat, an American anthropologist, was concerned that his notes would be used by the state’s Anti-Gang Unit to arrest the

TABLE 1 *Contractual procedures for protecting the confidentiality of individuals in research projects using administrative microdata files (from Brady et al. 2001: 255)*

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Prohibition on re-disclosure or re-release
Specification of electronic data transmission (e.g. encryption methods for network access)
Description of storage and/or handling of paper copies of confidential data
Description of storage and/or handling of electronic media, such as tapes or cartridges
Description of network security
Requirement for notification of security incidents
Description of methods of statistical disclosure limitation
Description of disposition of data upon termination of contract
Penalties for breaches

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children. Avoiding detailed field notes, at times he relied on a combination of ‘meticulous memorization of entire conversations’ and surreptitiously scribbled jottings on ‘scraps of paper that I kept in my boot’ (Kovats-Bernat 2000: 216). He urged other researchers, working in dangerous places, to remind themselves daily that ‘some of the things that we jot down can mean harassment, imprisonment, exile, torture, or death for our informants or for ourselves and take our notes accordingly’ (Kovats-Bernat 2000: 216; see also Salovesh 2003, on his work as an anthropologist in Mexico).

Other researchers have counselled research participants not to give them specific information, such as names or details of past criminal events for which they had not been arrested (Hall and Osborn 1994; Sluka 1995; Decker and van Winkle 1996; Feenan 2002) or future crimes that they planned to commit (Cromwell *et al.* 1991). Avril Taylor (1993) and Mike Maguire (2000) were concerned that, if they received such information, they might be blamed by participants if police subsequently arrested them for such offences. As Bourgois was told by the owner of a crackhouse in Spanish Harlem:

Felipe, let me tell you something, people who get people busted—even if it’s by mistake—sometimes get found in the garbage with their heart ripped out and their bodies chopped up into little pieces . . . or else maybe they just get their fingers stuck in electrical sockets. You understand what I’m saying? (quoted in Bourgois 1995: 22)

Some researchers have gone to considerable lengths to safeguard their data. At various points in her research on drug dealing in California, Patricia Adler (1985) and her husband had to protect their data from suspicious and sometimes volatile drug dealers:

We encountered several threats to our collection of taped interviews from people who had granted us these interviews. This made us anxious, since we had taken great pains to acquire these tapes and felt strongly about maintaining confidences entrusted to us by our informants. When threatened, we became extremely frightened and shifted the tapes between various hiding places. We even ventured forth one rainy night with our tapes packed in a suitcase to meet a person who was uninvolved in the research at a secret rendezvous so that he could guard the tapes for us. (Adler 1985: 23)

The couple were so concerned about drawing police attention to their work that they did not seek access to Drug Enforcement Agency Data (Adler and Adler 1993). They also avoided any publicity by holding back on publications until they had finished their fieldwork (Adler 1985) and their subjects had altered or stopped their involvement in drug trafficking (Adler and Adler 1993). During her doctoral research on cannabis dealers, Jane Fountain (1993) used a cover story throughout her fieldwork, deploying it in one form to ward off the interest of police officers at criminology conferences. Other researchers have reported sending files out of the jurisdiction, and avoiding using the mail or telephone system so that data could not be intercepted or seized by police or intelligence agencies (Sluka 1989; 1995; Decker and van Winkle 1996; Feenan 2002; Kovats-Bernat 2002).

Identifiers, such as names, geographical clues and vernacular terms, can also be removed in the writing-up stage. In his work on the Republican movement in Northern Ireland, Sluka agreed to allow representatives of the paramilitary organization that he was studying to review his book manuscript prior to publication. As a condition of his research, Sluka had agreed to ‘alter anything . . . necessary to ensure the immediate security of any living member of the IPLO’ (Sluka 1995: 279). However, it can be difficult

to disguise locations (Gibbons 1975) or, indeed, hide the identity of some people from themselves, their peers, investigative journalists or officials (Lowson 1970; Ellen 1984). Patricia Adler (1985) undertook a study of drug dealers and smugglers who were operating in California at the upper level of the trade:

Dealers occasionally revealed things about themselves or others that we had to pretend not to know when interacting with their close associates. This sometimes meant that we had to lie or build elaborate stories to cover for some people. Their fronts therefore became our fronts, and we had to weave our own web of deception to guard their performances. This became especially disturbing during the writing of the research report, as I was torn by conflicts between using details to enrich the data and glossing over description to guard confidences. (Adler 1985: 26)

Freidson (1978) argued that identifiers should not simply be removed from data, but should be completely destroyed: ‘the only true protection, immune to shifts in the political winds and changes in state policy, lies in the routine destruction of identifiers the minute they are no longer necessary for the planned research’ (Freidson 1978: 159).

In quantitative research, practices of stripping data of individual identifiers may be compromised by improved capacities to manipulate multiple, linked data sets. While a survey might not include individual names or other unique identifiers, it may include sufficient identifying attributes to allow a person’s identity and/or various sensitive attributes to be inferred. In short, there may be only one 80-year-old, tertiary-educated, Canadian-born Buddhist female in a particular neighbourhood and, if data sets then revealed that unnamed individual’s income or number of sexual partners, confidentiality would clearly be compromised.

However, there are various statistical methods that can be used to disguise or conceal the identities of individuals whose attributes are reported in data sets. Disclosure

... can be limited by making sure that the amount of information about any particular person never exceeds some threshold that is adjusted upward as the sensitivity of the information increases. (Brady *et al.* 2001: 229)

Brady *et al.* noted two major methods that could be used to limit disclosure of sensitive information. The first involved altering the data and the second required restricting access to the data. As the United States National Research Council (2000) recognized, each method offers advantages and disadvantages. So, data alteration may allow data to be disseminated more broadly, but may affect the confidence that people can place on particular aspects of the data. Conversely,

Restricting access may create inconveniences and limit the pool of researchers that can use the data, but generally permits access to greater data detail. (Mackie and Bradburn 2000: 29)

Brady *et al.* listed various forms of data alteration (see Table 2).

Masking of data can occur in various ways (Brady *et al.* 2001: 261): by *sampling*; *eliminating obvious identifiers*; *limiting geographical detail*; *limiting the number of data elements presented*; *simulating data through microaggregation* (synthetic average persons are described from aggregated data); *adding top and bottom coding* on continuous data which would allow, for example, all people over 75 years old to be treated as one group; *recoding into intervals and rounding* (so that, for example, date of birth is transformed into an age group); *adding random noise*; *swapping, blanking and imputing*, and *blurring* data in ways that do not significantly change the statistical properties of the database, including

TABLE 2 *Methods for data alteration (from Brady et al. 2002: 259–60)*

Cross-tabulations	Present aggregate data in the form of tables
Aggregation	Creating rules for minimum number of units before information is reported
Suppression	Not providing any estimate where cells are below a certain size
Random rounding	Rounding cells to a certain level, rounding up or down on the basis of probability not proximity
Controlled rounding	Adjusting rounding so that published totals equal actual totals
Confidentiality edit	Selecting a small sample of firms and swapping or altering values
Tables of magnitude data	Suppressing sensitive cells to ensure that information about dominant contributors of data (such as near monopoly firms) cannot be inferred

error inoculation (contaminating statistical data in random ways so that it is impossible to determine whether the responses recorded from an individual were those that he or she gave) (Kimmel 1988).

One way in which researchers have responded to demands by third parties during court cases to see their research data has been to offer redacted material, i.e. information where the identity of study participants has been removed. In some cases, such as those involving short questionnaires, redacting data may be quite easy. In other cases, it may place an enormous burden on researchers. For example, in *Deitchman v. E.R. Squibb and Sons*<sup>5</sup> in 1984, the manufacturer of the drug diethylstilbestrol (DES) sought all the information contained in the University of Chicago's DES Registry of 500 cases. The Registry refused to breach patient confidentiality and Squibb offered to accept data stripped of identifying information. The task was described by the Chairman of the Department of Obstetrics and Gynecology at the University as 'herculean' (Crabb 1996; Wiggins and McKenna 1996).

Although criminologists and socio-legal scholars were not involved, similar fishing expeditions for research data were conducted by manufacturers in lawsuits involving tobacco<sup>6</sup> and the Copper Seven intrauterine device.<sup>7</sup> In the latter case, attorneys demanded 300,000 pages of documents from a non-profit institute that had undertaken research in the area (Wiggins and McKenna 1996). More recently, 10 American universities received subpoenas from tobacco companies, demanding thousands of documents from studies conducted in the previous 50 years (McMurrie 2002).

Other researchers have attempted to reach agreements with criminal justice agencies. In St Louis, Wright and Decker (1997) developed a written agreement with the police that allowed the researchers to be taken to the site of armed robberies by offenders, without any intervention from the police. Criminal justice agencies are not always this accommodating. In Western Australia, during her work on youth, AIDS and drug use, Wendy Loxley received assurances—although 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 South Australia, I negotiated a protocol with police that, under specific conditions, allowed students to interview sex-industry workers, without threat of police interference. When Feenan (2002) sought to reach an agreement with the prosecuting authority in Northern Ireland, during his research on informal justice

<sup>5</sup> 740 F.2d 556 (7th Cir. 1984).

<sup>6</sup> See *In re R. J. Reynolds Tobacco Co.*, 518 N.Y.S.2d 729 (Sup. Ct 1987); *R. J. Reynolds Tobacco Co. v. Fischer*, 427 S.E.2d 810 (1993).

<sup>7</sup> *Ankerv. G.D. Searle and Co.*, 126 F.R.D. 515 (M.D.N.C. 1989).



systems established by paramilitary groups, he received a non-committal (and completely useless) answer.

Some researchers may receive statutory protection for their data. In the United States, National Institutes of Health have issued confidentiality certificates under the Public Health Service Act<sup>8</sup> to individual projects or classes of research in the area of health. Projects conducted by the National Institute of Justice or the Office of Justice Programs can also receive statutory protection (Nelson and Hedrick 1983; Palys and Lowman 2002). In Canada, Statistics Canada researchers guarantee confidentiality to research participants under the protection of the Statistics Act 1985,<sup>9</sup> although this protection might not be absolute if challenged on the basis of the Charter or, possibly, provincial mandatory reporting laws (Palys and Lowman 2000).

In Australia, the Commonwealth Epidemiological Studies (Confidentiality) Act 1981 and the Australian Capital Territory Epidemiological Studies (Confidentiality) Act 1992 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). Researchers have found this legislation to be quite unwieldy. The Australian Capital Territory Act does not appear to allow disclosure of information in the public interest (Cica 1994) and Commonwealth laws can only cover prescribed epidemiological projects, conducted by or on behalf of the Commonwealth government (Loxley 1997). By 1996, only two studies had been listed (Dance 1998) and there was an 18-month waiting period for studies to be considered (Fitzgerald and Hamilton 1996).

Even when there has been no statutory protection, researchers *have* refused to reveal information to government investigators (James 1972; Kershaw and Fair 1976; Maisel and Stone 1998) or to courts (Gillis 1992; McNabb 1995; Picou 1996; O'Neil 1996; McCollum 1999; McLaughlin 1999; Wilson 2003).<sup>10</sup> As the following examples illustrate, the reasons for their decisions and the point at which they decided they could no longer cooperate with the legal system vary considerably.

In 1974, a Californian graduate student, observing police patrols, witnessed a police assault of a civilian (Van Maanen 1983). Although Van Maanen gave police internal investigators a sworn statement about the incident, the patrol officers were exonerated. The police officers sued a newspaper that covered the assault. When the paper subpoenaed Van Maanen's field notes, he refused to show them. Van Maanen decided that while he would be willing to testify about the assault, he was not prepared to hand over notes that contained

. . . raw details about questionable, irregular, and illegal police actions with the names of those involved. . . . Many of these incidents were, to be sure, merely conjecture on my part or unverified (and perhaps unverifiable) stories I had heard told by patrolmen. . . . But a few of these tales had been confirmed by my own observations. (Van Maanen 1983: 275-6)

Fortunately for Van Maanen, the officers' case was dismissed before the researcher had to face potential consequences of his decision.

<sup>8</sup> 42 U.S.C. s. 201.

<sup>9</sup> R.S. 1985, c. S-19.

<sup>10</sup> See also *Richards of Rockford v. Pacific Gas and Electric*, 71 F.R.D. 388 (N.D. Cal. 1976); *In re the Exxon Valdez* Re: All Cases, Misc. 92-0072 RV-C. (S.D. Ala. 1993).

In the 1980s, a New York student engaged in an ethnography of Long Island restaurants was subpoenaed, together with his field notes, by prosecutors investigating arson in a restaurant (Brajuha and Hallowell 1986).<sup>11</sup> A letter written by John Lofland, chair of the American Sociological Association's Committee on Professional Ethics, was cited in court by the American Sociological Association, the American Political Science Association and the American Anthropological Association. Lofland asserted the importance of maintaining the confidences of sources in a field study:

Ethically, social scientists have desired not to harm people who have been kind enough to make them privy to their lives. At the level of sheer civility, indeed, it is rankly ungracious to expose to public view personally identified and inconvenient facts on people who have trusted one enough to provide such facts! Strategically, fieldwork itself would become for all practical purposes impossible if fieldworkers routinely aired their raw data—their fieldnotes—without protecting the people studied. Quite simply, no one would trust them. . . .<sup>12</sup>

The student, Mario Brajuha, was able to maintain his promises of confidentiality by negotiating with prosecutors to remove the names of informants from sensitive material, but not before a lengthy and expensive court battle, which resulted in Brajuha's losing his money, his family and his desire to work in sociology.

In the late 1980s, Kenneth Tunnell and Terry Cox, two Kentucky-based researchers, were investigating a murder case, when defence attorneys attempted to block their research. Threatening legal action, the lawyers demanded the researchers' field notes, interview transcripts and the names of informants. Tunnell and his colleague ' . . . decided simply to lie and tell the attorneys that, due to their threats, we had destroyed the tapes and transcripts in question. . . . We believed a good poker face would conceal our nervousness' (Tunnell 1998: 211). The lawyers dropped their demands.

Although potential liability will vary between jurisdictions, researchers may be vulnerable to legal action in several ways (Fitzgerald and Hamilton 1997). If they refuse to disclose information where ordered by a court, researchers may be found guilty of obstructing the police in execution of a warrant, or even of contempt of court. In 1972, a Harvard political scientist, Samuel Popkin, failed to disclose to an American grand jury the names of and the data provided by government officials who had discussed a classified American Defense Department project with him (Carroll and Knerr 1973). Popkin spent eight days in jail.<sup>13</sup> In 1993, an American sociology graduate student spent 159 days in jail, in Washington State, for contempt of court.<sup>14</sup> Rik Scarce had failed to comply with a demand from a grand jury that he disclose information gathered during research concerning radical animal-rights activism. Scarce defended his actions in a later publication:

As information gatherers and transmitters, we will be bankrupt—morally and professionally—if we do not treat our information and the trust of readers and informants as so valuable that we would, in the worst case, defend them with our liberty. (Scarce 1999: 980–1)

In the only case in which a Canadian criminologist has been charged with contempt for failing to disclose confidential information relating to the identities of research participants

<sup>11</sup> *In re Grand Jury Subpoena*, 583 F. Supp. 991 (E.D.N.Y.), *rev'd*, 750 F.2d 223 (2d Cir. 1984).

<sup>12</sup> *Amici Curiae Brief of the American Sociological Association, American Political Science Association, and Anthropological Association* (2d Cir. 1984) (No. 84–6146), at app. 1. Cited in Wiggins and McKenna (1996: 82).

<sup>13</sup> *United States v. Doe (In re Popkin)*, 460 F.2d 328 (1st Cir. 1972).

<sup>14</sup> *Scarce v. United States*, 5 F.3d 397, 399–400 (9th Cir. 1993).

(Palys and Lowman 2000), a Masters' student, investigating the deaths of AIDS patients, was subpoenaed by the Vancouver Coroner to appear at an inquest.<sup>15</sup> In his interviews with people who had assisted in the suicides, Russel Ogden had offered absolute confidentiality, following a procedure approved by his university's ethics committee. Ogden agreed to discuss his research findings with the court but refused to divulge the names of research participants. With very limited support from his university, Ogden asserted that this was privileged communication between researcher and research participant. He won his case 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).<sup>16</sup> Two faculty members of Ogden's School of Criminology at Simon Fraser University argued that not only had the student acted ethically, but their university—in disassociating itself from Ogden—had not (Palys and Lowman 2000). Ogden met additional difficulties negotiating confidentiality when he attempted to extend his research as a doctoral student in the United Kingdom (Dickson 1999; Farrar 1999a; 1999b). In 2003, Ogden ran into further trouble when, as an independent researcher, he received a subpoena to appear as a prosecution witness in the preliminary hearing of a British Columbian woman, charged with counselling, aiding and abetting suicide. Palys and Lowman (2003) once again argued that the subpoena would disrupt Ogden's longitudinal research on non-physician-assisted suicide.

As one anthropologist acknowledged, 'The prospect of having to refuse to respond to a subpoena or to testify clearly chills the depth of researchers' inquiries' (McLaughlin 1999: 934). As a result, some American researchers have argued that research data should be privileged—shielded from court discovery (Levine and Kennedy 1999). As Ogden discovered, some protection for communications between researcher and research participant may be available under common law in Canada.

### *A Strategy for Protecting Confidential Data*

Researchers can only very rarely invoke legislative protection to maintain the confidentiality of their data. However, Michael Traynor (1996) identified a range of techniques that researchers can use both while planning and conducting their research, as well as after legal action is initiated (see Table 3). While Traynor's recommendations related to the American legal system, many of his suggestions should be relevant to other jurisdictions.

### *Disclosure*

Both Bok (1983) and Beauchamp and Childress (2001) concluded that obligations of confidentiality were only *prima facie* binding. This means that they cannot be considered absolute and, in some situations, researchers should contemplate disclosing to a particular person or group information that they had received under an implied or explicit assurance of confidentiality. So, while many researchers have sought to avoid

<sup>15</sup> *Inquest of Unknown Female* (1994) Vancouver Coroner Case File 91-240-0838. Cited in Palys and Lowman (2002).

<sup>16</sup> In Ogden's case, the Canadian Supreme Court recognized a four-part test, devised by the American academic lawyer, Henry Wigmore (1905), as the appropriate means for deciding whether communication should be deemed to be privileged and, therefore, not required to be disclosed in court (Nelson and Hedrick 1983; Traynor 1996; and see Lowman and Palys 2001b).

TABLE 3 *Strategies for countering subpoenas for research (adapted from Traynor 1996)*

The planning stages	Identify reasons for confidentiality Give confidentiality assurances sparingly Obtain statutory confidentiality protection, if available
Research in progress	Unlink names and identifying details of sources from confidential data and safeguard the data Comply with requirements of your institutional research ethics committee
After the subpoena arrives	Consult with your management and legal counsel immediately Notify confidential sources and study participants when there is risk of disclosure Make timely service of written objections Negotiate an acceptable limitation of subpoena or move to quash or modify it Seek an adequate protective order
When disclosure has been ordered	Seek recovery for costs of compliance with subpoena, when possible, and appropriate Request a court order that may help to protect you from liability for disclosure and/or require party who issued subpoena to indemnify you If trial court orders disclosure of confidential data, consider requesting a stay as well as review by an appellate court Develop constitutional issues and policy questions and preserve significant matters for appellate review Consider refusing to obey a final and binding court order of disclosure and going to jail for contempt

releasing confidential information, there are some situations in which researchers have argued that it would be appropriate to breach confidentiality.

There are various situations in which, in law, it might be permissible for researchers to disclose information that they had held in confidence. This does not mean that it will 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. Secondly, the law offers no protection to research participants if the information released has no proprietary value. Thirdly, 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.<sup>17</sup> In Canada, Australia, New Zealand and the United Kingdom, the courts would accept that a duty of confidence is not breached by disclosure of iniquity to the proper authorities (Cica 1994; 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*,<sup>18</sup> Canadian courts accepted that a psychiatrist who is seeing a client for a pre-trial assessment could divulge to the court the client's revelation that he intended to murder Vancouver prostitutes.

<sup>17</sup> *Wv. Edgell* [1990] 2 WLR 474; *Tarasoff v. Regents of the University of California* (1976) 551 P.2d 334.

<sup>18</sup> [1999] 1 S.C.R. 455.

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 or elder abuse. The legal obligations of researchers who do not fall into any of the named professional categories are not always clear (Steinberg *et al.* 1999). As we have seen, courts may also order documents to be disclosed during criminal investigations or civil litigation. Of course, these are legal and not ethical obligations, and researchers and courts may reach different conclusions as to what the right course of action might be.

Professional associations appear to be divided about whether researchers could refuse to follow a court order on the basis of professional ethical obligations. Section 4 of the British Society of Criminology Code and s. 5d of the Australian and New Zealand Society of Criminology Code make references to respecting undertakings of confidentiality. The latter also requires members to ‘comply with all legal requirements’ (Australian and New Zealand Society of Criminology Code, s. 5a). While the British Code requires members to ‘work within the confines of current legislation’ (s. 4(iv)), this could be interpreted more narrowly to include only matters relating to data sharing in the context of particular kinds of laws.

On the other hand, two American associations appear to require researchers to take greater risks to protect informants. Drawing on a 1989 American Sociological Association Code (s. 11), the American Society of Criminology Draft Code (s. 19) and the American-based Academy of Criminal Justice Sciences Code (s. 19) state that:

Confidential information provided by research participants must<sup>19</sup> be treated as such by criminologists, even when this information enjoys no legal protection or privilege and legal force is applied.

This seems to place researchers in the unenviable position of being required by their professional association to violate court orders (Lindgren 2002). While the American Sociological Association dropped the second half of the sentence in their revised 1997 Code (Lowman and Palys 1999b), its Committee of Professional Ethics contended that this did not imply that researchers *should* divulge confidential information under pressure from the courts (Iutovich *et al.* 1999; Levine and Kennedy 1999).

Finally, the British Socio–Legal Studies Association grants researchers considerable latitude to make their own decisions, as long as informed consent is received from participants:

Research participants should be informed of obligations under law, e.g. the risk that the researcher will be required to give evidence or reveal documents, which may make it impossible for socio–legal researchers to keep certain information confidential without breaking the law. (s. 7.3)

In the face of such conflicting professional requirements, and legal requirements that vary between jurisdictions, perhaps it is not surprising that researchers, who may belong to several professional associations and be engaged in work across several jurisdictions, may struggle to reach and defend a coherent ethical position.

### *When Can We Disclose?*

The three different consequence-, rights- and fidelity-based justifications for confidentiality provide different ways of thinking about whether and to what extent breaches of

<sup>19</sup> The word ‘should’ is substituted for ‘must’ in the Academy of Criminal Justice Sciences Code.

confidentiality might be justified on ethical grounds. Researchers may find that if they do not breach confidentiality, then there is some possibility that their confidants may hurt themselves or may harm an innocent third party. What should researchers do if they uncover a miscarriage of justice and are in a position to prevent the wrongful conviction of a third party for a serious offence?

Almost all professionals would be willing to reveal the secrets of someone who was temporarily mentally incompetent and was about to do him- or herself irreparable damage. So, a researcher might reveal to a doctor the name of a drug with which a research participant had overdosed (see discussion in Carey 1971; Power 1989). However, researchers are less likely to be able to justify revealing information about drug use if the research participant's health were not in immediate danger and the drug-taker had carefully considered what he or she was doing.

In the field of bioethics, Beauchamp and Childress (2001) developed a starting point for assessing whether to infringe obligations of confidentiality on the basis of possible consequences of a failure to disclose. They focused predominantly on risks to third parties. They argued that the weight of the obligation to breach confidentiality increased as the probability and magnitude of harm increased. In borderline cases, they suggested that researchers consider the foreseeability of a harm, the preventability of the harm through the intervention of the professional (presumably interventions that did not require a breach of confidentiality), and the potential impact of disclosure. Of course, they recognized that 'Our attempts to measure probability and magnitude of harm are imprecise in many cases, and uncertainty will be present' (Beauchamp and Childress 2001: 309).

The 1997 American Sociological Association's Code of Ethics allows researchers to consider breaching confidentiality if, in unanticipated circumstances, they receive information about clear and prospective, serious harm (s. 11.02(b)). Serious harm is defined as life- or health-threatening. Lowman and Palys (2000) argued that, in such cases of 'heinous discovery', researchers should distinguish between the kinds of serious harm that they could anticipate discovering during a particular piece of research and those that they could not. In the first instance, Lowman and Palys argued that researchers had two options: either be prepared to hear about such activities and keep quiet, or do not undertake the research (see also Wolfgang 1981).

In other words, doing research with would-be nuclear terrorists will mean making a pledge of unlimited confidentiality, with the full intention of upholding it. If the ethical conflict creates too much of a personal burden, then we believe that the ethical choice is to not do the research. Our personal decision in this regard is straightforward: we do not anticipate conducting research with would-be nuclear terrorists (2000, s. III-5C).

Drawing on experiences of witnessing police violence during his doctoral research in the United Kingdom, Clive Norris (1993) reached a similar conclusion:

Given that I had expected to encounter police deviance but had, none the less, still made promises of anonymity and been sensitive to the issue of informed consent, then I had no right to change my mind when confronted with such behaviour. (Norris 1993: 140, but see Carroll 1980 for a different conclusion)

As a result, Lowman and Palys have supported Ogden throughout his struggle to research non-physician-assisted suicide. Indeed, it seems that they would also support Yuill's decision to offer unlimited confidentiality in his research on paedophiles. Or, at

least, they would subject to the limitation of whether a researcher might anticipate hearing about such kind of harm. Like the American Sociological Association, Lowman and Palys acknowledged that sometimes researchers discovered information about serious future harms or past injustices that had nothing to do with their current research. This, they maintained, was information that they would be prepared to divulge, while ensuring the safety of all parties and minimizing the extent to which the confidence would be breached. As a result, Lowman and Palys described the assurance that they would give research participants as ‘unlimited’ as opposed to ‘absolute’.<sup>20</sup>

Lowman and Palys’ position on this point is consistent with that of Sissela Bok. Bok (1983) argued that people who provided information in confidence could not expect to maintain their right to secrecy if they acted in bad faith by, for example, intending to harm a third party. In the context of HIV transmission, Gillett (1987) termed such reliance as ‘moral free-loading’. Bok suggested that someone who knew of the potential harm could act to counteract the plan or, failing that, warn the potential victim, as long as the confidence was violated only to the extent necessary to forestall the harm. For Bok (1983), when considering whether to breach a promise, researchers must consider whether it was right to make or accept the promise in the first place, whether the promise was or is binding, and under what circumstances it might be justifiable to override it.

When researchers decide that promises of confidentiality are not binding, they *may* be in a position to disclose information. However, this is a long way from saying that they *must* disclose.

### *Integrity and the Promises that We Make*

This paper may disappoint some readers. It offers no sharp distinction between those occasions when researchers should disclose or protect information. Perhaps this should not be much of a surprise—ethical considerations in research are rarely clear-cut. However, I do advocate a way for researchers to make their decisions—one that rules out some decisions and furthers discussion on other matters, because it draws on the collective integrity of researchers in criminology and socio-legal studies.

Stephen Carter (1996), professor of law at Yale University, argued that integrity required three elements. First, people who acted with integrity needed to reflect on the differences between right and wrong ways of acting. Secondly, they had to act consistently in accordance with the result of their reflection so that there is coherence between principle and action, and principle and motivation (McFall 1987). Actions needed to be performed despite the possibility of having to face or take responsibility for unpleasant consequences. Thirdly, actions also had to be open and transparent, so that people operated in a way that advanced public dialogue on tough moral questions. In short, acting with integrity meant:

(1) *discerning* what is right and what is wrong; (2) acting on what you have discerned, even at personal cost; and (3) *saying openly* that you are acting on your understanding of right from wrong. (Carter 1996: 7)

How might an approach based on Carter’s definition of integrity influence the promises that researchers might make? A review of work in criminology and socio-legal studies

<sup>20</sup> Private Communication from John Lowman to author, 23 February 2003.

suggests that researchers have formulated several forms of promises. Some academics have offered unlimited confidentiality; a second group have provided only limited confidentiality, their promise circumscribed by the boundaries imposed by the law; a third set of scholars have added the further condition that they will tell a third party—their employers, sponsors, or a specific state agency—details of particular kinds of activities.

### *Unlimited Confidentiality*

Several criminologists have been prepared to offer unlimited confidentiality. Patricia Adler (1985; Adler and Adler 2002) in work on drug smuggling to the United States, John Fitzgerald and Margaret Hamilton (1996; 1997) during research on drugs in Australia, Russel Ogden in his study of non-physician assisted suicides in Canada (1994), and Ted Palys and John Lowman (2001) in work on Canadian prostitution each sought to offer such protection. Ogden had said that he would not divulge confidential information under any circumstances and endured a lengthy court battle to protect his informants, while Palys and Lowman told their institutional ethics committee that—like Popkin and Scarce—they might be prepared to go to jail to protect their sources. Marvin Wolfgang (1981) would probably have agreed with these decisions. Adler, Palys and Lowman, and Fitzgerald and Hamilton have all argued that it might become impossible to research particular areas, such as prostitution and illicit drug supply and use, unless informants could be properly protected.

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 2002: 518)

As I have noted, various legislative measures in North America and Australasia recognize that some research participants should be offered unlimited confidentiality.

However, this position is not without its critics. Palys and Lowman have been challenged for offering unlimited confidentiality. For Geoffrey Stone (2002), professor of law and former provost at the University of Chicago, the two Canadian researchers were at fault for failing to warn participants that the agreement could only be fulfilled by breaching the law, thereby involving participants in an unlawful agreement.<sup>21</sup> Stone also argued that such an offer placed researchers and their universities in an embarrassing political and legal situation, vulnerable to a civil suit from research participants if the researcher breached the guarantee and criminal action if researchers defied a court order.

Stone maintained that it was not ethical for researchers to offer full confidentiality if the only way that they could fulfil the promise was by defying the law:

The researcher had no business—professionally, legally or ethically—making the promise in the first place. By making the initial promise, the researcher falsely constructs the role of martyr. (Stone 2002: 26)

Rather than calling for civil disobedience on such a matter, Stone argued that researchers should lobby the legal and political system to provide protection. Palys and Lowman can hardly be faulted on this score. For the last few years, they have pressed

<sup>21</sup> Stone is not entirely accurate on this point—Palys and Lowman *do* warn research participants about the risk that a court may order disclosure. However, they also warn participants that the research team does not intend handing over confidential information to courts (Private Communication from John Lowman to author, 23 February 2003).



for action by their own university (Lowman and Palys 1999a; 2000), professional association (Lowman and Palys 1999b) and national research councils (Palys and Lowman 2003) on the matter. They have also called for legislative change in their own jurisdiction of Canada (Palys and Lowman 2002). All these actions meet the standard of integrity advocated by Carter. Nevertheless, Stone asserted that if, after sustained effort, no changes were forthcoming, then civil disobedience would still not be warranted on what he regarded as a relatively insignificant matter.

Another way of fulfilling a commitment of unlimited confidentiality would be by deception. Although I applaud Tunnell's honesty in revealing what he did and why, clearly Tunnell's decision to lie to correctional services' personnel would not have met with Carter's approval. There were times in my own research on South African political exile (Israel 1998; 1999) when I contemplated what I would have been prepared to do to protect interview data from agents of the South African state. Although I probably would have been willing to lie, I did not have to do so. However, we could (and I would) distinguish between the position of a researcher who deceived institutions of the South African state under minority rule and one who lies to Western liberal democracies which, despite their many flaws, may be regarded as having greater legitimacy (McFall 1987). If, as a researcher, I had lied to agencies of either of my own countries of citizenship—Australia or the United Kingdom—I might now find myself far more troubled with my decision than Tunnell appears to be. I would be concerned because, by driving the issue of needing to protect information underground (at least initially), I would have failed to raise the matter with either the state institutions or my colleagues in research.

### *Confidentiality Limited by Law*

Recognizing that full confidentiality may be threatened by legal action, several research councils and university ethics committees have published guidelines that require 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). Indeed, this position has been endorsed in a guide written for the Economic and Social Research Council in the United Kingdom:

An exception to the duty of confidentiality exists in cases where information is gained in an interview from a person who has been engaged in crime. The researcher can be legally required to disclose information on the person where it is required in connection with a criminal investigation or there is a court order for the researcher to disclose the information. Failure to disclose when required can result in a criminal offence. However, it only applies when the researcher is to be questioned by the police or legal proceedings are to be instituted which orders an appearance in court. The obvious way of addressing this potential problem is to explain at the start of the interview that there is this exception. (Economic and Social Research Council 2000)

Such a position appears to be a long-standing part of some criminologists' research methodology. For example, in his well known study of an American professional fence, Carl Klockars told his informant, Vincent, that 'I would talk if I were forced to, rather than go to jail . . . I added that I would not say more than I was forced to . . .' (Klockars 1975: 225) However, such a decision may carry legal implications, at least in some jurisdictions. Palys and Lowman (2002) interpreted the decision of an American court in

*Atlantic Sugar* to mean that an offer of only limited confidentiality would be understood by courts as a waiver of privilege under the Wigmore test, thereby undermining the legal rights of participants.<sup>22</sup>

Some researchers are willing to provide information to law-enforcement agencies without being asked. In his research on the illicit economy in the United States, Sudhir Venkatesh (1999) not only indicated that he might be required to hand over research data to courts, but also told potential informants that he would proactively report any information that he had about future crimes to law-enforcement agencies:

Obviously this is not the most optimal way to initiate a relationship with someone from whom you are going to seek information! Indeed, several perceptive informants have then queried me, 'Would you tell the police my name? Would you give them your field notes, or would you go to jail and protect me?' After some proffered estimation of the odds that this might occur (which I say are relatively low if the past is any indication), I say that I will not compromise my position by disclosing names and other identities. (Venkatesh 1999: 990)

However, integrity does not necessarily mean that researchers follow every law or rule. Indeed, maintaining integrity may mean that they break some rules. Nevertheless, when Lowman and Palys opposed mandatory inclusion of 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 (Lowman and Palys 2001a)—a decision that led to the intervention of the University President (see Lowman and Palys 2000; 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. While Lowman and Palys (1999a) do accept that other researchers might prefer to limit their promises of confidentiality to that allowed by the law, the two Canadian researchers do not accept that this promise would be fulfilled if documentation were to be surrendered the moment a court asked for it. Instead, they argue that researchers and institutions must do whatever they can to defend confidentiality in the courts.

#### *Limited by Third Parties*

Some researchers have warned participants that there were circumstances under which they will or might have to breach confidentiality by providing information to third parties. For example, British researchers, examining children's perceptions of violence in residential care, warned participants that they would report any circumstances in which children were in 'immediate serious danger' to senior management in the institution (Barter and Renold 2003). A similar proviso was placed on the assurances of confidentiality provided in the case of Scottish research on girls' understandings of violence (Tisdall 2003). In both cases, the exception to confidentiality was directly related to the research focus. In the latter study, the researchers were concerned about the impact that limited confidentiality might have on their interviewees. Tisdall (2003) reported that, while girls may have self-censored their responses, the study 'did not lack for descriptions of violence' (Tisdall 2003: 145). The only participants to question the

<sup>22</sup> *Atlantic Sugar Ltd. v. United States* 85 Cust. Ct 128 (1980).

exception were girls in a residential school, who may have already experienced the limits of such assurances through their involvement with the legal system.

A broader limitation was placed on his research by a Canadian psychologist. Ivan Zinger (Zinger, Wichmann and Andrews 2001) told those prisoners who participated in his doctoral research on administrative segregation that ‘he had an obligation to disclose any information you may provide if it’s in regards to your safety or that of the institution. Those areas include suicide plans, plans of escape, injury to others and the general security of the institution’. Although Zinger discussed the warning in the appendix to his doctorate, he did not repeat this information in a publication based on his findings (Zinger, Wichmann and Andrews 2001). This may have been because, as Zinger, Wichmann and Gendreau (2001) suggested, such limits to confidentiality may be routine in some forms of correctional research.

Zinger and his colleagues seemed to be suggesting that removing fidelity-based justifications for confidentiality might absolve researchers of obligations based on other, in this case, consequentialist, grounds. Palys and Lowman (2001) maintained that Zinger’s approach was both politically and methodologically flawed. They argued that it privileged institutional loyalties 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.<sup>23</sup> 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). Not surprisingly, these arguments were rejected by Zinger and his colleagues (Zinger, Wichmann and Gendreau 2001).

While some might accept that Zinger’s decision was based on reflection, Palys and Lowman (2001) disagreed, maintaining that adequate consultation with colleagues would have revealed a better response to a conflict of interest between Zinger’s role as a researcher and as an employee of the Correctional Service of Canada. In addition, we might be critical of Zinger’s failure—in contrast to Tisdall (2003)—to elaborate on his offer of limited confidentiality in his publication.

### *Conclusion*

Criminologists and socio–legal scholars often depend on informants agreeing to talk about illicit or sensitive activities. Participants reveal secrets about themselves, their peers or organizations for very little reward. If researchers were unable to protect participants, then they might get very little work done. Yet, the information provided to researchers might be valuable in its raw form to all kinds of other people, including agencies of the criminal justice system, and organizations and individuals engaged in civil litigation.

It is not surprising, therefore, that researchers have devised a series of methodological and legal responses to threats to their data. In the last resort, a few researchers have gone to prison. Despite these lengths, academics have not always been successful in disguising the identities of their informants. Indeed, in some cases, they have chosen

<sup>23</sup> Interestingly, a Western Australian drug researcher reached the opposite conclusion to Zinger *et al.* The former concluded that his failure to obtain the statutory protection that he had promised drug users who were participating in his study not only made his research unethical but also limited its value (Loxley *et al.* 1997: 1083; Moore 1993: 15).

either not to offer full protection from the outset or have felt that it would be ethically appropriate to divulge information given to them in confidence.

While some of these decisions have received considerable attention from other academics, and even the media, most of these decisions have been made quietly, with considerable difficulty and, perhaps, with little support from peers, in the face of conflicting and sometimes ambiguous advice from professional associations (Norris 1993; Finch 2001). In stimulating discussion on how and to what extent we might be prepared to offer confidentiality, this paper has suggested that a collective acceptance of a particular standard of integrity might enable researchers to share their dilemmas with colleagues. In return, colleagues might recognize the possibility that some of their peers have acted with integrity, even though they do not agree with their peers' decisions.

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