Do University Lawyers and the Police Define Research Values?

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Significant changes during the later twentieth century have profoundly affected the conduct of social scientific research. During this time institutional review boards (IRBs) at major universities all over North America came to regulate scholarly research. Originally called committees for the protection of human subjects, they have revealed themselves to have simultaneously greater and lesser goals, as we argue below.

The directives and judgments of these boards have evolved, becoming considerably more restrictive, and they now represent a major bane and obstacle to active researchers. Although they present themselves as something other than petty, narrow minded, restrictive bureaucratic 'rangers,' it is often hard not to suspect otherwise. Board members assert that they are not making the rules, that they are merely following the dictates of the U.S. federal government. They claim that failure on their part to restrict our research would result in a loss of federal funding for the institution and possibly a halt to all permissible research. Yet it has become increasingly clear that the standards of these committees vary from school to school, not just between our two schools - the University of Colorado and the University of Denver - but among others as well. Some are laxer, and some are tighter. For example, Denver started regulating teaching only in the late 1990s, while Colorado had done so since the late 1980s, and Colorado is much stricter all around, requiring all research - undergraduate, graduate, and faculty, funded or unfunded - to pass through its approval process. To force people to comply, they have the power to withhold students' degrees and to revoke the tenure of faculty members. An Orwellian atmosphere of surveillance and compliance has emerged.

The experiences that we discuss draw on our familiarity with our field, on our own experiences, and on those of the students whom we have mentored and taught. In particular, Patti teaches a two-year graduate ethnography sequence (gathering and analysis of data) that has run uninterrupted for fourteen years, and Peter teaches shorter graduate courses in ethnography as well. We have had ample opportunity to see the workings of these boards closely as we have tried to pass our own and our students' projects through.

We have noticed two major changes over time in standards - in permitted research practices and in standards for clearance - although committee members deny this. Research practices that used to be allowed are no longer allowed. For example, in the 1980s, a distinction was made if people gathered their data through a membership role in the field, as we did in the bulk of our research for Peer Power (Adler and Adler, 1998). For this project, we often acquired information as we stood informally chatting with other parents on the sidelines of athletic fields, at parties, at meetings of parent-teacher associations and back-to-school nights, or conversing with our children and their friends. We could then use this everyday-life knowledge as data for research. Our students were told that if they gathered data through a membership role, as one young woman did as a volunteer with a group before she decided to make it a project of study, that they could then convert the information to usable data.

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As well, standards for clearance have changed (although IRB members deny this as well). Proposals that used to clear through with exempt status now require expedited review, and formerly expedited proposals now need full committee approval. Many that previously went through without consent forms now are being required to use such forms. Others that used to be acceptable with consent forms are now not acceptable in any way, shape, or form. We put forth an interview study with female impersonators seven years ago and received exempt status, but, after letting the project lapse and then looking into picking it back up, we learned that it would then require consent forms and full committee review.

Some projects are now just impossible, as the following five stories show.

In the mid-1990s Patti had a student who took an extended leave of ab-
sense from graduate school because his inability to clear his project through the IRB after three attempts proved fruitless. He was gay and had been working with the Boulder County Health Project, facilitating, with two others, a support group for teenagers who were dealing with coming-out issues related to being gay, bisexual, lesbian, and transgendered. The committee started out by insisting that the teens not only give signed consent to be studied, but obtain parental consent as well. This was an unthinkable requirement for most subjects, who were attending support groups precisely because they could not talk to their parents about their developing thoughts and feelings. They were telling their parents that they were at friends’ houses or the grocery store or offering some safe ‘cover’ story. Obtaining parental consent would have harmed these youths.

The IRB next rejected his role in the setting as a co-facilitator, arguing that this represented a role of potential power among the youths. It insisted that he had to find another group, probably in Denver, an hour’s drive away, and do research there. He had made a three-year commitment to the group in which he was working and would have had to attend this group and do research in another. But he could not find another group that would take him as a non-facilitator and a non-teen.

The IRB finally told him that he would have to declare his research interest each time a new person attended the group and that if that person did not feel comfortable with his conducting research he had to leave. He tried to negotiate with the committee and suggested that he could just leave the stories or case examples of the non-consenters out of his fieldnotes and data, but it rejected this idea. He still had to leave the setting. There was no way he could do this project under the IRB regulations. He left the university in frustration.

Another gay student wanted to study public sexual activity to learn about at-risk behaviour. Again, the IRB made untenable demands. Every time it told him what it would require from his subjects, he went back to his gay friends in the field to ask them if they or others would agree to the stipulations, and each time they told him, ‘No.’ He was never able to find a middle ground between what his subjects and the committee would accept.

A female student who was studying sexually transmitted diseases planned to initiate a support group for women who had been diagnosed with one. With a strong background as a peer educator, she had led support groups for women with eating disorders and thought that this project would be a good way to gather data while helping women. The university’s student health service was highly supportive and offered to refer newly diagnosed women to her group, but the IRB placed too many obstacles in her path. Again, it did not like her prospective position of power over the group members. It worried about individuals who did not want to be studied. She offered to screen people before they came into the group, advising them that she was collecting dissertation data on the topic. But the IRB said that she could not deny people access to the support group because of their refusal to be researched. If even one person refused consent, she would lose her permission to study the whole group. The IRB told her that she would have to run another group, a non-research group, and offer that to people. But she was unable to recruit enough individuals for two groups in order to guarantee a non-research group, even if no one asked for it. So it said, ‘No.’

Another young woman wanted to do research on incarcerated women in the state penitentiary. She hoped to find out about their lives, relationships, social environment, and criminal careers. After several unsuccessful rounds through the IRB, she and Patti were sent to meet with the university lawyer to discuss consent issues. She was told that she had to warn women at the outset of each interview that if they said anything about illegal behaviour in which they had ever engaged she would not be able to keep it confidential. It might be subject to subpoena, which might increase their prison terms. These obstacles were so daunting that she abandoned her project and also left graduate school.

Finally, Patti had a student who wanted to study women arrested for domestic violence. That became a hot topic around 1990, when mandatory arrest policies began to be enforced. The police would arrive on the scene, see which party was more badly beaten, and arrest the other. For the first time, women were arrested for domestic violence in more substantial numbers and placed in treatment groups for violence prevention. Although these women all had histories of chronic battering, and most had resorted, in desperation, to violence as a way of protecting themselves, the committee insisted on mandating her to report on her subjects. If women hit their husbands, they might hit their children, board members argued. She was thus required to inform women prior to the interview that if she observed or heard of any violence she had to report it to the authorities. She had to go into the research telling these women that she
could not hold what they said in confidence and that she would be forced
to turn them in.

These requirements fly in the face of everything that we learned in gradu­
ate school, in books and classes on field research ethics – our loyalty lay
with our subjects, whom we protected. If we found others needing protec­
tion, we tried to help them too. We certainly did not turn them in to
the police. John Van Maanen (1983) published a now-classic piece on
ethics in field research about getting caught in a situation where the po­
lice with whom he was riding were charged with using excessive violence
to suppress a Black subject. He was subpoenaed to testify against his sub­
jects, yet he felt an ethical imperative to hold their confidentiality and
managed to keep his field notes out of court. Others and we have written
about the practice of self-censorship (Adler and Adler, 1993) precisely
because sociologists use discretion about what they report. We do not
advance our careers at the expense of our subjects.

But the new Code of Ethics of the American Sociological Association
(ASA) supports the rights of the police over the subjects’ claim for loy­
alty. In the 1980s and 1990s the ASA filed amicus cura (friend of the court)
briefs in two fieldwork cases. Mario Brajuha was studying a restaurant
when a fire of suspicious origin burned it down (see Brajuha and Hall­
owell, 1986), and Rik Scarce was studying animal rights groups when an animal
research laboratory was ‘liberated’ (see Scarce, 1994). Both men were
graduate students whom the police approached to subpoena their field
notes, and both resisted. Scarce went to jail for almost six months. The
ASA backed his stance. But now the ASA would not support him. Its new
ethics code is that the law of the land is the ethics code of the ASA. Is that
right? Do we have a moral obligation to our subjects to protect them?

The new code is grounded in litigious U.S. society. Lawsuits have
become pervasive there, and people use them as a way of creating and
enforcing morality as well as gaining riches. American universities have
influential legal departments that advise administrators at every step on
protecting themselves from lawsuits. They do not want to house any re­
search that the police or the courts will not support. Applicants for cer­
tificates of confidentiality from the department of health and human
subjects must now meet with university lawyers prior to applying for a
certificate (to further protect their subjects) to see if these lawyers would
be willing to support them. Publishers are taking the same precautions,
and our U.S. publisher asked us after we wrote our last book if we had
collected the appropriate informed consent forms. The editorial board

cared not about the ethics of our research, but about its exposure to law­
suits. Similarly, in Patti’s class on the sociology of deviance, for a norm­
violation assignment, students have to sign a contract (required by the
IRB) stating clearly what they are going to do. This has to be approved,
under restrictive guidelines, by Patti. If they do something else and get in
trouble, the university has the contracts and can show that the students
are out on their own. In fact, in our increasingly bureaucratic society,
documentation is now required of everything.

But the ASA has totally capitulated. Its code means that whatever the
IRB demands becomes its ethics stance as well. The police, the lawyers,
the U.S. government, and the universities are ethics guardians now. And
at what price? We, the researchers, are to protect our subjects from our­
selves. We are to protect them from telling us anything that we cannot
hold safe, because we are not allowed to hold anything safe. We are
‘rollover’ stooges. We are the children of Tuskegee (see James H. Jones,
1993), of Milgram (1965), of medical researchers and experimentalists
who abused their positions of authority. We in fact have never heard of
any field researchers undercutting their own subjects. We ethnographers
are too deeply involved with our subjects to do these kinds of heartless
and unethical things to them. We spend the longest time of any research­
ers with them and forge the deepest relationships with them. We write
about things such as self-censorship (Adler and Adler, 1993), precisely
because we use discretion in what we report. Becker (1967) asked us
bluntly to answer the question, ‘Whose side are we on?’, by telling us to
side with the underdog. But the new regulations drive a wedge between
our subjects and ourselves by requiring us to become the ‘stooges’ of law
enforcement.

What types of research are hardest hit by the new changes in the ASA
code? First, illegal activity has become extremely difficult to study. The
warnings that we give people against ourselves and the lack of support
that we get from the government in shielding our subjects expose both
them and us to danger. We risk going to jail or sending our subjects to jail
if we uncover anything illegal. Second, we are constrained from looking
too closely into powerless or vulnerable groups. Studying children, men­
tal patients, prisoners, foreigners, or people with psychological stress, or
dealing with sensitive topics necessitates jumping through all sorts of
extra hoops, which makes these groups and subjects sometimes
unresearchable. Third, it is hard to get information on publicly account­
able individuals, those who do things that affect the public, because they
are now off-limits. These people or corporations can now ‘SLAPP’ (see

What is the main point the author is trying to make about the new Code of Ethics of the American Sociological Association (ASA)?

The author is concerned about the new Code of Ethics of the American Sociological Association (ASA) placing the rights of the police over the subjects' claim for loyalty. This ethics code supports the law of the land as the ethics code of the ASA, which the author finds questionable. The author argues that sociologists should use discretion in what they report to protect their subjects and themselves from lawsuits, and that the new regulations drive a wedge between the researchers and their subjects by requiring them to become the 'stooges' of law enforcement. The author also discusses the challenges faced by researchers when studying illegal activity, powerless or vulnerable groups, and sensitive topics.
researchers or concerned individuals who try to reveal information to advance the public good with a public-interest lawsuit if they are challenged in any way. Fourth, powerful elite or semi-elite groups can deny research access by refusing consent. Fifth, all aspects of investigative and covert research have been banned. Many classic pieces of research, including Humphrey’s (1970) Teatoom Trade and Wheeling and Dealing (Patricia Adler, 1985), could not be done today. Like the outcomes of many other moral entrepreneurial campaigns, the ‘protection of human subjects’ movement has favoured the dominant classes over the weaker. Powerful, elite groups can now better hide their mechanisms of control, while weak and powerless groups have lost the ability to tell their stories from their own perspective.

Is ethnographic research hit the hardest by these changes in the ASA’s code? There are five reasons why we believe this to be the case. First, acquiring informed consent is delicate in participant observation. Participant observation has a fuzziness about what is research and what is not, as ethnographers are observers of everyday life and may be generating insights and gathering data from people in all kinds of situations (a waitress at a restaurant, a fellow passenger on an airplane, a person whose child is the same age as one’s own). They may not know in advance what information will drift their way that may prove explicitly useful, either currently or in the future. And it is often not exactly clear when, where, and how research begins. To push for informed consent when people have not determined if a particular setting is viable, if they can forge a role in it, and if they can generate relationships with setting members may be premature, damage relationships and status, and doom the research. To wait too long leaves previously collected insights potentially unusable later if subjects leave or become unavailable.

Explaining the purpose and interests of research may be harder in ethnography than it is in other methods of approach, especially because it is still emerging. For example, in studying hotel employees in Hawai’i, we began by obtaining the official permission of the hotel that we studied first. We conducted interviews with the management and did ‘chat swings’ with employees as we wandered around the property, chatting with people while they were at work. We had maybe five minutes to strike up a casual conversation with these strangers and ask them such questions as, What department do you work in? Do people from your department stay at work here year-round? Do they hold multiple jobs? Are they mostly transient or stable? What is your living situation – do you live with your nuclear or extended family? And then we had to move on, before their supervisors looked over and they thought that they had better return to work or they could be in trouble. We could spend the whole five minutes explaining that we were researchers wanting to study their working situations and way of life. But then we would be doing all the talking. Anyone we talked to a few times we tried to inform of our research interests, or if they asked us, we told them. But we did not blurt this out to everyone; it could not be the first thing that we mentioned. If we made our research interests the first subject of our conversation with people, many of them would think that we were spies for the management.

Second, ethnographers have a more difficult time than survey and experimental researchers anticipating what will happen in their research. As Van Maanen found out, his subjects behaved in ways that put his position in jeopardy and made protecting them difficult. What would he have done had the beating that they administered to their recalcitrant subject led to his death? Or, new issues may arise during the course of research that were not anticipated, leading researchers into sensitive and problematic topics. For example, one of our students researching pregnant teenagers found that these young women were often the victims of physically and sexually abusive parents.

Third, the power differentials between researchers and their subjects are not the same for ethnographers as they are for quantitative researchers. Experimental and survey researchers take more of a command position, while ethnographers are more often learners in the field, there at the good graces of their subjects. As Murray Wax (1983) noted, we are relatively more powerless compared to researchers using other approaches.

Fourth, researchers’ roles throughout the data-gathering process vary between these methods. Survey and experimental researchers more clearly play the role of ‘researchers’ at all times, while ethnographers cannot do so. It is unnatural. Punch (1994) noted that it jeopardizes their role as participants. This makes it harder for ethnographers to do research in a formal way, i.e., by using the legalistic consent forms that are scary and alienating.

Fifth, ethnographers cannot use anonymity in gathering data as survey and experimental researchers can, where they do not know the identities of their subjects, since ethnographers gather data face to face from people whom they know. It is often harder to offer confidentiality as well, disguising the identities of their subjects, although they try, because the populations that they study are small and personal. Members of such
groups may be more easily recognizable. These characteristics of ethnographic research make it harder to pass the IRB criteria.

What are the goals, then, of regulating research, and how can these best be attained? Clearly, if we are being told that we cannot protect our own subjects from official investigation short of our or their going to jail, which not everyone is willing to do, some changes are necessary. Is the new system the best way? If you fundamentally shut down research there is no risk to subjects because researchers will not know anything. But should we be willing to pay the price of losing knowledge about huge chunks of society, because people with the most to lose are the most likely to see the consent forms as barriers? What are we really being driven by here — an ethical imperative to protect the rights of people or an unethical imperative designed to keep universities, publishers, and sponsoring agencies from being sued? We are called to question the motives of these regulations when standards governing research on the same behaviour differ in private and in public settings. Researchers can study something if it is done in public, where people presumably have less right to expect privacy, that you cannot in private, where they can be sued. This applies to crack dealing occurring in crackhouses versus on the street. It makes one think that the regulators do not care about the subjects getting hurt as long as they cannot sue. The fundamental issue in reformulating the ASA code should be trust and professional ethics, not further protecting the elites.

No matter how much ethnographic research is regulated, no matter how tight the stipulations, unanticipated situations will always arise that are not covered in a research plan or proposal. Researchers will always have to make situational decisions and interpretations about the ethical and safe thing to do. We argue that not alienating researchers and their subjects increases the chances for a proper decision. We advocate a joint, reciprocally respectful relationship, more attuned to legal nuances, that looks ahead to anticipate potential problems while still respecting the fundamental bond of obligation and trust between researchers and those whom they study.