

Ethical Principles in Criminological Research

Crim 860
02 October 2026

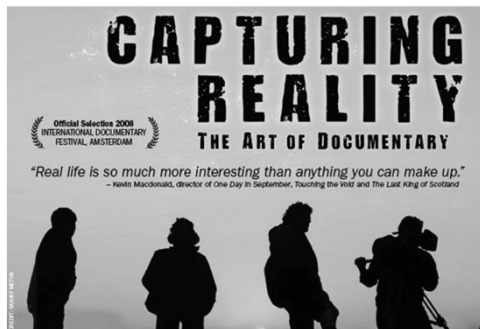
SFU

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Ethics Principles

- Two fundamental principles that you undoubtedly will have to deal with are:
 - Free and informed consent
 - Confidentiality
- Another common one is:
 - Conflicts of roles/duties/interests, the problem of “Divided Loyalties”

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Free & Informed Consent

- In most cases, research requires consent
- In field research, consent typically **oral**
 - Ideal relationship based on **rappport**, mutual **trust** and **respect**, not contract law
 - Written consent creates paper trails; undermines ability to maintain confidentiality
- Sticky issues:
 - Linking diverse data sets beyond anticipated consent
 - Public vs private spaces, e.g., online
 - Digital tools in a surveillance economy

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Wolfgang on Confidentiality

- Marvin Wolfgang (1976, 1981, 1982) summarizes criminologists' ethical responsibility to maintain confidentiality:
 - [The researcher] is a neutral, disinterested recipient of data collected only for scientific research purposes. The purpose for obtaining the information is to aid the scholarly enterprise and to provide guidance for a rational social policy. Data obtained that could have direct untoward consequences to subjects are not the possession of the state but of science. ... the social scientist is not a representative of any branch of government with an obligation to execute certain police or judicial duties.

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Wolfgang on Confidentiality

- "What should a research center do if the police, prosecutor or court requests the files?"
 - Our position is clear: we would not honor the request. We would make every effort, short of using aggressive force, to prevent the files from being examined or taken from the Center's premises. We would, if necessary, enter into litigation to protect the confidentiality of the records.
- He adds, even if a researcher were to be charged as an accessory or with contempt, "we would still maintain a posture of unwillingness to reveal names."

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Confidentiality

- Wolfgang reflected in Criminology's approach exemplified by ACJS *Code of Ethics*:
 - "Members of the Academy respect the rights, dignity and worth of all people. The worth of people gives them the right to demand that information about them remain confidential." (General principles)
 - "Confidential information provided by research participants must be treated as such by criminologists, even when this information enjoys no legal protection, and legal force is applied." (Section 19)

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Confidentiality

- Easiest way to protect research confidentiality is via anonymity
 - Not always possible, at least initially
- In general, three different foci to data protection:
 - *Always* retain control over data. Be careful how/where you store it; should be commensurate with sensitivity of information
 - Separate/redact identifiers at first opportunity
 - Maximize available legal protection. Do your utmost to be ethical *and* legal

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Confidentiality

- Formal threats rare. Biggest thing to remember is day-to-day management of confidentiality:
 - Don't be a blabbermouth; don't leave data around
 - Encrypt identifiable data, same with interim analyses
 - Anonymize wherever possible and as soon as possible
 - If appropriate, anticipate the Wigmore criteria
- Don't be as thoughtless as our provincial government...

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Confidentiality

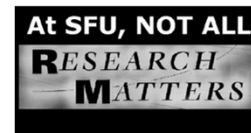
- Many of our career choices are intentional, but sometimes chance drops things in your lap
 - A serendipitous involvement
 - A tale of two researchers
- 



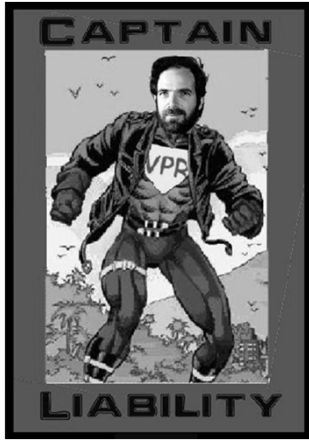
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Criminology vs SFU Admin

- Ogden revered then dumped by SFU administration. Who to turn to?
 - The Chair of the ethics committee?
 - The Dean of Grad Studies?
 - The VP-Research?
 - Criminology fights back
 - Ogden sues SFU in small claims court for breach of contract
- 



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Ogden vs SFU

“The vague statements of personal support as expressed by the president of the University, Dr. Stubbs, and the dean of Graduate Studies, Dr. Clayman, sound hollow and timid when compared with the opportunity they had as leaders of the University, to promote the demonstrated value of academic freedom and academic privilege as evidenced in this case. To set aside this opportunity because of fear that if they were to financially support Ogden by paying his legal fees in this context, some people might misapprehend that they were in favour of euthanasia, demonstrates a surprising lack of courage.” (Judge Daniel Steinberg)

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Ogden vs SFU

- After Judge Daniel Steinberg criticizes the university in *Russel Ogden v. SFU*, and Blomley and Davis are equally stinging in their independent review of the Ogden decision, SFU
 - apologizes to Ogden;
 - pays his legal bills; and
 - guarantees to represent grad students in future.
- SFU goes from the worst university in the country for grad student research protection to the best.

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Criminology vs SFU Admin

- VP-Research and his URERC change the ethics policy based on “Law of the Land” perspective.
 - Criminology targeted: Researchers who “might hear about violations of criminal or civil law” must warn participants that the researcher might be “required” to give up confidential information.
 - Couched in the language of “informed consent,” it is a university administration driven by liability and image management considerations. *Caveat emptor* is ethical.

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Hello, I'm a
Researcher



From
RAT-ON-U

Ethics Committee



Caveat Emptor

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Criminology vs SFU Admin

- We refuse to use the university's “limited confidentiality” consent statement, and begin what would turn out to be an 18-month fight -- through the application, appeal and grievance procedures -- for the right to do our research.
 - Important support from our colleagues in Criminology, the SFU Faculty Association, CAUT, ASA, and finally, a proper Legal Opinion.
- The grievance is resolved when we agree on a consent statement that does not subjugate ethics to law, and anticipates using the Wigmore criteria.

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The agreed consent statement

- "The researchers will do everything possible to maintain the confidentiality of information obtained during this study and the anonymity of its sources. If an order is made by a court that the researchers provide information or reveal the identity of their sources, the university will provide legal representation until all available court processes have been exhausted to assist the researchers to maintain confidentiality of information and sources. Even then, the researchers will not reveal any confidential information and will never do so unless they believe it is ethically proper, considering the circumstances, to reveal that information."

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Criminology vs SFU Admin

- Responsibility for the design of a new ethics policy placed in the hands of *Research Ethics Policy Revision Task Force* that is independent of the university admin and reports to Senate.



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Confidentiality

- The Russel Ogden case and its lessons
 - Never trust a university administrator
 - Need to avoid institutional conflicts of interest
 - The importance of Wigmore
- Lowman → REB; Palys → SSHWC
- Took 25 years to get right ... but still only as good as the people who implement it
- More than a decade until next case

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Luka Magnotta murder trial: Confidentiality rights of a research subject under discussion

BY RENÉ BRUEMMER, THE GAZETTE OCTOBER 16, 2012



This photograph obtained courtesy of the Service de Police de la Ville de Montréal (SPVM) shows Luka Rocco Magnotta (C) escorted by police upon arrival from Germany on June 18, 2012 at Mirabel Airport outside Montreal on June 18, 2012 in Mirabel, Quebec, Canada. Magnotta, dubbed "The Canadian Psycho", is accused of slaying and dismembering a Chinese student in Montreal last month, before fleeing to Europe. AFP PHOTO / Service de Police de la Ville de Montréal // RESTRICTED TO EDITORIAL USE / MANDATORY CREDIT: "AFP PHOTO / Service de Police de la Ville de Montréal" / NO SALES / NO MARKETING / NO ADVERTISING CAMPAIGNS / DISTRIBUTED AS A SERVICE TO CLIENTS == JAPP0501images

Photograph by: - GETPICIS

MONTREAL — Evidence gathered in preparation for Luka Magnotta's murder trial has resurrected the debate over whether the confidentiality rights of a research subject take precedence over the need to prosecute.

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CAUT ACPU BULLETIN

uOttawa criminologists go to court to protect research confidentiality



Chris Bruehmer (left) & Cheryl Peckham are among Ottawa Superior Court to preserve their confidentiality. Two University of Ottawa criminologists are going to court to protect the confidentiality of research records they obtained in 2007.

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Rock to CAUT (from *CAUT Bulletin*)

“The University of Ottawa recognizes its role ... in safeguarding entrusted information. However, the University does not consider that its role extends to the payment of legal costs if researchers decide to challenge the seizure of research records in the context of criminal proceedings.”

– Letter from U of O president Allan Rock to CAUT executive director James Turk

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REB Comments; CAUT Intervenes

CAUT Bulletin **BULLETIN**

REB members deplore
uOttawa's refusal to defend
confidentiality



- “This is a landmark case that will set the precedent on how courts will deal with confidentiality between academic researchers and research participants,” said CAUT executive director James Turk.
- “Just as with investigative journalists, academic researchers fulfill a vital public good by examining a variety of issues that can only be studied when confidentiality is promised to research participants.”

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Confidentiality: Subpoena

- In the U.S. and Canada, subpoenas have arisen in two main contexts:
 - Legal authorities (esp. grand juries in US) looking for info useful in criminal prosecution
 - Civil litigation, most frequently in health field
- Statute-based protections exist in the U.S.
 - Confidentiality Certificates for health (NIH)
 - Privacy Certificates for criminology (NIJ)

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Making the Case for Privilege

- We all are obliged to testify when called
- Exceptions are called “privileges”
- Can arise in several ways
 - Statute-based (e.g., *Statistics Act*)
 - Class privilege (e.g., lawyer-client)
 - Onus on anyone who would violate
 - Case-by-case (e.g., researcher-participant)
 - Onus on the person claiming the privilege

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The Wigmore Criteria

1.

- the communications must originate in a *confidence* that they will not be disclosed.

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Criterion 1: It's Confidential

Ogden

- Submitted his research for Ethics review
- Explained in his proposal why confidentiality was crucial to the validity of the research
- Made clear to participants that their interactions were confidential and he would maintain that guarantee no matter what

Bruckert/Parent

- Submitted research for ethics review
- Explained why confidentiality was crucial
- Training of assistants emphasized confidentiality
- "Confidentiality and anonymity will be respected at all times;" no limitations

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The Wigmore Criteria

2.

- this element of *confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.*

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Criterion 2: It's Essential

Ogden

- Asked participants whether they would participate if not confidential; all said "no"
- Noted criminologist Richard Ericson testifies such research could not be done otherwise
- Community health nurse testifies re costs to HIV/AIDS community

Bruckert/Parent

- Confidentiality an essential part of SSHRC funding, REB approval
- Noted criminologist John Lowman testifies research with such populations impossible to conduct without confidentiality
- Participants would suffer harms from disclosure

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The Wigmore Criteria

3.

- the *relation* must be one which in the opinion of the community ought to be sedulously *fostered*.

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Criterion 3: It's Valued

Ogden

- The academic/research community
- Community of institutions faced with responding to the issue of euthanasia and assisted suicide
- The community of persons suffering from terminal illnesses
- Society at large

Bruckert/Parent

- Researcher-participant relationship important to academy and society
- Protects academic freedom, which is essential in a free and democratic society
- Researchers accountable to their institutions, professional standards
- Kudos to TCPS2

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The Wigmore Criteria

4.

- the *injury* that would inure to the relation by the disclosure of the communications must be *greater than the benefit* thereby gained for the correct disposal of litigation.

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Criterion 4: Balancing the Scales

Ogden

- Research would provide the world with critical information about an important social problem
- That information would not exist if it were not for the pledge of confidentiality
- Society's ability to gain from research would be hampered if researcher promises cannot be trusted

Bruckert/Parent

- Criminal activity per se not a problem
- Valid data could not be gathered with a clear pledge of confidentiality
- Psychiatrist testified information unlikely to be of value for NCR assessment
- No more than a fishing expedition by Crown/police

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Aftermath: U of Ottawa

UA/AU University Affairs Affaires universitaires

March 5, 2014

Quebec ruling supports confidentiality of researchers' interviews

Court case shows that researchers must design their confidentiality protocols to conform to Canadian law.

Rutale Samson



Police return Luka Magnotta to Canada in June 2012 after his arrest in Berlin. Photo courtesy of a police handout.

A recent ruling by a Quebec superior court has major ramifications for researchers who offer confidentiality to people they interview for their research.

CAUT/ACRU BULLETIN

Court upholds researchers' right to protect confidential information



Researchers across Canada won a major victory after police efforts to seize confidential research records were quashed in a precedent-setting Quebec court decision last month.

University Administrators 2.0

CAUT/ACRU BULLETIN

Complaint targets uOttawa for failure to defend confidentiality



5.1 Ethical Duty of Confidentiality

Researchers shall safeguard information entrusted to them and not misuse or wrongfully disclose it. Institutions shall support their researchers in maintaining promises of confidentiality. (p.58)

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U Ottawa to SRCR

- "Regarding Dr. Palys' allegation that the University of Ottawa has breached Article 5.1 of the TCPS 2, we do not believe this is accurate. Article 5.1 may state that institutions should support their researchers but it does not stipulate how this should be done. The article deals with the responsibility of researchers, not the responsibility of universities."

TCPS Interpretation

- "The researcher conducts research under the auspices of the institution. The REB is appointed by the institution as its vehicle for reviewing research projects to ensure their ethical acceptability. In granting its approval for a study, the REB engages the responsibility of the institution to support the researchers in their commitment to protect participant confidentiality."
- "Institutions should establish a policy that explains how they will provide that support."

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What if ... ?

- There is no general requirement to report crime
 - Exception in BC: Mandatory reporting regarding “children in need of protection”
- Past behaviour is no problem to protect; courts have been very protective
- Current crime gets dicey, e.g., Goffman

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What if ... ?

- What about future crime?
 - you start to become complicit
 - in US, it’s the one thing PC’s don’t protect
 - in Canada, *Smith v Jones* (1999) affirms disclosure *permissible* (not required) if
 - severe injury or death;
 - clear target;
 - imminent

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Confidentiality

- It only took 25 years, but several positive outcomes along the way:
 - Ogden review recommendations accepted
 - Granting agencies confirm “ethics first” and “law first” approaches
 - TCPS asserts need to avoid institutional conflicts of interest
 - TCPS2 makes clear that researchers must defend confidentiality; institutions must support
 - Still missing: a statute-based privilege

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Conflict of Roles/Divided Loyalties

- Conflicting duties: TCPS is clear you must distinguish roles when professional/research standards may create a conflict:
 - “To preserve and not abuse the trust on which many professional relationships rest, researchers should be fully cognizant of conflicts of interest that may arise from their dual or multiple roles, their rights and responsibilities, and how they can manage the conflict. When acting in dual or multiple roles, the researcher shall disclose the nature of the conflict to the participant in the consent process.” (p.2.4)

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Conflict of Roles/Divided Loyalties

- Professionalization/proliferation of research skills/interests opens possibility for conflicts of interest
- Conflicting roles
 - What happens after the research is over?
 - Power dynamics of teacher/researcher, police officer/researcher, social worker/researcher, etc
 - Conflicting allegiances; conflicting standards (e.g., regarding confidentiality/disclosure/reporting)

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Conflict of Roles: Example

- Zinger was a PhD student at Carleton University while a CSC employee
- Did his dissertation (2001) on the effects of “administrative segregation” (i.e., solitary confinement)
 - Limited confidentiality
 - Results self-serving, invalid

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Research Participants = Special

- they don't come to us; we go to them
- without them, our discipline is impoverished
- researchers in criminology deal with serious issues that can impact people's lives if disclosed
- No *caveat emptor*; do not gather data you are not prepared to defend

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Dealing with the SFU REB

- The people who review your research know less about the disciplinary standards of criminology than you do
- Don't use templates blindly. They are not requirements. Think through your choices.
- Don't be afraid to disagree with ORE; by and large the folks there listen to reason

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Contemporary Issues

- Never trust a university administrator
- Are “ethics” just “liability” in disguise?
- The paradox of confidentiality in a digital world steeped in surveillance capitalism
- The push to cloud services
- Will Canada develop statute-based protections comparable to those in the US?