

5-1-2022

Researcher-Participant Privilege: Confidentiality and Qualitative Criminology

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<http://dx.doi.org/10.34917/31813330>

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RESEARCHER-PARTICIPANT PRIVILEGE: CONFIDENTIALITY AND QUALITATIVE
CRIMINOLOGY

By

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Bachelor of Arts – Criminal Justice
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2016

A thesis submitted in partial fulfillment
of the requirements for

Master of Arts – Criminal Justice

Department of Criminal Justice
Greenspun College of Urban Affairs
The Graduate College

University of Nevada, Las Vegas
May 2022



Thesis Approval

The Graduate College
The University of Nevada, Las Vegas

April 7, 2022

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entitled

Researcher-Participant Privilege: Confidentiality and Qualitative Criminology

is approved in partial fulfillment of the requirements for the degree of

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Abstract

Research institutions have the responsibility to comply with laws that govern the oversight of all research including research with human subjects. Institutional Review Boards (IRBs) review research protocols and approve research based on the rights and safety of research subjects. When conducting qualitative criminological research, researchers must weigh ethical considerations around their methods. These methodological considerations are coupled with guiding ethical principles that are fundamental to human subject research. One major consideration regards breaking confidentiality which can bring about great risk to participants. The following thesis focuses on the ethics of researcher-participant privilege and issues that qualitative researchers have in maintaining confidentiality due to institutional pressures, particularly those set up via Institutional Review Boards (IRB). Interviews were conducted with six (6) qualitative researchers in the field of criminology to better understand their experiences with disclosure, how they understand ethics around confidentiality, and what rationales they have for resisting requirements to disclose. Findings suggest that these researchers view IRB as upholding racist, sexist, and classist paradigms while doing nothing to actually protect participants from marginalized communities. The thesis concludes that researchers respond through acts of resistance that, due to the nature of their subversion, undermines the idea that IRB can protect participants at all.

Keywords: Institutional Review Boards; IRB; Confidentiality; Qualitative; Ethics.

Acknowledgements

This thesis would not have been possible without the support of family, friends, and colleagues. It became evident to me that the many late nights working on this project and the loss of focus on the world around me payed a toll on more than just myself. I would like to personally thank Sam for her endless love and support.

I have greatly benefited from the wisdom of many professors, academics, and researchers. They all have shown nothing but grace and patience as this thesis finally came together. This is especially true of Dr. Emily Troshynski. I would also like to thank everyone that has shared time on my committee for their indispensable feedback and the researchers who participated in this thesis. You have all been nothing short of inspiring.

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Researcher-Participant Privilege: Confidentiality and Qualitative Criminology

I was leaving this interview and this mother was passed out in a heroine state while her 3-year-old daughter was staring at her. Again, I did not report. But considering the ethics of this. A child. Would calling CPS have even helped? It is also not my place to come into this community and bring my own privileged ethics and force these people, that I am trying to learn from, to follow them.

Qualitative criminologists, due to the nature of their research topics and methods, often find themselves in ethical dilemmas. The ways in which they react to these dilemmas and justify their actions is an interesting area of research that has been previously studied (Worley, Worley, & Wood, 2016). One particular area of ethical concern for qualitative researchers regards protecting the privacy of research participants while maintaining their (and the data acquired from them) confidentiality (Israel, 2004). What should a researcher do if/when they learn about illegal on-goings from their participants? These methodological considerations are coupled with guiding ethical principles that are fundamental to human subject research.

The way in which institutions address ethical concerns and how they may diverge from the interests of the researchers has also been studied (Adler & Adler, 2002; Hamburger, 2005). The creation of Institutional Review Boards (IRB) is one such mechanism that aims to address those ethical concerns while also providing guidance to researchers. The formation of the Institutional Review Boards (IRB) followed on the heels of one of the most unethical biomedical studies ever done in the 20th century of the United States. Through the Belmont Report of 1979, it was established that all research involving human subjects must go through a review process to

determine the three newly established principles: respect, beneficence, and justice. Since “all research involving human subjects” is broadly defined, this can have many different outcomes across methodologies and disciplines.

Researchers working within the discipline of criminology have detailed the ways in which law enforcement, prosecutors, and Institutional Review Boards (IRB) have made it impossible for them to maintain information acquired by their participants confidentially (Adler & Adler, 2002; Israel, 2004; Schrag, 2011). Being asked/required to break confidentiality and disclose personal information not only puts research participants at risk of harm (Cheit, 2014; Fitzgerald & Hamilton, 1997) but it can also put researchers at risk of harm as well. Specifically, prior studies note how some qualitative criminologists worry about individual and community-level retaliation. When a community no longer trusts a researcher, that researcher (and future researchers) is cut off from the community of interest. This lack of access equates to broader knowledge production concerns.

The following thesis will, first, highlight research dedicated to the creation, goals, and limitations associated with Institutional Review Boards. Specifically, Chapter 1 will chart the history of the formation of IRB to help establish an ethical oversight of human subjects research. Second, Chapter 2 will highlight research on confidentiality, ethics, and harm. Theoretical conversations about confidentiality will then be placed within the ethical framework of IRB as established according to the three principles in the Belmont Report of 1979. Chapter 2 will also include a conversation about the many unique epistemological characteristics of qualitative criminological research that make confidentiality such an ethical gray area. This latter point will be explored more fully as understanding confidentiality is privy to the stated goals of this research project (see Chapter 3 on Methods).

Finally, using original data collected by interviewing six active qualitative criminologists, the following thesis will explore the experiences researchers have with maintaining confidentiality, the pressures they face from IRB, and how they respond to those pressures. Findings from this thesis are presented throughout Chapters 4, 5, and 6. Lastly, Chapter 6 discusses the ways that politics impact the divisions between IRB and qualitative researcher's ethical concerns. Chapter 7 concludes that IRBs uphold the very aspects of society that many qualitative researcher's aim to challenge.

Chapter 1:

Understanding the Tenets of IRB and Connections to Qualitative Researchers Experiences

Institutional Review Boards (IRB) are the gatekeepers to all research activities and play an important role in the oversight of all human subject research. Before any researcher can even begin searching for participants, they must receive approval from their Universities' IRB.

Therefore, IRB reviews research proposals based on a risk/benefit analysis, whether or not the human subjects under study are chosen equitably, and that informed consent is obtained before the research begins. The merit of institutional oversight is stressed through case studies involving horribly unethical conduct by researchers (Daugherty-Brownrigg, 2013; Graber, 2016).

However, researchers and their institutional IRBs do not always agree on what is ethical. This is particularly true when discussing confidentiality (Israel, 2004; Kagle & Koples, 1994). The following chapter will explore the formation and role of IRB and how confidentiality relates to qualitative research.

The “Common Rule” and the Creation of IRB

The Belmont Report was first published in response to the unethical research conducted in the Tuskegee Syphilis Experiment. This laid out three driving principles to human subject researchers (National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, 1978). First, that a respect for persons must be upheld. They define this as the requirement “that individuals should be treated as autonomous agents” and “that subjects enter into the research voluntarily and with adequate information” (p. 4). Adequate information

is meant to include a statement of informed consent and any limitations to the confidence that the researcher will not disclose their identity.

Second, a standard of beneficence must be upheld. Beneficence is generally defined as bringing more benefit than harm to participants. This means that the outcome of the study cannot cause unjustified harm while actively providing as many positives to the participant(s). These principles also extend to individuals outside the scope of the study and to society at large. So, for example, the benefit of vaccine research can be said to outweigh the harms from potential side-effects in experimental populations.

The third main principle is that the benefits provided by the research are distributed justly amongst the participants. There is an injustice when a population of interest is studied solely for the benefit of another. For example, the Tuskegee study used African American subjects but the benefits were for white populations. Additionally, injustices occur when researchers inequitably reap the benefits from the participation of others. This can occur when the advancement of a researcher's career is placed above the advancement of solutions to, or at the very least a better understanding, of the problems faced by the populations represented by the participants.

Regulations established as a result of the Belmont Report that aimed towards the "protection of human subjects" are what lead to the establishment of the "Common Rule" in 1991. The main impact this had was the establishing of IRBs, informed consent, and Assurances of Compliance (Federal Policy, 1991). IRBs approve or deny research on the basis of the three established principles of the Belmont Report.

Each university has its own IRB that was formed after the "Common Rule". This means that IRBs are not a monolithic entity. Some institutions will have only a single IRB for all human-subjects research while others might have distinct IRBs for each type of research (e.g.,

biomedical, social science). Additionally, similar ethics boards were also established under this rule for non-university research such as consulting firms, research think tanks, and larger non-profits. However, this thesis will focus on research from universities.

Other rules established under the “Common Law” regard how to conduct research ethically. For example, informed consent is required from participants to be used in research, that they are aware they are being studied and of the potential risks. There are some exceptions to informed consent that depend on the methodology of the research. For example, some experimental research may still engage in manipulation under certain circumstances (e.g., use of a control group). The research that will be discussed in this thesis does not involve those methods.

Periodically revisions are made to the “Common Rule.” A proposal for revisions came in 2014 which included requests to update language around “risk” for IRBs (Committee on Revisions, 2014). One such recommendation was that IRBs “avoid confusing the risks participants may face in their daily lives from the risks of potential harms produced solely by their participation in research” (Confidentiality Risk and Legal Harm section, para. 3). The section continues to stress the importance of maintaining confidentiality and the potential harms that can come from the publishing of identifiable information about participants.

Institutional Review Board (IRB): Importance and Impediments

IRB may operate off of a set of values, but often they can be inconsistent with one another. These inconsistencies can lead to requirements that make researcher’s projects unnecessarily difficult. Examples of minor hindrances include the requirement of a researcher’s IRB to acquire signed consent forms from every person the researcher comes into contact with

throughout the duration of a research project. One example includes an ethnographic researcher having to include a consent form from the barista she ordered her coffee from (Schrag, 2011). Such a demand would make an ethnographer's daily interactions a living nightmare as studies are often years long (Marcus, Horning, Curtis, Sanson, & Thompson, 2014). Other institutional demands have simply made a qualitative researchers' jobs close to impossible.

For example, one student who organized a support group for women with sexually transmitted diseases wanted to gather data from these conversations (Adler & Adler, 2002). She was already planning on obtaining consent from each individual participant prior to organizing the support group, but her IRB also required her to: 1) not allow anyone into the group that did not wish to be researched and 2) not deny access to the support group for anyone. The entire research study had to be scrapped as a single participant not wishing to be researched would mean that the entire support group would be required to go unresearched.

Meanwhile, others have argued for the importance of IRBs (Graber, 2016; Robertson, 2014). Past research has shown that researchers do not always share the same concerns as their participants and can cause literal harm to them (Babbie, 2004). An example includes the infamous Tuskegee Syphilis Experiment consisting of withholding knowledge that the participants had syphilis and that proven treatments already existed so as to spectate their declining health over time (Daugherty-Brownrigg, 2013). Much has been written about this particular case for its use of deception, harm caused to research subjects, the fact that a cure for syphilis was discovered prior to the experiments end, and that the participants were purposefully chosen due to being poorly educated, lower-class, African Americans (Daugherty-Brownrigg, 2013; Graber, 2016). Indeed, IRBs were initially established under the Belmont Report in response to this particular case.

Little has been explored in the area of epistemological contradictions between institutional review boards, laws and policies, and the generators of new knowledge (i.e., academic faculty, staff, and researchers) within social science. No synthesis has been made in the exploration of this topic as either side is arguing for whether having institutionally based requirements for researchers is *good* or *bad*. This is particularly the case regarding confidentiality between researchers and participants. This is important because what is accepted as knowledge has influence over policy and attitudes.

It is uncertain where the line is drawn within criminological research to distinguish an ethical responsibility to disclose a subject's motives. Since the populations of interest to criminological researchers are often criminals and victims themselves, it is difficult to distinguish when their motives are better off studied for the benefit of society (e.g., policy reforms) or disclosed to law enforcement for the benefit of a potential victim or another victim(s). This distinction is critical as researchers have both been held criminally responsible for instances where they have refused to divulge information to authorities about their participants (Israel, 2004; Kagle & Koples, 1994) and even for times when they have (Cheit, 2014). Continued analysis of this gray area could lead to the absolving of this epistemic stalemate and the establishing of a consistent ethical code for a range of social scientists.

Understanding the Importance of Confidentiality

Confidentiality is generally defined as: "having another's trust or confidence; entrusted with secrets or private affairs" (Confidential, 2010). For social scientists, this means that their participants trust that any information and/or secrets that are shared with the researcher are not disclosed along with their identity to any third-party. For criminologists specifically, this means

trust must be upheld with participants who are in some way involved with crime. As will be further discussed later, trust is an integral part of the researcher-participant relationship. When a subject lacks confidence in the researcher, often incorrect or misleading information can be shared, spoiling the overall reliability and general purpose of the study (Israel, 2004; Fitzgerald & Hamilton, 1997; Palys & Lowman, 2002).

Institutional Review Boards also have a grounded interest in confidentiality. All three of the original principles established by the Belmont Report are sacrificed when confidence is not upheld with the participant. However, can disclosure be justified when larger ethical concerns are considered?

The continued exploration of the topic of confidentiality is of the utmost importance when considering these principles. Within the field of criminology, the populations of interest are unique, comparable to other sociological studies, in that they involve participants that require idiosyncratic methods on the part of the researcher (Westervelt & Cook, 2009). This is due to the fact that participants are often active criminals, ex-criminals, or victims. The breadth of their offenses can range from the most mundane like illicit graffiti artists (Fransberg, 2018) to the most horrific like human traffickers (Troshynski & Blank, 2008). They can also range from crimes that are often argued to be victimless such as prostitution (Sangaramoorthy & Kroeger, 2013) to those which no such argument exists like armed robbers (Wright & Decker, 1997). Should the participants in all of these studies be granted the same level of rights by their researchers?

In order to understand these and other questions about ethics, confidentiality, and impacts on qualitative research, this thesis interviews active researchers about their histories navigating the ethical dimensions of IRB confidentiality. Only qualitative researchers who have studied

criminal or delinquent populations, as defined by the state, will be used. The aim is to explore the nuance of researcher-participant relationships and to push the conversation of qualitative research beyond its current stalemate. Therefore, this thesis will explore confidentiality in its practical application within the discipline of criminology. Case studies will be drawn from to display the potential benefits and limitations of such an approach. The goal, therefore, is to explore if this practice can lead to the most ethical method of knowledge gathering within qualitative research. Hopefully, this research can be used by researchers and IRB members alike to assist in negotiating the best methods for navigating into the epistemological gray areas of the criminological discipline. In order to make the connections between the goals of this research project and prior studies completed, the next chapter highlights academic work completed in the area of research ethics.

Chapter 2:

Review of Theoretical Research Connected to Ethics, Confidentiality, & Harm

As previously discussed, it is important that researchers have some form of institutional oversight that is looking out for the best interests of the research participants. Institutional Review Boards (IRB) are established for that very purpose. However, it is also argued that, when dealing with issues of confidentiality, the guiding principles associated with IRB and how those are applied to human subject research, do not live up to those same standards. In fact, in some instances, IRB oversight can actually increase the likelihood of participant and researcher harm. It is the case that qualitative researchers studying criminological topics must tread carefully when dealing with privileged information. They are therefore tasked with walking a thin ethical line between the needs of their participants, the needs of their research, and the needs set by their institutions via IRB.

A rich theoretical literature on research ethics exists within the social sciences (e.g., Cheit, 2014; Schutt, 2015) and more specifically within criminology (e.g., Briggs, 2010; Rowe, 2007). This chapter of the thesis will review theoretical perspectives that pertain to qualitative research and confidentiality. First, this chapter begins with a conversation of the goals of research and the methods imposed by qualitative criminological researchers. Second, the dialogue between proponents and critics of IRB requirements will be reviewed. Third, a focus on confidentiality overall, and unlimited confidentiality specifically, will note arguments for and against IRB. The chapter will then conclude with a review of what research exists regarding confidentiality in particular.

Qualitative Researchers: Goals and Methods

The acquisition of new knowledge often pits researchers into ethically compromising circumstances (Briggs, 2010; Murphy & Dingwall, 2007; Worley, Worley & Woods, 2016). For example, Worley et al. (2016) describe ethnographic researchers who, through the process of gaining access to and relating with their participants, engaged in illicit activities themselves (2016). These considerations are weighed against a belief that the epistemological quest will reap rewards in the form of progress and human flourishing (Hamburger, 2005; Israel, 2004).

Further, it has been argued by Fricker (2007) that misunderstandings due to unexplored avenues in social scientific research can lead to hermeneutical injustices. This occurs when society lacks the tools necessary to more accurately diagnose a situation. The example she uses is of “a woman who suffers sexual harassment prior to the time when we had this critical concept, so that she cannot properly comprehend her own experience, let alone render it communicatively intelligible to others” (p. 6). She goes on to suggest that the blame for this form of injustice is not on any individual, for “both the speaker and hearer are laboring with the same inadequate tools” (p. 7). The only remedy for this situation is establishing concepts which more accurately grasp the lived experiences of individuals. The way in which researchers explore new critical concepts via lived experiences is through qualitative research designs (i.e., naturalistic field research method, grounded theory, ethnography) (Sadler, 1981).

For example, in studying death row exonerees, feminist qualitative researchers Westervelt and Cook explore the practices necessary for ethical navigation of the lived experiences of those wrongfully convicted (2007). They lay out four principles that they consider necessary to “ethical research that illuminates and enhances people’s lived realities” (p. 27). The first is that research must be a collaboration between participant(s) and researcher(s). They argue

that this approach places the researcher as equal to the participant in regards to the discovery of truth. This helps establish their second principle, that trust is the central goal. By breaking down the power structure that exists between an observer and the observed, participants can feel free to express openly and honestly with the researcher in regards to the subject of interest. The third principle is that researchers should quite literally care for their participants. This can be viewed in accordance with the IRB's standard of "harm avoidance" (8). However, the "ethic of care" detailed by Westervelt and Cook goes beyond simply not hurting the participants (2007, p. 27). They detail how one should care too about the human within the participant and their willingness to share openly the experiences of often traumatic events with the researcher. Finally, one should not forget the importance that gender, race, and class can play in the lives of individuals and how this effects their perceptions.

Confidentiality has a role to play with all four of the previous principles outlined by Westervelt and Cook (2007). Consider an attempt by a researcher to establish an open dialogue with death row exonerees, a population that would be all too perceptive of the fear of incrimination. Only through the building of trust could this be made possible. Now imagine if the researcher had to disclose to the participants that anything they revealed could be used against them in a legal setting. As these disclosures occur within the initial encounter with the researcher, an issue of first impressions occurs. Sadler (1981) states that the order of received stimuli matters: that the original intuitions about someone often supersede later evidence (p. 27). A qualitative researcher must therefore work doubly hard to overcome their first impression with participants who will view their initial encounter as a requirement to sign a document that may put them at risk of self-incrimination. Furthermore, how will they be able to differentiate the allegiances of the researcher from that of the criminal justice system which they are already

skeptical of? It would be a moot point for the researcher to then attempt to describe how the study is meant to maintain a standard of beneficence when a participant can feel as though they are putting their life on the line.

Adler and Adler (2002) further document a case where a student researching women and intimate-partner violence was obligated to report any illegal behavior to the authorities. To begin each interview, she was required to disclose to them that nothing they told her could be held in confidence. How could any of the participants, therefore, be open and honest when the penalty for domestic violence, in some states, is an immediate arrest of the participant and their intimate partner? The board justified this requirement by stating, “if women hit their husbands, they might hit their children” and disregarded the researcher’s mention that each of the participants were themselves a victim of “chronic battering” (p. 37). The effect of the IRB was that the participants could be held criminally liable for any disclosed altercation, including one of self-defense. Therefore, the integrity of their answers to any of the researcher’s queries could not be reasonably trusted. However, in choosing to focus on the children as victims as opposed to just the participants, it could be argued that the IRB was considering the ethical consequences of the research more broadly. Proponents will argue just that (Robertson, 2014; Graber, 2016), while critics will see this as short-sighted, unnecessary, or even contradictory (Schrag, 2011).

Proponents and Critics of IRB

It is important to better understand the logic of both the proponents and those critical of IRB. Schrag (2011) makes the case that Institutional Review Boards are inept at making ethical decisions about social scientific research. He claims that they “impose silly restrictions” (p. 122). An example he uses is of the ethnographer who was required to obtain a signed consent form

from everyone she came in contact with, including the barista they ordered coffee from. A total of around two hundred fifty signed forms had to be collected by the time the researcher concluded their study of a small video game company. He also suggests that ethics boards are designed as a response to harms conducted by biomedical researchers, not social scientists. The principles driving institutional review boards are used across methodologies in which they are not applicable such as in non-experimental settings. Furthermore, he claims that ethical considerations that should be had are missed due to the one-size-fits-all approach of rooting all ethical principles in research on the basis of the biomedical field. Finally, claims that ethics committees overestimate dangers because they are not overseeing the fields in which they have expertise. They often require consent forms that warn participants of the potential harms of being re-victimized by their discussions of past trauma, a claim that Schrag says is not supported by research.

Meanwhile, other researchers have argued for the necessity of ethics review boards and claim that the above criticisms are overblown (Robertson, 2014). Graber (2016) extols the many values of the medical fields' response to the Tuskegee Syphilis Experiment with establishing the Belmont Report of 1968. The particular elements of the Belmont Report are important to note as is the history of Institutional Review Boards from which Graber considers laudable.

For instance, the first response to that horrific experiment was to change the purpose of physicians (Graber, 2016). The previous unitary goal of healing which "makes possible a position in which the ends justify the means" was replaced (p. 132). With the Belmont Report, a subject's privacy, autonomy, justice, and potential harm must be prioritized over the goals of the physician. For social scientists, this means that participants must be selected for equitably, the risks associated with their role in the research minimized, and the benefits of the research

maximized (Greenwald, Ryan, & Mulvihill, 1982). The role of the IRB is to “[review] the research from the point of view of a potential subject” the same way Senators are meant to represent the point of view of their respective constituents (p. 36).

One of the most cited examples of ethical consequence in the history of social science research is that of the *Tearoom Trade* (Galliher, Brekhus, & Keys, 2004). Social scientist Laud Humphreys, wanting to study the culture surrounding homosexual activity that takes place in public restrooms. “Tearoom” is a colloquial term for a place where men gather for casual oral sex. To gain access to participants, Humphrey had to participate as a “watch-queen” during tearoom encounters. “Watch-queens” are tasked with being a lookout for police as these sort of public homosexual encounters are felonies. This placed Humphreys in the role of an ethnographer, as he was studying this subculture from within the lifestyle (i.e., as a participant himself). The goal of the *Tearoom Trade* study was to counter the narrative that these sexual encounters were by “depraved and demonic deviants, lurking in the shadows to pounce upon unsuspecting young men” (Babbie, 2004, p. 15). Furthermore, his conclusion was that homosexual men are engaging in these activities due to social pressure: the inability of gay men to come out publicly without great risk to their social status. Though this conclusion is widely lauded as helping advance the civil rights of the gay community, many have also been critical of the methodologies employed by Humphreys (Babbie, 2004).

Regarding the *Tearoom Trade*, critics raise ethical considerations relating to the privacy of participants, the use of deception on his participants, and the felonious nature of his study. In an article written shortly after *Tearoom Trade* was published in 1970, Von Hoffman dubbed Humphreys as a “sociological snooper” who invaded the privacy of the participants he was meaning to help. He goes on to criticize the deceptive nature by which he gained information

from participants. Participants did not know they were being studied as Humphreys was only ever a “watch-queen” to them. They also did not know that their license plates were being recorded so that the researcher could interview them at their homes a year later. Furthermore, Galliher, Brekhus, and Keys (2004) say that Humphreys “loved an audience” and enjoyed to “shock people with mentioning salacious sexual details” (p. 95). They go on to assert that, perhaps as a sort of personality flaw, Humphreys preferred studying homosexual acts when he may have supported his same thesis by simply conversing with homosexual men. Engagements in these felonious acts, even as just a lookout, put his participants at risk as the arrest of Humphreys could lead to the additional arrests of his participants, many of which he maintained identifiers such as names and license plate numbers of (Babbie, 2004). It could be argued then, that an ethical review prior to the study could have helped reduce the potential risks to the participants without harming the positive impact the study may have had on gay rights. Though guidelines surrounding social science research would change directly following the publication of *Tearoom Trade*, it is important to note that the IRB would not be established for another 4 years after the study.

In the fallout from studies such as the *Tearoom Trade*, Robert Worley, Vidisha Worley, and Brittany Wood (2016) detail some of the ethical dilemmas that ethnographers still find themselves in. In a study of eight ethnographic scholars who have published fieldwork related to crime or deviance, they found that ethical conundrums found their way into every aspect of their research. Many of these problems are not ones that could have been foreseen. For example, participants discussed the stigma they faced by colleagues after conducting ethnographic research. Stigma that they were somehow liable for, or at the very least active participants in, the daily lives of their subjects. For example, one participant wished to learn more about the lived-

experiences of exotic dancers and did so by becoming one herself through the course of her ethnographic research. For her, this was a way to show her research participants that she was one of them and not some untrustworthy outsider. However, the stigma of being a dancer followed her back to the academy, particularly among male colleagues who began to objectify her and consequently belittle her research. This would not be a concern which an IRB would be able to address. Particularly because it deals with deeper cultural issues that members of the board would themselves be subjected to.

However, the most relevant argument amongst criminologists against Institutional Review Boards is their tendency to fall in line with law enforcement strategies which restrict confidentiality at the expense of participants. This is where Adler and Adler (2002) make the claim that the fear of lawsuits has shaped University research policies more than the fear of harm to participants by researchers. Law enforcement often subpoenas researchers for information about the participants of the studies in the hopes of catching criminals. This is the process which has led to researchers being prosecuted when they decline to sacrifice the subjects they have been spending so much precious time working with (Israel, 2004; Palys & Lowman, 2002). Review boards, therefore, are only trying to balance their ethical principles with outside pressures and this often comes at the expense of the researcher, their product (i.e., knowledge production), and their participants. As Schrag (2011) puts it, “Were governments serious about protecting the human subjects of research, they might better pass shield laws protecting research notes” (p. 128).

A Focus on Confidentiality

Amongst the above theoretical arguments between proponents and critics of IRBs are scholars who focus on confidentiality between researchers and their participants. These research ethics scholars suggest that stronger confidentiality laws - including the establishment of unlimited confidentiality - would serve to further the principles of IRBs (i.e., to protect human subjects from harm). Literature reviewed throughout this subsection are surmised from studies from the United States and abroad. Charting these global works helps to display an international struggle around the establishment of an ethics for researcher-participant privileges.

Since confidentiality signifies a primary principle of research ethics as well as a standard practice in social research (see Kaiser, 2009), scholars like Palys and Lowman (2002) suggest that confidentiality laws should be strengthened. They explain that, under U.S. Common Law, there are two types of privileges that protect persons from disclosing their confidential information. The first is a class-based privilege such as attorney-client privilege. In this case, it is safe to assume that confidentiality will be upheld as the “onus of proof [is] on any person who seeks to obtain confidential information” to make justifications (p. 6). This is set, in contrast, to a case-by-case basis where confidentiality must be justified by the person asserting the privilege. The latter is the case for researchers and the reason they are easily forced to either a) declare that they will not be able to maintain privilege with their participants or b) breach established confidentiality (whenever they are able to have it established with their research subjects) at the will of a judge, grand jury, lawyer, or law enforcement official.

Such legal restrictions on confidentiality are contentious issues to grapple with, particularly for qualitative criminologists who study participants that may disclose participation in illegal activities. Therefore, Palys and Lowman (2002) recommend that the Wigmore Criteria be applied to researchers. This principle, established to protect journalists, maintains that

privilege must be upheld when confidentiality can be assumed except under the most extreme of cases where justification before a judge must be made to breach confidentiality (Wigmore, 1902). However, this would require a researcher making it to the Supreme Court with an applicable case of confidentiality – a feat that has yet to occur. Palys and Lowman (2002) conclude by asserting the importance of social science researchers to make confidentiality a large part of their research design including it being made a clear assurance to their participants.

Fitzgerald and Hamilton (1997) go on to explain how the assurance of confidentiality will always be a lie under current legal standards. Field notes were subpoenaed by an anthropologist studying Australian aboriginals in 1985. The subpoena was at the detriment to both the researcher and the aboriginal subjects with which they worked with for the benefit of a company seeking to make a claim to that land. In the U.S., similar subpoena strategies have been used to further both private and state interests. In 1993, a graduate student was jailed for over 150 days for not disclosing information about an animal rights organization she was studying.

The authors list four legal liabilities that force researchers, and by extension their universities, to disclose information. The first, and the one that sent the graduate student to jail, was that you can be held in contempt of court. Secondly, if an officer demands disclosure, it is deemed a “charge of hindering police” to refuse (p. 1101). Third, a researcher can be accused of aiding and abetting if their participant happens to be engaged in criminal activities which are not disclosed to authorities. This is, of course, always the case when researchers are studying criminals. Finally, researchers can be held civilly liable by either participants or third-party individuals (or companies) that are against the aims of the research. An example of this is the documented cases since the 1940s of tobacco companies subpoenaing Universities for data as a means of thwarting research that could be threatening to their marketing operations (McMurtrie,

2002). The authors conclude that a legal standard of confidentiality needs to be set; otherwise, researchers will never be able to assure participants of any privileges.

Israel (2004) continues this point by bringing up the concept of unlimited confidentiality. He first lays out the three ethical frameworks from which justifications for confidentiality exist. First, is the consequentialist argument which states that the consequence for not being about to assure a person of privileges is that they either will not participate or will withhold or even alter information (i.e., lie). The second, is the rights-based argument which advocates participant's right to privacy. This argument has a basis in the Belmont Report as the autonomy of participants is held as one of its three guiding principles. Finally, the fidelity-based argument asserts that researchers "owe loyalty to the bonds and promises associated with research" (p. 718). This includes that they respect the participant as an equal towards the goal of acquiring knowledge and remain faithful to the expectations that they may have for the researcher.

The ability of researchers to remain faithful to their participants is astounding. Israel (2004) describes an ethnographer who hid his notes in his boot so that anti-gang units would not be able to arrest the children he had been interviewing. The researcher describes that "some of the things we jot down can mean harassment, imprisonment, exile, torture, or death for our informants or for ourselves" if he was unable to maintain confidentiality with his participants (p. 720). That was in an effort to thwart law enforcement procedures overseas. Within the United States, another researcher studying prison inmates was forced to testify against a participant and later reported "I lied. I lied and was glad that I did. I lied and today remain happy that I did." (p. 719). The accurate disclosure by that researcher would have meant the continued incarceration of one of his participants. Instead, he chose to maintain confidentiality without having to personally face the repercussions of keeping quiet. This is a privilege not all criminological researchers are

able to navigate but one which could be easier with the inclusion of unlimited confidentiality within law.

Israel (2004) further details the cases for which disclosure by a researcher can be considered the ethical choice. If the researcher knows that a participant is either planning to hurt themselves or another person, maintaining confidentiality would actually be the greater harm. This would be the utilitarian argument for disclosure. However, under this principle a social scientist would never be able to research non-physician-assisted suicide, drug-users, or criminals of any kind. The distinction the author makes, therefore, is between anticipated and unanticipated harms. The former is when a researcher knows the behaviors of the subjects that will be participating (e.g., that a burglar will be discussing burglaries). The latter is when an unintended harm is uncovered such as that burglar discussing their plans to stick around and murder the owners next time. The ethics of disclosing either case is not just discernible by the severity of the crime, but also by the researcher's relationship to the goals of their research. This displays another gray area in confidentiality among criminological research.

Throughout, this chapter has described the goals and methods of qualitative research, how those goals align with, or come in contradiction to, IRB, and how confidentiality, specifically, opens up more avenues for continued exploration of ethical considerations. What role do qualitative researchers, themselves, believe they play in knowledge production? How do they relate to their participants and how do they do so ethically? Hopefully the following study can contribute to a better understanding of how researchers view the ethics of disclosure versus confidentiality. It is also the goal to learn more about what researchers do when they are faced with these kinds of conundrums.

Chapter 3:

Methods of the Current Study

As noted throughout the prior chapters, previous research has displayed the benefits and problems of applying similar restrictions on social science research that developed from medical research (Schrag, 2011), the ways in which epistemological pursuits have been thwarted by institutional requirements (Adler & Adler, 2002), and how qualitative researchers have had to respond to these impediments (Israel, 2004). Additionally, some researchers have even explored unlimited confidentiality as a principled response to IRB requirements (Adler & Adler, 2002; Israel, 2004). However, it has yet to be found out the efficacy of such a strategy. This is important as the ethics of guaranteeing privilege to all research participants is still debated (Israel, 2004; Palys & Lowman, 2002).

Thesis Research Goals and Guiding Questions

To explore the concept of confidentiality within qualitative criminological research, this study interviewed relevant researchers. In so doing, this research attends to three (3) overarching research goals with accompanying research questions that are connected to interview script questions (see Appendix 1). They are as follows:

Goal 1: Explore qualitative researchers' experiences with disclosure. Research question 1: This broader first research goal is answered through the exploration of qualitative researchers' experiences with research participant recruitment via a) privacy, b) informed consent, and c) confidentiality and is connected to interview script questions 1, 2ab, and 3abc.

Goal 2: Explore qualitative researchers' understandings of the ethics of

disclosure. Research question 2: This broader second research goal is answered through the exploration of qualitative researchers' understandings of a) benefits, b) risks, and c) drawbacks to conducting qualitative research and is connected to interview script questions 4abc, 5abc, and 6.

Goal 3: Examine qualitative researchers' rationales that either a) justify or b) resist disclosing information provided to them, in confidence, by their research participants. This thematic third research goal is answered through the exploration of research questions 1 and 2 (above) via an additional heuristic analysis for "meaning making" (see Moustakas, 1990; Timmermans & Tavory, 2012) of qualitative data coded for a) support/justify or b) oppose/resist rhetoric/examples when discussing disclosure.

Attending to these three research goals and overarching research questions allows for the broader exploration of how qualitative researchers, working in the areas of criminology, understand confidentiality and how it relates to ethical participation by human subjects. The following sections will detail the sampling strategy, research methods, and the strengths and limitations of both.

Sample and Selection of Research Participants

There was not a requirement that the research participants for this thesis project were criminologists themselves. There was a requirement that participants of this study research topics, populations, communities located within the scope of criminology - either as criminals, victims, and/or administrators/workers within criminal justice and legal fields. Additionally, in order to ensure that they have notable experience, participants of this study must have published qualitative research.

Gaining access to participants was integral to this study. Interviewing participants for the project occurred in several steps including 1) the use of a gatekeeper, 2) contacting academic organizations and sending study information sheets and requests to participate to membership, 3) snowball sampling. To gain access to qualitative researchers studying criminological phenomena, first, a gatekeeper was used. As a Master's student with limited connections in a predominantly quantitative department, I used my thesis chair as the initial gatekeeper for getting access to qualitative researchers. Although my thesis chair is a qualitative researcher within the discipline of criminology and criminal justice, she will not be a participant. This is because her participation would be unethical due to conflicts of interest. Furthermore, her participation would be impossible to keep private and would compromise any ability at maintaining confidentiality.

Based on information provided by this gatekeeper, a total of 17 researchers were contacted through this method. Only five (5) people responded with interest. One (1) provided a referral to a different researcher who is included as a snowball participant, but did not do an interview themselves. One (1) person had to reschedule the interview due to a family emergency and then never got back to me and another (1) had to be removed due to their research not fitting the correct category for this study (i.e., qualitative research related to crime, deviance, or social control). This sampling method provided a total of two (2) positive respondents, plus the additional snowball participant.

Second, recruitment via national and international academic organizations (i.e., American Society of Criminology; Academy of Criminal Justice; Law and Society Association) and their respective divisions' memberships were made (i.e., Division on Critical Criminology and Social Justice; Division of Women and Crime). An email was sent to division memberships summarizing the study and qualifications for participation. The Division on Critical Criminology

and Social Justice had 300 active members at the time meanwhile the Division of Women and Crime had 400. Five (5) people responded with interest. However, only two (2) were able to be used for this study. One (1) participant did not fit the correct category of research (i.e., qualitative research related to crime, deviance, or social control) and the 2 others were unable to find the time when it came to scheduling interviews.

Third, a snowball sampling method was used to allow for the finding of additional participants. A snowball sample involves speaking with and surveying initial key informants who, in turn, provides access to other relevant participants (Schutt, 2015). Each participant nominates additional relevant contacts. Each nominated contact was then reached via an email that introduced the author/researcher and the purpose of the research while requesting their participation. Two (2) participants were included through this process. One (1) was recommended at the level of the gatekeeper sample, the other was recommended by a participant that found out about this study through the listserv.

The snowball sampling method allows for a bridge to be built between the researcher and a particular tight-knit community (Trotter II, 2012). Their dynamics are better understood than from other sampling strategies as participants have a relationship to one another (Gibbs, Kealy, Willis, Green, Welch, & Daly, 2007). For this thesis, the community of interest is a network of qualitative criminological researchers. However, a limitation of this strategy is that initial informants bias the resulting sample by having much more control over the resulting nominations (Schutt, 2015). This can be mitigated through having multiple initial informants to use as starting points (Trotter II, 2012). The initial recruitment emails allow for multiple index individuals to snowball sample from and, therefore, access to multiple networks of researchers.

Please note that participants names and identifiers have been removed from any of the below conversations. In place, alias or other names were given to them. These names were given by requesting a list of gender-neutral names from a Discord server. No one in that server is aware of the research or the reason for the request. The first six were picked and have no significance outside of identifying the participants within the confines of the following thesis.

Of the six participants, five of them are female and one is male. To further deidentify all research participants, gender-neutral “they,” “them,” and “their” pronouns will be used. Other demographic information collected - including race and ethnicity, type of research institution (teaching, R2, R1) - will also not be linked to individual participants. Four of the participants are from R1 research institutions and the other two are from R2. At two of those institutions, there is a specific IRB for the Social Sciences. The other four participants are at institutions where all human subjects research goes through the same board. Regarding race, two described themselves as “Asian”, one as “Latino”, and three as “White”. No other personal identifiers were collected. Any information related to participants specific research topics as well as their home research institution were not linked to their identity. It is not expected that participation in this project presents any risk or harm to participants nor that legal risk could appear during the research.

Interview Methods

Overall, in order to gauge the consequences of institutional demands over researchers and the efficacy of unlimited confidentiality, structured interviews were conducted. These questions aimed to understand qualitative researchers' experiences with disclosure, the ethics of disclosure, and how they justify and/or resist disclosing confidential information, even when that information is relevant to law enforcement practices. Since research has noted how law

enforcement strategies have had an effect on the requirements set by IRB (Adler & Adler, 2002; Israel, 2004), some questions utilized for this thesis addressed these issues including whether or not qualitative data was ever – or could be – subpoenaed.

Qualitative interviews consisted of six structured questions that received full exempt status through IRB on March 11th, 2019. The proposal was titled “Researcher-Participant Privilege within Qualitative Criminology” [1380431-1]. The interview process began with an introduction to the purpose of the study and the knowledge that the participant may withdraw from participating in the study at any time. Participants were also allowed to ask for clarification regarding any questions and to withhold answering any questions for any reason. All interviews were conducted one-on-one.

All interviews were conducted over the phone between April 29th and May 27th of 2019. These conversations lasted on average 37 minutes with the longest being 57 minutes and the shortest being 22 minutes. Each conversation began with a short demographic question to gauge participants ethnicity, race, gender, and religion. Demographic questions were open-ended allowing participants to use their own language to identify themselves. This strategy was intentionally chosen because it allowed for participants to describe themselves with their own labels and categories (if they so choose to do). For the sake of better understanding what kinds of universities participants work and do research at, without identifying the institutions themselves, they were also asked to describe the type of institution they are currently employed at. These institutional descriptions consisted of the Carnegie Classifications (i.e., R1, R2, R3, teaching).

A tape recorder was utilized for all interviews and kept in a locked briefcase until the process of data transcribing began and ended. Afterwards, all recordings were destroyed. Every participant was made aware of the recorder at the beginning of each interview and that they were

able to opt-out of recording at any time if they choose. Only three of the six participants were ever audio recorded. The recordings were destroyed immediately following transcription and names, along with any identifiable information, were removed from all transcriptions.

Structured Interviews Strengths and Limitations

The strengths of this study are that the interview process allows for a collaborative process by which information will be acquired (Schutt, 2015). The benefits of having a collaborative, as opposed to a hierarchically designed one, is that “there are clear benefits to those involved” where “each participant’s diverse experiences and skills are critical to the outcome of the work” (Ritchie, Lewis, Nicholls, & Ormston, 2013, p. 36). Furthermore, the questions aim to prod both the ethical and the practical implementation of upholding confidentiality among qualitative researchers drawing from their own experiences with participants.

Presenting research participants with the same structured interviews has its benefits. First, research suggests that the more structured an interview, the greater the validity of findings to be compared/contrasted across participants. Since participants of the study were asked the same questions, it was easier to compare and contrast answers to questions thus making it easier to understand thematic consensus and disagreement, if any. Also, any inconsistencies on behalf of the interviewer (the author/researcher) were minimized with the use of a structured interview script. For example, additional/supplemental follow-up questions were also created and utilized throughout the interviews. This was done to help create consistency and it also allowed the researcher to be prepared before each interview (see Weil, 2017).

Keeping these strengths in mind, there are limitations to consider. The discriminant choosing of participants that come about by this method involves a biased selection of cases. This method, therefore, negatively impacts the generalizability of the study as the initial subject will have a disproportionate effect on what respondents ultimately join the study (Schutt, 2015). However, this is not an issue since generalizing is not the goal of this research. Instead, the goal is to explore the lived experiences of qualitative researchers as they attempt to navigate institutional demands with the ethical demands of their participants.

Please note that a major ethical consideration for this research design is that of confidentiality, privacy, and consent. It may seem ironic that a study of confidentiality will itself require information to be kept confidential. However, as the participants of this study are researchers and professors themselves, information they disclose could put their careers, including tenure, at risk.

Coding and Analysis

After conducting each interview, the interview was transcribed and a transcript was created. These transcripts were either transcribed from audio recordings, when available, or recorded from memory and based on cursory notes taken during the interview. For interviews that had audio recordings, Danny and Bailey, recordings were deleted immediately after transcribing.

Each transcript was coded based on the 3 research questions. Open coding was used to establish broad categories which respondents shared. These broad categories were ethics, epistemology, confidentiality, and experiences with IRB. These responses were then used to

build a narrative related to the overall topic as well as for answering each specific research question.

Coding was done a second time to look at agreements and disagreements between each interviewee. These were then used to delve deeper into themes. Themes were determined by the overall narrative, with a focus on answering the research goals and questions of the study. Then, a third round of heuristic coding was done based on these new themes. Heuristics is a method for exploratory investigation into human experience that allows for the subjective relation of the researcher to the phenomenon “rather than exclusively to relations among the pieces of that outside situation” (Sela-Smith, 2002, p. 7). In this way, heuristic coding made it possible to draw a third research question based on the meaning making shared by the participants when interviewing them based on the first two research questions. This method of heuristic coding helped inform answers to the third research question (see Chapter 6) as well as comments throughout the Conclusion chapter and to give recommendations for future research. Coding was completed by two scholars trained in qualitative research methods and analysis (myself and by my Thesis Chair). This allowed for a comparison of both of our sets so that inter-rater validity could be better established.

Table 1*Qualitative Researcher Answers to Interview Questions*

Question Number	Jess	Alex	Lee	Danny	Bailey	Mason
1	Autophoto.	Narrative	Grounded	Mixed	Ethnog.	Grounded
2	Yes	Yes	Yes	Yes	Yes	Yes
3	Yes	No	Yes	Yes	No	Yes
4	No	No	Yes	No	Yes	Yes
5	No	No	No	No	-	-
6	Yes	Yes	Yes	Yes	Yes	No

Table 1 records the responses to the six standard questions that can be found in Appendix 1. Question 1 was open ended, asking that they explain the kind of research that they do. The table simply lists the approach to qualitative research that they engage with (i.e., autophotography, narrative research, grounded theory, mixed method, and ethnography). These were provided to show the diversity in qualitative research methods used across research participants. In the case of the single participant that used a mixed methods approach, only the experiences with the qualitative side of his research were discussed. Binary responses to the next 5 questions are recorded in the table to show what areas of agreement/disagreement were found across the 6 participants.

The following thesis chapters are organized in to three findings chapters (see Chapters 4, 5, and 6) a Discussion (Chapter 7) and a Conclusion (Chapter 8). Most relevant to this thesis was the relationship the participants had with their own participants. Findings associated with how participants experience confidentiality (see Chapter 4), how they understand the ethics of

disclosure (see Chapter 5), and how they justify and/or resist institutional demands associated with IRB (see Chapter 6) are offered next.

Researcher Biases and Limitations

Standpoint epistemology is the view that “social identity is relevant to knowledge-acquisition” (Toole, 2022, p. 47). It suggests that one’s own identity (e.g., gender, race, class) impacts the way one understands the world around them and their understanding of knowledge itself. Researchers that practice standpoint epistemology attempt to raise the voices of marginalized or oppressed groups who they view as being largely ignored as a part of conventional knowledge. Therefore, it is worth pointing out that the author of this thesis is a white, cis-male, heterosexual and that this undoubtedly impacted the nature of this study despite attempts to stay as true to the meanings that were conveyed to me by the participants. For example, my standpoint within society impacts the types of questions that were even asked as these were already based on my current understandings.

There are also limitations to the methodologies used in this thesis. All three sampling methods utilized are open to self-selection. People volunteer simply because they have experiences related to this topic and not because of incentives to participate (there were none). Additionally, the sample only includes researchers so the perspective of IRB members is not gained.

Chapter 4: Findings I.

Experiences with Disclosure

The goal of this chapter is to explore qualitative researchers experiences with confidentiality. The first theme presented in this chapter discusses how the participants conduct their research. It aims to give a breakdown of the kind of research participants of this study engage with. It is important to establish the context of what it is they are themselves interested in studying, who their participants are, and what methods they engage with. The second theme explores the Institutional Review Boards (IRB) requirements that participants experience when conducting research. This thematic section explores how IRB adds a new layer to how researchers engage with participant trust and privilege including and how IRB makes maintaining confidentiality more difficult. Additionally, engagements with other institutions and agencies are discussed as examples of how participants complicate the maintaining of confidentiality.

Theme 1: Context: “In this field, I have been in the minority as a qualitative researcher.”

First, describing the kinds of research each participant engages with is important for establishing the context by which they have experiences with disclosure. All six participants are qualitative researchers that have direct contact with the participants of their studies. For most of them, this direct contact revolves around interviews with participants. The only exception is Bailey who instead takes a less formal ethnographic approach. In their words,

As an ethnographer I kind of just record what conversation naturally comes up. So, I don't really ask a lot of questions. The process is to let the natural setting flow as it is.

This method is distinct from the other 5 participants who would instead have questions in mind already that they plan on having their participants answer. As such, the ethical considerations are also diverse which will be discussed further in the proceeding second findings chapter.

The other distinct researcher is Jess. They use photographs as their main source of data. The photographs tend to be of places - mainly of institutions (e.g., probation and parole centers) - that can be used to help detail their conditions. Jess also carries out interviews with participants to help add additional context to these photographs. Meanwhile, Alex, Lee, Danny, and Mason all primarily use interviews as their primary source of qualitative method.

All six participants responded that the information they were receiving from participants was sensitive. They each gave an overview of the studies they have been involved with and how those experiences relate to confidentiality. They all shared a common theme where the nature of their studies puts their participants at heightened levels of risk if they were able to be identified by their responses. A common concern was that their participants could be harmed as a result of the information they shared. As Jess describes:

Well since I'm working with probation and parole, I often interview parolees as a part of my research. The information they share with me could be sensitive, like self-incriminating. This is also true of the interviews I have done with those that have spent time in solitary. The things they say could inadvertently bring retribution on to them by the officers, if they found out what they were saying and who was saying it.

Jess has to be mindful of possible retribution upon their participants if they are identified. Possible examples of retribution includes targeted harassment by police, citations by probation or parole officers, or increased interest by law enforcement resulting in additional surveillance. For participants that have already spent time in solitary confinement, they already know what the

stakes are if any officer decides to punish them further. Therefore, it is important for the researcher to keep this information confidential.

Alex conducted a research project which involved interviewing teenagers who were a part of a rehabilitative institution for juveniles. This is, as they describe, an industry that builds alternatives to jail for the more privileged members within society. When a teenager is busted for having/using drugs, for example, they are sent to these private institutions. Importantly, in lieu of a juvenile detention sentence, they are sent to these institutions but only if their parents can afford it. When asked if Alex regularly had sensitive information shared with them from research participants, they responded, *“Well of course. They tell me stories about family trauma, of abuse, rape, including rape by staff members, and illegal activities which they engage in to survive.”*

Just like Jess’ research into parolees, there is a fear that retribution could be brought back onto individuals who participate in sharing their stories with the researcher. Alex continues, *“In exchange for these stories, I have to keep my promise to not ‘out’ any of them.”* This is a common theme among all the participants of this study - that they first have to build trust with their participants by letting them know that their sharing of stories won’t come back to haunt or harm them. As Lee describes,

Well first I would like to tell you about my two roles in research. I am a criminologist first and a legal sociologist second. So, I focus on issues of fairness in the law related to capital punishment, policing, and immigration/crimmigration. In this field, I have been in the minority as a qualitative researcher. A lot of my work is interviews. I’m not an ethnographer. However, I have committed felony offenses, technically, by even interviewing as even giving many of my participants a ride is a crime.

For Lee, the simple act of allowing participants a car ride, either as gratuity for participating or as a way to even get to do the interview in the first place, is legally a crime. This means the researcher must also be mindful of their own risk, in addition to risk of harming their participants particularly if any kind of identifiable information gets out.

Lee also has to be mindful of disclosing too much information about their participants. Their research often deals with immigrant populations and so topics around citizenship and documentation status can be risky for participants. Lee describes how their participants housing, jobs, and livelihoods can be put in jeopardy and that they could get deported if any identifiable information gets out or is found out by law enforcement entities.

Lee's other research was with gang members who are very secretive. To get access to this population, they have to prove to them that they won't disclose their names and activities to law enforcement. The way they describe their participant's attitudes is "*it's like 'fight club' for gang members – don't talk about fight club, you know.*" The aim or goal, here, for Lee, is to prove to all of their research participants that they can be trusted with stories shared. Considered a form of rapport building, several other participants noted similar methodological and ethical tactics.

For example, Danny takes rapport building a step farther: "*[T]he very existence of an interview taking place is a liability. The very notion that someone else would know that I spoke to [a participant] can be highly problematic*". They bring up the fact that, besides keeping separate the identities of participants from the stories their participants share, researchers often obscure their own participation entirely. While researching topics involving white collar crime, corruption, and gangs, Danny has found that it is safest to remove participants' names entirely from the project.

When discussing interviews with incarcerated gang members, Danny mentions, similar to Jess and Alex, that they have to be conscious of the possibility of retributive actions depending on what participants share. Similarly, when interviewing participants for a project on white-collar crime and corruption, Danny, again, talks about trying to keep participant's identities safe: *"...should anyone find my backpack they're not going to find a binder with people's actual signatures or even the words 'white collar crime' or 'corruption'"*.

Bailey, the only ethnographer in this study, has very unique experiences with conducting their research. By not having pre-planned and scripted questions that they set out to ask their participants, they have less worry about what information may arise. Bailey explains, *"the process is to let the natural setting flow as it is."* This allows their research to take a more organic approach and to, as they describe, learn *with* their human subjects and not *from* them. When asking Bailey about whether law enforcement would desire information about their participants, they responded,

I haven't really been active with participants that have necessarily broken the law, per se. Maybe, you know kids smoking pot or drinking under age, stuff like that.

However, when discussing the IRB they admit that they have a different view towards these sorts of activities.

For instance, Bailey's IRB nearly put a requirement on their research noting that they would be forced to disclose any information about gangs, drug use, or violence just because the participants were going to be overwhelmingly people of color. Bailey noted: *"They [IRB] seem to think that every time you talk to black or brown kids that you are automatically talking about drugs and gangs."* This connection to racist and classist stereotypes will be further discussed in the IRB section. So, while Bailey's work mainly involves studying inner-city attitudes towards

education as well as broader topics such as “*racial domination, white supremacy, [and] gender equality,*” for this researcher, conversations with IRB still included topics associated with crime and criminal justice.

Connected to these examples of worrying about disclosing too much information about their human subjects, participants also acknowledged worry about law enforcement acquiring their “data”. For example, when participants were asked about the desirability of law enforcement to acquire sensitive information about their participants, four expressed personal examples when this occurred noting the ways that they avoided personal information from getting out. Lee brings up the issue of “*crimmigration,*” that is, the overlap between the immigration and criminal justice systems. For this research participant, disclosing information about their human subjects – based on their citizenship status alone - would place them at-risk to future encounters with local and state law enforcement entities as well as the Department of Homeland Security and U.S. Boarder and Customs.

Beyond law enforcement entities, other shared examples of institutions that could benefit from the disclosing of participants information includes private interest groups and/or organizations, members of the media who may not have the same concerns toward confidentiality, and the welfare state. For example, Mason explains how the state could use sensitive private information to cut people off from resources: “*A lot of my information could stop them [participants] from receiving benefits. Examples include people engaging in the informal economy to make ends meet.*” Since Mason’s work focuses on what they call “*hustlers*” or “*people who are engaged in behavior that would be a part of an informal economy*” - which they describe as mainly being drug dealers - any one of their participants is at-risk of being found out and cut off of from necessary resources and services.

Alex was the first of two respondents that answered ‘no’ to the question of law enforcement desiring their data and explained that this was because their participants are from a privileged group: “*Because they have wealth, law enforcement is not concerned with these participants.*” Alex explains that staff at the facility under study would, instead, be more interested in acquiring their research/study data because they would “*punish those committing status offenses*”. Status offenses are those non-criminal violations that participants of Alex’s study might be committing and might, therefore, disclose when talking to the researcher. This concern is similar to the worries expressed by Jess - that officers, if they find out who and what is said, could retaliate against parolee participants based on what may have been shared during the interview. Bailey also responded ‘no’ and explained that they study juveniles and not necessarily delinquency or criminality. So regardless of a participant's engagement in crime, this would not be information that Bailey would even try to collect, capture, or document as “data” for their research.

Theme 2: Breaking Trust: “It took me 10 months for IRB. I mean, they fought me about everything in this project.”

In attending to how researchers understand their requirements to disclose information that are imposed by Institutional Review Boards (IRB), half of the participants responded that they were told, prior to their study, that certain information would require them to breach confidentiality with their participants, if uncovered. Lee said, “*I had to drop a previous participant as he had disclosed some information about crimes. IRB would have wanted me to disclose this.*” Meanwhile, the other half explained that their IRB never gave them any stipulations about when and if they should violate their participants’ confidentiality. However,

that also does not mean their ability to maintain confidentiality was not impacted in another ways.

For example, Jess answered ‘no’ but explained their institution adopted a “five-year rule” that requires all information collected via IRB approved research to be handed over to the university for five years. When asked what they believe would happen if researcher data was requested by outside forces, for example by subpoena, they responded confidently, *“They would go to the University and the University would hand it over.”* Thus, any data belonging to the university is effectively compromised within that five-year timeframe. Importantly, this was the only participant of this study that was working for an institution with such a hand-it-over-and-it’s-ours-for-five-years rule.

Interestingly, all participants answered that they were not necessarily afraid of their research data and participant information being subpoenaed from them. Jess, working at an institution with a “five-year rule,” said that a subpoena or lawsuit would go directly to the university. When asked about the stance of the university, Jess expected that they would buckle and turn over all data every time. When discussing a study from a decade prior, Alex explained, *“This local politician didn’t like what I had to say so they tried to cut me off from the data I was using.”* They admit this project was not something they were particularly passionate about so they decided to end the research project altogether.

Alex also explains a similar situation that happened with a colleague of theirs, *This other researcher I know did a survey regarding some reform school. They were contacted by lawyers of the industry (pauses) and the article they published was favorable [to the reform school], if that’s any indication.*

This connection between the labor (emotional, physical and mental) of conducting research as well as writing up findings and publishing was noted throughout a couple interviews.

For example, Alex also expressed concerns regarding being stilted by private interests more so than law enforcement entities. The research conducted by them would be more valuable to the private interests that may want certain information obscured. *“The industry will probably come after me,”* they explain. Since Alex’s work was yet to be published, they were also concerned about what would happen when corporate interests come across their final research publication(s). Alex mentions that their publication will not be *“favorable to the industry”*, so they are naturally expecting pushback. Importantly, Alex’s current publication is one that has taken them 10 months to get through IRB. Alex describes how they have put years of work into, and have a personal connection with the facility – a connection that predates their research project.

That personal connection is how Alex was able to gain the initial trust of their research participants. Alex believed that their participants felt like they could open up to them and not see them as an outsider; that they could trust that Alex was not just someone working for the staff of the facilities under study. Alex expounded, *“They wouldn’t even have trusted me had I not gone through [a similar program] as a teen. Most told me this, in fact. So, I just try to be sincere.”* This sentiment is also reflected by Danny who similarly explains how they try to break the ice with participants by going over how they maintain confidentiality with them and provide them with basic *“legal consciousness.”*

For example, as a way of depersonalizing their experiences, Danny tells their participants to talk about events that have occurred, rather than to say that they have personally done something or acted in a certain way. Danny describes this technique as a positive way to build

trust with participants because “*it signals that we are not trying to ‘catch’ you.*” Danny explains that their participants receive this insight positively, that they “*get it*”, and are then more likely to share stories of experiences in general.

Multiple participants expressed fear that any research that is too honest could result in some form of future litigation. Some explain ways that they intentionally try to not be “too honest” or accidentally know something that they wish they hadn’t. These areas of ethical navigation are covered in the following chapter. Overall, potential for future litigation itself is a fear participants of this thesis research share. Particularly, such as in Alex’s case, these concerns are heightened when their work becomes published. Similarly, Danny discussed an example of how they had a journalist contact them after their research was published; the journalist demanded proof that their interview had actually occurred to back up their published claims/findings. These findings suggest that, even years later, qualitative researchers often have to take steps to continue to avoid disclosure and that they are pressured by outside interests.

Themes presented throughout this first findings chapter helps us have a better understanding of how qualitative researchers experience disclosure. First, understanding their research topics and the participants of their projects are important in establishing the context of their own experiences with disclosure. Building trust and rapport with participants includes protecting them in myriad ways. Understanding how much information/data is “too much”, or “too close” to a participant, and how to navigate the “what if’s” associated with law enforcement and other institutional systems requesting data are paramount to conceptions of disclosure. These concerns can be connected to prior research regarding how private and state interests can attempt to hinder qualitative research (McMurtrie, 2002) or attempt to force them to disclose (Fitzgerald & Hamilton, 1997). Yet findings herein suggest that IRB may also play a role in promoting

private interests outside of the university. And that, collectively, these worries promote anxiety about harms that could occur against the researcher as well as participants of their research.

Second, the ways that qualitative researchers build trust with participants and maintain confidentiality suggest that they identify with their participants in humane, empathetic, and just ways. For example, Alex had built trust among the population they wished to study long before their research even began. Danny takes the time to coach each of their participants in what they describe as “*legal consciousness*.” Lee understands the marginalization that immigrant populations face and simultaneously wants to learn from them while keeping them safe despite hardship from IRB. We learn from these participants that they value their participants more highly than their very institutions. This echoes previous research about the lengths to which qualitative researchers are willing to go to maintain the confidentiality of their research participants (Israel, 2004). This serves as an experienced and practical context by which the ethics around confidentiality can be seen through the points of view of these qualitative researchers themselves. Connections to how these researchers understand the ethics of disclosure follows.

Chapter 5: Findings II.

Understanding the Ethics of Disclosure

Based on findings from Chapter 4 above, we realize that participants of this study feel that IRBs put their own human subjects at greater risk of disclosure. This second findings chapter explores researchers' ethical views more fully. What considerations do they have towards their participants regarding confidentiality, risk, and benefit? Does IRB help them navigate ethics in their research practice? What do they view the goals of IRB as? Finally, for those that proposed recommendations for IRBs, what could be done differently?

Theme 1: Ethical Viewpoints: "The very existence of an interview taking place is a liability."

When discussing their experiences, each participant explained the role in which they viewed themselves as playing. These roles then seem to inform their ethical views and the actions that carried out while in the field. Topics they discussed included trust, power-dynamics, gender, race, and class. The following section will explain each of these ethical concerns as they relate to participants' experiences while conducting qualitative criminological research.

Maintaining trust with their participants was a common theme among all six participants. First, they have to establish themselves as trustworthy even before initiating an interview or conversation. Sometimes that trust is built by being open to participants about the nature of their study. Lee discusses being open with participants about the goals and procedures of their study, "*all people involved should know.*"

Danny explained additional ways to build trust with participants by training them in "*lawyer speak*" while going through the informed consent forms prior to interviewing. Danny

mentioned, *“I have made it clear to them that when I interview people to explicitly say that: ‘Do not admit to any activities that you, yourself, have been a part of.’”* Danny does this as a way to build trust with their participants before an interview. By sharing ways for participants to protect themselves via editing how they respond to questions, this also signals that they can be honest with the interviewer in return.

Danny continues to expand on this notion of providing participants with some sense of *“legal consciousness”*,

I say - to make sure that if you are on the take, or you work with cops or managers in a sort of way, if you want to talk about it, then let’s talk about it. But don’t say, “I pay off the police,” or “I skim the cash register,” etcetera, etcetera. Respondents sometimes receive that favorably. It can be a way of breaking the ice because . . . it signals that we are not trying to “catch” you.

Other participants expressed ways that they have built trust. Alex built trust by having a history with the participants they were studying. They were already welcomed as someone who had gone through a similar experience and knew what it was like. *“So, I am already accepted by the community, and they all know I am a researcher and I am open with them about my project,”* Meanwhile, Bailey tries to build that trust over time. As an ethnographer, they have to root themselves into community and allow bonds to slowly build over time. This process is what primarily informs their research.

Next, researchers have to maintain that initial trust. They do this through actions towards participants after an interview or through the ways that they capture and document research data. Participants shared tips to help maintain confidentiality after data has been collected. Jess explains that they deidentify participants in their notes by using pseudonyms. However, they

continue that this is often not enough when doing research with incarcerated individuals. Jess continued to explain that, since guards will know who has and has not participated in the research, they “*try to only ask questions that are impersonal or are not likely to incur retribution.*”

Danny also talks about avoiding keeping participant names and identifying notes and adds that they keep certain topics about crime out of their research notes entirely. They say that this latter point further reduces any risk to their research participants. Being conscious of the language used in one’s own notes and memos can reduce the chance of unwanted interest by strangers or of identifiable documents being turned in to authorities.

One disagreement between researchers included whether or not locations should also be deidentified. When discussing IRB requirements, Bailey says,

I had to keep the city confidential, the city that the [participants] lived in. Which was strange. It sort of makes it hard for other researchers to go in and study the city and compare their findings with yours.

They describe how it would be hard for other researchers to follow-up if the location is not disclosed. Meanwhile Danny expressed their own desire to hide geographical location identity regarding their own study.:

This was one of those things that would have implicated both the police and the fire department. I was trying to model my research after this book from the seventies, and he actually got beat up by organized crime actors in Seattle. My own advisor suggested I be very careful with this study which crisscrossed with police. So, once I found out what was going on with the sex market thing. . . I made the decision. I wasn’t going to report it.

The main differences between Bailey and Danny's experiences are based on the context of their research. Bailey felt that their research dealing with childhood education was innocent enough and that, since their participants were already deidentified, the risk was low. They were also not trying to uncover illegal behavior in that study. However, Danny was researching corruption and uncovered sex trafficking that was facilitated by the police and fire departments. Publishing the location would easily identify the participants themselves. Danny mentions, "*[the study involved] reputable actors which makes it all the more dangerous. So, the city in the study was not revealed by name.*"

Danny admits they came across information in this study that they were not prepared for: "*There's the kind of corny phrase, 'don't fly too close to the sun'. You know, there are certain questions you shouldn't ask because you actually don't want to know.*" Their reason for choosing to keep this information confidential came down to their perceived role as a researcher. Danny discussed how they do not want to be playing the role of a journalist, which they describe as "*a reporter looking for 'the scoop.'*" They describe the role of a researcher as exploring phenomena as honestly as possible without harming participants. However, they are also conflicted about this role:

The New York Times doesn't pay me. Why would I stick my neck out there at very high risk to myself and to the participants of the study? So that is a scenario where when it is the police that are involved in the very item in question, that is the riskiest thing, right? I wouldn't. So... That is a scenario I feel conflicted about to this day. Some could view it as cowardice, self-preservation, or just not rocking the boat. But I erred on the side of being the fly on the wall observing and writing about it. Not having the audacity to snitch and sending out a cascade which would have brought different forms of harm to many people.

Danny pointed out how breaking confidentiality would not only have brought harm to their participants, but also to themselves. They wrestle with the hypothetical assertion that it was only themselves that they were trying to protect. However, they go on to better explain what the role of a researcher is as they see it. They continue, *“I am not a crusader. ‘Outing’ people would have wrecked the lives of the very people that trusted me to have those meetings just to help me with my own research.”*

Danny’s concern with researchers prioritizing their careers over the potential risks brought upon participants was shared by other participants of this study. Often, the only compensation that a human subject participant receives is the positive feeling that they are getting to share their story. Also, importantly, there is a simple promise that any information shared with the researcher will not come back to haunt them. Danny explains this as, *“it’s like, on your anguish and misery I am advancing my career, essentially. That’s the core critique.”* Stories from human subjects inform participants of this study via their research trajectory. In so doing, they can advance their career by potentially adding another publication to their curriculum vitae, secure a promotion, or even a raise for productivity in research. Therefore, the ethics of reducing risk for their own research participants is based on this understanding that they are benefiting from them. That benefit means that steps must be taken to make sure that their participants are respected and that their privacy is taken seriously.

Danny contrasts conducting research on vulnerable populations to those with power. They continue, *“The reverse is how politicians use academics all the time - that you are doing the study which will show how great their political agenda is.”* Their example of this is when they researched a high-ranking police officer who was happy to meet with them to share *“all the good news and share only that good news.”* This strikes Danny as akin to interviewing a

politician that is wanting to take the opportunity to share their platform and all the positive effects their policies have made. *“The very reason that they would even want to meet with you is because they are also using you,”* Danny says. Throughout all interviews for this thesis, participants discussed how any qualitative researcher must be aware of these kinds of power-dynamics and that there are instances where a participant is much more vulnerable due to the nature of what they will be disclosing with the researcher.

While most researchers admitted there was a limit to their maintaining confidentiality, several noted that these limitations only occurred in the most extreme cases. Examples of these situations includes participants who are *“actively homicidal or suicidal”* as Alex puts it. After being asked if there were any instances where information should be disclosed, Jess says, *“only if I felt like it would prevent the harm of someone”* but clarifies that context is important so they probably would still be unlikely to report. Lee also explained reasons to disclose as an *“impulsive killer”* scenario where a participant expresses immediate plans to commit murder. This shows how drastic a scenario must be for qualitative researchers to consider risking their participants' confidentiality through disclosure. However, all of these participants who answered “yes” were answering as hypotheticals as none of them have been in such situations.

Again, in asking about hypothetical breaching of confidentiality with their participants, the only ‘no’ answer came from Mason who had some stories to back up their experiences. Importantly, they shared three stories where the ethics became blurry but they still chose not to break the confidentiality of their participants. The first story was about a woman who was a diagnosed schizophrenic who had been stashing, rather than taking, her drugs.

A woman in her 50s invited me to her home and divulged to me that she was schizophrenic. I am going to use you as my therapist here for a minute. So, this woman

has been stashing all of her pills in the closet. She had not been taking them even though she was diagnosed and prescribed.

In these moments this researcher chose to keep this information to themselves and to stop communicating with the participant. They say that they “*did not feel like it was my place to report her*” but remain conflicted about their decision.

The second scenario Mason shared involved a woman on heroin around her child. Importantly, this woman is a stranger and not one of the participants in Mason’s study.

I was leaving this interview and this mother was passed out in a heroine state while her 3-year-old daughter was staring at her. Again, I did not report. But considering the ethics of this... A child. Would calling CPS have even helped?

This is another situation that they feel conflicted about. Their desire to rescue the child ran contrary to their other ethical concerns as a researcher. They also doubt that reporting this would have even helped the child at all.

Furthermore, they describe breaking confidentiality in this instance as something that could have eroded the trust of not just their participants, but of the entire community they were trying to learn about. They explain their ethics by saying,

It is also not my place to come into this community and bring my own privileged ethics and force these people, that I am trying to learn from, to follow them. It also would have damaged my reputation. People would not have wanted to participate. The community would not have appreciated me notifying authorities.

Other interviewees similarly expressed concerns with the harm that can come from a community deciding that they cannot trust researchers. Danny describes the harm that occurs when a researcher “*blows up the spot*” which they define as breaking confidentiality and

therefore causing participants to lose trust in all researchers. The following clarification question was asked of Danny:

For example, if you were to have 'blown up the spot' no other researcher would be able to learn from this population and we'd be kept in the dark about these sorts of phenomena you explore in your book.

They agreed with this and offered an example from their own experiences involving researching police.

Danny discussed that this local law enforcement department had “*rolled out the red carpet*” and allowed them to conduct interviews and collect data. They warn of the repercussions that academia could have more broadly in instances where a qualitative researcher breaks confidentiality. They continue,

If I were to use that data to just write a hit-piece, I basically just ruined it for countless graduate students and researchers that I may never even meet. When another researcher may want to explore some data [the police] may say 'hell no, last time I shared any data I had to hold a press conference to deny what the other person wrote.'

Danny explains that they deidentified that particular police department so that they could still be honest. They changed the name of the city, the participants, and any features that could link the data geographically. Then, they were able to publish a book that was critical about what was occurring without breaking anyone's trust or stifling another academic's ability to conduct their own research on similar subjects. They felt that this was the right thing to do.

Further, some researchers described a desire to benefit their participants out of appreciation. The final situation Mason confided during the interview involved a participant purchasing drugs.

I have not shared these stories with anyone else until now. I have one more though. In terms of law enforcement, an interviewee asked me to help pick something up for her. It was obvious that we were going to get crack, although she did not say. And so, I drove her over to pick it up.

Not only did they make a decision not to break confidentiality with the participant and report her, but they actually aided in the purchase.

From the perspective of these six qualitative researchers, their participants are taking on a great risk by even sharing their stories with them. This is connected to previous research regarding how confidentiality cannot always be guaranteed according to the current legal framework (Fitzgerald & Hamilton, 1997). The promise that a researcher's work will benefit participants by positively impacting policy resulting in improvements to their material conditions seems as much a pipe dream as their promise to protect them from disclosure. Regarding giving her interviewee a ride, Bailey says, *"It was the least I could do. I mean, I don't pay my participants anything to share their stories with me."* This shows that qualitative researchers have a desire to compensate their participants for taking on this risk of participating in their research because, as they note, simply participating in an interview could be considered a liability.

Theme 2: Institutional Ignorance: "No researcher is going to sacrifice their participants' health and trust for some institution."

The qualitative researchers interviewed for this thesis all expressed disagreements with Institutional Review Boards (IRB). First, they discussed the feeling that IRBs lack an understanding of qualitative research in general. Second, they also felt like IRBs acted in ways

that are racist, sexist, and classist. From their perspectives, experiences with IRBs led them to make decisions regarding confidentiality that ultimately increased the risk of harm to participants. These critical opinions are viewed as failures on the part of IRB to live up to their own standards of respect, beneficence, and justice for human subjects.

To begin, when discussing IRB, interviewees displayed grief at reviewer's lack of understanding of qualitative research. This echoes prior studies summarized throughout the review of literature (Murphy & Dingwall, 2007; Palys & Ivers, 2018; Schrag, 2011). One critique was that the IRB did not understand research methods used by researchers in social science fields and that "*they [members of IRB review] are only traditional hard science minded*" as Lee stated.

There was also a lack of understanding of ethnographic and qualitative research methods, their procedures and research goals. For example, Bailey stated,

They [IRB] would ask me questions such as 'what are you looking for?' or 'what questions are you planning on asking and what do you think you are going to find?' but, ethnographers don't go into that. They don't go into tabula rasa.

While being a critique unique to ethnography, this is echoed by the other researchers as well regarding their IRBs regardless of the kind of qualitative methods they use. This often caused IRB to make requests that "*didn't make sense for the research*".

In Bailey's case, they found a trick to navigate and get through the IRB process. They describe teaching members of their IRB about the goals and methods of ethnography. They called it an "*individual level fight*" because they had to go through this every time they were going to do research where they submitted an IRB for review.

Speaking about IRB, Alex says, *“First of all, they don’t even know what I am trying to research. I am at an R1 School. They do not understand [the social sciences] here. They are strictly used to the medical model only.”* Alex complained about the barrage of questions they received about their research design that were unhelpful. Danny also criticized the questions they would receive during full-board hearings: *“[IRB] will ask questions more appropriate for if I was trying to do research with cotton swabs and saliva.”* Lee makes the same critique saying, *“They are ‘traditional hard science’ minded”* and goes on to contrast the kind of research that they felt IRB was quick to approve with their own: *“Yeah, there was a study where cats were being skinned. That was approved. But interviewing undocumented people was a no-no.”* It is the case that every participant interviewed held a negative attitude toward the IRB process mainly because their experiences were negative and devoid of qualitative methodological understanding.

Their opinions of IRB are so damning, in fact, that both Danny and Mason wished to discuss how the current study, which was IRB approved, will protect their own identities. This is despite the fact that procedures, such as deidentification and the destruction of audio recordings after transcription, were already addressed prior to the start of each interview. These procedures were also included in the informed consent forms as well. The most direct criticism of IRB came from Alex who simply said, *“fuck IRB.”*

As previously discussed, Alex was already familiar with and accepted by the population they were trying to research. They explain that they had proposed two ways that they were wanting to collect data. First, they would interact with participants online through a support group that *“comprised entirely of teens, young adults, and some adults that have been in these programs.”* However, they say that IRB made them remove this section of the research altogether. Their explanation was that IRB claimed to want to protect this population. They

explain how they told their IRB, *“I am already accepted by the community, and they all know I am a researcher and I am open with them about my project. But no, they made me remove that section of my research entirely.”*

The second part of their research, and the only part they would be able to implement after 10 months of back-and-forth with IRB, was the interviews. However, this came with the stipulation that each participant had to sign four separate consent forms. Regarding the multiple consent forms, Alex says, *“I really believe this was used as a deterrent to the project.”* Alex continued to say the board then accused them of *“dirt digging”* and that the participants should be left alone entirely.

When asked why they thought IRB would feel that way about their research, Alex used their previous experience going through IRB for a different project to juxtapose:

My [first] sample was of a poor, mostly black, inner-city population. For this, I had no hiccups in IRB. They said, ‘cool, go ahead’ and I interviewed these people with absolutely no pushback. . . . They were coddling to this [second] sample, and not the other, because these were rich, white, women and girls. But they weren’t actually protecting them. They were only trying to get me to not do my research.

These accusations of sexism, racism, and classism are also shared by other participants.

For example, Bailey talks about how, when they were preparing an ethnographic study of inner-city youth, they experienced similar rhetoric from IRB. Because of the geographical location that Bailey was proposing to do their research, IRB made certain assumptions based on the demographics of community members living there. Bailey explains,

[The demographics of the research sample] were primarily black and brown kids who were marginalized and I wanted to observe them over a year and see how they transition

from high school to college. A lot of the IRB board just assumed it was going to be about drugs. I feel that, like anywhere else, a lot of the positions are filled by people that may have racist ideas and so the IRB are really no exception. . . They seem to think that every time you talk to black or brown kids that you are automatically talking about drugs and gangs even though drug use rate is found to be even across white, black, brown, and yeah. This is then, a confrontation with just another racist institution.

This is another example of IRBs using double-standards based on racialized, gendered, and classist stereotypes of potential human subjects. IRBs misunderstandings of qualitative research and their, as Alex calls it, “*reinforcing [of] race/class/gender paradigms*” goes on to inform decisions that many of the participants claimed were dangerous.

Some of these decisions involve requirements to disclose information which could harm participants. For example, Bailey explained that the IRB planned on requiring them to disclose if any of their participants are gang affiliated even though they had no intention of even discussing such topics/matters. When discussing a study involving a population that was primarily Latino, Lee mentioned how IRB made similar requirements based on racist ideas. In this instance, IRB required them to disclose the immigration status of all of their participants. Lee notes,

I was not planning on asking them anything regarding if they had committed any crime, what their immigration status is, or any particular event; only their perspectives of police legitimacy. IRB made us ask each participant if they were undocumented and then deny them access to the study if they were. Just that they wanted me to know of their status can put them in jeopardy.

Disclosure of such information could cost a participant their job, home, or result in them being deported. These were harmful outcomes Lee felt that they were alone in worrying about. They continue,

So, at the end of the day, I hold myself to a higher ethical standard than the IRB. For one, I would not comply with law enforcement or immigration. I would prefer to burn records than to ever put my participants at risk. IRB seems to prefer risk.

Similarly, Danny discusses their view that the IRB doesn't care about ethics at all. “[The IRB] is really there to protect from legal liabilities and the perception that they don't protect human subjects.” They claim that IRB are just a bureaucratic arm of universities that simply shield them – the universities - from lawsuits.

Danny continued to compare IRB to the Human Resources (HR) of a private company in this way. “You may think that HR exists to back you up and to provide you with the three-fold brochure and all the services available to you or whatever. [IRB] exists to make sure that the university can't be sued.” IRB do this by spending most of their time making sure that all the paperwork is in order.

In this regard, Danny also compares them to the Department of Motor Vehicles and ends their rant summarizing, “I just don't see IRB as this benevolent institution, I see it as a legal-compliance institution.” Similarly, Bailey doubts that the IRB can be relied on to protect participants and distrusts that they can even be “fixed”:

I don't think they actually protect any of the ethical concerns that come with research. . . I think that the IRB does exactly what it is meant to do when it protects the university's behind and I don't think that any sort of reform here or there will change much of anything.

Danny contends that IRB is an institution that fails to uphold ethical concerns. They assert that IRB does not aim to reduce risk for human subject participants but aims to reduce risk and liability for the university.

The qualitative researchers interviewed in this thesis recognize the risk that participants face just for being included in their research. Specifically, they worry that they will not be able to keep their participants confidential. Often this is a result of an institutional milieu that prioritizes legal compliance above ethics. This is echoed in previous research regarding the main concern of universities as enforcing legal liability (Adler & Adler, 2002). The present thesis contributes to that point by showing how IRB functions as an enforcement arm for legal liability even when it is contradictory to their stated goals (i.e., risk, beneficence, and justice) to do so. The next chapter will explore how qualitative researchers challenge these institutional requirements.

Chapter 6: Findings III.

Justifying and Resisting Disclosure

Qualitative researchers discussed the importance of building trust with their human subjects as well as the risks associated with learning about certain private information. Information - such as drug use, immigration status, and criminal acts - could cause harm to participants if it is disclosed. However, as this thesis notes, confidentiality cannot always be guaranteed. Participants of this research shared frustrations with IRB putting requirements on their research to either collect or disclose certain information that they felt increased the risk of harm to participants and undermined researcher trust. This is similar to previous research which has suggested that IRB are inept at dealing with ethical issues connected to qualitative research methodologies (Schrag, 2011). Participants also discussed what they would do as a result of these institutional challenges. This chapter will examine how qualitative researchers justify and resist disclosing information provided to them, in confidence, by their research participants. In highlighting the ways that qualitative researchers navigate the IRB process, we learn about how they also challenge IRB through acts of resistance.

Theme 1: The Price for Honesty: “Do what you need to do to get through the IRB, then change your methods if you need.”

Participants hold a view that IRB is an obstacle to overcome, often through subtlety. They discuss efforts to try to get through the IRB process as quickly as possible and without drawing attention to their research methodologies. Often, they do this by withholding information or by editing language within the proposal. In instances where they are able to just

submit their proposal without drawing any additional attention from IRB board members/reviewers, their proposal is passed and they are able to begin working on their research. However, it is when they are requested to go before the board for a full review that they run into issues discussed in the previous chapter (i.e., educating IRB members about ethnographic and qualitative methodologies, defending the topic of their research, minimizing any connection to illegal activities yet unknown).

One way that qualitative researchers try to avoid the full review of IRB is by submitting a research proposal that has slightly altered or has vague and/or incomplete information. Even just changing the title of the research proposal or using general and/or vague language throughout can help circumvent a tedious process. Bailey describes using broad language in the proposal: *“I had to create a broad IRB so that I don’t have to keep going back to modify.”* Choosing the right language to describe your research is especially important for qualitative criminologists.

As Lee explains, *“I feel we just haven’t had representation on IRB as such a new field [criminology]. . . There are accepted ways to do this research, but IRB does not know and they do not care.”* By not having criminologists represented on boards, IRB are often shocked by the kinds of topics being researched. Additionally, there is a lack of qualitative scholars on IRB boards. This means that, for qualitative criminologists, they are asked questions about topical issues as well as methodological concerns. Danny discussed removing words like *“corruption”* from their research to keep it inconspicuous and other researchers explained this similar process with IRB specifically. Mason describes this process as *“reframing”* and gives an example from their own experiences:

Initially my project was framed as an 'informal economy' study and IRB wanted a lot of information from me and from my participants. Who are they? Are they using or selling drugs? So, I reframed my study, the same study, to be about 'poverty' and it went through no problem.

Alex discusses what can happen when a researcher is too honest with IRB. Their colleagues advised them to not share too much information in their initial proposal. Then the researcher can change their research methods after they obtain approval. They say,

I tried to play by the rules and be as open as possible. I was told candidly by many professors, 'do what you need to do to get through the IRB, then change your methods if you need.' So, the barrier is really just with the initial IRB, they told me that they rarely follow up.

Of course, being “*as open as possible*” ran Alex into trouble which held up the start of their research by 10 months. This process also included the additional requirement that they must conduct and score mental health screenings with all of their participants. Participants within a particular score range, Alex was told, would have to be excluded from the research. This is another potentially identifiable datapoint that the researcher then has to keep safe from disclosure; a requirement that likely would not have been present if they had presented their project in a vague and sterilized way.

Getting past that initial review process is often the only obstacle with IRB. Danny agrees that they rarely follow up after the proposal is approved: “*We just need to get IRB approval. Then we are cut loose. You get IRB, then you do what you want to do.*” Once a qualitative researcher gets approval from IRB, they can begin their research project. Importantly, Danny also shares that IRBs are inconsistent across institutions. They admit that some qualitative scholars at other institutions have a much easier process depending on whether or not IRB board

members have varying degrees of knowledge about social scientific research. Based on these experiences, qualitative researchers begin to recognize and remember which IRBs at which institutions are preferable for qualitative criminological pursuits.

Due to the inconsistent nature of IRBs, some researchers have begun to take advantage through another form of resistance. Lee details the process of “*shopping around*” with different IRBs. They say,

This is something I tell all my colleagues too. This is intentional and strategic. We would submit through a colleague’s IRB instead [of our own]. We share with each other which IRB is better. I can also list myself as a consultant to use someone else’s IRB.

This is interesting because the qualitative researchers interviewed promote editing and downplaying their topics and methods to IRB as a method to get past their review. Sometimes this is to protect participants from potential requirements that may harm them such as Mason “*reframing*” their study so that they would not have to disclose, or even collect at all, participant’s drug use. Sometimes researchers lie just for the sake of convenience. Alex admitted they wished they had lied to save themselves 10 months of battling the IRB. While previous research has discussed how researchers obscure information in their proposals to help with the odds of getting past IRB (Schrag, 2011), the current thesis shows how researchers can work together to get past review by cosigning other’s research to effectively trade IRBs.

Theme 2: Obscuring Data: “I would prefer to burn records than to ever put my participants at risk.”

When a qualitative researcher does come out of IRB with an approval, they are sometimes required to disclose particular things that may come up when they are speaking with

human subjects participating in their research. According to the participants of this thesis, requirements to break confidentiality can include drug use, gang affiliation, immigration status, or mental health scores. As such, the participants describe being overly conscious of the information they try to seek out. When they cannot guarantee that information can be kept confidential, they shut down their research or remove data.

Lee says they “*pulled the study*” once as a result of needing to disclose the immigration status of all participants. Since the study was specifically in regards to immigration, it was not something that they could avoid discussing with participants as a topic. In another example, Lee discusses removing an individual participant from their data as a result of what the participant had disclosed to them. They explain, “*I had to drop a previous participant as he had disclosed some information about crimes. IRB would have wanted me to disclose this. Instead, I scrubbed it from my research.*”

The practices by qualitative researchers to subvert IRB requirements both during their initial proposal and data collection undermine the ability of IRB to even pretend to function as an ethical oversight review board. However, many of the forms of resistance that researchers engage in do nothing to actually challenge the issues they feel IRB has. Sure, researchers can bend the truth, they can educate board members, or submit proposals to different institutional IRBs to get through the proposal process. However, none of these actions have any impact beyond allowing their research to continue without interruption.

When discussing the goals of IRB, Bailey summarizes this point,

“The purpose of protecting marginalized communities is still not served as people just get around it and the system broadly doesn’t care.”

Even after criticizing the IRB, Bailey finds a benefit to an institution that oversees ethical concerns regarding research. They wish that IRB would protect marginalized communities from unethical research practices but does not believe that IRBs currently have the capacity to do so, or even the desire.

This chapter shows how qualitative researchers support and justify their resistance to requirements by IRB to disclose. For example, Mason changed how they framed their study so that it could pass IRB without requiring them to disclose more information about their participants that may have put them in jeopardy. It also details researcher opposition to IRB as a legal compliance institution. This echoes Adler and Adler's (2002) research which discusses how, in practice, universities derive their values from lawyers and not from ethics. As a result, researchers engage in behaviors to obscure data, lie by omission to IRB, and game their procedures.

Chapter 7:

Discussion and Future Research Directions

The three previous findings chapters present experiences by six qualitative researchers that aim to answer the three research questions of this thesis. Overall, the goals of this project were to explore the experiences researchers have with maintaining confidentiality, the pressures they face from IRB, and how they respond to those institutional pressures, barriers and setbacks.

First, what kinds of experiences do qualitative scholars have with disclosure when conducting research in the field of criminology? This first research question is answered throughout Chapter 4. It touched on, for qualitative criminologists, how confidentiality plays a large role in the understanding and collection of data. Further, findings throughout Chapter 4 suggest that maintaining trust is a value that qualitative researchers extol. The length at which qualitative researchers try to maintain trust with participants extends into their attitudes towards confidentiality. Prior research has shown how qualitative researchers are willing to go to great lengths, even bringing harm to themselves, to protect the confidentiality of participants (Israel, 2004). It is suggested in this thesis that this is due to researchers identifying with their participants and not with IRB. Alex wanted to research a particular rehabilitation program because it was something that they had personally experienced. They explained how they were a member in a social media support group for people who had “*survived*” the program when they decided to research and publish their stories. However, when describing their feelings towards IRB, they refer to them as “*nameless, faceless, power*” and express their desire at holding them accountable.

Second, Chapter 5 addresses how we understand qualitative criminologists experiences with the ethics of disclosure. Throughout this Chapter 5, articulations of benefits, risks, and drawbacks of conducting research and maintaining confidentiality are addressed. Participants shared the many ways in which they found themselves in ethically questionable situations. Mason got into situations where they were, due to their attitudes regarding childcare, tempted to disclose information about a participant that they also felt would not have helped the situation. Danny discussed their unwarranted discovery of a sex trafficking operation that was facilitated by “*reputable actors.*” This is echoed by past research about how ethnographers, specifically, can get into ethical dilemmas (Worley et al., 2016) yet shows how scholars employing other qualitative methods can also get into these situations as neither of the above participants are ethnographers.

Third, Chapter 6 explored how qualitative criminologists respond to institutional pressure to break confidentiality and how they rationalize their positions to do so as well as how they justify resisting these institutional pressures. A big part of answering this research question derives from how qualitative researcher's epistemology impacts their ethics. Participants all shared in common two key aspects to their epistemologies. First, that they are all biased and conscious of how those biases can corrupt their research. They expressed doubt that social science researchers could be unbiased. They would use phrases like “*quote/unquote*” before mentioning attempts by researchers to be objective. Another example is when Mason said that they didn't want to “*bring my own privileged ethics and force these people. . . to follow them.*”

Importantly, some participants explain that they are learning *with* participants rather than from them. Danny describes their research as coproducing knowledge. They give an example:

Am I telling the cops what are 'evidence-based practices' or am I learning alongside them about how they make sense or understand what is 'evidence-based?' And then we coproduce what the problems and the potential solutions are.

This is important because qualitative researchers are not trying to overcome potential bias through manipulation (e.g., double-blind experimentation). They do so by being open about their biases. They do not even see value in such actions and criticize, as Lee put it, “*psych people*” for their tendency to “*manipulate people in their research.*”

Danny describes their use of standpoint epistemology by contrasting it to the perspective anthropologists used to hold. They say,

Imagine, white dude, privileged, aristocratic background, studies at pristine schools like an Ivy League. They get their training, go off into another country, another continent, another culture and scoop everything they can up from their subjects. They poke and prod them, measure them, whatever, record how they speak. Then they come back to their global north area and, quote unquote, construct knowledge with these objective claims about these entire people.

In this way Danny criticizes the notion that claims about a population can be made by the outside without including the voice of the population itself. The participants see their subjects' versions of stories as authentic representations of knowledge by their very nature and that variables cannot be sterilized or removed from its context.

Part of that subjectivity (i.e., context) even includes the political philosophies that the researcher holds. The participants are not fooled into thinking that their research, and all research for that matter, are not political endeavors. Danny says quite candidly that “*everything we study in the social sciences is inherently political.*” These political viewpoints inform the type of

research they do, the subjects they are interested in, and the ethical views they hold towards them.

Bailey uses examples of past research from the social sciences that have informed, in their view, disastrous policies. They view a lot of research from universities as being funded solely for political aims. While talking about what IRB could do to help with research ethics, they say, *“To really challenge the more insidious and harmful nature of research that comes from universities [IRB] need to tackle something bigger. But I’m not sure they are interested in doing that to begin with.”* When asked to explain what *“something bigger”* is, they replied:

Stuff like funding structures. Who funds what kind of research? Look at a genealogy of knowledge production. The most harmful policies that have been implemented have come from universities whether it is Milton Friedman’s ‘trickle down’ or ‘the culture of poverty.’ A lot of these more harmful policies come from universities. Like, you know, ‘zero-tolerance policy’ and ‘broken windows theory’. I think the problem is bigger. So, I don’t think that there is clearly an ethical divide between IRB and researchers. I think they are part of the same system. While some might challenge the system a bit more than others, I don’t think there’s a clear-cut divide. Professors and IRB are part of the same system.

Future Research Direction

This concern that IRB aims to stifle specific research that the institution disagrees with politically is brought up through previous research such as Hamburger (2005). Future research could explore to what degree IRB requirements are rooted in political, rather than ethical,

concerns. However, Bailey suggests that those political concerns may be a reflection of the university system broadly, rather than of IRB specifically.

When explaining how IRB misunderstands their research methods requiring them to teach them about ethnography, Bailey expresses how the career path into IRB is not through academia. In their concluding remarks, they say that interviewing IRB board members would be a great idea to better understand why there is so much variation across institutions and to better see what their views around ethics even are. Following this same theme, Danny suggests additional areas of future research:

Is it even the case that IRB boards are homogenous? Is it all white dudes or just dudes generally? When there are scholars of color, are they scholars of color in the social sciences? What about women of color? And how do they assign? Are some institutions might do this better than others? What is their division of labor among board members?

Knowing more about IRB from the perspectives of those that actually serve on boards would be beneficial to future research. Currently, research is strictly from the perspective of researchers themselves. The goals of IRB are thus only stated in statute and regulations. Yet, this thesis suggests that those regulations are not being considered in actual practice.

Future research should aim to better understand the history of the university system within the context of corporatization and the impact this may have caused on a qualitative researcher's academic freedom.

Chapter 8:

Conclusion

There are tremendous ethical concerns when conducting qualitative research in the field of criminology (Worley et al., 2016). A major area of concern is around the subject of confidentiality (Israel, 2004). Disclosure of identifiable data can place participants at great risk (Cheit, 2014; Fitzgerald & Hamilton, 1997). Institutional Review Boards often make requirements that particular information be disclosed which researchers don't feel comfortable releasing out of concerns for the participants (Adler & Adler, 2002; Israel, 2004; Schrag, 2011). It has been suggested in previous research that this is due to a fear of legal liability (Adler & Adler, 2002) or that IRB is politically motivated to make certain kinds of research impossible to conduct (Hamburger, 2005).

This thesis has shown how qualitative researchers respond to the above concerns and the lengths at which they attempt to maintain confidentiality and reduce harm to participants. Qualitative researchers have to balance considerations around confidentiality beginning with the point of recruitment that are distinct for each population. For example, Jess studies prisons and knows that any participation in their study will be known by the correctional staff so they have to take extra precautions not to ask participants any questions that could bring retribution on them. Many of these researcher contexts are thus unique, requiring different approaches that serve the best interest of the participants themselves.

IRB are meant to make judgements of these ethical calculations. They aim to consider the potential risks of conducting research and make sure that respect, beneficence, and justice are maintained. However, it is this thesis' contention that they operate in contradiction to those

goals. The participants of this study share examples of how IRB, due to ignorance, the reinforcement of classism and racism, and desperate intentions, act in a manner that increases the possibility of harm for participants. In response, qualitative researchers engage in strategies to subvert the IRB as much as possible. When researchers are unable to get past IRB without a requirement to break confidentiality, they choose to give up on their project entirely.

Note on Mental Health of Qualitative Researchers

Due to the experiences shared with me by such sincere and open participants, I feel compelled to include a chapter on mental health. It is a topic that came up naturally on six separate occasions by three of the participants. The very nature of criminological research necessitates the studying of topics that are heavy. The six in this study all seek out marginalized communities that they personally believe face injustices. The epistemologies endorsed by qualitative researchers are ones that require earnestness towards the lives of their participants. They identify with participants on a level that goes beyond just a datapoint or a statistic while balancing their own understanding of their often-privileged position in these encounters. The degree of empathy needed for researchers to engage in this work authentically must be emotionally taxing.

I was told candidly by two separate participants that I was acting as a therapist for them as they shared their stories. Lee discussed details in their research that they say their significant other doesn't even know. Danny and Mason both shared stories about situations they found themselves in and information they came across that they still feel conflicted about. Danny referred to this as "*flying too close to the sun*" and also goes on to express how knowledge of coping skills could have helped them. Danny says,

If the IRB really cared about the researcher-participant relationship they would offer things like 'how to cope with high-stress interviewees' or like counseling services for sensitive subjects and this would actually show that the IRB really cares about human beings.

Danny offers a great point that institutions should make resources available to researchers exploring these sensitive subjects like crime and victimization. Furthermore, graduate students that assist with these projects, or conduct their own research, should also be encouraged by their professors to use whatever resources may be available to them. Future research could also be conducted on the mental health effects of even studying such disciplines as criminology from a qualitative perspective.

Appendix 1: Interview Questions

1. "Generally speaking, can you tell me a little bit about the research that you do?"
2. "As a qualitative researcher, have you ever worked with participants whose information may have been sensitive had it been disclosed?"
 - a. If Yes: What populations have you worked with and how did you have to navigate this experience?
 - b. If No: Do you know of any examples from research or colleagues and/or other academics that have experienced this?
3. "Could that research have been desirable for law enforcement strategies, whether for prosecution, protection of a victim, or program planning?"
 - a. If Yes: How did you navigate this?
 - b. If No: Do you know of any examples from research or colleagues and/or other academics that have experienced this?
4. "Has IRB ever required that particular information be disclosed if shared with you by participants?"
 - a. If Yes: How did you navigate this?
 - b. If No:, Do you know of any examples from research or colleagues and/or other academics that have experienced this?
 - c. Also, if No: Would you disclose if such a request was made?" Why or why Not?
5. "After the completion of a study, has it ever been required that you disclose private information about a participant through subpoena or other institutional requirement?"
 - a. If Yes: How did you navigate this?

- b. If No: Do you know of any examples from research or colleagues and/or other academics that have experienced this?
 - c. Also, if No: Would you disclose if such a request was made?" Why or why not?
6. "Could there be a case where you would feel ethically obligated to disclose information to law enforcement officials about a participant regardless of any institutional requirement?"

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