WORKSHOP: THE ROLE OF ETHICS IN RESEARCH

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Introduction

I am going to start this session off by sharing with you something of my recent experience in getting off the ground research that involved interview of incarcerated major heroin importers. (Major being defined as an importation involving 5kg or more of heroin).

Not many people would dispute the value of social research in the area of crime and criminal behaviour. Indeed considerable money is spent on such research each year. Social research supplements quantitative facts and figures and fills in the gaps. Deeper knowledge of the characteristics, motivations, behaviours, environments - and of the nature and complexities within and surrounding criminal offending - provides policy makers and practitioners with valuable evidence on which to base policies, strategies and practice, and on which targeting and efficacy of programs can be developed and evaluated.

Yet to conduct social research into illegal behaviours in Australia necessitates compromise, risk and bias. In Australia, no research into illegal behaviours is immune from the possibility of some, or all the research material being subpoenaed. Thus, researchers studying behaviours and patterns associated with illegal behaviours must conduct their research under conflicting ethical obligations. On the one hand they must fulfill university and other professional body standards and protocols in relation to safeguarding the confidentiality of research subjects, and on the other they are legally obliged, if subpoenaed, to disclose all research information, including identifying information, to law enforcement. Lack of legislative protection leaves not only the participants vulnerable but also the criminological researchers who may be open to prosecution and jail terms in some instances, for failure to disclose material or knowledge of offences obtained by them in the course of their research.

My Research

I offer my own recent experience as an illustration of the quandary of all criminological researchers: In partnership with ACS I am conducting a NDLERF funded study called: A study of the mechanics of cross-border trafficking of heroin: the experiences of incarcerated high level drug importers. As I said, the research involves interview of incarcerated high level heroin importers.

This is not a whinge about how long it took to proceed this research through the Ethics Committee - although let me get it off my chest! - the process from first submission to commencement took 3 years [!] - 20 months of which the research was in the hands of the ethics committee. My concern is that it was necessary to change Federal legislation for this reasonably straightforward piece of research to be able to guarantee the necessary confidentiality to the participants - and therefore to proceed past the ethics approval stage. Only a handful of studies have ever been ‘prescribed’ under the Epidemiological (Confidentiality) Studies Act 1981 which is the only legislation that can provide a guarantee of confidentiality for participants and protection to the researcher doing research into illegal behaviours.

Initially I found research into offending patterns and characteristics of high-level drug offenders to be an extremely underdeveloped field of research – only a handful of studies have ever been done internationally and there is no substantive body of knowledge in the field. No studies in the area have been done in Australia independent of law enforcement. This is despite importation and high level drug dealing being the highest leverage point for government’s supply reduction efforts. It is at the border that the largest quantities of drugs are seized – far greater than all seizures made nationally by total police agencies each year within Australia’s borders.
The very, slender evidence base for the development of policies and strategies in this area is not, in my opinion, related to perceptions of personal danger from offenders, reticence by law enforcement, or to do with issues of national security. Rather it is the lack of legislative protection is the significant factor. Where the penalties attached to the offending are substantial lack of legislative protection becomes a particularly significant block to research.

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

In order to be able to guarantee confidentiality an amendment to Commonwealth legislation was required. This was duly accomplished and the research became one of only a handful of studies ever to be ‘prescribed’ under the provisions of the Commonwealth’s Epidemiological Studies (Confidentiality) Act, 1981. Primarily through our doggedness and determination was this achievement accomplished. This hugely cumbersome and time-consuming process was the only way in which this relatively simple research project was able to proceed. What struck me about the whole experience was that the policy of evidence-based practise that is widely promoted and accepted in exists without any reference to the necessary supports and safeguards to achieve relevant, unbiased evidence.

Summary

In sum, lack of legislative protection for criminological researchers in Australia has three main outcomes:

1. Rejection of research submissions by ethics committees
   The impact of not having legislative protection manifests itself invisibly through the numerous ethics committees who reject research proposals on the basis that confidentiality cannot be guaranteed to subjects. This extent to which research is rejected on this basis is not known. However, this fact, together with a lack of guidelines for ethics committees on these issues is probably having a large and widespread affect on the quality and type of research currently being undertaken.

2. Bias in research results
   Lack of guarantee of confidentiality influences decisions by subjects to participate - particularly where high penalties are attached to the offending. Considerable bias would be expected to exist in results obtained where the researcher was diligent in explaining that confidentiality cannot be guaranteed.

3. Duty of care compromised
   Many offenders are among the most marginalised and vulnerable people in the community. Many have poor literacy skills, drug and alcohol issues, and many have diagnosable mental illnesses. The extent to which such people participating in research are able to understand the full implications of their participation in research is debatable. How often is the lack of an ability to guarantee confidentiality stressed by researchers to ensure potential participants are giving fully informed consent? My guess is that those with any consciousness of their conflicting obligations do not stress the point for fear they will frighten people away from participating. And those researchers not fully aware of their conflicting obligations may wrongly assure participants they can guarantee confidentiality.
4. Risk to the researcher

A final, not inconsiderable consideration is the lack of protection afforded researchers of illegal behaviours who may be liable to jail terms for failing to disclose indictable offences revealed to them by participants in their research, or who may be required to reveal their data and identifying information or face legal sanctions.

Conclusion

While it is understandable that law enforcement agencies in Australia would not want to lose a power - that is to subpoena research - the existence of the threat of this power, whether it is used or not, will continue to be counterproductive since it stymies and biases research and information that may be of considerable benefit to law enforcement and to policy makers. From a financial and efficacy point of view, lack of legislative protection for researchers should be of considerable concern to government who have 1) committed enormous amounts of money to research – particularly lately into drug research, and 2) relied on research to provide the ‘evidence’ on which policy and practice may be based.

I think researchers to date have done a magnificent job conducting research under such risky conditions. However in these days of litigation and complex privacy and ethical requirements I don’t think it is reasonable – never mind good policy - to continue to compromise researchers and the participants in research. I think it is timely for researchers to join together to lobby for change and for legislative protection, perhaps similar to that enjoyed in Canada for example. Without it researchers will continue to place themselves and their research participants at risk and policy and practise will continue to be based on restricted research that may be biased.