Author's Commentary on "Ethical Issues in Discovering Criminal Behavior during Interviews"

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The key questions in this case lie in the tensions between maintaining a research participant's confidentiality and a researcher's ethical obligations to the public weal. While Barnes is at one level ethically obliged to maintain the confidentiality of his participant, tension emerges from his awareness of these weapons and the harmful use to which they could be employed, as well as from the possibility that he could be held accountable for not revealing their existence. Barnes's decision is further complicated by the certainty that reporting this individual to the authorities will ruin his research prospects, and by the not-insignificant possibility that to do so will also place him at risk of retaliation by the participant or his comrades. In discussing this case, one might look to other examples of research involving criminality — studies of illicit sexual activity (Humphries, 1970) or of drug sales and trafficking (Adler and Adler, 1983), for example—in which researchers have maintained the confidentiality of their participants and have not reported illegal behaviors. In these cases, however, the crimes are widely considered "victimless."

The possibility, however remote, that these weapons could be used for violent criminal activity or in a revolt against government authority — and thus the possibility that the consequences would be much more severe and widespread — problematizes a comparison with victimless crimes. On the other hand, one might argue that the types of weapons involved in this case are commonly owned, and thus represent a level of threat to which law enforcement agents are accustomed, and for which they are prepared to encounter. Ironically, it is perhaps the rather prosaic nature of the weapons that complicates the issue: if Barnes's participant had revealed that he'd constructed a truck bomb, Barnes's obligation to the public weal would be unquestionable. In this sense, Barnes's decision may be guided by considering the threat posed to the public by various weapons along a continuum of

lethal force. By this utilitarian logic, Barnes might dismiss the need to report illegal personal weapons such as rifles. What complicates this scheme, however, is the difficulty that would arise in intermediate cases — discovering an illegal pistol at one end of the continuum or a massive truck bomb at the other makes for an easy decision, while a machine gun might not.

In such cases, it might be useful for researchers to rely on cues of an individual or group's intent, or on the group's narratives vis-à-vis their weaponry. In this case, Barnes might note that American militias generally consider their personal weapons (rifles, pistols, etc.) as defensive in nature — necessary tools to protect themselves from potential governmental coercion or tyranny. A large bomb, by this standard, would be an offensive weapon, and is thus not consistent with the group's narrative of action. Possession alone of such a device could then be reasonably assumed to reflect imminent criminal intent, and would thus warrant action on the part of the researcher. The converse is not true, however — it does not necessarily follow that possession of weapons considered by their owners to be defensive in nature can be seen as an absence of violent intent. Ultimately, a researcher in such a case cannot definitively gauge his respondent's intent.

Nancy Scheper-Hughes (2004) provides an illustration of one alternative to non-reporting of observed criminal behavior. After studying illicit human organ trafficking networks, she offered general testimony to various legislative bodies and health agencies about the nature of the networks and their operation. Following this example, Barnes might offer a description of militia activities to the appropriate authorities without naming specific members of the groups he's studied. Upon finding evidence of coerced organ donation, however, Scheper-Hughes actively cooperated with international law enforcement agencies to target traffickers and surgeons. Her decision to do so was clearly reached as the result of reaching an ethical tipping point — and how to identify that boundary is precisely the dilemma Barnes faces. Unfortunately, though, this example offers little guidance, for coercive organ harvesting provides such an egregious violation of all humane ethical standards that it cannot be seen as comparable to the crime of violation of gun possession laws.

In considering his design of the study and his discussion of informed consent with his participants, one might ask whether Barnes's knowledge that many of his research participants maintain a defiant attitude towards many forms of Federal regulation—particularly in matters of gun control—should have led him to a more

explicit or specific formulation of his informed consent materials. Looking forward, this could be instructive to his future research and that of others. Offering warnings against discussing specific illegal acts—ranging from the common (illegal firearms possession) to the most extreme (bomb plots or other conspiracies)—rather than a blanket proscription against discussing "illegal activity," might have prevented this situation in the first place, and could prevent a reoccurrence of such a case. One must ask, however, whether we can reasonably expect a researcher to anticipate each and every possibility.

Similarly, by obtaining a Certificate of Confidentiality from NIH or other Federal agencies, Barnes can protect his participants' recorded interviews from subpoena, thus further minimizing the risks they face by participating. These documents, however, do not prohibit researchers from voluntarily disclosing information about research participants in cases in which the researcher believes them to be at risk or a danger to others. Regulations governing these cases, however, explicitly state that if a researcher intends to make such voluntary disclosures, he should clearly indicate this on the consent form provided to potential participants. This suggests that Barnes, ideally, should have more thoroughly considered the possible criminality he would encounter and set the standard for disclosure beforehand. It is, however, difficult to predict how an interviewee would react to such a practice. On the one hand, this might produce a more guarded interview. On the other, such forthrightness and honesty in the early stages of the consent process might be seen as an indicator of the trustworthiness of the researcher. Unfortunately, for any benefit this practice might provide, it could actually increase the risks faced by the researcher: what might happen when a research participant, in the middle of a taped interview, catches himself revealing behavior the researcher has indicated he will report to the police? This represents an illustration of the unpredictability that characterizes the core of this case. The uncertainty to what purpose the weapons will be put, the unpredictability of the reaction from participants, and the uncertain risks to both the public and the researcher himself creates the dilemma.

References

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