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**When ‘on the record’ doesn’t really mean ‘on the record’: an attempt to navigate ethical clearance for journalism and nonfiction research**

**Sue Joseph**

Abstract:

Journalism and writing academics from around the country are evaluating the best method to tackle problematic encounters with Human Research Ethics Committees (HRECs). Discussion is focusing on the management of the ethics approval process within universities pertinent to their roles as researchers and as supervisors to their Higher Degree Research students. The National Statement on Ethical Conduct in Human Research was revamped in 2007 to be more inclusive of specific research practices within these fields, but it seems the flow-on effect to many university HRECs has not evolved with it. Instead, a conservative stasis pertaining to the previous medical/scientific paradigm remains the default position. Pre-empting upcoming ethics applications flowing from the creation of a newly formed journalism graduate school, this paper will detail a submission that was made by the author to a university’s HREC in a bid to expedite the process for nontraditional and creative researchers within the new school. It will also propose a more appropriate and applicable model of the informed consent letter that addresses tensions around the withdrawal of ‘data’. The HREC response and subsequent outcome will also be examined. This paper seeks to add to the debate around this issue by detailing how the revised National Statement has indeed given creative practice-led academics the ability to improve the ethical clearance process – on close reading, the mechanisms are there within the Statement.

Biographical note:

Dr Sue Joseph has been a journalist for more than thirty years. She began working as a UTS journalism academic in 1997. She now teaches both journalism feature writing and creative nonfiction, also supervising nontraditional higher degrees. Joseph has just published her third book, *Speaking secrets* (Alto, 2012).

Keywords:

Creative research – Journalism – Nonfiction writing – Human Research Ethics Committees – National Statement on Ethical Conduct in Human Research

‘In the end, ethics ceases to be ethics when it becomes regulation.’<sup>1</sup>

## Introduction

Contextualising journalism and nonfiction writing practice-led academic research in Australia within current institutional and national human ethics guidelines is not difficult. It is situated neatly within a humanities methodology of some form of mediated narrative and qualitative inquiry. In 2007<sup>2</sup> the National Statement on Ethical Conduct in Human Research was revamped to be more inclusive of specific research practices including the fields of journalism and nonfiction writing practice-led academic research. It sought to more fully embrace qualitative fields of research, moving away from the auditing biomedical model. In addition, after long and robust negotiation, the federal government’s Excellence in Research for Australia (ERA) initiative finally recognised these fields of practice, widening its definition of research to include portfolio and nontraditional outputs. But it seems the flow-on effect of both these policy decisions to many university Human Research Ethics Committees (HRECs) has not evolved with it – instead, a conservative stasis associated to the previous scientific/medical paradigm remains the default position.

So why is this? Why is there a tension between tertiary ethics committees and journalism and nonfiction writing academics and HDR students, both individually and collectively? Before the 2007 revised statement, Cribb concluded that it was ‘the research interview’ which created the tensions between humanities researchers and HRECs (Cribb 2004, 47). Unpacking Cribb’s notion further, this paper will discuss a belief that this ‘research interview’ strain still exists but is three-fold, entailing the concepts of: informed consent; withdrawal of ‘data’; and identification. These three notions become problematic when they involve negotiating the delicate entry point of personal information from the private to the public sphere, particularly within a social science application of the current biomedical model. Consequently, the ‘research interview’ and how it is managed within journalism practice and other nonfiction writing continuously creates flashpoints of tension and misunderstandings between researchers and their various HRECs.

In 1999 the National Statement on Ethical Conduct in Research Involving Humans was released, sweeping the humanities and social sciences into a regulated ethical review process, flowing directly from biomedical and scientific review. Richards writes: ‘Some of the strongest criticisms of HRECs have come from humanities and social science researchers. Given that the Australian system evolved with little consultation with, or input from, this section of the research community, this is hardly surprising’ (Richards 2005, 37). The original statement was revised and reviewed culminating in the release of the National Statement on Ethical Conduct in Human Research in 2007. Interrogating the ethos behind those revisions, this paper aims to highlight and engender further discussion about HREC handling of creative practices, particularly journalism and nonfiction writing. It is worth noting that this issue is just as pertinent for film, multimedia platforms, photography, and other humanities and social sciences practices. The 2007 revisions were sought specifically in a bid to allow for greater flexibility and a loosening of the medical/science framework stronghold after lobbying from the social and political sciences. Following on from a brief history

of the genesis of ethical protocols this paper will specifically discuss three focal points of the ethical application process: informed consent, including a discussion of ‘on the record/off the record’ practice; withdrawal of data; and identification. Using a case study relating to a submission to negotiate and streamline the ethical application procedure within a university, just after the launch of a Journalism Graduate School, this paper further contextualises specific statements written by Christopher Cordner (chair of the joint working party revising the National Statement in 2007 on behalf of the National Health and Medical Research Council, Australian Research Council and the Australian Vice-Chancellors’ Committee) and Colin Thomson (member of the working party). The HREC response to the submission will also be discussed.

### **History and review**

Twentieth-century human research protocols evolved directly from the biomedical/scientific contraventions and atrocities perpetrated by the Nazi physicians in World War II Germany. The 1992 Australian National Health and Medical Research Council (NHMRC) National Statement flowed directly from this time and its aftermath, when the Hippocratic Oath clearly held no sway. The Nuremberg Code (1958) was established from the Nuremberg Trials (1946), highlighting voluntary consent and risk minimisation, among its 10 main points. The Declaration of Helsinki, first adopted by the World Medical Assembly in 1964, was revised four times since then, most recently in 2001. The wellbeing of participants and assessment of risk are two main thrusts of the code. Other notorious abuses and influences have been well documented throughout the years: the Tuskegee Syphilis Study (1932–72); thalidomide (late 1950s); Stanley Milgram’s electric shock experiments (1961–62); the revelation of 22 unethical studies published by Henry Beecher (1966); and the Belmont Report (1979), a hugely influential document emphasising respect for people, justice and beneficence, three abiding principles that underpin most modern statements on the ethical research of humans around the world today.

History has taught us that there is a clear and strong imperative to consider the ethical ramifications involved in medical and scientific human research. But research within creative industries – materialising in varying affectations within the arts, humanities and social sciences – rarely tortures or threatens lives, either physically or psychologically. The potential for harm is minimal. A case can be made for a risk of harm within investigative journalism research, particularly in cases dealing with corruption and illegality, framed and remedied by both the public’s right to know and public interest. Sensitive care and handling is an ethical imperative when dealing with participants discussing trauma, as psychological harm is inherent in these cases. However, often these stories are revealed with participant cooperation as a form of advocacy journalism, which comes with its own set of ethical and holistic imperatives (Joseph 2011).

Since the early 1990s in Australia, biomedical and scientific researchers have been required by the NHMRC, the main funding body for health science research in Australia, to make ethics applications to their institution’s HREC. A National Statement on Ethical Conduct in Research Involving Humans was released by the

NHMRC in 1999, extending the remit of the 1992 NHMRC National Statement for medical and scientific researchers to the humanities. There is debate over whether this remit was indeed legal (Parker et al. 2003, 51). Notwithstanding, the document was endorsed by the Australian Research Council, the Australian Academy of the Humanities and the Academy of Social Sciences in this country. According to Cribb, this led to ‘cumbersome procedures, needless restrictions and even prescriptions which run counter to their own ethical senses’ (2004, 39). Compliance with the stated guidelines is through submission of project proposals to the institutional HRECs prior to carrying out any contact with participants. Cribb was scathing: ‘...the drafters of the National Statement, those who implement it and those who have failed to take steps to reform it all bear a heavy moral responsibility for encouraging a culture of mendacity in the universities, for making liars of honest men and women’ (2004, 51). He was of course writing prior to the 2007 reforms, of which he was instrumental, and referring to the practice of compliance for compliance’s sake, regardless of what was actually done in the field subsequently.

Langlois outlines the negative consequences of regulating research in this way, drawing on his own political research as analogy. He is writing after the 2007 review, which he believes did not go far enough in revision. He offers up two models for discussion, calling for further review of the National Statement (Langlois 2011). He claims that both the conceptual framework and the institutional model applied throughout Australian universities as research ethics review are inappropriate and warns of ‘serious detrimental consequences’ (Langlois 2011, 141). He cites these consequences as:

- research findings being potentially skewed;
- research going underground or being undertaken in ways which diverge from what has been approved by committees;
- self-censorship;
- disengagement from institutional research governance procedures;
- the generation of risk for researchers who are operating outside institutional approvals because they feel they ‘have to’;
- the construction of unnecessary prejudice against the legitimate aims of research ethics review procedures;
- and, finally, and most disturbingly, important and legitimate research not being undertaken. (ibid.)

Despite Langlois claiming otherwise, Cordner and Thomson believe the 2007 National Statement review answered Cribb’s call for more flexibility. They claim it:

- ...undertook to give the processes of ethical review a looser, more flexible structure that makes them more responsive to the needs of different areas and forms of research; we clarified the difference between the statement of general ethical principles and their application; and we made provision for review bodies to draw on wider resources for ethical review. (Cordner & Thomson 2007, 39)

It is clear the mechanisms are there enabling HRECs to work better with creative practice academics and their students, so why is there still tension? Why, after five years of the tabling of revisions, are HRECs still sticking to a conservative stasis? Further, what can be done about it? The following case study exemplifies a situation that feeds frustrations rather than diminishes them, and substantiates claims made by Langlois that more needs to be done.

### **Case Study**

For clarification, the Creative Practices Academic Group and the Creative Practices and Cultural Economy Research Strength at UTS include practitioners from creative writing, journalism and nonfiction writing, media and arts, multimedia, memory and history, and music and sound.

With the launch of the University of Technology, Sydney, Graduate School of Journalism in March 2012, approaches were made to the Human Research Ethics Committee in a bid to open a dialogue about specifically tailoring a creative practice ethics' application template for future Grad School HDR candidates. The new Graduate School of Journalism was to include PhD candidatures; DCA candidatures; Masters by Research candidatures; coursework Masters candidatures; and of course, journalism and writing academics when considering their own creative practice-led research. The candidatures include a mix of journalism, literary journalism, life writing and investigative journalism, across all and every media.

An impetus behind the formation of the Graduate School was to attract midcareer journalists from industry interesting in writing a book or undertaking long-form narrative multimedia projects with a research component. It is envisioned that this research will enrich and enhance Australian creative practice research in the academy, and will particularly build on the research components of journalism professional practice. But as Ian Richards writes:

One of the surprises awaiting the journalist who moves from the newsroom to the campus is the discovery that any interview conducted for research purposes requires prior approval from a university ethics committee. In Australia these are known as Human Research Ethics Committees (HRECs) (Richards 2009, 32).

As Richards indicates, explaining to career journalists, all of whom regard themselves as ethical practitioners, that they had to submit their work to the university ethics committee – and not only that, but the committee could insist on modifications, clarifications and in some scenarios, refuse clearance – was going to be a challenge. Concepts such as 'risk assessments', 'beneficence', 'withdrawal of data' and 'written informed consent' were bound to cause disquiet among the cohort.

The plan was to devise a templated model that could be modified for various projects but have much of the bureaucratic linguistic work done; so there was not a reinventing of the wheel with every application. Still, there would be time for thought and reflection about suggestions for a consent letter<sup>3</sup> tailored specifically for journalism/creative practice researchers; and the incorporation of an off the record/on the record paradigm, again specifically for the type of qualitative/narrative research

that both creative practice-led research academics and candidates undertake. After prolonged discussion with the university HREC about devising a creative practice template, complete with a tailored consent letter for creative practitioners which could be reshaped according to the discipline, the submission was made. Three major notions within the National Statement were highlighted as points of concern and hopefully, negotiation: withdrawal of data; the consent letter; and identification.

As journalism academics and journalism candidates within universities, research must be undertaken in alignment with professional practice, a professional practice carefully framed by the MEAA Code of Ethics.<sup>4</sup> Reading the Code highlights the fact that journalism professional practice is in alignment with the National Statement on Ethical Conduct in Human Research, on several levels. It talks of respect, honesty, fairness, minimising harm, accountability – it uses many of the terms in both national and university statements.

The National Statement maintains at its beginning that it does not have all the answers. It sets out:

There are, for example, many other specialised ethical guidelines and codes of practice for specific areas of research. Where these are consistent with this National Statement, they should be used to supplement it when this is necessary for the ethical review of a research proposal.<sup>5</sup>

As discussed above, the MEAA Code of Ethics shares many of the same notions, using a similar semantic to the National Statement. Clearly, journalism is a ‘specific area of research’ and as such, the incorporation of the MEAA Code of Ethics should be used to supplement and expedite the ethical review of projects. Indeed, the National Statement urges this.

### **Withdrawal of data, consent and identification**

The National Statement describes subjects’ ability to withdraw from a research project – this is nonproblematic. What is problematic to a creative practice researcher within a university is the attendant notion of withdrawal of data. But as Angela Romano says:

There is no cast-in-stone requirement by any university ethics committees that interviewees have the right to retract comments at a later date... It’s simply that many journalism researchers aren’t aware that they can argue the case that it is methodologically and ethically sound to do otherwise.<sup>6</sup>

Close analysis of the National Statement (2.2.26)<sup>7</sup> does not clarify that this is a given. It simply states:

(g) the participant’s right to withdraw from further participation at any stage, along with any implications of withdrawal, and whether it will be possible to withdraw data.

Clearly, it is not an immediate expectation within the National Statement that withdrawing from a project is synonymous with withdrawing data. If we translate data as information derived through interview with a participant who has given informed consent on the record, withdrawing it renders the research and the practice both

compromised and vulnerable. As Bamber and Sappey write: ‘...this may leave researchers in a chasm of their own, never confident that the data can be finalised and secured if any party has the option of withdrawing its pertinent data from the study’ (Bamber & Sappey 2007, 31). They go further when they write: ‘We must ask whether a researcher could ever be confident that a project is viable and whether the data set is secured’ (Bamber & Sappey 34).

The remedy submitted to the committee on behalf of the UTS Journalism Graduate School was a simple and practical one but one which could be taken up by other creative disciplines and fields, to streamline ethics application processes. There must clearly be a paragraph about withdrawing from the project – that is a right – but this does not equate to withdrawing data already gathered. Participants should be apprised of the journalistic practice of ‘on the record/off the record’, where they can at any time request an off-the-record status. Professor Ian Richards writes:

...seeking consent is standard journalism practice. Thus it is customary for interviewees to consent to being interviewed, and customary for journalists to clarify whether information provided by a source is ‘on’ or ‘off’ the record (Richards 2005, 145).

This practice is sacrosanct within the journalism industry by journalists of integrity; within a university, we have to believe it is a day-to-day practice among all staff and aspired to and practised by students.

‘On the record/off the record’ practice was one of several journalism practices investigated during a 2003 British judiciary inquiry chaired by Lord Hutton.<sup>8</sup> This led to perhaps the most scrupulous look at the practice – resulting in the discovery that to different journalists, it meant different things. Some believed it meant not ever to be published and some believed it is information to be used but not attributed. Others believed it is information that can be used to source verification, still nonattributable (Tanner et al. 2005, 86-7). American journalist William Safire is more purist. He enshrines the Lindley Rule<sup>9</sup> and claims ‘off the record’ means: ‘You may not use this. It is for your ears only, not for publication in any way’ (Safire 2004, 16). That means, even with no attribution. He then goes on to define four subcategories of source protection before arriving at the defining rule:

- For attribution
- Not for attribution (background)
- Deep background (no named source), and
- Off the record

Safire writes: ‘If we keep the rules from fraying at the edge, we avoid misunderstanding between source and outlet’ (ibid.). Canadian academic David Butz gives a clear and working explanation of informed consent. He writes:

Voluntary informed consent is recognised as one of the foundational tenets of ethically responsible research, according to the logic that people have the right to know that they are being researched, what the research is about, and what is expected of them as participants. They also have the right not to be researched unless they provide their explicit agreement (Butz 2008, 242).

It is standard procedure in all journalism research, like any other field or discipline, (with the exception of certain undercover or doorstep interviews in the public interest), to ask permission to interview. Obversely, consent is implicit when the participant takes part on the record.

Professor Colin Thomson spoke to Kayt Davies in a personal interview. According to Thomson, the 2007 revisions:

...allow for approval of mechanisms for acquiring proof of informed consent other than formal double signed letters and for the waiving of the requirement of informed consent altogether, if appropriate. The new clauses also allow for approval of projects that seek to expose corrupt and illegal behavior, which is clearly not in the best interest of the participant, if a greater social good results from the exposure (Thomson in Davies 2010, 160–61).

But the UTS submission did not balk at using consent letters for journalism research. It suggested incorporating into the consent letter the practice of on the record/off the record. This can be construed as underpinning the exact nature of consent that the National Statement requires – that it is not static; it is ongoing and changing. By offering the on the record/off the record paradigm throughout interview, it was the contention of the submission that participants were actually given more power over their participation and more control over final outcomes in terms of data collection.

The issue of identification was included in the form consent letter as it was the submission's position that when tailoring a consent letter for journalism/nonfiction writing research, the default is that the participant would be identified. The break away from this is keeping sources de-identified or, harking back to Safire, off the record.

### **HREC response**

While the HREC found the submission 'informative' and 'stimulating', the gist of the response was that it would not consider any other model other than the default; that there was no movement away from the default model. Indeed, the submission was viewed as one that was asking for 'special treatment', and one that was requesting only professional practice guidelines as denoted by the following:

...we cannot privilege one group of professionals over another...In essence what you have proposed is that research involving human subjects be conducted along professional practice guidelines, rather than an approach that is protective of participants in accordance with the National Statement (NS) – as the UTS HREC, we are obliged to follow the guidance provided by the NS.

Therefore the general default in respect of the specific issues you raise is 1) that individuals are not identified in any publication and 2) if an individual withdraws, their data is also not available (personal correspondence, March 3, 2012).

On all counts the submission was thwarted.

## Conclusion

In a bid to streamline and support new journalism candidates straight from industry, the submission to the UTS HREC was made in good faith and tabled for discussion. Close analysis of the National Statement was implemented in order to imaginatively take advantage of what the drafters meant – a more flexible and diverse use of the National Statement in order to collaborate with social scientists and creative practice researchers. The outcome was frustrating to say the least, and I have to concur with Israel and Hay: ‘It is disturbing and not a little ironic that regulators and social scientists find themselves in this situation of division, mistrust and antagonism. After all, each start from the same point: that is, that ethics matter’ (2007, 1). And as Martyn Hammersley writes of the current system: ‘There are few other areas of life in which adult citizens are subjected to such a severe form of ethical regulation’ (Hammersley 2009, 220).

The revised National Statement has given creative practitioners within the academy the tools to open negotiation with their own HRECs and streamline the ethical clearance process through flexibility and greater understanding of specialised field practice. And indeed, it urges academics to do this. It is time for creative practice-led researchers, both academics and Higher Degree students, to call for closer scrutiny of the National Statement Guidelines by HRECs as it pertains to these fields, with a more flexible approach to creative practice-led ethical clearance application that is uniformly and nationally upheld.

Appendix 1:

DRAFT TEMPLATE OF CREATIVE PRACTICE (JOURNALISM) CONSENT LETTER

I \_\_\_\_\_ agree to participate in the research project entitled \_\_\_\_\_ conducted by \_\_\_\_\_ from the Faculty of Arts and Social Sciences at the University of Technology, Sydney.

I understand that the purpose of this study is to \_\_\_\_\_. One of the main outcomes of the research will be \_\_\_\_\_.

I agree that researcher \_\_\_\_\_ has described the aims and objectives of this research, including the perceived final published/broadcast output.

I understand that my participation in this research is voluntary and will involve \_\_\_\_\_ hours/days of interviews and photographs or filming, at a venue of my own choosing. The length of interview will ultimately be at my discretion and convenience. There may be some follow up phone and email contacts after the interview; perhaps even a second interview. These also will be at my discretion.

I also understand that as I am entering into a journalism professional practice interview process, what I tell the researcher will be regarded as 'on the record', unless I specifically request 'off the record' status. I understand I will be free to request 'off the record' status at any time, and this will be strictly adhered to by \_\_\_\_\_ and that any information given 'off the record' will not be used by the researcher in any manner, unless agreed to by myself. I understand that I may withdraw from this project at any time and that the 'on the record/off the record' status of information already provided by me will be maintained in the final output if pertinent, even if I have chosen to physically withdraw from the process. I agree that the 'on the record' research data gathered from this journalism research project may be published in a form that will identify me and am happy to participate with this understanding.

I also understand that \_\_\_\_\_ will conduct her journalism practice regarding this project and my part in this project, including my re-representation within the final creative output, within the parameters of the National Statement on Ethical Conduct in Human Research, the UTS Human Research Ethics Committee Guidelines and the Media, Entertainment and Arts Alliance Journalism Code of Ethics.

I am aware that I can contact \_\_\_\_\_ if I have any concerns about the research, at any time.

\_\_\_\_\_  
\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Signature (participant)

Date

\_\_\_\_\_  
Signature (researcher)

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date

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## Endnotes

1. Robert Cribb, 2004, 55
2. tabled in federal parliament on 28 March 2007; replaced the 1999 National Statement
3. see Appendix 1
4. <http://www.alliance.org.au/code-of-ethics.html>
5. National Statement on Ethical Conduct in Human Research, 13
6. jeanet forum, 15 March 2012
7. National Statement on Ethical Conduct in Human Research, 20
8. The Hutton Inquiry; judicial inquiry convened in August 2003 to investigate circumstances around the death of biological warfare expert and UN weapons inspector in Iraq, David Kelly. Kelly was named as a source by BBC journalist Andrew Gilligan. It was reported in January 2004.
9. Ernest K Lindley was a *Newsweek* columnist throughout the 1950s who was the first to write of a 'deep background' convention. His definition became known as the Lindley Rule.

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**The *Encounters: place, situation, context* papers – the refereed proceedings of the 17th conference of the Australasian Association of Writing Programs, 2012**

### **Editorial introduction**

The refereed proceedings for the 17th annual AAWP conference, ‘Encounters: place, situation, context’, is a collection of works all brushed by an awareness that writing is above all a matter of encounters. The encounter of writing with itself is one dynamic of the production and reception of writing. Another is the encounter of writing with the world, with all of its levels and degrees of encounter, within which writing is produced and received. The more you think about it, the harder it is to find anything about writing that is not an encounter.

What saves the term ‘encounter’ from the dullness of overfamiliarity is the skill with which the writers gathered within this collection have expanded on the conference subtitle – ‘place, situation, context’ – and taken any number of routes towards the site of their own particular interest in ‘Encounters’. Those papers that seem to drive towards a cul-de-sac of encounter, and there are some, should productively be seen as provocations for discovering and analysing yet more modes of encounter. The encounter with the field of Encounters, while it has a long history within the AAWP and elsewhere, is in some sense only just beginning.

Some of the forty papers gathered here may soon occupy canonical status within a discipline in which the canon moves fast. Others may seem, in due course, to have been more important for their moment than for later times. The Encounter of these works with the future is something that, while we may influence it through our reading and further dissemination of these proceedings, will proceed in any event without us.

We encourage you to encounter these encounters and bring what they yield to you into dialogue, collaboration, confrontation and encounter with your own future encounters with writing.

**Patrick West**  
15 February 2013

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