



Article

Law for ethnographers

Methodological Innovations

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Abstract

Despite a long history of ethnographic research on crime, ethnographers have shied away from examining the law as it relates to being present at, witnessing and recording illegal activity. However, knowledge of the law is an essential tool for researchers and the future of ethnographic research on crime. This article reviews the main relevant legal statutes in England and Wales and considers their relevance for contemporary ethnographic research. We report that researchers have no legal responsibility to report criminal activity (with some exceptions). The circumstances under which legal action could be taken to seize research data are specific and limited, and respondent's privacy is subject to considerable legal protection. Our review gives considerable reason to be optimistic about the future of ethnographic research.

Keywords

law, ethnography, confidentiality

Introduction

Ethnographers of crime and deviance have long trod the thin line between observing and participating in criminal activities, so it is somewhat surprising that they have shied away from a clear-eyed examination of the law. This article emerged from a workshop at the Ethnography Symposium on crime and deviance held at the University of Leicester in May 2014, bringing together a legal expert (the first author) and ethnographers whose fieldwork included football hooliganism, anti-gentrification protests, illegal drug markets, drug use, policing and prisons. This article is a development of this discussion, examining the main legal provisions relevant to contemporary ethnographers.

Recent controversies make clear the importance of the law for ethnographers. In 2012, Bradley was arrested by the British Transport Police in connection with his ethnography of urban exploration (Garrett, 2014; also discussed by Ferrell et al., 2015). Mostly supportive press coverage highlighted the potential 'chilling' effect of his prosecution on social research and ethnography in particular (Fish, 2014; *The Guardian*, 2014; *Times Higher Education*, 2014). Alice Goffman's (2015) *On the Run* prompted widespread media debate about whether Alice had broken the law in the course of her research and could potentially be subject to legal proceedings (Lubet, 2014).

Goffman's trial by media and Brad Garrett's legal trial raise a number of questions, including a renewed call

for researchers to be granted legal privileges to guarantee respondents' confidentiality, as occurs for government-funded research in the United States (Fish, 2014). This is not a new issue, however (see Coomber, 2002a). Until such times may come when researchers hold legal privilege (we live in hope), there is an urgent need for ethnographers to better understand the legal frameworks relevant to fieldwork as the basis for their professional practice. We contend that while getting into trouble with the law may be inevitable in some circumstances, much can be done to avoid it, armed with a little legal knowledge. Researchers subject to police investigation or legal proceedings may have little support from the institutions that employ them or sponsor their research (Scarce, 1994). Legal battles are tremendously expensive.¹ Furthermore, the cost of a high profile legal case against an ethnographer may do untold damage to the public reputation of social scientific research in general, as well as ethnography in particular, especially given the increasingly risk-averse climate in Universities (Armstrong et al., 2014; Haggerty, 2004).

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This article makes available information about the law and its implications for contemporary ethnographers of crime and deviance. Hopefully, it also conveys that the law is fairly interesting! This is not a new problem, but the proliferation of closed-circuit television (CCTV), the Internet and modern technology presents new problems for contemporary researchers. The remainder of the article discusses the main relevant legal statutes, and concludes with some brief implications for contemporary ethnographic research.

Contemporary ethnography: from fieldnotes to electronic footprint

Fieldnotes are central to the practice of ethnographic research, traditionally taking the form of a prose record of observations as well as the beginnings of theoretical development (Emerson et al., 2011). Researchers also audio record interviews, take photographs, collect maps, make drawings or collate physical objects (as illustrated by others in this special edition). Rarely, these records may be sought out by law enforcement for the purposes of criminal prosecution, usually through the process of a witness summons (discussed in more detail below). Famously, Ric Scarce (1994) was sentenced to jail for contempt of court after refusing to identify his respondents. Brad Garrett was arrested at the airport, whereupon police seized his phone and laptop. His flat was also raided, and fieldnotes were seized under warrant (Garrett, 2014).

Ethnographers typically take steps to protect themselves and respondents. Long-standing strategies include deciding when and when not to be present, as well as what to record (and what to commit to memory). Researchers regularly anonymise fieldnotes and interviews to protect participants, as well as to decrease their usefulness to law enforcement officers (Lee, 1993),² and may in some circumstances even destroy their fieldnotes, as Goffman (2015) did recently.

A new problem has emerged: the proliferation of technology with the potential to produce data/evidence about researchers and respondents. Estimates as to the number of CCTV cameras used for surveillance in the United Kingdom vary widely: a study by Gerrard and Thompson (2011) claimed there were about 1.85 million CCTV cameras in the United Kingdom and that an average person was likely to be caught on camera up to 70 times a day. In 2013, the British Security Industry Authority (BSIA) suggested that a more likely figure was 4.9 million CCTV cameras, one for every 14 people in the United Kingdom (figure cited by Barrett, 2013). The use of CCTV evidence in criminal trials has become commonplace, with CCTV evidence being admissible to show whether an offence was committed and the identity of the offenders. Footage may be played in court during the trial so that the tribunal of fact may decide what the video evidence shows. In addition, witness evidence may be called to identify a person portrayed in video or photographic evidence as being the defendant, and a police officer who has

studied CCTV evidence closely and analytically may be permitted to give ad hoc expert evidence of identification based upon his or her studies. Recent years have also seen the increased use of facial mapping evidence in criminal prosecutions, whereby a suitably experienced expert witness makes a comparison between images taken at the scene of the crime (e.g. by a CCTV camera) and a recent photograph of the defendant. In addition, numerous forms of electronic evidence may be used to link someone to a crime scene, for example, debit, credit, loyalty or Oyster cards records; the use of automatic number plate recognition systems (ANPR); global positioning system (GPS) monitoring of vehicle movements; cell siting technology to monitor the location of mobile phones; and the use of coded entry systems. Although such surveillance may be trained primarily on their respondents, researchers may also find themselves under view, and under scrutiny.

Unlike the researcher's own records (which the researcher can destroy if necessary), CCTV and phone records are out-with the researcher's control. This 'electronic footprint' might be used to link them to the scene of a crime. It would therefore be wise to bear in mind that public areas, for example, football stadia and the surrounding streets, are generally very well served with security cameras so that an ethnographer 'hanging out' with those involved in criminal behaviour in such venues is highly likely to be captured on film. This electronic footprint might mean that fieldnotes are of less interest to the law. Objective records (such as CCTV) are arguably more credible than first-person accounts. Nonetheless, such data might be used to build a case for seizing researchers' notes (or phone, camera or laptop) on the basis that they may have recorded events pertaining to criminal activities, or have knowledge about a person's beliefs, activities or criminal motives. Although such data have not so far resulted in researchers being questioned by the police (to our knowledge), surveillance data are already a mainstay of criminal proceedings. Thus, one's electronic footprint has the potential to make the job of the contemporary ethnographer more complex, given its potential to make researchers more traceable than before.

A rough guide to the law

First, we consider the Criminal Damage Act 1971. This is the offence of which Garrett was convicted and is pertinent for researchers undertaking fieldwork in public places. Second, we consider the potential for researchers to be held legally liable when they merely observe law-breaking. Third, we consider the law relating to confidentiality, and demonstrate that respondents' privacy and the confidential research relationship receive some limited protection. Furthermore, researchers (like the rest of population) are under few legal obligations to report crimes, as we demonstrate in the fourth section, with the notable exception of terrorism. In the fifth section, we examine the processes that potentially allow for

ethnographers' data to be subject to legal proceedings and describe the specific, limited circumstances under which this could occur.

The extent of potential criminal liability: breaking the law

Ethnographers have candidly admitted to involvement in criminal activities. Adler arguably led the way with her admission of drug taking as part of her fieldwork on drug smugglers in California (Adler, 1993). Bradley Garrett's arrest reignited long-running debates around the ethnographer's responsibility to (sometimes) break the law in the pursuit of knowledge (Ferrell et al., 2015; Pearson, 2009; Polsky, 1985: 117; Sutherland and Cressey, 1960). Crimes committed by researchers vary, but are usually relatively minor, including fighting and pitch invasions (Armstrong, 1993; Pearson, 2009), graffiti vandalism (Ferrell, 1995), trespassing (Kindynis, 2016) and drug taking (Becker, 1963; Blackman, 2007; Sandberg and Copes, 2012). For some researchers, breaking the law is serendipitous, but for others, it may be a necessary way of gaining entrée, gaining credibility and trust, or an epistemological commitment to see and experience the world as their research subjects do (Adler and Adler, 1987; Ferrell, 1997). To state the obvious, if, while engaged in ethnographic (or indeed any) research, someone commits or becomes engaged in criminal conduct, then they may be investigated by the police, prosecuted, tried, convicted and sentenced. In short, no exceptions are made for crimes committed in the name of research. Researchers conducting ethnographic research into potentially criminal conduct would do well to be aware of the relevant criminal law.

The Criminal Damage Act 1971 includes a very wide range of activities relevant to researchers. It also demonstrates that the boundary between lawful and criminal activity may not always be crystal clear. For instance, the offence of destroying or damaging property, pursuant to section 1(1) of the Criminal Damage Act 1971,³ can encompass very minor damage to property, with the term 'damage' being interpreted to include not merely permanent or temporary physical harm but also temporary impairment of value or usefulness.⁴ To provide but a few examples: the application of water-soluble paint to a pavement,⁵ the 'temporary functional disarrangement' of a policeman's hat by stamping upon it,⁶ adulterating milk by adding water to it,⁷ smearing mud on the wall of a police cell⁸ and disabling a machine to make it temporarily useless⁹ have all been held to amount to 'damage'. The social geographer Bradley Garrett discovered this to his cost when he was arrested and charged with conspiracy to commit criminal damage as a result of his participation in 'place-hacking' activities (otherwise known as urban exploration). Ultimately, Dr Garrett pleaded guilty to five counts of criminal damage upon London Underground property, for which he received a 3-year conditional discharge. In this case, the criminal damage included removing

a wing nut from a door, and removing a board and then replacing it (Garrett, 2014; *The Guardian*, 2014; *Times Higher Education*, 2014). The wide reach of the Criminal Damage Act could potentially be applicable to activities undertaken by researchers, such as parkour, protest and graffiti writing, for example.

Observing, and encouraging or assisting criminal conduct

Many researchers seek to avoid breaking the law and merely hang around with those who do. For example, ethnographers of young people's crime/deviance tend to observe, given that their research often overlaps with their role as a youth worker (Fraser, 2016; Gunter, 2010; Ilan, 2012). Yet, criminal liability may be extended not merely to the person who commits the criminal conduct (the 'principal offender') but to those who act as secondary parties (such as researchers), where they provide assistance or encouragement. A person who encourages or assists the principal to commit a criminal offence, intending to provide such encouragement or assistance,¹⁰ may be regarded as an accessory to the principal's crime and is liable to be charged, tried and punished as if they were the principal offender.¹¹

Encouragement or assistance which is capable of giving rise to criminal liability may include a very wide variety of conduct: for example, the supply of tools,¹² offering verbal or practical encouragement or support,¹³ driving the principal to the scene of the crime,¹⁴ keeping 'watch'¹⁵ or making video recordings of criminal conduct.¹⁶ Such activities clearly overlap with the kinds of things researchers routinely do while hanging around, especially visual recordings and offering lifts. Ethnographers researching in crowds may be seen to offer verbal encouragement, see for example Treadwell's ethnography of the English Defence League (Treadwell and Garland, 2011). Covert ethnographers may find that they 'join in' to obtain credibility with the group, as Pearson did in his ethnography of football hooligans (Pearson, 2009). Even those shouting supportive comments could potentially be investigated and prosecuted.

What then of the researcher who merely intends to be present at the scene of criminal conduct and to act as an observer? May this researcher incur criminal liability? It is difficult to provide a conclusive answer because it depends upon the circumstances of the case. Nonetheless, simply being present while others are engaging in the commission of criminal offences does not necessarily amount to assisting or encouraging that conduct.¹⁷ In order to prove that the presence of an individual at the scene of a crime rendered them liable as an accessory, the prosecution would need to prove *both* that the individual did in fact assist or encourage the crime *and* that he intended to provide assistance or encouragement.¹⁸ So, in a criminal case, where the prosecution has to satisfy a jury or magistrate of guilt beyond reasonable doubt,¹⁹ the prosecution may find it very difficult to

discharge this burden if the only evidence against the accused is presence at the scene.²⁰

Although presence at the crime scene does not, of necessity, amount to aiding and abetting that criminal conduct, it is likely to be very relevant evidence on the issue of whether assistance or encouragement was provided.²¹ The reason for regarding presence as being relevant evidence in relation to this issue was explained by the Supreme Court in the recent case of *Jogee*:

Numbers often matter. Most people are bolder when supported or fortified by others than they are when alone. And something done by a group is often a good deal more effective than the same thing done by an individual alone. A great many crimes, especially of actual or threatened violence, are, whether planned or spontaneous, in fact encouraged or assisted by supporters present with the principal lending force to what he does.²²

In addition, a tribunal of fact considering such evidence, and drawing inferences from it, might, in some cases, conclude that they could be satisfied that there was intention to assist or encourage:

... the fact that a person was voluntarily and purposely present witnessing the commission of a crime, and offered no opposition to it, though he might reasonably be expected to prevent and had the power so to do or at least to express his dissent, might under some circumstances, afford cogent evidence upon which a jury would be justified in finding that he wilfully encouraged and so aided and abetted.²³

Thus, in *Coney*, the fact that the defendants were present at an illegal prize-fight, although there was no evidence that they did or said anything, was evidence that the jury could take into account when considering whether they had aided and abetted assaults committed by the participants during the boxing match, but it was not in itself conclusive proof of their participation in the crime.²⁴ By contrast, in *Wilcox v Jeffery*,²⁵ it was held that there *was* sufficient evidence from which it could be properly concluded that the appellant had encouraged a famous American jazz saxophonist in his contravention of immigration legislation,²⁶ by being present at a public performance by this artist. The appellant had met the musician at the airport, paid to attend the concert at which the musician performed and reviewed the performance in a very positive manner.

This distinction between ‘mere’ presence and conduct which amounts to encouragement may be particularly thin in cases where there is violence involving groups of people, since in the hurly-burly it may be very difficult to identify the main participants, who is actively encouraging them and who is merely a bystander.²⁷ Although the motivation of conducting research would not generally excuse criminal conduct,²⁸ clearly presence at the scene as a bona fide researcher (rather than a ‘troublemaker’) would be a significant factor when a determination was being made as to whether criminal conduct had been intentionally encouraged. The point that

ethnographers can take is that mere presence is unlikely to result in criminal liability being extended to the researcher, although the court might consider prolonged fieldwork presence with regard to offering encouragement. As such, researchers might wish to consider the extent to which fieldwork activities might constitute encouragement of illegal activities.

Confidentiality

Respondents’ confidentiality is enshrined in ethical codes of practice. The British Society of Criminology (BSC, 2015) states that researchers should ‘Strive to protect the rights of those that they study, their interests, sensitivities and privacy’ (para 3) and that ‘Researchers should not breach the “duty of confidentiality” and not pass on identifiable data to third parties without participants’ consent’ (point 12).²⁹ Nonetheless, it is broadly recognised that research material *can* be subject to seizure by law enforcement, and that absolute confidentiality cannot therefore be guaranteed (Coomber, 2002b, 2002a). As such, the BSC (2015) recognises that as part of the process of obtaining informed consent, researchers should inform participants ‘about the limits to anonymity and confidentiality’ (para 8). Furthermore, the United Kingdom is party to a number of international mutual legal assistance (MLA) treaties (e.g. the Treaty on Mutual Legal Assistance between the United States of America and the European Union 2003),³⁰ which means that foreign prosecutors may seek the assistance of the UK authorities to compel researchers to give evidence or produce documents.³¹ In 2011, oral history interviews with Loyalist and Irish Republican paramilitaries, housed by Boston College, USA, were subject to a subpoena from the British government (Schmidt, 2012). At the time of writing, the ensuing legal wrangling was ongoing (Witeveen, 2015).³²

Although it has long been a hypothetical possibility, Garrett is arguably the first researcher in England and Wales to have their research data seized by police in connection with a criminal investigation. The following section describes the law and processes that make this possible. The key point is that research data can only be seized under quite specific circumstances. Understanding these may enable some researchers to more confidently promise confidentiality in their research.

The law on confidentiality and the disclosure of ‘iniquity’

Circumstances may arise in which the law requires the disclosure of information to law enforcement. Yet, the law may also step in to *protect* an individual’s interest in maintaining the confidentiality of information about them in a number of ways. First, a legally enforceable duty of confidence may arise, based upon the equitable principle that ‘it is unconscionable for a person who has received information on the

basis that it is confidential subsequently to reveal that information'.³³ If information has been obtained in such circumstances that disclosure of the information would amount to a breach of confidence, an injunction will be granted to restrain the recipient from communicating the confidential information to another, or damages awarded.³⁴

So, when does this 'duty of confidence' arise? In the 'Spycatcher' case, *Attorney-General v. Guardian Newspapers (No.2)*, Lord Goff stated that a duty of confidence arises

... when confidential information comes to the knowledge of a person (the confidant) in circumstances where he has notice, or is held to have agreed, that the information is confidential, with the effect that it would be just in all the circumstances that he should be precluded from disclosing the information to others.³⁵

This could be applied to research where a participant discloses information having been promised by the researcher that the information will remain confidential (Finch, 2001).³⁶ However, Lord Goff also identified three principles limiting the duty of confidentiality:

1. The duty only applies to confidential information:

once it has entered what is usually called the public domain (which means no more than that the information in question is so generally accessible that, in all the circumstances, it cannot be regarded as confidential) then, as a general rule, the principle of confidentiality can have no application to it.³⁷

2. The duty does not apply to useless or trivial information.³⁸
3. The public interest in protecting the confidence must not be outweighed by a countervailing public interest in favour of disclosure.³⁹

As Finch (2001) has observed, the first two of these are unlikely to apply in the context of criminological research: limited disclosure to a researcher is unlikely to be sufficient to place the information in the 'public domain' (at least prior to publication, which normally disguises respondents' identity), and information which is of value to academic research is not likely to be regarded as being 'useless or trivial'. However, in the case of information which relates to criminal activity, particularly to serious criminal activity, researchers should be aware that the public interest in disclosure may outweigh and effectively trump the duty of confidentiality. Since the 19th century, the courts have made it clear there is no duty of confidence in relation to the 'disclosure of an iniquity':

You cannot make me a confidant of a crime or fraud and be entitled to close up my lips upon any secret which you have the audacity to disclose to me relating to any fraudulent intention on your part; such confidence cannot exist.⁴⁰

This so-called 'iniquity' rule includes actual *and* contemplated criminal or fraudulent conduct,⁴¹ as well as misconduct⁴² or anti-social behaviour⁴³ (including potential behaviour which poses a real risk of danger to the public),⁴⁴ which is of such a nature that it is in the public interest that it be disclosed to others.

For example, in *W v Egdell*, a patient, W, had been detained in a secure mental hospital. He had shot five people dead, and wounded two others, and had pleaded guilty to manslaughter on the basis of diminished responsibility. W wished to apply to a mental health review tribunal, either to be discharged from hospital or to be transferred to another unit, and his solicitors instructed Dr Egdell, an independent consultant psychiatrist, to prepare a report, with a view to this report being used in support of his application. Unfortunately for W, the report produced by Dr Egdell was very far from being favourable to his case and disclosed that W still had a long-standing and continuing interest in home-made bombs and that Dr Egdell did not accept the view that W was no longer a danger to the public, and this led to W's solicitors withdrawing the tribunal application. When Dr Egdell discovered that the report was not to be used, he was concerned that W's carers should know of his conclusions, particularly in relation to the issue of W's dangerousness, and disclosed a copy of his report to the medical director of W's secure hospital. The hospital then sent a copy of the report to the Home Secretary, who in turn forwarded a copy to the tribunal. The Court of Appeal held that where a patient in W's position commissioned an independent psychiatric report, the doctor making the report was undoubtedly under a duty of confidence, but that that duty was not absolute. In the circumstances, disclosure to the relevant authorities was justified because there was a strong public interest in reducing the risk that W posed to public safety. A psychiatrist who, as part of the exercise of sound professional judgement, fears that

decisions may be made on the basis of inadequate information and with a real risk of consequent danger to the public is entitled to take such steps as are reasonable in all the circumstances to communicate the grounds of his concern to the responsible authorities.⁴⁵

Thus, the court would consider whether the disclosure is proportionate in extent and made to the proper authorities, when deciding whether a particular disclosure is justified in the public interest.⁴⁶ Unfortunately, the courts have not provided clear guidelines as to the point at which criminal conduct will be sufficiently serious to justify making disclosure. In the case of minor criminal activity, such as smoking cannabis at home,⁴⁷ or private sexual activity involving consenting adults (even if it involves spanking or fetishism),⁴⁸ the public interest in disclosure would probably not outweigh the duty to maintain confidentiality. For the vast majority of researchers (whose research is on relatively minor offending), this is good news.

An individual's right to confidentiality is also protected by Article 8(1) of the European Convention on Human Rights (ECHR), incorporated into domestic law by the Human Rights Act 1998,⁴⁹ which protects the right to respect for an individual's private and family life and which has been used in recent years to extend the law to afford protection to information in respect of which there is a reasonable expectation of privacy.⁵⁰ However, this right is qualified by Article 8(2):

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Any interference with an individual's Article 8 rights must be justified as being in accordance with the law, pursuing one of the legitimate aims identified in Article 8(2), and must be 'necessary', which requires that the interference 'corresponds to a pressing social need' and is 'proportionate to the legitimate aim pursued'.⁵¹ There are currently no reported domestic or European Court of Human Rights cases dealing specifically with the issue of whether a disclosure of information by a researcher relating to criminal conduct by a research participant is justified under Article 8(2). There has been some consideration of the circumstances in which the disclosure without consent of medical records is permissible under Article 8(2).⁵² For example, in *Z v Finland*,⁵³ the applicant had been married to X, who had been charged with a number of sexual offences, including attempted manslaughter by deliberately subjecting the complainants to the risk of HIV infection. In order to discover when X became aware that he was HIV positive, the police sought and obtained access to X and Z's medical records, and Z's doctors and psychiatrist were compelled to give evidence in the course of the criminal proceedings against X. The European Court of Human Rights considered that the obtaining of this information was justified because the information was necessary for X's prosecution and there were 'weighty public and private interests in pursuing the investigation of the offences of attempted manslaughter'.⁵⁴ Clearly, the balancing exercise involved in determining whether a disclosure of confidential information may be justified in the public interest may be very difficult.

Reviewing the research offers no clear answers for ethnographers: the balances of privacy versus public interest are highly specific to each case. Nonetheless, confidentiality and the right to privacy are subject to legal protections, and so breaching these is not simply a matter of course, even when it comes to iniquity.

Failure to report criminal activity

It is not generally an offence to fail to report crimes to the police (Ashworth, 2013). The common law offence of misprision of felony,⁵⁵ which required the revealing of felonies to

the authorities, ceased to exist with the coming into effect of section 1 of the Criminal Law Act 1967 (Williams, 1961).⁵⁶ However, 'failure to report' offences are created by sections 19 and 38B of the Terrorism Act 2000. These are mainly pertinent to researchers studying terrorism, although terrorism is quite broadly defined (more below). Section 19 of the Terrorism Act 2000 creates an offence in relation to the failure to report a number of financial offences relating to terrorism: fund-raising (s.15), the use and possession of money or property for terrorist purposes (s.16), entering funding arrangements (s.17) and money laundering (s.18).⁵⁷ To prove this offence, it is necessary for the prosecution to prove *both* that the accused knew or suspected that one of the specified terrorist offences was being committed by another individual *and* that they failed to report it. Section 38B makes it an offence for a person to fail to disclose to a police constable, as soon as reasonably practicable, information which he knows or believes might be of material assistance either in preventing another person from committing an act of terrorism or in securing the arrest, prosecution or conviction of a person in the United Kingdom for an offence involving the commission, preparation or instigation of an act of terrorism.

Both offences provide that it is a defence for an accused to prove that 'he had a reasonable excuse for not making the disclosure',⁵⁸ and it is clear that family ties and the desire to protect a relative do not amount to a reasonable excuse,⁵⁹ although what might amount to a 'reasonable excuse' is not clear.⁶⁰ It is highly doubtful whether conducting research would constitute a 'reasonable' excuse.

A further difficulty for researchers is that the definition of 'terrorism' provided by the Act is very broad, including the use of threat of serious personal violence, serious damage to property, the endangerment of another person's life, the creation of a serious risk to public health or safety of the public, or a design seriously to interfere with or disrupt an electronic system, where

the use or threat is designed to influence the government, or an international governmental organisation, or to intimidate the public or a section of the public, and ... the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.⁶¹

Potentially, this might include research into groups such as 'Islamic fundamentalism, anti-Capitalist protests and environmental groups such as Greenpeace' (Feenan, 2002: 762), anti-vivisection activists and computer hackers, and inevitably much depends upon prosecutorial discretion as to whether an action or threat amounts to terrorism.⁶²

Investigatory powers, court orders and research data

The investigation and prosecution of Bradley Garrett serves as a cautionary tale, illustrating how research data may be seized and used by law enforcement authorities to support the investigation and prosecution of the researcher and

research participants. When Dr Garrett was arrested, his research materials were seized by the police and used as the foundation of the prosecution case against both him and a number of his project participants, despite representations made by his legal representatives that these were to be regarded as 'special procedure material' (discussed in more detail below) (Barrett, 2013; *The Guardian*, 2014; *Times Higher Education*, 2014). A raft of legislation exists empowering the search and seizure of property by the police or other authorities,⁶³ including the Criminal Damage Act 1971, s.6; the Misuse of Drugs Act 1971, s.23; the Theft Act 1968, s.26; the Animal Welfare Act 2006, s.23 and the Serious Crime Act 2015, Part 4, to name but a few, and it is not possible to explore all of these within the scope of this article. An outline of the main relevant provisions is provided.

Section 8 of the Police and Criminal Evidence Act 1984 (PACE) provides that a Justice of the Peace (JP) may authorise a search warrant to enter and search premises if there are reasonable grounds for believing that an indictable offence has been committed and that there is material on the premises likely to be relevant evidence of substantial value to the investigation of the offence⁶⁴ and authorises a constable to seize and retain anything for which the search has been authorised.⁶⁵ In other words, a warrant cannot be issued on the basis that a researcher knows about a criminal topic or individual that the police are interested in, but only in relation to a particular crime that is subject to a legal investigation.

This provision is subject to a number of limitations, one being that the material sought 'does not consist of or include ... excluded material or special procedure material'.⁶⁶ 'Excluded material' is defined in s.11 as including 'personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence', and journalistic material which a person holds in confidence and which consists of documents or other records.⁶⁷ 'Personal records' here means 'documentary and other records concerning an individual (whether living or dead) who can be identified from them',⁶⁸ which relate to his physical or mental health or to specified counselling or assistance given or likely to be given to him,⁶⁹ a definition which is unlikely to cover most ethnographic research data into criminal activity. If, however, data did fall within this definition, it would need to be held subject to an express or implied undertaking, or legal duty to hold it in confidence.⁷⁰ Criminological research data might be regarded as 'journalistic material', defined in the Act as 'material acquired or created for the purposes of journalism'.⁷¹ The Act does not provide further guidance with regard to the interpretation of the term 'journalism', although if one examines a dictionary definition of the term – 'The profession or practice of reporting about, photographing, or editing news stories for one of the mass media'⁷² – this suggests that most ethnographic research would not fall within this definition. Of more potential significance are the provisions relating to 'special procedure material': 'material, other than items subject to legal

privilege and excluded material, in the possession of a person who ... acquired it in the course of any trade, business or profession or other occupation or for the purpose of any paid or unpaid office' and who holds that material subject 'to an express or implied undertaking to hold it in confidence'.⁷³ This definition *could* potentially include fieldnotes and other data, although this was not recognised in Garrett's case.

If the police wish to gain access to excluded material or special procedure material for the purposes of an investigation, then an application must be made to a circuit judge for an order in accordance with Schedule 1 PACE.⁷⁴ If a judge makes an order that information stored 'in any electronic form' be produced under Schedule 1, the information must be produced in a 'visible and legible form', it would therefore need to be decrypted.⁷⁵ A person who fails to comply with an order made to produce information may be dealt with as if they had committed a contempt of court.⁷⁶ So while encrypting data might be good practice in protecting respondents' identities (in the same way that keeping paper copies in a locked cabinet is good practice), researchers can be required to decrypt their data. Information relating to terrorism is subject to specific legislation.⁷⁷ While these provisions provide additional safeguards for special procedure material, a court considering whether the relevant statutory conditions are met, when conducting the balancing exercise between the public interest in maintaining the confidentiality of research participants and the public interest in the prevention and investigation of crime, is likely to place great weight upon the latter.⁷⁸

In addition, where a person is likely to be able to produce or to give material evidence in Crown Court proceedings, the Crown Court may issue a summons requiring them to attend court and give evidence, or to produce the document or thing.⁷⁹ Similar powers exist in relation to summary proceedings in the magistrates' courts.⁸⁰ Although in common parlance mention is still made of a witness being 'subpoenaed' to attend a criminal trial, the procedure of issuing subpoenas to give evidence or produce documents has actually been abolished in criminal proceedings, and replaced with witness summonses.⁸¹ Where an application for a Crown Court witness summons appears to relate to confidential material, all parties served with the application have at least 14 days to make representations about whether there should be a hearing of the application, which allows objections to be raised in relation to the disclosure of confidential material.⁸² The court must be satisfied that adequate account has been taken of the rights and duties of the person summoned and any person to whom the proposed evidence relates, before issuing a witness summons.⁸³

While a researcher faced with the possibility of being summoned to attend court to give evidence against participants might seek to persuade a judge to withdraw, or not to grant a summons, upon the basis that the relevant information was confidential, the limitations of confidentiality outlined above need to be recognised. In the case of serious criminal activity, the public interest in disclosure will likely

trump the researcher's obligation to maintain confidentiality. A researcher who disobeys a witness summons without just excuse would be guilty of contempt of court and may be punished summarily by the court with a sentence of up to 3 months' imprisonment.⁸⁴ This is similar to what happened to Scarce when he refused to identify his respondents in court (Scarce, 1994).

Implications for ethnographers

Having acquired some knowledge of the law, what should ethnographers make of it? There is a danger in being overly cautious: the number of cases of research data being seized, or of researchers being subject to legal proceedings, remains very small indeed. Some researchers may wish to avoid legal risks altogether, in which case they might do well to avoid field research. This was the case for Clough and Conigrave, who sought legal advice in relation to their research project on illegal drug use in Australia (2008). They were advised that, since theoretically a subpoena or search warrant could be issued to peruse the researchers' databases, they should avoid asking about cannabis supply and distribution networks, participants' cannabis use and prices paid for cannabis (Clough and Conigrave, 2008: 61). Our review of the law in England and Wales shows that while information relating to actual instances of supply (or even planned supply, that is, conspiracy) might be of interest or value to the court, general information about use would be less likely to meet the criteria of being of substantial value.

What can be drawn from the above is the need for ongoing professionalism. It has long been recognised that researchers of crime and deviance should take great care about what data they record, and how they record it (Lee, 1993). We would also suggest that researchers consider the electronic footprint they might leave during fieldwork. Furthermore, a good working understanding of the law enables researchers to make informed decisions about whether, or to what extent, they may break the law during fieldwork. While researchers may choose to break the law, the ethical duty to protect respondents' confidentiality and privacy is non-negotiable. Although it is impossible for a researcher to predict *whether* a respondent is likely to be subject to criminal proceedings at a later date, they can avoid asking about or recording information relating to specific incidents. Fieldnotes might make use of participant pseudonyms, for example. Thick description, and even photographs, can accurately reflect social interactions and processes without the need for a detailed record of names or places (see Lee, 1993). Furthermore, written consent forms and paperwork relating to paying respondents honorariums also have the potential to be subject to legal proceedings (Coomber, 2002b; Fitzgerald and Hamilton, 1996). Informing universities that such information is legally sensitive can be a useful way of ensuring that it never be collected nor stored at all!

Additional care is needed regarding publication, especially in the digital age. Recalling that journalists managed to track down Goffman's respondents using her book, and that the British Transport Police downloaded Garrett's thesis, ethnographers would arguably do well to consider when, and in which format, they publish. University libraries can embargo PhD theses for several years before they are made publicly available. Jennifer Fleetwood's (2009) thesis on drug trafficking was under embargo until recently. Despite using pseudonyms for respondents, and places, at least one respondent was known to have been under police surveillance. Finally, some data may be too sensitive to publish, but might nonetheless form an important background to the analysis (Blackman, 2007).

Conclusion

Here, we have offered a review of the law as it relates to ethnographic research and made some brief suggestions for appropriate field-craft. We wish to emphasise that, as the above demonstrates, the law is not solely there to make trouble for those who would produce knowledge but also enshrines rights (albeit to respondents more than researchers). To recap, our review shows that researchers in the United Kingdom generally have no legal duty to report a crime, except in relation to terrorism (keeping in mind that this can be defined very broadly).⁸⁵ Knowing this is fundamental to ethnographic research on crime (acknowledging that this does not dispense of moral obligations to do so in some circumstances). Although no absolute legal protections of respondents' confidentiality exist, the legal processes that would force a researcher to break confidentiality are quite specific. The court could only apply to access research data in a circumstance in which researchers were thought to have information relating to a specific criminal case, and where the public good outweighed the duty of confidentiality. Relevant legal procedures (i.e. witness summons) would also offer an opportunity for the researcher to make a case for the need to protect respondents' confidentiality and right to privacy. While some academics expressed concern that prosecuting Garrett might have a 'chilling effect' on social science (Fish, 2014), our review hopefully gives reason for researchers to feel optimistic about the possibility for ethnographic research on crime and deviance within the bounds of the law.

It is also worth bearing in mind that ethnography is not necessarily more legally complex than other research methods. Oral history interviews with former IRA (Irish Republican Army) members held in Boston University have been embroiled in legal proceedings since 2011 following a subpoena by the UK government (Witeveen, 2015). Rizwan Sabir, a PhD student at the University of Nottingham, was arrested after downloading a declassified Al Qaeda training manual (*Times Higher Education*, 2008). Forensic research is subject to a highly complex regulatory and legal framework (Forensic Science Regulator, 2016), while medical

research is similarly governed by a panoply of legal provisions, including the Human Fertilisation and Embryology Act 1990, the Human Tissue Act 2004 and their Codes of Practice. Understanding and complying with such legislation are part of their practice and ought to be ours too.

Finally, some caveats. The above review is inevitably limited and we encourage ethnographers to seek out more information in relation to their unique projects and distinct national contexts. Our review is unfortunately limited to England and Wales, and although there are some similarities with other jurisdictions, there also exist important differences. For example, in France, members of the public are required to report serious crimes⁸⁶ and child abuse.⁸⁷ Lucky researchers may encounter colleagues in law departments who relish the opportunity to share their encyclopaedic knowledge. Finally, many moral and ethical issues sit outside of the law: just because something is legal, does not mean it is morally justifiable and vice versa. For example, researchers in the United Kingdom are currently under no legal obligation to report child abuse or neglect where they suspect it,⁸⁸ nonetheless it is universally agreed that researchers have a duty to do so. Upholding this convention also fulfils our collective obligations to the public and our profession.

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Notes

1. In the United Kingdom, the UCU (the main union at Higher Educational authorities) offers legal assistance to members, but not for criminal cases. Criminal legal aid may be available to assist with the costs of legal representation, although the eligibility criteria have been considerably tightened up in recent years (Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), Criminal Legal Aid (General Regulations 2013/9). The legal provisions relating to legal aid eligibility are complex and subject to change, although guidance may be found at the Gov.uk website. To qualify for legal aid, an applicant must pass both a means test and an 'interests of justice' test, which takes into account matters such as whether the case involves a substantial issue of law or requires expert evidence to be obtained, and whether, if the accused were convicted, they would be likely to suffer loss of liberty, reputation or serious damage to reputation. In brief, a PhD student earning the standard research bursary of £14,296 (at the time of writing) would be likely have access to legal aid, but a lecturer in full-time employment would likely have to fund their own legal defence.
2. Lee's strategies for handing sensitive data are indispensable for criminological researchers (1993).
3. S.1(1) 'A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or

damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence'.

4. *Morphitis v. Salmon* [1990] Crim. L.R. 48 (DC); *R. v. Whiteley*, 93 Cr.App.R. 25 (CA); *R v Fiak* [2005] EWCA Crim 2381.
5. *Hardman v Chief Constable of Avon and Somerset* [1986] Crim LR 330 (Bristol Crown Court).
6. *Samuels v Stubbs* (1972) 4 SASR 200 (Sup Ct, Aus, single judge), approved in *Hardman*, above Note 7.
7. *Roper v. Knott* [1898] 1 QB 868.
8. *Roe v Kingerlee* [1986] Crim LR 735. See also: *R v Fiak* [2005] EWCA Crim 2381 (flooding a police cell by placing a police blanket in the toilet and flushing it held to amount to criminal damage of the cell and blanket because the blanket could not be used until it had been dried and the flooded cell was out of action until the water had been mopped up).
9. *R v Fisher* (1865) LR 1 CCR 7 (plugging up the feed-pipe of a steam-engine, and displacing other parts of the engine in such a way as to render it temporarily useless, and in a manner which would have caused an explosion, if the obstruction had not been discovered and removed).
10. *R v Clarkson* (1971) 55 Cr App R 445. For a more detailed account of the law relating to participation in crime, see *R v Jogee* [2016] UKSC 8; [2016] 2 WLR 681 and D. Ormerod and K. Laird, *Smith and Hogan's Criminal Law*, 14th edition (Oxford, Oxford University Press, 2015), Chapter 8.
11. Accessories and Abettors Act 1861 s.8 (re indictable offences); Magistrates' Courts Act 1980, s.44 (re summary offences).
12. See, for example, *R v Bainbridge* [1960] 1 QB 129 (supply of oxygen cutting equipment for use in a burglary).
13. In *R v Giannetto* [1997] 1 Cr App R 1, at 13, it was suggested that if a murderer came up to a husband and said, 'I am going to kill your wife', and the husband merely patted him on the back and said, 'Oh goody', that would be sufficient to amount to encouragement for the purposes of s.8 if the murderer did indeed kill the wife.
14. See, for example, *DPP for Northern Ireland v Maxwell* (1979) 68 Cr App R 128; *R v Nedrick-Smith* [2006] EWHC 3015 (Admin).
15. C.f. *R v Nedrick-Smith* [2006] EWHC 3015 (Admin).
16. C.f. *R v N(P)* [2010] EWCA Crim 941; [2010] 2 Cr App R 14, although in this case there was other clear evidence of participation.
17. *R v Coney* (1882) 8 QBD 534, Hawkins J at 557 (a case involving an illegal boxing match): 'It is no criminal offence to stand by, a mere passive spectator of a crime, even of a murder. Non-interference to prevent a crime is not itself a crime'.
18. See, for example, *R v Clarkson* (1971) 55 Cr App R 445, where the two appellants were present in a room in army barracks while a young woman was being raped by at least three soldiers. There was no evidence to suggest that either appellant had done anything which involved direct physical participation or verbal encouragement to those committing the rape, so the only basis upon which they could be convicted was that, by their presence at the scene, they were encouraging the rapists. The appeal succeeded because the trial judge had not properly directed the jury that the prosecution needed to prove that the appellants had intended to encourage the rapes.
19. *Miller v Minister of Pensions* [1947] 2 All ER 372. The usual judicial direction to the jury is that they must be 'satisfied so that they are sure': *R v Summers* [1952] 1 All ER 1059.

20. See, for example, *R v Miah* [2004] EWCA Crim 63.
21. *R v Jogee* [2016] UKSC 8; [2016] 2 WLR 681, at [11].
22. See Note 21.
23. *R v Coney* (1882) 8 QBD 534, Hawkins J at 557. This passage follows on directly from that referred to at Note 18 ante.
24. *R v Coney* (1882) 8 QBD 534, Hawkins J at 557. This passage follows on directly from that referred to at Note 18 ante, at 540, 560. The appeal was allowed because the judge had not correctly directed the jury about the significance of presence.
25. [1951] 1 All ER 464.
26. Art 1(4) of the Aliens Order, 1920.
27. See, for example, *Allen v Ireland* (1984) 79 Cr App R 208; *R v Ellis* [2008] EWCA Crim 886; cf. *R v Blackwood* [2002] EWCA Crim 3102. Cf. D. Ormerod and K. Laird, above Note 11, at 223.
28. Cf. *A-G's Reference No1 of 2002* [2002] EWCA Crim 2392.
29. The same statement appeared in the previous version (British Society of Criminology (BSC, 2006).
30. See Cmnd.7613 (2004). The European Investigation Order (EU Directive 2014/4/41/EU), aimed at streamlining the mutual legal assistance (MLA) process between EU Member States, will be implemented in the United Kingdom in May 2017. A list of MLA agreements to which the United Kingdom is party may be accessed here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/516418/Treaty_List.pdf (accessed 8 May 2016).
31. Crime (International Co-operation) Act 2003. For further guidance, see Home Office (2015).
32. The legal limits of confidentiality have long been acknowledged in the United States. Knerr and Carroll (1978) identified at least 18 researchers who had been subject to subpoena (p. 311). In 1993, Ric Scarce (1994) was found in contempt of court after refusing to reveal confidential information about his research subjects as part of his ethnographic research on the radical environmental movement. In the United States, researchers can secure 'Certificates of Confidentiality' from the Department of Health and Human Services, authorised by Federal law; however, questions have been raised about their efficacy. Beskow et al. (2008) describe an incident in which an interview (of a key witness), gained during research on a drug treatment programme, was released to the state's chief investigating officer, the witness, the District Attorney's staff, the defendant and his wife. The judge authorised the release of the interview on the basis that the defendant was entitled to exculpatory evidence (Beskow et al., 2008). In Canada, the court issued a warrant requiring researchers release a confidential research interview after the respondent committed a serious crime after participating in research (Canadian Medical Journal 2014). Although the interview was not made public, the judge nonetheless read it before deeming it not relevant to the case. In both examples, confidential information was released to a third party, without the respondents' permission (the standard set out by the BSC).
33. *Stephens v Avery* [1988] Ch 449, Sir Nicholas Browne-Wilkinson V-C, at 456.
34. *Phipps v Boardman* [1967] 2 AC 46, Lord Upjohn, at 127. A court may also require a person to account for profits made as the result of the misuse of confidential information (e.g. from book royalties): *Attorney-General v Guardian Newspapers (No.2)* [1990] 1 AC 109.
35. [1990] 1 AC 109, at 281.
36. See Finch (2001) for an expanded discussion of the issues relating to criminological research and confidentiality.
37. [1990] 1 AC 109, at 281.
38. See Note 37.
39. Above, Note 38.
40. *Gartside v Outram* (1856) 26 LJCh 113, Wood V-C at 114.
41. *Initial Services v Putterill* [1968] 1 QB 396, Lord Denning MR, 405.
42. See Note 42.
43. *Francome v Mirror Group Newspapers Ltd* [1984] 1 WLR 892, Lord Denning MR, 895–896.
44. *W v Egdell* (1990) Ch 359.
45. *W v Egdell* (1990) Ch 359, Bingham LJ, 424.
46. *Attorney-General v Guardian Newspapers (No.2)* [1990] 1 AC 109 at 268–269, 282; Halsbury's Law of England, *Confidence and Informational Privacy*, Vol. 19 (2011), para 73.
47. *Moseley v News Group Newspapers* [2008] EWHC 1777 (QB), Eady J, [111]. Cf. *Stone v. South East Coast SHA* [2006] EWHC 1668 (Admin).
48. *Moseley v News Group Newspapers* [2008] EWHC 1777 (QB), Eady J, [106].
49. In force from 02.10.2000. For a more detailed account of the Act and the law relating to Article 8 and Article 10, which protects freedom of expression, see Wadham et al. (2015).
50. See, for example, *Campbell v Mirror Group Newspapers Ltd* [2004] UKHL 22, [2004] 2 AC 457; *Moseley v News Group Newspapers* [2008]; EWHC 1777 (QB).
51. *Szuluk v. United Kingdom* (2010) 50 EHRR 10, [45]. Cf. *Re General Dental Council's Application* [2011] EWHC 3011 (Admin)
52. For an expanded discussion of the law in relation to confidentiality and medical records, see, for example, Jackson (2013, Ch.7).
53. (1998) 25 EHRR 371.
54. (1998) 25 EHRR 371, at [81].
55. *Sykes v DPP* [1962] AC 528.
56. Halsbury's Laws of England, *Criminal Law*, Vol. 26 (2016), para 798. The common law offence of misprision of treason has not been abolished (s.5(5) Criminal Law Act 1967), and it is an offence for a person who knows that treason is being planned or committed not to report it to the relevant authorities (Halsbury's Laws of England, *Criminal Law*, Vol. 26 (2016), para 421), but this offence has not been charged in recent times and appears to be obsolescent. Under the Criminal Law Act 1967, s.5(1), it is an offence in England and Wales to conceal for reward material information about a 'relevant' offence: see s.4(1A) Criminal Law Act 1967. The equivalent provision in Northern Ireland, s.5 Criminal Law Act 1967 (Northern Ireland) (available at: <http://www.legislation.gov.uk/apni/1967/18>, last accessed 18.3.2016) is cast in wider terms and requires the reporting by a person of information which is likely to be of material assistance in securing the apprehension, prosecution or conviction of any person in respect of a relevant offence within a reasonable time, unless they have a reasonable excuse: see Feenan (2002) for discussion on the use of this provision, which might be used in relation to research data. Under s.5B Female Genital Mutilation Act 2003 (inserted by s.74 Serious Crime Act 2015 and in force from 31 October 2015), regulated health and social care

- professionals and teachers in England and Wales are required to report known cases of female genital mutilation in children under 18, which they identify in the course of their work, to the police.
57. In 2008, the scope of s.19 was expanded (by Pt.7, s.77(2) and (3), Counter-Terrorism Act 2008) to include information about these offences coming to all persons in the course of their employment, with ‘employment’ being very broadly defined to include any paid or unpaid employment, work under a contract for services, work experience provided pursuant to a training course or programme or in the course of training for employment, and voluntary work, and so could also include researchers: S.22A Terrorism Act 2000.
 58. S.19(3) and s.38B(4). It is also a defence to the s.19 offence to prove that disclosure was made in accordance with a procedure laid down by the accused’s employer: s.19(4).
 59. *R v Sherif* [2008] EWCA Crim 2653, [2009] 2 Cr App R (S) 235, at [45]; *R v Girma* [2009] EWCA Crim 912, [2010] 1 Cr App R (S) 28.
 60. For further discussion upon s.38B and the ‘reasonable excuse’ defence, see Walker (2010).
 61. S.1(1)(b) and (c) Terrorism Act 2000. Where the use or threat involves firearms or explosives, it amounts to terrorism even if there is no design to influence or intimidate government or the public: s.1(3).
 62. See, for example, *R v Gul* [2013] UKSC 64, [2014] AC 1260, [31]-[37], [62] for criticism of the definition.
 63. Including Revenue and Excise and local government. For a more comprehensive account, see Stone (2016).
 64. S.8(1). ‘Material’ is capable of including a computer and its hard drive, which are to be regarded as a single item/thing: *R (Faisaltek Ltd) v Crown Court at Preston* [2008] EWHC 2832 (Admin), [2009] 1 WLR 1687; *R (Cabot Global Ltd) v Barkingside Magistrates’ Court* [2015] EWHC 1458 (Admin), [2015] 2 Cr App R 26.
 65. S.8(2).
 66. S.8(1)(d).
 67. S.11(1). Cf. Feenan, above Note 69, at 770.
 68. S.12.
 69. See Note 68.
 70. S.11(2). See the discussion ante regarding confidentiality.
 71. S.13. See Feenan, above Note 69, at 770.
 72. I. Brookes et al. (eds), *Collins English Dictionary*, 12th edn. (Glasgow, HarperCollins, 2014), p. 1049.
 73. S.14(1) and (2). Cf. *R (S) v Chief Constable of British Transport Police* [2013] EWHC 2189 (Admin), [2014] 1 WLR 1647, [28]-[29].
 74. S.9(1). An application for an order that consists of or includes journalistic material should be made on notice: Schedule 1, para 7; *R (British Sky Broadcasting Ltd) v Central Criminal Court* [2014] AC 885. For the procedure to be followed when a Schedule 1 application is made, see Criminal Procedure Rules 2015, r.47.10.
 75. Schedule 1, para 5.
 76. Schedule 1, para 15.
 77. The Terrorism Act 2000 Schedule 6 contains analogous provisions in relation to material likely to be of substantial value to a terrorist investigation. For the procedure to be followed when an application is made under Schedule 6, see Criminal Procedure Rules 2015, r.47.11–12.
 78. *R v Bristol Crown Court, ex parte Bristol Press and Picture Agency Ltd* (1987) 85 Cr App R 190.
 79. Criminal Procedure (Attendance of Witnesses) Act 1965, s.2. There is also power under s.2A to require advance production of a document or thing for inspection at a specified time and place. For the procedure in respect of applications under s.2, see Part 17, Criminal Procedure Rules 2015.
 80. Magistrates’ Courts Act 1980 s.97.
 81. Criminal Procedure (Attendance of Witnesses) Act 1965, s.8.
 82. R.17.5(4), Criminal Procedure Rules 2015.
 83. R.17.5(4), Criminal Procedure Rules 2015. The warrant may also be withdrawn if these rights outweigh the reason(s) for the warrant being issued: R.17.7, Criminal Procedure Rules 2015. Cf. *R (TB) v Stafford Crown Court* [2006] EWHC 1645 (Admin), [2006] 2 Cr App R 34.
 84. S.3, Criminal Procedure (Attendance of Witnesses) Act 1965.
 85. And in the circumstances outlined at Note 56 above.
 86. Code Pénal, Art 434-1:

Any person who, having knowledge of a felony the consequences of which it is still possible to prevent or limit, or the perpetrators of which are liable to commit new felonies that could be prevented, omits to inform the administrative or judicial authorities, is punishable by three years imprisonment and a fine of €45,000 ...
- The penalty is increased in the case of acts of terrorism or certain other serious crimes: Art 434-2. Art.223-6 imposes a duty of easy rescue, which may require individuals to contact the emergency services:
- Anyone who, being able to prevent by immediate action a felony or a misdemeanour against the bodily integrity of a person, without risk to himself or to third parties, wilfully abstains from doing so, is punished by five years’ imprisonment and a fine of €75,000 ... (available at: <https://www.legifrance.gouv.fr/>)
87. Code Pénal, Art 434-3. This duty to report also extends to other vulnerable individuals:

Any person who, having knowledge of maltreatment, deprivations or sexual assaults inflicted upon a minor under fifteen years of age or upon a person incapable of self-protection by reason of age, sickness, infirmity, psychical or psychological disability or pregnancy, omits to report this to the administrative or judicial authorities is punished by three years’ imprisonment and a fine of €45,000 ...
 88. However, researchers should be aware that this may change in the near future. In 2016, the Government launched a consultation report, *Reporting and acting on child abuse and neglect* (which concluded on 13 October 2016), Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/539642/Reporting_and_acting_on_child_abuse_and_neglect_-_consultation_document__web_.pdf (accessed 6 December 2016). One of the statutory reforms under consideration is whether there should be ‘a mandatory reporting duty, which would require certain practitioners or organisations to report child abuse or neglect if they

knew or had reasonable cause to suspect it was taking place' (Consultation Report, para 43). In Wales, a legal obligation on the part of those who are under a duty to co-operate with the Local Authority and Youth Offending Team, to report children at risk of abuse or neglect, was introduced by the Social Services and Well-being (Wales) Act 2014: See, for example, HM Government, *Reporting and acting on child abuse and neglect* (2016), Annex B, p. 5: Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/539615/Reporting_and_acting_on_child_abuse_and_neglect_-_annexes_web_.pdf. Reporting child abuse is mandatory in selected professions in many jurisdictions, including the United States, Canada and Australia, and in some jurisdictions (e.g. Canada and some US states) and obligation to report child abuse is imposed on all citizens. See, for example, *Reporting and acting on child abuse and neglect* (2016), Annex D, pp. 18–19 and 30–35.

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