

# 11 I Want a Life Story not a Life Sentence. Legal, Ethical and Human Rights Issues Related Recording, Transcribing and Archiving Oral History Interviews

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This paper explores legal, ethical and human rights issues of conducting oral history interviews and focuses on problematic factors related to depositing the resultant audiotapes and transcripts in archives. Methods of protecting those who may be harmed in anyway by the tapes or transcripts being open to public access are identified. The potential ethical and legal consequences for researchers are explored. The interviews were part of an historical research study into the history of Nursing in the two West Yorkshire towns of Halifax and Huddersfield, United Kingdom (UK) between 1870-1960. The two methodological approaches were analysis of the primary and secondary documentary archival sources, and oral history interviewing of a sample of twenty-one retired nurses ranging from 65-97 years old representative of location and career experience to ensure a strategic purposive sample. The resultant audiotapes and transcripts will be stored in the archives of The University of Huddersfield.

The aim of this paper is to explore the ethical and legal issues related to recording and transcribing oral history interviews, and depositing them in archives, and focuses on the complexities of informed consent and the importance of recognising the rights of third parties implicated by their inclusion in other people's narratives. Options related to recording, transcribing and archiving narrative data were identified and ultimately the decision to deposit both the tape and transcript in the university archives was made. It seemed wasteful to record this irreplaceable data and then destroy it. The Qualidata Centre aims to deposit qualitative data in suitable public archive repositories (Corti et al., 1995). This initiative recognises the importance of preserving research data and the problematic issues created.

The researcher's role in depositing material into an archive was questioned including the relationship between the researcher and the archivist. How can

researchers ensure all ethical and legal agreements between themselves and their interviewees are maintained once the research data is archived? Richardson and Godfrey (2002) explore some of these issues. Bar-on (1996) recommends researchers consider if they want to interfere in the interviewee's life and if they can cope with unexpected consequences of the interview.

When preparing data for archival storage questions arise as to what extent, if any, data should be edited prior to storage and for what reasons. Bradburn (1973) and Cassinelli (1958) discuss the collection and use of research data and consider it in relation to its value and importance to the public's interest.

Ethical and legal issues identified while planning the research were informed consent, confidentiality, anonymity, copyright, protection of other people's rights, interviewing elderly fellow nurses and access to archives. This resulted in the need to consider potential legal and ethical issues. Punch (1994) identifies harm, deception and privacy. Miles and Huberman (1998) additionally identify honesty and trust, competence boundaries, worthiness of the project, advocacy, research integrity and quality, ownership of data and conclusions, and the use and misuse of results.

This paper concentrates on two of these: informed consent and protection of other people's rights, but the other issues are also dealt with because areas of ethical and legal concerns often overlap.

The oral history method incorporated a "life story" approach to capture data related to the retired nurses' life before, during and after their nursing careers. Interviews provide biographical data about the individual's personal and professional life events. Faraday and Plummer (1979), Hagemaster (1992), Atkinson (1998) and Johnson (1992) provide additional views about the life story method. Cormack (1996) suggests oral history is a form of in-depth interview. Further definitions of concepts related to oral history and life story as research tools include Bornat (1998) who provides an example of oral history with older people. Dunaway (1992), Perks (1992), Howarth (1998), Ritchie (1995) and Perks and Thomson (1998) provide accounts of oral history methodology. Stahl and King (1996) discuss the value of oral history in preserving professional heritage. Oral history is promoted as a way of allowing data to be collected from the public and returned to them via archival oral history collections.

Legal, and ethical issues are not static as over time the boundaries and limits shift. Researchers need to keep up to date with changes to ensure they practice ethically and lawfully. The UK's Data Protection Act (HMSO, 1998) provides an example of this and identifies eight principles of good practice ensuring data are:

- fairly and lawfully processed;
- processed for limited purposes;
- adequate, relevant and not excessive;

- accurate;
- not kept longer than necessary;
- processed in accordance with the data subject's rights;
- secure;
- not transferred to countries without adequate protection.

The Act defines data both as facts and opinions about individuals and it incorporates the concepts of 'obtaining', 'holding' and 'disclosing'. These concepts have proved useful as a framework.

By their nature, oral history and life story approaches often provide access to intimate and detailed narrative data. These narratives can include individual's feelings, emotions, beliefs, values and thoughts on varied aspects of their lives. Placing transcripts and audiotapes in archives allows others access to this personal and private research data (Yow, 1994).

Libel is a false published statement intended to harm a person's reputation (Yow, 1994). How can researchers identify and check statements like this? Is the interviewee's version of events and opinions of third parties just that, *their* views or judgements and therefore should be taken as such? If a libellous statement goes into the archives it would be liable to a claim of defamation and anyone repeating, republishing, or redistributing a defamatory statement made by another can be held liable. So instead of collecting a life story the researcher, archivist or archive organisation could be getting a life sentence!

Ensuring research is conducted within a suitable legal and ethical framework is vital to prevent harm to either the interviewee, 3rd parties mentioned in the interview or the researcher. When to ask for permission to deposit the audiotapes and transcripts in the archives and how to ensure interviewees are fully informed of their rights are important questions. How can you ask for this permission prior to interview when almost inevitably neither the interviewer nor interviewee knows the content of the interview? This means asking for permission to deposit the audiotape and transcript prior to interview is unfair to the interviewee and potentially dangerous for the interviewer. Questions arise about the implications of dealing with interview content that may be ethically and/or legally contentious. However, until the interview has been conducted potential problematic contentious issues are unknown.

Qualitative research data such as narratives often originate from a small number of interviews which if put in publicly accessible documents increases the risk of identifying participants or third parties (Hadjistavropoulos and Smythe, 2001). These issues may include words that are of a derogatory nature about places, organisations or individuals potentially leading to legal action. Concern about what to do if criminal, unethical or unprofessional activity was narrated relating to individuals or third parties had to be considered.

Hadjistavropoulos and Smythe (2001) highlight the risk of third parties not involved in the research being identifiable in publicly accessible narratives and provide a detailed examination of issues and example legal cases. They argue that whatever interviewee's say about third parties can be potentially damaging and harmful with third parties becoming angry or likely to sue for defamation or violation of privacy. They suggest this increases the risk of interviewees developing interpersonal problems with third parties. Their examination of a sample of theses found abundant transcript references to third parties. They found both ethically unproblematic and problematic mention of third parties. Problematic examples included:

- family/marital difficulties;
- money/employment problems;
- dating/relationship issues;
- health problems;
- drug/alcohol abuse;
- verbal, physical, sexual abuse;
- unethical/illegal activities;
- professional misconduct.

In fact most people when narrating stories refer to others in one way or another. This was important in relation to local retired nurses as many knew each other and were friends, but also talked about each other in the interviews. Also, as the archive is local interviewees and third parties would have easy access. In more contemporary narratives the issue of third parties being able to recognise themselves is relevant. However, many senior nurses like matrons and ward sisters mentioned from a nurses training period in the 1940s would not have survived so they are potentially vulnerable to libellous statements been made against them. However, Thompson (2000) confirms the dead cannot be libelled. Does this mean derogatory statements about them can be deposited in public archives without any moral or professional responsibility? What do researchers do if third parties have not given consent for their stories to be archived? The research participants cannot give consent on behalf of others so many third parties interests are not protected (Hadjistavropoulos and Smythe, 2001).

Copyright, as a complex legal issue, manifests itself in two forms, the recording copyright that the interviewer owns and the actual words of the interview, which the interviewee owns (Thompson, 2000). In oral history the interviewee is asked to handover copyright of these to the archivist who becomes the copyright holder. This involves ensuring appropriate informed consent is obtained from the start of the research process so that the intention to archive the audiotapes and transcripts is transparent to the interviewees and

if necessary, their families. However, this can impact on the validity and reliability of the study if interviewees in some way change or edit their “stories” for public consumption in the archives, therefore potentially diluting the narrative. This needs to be considered during analysis of the resultant narrative.

Informed consent attempts to protect interviewees from deception, and Lawson (2001) and Pittenger (2002) discuss this concept and its use. In general terms withholding the truth or deceiving research participants is unethical. However, for certain types of research study its legitimate use has been debated (Lawson, 2001). Gaining permission from elderly interviewees and not deceiving them presents particular problems. Harris and Dyson (2001) identify the complex issues of recruiting older people to research and the skills required to ensure nonexploitation. Good communication skills help explain complex ethical and legal issues to older people who are potentially vulnerable (Peter and Morgan, 2001). Conducting pre-interview visits allowed the interviewer to try to gain the interviewee’s confidence, explain the interview process, and gain informed consent. Specific issues related to interviewing the elderly had to be well thought-out as oral histories are often done with older people who are relatively powerless (Cornwall and Gearing, 1989; Reinhartz, 1992). Gaining informed consent from retired nurses proved problematic as some had visual or hearing difficulties and other aging health problems. This made explaining the complexities of copyright and archival depositing difficult and hindered their comprehension of written and verbal forms of communication. Methods to overcome these problems included large print on forms, face-to-face explanations, and involvement of relatives. Recognising the interviewer as the more experienced partner gives researchers responsibility to educate narrators about the implications of their accounts (Fry, 1996). Smythe and Murrey (2001) suggest researchers should “monitor continually the vulnerability and consent of the participant”. Munhall (2001) provides details of the concept of “process consent” suggesting that consent to participate in qualitative research should be an ongoing, mutually negotiated process between researcher and participant rather than merely the one-time signing of a consent form. This can be implemented by using multiple consent forms or periodic verbal or signed authorisation (Hadjistavropoulos and Smythe, 2001).

Concerned about the researchers ability to protect research participants, Gottlieb and Lasser (2001) acknowledge that individual researchers may not have the required skills or backup to provide adequate support, relating to the researcher’s ‘competence boundaries’. They identify potential conflicts of interest between the researcher’s need to complete their study and their role in protecting participants and third parties from harm. Furthermore, they state that harm to participants may not always be evident to the researcher, and participants need to have access to professionals who can meet their needs when the researcher is unaware of them or unable to do so.

The retired nurses were requested to waive their rights to privacy, anonymity and confidentiality, in effect invading their privacy. This may result in exposure of damaging information, diminishing a person's control and liberty, and intrusion into a person's private space (Kelman, 1994). Horner (1998) provides further analysis of the concept of privacy. By participating in the study interviewees were agreeing to others having access to their personal memories. Nespor (2000) provides details of issues and problems related to maintaining anonymity in qualitative research. However, Yow (1994) warns guaranteeing anonymity for the narrator and maintaining confidentiality of information is problematic, while Appleton (2001) questions how confidentiality can be maintained in narrative research. The British Sociological Association's guidance recommends guarantees of confidentiality and anonymity must be honoured unless there are clear and overriding reasons not to do so (Grinyer, 2001), and this confirms the need for assurances of confidentiality and anonymity in nearly every case (Cormack 1996).

Oral history interviews deposited in an archive contain data that is by its nature not confidential. The author wondered if this research was one of the cases when confidentiality is not required, or one of the 'exceptions to confidentiality' (Appleton, 2001).

The researcher found a trusting relation was created with each interviewee. Because the interviewer was a nurse, a professional understanding was created which may have made the interviewees more trusting and thereby provide more detailed narratives. Price (1996) discusses trustworthiness suggesting that this needs to be considered in relation to validity and reliability. Conducting the interviews in the interviewee's homes meant they might have been more comfortable and relaxed in familiar surroundings. However, the fact that the interviewer was male and all interviewees were female may have had a detrimental effect on the interview process.

Gaining interviewee trust created potential problems, the more relaxed and trusting the interviewees were, the more open and explicit their narratives may become. This provides a rich source of data but may also provide problematic contentious issues, which need consideration before archiving.

Chase (1996) explores the concept of vulnerability concluding that informed consent is the main method of protecting interviewees. The issue of trust becomes a moral issue for the researcher when they are out in the field and in direct contact with the interviewees. Moral dilemmas are often complex and dealt with by researchers individually based upon their own values and experiences and can be inconsistent (De Hann, 2001).

In general terms it is unethical to harm anyone in the course of conducting research so the concept of harm reduction is important (Grbich, 1999).

In the author's research, archiving interview data posed the question of how confidentiality and anonymity could be safely breached?

With an overall aim to prevent harm to retired nursing colleagues, or others they mention in their interviews, forms were designed to obtain 'process' informed consent, copyright clearance and permission to deposit the transcripts and tapes in the archive. The University's legal representatives and archivist were involved in producing these forms. The Holocaust Survivor's Friendship Association assignment of copyright and other related rights form was considered as an additional element. It states the interviewee guarantees, by signing a form prior to interview, that the information they provide "does not infringe the copyright or other rights of any other person or organisation, neither is it deliberately defamatory in its nature or content" (Cornish, 2001). This has enormous implications for the validity and reliability of the resultant narrative, but attempts to prevent harm. This means researchers have to prioritise and make decisions about their methodological approaches.

Consenting to deposit the transcripts and tapes in the archives meant interviewees were agreeing to their memoirs been open to public access.

Interviewees had to understand they were losing their anonymity and that others would be able to identify them and have access to their views on a variety of issues covered in the interview. Concerns about reprisals or legal implications may affect what is said at interview, or how it is presented and has to be considered (Winslow, 2001). Warning interviewees about 3rd party rights may have an impact on what they said or how they said it when narrating their stories. There is a danger of the interviewee "watering down" or "sanitising" their stories with the resultant narratives not accurately reflecting actual events described. Research validity and reliability need to be protected so that narratives are as accurate as possible reflections of the interviewee's life, warts and all. The interviewee's feelings, emotions, beliefs, values and thoughts are all central to presenting an accurate portrait of their lives. Ensuring the authenticity of the narrator's story becomes another of the researcher's conflicting priorities to be balanced with harm reduction.

Negative aspects of interviewee motivation had to be guarded against such as those who air private grievances in the interview (Gregg, 2000). Also narrators sometimes may keep secrets, deliberately lie, make mistakes or misremember (Polishuk, 1998).

Richardson and Godfrey (2002) state the traditional views of ethical issues in qualitative research interviewing are challenged when access to the interview transcripts and tapes, and therefore the data they contain, is opened up to others. Perks and Thomson (1998) ascertain that depositing oral history recordings in publicly accessible archives creates legal and ethical problems, emphasising the need to respect the privacy of both the interviewee and any third parties mentioned. They further stress disseminating the content of recordings may harm some individuals and lead to libel suits.

If any contentious issues are identified within an interview the researcher has the moral dilemma of what to do with them. Thurgood (2002) discusses the

concept of editing audiotapes and/or transcripts as a solution to this, and the complex ethical and legal issues this creates. Following any editing, with the interviewees written consent, and in consultation with the archivist, their audiotapes and transcripts may finally be deposited in the archives.

Bainbridge and Cunningham (1998) in New Zealand and Winslow (2001) with the on-line Hospice History Project in Sheffield, UK, illustrate how oral history and narratives can be made available on the World Wide Web. Levine (2001) identifies Berkeley Oral History Online Project and Bridgeport Working Voices from the 20th Century, as current Internet development examples. Making narratives more accessible with technology brings similar and different potential ethical and legal dilemmas.

To summarise, oral history provides an invaluable way of recapturing the past (Russell, 1997). Legal and ethical issues related to archiving oral history interview audiotapes and transcripts, and informed consent and protection of third parties have been addressed. Exploration of these has identified ways of protecting those, including researchers, who may be harmed in any way by narratives being publicly accessible. Collaborative multidisciplinary team working between researchers, archivists, university legal advisors and colleagues can promote and enhance research integrity and quality. Creating transparent research plans that are checked internally and externally at all stages of the process ensures safety for all concerned and enriches the research experience.

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