

## Rejoinder

*Hermann Habermann*

I would like to thank the reviewers for their varied and thoughtful comments. The comments have enlarged and enriched the discussion. Trewin, Prewitt, and Clark consider some common themes and I will discuss their reviews first followed by Holt, Fienberg, and Anderson and Seltzer.

Trewin and Prewitt raise the issue of mission harm and I agree that this issue needs further discussion. Ken Prewitt's description of the context in which his apology was issued is particularly helpful. He points out:

One element in play was the sense among a number of advocacy groups, particularly those working with minority populations, that the privacy debate would depress cooperation and thus an accurate count of America's racial minorities. Some of these groups were focused on how the Japanese-American relocation in 1942 was echoing across the media coverage, knowing that their constituencies were already wary about government misuse of census answers.

While it is difficult to quantify the risk of mission harm, I can conceive of circumstances when the Director of the U.S. Census Bureau would refuse to release nonidentifiable information because he or she believed the public controversy resulting from that release would endanger the U.S. Census Bureau's ability to conduct a census. The census is mandated by the Constitution of the United States. It is one of the few tasks explicitly mentioned in the Constitution, and provides the very foundation for the mission of the U.S. Census Bureau.

Our initial response to the release of information on Arab Americans was to institute a policy in response to our fear that this event might cause mission harm. This interim policy stated that if the requestor was a law enforcement or intelligence agency and/or the request involved a sensitive population, the request would be reviewed by senior staff and not be granted without their approval. We abandoned that policy because: (1) we had no authority to make a decision based on sensitivity, (2) even if we had that authority we could not develop any defensible criteria for senior staff to make the decision and (3) even if we had the authority and the criteria, it is not clear that a statistical agency should decide who should get nonidentifiable information. In addition, we have wrestled with the larger question of what it means to be a national statistical organization. Prewitt states the case clearly when he says: "The stakes are high. We cannot even imagine a modern democracy in the absence of statistical information. Democracy differs from other forms of rule in requiring that its leaders justify their policies." We serve the citizens, and this includes providing data to other government agencies. Because we could not justify a policy where the U.S. Census Bureau could decide who received information and what was sensitive,

we ultimately revised the policy. Our final policy on what we call custom tabulations ([www.census.gov/privacy/files/data\\_stewardship/006714.html](http://www.census.gov/privacy/files/data_stewardship/006714.html)) reflects this understanding. It does not, however, consider explicitly how to avoid mission harm.

Our custom tabulations policy, however, does recognize one of the important points raised by Trewin and Clark: transparency. In fact, we believe this may address the issue of mission harm, by allowing us to communicate openly with stakeholders. As a part of the custom tabulations policy, we disclose publicly for whom we created the custom tabulations and the subject of the tabulations. This is important for the credibility of the agency and to ensure that the public knows what information is disseminated.

One of the options that Trewin raises, which is also considered by Clark, is to not collect information at all. This is an option that will become more important. There is pressure, at least in the United States, for smaller and smaller population groups to demand that the Census Bureau collect information about their demographic and economic characteristics. Before collecting such information we must engage in an open dialogue about the possible misuse of data by society; the best option may be to not collect the data at all. The U.S. Census Bureau is required to give public notification about its data collection intentions and request public comments. We may want to sharpen our dialogue so that questions of possible misuse are considered by society, e.g., Congress and special interest groups, before the actual data collection.

Tim Holt is quite correct in saying that statistical organizations have to consider the potential for third parties to have the capability to breach the confidentiality of respondents. As he points out, the size of these databases and the capability to use them to breach confidentiality is largely unknown. It is a nontrivial exercise to do this and requires expertise in both statistics and computers and provides limited payoff. Fortunately, the very people who have this expertise are generally not the people who would try to breach the confidentiality, except to make a point. In principle I think his idea to “. . . transfer some of the responsibility from the provider to the user . . .” has great appeal. In practice I am not certain how it would work – at least here in the United States. Employees of the national statistical office can be held accountable fairly easily. Researchers can be denied further access to micro data files. But it is not clear how members of the general public can be held accountable. It could also be difficult, if not impossible, in the litigious society of the United States to define what it means to “. . . use the accessed data in any way that could lead to a breach of confidentiality.” Nonetheless, it is always easier to criticize an idea than to create one, and his idea deserves further study.

I am somewhat confused by the comments of Stephen Fienberg. He asserts that “my arguments about the past are not well supported by the facts and [my] views about ethics are out of step with much of the profession and the expectations of modern American society.” It appears that Fienberg and I are going to disagree about the role of the U.S. Census Bureau in the internment of Japanese-Americans in 1942. Please see below my rejoinder to Anderson and Seltzer on this issue.

As to the second point, I find it difficult to find the disagreement between us. Specifically, I agree with his main argument. If I have given the impression in my article that I find ethics and the law to be synonymous, then I appreciate the opportunity Fienberg has given me to correct this. In fact, I believe I pointed out in the article that the law does not absolve us of our responsibilities as beings with ethical responsibilities—the demands

of law and ethics may differ. Far from being perplexed, we well understood the concern felt by some over the uncertain use of information provided by the U.S. Census Bureau about Arab Americans. Leaders do have to consider questions of the law, ethics, and mission harm in making their decisions. Both Prewitt and Fienberg assert that the U.S. Census Bureau would have better served its mission if it had not provided the information on Arab Americans to the Department of Homeland Security. I agree that these decisions involve more than just the protection of nonidentifiable data. It is for these reasons that we are trying to develop ethics training so that senior officials can consider ethical obligations before the forcing event.

Anderson and Seltzer raise questions about the motivation and involvement of the then director of the U.S. Census Bureau in the government's efforts to intern Japanese Americans during World War II. They would like to believe the jury is still out as to whether the U.S. Census Bureau violated the law and disclosed identifiable information in 1942. As part of our research (which we expect to publish in the near future), we reviewed the sources cited in their work. In addition, we reviewed the records of the Army's Western Defense Command, the Chief of Staff of the Army, the War Relocation Authority, and other sources. Our research found no evidence that such a violation occurred. If the authors have any concrete evidence to the contrary, we would appreciate seeing it.

Finally, it is important to remember that all national statistical offices operate under a set of laws, which differ from country to country. I think we need to be clearer with all parts of society about the extent to which these laws restrict or do not restrict the dissemination of aggregate data on small areas. The release of information about Arab Americans has caused us to reexamine the nature of our dialogue with respect to our dissemination authorities and responsibilities. Beyond the laws and regulations, however, leaders of statistical agencies are still moral beings and cannot ultimately use the law as an inviolable shield. They may have to make decisions about dissemination of data that could cause mission or group harm on ethical and not merely legal considerations.

I appreciate the opportunity provided by the JOS to explore this important issue and I suspect that our words will not be the last on this subject.

Received April 2006