

# COMPELLED DISCLOSURE OF SCHOLARLY RESEARCH: SOME COMMENTS ON “HIGH STAKES LITIGATION”

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## I

Those of us who conduct independent research are expected to present findings at professional meetings and publish results in peer-reviewed journals. Over the last twenty-five years, this basic norm of the scientific community has provided opportunities for parties in litigation to use these findings to expand or limit potential damage claims.<sup>1</sup> When such situations emerge, researchers can expect to have their research activities, data, and their professional integrity challenged. These challenges occur even if such claims are unwarranted by the paradigmatic standards of the researchers' discipline.<sup>2</sup> The targeted researcher often becomes an “unwilling informant” when he or she receives a subpoena that requests all records corresponding to the relevant research. Parties in litigation purposefully use broad subpoenas in an attempt to gather any and all information that can be repeatedly challenged by a “litigation-centered review” rather than a “discipline-centered review.”<sup>3</sup>

Upon reviewing the articles in this volume of *Law and Contemporary Problems*, I was impressed by the range of issues covered, the comprehensiveness and detail provided, and the importance of this information for researchers who will find themselves in the role of the “reluctant expert” in the future. Although I had previously served as an expert witness for the court and for plaintiffs in several toxic tort cases, when, as an independent researcher, I re-

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1. Michael R. Edelstein, *Psychosocial Impacts on Trial: The Case of Hazardous Waste Disposal*, in *PSYCHOSOCIAL EFFECTS OF HAZARDOUS TOXIC WASTE DISPOSAL ON COMMUNITIES* 153, 157-59 (Dennis Peck ed., 1989). This fact is especially true for those scientists who independently study highly litigious issues, such as technological disasters, *i.e.*, human-caused events that result in massive environmental contamination. *Id.*; see also Sheila Jasanoff, *Research Subpoenas and the Sociology of Knowledge*, 59 *LAW & CONTEMP. PROBS.* 95 (Summer 1996) (discussing the similar notion of “construction” and “deconstruction” of evidence).

2. Richard A. Berk & Jerold Oppenheim, *Doing Good Well: The Use of Quantitative Social Science Data in Advocacy Proceedings*, 1 *L. & POL'Y Q.* 123, 137 (1979); see also Sheila Jasanoff, *What Judges Should Know About the Sociology of Science*, 77 *JUDICATURE* 77, 82 (1993); Jasanoff, *supra* note 1.

3. Jasanoff, *supra* note 1, at 113-14.

ceived an eight-page subpoena from attorneys representing the Exxon Corporation in the fall of 1992, I was unprepared for the lengthy court battle that was to ensue.<sup>4</sup> If this volume had been available at that time, it would have benefited my attorney, my colleagues, and the respondents of my research study, and it would have significantly reduced my personal distress-level, which lasted for almost a year.

The focus of my contribution to this volume is limited to my involvement in the ongoing Exxon Valdez litigation. The Exxon Valdez disaster was the largest and most ecologically destructive oil spill in North American history.<sup>5</sup> Like the case of *Deitchman v. E.R. Squibb & Sons, Inc.*,<sup>6</sup> a pharmaceuticals products liability action for injuries stemming from plaintiffs' *in utero* exposure to the drug DES,<sup>7</sup> the litigation involved quickly became "high stakes" by all standards, and, at this writing, continues to be an extraordinary high-stakes money game.<sup>8</sup> Exxon settled with the government for \$1.1 billion,<sup>9</sup> and the civil case resulted in jury awards to the plaintiffs totaling more than \$5 billion.<sup>10</sup> At present, the civil awards are pending appeal and Exxon's aggressive, "hardball" legal strategy will ensure litigation well into the twenty-first century.<sup>11</sup>

Other accounts of my involvement in the Exxon litigation have misrepresented my role.<sup>12</sup> As an independent, third-party researcher, I directed the collection of survey data related to the disaster in several small Alaskan communities from 1989 to 1992. Unfortunately, my case has been confused with at least one other case, which involves several anthropologists working for Impact Assessment, Inc., who conducted a survey for the plaintiffs one year after the spill.<sup>13</sup> I will discuss the articles in this volume against the backdrop of my per-

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4. I have discussed this litigation in detail elsewhere and draw extensively from these works for my comments. See J. Steven Picou, *Sociology and Compelled Disclosure: Protecting Respondent Confidentiality*, 16 SOC. SPECTRUM 209 (1996) [hereinafter *Sociology and Compelled Disclosure*]; J. Steven Picou, *Toxins in the Environment, Damage to the Community: Sociology and the Toxic Tort*, in WITNESSING FOR SOCIOLOGY: SOCIOLOGISTS IN COURT 211, 219-22 (Pamela J. Jenkins & Steve Kroll-Smith eds., 1996).

5. Robert B. B. Spies et al., *The Effects of the Exxon Valdez Oil Spill on the Alaskan Coastal Environment*, in PROCEEDINGS OF THE EXXON VALDEZ OIL SPILL SYMPOSIUM 1, 11-13 (Stanley D. Rice et al. eds., 1996).

6. 740 F.2d 556 (7th Cir. 1984).

7. *Id.* at 557.

8. Barbara B. Crabb, *Judicially Compelled Disclosure of Researchers' Data: A Judge's View*, 59 LAW & CONTEMP. PROBS. 9-14 (Summer 1996).

9. Ernest Piper, *The Exxon Valdez Oil Spill: Government Settlement and Restoration Activities*, in THE EXXON VALDEZ DISASTER: READINGS ON A MODERN SOCIAL PROBLEM 255, 258-60 (J. Steven Picou et al. eds., 1997).

10. William B. Hirsch, *Justice Delayed: Seven Years After the Exxon Valdez Oil Spill and No End in Sight*, in THE EXXON VALDEZ DISASTER: READINGS ON A MODERN SOCIAL PROBLEM 271, 271 (J. Steven Picou et al. eds., 1997); see also Mike France, *Corporate Litigation: Playing Hardball is One Thing . . .*, BUS. WK., July 1, 1996, at 32.

11. Hirsch, *supra* note 10, at 271, 289; France, *supra* note 10, at 32.

12. See, e.g., Steven McNabb, *Social Research and Litigation: Good Intentions Versus Good Ethics*, 54 HUMAN ORG. 331, 331-33 (1995); Marilee Enge, *Scientist, Exxon Fight Over Data*, ANCHORAGE DAILY NEWS, May 26, 1993, at A1.

13. See Elizabeth C. Wiggins & Judith A. McKenna, *Researchers' Reactions to Compelled Disclosure of Scientific Information*, 59 LAW & CONTEMP. PROBS. 67, 68 n.3 (Summer 1996).

sonal experience in the *Exxon Valdez* litigation.

## II

My research in Alaska was independently funded through the peer-review process of the National Science Foundation, and, more importantly, the project was a longitudinal study that lasted four years. The longitudinal research design necessitated a detailed record of respondent identities for re-interviewing, required constant field work and data management, and included specific methodological procedures to protect respondent privacy.<sup>14</sup>

Respondents were selected by random procedures and guaranteed confidentiality. This guarantee was consistent with regulations set forth by the National Science Foundation in their *Principles for the Conduct of Research in the Arctic*<sup>15</sup> and the American Sociological Association's *Code of Ethics*.<sup>16</sup> In addition to this written guarantee of privacy, respondents were given information about methodological procedures that would be utilized in the research. Specifically, they were told that immediately following the receipt of their final interview, all personal identifiers, including names, addresses, and phone numbers, would be eliminated from the master data file and all hard copies would be discarded.<sup>17</sup>

Although not designed as a social damage assessment, this study collected data on spill-related stress-levels and patterns of social disruption. Beginning in 1989, my colleagues and I presented papers at professional meetings and, in 1992, published two peer-reviewed articles that detailed patterns of stress and disruption between impacted and control communities.<sup>18</sup> Unknown to me, these papers and publications were referenced by the plaintiffs' experts and attorneys. Upon returning from Alaska in late September of 1992, I received a civil subpoena from attorneys representing the Exxon Corporation, which commanded that I produce and permit inspection of a litany of documents deemed to be in my possession.<sup>19</sup>

Upon receipt of the subpoena, I immediately contacted the attorney of the University of South Alabama. After numerous meetings, the university filed a protective order on my behalf, which attempted to set a cooperative tone for the release of information.<sup>20</sup> An exception to this cooperation was noted for

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14. See Michael Traynor, *Countering the Excessive Subpoena for Scholarly Research*, 59 LAW & CONTEMP. PROBS. 119, 120-35 (Summer 1996).

15. Nat'l Science Foundation, *Principles for the Conduct of Research in the Arctic*, 4 ARCTIC RESEARCH FOR THE UNITED STATES 110, 110-11 (1990).

16. AM. SOCIOLOGICAL ASS'N, CODE OF ETHICS, I A, B (1982).

17. See Traynor, *supra* note 14, at 124-25.

18. See J. Steven Picou et al., *Stress and Disruption in an Alaskan Fishing Community: Initial and Continuing Impacts of the Exxon Valdez Oil Spill*, 6 INDUS. CRISIS Q. 235 (1992).

19. My subpoena is reproduced in its entirety in Appendix A of Picou, *Sociology and Compelled Disclosure*, *supra* note 4, at 231-36. Other researchers involved in the Exxon Valdez litigation received similarly broad subpoenas. For example, compare McNabb's subpoena reproduced in McNabb, *supra* note 12, at 333.

20. Traynor, *supra* note 14, at 131-34.

the protection of survey data and respondent confidentiality.<sup>21</sup> With subpoena in hand, I had to refocus my research efforts to protecting the respondent identifiers, to the extent legally possible, from those who would use the information to advance a particular legal claim. Although the protective order was granted on October 14, 1992,<sup>22</sup> the court reserved the right to reconsider the order as well as to modify it.<sup>23</sup>

The following month I was deposed by an Exxon attorney. At that time, all project financial records, files, correspondence, papers, and other materials were turned over to Exxon. The production and copying of the massive amount of material that had accumulated over four years was an arduous task for my staff and myself. There was no reimbursement for labor and technical costs; however, there was also no release of data files or data records at that time because of the standing protective order.

The next four months were frantic and extremely stressful for me. Throughout this time, Exxon sought access to the data by negotiating directly with the university attorney and through motions and affidavits offered to the court by their attorneys and experts. Various news accounts of my litigation were published in Alaska newspapers, and rumors about my case reached me from the communities I studied. Several respondents expressed fear and concern regarding the release of the data, respondent identifiers, and information on their involvement in the Exxon litigation. The ethical priority of protecting respondent confidentiality became my obsession when a "concerned" respondent committed suicide.<sup>24</sup>

Upon hearing of this incident, I more clearly realized the vulnerable position that respondents occupy in high stakes litigation. Victims of technological disasters such as the Exxon Valdez oil spill experience long periods of chronic stress making them even more vulnerable as continuing research respondents during protracted litigation.<sup>25</sup> My resolve to protect the data and the identities of the respondents was stronger than ever while the litigation activities consumed all of my attention.

Numerous motions offered by Exxon's attorneys and experts argued that I was uncooperative and had become "more and more restrictive" in my negotiations and that my timetable for the release of information "would render information useless" to Exxon.<sup>26</sup> In short, they argued I was being "intractable," and because my research had been referenced by the plaintiffs' experts, Exxon

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21. Motion for Protective Order, *In re the Exxon Valdez Re: All Cases, Misc. 92-0072 RV-C* (S.D. Ala. Oct. 13, 1992).

22. Protective Order, *id.* (S.D. Ala. Oct. 14, 1992).

23. *Id.*

24. Marilee Enge, *Cordova Mourns Yet Another Loss: Suicide Touches Nerve Left Raw by Oil Spill*, ANCHORAGE DAILY NEWS, May 17, 1993, at A1.

25. Andrew Baum & India Fleming, *Implications of Psychological Research on Stress and Technological Accidents*, 48 AM. PSYCHOLOGIST 665, 665-672 (1993).

26. Defendants' Motion to Compel, *In re the Exxon Valdez Re: All Cases, Misc. 92-0072 RV-C* (S.D. Ala. March 18, 1993).

filed a motion to compel production of the data.<sup>27</sup>

The written responses to these claims prepared by the university attorney and me emphasized and reaffirmed the importance of maintaining respondent confidentiality and my rights as a researcher to unanalyzed raw data. Several leading cases were used to support the argument for protecting respondent confidentiality, including *Deitchman v. E.R. Squibb & Sons, Inc.*,<sup>28</sup> a case giving the requesting party some access to a university's study registry, which was the only centralized repository of information on a disease relevant to the litigation. However, in *Deitchman*, the Seventh Circuit directed a lower court to issue a subpoena that balanced the defendants' urgent need for disclosure of the study against the university's privacy right in the registry.<sup>29</sup> Our arguments supporting the nondisclosure of respondent data also rested on the case of *Farnsworth v. Proctor & Gamble Co.*,<sup>30</sup> in which a research center's interest in maintaining the confidentiality of its study participants' identity was deemed to outweigh countervailing discovery interests.<sup>31</sup> Additionally, *Dow Chemical Co. v. Allen*<sup>32</sup> was used in support of the proposition that forced production of research results that had not been subjected to peer review would both jeopardize the study and unduly burden researchers.<sup>33</sup> Oral arguments raising these issues were presented by both parties during a hearing on May 23, 1993.

Approximately five weeks after the hearing, the court ruled on the case. In a manner similar to the *Deitchman* case, the ruling essentially constituted a "split decision." Exxon's motion to compel my release of the data was partially granted and partially denied. Nonetheless, this "split decision" was consistent with the result in the cases discussed throughout this article.

The basis for the court's ruling rested in the distinction made by the court concerning specific data that had been used in the publication of a peer-reviewed article (data collected in 1989 and 1990) and data that reflected ongoing research, which had not been subjected to any peer-review process (data collected in 1991 and 1992). As discussed by Wiggins and McKenna,<sup>34</sup> as well as O'Neil and Traynor,<sup>35</sup> the portion of the ruling denying the motion to compel disclosure recognized that the release of incomplete and unpublished data did not have probative value and was inconsistent with the ethics and norms of the scientific community.<sup>36</sup>

The portion of Exxon's motion granted by the court recognized that for

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27. *Id.*

28. 740 F.2d 556, 561 (7th Cir. 1984).

29. *Id.* at 565-66.

30. 758 F.2d 1545 (11th Cir. 1985).

31. *Id.* at 1547.

32. 672 F.2d 1262 (7th Cir. 1982).

33. *Id.* at 1273.

34. Wiggins & McKenna, *supra* note 13, at 67, 86-88.

35. Robert M. O'Neil, *A Researcher's Privilege: Does Any Hope Remain?*, 59 LAW & CONTEMP. PROBS. 35, 43 (Summer 1996).

36. Order at 7-8 n. 3, *In re the Exxon Valdez Re: All Cases*, Misc. 92-0072 RV-C (S.D. Ala. July 1, 1993) (order).

published research, access to “the underlying data must be made available to others equally skilled and perceptive.”<sup>37</sup> Thus, the data collected in 1989 and 1990 were turned over, in raw form, through a “computer dump” of existing data records. Although these data had been used to publish one article, a final codebook was not available for the released information. This fact was very disconcerting to me, given that the data were not in a format that is customary for collegial data sharing in the scientific community.<sup>38</sup>

Most important for the issue of respondent confidentiality, the portion of the ruling granting the motion to compel was also governed by a protective order entered on the same date.<sup>39</sup> The protective order limited access to the 1989-90 computer data to the defendants’ designated experts. Hard copies were for experts’ eyes only, and any reproduction of data was prohibited.<sup>40</sup> All paper documents were to be stamped “HIGHLY CONFIDENTIAL PURSUANT TO DR. J. STEVEN PICOU PROTECTIVE ORDER IN THE EXXON VALDEZ OIL SPILL LITIGATION.”<sup>41</sup> Defendants’ experts were required to complete an agreement signifying their understanding of the confidentiality before gaining access to the material.<sup>42</sup> The data were to be produced solely for statistical analysis, and attempts to identify individuals listed on the computer documents were prohibited.<sup>43</sup>

Immediately following this ruling, Exxon’s attorneys filed a motion to amend the court order because it did not “distinguish between plaintiffs and non-plaintiffs” for material that was to be turned over to Exxon.<sup>44</sup> This request was a direct challenge to respondent confidentiality and revealed numerous contradictions in previous arguments maintained by Exxon’s attorneys. The ruling by the federal magistrate noted that Exxon’s motion simply “exceed[ed] the scope of the original motion as well as the discovery needs identified by the defendants.”<sup>45</sup> This order and the prior ruling upheld the issue of respondent confidentiality and reaffirmed a form of “researcher privilege” by denying access to unpublished and incomplete data. Indeed, like the *Farnsworth* case, no disclosure of respondent identifiers occurred and the court specifically denied any form of “deductive disclosure” by prohibiting the identification of indi-

37. *Deitchman, v. E.R. Squibb & Sons, Inc.*, 740 F.2d 556, 562 (7th Cir. 1984). See generally *Andrews v. Eli Lilly & Co.*, 97 F.R.D. 494 (N.D. Ill. 1983); *In re R.J. Reynolds Tobacco Co.*, 518 N.Y.S. 2d (N.Y. Sup. Ct. 1987); *Wright v. Jeep Corp.*, 547 F. Supp. 871 (E.D. Mich. 1982). See also Paul D. Carington & Traci L. Jones, *Reluctant Experts*, 59 LAW & CONTEMP. PROBS. 51, 62 (Summer 1996).

38. See Defendants’ Proposed Findings of Fact, Conclusions of Law, and Order at 3, *In re the Exxon Valdez Re: All Cases*, Misc. 92-0072 RV-C. (S.D. Ala. 1993); Exxon’s Request for Further Hearing with Respect to the Court’s Order of July 1, 1993, *In re the Exxon Valdez Re: All Cases*, Misc. 92-0072 RV-C. (S.D. Ala. August 9, 1993).

39. Protective Order, *In re the Exxon Valdez Re: All Cases*, Misc. 92-0072 RV-C (S.D. Ala. July 1, 1993).

40. *Id.* at 3-4.

41. *Id.*

42. *Id.* at 4-5.

43. *Id.*

44. Motion to Amend Court Order, *In re the Exxon Valdez Re: All Cases*, Misc. 92-0072 RV-C (S.D. Ala. July 2, 1993).

45. Order at 3, *id.* (S.D. Ala. July 9, 1993).

viduals through a protective order.<sup>46</sup> The premature disclosure of independent scientific research was also prohibited; therefore, the “norms and values of the scientific community” were upheld.<sup>47</sup>

### III

It is apparent from this review and the articles in this volume that researchers take many risks when they become involved in studies deemed relevant to “high stakes litigation.” The risk of being subpoenaed involves many demands on the researcher for which he or she may not be compensated. In my case, I was fortunate to have strong and continuing support from my university, department, counsel, colleagues, and family. A review of similar cases indicates that such support is rare for the university scholar.<sup>48</sup> Furthermore, the time and constant attention that is required to respond adequately to subpoenas in such cases is underestimated by the courts. The schedule of my research project was permanently disrupted due to the constant need to respond to motions and affidavits, which, in my opinion, repeatedly reflected inaccurate information and irrelevant charges. Nonetheless, as reaffirmed by Judge Crabb’s contribution to this volume, the argument of “burdensomeness” may not be compelling to the court when the requested data is deemed to have “significant probative value.”<sup>49</sup> Although in my opinion, references to my work by plaintiffs’ experts were minimal, the court ruled otherwise.

The researcher also takes the risk of having his or her professional integrity, research methodology, and personal ethics challenged through the “deconstruction” of his or her work.<sup>50</sup> In my case, this deconstruction began with a comparison of the procedures used in the research design I employed with a gold standard design used for conducting ideal experiments. Obviously, this tactic was exclusionary; that is, Exxon’s experts attempted to build a case “to deny scientific status” to any results that expanded the range of damage claims by plaintiffs.<sup>51</sup> In short, “mindless deconstruction” of one’s research is a very real risk to the researcher.<sup>52</sup>

Despite such unavoidable problems, researchers can successfully protect respondent confidentiality and deny premature disclosure of research data by utilizing methodological procedures designed to protect confidentiality and by having good legal counsel.<sup>53</sup> A review of the suggestions provided by Traynor for countering the excessive subpoena reveals that we adhered to seven of them

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46. Protective Order, Exhibit A, *In re the Exxon Valdez Re: All Cases*, Misc. 92-0072 RV-C. (S.D. Ala. July 1, 1993).

47. Carrington & Jones, *supra* note 37, at 61.

48. See Mario Brajuha & Lyle Hollowell, *Legal Intrusion and the Politics of Field Work*, 14 URBAN LIFE 454, 458-460 (1986); Rik Scarce, *Scholarly Ethics and Courtroom Antics: Where Researchers Stand in the Eyes of the Law*, 26 AM. SOCIOLOGIST 87, 94-96 (1995).

49. Crabb, *supra* note 8, at 24.

50. See Jasanoff, *supra* note 1, at 98-100.

51. *Id.* at 114.

52. *Id.* at 98.

53. See generally Traynor, *supra* note 14.

in the Exxon case.<sup>54</sup> More specifically, we (1) identified the reasons for confidentiality, (2) removed identifiers and safeguarded the data, (3) complied with Institutional Review Board policy, (4) consulted counsel immediately upon receipt of the subpoena, (5) made timely service of written suggestions, (6) moved to quash or modify the subpoena, and (7) sought and received an adequate protective order.

These activities obviously enhanced our arguments to the court. Fortunately, future "reluctant experts" will have the benefit of the discussion in this volume and specifically Traynor's strategies for responding to subpoenas. We should also note the importance of obtaining federal confidentiality certificates whenever research involves the mental health of respondents.<sup>55</sup> This activity provides important statutory protection for respondent confidentiality prior to researching legally sensitive topics.<sup>56</sup>

To address what can be done to reduce the legal burdens of everyone involved in "high stakes litigation," the suggestions provided by Carrington and Jones<sup>57</sup> and Jasanoff<sup>58</sup> should be given serious consideration. By appointing independent experts, review panels, disinterested witnesses, or by ordering a comprehensive damage assessment, the courts could reduce the economic advantage of parties in litigation, facilitate relatively quick settlements, eliminate "repeat witnesses" and "hired guns," and, in general, tone down contrived opinions that work against the best interest of both science and the court. Such an enlightened resolution was accomplished for a train derailment and massive toxic spill case that occurred in 1982 in Livingston, Louisiana.<sup>59</sup> In this case, following the filing of a class-action suit by community residents, a Louisiana court ordered a comprehensive, impartial investigation of community impacts resulting from the accident.<sup>60</sup> As I have noted elsewhere,

it is obvious that the [court] . . . was innovative and effective in the manner that it organized a resolution to the legal claims of plaintiffs. Expert testimony was presented by independent, third-party scientists who collected data utilizing generally accepted discipline methods. All reports were completed by the time the trial was scheduled to start. Data in the reports were used to negotiate a relatively quick settlement between the community and [the] I[llinois] C[entral] G[ulf] R[ailroad]. Such an informed and organized legal response to technological disasters and victims of such events is rare, indeed.<sup>61</sup>

There are, however, some very real difficulties in this type of resolution for "high stakes litigation." Problems concerning financial support for the ex-

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54. *Id.*

55. *Id.*

56. For a discussion of methodological strategies for protecting confidentiality, see ROBERT F. BORUCH & JOE S. CECIL, *ASSURING THE CONFIDENTIALITY OF SOCIAL RESEARCH DATA* (1979).

57. Carrington & Jones, *supra* note 37, at 63-65.

58. Jasanoff, *supra* note 1, at 106-07, 115-17.

59. J. Steven Picou & Donald D. Rosebrook, *Technological Accident, Community Class Action Litigation, and Scientific Damage Assessment: A Case-Study of Court-Ordered Research*, 13 *SOC. SPECTRUM* 117, 117-38 (1993).

60. *Id.*

61. J. Steven Picou, *Toxins in the Environment*, *supra* note 4, at 217.

penses of independent researchers, their availability, time constraints, and the organization and administration of the independent projects hamper such alternative models for resolving high profile cases.<sup>62</sup> Nonetheless, the courts should give strong consideration to these suggestions.

Recently, the United States Supreme Court ruled that the conversations between a licensed social worker and her patient were protected by Rule 501 of the Federal Rules of Evidence.<sup>63</sup> The Court held that “the federal privilege, which clearly applies to psychiatrists and psychologists also extends to confidential communications made to licensed social workers in the course of psychotherapy.”<sup>64</sup> Although the protection of data and respondent confidentiality by survey researchers may not be immediately effected by this ruling, there appears to be developing case law that might be extended to research conducted by sociologists and cultural anthropologists. Given this ruling, and the discussions presented in this volume, the courts seem to have recognized the importance of the protection of respondent confidentiality and the necessity to protect a scholar’s right to unpublished, incomplete research records.

Nonetheless, I agree that resisting compelled disclosure will continue to be, at best, a “tenuous and uncertain” journey for the researcher.<sup>65</sup> Legal resolution will continue to be decided on a case-by-case basis. Ultimately, it is the researcher who must weigh the ethical and legal consequences of refusing to turn over data to the court and receiving a jail term for contempt. I hope this publication will make a significant contribution to the realization of Traynor’s concluding admonition: “With common sense and good will in every quarter, there should be few spectacles of a scholar going to jail to honor his promise of confidentiality in the interest of useful research.”<sup>66</sup>

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62. Maurice Rosenberg, *Science in the Courthouse*, 16 *TECH. IN SOC’Y* 1, 5 (1994).

63. *Jaffee v. Redmond*, 116 S. Ct. 1923, 1931 (1996).

64. *Id.*

65. O’Neil, *supra* note 35, at 49.

66. Traynor, *supra*, note 14, at 148.