

of the very essence of the professional relationship. The effectiveness of the doctor, plainly, is similarly vulnerable if patients ever believed they could not rely on their physicians to respect imparted confidences. In quite another area: what would happen to the process of education if student attitudes, as revealed in the Socratic interchanges of the classroom, were recorded and reported by the teacher and then used for scientific research or for other purposes—such as responding to inquiries by potential employers?

The point, then, is that consent and confidentiality have a pragmatic as well as a moral importance to the pursuit of any profession. The quality and effectiveness of behavioral research will depend, accordingly, on the confidence the public has in the behavioral scientists and in the way they pursue their science.⁴⁷

VI. THE CONCEPT OF CONSENT

The essence of the claim to privacy is the choice of the individual as to what he shall disclose or withhold, and when he shall do so. Accordingly, the essential privacy-respecting ethic for behavioral research must revolve around the concept of consent.⁴⁸ Taken literally, the concept of consent would require that behavioral research refuse to engage in the probing of personality, attitudes, opinions, beliefs, or behavior without the fully informed consent, freely given, of the individual person being examined. There are, however, several reasons why the concept of consent cannot be so literally invoked in the name of privacy.

In the first place, a rigid and literal insistence on formal consent, in a research context, can readily become unrealistic. In some instances, insistence on consent would shake the validity of the research itself. The very selectivity involved in consent would ensure that the research was based on a biased sample and therefore could not be generalized to a wider population. And where subtle attitudes are being measured, knowledge of, and consent to, what is being sought is almost certain to distort the results. In other instances, the requirement of consent might frustrate the project at the outset.⁴⁹ Finally, in many instances a full appreciation of the nature of the research, the purposes to be achieved and the risks involved would be impossible to convey fully, either because of their essential complexity, or because they involve

47. See Gross, *Social Science Techniques: a Problem of Power and Responsibility*, 83 THE SCIENTIFIC MONTHLY 242 (1956); Mead, *The Human Study of Human Beings*, 133 SCIENCE 163 (1961).

48. The tribunal in the Nuremberg trials considered at some length the circumstances under which medical research conducted with human beings would conform to the ethics of the medical profession. It evolved ten basic principles that "all agree . . . must be observed in order to satisfy moral, ethical and legal concepts." The first of these ten Nuremberg commandments was that: "The voluntary consent of the human subject is absolutely essential." II TRIALS OF WAR CRIMINALS BEFORE THE NUREMBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO. 10, THE MEDICAL CASE (United States v. Brandt) 181 (U.S. Gov't Printing Office 1949). See generally Lewis, *supra* note 27.

49. How many people, for example, could be expected to participate willingly in a test to devise a standard of homosexual tendencies? Or to measure intra-family hostility?