

observed, our society permits the taking of private property without consent. There is no reason to doubt that, under similar circumstances, society will permit at least a limited invasion, or taking, of private personality. Circumstances under which the community tolerates the probing into private areas without the consent, and if necessary, without the knowledge of the examinee do, in fact, exist. A number of examples can be easily found in law enforcement, in selection for military service, in social welfare work, in the protection of the public health, in the national census, and in the selection of employees for the Central Intelligence Agency or as airline pilots.

A public trial may also invade the privacy of the individuals involved in the litigation. Yet since our society is persuaded that a public hearing is essential to a fair trial and to social order, it finds entirely reasonable that the individual claim to privacy must yield in this instance. Even here, however, the equilibrium between the competing values is sensitively preserved and there are occasions when the court is cleared, or the testimony sealed.⁵⁴

Even where the public interest may warrant the taking of private property or of private personality, no absolute license is justified. The taking should be reasonable, it should be conducted with due process, and it should be limited to no more than what is necessary for the fulfillment of the public purpose which, in fact, warranted the invasion.

If we apply these principles to behavioral research, it is clear that, in determining whether the interference with the right of private personality is reasonable, one must appraise many diverse factors. They include such matters as whether the research is necessary, or simply desirable; whether the identification of the individual is in fact required for the successful conduct of the research; whether the invasion of privacy is being limited to the narrowest extent possible; whether artifice and the risk of physical or psychological

54. Examples of the range of protections available in the judicial process are:

(a) Court orders to protect confidential information obtained for evidentiary purposes from being improperly used for other purposes. See *Covey Oil Co. v. Continental Oil Co.*, 340 F.2d 993 (10th Cir. 1965), *cert. denied*, 380 U.S. 964 (1965); *United States v. Lever Brothers Co.*, 193 F. Supp. 254 (S.D.N.Y. 1961), *appeal dismissed*, 371 U.S. 207 (1962), *cert. denied*, 371 U.S. 932 (1962). See also N.Y. CPLR § 3103 (preventing the abuse of pre-trial disclosure proceedings).

(b) Statutory provisions relating to the disposition of the evidence submitted to the Tax Court, see INT. REV. CODE OF 1954, § 746; or the reception of certain evidence by the Civil Rights Commission. See Civil Rights Act of 1957, 102(g), as amended, 78 Stat. 249 (1964), 42 U.S.C. § 1975a(e) (1964).

(c) Statutory provisions for the sealing of records in judicial proceedings and limiting access thereto. See N.Y. DOM. REL. LAW §§ 114 (adoption), 235 (matrimonial actions); N.Y. FAMILY CT. ACT § 166 (privacy of records); N.Y. SOC. WELFARE LAW §§ 372(4) (records as to children), 132, 136 (welfare records).

(d) Statutory provisions for the exclusion of the public from court proceedings. See N.Y. JUDICIARY LAW § 4; N.Y. FAMILY CT. ACT § 531 (paternity proceedings).

(e) Statutory provisions restricting the availability of information obtained by the Department of Justice under a Civil Investigative Demand, see Antitrust Civil Process Act § 4(c), 76 Stat. 550 (1962), 15 U.S.C. § 1313(c) (1964), or obtained by the Department of Commerce. See 13 U.S.C. § 9 (1964).

(f) Statutory prohibitions against televising or broadcasting of judicial proceedings, such as N.Y. CIV. RIGHTS LAW § 52.