

better and more rational research techniques. Their innate inventiveness can be expected to yield new and better research methods.

Not only will the behavioral scientists be inventive in accommodating the competing values of privacy and research, but in doing so they will be more sensitive to the complexities and nuances involved than either courts or legislatures. To be sure, however, judges and legislators do have a supportive role and can be expected to fill it either by correcting abuses or protecting the responsible investigator who operates in accordance with the ethical consensus of the community.

The supportive measures available to the law, several of which have already been mentioned, are numerous and varied. One is the extension of a privileged status to the confidential communication of private information to a behavioral scientist. Another is the provision of civil or criminal remedies for the breach of the right of privacy.⁶⁵ A third is to assess and define the contexts in which, or the conditions under which, the cost in privacy is either marginal or *de minimis*, or permissible, because outweighed by the positive gains perceived for society in particular research. A fourth measure is to preclude public officials or employees from disclosing confidential information acquired in the course of employment.⁶⁶ A fifth approach is to develop "disciplinary proceedings" to enforce the claim to privacy against

65. Remedies for the breach of this right are already available in many states:

(a) See the list of states which recognize a common-law right of privacy in Prosser, *supra* note 14, at 386-89.

(b) Oregon and Maryland have statutes which make eavesdropping, without the consent of all persons being overheard, a crime. Neither accords any exemption for behavioral research. Thus, in Oregon, it is unlawful to obtain any part of a conversation by an eavesdropping device "if all participants in the conversation are not specifically informed that their conversation is being obtained." ORE. REV. STAT. § 165.540(1)(c) (1963). Violation of this Oregon statute is punishable by fine or imprisonment and renders the violator liable for damages in a civil suit. ORE. REV. STAT. §§ 30.780, 165.540(6) (1963). In Maryland it is unlawful to use any device "to overhear or record any part of the conversation or words spoken to or by any person in private conversation without the knowledge or consent, expressed or implied, of that other person." MD. ANN. CODE art. 27, § 125A(a) (Supp. 1964).

(c) See the statutes in five other states which make eavesdropping unlawful without the consent of a party to the conversation—again without an exemption for scientific research: CAL. PEN. CODE § 653j; ILL. ANN. STAT. ch. 38, §§ 14-2, 14-4 (Smith-Hurd 1964); MASS. GEN. LAWS ANN. ch. 272, § 99 (Supp. 1964); NEV. REV. STAT. § 200.650 (1957); N.Y. PEN. LAW § 738.

(d) See also the comparable but more limited statutes in six other states: ARK. STAT. ANN. § 41-1426 (1964) (loitering for purposes of invading privacy); GA. CODE ANN. § 26-2001 (1953) (peeping or similar acts tending to invade privacy); N.D. CENT. CODE § 12-42-05 (Supp. 1965) (using any mechanical or electronic device to overhear or record and to repeat with intent to vex or injure); OKLA. STAT. tit. 21, § 1202 (1941) (loitering with intent to overhear and repeat to vex or injure); S.C. CODE ANN. § 16-554 (1962) (peeping or similar acts tending to invade privacy); S.D. CODE, § 13.1425 (1939) (loitering with intent to overhear and repeat to vex or injure).

(e) See RESTATEMENT (SECOND), TORTS § 286 (1965), which reflects the judicial acceptance of such statutory standards as a basis for civil liability.

66. See, e.g., Antitrust Civil Process Act § 4(c), 76 Stat. 550 (1962), 15 U.S.C. § 1313(c) (1964); N.Y. EDUC. LAW § 1007; N.Y. LAB. LAW § 537; N.Y. PEN. LAW § 762; N.Y. PUB. OFFICERS LAW § 74(b).