

When Does an Interview Constitute Intrusion

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Although North Carolina does not recognize certain invasion of privacy claims recognized in some states, its courts have adopted the claim of invasion of privacy by intrusion. Unlawful intrusion is:

an intentional physical or sensory interference with, or prying into, a person's solitude or seclusion or his private affairs, where the intrusion is highly offensive or objectionable to a reasonable person.

Examples of conduct that North Carolina courts have found constituted unlawful intrusion include physically invading a person's home or private place, eavesdropping by wiretapping or microphone, peering through windows or doors and persistent telephoning. Potential liability for intrusion may therefore place some limits how far journalists go in reporting a story or attempting to interview a source.

A person may not maintain an intrusion claim if he or she consents, at the time of the alleged intrusion, to being photographed, recorded or videotaped. Thus, the failure to obtain consent, when combined with surreptitious recording at a private location, may expose reporters to liability.

For example, one case involved a reporter who arrived at the subject's house with no prior notice, and, when an adult answered the front door, the reporter began asking him questions. During the interview, the reporter wore a hidden microphone in his necktie, while a cameraman and sound technician hid in a van across the street. The subject had not agreed to be interviewed in advance and at no time during the interview did he consent to being recorded. On these facts, a federal appeals court in California concluded that the subject could maintain an intrusion claim.

The law in North Carolina does not expressly require parental consent to interview a minor in a public forum or to publish or air a minor's image in connection with a news story. However, even if a minor consents to being interviewed at their home, a reporter is not necessarily protected from liability for intrusion. For example, in a case out of California a television film crew appeared unannounced at the front door of a private residence. Two young children, ages five and seven, answered the door and purportedly consented to being interviewed after the news crew informed them that their friends had just been murdered by their friends' mother. The court ruled that the children, because of their young age, lacked the capacity to consent to the news crew's presence

on the private property, and, therefore, did not consent to the subsequent interview.

In addition to being mindful of potential intrusion claims and issues of consent, journalists and editors should also be aware that courts generally consider public school property to be a “non-public forum.” This designation means that the federal Constitution will permit reasonable local or state regulations that restrict media access to school property or that otherwise restrict newsgathering activities on school property, so long as those regulations are designed to lessen interference with normal school activities. These permissible restrictions may even extend beyond school grounds, so long as they apply to a school-sponsored activity such as a sporting event, a field trip or a graduation ceremony. More information about access to public school property is available in from The Reporters Committee for Freedom of the Press and from David M. Herszenhorn.