









- 1  **Intrusion**  
Intrusion is intentional invasion of the solitude or seclusion of another in her private affairs or concerns, through either physical or nonphysical means.
- 2 
  - Plaintiff's case
    - Was defendant's conduct highly intrusive
    - Was the intrusion highly offensive to a reasonable person
    - Did the plaintiff have a reasonable expectation of privacy.
- 3 
  - Intrusion is NOT concerned with the subject matter of what is published
  - Intrusion is NOT concerned whether the material was published
  - Intrusion is concerned with the METHOD of obtaining the information.
  - The entire tort turns on whether the plaintiff had a reasonable expectation of privacy.
  - Intrusion is similar to trespass.
- 4 
  - Intrusion falls into three general categories
    - Surreptitious surveillance, including tape recording phone calls
    - Traditional trespass, entering onto private property without permission -either express or implicit
    - Consent to enter into a private setting has been exceeded.
- 5 
  - Intrusion into Public and Quasi-public places
    - Eavesdropping on conversations?
    - Gathering personal information from private records?
    - Use of telephoto lens?
      - In public places one has to assume that she might be photographed
      - Media can record in public assuming they don't harass, intimidate, trespass, etc. Overly aggressive information gathering in public can become an intrusion. But this

6  clearly does not include ambush interviews.

- Intrusion into Private Places
  - Third party monitoring
  - Participant monitoring
    - Federal law
    - State law
    - Tort

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- Hidden cameras
  - When the info is of profound importance
  - When all other alternatives for obtaining the same information have been exhausted
  - When the individuals involved and their news organizations apply – through outstanding quality of work as well as the commitment of time and funding – the excellence needed to pursue the story fully
  - When the harm prevented by the information revealed through deception outweighs any harm caused by the act of deception.
  - When the journalists involved have conducted a meaningful, collaborative, and deliberative decision to justify deception.

8 

- Taping Phone conversations
  - Federal law:
    - The Federal Wiretap Statute (18 U.S.C. 2510-2520) prohibits “interception of wire or oral communication,” and disclosing the contents of such communication.
    - There is an exception for taping a phone conversation by one of the parties to that call. Unless one of the party’s taping the call is to commit a criminal act, or a tortuous act.

9 

- FCC regulations
  - The FCC long had prohibited recording long distance phone conversations (the only type over which the FCC has jurisdiction) without a “beep-tone” being audible to all participants.
  - But the only penalty was loss of phone service, and the rule was not enforced.
  - In essence, a station is forbidden from broadcasting a telephone call the station tapes unless it has permission from all parties to the call.
  - But a station may broadcast a recording of a call that was made by someone not affiliated with the station (so airing the Genifer Flowers’ tapes were OK).
- State laws vary.

10  **Tips**

- Gather info from public places and public sources – especially for docs.
- Be careful when using telephoto lenses and special surveillance equipment.
- When possible, get consent.
- Avoid use of concealed video and audio equipment
- Remember, it is about the act of newsgathering, not publication.

11 

- Trespass - this is how NY handles it.
  - Whenever there is private property and there is not permission to enter it.
  - Reporter accompanying a public safety official?
    - Exceeding Consent
    - False Pretenses
    - Receiving Stolen Information
    - Civil Rights Violations
    - Defenses

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- Intrusion and the Internet
  - Online privacy of personal data cookies, recovering deleted files
  - Electronic Computer Communications Privacy Act (EPCA)
  - Children's Online Privacy Protection Act (1986)