

North Carolina Association of Private Investigators
Presents...



From the Shadows to the Spotlight: Lawsuits Against Private Investigators

By Mark Spencer Williams, Esq.



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Handouts – 500 + pages

http://www.RiceFamilyLaw.com/private_investigators



The screenshot shows the website for Rice Law PLLC. The header includes the firm's logo, office locations, and social media icons. The navigation menu lists: ABOUT, FAMILY LAW, EDUCATION LAW, BLOG, RESOURCES, SERVICES AREAS, and CONTACT. The main content area is titled "NC PRIVATE INVESTIGATORS" and contains the following text:

There have been a number of lawsuits against private investigators in North Carolina. The following presents details regarding those suits and sample information from other jurisdictions.

NC Lawsuits Against Private Investigators

- *Miller v. Brooks*, 123 N.C.App. 20 (1996) -- Private investigators hired by wife installed video camera in husband's home and assisted wife in intercepting her mail from the U.S. Post Office. Husband sued for invasion of privacy, trespass and other claims against both wife and the private investigators she hired.
- *Kolb v. Schatzman & Assoc.*, 150 N.C.App. 94 (2002) -- Grandmother hired NC Private Investigator to help exticate her daughter and grandchildren from Lebanon and private investigator got stuck with mom and children in Syria. She tried to avoid the contract claiming it was an illegal contract and therefore, unenforceable. Read the entire Record on Appeal (warning file is very large)

On the right side, there is a "Resources" section with two items:

- Blog on family law issues**: Rice Law attorneys author timely articles to answer your questions. [Read the blog »](#)
- Your virtual law office**: Message an attorney, check your legal calendar, or track your case in our secure online office (registration required). [Learn more about the VLO »](#) [Register & sign on now »](#)

At the bottom of the resources section, there is a link to **Read Kroh v. Kroh**, which sets out an exception to North Carolina's Electronic Surveillance Act and federal wiretapping statutes by allowing parent to vicariously consent to recording when the parent has a good faith believe that the child is subjected to...



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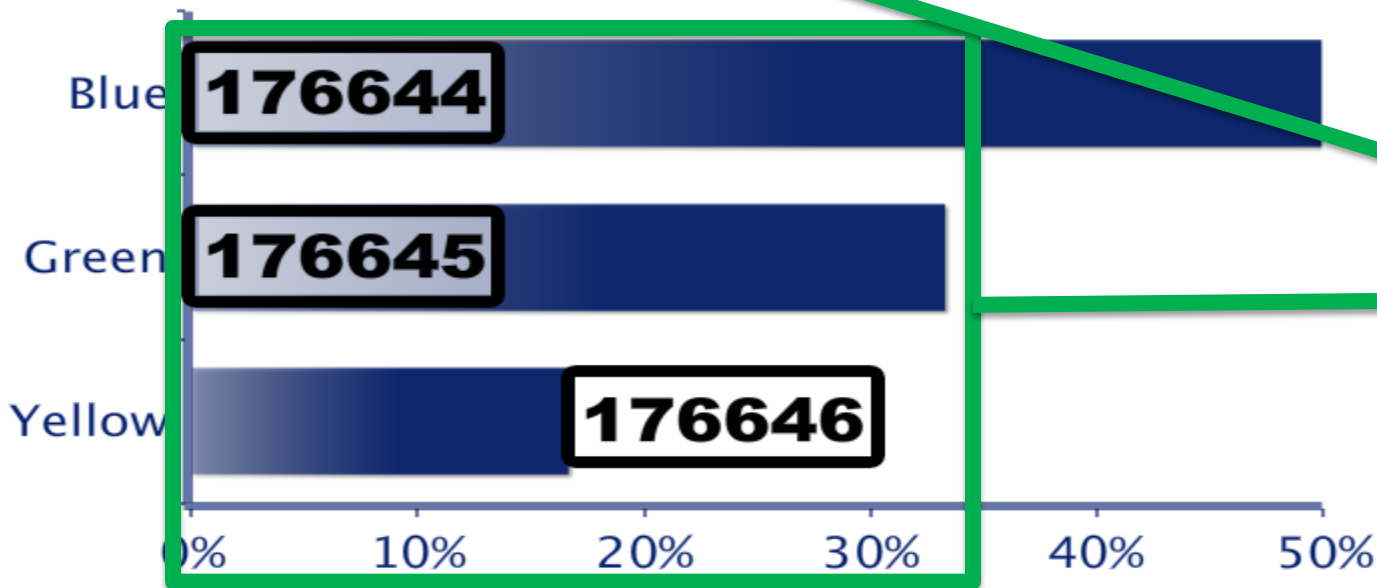
How To Vote via Texting

EXAMPLE

What is your favorite color?

Text a **CODE** to **#####** Tweet **@poll** and a **CODE**

Submit responses at **POLLv.com/username**



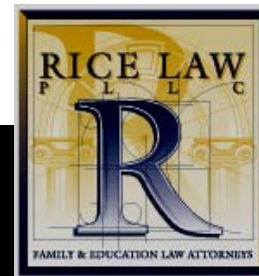
1. Standard texting rates only (worst case US \$0.20)
2. We have no access to your phone number
3. Capitalization doesn't matter, but spaces and spelling do



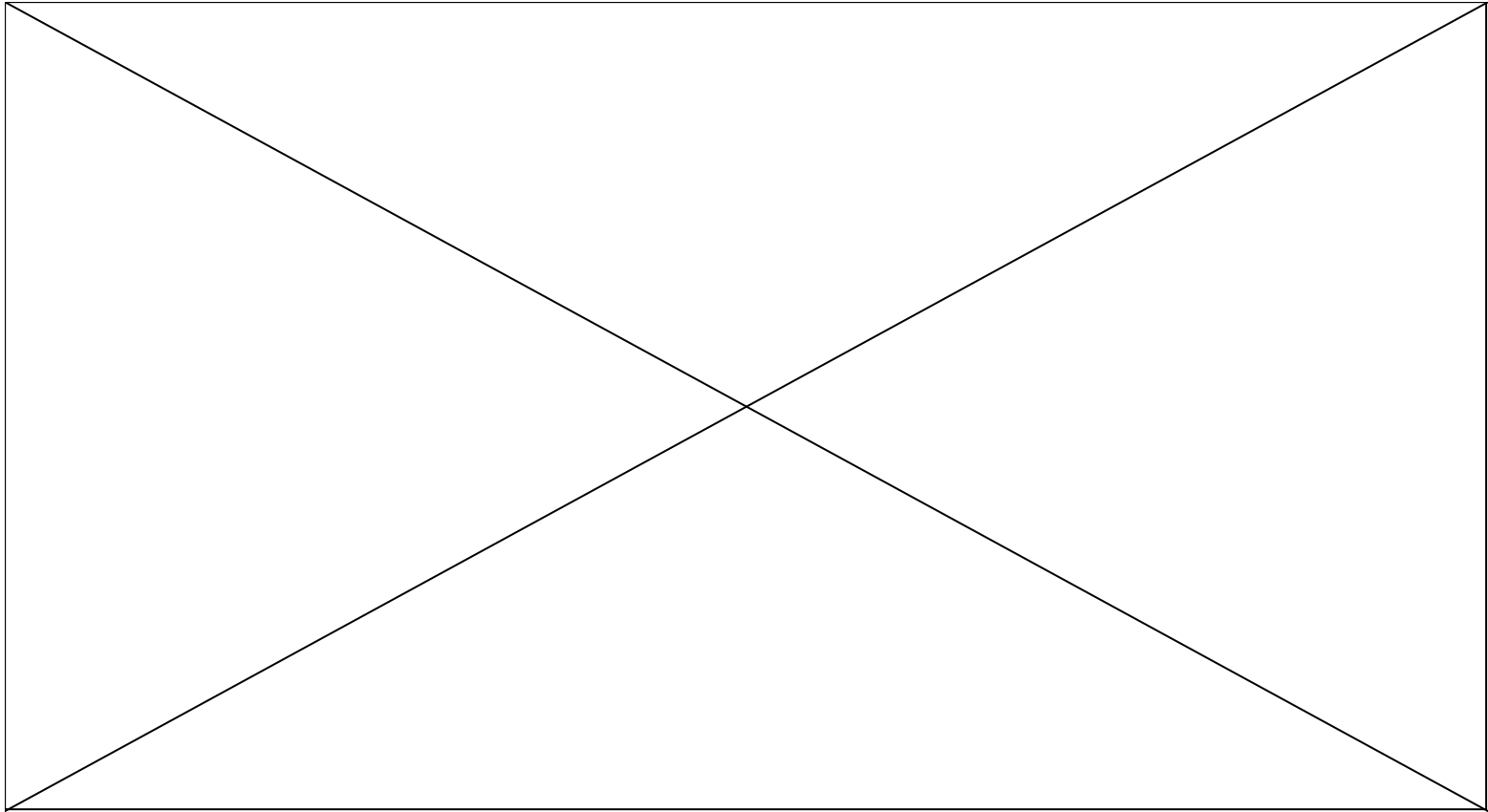
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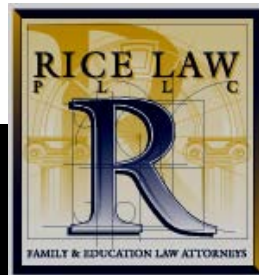


Audience Poll



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Poll Results: Survey Says

- Is it legal to install a video camera for a business owner to monitor his or her employees?
 - In NC, probably yes if no audio and not monitoring private area like a bathroom. Better to have a written policy disclosing monitoring to employees

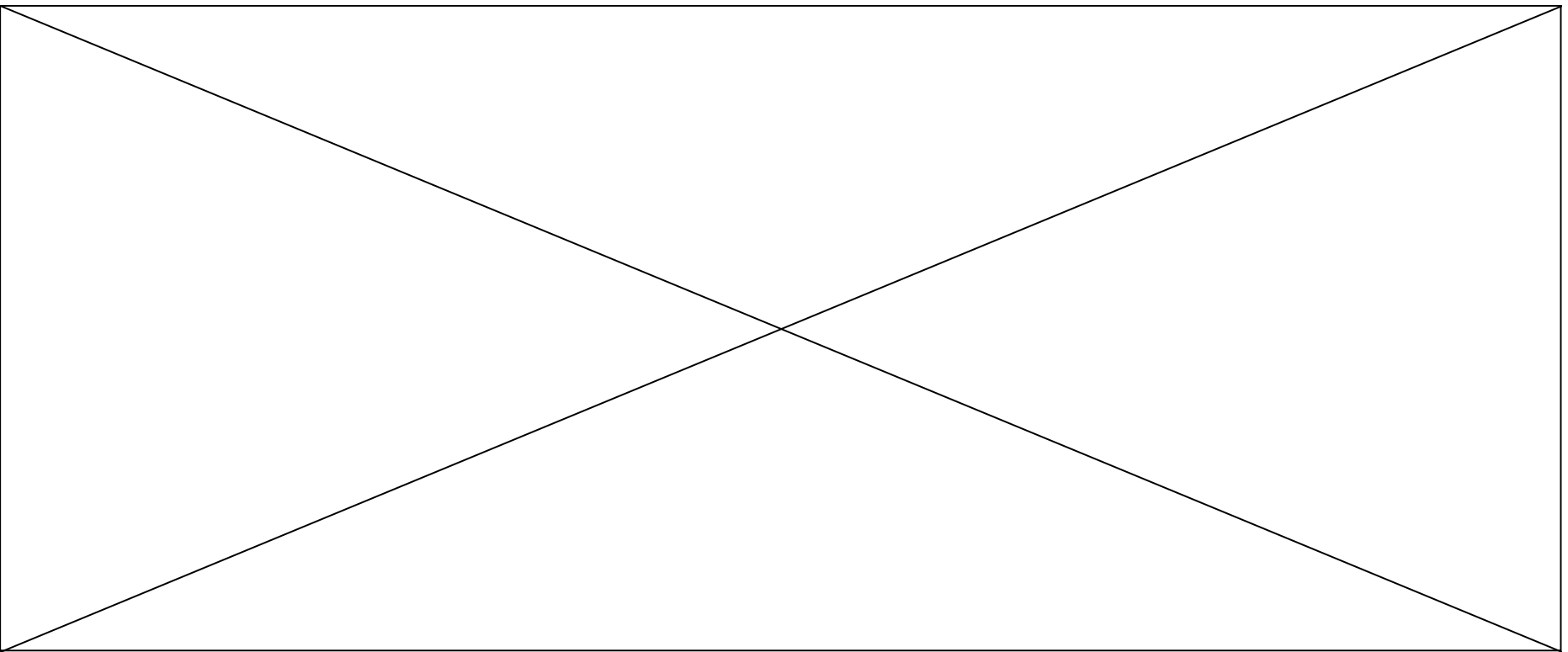


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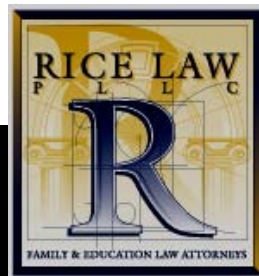


Audience Poll



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Poll Results: Survey Says

- Is it legal to walk through a neighbor's yard to get a better vantage point at your target?
 - Not a criminal offense because N.C. Gen. Stat 14-159.12 and 14-159.13 require signs or some demonstration by owner intent to secure and keep intruders out
 - But Civil violation = YES and can be sued for damages

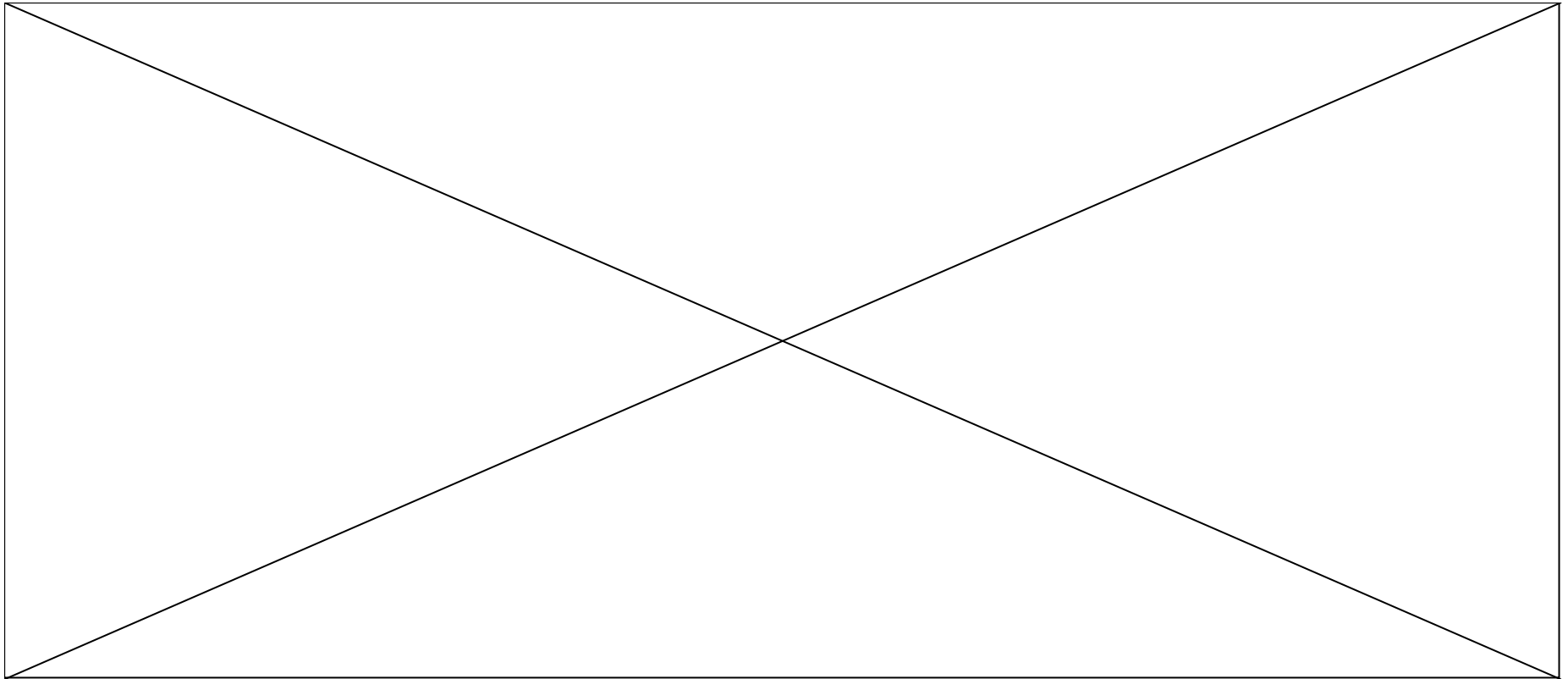


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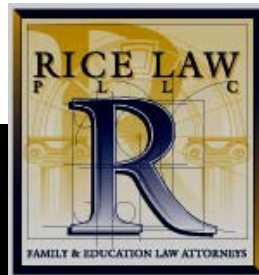


Audience Poll



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Poll Results: Survey Says

- Do you have any risk of a lawsuit from using a GPS tracker on a vehicle without the driver's knowledge and consent?
 - Yes
 - It remains to be seen whether such suits in North Carolina will be successful
 - Several theories including trespass to chattel, invasion of privacy



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Miller v. Brooks, 123 N.C.App. 20 (1996)

- Husband sued wife and her private investigators for, *inter alia*, invasion of privacy, and trespass.
- Parties had separated and had a written separation agreement.
- Wife hired private investigator to place surveillance camera in the home and they did so.
- Husband discovered the camera (sawdust)



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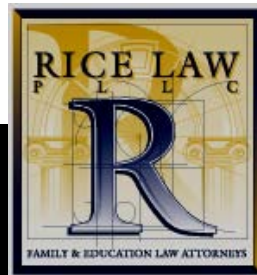
Miller v. Brooks,
123 N.C.App. 20 (1996)

- Wife also arranged to have his mail held at the Post Office and the private investigator picked up the mail for her at the Post Office.
- Court of Appeals found that wife did not have authority to grant permission for Private Investigator to enter home upholding trespass and that the installation of camera could be invasion of privacy.



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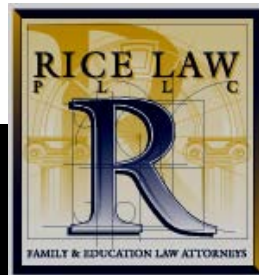
Miller v. Brooks Teaches

- Perform some due diligence
- Have client warrant they are authorized to hire you to take certain actions
- Get written waiver of indemnification from client
- Don't install video in private areas even if owner requests and don't use audio
- If your client needs you to hire a locksmith, beware!
- Make sure requests are legal



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Kolb v. Schatzman & Assoc., 150 N.C.App. 94 (2002)

- Lebanese Husband and NC Wife moved to Lebanon with their three children.
- Husband informed Wife he refused to renew Wife's visa and she would be expelled and kids stay with him.
- Mom and children escaped to US Embassy but there was a block on their passports.
- Maternal Grandmother hired PI to assist Wife and children in exiting Lebanon (oral contract with \$15,000 retainer).



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Kolb v. Schatzman & Assoc., 150 N.C.App. 94 (2002)

- PI got Wife and children into Syria but could not get them out of Syria and was stuck there.
- Maternal Grandmother hired another company to get mom and kids out of Syria for \$155,000 and they got PI, mom and kids out.
- Maternal Grandmother sued PI and PI counterclaimed on oral contract. GM claimed “illegal contract”. Trial court awarded \$47,662 to PI and Court of Appeals affirmed.



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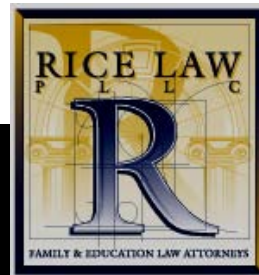
Kolb v. Schatzman Teaches

- Use Written Contracts!
 - Key was whether results were promised
- Your clients are litigious – expect they will also sue you!
- Reduce risk with arbitration clauses, choice of law clauses, choice of venue clauses, etc.



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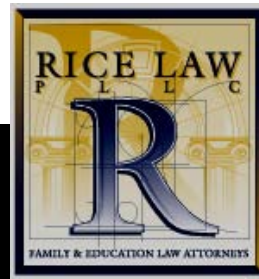
Wyatt v. Walt Disney World., 151 N.C.App. 158 (2002)

- Guest of WDW got injured at WDW
- WDW hired CVI, a Florida Company, to investigate claim.
- CVI subcontracted Daniel Keys, a PI in NC, to investigate claim.
- Guest sued WDW in North Carolina and trial court dismissed for lack of personal jurisdiction.
- Plaintiffs tried to use PI in NC to bootstrap jurisdiction



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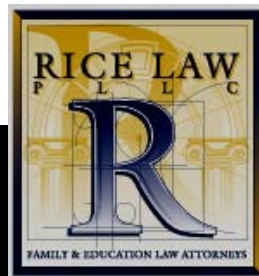
Wyatt v. WDW Teaches

- Even the innocuous case may cause you to be hailed into court
- Make sure your contract covers “witness fees” even if not an “expert witness”



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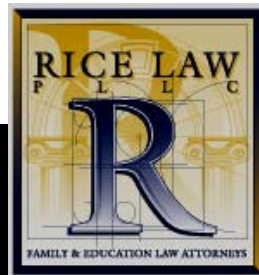
Keyzer v. Amerlink Ltd.,
173 N.C.App. 284 (2005)

- Keyzer sued Amerlink regarding his purchase of a log home kit.
- The parties reached a private settlement involving a \$400,000 payment to Keyzer which included a confidentiality agreement.
- Defendant hired private investigator to pose as a disgruntled customer of Amerlink and approach Plaintiff's attorney as a potential client.



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Keyzer v. Amerlink Ltd.,
173 N.C.App. 284 (2005)

- Keyzer sued the American Detective Services and Kenneth Johnson for invasion of privacy and trespass.
- A divided Court of Appeals upheld the trial court's ruling in favor of the private investigator.
- Trespass was the real issue as consent for entry was obtained upon a misrepresentation



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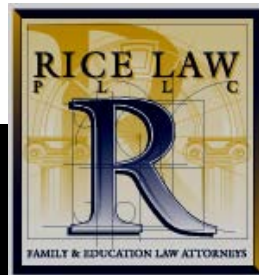
Keyzer v. Amerlink Teaches

- Not illegal but Very Risky
- Risky Behavior = ?
- Could have won on Trespass claim



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Katz v. County of Contra Costa

- Katz claims his wife wanted to make him look bad for a child custody proceeding.
- She allegedly hired a private investigator to ply him with drinks and get him arrested and charged with a "dirty DUI" by tipping off law enforcement when he attempted to drive away.
- The PI, Chris Butler, has admitted to the scheme.
- Butler was later arrested on drug charges.
- <http://www.youtube.com/watch?v=kuLDLETDzw>

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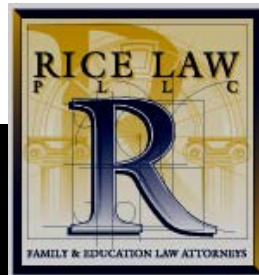
Possible Claims Against PIs

- Breach of Contract
- Negligence
- Fraudulent Misrepresentation (e.g., impersonation, statements at trial)
- Negligent Misrepresentation
- Defamation
- Infliction of Emotional Distress



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Possible Claims Against PIs

- Unfair and Deceptive Trade Practices
- Trespass
- Trespass to Chattels
- Violations of the Electronic Communication Privacy Act (ECPA) (e.g., wiretapping)
- Invasion of Privacy (e.g., GPS, key loggers)
- Contempt of Court as Non-Party



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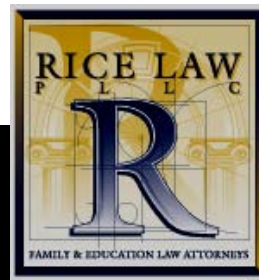
Invasion of Privacy

One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy if the intrusion would be highly offensive to a reasonable person. *Miller v. Brooks*, 123 NC App 20



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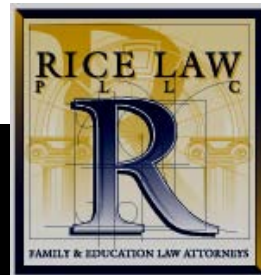
Invasion of Privacy Examples

- Physically invading one's home or other place
- Eavesdropping by wiretapping or microphones
- Peering through windows
- Persistent telephoning
- Unauthorized prying into bank account
- Opening the mail of another



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GPS Trackers

- No clear law in North Carolina about use of GPS trackers by private individuals against other private individuals
- Recently read PI report where client authorized installation on vehicle not owned. Used logs to identify was placed while on private property
- Can't rely on advice from non-lawyer or lawyer as to legality – Use at your Own Risk! May want an indemnity clause!



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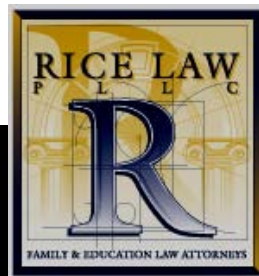
U.S. v. Jones, 565 U.S. ____ (2012)

- Government attached a GPS device to criminal suspect's vehicle after warrant expired
- US Supreme Court held that it violated his 4th Amendment Rights as unreasonable search
- Original 4th Amendment jurisprudence tied to common law trespass
- GPS monitoring impinges on expectations of privacy



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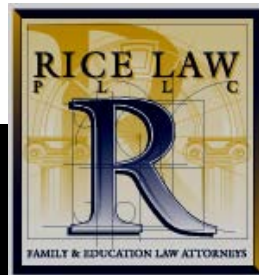
U.S. v. Jones, 565 U.S. ____ (2012)

- Only applies to 4th Amendment
- Theory under 4th Amendment is “public view”
- Issue becomes what occurs when on private property
- Does not mean a private cause of action cannot be brought for invasion of privacy or trespass



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Communications

- Electronic Communications Privacy Act
- Stored Communications Act
- N.C. Gen. Stat. 15A-287
 - Interception and disclosure of wire, oral or electronic communications prohibited



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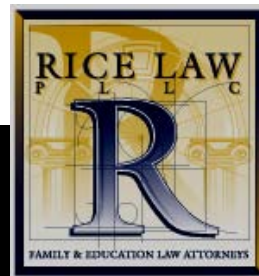
Communications

- Rollins v. Lower Merion School District (PA)
 - school admitted to secretly activating webcams on school laptops and snapping 66,000 photos
- Several cases arises under ECPA, Stored Communications Act in NC
 - Best defense is good offense



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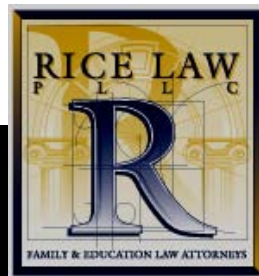
Communications

- Under special circumstances, may be able to record child (e.g., suspect abuse). See Kroh v. Kroh, Wagner v. Wagner, Campbell v. Price



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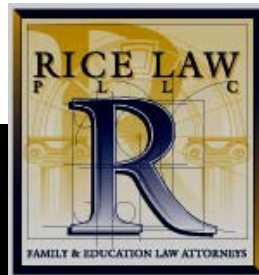
Negligent Misrepresentation

- Information prepared without reasonable care
- By one who owed the relying party a duty of care
- Justifiably relied on by the party owed the duty
- To his detriment



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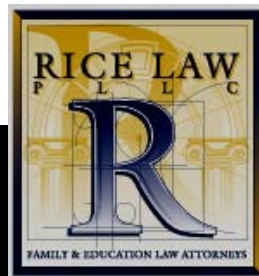
Trespass

- Plaintiff in actual or constructive possession
- Defendant made unauthorized entry
- Plaintiff was damaged (but also nominal damages without proof)



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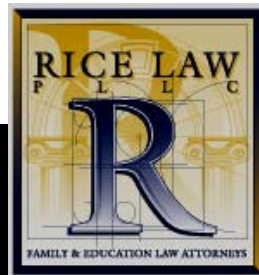
Trespass

1. Possession of the property by the plaintiff when the alleged trespass was committed;
2. An unauthorized entry by the defendant;
and
3. Damage to the plaintiff from the trespass.

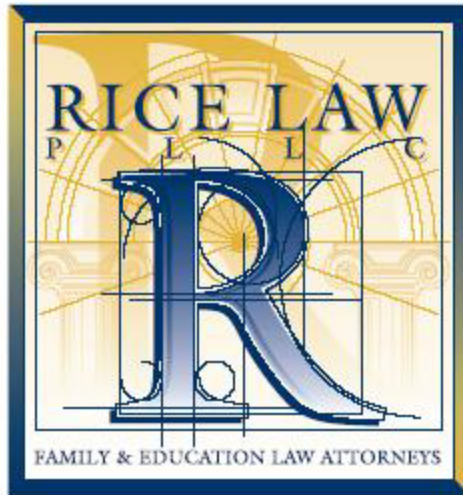


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