

TECHNIQUES OF INVESTIGATIVE REPORTING: PUBLIC'S RIGHT TO KNOW AND INDIVIDUAL'S RIGHT TO PRIVACY

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This is a philosophical investigation on methods of obtaining information employed by journalists that define the line and reflect the tension between the public's right to know the truth and an individual's claim to anonymity and privacy. The study examines the ethics (relating to morals or the science of ethics or professional science of conduct) of the investigative methods employed by journalists. The study was guided by two research questions and assumptions: To what extent does the use of evasive techniques morally right in investigative reporting? and does the use of evasive techniques encroach upon individual's privacy? The methodology employed is survey where practising journalists, journalism teachers and students journalists were required to answer questions relating to how they make ethical decisions especially in cases where news worthiness and individual safety conflicts. The answers are contrasted against a set parameter designed by the researcher on how investigative journalism should be practised making special references to the classical theories of the study of ethics. The findings revealed that investigative reporting techniques could only be employed when it is highly expedient, especially when the life of the journalist is at risk or in the extreme case when the news subject is not forthcoming with information. The findings did not totally uphold the first assumption that the use of evasive techniques is morally right for investigative journalists. Moreover, the second research assumption concluded that sometimes, not all the time, investigative reporting techniques encroach on individual's privacy. However, it was clearly established that public interest is a paramount factor in investigative reporting techniques. The paper concluded that in upholding ethical standard in the practice of investigative reporting, journalists have been encouraged to do unto others as they will want others to do unto them to balance all sides to a story.

Keywords: Privacy, Public's Right to know, Evasive Techniques.

Introduction

Mustapha-Koiki (2008) in discussing the practice of investigative journalism examined some cases of investigative reporting in Nigeria. The study revealed different ways or techniques that investigative reporters employed in the course of their investigation.

One of the reporters in Mustapha-Koiki's study is Dele Agekameh, former senior associate editor of *Tell* magazine. In the story, 'Axis of Evil' which made the cover for that week, Agekameh joined police patrol team on a reconnaissance mission. The report detailed how in a special operation, police authorities moved swiftly against car robbers and, drug and arms dealers, arresting and killing some and recovering vehicles along their routes on the border between Nigeria and Benin. Agekameh though, not a police officer acted in the capacity of police in order to unearth the story. In fact, he followed the police in charge of Rapid Response Squad (RRS) to the subject's (Hammani Tidjani) neighbourhood for more reports

The techniques employed by Agekameh here to get details about the story was that of impersonation of identity as a police officer.

Also, Emmanuel Maya of the *Sun* Newspaper in a story titled, “Inside Nigeria’s Industrial Concentration Camps” posed as a casual labourer in a period of seven weeks, where he worked in different factories like WAHUM, Eskimo and OK. His mission was to uncover the inhuman conditions that thousands of Nigerians were exposed to in factories run by Asians. Mayah put his experience thus: “In one of the factories where I worked, I was put in a section where they mould plastics”. This is a proof that the investigative reporter actually used the tactic of a monkey behaving like a monkey. Infact, Mayah narrated how he overcame the challenge of using a camera because of the necessity to do so. He revealed that, “I had to keep my camera inside my pants”.

Somehow the same style was employed by Wola Adeyemo of TELL magazine in the cause of his investigation for the story titled “Third Term Agenda”. In the story, Adeyemo and his colleague laid siege for their subject who was an honourable member of the House of Representatives.

In analysing this study, it was revealed that techniques employed by the investigative reporters were mostly done under cover of either impersonation, ambushing the subjects or secret use of audio/video recording, or an outright use of all the undercover techniques to satisfy the public’s right to know. It is against this background that this paper examines whether the use of these investigative techniques infringes on individual’s right to privacy.

Thesis Statement

Investigative reporting techniques in satisfying the public’s right to know infringes on individual’s right to privacy.

Statement of the Problem

Individuals and people holding leadership and key positions in the society tend to keep their affairs in utmost secrets. Investigative journalists on the other hand, in discharging their responsibilities as the watchdog of the society always work towards unearthing those issues that are kept secret. Hence, various techniques are employed by the journalists in order to achieve the rights of the public to know. It is against this background that this study investigates whether the various techniques employed by the journalists infringe on individual’s privacy.

Techniques of Investigative Reporting

The reportorial styles for investigative reporting as described by Ayedun-Aluma (2012) emphasises the manner of information gathering employed by the reporter. It recommends the painstaking use of numerous sources, including personal interviews, documents and records. It requires the reporter to spend a lot of time probing deeply into an issue.

The question to ask is how deep can an investigative reporter dig? In my opinion, the professional expectation requires that the investigative reporter explores all the human and non-human angles to a story.

Impersonation: This is one of the techniques of investigative reporting employed by journalists to get their stories. The legal definition of impersonation according to West’s Encyclopedia of American Law is “the crime of pretending to be another individual in order to deceive others and gain some advantage”.

One way to understand impersonation is to recount the methods used by German undercover journalist, Günter Wallraff as explained by Burgh and Bradshaw (2008). They wrote about his impersonation tactics:

A particular method employed by the best-know German undercover journalist, Günter Wallraff, is to enter a subject area by deception and record his experiences. His identity would be constructed to allow him access, which would ordinarily be refused, in discipline and well-prepared cover, he has become a Turkish guest worker, a tramp, a rightwing tabloid journalist, an alcoholic and a business man offering funds to a nascent military dictator in Portugal.

The above explains clearly what impersonation is. According to some authors, it is a way to deceive someone into believing that the journalist is who they are not in reality (Foreman,1998).

In explaining impersonation, Hulteng (1985) wrote about journalists who employ impersonations writing that “a few reporters sometimes lie about their identities depending on their needs in gathering information for a particular story. They may pose as patients while gathering information about a mental hospital. Or, they may pose as labourers while writing about migrant workers and their exposure to the chemicals sprayed on farm crops”.

In essence impersonation is all about pretending to be someone else and in investigative journalism the goal is to get information.

Ambush: An ambush is a surprise attack by someone or something that was hidden. (noun). Journalists use this technique to accost a source who may prove to be taciturn and force him to speak.

Ambush is actually one of the tactics of war. The Encyclopaedia Britannica explains it as closely connected to those tactics used in hunting and are well known to tribal societies all over the world. The encyclopaedia explains that “typically the operation gets under way when warriors, having reconnoitred the terrain and stalked their enemy, take up concealed positions and wait for the signal. The engagement opens by means of such long-range missile weapons as the javelin, the bow, the sling, and the tomahawk. Once the enemy has been thrown into disorder and some of his personnel killed or wounded, cover is discarded, and short-range weapons such as club, spear, and dagger are employed for delivering the coup de grace”.

Relating this to investigative journalism, journalist employ this method and most times they get their sources scared and due to this unexpectedness, they force them into divulging information which would go on to make a lot of impact in the way the story is presented. This tactic is not limited to foreign journalists alone, but prevalent everywhere, even in developing countries.

In her provocative book, Brooke Kroeger argues for a reconsideration of the place of oft-maligned journalistic practices. While it may seem paradoxical, much of the valuable journalism in the past century and a half has emerged from undercover investigations that employed subterfuge or deception to expose wrong. Kroeger asserts that undercover work is not a separate world, but rather it embodies a central discipline of good reporting the ability to extract significant information or to create indelible, real-time descriptions of hard-to-penetrate institutions or social situations that deserve the public's attention. Together with a companion website that gathers some of the best investigative work of the past century, Undercover Reporting serves as a rallying call for an endangered aspect of the journalistic endeavour.

Wymore and Petite (2008) mentioned that “with advances in electronic technology and the inherent obstacles to investigative reporting, it has become routine for reporters to gather news with hidden cameras, surreptitious recording devices and other surveillance equipment”.

David (2008: 278) mentioned phone and computer hacking as well as concealed recordings as the “dark arts” of journalism. Ongowo (2011) wrote that they remain the most

controversial method investigative journalists use in gathering information especially after the closure of Britain's selling tabloid *the news of the world* in 2011 over phone hacking scandal (Sadle,2011).

This is one of the techniques that has been criticised heavily, but many of the journalists who employ this always hinge it on the public's right to be informed.

Definition of Key Terms

Evasive Techniques: Methods of investigative reporting that are not straight forward like in a direct interview.

Privacy: Issues that are personal to one and which they do not want others to know about.

Right To Know: Public's right to information, which has been extended to the journalists as his part of his duties and social responsibility.

Research Questions

RQ1: To what extent does the use of evasive techniques morally right in investigative reporting?

RQ2: Does the use of evasive techniques encroach upon individual's privacy?

Research Assumptions

1. The use of evasive techniques is morally right in investigative reporting.
2. Evasive techniques encroach upon individual's privacy.

Purpose of the Study

The purpose of this study is to examine whether it is ethical for journalists to use evasive techniques or methods in investigative reports even if it encroaches on individual's privacy. It also examines the moral justification of the use of evasive methods or techniques if the investigative story is in the interest of the public or the journalist's interest.

Literature Review

A reasonable definition of a good journalist according to Frost (2007: 11) is 'someone who gathers, in a morally justifiable way, topical, truthful, factually-based information of interest to the reader or viewer and then publishes it in a timely and accurate manner to a mass audience. He continued, however, that all too often journalism falls far short of this ideal. How the news was gathered and sourced, together with the degree of accuracy, would seem to be secondary considerations in this definition of a 'good journalist'. 'Don't let the facts get in the way of a good story' is an instruction that has been heard in more than one newsroom.

This scenario suggests that journalists are more concerned about the story than HOW they get it.

It is the how stories are gathered by journalists in the course of investigative reporting and whether in the course of news gathering, individual's privacy is encroached upon is the crux of this paper.

Privacy, however, according to Archard (1998: 83) claims that 'Privacy has to do with keeping information non-public or undisclosed.' He goes on to explain that some classes of

information might be considered private by some, but not others. This explains why some people consider journalists' reporting of their action as intrusion of their privacy.

It is in the same light that the issue of public interest becomes so important in journalism that even the Nigerian constitution reads in section 22 that "The press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this chapter and uphold the responsibility and accountability of the government to the people".

The last phrase '... to the people' shows the importance of the public when it comes to the product of media houses. To sum it all up is to agree with Frost (2000: 24) who wrote that "...the media has its most important role – keeping the public informed and facilitating political debate". The functions of the media include informing, educating as well as entertaining the PUBLIC.

Existing for the public has given the media some rights backed by the constitutions of many nations and in Nigeria backed by section 22 as well as 39 of the 1999 constitution. Section 39 falls in chapter IV of the constitution titled fundamental rights. In the same chapter precisely in section 37 which reads "The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected".

In periods of extreme moral and social crises, according to Dapo Olorunyomi (2008), the media have played, and continue to initiate, major options in the restoration of values and standards of public (and indeed private) policy management. This is what the watchdog role of the media has always meant.

Investigative reporting in journalism is laudable as it helps journalists fulfil their most important function in the society – being the public watchdog. But in the quest to achieve maximal results, journalists have many times encroached on the privacy of some individuals raising many ethical questions. Nigeria suffers from the same problem, at least from a normative point of view, and based on existing researches and court judgements. Treading the fine line between the public's need to be informed and the individual's need to be exempted from the public knowledge is the main thrust of this paper.

The dividing lines existing between the sections of the constitution ethically and in practice is what this paper dissects making adequate reference to the code of conduct.

Issue of Privacy

The need for privacy of individuals is recognised by psychologists as a basic human need, a drive almost as powerful as sex, hunger and thirst. Frost (2007:88) further emphasised that "We all need privacy and we need to be in control of the flow of information about our private selves. It is often said that information is power, but it is just as true that control over information is power."

The Right to Privacy

The first British Royal Commission on the Press in 1947-49 says hardly anything about the invasion of privacy. It is concerned with monopoly ownership and accuracy. By the late 1960s and early 1970s, however, it was firmly on the agenda. The Nordic Conference on the Right of Privacy (1967) came to the conclusion that:

The right to privacy is the right to be let alone to live one's own life with the minimum degree of interference. In expanded form this means:

The right of individual to his (sic) own life protected against:

- a. Interference with his private, family and home life;
- b. Interference with his physical and mental integrity or his moral and intellectual freedom;
- c. Attack on his honour and reputation;
- d. Being placed in a false light;
- e. The disclosure of embarrassing facts relating to his private life;
- f. The use of his name, identity or likeness;
- g. Spying, prying, watching and besetting;
- h. Interference with his correspondence,
- i. Misuse of his private communications, written or oral;
- j. Disclosure of information given or received by him in a condition of professional confidence (Committee on Privacy 1972:327)

Just because there is no specific law against invasions of privacy (other than the Human Rights Act) this does not mean to say that journalists can do whatever they want. Alongside the laws on defamation and malicious falsehood, there are a range of laws which offer a patchwork protection of parts of people's private lives. These include the Data Protection Act 1998, the laws of confidence and copyright. It is the law of confidence that is perhaps being most often by the courts as a way of protecting privacy.(Frost 2007:97)

General Rule on Privacy

In the Code of Ethics for Nigerian Journalist, the new code is a collective effort of Nigerian journalists represented by the NPO (Nigerian Press Organization made up of NUJ, NGE and NPC).

As a general rule, a journalist respect the privacy of individuals and their families unless it affects public interest.

1. Information on the private life of an individual; or his family should only be published if it impinges on public interest.
2. Publishing of such information about an individual as mentioned above should be deemed justifiable only if it is directed at:
 - Exposing anti-social misdemeanour
 - Exposing anti-social conduct
 - Protecting public health, morality and safety
 - Preventing the public from being misled by some statements or actions of the individual concerned

From the foregoing, it is crystal clear that the only snag to the issue of privacy is if and only if it affects the public good or rather if the issue or the subject is in the public interest.

The interviews were conducted using the interview schedule which were analysed. A master code list was developed from the questions and variables in the interview schedules. Using the master code list, the transcribed interviews were analysed manually. The researcher had the intention of using the HyperRESEARCH 2.6 software for qualitative data analysis as used in analysing a study by one of her Ph.D course facilitators, Dr Ayedun-Aluma but was unable to do so due to inaccessibility of the software and inability to download it. The researcher chose this form of analysis in some of the research questions due to its suitability for this research.

The analysis was embarked upon by using a descriptive template adapted by this researcher using all the variables that were reflected in the problem which include the public's right to know, uses of various evasive techniques like impersonation, ambush and secret recording or video of a subject. The template was adapted to assign investigative

techniques to theoretical categories. This is done to enable categorisation of the observed pattern. (A copy of the template is attached as appendix to this paper).

The data were analysed using a descriptive pattern of the different techniques that journalists employed in investigative reporting and determining in whose interest is the public's right to know.

Theoretical Framework

Teleological Ethical Theory or Consequentialism

According to Okoye (2007), this is concerned with the result of the action. An action is considered as good if it produces good results. Hence, those who subscribe to this ethical orientation are called consequentialists. Within the teleological school there are three subgroups. They are: utilitarianism, egoism and pragmatism.

Pertinent to this study is the ethical utilitarianism and pragmatism.

The **ethical utilitarians** believe that people should act in the best interest of everyone concerned. Their catch-phrase is "the greatest good for the greatest number". Their consuming passion is the good of the majority rather than the interest of a single individual. This may appear all right on the surface. But, according to Pasqua et al., (1990:259) the problem may arise as to the acceptable assessment of what constitutes the greatest number. This takes justification when journalists employed the use of any form of varied techniques like impersonation with the sole reason that the story is in the interest of the general public.

This is justified in view of the fact that investigative journalism primarily has to do with public interest.

Ethical pragmatism is the third subgroup under the teleological school. It insists that that which works in real life is the right thing to do. In other words, for pragmatists, truth is what works in the real life of human behaviour. Pasqua et al (ibid: 260) describes pragmatism as the ethical theory with a pure American origin. The fact that something works does not necessarily make it good. For example, a pragmatic journalist could use dishonest persuasion on a highly vulnerable and trusting audience, on the mere justification that the method works. But this could be dangerous. Just like an investigative reporter could decide to visit a hotel and act like a customer wishing to patronise a commercial sex worker. The method is highly dangerous.

Research Methodology

In-depth interview method was used to collect data from practising journalists, student journalists and journalism teachers. Sampling was done using the convenience sampling method.

Findings

Research Question 1

To what extent does the use of evasive techniques morally right in investigative reporting?

In analysing this research question, respondents were asked questions on the three highlighted evasive techniques in investigative reporting, which are: the use of impersonation, ambush and secret use of audio/visual recording.

Majority of the respondents (practising journalists and journalism teachers) Most of the respondents, especially the practising journalists were of the opinion that impersonation is both immoral and criminal and concluded that it is not ethical to use impersonation.

However, most of the respondents especially the student journalists were of the view that when investigating a delicate story which “may put the life of the investigative journalists in danger or when the subjects are not forthcoming with information due to the nature of the story involved”, the journalist could stay under cover (that is, not revealing his true identity as journalist) but not to take up other person’s identity.

The figure below is the diagrammatic representation of the responses.

Figure 1: Use of Impersonation in Investigative Reporting

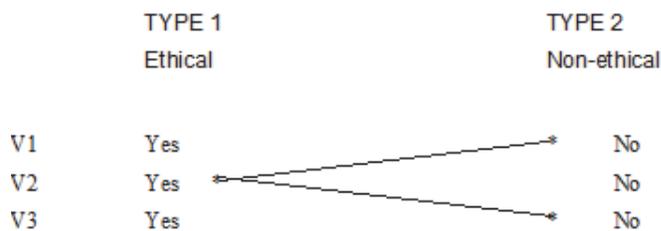


Figure 2: Use of Ambush in Investigative Reporting

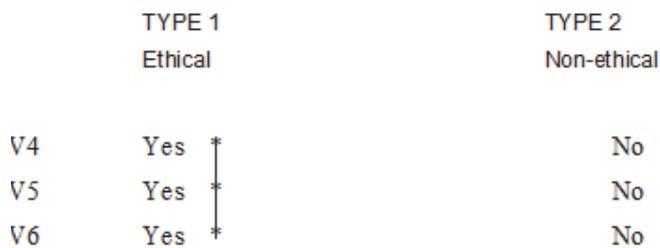
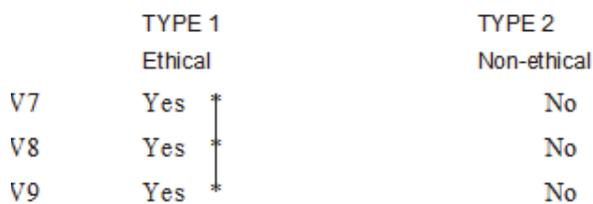


Figure 3: Secret use of audio/video Recording



(Looking through V1 to V3), it was also found that impersonation was viewed as unethical. It was further revealed that impersonation becomes morally right to use when the life of a journalist is at risk. But it becomes unethical to use impersonation even if the source is not forthcoming with information. Majority of the respondents expressed the thought that impersonation can be criminal.

Variables V4 to V6 has descriptive statements on ambush, the respondents were of the view that it is ethical to use ambush as a method of investigative reporting, supporting the view that it can also be used when journalists find it expedient and when the source becomes evasive. The same responses were got for questions on the use of audio/video recording (V7 to V9).

Research Question 2

Does the use of evasive techniques encroach upon individual's privacy?

Most of the respondents had divergent views on this research question. The most popular view among the practising journalists and journalism teachers was that use of evasive techniques sometimes encroaches upon individual's privacy, "since most of the evasive techniques employed to gather information on the subjects were secretly used without the news subjects being aware (sic)". This, to this group of respondents, indicated that there was "interference in the private and family life" of the news subjects.

But to majority of the journalism students they were of the view that it was right in the first place for the journalists to use evasive techniques to gather information from "uncooperative or endangered sources". Furthermore use of such techniques do not encroach or infringe upon individual's privacy since the purpose of investigation is "in the public interest".

Discussion, Suggestions and Conclusion

Findings from the study suggest that use of some of the evasive techniques especially impersonation is criminal in nature hence, it is immoral since according to the respondents, "it involved taking up other people's identity which is criminal." But for the other techniques, the study concluded that they are ethical, since the sole aim "is in the public interest". This finding however, did not fully uphold the first assumption of this research in its totality. It does not justify use of all the techniques, it condemns some of them.

In explaining some of the motives for using some of these techniques, the respondents explained that news subjects strive vigorously to keep their affairs in secrecy and are not always ready to talk in direct interviews. Rather, the investigative journalists resort to using these methods in order to keep the citizenry informed.

On whether evasive techniques infringe on the privacy of individuals, the findings suggest that sometimes, not all the time, privacy of individuals is invaded. The reason for this is giving on the note that most times the investigative journalist does his investigation in secrecy in order not to create awareness and at times, he interferes with privacy of news subjects. A case in point was when Dele Agekameh (an investigative reporter with TELL magazine) was in Hammani Tidjani's house with the police. It shows that he used the police connection to invade Tidjani's territory without his consent.

Other findings in the study suggest that investigative journalist could employ evasive techniques but should not be ones that are criminal in nature.

It was however suggested that in order for an investigative journalist to do his job well without being unnecessary intrusive and unethical, he needs to balance all sides to a story and abiding by laid-down rules and regulations.

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Appendix:

Template for the Assignment of Interviewers' Responses to Theoretical Categories

Variable	Description	Attribute (Yes/No)
V1	It is ethical to use impersonation as a method of investigating.	
V2	Impersonation can be used when the life of the journalist is at risk.	
V3	Impersonation can be used when the source is not forthcoming with information.	
V4	It is ethical to use ambush as a method of investigating.	
V5	Ambush can be used when journalists find it expedient.	
V6	Ambush can be used when the source is evasive.	
V7	It is ethical to secretly record/video a subject and or his activities.	
V8	Secret audio/visual recording can be used when the life of the reporter is at stake.	
V9	Secret audio/visual recording can be used when evidence or proof is required.	