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David Schultz: The ethics of protests at people's homes



John Thompson, Minnesota Democratic candidate for district 67A, speaks during a protest near Minneapolis Police Union Chief Bob Kroll's house on Aug. 15, 2020, in Hugo. (Stephen Maturen/Getty Images)

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Under what conditions, if at all, is residential picketing a form of legitimate protest or expression of ideas?

Recently in response to the death of George Floyd the streets in front of the personal residences of two police officers and their families have been the sites of public protest. So too has the Minnesota governor's mansion, also located on a residential street.

First, no reasonable person should disagree with the proposition that racism is wrong. Nor should a reasonable person endorse unwarranted use of force by police, especially when done in a racially discriminatory way. What happened to George Floyd was a tragedy and whether the police officers are guilty of a crime is a matter for the courts to decide.

Regardless of legal verdict in the pending trials, individuals have a First Amendment right peaceably to assemble, protest, and present their views on public streets, however much we agree with them or find their views repugnant. There is also a right, whether prudent or not, to use language, symbols, and speech which many might consider to be uncivil, to express their ideas. None of us should be expected to use perfect grammar or prose, and sometimes the choice of words or symbols, however impolite some may view them, may be effective ways to convey a message or get attention.

There are limits to the expression of ideas in residential areas.

The issue is not civility but counterbalancing rights of individuals to be protected from harassment and unwanted speech from which they cannot escape.

In the 1988 case of *Frisby v. Schultz* (no relation to this author), anti-abortion protestors peacefully picketed on the streets in front of the home of a doctor who performed abortions. The home was in a residential district. Justice O'Connor, writing for the Supreme Court, recognized that streets even in residential neighborhoods were public, yet upheld an ordinance banning this picketing. It did so for a couple of reasons.

One, the Court recognized a right to privacy in our homes. There is a legitimate interest in protecting people from unwanted intrusions into their homes.

Two, unlike protests in front of businesses or other public accommodations, individuals in their private residences are captured audiences who have no ability to escape from speech they do not wish to hear. One may have a right to free speech, but not a right to force unwilling audiences to listen.

Protests, especially loud, long, repeated, or with large crowds, can be threatening, and if residents or neighbors have no means to escape, these protests have turned from legitimate expression of views into forms of intimidation. Even the liberal Justices Brennan, Marshall, and Stevens, who dissented in *Frisby*, contended that there are valid time, manner and place restrictions on speech, and a careful balance of expressive rights must be struck with efforts to protect privacy, captured audiences, and prevent intimidation. Contending rights must be balanced, and in some cases limited restrictions on residential protests should be upheld.

There is a critical difference in the protests in front of the private residences of police officers versus the governor's mansion in Minnesota. The latter is a public building with a public official. He is fair game for protest, however uncivil but peaceful it may be, and a different balance may need to be struck here that weighs more in favor of the protestors.

There is an additional problem with protests at private homes, at least as they have emerged recently. The demonstration at the home of Minneapolis officer Bob Kroll also targeted his wife. Bob Kroll's wife is not Bob Kroll. There is an incredible amount of sexism in attributing the views of a husband to his wife, whether the attribution is positive or negative. We are all individuals and should be judged on basis of who we are as individuals, not by association.

But even if that protest had focused only on the officer, it subjected all parties in the household, including children and also perhaps immediate neighbors, to unwarranted intrusions on their privacy under circumstances where they had limited opportunity to escape speech they did not wish to hear. If the whole purpose of the protests at a private residence was in fact to trap people in their homes, then this was not speech but intimidation.

Some will argue that the protest intrusions here were justified in the name of abating racism. Others will contend that criticizing these protestors is racist. Both assertions are wrong and misdirected.

Abating racism and righting the wrongs it has caused do not justify committing other wrongs or trampling on the rights of others, no matter how noble the cause. If today it's racism, tomorrow another perceived greater good may justify similar tactics, perhaps even for a cause you do not endorse and against people whom you do.

Finally, criticism of these tactics is not racist. It is an argument to respect rights and to suggest that there may be more effective and focused ways to make a

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