

2519082 01201  
KAIKY'S RUDOUSKY, EPSTEIN ETAL  
712 ARCH ST. #5 1918  
PHILADELPHIA PA 19106  
111 253875 12/31/0

# The Trial Intelligence

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2007

PHILADELPHIA, FRIDAY, JULY 20, 2007

VOL 236 • NO. 14 \$3.00

ALM

## Bush's Name Still a Factor in Protester's Suit

*Defense Motion to Ban  
Moniker at Trial Defeated*

BY SHANNON P. DUFFY  
U.S. Contributor

**A**pparently President George W. Bush is now so unpopular that some lawyers believe the mere mention of his name in front of a jury could tip the scales against them.

Attorneys Michael P. Laffey and Robert P. DiDomenico of Holstein & Associates in Media are defending Upper Darby Township in a civil rights suit brought by Harold Lischner, an 82-year-old doctor who claims he was falsely harassed for displaying an anti-war sign at a Bush campaign event in September 2003.

With the case set to go to trial on July 23, the defense lawyers recently filed a flurry of motions, including one that asked U.S. District Judge Gene E. Prattler to prohibit the plaintiff from mentioning Bush's name

rating of an American president in a general election," and that 62 percent of Americans believe that Bush's handling of the war in Iraq show that he is "stubborn and unwilling to admit his mistakes."



PRATTLER

Laffey and DiDomenico argued that "the identity of George W. Bush has no relevance to plaintiff's claim and should not be admitted."

Any "probative value" of Bush's identity, they argued, "is substantially outweighed by the danger of unfair prejudice to defendant." Bush's identity, they argued, "in and of itself, presents the danger that the jury will favor plaintiff."

As a result, the defense lawyers said, "it will be sufficient for plaintiff to testify that he displayed a sign in opposition of a presidential candidate."

In separate motions, the defense team

and to bar any testimony about the message on Lischner's protest sign.

In response, Lischner's lawyers — David Rudovsky and Jonathan H. Feinberg of Kairy, Rudovsky, Messing & Feinberg — complained that the defense team was asking for "extraordinary limits" that simply couldn't be justified.

Taken together, they argued, the defense motions were asking the court "to preclude testimony on all of the important facts in this case and apparently envisions a presentation during Dr. Lischner's case limited to testimony that Dr. Lischner was 'displaying' an unspecified sign in opposition to an unspecified political candidate."

In civil rights suits, the plaintiff's team argued, it is an "accepted principle" that the plaintiff "must be given leeway to provide the jury with narrative background of the case."

In Lischner's case, they argued, the First Amendment message on his sign, and the "target" of his message — Bush — are

what Upper Darby proposes is a viable approach."

Prattler found that the message on Lischner's sign and Bush's identity, as well as the circumstances surrounding his visit — including the war in Iraq and Bush's bid for re-election — are "relevant to the determination of probable cause and to the adequacy of Upper Darby's training and policies."

All relevant evidence is "generally admissible," Prattler said, and "the president's identity and Dr. Lischner's opposition to the war in Iraq — presumably as evidenced by the text on his sign — are relevant because they are part of the circumstances weighing on the probable cause analysis conducted by Officer [Michael] Kehle."

According to court papers, Bush came to Upper Darby on Sept. 15, 2003, for an event with local supporters at the Drexelbrook Center Facility, located within a privately owned residential community.

It was a private, by-invitation-only event, but Drexelbrook had designated an outdoor

"Because the requirements of the ordinance clearly go to the heart of business management and usurp the role of management," we hold that the trial court did not er-

## Civil Rights Suit

*continued from 1*

However, Drexelbrook Associates instructed the Upper Darcy Police Department that neither protesting nor the displaying of signs would be permitted on its property.

Lischner, then 78 years old, was one of the 50 members of the public gathered along the driveway and had placed a torso-sized sign on the front of his chest with a message that stated: "Withdraw our troops from Iraq. Give the \$87 billion to the Iraqi governing council and U.N. for immediate relief and repair of the destruction we caused."

The suit alleges that Kehle told Lischner that no signs or demonstrators were permitted, and that he would have to leave the

their employment." Leavitt disagreed with the union's argument that the section limits the authority to only include the regulation of taxes.

premisses if he did not remove the sign. When Lischner repeatedly refused to remove the sign or leave, Kehle arrested him on charges of defiant trespass.

Lischner was later found not guilty of disorderly conduct — the crime with which he was eventually charged — and filed a civil rights suit alleging that the arrest was without probable cause.

In a previous ruling, Pratter refused to dismiss the suit, finding that the conditions imposed by Drexelbrook were illegal and that a jury must decide "whether Upper Darcy had a policy, practice or custom of enforcing the landowner's unlawful condition."

Also to be decided by the jury, Pratter said, is "whether Upper Darcy failed to adequately train its police officers and such failure to train caused Dr. Lischner's

department was on vacation and unable to read the opinion. He said he argued with the union's attorney, Michael J. Healey of Healey & Hornack in Pittsburgh.

constitutional injury."

Now Pratter has ruled that, at trial, Bush's identity has legal significance because it bears directly on the legality of Upper Darcy's policies.

"The facts that the political candidate was not only a candidate for arguably the most important office in our government, but also the current president participating in a campaign for re-election, were important to the court's determination that the condition imposed by Drexelbrook was illegal and, thus, relevant to the probable cause determination."

The text of Lischner's sign is also legally significant, Pratter found, because "the fact that Dr. Lischner's sign was not blatantly offensive or disrespectful, and certainly not aimed at inciting violence or some other physical disruption, is relevant to whether

Intelligence. Please call the Instant Case Service at 800-order or for information. Some available until 1 p.m.) •

probable cause existed."

As a result, Pratter rejected L argument that the "probative Bush's identity and the text sign is outweighed by the danger prejudice."

"There is no requirement made up of the blandest theoretical arguments available," Pratter wrote. "By the same token," Pratter are not stages set for sensation court intends to guard again becoming a platform for public

*Copies of the 23-page opinion v. Upper Darcy Township, P 1117, are available from Intelligence. Please call the Instant Case Service at 800-order or for information. Some available until 1 p.m.) •*

## Raising the Bar

*continued from 3*

firms that did not immediately join the campaign. Dilworth Paxson ultimately did, but

the latter two did not. None of those three firms are currently on the campaign's 2007 list.

In early July last year, Feldman said he was pleased to see that three top midsize defense firms — Margolis Edelman, Nautly Scarcamazza & McDevitt and Marshall

Dennehy Warner Coleman & Goggin — had decided to sign on.

Of those three, only Nautly Scarcamazza is not listed as recommending to the initiative.

Last year, Wilson Elser Moskowitz Edelman & Dicker — one of whose local partners, Kathleen Wilkinson, was co-chair

of the 2006 campaign — did not sign on.

This year, Blank Rome, horn chair Palmer, is not listed as he to the initiative. The firm was year's campaign.

— Asher

# Be a Panelist on the 2007 Labor & Employment Roundtable

Coordinated by:  
**The Legal Intelligencer**

Date: **August, 2007**

