

SERVING THE SECRET SERVICE

SEAN R. GALLAGHER PROTECTS SECRET SERVICE AGENTS ALL THE WAY TO THE U.S. SUPREME COURT

BY JESSICA TAM



In 2006, Vice President Dick Cheney was greeting the public at a mall in Beaver Creek. Some folks shook hands with Cheney, others snapped photos, and one man, talking into his cell phone, said he was going to ask the vice president, “How many kids he’s killed today.”

This last conversation was overheard by Secret Service agent Dan Doyle, who then saw the man, Steven Howards, moving quickly through the crowd toward Cheney carrying an opaque bag. When he came face to face with the vice president, Howards told him that his policies in Iraq were disgusting. After Cheney replied, “Thank you,” Howards touched Cheney’s shoulder. Howards says it was a pat. Agents at the scene saw it as a push.

Doyle reported the events to agent Virgil D. Reichle Jr., who then approached Howards. According to Denver litigator Sean R. Gallagher, “Howards refused to talk with him. He tried to leave the area without speaking. Then when Reichle asked him whether he touched the vice president, Howards lied.”

Howards was arrested on harassment charges. It was later determined that he had been looking for his son in the crowd and that the bag in question contained shoes. The harassment charges were dismissed. But Howards filed suit claiming he was arrested in retaliation for his comments against Cheney.

At his deposition, Howards admitted he touched the vice president. He also admitted he lied to Reichle. “And that’s critical, because lying to a federal agent is a felony,” says Gallagher, a shareholder at Polsinelli Shughart, who was retained by the Department of Justice to represent agents Reichle and Doyle.

“It was a fascinating case,” says Gallagher. “The case really involves two

competing issues: on one hand, the extent to which individuals should be allowed to express their opinion to public officials and around public officials; but at the same time you have to balance that against the legitimate need of the Secret Service to protect a public official.

“Generally the content of what someone is saying, especially a protester, isn’t relevant to what the police officer is doing,” says Gallagher. “But a Secret Service agent is in a very different position.” Agents are present not to enforce the law but to protect public officials. “Therefore, what a protester is saying may be relevant to a Secret Service agent in evaluating whether a person poses a potential threat.”

For six years, the case gathered attention in news outlets before it reached the U.S. Supreme Court last March. In *Reichle v. Howards*, the Court voted 8-0 that the agents were entitled to qualified immunity in the suit.

“I moot-courted the case seven times before we did the oral argument,” Gallagher says. That included twice at Baylor University Law School, once at Georgetown University Law Center, once in Washington, D.C., with the National Association of Attorneys General, and once with the Solicitor General of the United States.

“All that preparation paid off,” says Gallagher, “because during the course of my oral argument, I was not asked a single question that we had not seen earlier in a moot court. I was prepared for all the questions that were asked. The first question from Justice [Ruth Bader] Ginsberg was asked probably about 45 seconds after I started. ... The 15 minutes went by in a flash.” [SI](#)