

FIRST DAY

Patricia Duarte has resigned as editor in chief of Essence Communications' Latina and been replaced by Emmy Award-winning producer Sandra Guzman.

The leading news source for the magazine industry -- twice weekly from FOLIO:

Legal Eagles Size Up New York vs. Giuliani

New York magazine and its publisher, Primedia Inc., have gotten more than their money's worth out of the now-infamous \$85,000 "Rudy" (i.e., New York City Mayor Giuliani) bus-ad campaign created by the DeVito Verdi agency. It's been a PR "home run of home runs," says Primedia PR Pooh-Bah David Adler. "But," he adds, "it's also a very serious issue." Chris Fraser, Primedia's associate general counsel, was nothing but serious in discussing the *New York-Giuliani* contretemps with FIRST DAY. "This is not a battle we wanted," the attorney says. "There are all sorts of reasons why it doesn't make sense for us. Unfortunately, we were backed into a corner by the mayor. We simply can't sit by and allow our First Amendment rights to be trampled."

In case you haven't heard or read about this squabble, here's the condensed version: The bus ads, which proclaim *New York* as "possibly the only good thing in New York Rudy hasn't taken credit for," came out near Thanksgiving and were to run through December. The pugnacious Giuliani resented the appropriation of his name without his permis-

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sion and ordered a halt of the campaign, an order that was overturned by U.S. District Court Judge Shira Scheindlin. She wrote that "one who has chosen to be Mayor, and therefore to be the subject of daily commentary and controversy, cannot avoid the limelight of publicity--good and bad." But the campaign was interrupted again when the city and the Metropolitan Transit Authority won a temporary stay last Tuesday that was in turn nullified by a three-judge panel last Thursday. A final ruling by the city's Second Circuit Court of Appeals is set for Dec. 15.

"We feel this is an interesting case but not a difficult one," Fraser says. "Judge Scheindlin got it right and we would expect the Second Circuit to agree, but we recognize the possibility of losing." David Korzenik, an attorney with the New York law firm of Miller & Korzenik LLP who specializes in First Amendment cases, says Giuliani "shouldn't have any chance of winning, but people can make mistakes." But he adds: "There should be no mistake with this....A magazine is always entitled to use the names of its stories' subjects to sell its wares." The best outcome of this episode, Korzenik continues, is that "there'll be clarification of a rule that should already be understood. It'll establish a sort of First Amendment for Dummies." (Editor's note: "For Dummies" is a trademark in this context.)

Fellow media-law maven Lawrence Savell, who presented "The Law and Your Magazine" at the *Folio*: show in October, thinks Giuliani wasn't justified in shutting down the campaign. "In a sense, invoking the privacy-protection statutes-- Sections 50 and 51 of the New York Civil Rights Law--in this kind of marginal situation would weaken them for cases that are truly legitimate," Savell says. "You simply cannot stop the use of this ad by this statute in these circumstances." Sections 50 and 51 prohibit the "uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person."

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