



Training Session A Hit!

Hats off to **Chris Bradford**, Circulation Director for the Brownwood Bulletin, for organizing a super two day conference on Single Copy Sales. The Spring Seminar was held at the Holiday Inn in Austin on May 14-15, 1998.

The day began with a TCMA board meeting in the morning followed by an afternoon session of the seminar. First at bat was **Camile Olson**, Attorney at Law for the Seyfarth, Shaw, Fairweather and Geraldson law firm. **Camile** discussed the Supreme Court's decision to overrule the *Albrecht v. Herald Company* law suit. She told how this case had a greater impact on

newspaper distribution systems than any other case over the past fifty years. The Supreme Court held that an agreement by a publisher fixing the maximum price at which a distributor could resell its newspapers to home delivery subscribers was a *per se* violation of the Sherman Act. Newspapers could not afford to suffer losses in circulation due to price increases imposed by distributors.

In addition, **Camile** talked about the Direct Seller Amendment to the IRS code. She further suggested how newspaper executives should have certain language in their contracts with distributors to insure compliance with

the new amendment.

Next up was **Kelly Roberts** from the Dallas Morning News. **Kelly's** topic dealt with Developing Dealer Relationships and Dealer Promotions. **Kelly** told how successful the Dallas paper was in their organizational structure in single copy management. He explained how each distributor has an operations manager and a sales manager. For the day to day aspects of the single copy distributor's life, he or she will conduct their business with the operations manager. The sales manager is consulted when the new stores open up or when there is a specific sales

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Catch The Wave

By **Andy Nelson**

TCMA's annual conference is scheduled for October 12 - 14, 1998, at the Radison Hotel in South Padre Island. The conference will feature Steve Wiley "The Human

Side of High Performance" as the key note speaker. The program will also include speakers with ideas and strategies from the re-



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Special points of interest:

- *TCMA Convention October 12-14, 1998*
- *Regina Staffa Moves to Austin*
- *Ad Deadline Approaches for Buyer's Guide*
- *Training Session Photos*

Legally Speaking

By L. Michael Zinser TCMA General Counsel

In this month's column we report on a ruling for independent contractor status in Missouri, an Eleventh Circuit Court of Appeals ruling that opposition to union organizing is not an unfair labor practice, and a Maryland District Court ruling that an employer may correct a mistaken grant of FMIA leave by later denying coverage to the employee.

1. Independent contractors in St. Joseph, Missouri

A newspaper carrier, Roxanne Liechti, filed suit against the St. Joseph NewsPress, claiming that she was an employee who had been discharged in retaliation for filing a workers' compensation claim. The St. Joseph News-Press immediately filed a Motion for Summary Judgment, asserting that

it was not liable for the alleged retaliatory discharge, as Plaintiff Liechti was not an employee. The court, applying the common law right to control test, found Roxanne Liechti to be an independent contractor based upon the following factors:

The carrier signed an independent contractor agreement which clearly evidenced an intent to create an independent contractor relationship. The day to day course of dealing between the parties was consistent with the contract. The carrier purchased newspapers at a wholesale rate and resold them at a retail rate. The carrier had the right to use substitutes, or helpers. The carrier was responsible for all taxes and expenses, including the large expense of a vehicle. The carrier had

the right to cancel subscribers for non-payment. The carrier set her own working hours, subject to a delivery deadline.

2. Any company has a perfect right to be opposed to a union

BE & K operates under a merit shop policy and hires both independent craft workers and union craft workers. Pursuant to company policy, prospective employees were required to apply individually, and in person. Accordingly, BE & K rejected "batched" applications consisting of letters by union business agents accompanied by several applications. The unions filed an unfair labor practice charge. The Board determined that the violations did indeed occur.

The U. S. Court of Appeals for the

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Training Session A Hit

promotion that involves the distributor. Kelly's group is responsible for contacting corporate executives to design and implement promotions that affect the sales of the Dallas Morning News.

To close out the afternoon, Mike Tiesman from the Bay City Daily Tribune spoke about the problems associated with selling the Bay City Daily Tribune in a market dominated by a large metropolitan daily, the Houston Chronicle, and a mid size market paper, the Victoria Advocate. Mike told of his relationship with the managing editor and how the two work closely together to get the papers out early everyday to maximize sales. The condition of the racks was paramount to catching the eye of the single copy buyer.

Seminar participants had the evening off to enjoy the night life of Austin. Several from the Houston Chronicle attended a Seinfeld Party at the home of former TCMA Secretary Regina Staffa.

Bright and early Friday morning Chris Bradford hosted a tasty breakfast followed by a Hot Idea Session. Several attending the breakfast spoke about ideas that were successful at their

paper that had increased single copy sales.

Leading off on the second day was Linda Furry, from the Odessa American. Linda had a slide presentation of the numerous ideas she had used in her market to promote and sell the Odessa American. She told how changing the rack colors from orange to all American red, white and blue has paid off handsomely. She also had several examples of specific projects that increased circulation for the paper.

Batting next was a duo from the Houston Chronicle, Carlos DeCancio and Darrell Boenker. Carlos spoke first about the grocery store promotions the Chronicle has with the Kroger food stores in Houston. He had examples of the racks that are used in Houston. He told how versatile the racks can be for the store manager. Darrell Boenker took the microphone from Carlos and shared of the astonishing relationship between the hawker distributor and the single copy distributor. Darrell told how a hawker sells outside a grocery store while the single copy distributor

has papers for sale inside the store. The two actually compliment one another. Although the hawker may sell more or the sales inside may sell more, it is the Chronicle that benefits because of the increased sales. Darrell also told about the "street executives" or corner hawkers and how customers will actually look for their seller each morning during drive time.

Performing clean up for the session lineup was Tami Long from Texas Monthly. She

started out asking for questions and backed into her presentation. Tami told how magazine publishers traditionally sell magazines at the grocery store check out lanes and how difficult it has been to maintain this area for selling.

Don't miss the Spring Seminar for 1999. The topic will be home delivery.

The condition of the racks was paramount to catching the eye of the single copy buyer.

Zinser Continued

Eleventh Circuit held that the NLRB failed to establish a prima facie case because the sole evidence relied on by the NLRB to prove anti-union animus consisted of BE & ICs lawful, non coercive statements of BE & K's merit shop policy. The court also held that unlawful motivation "cannot be based solely on the anti-union stance of an employer." Recognizing an employer's First Amendment right to oppose unionization, the court stated "we do not doubt that BE & K desires to keep its work place union free. This is the very essence of its merit shop policy. But we will not allow the Board to punish an employer simply because that employer is anti-union. Any company has a perfect right to be opposed to a union, and such opposition is not an unfair labor

practice."

3. Company can correct FMLA error

An employee requested FMIA maternity leave and filled out a form for her employer. The employer approved the form by checking the box stating that the leave request was granted and charged against the employee's FMLA entitlement. That space on the form also informed the employee of the need to see an attached notice explaining FMIA leave. The company leave policy, which was also attached, stated that twelve consecutive prior months of employment with the company was a prerequisite to eligibility for FMLA leave. The employee had only been employed by the company for six months at the time her leave commenced.

After the employee's leave began, the employer realized that she was not eli-

gible and rescinded her leave. She was told to return to work or be terminated. The court struck down the Dept. of Labor regulation that denied companies the ability to correct their errors under the FMLA and upheld the company's actions. The employee's claim for discharge in violation of the FMLA was dismissed.

Regina Staffa Resigns from the Chronicle

Hollis Price, Vice President of the Houston Chronicle, has announced that **Regina Staffa** left the Chronicle effective April 24, 1998. Regina's husband, **Jason**, accepted a job in Austin. **Regina** and **Jason** are expecting their first child in July.

Regina will be missed for many reasons. Her knowledge of circulation, ability to get things done, and total un-

derstanding of Chronicle operations are just a few of those reasons. In circulation we are not only losing a terrific employee but a very good friend.

Regina submitted her resignation as Secretary to the TCMA Board. **Ben Morgan**, TCMA President,

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has asked **James Smith**, Retention/Verification Manager from the Houston Chronicle to replace **Regina** as TCMA Board Secretary.

Catch the Wave Continued

tail food industry and magazine industry and industry updates from NAA, ABC and the TCMA legal counsel. The host newspapers in the Valley are putting together an exciting and informative conference that you will not want to miss. Look for registration information in early to mid summer.

Make your hotel reservations now!

Radisson Resort Hotel

956 761 6511

800 292 7704

Rates from \$75.00

October 12-14, 1998

Be sure to mention you are with the Texas Circulation Management Association

Lessons Learned in the Hundred Acre Wood

"Success is knowing the answers in school," said Piglet. "Success is being known," said Pooh. "Success is a large field of thistles, said Eeyore. "Or playing in a large Sandy Pit," said Roo. A stranger was visiting the Hundred Acre Wood, and he proposed to teach Pooh and his friends his Success Formula. The Stranger explained that success is "personal to the individual who defines what result is desired." In the days and weeks that followed, the Stranger helped Pooh & Company relate his success formula to their experiences, and to the grand adventures they had all enjoyed with Christopher Robin. *Winnie-the-Pooh on Success*, by Roger E. Allen and Stephen D. Allen, is the third in a series of books based on A.A. Milne's celebrated characters. In this 1997 publication, the authors have sought to help those who, like Pooh, are courageous enough to admit that "it is usually the 'Hows' that I have trouble with." For Pooh - and for us - the formula looks like this:

S - SELECT A DREAM. A dream is something you really want to accomplish. In choosing one, don't be concerned if it seems too difficult, too ambitious, or if others will question

the wisdom of your selection.

U - USE YOUR DREAM TO SET A GOAL. To turn a dream into a goal you make the dream specific, concrete, and definite. Make sure the goals are your own (and not set for you by others), and review them regularly to see that they remain appropriate and applicable with the passing of time and the changing of conditions.

C - CREATE A PLAN. A plan is your map - a list of the individual activities (in order) that will take you from where you are now to where you want to be. Flexibility is important, because your plan may need occasional readjustment.

C - CONSIDER RESOURCES. The most common resources in any project are time, money, knowledge, and **skills**. A **Skills Inventory** is often helpful to identify which of your **skills** are transferable to the new project, and where you may need to acquire new ones.

E - ENHANCE SKILLS AND ABILITIES. Learn to practice with purpose as you acquire new skills or work at maintaining existing ones.

S - SPEND TIME WISELY. We can't actually manage time, but we can manage the way we use our time. Allowing time for creativity, using problem solv-

ing skills, negating interruptions, minimizing routine work, and sharing tasks are all ways to use time wisely.

S - START! GET ORGANIZED AND GO. Getting started is the most important step in the process, and procrastination refers to any excuse we find for putting off the process of achieving success.

Back at the Inn, the Stranger "relaxed in the warmth of the fire," pleased to think that these simply tools and fundamental principles could help anyone to "lead a fuller, more enjoyable, satisfying, and productive life." Beware: sometimes it's not wise to listen to strangers! In the final analysis, what I want to accomplish is not as important as knowing that I am successful in God's eyes.

(The Word for the Week, a weekly fax letter from Success Insight)

Training Session Photos



Andy Nelson
Dallas Morning News



Lorenzo Vigilante
The Eagle



Camile Olson
Guest Speaker



Ben Morgan
TCMA President



Chris Bradford
Brownwood Bulletin

Don't Miss the Boat!

by **Lorenzo Vigliante**

Someone once said, "There are no new ideas—everything you can think of has been thought of before."

While I'm not sure of the accuracy of that statement, it is true that most of the innovative tools we use originated from some other source. As we set out to achieve our goals and objectives, we look at what others have done and to what degree they were successful in doing it. Then we take those ideas and add our own touch of creativity.

In the busy world of newspaper circulation, it is important to find sources and tools that have proved

successful. Whether it is special products, services, consultations, or whatever, the 1998 TCMA Buyer's Guide will be an easy-to-use resource tool. The vendors who support our organization by advertising have "been-there, done-that," and they know what works and what does not.

The buyer's guide will also be a great communication tool way to "toot your own horn" through an ad for your newspaper.

The deadline is July 1, 1998; just around

the corner, so don't miss the boat on this opportunity.



More Training Session Photos



Darrell Boenker
Houston Chronicle



Mike Tieman
Bay City Daily Tribune



Kelly Roberts
Dallas Morning News



Richard Kitmann
RAK Systems



Doug Windsor
Houston Chronicle



Steve Jordan
Houston Chronicle

James Smith
Secretary, TCMA
Houston Chronicle
801 Texas Avenue
Houston TX 77002

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Houston TX
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TCMA

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