

## Fall Conference Dates Set For San Antonio

First Vice President and Program Chairman, **Lorenzo Vigilante**, has announced the TCMA Fall Conference will be at the Adam's Mark Hotel in San Antonio October 10-14, 1999.



**adam's mark** A golf tournament is planned for Monday, October 11, 1999, and the conference gavel will fall on Tuesday, October 12, 1999, to begin a super conference. The President's Dinner is being planned for a popular location near the Alamo. That event will be worth the cost of going to San Antonio. On Wednesday evening, we will conclude the conference with the COTY Awards.

The host newspaper, the San Antonio Express-News is actively involved in making sure your time is well spent in San Antonio.

The Adam's Mark Hotel is located at 111 Pecan Street within easy walking distance to the famed RiverWalk. For you shoppers, don't forget the River Center Mall is also downtown not far from our hotel.

Members with e-mail addresses on file received an advance notice of the conference with links to the hotel and the Express-News.

The program is still under development awaiting commitments from speakers. It promises to be an educational time. The overall emphasis this year is home delivery. In addition, there will be several proposed by-law changes to be discussed.

Now is the time to get your room reservation. Rooms at the Adam's Mark have been reserved at a special conference rate of \$149.00 per night. Act now to ensure you have a room at the conference hotel.

Call (210) 354 2800 for reservations or the central Adam's Mark Reservation service at 1 800 444 ADAM (2326). Be sure to mention you are with the Texas Circulation Management Association to receive the conference rate.



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### Special points of interest:

- Adam's Mark San Antonio site for Fall Conference
- Marketing for New Millennium
- Former TCMA President Dies
- Meet Eddie Goll, TCMA Director

# Legally Speaking

By L. Michael Zinser TCMA General Counsel



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## "A restricted railroad ticket, good for this day and train only"

On December 31, 1998, the Texas Supreme Court decided that The Kirby Co., a vacuum cleaner manufacturer, was liable for a sexual assault committed by its independent contractor's independent contractor. By analogy, that is equivalent to holding a publisher responsible for a sexual assault committed by a newspaper carrier's substitute or holding a publisher responsible for a newspaper distributor's independent newspaper carrier. While certain to generate much commentary, the court specifically limited its holding to the specific facts of the case.

Kirby's distributor (Sena) was an independent contractor. The distributor's dealer (Carter) was also an independent contractor. Kirby's contract with Sena made the following requirement of the dealer:

*Dealer fully understands that in order to protect and maintain The Kirby Company's trade name, reputation and competitiveness in the marketplace, Kirby Systems must be sold exclusively to consumer end-users by in-home demonstrations.*

Carter provided Sena with three references and three prior

employment. Sena checked none of them. Had he checked he would have found "that women at Carter's previous places of employment had complained of Carter's sexually inappropriate behavior." He had also been arrested on a charge of indecency with a child. Plaintiff (Read) was sexually assaulted by Carter in her home.

Because Kirby required in-home demonstrations, thus retaining control of that portion of the distributor's work, the court ruled that Kirby owed a duty to Read to exercise reasonable care in imposing the in-home demonstration. The court said this was true even though Kirby had no right to control Sena's dealer selection process. For the court, the touchstone to impose the duty was Kirby's requiring in-home demonstrations.

The court went on to note in the distributor's testimony that if Kirby had directed him to do so, Sena (the distributor) would have conducted a background check on Carter. Sena would have learned of Carter's problems and therefore would not have contracted with Carter. "Kirby dealers, required to do in-home demonstrations, gain access to that home by virtue of the Kirby name. A person of ordinary intelligence should antici-

pate that an unsuitable dealer would pose a risk of harm."

Justice Hecht wrote a vigorous dissent, concluding that well settled law would allow Read to get compensation from Sena and Carter only. Recognizing the majority's contortions to get money from a deep pocket, Justice Hecht concludes:

*The Court tries as much as it can to prevent its decision from impacting a multitude of businesses similar to Kirby's. A decision aimed at a result may not be consequential, but result-directed decision-making is more serious. A Court that departs from settled principles in one case may do so in another no appellate court decision should turn out to be 'a restricted railroad ticket, good for this day and train only'; certainly, no decision should be designed with such restrictions.*

Editor's Note: Caution is urged to anyone who may decide to use this case to impose controls over the business of independent contractors. The court limited the case to the peculiar requirement of in-home demonstrations. Let's not overreact to this decision.

## Spring Seminar Planned

# Marketing Circulation for the New Millennium

**John Whaley**, Circulation Director for the Lubbock Avalanche-Journal, has planned a super two day Spring seminar in May to be held in Austin.

Topics such as Circulation Challenges in the Community Newspapers, Relationship Selling/Event Marketing and Low Cost or No Cost Retention ideas are just a few of the topics that will be addressed at this year's seminar.

John has invited speakers from Dallas, Austin, Amarillo, and Augusta, Georgia. The seminar will be a time of new ideas and tried and true practices. Don't forget the Hot Ideas Breakfast on Friday morning that will be hosted by **John Whaley** himself.

There is a registration form enclosed with this newsletter. You will want to make your hotel reservations now by calling the Holiday Inn-South in Austin (512) 448-2444. The seminar will start at Noon on Thursday, May 13, 1999 and conclude at 12:00 Noon on Friday, May 14, 1999. Hotel rates are \$69.25 for a single and \$79.25 for a double plus tax. When making your reservation be sure to mention the key work "AUSSO" to identify our association group rate.

During the breaks at the seminar, the following individuals and companies have agreed to sponsor the refreshments:

|                        |                                 |
|------------------------|---------------------------------|
| <b>Richard Kitzman</b> | <b>RAK Systems</b>              |
| <b>Howard Huffman</b>  | <b>Parade Magazine</b>          |
| <b>Rick Hively</b>     | <b>Wilson-Gregory Insurance</b> |

Don't delay! Make your plans now to be in Austin on May 13, 1999 at the Holiday Inn-South for the 1999 TCMA Spring Seminar! We will look for you!



**Holiday Inn**

**Holiday Inn-South**  
3401 South IH 35  
Austin Texas 78741  
512 448 2444 Key word AUSSO

## ***Building Relations with Retailers***

Single Copy Merchandising is a critical element in increasing sales and building the brand. Although the responsibility goes beyond the bounds of the circulation department, there's a need for circulation executives to better understand the needs of grocers and convenient store management. Single copy managers also need to deliver a message to their retail partners: The newspaper can play an important role in attracting shoppers, building traffic and increasing sales. Two stories – *Help us to help you: Newspapers and Grocers are Natural Partners and Success in Building Partnerships with Supermarkets* were developed by the NAA staff for publication in popular grocery trade magazines.



# Eddie's Supply Started in 1993

By Eddie Goll



Ms. Eddie started Eddie's Supply Company in 1993 as a distributor for Alliance Rubber Bands. In 1994, she expanded to include American Locks and a full-line of circulation supplies. Eddie gives personal service to all of her customers regardless of the size of the order.

Eddie has been married 36 years to Frank Goll. The Golls have two children, J.R. (Frank, Jr.) and Tonni, and two grandchildren, Amanda and Bobby.

An active civic leader in her community, Eddie has been a member of the Towne and Country Optimist Club since 1994. Eddie is now President Elect of the San Antonio Downtown/South West Optimist Club.

Eddie says she will treat her customers fairly and give the best customer service available to everyone.



Your TCMA Board is still building a list of e-mail addresses. Over **ninety four** of your fellow members receive updates and advance notices of 'what's happening' in the TCMA.

Won't you join us? Send your e-mail address to [tcma@chron.com](mailto:tcma@chron.com) and you will be included. When important information arises that needs to be communicated, you will be sent an e-mail.

Do it today!



## In Memoriam

**Charles Harriman**, 72, retired circulation director for the Houston Chronicle, died Monday, February 1, 1999. He had been in poor health for several years after heart surgery.

He started in 1954 as an independent distributor and became a Chronicle employee in 1967, serving as state and city circulation manager and circulation director. Harriman served as TCMA President in 1981.

After retiring in 1986, Mr. Harriman owned and published several weekly papers in Central Texas.

Harriman is survived by his wife Luetta; six children, Holly Rogers, Terry Harriman, Mark Harriman, Marta Pate, Chap Harriman, and Cara Bockholt. Harriman had 19 grandchildren.

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# BETTER THAN SILVER OR GOLD

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Abraham Lincoln has an enduring reputation as a man who was fair, trustworthy, honest, sincere, straightforward, and truthful—a man of character. Ample proof of these attributes is found in Donald Phillip's *Lincoln on Leadership*. Today we continue to celebrate the birthdays of Washington and Lincoln, and recall their contributions to our nation. More than 130 years after his death, Lincoln's reputation for honest and integrity is unblemished. Note these ways in which his character was revealed:

- Lincoln refused to deal with people he knew to be dishonest. His philosophy, "Stand with anybody that stands right...stand with him while he is right and part with him when he goes wrong." Many of his anecdotes were directed at liars and swindlers, and he dismissed from his service any individual known to have engaged in any impropriety.
- Lincoln rose above unjust criticism. Although he was frequently slandered and libeled, he handled with grace the criticism directed at him. He did so by (1) ignoring it. He often avoided reading anything that contained an attack on him, not wanting to be distracted from the work he had to do; (2) by refuting it. He did this only when he felt the accusations against him were important enough to make a difference, or if they damaged the view of his principles; (3) by deflecting it with humor. He often responded to unjust criticism with amusement and wit. Bottom line: Lincoln had a confidence in his ability to know right from wrong, so he did not let himself become intimidated by opposition or adversity.
- Lincoln was remarkably consistent throughout his presidency. This consistency was evident in the way he treated people, the way he made assignments and promotions, and the way he managed the government. His dependability inspired trust and became a trademark of his administration.

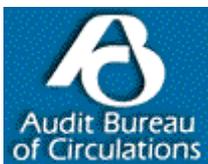
"A good name is more desirable than great riches." Pr. 22:1 Character is developed in the crucible of everyday choices and decisions. Character had been described as "who you are when no one is looking." Phillips reports Lincoln dressed in "black, dull, ill fitting clothes and rarely combed his hair," yet he is still respected as a model of character and integrity.

*The WORD for the Week, a weekly fax letter from Success Insight.*

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## ABC Form Gets First Passage

At their November meeting in Chicago, The Board of Directors of the Audit Bureau of Circulations gave first passage of a new optional report format for U.S. daily newspapers. The new format will allow newspapers to report up to 30 percent of their total distribution as "other circulation." The ABC Board also endorsed the Readership Profile Service. This service is a mechanism for reporting newspaper readership. Lisa Cody-Smith, NAA's Director of Circulation Marketing provides a summary. *If you have questions or comments about the most recent ABC rule changes, contact the NAA's Circulation Marketing Department or The Audit Bureau of Circulations directly at (847) 605-0909 or <http://www.accessabc.com> for details.*



## Adam's Mark Hotel, San Antonio, Texas

### Location

- Downtown on The Riverwalk in the heart of the business district, within walking distance of The Alamo, Convention Center and Hemisfair Plaza.

### Accommodations

- 410 luxurious guest rooms including 4 suites with parlor and wet bar, remote control TV, in-room movies, two phones per room (one with data port), voice mail, oversized desk, non-smoking and handicapped accessible rooms available.

### Special Features

- Outdoor pool
- Complete health club
- Sauna, Jacuzzi
- Gift shop
- Express checkout
- Safe deposit boxes
- 24-hour room service
- Same-day dry cleaning, laundry
- Covered self parking and valet parking

### Dining & Entertainment

- **Restaurante Marbella** -- Spanish decor and exhibition kitchen serving breakfast, lunch and dinner.
- **Tiffany Rose** -- Intimate lobby lounge featuring live entertainment.
- **Players** -- Lively sports bar with large screen TVs, great beer selection and deli-style menu.

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|--------------------------|------------------------------|------------------------------------|
| <b>Andy Nelson</b>       | <b>President</b>             | <b>Fort Worth Star-Telegram</b>    |
| <b>Lorenzo Vigliante</b> | <b>First Vice President</b>  | <b>Bryan-College Station Eagle</b> |
| <b>Chris Bradford</b>    | <b>Second Vice President</b> | <b>Brownwood Bulletin</b>          |
| <b>John Whaley</b>       | <b>Director</b>              | <b>Lubbock Avalanche-Journal</b>   |
| <b>Jo Linda Bishop</b>   | <b>Director</b>              | <b>Palestine Herald-Press</b>      |
| <b>Paul Jauma</b>        | <b>Director</b>              | <b>Houston Chronicle</b>           |
| <b>Lane Aten</b>         | <b>Director</b>              | <b>Valley Morning Star</b>         |
| <b>Eddie Goll</b>        | <b>Associate Director</b>    | <b>Eddie's Supply</b>              |
| <b>Jim Delaney</b>       | <b>Associate Director</b>    | <b>Spanlink</b>                    |
| <b>James Smith</b>       | <b>Secretary</b>             | <b>Houston Chronicle</b>           |
| <b>Ed Dorsey</b>         | <b>NAA Federation</b>        | <b>Dallas Morning News</b>         |