

# Lone Star Review

## 2013 Centennial Roundup!

What an exciting year awaits TCMA Members. The Texas Circulation Management Association will celebrate its 100th Anniversary in 2013. This is no small feat! Just think of the organizations or companies in your lifetime that did not even make it to 50 years! The landscape is littered with professional organizations/associations that disbanded.

TCMA was the first of its kind when it was founded in 1913 by the Circulation Managers of the Houston Chronicle and the Fort Worth Star-Telegram. They met at the Fort Worth Elk's Club on September 18, 1913, for the purpose of establishing an Association for Circulation Managers in Texas. The original name was Texas Circulation Managers Association but was changed in the 1970's to include anyone in a Management position at a Texas newspaper.

The Board of Directors is working to prepare an evening with a historical look at the past. Since I became Secretary in the late 1990s I have accumulated many photographs of our conferences and Board of Directors and Presidents. Some of my photos are prints and I can scan them but many are digital.

If you have any photos or other memorabilia (goody bags, trinkets, etc.) you would like to share for the conference I would welcome the opportunity to speak with you. I will scan the photographs and return them to you before the conference. I would like to have a historical table to showcase any other items from past conferences.

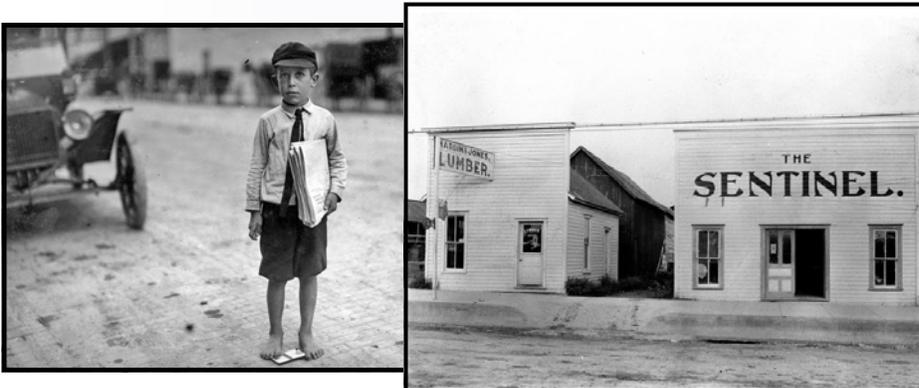
If you would like to participate please let me know by sending me an email with your phone number and I'll call you to work out the logistics. Send your email to [tcma@texascma.org](mailto:tcma@texascma.org)

### Inside this issue

- 2013 Carrier of the Year..... 2
- President's Message ..... 3
- TCMA History..... 3
- 2013 Membership Renewal ..... 4
- Memoriam..... 4
- 100th Celebration Details ..... 5
- Welcome New Members ..... 5
- Zinsergram..... 6-7
- Lone Star Review Sponsors ..... 8

### Special points of interest

- 2013 Centennial Roundup
- TCMA History



## 2013 Carrier of the Year Competition

The 2013 Carrier of the Year (COTY) applications, deadlines and instructions will be arriving in your email inbox in a few days.

Does your newspaper have an on-going carrier recognition program? The TCMA COTY award program recognizes the best of the best. Each year you have the opportunity to nominate your carriers and/or your district managers/distributors. They are on the front lines every day, in all kinds of weather, delivering newspapers to our subscribers. In some cities carriers are even delivering multiple products.

### Online Applications

The 2013 Applications will be online soon. It takes only few minutes to complete the application. Just a click sends your application to TCMA! Go to [www.texascma.org](http://www.texascma.org) and then to the Carrier of the Year page. This year's COTY nominating process will be entirely online. If you do not want to send your nomination by using the online process a PDF form will be available for you to print and mail or fax. You will also be able to forward the email to all your Distributors or District Managers without having to print and deliver paper copies.

Check out the videos from 2007 through 2012 on the TCMA web site to view previous winners. Every newspaper has some deserving carriers needing to be recognized. Nominate them today.

## What is the Carrier of the Year Award?

The TCMA Carrier of the Year Award program began decades ago. TCMA wanted to honor the best newspaper carriers in all of Texas. Some say anybody can deliver newspapers as it is a simple job. Really? If that is your approach then I would suspect your turnover rate is quite high among carriers at your newspaper.

However, if you properly recruit and show the carrier the best methods for delivering the newspaper then you will have a long time carrier. Take a look at some of the past winners on the TCMA COTY web site. These folks love their job! Many newspapers already have a program to honor their best carriers and the TCMA Award program makes your job easier. You can nominate your in-house winners. If you lack the funding to have an internal recognition program for your carriers then the TCMA Award program is for you.

There are four categories for the TCMA Award. There are two categories in Home Delivery, one in Single Copy, and a category for the District Manager/Independent Distributor. The first step is to submit a nomination. You may want to print the nomination form to complete and then go back to the web site to submit the nomination. After the nomination forms are received the COTY Chairperson will select a committee at his/her newspaper to select three finalists in each category. The finalists are notified and asked to prepare a five (5) minute video/DVD or PowerPoint presentation answering several questions that will be provided. Once the video has been completed the TCMA Board of Directors will view each nomination and video to select a winner. The nomination counts as 60% of the determination and the video/DVD as 40%.

The Carrier of the Year winners are invited to a luncheon/dinner held in their honor at the Annual Conference. The winners are presented a commendation from the Governor of Texas along with a financial prize from TCMA. The COTY winner's Manager is also invited to the Annual Conference at no cost for the Conference fee. With the Centennial Celebration/Conference next spring this would be a great year to have a winner from your newspaper. If you have questions or need additional information contact me at [tcma@texascma.org](mailto:tcma@texascma.org) —J W Smith

## A Message from our President

My participation on the TCMA board is a result of my relationship with Erik Buck from our neighbors at the Longview News-Journal. Maybe you see where I am going with this.

All of us have debated at some point or another the purpose for which a potential consumer picks up our newspaper. Our paper's Advertising Director and VP of Sales and Marketing are both very pleased to inform anyone interested that everyone buys a local paper to see the ads; how is one to know where the deals are today if they don't pick up a local newspaper? Don't take my word for it, run an ad this week and see for yourself! I don't believe any of us would expect any less confidence from our editors as they would very gracefully create a word picture to help us see the fact that everyone in our community picks up a local paper for outstanding journalism; quality writing about local on goings that will not be found anywhere else. On this planet. Period. *Please respond with a letter to the editor.*

I started working for our family owned newspaper in 1989; I was probably 4 years old at that time. I have been fortunate during my tenure with this newspaper and I am very grateful for the opportunity to have worked in just about every department as I learned about the many contributions of our industry to our great community and the value of forged relationships along the way. While assisting sales staff in selling advertising, developing editorial content, designing, producing, or marketing and distributing our product, I have been involved in every aspect of the great debate over why anyone picks up a newspaper.

While I must admit that I enjoy conflict more than most, I have worked very hard to learn to listen to those before mentioned perspectives. Through years of journalists' and advertising executives', readers' and advertisers' comments, I can only offer you one absolute fact: It isn't really about either, our industry became a success as a result of our relationship with our community (please remember that I never claimed that I would share anything with you didn't already know). Quite frankly, we have all heard the clichéd "praises" of others' opinions or perspectives. I only encourage you today to contemplate this fact, as well as your perspective of your many other relationships, what they have done for us as an industry and challenge you to review the relationships that you have control over.

As smart phone apps, Internet access and social media adds more events and to-do's to an already busy schedule that continues to steal time away from all of our personal relationships, three important relationships come to my mind right away; the relationships

*(Continued on page 5)*



## TCMA History

### Conference locations beginning with 1914

|                              |           |
|------------------------------|-----------|
| <b>Bryan/College Station</b> | <b>1</b>  |
| <b>Harlingen</b>             | <b>1</b>  |
| <b>Kerrville</b>             | <b>1</b>  |
| <b>Longview</b>              | <b>1</b>  |
| <b>McAllen</b>               | <b>1</b>  |
| <b>Midland</b>               | <b>1</b>  |
| <b>Abilene</b>               | <b>2</b>  |
| <b>Amarillo</b>              | <b>2</b>  |
| <b>Brownsville</b>           | <b>2</b>  |
| <b>Corpus Christi</b>        | <b>3</b>  |
| <b>Laredo</b>                | <b>3</b>  |
| <b>S Padre Island</b>        | <b>3</b>  |
| <b>Beaumont</b>              | <b>4</b>  |
| <b>El Paso</b>               | <b>5</b>  |
| <b>Galveston</b>             | <b>7</b>  |
| <b>Houston</b>               | <b>10</b> |
| <b>San Antonio</b>           | <b>11</b> |
| <b>Austin</b>                | <b>12</b> |
| <b>Fort Worth</b>            | <b>13</b> |
| <b>Dallas</b>                | <b>14</b> |

## 2013 Membership

TCMA By-Laws require the Secretary to mail membership renewal notices each November for the following year. You will want to be listed as a member of TCMA for the Centennial Year!

Be sure to watch for your membership renewal notice in the November 2012 issue of *Lone Star Review*.

Your membership fee enables the Association to provide a quarterly newsletter as well as supporting the Carrier of the Year Competition. It is the membership fee that supports TCMA. **Our Conference is not open to the public but to TCMA Members only.**

A special offer will be made to our Vendor members this year to cover membership, a newsletter ad and buyer's guide ad for a one time payment. No more individual invoices for each service—unless that is your preference.

Don't forget! You can renew your membership online and use a credit card to pay for your membership and other services provided by TCMA.



## Memoriam

**John Walsh**, former TCMA Member and Senior Vice President of the Dallas Morning News for ten years, passed away on July 26, 2012, in Irvine, California. He died suddenly at just 61 years of age. He died of Esophageal gastric cancer.

John had recently become Executive Vice President of American Circulation Innovations (ACI) in Long Beach, California. He had also held previous executive positions at the Philadelphia Inquirer (PA), and the Orange County Register (CA).

A life celebration for John Walsh was held in Scottsdale, Arizona, on August 18, 2012. A John G. Walsh Scholarship Fund has been established at his alma mater, Michigan State University. If you would like to make a gift online you may do so at this web address: <https://www.givingto.msu.edu/gift/?SMID=A9002441> A pledge form is also available on the TCMA web site by clicking [here](#)



(Continued from page 3)

we have with our Savior Jesus Christ, our family and our community. I am certain we can all benefit from consistently evaluating these three relationships, carefully taking frequent inventory of the various perspectives we receive from those we surround ourselves with as we make well thought out decisions of how we might be able to strengthen each of these as we press forward.



**Bill Campbell**

I have no doubt that my newspaper will be successful through this culture change due to the focus of our ownership; how about you? Why will your company be successful? How do you value relationships? What is the current relevance of your newspaper in your community? Please share your thoughts with me at [bc@tylerpaper.com](mailto:bc@tylerpaper.com); I value you and your perspective and am again thankful for your participation in TCMA, our TCMA community and what the input of so many

great newspaper people has meant to our industry and my publication. I hope that each of you will be a part of the great celebration next year as TCMA celebrates its 100<sup>th</sup> anniversary. Begin now to spread the word so that we might grow even stronger during our next 100 years!

## Welcome New Members

**Chris Howell**  
Impact Marketing

### **2013 TCMA 100th Anniversary Conference**

**March 20-22, 2013**  
**Anniversary Celebration Dinner, Wednesday**  
**1 1/2 day Conference, Thursday/Friday**  
**Off Site Venue Thursday Night**  
**Lots of surprises!**



**Marriott Solana Hotel**  
**5 Village Circle**  
**Westlake TX 76262 (North Fort Worth)**



## Zinsergram a/k/a Legal Update

By L. Michael Zinser  
The Zinser Law Firm, P.C.

### NLRB QUICKIE ELECTION RULE ENJOINED

The NLRB had promulgated a new rule designed to take away an Employer's First Amendment right to campaign against a union in the period preceding an election. The rule was to take effect on April 30, 2012. On May 14, 2012, in a stinging rebuke to the NLRB, the U.S. District Court for the District of Columbia enjoined the rule. United States District Judge James E. Boasberg, *U.S. Chamber of Commerce et al v. NLRB U.S. District Court for the District of Columbia*, wrote:

According to Woody Allen, 80% of life is just showing up. When it comes to satisfying a quorum requirement, though, showing up is even more important than that. Indeed, it is the only thing that matters—even when the quorum is constituted electronically. In this case, because no quorum ever existed for the pivotal vote in question, the court must hold that the challenged rule is invalid.

On December 22, 2011, the NLRB published the new rule. Two of the Board's three members voted in favor of adopting the rule. The third member of the Board, Brian Hayes, did not cast a vote. Because Member Hayes did not participate in the decision to adopt the final rule, the other two members of the Board lacked the authority to effect its promulgation. According to the court, "Member Hayes cannot be counted towards the quorum merely because he held office." The court stated, "He need not necessarily have voted, but he had to at least show up. At the end of the day, while the court's decision may seem unduly technical, the quorum requirement, as the Supreme Court has made clear, is no trifle . . . . The Board lacked the authority to issue it, and, therefore, it cannot stand."

The final draft of the rule was circulated in the Board's internal Judicial Case Management System (JCMS). Both Chairman Pearce and Member Becker voted to approve the rule. Hayes did not vote, nor was he "asked by e-mail or phone to record a final vote in JCMA before or after the final rule was modified, approved by Chairman Pearce and Member Becker, and forwarded by the solicitor for publication December 16, 2012.

This case hinged on what constitutes "participation" in an electronic vote. The court raised the question, "When the very concept of a quorum seems designed for a meeting in which people are physically present in the same place, what does it mean to be present or to participate in a decision that takes place across wires? In other words, how does one draw the line between a present but abstaining voter (who may be counted toward a quorum) and an absent voter (who may not be) when the voting is done electronically?" Member Hayes did not vote on the adoption of the final rule when it was circulated through the JCMS system on December 16, 2011. When no vote or other response was received from Hayes, no one requested that he provide one, per the agency's usual practice. The U.S. Supreme Court clearly stated in a previous case that that Member may not be counted toward a quorum simply because he holds office. Member Hayes was sent a notification that the final rule had been circulated for a vote, but he took no action in response. He simply did not show up in any literal or even metaphorical sense. Had he affirmatively expressed his intent to abstain or even acknowledge receipt of the notification, he may well have been legally "present" for the vote and counted in the quorum. Had someone reached out to him to ask for a response, as is the agency's usual practice where a member has not voted, it would have been a closer case, but none of that happened here. The court stated: "In our world of in person meetings, Hayes' actions are the equivalent of failing to attend. Whether because he was unaware of the meeting or for any other intentional reason. In any event, his failure to be present or participate means that only two members voted, and the rule was then sent for publication that very day."



The Court ruled that the quorum requirement was a fundamental constraint on the exercise of the Board's power. The NLRB is a "creature of statute" and possesses only that power that has been allotted to it by Congress. As the final rule was promulgated without the requisite quorum and thus in excess of that authority, it must be set aside.

#### **NLRB BEGINS TO ATTACK AT WILL DOCTRINE**

Acting NLRB General Counsel Lafe Solomon, recently speaking at the Connecticut Bar Association annual meeting, indicated that blanket "at-will" statements in employee handbooks will face close scrutiny by the NLRB as the agency's next enforcement target. The "at-will" doctrine is a creature of state law. The NLRB's new initiative is usurping state law and individual contract rights. Apparently, Acting General Counsel Lafe Solomon is going to use the National Labor Relations Act to regulate what is a state law employment relationship.

In a recent case, the NLRB issued a complaint against Hyatt Corp., taking issue with the Company's handbook provisions, requiring employees to acknowledge they are employed at-will and that at will status may only be altered by a Hyatt Executive.

The complaint charged that certain employee *acknowledgement* provisions are overly broad and discriminatory (although not coercive):

"I understand my employment is at-will."

"I acknowledge that no oral or written statements or representations regarding my employment can alter my at will employment status, except for a written statement signed by me and Hyatt's President or Executive Vice President/COO."

"The at will's test of my employment can only be changed in writing, signed by the employee and one of two Hyatt executives."

Hyatt settled its case without litigation. However, in another case involving *American Red Cross*, an NLRB ALJ ruled that American Red Cross violated the Act with a handbook receipt provision, requiring employees to acknowledge that "the at-will employment relationship cannot be amended, modified, or altered in any way." The NLRB Acting General Counsel's position is that the employee's signing of the acknowledgement form is "essentially a waiver in which an employee agrees that his/her at-will status cannot change, thereby relinquishing his/her right to advocate concertedly whether represented by Union or not, to change his/her at-will status."

The NLRB's brief further argued that, "For all practical purposes, the employee acknowledgement requirement premises employment on an employee's agreement not to enter into any contract, to many any efforts, or to engage in conduct that could result in Union representation and in a collective bargaining agreement, which would amend, modify, or alter the at will relationship. Clearly such a clause would reasonably chill employees who are interested in exercising their Section 7 rights."

The philosophy of this new position of the Acting NLRB General Counsel is extremely dangerous. Every term of any employee handbook is potentially negotiable if the employees organize. For example, overtime, holidays, pensions, sick leave, etc. Why should "at-will" be any different? What if your handbook contains a provision that says overtime will all be paid after working forty (40) hours in a week? Under the NLRB's approach, that handbook provision would be invalid and overly broad because employees might misconstrue it as prohibiting any bargaining over the overtime premium issue. This is just nuts! It is probably going to take the U.S. Court of Appeals to fix this new problem.

# TCMA Lone Star Review Sponsors



**Robert Landis**  
President

Cell: 480.220.0131  
Office: 480.455.1511  
[www.cirtech.us](http://www.cirtech.us)  
[robert.landis@cirtech.us](mailto:robert.landis@cirtech.us)

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**L. MICHAEL ZINSER**  
PRESIDENT

414 Union Street, Suite 1200  
Nashville, Tennessee 37219  
Telephone 615.244.9700  
Fax 615.244.9734  
[www.zinsertlaw.com](http://www.zinsertlaw.com)

Area Code 615  
Residence 452.4357  
Residence Fax 452.2853  
Cellular Phone 302.7681  
Email: [mzinsler@zinsertlaw.com](mailto:mzinsler@zinsertlaw.com)



**Jeff Ferrazzano**  
President

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