

## President's Message

BY RUSS DAVIS



Russ Davis

"We must become the change we want to see." This quote by Mahatma Gandhi is still true today. Our industry is being bombarded by new and innovative challenges every day. Creating higher levels readership in our business seems to

be a topic on every newspaper's agenda. Knowing how to create and sustain a higher level of readership is one of our greatest challenges.

As Circulation executives we are accountable for a big part of growing readership. The dictionary defines accountability as: subject to having to report, explain or justify, responsible, answerable. In the book "The Oz Principle" by Roger Connors and Tom Smith they provide a new definition for accountability. It reads, "A Personal choice to rise above one's circumstances and demonstrate the ownership necessary for achieving desired results, see it, own it, solve it and do it." I really like the ownership approach this definition provides. To see something, then to own it, solve it and do it, what a concept. Most of us see what we need to do to lead our departments and have taken ownership, but solving and doing present us challenges. This is where our annual association conference comes into play.

In a couple of weeks (April 21- 23) the combined Cal-West and NICE associations will be putting on the 2011 Conference and an outstanding group of speakers have committed to help us solve some of our challenges and some tips on

how to do it. On the agenda will be a presentation from Jessica George, from ABC, regarding rule changes and updates. We will also get a look at the "Reader Rewards Program" used by the Baltimore Sun presented by Gary Olsewski. Matt Lindsay from Mather Economics will provide some metrics on Market Based Pricing-Econometrics, followed by tips and pointers on Paid Online Content from Keith Foutz, Corporate Director of Circulation Operations – Western Communications. On the last day we will be entrained by Michael Zinser as he holds his latest court and explains current legal issues. We will also learn how to lower CPO and increase sales and service capabilities using email and the internet from Scott Stines, President of Mass 2 One. Along with these presentations will be the opportunity to visit with our dedicated vendors, hear their ideas and see new products.

This looks to be a rewarding and informative conference with over 50 newspapers being represented. Networking and sharing with newspapers from all over the West should be enlightening and helpful in our cause to see it, own it, solve it and do it. If you haven't already signed up to attend the conference do so today. For more information regarding this year's conference go to: [www.cwcma.com](http://www.cwcma.com)

### HOW TO REACH US

**Secretary/Treasurer:**

Dale Irvine  
PO Box 778  
La Conner, WA 98257  
360-466-2006  
[nice@galaxynet.com](mailto:nice@galaxynet.com)

**President:**

Russ Davis  
Herald Journal  
435-792-7280  
[rdavis@hjnews.com](mailto:rdavis@hjnews.com)

Visit our website at:  
**WWW.NICEX.ORG**

# Legally Speaking

L. Michael Zinser • NICE General Counsel

This month we report on an independent contractor victory at *The Intelligencer* in Pennsylvania, an arbitration victory at *The Register-Guard* in Oregon, and another independent contractor victory at *The Herald Bulletin* in Indiana.



L. Michael Zinser

## 1. Another Keystone state independent contractor victory

In what seems to be an epidemic, *The Intelligencer* had to defend its independent

contractor relationship with an admitted independent contractor due to the ambitions or errors (depending upon your view) of the Commonwealth. At issue was an independent contractor, Craig, who honestly informed Pennsylvania of his profits as an independent contractor while collecting unemployment from a former employer. Pennsylvania then misclassified *The Intelligencer* as Craig's employer, a determination *The Intelligencer* had to appeal. And, incredibly, the claim processed although Craig admitted he was still an independent contractor for *The Intelligencer* at the time of the appeal. Referee Sandra Henderson corrected the error, concluding that Craig was an independent contractor. The facts established:

- *The Intelligencer* did not provide any day to day supervision of the claimant;
- *The Intelligencer* did not control the claimant's territory and claimant was free to grow his route and sell newspapers to anyone he chose to;
- *The Intelligencer* only required the timely delivery of a dry readable newspaper;
- Craig used his own vehicle, paid for his own supplies, could hire helpers, did not receive benefits, and entered into an independent contractor agreement with *The Intelligencer*;
- Craig "was free from substantial

direction and control by *The Intelligencer*;"

- Craig was free to distribute other products and could even bundle competing newspapers with *The Intelligencer* in the same polybag;
- *The Intelligencer* sold Craig supplies, but Craig was able to purchase supplies from any source

*Editor's note:* The Zinser Law Firm represented *The Intelligencer* in this case.

## 2. Manning table is not applicable to "commercial work"

Arbitrator James Dworkin, on December 17, 2010, denied in its entirety a grievance filed by Teamsters Local 206. Arbitrator Dworkin ruled that Guard Publishing Company, publisher of *The Register-Guard*, had the right, under the Reserved Rights Doctrine, to staff the printing of a commercial job as it determined in its management discretion.

The collective bargaining agreement has a manning table that requires staffing at certain levels. The manning table refers to the printing of "the daily product." The union stipulated that the daily product is the daily newspaper, *The Register-Guard*.

A previous collective bargaining agreement contained a second manning table for printing items other than the daily product. *The Register-Guard*, in negotiations, proposed to delete this table in its entirety. The union, without much comment, agreed to the deletion of that manning table for printing items other than the daily product. Ruling in favor of the employer, the arbitrator ruled that Guard Publishing Company has the right "to determine manning levels for these commercial jobs under the Reserved Rights

Doctrine. There is no language in the collective bargaining agreement nor is there any past practice which would limit the employer's ability to determine manning levels on its press when printing jobs other than its daily product."

*Editor's note:* Guard Publishing Company was represented by The Zinser Law Firm.

## 3. NLRB denies review of *The Herald Bulletin* in Anderson, Indiana

By an order dated January 10, 2011, a three-Member panel of the NLRB (Chairman Wilma Liebman, Craig Becker and Mark Pearce) denied the request for review of Teamsters Local 17M. As reported in the November 2010 issue of *LawLight*, the Teamsters were appealing a decision of the NLRB Regional Director in Indianapolis that the newspaper carriers of *The Herald Bulletin* in Anderson, Indiana are independent contractors. NLRB Chairman Wilma Liebman has been vocal about her dissent in *St. Joseph News-Press*, the controlling federal precedent on the issue. This writer had predicted that the NLRB might try to use *The Herald Bulletin* case as a vehicle to overturn *St. Joseph News-Press*. This is great news that they have allowed the independent contractor decision in Anderson, Indiana to stand. In a footnote of the January 10, 2011 order, Chairman Liebman emphasized that she dissented in *St. Joseph News-Press* and *The Arizona Republic*: "In the absence of a current majority to revisit these cases, she recognizes that they are extant law and she applies them, for institutional reasons, for the purpose of deciding this case." That footnote is ominous. Newspaper industry—stay tuned.

# “AH HA” moment

by Wyatt Gardiner

I recently I had an “AH HA” moment that proved to have some great application to daily work life. Let me share the experience and a few of the “AH HA’s” with you.

I am the father of three young kids. My life revolves around them. A few days ago my 6 year-old kindergartner proceeded to lecture me on my bad attitude. She informed me that if kids in her class are a “Negative Nellie” they would have to go to time out. “Do you want to go to time out daddy?” As I watched my daughter walk away with a proud look on her face and my wife with a huge smile of agreement on her face my anger turned to disbelief. I had to be chastised by my 6 year-old daughter in order to get my act together. It was an event that I do not want to repeat, but taught me a few valuable lessons. I use the term “call to action” with my staff quite often, and this experience was a definite call to action for me. It forced me to reflect on

my “issues” and what I can and should be doing a bit different. I have tried to incorporate a few of the nuggets I took away from that experience into my daily work life. Here are a few things that I am trying to focusing on: The owner of our paper always says “Attitude is everything”. I have to agree (not just because he signs my paycheck). When I come to work with a “Negative Nellie” attitude it affects a lot more than just me. It dampens the spirits of my entire staff, which is certainly not fair to them.

Try and lighten the mood in the department. With every circulation department doing more with less there is a fair amount of pressure put on all staff members to perform at a high level. Enjoy a few of the lighter moments with staff. Hey, there is a ton out there that can get us down, but there is plenty to smile about as well. Take the time to “stop and smell the roses” and help staff do the same.

When you have a success whether it is large or small make sure you celebrate it and thank those that put in the effort to make it happen. That thanks does not need to come in the form of monetary gain, a simple note of thanks goes an awful long way. When that success doesn’t come pouring in it might be wise to take a few moments to reflect on lessons learned. Albert Einstein said “The definition of insanity is doing the same thing over and over again and expecting a different result.” Don’t go insane - Make sure you jot down some notes of what worked and what didn’t so you are prepared for next time.

These things seem pretty intuitive to me, but I needed the reminder. I am glad I had help identifying the “Negative Nellie” in me.

Wyatt Gardiner  
Circulation Director, The Wenatchee World  
gardiner@wenatcheeworld.com  
(509) 664-7120

NICE, PO Box 778 • La Conner, WA 98257

Montana  
Alberta  
Oregon  
Alaska  
Utah  
Idaho  
Montana  
Washington  
Saskatchewan  
British Columbia



## Full Program Information

Full program information for the combined NICE and Cal-West conference in Reno, Nevada, April 20-22, 2011, is now available at: [cwcma.com](http://cwcma.com). Over 100 newspaper executives and vendors have already signed up for this conference. If you haven't already registered, you can do so on line at: [cwcma.com](http://cwcma.com)