

N.I.C.E. News

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President's Message

BY RUSS DAVIS



Russ Davis

Harold Whitman once said, "Don't ask yourself what the world needs; ask yourself what makes you come alive. And then go and do that. Because what the world needs is people who have come alive."

One thing that helps me come alive is the annual NICE conference. Each year I come away with new energy and ideas. And this year's conference, which was held onboard the ms Oosterdam, was especially energizing. With the conference theme: Unleash the Power to Grow Circulation and the powerful presentations from L. Mike Zinser, Steve Wagenlander and Mark Henschen, everyone who attended came away with some good ideas. Plus the fact that each presenter's meeting was in a different part of this beautiful world we live in made it even more unique. Mike Zinser's legal presentation took place outside scenic Victoria, British Columbia. Steve Wagenlander's energizing 25 Ways to Grow Circulation took place along the shores of Astoria, Oregon. And Mark Henschen's Unleash the Power Within was presented miles offshore on the Pacific Ocean. The ms Oosterdam's crew and staff provided awesome food and entertainment, along with a unique way to mingle with circulation professionals and vendors in an inspiring, learning environment.

Here are some of the comments from this year's conference participants: Very informative. Great handouts! Ton of ideas to grow circulation and revenue. Very impressive presentation, how to build morale, leadership, etc. Great speakers! Great ideas to take back. Good exchange presentation of ideas and promotions. Helps me to realize self-improvement is never ending. Great ideas and it was very refreshing.

Awesome!!! Loved the handouts. Helpful to visualize ideas, hope to put some of this to practice. As good as it gets. Lots of great ideas to work from.

To use the words of Andrew Carnegie, "It marks a big step in your development when you come to realize that other people can help you do a better job than you could do alone." The NICE conferences are designed to do just that - help in your development as a circulation professional. We, the NICE board, welcome any suggestions, thoughts and ideas on how the NICE association can help in developing your staff of circulation professionals. Please submit suggestions to any of the following board members:

Steve DeVore, Board Chairman, sdevore@lagrandeobserver.com; Eileen Widdison, 1st VP, ewiddison@thedailycourier.com; Jodie Krueger, 2nd VP, jodiek@circ.oregonian.com; Jim Crawl, 3rd VP, jcrawl@dnews.com; Ed Navarro, One year Director, Navarro@wenworld.com; Tim Coles, Two year Director, tcoles@salem.gannett.com; or myself at rda-vis@hjnews.com.

We look forward to your suggestions and ideas in planning next year's conference in Vancouver, Washington. The dates are set as May 6th, 7th, & 8th. The Columbian is looking forward to hosting next year's event at the new Hilton.

Special thanks go to Dale Irvine, NICE Secretary-Treasurer, and Theresa Kehrli, AAA Washington, for putting together an outstanding conference onboard the ms Oosterdam. All of us who attended the 2007 conference have been energized and for some of us a little heavier. The dining experience with fellow circulation professionals was first rate.

As the old Chinese proverb says: "A bird does not sing because it has an answer; it sings because it has a song." Let's all sing the song of the outstanding 84th Annual NICE Sales Conference that just concluded. Once again, thanks to all who helped make it a success.

Legally Speaking

by L. Michael Zinser • NICE General Counsel

This month's column reports on an independent contractor victory for USA TODAY, an important email case involving The Register-Guard in Eugene, Oregon, and a practical tip for managers concerning email communication.

1. USA TODAY independent contractor victory remains intact

On January 13, 2007, the California Unemployment Insurance Appeals Board (CUIAB) confirmed the independent contractor ruling of ALJ June Nelson, preserving USA TODAY's victory over the Employment Development Department. The bottom line is that USA TODAY's newspaper carriers statewide are independent contractors, and USA TODAY will not owe hundreds of thousands of dollars in unemployment taxes to the state of California. This is a great victory for California newspapers!

Significantly, the CUIAB found that the newspaper business typically contracts out distribution. USA TODAY's distribution method is thus customary within the newspaper industry. The CUIAB further found that the evidence supports that the fees paid to the newspaper carriers are negotiable. The CUIAB ruled that the "EDD and the Appeals Board are bound by properly promulgated regulations unless such regulations violate some specific statute." The CUIAB goes on to note that the EDD did not identify such a statute, and the CUIAB could not find one either. The regulations (Section 4304-6 of the California Administrative Code) were crafted to take into consideration industry practice and to provide guidance as to the correct inference to be drawn from a specific practice. The CUIAB found that Judge Nelson's reliance on the regulations was proper.

Editor's Note: The CUIAB did the right thing in light of the complete record made by USA TODAY at the hearing before ALJ Nelson. Over seven days of hearings, USA TODAY presented both management and contractor witnesses who supported USA TODAY's argument that the contractors are independent contractors under the law. To prove industry practice, USA TODAY utilized California Newspaper

Publishers Association Executive Bryan Clark, who testified that newspapers statewide treat newspaper carriers as independent contractors for purposes of workers' compensation. The Zinser Law Firm represented USA TODAY.

2. NLRB schedules argument on The Register-Guard email case

On Tuesday, March 27, 2007, the National Labor Relations Board in Washington, D.C. will hear oral argument on The Register-Guard email case. The NLRB rarely schedules oral argument on any case. The fact that the NLRB has scheduled oral argument on its own motion indicates the importance of email. The case has been briefed and sitting before the NLRB since April 2002. The issues presented in the case include whether the union and/or employees have the right to use their employers' email systems (or other computer-based communication systems) to communicate with other employees about union or other concerted protected activities.

The Register-Guard's email policy prohibits the use of its email system "to solicit or proselytize for commercial ventures, religious or political causes, outside organizations, or other non-job-related solicitations." Guild Local 37194 filed unfair labor practice charges over the policy when the union president attempted to use the email system to communicate a message to 50+ employees.

Editor's Note: The Zinser Law Firm will represent The Register-Guard on March 27, 2007.

3. Resolved: I will write no stupid emails

Emails are constantly the subject of discovery in employment litigation, be that litigation before the National Labor Relations Board or in the Federal Courts. It is amazing what managers and executives will write in an email that is then recorded and stored on a computer. For whatever reason, people will write in an email messages that they would not even contemplate writing in a regular hard-copy letter on letterhead. Nevertheless, these stored messages are discovered and sometimes are very hurtful.

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N.I.C.E. Conferences in Perspective

Much has changed in the industry since this excited new college grad/circulation manager at his first paper attended his first N.I.C.E. conference in 1975. Yes, sales and service were on the agenda, but much of what we discuss today was not even dreamed of yet. What has not changed is the support and encouragement shared between the members. I can say I learned a lot at that first conference and all that followed that has enabled me to meet revenue goals, and stay above average in circulation growth at a number of newspapers over the past 30+ years as a CD.

Why is conference attendance down in recent years throughout the country? Distance? Short-staffing? Budget? Consolidation? These all come into play. However, this is a time it's even more vital for all newspapers to include training such as N.I.C.E. at the "top of the list".

I have never gone to a conference that I have not saved the small cost many times over, either through marketing ideas, cost saving measures, or revenue increasing ideas. I suspect this will continue as our role evolves and goes further from circulation tradition. There will be some exciting opportunities, but as we experiment further from core products, the communication with other newspapers will be critical.

One of the great advantages to the NICE conferences is that any member serious about his perfor-

mance and that of his newspaper can personalize the conference to his individual goals. The conferences go well beyond the guest speakers, with the opportunity to consult with dozens of experts in attendance. The relationships made at the conferences often result in a call for advice or to brainstorm later in the year.

One of my goals, and that of my fellow board members, is to make NICE even more meaningful to the member newspapers. During the next couple months, we will be surveying each member to find out what will benefit you and your newspaper the most during the coming years. We will be looking ahead and asking about speakers and topics you want to hear.

Don't lose out on the opportunity. We welcome your feedback, and encourage your participation at the next NICE conference. You and your newspaper will greatly benefit!

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Legally Speaking continued

Therefore, a manager's resolution is in order. In 2007, resolve to write no more stupid emails. When drafting internal emails to other managers and employees, assume that they may be discovered in litigation and guide yourself accordingly. String emails are another problem. Chances are, if you are thinking of sending an email to more than three people, it may be prudent to have a meeting rather than to disseminate an email that will be stored on your system.

Finally, adopt a policy that email communication from your attorneys will not be forwarded. Forwarded confidential communication gets mixed up with other

communication in a long string of emails. It is best to keep these communications pure.

NEWSLETTER ALL ELECTRONIC IN AUGUST

This will be the last issue of this newsletter printed and mailed. Starting in August the newsletters will be distributed electronically with, hopefully, lots of color. We have been sending the newsletter by mail and electronically the past year. The change will save us printing and postage costs.

2007 Conference Snapshots



Steve Wagenlander gave us 25 Ideas to Grow Circulation and Revenue.



Mark Henschen (left) showed us How To Unleash the Power Within while Mike Zinser presented Master Circulation Legal Strategies.



For More Conference Photos: Go to our website at WWW.NICEX.ORG

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