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May, 1998

Volume 69, Number 5

The Official Publication
of the Kentucky Press
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PRESS

Former official loses legal battle with paper

A former Russell County judge-executive has lost again in his effort to win defamation damages against The Russell Springs Times Journal.

The Kentucky Court of Appeals ruled April 24 that the editorial in question couldn't be construed as defamatory by even a layman's standard, much less by the standard for an elected official.

The lawsuit was filed by Terril Flanagan who lost his bid for re-election in 1993. Flanagan first sued the paper over three articles that appeared in the Times Journal in 1992 and 1993. A local jury awarded him \$1 million but the Court of Appeals threw out the award in November 1995. The appellate court ruled a public official must prove the newspaper published material it knew to be false or recklessly disregarded whether it was true or false. The test is called "actual malice."

The state Supreme Court and U.S. Supreme Court refused to review the Court of Appeals'

"This case really was, in my judgment, a clear cut case of a clean editorial written about current events about public figures and was very clearly protected — as well as being truthful."

Jon Fleischaker
KPA General Counsel

decision, thus putting an end to the first lawsuit.

The latest suit stemmed from an editorial printed on Jan. 13, 1994, after Flanagan had lost the election and about 10 days after the new administration took over. The editorial praised new judge-executive Charles Smith's position on a payroll tax, contrasting it with Flanagan's position on the tax.

KPA General Counsel Jon Fleischaker, who

was hired to represent the Times Journal after the \$1 million verdict, filed a motion to dismiss the second suit in Russell Circuit Court. Because the first case was still pending in appeal, Judge Eddie Lovelace held the case in abeyance since the issues involved were basically the same. When the U.S. Supreme Court refused to hear the first case, Lovelace dismissed the second lawsuit and the April 24 Court of Appeals' decision upheld that judgment.

Judge Sara Combs, in drafting the majority opinion, wrote that the editorial dealt with Flanagan's performance in office, so he had to prove actual malice.

"Construing the statements about Flanagan within the context of the editorial, we cannot find their 'gist or sting' to be defamatory even under a layman's standard — much less the more rigorous test of actual malice," wrote

See **BATTLE**, page 12

Smoky Mountains provide backdrop for convention

Joint KPA-TPA summer meeting in Gatlinburg offers fun, education

By **LISA CARNAHAN**
KPA News Bureau

If you still haven't made vacation plans for this summer, then KPA has a deal you shouldn't pass up. It includes golf, a theme park, and quality music entertainment in one of the premier vacation spots in America plus workshops on topics like Open Meetings and Open Records and Advertising Legalities.

What could possibly offer all this fun and provide a learning opportunity, too? It's the 1998 KPA Summer Convention June

18-20 in Gatlinburg, Tenn.

This year's convention is a joint meeting between KPA and the Tennessee Press Association. A similar meeting in 1995 in Gatlinburg attracted nearly 300 KPA members, the largest summer convention crowd of the past 15 years.

The activity gets underway Thursday at the Holiday Inn Sunspreet Resort with the KPA/KPS Board of Directors luncheon and meeting. Registration will also begin that afternoon.

The fun begins that evening with an opening reception at 6 p.m. at the Sunspreet. At 7:30 p.m., convention goers will head to the Dixie Stampede and Dinner Show. Those who made

See **CONVENTION**, page 12



"Think About the Game"

Jack Azman encouraged KPA members attending the 1998 Spring Advertising Seminar to be prepared to sell newspaper advertising before they leave the office. Azman, a newspaper veteran with 34 years of experience in bringing sales staffs up to top productivity, was the guest speaker. He said planning and practice are key elements of any "pre-game" strategy.

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Kentucky people, papers in the news

Lawhead named editor at News-Enterprise

Deedra Lawhead has been named editor of The News-Enterprise, Elizabethtown.

Lawhead, 30, joined the Elizabethtown news staff 16 months ago as education reporter and recently was named reporting team leader. Before coming to The News-Enterprise, she was a reporter — first on the city staff, then on the metro staff — for The Daily Herald, a 140,000-circulation paper in suburban Chicago.

She holds a bachelor's degree in journalism and political science from Southern Illinois-Carbondale and a master's degree in public affairs reporting from the University of Illinois.

Sparks, Bussell join staff at The News-Outlook

The Bath County News-Outlook has added two new faces to its staff.

Laurie Sparks, a senior at Morehead State University, will work in bookkeeping, typesetting and also the design and layout of the classified and courthouse news pages.

Sparks has served as photo technician for the MSU campus newspaper, The Trail Blazer, for the past two years. After graduation, Sparks says she hopes to get a job in newspaper pagination and designing Internet Web pages.

Kimberly Bussell, who previously worked at the newspaper for two years in the office/composition

department, has rejoined the staff as an advertising sales representative.

Along with selling ad space to area businesses and designing ads, Bussell will also be working in the newspaper circulation department. A Bath County resident for six years, Bussell says she first became interested in newspapers in high school where she served as editor of the Bath County High School yearbook.

was the 1997 winner of the KEA School Bell Award for outstanding coverage of school issues.

Kidwell to head state A.D. association

Lewis County Herald sports editor Gary Kidwell has been named president of the Kentucky High School Athletic Directors Association.

Kidwell is Lewis County Athletic Director and is also sports director of WKKS Radio. He was named president-elect for the 1998-99 year by the 200-member organization. His term of president will begin in the spring of 2000.

Holwerk named editor of Duluth newspaper

David Holwerk, longtime Lexington Herald-Leader news executive, has been named editor of the Duluth (Minn.) News-Tribune. He assumes the new position May 18.

Holwerk grew up in Lexington and graduated from the University of Kentucky. He has held several positions at the Herald-Leader including copy editor, reporter, Frankfort bureau chief, editorial page editor and most recently, managing editor.

During his tenure as editorial page editor, Herald-Leader staff writer Maria Henson won a Pulitzer for editorial writing.

Fulton Publishing marks 100th anniversary

Fulton Publishing Co., will mark its 100th anniversary on June 25. The first issue of the Fulton Daily Leader appeared on the streets of Fulton and South Fulton that day and the newspaper has published since that time without interruption.

A year-long celebration of the event is underway. Among the activities is a contest to locate the oldest Fulton Daily Leader. The newspaper will host an open house on June 25. Daily publication changed to weekly in 1989 and the newspaper's name became The Fulton Leader.

Former Oldham Era editor appointed to school board

Former Oldham Era editor Kit Millay-Fullenlove has been appointed to the Oldham County School Board.

Millay-Fullenlove will serve on the board for the remainder of 1998, filling the expired term of a Tim Feeley who resigned to run for state representative. She was editor of the Oldham Era for more than 13 years and covered the school board for nine years. She

Jobe Family Publishing buys Butler Co. paper

Roger and Deborah Givens have sold The Butler County and The Green River Republican Banner to Jobe Family Publishing.

See PEOPLE, page 11

— The Kentucky Press —

The Kentucky Press (ISSN-0023-0324) is published monthly by the Kentucky Press Association/Kentucky Press Service, Inc. Periodical-class postage is paid at Frankfort, KY. 40601. Subscription price is \$8 per year. Postmaster: Send change of address to The Kentucky Press, 101 Consumer Lane, Frankfort, KY. 40601, (502) 223-8821.

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Deaths

Kay Ellis

Longtime Voice-Tribune reporter and food columnist Kay Ellis died March 21 following complications from brain surgery.

Ellis was best known for her government and consumer advocate reporting and her food column appeared in the Courier-Journal, Louisville Magazine and The New Albany (Ind.) Tribune. Before coming to Louisville in 1991, she worked for news publications in Massachusetts, Rhode Island and Florida.

She taught English at schools in Rhode Island and New York before beginning her journalism career.

A funeral mass was celebrated March 24 at Holy Spirit Catholic Church where she was a member of the Parish Council. The family also planned to hold a memorial service in Rhode Island.

The family suggests memorial gifts be made to St. Vincent DePaul Society's St. Jude House.

Betty Milliken

Betty Milliken, a former co-owner of the Franklin Favorite and WFKN, died April 9 in Nashville. She was 92.

Milliken and two other partners purchased the newspaper in the 1940s, and added the radio sta-

See DEATHS, page 11

Cops vs. reporters: Bad relationship is a 'no-win'

When I lived in a small town years ago, my friends and I used to do a stupid thing.

Late some nights, we'd get drunk, then go outside and drive golf balls down Main Street. Not a smart move, especially as the county sheriff lived one house away.

Making the cops angry is a bad idea, but journalists do it all the time. And, to judge by the questions at writing seminars, dealing with uncooperative police chiefs is a huge problem.

Reporters at several state conventions this winter asked me what they could do to get information from police chiefs who would give them nothing.

First, I told them, let the chief see you're a human being. Most police chiefs and cops think of us as voices over the phone, not real people. We call, usually in a hurry, and expect the cops to have some First Amendment allegiance that compels them to tell us everything.

My friend and mentor, Denny Dible, managing editor of the Dominion-Post in Morgantown, W.Va., told me, "The telephone is the enemy. Visit the police department. Make conversation with the chief, say, 'Hey, I saw you in K-mart checking out the fishing gear. Where do you go fishing around here?'"

Denny said we often try to get information when the chief is sweating over a big case. "If I'm a chief," Denny said, "and I just spent 11 hours working on a case, and some pushy, cocky reporter calls on the telephone and demands answers, I'm going to be defensive, too."

Second, find out what good deeds your police chief does, and see if they merit a story. Some chiefs are active in youth sports, some in education programs. If without lowering your newspaper's standards, you can write about the chief's favorite community-welfare activities, you have removed one of his biggest fears, that your only interest is in negative stuff.

Third, sit down with the chief and ask why he doesn't like the paper. You'll probably find he is angry about a long-ago story that implied he or his department screwed up.

Listen patiently to his complaints, some of which might be valid. Listening is not a cure-all, but it never hurts. Perhaps he has been stewing for years over a careless error, and all he needs is a chance to yell at you.

Obviously, you should not

Coach's corner

By Jim Stasiowski



agree to any kind of belated correction or change in the newspaper's policy. But you can promise you'll tell your editor why he's angry. Talk to the editor about the problem, then be sure to get back to the chief, no matter what the editor decides.

Fourth, learn your state's open-records laws. We journalists are impatient, and we don't like to pore over legal definitions and distinctions among different police documents. Thus, a police chief can often bamboozle us by insisting he doesn't have to show us what we want.

He is probably right, but if we don't read the law, he can get away with anything.

At a state convention, one reporter told me, "The police chief can withhold such-and-such information," and another reporter overheard us and said, "No, he can't." I don't know which one was right, but the fact they disagreed spoke eloquently of our ignorance.

Fifth, ask your editor or publisher to buy a couple of police scanners that reporters can take home. When I started as a photographer at a small paper in Florida, I used to take the scanner home, and many nights, to my wife's chagrin, I was out chasing crime, accidents and the occasional alligator who had been stalking Mrs. Muldowney's fat poodle.

You don't have to run out on every call, but if you already know the nature of the crime, the time and place, you at least have some leverage when you call the chief.

Sixth, woo discreet allies who might help you. Sometimes 911 dispatchers will at least steer you toward stories, provided you don't tell anyone they're helping you. Ambulance crews will know about serious injuries, as will hospital workers. They can't give you official details, but if they can give you times, addresses, etc., you can do your own leg work.

Seventh, when you hear about a crime or serious traffic accident, bypass the police and go straight to the victims or their families. One of the big mistakes we make is counting on police for all crime or accident details. Police are almost never on the scene until after the event, so they're getting their information from witnesses.

See COPS, page 9

Writers rely on verb 'believe' too much

Think before you use the verb "believe."

Because believing is not the same thing as thinking.

Does anyone think anymore?

Some days, I wonder. Because if journalists thought more, the people they write about would believe less. And if everyone thought more, we'd all be better off, etymologically speaking.

Let me explain by providing some examples. Take this lead from the Washington Post: "fingerprints believed to be those of the gunman who killed two men..."

And this sentence from the Associated Press: Many relief officials also believe a commanding international figure is crucial to being a lasting peace to Somalia."

And this from the Post again: "Franklin said police now believe the gunman stopped his car..."

In each case, "believe" is misused. The correct word is "thought" in the first sentence, "think" in the other two. The difference is subtle, but important. Unfortunately, the subtlety seems to have grown blurry among deadline-pinched writers and editors.

The sentences I used above weren't hard to find. In fact, such examples are much too prevalent in newspapers, magazines and newsletters, and on television and radio news. It's the same everywhere. We've become a nation that believes before it thinks.

That's unfortunate. Believing isn't the same as thinking, and thinking isn't the same as believing. Thinking is an analytical process; believing is a leap of faith.

John Bremner, the renowned editing teacher, provided a good explanation of the difference between believe, think and feel in his book, "Words on Words."

Wrote Bremner: "One believes

with the heart, the soul, faith. One feels with the senses, the emotions. One thinks with the mind, intellect, reason.

"You believe in God, you believe in a hereafter, you believe in her, you believe that she won't let you down. Not: I don't believe we've met before. (I don't think we have.)"

"You feel hungry, you feel nauseated, you feel a song coming on, you feel sorry for him, you feel he can't be trusted. Not: He feels that the speed limit should be enforced. (He thinks it should be.)"

In other words, if we'd use our heads more when we wrote, we'd use believe less in our writing. We'd write: "Fingerprints thought to be those of the gunman..."

"Many relief officials also think a commanding international figure is crucial to bringing a lasting peace to Somalia."

"Franklin said police now think the gunman stopped his car..."

What difference does it really make? The sentences above are certainly understandable, even when the wrong word is used. But they failed to preserve the nuance that is so important in writing.

Words were meant to have specific meaning, and when they lose their nuance, we the writers and readers lose an important means of conveying our thoughts and our beliefs. Altering the meaning of words and phrases to provide specificity is part of the natural evolution of the language. Fudging of those meanings just because others do is sloppiness.

"Think" and "believe" aren't synonyms. If we believed in everything, would we really believe in anything?

Think about it.

(Reprinted from the ASNE Bulletin)

Got legal questions about a story or ad?

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Judges' unsuccessful in efforts to bar media

By KIM GREENE
KPA General Counsel
Dinsmore & Shohl



Years ago, the Supreme Court recognized that one of the important roles of the news media is to serve as the public's surrogate in the courtroom. This function is crucial for at least two reasons.

First, for a democratic society to work the citizens must understand and believe that the American judiciary is serving justice fairly. We can make that determination when we are able to observe the judiciary at work, by attending trials or hearings or by reviewing the court file of a case. These days, however, few individuals can take time from their own daily routines to visit courthouses. Therefore, ordinary citizens must rely upon the news media to keep us apprised of court proceedings of interest or concern to the community.

Generally, although it is not friction-free,

the relationship between the news media and the judicial system works and the public remains informed. There are times, however, when that friction results in a barrier to public access, which is overcome only by an extraordinary intervention.

There have been two such instances in Kentucky in recent months. In both cases, trial courts have closed their courtrooms to the public and press during jury selection in murder cases. In both cases, those courtrooms were opened only through the timely — and costly — intervention by the local newspapers. For that reason, we salute those organizations today and we are grateful to them — The News Enterprise in Elizabethtown and The Danville Advocate-Messenger — for serving so well as the public's surrogate and for taking up the fight to ensure access to these trials for all of us.

Needless to say, any time a murder is committed, the community takes notice. This is particularly true in town the size of Elizabethtown and Harrodsburg, where neighbors are much more likely to know either the victim or the

accused, or both.

In February, the Hardin Circuit Court presided over a murder-for-hire trial involving multiple defendants. Because the prosecution was seeking the death penalty, the Court's sensitivity to the defendants' Sixth Amendment right to a fair trial was particularly heightened. Out of his belief that potential jurors would respond more candidly to questioning in a conference room, he excluded the public and the press.

Two months later, the Mercer Circuit Court held the trial of a double murder case. Here, too, the prosecution sought the death penalty. In an attempt to protect the defendant's Sixth Amendment rights, the trial judge there also closed a portion of the jury selection process. In addition, he closed all proceedings during the week before trial and sealed the court record.

Selecting a jury capable of giving the defendant a fair and impartial hearing is one of the most important functions a trial court performs.

See MEDIA, page 5

Reporter convicted of contempt

Kirsten Mitchell, Raleigh (N.C.) bureau chief for the Wilmington Morning Star, has been found guilty of criminal contempt of court for reading a confidential settlement order she was mistakenly given by a court clerk.

U.S. District Judge Earl Britt ruled that warnings on an envelope should have kept Mitchell from reading the order. He found Cory Reiss, another reporter, and the paper innocent of criminal contempt charges. Britt said he would rule later whether Mitchell, Reiss and the paper are guilty of civil contempt.

Mitchell was fined \$1,000 and the case is now on appeal to the U.S. Fourth Circuit Court in Richmond.

"It was given to me by the clerk, and I assumed everything given to me by the clerk was a public document," Mitchell testified. "It was never my intention to violate any court order."

George Freeman, a lawyer for the New York Times Co., parent company of the Morning Star said, "the idea she could be held in contempt for reading a document she was given by the court clerk is unprecedented. We're confident this will be overturned."

"All I was doing that day was what thousands of journalists do every day," said Mitchell. "And that was exercising the First Amendment right to gather information and report it legally."

"The judge thinks the case is not about the First Amendment, but respect for the courts. He has maintained that view for this case," she said.

The case involves a lawsuit against Conoco oil company by 178 residents of the Wrightsboro trailer park who charged that gas leaks from a service station contaminated their water supply. A jury found Conoco acted fraudulently and neg-

ligently in response to spills at the station, but the settlement was reached before punitive damages were announced in open court. Reiss and Mitchell reported last October that the \$36 million settlement was at least \$12 million more than the jury awarded.

Mitchell had asked to look at the files in the case. Anne Caviness, a deputy clerk of court, testified when Mitchell asked for the documents in the case, she accidentally left the confidential settlement in the eight-inch thick set of documents she gave to Mitchell. She did notice a second envelope that had been ordered sealed and removed that one. Mitchell's attorney, Mark Prak, argued she had every reason to suspect the documents had been unsealed, as often happens in court cases, because it was given to her by the clerk. The clerk had removed a sealed envelope from the file and a device on the envelope indicated that it had already been opened after having been sealed.

Mitchell, Reiss, and the newspaper were well within their First Amendment rights to publish the information. "Like us or hate us," Prak said, "we were just doing our jobs."

Reiss also obtained the settlement information from two other sources, Prak said. David Long, a Raleigh lawyer appointed by Britt as a special prosecutor after the U.S. Justice Department declined to prosecute, argued that regardless of Caviness' error, the envelope containing the settlement was clearly marked "To be opened by the court only." By ignoring that, Mitchell placed herself in criminal contempt.

Conoco contends that publication of the settlement amount will hamper it in future court cases. The company is seeking compensatory damages and attorneys' fees.

Court ruling could hamper open government in Ohio

On Feb. 12, a three-judge panel of the United States Court of Appeals for the Sixth Circuit unanimously decided that the City of Columbus is liable for damages under the federal civil rights laws for releasing to an attorney the personnel records of undercover police officers. The ruling also bars the city from releasing similar information without first notifying the police officers affected, and giving them a chance to argue against the release.

During the criminal trial of members of a violent Columbus area gang, the attorney for the accused asked the city to disclose as public records the personnel records of the undercover police officers who were testifying in open court against the attorney's clients. The city provided the records under the authority of Ohio's Public Records Act.

After the trial ended with convictions, the undercover police officers sued the city in federal court, claiming that the city's release of personnel information violated their constitutional right to privacy.

The officers argued Ohio's Public Records Act is unconstitutional because it required the city to disclose the information to the criminal defense attorney.

Federal judge George Smith, sitting in Columbus, decided that release of the information created a serious risk to the safety of the officers and their families, but ruled that the release did not implicate any constitutional right to privacy. The court of appeals

reversed, ruling that the city was liable to the officers for damages and that the city must give the officers a chance to show the city should not release the information to anyone who asks for it as a public record in the future.

The court of appeals' opinion, written by Judge Karen Moore, states that the city violated the officers' constitutional rights by "automatically disclosing this information to any member of the public requesting it," which is what the Public Records Act requires public officers to do.

The Sixth Circuit also ordered the trial court to revisit the city's disclosure in 1995 of the same kind of personnel information to an organization of police officers called Police Officers for Equal Rights. The court also noted that, although there was no indication that the Police Officers for Equal Rights posed any threat to the undercover officers and their families, disclosure even to that group increases the risk that the information could fall into the wrong hands.

Although a strong argument could be made to try to limit the ruling to covering only undercover officers, cautious public officials will perceive that the ruling logically could extend to information contained in the personnel files of any public employee.

The Sixth Circuit ruling places public offices in a vulnerable box when faced with a request for the personnel records of any public employee. A public office may risk liability for damages and

See HAMPER, page 7

Openness is the right way to handle police complaints

By **BILL LUEDERS**

In early February, a Dane County (Wisc.) judge ruled that the Madison Police Department had no right to withhold records of complaints filed against cops by other officers or outside officials. But he did say police could in most cases redact, or black out, the names of the complainants and accused officers.

"With identifying information withheld, legitimate department concerns are greatly, if not entirely, diminished," wrote Judge Mark Frankel in a 51-page decision. "The public is already aware that police misconduct exists on some scale. Releasing this information in redacted form may, in fact, reassure the public that the incidents of misconduct are either minor and insignificant, and/or dealt with in an appropriate fashion."

It was the second open-records victory that my paper, Isthmus, has won against the Madison Police Department. In 1995, another judge ordered the release of complaints against cops filed by citizens, names and all.

As a named plaintiff in both cases, I am troubled that it took two costly and protracted lawsuits to get the Madison Police Department to obey the state's open-records law. (In the first case, the city had to reimburse my paper and the Wisconsin State Journal for more than \$37,000 in legal fees. The fees for the second lawsuit are likely to top \$60,000.)

Even more troubling, however, is the apparent determination of the department to continue withholding as much information as it possibly can.

A few days before Judge Frankel's decision the police finally complied with my request for records of all complaints made against officers by citizens in 1997. Although the Open Records Law states that requests must be answered "as soon as possible and without delay," the police took more than seven weeks to pull together a slim stack of records from about 30 complaints. Almost as substantial were its two letters explaining why various information was being withheld.

Most of the complaints were minor: a minister upset by a late-night police visit about his barking dog; a city employee who says an officer he caught parking illegally turned on him and demanded, "So, what are you going to do about it?"

In every case, the department concluded that its officers behaved appropriately. Non of the complaints led to disciplinary

action. In the one case in which an officer was determined to have committed a "policy violation," all details were suppressed.

And whereas the department last year blacked out the names of only those officers who were disciplined (thus perversely protecting the guilty), this time around it redacted the names of officers from all 13 complaints on which they appear. Lt. Pat Mollow, who heads the department's Professional Standards unit, said that to reveal this information would jeopardize "the privacy and reputational interests" of the officers involved.

This wording reflects a 1996 Wisconsin Supreme Court ruling, *Woznicki v. Erickson*, which has thrown the state's open records law into crisis. It holds that custodians must notify individuals before releasing records that could compromise their privacy or reputation. The person can then file suit seeking to block the records' release.

The Supreme Court did not say custodians can withhold names to avoid the burden of notification. But that's what the Madison cops decided to do, continuing their commitment to maximum secrecy.

Soon after Judge Frankel issues his ruling, the assistant city attorney who has led the fight for police secrecy was practically gloating: "It will be interesting discussion, what constitutes 'identifiable information.'" In other words, the city is already plotting to use the judge's wording to withhold not just names but also dates, places, incidents, circumstances and more.

I think this is the wrong way to go. The more information that's available about these complaints, the better, for all concerned. Openness is the best policy.

My experience as a reporter and editor is that the media are only too happy to tell the cops' side of any story — so long as they have access to this information. The fact that the police would rather not have to publicly explain their actions doesn't change their obligations under the open-records law.

The law exists to protect the public's right to know, not the desire of police departments to avoid outside scrutiny.

"Your right to Know" is a monthly column produced by the Wisconsin Freedom of Information Council, a statewide media group devoted to protecting Wisconsin's open records and open meetings laws. Bill Lueders is news editor of Isthmus, a Madison weekly.

Media

Continued from page 4

Because it is the jury which will determine the fate of the accused, it is especially crucial for the public to believe that the jurors selected can provide a fair hearing for the defendant and that the process used to select those jurors was appropriate. This is especially true in a case where the defendant's life is at stake because the Commonwealth has asked for the death penalty. Of course, the only way for the public to become satisfied of these things is to witness the process itself or through its surrogate, the press.

Contrary to the fear of some trial courts that individual jurors will be less than honest if they have to answer questions in open court, the Supreme Court has recognized that open proceedings engender openness and candor among prospective jurors. The theory is the same as that behind the premise that witnesses generally must testify in open court: testimony in open court tends to be more honest because neighbors, friends and relative who know you may be listening.

After their initial calls to the KPA Hotline, both The News Enterprise and The Advocate-Messenger decided to retain Hotline attorneys to challenge the closed court proceedings. Things moved very quickly in both cases. Within three hours of learning that jury selection was closed to the public, Kim Greene and Julie Foster were at the Hardin Circuit Court with a motion on behalf of The News Enterprise to reopen the proceedings. In the Advocate-Messenger case, Hotline attorneys Julie Foster and Kenyon Meyer presented that motion to the Mercer Circuit Court.

In both cases, the trial courts rejected the newspapers' pleas for access to the jury selection proceedings. When an action of a trial court infringes upon the First Amendment rights of the public and the press, the court rules permit an expedited appeal to the Kentucky court of Appeals. In both of the recent cases, the newspapers elected to file that action, asking the Court of Appeals to order the trial court to conduct its trial proceedings open to the public and press in a manner that balances the public's First Amendment right to attend with the Defendants' Sixth Amendment fair trial right. In both cases, less than 24 hours after the trial court rejected the newspapers' motions, papers were filed with the Kentucky Court of Appeals.

In The News Enterprise case, Court of Appeals Judge Huddlestone conducted a telephonic hearing involving the Hardin Circuit Judge, the prosecutor and

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the defense attorneys in the murder case, and counsel for the newspaper. At the conclusion of the hearing, Judge Huddlestone ordered the Hardin Circuit Court to stop the closed door proceedings and follow the procedure for individual questioning of jurors set out by the United States Supreme Court in *Press Enterprise v. Superior Court of California*. The Supreme Court designed that procedure to ensure that the jury selection process would be open but individual jurors could respond privately to the Court and counsel to any particularly personal or embarrassing inquiries. At the beginning of jury selection, the court is to inform the jurors that they may ask to answer a question privately if they feel that their answer to that particular question would call upon them to divulge sensitive, personal, private or embarrassing information about themselves or their families. Using this procedure, the trial court does not assume that the answer to any particular question would be embarrassing to all jurors. Instead, it is left to the individual jurors to identify those questions, if any, for themselves.

In The Advocate-Messenger situation, Court of Appeals Judge Knox ordered the Mercer Circuit Court to conduct a hearing as to whether closure of the jury selection process was really necessary to protect the defendant's Sixth Amendment rights. At that hearing, the trial court adopted the Press Enterprise procedure for the jury selection in both cases and the newspapers' decisions to challenge the closed proceedings were vindicated in two ways. First, the newspapers were able to provide their readers with first hand accounts of the entire trial, including the jury selection process. Second, all of the potential jurors in both cases answered all of the questions posed to them during jury selection. We are told that not one of them asked to answer a question in private.

If you have questions about these cases, the process for challenging orders closing court proceedings or sealing court records, or particular closure situations, do not hesitate to call your Hotline attorneys. We are standing by ready to assist.

Errors a small price to pay for free student press

By DR. LIBBY FRAAS

What spectacle can be more edifying or more reasonable, than that of liberty and learning, each leaning on the other for their mutual and surest support? — James Madison

The vice president of student affairs at Virginia Tech was not amused when she saw her quote in the student newspaper that morning.

The positive story about a Governors Fellows program had included her comments, attributing them to Sharon Yeagle, "Director of Butt Licking."

No, it was not a smart aleck comment on the role of university vice presidents, but a mistake.

In this age of computer cut and paste, we who have been there can understand how the usually responsible student-run Collegiate Times had set up a template to hold the format of frequently used design elements.

Some student editor in a hurry dragged the irreverent pull quote box out onto the page with its dummy text, but failed to type in the correct information.

The student editor apologized with a letter and a recording on Yeagle's answering machine. But that was not enough. Yeagle sued claiming she had been defamed and accused of "a crime against nature."

The Virginia Supreme Court ruled March 6 that the Collegiate Times did not defame Yeagle agreeing with an earlier court which had ruled that no reasonable person would con-

"Student error is a nightmare for every student newspaper adviser, but it's the price you pay for a truly free student press, where students exercise control over content and live with the consequences of their decisions."



Dr. Libby Fraas
EKU journalism professor
Eastern Progress adviser

clude that such a title conveys factual information. (It's a ruling similar to the U.S. Supreme Court's decision that Larry Flynt's parody of Jerry Falwell was not factual speech.)

That's the way irresponsibility of the student press should be handled. After the fact, no matter how painful. The students apologize, promise to be more responsible and cough up money for their defense if a lawsuit is filed.

Student error is a nightmare for every student newspaper adviser, but it's the price you pay for a truly free student press, where students exercise control over content and live with the consequences of their decisions.

Contrast that with the unenlightened philosophy of Kentucky State University administrators who confiscated and refused to distribute the 1994 student yearbook. The students who brought the lawsuit against KSU administrator Betty Gibson, complained that the administration also attempted to control the

newspaper and to "quell anything negative in the publications regarding Kentucky State University."

KSU officials claimed they had problems with the quality of the copyediting and the selection of content in the yearbook. They also objected to the color of the cover because students had selected purple rather than the school colors of yellow and green. KSU administrators didn't like the title, "Destination Unknown," which the students had chosen for their book. They objected to the students' decision to include "current information" which did not relate to KSU.

Therefore they decided to leave the yearbook in its boxes.

Unfortunately, a federal judge in Kentucky has sided with the university in a case which is worrying those who believe that students have First Amendment rights and can exercise them responsibly.

In *Kincaid v. Gibson*, Judge Joseph M. Hood ruled March 5 the student yearbook is not a public forum and the university's confiscation of the yearbooks is a reasonable restriction of speech. It's a notion that university administrators ought to run from kicking and screaming.

With affirmative action review, post-tenure review, merit pay review, food service review, athletic requirements review (you get the idea), what right-thinking administrator would want to take on student publication review — essentially taking the rap for every goofy miscue a

See STUDENT, page 7

Letters to the editor

To the editor:

Student journalists at Kentucky's colleges and universities were dismayed when administrators at Kentucky State University confiscated and refused to distribute the 1994 student yearbook. Now we are troubled by the ruling of a federal district judge to dismiss the objections of its student editors and faculty adviser and to condone this act of censorship of the student publication by university officials.

KSU officials claimed they had problems with the quality of the copy editing and the selection of content in the yearbook. They also objected to the color of the cover and the title which the students had chosen for their book. We fear, however, that administrators at KSU are placing themselves in the position of censoring the student editors and controlling the content of student publications at a public university, because of arbitrary and after-the-fact reasons. We do not hear of the KSU president banning athletic contests because the team wasn't playing up to par or canceling student concerts because someone sang off key.

The Kentucky Intercollegiate Press Association supports quality and responsibility in student journalism. We encourage colleges and

universities in Kentucky to provide students with the education, curriculum and resources to practice the art of communication through student media. We feel valuable lessons can be taught not only in writing and accuracy of reporting but also in respect for diversity and the marketplace of ideas. But we also feel that college administrators — particularly those on the public payroll — must also recognize the First Amendment right of student editors to control the content of their publications even if it means they (like professional media and university presidents) may make mistakes from time to time.

We urge KSU to reverse its thinking and distribute the yearbooks and establish a policy that will ensure student control over editorial content. We urge the Sixth Circuit Court of Appeals to reverse this dangerous decision and to restore freedom of expression to the students of Kentucky State and college students in this circuit including their freedom to determine the content and design of their student publications.

**Amanda Fryman, President
Kentucky Intercollegiate Press
Association (KIPA)
Joe Hedges, Exec. Secretary
KIPA**

Commentary

High school students now facing censorship in their homes from administrators

By KENNETH A. PAULSON

For most young people, a classroom is where they first hear about the Bill of Rights. Unfortunately, they learn a different lesson when educators fail to practice what they teach.

All too often students are told the First Amendment gives them the right of free expression, but they also see how school administrators try to limit that right.

A recent example involved a 13-year-old boy from McKinney, Texas, who created a Web site that satirically made fun of Chihuahuas. The Web site — heralding the Chihuahua Haters of the World (CHOW) — was a put-on.

But it attracted the attention of a chow dog breeder who sent an e-mail to the superintendent of McKinney schools protesting the site. The administrator told the boy to remove the site from the Internet, even though it was created in the boy's home. The young man refused and was suspended for a day.

The incident was a vivid

reminder of how school administrators seem to be unaware of the Constitutional rights of the students they supervise.

In *Hazelwood vs. Kuhlmeier*, the U.S. Supreme Court ruled that school administrators can censor a high school newspaper because its primary function is as an educational tool and not as a forum for free expression.

It's quite a leap from *Hazelwood* to shutting down a Web site. There is no legal justification for censoring a student's expression in the privacy of his home.

Other examples of curtailed student expression:

- An Ohio school district suspended a 16-year-old for using his home computer and personal Web site to post mildly negative comments about a teacher. A federal judge ordered the suspension lifted pending a hearing.

- A Michigan high school student was suspended for wearing T-shirts bearing the names of the rock

See SCHOOL, page 7

NAA Foundation invites teen-agers to participate in writing contest

The Newspaper Association of American (NAA) Foundation is sponsoring "Profiles in Courage: Young People Who Stand Up for Their Rights," a writing contest for teen-agers. The essay contest commemorates the 30th anniversary of the Tinker decision.

The U.S. Supreme Court case was the first to address the issue of free speech and First Amendment protection for young people. *Tinker vs. Des Moines Independent Community School District* was argued before the Supreme Court on Nov. 12, 1968 and decided on Feb. 24, 1969. Three teen-agers wore black armbands to school in Des Moines, Iowa in 1965 to protest the Vietnam War. They wore the armbands in violation of a school policy and were subsequently suspended. They filed a lawsuit claiming the suspension infringed on their First Amendment right to free expression. In 1969 the Supreme Court agreed with them.

Contestants will profile a real teen-ager — past or present, living or dead — who stood up for his or her rights. The essay can be up to a 1,000 words long. The deadline for submissions is June 30.

For entry forms and more information, contact: Mary Arnold Hemlinger, Profiles in Courage Contest, NAA Foundation, 1921 Gallows Road, Suite 600, Vienna, Va. 22182-3900, (703) 902-1729, or by e-mail at arnom@s.org.

School

Continued from page 6

bands Korn and Tool. School officials banned the shirts after looking up the groups' lyrics on the Internet.

• A young man was chastised by his principal, who disagreed with comments the youth made at a public forum at the First Amendment Center. At the forum, the student questioned why the school emphasized enforcement of a dress code. The principal said the youth should have shared his criticisms with the school instead of going public with them. The principal, who has since apologized, later the First Amendment Center that she "told his sponsor that (the sponsor) needs to think twice about who she sends to these conferences."

When social studies and history teachers teach the Bill of Rights in their classrooms, they would do well to ask administrators to sit in. Some lessons bear repeating.

(Paulson is executive director of the First Amendment Center in Nashville, Tenn.)

Paper gets involved by developing after-school tutoring program for kids

Last year, a daily newspaper in Texas took the initiative to help develop an after-school tutoring program for elementary students. It's a model that could be adapted in your community.

The staff of *The Baytown Sun* was concerned about the 50 percent dropout rate in the local high schools. They were advised that helping elementary students with reading and math skills would have the most impact.

Letters were sent to elementary schools and 250 names were submitted for consideration in the program. Sixty-four students entered the program.

The guidelines used included:

- The YMCA would be responsible for administration, site directors, paid tutors and logistics.

- Churches would provide classroom space and volunteer tutors.

- A local college would seek grant money to provide tutors from their school.

- The newspaper would provide financial assistance and promote the program.

- Local schools would select students.

The average GPA of the students who started the program was 55 or failing. After just one semester of tutoring, the average rose to 84.5.

The program will be repeated with an expected increase in participants. The *Sun*, with a circulation under 15,000, received a \$10,000 gift to help finance the program. For more information, contact *The Baytown Sun* at (713) 422-8302.

Use of Internet for public notices being debated

Legislators around the country want to take public notices out of newspapers and put them on the Internet. Utah legislators, among others, have that proposal before them.

A Utah publisher, Bonnie Miller of *Intermountain Commercial Record*, pointed out some problems with this proposal. They were reproduced in *Pressing Issues*, the Utah Press Association's newsletter.

1. Standards for electronic access to and storage of public notices on the Internet are nonexistent.

2. Archiving historically significant files is an uncertain world on the Internet.

3. There is no way to prove infor-

mation has been published on the Internet, for how long, or to what audience.

4. There is no way to provide proof of publication on time, place and content for the government, by the government and sworn to by the government, when all are entirely under the government's control.

5. There are significant security issues related to publishing on the Internet. Newspapers are a permanent record.

6. Government notices can become a political tool. As an example, the next time your school board sends out a newsletter on increasing taxes, judge for yourself if it is objective.

7. A newspaper of record suitable for public notices includes requirements for paid circulation, editorial content and frequency of publication. Home pages are not required to have any editorial content, which deliver the notice into the hands of the reader.

8. Despite all the hype about the Internet, only a small percentage of the population accesses the Internet, and often only to check e-mail.

9. Once in print, a notice cannot be changed and cannot be destroyed.

The Internet may be the wave of the future, but it is a poor way to generate permanent, definitive record of government activities that is accessible to all the public.

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Student

Continued from page 6

student staff might commit?

Unless of course your university administrator is unsure of the mettle of its students or hasn't provided the student media program with the curriculum, education and resources to produce a publication that can be both an exercise in free speech and free press as well as an achievement for the university.

But there's another reason university administrators might not want to play the role of censor.

The quote that started this column was from our shortest presi-

dent, James Madison. Madison didn't have a happy tenure as president. In fact he was run out of the White House and saw the British invade Washington and burn the Capitol in 1814.

But his contributions to the direction of our country were more valuable than his presidency. A man of books and letters, Madison is given credit for lobbying for the unique freedoms that distinguish our country for most of the other countries in the world.

In the *Federalist Papers*, he noted that "freedom of the press and rights of conscience, those choicest privileges of the people, are unguarded in the British constitu-

tion."

In arguing for their inclusion in the U.S., he wrote about the new America: "The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable."

Let's hope KSU administrators reconsider their action and give their student editors the freedom to decide their own editorial content and distribute their yearbook.

It would be a tribute to James Madison and those who come down on the side of liberty and learning.

Hamper

Continued from page 4

attorney fees under the federal Civil Rights Act if it complies with Ohio's public records law. But if the public office refuses to comply with Ohio's law, it risks liability for the award of attorney's fees available under the Ohio law.

One likely impact of the Sixth Circuit's ruling is that, in the future,

public offices will respond to everybody's request to see personnel records by demanding that the requester first disclose (1) full identity, (2) intended use of the information, and (3) to whom the information will be made available. The public office may give the employee who is the subject of requested personnel records an opportunity to stop the release of information.

Private individuals have right to privacy, too, and public offices have plenty of records with private names

and home addresses on them. To avoid potential civil rights liability, public offices may decide that they have to screen all requests for public records containing personnel-type information, even though it is not in an administrative personnel record.

Concerned about exactly that kind of scenario, the city of Columbus is asking the entire court of 14 Sixth circuit judges to rehear the case.

(From the *Ohio Newspaper Association Bulletin*, "Legally Speaking," by David Marburger.)

AD \$ENSE

Paper finds pre-dummied sections are a quick sell that just keeps growing

The Berkshire Eagle (morning, circulation 31,746) in Pittsfield, Mass., discovered how to keep growing its special sections by 20 percent every year: give the reps live sections to sell. About three years ago, the paper started putting together its special sections before the reps went out.

The real editorial that is going to appear is in place, right alongside the blank advertising spot. The ads are numbered, and each position is tied into a price sheet.

Ad reps take around a copy of the section and can show the advertiser exactly where their ad will go.

"The nice thing about selling pre-dummies is that we really scrutinize the editorial," says John Gallacher, advertising director. They try hard to match up advertisers to the appropriate editorial.

Advertisers like to see exactly where their ad will go, and it makes the sale easier, especially with new customers. The sale is also helped by an atmosphere of urgency. Reps have to call in all their sales right on the spot, to make sure the position hasn't already been sold.

"It creates a little sizzle and some good competition between the accounts and the sales reps," says Gallacher. Every day, the advertising coordinator keeps track of what has already been sold and gives reps an updated list. The paper uses this approach on all its special sections — about 20 a year.

It has been so successful that most of the premium positions have a waiting list. First refusal goes to the account that held the position the year before.

In a 20-day selling cycle, Gallacher estimates that the best spots are gone within three-to-four days. One of the secrets is giving the reps the sections four-to-six weeks in advance, so everything goes more smoothly.

Everyone has to have copies in hand to sell with, and the advertising coordinator has to stay on top of what has been sold so that no position gets sold twice. All the sections are created with canned copy from a variety of wire services. This gives the advertising department the flexibility to create some unusual positions, like island ads, that may catch someone's eye.

It's been a great vehicle for getting new advertisers and upgrading existing advertisers. Every year, they simply increase the size of the section by 20 percent and manage to sell it. And Gallacher thinks they can do even better: Recently, they started integrating spec ads into the pre-dummies.

Contact: John Gallacher, The Berkshire Eagle, (413) 496-6320.

(Reprinted from *Big Ideas*, a publication of NAA.)

BNC breaks entry record

A total of 65 newspapers submitted entries in the 1998 KPA Better Newspaper Contest.

A total of 1,155 entries were received for a revenue of \$5,270.

The winners will be announced in an awards banquet during the KPA-TPA Summer Convention next month in Gatlinburg.

The contest was judged in Tampa by the Florida Press Association.



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Nothing takes the place of handwritten notes

Ad-libs®

By John Foust
Raleigh, N.C.



Let's say you get home from work and find a dozen pieces of mail in your mailbox. There are a couple of bills, a handful of direct mail promotions and maybe a catalog or two. Sounds pretty ordinary, doesn't it?

But as you drop the bundle on the kitchen table, you notice a smaller envelope. This one looks different. It is hand addressed and has a first class stamp.

It's obvious which envelope you'd open first. Such is the power of a handwritten note, especially as business communication becomes more efficient and less personal. Phone mail, e-mail and faxes are indispensable. But they will never replace one-to-one human contact.

Notes can be valuable tools in building client relationships. Simply keep a box of notecards and envelopes close at hand (preferably with an imprint of the name of your newspaper). And when you see an opportunity, jot a few lines and drop it in the mail.

As basic as they are, notes should never be used as sales gimmicks. Every note you write should be a sincere expression of your interest in that person. (If you don't have a genuine interest in your clients, you're in the wrong profession.)

Salespeople who claim they are too busy to write notes are missing the point. Notewriting doesn't have to take a lot of time. And those who say that personal notes are not appropriate for business situations are just making excuses. There are plenty of circumstances which are perfect for handwritten notes:

1. Thank you notes. Most people understand the importance of saying "thank you," but a precious few put it in writing. Think of the advice columns which occasionally feature letters from grandparents who never receive thank you notes for birthday presents.

If you want to stand out from the other media salespeople who call on your clients, take the time to write thank you notes.

You can thank clients for...listening to a sales presentation or signing a contract...trying a new advertising strategy...increasing their newspaper budget...running in a special section...or

See NOTES, page 9

Video workshop can help your staff create better ads



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Growth holds more good than bad for communities

By MAX HEATH

In many parts of the country, the big issue facing communities is growth.

After the farm out in the 1980s which saw population fleeing the countryside, growth has returned to many counties outside urban areas where my company owns 44 community newspapers and where many other National Newspaper Association members live and operate local newspapers.

While not universal, the growth is widespread enough to have gained the attention of such specialty magazines as American Demographics, and the newspaper of hot trends, USA Today.

For instance, the Feb. 3 USA Today Business section cover story was headlined "rural gold rush" as "Big chains sweep into small towns." Another subhead proclaimed "Baby boomers with city tastes are moving to the country."

My newspaper group has witnessed quick growth in a number of counties that are two to three counties out from big cities and suburbs. Many had lain dormant for years.

Rural population swelled 6 percent from 1990 to 1996, the article reported, "reversing a downward slide."

American Demographics in July 1995 reported that three in four non-metropolitan counties are growing. The main reason: "more rural residents staying put and some urban residents moving to small towns and rural homes." Also, since 1988, the pace of job growth in non-metro areas has been faster than job growth in metro areas, creating less of an incentive to move to the city for jobs.

The good news for newspapers is that, after years of Wal-Marts stripping retailers from our Main streets, such newspaper-users as Sears, Circuit City, Sun Television & Appliance in the Midwest, Bon Ton, Peebles department stores, Stage Stores, and others are coming. That should mean growth in advertising dollars badly needed by grass-roots publishers.

The bad news is the difficulty of attracting new residents to read local papers, since many of them bring the daily habit of the big city they left behind, or don't read at all.

And it means coverage of conflict about

growth, as those who oppose newcomers and overcrowding resist new subdivisions, apartments and mobile homes, and paying for the necessary infrastructure of sewers and roads. Too often, the last ones in want to prevent the next wave from enjoying the rural atmosphere they moved out to the country for.

But that also makes community newspapers useful to those interested in the conflicts over zoning, taxes, and water use. The challenge of fair, detailed coverage and the people affected by growth makes our newspapers essential.

For those communities lucky enough to grow, I urge publishers to take advantage of the opportunity and make their products more valuable to readers and advertisers alike. Put more effort into subscription promotion and expand single-copy outlet growth. Serve advertisers with non-subscriber products when necessary to meet needs for broader coverage.

If growth finds you, enjoy!

(Max Heath is vice president for editorial and circulation development at Landmark Community Newspapers. Reprinted from Publisher's Auxiliary.)

Newspapers should resurrect mass/class appeal approach

Just how far does a newspaper's obligation go to the general public? We talk often, for instance, of the public's right to know and the public's need to know. But what about the public's want to know? Remember The National Enquirer's television spots with the featured pitch, "Inquiring minds want to know?"

Is the fascination with gossip and titillation within the scope of the daily newspaper's social obligation? Much of the newspaper industry is acting as if it is.

As newspapers continue to chase subscribers in a mass-circulation arena, they must pander to the apathetic (industry researchers call them "marginal") readers. Why? Because that is where the incremental growth often lies.

If newsroom budgets were unlimited, offering something for everyone might not be so questionable. The reality is the opposite, however. Newsroom budgets are tight and getting tighter. Whatever money goes toward the shadow is money taken from the substance.

Seven years ago, the Newspaper Association of America suggested newspapers could go for a Mass Appeal, Class Appeal, Individual Appeal, or Direct Appeal in their efforts to survive and prosper.

I haven't heard much about this debate recently, although online publications seem to have the Individual Appeal all wrapped up, and the Direct Appeal is more related to pleasing advertisers than focusing on the reader's needs.

So it seems like a good time to

resurrect and re-examine the Mass Appeal/Class Appeal question. Why? Because no one except monopoly-loving Wall Street appears happy with the current climate in newsrooms or the way much news is being defined and packaged.

The situation is full of irony. Industry research indicates that newspaper circulation is flat, even as reporters and editors grow weary over delivering a compromised brand of journalism designed to attract the larger audiences they are not getting.

Recently some 25 editors and academics making up the ASNE Ethics and Values Committee met in Philadelphia to study newspaper credibility.

Much was said about gaining more credibility by focusing on the traditional standards of accuracy, fairness, depth, and balance. There was general reluctance, however, to talk about what readers might want. Some dedicated editors even suggested this credibility study should not be concerned with marketing considerations.

Admirable as this thinking is, it belies reality. Responding to a recent survey on credibility, several top editors noted that credibility is a reader's issue, not a journalist's issue. The readers, this thinking goes, define whether a newspaper is credible.

And readers may or may not use the same yardstick that a dedicated editor might.

If journalists want to define credibility in their own terms, they

See APPEAL, page 10

Cops

Continued from page 3

Why not go straight to the witnesses?

Granted, we sometimes don't know who the witnesses are until we get the police report, so chasing them is sometimes impossible. But if you establish a reputation as someone who doesn't wait for the chief to deliver the official information, perhaps he will loosen up. After all, what the chief really wants is control, and if he knows he can't control you, he might decide to make sure you at least start with his version of events.

Oh yeah, one more thing: Don't drive drunk. Not your car, not a golf ball.

THE FINAL WORD: It's not a word this month, but a punctuation mark, the lowly comma. In an attribution, the absence of a comma changes the meaning drastically. Here's the sentence I ran across. "When he joined the force in 1958, Swanson said he had no idea he would become chief."

Oops. The way the writer wrote that sentence, "Swanson said" happened in 1958. But the writer meant Swanson said it Tuesday. Better. "When he joined the force in 1958, Swanson said, he had no idea he would become chief."

(Writing coach Jim Stasiowski welcomes your questions and comments. Call him at 410-247-4600, or write to 5812 Heron Drive, Baltimore, Md. 21227.)

Notes

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rescheduling an appointment.

2. Business anniversaries. Unless you know them well, it may not be appropriate to send birthday cards to clients. But what about business birthdays?

I guarantee that every business owner in your town remembers the first day they were open. That day represented the combination of years of big dreams and hard work. If they're like most people, they love to reflect on their beginnings. And even though they may not announce it to the world each year, they remember that special date.

If you like the idea of writing notes, why not add business

anniversaries to your account list? Then transfer those dates to your calendar to remind you when to send notes.

3. Congratulations. Don't miss the chance to recognize important events. You can congratulate clients for...a promotion...a special award...a business expansion...or a big sale. If the news is mentioned in a newspaper article or business column, include a clipping.

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(John Foust conducts advertising training for newspapers. His ad workshop video "Basics of Layout and Copy" is being used by newspapers from coast-to-coast. For information, call or write: John Foust, PO Box 10861, Raleigh, NC 27605, Phone (919) 834-2056.)

Deaths of newspapers leave permanent scars

Pressing Issues

By Jerry Hilliard & Randy Hines
East Tennessee State University

Friends recalled a lifetime of outstanding service to the community. The deceased — well over 100 years old — had struggled valiantly to the end and would be sadly missed.

The Nashville Banner
April 10, 1876-February 20, 1998
R.I.P.

With the closing of the *Banner*, about 100 newsroom employees joined a growing list of survivors of daily newspapers that have given up the ghost. Nothing but memories remain of the *Baltimore Evening Sun*, the *El Paso Herald-Post*, the *Houston Post*, the *Knoxville Journal*, the *Miami News* . . . and the list goes on.

The obituaries have become agonizingly similar. Metropolitan dailies that have gone out of business in recent years tended to share the following description:

- It was an evening publication whose circulation had tumbled in recent years.
- The main competition came from a daily published in the morning.
- The two papers had operated for many years under a joint

operating agreement.

• Competition between the two papers' staffs was fierce, despite the fact that they worked in the same building.

• Reporters and editors considered competition between the two papers to be good for the community.

• Because of the evening paper's relatively small circulation, employees looked upon themselves as the "little guys" — underdogs in their market.

• Members of the staff were well aware of the historical significance of their paper.

• Staff members continued to produce what they considered to be a quality publication to the bitter end.

So what went wrong?

Stories announcing the deaths of evening dailies have cited several factors, such as changes in lifestyle and readership patterns. These resulted in drastic drops in circulation, with no relief in sight.

Other reasons include delivery problems in crowded cities during daytime hours. And, perhaps most significantly, the troubles of evening newspapers have been traced to competition from other media, including cable television and the Internet.

Often lost in the recitation of reasons is the profound effect of a closing on those who have an emotional attachment to the pub-

lication. The lead story in the *Nashville Banner's* final issue said employees and readers alike felt the paper "has been a friend and its demise has been no less a blow than the death of a loved one."

Few staff members of any paper that has ceased to exist have such hard shells that they don't grieve in some way over the end of an institution in whose history they have played a part. Even those who moved on well before the last issue went to press feel a deep sense of loss.

The closing of the *Knoxville Journal* on Dec. 31, 1991, was the final chapter in a history dating to 1885.

Among those who suddenly found themselves without jobs was Ron Walli, who within two months was hired by Oak Ridge National Laboratory, where he is a research/development writer in the Office of Communications and Public Affairs.

Walli, who had been a copy editor at the *Journal* for five years, said: "The biggest tragedy was that a paper that had been around for more than 100 years was lost. Any city gets cheated with only one paper."

Walli, who still lives in the area and pays close attention to news developments in Knoxville, said, "Every time I pick up a paper and see that something isn't being covered as well as I think it should be, I wonder what the *Journal* would have done."

Frank Trexler, another five-year veteran of the *Journal*, was transferred to nearby Maryville, Tenn., where he became managing editor of *The Daily Times* in 1990.

Memories of the *Journal* return to Trexler whenever he gives a tour of his newspaper's building.

At the time of the *Journal's* closing, it and *The Daily Times* were owned by the same company, which became embroiled in a legal battle over stipulations of a joint operating agreement with *The Knoxville News-Sentinel*.

Part of Trexler's responsibilities was to help prepare for a move of the *Journal* from Knoxville to Maryville. The plan eventually fell through, but a weekly bearing the name of the *Journal* was published in Maryville for eight months after the paper in Knoxville folded.

Trexler remains loyal to the *Journal*. "The paper had an important place in the city's history," he said. "I remember studying about it in college journalism courses."

When plans to close the *Journal* were announced, the staff "felt a sense of betrayal," Trexler said. "At the time, I thought the wrong paper in Knoxville had died, and I still feel that way."

Although she certainly doesn't share Trexler's sentiments

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Appeal

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will never do it while appealing to a mass-circulation market that is essentially a market for attention, not news. In a market for attention, the person who buys the paper for the comics counts as much as one wanting the news.

The option, of course, is to break off the chase and redefine the market much as magazines started doing 25 years ago. After the giant, general-circulation magazines like *Look* and the original *Life* folded in the early 1970s, the magazine industry moved ahead by charting a new course in targeting niche audiences. Today magazines are stronger than ever.

The risk magazines took was that circulation numbers could be sacrificed for quality readers. Quality was defined as an intense level of interest by readers in the magazine's subject matter. If interest were strong enough, then a smaller circulation base would suffice if the right advertising mix were found for the content.

Of course, some newspapers have already moved in the direction of seek-

ing more intense readers. The *New York Times*, the *Boston Globe*, and the *Wall Street Journal* are among them. Their uniqueness lies in targeting their market's most interested readers and giving them a solid news product. Marketing efforts directed at the marginal, apathetic readers are slim to none. Interesting, isn't it, that these are also three of the largest circulation newspapers in America?

Associated with such readership is strong education, affluence, and community involvement. Coincidentally, these are just the factors most advertisers target, too.

The *Class Appeal* (a worse name than *Focused Appeal*) strategy often calls for aggressive pricing that would increase circulation rates while sustaining overall circulation number declines of up to 25 percent. The readers who remain, however, would be the ones with the solid interest in news.

Does this translate to abandoning some readers and to pricing a newspaper beyond the reach of the disenfranchised? And what about doing this in a non-television market where the alternatives to news are more limited?

As to abandonment, consider who is abandoning who. The *Class Appeal* strategy targets those individuals

interested enough in the news to read it. If an individual wants to avoid the news, then he or she is the one doing the abandoning.

I have a 6-year-old at home who sometimes cries because she feels left out of a conversation. But all she must do to be included is to get involved in the chat. It is the same with marginal readers and non-readers. It is their responsibility to get involved.

Further, it is unlikely that a newspaper, which targets news-hungry readers, will abandon coverage of any market segments.

Why? Because of the very nature of the curious readers they are serving.

As to pricing a newspaper beyond the level of people able to pay, we are talking about a few extra dollars per month. If people care that little about the news, then how much money does the newsroom want to spend in luring them?

As to restricting news alternatives in non-television markets, this is a non-issue. These markets are generally community journalism markets, and the popularity of most community newspapers is so strong that few adjustments are needed in the first place. Also, in case it has escaped any-

one's attention, we are living in an age where the problem is more of an information glut than vacuum.

Newspapers can cover all market segments, but they cannot force anyone to read the news. All a paper can do is:

- Provide a good news product to those who want it, or
- Lure the attention of marginal readers through pseudo-news and entertainment.

Given the state of newsroom budgets, no newspaper can do both simultaneously; at least not for very long.

In some ways the *Class Appeal* strategy goes against the populist-based grain of many journalists. But the *Mass Appeal* strategy bases a definition of news quality on popularity rather than high journalistic standards.

A newspaper is subsidized by advertisers who currently don't care why a consumer buys it. Maybe it is time for the newspaper itself to step up and say it cares and that is makes good business sense for the advertiser to care, too.

Maybe it is time to start serving a news market for a change, too.

(Reprinted from *The American Editor*, March 1998)

Those with true respect for type a 'vanishing tribe'

Design is everything

By Edward F. Henninger



Beatrice Warde was a renowned and respected typographer in Britain during the early part of this century. Her type designs are still in use today, and she won the admiration of typographers the world over with her work.

During a speech to the British Typographers' Guild, Warde — perhaps better than anyone else — gave us a sense of respect and admiration for type itself.

Following is an excerpt from

that speech:

"Imagine that you have before you a flagon of wine. You may choose your own favorite vintage for this imaginary demonstration, so that it be a deep shimmering crimson in color. You have two goblets before you. One is of solid gold, wrought in the most exquisite patterns. The other is of crystal-clear glass, thin as a bubble, and as transparent.

Pour and drink; and according to your choice of goblet, I shall know whether or not you are a connoisseur of wine. For if you have no feelings about wine one way or the other, you will want the sensation of drinking the stuff out of a vessel that may have cost thousands of pounds; but if you are a member of that vanishing

tribe, the amateurs of fine vintages, you will choose the crystal, because everything about it is calculated to reveal rather than to hide the beautiful thing which it was meant to contain.

Bear with me in this long-winded and fragrant metaphor, for you will find that almost all the virtues of the perfect wine-glass have a parallel in typography.

There is the long, thin stem that obviates fingerprints on the bowl. Why?

Because no cloud must come between your eyes and the fiery hearth of the liquid. Are not the margins on book pages similarly meant to obviate the necessity of fingering the type-pages?

Again. The glass is colorless or at the most only faintly tinged in

the bowl, because the connoisseur judges wine partly by its color and is impatient of anything that alters it. There are a thousand mannerisms in typography that are as impudent and arbitrary as putting port in red or green glass!

When a goblet has a base that looks too small for security, it does not matter how cleverly it is weighted; you feel nervous lest it should tip over. There are ways of setting lines of type which may work well enough, and yet keep the reader subconsciously worried by the fear of "doubling" lines, reading three words as one, and so forth.

Printing demands a humility of mind, for the lack of which many of the fine arts are even now

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People

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The Givens started the Butler County Banner in 1982 and in July 1992, purchased The Green River Republican and combined the two newspapers. They plan to continue with the newspaper.

Jeff and Susie Jobe started their newspaper careers at The Courier-Journal after college. Jeff Jobe was then promoted to Marketing and Operations Manager at a Gannett paper in New York. After leaving Gannett, he worked for the Journal Register Company and Thomson Newspapers where he last served as vice president of sales and marketing.

Snell to hold No. 2 editorial position at Kentucky Enquirer

Roger Snell has been named assistant editor at the Kentucky Enquirer.

A native of Arcanum, Ohio, Snell worked for several years reporting on special projects and investigations for the Columbus Dispatch. In 1990, he and a fellow Dispatch reporter were Pulitzer Prize finalists for a series of stories about narcotics officers who owned crack houses. In 1992, he was given the American Bar

Association's top national award for stories about ethical misconduct and racial slurs by justices of the Ohio Supreme Court.

McCarty, Almjeld promoted in Richmond

Matt McCarty has been named news editor of the Richmond Register. He replaces Lea Schultz who retired in April.

A native of Johnson County, McCarty joined the newspaper's sports department in August. He graduated from Eastern Kentucky University with a degree in journalism and while there, worked for the student newspaper, The Eastern Progress, including a year's stint as managing editor. During that year, the Progress was named one of the top 10 collegiate weekly papers.

McCarty has held internships at the Lexington Herald-Leader, Winchester Sun and the Elizabethtown News-Enterprise.

Jennifer Almjeld has been named Lifestyles Editor after working as a staff writer for 10 months.

A native of South Dakota, she has lived in Madison County since she was an infant. Prior to the Register, she was an intern at the Lexington Herald-Leader. An EKV graduate, she also worked for The Eastern Progress.

station.

Survivors include a brother, J. Harb Milliken, Chicago; three sisters, Lucy Gilchrist, Nashville; Mary Ogles, Franklin; and Katherine Morgan, Gaithersburg.

Funeral services were held April 11 at the Booker-Gilbert Funeral Home.

Burial followed in Greenlawn Cemetery.

Scars

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about the wrong paper having died, one person who genuinely understands them is Georgiana Vines, deputy managing editor of The Knoxville News-Sentinel and former national president of the Society of Professional Journalists.

For 20 months leading up to its closure last October, Vines was editor and president of the El Paso Herald. The city's first newspaper, with a history tracing back to 1881, the Herald had a long-standing reputation for sticking up for the little guy.

"We felt we were ending a part of the history of El Paso that shouldn't be ending," Vines said. "It's still very difficult for me to talk about."

After Vines became editor, the various departments of the afternoon publication worked together to build its sinking circulation. Eventually, their efforts couldn't offset financial realities.

The paper's circulation had dropped by more than one-third in its last decade of existence and stood at less than 19,000 in a city with a population of nearly 700,000.

The owner's decision to throw

in the towel came as a surprise to employees and the community.

Vines said staff members, who shared a strong sense of the Herald's rich heritage, were deeply saddened. A large percentage were veteran journalists who had lived in El Paso for many years.

"People in the community were stunned," Vines said. "Most of them had no clue that circulation had been declining to the point where the paper's existence was threatened."

She continues to hear reports of how much the paper is missed by the citizens of El Paso.

"It's too bad that more of the people who feel that way weren't subscribers," she said. "We did good journalism. It wasn't the quality of the paper that caused its demise."

Similar memories help console the rest of us who have worked for newspapers that no longer exist. But the sadness just won't go away.

(We welcome responses to our columns, and would like to share them with readers. Please send your comments to us at the Department of Communication, ETSU Box 70667, Johnson City, TN 37614-0667. Our fax number is (423) 439-4308. E-mail may be sent to hilliarj@access.etsu.edu., or hinesr@access.etsu.edu.)

Notices

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Newspaper notices remain the best way to reach the public with this vital information.

Government home pages are fine. They can be a great resource. No law is needed to do this. But if the law is changed to allow governments to replace newspaper notices

with notices on the Internet, it would put the government in charge of and in control of information in a forum that invites abuse and self-promotion. We don't need that.

The scheme to move public notices from the newspaper to the Internet sacrifices the people's right to know under a pretext of saving a few dollars. That's not a sacrifice we can make.

(Reprinted from the Missouri Press News, March issue)

Positions still open for May newspaper technology session

The Institute of Newspaper Technology has a few positions open for the May session.

There are a few spaces left in the Advanced Session and several in the First-Time Session, according to director Kevin Slimp. Both

sessions will be held at the University of Tennessee School of Journalism May 27-30.

Three new labs will be utilized in the May session, one Pentium and two Power Mac. For more information, call (423) 584-5761.

Battle

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Combs.

Fleischaker said he is hopeful the April 24 decision ends the litigation between Flanagan and the newspaper.

"I think everything is resolved. I hope he (Flanagan) doesn't take it any further, and I don't think he will... but I've been wrong before," said Fleischaker. "This case really was, in my judgment, a clear cut case of a clean editorial written about current events about public figures and was very clearly protected — as well as being truthful."

While the Times Journal has been successful in defending the lawsuits, the litigation has been costly. After the million dollar verdict, Flanagan's lawyer placed a lien on the home of David Cazalet who was publisher of the paper at the time. Cazalet, who works for Somerset Community College now, said the lien had just recently been lifted.

Fleischaker said fees to defend both lawsuits were covered by insurance the newspaper carried. He noted that considering one case went through a full trial, and appeals before the state and U.S. Supreme Courts, the costs were not exorbitant which he attributed to lower legal fees in Kentucky in comparison to other metropolitan areas.

A current controversy in Russell Springs has some people

speculating that the \$1 million award has had a lingering effect.

Paul Osborne, Smith's Republican challenger in the May Primary, has accused the newspaper of censorship for rejecting his ad that was critical of Smith.

Publisher Jay Albrecht says the old lawsuit had nothing to do with the decision on Osborne's ad.

According to an Associated Press report, the paper told Osborne it is examining ads to avoid legal problems. In a letter to Osborne, Albrecht wrote, "We are attempting to protect ourselves and the advertiser from the legal experience." The paper offered to publish the ads if Osborne made changes, but he refused.

Fleischaker said the Russell Springs' case is just one of several pitting political figures against newspapers.

"I think this case and others have started making papers very concerned about political commentary," said Fleischaker. "There's been more of an effort in Kentucky by public figures to go after editorial comment... All of it has been unsuccessful, but it's hard to be involved in a defamation lawsuit. It's creates the so-called 'chilling effect'... but it's true. This was my fourth case in Kentucky in the last five years involving editorials and the fifth case dealing with the political process where politicians sue because they don't like something said about them or because they lost an election."

(The Associated Press contributed to this story.)

Type

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floundering in self-conscious and maudlin experiments.

There is nothing simple or dull in achieving the transparent page. Vulgar ostentation is twice as easy as discipline. When you realize that ugly typography never effaces itself, you will be able to capture beauty as the wise men capture happiness — by aiming at something else.

The "stunt typographer" learns the fickleness of rich men

who hate to read. Not for them are long breaths held over serif and kern, they will not appreciate your splitting of hair-spaces. Nobody (save the other craftsmen) will appreciate half your skill.

But you may spend endless years of happy experiment in devising that crystalline goblet...which is worthy to hold the vintage of the human mind."

(Edward F. Henninger is an independent newspaper consultant and the director of OMNIA Consulting in Rock Hill, S.C. You can reach him at 803-327-3322, fax: 803-327-3323, e-mail: omnia@charlotte.infi.net)

Journalists honored for work during Bluegrass State Games

Newspapers across the state have been honored for their coverage of the 1997 Bluegrass State Games. Gold, silver and bronze medals were awarded to weekly and daily newspapers for their coverage and promotion of the games.

More than 19,000 Kentucky amateur athletes from across the state participated in the 1997 Games held in Lexington the last two weekends in July.

Media awards were based on journalistic excellence and creativity in the amount of effort put forth in covering the Games.

Winners included:

Daily newspapers: Gold - Benoit Denizet-Lewis, Lexington Herald-Leader; Silver (tie) - Larry Vaught, The Advocate-Messenger, Danville and Rocky Stanley, The Daily Independent, Ashland; and Bronze - The Times Tribune, Corbin, for overall coverage.

Weekly Newspapers: Gold - The Jessamine Journal, Nicholasville; Silver - The Floyd County Times, Prestonsburg; and Bronze - The Kentucky Standard, Bardstow.

Photography: Gold - Rob Summer, Lexington Herald-Leader; Silver - Frank Newman, Corbin News-Journal; Bronze - Ed Taylor, Floyd County Times.

Daily Newspaper Promotions: Gold - Lexington Herald-Leader; Silver - Commonwealth Journal, Somerset; Bronze - The Ledger & Times, Murray.

Weekly Newspaper Promotions: Gold - Laurel News Leader, London; Silver - Martin County Sun, Inez; Bronze - Dawson Springs Progress.

Convention

Continued from page 1

the trip in '95, or have seen the Dixie Stampede in other resort towns, know the show provides quality music entertainment, championship horseback riding and a down-home country meal.

On Friday morning, golf enthusiasts will have the opportunity to play the Bent Creek Golf Course designed by well-known Senior Pro Tour member Gary Player.

If golf isn't your game, then a day at Dollywood theme park has also been planned.

Dollywood is one of the largest theme parks in the region with dozens of rides, a wide variety of music shows and craft shops. This season, the park debuted the tallest water flume ride in America.

Friday afternoon roundtables on Open Meetings and Open Records and Advertising Legalities will be conducted by KPA General Counsels Jon Fleischaker and Kim Greene.

At 6 p.m. Friday, a reception will be held at the Park Vista Hotel (where our Tennessee counterparts are headquartered) to mark the 150th anniversary of the Associated Press. The event is being sponsored by the Kentucky and Tennessee Associated Press Bureaus.

Then, if you have any energy left, it's time for the highlight of the summer convention, the presentation of the 1998 Better Newspaper Contest awards. The awards banquet begins at 7:30 p.m. at the Sunspree Resort.

On Saturday, roundtables begin at 9 a.m. featuring a session by Internet guru David Carlson. Carlson, director of the Interactive Media Lab at the University of Florida, will lead workshops entitled, "Want to Sell Web Advertising? Stop Thinking Like a Newspaper."

The World Wide Web presents a whole new set of opportunities for newspaper advertising departments, according to Carlson, but newspapers never will capitalize on them if they don't start thinking in new ways. This session will decode Internet gobbledegook such as "hits," "impressions" and "page views" and offer thoughts about ways advertising departments can change their mindset, generate new revenue and make money on the web.

Software training will also be conducted in other Saturday morning sessions.

At noon, a luncheon at the Sunspree will feature the presentation of the Courier-Journal's Barry Bingham Freedom of Information Award. This year's recipient, U.S. Sen. Mitch McConnell, will be the luncheon's keynote speaker.

After lunch, convention goers will be treated to one of country music's favorite female performers, Louise Mandrell. Dinner at the Alabama Grill will be followed by the Music Mansion Show.

Rooms at the Holiday Inn Sunspree Resort are just \$75. Hotel registration forms, as well as detailed information about the convention, have been mailed to all members.

So watch your mailbox and don't delay. Space is limited for some activities so register early.