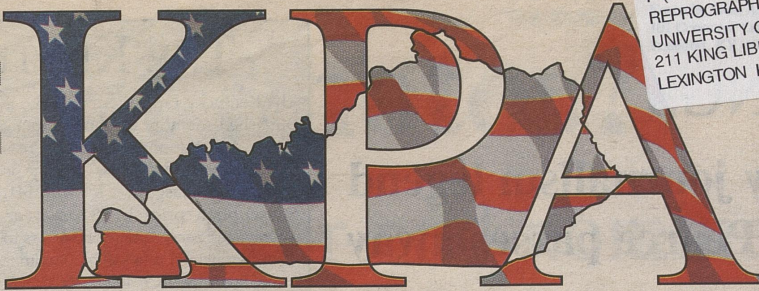


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October, 2006 - Published by Kentucky Press Association/Kentucky Press Service

PEOPLE Constitutional questions

AND PAPERS

Schurz elected to KPA/KPS Board

Scott C. Schurz Jr., nephew of KPA Past President Mary Schurz, has been elected to the Kentucky Press Association/Kentucky Press Service Board of Directors. He fills a position on the Board vacated by Teresa Scenters, of the Berea Citizen. Schurz will serve on the Board through the Winter Convention when a new three-year term begins for District 14.



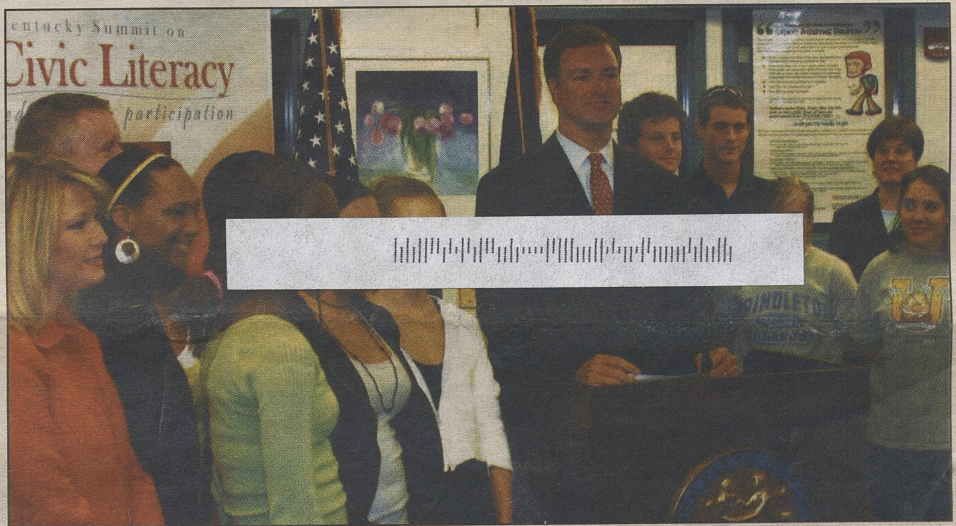
SCOTT C.
SCHURZ Jr.

Schurz is publisher and editor of The Advocate Messenger in Danville. After serving since January, 2005, as assistant publisher, he was named to replace his aunt as publisher and editor in June, 2006.

His father, Scott Sr., has served twice as president of the Hoosier State Press Association. Mary served as president of KPA/KPS in 1992.

Scott Jr., 37, was hired by Schurz Communications Inc. in 1993 and has held positions at the South Bend

See PEOPLE on Page 10



Kentucky Secretary of State Trey Grayson announces some of the findings from the Rediscovery Democracy report which is the result of the Kentucky summit on Civic Literacy. Working with Laura Williams of the Knight Foundation and Rebecca Bush of the Secretary of State's Office, The Kentucky Press Association developed a "Constitution Quiz" to offer students a short quiz about the Constitution. KPA Director of Member Services David Greer developed 15 questions and KPA New Media Administrator David Spencer designed the online test.

PHOTO BY JOHN WHITLOCK/KPA

PASSINGS

Kentucky journalism legend John Ed Pearce passes away

Editor's Note: Obituary and photo courtesy of The Institute for Rural Journalism and Community Issues

John Ed Pearce, whose many awards included part of a 1967 Pulitzer Prize for The Courier-Journal's campaign for stronger control of strip mining in Kentucky, died Sept. 25 of complications from cancer. It was his 87th birthday.

Pearce was a native of Norton, Va. where his father founded The Coalfield Progress. He briefly edited the old Somerset (Ky.) Journal before joining the Louisville paper in 1947.

Since 1990 Pearce "was a contributing columnist for the Lexington Herald-Leader," that paper's Jennifer Hewlett said. "His work also appeared in The New York Times and The Washington Post, and he wrote several books."

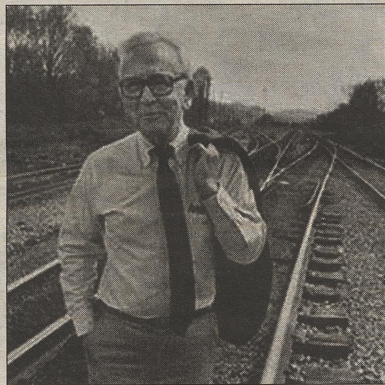
The C-J obituary by Sheldon Shafer said Pearce "was revered in many corners for a smooth, liberal-leaning prose that stirred readers and often spurred politicians into action."

Former C-J publisher Barry Bingham Sr. said in 1986 that Pearce "knows more about what really makes this state different than anybody else I know." Bingham said Pearce was the paper's "best writer -- ever." John Carroll, former editor of the Herald-Leader and the Los Angeles Times, told Hewlett, "I always thought John Ed was the best newspaper writer in Kentucky."

Pearce co-founded the Kentucky Oral History Commission, which has financed and preserved interviews with more than 20,000 Kentuckians. He served on the state parks board under Gov. Bert T. Combs (1959-63), to whom he was close -- so close that when Barry Bingham Jr. took over The Courier-Journal in 1971, he moved Pearce to the paper's magazine, under a new ethics policy.

The magazine turned out to be Pearce's signature forum -- for a column he continued into retirement, for probing feature stories about Kentucky public figures, and for a series on Kentucky counties that helped preserve the paper's ties with rural readers. For a reflection by Kentucky journalist and commentator Al Smith, who says "the good humor with which he engaged the mining of stories and the entertainment of dinner companions only slightly masked a notion that life had not dealt all the cards owed him."

A memorial service was held Sept. 30 at Pearson Funeral Home in Louisville.



JOHN ED PEARCE

THE KENTUCKY PRESS

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.....

Staff members, officers and directors may be reached by e-mail using the individual's first initial, full last name@kypress.com.

Got photos?

Time for some year-end nominations

It's been a quick year, seems like, and the year-end brings to mind several things we have to start working on for 2007. So here are some areas where you can help -- by nominating someone for outstanding community service, by showing off the work of your photographers in 2006 and by submitting a front cover photo for the 2007 KPA Yearbook and Directory.

Vice-President Nominations for KPA/KPS
Nominations and letters of application are being accepted until Friday, Oct. 6 for the office of vice-president of the Kentucky Press Association for 2007.

Any KPA member may nominate any individual who meets the criteria set forth in the KPA bylaws for that position. Additionally, individuals interested in holding office in the Kentucky Press Association may submit a letter of application.

KPA bylaws state: *"The only persons eligible for election to the office of vice president are those who are currently serving as elected directors; those who have been elected to serve on the board, provided they have previously served as either an elected or appointed director or those persons who have served three consecutive years as an appointed director."*

Nominations must be sent to David T. Thompson, Kentucky Press Association, 101 Consumer Lane, Frankfort, KY, 40601.

All nominees consenting to the nomination and agreeing to serve if elected will be interviewed by the nominating committee once it has been determined that the nominee meets bylaw requirements.

Following the interview process, the nominating committee will recommend a candidate for vice president to the Kentucky Press Association and Kentucky Press Service Board of Directors.

Following action by the board, the individual will be recommended for approval by the full membership of the KPA during the business session of the 2007 convention in Louisville in January.

The person elected vice president will become president-elect in 2008 and serve as president in 2009.

Lewis Owens Community Service Award
Each year, the Lexington Herald-Leader honors a newspaper person, or a newspaper staff, by presenting its Community Service Award. The award was renamed the Lewis Owens Community Service Award in 1996.

On Second Thought

By David T. Thompson
KPA Executive Director



Presented annually by the Lexington Herald-Leader, the award recognizes outstanding community service by a Kentucky newspaper person or staff. The award was originally established in memory of Edwards M. Templin, promotion director of the Lexington Herald-Leader and president-elect of the Kentucky Press Association when he died in 1967. It was later renamed to honor and memorialize Lewis Owens for his many years of service to community and service organizations and to Kentucky's newspaper industry.

Previous recipients include the staff of the Falmouth Outlook, Merv Aubespin, Tom and Pat Gish, Russ Metz, Max Heath, Betty Berryman, Louise Hatmaker, David McBride, Don Towles, Niles Dillingham, Floe Bowles, John B. and Ray Gaines, Fred Paxton, among several others.

The Lexington Herald-Leader is now accepting nominations for the 2006 Lewis Owens Community Service Award.

The award will be presented in January at our 2007 Kentucky Press Association Winter Convention at the Hyatt Regency. The deadline for nominations is Nov. 10.

If you wish to nominate someone for this award, complete the nomination form and mail by Nov. 10 to:

Tom Caudill
Lexington Herald-Leader
100 Midland Avenue
Lexington, KY 40508

A list of previous recipients is printed in the 2006 KPA Yearbook and Directory.

KPA Photo Exhibit

At the 2007 KPA Winter Convention, (January 25-26 at the Hyatt Regency in Louisville), we will display photos from Kentucky newspaper photographers that were taken in . These are on display during our Trade Show and the exhibit is available for local use, at public libraries for instance, after the convention ends on January 26.

Kentucky is known for having some of the

best newspaper photographers in the country and this is our way of displaying the work of those photographers.

This is not a contest and most all photos are used in the exhibit, depending on space available. Photos may be in color or black and white; should be no larger than 11 x 14; and should be mounted, preferably on black poster board. The photo should be affixed to the poster board along with the name of the newspaper and the photographer's name and a cutline, if appropriate. These do NOT have to be photographs that were published in the newspaper.

The deadline for sending photos for the KPA Photo Exhibit is Dec. 15. If your newspaper would be interested in displaying this exhibit after the convention, please contact Sue Cammack or Bonnie Howard at (800) 264-5721.

Please indicate on a cover memo that the photographs are being submitted to use in the KPA Photo Exhibit.

2007 KPA Yearbook and Directory Front Cover

What better way to show a photographer's talent than on the front cover of the KPA Yearbook and Directory? Each year, we select one four-color photograph or a montage from a photographer at a Kentucky newspaper and publish that on the front cover of the directory with appropriate credit given inside the directory.

Any photograph depicting life in Kentucky or a recent event in Kentucky is considered and the photo does not have to have been published in a newspaper to be used on the directory's cover.

The deadline for submitting a four-color photograph for the front cover is Nov. 10.

The photographer whose photo is selected will then be notified and asked to send KPA a four-color separation of the photograph by Dec. 1.

Please indicate on a cover memo that the photo is being sent for consideration for the front cover of the KPA Yearbook and Directory, and include the newspaper and the photographer's name.

Please mail your photo exhibit pictures (deadline Dec. 15) and 2007 Yearbook and Directory front cover photographs (photo deadline is Nov. 10) to:

David T. Thompson
Kentucky Press Association
101 Consumer Lane
Frankfort, KY. 40601

Have a role with the next generation

Less than halfway through the annual Kentucky High School Journalism Association membership drive, we are generating some impressive numbers. These are numbers even newsroom types - who are sometimes allergic to math - can appreciate.

I fall into that category.

With nearly six weeks to go - as this was written on Sept. 19 - KHSJA has 58 member schools. Of those, 40 have been sponsored by one of 16 Kentucky newspapers. And 18 schools paid to join or renew their own KHSJA membership.

That means more than 68 percent of our member schools so far this school year have been sponsored by a newspaper.

That's truly outstanding.

Remember, the papers sponsoring the most schools in KHSJA will be recog-

Oh, by the way ...

By David Greer
KPA Member Services
Director



nized at the KPA convention in Louisville Jan. 26.

During the last school year, KHSJA had 107 member schools with more than 60 percent of them sponsored by a

newspaper.

It's not too late to sponsor your local school or schools. Sponsorship costs \$50 per school per school year and entitles schools to attend KHSJA workshops and participate in the annual KHSJA contest.

We can bill you for the \$50 or we can even deduct it from your paper's KPS ad revenue check, which makes it easy because you won't even have to cut a check that way. Or, if you like checks, we will be glad to take them too.

Sponsoring a local school in KHSJA is an easy but meaningful way to help mentor the next generation of Kentucky journalists.

Looking forward

The list below shows the Kentucky papers that are sponsoring schools and the number sponsored:

Kentucky New Era, Hopkinsville	7
Advocate-Messenger, Danville	7
News-Enterprise, Elizabethtown.....	6
Daily News, Bowling Green	4
Richmond Register	4
Central Kentucky News Journal, Campbellsville	2
Todd County Standard, Elkton	1
Meade County Messenger, Brandenburg	1
Marshall County Tribune-Courier, Benton	1
Citizen Voice & Times, Irvine	1
Clay City Times, Stanton	1
The Record, Leitchfield	1
Nicholas News, Carlisle.....	1
Sentinel-News, Shelbyville	1
The Gleaner, Henderson	1
Times-Leader, Princeton.....	1

Ruling could limit media access to some records

Appeals court says public employees' personal e-mail not public record

Private e-mail messages written by government employees and sent from publicly owned computers are not subject to Arizona's public disclosure laws, the state Court of Appeals in Tucson said in a decision that Phoenix Newspapers Inc. plans to appeal to the state's highest court.

"If left standing, this decision would seriously undercut the public's ability to keep tabs on public officials and [on] public resources," said David Bodney, attorney for The Arizona Republic. "It allows a public official to pronounce his own e-mail as purely personal and therefore beyond public review."

A three-judge panel, relying on a previous decision by the Arizona Supreme Court, ruled Aug. 4 that in order for an e-mail message to be deemed public, it must not only be created by a government employee on a government computer, but it "must also have some relation the official duties of the public officer that holds the record."

"We see no such relation between [the employee's] purely personal e-mails and his

"We see no such relation between (the employee's purely personal) e-mails and his official duties."

CHIEF JUDGE JOHN PELANDER

official duties," Chief Judge John Pelander wrote for the panel, reversing a trial judge's earlier ruling ordering the release of all the public employee's e-mail messages.

The Republic sought all e-mail messages sent and received by Pinal County Manager Stan Griffis in his last 60 days in office, from Oct. 1 to Dec. 2, 2005, in an investigation of Griffis' alleged spending on \$21,000 worth of sniper rifles and related materials, and a subsequent African safari, Bodney said.

Griffis challenged disclosure of 120 of his e-mail messages as "documents of a person-

al nature,' including 'communications regarding a personal vacation and . . . purchases from online retailers,'" according to the court's opinion.

In agreeing with Griffis, Judge Pelander wrote that the "content of the e-mails . . . is merely a record of Griffis's personal affairs and falls outside the scope of information necessary for the public to have knowledge of 'the manner in which he conducts his office and performs his duty.'"

Judge Pelander, who was joined by Judges J. William Brammer Jr. and Peter J. Eckerstrom, said the court's decision did not address Pinal County's assertions that Griffis' e-mail messages were also public records under the County's computer policies. That determination could only be made through entirely new litigation, the court said.

Bodney said the newspaper will wait to see if the Supreme Court takes the case before considering that alternative.

Political candidates want to use you

The NAA Political Advertising Forum in Washington, D.C. provided a wealth of information to sales reps. During the day long conference held Sept. 15 various speakers talked about a common sense approach to selling newspaper ads to politicians.

Tim Curran, editor of Roll Call magazine in Washington, D.C. talked about the political climate in Washington and at his newspaper. He urged those in attendance to go after the campaigns because of the crucial House seats at stake this fall.

One area for politicians to focus on would be the absentee voters. Newspapers can help those running in the election by targeting ads to the absentee voters. Information is available for sales presentations on the naa web site at:

<http://www.naa.org/>

According to a survey conducted by Bill Cromer, of The Cromer Group, 82 percent of voters who specifically look for ads in their daily newspaper do it once a week or more. Cromer also talked extensively about newspapers being a non-invasive media. "Newspapers are invited into home. We subscribe to them and want to see them," said Cromer.

The political consultants at the meeting said that most candidates want to be included in a voter's guide that comes out just before the election. If newspapers are not doing special sections for these elections, then there could be critical dollars lost to other media sources.

One of the advantages that newspapers have over TV and radio is the fact that we can't sell out of inventory. If a newspaper sees that it is getting a higher percentage of advertising revenue then two pages can be added easily. You won't ever hear a newspaper rep saying "We're sold out on that day." The only way that I have seen that happen is when color is involved and there are limited numbers of color positions in each newspaper.

Joanna Smith was the final speaker of the day. She is the coordinator for corporate political advertising for Lee Enterprises. Their company has seen a 150 percent increase in political dollars from 2002-2006 because of the dedicated focus. She expects online spending to increase 20 percent in 2006.

Smith said to make sure and tell them what your newspaper can do to help them. "Campaign managers don't have the time to shop around and if you can help with printing and distributing - tell them about it. When they see how valuable you are they will appreciate the service that you provide," said Smith.

Anyone needing information, power points, etc. give me a call and I will be happy to share.

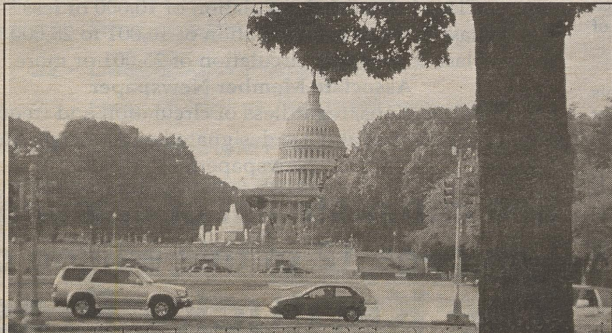
Advertising Plus

By Teresa Revlett
KPS Director of Sales

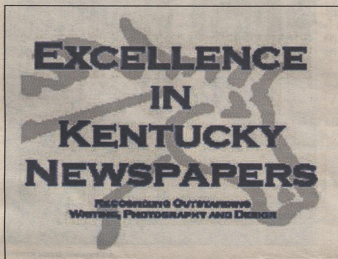


ALL PHOTOS BY TERESA REVLETT

Above: Kentucky Press Association Director of Sale Teresa Revlett meets with Joanna Smith, coordinator for corporate political advertising for Lee Enterprises, during a recent workshop in Washington D.C. Below: Smith enjoys a moment of levity with a fellow attendee. Smith said their company has seen a 150 percent increase in political dollars from 2002-2006 because of the dedicated focus. Bottom left: No trip to Washington would be complete without a visit to the U.S. Capitol.



GET READY ... GET SET ... GO! It's KPA contest time



Competition period is or all issues published between Oct. 1, 2005 and Sept. 30, 2006

All entries must be postmarked by Oct. 16

Kentucky Press Association Excellence in Kentucky Newspapers Circulation Divisions

Weekly Division:

Published One Day Per Week

Class 1: Certified circulation of 3000 or less

Class 2: Certified circulation of 3001 to 4600

Class 3: Certified circulation of 4601 or more

Multi-Weekly Division

Published 2 or 3 times per week, regardless of circulation

Daily Division:

Published Four Days Per Week or More

Class 1: Certified circulation of 10,000 or less

Class 2: Certified circulation of 10,001 to 25,000

Class 3: Certified circulation of 25,001 or more

Associate Member Newspaper

For all publications, regardless of circulation and frequency, who have joined as and are designated as Associate Member Newspapers

See complete list of categories on page 12 of this edition of The Kentucky Press

Get a jump start on preparing your entries in the Excellence in Kentucky Newspapers - 2006 competition. Remember, preparing your entries takes longer than you think! Before you start pulling tear sheets, we recommend you spend a few minutes reading over the rules of the contest, as well as the general information that follows:

Eligibility: Open to all full member newspapers and Associate Member Newspapers of the Kentucky Press Association who have paid dues for 2006.

Entry Fee: There is an overall \$10 entry fee for the newspaper, then \$5 per individual entry in each category.

Awards: Plaques are presented to the newspaper for each first place. Certificates are awarded for second, third, honorable mention or Certificate of Merit as awarded by the judges. A certificate of merit is awarded in any contest category for which only one entry was received. Additionally, point totals are awarded for each first, second and third place for the newspaper and general excellence awards are presented in each division for first, second, and third place, based on a total accumulation of points in the contest.

Point Basis: Five (5) points are given for each first place; three (3) points for each second place; one (1) point for each third place; and one (1) point for each certificate of merit.

Competition Period: The Excellence in Kentucky Newspapers - 2006 is open for all issues published between Oct. 1, 2005, and Sept. 30, 2006.

Deadline: The deadline for entering the Excellence in Kentucky Newspapers Contest 2006 is Monday, Oct. 16.

Entry information, entry forms and tear sheet labels are also available on line: www.kypress.com/excellence2006.

Excellence in Kentucky Newspapers - 2006

Entry Deadline: October 16, 2006 Division _____ Class _____ Circulation _____

Newspaper Name _____
 Publisher/Editor Signature _____
 We are submitting a total of _____ entries in the Excellence in Kentucky Newspapers - 2006. Enclosed are our entries and our contest entry fee (\$10 per newspaper plus \$5 for each entry)

Category Number/Name	Number of Entries	Cost Per Entry	Entry Fee
Category 1 - Best Editorial	_____	x \$5	\$ _____
Category 2 - Best Spot News Coverage	_____	x \$5	\$ _____
Category 3 - Best General News Story	_____	x \$5	\$ _____
Category 4 - Best Feature Story	_____	x \$5	\$ _____
Category 5 - Best Column	_____	x \$5	\$ _____
Category 6 - Best Sports Column	_____	x \$5	\$ _____
Category 7 - Best Sports Story	_____	x \$5	\$ _____
Category 8 - Best Sports Feature Story	_____	x \$5	\$ _____
Category 9 - Best Enterprise or Analytical Story	_____	x \$5	\$ _____
Category 10 - Best Investigative Story or Series	_____	x \$5	\$ _____
Category 11 - Best On-Going/Extended Coverage Story	_____	x \$5	\$ _____
Category 12 - Best Business/Agribusiness Story	_____	x \$5	\$ _____
Category 13 - Best Headline	_____	x \$5	\$ _____
Category 14 - Best Spot News Picture	_____	x \$5	\$ _____
Category 15 - Best General News Picture	_____	x \$5	\$ _____
Category 16 - Best Feature Picture	_____	x \$5	\$ _____
Category 17 - Best Picture Essay (Spot, General or Feature)	_____	x \$5	\$ _____
Category 18 - Best Sports Picture	_____	x \$5	\$ _____
Category 19 - Best Sports Picture Essay	_____	x \$5	\$ _____
Category 20 - Best Special Section	_____	x \$5	\$ _____
Category 21 - Best Graphic	_____	x \$5	\$ _____
Category 22 - Best Sports Page/Section	_____	x \$5	\$ _____
Category 23 - Best Business/Agribusiness Page	_____	x \$5	\$ _____
Category 24 - Best Lifestyle Page	_____	x \$5	\$ _____
Category 25 - Best Editorial Page	_____	x \$5	\$ _____
Category 26 - Best Front Page	_____	x \$5	\$ _____

Return this form with a check for the appropriate amount. Newspaper's publisher or editor must sign the form, verifying that all entries are submitted according to the contest guidelines.

Entry Fee \$10.00
 Total Contest Fee \$ _____

What is copyright and fair use?

Tom Payne, the first African-American recruited to play basketball for Adolph Rupp's UK Wildcats, is currently serving a lengthy prison sentence in Kentucky on a rape conviction. In prison, he found religion and began authoring Christian-themed children's books. One of those books, *The Angel Mimi* and the *Giant* (A Lesson in Love), tells the story of a mean giant who encounters an angel who shows him how to be nice to others.

Whether or not the book was intended to be autobiographical, it appeared to have some parallels with Payne's life. In April 2001, sports reporter Brian Bennett was working on a feature about Payne's life for *The Courier-Journal*. When Payne told him about the book, he visited Payne's mother and obtained a copy. He incorporated several excerpts from the book in the feature and even included a photo of the book's cover.

About three years later, *The Courier-Journal* was sued for copyright infringement. Two of Tom Payne's sisters filed the lawsuit, alleging that they (not Tom Payne) owned the copyright in the book and that *The Courier-Journal* had printed excerpts without their permission. They claimed their copyright had been infringed.

In July 2006, after a couple years of unorthodox legal wrangling (Payne's sisters represented themselves in the lawsuit), the federal courts dismissed the lawsuit. Both the U.S. District Court and the Sixth Circuit Court of Appeals held that *The Courier-Journal's* use of the book's excerpts was protected by the Fair Use Doctrine.

We receive a significant number of calls at the KPA Hotline concerning copyright issues, and this column will attempt to shed some light on the basics of copyright law and the Fair Use Doctrine. We'll use the case concerning *The Angel Mimi* as an example.

Copyright Basics

Copyright protection, which is an area of exclusive federal control, applies to original works of authorship. Copyright protection applies broadly to any tangible form of expression, such as writings, art, audio and visual recordings, and computer files. Copyright protects the expression of facts and ideas, not the facts or ideas themselves.

A copyright holder has the exclusive right to: 1. reproduce the work; 2. prepare derivative works based on it; 3. distribute or copy the work; 4. publicly perform the work; and 5. publicly display the work. Unless an exemption, such as the Fair Use doctrine, applies, permission must be obtained from the copyright holder before any of these uses may be made of the copyrighted work.

A copyright holder can transfer all or a part of his or her rights to another. For example, in the Payne case, Tom Payne wrote the book, but his sisters claimed to own the copyright. The lawsuit never reached the point of examining whether or how Tom Payne's sisters obtained the copyright

From a legal standpoint

By Jeremy Rogers

KPA General Counsel
Dinsmore & Shohl



If you have any legal questions, call the KPA hotline attorneys:

Jon L. Fleischaker: 502-540-2319

R. Kenyon Meyer: 502-540-2325

Ashley C. Pack: 502-540-2385

Jeremy S. Rogers: 502-540-2384

.....

DINSMORE & SHOHL LLP

Switchboard: 502-540-2300

Facsimile: 502-585-2207

interest in *The Angel Mimi*.

Common Misconceptions

Copyright protection does not require a work to be published. Rather, copyright protection attaches to a work the instant the work is created. For works that are published, neither a formal copyright notice nor the symbol © are legally required, if the work was published after March 1, 1989. Also, while a copyright holder must have registered his copyright with the U.S. Copyright Office in order to sue for copyright infringement, the fact that a work is not registered does not mean that it is not protected by copyright. Creators often register with the Copyright Office after their work has been infringed, simply so they can sue.

The Fair Use Doctrine

There are a number of exceptions to the exclusive rights of a copyright holder. In these instances, a copyright holder's permission is not required in order to reproduce portions of a copyrighted work. Works created by the federal government, for example, are not protected by copyright. There are also a number of specific exceptions for library and classroom uses. Moreover, copyrights eventually expire, leaving a work part of the "public domain." The Fair Use Doctrine, however, is the exception that most often applies when a newspaper makes use of copyrighted material.

In many respects, the Fair Use Doctrine is a reflection of First Amendment principles. It allows limited use of copyrighted material without permission from the copyright holder in

order to allow news organizations and others to freely engage in criticism, comment, and news reporting. There are four factors to be weighed when determining whether the Fair Use Doctrine applies. While the law requires that each of the four factors be examined, they do not all have to be answered in the affirmative for the doctrine to apply.

1. The Purpose and Character of the Use.

The first factor under the Fair Use Doctrine is the purpose and character of a use of copyrighted material. This factor is supposed to determine whether an allegedly infringing use merely serves as a replacement for the original copyrighted work or instead adds something new, with a further purpose or different character.

In most news reporting situations, the first factor will weigh in favor of finding a Fair Use. This is so because news reporting about a copyrighted work does not typically attempt to replace the original work. In the Payne case, for example, the excerpts from *The Angel Mimi* were used in the feature story on Tom Payne to explain his life -- not to serve as an alternative for those who might otherwise buy a copy of the book to read to their children.

2. The Nature of the Copyrighted Work.

The second factor in the Fair Use Doctrine examines the nature of the copyrighted work. Works involving more creative expression, such as plays, poems, fictional works, photographs, and paintings, are subject to higher protection. Unpublished works are fully protected and, for creative works like these, an author's rights of first publication often restrict the Fair Use Doctrine.

In the Payne case, for example, Tom Payne's sisters argued that they should have the right to first publish *The Angel Mimi*, and that *The Courier-Journal* infringed their ability to do so. On the other hand, the nature of the book as an arguable parallel to Tom Payne's life weighed in favor of *The Courier-Journal's* use.

3. Amount and Substantiality of the Portion Used in Relation to the Copyrighted Work as a Whole.

The third factor examines how much of the copyrighted work was used. There are no hard-and-fast numerical or percentage limits. Generally, the larger the amount used, the less likely it will be a Fair Use. This factor also takes into consideration the importance of the copied portion as well as the amount. Sometimes, even a small amount can make this factor weigh against Fair Use if the portion used is "the heart" of the copyrighted work.

In the Payne case, the feature article quoted five substantial lines of text, which comprised a

See COPYRIGHT on Page 9

In the opinion of the Attorney General ...

On-going probe limits records

The Kentucky Attorney General's office has rejected an appeal that the Department for Natural Resources violated the Open Records Act in denying a request from Associated Press correspondent Samira Jafari.

In her request, Jafari requested transcripts of all the interviews conducted by officials from the Office of Mine Safety and Licensing under the Kentucky Environmental and Public Protection Cabinet of witnesses regarding the May 20 explosion at Kentucky Darby Mine No. 1 in Harlan County held between May 31 and June 2 at the Kentucky Community and Technical College campus in Harlan.

In a response dated June 7, Linda Potter, executive assistant to the commissioner of the Office of Mine Safety and Licensing, said the transcripts were not finished and the office was still investigating the incident.

"Because the interviews are an integral part of our investigation, the transcripts will not be made available for release by the Office of Mine Safety and Licensing until the conclusion of the investigation," Potter wrote.

Jafari appealed the department's decision, questioning how release of the transcripts could harm the department by revealing the identity of informants when the department had "already disclosed who the informants were by publicly stating that Kentucky investigators subpoenaed and interviewed all the employees of Kentucky Darby Mine No. 1" while noting that state and federal investigators in West Virginia released transcripts of the

witnesses connected to the January 2006 Sago disaster in April 2006 - as their investigation into the tragedy continued."

The attorney general's office was unable to resolve the question with the facts on hand and posed a series of questions to the Department of Natural Resources.

The A.G.'s office asked the department to describe the particular harm to the agency that would result from the premature disclosure of the requested transcripts.

The department said contends releasing the transcripts before the investigation is complete could contaminate the testimony of other witnesses.

"Interviews of witnesses need to be spontaneous and free of the influence of knowing what others have said," the department said. "The knowledge of others' testimony can result the tailoring of responses and the loss of independent recollection which is vital to the investigation process. There are serious enforcement and sanction effort tied to these investigations as well as recommendations for future safety procedures. If these are to be appropriate, meaningful and accurate, the integrity of the evidence gathering process must be preserved to the greatest extent possible."

The A.G.'s office also sought more information on the department's investigation process and how the transcripts would be used.

The department said all information gathered during the investigation, including the transcripts, would be used to determine what caused the accident, whether viola-

tions occurred and who caused them and what steps can be taken in the future to prevent such accidents.

As of June 21, the date the department responded to the questions from the A.G.'s office, the department expected the interview process would be complete within 10 days.

After reviewing the answers provided by the department, the A.G.'s office upheld its decision to withhold the transcripts.

The department was justified in its denial because of the pending investigation.

"In order to successfully raise this exception, a public agency must satisfy a three-part test," the A.G.'s office wrote in its decision. "The agency must first establish that it is a law enforcement agency or an agency involved in administrative adjudication. It must next establish that the requested records were compiled in the process of detecting and investigating statutory or regulatory violations. Finally, the public agency must demonstrate that disclosure of the information would harm it by revealing the identity of informants not otherwise known or by premature release of information."

Resolution of the issue in this appeal turns on whether the department has proven that releasing the transcripts would damage its investigation.

"The department describes particular harm to the agency and its investigation that would result from premature disclosure of the requested records. We believe it has," the A.G.'s office said in its decision. "

Jail ordered in fake obit case

By JEFF REINITZ
Courier Staff Writer

A Stout, Iowa man who submitted a fake obituary for his girlfriend's son to get out of work has been sentenced to jail.

District Associate Judge James Coil sentenced James Ralph Snyder, 36, to a year in jail suspended to seven days behind bars after he pleaded to misdemeanor tampering with records.

A \$500 fine was suspended, and he will be on probation for two years.

Snyder, who had been working at Tyson Foods when he took out the obituary in December, apologized to the court during the hearing.

Authorities said Snyder submitted information for an obituary to the Courier for his girlfriend's 17-year-old son saying he died after a lengthy illness as part of a plan to get funeral leave.

The girlfriend, Mary Jo Elizabeth Jensen, who also worked at Tyson and also took leave, was charged as an accessory after the fact.

The deception was discovered days later when people who knew the boy and read the obituary spotted him at a downtown restaurant and called police and the newspaper.

The teenager is alive and well and graduated from high school in May.

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significant portion of the a relatively short children's book. On the other hand, a children's book of this type is as much about the illustrations as it is about the text, so this factor was a close call.

4. The effect of the use upon the potential market for or value of the copyrighted work.

The fourth and final Fair Use factor examines to what extent the allegedly infringing use affects the market for the copyrighted work. This is often cited as the most important of the four fac-

tors. As an unpublished children's book, Tom Payne's sisters were faced with a difficult task of showing that The Courier-Journal feature would have negatively impacted whatever potential market The Angel Mimi might have -- in other words to show that those who might otherwise buy the book would just read the feature article instead.

It is easy to see how all the Fair Use factors work together to get to the ultimate question of whether a use is a fair one or whether it infringes an author's ability to control and profit from his own intellectual property.

A use becomes less and less fair the more it approximates the same purposes as the copy-

righted work, the more it borrows from the copyrighted work in quality and quantity, and the greater it impacts the market for the copyrighted work.

While the use of excerpts or quotes from copyrighted material is quite often a Fair Use in hard news stories, features, reviews, and advertisements can present more difficult questions. A Fair Use analysis can be complicated and it necessarily depends on the unique circumstances surrounding a proposed use.

If you have questions about copyright issues, including whether a proposed use could qualify under the Fair Use Doctrine, call your hotline attorneys.

PEOPLE

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(IN) Tribune and WSBT-TV in South Bend, Associated Desert Shoppers in California and The Herald-Times in Bloomington IN. Prior to moving to Danville, he served as general manager, special publications at the South Bend Tribune.

He holds both a bachelor of arts and master of business administration from the University of Notre Dame and has served on a number of civic and professional boards and committees while with the company.

He and his wife, Stephanie, have two children, Scott (Trey) III, 3, and Daniel, 2.

.....

Mahagan named as Daily News ad director

The Daily News in Bowling Green has announced that Mark Mahagan will be the new advertising director.

Mahagan, 44, was an advertising major at Western Kentucky University and graduated in 1984. He has worked for the Daily News since 1988, with the last 15 years spent as retail advertising manager. Mahagan and his wife, Renee, have two children, Clay and Carrie.



MARK MAHAGAN

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O'Toole accepts position at PSA magazines

Current Daily News Advertising Director Kent O'Toole is resigning to accept the position of publisher and executive vice president of PSA Magazines, which publishes From House to Home, Better Health and Living and Wedding Vow magazines. PSA's unique partnership with newspapers throughout the United States delivers a sophisticated turnkey, special section product that captures non-traditional revenue from your local market. PSA's corporate offices are in West Palm Beach, Fla.



KENT O'TOOLE

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Swindler named editor of The Times-Tribune

Samantha Swindler, formerly of the Jacksonville Daily Progress in Jacksonville, Texas, started recently as the managing editor for the Times-Tribune.

She replaces Patrick Ethridge, who was promoted to the Kokomo Tribune in Kokomo, Ind.

"It's a good opportunity," Swindler said, noting that the Times-Tribune is about twice the size of the Daily Progress. "I see a lot of positives here and growth everywhere."

Swindler said picking up a paper from any day of the week shows how you can take a larger issue like crime and relate it in smaller ways. Recent coverage of the alleged attacks on two grandparents by their grandson may not affect the average reader for example, she said, but if the story involved drugs, "people want to know where did he get those drugs and how did they get in our community?"



SAMANTHA SWINDLER

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Carroll temporarily leaves Kentucky post

Helen M. Carroll, community relations manager for Toyota Motor Engineering and Manufacturing North America, is talking a short-term assignment at the company's new truck plant in San Antonio.

"I am going there to lead the planning efforts for the First Truck Line Off Ceremony, scheduled for Nov. 17," Carroll said.

Jana Martin Kemp, Assistant Manager in our External Affairs group and currently working with our plants and suppliers on a variety of projects and on some Northern Kentucky community activities, will shift most of her responsibilities to the Community Relations group, supporting our many community relations activities.

.....

High school student will help out Tribune-Courier

Ben Clark, a senior at Marshall County High School, will be helping the Tribune-Courier with its sports reporting.

Clark said he is hoping to "learn the ropes" of journalism before heading off to college where he would plan to study broadcasting.

Clark's work at the Tribune-Courier will focus on freshman and junior varsity football and the middle school softball team and other middle-school sports.

.....

Emily Salmon becomes new reporter at Sun

The Winchester Sun's newest full-time reporter already knows most of the ropes at the paper.

Emily Salmon was hired as a part-time news clerk in June, and recently moved to the vacated education, police and court reporter position.

A Western Kentucky University graduate, Salmon completed her journalism degree in December. She previously worked at the Portsmouth Daily Times in Portsmouth, Ohio, as an education reporter.

Salmon, 23, said she was inspired to join the field by her brother Ben Salmon, who is a music reporter at a daily newspaper in Oregon.



EMILY SALMON

.....

Lewis named new ad manager in Winchester

The Winchester Sun advertising department has a new face and a fresh approach.

Sean Lewis, a Cincinnati native, took over the position of advertising director July 24 at the Winchester Sun.

Lewis attended Wright State University in Dayton, Ohio, and has worked in sales for more than 20 years. He last worked at the Herald-Mail, a medium-sized daily newspaper in Hagerstown, Md.

An avid sports fan, Lewis can usually be found cheering for the Cincinnati Reds, Cincinnati Bengals and Ohio State University football. He also enjoys playing golf, working around the house, and spending time with his wife, Diana, and 8-year-old son Matthew.



SEAN LEWIS

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Sentinel-News hires Skellie as ad consultant

George Skellie has joined the Sentinel-News as an ad consultant.

Previously, Skellie worked as an account executive for Insight Communications.

Skellie holds a B.A. in broadcasting from Eastern Kentucky University. He lives in

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PEOPLE

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Shelbyville with his wife, Cyndi, and three children.

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Brewer returns to pages of Georgetown paper

Byron Brewer, former editor of the Georgetown Graphic, the Georgetown News and Times, the Georgetown Times and the Georgetown News-Graphic, has agreed to write a weekly column for the News-Graphic.

Brewer, 48, came to Georgetown in 1980 after graduating from the University of Kentucky.

In 2004, Brewer was forced to leave his career because of a medical problem. It was only recently that Brewer felt strong enough to return to journalism.

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Stanley becomes sports editor at Cadiz

The Cadiz Record newspaper announced the hiring Michael Stanley as its sports editor.

Stanley attended the Indiana University Southeast and has worked as a sports writer at Bedford and Paoli, Ind.

Stanley is the first sports editor the paper has had in several years.

The Record will also be beefing up its sports coverage with contributions from several freelance writers.

"(Stanley) is dedicated to not only bringing our readers the scores of the various competitive sports, but looks forward to doing feature stories on individual players and coaches of the many sports at all levels," Cadiz Record General Manager Vyron Mitchell said. "It's something the newspaper has needed to do for a long time."

.....

Pace, Downs join The Anderson News staff

Jane Ashley Pace is the new advertising manager and Tom Downs a new sales representative at The Anderson News.

Pace, a native of Campbellsville, previously worked as a sales representative at the Grant County News in Williamstown.

Ben Carlson, general manager of The Anderson News, said he is excited to have Pace lead the paper's advertising department.

Downs, a native of the Bardstown, joined the paper earlier this summer. He previously worked as a food and beverage coordinator at Woodford Hill Country Club. Working for the newspaper has been a new experience filled with exciting challenges that change on a daily basis, said Downs, whose territory includes Lawrenceburg, Versailles and surrounding counties.

Carlson said Downs adapted quickly to the

unique world of advertising. "Tom came to us as a rookie, but has done a wonderful job learning his craft and providing advertising solutions for our fellow business owners," Carlson said. "With Jane Ashley's experience and guidance, I'm sure he will continue to improve and help our neighbors prosper."

Downs is a graduate of Bardstown High School and attended the University of Kentucky for three years.

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Sidebottom joins LaRue County Herald News

Ashley Sidebottom was recently selected to fill The LaRue County Herald News' part-time staff writer position.

Sidebottom is a senior at Campbellsville University where she is majoring in public relations with a minor in history. She will receive her Bachelor of Science degree in December. She has also been a member of CU's Campus Times staff for the past year.

Sidebottom has a son, Nate, who will be three in December. She is also engaged, and plans to marry her fiance, Brian, in 2007.



ASHLEY
SIDEBOTTOM

WKU newspaper, yearbook up for Pacemaker Awards

Western Kentucky University's student newspaper has joined the WKU yearbook as a finalist for national Associated Collegiate Press Pacemaker awards.

The College Heights Herald, which competes in the four-year non-daily newspaper category, has won the national Pacemaker 11 times. Editors for the 2005-06 year were Shawntaye Hopkins and Michael Casagrande, both of Louisville.

Earlier this year, the ACP announced that the 2005 edition of the Talisman is among finalists for the Pacemaker in the yearbook category. Katie Clark of Bowling Green was editor of the 2005 Talisman.

The Talisman, which resumed publication in 2003 after a six-year absence, has won nine national Pacemakers including 2003 and 2004.

Last year, WKU was the only school in the nation to win newspaper and yearbook Pacemakers. The Herald and Talisman have won national Pacemakers at the same convention five other times - 1981, 1982, 1984, 1988 and 2003.

This year's winners will be announced during the National College Media Convention Oct. 25-29 in St. Louis.

Student Publications director Bob Adams will be inducted into the College Media Adviser Hall of Fame on Oct. 26. Adams is receiving the group's highest honor for his dedication to student journalism and College Media Advisers. Adams, Herald editor in 1964, has been an adviser to the paper since 1968 and has been director of Student Publications since 1990.

2006
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KENTUCKY
NEWSPAPERS
Want to see
the winning ads
from the 2006
Ad Contest
ONLY up close and
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Send checks for \$5.00 along with this order form to:

Ad Contest 2006 CD
C/O Kentucky Press Association
101 Consumer Lane
Frankfort, KY 40601

Now you can order a cd that has all the First Place ads from the 2006 Ad Contest.

Newspaper: _____

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Address: _____

City/State/Zip: _____

The categories for the 2006 Excellence in Kentucky Newspaper contest

Category 1: Best Editorial

Submit as your entry a full-page tearsheet clearly marked. Editorials must be locally written.

Category 2: Best Spot News Coverage

The stories submitted for this category should be of unscheduled events, for which no advance planning was possible, such as accidents, fires, natural disasters or other breaking news events. Submit as your entry a full-page tearsheet with the best spot news story by any writer clearly marked.

Category 3: Best General News Story

The entries in this category should be for articles on scheduled or organized events for which advance planning was possible, such as trials, public meetings, dedications, political appearances, etc. Submit as your entry a full-page tearsheet with the best general news story clearly marked.

Category 4: Best Feature Story

Submit as your entry a full-page tearsheet with the feature story clearly marked. Factors to be considered in judging this category will be quality of writing, subject matter and reader interest. Articles should be of local interest, preferably about local people, places or things.

Category 5: Best Column

One entry must consist of three columns, each from a different issue of the newspaper. The three tearsheets should be stapled together as one entry. Columns must be written by a staff member or regular local columnist for your paper. The writer has considerable latitude in this category.

Category 6: Best Sports Column

One entry must consist of three full-page tearsheets from different dates with column clearly marked. Columns must run as a regular feature in your newspaper and must be written by a staff member or local columnist. Originality and style will count highly in judging.

Category 7: Best Sports Story

Submit a full-page tearsheet with your best sports story plainly marked. Community interest, thoroughness, story structure and impact of lead will be considered. Entries must be by local staff members.

Category 8: Best Sports Feature

Submit a full-page tearsheet with your best sports feature plainly marked. Community interest, thoroughness, story structure and impact of lead will be considered. Entries must be by local staff members.

Category 9: Best Enterprise or Analytical Story

Defined as reporting on an original topic, often an issue or trend. This can be a single story or a story with sidebars. (This category does not include breaking news, which is in Category 2; and coverage of events such as trials or government meetings goes into Category 3. This category could include stories that examine issues stemming from such meetings or from other news events.) The coverage should demonstrate the reporter's/reporters' initiative in story selection, research or analysis.

Category 10: Best Investigative Story or Series

This category is defined as a single story or series of stories initiated by the newspaper on the same subject which demonstrates the

reporter's/reporters' initiative in research or investigation. If a series, its publication must end within the contest period.

Category 11: Best On-Going/Extended Coverage Stories

This category is intended to recognize efforts by newspapers and reporters to continue coverage of a news story. An example would be follow-up stories on developing news when the entry doesn't qualify as a story series or investigative reporting. Submit the original (first) news story and all subsequent follow-up stories.

Category 12: Best Business or Agribusiness Story

Submit a full-page tearsheet with your best business or agribusiness story plainly marked. Entries must be by local staff members.

Category 13: Best Headline

This category is designed to recognize the best headlines on stories. A headline writer may submit up to three headlines she/he has written in the contest period with the limit of one entry (up to three headlines) per staff member. There is no limit on the number of staff members entering this category. An entry must consist of full page tearsheets with the headlines written by the staff member clearly marked with a red check mark. All three tearsheets for any one individual must be stapled together with an entry label placed on the top tearsheet only.

Category 14: Best Spot News Picture

The photographs for this category should be of unscheduled events for which no advance planning was possible, such as accidents, fires, natural disasters or other breaking news events. Submit a well-marked, full-page tearsheet. Judging will be made on the basis of newsworthiness, local interest, and overall quality of work.

Category 15: Best General News Picture

Judging for Category 15 will be made on the basis of newsworthiness, local interest, balance and quality of work. Submit a well-marked, full-page tearsheet. The pictures should be of scheduled events for which planning was possible, such as meetings, dedications, political appearances, etc.

Category 16: Best Feature Picture

Submit a well-marked, full-page tearsheet. Judges will be looking for local interest and appeal, imagination and originality in selection of subject matter, posing, lighting and overall quality of work.

Category 17: Best Picture Essay (Spot, General or Feature)

An entry must consist of two or more pictures used together to tell a story. Overall impact, appeal, balance, lighting, technique and quality of work will be considered in the judging.

Category 18: Best Sports Picture

This category is to encourage more and better sports coverage. Overall impact, appeal, balance, lighting, technique and quality of work will be considered in judging.

Category 19: Best Sports Picture Essay

An entry must consist of two or more pictures used together to tell a story. Overall impact, appeal, balance, lighting, technique and quality of work will be considered in judging.

Category 20 - Best Special Section

Submit as your entry a full copy of one special edition or section produced by your newspaper. This entry must have been an individual newspaper's own effort, not a canned section. This special section or special edition will be judged as a whole with emphasis placed on editorial content, makeup and photographic excellence. A reasonable blend of advertising will be accepted. You may enter three special sections or editions, but separate entry fees are required for each one.

Category 21 - Best Graphic

Submit as your entry a full-page tearsheet showing the best graphic to emphasize a point or to give readers a better understanding of a story. Graphics or charts may be computer generated but must be locally produced. Each graphic is considered a separate entry.

Category 22 - Sports Page/Section

Submit as your entry a tearsheet or section from three separate issues, stapled together. Advertising is not a detriment to the judging of the content, but such advertising should be not more than one-quarter page and should be appropriate to the sports page. Sports pages will be judged on layout, writing style, pictures and other illustrations.

Category 23 - Business/Agribusiness Page

Submit as your entry tearsheets of your page or section from any three separate issues, stapled together. Advertising is not a detriment to the judging of the content, but such advertising should not be more than one-quarter of a page or half of the section and should be appropriate to the business page. Business pages will be judged on layout, writing style, pictures and other illustrations.

Category 24 - Lifestyle Page

Submit as your entry full-page tearsheets of the Lifestyle or Family Section of three separate issues, stapled together. This page is to be judged on appeal to the family and its general appearance. While advertising is permitted, it should not be more than one-quarter of the page and it should be appropriate to the page. Points to be considered are layout, writing style, photographs, variety of news, features and brief personal items.

Category 25 - Editorial Page

Submit as your entry full-page tearsheets of any three issues, stapled together. The editorial page will also be judged as a whole. Quality of writing and importance of subjects locally will count. Localized editorials are most desired. Local work, writing, columns, cartoons are more desired than syndicated materials or other outside material. Layout and style of pages are also factors. Advertising will not detract from the judging, providing it occupies less than one quarter of a page.

Category 26- Front Page

Submit as your entry full-page tearsheets of any three issues, stapled together. Judging will be on the factors of appearance and content of the front page. Newsworthiness and good writing are of prime importance. Pictures will be judged on quality and newsworthiness, not on size alone. Factors to be considered include general appearance and reader appeal, including typography, pictures and other illustrations, headlines, use of white space, layout and proofreading.