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## TELLING STORIES:

### *Ron Lansing's Approach to Legal History*

**Editor's Note:** *In our Summer 1993 issue of Oregon Benchmarks, we ran a brief review of Ronald B. Lansing's new book, Juggernaut: The Whitman Massacre Trial, 1850. In that review we talked about how this history departs sharply from the traditional scholarly account, which often relies on the author's narration and carefully qualified language to get at historical truth.*

*In Juggernaut, Lansing departs from tradition by letting an imaginary eyewitness, mountain man Eli, recount—in his own bomey lingo—the trial of five Cayuse Indians for the murder of fourteen men, women, and children at the remote Whitman mission on the Columbia River.*

*Each reader will have to judge how well Lansing's approach works. For my part, I wanted to find out how and why he wrote as he did. So I met with him one day in his faculty office at the Northwestern School of Law of Lewis & Clark College, turned on my tape recorder, and settled back to hear a fascinating account of one man's way with words.*

**Buan:** *As I compare your book to most of the histories I've read, I must say your eyewitness storyteller approach is unique. I can't help wondering how a mild-mannered law professor like you did this "Clark Kent-like" about-face.*

**Lansing:** I don't know that it's all that radical a difference to write a history than to write about law. There are many jurisprudential schools in law, one of which certainly is the history perspective. Oliver Wendell Holmes said about the life of laws that it is experience, not logic, meaning that to understand how things got the way they are is a better understanding of law than is pure syllogistic, logical analysis. Obviously, both are important.

History and law are pretty much compatriots. It's not unusual for lawyers to be very interested in history and historians to be interested in law. Common law, particularly, is based on precedent—how did the courts decide things yesterday? So to look to yesterday is a constant source of lawyer research. You're always going back.

And you're always looking at stories. Common law begins with a case: Joe the tiler went after James the tailor with a sword. Then it comes before the judges and they write opinions about it and they say you have to pay him money or you have to go to jail. But it begins with a story. The story becomes the law, rather than the law becoming the story.

**Buan:** *What prompted you to write about the Whitman massacre trial?*

**Lansing:** I happened to be researching another book at the Oregon State Archives when I came across what would today be called the transcript of this 1850 trial. It's called the Bill of Exceptions—old "parchmenty" paper on some blue stationery. It was just a summarization. They didn't have verbatim reporters then—at least not here on the frontier. It told what each of the witnesses said in the Cayuse murder trial. And I thought, "This will be an interesting article." I'd read a lot about the Whitman massacre but never anything that told what happened at the trial.

I thought I'd write a short article. It grew and grew and it turned into a book-size manuscript. You can't keep a good lawyer down.

*Continued on page 4*



*Ron Lansing in his office at the Northwestern School of Law of Lewis & Clark College. His Juggernaut: The Whitman Massacre Trial, 1850 has been a popular book during the Oregon Trail Sesquicentennial.*

## President's Message

By Outgoing President Katherine O'Neil



Katherine O'Neil

When **George Fraser**, new president of our society, was president of the Multnomah Bar Association in 1960, about 1,000 attorneys practiced in Multnomah County. An additional 1,500 practiced elsewhere in Oregon. In 1960 MBA members met in monthly luncheon gatherings, a community of friends and professionals.

With the explosive growth in bar membership, Oregon's attorneys have begun to find a community of friends in other, smaller, specialized groups such as our U. S. District Court Historical Society.

**Noreen Saltveit** reflected on this phenomenon in the last issue of the Oregon State Bar magazine, and I've thought about it during meetings, dinners, picnics, and other gatherings of our society. Our members range from law clerks to senior judges, drawn together by our practice in federal court and our interest in the history of the institution. We know one another personally, see one another frequently, and actually rejoice in our work celebrating and recording the history of our court.

As I transmit my quill pen and file folders to George Fraser, it's time for me to thank society members and others who have made special contributions to our community.

◆ **Carolyn Buan**, editor of this newsletter and our book, *The First Duty*, for professional skill and for personal interest and commitment to our society;

◆ **The Hon. Owen Panner**, chair emeritus, who has hosted numerous boisterous executive committee meetings in his chamber, for his continued interest and support;

◆ **Jim Westwood** and **Joyce Hyne** for persistence and dedication in keeping our oral history project on target;

◆ **Al Bannon**, treasurer, and **Laura Hashimoto**, staff, for keeping track of our finances;

◆ **Greg Chaimov**, secretary (the actual keeper of the quill pen), for keeping the history of our meetings and proceedings straight;

◆ **Jeff Batchelor**, membership chair, for keeping our flock together and growing;

◆ **Adair Law**, assistant to Chet Orloff at the Oregon Historical Society, who has graciously welcomed our society to the OHS facility for some of our events—and to the Bybee-Howell House for our 1993 picnic;

◆ **Kirk Hall** and his assistant **Marvis Gillnet**, who have handled distribution of several hundred individual orders for *The First Duty*; and

◆ **Bill White** and **Caroline Stoel**, who served on our Book Committee and offered both their good ideas and their help in marketing our book.



### District Court Histories Donated to Franklin High School's Law Magnate Program

In addition to donating copies of *The First Duty* to high school libraries and educational service districts around the state, our society recently provided free copies to every teacher in the Portland Public Schools Law Magnate Program at Franklin High School. The following letter of thanks was sent to Katherine O'Neil by the program's coordinator:

Dear Ms. O'Neil

I would like to express my appreciation for your part in sending us copies of the book, *The First Duty*. When I first saw information about the publication, I had no idea that it was more than a pamphlet. Imagine my delight when I saw what a beautiful book it turned out to be. As I began reading it, I was surprised to find that it was not filled with arcane concepts of law, but really held my interest as a non-lawyer history buff.

Please extend my thanks to all who had a part in the book's distribution to schools.

Oregon needs more such information about the development of its institutions.

Sincerely,

Joel E. Daniels

Law & Public Service Coordinator, Franklin High School

## 1993 Annual Meeting and Election Results

The 1993 annual meeting took a different form this year, as members and guests gathered at the Madison Room of the Oregon Historical Society for wine and hors d'oeuvres rather than dinner. The meeting was held Tuesday, November 9. The program featured a delightful talk by Professor Ralph James Mooney about Judge Matthew Deady—an historical figure about whom Mooney has written widely.

New officers elected at the annual meeting are **George H. Fraser** (President), **Joyce Hyne** (Vice President and President-elect), **Albert J. Bannon** (Treasurer), and **Gregory A. Chaimov** (Corporate and Executive Secretary).

Also elected were three new board members: Chet Orloff, as the representative from the Oregon Historical Society, and—for two-year terms—Martin Hansen, an attorney in Bend, and Diane Rynerson, executive director of Oregon Women Lawyers.



**Chet Orloff** has been executive director of the Oregon Historical Society since 1991, having served in earlier years as the society's development director. From 1986 to 1991, he was founding di-

rector of the Ninth Judicial Circuit Historical Society and editor of *Western Legal History*. Orloff holds undergraduate and graduate degrees in western archaeology, Pacific Northwest history, and historical agency management. He has served on numerous community boards, including the City-County Bicentennial Commission, the Nature Conservancy, the Portland Planning Commission, the Portland Landmarks Commission, and Artquake.

**Martin E. Hansen** is a partner in the Bend firm of Marceau, Karnopp, Petersen, Noteboom & Hubel, focusing his practice on civil and commercial trial practice, including insurance defense, banking law, and land-use law. A native of the San Francisco Bay Area,



## New Federal Courthouse Site Has An Interesting History



(From left) Joyce Hynes is the society's new vice president, Jim Westwood is co-chair (with Joyce) of the oral history project, and Greg Chaimov is the society's secretary.

Hansen received his undergraduate degree in political science from Southern Oregon State College and his law degree from the University of Puget Sound School of Law. Besides being active on a number of OSB committees, Hansen is a self-described history buff. He is chairman of the Deschutes County Landmarks Commission and is presently writing a book that chronicles the role of railroads in the region's lumber industry.

**Diane Rynerson** was born and raised in Portland. After graduating from Grant High School, she attended Portland State University, where she was enrolled in the Scholars Program. She graduated with honors in German at



Portland State and later attended the University of Santa Clara School of Law, where she received her law degree in 1985. Rynerson is a member of the California and Oregon bars. She has been executive director of Oregon Women Lawyers since 1990 and has been actively involved in collecting oral histories of women lawyers for the Queen's Bench history committee, in cooperation with the District Court Historical Society's oral history program.

If you are aware of any photographs, articles, documents, deeds, transcripts, or other memorabilia that might be of interest to the U.S. District Court Historical Society, please let us know. Call Norman Wiener at 224-5858 with your recommendations or gifts.

Portland's old Hamilton block, between Southwest Second and Third avenues and Main and Salmon streets, will soon be the site of a new federal courthouse. In 1993 that site was the subject of an archaeological dig by Archaeological Investigations Northwest, Inc., a firm hired by the General Services Administration to ensure that important archaeological deposits would not be adversely affected by courthouse construction.

The Hamilton block has some importance in Portland's history, for it housed some of the city's early Chinese residents and businesses. In 1875 Is Sing, a Chinese clothing manufacturer, occupied a building on the Salmon Street side of the block, and in 1880 a series of wooden buildings facing Main Street and Second Avenue served a small enclave of Chinese workers, who had come to this country to earn money for their families at home.

One building in the Hamilton block was a tenement for 46 single men; another was a laundry. By 1898 a Chinese mission had been established on Second Avenue by the First Christian Church—perhaps to combat the prostitution, gambling, and opium smoking that was rumored to be rampant among the foreigners.

Later, after Chinatown moved north toward the Union Station area, three of the Hamilton block's lots were acquired by Moy Back Hin, one of the region's first Chinese millionaires.

Much of the early Chinese presence on

the Hamilton block was destroyed by excavations for later buildings. But archaeological work has uncovered a number of artifacts, from which to paint a picture of life there in the 1870s and 80s.

According to one scientist, who led an informal tour of the site in August, the finds include ceramic plates, condiment containers, gaming pieces, buttons, and animal bones. By studying those artifacts, archaeologists will be able to draw a number of conclusions.

As the tour leader explained, "One of our main research topics is how, in the first 20 or 30 years that the overseas Chinese were in this country, they were assimilated into mainstream American society. And the way that we want to look at that is through their material culture. We're going to look at the dishes they were buying, the cuts of meat, the condiments. We're going to look at their garments through an analysis of the buttons they were wearing."

Today, all traces of the Hamilton block buildings and the archaeological dig have been removed from the site, readying it for courthouse construction. But evidence of the Chinese occupation will be stored at the Oregon State Museum of Anthropology in Eugene, where it will be available to scholars. There has also been some discussion of mounting an exhibit.

**Editor's Note:** Thanks to member Todd Peterson for his help in gathering material for this story.



## Ron Lansing continued

**Buan:** *Do you have an undergraduate degree in history?*

**Lansing:** No, English and philosophy.

**Buan:** *Do you teach the history of law?*

**Lansing:** No, I teach torts and evidence law—trial-type law. Evidence law has to do with the rules of how you play the game called trial, and so it was the maneuverings at the Cayuse trial that interested me.

**Buan:** *When you decided that this was going to be more than an article, what was the series of decisions that led you to write it the way you did? For one thing, it's obviously for a lay reader, and I notice that when you talk you define terms as you go, which is not all that common for people in the law.*

**Lansing:** I've written a lot of law review articles, and I've always felt that these articles start with the assumption that the readers have a law background and so you start writing with the jargon, writing for an esoteric audience. And I've always felt badly about that. Writing is the lawyers' and professors' stock in trade. And I felt I should be writing to a general citizen audience.

I'm more interested in being the teacher than I am in being the scholar. And I realized that the best way to teach anything is to show rather than tell. I wrote my first book, *Skylarks and Lecterns—A Law School Charter*, to teach first-year students about what happens at law school. I chose to do it with descriptive writing, rather than exposition.

I wanted to reach the constituents, the consumers, of law and not just talk to colleagues, so when I saw the account of the Cayuse trial, I said, "This is an interesting darn case. And it's got a lot of interesting law points in it. They're kind of technical points about jurisdiction and venue and stuff like that. And people can be made to understand these things if put in their terms." So to get away from my professorial way (I've been teaching for twenty-six years), I had to create a narrator—some fictional person to tell this story instead of me in order to talk straight to people. Because I knew I would fall into polysyllabic words and the jargon of law if I didn't.

So I made this guy somebody who knew something about law, but who was a mountain man—a no-nonsense talker.

**Buan:** *Did you base him on any real person?*

**Lansing:** No. And I can't say I've ever encountered anyone like him. The vernacular there—the idiom—so often was true about mountain men. Read the Joe Meek story in Frances Fuller Victor's *River of the West* where Meek's reported yarning has an Appalachian rhythm and idiom.

Appalachian language will sometimes compound the superlatives. They won't say, "the most beautiful," they'll say, "the most beautifulest." They'll say, "it was a powerful good story" or "she was bad awful sick."

When I first wrote the book it was *thick*—I mean really *thick*—with that vernacular. But I had advice from other editors who said, it's nice, but it gets in the way. It doesn't flow. It doesn't go fast enough. Readers have to stop and decipher it.

They were right. Good advice. I had—to cut back on that patois. To just suggest dialect to the reader—that's all the reader needs. Realize that the reader's going to meet you halfway. And if you try to write all the way to readers, you're talking down to them. If you don't tell enough, you're asking them to come too far. You have to plant the seeds and let the reader's imagination till and reap the rest. Anyway, I toned it down. What you see now is just suggestions.

On the other hand, I had to keep the narrative conversational. I had to remind myself, "This is not written...this guy is *telling* this story. This is a narrative—it's oral. It just happens to be written down. I had to think I'm just *saying* these words.

**Buan:** *I can see that a lot of what helped you shape this book is your background in English. Each section ends neatly, and the next picks up on some word or phrase in it. In one place you say, "Folks were pleased to get home that night. Bellies needed store." Then you begin the next section with, "The meals for the jury that night and next morning were slim pickings."*

**Lansing:** My English teachers were heavy on poetry, and the difference between poetry and prose has to do with compaction of thought within a single image and a single line. Again, it's letting the reader meet you halfway. And again it's *pictures—pictures, pictures, pictures*. That's what I like so that's what I do, make pictures, images.

The book could have been longer, but I think it's the "lit" background that kept it short—not the law background.

**Buan:** *It appeared to me when I read your endnotes that you'd done a tre-*

*mendous amount of research and reading before you started out on this book. How did you decide on this structure and what details to put in and leave out?*

**Lansing:** Having read quite a bit about the massacre itself, I wanted to do something that no one else had done. Only a few put in a paragraph or two about the trial itself. I didn't want to tell the story about the massacre again. Every book about trials is really two stories: the story of the original crime or whatever the trial is about and the story that is retold at the trial. That is really what lawyers do. I wanted to tell in a journal style, day by day, what had in fact happened. The scenes and people had to be accurate. Having gained the reader's attention with narrative and vernacular, it was vital that the book be informational and "true to a hair," as Eli would say.

**Buan:** *When you started thinking about this book, did you approach the publisher?*

**Lansing:** Oh, no. I'm not well enough known to do that. I wrote the book first. I knew I would be dealing with a regional publisher. I had no particular publisher in mind. But I wrote just to please myself. It's not my living. If I made my living by writing and just starved for awhile, I'd be a different writer entirely, because I'd be much more conscious of the market. Although this book turned out to be quite marketable during the Oregon Trail celebration.

**Buan:** *Were you consciously thinking of the Oregon Trail year?*

**Lansing:** No it just happened to coincide. My daughter went to Whitman College in the early 1980s. I stopped at the Whitman Mission many times on the way back from taking her there. I was impressed. I thought, "There's a story here." I had no idea what it was. Then when I came across the trial manuscript in the archives, I simply put the two interests together.

**Buan:** *Did you run into any historians who were concerned about your "fictionalizing"—for instance, your making assumptions about whether Governor Lane was at the trial or not?*

**Lansing:** Well, not about that. What I ran into and had rejections on from publishers was the narrative style totally. Those publishers who have been dealing with history publications for a long period of time—several of them—said, "We can't publish history in this form. It's just not done." They were also concerned about the heavy

use of the vernacular. Then some publishers took a look at it again after I toned down the dialect and said, "We'll publish it right now if you'll just take the narrator out of there." But I was stubborn on that. I said, "I think people like to read their history that way." And I could hear the traditional, formalistic scholar in them talking, and the innovative scholar in me reacting to say, "I don't want to just write for you. If you want to get people interested in history, you have to get people motivated to listen before you impart what you have to say." It can't be dry. History has to live.

They said, "The narrator doesn't have to be a fictional person. That takes away the credibility of everything you have to say when you admit that that person is fictional. You want to convince your audience that what you say is true."

To be sure, you can write history without inventing a narrator, but I do believe, like Barbara Tuchman, that history has to be reported with the use of some imagination.

On the other hand, it can go too far. The author of the recent Teddy Kennedy book invents conversations. Even Gore Vidal says that Lincoln had a venereal disease and then admits he made it up. Well, you can't make things like that up.

But I'm candid in the footnotes. I don't know if Joe Lane was at the trial. I saw his letters from Oregon City and dated at the time of the trial. So we know he was in town. I know that part of his mission in being sent out by President Polk was to find those murderers and prosecute them. It just seems to me that Lane would have attended parts of the trial. Right after the trial he left for California. So he must have been there. Such deduction seems justified—especially when you make it quite clear to the reader it's what you're doing.

**Buan: Did you read any settlers' diaries?**

**Lansing:** Yeah, I did. Several, including autobiographies or memoirs. I like history that goes back to the primary sources. In law when you research you have to distinguish primary from secondary and tertiary sources. So I like finding contemporary newspaper articles—"hot" news. Of course journalistic accounts—we can see this today—are not always completely accurate, but they have presence; they are rich in time and place.

I was very fortunate to have the Bill of Exceptions, together with the *Oregon Spectator* newspaper's report that came out that same week, and be able to compare what they said about what the wit-



**HOW SHARP AN EYE DO YOU HAVE FOR HISTORICAL DETAIL?** The first person to identify the "mystery figure" in this photo will be the luncheon guest of our new president, George Fraser. Seated (left) is the U.S. attorney; standing (from left to right) are Nathaniel Soulé, Fred Staver, Maurice W. Seitz, and our mystery man (far right). The occasion commemorated by the photo (taken ca. 1928) is the purchase of land for the Gus J. Solomon Courthouse. Can you identify the man on the far right? If so, call George Fraser at 294-9375 and—if you're the first to do so—collect a free lunch with a fellow history buff.

nesses said. Those accounts align a lot. Two people separately reporting the same thing—verifying each other.

**Buan: Are there any lessons about history to be taken from Juggernaut?**

**Lansing:** The neat thing about history is that if you study it enough, it teaches a kind of tolerance. If you understand how things got to be the way they were, you realize that just because "the world gets wiser as it gets older, it doesn't mean it was foolish before." Those were the times. That's the way it was. History may not have the answers, but it sure knows how to pose the right questions. That is why I dedicated *Juggernaut* "...to all of the old ones from whose *kumtux* and *tseepe*—wisdom and mistakes—we live and grow."

As our conversation ended, I paused to look around Ron Lansing's office, a real "conversation piece" in its own right, with a bearskin (a gift, not a trophy), an antique shop's potpourri of "collectibles," and the bust of an important-looking man sporting a jaunty hat.

"I don't like offices, I like dens," said Lansing, following my glance. "That fellow is Judge John B. Cleland. He taught torts at this law school a long time ago, as I do now. I keep him here to remind me that I am tomorrow's history."

**In *The First Duty*, Federal Court History Comes Alive!**

**TALES OF FRONTIER JUDGES**, early land disputes, violence against Chinese immigrants, and land-fraud cases are among the fascinating subjects treated in *The First Duty: A History of the U.S. District Court for Oregon*. This carefully drawn history spans a century and a half and revisits the personalities, cases, and events that have made the U.S. district court a vital presence.

*The First Duty* is a 6 x 9-inch hardbound book of 332 pages with a handsome four-color dust jacket, illustrated with historical and contemporary photographs. Published by the U.S. District Court of Oregon Historical Society, retail \$29.95.

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Bulletin Editor: Carolyn M. Buan

(1) Judge Redden (left) regales Brian Booth, George Fraser, and Tom Booth with a humorous story. (2) Judge Panner (with box) presides at the water balloon toss. (3) George Fraser, Judge Goodwin, and Judge Burns pose for a "formal" portrait. (4) Don Ashmanskas awaits his turn at bat. (5) Kids and parents run the gunny sack race. (6) Bill White, Judge Panner, and Caroline Stoel cheer three-legged racers. (7) Well, okay, one more formal portrait for (left) Don Willner, Judge Ellen Rosenblum, Ron Lansing, and Jewel Lansing.

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