THE ISSUANT ISSUE

RONALD B. LANSING*

It was 1959, fifty-five years ago.

- The Pulitzer Prize went to Allen Drury for his creation: a novel, *Advise and Consent*.

- Top creative song records (called "platters") were awarded to Julie Andrews, "Sound of Music"; Bobby Darin, "Mack the Knife"; and Frank Sinatra, "High Hopes."

- Oregon celebrated its century-old origins as a State in the Union.

- NASA, the nation's outer space agency, introduced a team they called "Astronauts."

- Mattel Toy Company fashioned and marketed a controversial child's play doll that was anatomically correct and called it "Barbie."

- Two contenders (Democrat and Republican) formed their campaigns to compete for the top job in the nation. Each would get their wish to become Presidents of the US, albeit at different times. Neither would finish their final terms—one because of assassination and the other because of resignation forced by impeachment.

Within that vast heraldry and forerunning, there emerged another

* Emeritus Professor of Law, Lewis & Clark Law School; J.D. *cum laude*, Willamette University College of Law, 1960; first Editor in Chief of the *Willamette Law Review*.

harbinger—a new publication—one whose sweep had less fanfare. The first edition of that periodical launched a serial destined to live over a half century and still growing. Little could I have foreseen in my second year at Willamette University College of Law that I would be here writing of my encounters as midwife and nursemaid who diapered that precursor, old enough now to be a matronly ancestor.

Finding a Chief Editor:

It was springtime 1959. Some of my classmates and I had taken refuge from law study on a Friday afternoon for our weekly game of touch football on a field in Bush Park, Salem, Oregon. We were surprised when Professor John Paulus appeared and interrupted our diversion. He beckoned Dick Franzke and me to come over to the sidelines for a brief chat, which was, however, important enough to bring a professor down from tower to fields. What he had to say would change our way through law study and careers.

He told us that the dean and faculty had decided it was time for our seventy-five-year-old law school to begin publication of a periodical. It would cover development of trends, currency, views, reviews, concepts, and recaps in the discipline of law. Many law schools had such press—generally called "law reviews." Law students edited them, with a focus on judicial, professional, and educational readers and researchers. Thus, they provided for both proposal and practice—a written lyceum of law.

The professor then explained that, because law reviews are customarily student operations, the college had been waiting for the right class to get that periodical off the ground. (We could see flattery coming.) Our second-year class had started with almost sixty bodies. It was now pared down to about forty bodies and would end up graduating almost thirty in 1960. That was the way of attrition in those days. We were told we had proven more than able to take on the additional task of launching Willamette's first law review. Franzke and I had been chosen the dual editors in chief of the first two issues for publication in the forthcoming 1959–60 academic year. Paulus asked, "Do you accept?"

I remember a swell of feelings piled atop one another like when a touchdown is made: surprise, thrill, honor, challenge, hanker, and thanks. How could anyone turn away from such an opportunity? Our answers were "yes" and "yes" and continued to be so when told that

there was no pay or course credit for the work.

Before returning to our football game, Paulus had one more matter for us to resolve: the role of dual editors had to be divided. Who would be the chief editor for the Fall 1959 issue and who for the Spring 1960 issue? No sooner had we been joined than we were separated. The decision was not to be made by a coin flip. The choice had conditions to be considered. The Fall issue would need attention during the summer months and would become intense in the closing weeks of 1959 during the holidays and study for final exams.

Then too there was this to weigh: the Fall issue would be the lead issue for all future issues, and, therefore, would involve preliminary duties beyond the particulars of the first edition's pages. There would be decisions about the title of the new periodical, its cover and print design, the soliciting of subscribers and advertisers, and other marketing developments—all of which would affect destinies and routes for years to come.

A final matter to weigh involved a scheduling conflict with the national interscholastic moot court competition. That contest would be in full swing during the Fall semester—a time when Franzke would be a teammate in those forensics—a talent at which he excelled.[1]

The foregoing circumstances did not leave much for choice. I was made the editor in chief of Willamette's first law review edition, not by flip or favor, but rather by fate. Thus, I am privileged to author these memoirs emerging from over one-half century ago.

The Constraints:

While law reviews are student publications, they nevertheless come under school auspices—guidance that sometimes goes beyond advising to become supervising. Censoring language is an obvious example. Having a designated faculty advisor is also required. To be sure, there is a bit of oxymoron about a "mandated advisor." But Professor Paulus, who had already begun the role, removed "moron"

1. The Willamette moot court team (Franzke, Ted Carlstrom, and Marty Wolf) went on to New York City to win the national championship with over one hundred law schools competing. The team's written brief placed sixth best and Franzke was named the nation's best oral arguer. *See Fifty Years Later: Moot Court Championship and the First Law Journal*, Willamette Lawyer, Fall 2009, at 16 [hereinafter *Fifty Years Later*], *available at* http://www.willamette.edu/wucl/pdf/lawyer/fall2009.pdf.

and made it "mavan." He was an "oxymavan"—a godsend to us at those opening stages.

Certain other parameters were imposed—publication deadlines, for example. The first edition would have to be in print for readers no later than January 1960. That meant that, after June 1959 exams, the first issue had about a half-year of preparation time ahead, almost half of which was summer and holiday vacation time.

Symposia was another constraint imposed. The first issue had to be a single topical area tying all material together as opposed to an eclectic of unrelated articles, notes, and comments. That meant that editors would have to make preliminary analysis of the chosen topic in order to synthesize and to avoid repetitions, which in turn meant assigning sub-topics to authors rather than publishing author submitted topics.

A further inroad on student prerogative was the fix of the symposium topic. It had to center on "The Oregon Employer Liability Law" (E.L.L.). That legislation had existed in Oregon for almost fifty years in 1959 and still exists today—over a century later.[2] The dean and faculty had chosen the topic based on a survey taken among Oregon judges and lawyers, who put it as one of the most troublesome statutes in Oregon law practice.[3]

And so, because our reader subscribers were going to be largely Oregon jurists, and because major support would come from the Oregon State Bar, student editors were cautioned to stay within appeal to such audience.

The Editorial Staff:

Given parameters couched in symposium, target audience, deadlines, faculty appraisal, and school nudges, students were now at liberty to shape the rest of a law review. "Students" began with me, but I was far from enough. So, along with Franzke, our first task was to expand editorial staffs. We were to select three more associate editors each from a list of classmates the faculty prepared. Like forming teams on that football field, we took turns.

My three picks from the list were the only decisions I made

2. OR. REV. STAT. §§ 654.305–.335 (2012).

3. The second edition of our periodical series for 1959–60—which the bench and bar also chose—had to be a symposium on "Oregon Administrative Law."

alone. From then on the team of four joined in all conclusions. Those three decisions were the best I made throughout the whole process. I chose:

- Ted Carlstrom, Willamette's First Case Editor: He was tall in ways more than just physical. His law review service in the Fall term had to combine with the forensic teamwork that won the 1960 national moot court championship.[4]

- Bill Shantz, Willamette's First Article Editor: He went on to become a professor of Business Administration at Portland State University. His many authored books were widely published.

- Helen Simpson, Willamette's First Note Editor: She was the only woman in our graduating class and only one of four or five (as I recall) in the whole law school. She had a lame leg and, at age forty, was more than a decade older than any of her classmates. Her academic grade point average was the highest in the class. Age and disability did not obstruct her; gender, however, did. She deserved to be an editor in chief. But in 1959, women were in an era where indifference, disregard, or just plain distain, fixed a tradition; leadership was a masculine job. Candor, not modesty, is the reason for giving the credit here due.

The Authors:

With a core team in place, our first task was to get a dozen or more authors to write lead articles, student notes, and case comments. First issue of a new periodical has no manuscript offerings to select and work with. Indeed, the world outside did not know we existed. Given just a half-year lead time for research and writing, soliciting authors would not be easy.

Furthermore, seeking potential authors would have to be delayed because the symposium concept made it necessary for us to assign

4. *See Fifty Years Later*, *supra* note 1.

parts that fit within the whole. Thus, we first had to create an outline of the issues troubling the E.L.L.—a statutory scheme of which we knew little. After a few weeks of study and analysis of the legislation and many judicial interpretations of it, we settled on Helen Simpson's topical contours.

To hasten matters, we decided that each of us would author one of the four student notes. That left finding four lead article authors and five student case comment authors. Classmates Lew Hampton, Joe Lunsford, Chap Milbank, Sid Pearson, and Marty Wolf took on the extra-curricular jobs of writing case comments. Thus, nine students would crew the first Willamette law review. They were about one-third of the 1960 graduating class.

Four article writers were still needed. They would have to come from Oregon law practitioners—those whose careers were familiar with the workings of the legislation and its adjudication. Bill Schantz and I made a trip from Salem to Portland on old Highway 99E (the sole route available since Interstate Freeway I-5 was not yet open). The trip proved worthwhile. We gained the commitment of two prominent, plaintiff, trial lawyers: Philip A. Levin and Frank H. Pozzi.

The third article writer hunt developed complications. We believed that an Oregon State Senator had given us his promise. But after prolonged delay he ceased to respond. Within short notice, lawyer Arno Denecke kindly accepted but then had to decline when the governor appointed him a circuit court judge—a position from which it would be inappropriate to fix on a topic steeped in advocate controversy.[5] In a hurried, last minute substitution, lawyer James B. O'Hanlon took the assignment and met the deadlines.

Finding the fourth and final article writer proved even more difficult. We were running out of willing and qualified prospects. That's when Professor Paulus gave us a copy of Gene Stunz's doctorate thesis. It was done in fulfillment of the Doctor of Jurisprudence degree Willamette bestowed on him back in June 1959.[6] It was a perfect fit for what we needed. Ironically, although written when Stunz was a law student, it later proved to be more practical than the theoretical articles the practitioners provided.

5. Denecke would later become an Oregon Supreme Court Justice.

6. In those days, law graduates typically received a Bachelor of Law degree (LL.B.); but *cum laude* students were given the J.D. degree if they wrote an acceptable doctorate thesis.

Decisions Affecting Progeny:

By the end of summer, all authors were in place and at work researching and writing. Now, as Professor Paulus had forewarned, editors and Business Manager Bob Fox[7] could focus on our extra duties—groundwork that would pertain to issues in years yet to come. These decisions needed making:

- Who shall be the printing company?
- What should be the style, font, size, and composition of the pages?
- What will be the cover design?
- What will be the title of the periodical?
- What will be the promised time period of the series? Annual? Biannual? Quarterly?
- Whose manual of style and citation format do we follow?
- What shall be the issue price? The yearly subscription price?
- How do we gain subscribers?
- Should we have a complementary distribution of the first issues?
- Do we allow outside advertisement?

To be sure, school authorities had the overall say in such matters. "Ways and Means" will always be the purse at final clearance. But student editors were saddled with and given rein to jockey first

7. Bob was our classmate and had been picked by the faculty because of his no-nonsense, sober attention to fiscal matters, commerce operation, and past experience as business manager for some of the law school's previous handbooks on trial instructions. He went on to a career in the FBI.

proposals.

Like all pricing, our publication had to fit the existing economy—where in 1959, a cup of coffee cost two nickels; a loaf of bread, two dimes; a gallon of gas, two bits; a movie show, one buck. Accordingly, Manager Fox figured the fiscal exchange for our first issue should equal the cost of a cup, a loaf, a gallon, and a show; and an annual subscription for two issues should go for the bargain price of $2.50.

Regular subscribers would most likely be the myriad law libraries throughout the nation in municipal, state, and federal governments, plus courts and law firms. Individual members of the Oregon bench and bar should also be solicited for annual deliveries after our complementary first issue.

The need for expedient communication between editor and publisher was an important consideration in choosing our printing company. Long distance phone calling and shipment of paper were costly, and U.S. postal service was slow. Thus was our want to have a nearby print company capable of handling a national law publication. The closest our search could come to our need was a press in Portland, sixty miles and multiple stoplights up Highway 99E. Steve Gann of Gann Publishing Company had a law degree and published a lot of law forms, stationery, records, and other legal documents for lawyers and courts—but never a law review. He too could claim "first" in this periodical business.

Four businesses took advertisements in our back pages: Bender-Moss Company of San Francisco, Shepard's Citations of Colorado Springs, R. Wayne Stevens Law Books of Portland, and Gann Publishing who reduced its billing to us accordingly.

As for distribution, a huge part of any publishing venture, I do not recall and could not discover any record about how dispensing was to be handled. The publication was not yet born and, *a fortiori*, neither were its readers. I guess there was just no reason for editors to try to fit together two ends that did not yet exist. So, forming labor for distribution was left to future growth and managers.

Periodical Name and Cover:

The two most intriguing matters for prosperity were branding decisions: what should be the name of the periodical, and what should be its cover design?

All agreed the periodical name should include the school name: "Willamette." But then what should be its tag? On that, there was difference. Around the nation law periodicals used words like "Review," "Quarterly," "Manual," and "Journal." But those were customary, and we were a new generation handed the wheel of a new vehicle. Our thought was to be different. So, names like "Law Essays," "Law Assessments," "Analyses," "Reflections," "Retrospects," "Themes," "Abstracts," "Synopses," and "Digests" were put on the table—but then taken off—too scary, even for renegades to try. We ended up favoring the tag "Law Journal." That too in 1959 was somewhat conforming but was a tad rare enough to placate the rogue in young souls.

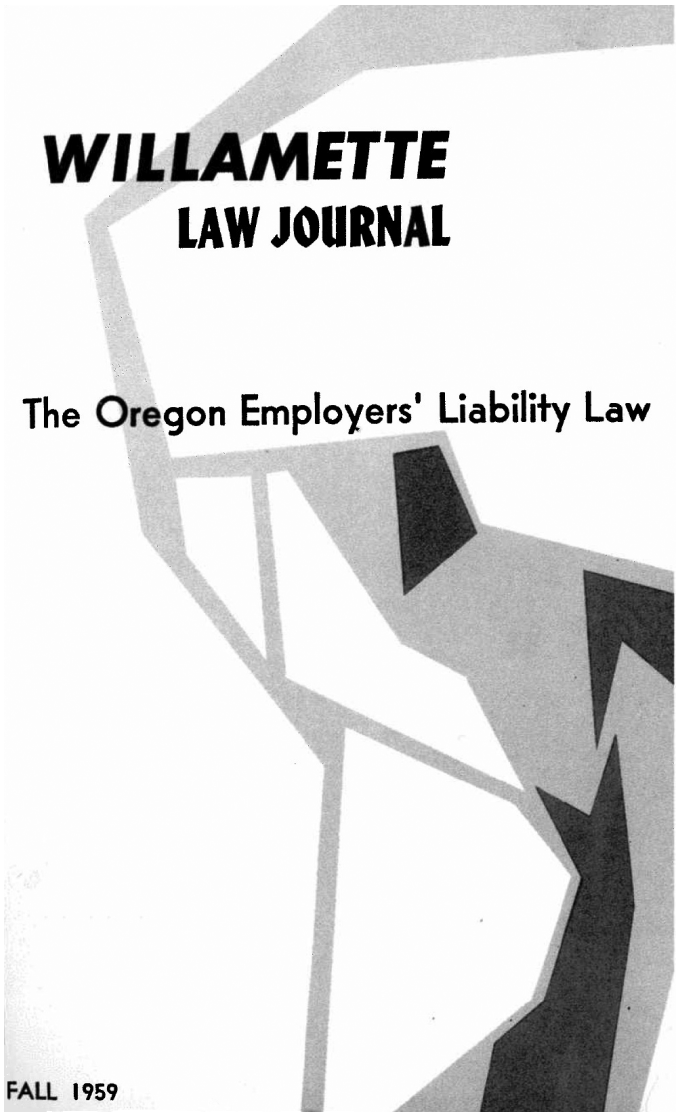
Then came the question of what to do about the cover. Of course, the cover and its spine would have words: "Willamette Law Journal—Fall 1959—Volume I—Number 1." But what else should the jacket look like?

Standard law review covers around the nation looked business-like, which is to say official and sedate—nothing fancy—words in tandem along lines—that is: "plain." If we were to be taken seriously, then words were enough. But swallowing custom was getting to be a bad taste for us amid too much force feeding. We vowed to be original; the cover seemed like a place to be so. We asked the art department at the university to give us some renditions of how our sheath, our shield, and our shell might picture us. The artists posed some strange questions of their own about "Law"—queries that lawyers, legislators, judges, and law educators had never heard before. The artists' probes went to the emotive and visual—not the cerebral and linear: what colors are Law? How do you picture Law in your mind? What are its images, not its labels? In a frozen moment of action, what do you see Law doing? We were unable to form answers, because our minds were now trained in words—the speech sounds in which Law sees, hears, feels, and thinks.

Despite our failure to help, the artists gave us two or three mock-ups—one of which caught our eye in spite of dumb mouths. The artist pitched his rendition in words to this effect: he saw Law dressed in browns, blacks, and greys with keen "angular" lines, "sharp" edges, "precise" corners, and "lightning furls of ideality or ideology."

It was hard to reflect an abstract word with mirror pictures and harder still to relate abstract pictures with mere words. Nevertheless, we chose the artistic rendition and used it in future years. We had changed tradition. But alas and indeed, change is among the few

dynamics in life that does not itself change. In years to come, both title and cover were changed.



(Cover of the *Willamette Law Journal's* first volume)

The art cover was re-clad in 1966 with more conventional and sedate wraps—now vectored and scaled in linear, lettered print design—more in keep with Law as science, not art. In defense of offspring, now passé, I wrote to the 1966 student editors, saying in

effect: The jacket now conforms with all of the rest of the gang—as well it should since Law must be in uniform or seem so. Redress in Law should be slow circling not abrupt angles. Thus does the tortoise outrace—but not without some nostalgia for mercurial hares who rest assured and are then left to lose and brood over Law's plodding persistence.

Then, in 1979, after two decades of legacy, the issues of the *Willamette Law Journal* were re-christened the *Willamette Law Review*. Had these new youngsters no respect for *stare decisis*? I pouted again at the disrespect for pedigree. I did so until reminded: Change changes. It is itself tradition.

The Editing:

By the end of October, we had received most of the draft manuscripts. Finally, we were at work doing what editors were originally meant to do: edit—the preparatory link that joins authors and printers, and then joins print proofs and published pages.

In the process of correcting and adapting, part of that task proved particularly troublesome. We ran into the problem whenever we encountered steerage between two different aims that went cross-eyed: an old astigmatic that blurred the unity of theory and practice.

On the one hand was the original desire to initiate a law review: the school's wish to reach more readily the national Academe—there to join in scholarly conversation while also providing a new tool for learning and for improving Law. On the other hand, however, was the desire of our immediate readers for a publication more parochial and utility oriented. Oregon's bench and bar concerns were keyed to the E.L.L. mechanics and current practice. After all, it was Oregon jurists who had chosen that legislative topic on grounds that it needed clarifying. They wanted existing origins, not future originality.

Beyond teaching students, higher education has two other missions: to serve what's scholarly new yet also to provide what's practically needed. Such outward bounding and inward calming sometimes tangle. One lawyer wrote us: "Do not be disappointed if [your edition] . . . fails of enthusiasm . . . [from practitioners who desire] . . . what law is, not what it might be if improved."

That attitude expressed was not just focused on the E.L.L., it was couched in an unfavorable disposition toward student law reviews in general—a view many jurists held in 1959. Student law reviews get

too opinionated and "change-happy"—long on theory and short on experience. Youngsters in school had not achieved license to author or edit legal advice. Our new law review was another car on the road with a sign reading: "Caution—Student Drivers."

But there were also those who thought otherwise. Minds new to stuff indoors can open windows for fresh air. A state legislator was critical because we did not have an article on trends and proposals concerning employer liability statutes. I had to respond: "We decided against such an article because . . . we wanted a law journal that would be of service to the practicing attorney's knowledge of the law as is, not as it might be." It hurt me to write so.

Likewise in the opening paragraphs of the Number One issue, I wrote in the "Editor's Note":

> The struggles between employer and employee are old ones . . . involving social, political, and economic arenas. In this symposium, however, there is no intent to make [such] . . . appraisals . . . The treatment is intended to be a practical study in the mechanics of the statute as positive law . . . . [T]he emphasis falls more on thought for food rather that food for thought.

If I had any misgiving about any aspect of our final product, it was that final segment in the Editor's Note that funneled our approach. It was anathema to me to make student authors walk gauntlet lines separating practicum and theorem. What is extant is not worthy if it cannot stand up to constant challenges from what it could be. And what is imagined is not worthy if it cannot measure up to what already works. In the discipline of Law, nothing is more practical than theory and nothing is more theoretical than practice. Food feeds thought and thought brings food. And I appreciate this second opportunity here to say so.

But, as to our final act as editors, we had to tone down student manuscripts (including our own) when they got too eager with proposals and critiques that tackled policy underlying the E.L.L. The notes and comments had to describe and define, not doctor.

The Finish:

Deadlines met and edits all set, we packaged, ribboned, and shipped the final product to the printer in Portland. The following delay and wait afforded us time to retrace our steps toward publishing

horizons. We had reached those vistas without voice mail; cell or smart phones; photocopiers; word processors; emails; pdfs; or any other electronic, digital computation. Nor did we have a law review office with land phone and waste basket. But we did have at our disposal a messy mimeograph machine. The other way of copying was to use ten onion-skins and ten carbon papers sandwiched and rolled onto a Smith-Carona typewriter platen. Both ways of copying demanded finger-pounding, not gentle touch, on QWERTY keys in order to imprint the mimeo-stencil or lamination. We were just steps above quills, candlelight, and stone tablets.

The Fall semester of 1959 in our senior year of law school was a time poked by the prod of constraints but also pulled by the carrot of being first. And we did it all while preoccupied by the pursuit of classroom work, law studies, exam-taking, part-time jobs, and family.

The Rewards:

Sometime in the last days of January 1960, student editors, authors, and our business manager gathered in the office of Professor Paulus for a ceremonial opening of a box from the printer. A copy of Issue Number One of Volume Number One of the *Willamette Law Journal* was drawn from the box and raised high for trumpet and salute. Cheers fell to silence as more copies from the box were handed out. Midst the smell of fresh printer ink, the sound of flipping pages, and the sight of gleaming smiles, there grew pride of possession—the holding in hand of physical product from what conduct gave. Eventually, however, selves relent and accept the fact that "public" in the word "publication" means: no longer "ours." We had been there at conception and gestation, but now it was parturition.

No one at that gathering could have envisioned that their first issue would trigger a move from emerging to heralding. Indeed, the issue was "issuant"—an adjective that used to mean "emerging." That definition is now archaic. Today "issuant" refers to an insignia in heraldry—an animal's head emerging from armorial escutcheon emblazoned on shields, flags, or coat-of-arms.

Our issuant issue *emerged* fifty-five years ago. But today, its fiftieth volume issue contains the coat of arms that now *heralds* its archaic head.

That tribute graciously given is gratefully received.