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Sid Lezak: A Portland Life in the Law

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Oregon Jewish Museum

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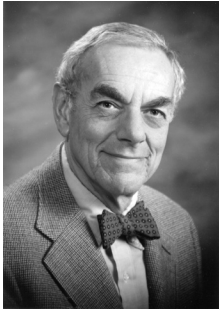
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Sid Lezak, *a Portland Life in the Law*

On August 2, 2005, Marilyn Yoelin, a volunteer for the Oregon Jewish Museum (OJM), interviewed Sid Lezak at his home in Portland. Lezak, who died on April 24, 2006 at the age of 81, was the longest serving US Attorney in American history. When he retired in 1982, he had served 19 years, but that period was only one—the middle—segment of his three careers in the law in Oregon. He had previously been in private practice and later led in the development of mediation as an alternative to lawsuits. His pioneering work helped make Oregon a national leader in this form of dispute resolution, both in the private sphere and public policy.

The reflections presented here are a small part of the wide-ranging interview that Marilyn Yoelin conducted with Lezak (there are also eight hours of untranscribed oral history by Lezak at the Oregon Historical Society) last century. The interview was transcribed by Anne LeVant Prabl, Curator of Collections at OJM on September 12, 2006.

The excerpt begins with Lezak reminiscing about how he and his wife, Muriel, came to settle in Portland.

—the Editor

COMING TO PORTLAND

Sid Lezak: We just needed to be on our own, independent. One of the things I did was to go to the University of Washington. I had been to California, I had an aunt in California and I had spent a summer in Los Angeles and I will say this: I was smart enough and sensitive enough to recognize that if I had gone to Los Angeles I would have become “one of them.” I would have been caught up in that life. This would have been in the late ‘40s. I actually had talked to people down there when I was there. I had done a tour of the west, knowing that I didn’t want to go south or east. I will never forget the florid-faced... lawyer in the first Beverly Hills law office I went to with a waterfall saying, “You like women? You like sun? You like the beaches? You like money? This is the place for you.” It was a complete turn-off and I recognized that my own weaknesses were such that I would not have been able to resist being a part of that sort of thing.

But I needed a fairly large city and I had gone to the University of Washington summer school. The minute I hit Seattle I knew the northwest was it for me. I hate hot summers and I love the relatively cooler summer (it was cooler then than we are getting these days in Portland). There was a kind of feeling that this was an area where we could be free and build our own lives. And

through a peculiar set of circumstances, many people are not aware that I accepted a job with Reuben Lenske.... We didn’t fit and I left after a couple of years....

He was very liberal, politically, much farther to the left than I was. Part of the dividing line in 1948 was whether or not you were a Wallace supporter in the Progressive Party or whether you were a liberal Democrat. I had had a defining experience in my life: the Nazi-Soviet Pact in 1939.... I had been with the American Student Union the Left-Liberal young people’s group and, without being too knowledgeable (I don’t want to indicate that I was particularly sophisticated) I knew that that was the side that I was on.

And I learned, at the time of that split and in later conversations that in fact the leaders of our group were in fact people who were part of the Young Communist League and part of the Communist apparatus. I later learned that there was no question in my mind that the brains and energy behind the Wallace movement was to a much larger extent aligned with the Communist Party. But the thing was that those who were Communists were defending the Nazi-Soviet Pact and that was a wake up call for me. From that point on I was suspicious. And I had other circumstances later in life, like with the American Veterans’ Commit-

tee and even with the ACLU, that always kept me aloof and suspicious of folks who not sufficiently aware of the downside of Stalinism and the Communists, who were always too eager to defend it.

One of the things I am rather proud of, notwithstanding my feelings about the Party and the people who were in some cases cheating it out of its dues if not actual members; I was one of four lawyers who were willing to represent people whose rights I thought were being prejudiced by the McCarthy hysteria in 1949. And there were still many people who wondered how somebody [could defend them without being a sympathizer].... Fortunately something happened that let the government, the FBI in particular which had infiltrated our local [Portland] Communist Party to a very great extent (as a matter of fact the joke later was that... the main financial supporter of this pitifully weak and small Communist Party in Oregon may have been J. Edgar Hoover, because he was paying off informants and so on).

In any event, it started with some immigration cases, the Filipinos who were being kicked out of the Party even though they were largely illiterate. They were working in fish plants in Goose Bay. The union had been organized by people who were Communist to some extent and they didn't know a Communist from a manicurist, and there may have been something that they did... fortunately we were able to establish in a kind of technical way (a lawyer in Seattle had done it but I was going to represent these folks before Judge Gus Solomon, who ruled against them). [*Gus Solomon was a distinguished US District Court judge in Portland from 1949 to 1971, otherwise known as a strong civil libertarian.* —ed.] It was something that I have never quite forgiven him for because he knew these people. He and Irvin Goodman and Leo Levinson had been partners and they had represented some of these folks. I was not sore at him for ruling against me in that case. I was sore at him because I didn't feel that he had given adequate consideration to the arguments that we were making and ultimately he was reversed by the Court of Appeals and the Filipinos were permitted to stay here — I won't go into the technicalities.)

Marilyn Yoelin: *Just for a moment to clarify — this was a deportation case?*

SL: Yes, these people were being deported.

MY: *And when was this?*

SL: This would have been in 1953 or '54.

MY: *So, J. Edgar Hoover...*

SL: No, he was not the head of the Immigration Department. But a lot of this case was based upon investigation that was done by the FBI, the Immigration Department and by the most active and enthusiastic "Red Squad" as they called it in the United States under a guy named Bill Brown who later became the head of the American Legion's so-called Patriotic Sub-set. Very enthusiastic supporter of "red-baiting."

MY: *So, you were an attorney [in private practice] at this time.*

SL: Yes, I was an attorney. I came out here and passed the Bar in 1949. But I was no longer with Reuben. I was working, oddly enough, first on my own and then in partnership with Paul Bailey and started representing lumber and sawmill workers and other unions.

In any event, one of the things that I did during the same era was that I became a member of the legal redress committee of the NAACP and something else that I am proud of is that in David Robinson's basement, (... he was the head of the Portland Rose Society, the first head of the Anti-Defamation league here and his son later became one of my assistants as a US Attorney and has had a very distinguished career as a law professor at George Washington University) in his basement, a group of us met to draft Oregon's first Public Accommodations Law which ultimately passed the Legislature.

Now, there is a little preface to that that people do not understand. In 1950, I believe, a vote was taken on an initiative about whether or not Portland should have (and this was only Portland) a fair employment practices act. At least I'm pretty sure it was that act. It was one of the major acts providing for penalties for discriminating. The people of Portland voted that down. People forget how reactionary this town was. When I came here all of the elected officials in statewide government were Republicans. The city was quite corrupt. It was only as a result of a City Club report on the extent of the corruption in the city, and particularly in the Police Department and tolerance toward gambling and prostitution, that a woman mayor, Dorothy McCullough Lee (called "Good-Deed Dottie") was elected and tried to clean it up. Four years later she was thrown out.

The old bunch was put back in. Portland was not ready for reform. Then a few years later, partly as a result of congressional hearings on the attempted takeover of vice by Teamsters and internal battles between those who wanted to fight the McClellan Committee hearings [*on labor racketeering*, —ed.] to push Bobby Kennedy up and gave him a good deal of publicity and credibility and enabled him to be appointed as Attorney General. That's another whole story.

In any event, people simply do not understand how this town has grown. When I came here in 1949, the lawyers were 4 to 1 Republican to Democrat. Now at least 5 to 1 Democrat to Republican.... But back in the 40s it was completely dominated both by very conservative business elements and very corrupt elements in (some, not all of) the unions. The Teamsters and Boilermakers [had] enormous amounts of money left over from shipyard days in the War. Then I was representing unions that were completely—I have to say this—clean. The FBI was very surprised when they went over my records with a fine-tooth comb in order for me to be US Attorney. They found out that there was nothing there. We gave a \$3.00 box of Tillamook cheese to some of our best clients for Christmas. That was the extent of our corruption. In one of the immigration cases, the parties refused my advice, which I thought would result in the charges being dismissed. But because these were people who had come over at a very young age, in one case six months and in the other case two years, one from Finland and one from Canada (the accusation was that they had been members of the Party). The Party wanted to make them martyrs and they did.

MY: *So they sabotaged...*

SL: They did not take my advice and I said, "I can only work for you and be your lawyer. I cannot be a lawyer for the interests that you may have other than those that I see as your best interest as your lawyer. If you have other reasons for wanting to take different advice that is your privilege." Ultimately, they both were deported. That's the McKay and Mackie cases. [*Hamish MacKay and William Mackie were immigrants living in Portland who were eventually deported owing to their membership in subversive organizations, after years of litigation. Mackie's case reached the Supreme Court.* —ed.]

It was made a cause celebre people on the very far left. And there were some other things that kind of indicated that I wasn't quite as close to

being the Communist supporter and sympathizer that some people thought I was because of others that I represented. I also handled some loyalty security cases of people who were being thrown out of the Federal government (or attempting to be thrown out) because of suspected disloyalty. One of the things that taught me is how frightening these cases are because you got nothing in those days from the government. I see the victory that the Mayfield people have in getting the government to disgorge. [*Brandon Mayfield was the Aloha lawyer wrongly accused of complicity in the March 11, 2004 Madrid train bombings.* —ed.]

We were absolutely unable to do that back in the 50s during that era. In one of the cases in particular I am very proud of being successful and the person has gone on to lead a particularly distinguished career and I have not gotten her full permission to disclose just who she was. People would be startled to hear who that was. Her whole group of people working with her came to her defense and enabled us to mount an effective defense proving that the problem was not hers but one of guilt by association.

MY: *We were talking about some of your first few cases that were revolving around immigration and deportation issues.*

SL: Yes The important thing is that it was another illustration of the fact that (perhaps foolishly because of the identification that people made between the kinds of cases that you handled and your own predilections) there were people who were startled that a "Communist" like me somehow got appointed as US Attorney. But, as I said, there were reasons why it was clearly known....

There was an interesting battle about whether there should be an ACLU chapter here. The group that wanted to organize the ACLU chapter were the people who had been active in the Wallace camp. The ACLU at this time was going through some of the problems in dealing with some of the same issues that I had dealt with at the University of Chicago and the American Veterans' Committee, there is no question that there was a tactic on the part of the Communist adherents, if they could not take over, they would make life miserable for the organization. There were a group of us, Alan Hart, a very distinguished lawyer... [*Hart, a former chief counsel of the Bonneville Power Administration and co-founder of the Portland firm Lindsay, Hart, Neil & Weigler.*—ed.] was one of us, Jack Biddy, Herb Schwab [*Schwab helped establish and was Chief Judge of*

the Oregon Court of Appeals, 1969-198. —ed.] and others—this would have been about 1955 or so—we felt that the moving force behind the effort to organize the ACLU was one that would embarrass the ACLU itself and the community. We resisted it until we could get our forces organized, which we did and had what we considered to be a — I don't know how to phrase this comfortably because I wasn't in that much disagreement with the ultimate goals that many of these people had — that was not the issue. It was an issue of style and process.

I mentioned Adlai Stevenson [*the Democratic Party's nominee for president in 1952 and 1956.* —ed.], a person who had progressive ideas but who was not willing to do those things to move them that would set people's teeth on edge. And these people just seemed to glory in combativeness and wanted to demonize the people on the other side. The beauty of much of what was Oregon in the old days was the ability of people — and I was the poster boy in a way in serving under six presidents with the assent and approval of both Democrats and Republicans all those years (and I want to say that one of the things I am most proud of is that there was never an accusation during the 20 years that I was US Attorney that that office was run with any consideration of any consequence being given to partisan. I had retained five of the six assistants that my predecessor had left and a couple of them stayed with me for the rest of their professional lives. And my hiring was not based upon consideration of party.

As a matter of fact something that just came up and is on my desk right now: Don Sullivan was the chief of the District Court and when I heard him I thought that he was a Republican and he had changed his registration so that he could vote for Kennedy in the primaries (he was a good Irishman) but again I thought that he was not being hired because of his registration. In his biography, which is in the Oregon District Court Historical Society, he is kind enough to say that the years he served as assistant US Attorney were among the happiest in his life.

That is my legacy — the people who worked there during the years that I was there and the freedom that I had from the kind of political pressures that so many had in other places so that I could hire the best people that I could find with some attention being paid to reaching out to hire minorities and women. The rule that I had was that there was certainly not a quota—no minority or woman would be hired who I did not think was

perfectly capable of doing the job—but I would have to say that minorities and women were not in every case, the very best qualified in terms of normal meritocracy standards. In other words I did make an effort to diversify the office because I thought that was valuable at the time. Those were some of the issues.

But let's talk about one issue before I forget it and then we will drift to something else, and that is, what is the most important decision that I ever made in my life? That is an easy one. Marrying my wife.

MY: *When did you get married?*

SL: 1949. We got our degrees on June 17. She got her Master's Degree in Community and Human Development at Chicago. I got my law degree June 17, June 16th we got married. And that day we piled everything we could fit into a Ford convertible and drove out to Oregon to settle. I already had a job lined up because I had been out the previous summer. I think she said to me, "Portland, is that the one on Puget Sound?" She was sort of "whither thou goest" and I remember sending her grandmother back a picture of us on the 4th of July when we went up to Timberline and there was snow up there. Her grandmother said, "What has this man done to my lovely granddaughter?" A few years later, after our first child was born, she recognized that just belonging to women's clubs and doing the housework was not enough of an outlet for her energy and she went back to get her PhD.... That was about 1954, and she was going very much part-time. The only place that she could get a PhD. was at the University of Portland. In 1960 she became a doctor and has had a very remarkable career. She is now a full-professor of neurology, psychology, and neurosurgery at the medical school. She published the first book to try and put the field together and found the best publisher, which was Oxford, and it has just come out in its fourth edition. It is universally accepted as the bible in its field (which means I don't win many arguments at home). I had to tell her, "Muriel, that book ways 6.2 pounds. If you throw that goddamn thing at me and kill me it will be a lethal weapon and you will be charged with murder."

THE US ATTORNEY YEARS

MY: *You did mention at one point that you served under six presidents. Did you start with Kennedy?*

I was the poster boy in a way in serving under six presidents with the assent and approval of both Democrats and Republicans.

SL: Yes, Kennedy, Johnson, Nixon, Ford, Carter, Reagan

MY: *I'm sure there were a lot of challenges with each administration, with each attorney General that you had to deal with.*

SL: We had some battles. People say, "What are you proudest of?" One of the things near the top is the battles that our office fought, along with the wonderful lawyer that I brought over from the Interior Department, George Dysart (who has since died). For many years he tried to persuade the Justice Department to come down on the side of the tribes with respect to their treaty rights to fish for salmon. The state officials were arresting the Indians for doing that which Dysart and the tribes felt that were not in violation of their treaty rights.

There was a case that started by an Indian named David Sohapp, Sr. against the State of Oregon because he tried to enjoin arrest for fishing at their usual, accustomed places and the government, through Dysart's urging and with my assent finally agreed to join in on the side of the tribes. It took 17 victories in a row over the states of Oregon and Washington (because the political heat was so great on the part of the fisherman in opposition to the Indians). The first case that we won was known as the "Bologna Case" (that is for Judge Bologna, not the lunch meat). It was the first decision that said that Indians had special rights to fish under their treaty that had to be taken into account by the states. Because the states of Oregon and Washington would not accept that decision, the case was taken before Judge Boldt in Washington who ruled that in the absence of any other method of determination, the Indians had the right to take one half of the fish. That sent up an enormous uproar from the sports and commercial fishermen....

Under Federal Law, major crimes on the Warm Springs Reservation were prosecuted as Federal crimes by our office and we maintained a wonderful relationship with the tribal people and law enforcement folks. I am pleased that I continue to have the confidence of those people.

MY: *Is it your sense of history that gives you the sensitivity for the disenfranchised from the majority population?*

SL: Yes, I think so. It is one of the reasons throughout history that Jews have been in the forefront on Civil Rights movements and movements to protect the rights of disadvantaged in every respect. I am comfortable relating some of

that to the extra sensitivity created because of the history that I was raised with.

MY: *You have been the initiator or part of the creation of many things that seem to have come to the US Attorney's office..... I wrote "non-partisanship, public defender's office project, affirmative action, bringing law clerks, special assistants..."*

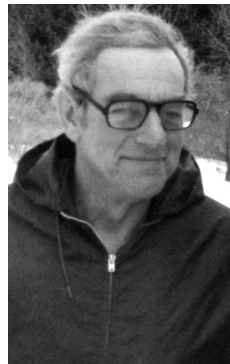
SL: I was certainly more interested in promoting and in doing things which lead to results which were favorable to those ends than were most US Attorneys. I was seen as being on the left wing of US Attorneys and it was almost a miracle that I was retained. We used to joke about it. I made no bones about my having a liberal agenda....

You are retained or appointed at the pleasure of the United States Senators. What we had was a peculiar situation in which both the Republican Senators, at the time that they decided to keep me (I had been ordered to submit my resignation when Nixon came in and I did) had a meeting and had some information about the way our office was operating... And also I think (being politically pragmatic and looking at it from their standpoint) that they were seeing the composition of Oregon politics changing. They were all moderates, Wendell Wyatt [*District 1. -ed.*] and John Dellenbach [*District 4. -ed.*] were the two representatives. Packwood and Hatfield, the two Republicans....

I think that maybe one of the reasons was that they may well have felt that this was a show of their openness by retaining a US Attorney who had proven not to be partisan. It would be nice to say that the only reason was that I was so outstandingly competent in the job, but there were a lot of competent people and there were only a few of us who were retained from administration to administration. Their perception of wanting to reach out to Democrats who had been voting for these folks in large numbers (Hatfield was elected by a large number of Democrats, as was Packwood. Packwood was the first person to get up on the floor of the Senate and talk about doing away with the criminalization of abortion. The women's groups all supported him).

JUSTICE DURING THE VIETNAM WAR

[The single most difficult problem] ... I had during the 21 years that I was US Attorney ... was during the years 1965 to 1973 having to deal with Viet Nam draft evaders and trying to make appropriate distinctions. Do you resign because of your protest of the war or do you stay in and try



Sid and Muriel Lezak.

to make the consequences of people having done what they felt was the right thing to do ... and I was quite sympathetic with many of them....

And the question was discussed and the decision was made that here in Oregon, having a very small percentage of its domestic product dependent on the military. As a consequence, Oregon was one of the most fertile ground for opposition to the war. So how to accommodate to that? At first we were like almost every other jurisdiction, it was the judge's prerogative to sentence. And there were sentences to prison that were being given out, two or three years in some cases. But as the war became less and less popular, the judges were reacting to it, our office was reacting to it, we had a wonderful probation officer who came up with the idea that we don't have to send these folks to prison. We can send them to the Tillamook Forest camp where they can serve for six months doing ecological work....

It was a humane way of handling a very difficult problem. It was also representative of a concern that the courts have some response to public attitudes and policies. I would give more credit to our chief probation officer on that one. It was clear that he thought he had fertile ground with us and with a couple of the judges.

INNOVATION IN MEDIATION

MY: *Now you were transitioning out of the US Attorney's Office and getting into more of the mediation and should we discuss the next step in your career?*

SL: It is interesting. If you look back in the Oregonian files you will find a quite long piece in what used to be the Northwest Magazine.... [O]n the front page there is a picture of me standing in front of the courthouse steps, "Sid Lezak – prosecutor, survivor, mediator".... [W]hat I was doing, without knowing it, as US Attorney, was functioning as a mediator. That was my role, without having been trained for it in ways that I have been since. Without recognizing that that was what I was doing, and not always doing as good a job at it as I would have liked. He [the Oregonian writer] recognized that I stood between my assistants and the courts and certainly between private council and the agencies which wanted us to bring certain actions that we may disagree with. The first fun of being the US Attorney was that you could pick and choose the cases you wanted to try and that was fun. I picked some good ones and we had great times on some of the fraud cases that I handled with most of the work being done by

one of the assistants. Then I realized that in the really difficult cases, my function, if I were to be active as the trial lawyer, I could not function as the mediator between the various kinds of interests that were there. So I backed away from being as active as a trial lawyer and concentrated on the role of being mediator. And it was OK with me when someone said to me, "Lezak you are an honest fixer." That was not a bad description for what I was doing.

MY: *That was your tikkun olam [the Jewish concept of performing good deeds to repair the world. —ed.].*

SL: That's right.

ON ADVISING YOUNG LAWYERS

SL: I had the good fortune, something that we did initiate with the aid of a former nun at Lewis and Clark Law School, to use Federal funds for work/study for Law students. Nobody had ever done that before. I went back to the Justice Department. Then we had law students coming out of our ears. We had more law students per lawyer than anybody else has ever heard of. It was a great experience, for them to be in the courthouse. You will run across them occasionally, there were about a hundred of them and there are still a lot of them running around Portland. You talk to anyone who worked in our office. It was not only good for them, they were wonderful for the office as well. They have been great boosters because of their experience and they've made me look better than I am entitled to look because it was such a good experience for them. The other thing they liked was "Uncle Sidney's" advice: you are all going to have choices to make. Let me tell you that the most important word in plotting out your careers is "serendipity." Serendipity will play a greater roll in your life than any plans that you make. Between rational choices, you might just as well toss a coin because you have no way of telling which among rational choices is going to turn out for the best. On the other hand, if you want to have some way to make a judgment about what to do, you follow the advice of a great American philosopher, Mae West. She said, "When faced with the choice between two evils you either pick the one you haven't tried before or the one that is the most fun." **M**

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