The Streaker

A flamboyant client makes my first trial an ordeal to remember

As I glance up from my computer and notice a photo propped on a shelf above my desk, I am reminded of my first jury trial. The year was 1974.

Inscribed on the photo are the words: "For Tom. I thank you, David thanks you, Elizabeth thanks you, and Judge Nebron – well no one can be loved universally. Someday I give you permission to put it to the old prick. Love. Bob."

The photo was given to me by Bob Opel at the conclusion of his trial for public nudity. It was my first trial as a defense attorney. Irwin Nebron, the judge who presided over the trial, was not happy with my zealous defense tactics and so we had some real rough times in that courtroom.

But back to the photo. It depicts Bob streaking across the stage of the 46th Annual Academy Awards, just as actor David Niven was in the process of introducing Elizabeth Taylor. Bob, flashing a peace sign to the audience, was broadcast completely nude on live television. No wonder the following year the show had a time-delay process built into the broadcast so that the producers could instantly edit out an incident which might be embarrassing to them.

Niven made light of the incident, remarking: "Just think. The only laugh that man will ever get is for stripping and showing off his shortcomings." When Taylor took the stage, she quipped: "That's a pretty hard act to follow. I'm nervous – that really upset me. I think I'm jealous."

Bob was not arrested for streaking the Academy Awards on April 2, 1974. But in the following months, the entire city of Los Angeles was abuzz about nudity. Not only were streaking incidents starting to pop up

Photo given to me by Bob Opel depicting his unscheduled performance at the 46th Academy Awards

all around the country – especially on college campuses and at sporting events – but people were going nude at some Los Angeles beaches. A portion of Venice Beach – a hangout for hippies, musicians, bodybuilders, and other interesting folks – was turning into a "clothing-optional zone."

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Nudists and their sympathizers were taking advantage of a ruling by the California Supreme Court in the summer of 1972. The case involved a man arrested for indecent exposure, a serious crime requiring registration as a sex offender for anyone convicted of the offense. Chad Smith's offense involved nothing but his sunbathing in the nude on an isolated beach.

The state's indecent-exposure statute required that the offense be done "willfully and lewdly." The Supreme Court issued a ruling, unanimously, that simple nudity in a public place, without evidence of lewd intent, did not violate the statute.

As news of this ruling slowly spread through the state, acts of nudity spread from a few isolated beaches to some very public places such as Venice Beach in Los Angeles, which is visited by thousands of people each day. Then came the gawkers. Dozens of fully clothed "dirty old men" began to stroll down the beach. Many had cameras and took photos of the lovely unclothed bodies soaking up sun. Then the church people got stirred up by preachers who found a new issue of immorality to politicize. They and their congregations did not frequent Venice Beach, but just the thought of people going nude at the beach was more than they could tolerate.

Leaders of some of the local churches pressed Ed Davis, the chief of police, to do something. Davis consulted the city attorney, Burt Pines, who concluded that under state law no arrests could be made for simple nudity in a public place. A local ordinance would be needed to fill this gap in the law. That's when Davis went to the City council and demanded action.

I was following this situation very closely – for personal, legal, and political reasons. On a personal level, I had sometimes gone to Venice Beach to sunbathe and swim nude at an area sectioned off as a "clothing-optional zone." I agreed with many nudists who wanted at least one convenient place they could go *au naturel*. Those who did not like nudity had hundreds of beaches. Why couldn't the nudists have at least one?

From a legal perspective, I agreed with the Supreme Court that simple nudity is not, in itself, lewd or indecent. As a law student and recent lawyer, I had been fighting against a different "lewd conduct" law which undercover vice officers had been using to arrest thousands of gay men each year in Los Angeles. I felt the term "lewd" was unconstitutionally

vague and so I joined with a few other lawyers to challenge that law. Any law that used the term "lewd" was not something I wanted to see enforced.

From a political perspective, I was angry with Ed Davis for using his power as chief of police to do the bidding of the religious right. He obtained millions of dollars each year from the City Council to fund his secret police – the vice squad – to ferret out and arrest homosexuals. Gay men were arrested at bars for kissing, touching, or slow dancing. They were arrested for simply asking another consenting adult male to go home to have sex in private. Gays were openly excluded from working for the Police Department. Davis used city funds to lobby the state legislature to defeat any bill that would end police harassment or end discrimination.

Let's put it this way. Ed Davis was no friend of mine. So I became upset when Davis started pressing the City Council for a new city ordinance to outlaw nudity at the beaches. Just as he felt there was no room in Los Angeles for openly gay people, he found no space for nudists, not even a few hundred feet out of the many miles of beaches along the Los Angeles coastline.

I showed up at the City Council committee meetings focusing on this issue in May and June of 1974. The audiences and the speakers involved the same usual suspects – the nudists versus the church people. The religious folks usually arrived on school buses.

After several committee hearings on the issue, the matter came before the full City Council on July 11, 1974. Public interest was so great that the 380-seat chamber was filled to capacity, and another 200-or-so people were watching the proceedings on video monitors in another room. Emotions were running very high.

At the front of the council chamber was a horseshoe-shaped table where the council members sat as they faced the elevated table of the president pro tem, who looked out toward the audience. Seven council members sat on one side of the horseshoe and another seven on the other side. Between them sat the chief of police and city attorney, who were there to answer any questions posed by the lawmakers. So the back of everyone seated at the horseshoe was to the audience.

On a blackboard at the front of the room were the words: "Simple nudity in a public place is not in violation of the law. *In re Smith*."

Below that were the options available for the City Council:

1) Do nothing

2) Clothing-optional

3) Total prohibition

For some reason, I was not at City Hall that day. Perhaps I was in court or had appointments at my law office. But I knew that I would get a full account on the evening news since all the major stations were covering the debate.

I watched the report on television news that night. Although I was not happy with the result, I was not shocked to learn that the council voted to prohibit all nudity at public beaches and parks. But there was more to the story – something that was a surprise. Bob had unzipped his jumpsuit and let it drop to the floor, walked up to the front of the chambers, stood naked between the chief of police and city attorney and asked: "Is this lewd? Is this indecent?"

In a matter of seconds, the audience in the council chambers went from silent to gasping for breath, to laughing and cheering, to shock. The chief of police yelled out: "Arrest that man." Bob was ushered out of the room by police officers as the people in the chambers tried to compose themselves.

At first I laughed. Then I suddenly became serious. I thought to myself: "I would love to have that case." That was because, if I represented Bob, I could force Ed Davis into court by having him served with a subpoena. I had tried to get judges to make Davis submit to a deposition or come to court in cases where I had sued him as a defendant for police harassment, but the judges would always quash the subpoena and let him off the hook. This was different.

My mind started to race. If I got this case, he would have to come to court. He was an eyewitness. In fact, he was the person closest to the penis.

I had never met Bob Opel. I did not even know his name until I saw the event on the news. I knew there had been a streaker at the Academy Awards, but I did not know him by name. He was just "the streaker."

As I went to bed that night, I thought to myself: "Wouldn't it be funny if he hired me as his lawyer?" But then I shrugged it off. What were the chances of that happening? I went to my office the next day as usual. That afternoon, my secretary came into my office and advised me that I had a phone call. It was Bob Opel on the phone. He had been released on bail and needed a lawyer. He wanted me to represent him.

Apparently, Bob had been referred to me by Morris Kight, a community activist and high-profile leader in the gay rights movement in Los Angeles. Kight had been watching my political and legal activities as a law student and young lawyer and was impressed by my advocacy skills.

Bob made an appointment and I agreed to handle his case "pro bono," since he was an unemployed actor and lacked funds to pay for a lawyer. I thought that his case would be a great experience as my first trial. Trial by ordeal, so to speak.

But I was not a fool, even though I was sometimes foolhardy. I asked my more experienced colleague, Albert Gordon, if he would serve as co-counsel for the defense. Al had been a mentor of mine for two years. He was a real fighter. He agreed.

I told Al that there was no need for him to go with me to the arraignment court. I went alone; entering a plea of not guilty would be routine. Was I ever wrong! After waiting for Bob for a few minutes on the courthouse steps, I saw this bizarre image coming closer. Could it be? No. Not possible. Tell me it isn't so.

Bob Opel was dressed as "Uncle Sam," in a red, white, and blue suit with a tall top hat. He was wearing red heart-shaped "Lolita" sunglasses.

I was nervous. The judge in the arraignment court did not like me. Clarence Stromwall was a crusty conservative. His physical appearance reminded me of a hard-nosed drill sergeant. Prior to being a judge, he had been a police officer – a vice officer, at that – who had probably arrested hundreds of gay men during his career as a cop.

Stromwall first met me two years earlier when I was an openly gay law student who started the project at the arraignment court to help gay men who had been arrested and were in pretrial custody. After months of reluctantly allowing the project to occur, Stromwall finally put a stop to it

and kicked me out when he learned that two of us law students had been gathering data to prove that the law was being enforced in a discriminatory way against gay men.

So now, two years later, I walked into his courtroom with Uncle Sam at my side in a high-profile case that was sure to attract lots of media attention. I was worried that Stromwall was going to think that I was in cahoots with Bob, which I was not. I was just as surprised as anyone to see Bob dressed like that for court. But what could I do? Here we all were – in Stromwall's courtroom.

Stromwall would not accept a plea in this case without a deputy city attorney present, even though he had accepted not-guilty pleas from other defendants without a city attorney in the courtroom. He told the bailiff to bring the supervising deputy city attorney into the courtroom.

Bob and I stood there at the front of the courtroom waiting, waiting, waiting, as Stromwall gave us dirty looks. It seemed like we were frozen in time for hours, although it was probably only two minutes later when the supervising deputy came in.

Stromwall read the charges and asked for a plea. Bob was charged with two counts – indecent exposure and disturbing a public meeting. We entered a plea of not guilty, a date was set for trial, and we left. As I walked toward my car I wondered: "If a simple arraignment turned out like this, what will the trial be like?"

The trial was transferred to the courtroom of Judge Irwin Nebron, a seasoned and rigid jurist who definitely wanted total control of his space. He was a no-nonsense guy. What a combination. Nebron was a strict and commanding judge. I was a notoriously strong advocate. Al was a former communist sympathizer who loved drama. And Bob was a showman who knew how to stir up publicity.

About a month prior to trial, I served subpoenas on all City Council members, the chief of police, and the city attorney. I soon got a call from a deputy city attorney, asking if I would place all these witnesses "on call" so they would not have to show up in court unless and until they actually had to testify.

I told the deputy that I would consider doing that if the city attorney would drop the indecent-exposure charge. Bob should not have been

charged with that offense since his behavior was not sexually motivated. It was a protest of sorts. Or it may have been a ploy for publicity. I reminded the deputy of the wording on the blackboard at the front of the council chambers, which read, "Simple nudity in a public place is not in violation of the law." Bob was simply nude.

Why were they charging him with a crime he clearly did not commit? The charge of disturbing a public meeting was fair enough. But it was bad faith to charge him with indecent exposure. So if they acted in good faith and dropped that charge, I would act in good faith and put all these witnesses on call rather than make them show up in court on the first day of trial. The deputy city attorney said he would get back to me. He would have to speak with his supervisors.

The next day, I received a call from a gay lawyer in the city attorney's office – someone I had gone to school with in law school. He tried to play hardball. I was advised that they would not drop the indecent-exposure charge. I was told that if I did not place these government officials on call, there would be a high price to pay – I would lose all plea-bargaining privileges in all future cases I might handle.

I thought about it a little bit and then dug in my heels. "Have the witnesses in court for the trial," I told him. My only concession was to place Burt Pines, the elected city attorney, on call. This was a personal courtesy since he was fair to gay people and supported gay rights.

On the first day of trial, Bob came dressed in a zoot suit – a distinctive style of dress suit which was popularized by Hispanics and Italians in the 1930s and 1940s. I wondered: "Where did Bob come up with these ideas? And why me? Why did he have to complicate things for me this way?"

Then the parade of government officials began. One by one, the 15 City Council members showed up in court, and one by one the judge placed them on call and they left the courtroom. Finally, the moment arrived I had been waiting for. Chief of Police Ed Davis walked in. He was dressed all in white. I looked at him and smiled, thinking to myself: "Gotcha!"

Judge Nebron went way overboard when it came to jury selection. In addition to the main set of 12 jurors, judges usually seat one or two alternate jurors. That is in case one of the main jurors becomes ill or is

otherwise disqualified during the trial. In this case, Nebron insisted on seating six alternate jurors. Obviously, he did not want to call a mistrial because of the lack of jurors. Half of the jurors could be killed in an earthquake and this trial was going to continue.

I could tell from the beginning that Nebron did not want me handling this case. He took Al Gordon and me into his chambers and tried to convince me to let Al handle the trial completely. I reminded Nebron that this was my case, that I was licensed to practice law, and that he should be glad that I had the good sense to ask Al to be my co-counsel. But turn the case over to Al completely? No way.

Nebron's irritation with me became apparent during my opening statement for the defense. That is a time when the defense attorney gets to lay out the defense case for the jury – explaining what the evidence would show and how that would point to a not-guilty verdict. I wanted to make a 10-minute opening statement, but after five minutes, Nebron interrupted me. "Wrap it up, Mr. Coleman," he stated in a commanding voice. "What does that mean, your honor?" I replied. "Wrap it up," he repeated. "I don't understand, do I have two minutes more or three or what?" I inquired. "This case is in recess," he declared as he showed his complete irritation with me. "Counsel, I will see both of you in chambers – now."

Once in chambers, Nebron told me that if I did not end my opening statement in one minute, he would forbid me from participating in the case, and Al Gordon would be the sole attorney for Bob. We returned to the courtroom and I did as I had been ordered.

We never did call the City Council members as witnesses. The jury was shown a videotape of the proceedings in City Hall. There was not too much in dispute in terms of facts. Bob went nude in City Hall. We all agreed on that.

The final dispute for the jury to decide involved two issues. On the first count of indecent exposure, the question was whether the jury believed, beyond a reasonable doubt, that Bob's conduct was sexually motivated. If not, he should be found not guilty of that charge. On the second count of disturbing a public meeting, the question was whether Bob's conduct caused a substantial disruption of the meeting. That was a closer call.

Our defense was that "substantial" disruption should be evaluated in terms of the length of time of the disruption. Al and I took a roll of butcher paper and unrolled it around three sides of the courtroom. A black line that we drew horizontally on the unrolled paper depicted the length of the council meeting, which was about two hours in all. Then we drew two vertical lines that were about two inches apart. That was how much time elapsed from when he first appeared nude until he was arrested. The disturbance, we argued, was not substantial but only trivial in terms of time.

The prosecution argued that whether a disruption is substantial or not should be measured by the nature of the disruption, not the length of time of the disruption. The jury deliberated for several hours and then returned with a verdict on both counts. Bob was found not guilty of indecent exposure but guilty of disturbing a public meeting. The case was scheduled for sentencing about a month later.

Bob and me standing in hallway outside of the appellate court

At the time of sentencing, Nebron said that he would place Bob on probation, on condition that he serve 40 days in jail and then see a psychiatrist for several months when he got out of jail. Bob rejected the terms of probation. So Nebron ordered him to serve four months in jail. Bob thanked Al Gordon and

me for representing him. He then gave me the autographed photo of him streaking David Niven, which included the reference to Judge Nebron.

I filed an appeal on behalf of Bob. The appellate court appointed me to represent him since he was an indigent. As a result, the county paid my legal fees for the appeal. Ultimately we lost the appeal when the appellate court affirmed Bob's conviction for disturbing a public meeting. After serving about two months in jail, Bob was released.

I lost track of Bob for a few months and then one day I received an invitation to attend his 35th birthday party. I decided to go. I drove to Bob's house and parked down the street. While I was walking toward the house I bumped into a friend who was walking toward me. We looked at each other and smiled. I think we both had the same crazy idea at the same time. I told Russ, "Let's do it."

Russ and I walked up the driveway toward the garage. We went inside the garage and closed the door. And then we took off all of our clothes. We walked to the back door, which entered the kitchen, and we went in. Bob was standing at the kitchen sink with his back to the door. He heard a little commotion from others standing nearby, so he turned around to see what was happening. He just about fell over. The amazed look on his face was incredible. Bob could not believe it. Someone had just streaked the streaker.

Bob took me by the hand and led me into the living room where most of the guests were sitting and chatting with each other. "Everyone. Everyone. Can I have your attention? I would like to introduce you to my attorney." The group roared with laughter. A few minutes later I put my clothes back on, rejoined the party for a while, and then left. That was the last time I saw Bob.

The next time I heard about him was a few years later when I was reading a newspaper. Apparently, Bob had moved to Northern California and was managing a bookstore. The story explained that a gunman had entered the store, robbed Bob, and then shot him to death.

What a tragic ending for him. But even though Bob died at the young age of 40, his short life was just like my first jury trial – anything but dull.