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Viktor

When an old buddy from college needs your help, how can you say no?

By Myron Moskovitz

"People of the State of California versus Viktor Szaz. Assaulting a police officer. How does the defendant plead?"

"My client pleads not guilty, Your Honor," I replied. Judge Borelli said, "OK, trial will be set for ... Viktor shot up. "Not guilty!" he shouted. "Never guilty. I did nothing, nothing!" Even in Berkeley, where nuts and nudists have always been common fare in its criminal court, Viktor was a piece of work.

Viktor was more than a client to me. In 1956 I was a freshman at Cal, living in a fraternity called Kappa Nu. That same year, on a less peaceful side of the world, Hungarians rebelled against their Soviet overlords. Before the Russian tanks squelched the revolt, for a brief time the borders were open, and Viktor fled westward. He somehow found his way to Cal, arriving penniless. As Viktor was Jewish, the dean of students called around to the Jewish fraternities to see if one of them would take him in. Kappa Nu agreed.

Viktor was in his early thirties, older than the rest of the guys. But we readily accepted him and his heavy accent, and he loved the place. Yes, Viktor had become one of the guys. And yet ...

He was "high strung." In the middle of a game of ping-pong, he might fly into an articulate rant on the evils of communism, fascism, or "Goldvasser" Republicans, or on the sublime joys of Gypsy positions of coitus. His lengthy soliloquies would be accompanied by compulsive pacing and arm-flailing, and his gravelly voice would sometimes approach a scream.

Why was he like this? Were all Hungarians so volatile? Or just Viktor? A possible answer came at dinner one evening.

The house cook was pretty good, but that didn't stop the boys from giving her a hard time.

"Hey, Cherry!" yelled one guy. "Where did you get this mystery meat? Tastes like an old jockstrap." The others laughed, but not Viktor. "Why do you boys complain? This is good food. What if you vere starving?"

The joker replied, "Who's starving? You've never starved, Viktor."

Viktor glared at him, then blew up. "You know where I vas when you nize Jewish boyz vere eating your mamas' kreplach in your big ranch houses? Look!" He yanked back his right sleeve. There it was, on his forearm: "2685719." A faded blue tattoo. They gaped at it. They'd heard of such things, of the camps, but to actually see one? In the flesh?

"You think such food as this vee ate in Auschwitz?"

Then it all spilled out: His father had been a well-to-do Budapest merchant who traveled throughout Europe buying imports. Sometimes he took his young son with him on his journeys to France, Germany, Poland, and other countries. Soon Viktor became competent in the languages of those countries.

During the war, when the Nazis' Hungarian ally seemed unable to hold off the massive Soviet counterattack, the Germans moved their own troops into Budapest, and the Szaz family went into hiding. They sent their young teenager out to forage for food, but he was spotted by a neighbor, arrested, and sent to Auschwitz. As this largest of the killing camps received Jews from every corner of German-occupied Europe, the death-masters needed translators to help them read documents and communicate orders to their victims. So Viktor was spared. After the war, he found his way back to Budapest-only to find the city dominated by the Russians. Somehow he made contact with an American CIA agent, who used him to report on the activities of the occupiers. But he was caught again, and this time he managed to make it through seven years in a Siberian gulag. After his release, he returned to Budapest, just in time for the '56 uprising.

Several years later, my phone rang late one night. "You must help me. I haff bin arrested."

After receiving his doctorate in Eastern European history, Viktor had found a job teaching history at Chico State University. Chico was a farming community in the northern Sacramento Valley. On weekends, he escaped rural confinement by driving to Berkeley and hanging out at the Mediterranean, a coffee house on Telegraph Avenue. This was the early '70s, a time of tense relations between citizens and law enforcement. Locals were still protesting the Vietnam War, and memories of the nearby People's Park riots of 1969 still lingered.

One Saturday afternoon, Viktor was walking to the Med when he saw one guy beating on another guy-maybe a drug deal gone bad. Viktor spotted one of Berkeley's finest, in khaki uniform, with his back to Viktor. Viktor grabbed the officer by the shoulder, from behind, to get his attention. Not smart. The cop whirled around and pushed Viktor away, hard. Viktor then spat on the ground. The cop arrested him for spitting at a police officer. "Viktor, I'm not the best lawyer for you," I told him. "I'm working for an antipoverty project specializing in landlord-tenant cases. I've done a handful of criminal cases, but none in Berkeley. I'll help you find a good criminal defense lawyer who knows the local scene."

"No. It must be you. I trust no one else. The CIA is trying to deny me tenure!"

"Come on, Viktor. You can't be serious." But he was. While gathering material for his Ph.D. dissertation, Viktor had traveled to Eastern Europe each summer. The CIA paid his way, in return for planting a few questions they wanted answered when Viktor interviewed various officials. But when the Vietnam War broke out and Viktor opposed it, they parted company-on bad terms.

"These people are very vindictive. When you reject them, they never forget. I am now up for tenure at Chico. I have enemies there who would destroy me. They need ammunition against me, and the CIA is trying to give it to them. A criminal record would end my career."

It didn't make sense to me that the CIA would engineer this prosecution. But something bothered me: Even if Viktor had spit at the cop, he missed, and no one was hurt. Didn't the law have bigger fish to fry?

"You'd be right, in most cases," said Roger Hansen, the deputy DA handling the case. "Officer King was going to let Viktor go after he drove him to the police station, but Viktor kept calling him a Nazi and a fascist pig. I've got to get along with the cops, and there's no way they'll let me drop this case." And there was no way to plea bargain, because Viktor believed that any conviction would end his career. So on to trial.

A jury was eventually selected: an old lady, a couple of African-Americans, and the usual run of Berkeley liberals-grad students, professional people, and small-business types.

Officer King's testimony on direct examination didn't take long. He told the jury that Viktor spat at him and missed, so King arrested him.

"Liar, liar!"

All turned to the source of this outburst. Viktor's eyes were afire. The judge addressed me: "Counsel, would you please advise your client that he will have his turn to testify, but until then he must stay silent." I'd taken vacation time from my job and gotten dressed up in a suit and tie for this? I hissed at Viktor, "Once more, Viktor, and I plead you guilty." Not legally permitted without Viktor's consent, of course, but Viktor didn't know that.

Time for cross-examination.

"Officer King, would you please stand up?" I asked. King stood. "Now, please place me at the same distance the defendant was from you when he spat." King told me where to stand, about three feet in front of him.

"What part of your body did he spit at?"

"My legs."

"Well, how come he missed?"

"I jumped out of the way."

"Is that so? Did he spit like this?"

I then spit at King's legs. Well, not really. I made a spitting motion with my mouth, jerking my neck forward to put a bit of oomph into it, but no saliva emerged. King flinched slightly, but of course had no time to jump out of the way of a shot from a mouth only three feet away. The courtroom erupted.

Deputy DA Hansen leapt to his feet: "I demand that defense counsel be held in contempt and arrested for spitting at the officer." I shrugged, "I didn't spit." Several jury members burst out laughing. Viktor thumped the table with delight. Judge Borelli banged his gavel. Hansen slumped back in this chair. It seemed that the trial was over.

But it wasn't. I wanted to quit while I was ahead, but there was no way a battery of howitzers could have kept Viktor from exercising his constitutional right to testify. Anyway, Viktor had told me his version of what had happened, and it seemed somewhat plausible.

Viktor composed himself, straightening his jacket and drawing himself up to his most dignified pose. He took the stand.

After developing Viktor's background (including his experiences in Auschwitz and Siberia, somehow without objection from Hansen), I asked the key question. "Why did you spit?"

"I speet on the ground, not at the police officer. And then I step on the speet."

"Could you please show the jury what you did?"

Viktor stood up. He pretended to spit hard on the courtroom floor. He stomped violently on the spot with his right foot, then twisted his sole back and forth, as if squishing a bug.

"Why?"

"To show him that I did not accept his disrespect for me. I had tried to do my duty as a citizen to tell him of a crime, a beating. But he pushed me away. This I do not accept."

"But why squish the spit?"

Viktor smiled at the jury. "In Hungary, in Central and Eastern Europe, this is how you show contempt for someone who disrespects you. It is a well-known custom for many centuries." Hansen rolled his eyes.

I was finished with Viktor, but not with his evidence. A few nights before, when Viktor had first told me about the squish-the-spit custom, I said, "Well, I've never heard of it, and I don't think anyone else in Berkeley has. Do you know anyone who can back you up?"

"I vill look," he replied. Sure enough, Viktor called back the next day. "My friend Tomas is Czech. He vill testify for me about this tradition."

So I put Tomas on the stand, and he confirmed Viktor's testimony. Perfect. The case was in the bag.

A tall, blonde, Nordic type, Hansen had been a track star at Cal, and he hated coming in second. He had watched miserably as I packed my briefcase, patted Viktor on the back, and said, "Good job on the stand. I think we have a winner." And then, as we walked out of the courtroom in front of Hansen, Viktor had turned around, cupped his hand, and blew Hansen a kiss, saying sweetly, "Too bad, my beeyooteful Aryan preentz." Hansen almost took a swing at Viktor. The look on his face showed that he wasn't about to give up.

The next morning, right after Judge Borelli took the bench, Hansen announced, "Your Honor, could counsel please meet with you for a moment? There's something I need to discuss." The judge said, "Fine. In my chambers." Hansen and I rose. So did Viktor, but the judge said, "Counsel only, Mr. Szaz." Viktor looked frantically at me. "Vhat? Vhat is happening?" I tried to calm him. "Probably just some housekeeping matter, like putting a time limit on closing arguments. Relax. I'll be right back." But as I walked off, Viktor stood watching me, wholly unrelaxed.

"So what's up?" the judge asked Hansen, as we sat down in his office.

"The People hereby request leave of the court to amend the complaint to add a new charge: littering. When he spit on the sidewalk, he littered."

I laughed. "You must be kidding. That is the dumbest ... "

Hansen explained. "Berkeley Municipal Code section 4382 defines 'littering' as 'depositing any foreign substance on a City sidewalk.' The defendant admitted that he deposited spit on the sidewalk. It's a foreign substance."

I said, "Judge, you can't let him pull a stunt like this now. The trial is over."

"Not quite. The case hasn't gone to the jury yet." He paused and thought. "I'm going to let him add the charge."

What was Borelli thinking? Well, he was a former prosecutor himself, and Viktor certainly hadn't endeared himself to the court with his antics.

The judge softened the blow a bit. "But I'm going to give you the right to reopen your case and present any additional evidence you like to rebut the littering charge."

When we returned to the courtroom, Viktor was anxiously staring at me. "It's OK, Viktor. Just a little problem. The judge let Hansen add a new charge: littering."

The lid blew. "Leetle problem? Didn't I tell you? The CIA vill stop at nothing to deny me tenure."

When I'd settled him down enough to listen, I spelled out my plan. "After you stepped on the spit and wriggled your foot, was there any spit left on the sidewalk?"

"No."

"It was all on the bottom of your shoe, right?"

"Right."

"It's like dropping a gum wrapper and picking it up. That's not littering. So I'm going to put you back on the stand and have you explain that. OK?"

"OK, yes."

I sat back and smiled. "Not bad," I thought. "First I demolish that cop, and now I figure a neat way out of the "leetle" problem. Maybe I should do trial work full time, even if I have to wear a tie. I'm a natural."

The judge reminded Viktor: "You're still under oath."

I asked the setup question: "When you spat on the ground, how much did you spit?"

"Nothing."

Silence. Everyone looked at me.

"Uh, remember? Yesterday you testified that you spat on the ground? So how much did you spit?"

"Nothing. I did not speet."

I thought I saw a small bird, wearing a sign that read "Myron's brilliant trial tactics" flying out the open window over the jury box. The case had been in the bag, but now Viktor panics, lying under oath, right in front of the jury. There might be a way some experienced criminal defense lawyer could get Viktor to "clarify" his contradictory testimony, but I had no idea what it was.

"Thank you, Mr. Szaz. That will be all."

Hansen had a wide grin. "No cross, Your Honor."

Viktor sat down as if nothing unusual had happened. I started to say something to him, then stopped. "What the hell," I thought. "No point in bawling him out now. We're finished."

"Mr. Hansen, you may present your closing argument to the jury."

Hansen looked smug. Given Viktor's most recent blunder, Hansen should have kept it short and sat down. But he'd prepared something the night before—a killer argument—and he'd be damned if he'd dump it.

"Last night, I was thinking about this so-called Eastern European custom of stepping on spit to show contempt for a sworn officer of the law. It made me think of something similar." Hansen strolled down to the far end of the jury box, where the two black jurors sat together. He looked right at them.

"In the American South, they too have customs. The Ku Klux Klan lynches Negroes. Suppose a Klansman were to bring this custom to Berkeley. Would you good citizens of Berkeley tolerate that? No! It's the same thing with defendant Szaz." Viktor could not contain himself. "Look what he's doing, that Nazi! He's appealing to their race." Hansen heard this. He flashed a mean smile at Viktor, then completed his argument.

But where Viktor saw disaster, I saw a ray of hope. I whispered, "Shut up. I think he's digging his own grave. He's assuming your story is true. And those black jurors won't like being patronized. Maybe we have a chance."

The jury didn't come back until late in the afternoon.

"We have a verdict on one count, Your Honor," the foreman announced. "Littering: Not guilty. But we're hopelessly deadlocked on the assault charge. We've tried and tried, but we can't get one juror to change her mind."

"One juror," I thought. So it's 11 to 1. But which way?

The judge said, "I declare a mistrial on the assault charge. Thank you for your service, jury members. You are discharged."

Which way? If 11 to 1 for conviction, Hansen would want the case retried. If 11 to 1 for acquittal, there's no way he'd ever get a conviction. He'd have to dismiss. I collared the foreman. "What happened?"

"Old Mrs. Thompson just couldn't bring herself to disbelieve a police officer." 11 to 1 for acquittal! I yelled over to Viktor, who looked totally perplexed. "It's over, Viktor. We won!" Viktor yelped and ran over to hug me and the foreman.

I asked the foreman, "Why did you acquit on the littering charge?"

"Come on. We all knew that was just a chickenshit charge the prosecutor added because he was losing."

"But Viktor lied on the stand. You all heard him."

"Sure, he lied, but only because he was so upset."

I shook my head in wonder. The common sense of the American jury—priceless.

After the jury left, the judge got back on the bench. "Anything further, counsel?"

Hansen pulled out his pocket calendar. "The People would like a date for the retrial on the assault charge."

I couldn't believe it. "What? The jury hung 11 to 1 for acquittal. There's no way he'll ever get a unanimous vote for conviction. Don't let him waste any more taxpayers' money, Judge."

"Well, I tend to agree, but it's not my call. The DA has the right to retry a case after a mistrial, if he wants."

Hansen was hot. "I do want, Your Honor. This man has no respect. The things he said to the police officer. The things he said about me. Nazi, Fascist, Aryan Prince. He has to be taught a lesson."

I thought fast. "Your Honor, why don't you let counsel talk this over before you set a date for retrial."

"Excellent idea. C'mon back at four tomorrow afternoon."

I led Hansen to the back of the courtroom.

"Well?" he said.

I looked him in the eye. "Roger, if you retry this case, I'm not going to represent him. You think you had it rough? Try dealing with his craziness for weeks before trial. And during the trial, he was bugging me so much I could hardly concentrate. I was controlling him to protect you." (Well, not quite, but what the hell-whatever works.) "And if he tries to get another lawyer, that lawyer will call me and I'll tell him the whole truth, and he won't take the case either. So Viktor Szaz will have to represent himself. You might get your conviction, and you'll probably get him cited for contempt of court half a dozen times. But I promise you, Roger, you'll never practice law again. After that experience, you'll be driving a truck for a living."

Hansen raised a forefinger and started to argue, but I said, "Don't give me your answer now, Roger. You're too worked up. Sleep on what I said. Call me in the morning."

I got to my office a bit late the next morning; I'd needed some extra sleep.

"Morning, Gloria," I said to my secretary.

"Hi. A Mr. Hansen left you a short message. 'Case dismissed.' "

I called Viktor with the good news. He said, "Meet me at the corner of Durant and Telegraph, right now."

When I arrived, Viktor smiled and held out his hand. I took it, but instead of a handshake, Viktor had placed something in my hand. I looked at it: a fat wad of twenty-dollar bills. "Viktor, I can't take this. You're my friend, my fraternity brother. I didn't do this for money."

Viktor grabbed me, hugged me, and kissed me on each cheek. "You saved my career. You saved my life."

And then he left. I never saw him again.

Last year, I got a call from an old fraternity brother. Viktor had passed away, a prominent professor in his 70s. At the memorial service in San Francisco, I told the story of the trial.

Afterwards, we had coffee and cake. A man came up to me and shook my hand. "That Czech who testified at the trial, Tomas. He was my father. Passed away last year. When I was just a kid, I was in our living room when Viktor came over to talk with my dad about testifying."

"Really? What did they say?"

"They made the whole thing up, that business about an Eastern European custom of stepping on spit. There's no such thing. Viktor told my father not to tell you."