

# The Trial of the QB 6

Sacco and Vanzetti it wasn't. But for six New Yorkers who believe in the bicycle, their trial for disorderly conduct was indeed an issue of life and death.



## The Great Spokes Trial

They called themselves the 'QB 6' — bicycle zealots arrested for blocking traffic on the Queensboro Bridge. But it was the automobile that wound up on trial.

*Newsday color cover photo by Ari Mintz: The QB 6: Charles Komanoff (kneeling), and (from left) John Gray, Stephen Kretzmann, Ann Sullivan, Jonathan Orcutt and John Kaehny.*

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A FEW TRIALS IN the history of the United States have stood out for their breathtaking eloquence, their historical significance, or their captivating steaminess. The trial of Charles Komanoff and five other bicyclists for disorderly

conduct does not sound like one of them. Until you talk to Charlie.

"This work on behalf of pedestrians and bicyclists meant more to me than my freedom," he said on the witness stand. "I was willing to go to jail if that's what it took - even though I didn't want to go to jail; I didn't even want to leave my office. But I felt I had to."

To him, and to the others committed to "Transportation Alternatives" - the name of the organization to which they all belong - their trial goes to the heart of an issue that means no less than the future of New

York City and of the United States and for that matter the world, an issue involving the right to breathe free and be (energy) independent, an issue of life and death.

The members of T.A., Transportation Alternatives, have been fighting the automobile since 1973, representing the 75,000 New Yorkers who use bicycles for regular transportation rather than just recreation (1,300 of them are dues-paying members) in such successful battles as the Koch administration's proposed Midtown bicycle ban in 1987. The mayor quickly rescinded the ban after T.A.-sponsored lawsuits and demonstrations.

"To get on a bike every day you've got to be part idealist, part dreamer," Komanoff likes to say, although he adds quickly: "It's also a very practical means of transportation."

The group that went on trial - among them a kindergarten teacher, a college student and a dancer - started calling themselves "The QB 6." This is not a bus route (although Transportation Alternatives does support mass transit). The QB stands for the Queensboro Bridge. Thirteen years ago, T.A. cyclists carried a banner across an outer lane of the bridge proclaiming it a "People's Roadway," prompting the city to open it the following year as a bike lane.

But last June, the city converted the lane normally reserved for bicyclists and walkers into an additional lane for automobile traffic between 3 and 7 p.m., in order to reduce congestion caused by the closing of some of the other lanes for repairs. The QB 6 were part of a weekly demonstration on the bridge protesting the change. They were arrested in October at their 20th demonstration doing what they had done at the previous 19: blocking cars from entering the bridge's bike path.

Normally, people so accused simply sign a piece of paper admitting guilt, and that's the end of it: no fine, no jail time, no record.

But the QB 6 insisted on risking all three. They demanded their day in court.

Nobody seemed to notice John F. Kennedy Jr., son of the president, in the crowded courtroom the day in January the trial was scheduled to begin, comfortably chatting with court officers and other assistant district attorneys. Perhaps everybody was too preoccupied, and not only with their own cases. With the midnight deadline for oil-rich Iraq to get out of oil-rich Kuwait half a day away, the bicyclists carried a banner down the street to the court building which said, "Don't Be Loyal To Oil." Komanoff and his co-defendants had hoped to attract a sympathetic crowd and a swirl of media coverage. But nobody seemed to notice.

If they had, they would have heard Charles Komanoff, energy consultant, promote the bicycle as . . . well, not exactly an answer to all problems, but certainly a start: "We connect this very strongly to oil dependence, acid rain, global warming . . ." But if he thinks globally, Komanoff also likes acting locally: "New York is an alienating place. Bikes are a partial antidote, in that the biker is put in a milieu in which he or she relates to the sights and sounds and smells of the city."

With no crowds and no cameras outside, the defendants and about a half-dozen supporters moved into the courthouse at 346 Broadway. Some carrying the front wheels of their bicycles and wearing white helmets and Spandex bicycle attire, they hung around the hallway or tried to wait in the first-floor courtroom, which is reserved for minor violations and was packed with accused minor violators waiting for their hearings, most lasting a matter of minutes.

"Are you a bicycle defendant?" one court officer asked a helmeted man sitting on one of the crowded benches.

"A bicycle supporter."

"Step outside."

After waiting a few hours, the defendants were informed that their case had been postponed several weeks. The police officer who had arrested them was busy elsewhere.

"It's really disappointing," said Ronald McGuire, the QB 6 attorney. "We had about ten witnesses all lined up."



*Transportation Alternatives / Doug Goodman photo: Protesters in October (1990) block the bike lane of the Queensboro Bridge, above.*

The day the trial finally began, Feb. 5, the newspapers were filled with coverage of the war, especially the huge oil slick in the gulf. Even the city government was preoccupied - Mayor David Dinkins had returned the night before from Scud-scarred Israel.

McGuire, meanwhile, was invoking the names of Henry David Thoreau, Martin Luther King, the underground railroad, Eugene Debs, the Vietnam draft resisters and the founders of our country. All of them, he said in his opening statement, had engaged in civil disobedience. And so had the QB 6.

The judge, Laura Safer Espinoza, seemed to be suppressing a smile, very much the way Grace Van Owen would in "L.A. Law," back when Van Owen was a judge on the show a few seasons ago. Judge Safer Espinoza even somewhat resembles Susan Dey, who plays Van Owen.

Only through civil disobedience, McGuire continued, could the members of Transportation Alternatives "act to prevent the slow, but inexorable, asphyxiation of New Yorkers through air pollution . . ."

McGuire, who in his youth had engaged in civil disobedience for civil rights, for open admissions at City College and against the Vietnam War, was now working without a fee for the militant bicyclists.

After McGuire's opening statement came John Gray's. He read from a stack of yellow index cards in the same kindly, sincere, slow and deliberate manner Mr. Rogers might explain brotherhood. Gray was not the prosecutor. He was one of the defendants.

A native of a small Southern town, Gray came to New York less than two years ago and was now a kindergarten teacher. "I take peace from the idea," he said, "that using a bike is consistent with my concern for the young children I teach."

"I love knowing that my bike is a compact, quiet, nonpolluting, human-powered vehicle," said Ann Sullivan, the dancer, the only woman in the QB6, in her opening statement. Sullivan explained that she had first come to the city 10 years ago. "Somebody stole my bike when I first came here. I had to save up to get another one. . .

"In a city where the bridges are crumbling because of overuse and lack of maintenance, where I see a haze of pollution hanging in the air nearly every day as I ride over the Brooklyn Bridge, where motorized vehicles clog the streets and kill pedestrians almost every day, I think we have to allow people to walk and bike. In fact, we should be encouraging biking and walking."

After Sullivan's opening statement came John Kaehny's. "I'm here because I care about New York City." Kaehny, a student in political science at Hunter College, had cuts and bruises under his eye and on his chin, and his right hand was in a cast. "It's totally unrelated to any of this," he said later, somewhat defensively, although his injuries were in fact the result of a bicycle accident on the bridge.



*C.T. Wemple photo: Police arrest John Kaehny, above, a student in political science at Hunter College and one of the 'QB 6' defendants.*

Finally, before the court could hear from the final two defendants, Jonathan Orcutt and Stephen Kretzmann, the prosecutor objected. How many opening statements could one side make?

The prosecutor himself made no opening statement, and the calling of witnesses for the defense proceeded, mostly bicyclists, including the defendants. Eleven witnesses were called in all, two full days' worth of testimony. An amazing amount of it was about the adequacy or inadequacy of the shuttle van that the Department of Transportation provides bicyclists weekday afternoons to travel across the bridge.

This was not shaping up as everybody's idea of a great trial. The court reporter looked in pain, or perhaps just painfully bored, and frequently asked witnesses to repeat what they said.

The defense attorney had a cold, and the defendants themselves occasionally followed up his questioning of a witness with questions of their own, sometimes several jumping up one after the other, beginning their questions quite professionally: "Would you not say that. . ."

The prosecutor looked like a very serious 16-year-old, and frequently erupted with "Objection!" without explaining to what he was objecting.

The judge would give him a semi-baffled, semi-incredulous Grace Van Owen look, and then say, "Overruled." The prosecutor would look in fury at the woman sitting next to him, who apparently had urged him to object.

The prosecutor's name, according to court records, was Linn Davis; he himself refused to talk to the press, on order of the Manhattan District Attorney's office, which, when contacted, couldn't figure out who he was; his name was not on their list of assistant district attorneys. The spokesman called later with an explanation: Davis is a third-year law school student, prosecuting under supervision of assistant district attorney Ruth Sussman as part of a regular program.

OK, so this wasn't necessarily Clarence Darrow versus William Jennings Bryan.

Nevertheless, the case rested on what lawyers might consider an interesting legal argument. The defendants admitted that they did what they were accused of, but they said it was justified. The justification defense, otherwise known as the necessity defense, holds, as it is written in New York State law, that "an act which would otherwise constitute a criminal offense is justifiable and not criminal when . . . such act is necessary as an emergency measure to prevent an imminent public or private injury which is about to occur . . ."

This was a brave argument: The requirements to demonstrate such a necessity are stringent, and no necessity defense for a demonstration or an act of civil disobedience had ever succeeded in any court in New York State.

The defendants were arguing that their actions were necessary to prevent three examples of "grave imminent harm" - to bicyclists and pedestrians who were on the roadway at the time the police demanded that the protesters start letting automobile traffic on the lane; to all New Yorkers because of automobile-caused air pollution; to the U.S. Constitution because of the denial of the fundamental right to travel freely.

IT WAS THE question of pollution to which the defense devoted much time and passion.

Dr. Steven Markowitz, deputy director for environmental and occupational medicine at Mount Sinai, testified to the effects on the health of various toxics in the air, pollutants that cause cancer, chronic lung disease, heart disease. "Auto exhaust is the primary cause of all these pollutants," he testified.

Based on personal experience, the prosecutor asked the doctor on cross examination, has anyone died because a lane has been opened to car traffic from 3 p.m. to 7 p.m. on weekdays?

Every increment makes a difference, the physician replied.

Ross Sandler, former commissioner of the Department of Transportation, was next to testify; the defense had subpoenaed him. Sandler said that the city has failed to reduce vehicular traffic and thus air pollution, for 20 years violating the air quality standard of the Clean Air Act Congress passed in 1970. The city had contemplated many innovative policies to comply with a federal deadline of 1987, including car pooling, restricting access to Manhattan, increasing "transit ways," special lanes for buses and bicycles.

But, Sandler testified, "A very powerful coalition of unions and business leaders were opposed to any kind of restrictions." There was also "very little editorial support."

Congress extended the deadline at least a decade. "Without legal compunction," Sandler said, "the city was not able to go forward on any of the policies." Meanwhile, the average speed in the city is the same as it was 100 years ago, before the automobile - 9 mph on the avenues, 6 mph on the side streets, Sandler said. This is true even though the sidewalks have been made narrower in order to widen the streets, the streets have been paved, and many highways and roadways have been added. The more room made for automobiles, Sandler testified, the more automobiles there have been. In fact, there are more than twice as many motor vehicles going into Manhattan every day as there were 20 years ago when the Clean Air Act became law.

At the same time, there is little in the way of alternatives - only three bridges across the East River below 125th Street are accessible to bicycles. That includes the Queensboro Bridge.

The final witness for the defense was Charles Komanoff himself, who, for the record, established his credentials: an honors graduate from Harvard with a degree in applied mathematics and economics; now an economist who, as president of his own energy consulting business, has advised Fortune 500 companies and the United States Congress on energy-related issues; and an unpaid volunteer for at least 30 hours a week with Transportation Alternatives who serves as an expert witness at countless governmental hearings.

The city's Department of Transportation itself, he testified, has officially acknowledged the important role bicycles could play in reducing traffic congestion and air pollution.

"Automobiles are the least efficient way of moving people," Komanoff testified. "The average U.S. car gets 20 miles per gallon. In New York City, with so many stops and gos, the average car gets about 15 passenger miles per gallon. Public transportation provides from 50 to 100 passenger-miles per gallon. Bicycling provides about 2,000 passenger-miles per gallon." (Asked later why bicycling would require any gallons at all, Komanoff explained the "fuel" for bicycling is the number of calories of food that the bicyclist needs for energy. "It's more a metaphorical point," he finally admitted.)

A survey conducted of Midtown office workers by the Department of Transportation, Komanoff testified, found that 28 percent of those responding said they would bicycle to work if it were made more convenient, with safe bicycle lanes, parking space for bicycles, shower facilities at the workplace. Of those who lived within 10 miles from their work, 49 percent said they would commute by bicycle under those conditions. But the city, Komanoff charged in his testimony, was doing very little to create the simple conveniences that would encourage more bicycle commuting.

"The United States is dependent upon imports of petroleum for a considerable percentage of our use. We import about 40 to 45 percent. By coincidence or not by coincidence, about 40 to 45 percent of the petroleum in this country is used by automobiles. We are the largest importers of oil in the world. Our foreign policy is affected by this oil dependency, which is really automobile dependency."

On the day of the verdict earlier this month, the war was over, most of the oil wells in Kuwait were still ablaze, and Ann Sullivan was in the lobby of the Criminal Court building at 100 Centre St. fighting with a court officer.

"There's no sign saying 'No Bicycle Wheels,' " she said angrily.

"There's no sign saying 'No Guns' either," he said, bored.

"Ann," Ron McGuire muttered into her ear, "let's just go to court."

"It's not fair."

"Don't give me more work." All the other defendants, who bicycled to court despite a bitter cold rain, also got into fights with the court officer as he forced each in turn to check his wheels at the front desk.

Finally, wheel-less and attentive, the QB 6 sat together at the defense table as Judge Safer Espinoza began reading excerpts from her decision.

The judge's decision was an extraordinary document in many ways, closer to a U.S. Supreme Court decision than your average verdict for a charge of disorderly conduct. In 41 well-reasoned, unusually well-researched pages, citing more than 100 cases, quoting from Supreme Court justices as well as centuries-old historical documents, and reaching at times a kind of eloquence, the judge issued an unprecedented opinion.

"Every year in New York City automobiles, trucks and buses send hundreds of thousands of tons of pollution directly into city air. No other pollution source even approaches this level. . ."

The 3-to-7 bridge bike ban "would prove to be a devastating disincentive to New Yorkers who use alternative or nonvehicular means of transportation between Manhattan and Queens. The only road open to bicyclists and pedestrians is practically inaccessible to them during the hours most crucial to their return home . . .

"It is beyond question that both the death and illness of New Yorkers as a result of additional air pollution, and the danger to cyclists and pedestrians posed by vehicles on the south outer roadway, are far greater harms than that created by the violation of disorderly conduct . . .

". . . this Court finds that the People have not disproved the elements of the necessity defense in this case beyond a reasonable doubt. Defendants are therefore acquitted."

The next day, the QB 6 held a press conference in the hallway outside the offices of the Department of Transportation, near the elevators and the snack machines.

"I have a brief statement," Charles Komanoff began, "which I intended for a larger audience . . ."

"We're here, Charlie," the lawyer said in encouragement.

"This decision in the trial of the QB-6 is a victory for cyclists, walkers, and indeed all New Yorkers who breathe," Komanoff said. A few of the other defendants, and a handful of supporters, applauded. No news reporters, radio microphones, or TV cameras were present. Charles Komanoff spoke on, holding up a letter he had sent to Mayor Dinkins asking him to restore the bridge bike lane 24 hours a day. A woman from the Department of Transportation, putting a few coins into a snack machine, looked idly at the bicyclists for about a second, just until her soda arrived. Nobody else seemed to notice.