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Police Versus Prosecutors: The Motorcycle Mayhem

By Joel Cohen

The motorcycle video [has gone viral](#). People worldwide now have seen the scary motorized spectacle that occurred on New York City's West Side Highway on an otherwise bright Sunday afternoon.

How could this have occurred? How can it be that this group -- at least those of it who cornered the Range Rover and brutally beat its driver before the eyes of his family -- aren't sitting in a jail cell, awaiting the full force of law? How can it possibly be that New York County's prosecutors, seemingly handed some of the supposed "perps" on a silver platter, are in conflict with the police willing to make arrests?

Many questions here. What, if anything, as might ask some motorcycle enthusiasts, did the "victim" automobile driver do to warrant this brutality? Or was he a complete innocent in all of this? Did he flip one of the cyclists the bird, or otherwise diss him? Was the incident ethnically motivated? Did the driver honk his horn too loudly, momentarily scaring some of the cyclists, and thereby incurring the wrath of

what can only be described as a gang? Or was it just that he was driving that afternoon on a road which the cyclists had arrogated to themselves as being "our road"?

Why did one of the cyclists video record the emerging incident in the first place -- and did he start taping *only after* something terrible had already happened? Did he want to communicate to the YouTube world that "this is what happens when you provoke us"? Was he appalled at what had happened and wanted to publicize the spectacle, but too afraid to identify himself as the videotaping "whistleblower," lest he suffer retaliation? Or maybe he was just looking for his Warholian 15 minutes -- even if anonymously.

Given the outrage, the public -- truly spoiled by fictional TV crime shows that portray a police capacity to solve cases in overdrive time -- want the police to have been able to break the case before the 10-minute video expires. The public expects the police and prosecutors to break suspects and gain their cooperation against the truly bad actors before

the *New York Post* and the *Daily News* can go online with blistering front-page headlines and editorials blasting law enforcement for taking its sweet time.

While one can sympathize with the police officer on the street who has a “perp” in hand with enough evidence to arrest him -- surely, a low bar -- the prosecutors’ role is far more complex. They must make the case stick. They must be confident that the evidence assembled is sufficient to sustain a case through conviction. They must ensure that they don’t act precipitously and charge someone with a minor offense -- when a more disciplined, sometimes time-consuming, investigation would lead to far more serious charges which might ultimately suffer dismissal later because the “perp” had already cleverly pleaded guilty to even a minor offense, thus entitling him to the protection of Double Jeopardy.

While the tabloid press sought to suggest almost an enmity between them, there is typically a natural tension between the police and prosecutors and what they are called upon to do. The motorcycle pandemonium is only a microcosm of that tension. The police want to act quickly. They’re typically the first responder -- the law enforcement personnel who encounter blood and guts on the ground, and hear the cry of victims or their families in real time. No matter how professionally they act, they’re the ones who are effectively asked in the face of a criminal event to restore peace to the streets, often in the wake of an horrendous episode such as this. The man on the street looks to the police, not to prosecutors. When the video emerged, the TV talking heads from both ends of the public’s continuum -- pro- or anti-police -- weren’t asking the question: “Where were the prosecutors?” In wondering aloud how this incident could have happened, they were asking, “Where were the *police*?” There was a vacuum here, and the police wanted to fill it and show John Q Public in no uncertain terms: “Here we are, and here’s what we’re doing!” Who can blame them?

But that’s precisely when and where prosecutors must stand up and be counted. They can’t allow the will of the street -- even if it’s caused by peaceful din of a dismayed public -- to rule the day and push arrests that may not ultimately stand up. Prosecutors, in circumstances such as these, must indeed act quickly and leave no stone unturned, lest the public lose confidence in them. At the same time, they need to act in a way that maximizes the likelihood of significant -- not slap on the wrist -- convictions of the guilty, whether they’re motorcyclists bent on causing mayhem or any other type of wrongdoer. Prosecutors have to deal face to face with sometimes skeptical judges in seeking to sustain criminal cases. Police typically don’t.

Perhaps more important, law enforcement officials -- both police and prosecutors -- must act in a way that will deter individuals or groups such as those responsible for this alleged atrocity -- letting them know that this isn’t the “Wild West,” and that New York (whatever it thinks of the “stop and frisk” controversy, which some commentators oddly think this incident was a response to) simply won’t tolerate this kind of thing. Both the police and the DA surely want that result. They just need to understand and respect each other’s role in the process.

You didn’t have to be on New York’s West Side Highway last Sunday afternoon in the midst of that horror and turbulence to appreciate just how important it will be for the police and prosecutors to finally walk into a courtroom together, arm-in-arm, when justice will ultimately be meted out.

This isn’t *Law & Order*. This is the real world!

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