**Middle Finger Flashed in ’06 Lives On in Suit**

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There is usually no mistaking the act or intent of extending a middle finger.

[Enlarge This Image](javascript:pop_me_up2('http://www.nytimes.com/imagepages/2013/01/04/nyregion/JPFINGER-sub-city.html','JPFINGER_sub_city_html','width=720,height=563,scrollbars=yes,toolbars=no,resizable=yes'))

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**Nathaniel Brooks for The New York Times**

John Swartz was arrested in May 2006 after he raised his middle finger upon spotting a police radar device in St. Johnsville, N.Y. An officer says he thought Mr. Swartz might be seeking help.

Take John Swartz, for example. In May 2006, Mr. Swartz was a passenger in a car in a rural part of upstate New York when he spotted a police car that was using a radar speed-tracking device.

Mr. Swartz, a Vietnam veteran and retired airline pilot, acted on instinct to show his displeasure: he extended his right arm outside the passenger’s side window, and then further extended his middle finger over the car’s roof.

The reaction was swift. The officer followed the car; words were exchanged; backups were called; and Mr. Swartz was arrested on a charge of disorderly conduct.

He later filed a civil rights lawsuit, and although a lower court judge dismissed the case, the prestigious United States Court of Appeals for the Second Circuit in Manhattan [reversed that decision](http://www.ca2.uscourts.gov/decisions/isysquery/8ea5193d-9b87-4e23-9840-a803659cf798/1/doc/11-2846_opn.pdf) on Thursday, ruling that Mr. Swartz’s lawsuit can go forward.

The appellate decision offers a rich thumbnail sketch of the history and significance of the raised middle finger, one that traces possibly the first recorded use of the gesture in the United States to 1886, “when a joint baseball team photograph of the Boston Beaneaters and the New York Giants showed a Boston pitcher giving the finger to the Giants.”

Mr. Swartz’s intent, 120 years later, was undoubtedly similar.

He made the gesture as his fiancée and now wife, Judy Swartz, was driving on the Sunday evening before Memorial Day through St. Johnsville, a village of under 2,000 people, about 50 miles northwest of Albany.

“I couldn’t see the officer, didn’t know who he was,” Mr. Swartz, 62, recalled on Thursday. He explained that his gesture was provoked by his anger that the local police were spending their time running a speed trap instead of patrolling and solving crimes.

“It was very disheartening,” Mr. Swartz said. “They’d do it constantly to the point where they ignored all of their other duties.”

The officer with the radar device, Richard Insogna, did see the gesture.

But in a curious instance of mistaken middle-fingered intent, Officer Insogna suggested in a deposition that he saw the finger as a potential call for help and followed the car because he thought Mr. Swartz “was trying to get my attention for some reason” and because he “wanted to assure the safety of the passengers.”

Thomas K. Murphy, a lawyer representing the officer and a sheriff’s deputy who was also sued in the case, said that Mr. Swartz’s gesture toward the officer was not common for their community and that Officer Insogna “had a concern and decided he should act on the concern.”

“This is St. Johnsville, New York,” Mr. Murphy said. “Not the Bronx. Not Manhattan. It’s a sleepy little town.”

Indeed, Paul J. Browne, the chief spokesman for the New York Police Department, suggested that if its officers “locked up everyone who gave the middle-finger salute, traffic would grind to a halt.”

According to Mr. Swartz’s account, Officer Insogna appeared behind them as the couple arrived at a relative’s house. There, Mr. Swartz got out but was ordered back into the car by the officer, who said he was making a “traffic stop.”

After more officers arrived, Mr. Swartz was arrested after muttering to himself about his own behavior, the ruling said.

The charge was later dropped.

The 14-page opinion, written by Judge [Jon O. Newman](http://topics.nytimes.com/top/reference/timestopics/people/n/jon_o_newman/index.html?inline=nyt-per) for a three-judge panel, expressed skepticism at the officer’s explanation of why he had followed the car.

“Perhaps there is a police officer somewhere who would interpret an automobile passenger’s giving him the finger as a signal of distress,” Judge Newman wrote.

“But the nearly universal recognition that this gesture is an insult deprives such an interpretation of reasonableness,” he added.

In the ruling, Judge Newman wrote that the act of “giving the finger” dated back centuries. He cited, for example, sources that trace the use of the gesture to ancient Greece, when it was used by Strepsiades to insult Aristotle and by Diogenes to insult Demosthenes.

The ruling also noted the work of Ira P. Robbins, a professor of criminal law at American University who has studied the history of the gesture and is the author of the article [“Digitus Impudicus](http://www.wired.com/images_blogs/threatlevel/2010/03/middlefinger.pdf): The Middle Finger and the Law.”

The lifting of the middle finger has a long history in popular culture, covering a president (George W. Bush), a vice president (Nelson A. Rockefeller), a [Super Bowl halftime performer](http://fifthdown.blogs.nytimes.com/2012/02/05/m-i-a-s-gesture-upstages-madonna/) (M.I.A.) and even a possible future mayoral candidate in New York (Joseph J. Lhota was described in [a 2000 article](http://www.nytimes.com/2000/04/29/nyregion/the-outspoken-stand-in-for-mayor-giuliani.html) as cheerfully making the gesture at a reporter in City Hall while he was deputy mayor).

The ruling, which was joined by Judges Gerard E. Lynch and Raymond J. Lohier Jr., makes no finding on the merits of Mr. Swartz’s claim of an illegal traffic stop, [false arrest](http://topics.nytimes.com/top/reference/timestopics/subjects/f/false_arrests_convictions_and_imprisonments/index.html?inline=nyt-classifier) and malicious prosecution. His lawyer, Elmer Robert Keach III, said Thursday that he had written to the judge in Utica who dismissed the suit to ask that it be placed on the trial calendar.

Regardless of the outcome, Mr. Swartz said that giving an officer the finger was a one-time occurrence. “I never did it before and I haven’t done it since,” he said, adding, “It’s not something I’m proud of.”

Wendy Ruderman contributed reporting.