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Can You Plea-Bargain in a Traffic Case? That Depends

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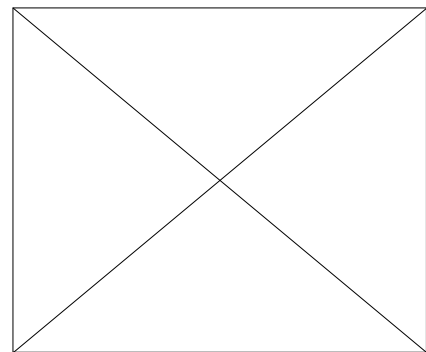
Robert Stolarik for The New York Times, Phil Mansfield for The New York Times

Jonna M. Spilbor, left, a lawyer, and Francis G. Christensen, a Milan, N.Y., town justice, are critics of the State Police policy.

By JOHN ELIGON
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For years it was a normal routine in traffic courts in towns and villages across [New York State](#): Drivers would negotiate at the courthouse with the state trooper or the local police officer who cited them for moving violations to reduce the charge. The judge would then make it official.

But the State Police, citing ethical concerns, issued an order in 2006 banning the practice, generating outrage among judges, town leaders, district attorneys and even some troopers. Local police officers still offer plea bargains.

Now, some lawyers have taken an unusual approach to challenge the ban: fighting tickets using a law established after the Civil War to protect the rights of former slaves.

The lawyers have cited the [equal protection clause of the Fourteenth Amendment](#), which mandates that laws be applied equally to everyone, to argue that the State Police policy prevents drivers from receiving equal justice. Whether a driver can negotiate a lower fine, the lawyers say, depends on where they get a ticket and from whom.

"It stinks because it prevents people from doing what other people are permitted to do, based on the color of the uniform of the cop that's pulling them over," said Jonna M. Spilbor, a Poughkeepsie-based lawyer who has fought about half a dozen traffic tickets using the equal protection argument. Although some of those tickets were reduced or

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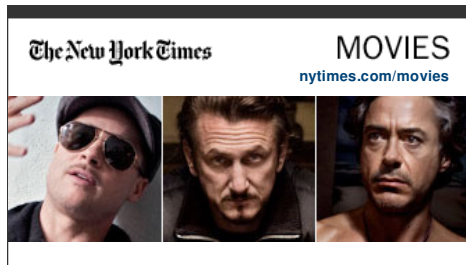


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dismissed, she and other lawyers and judges said they did not know of any state judge who had explicitly ruled that the State Police policy violated equal protection rights.

The issue may soon be decided by a state appellate court.

Critics of the policy accuse the State Police, who wrote more than one million traffic tickets last year, of trying to save on overtime by decreasing troopers' court appearances, of interfering with the judiciary and of placing an unnecessary financial burden on small towns. The State Police rule has no effect on drivers ticketed in New York City, Buffalo, Rochester and some towns in Suffolk County, where traffic violations have long been handled in administrative hearings set up by the Department of Motor Vehicles. Those cases are heard before an administrative judge, and there is no plea bargaining before the hearing with the ticketing officer.

The State Police have defended the ban, saying they did not want to open the door to ethical problems by having troopers cut deals with people they ticket. That argument was echoed by Gov. [David A. Paterson](#) when he vetoed a bill last year that would have overturned the State Police rule. (The two previous governors, [Eliot Spitzer](#) and [George E. Pataki](#), had also vetoed such bills.)

Mr. Paterson said the bill "would undermine the authority of the superintendent of State Police to institute policies that will prevent troopers from engaging in conduct that could lead to allegations of impropriety, favoritism and corruption."

The State Police also said the policy does reduce overtime costs and keeps troopers focused on more important patrol tasks. The policy saves the State Police about \$5 million in overtime and other personnel costs annually, according to a spokesman for the governor.

Towns have a strong financial incentive to allow plea bargains because cases that reach trial cost more. And for some infractions, like speeding, the state keeps all the money from the fines, but for a lesser charge, like failing to obey a traffic sign, the money goes to the town.

Despite the complaints, plea bargains or dismissals in town and village traffic courts around the state have not greatly dropped since 2006, according to statistics from the Department of Motor Vehicles.

Many towns have avoided the State Police directive by assigning special prosecutors who can offer deals to drivers who are given tickets by troopers. This adds fuel to the equal protection argument, lawyers say, because drivers ticketed by troopers in towns with those special prosecutors are treated differently from those in towns without them.

But in the roughly two dozen counties where troopers also serve as prosecutors in court, some judges dismiss or reduce tickets, even when troopers object.

And in some courts, troopers engage in surreptitious plea bargaining, said Thomas B. Mafrici, a traffic lawyer based in Cicero, N.Y. "I'm still talking to the trooper before I go to the judge," he said. "It's almost no different."

Lt. Glenn Miner, a spokesman for the State Police, said any trooper caught violating the agency's policy would be disciplined.

Some district attorneys said assigning their prosecutors to traffic cases was a waste of resources.

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"I would certainly rather have my people working on real criminal cases as opposed to performing a largely ministerial act of dealing with hundreds, probably thousands, of traffic tickets," said Terry Wilhelm, the Greene County district attorney. "We were completely satisfied with the procedure that was in effect before the state policy did this."

The State Police have aggressively sought to protect their policy. Two years ago, Francis G. Christensen, a town justice in Milan, reduced a speeding charge and ruled that it was "improper and unreasonable" for the State Police to ignore a defendant's explanation.

"A prosecutor is required to look out for justice, not necessarily a conviction," Justice Christensen, a former state trooper, said in a recent interview.

The State Police sued Justice Christensen, arguing that he overstepped his authority. Last September, a State Supreme Court justice ruled in the agency's favor.

Justice Christensen is appealing the decision to the Appellate Division, the second-highest court in the state. His lawyer, Marshall L. Brenner, said he planned to raise the equal protection argument.

Mr. Paterson's office has also rebuffed the equal protection argument, saying that despite the State Police ban on plea bargains, the county prosecutors in the area still have the discretion to offer them.

But Ms. Spilbor said it was unfair that state troopers would not even listen to a driver's arguments.

"The discretion to negotiate with you as the motorist is gone because this policy does not allow for it under any circumstances," she said. "By any other police agency, the discretion exists."

A version of this article appeared in print on February 22, 2009, on [Next Article in New York Region \(6 of 12\) »](#) page A31 of the New York edition.

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