

State of New York
Village of Malone Civil Services Law Section 75

Village of Malone,

Complaint,

-against-

Patrick Nichols,

Respondent.

Respondent, by his attorney THOMAS P. HALLEY, submits this brief in support of closing arguments with regard to the charges issued pursuant to the Civil Service Law, and following the hearing conducted on the September 16th, and 17, 1993 in the Village of Malone.

Officer Nichols is charged with various violations of the rules and regulations of the Police Department of the Village of Malone. For the reasons set forth herein, he should not be found guilty of the charges and specifications, or, in the alternative, if he is found guilty, he should be entitled to the defense provided by Section 75-b of the Civil Service Law, also known as the "Whistle Blower Law".

Charge number one alleges that Officer Nichols filed a written complaint against a fellow officer on July 13, 1993 regarding an April 2nd incident " which was lacking in grounds sufficient to result in discipline and which was filed purely as a retaliatory act" in reaction to a letter of reprimand. The testimony and evidence indicates otherwise.

Numerous village police officers agreed that Officer Nichols was investigating the April 2nd incident well before the July 13, 1993 complaint. Indeed, one officer specifically testified that he advised the Chief of Police several days before the letter of reprimand was issued that Officer Nichols was investigating the incident and was going to file a report. Thus, it cannot be said that the filing of the complaint was "purely as a retaliatory act" because the complaint was the product of an investigation which under way and almost complete. As to the claim that the complaint was "lacking in grounds sufficient to result in discipline" this has not been demonstrated. Clearly, an incident occurred which gave rise to some harm to Scott Mattimore. The District Attorney indicated that if the facts shown were proven to be true, he believed that a crime has been committed. Scott Mattimore himself testified that he had been recently questioned by the FBI regarding the incident. The fact that these two agencies have seen fit to render such opinions or take such action clearly demonstrates that this is not a case which "was lacking in grounds sufficient to result in discipline". Whether or not such a disciplinary proceeding would give rise to a finding of guilt or innocence is not the question before us. Indeed, this officer contends that this Civil Service proceeding should not give rise to a

finding of guilt. Nonetheless, the filing of the complaint was not only appropriate, but justified and necessary under the circumstances which were known to Officer Nichols at the time. For these reasons, this charge should be dismissed.

Charge number two accuses Officer Nichols of meeting with the Franklin County District Attorney to discuss the bleach incident. This action is clearly protected by the Whistle Blower Law as will be subsequently developed. In any event, the evidence demonstrated that the discussion by Officer Nichols with the District Attorney's office did not name the particular individuals, but rather referred to a report which had names deleted therefrom. Such action can hardly be called a discredit to the department, or a public criticism of members of the department. For the reasons set forth above, this charge should be dismissed.

Charge number three was dismissed on consent by the Village.

Charge number four alleges that Officer Nichols accused the Chief of Police of a "cover-up" in front of another officer. The accusation was made "without reasonable grounds." It is respectfully submitted that the testimony did not show that such an incident occurred. Even if it were to be shown that such a statement were made, it can hardly be said that such a claim was "without reasonable grounds."

Again, as will be further developed, Officer Nichols had every reason to believe that there was going to be and continues to be a cover-up of the April 2, 1993 incident so as to exonerate the Assistant Chief.

Charge number five alleges that Officer Nichols met with former Chief Richard Brown to discuss the April 2, 1993 incident. The evidence is distinctly lacking in regard to this charge. While there is no dispute that Officer Nichols had a conversation with the former Chief at a local diner, there was nothing more than a general discussion regarding police procedures. There was absolutely no showing that the incident of April 2, 1993 was discussed with the former Chief. For the reasons set forth above, this charge should be dismissed.

Charge six alleges that Officer Nichols met with Scott Mattimore on a unspecified number of occasions "for the purpose of conducting an unauthorized investigation." The evidence, however, distinctly shows that the meetings were chance encounters. The conversations between Officer Nichols and Scott Mattimore amounted to nothing more than general statements relating to the incident. Obviously, both Mattimore and Nichols knew about the incident as they were both present. There was hardly an unauthorized investigation being conducted. There was no criticism or discredit

rendered toward the Department in these conversations. There was no information released, or influence sought. For the reasons set forth above, this charge should be dismissed.

Charge number seven relates to a meeting with Mayor James Feeley during which Officer Nichols and the Mayor discussed a number of items, including, but not limited to, the bleach incident. It should be noted that this meeting took place on August 2, 1993, after the complaint had been filed with the Chief of Police. The Mayor at no time discouraged or dissuaded Officer Nichols from discussing the matter with him. Certainly if any departmental rules were being violated, the Mayor would have immediately informed Officer Nichols on this occasion. He did not. It was not until several days later that he advised Officer Nichols that he did not wish to discuss the matter any further. For these reasons, this charge should be dismissed.

Charge number eight alleges that on August 4, 1993 Officer Nichols discussed the April 2nd incident with Mayor Feeley. The context of the discussion does not disclose any discredit to the Department, or seeking of outside influence. Indeed, Officer Nichols had this second discussion with the Mayor after advising that he would get back to him with further information. Again, the Mayor at no time advised Officer Nichols that such a conversation was in violation of

the rules and regulations. For the reasons set forth, this charge should be dismissed.

Charge number nine, alleges that on August 2, 1993 Officer Nichols meet with the Mayor to discuss his termination as a DARE officer. As is noted above, if such a conversation were against departmental rules and regulation, the Mayor would have or should have so advised Officer Nichols . The mayor did not. It is alleged that the respondent had previously been counseled for the identical offense. This is incorrect. As was developed during the course of the hearing, it was a Village Board Member who initiated the contact with Officer Nichols regarding the DARE Program. While this may have been embarrassing to the Chief of Police, the fact that a Village Board calls a Police Officer does not constitute a violation of departmental rules and regulations. The same could be said with the regard to the August 2nd meeting with the Mayor. This was hardly an attempt to seek outside influence or intervention. It was a casual conversation which was freely joined in by the Mayor, and was never reported by the Mayor to the Chief of Police as a violation of the rules and regulations. For the reasons set forth above, this charge should be dismissed.

In any event, the Respondent is entitled the protections of the Whistle Blower Law. This law provides that a public

employer shall not dismiss or take other disciplinary action against a public employee because the employee discloses to a "governmental body" matters which the employee "reasonably believes to be true" and "reasonably believes" constitutes improper governmental action. The term "governmental body" is defined as, among other things, an officer of a public employer, a member of the legislative body of a village, a law enforcement agency, or any member or employee of a law enforcement agency. Thus, the disclosures to the District Attorney and/or to Mayor Feeley come within the definition of "governmental body." As was demonstrated at the hearing, Officer Nichols had a reasonable belief that the complaint was true. He observed a number of things first hand, he spoke to Scott Mattimore to confirm them, and he saw statements filed by two other officers which confirmed the account. He further reasonably believed that there was improper governmental action taking place because he had knowledge of a prior claim of a cover up. As he indicated in his report to the Chief, which constituted the formal complaint against Assistant Chief Moll, various rules and regulations of the department had been violated, as well as the Penal Law of the State of New York.

There is no dispute that the employee must make a good faith effort to provide the appointing authority a reasonable

time to take appropriate action. In this case, there is no dispute that the Assistant Chief knew about the incident as soon as it occurred. Further, supervisory personnel testified at the hearing that they were aware of the incident within a matter of days after it occurred. Therefore, the incident was common knowledge throughout the police department as of mid April 1993. It is respectfully submitted that the period of time from April of 1993 through the middle of July 1993, three months, constitutes a more than reasonable time to take appropriate action. The action taken against Officer Nichols, for example, as a result of his activities in July of 1993, gave rise to charges approximately one month later. Why did the Village Chief of Police wait over three months to conclude this investigation of Moll? The information regarding the incident was in the hands of the Village almost instantaneously. The so called "thorough investigation" conducted by the Chief of Police distinctly failed to include interviewing the victim, and failed to include information from Officer Nichols, who initiated and conducted the investigation.

The Whistleblower Law, in Section 75-b, subsection 3 (a) specifically provides that an employee may assert the law as a defense before the hearing officer. It further provides that the merits of such defense shall be considered

and determined as part of the hearing officer's decision on the matter. It is therefore respectfully requested that in the event that the respondent is found guilty of any of the charges or specifications, that his defense under Section 75-b be discussed and considered and determined.

The Village will undoubtedly argue that Officer Nichols cannot return to work because of the disruption that will be caused. However, there was no disruption caused by any of Officer Nichols activities. There is only a bad feeling within the Department because of a belief that the Chief of Police will watch Officer Nichols very closely in the future. However, this should not serve as a reason to deny Officer Nichols his return to the police officer.

If there was any improper activity in this case, it was caused or occasioned by the actions or inactions of the Chief of Police and his Assistant. It is the Assistant Chief who directly participated in the bleach incident. It is the Chief and the Assistant Chief who then did a perfunctory investigation in an effort to clear the Assistant Chief and not bring discredit on the department. Unfortunately, such activities have brought discredit upon the department. However, the blame should not lie with Officer Nichols. Further, in an effort to cause Officer Nichols to back off his investigation, a reprimand was illegally issued to him.

Civil Service Law Section 75 specifically provides that an employee shall not be subjected "to any disciplinary penalty provided in this Section" except after a hearing upon stated charges pursuant to the Section. The disciplinary penalty provided for in that Law ranges from "reprimand" to "dismissal." Thus, the issuance of a reprimand to Officer Nichols, without complying with the requirements of Section 75 of the Civil Service Law, was improper and should have no bearing on this case.

Officer Nichols was shown to be a dedicated and competent police officer. He was shown to be an honest law abiding citizen. While many of the aspects of this entire proceeding are unfortunate, and reflect badly upon the Village Police Department, Officer Nichols should not be terminated, suspended, or otherwise disciplined. He acted in a manner which he believed to correct, and in conformity with the Law Enforcement Code of Ethics which he took upon becoming a police officer. The Village of Malone would be well served in continuing to have Officer Nichols as a member of its Police Department.

DATED: Poughkeepsie, New York
October 13, 1993

THOMAS P. HALLEY
ATTORNEY FOR RESPONDENT
297 MILL STREET
POUGHKEEPSIE, NY 12601
(914) 452-9120

Malone Village Clear

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

Patrick Nichols,

Petitioner,

-against-

Village of Malone,

Respondent.

Full text w/ petition in transcript box

Index No. 93-755

NOTICE OF PETITION

PLEASE TAKE NOTICE that upon the annexed petition of Patrick Nichols, verified December 18, 1993, the annexed affidavit of THOMAS P. HALLEY, sworn to on the 16th day of December 1993, and the exhibits attached herein, an application will be made to this court, at a term thereof, to be held at the Court House at Malone, New York, on the 20th day of January, 1994 at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for a judgment reversing and annulling, the determination of the Village Board of the Village of Malone, made the 20th of October, 1993, pursuant to the provisions of Section 75 and Section 76 of the Civil Service Law of the State of New York, and granting such other and further relief as the court may deem just and proper.

PLEASE TAKE FURTHER notice that a verified answer and supporting affidavits, if any, must be served at least five days before the aforesaid date of hearing.

TO: Patrolman Patrick Nichols

FROM: Chief James E. Phillips

DATE: December 23, 1993

MEMORANDUM

Pat I would like to take this opportunity to congratulate you on your recent election to the Town of Malone Board of Supervisors.

I just have a couple of concerns that I have, that I thought I should make you aware of.

1. In the memo that I sent you dated June 22, 1993 I said I have no problem with you holding political office as long as it does not interfere with your job as a police officer.
2. I can see a problem where members of the board call the Police Station looking for you or members of the public. When Gary worked on the Police Dept. there was a big problem with the number of calls that he got involving Town business, while he was working as a police officer. I was not the Chief at that time and as such had no say in it. I hope that you would make it clear to your fellow board members of your schedule so they can contact you at other times than while you are working as a police officer. I have no problems with you getting phone calls at the station from family members or friends as members get now.

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

December 6, 1993

Ms. Betzy Nichols
146 Webster Street
Malone, New York 12953

Dear Ms. Nichols:

As a result of your refusal to cooperate with any investigation conducted by the Malone Police Department, and the declination of both the New York State Police and the Franklin County District Attorney's Office to investigate your allegations, I assigned the Police Committee of the Village Board to investigate your allegations.

On November 29th and December 1st all members of the Malone Police Department, who were called by the Village to testify at your husband's hearing on September 16, 1993, were interviewed by Trustees Fraser and Lavoie.

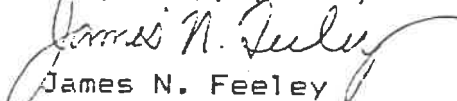
The Committee was to determine:

1. If any officer was forced, coerced or otherwise made to testify in any manner other than truthfully.
2. Did any officer, since the hearing, have any discussions of their testimony with you, and
3. If any officer had talked with you, did they tell or imply to you that they were advised or pressured by attorney Brian Stewart, or by anyone else, as to what they could and could not say at the hearing.

The Committee has reported back to me and the findings of their investigation are that no officer was made to testify in any manner other than truthfully and no officer had any communication with you concerning their testimony of September 16, 1993.

As such, unless other pertinent information develops, the Village Board of Trustees and I will consider this matter closed.

Very truly yours,


James N. Feeley
Mayor

JNF:ejb

cc: Trustees

Brian Stewart

Chief James Phillips

November 8, 1993

Chief James E. Phillips
Malone Village Police Dept.
2 Park Place
Malone, NY 12953

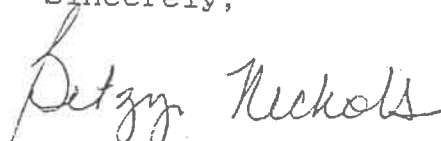
Chief:

I am in receipt of your letter of November 3, 1993. As was stated in Mr. Halley's letter to Brian Stewart of November 1st, I have strong concerns whether or not this matter will be properly investigated by the Malone Village Police Dept.

Because I am not willing to jeopardize another Police Officer's job, or his friendship, I will not comply with your request to provide a notarized statement to you regarding this matter. I don't feel it would be in the best interest of the Officer involved, given the previous and continuous mishandling of my husband's situation.

As clearly stated in Mr. Halley's and my husband's letters, I would be willing to make a statement ONLY to a responsible agent or agency. At this time, I personally do not consider the Malone Police Dept. a responsible agent or agency.

Sincerely,


Betzy Nichols

cc; Thomas Halley
Brian Stewart ✓
Robt. Fraser

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

November 15, 1993

BRYAN J. HUGHES
BRIAN S. STEWART

Telephone: (518) 483-4330

Fax: (518) 483-4005

Mayor James Feeley
Village of Malone Offices
16 Elm Street
Malone, New York 12953

Re: Patrick Nichols

Dear Jim:

Enclosed is a copy of a letter from Chief Phillips to Betzy Nichols and a copy of her response dated November 8th. I received these on the 10th of November. Betzy is refusing to name the officer who allegedly said that I told him how to testify. The Chief might be within his rights to drop the investigation at this point. However, it would probably be advisable to take the next step and to have someone question the officers who testified in an attempt to determine whether any of them feel that I instructed them to lie or change their testimony.

Very truly yours,

HUGHES & STEWART, P.C.
by Brian S. Stewart

BSS/tlw
enclosures

November 8, 1993

Chief James E. Phillips
Malone Village Police Dept.
2 Park Place
Malone, NY 12953

Chief:

I am in receipt of your letter of November 3, 1993. As was stated in Mr. Halley's letter to Brian Stewart of November 1st, I have strong concerns whether or not this matter will be properly investigated by the Malone Village Police Dept.

Because I am not willing to jeopardize another Police Officer's job, or his friendship, I will not comply with your request to provide a notarized statement to you regarding this matter. I don't feel it would be in the best interest of the Officer involved, given the previous and continuous mishandling of my husband's situation.

As clearly stated in Mr. Halley's and my husband's letters, I would be willing to make a statement ONLY to a responsible agent or agency. At this time, I personally do not consider the Malone Police Dept. a responsible agent or agency.

Sincerely,

Betsy Nichols
Betsy Nichols

cc; Thomas Halley
Brian Stewart
Robt. Fraser

Brian Stewart

**POLICE DEPT.
VILLAGE OF MALONE**

2 Park Place • Malone, New York 12953 • (518) 483-2424 • FAX (518) 483-2426

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

November 3, 1993

Ms. Betzy Nichols
146 Webster Street
Malone, New York 12953

Dear Ms. Nichols:

I am in receipt of a letter from your husband, dated October 27, 1993, that is a response to an order, to him, outlined in a letter to his attorney on October 22, 1993.

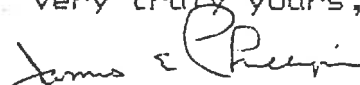
In that letter he was ordered to make a written report detailing information he had that certain members of the Malone Police Department were told how to testify or that they were forced to testify in a certain way at a Civil Service Hearing on September 16, 1993, Village of Malone v. Patrick Nichols.

In that letter he stressed that his information was "strictly hearsay" and named you as his source, as an officer had spoken to you about these allegations.

In order for an investigation to be undertaken, it will be necessary for you to name the officer who spoke to you so that appropriate statements can be taken.

Please provide a notarized statement to this department by November 17, 1993, detailing the allegations outlined in your husband's letter, so a proper investigation can be undertaken.

Very truly yours,


James E. Phillips
Chief of Police



THOMAS M. KEMP



FLANDERS SCHOOL

OCT. 29 1993

Chief Phillips
Malone Police Department
East Main Street
Malone, NY 12953

Dear Chief;

This letter is in response to inquiries from my students regarding the D.A.R.E. program. Would it be possible for you to inform me, and perhaps copies could be sent to the other fifth grade teachers in the district, as to the current state of the D.A.R.E. program? My students are quite anxious about the program and I felt a letter from you would help explain what is happening and, perhaps, becalm some of their anxiety.

Thank you.

Sincerely,

CC:
Mr. Dean Yando
Mr. Thomas Sklmer

THOMAS P. HALLEY

ATTORNEY AT LAW

November 1, 1993

297 MILL STREET
POUGHKEEPSIE, N. Y. 12601
(914) 452-9120
FAX (914) 452-9192

Brain S. Stewart
Hughes & Stewart, P.C.
31 Elm Street
Malone, New York 12953

RE: Village of Malone v Patrick Nichols

Dear Brian:

You should have a copy of Pat Nichols' statement to yourself, Trustee Fraser and Chief Philips. He has provided me with a copy. I should advise you that there is a concern on the part of Betzy Nichols regarding this matter. Pat notes in his letter that his wife has agreed to offer a statement to a responsible agent or agency. I note that there is a concern on the part of Betzy Nichols that this incident may not be fully or properly investigated. I am not taking a position as to whether or not this is accurate. I am merely stating to you what the concern is. Obviously, a major portion of the Civil Service Hearing related to whether or not the Police Department could adequately investigate itself. I think that Betzy Nichols continues to share this concern.

Again, I do not wish to imply any wrong doing, or potential for wrong doing, or claim that any inappropriate actions have taken place. I am just relaying the concern that has been expressed to me. Anything that you can do to relieve this concern would be most appreciated.

Thank you for your attention and courtesies on this matter to date.

Very truly yours,



THOMAS P. HALLEY

cc: Patrick Nichols
146 Webster St.
Malone NY 12953

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

BRYAN J. HUGHES
BRIAN S. STEWART

November 2, 1993

Telephone: (518) 483-4330
Fax: (518) 483-4005

Mayor James Feeley
Village of Malone Office
16 Elm Street
Malone, New York 12953

Re: Patrick Nichols

Dear Jim:

Enclosed is a copy of a report I have received from Pat Nichols. It is dated October 27th, and I received it on October 29th. I requested a report detailing allegations that certain members of the police force claim they had felt pressured or forced into testifying a certain way.

Typically for Pat, this report doesn't take me anywhere, because it's filtered behind layers of heresay and undisclosed sources. It does appear as though I am the person named as having done something improper, although the report isn't terribly clear on that either.

As you know, the police officers were questioned in your presence and/or the presence of Chief Phillips or Assistant Chief Moll. I didn't question anyone alone, except for my first interview with Scott Mulverhill. I have absolutely no recollection of telling anyone how to testify or threatening them if they testified in a certain way. There were numerous instances in which I instructed witnesses on the undesirability of heresay.

Since I appear to be accused of some kind of wrongdoing, I don't believe it would be appropriate for me to tell you or the Chief how to conduct an investigation into this matter, except to say that some kind of investigation should be done, and the source of this story should be identified.

Very truly yours,

HUGHES & STEWART, P.C.
by Brian S. Stewart

BSS/tlw
enclosure

Patrick M. Nichols
146 Webster St.
Malone, NY 12953
483-1116

Brian S. Stewart
Robert Fraser
James Phillips

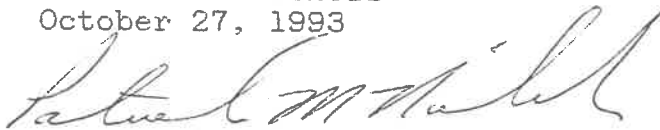
As ordered by the Chief of Police and the Mayor of Malone I am submitting this report containing information regarding allegations of the tampering with a witness. These allegations are in response to the Civil Service Hearing of September 16 & 17, 1993, Village of Malone vs. Patrick Nichols.

It must be made clear the following remarks are strictly hearsay coming from me and therefore my source should also be questioned in order to further substantiate the claim. My source has agreed to offer a statement to a responsible agent or agency assigned to investigate the aforementioned allegations.

During the afternoon of October 8, 1993 my wife Betzy advised me that she had a conversation with an Officer that had testified at the Civil Service Hearing on the 16th. She stated the Officer told her he was advised while being prepared for testimony by Stewart as to what he could and could not say and what he would and would not say. He was also told he could not elaborate on details in order to clarify his answers. My wife further stated that the Officer also told her that he was given orders to stay away from me (Pat) on or off duty or charges would also be brought against him.

The above information is as accurate as I recall and it is being submitted in response to a written order received on October 26, 1993. Copies, as ordered, are being sent to Robert Fraser (Trustee), James Phillips (Police Chief) and Brian Stewart (Attorney for Village of Malone).

Patrick M. Nichols
October 27, 1993



Brian Stewart

POLICE DEPT.
VILLAGE OF MALONE

2 Park Place • Malone, New York 12953 • (518) 483-2424 • FAX (518) 483-2426

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

November 3, 1993

Ms. Betzy Nichols
146 Webster Street
Malone, New York 12953

Dear Ms. Nichols:

I am in receipt of a letter from your husband, dated October 27, 1993, that is a response to an order, to him, outlined in a letter to his attorney on October 22, 1993.

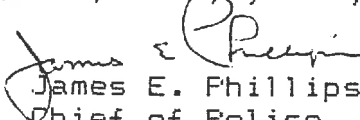
In that letter he was ordered to make a written report detailing information he had that certain members of the Malone Police Department were told how to testify or that they were forced to testify in a certain way at a Civil Service Hearing on September 16, 1993, Village of Malone v. Patrick Nichols.

In that letter he stressed that his information was "strictly hearsay" and named you as his source, as an officer had spoken to you about these allegations.

In order for an investigation to be undertaken, it will be necessary for you to name the officer who spoke to you so that appropriate statements can be taken.

Please provide a notarized statement to this department by November 17, 1993, detailing the allegations outlined in your husband's letter, so a proper investigation can be undertaken.

Very truly yours,


James E. Phillips
Chief of Police

VILLAGE OF MALONE
16 Elm Street
Malone, New York 12953
(518) 483-4570

TO: Patrolman Patrick Nichols
FROM: Mayor James Feeley
DATE: October 22, 1993
RE: Punishment Imposed On You By Village Board

After careful review of the report and recommendations of the hearing officer and the disciplinary proceedings against you on the charges contained in my letter of August 5, 1993, addressed to you, the Village Trustees have in fact decided that you are guilty of the charges as outlined in the hearing officer's report.

You are hereby reprimanded for your actions and violations of the department's duties and rules of conduct and this reprimand shall be attached to the hearing officer's report and made a permanent part of your personnel file.

I am also directing you to reread and acknowledge your understanding of the duties and rules of conduct of the police department. If you have any misunderstanding of the department's rules, please bring them to the attention of your immediate supervisor.



Mayor James Feeley

THOMAS P. HALLEY

ATTORNEY AT LAW

August 10, 1993

297 MILL STREET
POUGHKEEPSIE, N. Y. 12601
(914) 432-8120
FAX (914) 432-8162

James N. Feeley, Mayor
Village of Malone
16 Elm Street
Malone, New York 12953

RE: Disciplinary Charges - Patrick Nichols

Dear Mayor Feeley:

Please be advised that the undersigned represents the above Patrolman with regard to disciplinary charges issued on August 5, 1993.

On behalf of Patrolman Nichols, we hereby enter a denial of the charges. Patrolman Nichols did not violate any of the rules and regulations of the Malone Village Police Department, nor any of the provisions of the Civil Rights Law, Public Officers Law, or New York State Penal Law.

In addition, Patrolman Nichols specifically asserts as a defense, in the rights provided under Section 75-b of the Civil Service Law of the State of New York.

Please provide me with the name, address and telephone number of the hearing officer who will be conducting the hearing.

Please take notice that Patrolman Nichols demands a public hearing pursuant to the provisions of the Civil Service Law.

Please provide me with as soon as possible with copies of any and all documents in the possession of the Village which relate to the this matter and these charges, whether or not said documents are intended to be introduced at the hearing.

Please also provide me with a complete copy of the Malone Village Police Department Rules and Regulations.

Please also provide me with a complete copy of his personnel file.

All further notices and communications should continue to be addressed to Patrolman Nichols at 146 Webster Street, Malone, New York, and, in addition, should be sent to this office at the above address.

If you have any questions concerning any of the above, please feel free to contact me.

Very truly yours,



THOMAS P. HALLEY

cc: Patrick Nichols
146 Webster Street
Malone, New York 12952

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

August 11, 1993

Mr. J. Brian McKee
11 Charles Street
Malone, New York 12953

Dear Sir:

Per our telephone conversation with regards to your accepting the Village Board's designation as Hearing Officer in the disciplinary proceedings against Patrolman Patrick Nichols.

Patrolman Nichols is entitled to a hearing, which is tentatively scheduled for Tuesday, August 24, 1993, 6:00 p.m. in the Village Meeting Room, 14 Elm Street. As the Board's designee, you, for the purpose of the hearing, shall be vested with all the powers of the Board and shall make a record of the hearing, which shall, with your recommendation(s), be forwarded to the Village Board for their review and final decision no later than August 31, 1993.

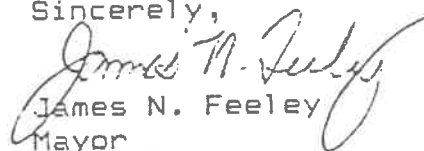
Patrolman Nichols is permitted to be represented by counsel, or a union representative, and is further allowed to summon witnesses in his behalf. The burden of proving the charges is on the Village and compliance with the technical rules of evidence is not required.

If found guilty of the charges, the penalty or punishment you can recommend may consist of either dismissal from the department, demotion in grade and title, suspension without pay for a period not exceeding two months, a fine not exceeding \$100.00, or a reprimand.

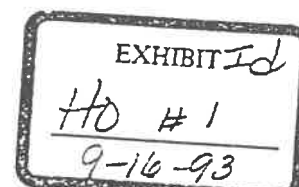
Your fee of \$200.00 is perfectly acceptable to both me and the Village Board. I will, at a mutually convenient time, deliver to you the letter Patrolman Nichols received outlining the charges preferred against him.

Should you have any questions concerning this matter please do not hesitate to contact me.

Sincerely,


James N. Feeley
Mayor

JNF:ejb



THOMAS P. HALLEY

ATTORNEY AT LAW

September 3, 1993

**297 MILL STREET
POUGHKEEPSIE, N. Y. 12601
(914) 452-9120
FAX (914) 452-9192**

Brian S. Stewart, Esq.
Hughes & Stewart, P.C.
31 Elm Street
P.O. Box 788
Malone, New York 12953

RE: Village of Malone v Patrick Nichols

Dear Brian:

The purpose of this letter is insure that there is not confusion with regard to the amended charges. I hereby formally enter a general denial with regard to the amended charges served upon me by letter of August 26, 1993. I repeat and renew the answers, defenses and demands set forth in my letter of August 9, 1993 to the Mayor of the Village of Malone.

I acknowledge receipt of the documents requested in my letter of August 9, 1993.

I acknowledge receipt of the name and address of the hearing officer who will be conducting the hearing.

I am confirming that the hearing is scheduled for Thursday, September 16th and Friday, September 17th during the day. Depending upon the availability of lodging, I believe that we could start at approximately 9:30 or 10 o'clock in the morning and hopefully go until the dinner hour. I believe it is in the best interest of all parties to conclude this matter during that time period.

Please feel free to contact me if you have any questions concerning any of the above.

Very truly yours,


THOMAS P. HALLEY

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street
P.O. Box #788
Malone, New York 12953

BRYAN J. HUGHES
BRIAN S. STEWART

September 13, 1993

Telephone: (518) 483-4330

Fax: (518) 483-4005

Chief Jim Phillips
Village of Malone Police Department
2 Park Place
Malone, New York 12953

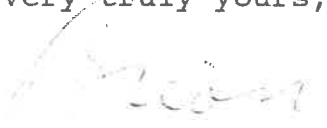
Re: Patrick Nichols

Dear Chief Phillips:

Enclosed herewith please find rough drafts of my personal notes which will be used for questioning our witnesses. You may show these to the witnesses you question, but they are not allowed to take copies. I would like this information to be under the personal supervision of you or Assistant Chief Moll at all times.

Please get back to me with any suggestions or corrections.

Very truly yours,


HUGHES & STEWART, P.C.
by Brian S. Stewart

BSS/tlw
enclosures

State of New York
Village of Malone Civil Service Law §75

Village of Malone,

Complainant,

v.

Patrick Nichols,

Respondent.

AFFIDAVIT

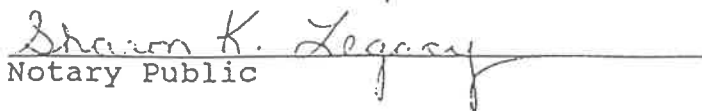
STATE OF NEW YORK)
COUNTY OF FRANKLIN) ss.:

Richard Edwards, being duly sworn deposes and says that:

- 1) I am the District Attorney of the County of Franklin.
- 2) On or about Friday, July 16, 1993, Malone Village Police Officer Patrick Nichols came to see me at my office at the Courthouse in Malone, New York.
- 3) At that time, Officer Nichols described an incident which he said happened at the Malone Village Police Building on April 2, 1993, involving a prisoner and a bottle of bleach.
- 4) Officer Nichols showed me a written description of the event on which the name of an officer using bleach had been whited out.
- 5) Officer Nichols said and his memorandum indicated he was not an eye witness to the events which he described.
- 6) Officer Nichols said that the matter had been reported to the Chief of Police of the Village of Malone. He also said something to the effect that he feared the matter would not result in an appropriate investigation^{AND ACTION} and asked if the District Attorney's office would review the matter if submitted to it. I do not remember his exact words.
- 7) Officer Nichols did not ask me to take any action. He said that he would return in the event that the investigation at the police department proved unsatisfactory.


Richard Edwards

Sworn to before me this
14th day of Sept., 1993.


Notary Public

SHARON K. LEGACY 4944592
Notary Public State of New York
Qualified in the County of Franklin
Commission Expires 11-25-94

EXHIBIT B

1
2 STATE OF NEW YORK
COUNTY OF FRANKLIN : VILLAGE OF MALONE

3 -----
4 In the Matter of a Disciplinary Hearing of PATRICK NICHOLS,
a Patrolman on the Village of Malone Police Department,
5 pursuant to Section 75 of the Civil Service Law:

6 Village of Malone,
Complainant,
7 -against- Volume I
Patrick Nichols,
8 Respondent.
9 -----

10 Representing the Village of Malone:

11 BRIAN S. STEWART, ESQ.
12 Elm Street
12 Malone, New York 12953

13 Representing the Respondent:

14 THOMAS P. HALLEY, ESQ.
297 Mill Street
15 Poughkeepsie, New York 12601

16
17 ARTICLE 75 PROCEEDING,

18 in the above matter, held at the Malone Village Offices,
19 Malone, New York, on the 16th day of September, 1993,
20 before BRIAN MCKEE, Designated Hearing Officer.

21 ACC-U-SCRIBE REPORTING SERVICE
22 Suzanne M. Niles, Notary Public
11 Main Street
PO Box 762
23 Canton, New York 13617
(315) 379-9216
24 Watertown - (315) 786-DEPO
25 ** ORIGINAL **

1
2 STATE OF NEW YORK
3 COUNTY OF FRANKLIN

VILLAGE OF MALONE

4 In the Matter of a Disciplinary Hearing of PATRICK NICHOLS,
5 a Patrolman on the Village of Malone Police Department,
6 pursuant to Section 75 of the Civil Service Law.

Village of Malone,

Complainant,

-against-

Volume II

Patrick Nichols,

Respondent.

Representing the Village of Malone:

BRIAN S. STEWART, ESQ.
12 Elm Street
Malone, New York 12953

Representing the Respondent:

THOMAS P. HALLEY, ESQ.
297 Mill Street
Poughkeepsie, New York 12601

ARTICLE 75 PROCEEDING,
in the above matter, held at the Malone Village Offices,
Malone, New York, on the 17th day of September, 1993,
before BRIAN MCKEE, Designated Hearing Officer.

ACC-U-SCRIBE REPORTING SERVICE
Suzanne M. Niles, Notary Public
11 Main Street
PO Box 762
Canton, New York 13617
(315) 379-9216
Watertown - (315) 786-DEPO
** ORIGINAL **

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street
P.O. Box #788
Malone, New York 12953

BRYAN J. HUGHES
BRIAN S. STEWART

September 20, 1993

Telephone: (518) 483-4330
Fax: (518) 483-4005

Mayor James Feeley
Village of Malone Offices
16 Elm Street
Malone, New York 12953

Re: Village of Malone vs. Patrick Nichols

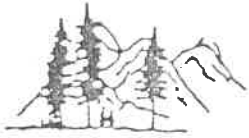
Dear Jim:

I'm enclosing a bill for services rendered in connection with Patrick Nichols disciplinary hearing. Thank you for letting me be of service to the Village in this matter.

Very truly yours,

HUGHES & STEWART, P.C.
by Brian S. Stewart

BSS/tlw
enclosure



J. Brian McKee
11 Charles Street
Malone, New York 12953-1209

Residence
(518) 483-4998
Office
(518) 483-1013
(518) 483-4200
(800) 551-0611

12 October 1993

BY FEDEX

Mr. Thomas P. Halley, Esq.
297 Mill Street
Poughkeepsie, New York 12601

Re: Village of Malone vs.
Patrick Myron Nichols

Dear Mr. Halley:

I am forwarding herewith, per our earlier conversation, one copy of the transcript of the Hearings held concerning cited matter on 16 and 17 September 1993 at Malone, New York.

Respectfully,

J. BRIAN MCKEE

copy to:
Mr. Brian S. Stewart, Esq.
Village of Malone
(with enclosure)

1
2 STATE OF NEW YORK
COUNTY OF FRANKLIN : VILLAGE OF MALONE

3 -----
4 In the Matter of a Disciplinary Hearing of PATRICK NICHOLS,
a Patrolman on the Village of Malone Police Department,
5 pursuant to Section 75 of the Civil Service Law:

6 Village of Malone,
Complainant,
7 -against- Volume I
8 Patrick Nichols,
Respondent.
9 -----

10 Representing the Village of Malone:

11 BRIAN S. STEWART, ESQ.
12 12 Elm Street
Malone, New York 12953

13 Representing the Respondent:

14 THOMAS P. HALLEY, ESQ.
15 297 Mill Street
Poughkeepsie, New York 12601

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1
2 STATE OF NEW YORK
COUNTY OF FRANKLIN

VILLAGE OF MALONE

3 -----
4 In the Matter of a Disciplinary Hearing of PATRICK NICHOLS,
a Patrolman on the Village of Malone Police Department,
pursuant to Section 75 of the Civil Service Law.

5 Village of Malone,

Complainant,

6 -against-

Volume II

7 Patrick Nichols,

Respondent.

8 -----
9 Representing the Village of Malone:

10 BRIAN S. STEWART, ESQ.
11 12 Elm Street
Malone, New York 12953

12
13 Representing the Respondent:

14 THOMAS P. HALLEY, ESQ.
15 297 Mill Street
Poughkeepsie, New York 12601

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Canton, New York 13617
23 (315) 379-9216
Watertown - (315) 786-DEPO

24 ** ORIGINAL **
25

State of New York
Village of Malone Civil Services Law Section 75

Village of Malone,
Complaint,

-against-

Patrick Nichols,

Respondent.

Respondent, by his attorney THOMAS P. HALLEY, submits this brief in support of closing arguments with regard to the charges issued pursuant to the Civil Service Law, and following the hearing conducted on the September 16th, and 17, 1993 in the Village of Malone.

Officer Nichols is charged with various violations of the rules and regulations of the Police Department of the Village of Malone. For the reasons set forth herein, he should not be found guilty of the charges and specifications, or, in the alternative, if he is found guilty, he should be entitled to the defense provided by Section 75-b of the Civil Service Law, also known as the "Whistle Blower Law".

Charge number one alleges that Officer Nichols filed a written complaint against a fellow officer on July 13, 1993 regarding an April 2nd incident " which was lacking in grounds sufficient to result in discipline and which was filed purely as a retaliatory act" in reaction to a letter of reprimand. The testimony and evidence indicates otherwise.

Numerous village police officers agreed that Officer Nichols was investigating the April 2nd incident well before the July 13, 1993 complaint. Indeed, one officer specifically testified that he advised the Chief of Police several days before the letter of reprimand was issued that Officer Nichols was investigating the incident and was going to file a report. Thus, it cannot be said that the filing of the complaint was "purely as a retaliatory act" because the complaint was the product of an investigation which under way and almost complete. As to the claim that the complaint was "lacking in grounds sufficient to result in discipline" this has not been demonstrated. Clearly, an incident occurred which gave rise to some harm to Scott Mattimore. The District Attorney indicated that if the facts shown were proven to be true, he believed that a crime has been committed. Scott Mattimore himself testified that he had been recently questioned by the FBI regarding the incident. The fact that these two agencies have seen fit to render such opinions or take such action clearly demonstrates that this is not a case which "was lacking in grounds sufficient to result in discipline". Whether or not such a disciplinary proceeding would give rise to a finding of guilt or innocence is not the question before us. Indeed, this officer contends that this Civil Service proceeding should not give rise to a

finding of guilt. Nonetheless, the filing of the complaint was not only appropriate, but justified and necessary under the circumstances which were known to Officer Nichols at the time. For these reasons, this charge should be dismissed.

Charge number two accuses Officer Nichols of meeting with the Franklin County District Attorney to discuss the bleach incident. This action is clearly protected by the Whistle Blower Law as will be subsequently developed. In any event, the evidence demonstrated that the discussion by Officer Nichols with the District Attorney's office did not name the particular individuals, but rather referred to a report which had names deleted therefrom. Such action can hardly be called a discredit to the department, or a public criticism of members of the department. For the reasons set forth above, this charge should be dismissed.

Charge number three was dismissed on consent by the Village.

Charge number four alleges that Officer Nichols accused the Chief of Police of a "cover-up" in front of another officer. The accusation was made "without reasonable grounds." It is respectfully submitted that the testimony did not show that such an incident occurred. Even if it were to be shown that such a statement were made, it can hardly be said that such a claim was "without reasonable grounds."

Again, as will be further developed, Officer Nichols had every reason to believe that there was going to be and continues to be a cover-up of the April 2, 1993 incident so as to exonerate the Assistant Chief.

Charge number five alleges that Officer Nichols met with former Chief Richard Brown to discuss the April 2, 1993 incident. The evidence is distinctly lacking in regard to this charge. While there is no dispute that Officer Nichols had a conversation with the former Chief at a local diner, there was nothing more than a general discussion regarding police procedures. There was absolutely no showing that the incident of April 2, 1993 was discussed with the former Chief. For the reasons set forth above, this charge should be dismissed.

Charge six alleges that Officer Nichols met with Scott Mattimore on a unspecified number of occasions "for the purpose of conducting an unauthorized investigation." The evidence, however, distinctly shows that the meetings were chance encounters. The conversations between Officer Nichols and Scott Mattimore amounted to nothing more than general statements relating to the incident. Obviously, both Mattimore and Nichols knew about the incident as they were both present. There was hardly an unauthorized investigation being conducted. There was no criticism or discredit

rendered toward the Department in these conversations. There was no information released, or influence sought. For the reasons set forth above, this charge should be dismissed.

Charge number seven relates to a meeting with Mayor James Feeley during which Officer Nichols and the Mayor discussed a number of items, including, but not limited to, the bleach incident. It should be noted that this meeting took place on August 2, 1993, after the complaint had been filed with the Chief of Police. The Mayor at no time discouraged or dissuaded Officer Nichols from discussing the matter with him. Certainly if any departmental rules were being violated, the Mayor would have immediately informed Officer Nichols on this occasion. He did not. It was not until several days later that he advised Officer Nichols that he did not wish to discuss the matter any further. For these reasons, this charge should be dismissed.

Charge number eight alleges that on August 4, 1993 Officer Nichols discussed the April 2nd incident with Mayor Feeley. The context of the discussion does not disclose any discredit to the Department, or seeking of outside influence. Indeed, Officer Nichols had this second discussion with the Mayor after advising that he would get back to him with further information. Again, the Mayor at no time advised Officer Nichols that such a conversation was in violation of

the rules and regulations. For the reasons set forth, this charge should be dismissed.

Charge number nine, alleges that on August 2, 1993 Officer Nichols meet with the Mayor to discuss his termination as a DARE officer. As is noted above, if such a conversation were against departmental rules and regulation, the Mayor would have or should have so advised Officer Nichols . The mayor did not. It is alleged that the respondent had previously been counseled for the identical offense. This is incorrect. As was developed during the course of the hearing, it was a Village Board Member who initiated the contact with Officer Nichols regarding the DARE Program. While this may have been embarrassing to the Chief of Police, the fact that a Village Board calls a Police Officer does not constitute a violation of departmental rules and regulations. The same could be said with the regard to the August 2nd meeting with the Mayor. This was hardly an attempt to seek outside influence or intervention. It was a casual conversation which was freely joined in by the Mayor, and was never reported by the Mayor to the Chief of Police as a violation of the rules and regulations. For the reasons set forth above, this charge should be dismissed.

In any event, the Respondent is entitled the protections of the Whistle Blower Law. This law provides that a public

employer shall not dismiss or take other disciplinary action against a public employee because the employee discloses to a "governmental body" matters which the employee "reasonably believes to be true" and "reasonably believes" constitutes improper governmental action. The term "governmental body" is defined as, among other things, an officer of a public employer, a member of the legislative body of a village, a law enforcement agency, or any member or employee of a law enforcement agency. Thus, the disclosures to the District Attorney and/or to Mayor Feeley come within the definition of "governmental body." As was demonstrated at the hearing, Officer Nichols had a reasonable belief that the complaint was true. He observed a number of things first hand, he spoke to Scott Mattimore to confirm them, and he saw statements filed by two other officers which confirmed the account. He further reasonably believed that there was improper governmental action taking place because he had knowledge of a prior claim of a cover up. As he indicated in his report to the Chief, which constituted the formal complaint against Assistant Chief Moll, various rules and regulations of the department had been violated, as well as the Penal Law of the State of New York.

There is no dispute that the employee must make a good faith effort to provide the appointing authority a reasonable

time to take appropriate action. In this case, there is no dispute that the Assistant Chief knew about the incident as soon as it occurred. Further, supervisory personnel testified at the hearing that they were aware of the incident within a matter of days after it occurred. Therefore, the incident was common knowledge throughout the police department as of mid April 1993. It is respectfully submitted that the period of time from April of 1993 through the middle of July 1993, three months, constitutes a more than reasonable time to take appropriate action. The action taken against Officer Nichols, for example, as a result of his activities in July of 1993, gave rise to charges approximately one month later. Why did the Village Chief of Police wait over three months to conclude this investigation of Moll? The information regarding the incident was in the hands of the Village almost instantaneously. The so called "thorough investigation" conducted by the Chief of Police distinctly failed to include interviewing the victim, and failed to include information from Officer Nichols, who initiated and conducted the investigation.

The Whistleblower Law, in Section 75-b, subsection 3 (a) specifically provides that an employee may assert the law as a defense before the hearing officer. It further provides that the merits of such defense shall be considered

and determined as part of the hearing officer's decision on the matter. It is therefore respectfully requested that in the event that the respondent is found guilty of any of the charges or specifications, that his defense under Section 75-b be discussed and considered and determined.

The Village will undoubtedly argue that Officer Nichols cannot return to work because of the disruption that will be caused. However, there was no disruption caused by any of Officer Nichols activities. There is only a bad feeling within the Department because of a belief that the Chief of Police will watch Officer Nichols very closely in the future. However, this should not serve as a reason to deny Officer Nichols his return to the police officer.

If there was any improper activity in this case, it was caused or occasioned by the actions or inactions of the Chief of Police and his Assistant. It is the Assistant Chief who directly participated in the bleach incident. It is the Chief and the Assistant Chief who then did a perfunctory investigation in an effort to clear the Assistant Chief and not bring discredit on the department. Unfortunately, such activities have brought discredit upon the department. However, the blame should not lie with Officer Nichols. Further, in an effort to cause Officer Nichols to back off his investigation, a reprimand was illegally issued to him.

Civil Service Law Section 75 specifically provides that an employee shall not be subjected "to any disciplinary penalty provided in this Section" except after a hearing upon stated charges pursuant to the Section. The disciplinary penalty provided for in that Law ranges from "reprimand" to "dismissal." Thus, the issuance of a reprimand to Officer Nichols, without complying with the requirements of Section 75 of the Civil Service Law, was improper and should have no bearing on this case.

Officer Nichols was shown to be a dedicated and competent police officer. He was shown to be an honest law abiding citizen. While many of the aspects of this entire proceeding are unfortunate, and reflect badly upon the Village Police Department, Officer Nichols should not be terminated, suspended, or otherwise disciplined. He acted in a manner which he believed to correct, and in conformity with the Law Enforcement Code of Ethics which he took upon becoming a police officer. The Village of Malone would be well served in continuing to have Officer Nichols as a member of its Police Department.

DATED: Poughkeepsie, New York
October 13, 1993

THOMAS P. HALLEY
ATTORNEY FOR RESPONDENT
297 MILL STREET
POUGHKEEPSIE, NY 12601
(914) 452-9120

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

BRYAN J. HUGHES
BRIAN S. STEWART

October 15, 1993

Telephone: (518) 483-4330
Fax: (518) 483-4005

Mayor James Feeley
Malone Village Offices
16 Elm Street
Malone, New York 12953

Re: Village of Malone vs. Patrick Nichols

Dear Jim:

Now that we have a decision, it would be appropriate to review the procedure that must be complied with in order to have the village board review that recommendation and take action.

The first thing we must do is to make sure that a copy of the original charges, the answer, the transcript and the hearing officer's recommendation are placed on file with the village clerk. The second thing we must do is to make sure that a copy of the transcript has been forwarded to Mr. Nichols or his attorney. The third thing we must do is to send a copy of the charges, answer, transcript and recommendation to Pat Gaglianese at Franklin County to be placed on file in her office. These things are required by Civil Service Law §75 (3).

The matter is then referred to the village board which is supposed to deliberate and make a decision as to what to do. Its options are limited to the following: a reprimand; a fine not to exceed \$100, to be deducted from the salary or wages of such employee; suspension without pay for a period not exceeding two months; demotion in grade and title; or dismissal from the service. The time during which the officer was suspended without pay may be considered as part of the penalty but does not have to be. Civil Service Law §75 (3).

General Construction Law §41 provides that if a public body consists of three or more persons, then a majority of the whole number of such board constitutes a quorum. A quorum of the village board is therefore three members, whether or not you consider the mayor to be a member of the village board. In point of fact, the mayor is considered a member of the village board. Village Law §3-301 (4).

October 15, 1993

TO: MAYOR JAMES FEELEY
RE: VILLAGE OF MALONE VS. PATRICK NICHOLS

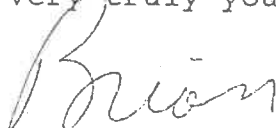
General Construction Law §41 is a bit ambiguous. If you have a quorum, is a vote by a majority of the quorum effective, or does a vote have to pass by a majority of the entire board? Despite an old New York Supreme Court decision to the contrary, the Attorney General's Office has ruled on this question repeatedly and has consistently decided that a vote is only effective if it is passed by a majority of the entire board. 1974 A.G. March 1; 1979 A.G. August 13; 1982 A.G. August 30. The Appellate Division has finally come around to the same conclusion in a case involving a subdivision plat approval. DEP Resources, Inc. vs. Planning Board of Monroe, 131 AD2nd 757.

There is already one vacancy on the village board. I believe that you are disqualified from participating in the village board discussions concerning this matter. I base that conclusion on the case of Sander vs. Owens, 82 Ad2d 968. That was a 1981 case in which a county clerk brought charges against an employee. The Appellate Division concluded that the county clerk was prohibited not only from being the hearing officer but from participating in the ultimate decision making process, because he was the one who forwarded the charges. In our case, you were primarily responsible for forwarding the charges, and you testified to that effect at the hearing.

That means that there are three trustees available to decide this matter. To take any action at all, they are going to have to be unanimous. In my opinion, a vote of two to one in either direction has absolutely no effect and Mr. Nichols will continue to be suspended without pay until the board takes action.

My recommendation is that the matter be scheduled for a special meeting of the village board and that the board conduct its decision making process in executive session. You should not be present at the executive session. In the event that the board decides that it cannot take action, the matter will have to be re-scheduled after a new village board member is appointed.

Very truly yours,



HUGHES & STEWART, P.C.
by Brian S. Stewart

BSS/tlw

10 Etn Street
MALONE, NEW YORK 12853

Telephone: (518) 483-4570

rec'd. nyc

RESOLUTION

At a special meeting of the Village Board of Trustees, Village of Malone, New York, on October 20, 1993, it was moved by Trustee Robert Fraser and seconded by Trustee Earl Lavoie that the following resolution be duly adopted:

BE IT RESOLVED that the Malone Village Board takes the following actions against Malone Village Police Officer Patrick Nichols:

- A. A reprimand
- B. A fine of \$100.
- C. Suspension without pay for a period of sixty (60) days, thirty (30) of which have already been served.

Ayes 3 Nays 0

RESOLUTION HEREBY ADOPTED

Elizabeth J. Bessette

Elizabeth J. Bessette
Malone Village Clerk

I, Elizabeth J. Bessette, Village Clerk of the Village of Malone, do hereby certify that the foregoing is a true and correct copy, and the whole thereof, of a resolution adopted at a meeting of the Village Board of Trustees held October 20, 1993.

SEAL

Elizabeth J. Bessette

Elizabeth J. Bessette
Malone Village Clerk

EXHIBIT

F

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN
:

TIME STARTED 12:30P
TIME ENDED 12:40P


DATE October 21, 1993 PLACE Malone Police Department

I, James E. Phillips am 42 years of age, born on December 12, 1950 address is P.O. Box 356 Malone NY 12953 my occupation is Police Chief for the Village of Malone, NY and degree of education is 15 years. I would like to state that on the above date while I was at the Mayor's Office located at 16 Elm Street in the Village of Malone, NY. At 12:10PM Mayor Feeley called Officer Pat Nichols on the speaker phone. I was present when the phone call was made and also Elizabeth Bessette was present. When Pat answered the phone Mayor Feeley told Pat who was calling, and said to him I hear Channel 5 is coming to interview you Pat acknowledge that they were. The Mayor then told Pat that he was still a member of the Police Department even though he was on suspension and he advised him to read section 11.5 of the rules of conduct before he made any statement to the press. Pat then said he would contact his attorney.

I have read this statement consisting of 1 page and the facts contained herein are true and correct. I understand that making a false written statement is punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

*Affirmed under penalty of Law
this 21 day of October, 1993

Signed:



PAGE 1 OF 1 PAGES

EXHIBIT

Village #13
6-16-94

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED :
TIME ENDED :

DATE: October 21, 1993 PLACE: Malone PD

I, Carl Thomas am 30 years of age, born on 9/19/63 my address is 118 Webster St Malone NY, my occupation is Mechanic, and degree of education is 10th grade.

I would like to state that sometime during the early part of September 1993 I was at my place of employment, Smith's 24hr Towing Service, I believe it was sometime in the morning hours when I was approached by Pat Nichols. Pat asked me if I would sign a petition on his behalf. He gave me the petition and I looked at it. It already had some names on it so I signed it. I didn't even read it and Pat never went into what it was about, after I had signed it I gave it back to Pat and he went over to one of my co-workers, Dale Lamitis. Pat and Dale had a brief conversation but I don't know about what.

I have read this statement (had this statement read to me) consisting of 1 page(s) and the facts contained herein are true and correct. I have also been told and I understand that making a false written statement is punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

*Affirmed under penalty of Law
this 21 day of Oct, 1993

witness:

witness:

Signed: Carl Thomas

PAGE

OF

PAGES

EXHIBIT

Village # 14
6-16-94

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED
TIME ENDED

DATE October 21, 1993 PLACE Malone PD

I, Dale Lamitie am 35 years of age, born on 6/12/58
my address is PO BOX 793 Malone NY, and degree of education
is 9th.

I would like to state that during the early part of
September 1993 I was at my place of employment, Smith's 24hr
Towing Service within the Village of Malone NY. I am a
mechanic at that business. I was working on a car one
afternoon when I was approached by Pat Nichols; Pat handed me
a petition and asked me to sign it. I read it over and it
said something to the effect that I would support his actions
in something that was going on between him and the Malone
Police Department. I knew from what I had read in the
newspapers that Pat has been suspended for something but I
didn't really pay much attention. I signed Pat's petition and
handed it back to him.

I have read this statement (had this statement read to me)
consisting of 1 page(s) and the facts contained herein are
true and correct. I have also been told and I understand that
making a false written statement is punishable as a class A
misdemeanor pursuant to section 210.45 of the Penal Law of
the State of New York.

*Affirmed under penalty of Law
this 21 day of Oct, 19 93

witness:

witness:

Signed:

PAGE

1 OF

PAGES

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street
P.O. Box #788
Malone, New York 12953

OCT 22 1993

BRYAN J. HUGHES
BRIAN S. STEWART

October 22, 1993

Telephone: (518) 483-4880
Fax: (518) 483-4005

Thomas P. Halley, Esq.
297 Mill Street
Poughkeepsie, New York 12601

Re: Village of Malone vs. Patrick Nichols

Dear Tom:

Congratulations on what I think was a good outcome for your client. Although the Village Board found him guilty, it is apparent that they thought a little leniency was in order. Hopefully, we can now move beyond this episode.

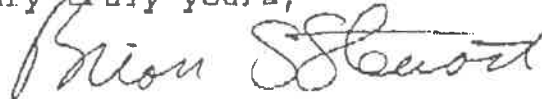
In my telephone conversation with you on ^{OCT} August 21st, you indicated something to me which was extremely troublesome. If I recall correctly, you said that Mr. Nichols told you that he had been informed by certain members of the police department that they were told how to testify or that they were forced to testify in a certain way, or words to that effect. As far as I know, this is incorrect. However, I cannot have that kind of allegation floating around the Village of Malone and not do the proper investigation.

Please instruct Officer Nichols to make a written report of his charge and to submit three copies in envelopes marked personal and confidential. One copy is to go to Chief Phillips. The second copy is to go to Trustee Robert Fraser. The third copy is to come to my office.

Officer Nichols is not to conduct an investigation. I want the details of exactly what he was told and who said it to him. Beyond that, Pat is to do no more.

The report must be mailed no later than Friday, October 29th. Officer Nichols should consider this an order coming to him directly from the Chief and the Mayor. I am sending it through your office as a courtesy, because you were the one who first made me aware of these allegations.

Very truly yours,



HUGHES & STEWART, P.C.
by Brian S. Stewart

BSS/tlw

cc: Mayor James Feeley
Trustee Robert Fraser
Chief James Phillips

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

October 27, 1993

BRYAN J. HUGHES
BRIAN S. STEWART

Telephone: (518) 483-4330

Fax: (518) 483-4005

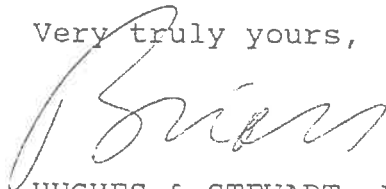
VILLAGE OF MALONE
c/o Mayor James Feeley
Village Office
16 Elm Street
Malone, New York 12953

Re: Village of Malone vs. Patrick Nichols

Dear Mayor Feeley:

Enclosed is another, and I believe final voucher for services rendered in connection with the Nichols matter. This voucher covers the closing memorandum and the special meeting of the village board. I am extremely conscious of the fact that this process is an expensive one, and I have tried to keep my time within reasonable limits and still get the job done. I greatly appreciate your allowing my firm to be of service to you in this matter.

Very truly yours,



HUGHES & STEWART, P.C.
by Brian S. Stewart

BSS/tlw
enclosure

Patrick M. Nichols
146 Webster St.
Malone, NY 12953
483-1116

Brian S. Stewart
Robert Fraser
James Phillips

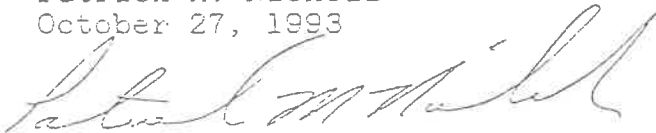
As ordered by the Chief of Police and the Mayor of Malone I am submitting this report containing information regarding allegations of the tampering with a witness. These allegations are in response to the Civil Service Hearing of September 16 & 17, 1993, Village of Malone vs. Patrick Nichols.

It must be made clear the following remarks are strictly hearsay coming from me and therefore my source should also be questioned in order to further substantiate the claim. My source has agreed to offer a statement to a responsible agent or agency assigned to investigate the aforementioned allegations.

During the afternoon of October 8, 1993 my wife Betzy advised me that she had a conversation with an Officer that had testified at the Civil Service Hearing on the 16th. She stated the Officer told her he was advised while being prepared for testimony by Stewart as to what he could and could not say and what he would and would not say. He was also told he could not elaborate on details in order to clarify his answers. My wife further stated that the Officer also told her that he was given orders to stay away from me (Pat) on or off duty or charges would also be brought against him.

The above information is as accurate as I recall and it is being submitted in response to a written order received on October 26, 1993. Copies, as ordered, are being sent to Robert Fraser (Trustee), James Phillips (Police Chief) and Brian Stewart (Attorney for Village of Malone).

Patrick M. Nichols
October 27, 1993



HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

August 25, 1993

BRYAN J. HUGHES

BRIAN S. STEWART

Telephone: (518) 483-4330

Fax: (518) 483-4005

Thomas P. Halley, Esq.
297 Mill Street
Poughkeepsie, New York 12601

Re: Village of Malone v. Patrick Nichols

Dear Tom:

Enclosed for your review please find the collective bargaining agreement, the departmental rules and regulations and a complete copy of Pat Nichols' personnel file.

I would like to temporarily schedule the hearing on this matter for Thursday, September 16th and Friday, September 17th, during the days. Please let me know if this is acceptable.

Amended charges have been drafted and will be forwarded to you as soon as they are reviewed by the police chief and the mayor. The intent here is to make the charges clearer, so as to make both of our jobs a little easier.

The basic charges involve insubordination and disclosing police business to persons outside the police department without permission. I'm not going to have very much trouble showing that Pat discussed the bleach incident with a number of people outside the department including the district attorney, the former police chief, the mayor and Scott Mattimore. I don't believe that I will have very much trouble in showing that Pat called the chief "stupid" in the police building and in front of other officers and that he unjustifiably said that the chief was engaging in a "cover-up," in the police building and in front of other police officers. I believe that I am going to be able to show that Pat never really felt that the charges involving the bleach incident had any merit and that he filed such charges as retaliation for the fact that he received a letter of reprimand on July 3rd. Pat may not admit this, and he may not even see the connection himself. However, statements that he made to the chief and other officers and the proximity in time between being handed the letter of reprimand and his filing of charges would lead a reasonable man to believe that Pat's motives were retaliatory in nature.

August 25, 1993

TO: THOMAS P. HALLEY, ESQ.
RE: VILLAGE OF MALONE V. NICHOLS

If I am successful in proving one or all of these charges, the hearing officer will make a recommendation of discipline based on the entire content of the Pat's personnel file. As you will see, there have been a series of problems with Pat. Under the circumstances, it is highly likely that the Village Board will decide to terminate Pat. Pat has a lot of good qualities and in my opinion, deserves the right to a fruitful and rewarding career somewhere outside the Malone Village Police force. His future may be in jeopardy if he is terminated from this small police force for cause.

I am not authorized to make any offers in this case. However, it would seem reasonable to attempt to work out a resolution of the problem whereby charges are withdrawn, Pat receives his back pay, and he agrees to leave the force and not to reapply. Please let me know if your client would be interested in resolving the matter along those lines.

Very truly yours,

HUGHES & STEWART, P.C.
by Brian S. Stewart

BSS/tlw
enclosures

VILLAGE OF MALONE POLICE DEPT.

2 PARK PLACE
MALONE, NEW YORK 12953
(518) 483-2424

TO: Mayor James Feeley ADDRESS: Village Office
DATE: 08-25-93 SUBJECT: Amended charges for Ptl. Nichols

Mayor,

I have reviewed the amended charges that Brian Stewart sent to your office. Enclosed you find four more charges that should be added. Most importantly the charge when Ptl. Nichols discussed the DARE Program at your residence. I also feel that section 10.1.78 should be added to each charge when Ptl. Nichols made contact with you. This is the section that he was reprimanded on in Feb. 1993. I sent along an extra copy for Brian to review.

SIGNED: 

Ass't Chief Gerald K. Moll

Brian,

For your review and comment

J

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

BRYAN J. HUGHES
BRIAN S. STEWART

August 26, 1993

Telephone: (518) 483-4330

Fax: (518) 483-4005

Thomas P. Halley, Esq.
297 Mill Street
Poughkeepsie, New York 12601

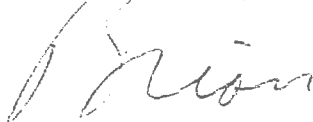
Re: Village of Malone v. Patrick Nichols

Dear Tom:

Enclosed please find a statement of charges against Pat. They are relatively simple and should be relatively easy to prove.

The Village would still be willing to settle this matter by dropping the charges and repaying Pat for his thirty days lost wages in exchange for his resignation from the force and his agreement not to reapply. I have not made the written charges public in the hopes that Pat will change his mind. If Pat doesn't change his mind, then I will probably have to release the charges to the press in light of Pat's written request that the entire proceeding be disclosed to the press.

Very truly yours,



HUGHES & STEWART, P.C.
by Brian S. Stewart

BSS/tlw

enclosure

cc: Mayor James Feeley
Chief Phillips

State of New York
Village of Malone Civil Service Law §75

Village of Malone,

Complainant,

v.

Patrick Nichols,

Respondent.

CHARGES

The Village of Malone hereby charges Police Officer Patrick Nichols pursuant to Civil Service Law §75 as follows:

- 1) On or about July 13, 1993, Patrick Nichols filed with the Chief of Police a written complaint against a fellow officer regarding an incident on April 2, 1993 which was lacking in grounds sufficient to result to result in discipline and which was filed purely as a retaliatory act in reaction to a letter of reprimand placed in respondent's personnel file on July 13, 1993. This action violated the following departmental rules and regulations:

6.2.33 Requirement to immediately notify Desk Officer of an unusual occurrence.

10.1.1 Discredit upon Department.

10.1.4 Insubordination or disrespect to a superior officer.

- 2) On or about July 16, 1993, respondent met with a non-member of the Department, the Franklin County District Attorney, to discuss the charges relating to the April 2, 1993 incident, without the permission of a superior officer. This action violated the following departmental rules and regulations:

10.1.1 Discredit to Department.

10.1.4 Insubordination or disrespect to a superior officer.

10.1.27 Public criticism of a member of the Department.

10.1.28 Releasing departmental information without permission.

10.1.40 Communicating with other police agencies concerning police matters except as provided by departmental procedures.

10.1.77 Seeking the influence or intervention of a person outside the Department for purpose of advantage.

11.5 Disclosing official business of the Department without permission.

3)

On or about July 27, 1993, the respondent called Police Chief Phillips "stupid" in the presence of Detective Michael Fleury. This action violated the following departmental rules and regulations.

6.2.7 Treat members of the Department with respect.

10.1.4 Insubordination or disrespect to a superior officer.

10.1.17 Failure to treat any person civilly.

4)

On or about July 27, 1993, without reasonable grounds, respondent accused Police Chief Phillips of engaging in a "cover-up" in front of Patrolman Clyde LaChance. This action violated the following departmental rules and regulations:

6.2.7 Treat members of the Department with respect.

10.1.4 Insubordination or disrespect to a superior officer.

10.1.17 Failure to treat any person civilly.

5)

Once, between July 13, 1993 and August 5, 1993, the respondent met with a civilian, former Police Chief Richard Brown, to discuss the alleged incident on April 2, 1993. This meeting occurred in the presence of Patrolman Scott Mulverhill. This action violated the following departmental rules and regulations:

10.1.1 Discredit to Department.

10.1.4 Insubordination or disrespect to a superior officer.

10.1.27 Public criticism of a member of the Department.

- 10.1.28 Releasing departmental information without permission.
- 10.1.77 Seeking the influence or intervention of a person outside the Department for purpose of advantage.
- 11.5 Disclosing official business of Department without permission.

6) Between July 13, 1993 and August 5, 1993, respondent met with a civilian, Scott Mattimore, to discuss the April 2, 1993 incident for the purpose of conducting an unauthorized investigation. This action violated the following departmental rules and regulations:

- 8.1 Patrol officers shall be under the direction and control of...[the] commanding officer...
- 10.1.1 Discredit to the Department
- 10.1.4 Insubordination or disrespect to a superior officer.
- 10.1.27 Public criticism of a member of the Department.
- 10.1.28 Releasing departmental information without permission.
- 10.1.77 Seeking the influence or intervention of a person outside the Department for purpose of advantage.
- 11.5 Disclosing official business of the Department without permission.

7) On August 2, 1993, the respondent met with Malone Village Mayor James Feeley to discuss the April 2, 1993 incident, without the permission of a superior officer. This action violated the following departmental rules and regulations:

- 10.1.1 Discredit to the Department.
- 10.1.4 Insubordination or disrespect to a superior officer.
- 10.1.28 Releasing information without permission.
- 10.1.77 Seeking the influence or intervention of a person outside the Department for purpose of advantage.

10.1.78 Contacting the Board of Trustees on police problems without permission from the Chief of Police.

11.5 Disclosing official business of the Police Department without permission.

- 8) On August 4, 1993, the respondent telephoned Malone Village Mayor James Feeley to discuss the April 2, 1993 incident, without the permission of a superior officer. This action violated the following rules and regulations:

10.1.1 Discredit to the Department.

10.1.4 Insubordination or disrespect to a superior officer.

10.1.28 Releasing information without permission.

10.1.77 Seeking the influence or intervention of a person outside the Department for purpose of advantage.

10.1.78 Contacting the Board of Trustees on police problems without permission from the Chief of Police.

11.5 Disclosing official business of the Police Department without permission.

- 9) On August 2, 1993, the respondent met with Malone Village Mayor James Feeley to discuss his termination as the DARE officer without the permission of a superior officer. The respondent had been previously counseled for the identical offense. This section violated the following departmental rules and regulations:

10.1.1 Discredit to the Department.

10.1.4 Insubordination or disrespect to a superior officer.

10.1.28 Releasing information without permission.

10.1.77 Seeking the influence or intervention of a person outside the Department for purpose of advantage.

10.1.78 Contacting the Board of Trustees on police problems without permission from the Chief of Police.

WHEREFORE the Village of Malone recommends that the respondent be punished pursuant to the provisions of Civil Service Law §75.

Brian S. Stewart, Esq.
HUGHES & STEWART, P.C.
Special Village Attorney
P.O. Box 788 - 31 Elm Street
Malone, New York 12953
(518) 483-4330

TO: Patrolman Patrick Nichols
146 Webster Street
Malone, New York 12953

Thomas P. Halley, Esq.
297 Mill Street
Poughkeepsie, New York 12601

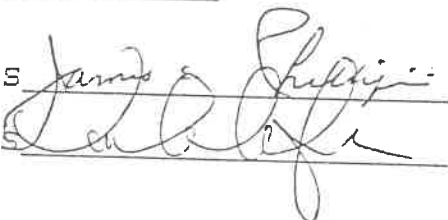
PATRICK NICHOLS

I, THE UNDERSIGNED, ACKNOWLEDGE THAT I HAVE RECEIVED A COPY OF THE SET OF CHARGES PREFERRED AGAINST ME BY THE VILLAGE OF MALONE, NEW YORK AND SET FORTH IN A LETTER TO ME DATED ON THE 5 DAY OF AUGUST 1993.

DATED 8-5 1993

WITNESS

WITNESS

A handwritten signature in cursive script, appearing to read "Patrick Nichols", written over a horizontal line.Two handwritten signatures in cursive script, written over horizontal lines. The first signature is partially obscured by the word "WITNESS" and the second signature is also partially obscured by the word "WITNESS".

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

August 5, 1993

Mr. Patrick Nichols
146 Webster Street
Malone, New York 12953

Dear Sir:

In accordance with the provisions of Section 75 of the Civil Service Law, and provisions of your collective bargaining agreement, you are hereby notified that the following charges are preferred against you.

CHARGES

Malone Village Police Department Rules & Regulations:

- 10.1.4 Insubordination or disrespect towards superior officer
- 10.1.28 Releasing information contained in a department record
- 10.1.34 Deliberate violation of regulations pertaining to police management and control
- 10.1.57 Removing departmental records except as for in departmental orders
- 11.5 Member of department shall treat as confidential the official business of the police department. He shall not impart information relating to the official business of the department to anyone except under due process of law and as directed, or with the permission of the Chief of Police.
- 10.1.40 Communicating with other police agencies concerning police matters except as provided by departmental procedures
- 10.1.77 Seeking influence or intervention of any person outside the department for the purpose of personal preferment
- 10.1.78 No member or members of the department shall initially contact the Board of Trustees on Police problems except through regular channels or by permission of the Chief of Police

Civil Rights Law:

50.a Right of privacy, personnel records of police officers

Public Officers Law:

87 Freedom of Information Law, access to agency records

95 Personal Privacy Protection, access to records

New York State Penal Law:

156.10 Computer trespass

156.30 Unlawful duplication of computer related material

SPECIFICATIONS

(Received from Police Chief James Phillips)

Information from Mayor Feeley stating that Patrolman Nichols scheduled a meeting with the Mayor. Mayor Feeley thought that the meeting was to discuss the recent disciplinary action that was brought against Patrolman Nichols. Mayor Feeley stated that it took him off guard with Patrolman Nichols started talking about the Mattimore incident. During this meeting Patrolman Nichols also discussed his feelings that the incident was being covered up by myself. Patrolman Nichols then turned over a copy of a document from our department's new computer. This document was a copy of my personal notes that I made while conducting the personnel investigation on one of my subordinates.

This document was stored in my personal computer that could only be accessed from the other computers by calling up my computer which is computer number six. On screens would have shown CHIEF'S PERSONAL COMPUTER. Next WORD PROCESSING program would have to be entered. Once inside my word processing, the files that I had in memory could be accessed. The file was labeled JIM. Once JIM was entered, the screen would have shown notes for a personnel investigation that I was conducting on another officer. At the top of the screen were the words "PERSONAL COMPLAINT".

Patrolman Nichols let another officer under my command know that he was able to access my personal computer. Patrolman Nichols also made the comment to this officer that he couldn't believe how stupid I was for leaving the notes in my computer.

Patrolman Nichols submitted a memo on July 21, 1993 requesting the results of the personnel complaint that he filed against another officer. I responded to his memo explaining that investigations on personnel were covered under the Privacy Act and he was assured that the investigation was being conducted.

Even after being advised that Personnel Investigations were covered under the Privacy Act, Patrolman Nichols took it upon himself to hand over a document involving the personnel investigation of another officer without permission or authorization. Due to Patrolman Nichols actions and comments, I feel that the above departmental rules and laws may have been violated.

Information from Franklin County District Attorney, Richard Edwards, stating that Patrolman Nichols came to his office about two weeks ago to discuss the Mattimore incident. Patrolman Nichols handed over a copy of the statement that he submitted to me and his accusations against Assistant Chief Gerald Moll. The statement had "whiteout" used to block the name of Assistant Chief Moll. Patrolman Nichols discussed his concerns of a cover-up with my investigation into the incident and what course of action he could take.

Patrolman Nichols took it upon himself to meet with the District Attorney shortly after he submitted his statement to me. His allegations were being investigated. Mayor was advised and statements were being taken. A preliminary interview was conducted over the phone with Assistant Chief Moll and a statement was to be secured when he returned from vacation.

Information from Mayor Feeley stating that Patrolman Nichols had stopped at the Mayor's house on the night of August 2, 1993 while working the night shift. Patrolman Nichols discussed that he was being terminated from the DARE Program and that Patrolman Simonsen was going to take his place.

Patrolman Nichols has made it well known among the department that he no longer wishes to be involved with the DARE Program. Patrolman Nichols also stated this on February 4, 1993 to Assistant Chief Moll and myself.

The night that Patrolman Nichols met with the Mayor, there was no final determination as to the 1993-94 DARE Program. Nothing was confirmed as to Patrolman Simonsen teaching DARE or Patrolman Nichols terminated from DARE. This meeting with the Mayor was not authorized and the information released to the Mayor by Patrolman Nichols was premature and against policy.

Patrolman Nichols did not seek permission from myself to set up these meetings. His comments and actions were an attempt to bring discredit to this police department and myself. The above rules and regulations of the department may have been violated.

You are allowed until the 16th day of August, 1993, within which you may make and file your answer in writing to these charges. Such answer should reach the office of the undersigned at 16 Elm Street, Malone, New York, at or before four o'clock in the afternoon on said 16th day of August, 1993.

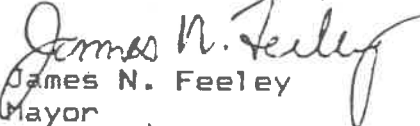
You are entitled to a hearing on the above charges and to be represented at such hearing by an attorney, or a representative of your union. You should be prepared at such hearing to present such witnesses and other proof as you may have in your defense against these charges. Such hearing will be held at six o'clock in the evening on August 24, 1993, in the Malone Village Meeting Room located at 14 Elm Street, Malone, New York.

If you are found guilty of any of the above charges, the penalty or punishment imposed on you may consist of either dismissal from the service, demotion in grade and title, suspension without pay for a period not exceeding two months, a fine not exceeding \$100., or a reprimand.

Pending the determination of these charges, you are suspended without pay for an indefinite period (not exceeding 30 days), effective immediately upon service on you of a copy of this notice and statement of charges.

All further notices and communications addressed to you in connection with these charges will be mailed to your latest address on record in the personnel office of the Village of Malone, which is 146 Webster Street, Malone, New York, unless you request in writing that the same be sent to you at a different address.

Very truly yours,


James N. Feeley
Mayor

JNF:ejb

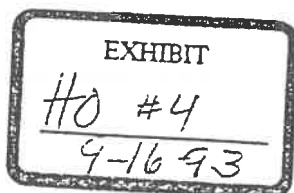
PATRICK NICHOLS

I, THE UNDERSIGNED, ACKNOWLEDGE THAT I HAVE RECEIVED A COPY OF THE SET OF CHARGES PREFERRED AGAINST ME BY THE VILLAGE OF MALONE, NEW YORK AND SET FORTH IN A LETTER TO ME DATED ON THE 5 DAY OF AUGUST 1993.

DATED 8-5 1993

WITNESS

WITNESS



VILLAGE OF MALONE POLICE DEPT.

2 PARK PLACE

MALONE, NEW YORK 12953

(518) 483-2424

TO: Mayor Fecley

ADDRESS:

DATE: August 3, 1993

SUBJECT:

Jim, Sgt. Ritchie advised me shortly after speaking with you this past evening that Phillips told him that he knew I was meeting with you in your office. He also told Ritchie that if I were the one that requested the meeting that I would be disappointed. No surprise of course. I ask that for the time being ~~xxxx~~ the context of our meeting remain confidential due to the circumstances. Sincerely, Pat Nichols

SIGNED:



EXHIBIT 9

EXHIBIT

H

— EXHIBIT # 4 —

PERSONNEL COMPLAINT

JULY 13, 1993

RECEIVED A STATEMENT FROM OFFICER PATRICK NICHOLS STATING THAT ASST. CHIEF GERALD MOLL HAD VIOLATED SEVERAL RULES AND REGULATIONS OF THE MALONE POLICE DEPARTMENT. DURING THE NIGHT OF APRIL 2ND 1993. (COPY OF STATEMENT ATTACHED)

THIS COMPLAINT WAS FILED JUST AFTER PTLM NICHOLS WAS GIVEN A LETTER OF REPRIMAND. FOR VIOLATION OF THE DEPARTMENT RULES AND REGULATIONS. IN LOOKING OVER HIS COMPLAINT I FIND THAT ALL OF THE INFORMATION THAT HE STATES IN THE LETTER IS HEARSAY AND HE IS NOT THE PERSON THAT SHOULD OF FILED THE COMPLAINT.

IN TALKING WITH THE OFFICERS THAT WERE PRESENT DURING THE INCIDENT IN QUESTION I FIND NO BASIS FOR THE COMPLAINT TO BE CARRIED ANY FURTHER THAN THIS. THE PERSON THAT WAS ARRESTED PLEAD GUILTY TO THE CHARGES THAT WERE BROUGHT AGAINST HIM. IT HAS ALWAYS BEEN THE POLICY OF THIS DEPARTMENT THAT IF A PERSON DOES DAMAGE TO VILLAGE PROPERTY THAT PERSON BE CHARGED WITH CRIMINAL MISCHIEF AND WHEN ASST CHIEF MOLL ORDERED THE ARRESTING OFFICER TO FILE PAPER WORK IN REGARDS TO THIS HE WAS JUST ACTING IN HIS CAPACITY OF A SUPERVISOR.

THERE IS ALSO THE QUESTION THAT AT THE TIME THIS INCIDENT TOOK PLACE THERE WERE NO DEPARTMENT RULES OF CONDUCT THAT WERE IN EFFECT FOR THE POLICE DEPARTMENT.

I FIND THAT OFFICER MOLL ACTED PROPERLY DURING THE ARREST AND FIND THAT THERE IS NO BASIS FOR ANY TYPE OF DISCIPLINARY HEARING IN REGARDS TO THIS MATTER.

THE BIG QUESTION IS ABOUT THE BLEACH THAT ASST CHIEF MOLL SPILLED ON THE FLOOR IN FRONT OF THE HOLDING ROOM CELL TO NEUTRALIZE THE URINE THAT THE DEFENDANT HAD PUT ON THE FLOOR WHEN HE URINATED IN THE HOLDING ROOM CELL AND WHICH WAS MOPED UP A SHORT TIME AFTER ASST CHIEF MOLL WAS JUST FOLLOWING DEPARTMENT POLICY IN REGARDS TO THE BLOOD BORN POLICY THAT THE STATE HAD US IMPLEMENT LAST YEAR WHERE IF BODY FLUIDS ARE SPILLED THEY ARE TO BE NEUTRALIZED WITH A DISINFECTANT BEFORE THEY ARE CLEANED.

This letter found in Computer and given to me.
by Officer Lachance.

21-22 / 1

EXHIBIT C

VILLAGE OF MALONE POLICE DEPT.
2 PARK PLACE
MALONE, NEW YORK 12953
(518) 483-2424

TO: Chief Phillips

ADDRESS:

Personnel Comp.

TO:

DATE: July 21, 1993

SUBJECT:

Could you advise me of the results of the investigation regarding a personnel complaint I filed with you July 13, 1993. Brief Assistant Chief Moll.

SIGNED:


Patrick M Nichols

EXHIBIT

McKee and James
Investigative and Security Services
Incorporated
11 Charles Street
Malone, New York 12953

J. Brian McKee
Luddrick M. James, Jr.



(518) 483-4998
(518) 483-4200

15 October 1993

Honorable James N. Feeley
Mayor, Village of Malone
16 Elm Street
Malone, New York 12953

Re: Village of Malone vs.
Patrick Myron Nichols

Dear Mayor Feeley:

Reference is made to my letter of 13 October 1993, captioned as above.

I forward herewith an unsigned brief received by Federal Express this afternoon which is identified as a brief prepared by Mr. Thomas P. Halley, attorney for the Respondent in cited case, in support of his closing arguments in the 16-17 September 1993 hearing.

I have closely reviewed the aforementioned brief and given full consideration to the statements included therein. There is nothing contained therein which was not already raised during the hearing and, accordingly, I am not compelled to make any change to my memorandum report of 13 October 1993.

Respectfully,


J. BRIAN MCKEE

Full text in
transcript box (#1)

State of New York
Village of Malone Civil Services Law Section 75

Village of Malone,
Complaint,

-against-

Patrick Nichols,
Respondent.

Respondent, by his attorney THOMAS P. HALLEY, submits this brief in support of closing arguments with regard to the charges issued pursuant to the Civil Service Law, and following the hearing conducted on the September 16th, and 17, 1993 in the Village of Malone.

Officer Nichols is charged with various violations of the rules and regulations of the Police Department of the Village of Malone. For the reasons set forth herein, he should not be found guilty of the charges and specifications, or, in the alternative, if he is found guilty, he should be entitled to the defense provided by Section 75-b of the Civil Service Law, also known as the "Whistle Blower Law".

Charge number one alleges that Officer Nichols filed a written complaint against a fellow officer on July 13, 1993 regarding an April 2nd incident " which was lacking in grounds sufficient to result in discipline and which was filed purely as a retaliatory act" in reaction to a letter of reprimand. The testimony and evidence indicates otherwise.

10 Elm Street
MALONE, NEW YORK 12853

Telephone: (518) 483-4570

rec'd. 10/20

RESOLUTION

At a special meeting of the Village Board of Trustees, Village of Malone, New York, on October 20, 1993, it was moved by Trustee Robert Fraser and seconded by Trustee Earl Lavoie that the following resolution be duly adopted:

BE IT RESOLVED that the Malone Village Board takes the following actions against Malone Village Police Officer Patrick Nichols:

- A. A reprimand
- B. A fine of \$100.
- C. Suspension without pay for a period of sixty (60) days, thirty (30) of which have already been served.

Ayes 3 Nays 0

RESOLUTION HEREBY ADOPTED

Elizabeth J. Bessette

Elizabeth J. Bessette
Malone Village Clerk

I, Elizabeth J. Bessette, Village Clerk of the Village of Malone, do hereby certify that the foregoing is a true and correct copy, and the whole thereof, of a resolution adopted at a meeting of the Village Board of Trustees held October 20, 1993.

SEAL

Elizabeth J. Bessette

Elizabeth J. Bessette
Malone Village Clerk

EXHIBIT *F*

1113

POLICE DEPT. - EXHIBIT #3
VILLAGE OF MALONE

2 Park Place • Malone, New York 12953 • (518) 483-2424 • FAX (518) 483-2426

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

Chief Phillips,

In accordance with article 10 section 10.1.33 of the Malone Police Department's rules of conduct I am informing you, in writing, that a member of the department has violated several rules and regulations and may have also committed Official Misconduct as defined in section 195.00 of the N.Y.S. Penal Law. All violations related to one incident that took place April 3rd, 1993.

On April 2, 1993 I was working night shift along with Officer Stone, Officer Mulverhill and Assistant Chief Moll. At about 1:15 a.m. on the 3rd of April all three patrolman were dispatched to a burglary on Duane St.. The response resulted in the arrest of Scott Mattimore. Mattimore was transported to the station and seated in the processing room. I was directed to return to the scene to gather further evidence. When I returned to the station I entered through the front door at which time I smelled a strong odor of bleach and also noticed the holding cell window smashed. Mattimore stated to me that an Officer had thrown a large quantity of Bleach under the door which was the only point of ventilation causing it very difficult to breath and therefore had to break the window to breath fresh air.

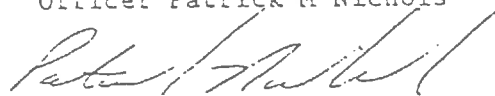
The following list of circumstances, mannerisms and chain of events would indicate that there was intent on Moll's part to injure Mattimore.

1. Verbal statements by Mattimore, Stone and Mulverhill indicate that Moll splashed bleach under the base of the door and then kicked it under the door.
2. Mulverhill asked Moll if he wanted hand irons put on Mattimore at which time Moll said no and proceeded with the bleach.
3. The holding cells only source of ventilation is under the door.
4. The warning on bleach indicates the potential hazards to humans.
5. Moll ordered the arresting Officer to additionally charge Mattimore with criminal mischief for breaking the window after Moll created the circumstances that caused Mattimore to commit the crime.
6. Moll commented to Mulverhill at the end of shift that he felt bad about what happened and that maybe he should pay for the window himself.
7. Mattimore requested several times for the door to be opened as he could not breath.

After a lengthy review and much thought I firmly believe that Moll's actions caused Mattimore to break the window and Moll's directive also caused the unlawful charge of Criminal Mischief against Mattimore. Such behavior by a public servant constitutes Official Misconduct. Department rules of conduct sections 6.1, 6.2.2, 6.2.15, 6.2.34, 9.11, 10.1.1, 10.1.9, 10.1.16, 10.1.18, and 10.1.19 have also been violated by the actions of Assistant Chief Moll.

I trust this matter will be dealt with accordingly now that you have been made aware of the details. PMN

Officer Patrick M Nichols



*Original given to
Phillips on 7-13-93 at 2:50 pm.
(by me w. Hess.)*

EXHIBIT A



RICHARD H. GIRGENTI
DIRECTOR OF CRIMINAL JUSTICE
AND
COMMISSIONER
DIVISION OF CRIMINAL JUSTICE SERVICES

STATE OF NEW YORK
DIVISION OF CRIMINAL JUSTICE SERVICES
EXECUTIVE PARK TOWER
STUYVESANT PLAZA
ALBANY, NY 12203-3764

JOHN W. HERRITAGE
DEPUTY COMMISSIONER
518 457-6101
BUREAU FOR MUNICIPAL POLICE
TRAINING UNIT
518 457-2667
D.A.R.E. PROGRAM
518 457-2666
1 800 SAY-DARE
LAW ENFORCEMENT ACCREDITATION
518 485-1415
INTERNAL OPERATIONS
518 485-7620
TECHNICAL SUPPORT UNIT
518 485-1414
SECURITY GUARD PROGRAM
518 457-4135

July 13, 1994

Chief James Phillips
Malone Police Department
2 Park Place
Malone, New York 12953

Dear Chief Phillips:

I am writing in response to our recent telephone conversation regarding D.A.R.E. Officer Patrick Nichols.

As discussed, all information supplied to DCJS relating to allegations of misconduct by Officer Nichols has been thoroughly reviewed by Bureau for Municipal Police and DCJS Counsel's Office staff. While revocation of Officer Nichols D.A.R.E. instructor certification has been recommended, Counsel also recommended that no action be taken until the most recent charges against him are resolved.

Accordingly, when pending department actions are concluded or additional actions are instituted, we would appreciate immediate notification. At that time we will take any action deemed to be appropriate.

Please feel free to contact me if you have any questions or comments.

Sincerely,

Kenneth R. Buniak
Director
D.A.R.E. Unit



RICHARD H. GIRGENTI
DIRECTOR OF CRIMINAL JUSTICE
AND
COMMISSIONER
DIVISION OF CRIMINAL JUSTICE SERVICES

STATE OF NEW YORK
DIVISION OF CRIMINAL JUSTICE SERVICES
EXECUTIVE PARK TOWER
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1 800 SAY-DARE
LAW ENFORCEMENT ACCREDITATION
518 485-1415
INTERNAL OPERATIONS
518 485-7629
TECHNICAL SUPPORT UNIT
518 485-1414
SECURITY GUARD PROGRAM
518 457-4135

February 17, 1994

Chief James Phillips
Malone Police Department
2 Park Place
Malone, NY 12953

Dear Chief Phillips:

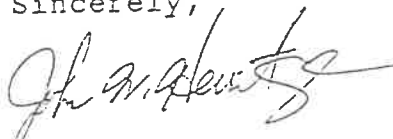
As you know, the New York State Division of Criminal Justice Services, Bureau for Municipal Police is responsible for statewide coordination of the Drug Abuse Resistance Education (D.A.R.E.) program. Responsibilities include training, certifying, decertifying, monitoring and evaluating instructors. They also include maintaining program and instructor integrity.

According to conversations my staff had with you, it is my understanding that Police Officer Patrick Nichols recently served a sixty day suspension (without pay) and loss of one week of vacation pay. The suspension and loss of pay resulted from him being found guilty of forty-two departmental charges. I also understand that a public hearing was held in relation to this matter.

Since Officer Nichols is trained and certified as a D.A.R.E. instructor, I would like to review this incident and related conduct to determine if Officer Nichols' certification as a D.A.R.E. instructor should be continued or revoked. Accordingly, I am requesting copies of all investigative reports, as well as all departmental charges (along with subsequent dispositions) associated with this incident.

Thank you for your cooperation and continued support of the D.A.R.E. program. Please send the requested information directly to Senior Training Technician Alton Hoke, Jr. at the address listed on the previous page. If you have any questions, please do not hesitate to contact me directly at (518) 457-6101 or Mr. Hoke at (518) 457-2666.

Sincerely,

A handwritten signature in dark ink, appearing to read "John W. Herriage", written in a cursive style.

John W. Herriage
Deputy Commissioner

POLICE DEPT.
VILLAGE OF MALONE

2 Park Place • Malone, New York 12953 • (518) 483-2424 • FAX (518) 483-2426

James E. Phillips
Chief of Police

Gerald K. Moll
Assistant Chief

To: Chief James E. Phillips

From: Ass't Chief Gerald K. Moll

Date: February 21, 1994

Ref: DWI Arrest on Feb. 6, 1994

Attached are the statements in regards to the DWI Arrest that took place on Feb. 6, 1994. The only statement that was not secured was a statement from the College Intern. At this time I didn't feel that it was necessary to subject this intern to a internal police department problem.

In reviewing the statements, it is obvious that Ptl. Mulverhill discarded the small mouth piece on the ground at the arrest scene. This has been a common practice with our department and most officers for years. As noted in Trooper Bonner's statement, it is a common practice with the New York State Police as well. There is no department policy addressing on how Officers discard the breath test mouth piece.

As far as any inappropriate or unprofessional behavior on the part of Ptl. Mulverhill at the scene and in the station, Ptl. Nichols makes reference to Ptl. Mulverhill raising his voice. In any of the statements taken, no other Officers gives this indication on anything out of the ordinary took place. Our department rules and regulations do specify that members should treat each other with respect, courtesy and civil at all times. There was no mention of abusive or obscene language on the part of Ptl. Mulverhill. The level of loud tone of voice would be the question. In absence of any corroboration to Ptl. Nichols claim, I'm reluctant to say whether there is a clear violation.

Recommendation:

On discarding the small plastic mouth piece, at the present time there is no department policy on discarding the Breath Test mouth piece. However, the main priority is the safety of the Officers and equipment. The mouth piece has to be removed before it is secured back in it's case. For health exposure reasons, the Officer should not place the mouth piece in his clothing and should also limit touching the mouth piece with bare hands. Thus Officers can flick the mouth piece off the Alco-Sensor Unit and onto the ground. This will allow the Officer to give full concentration to taking the subject into custody, which is a primary concern. After the subject is in custody, Officers can put on protective gloves and pick up the mouth piece. This can easily be reviewed by Officers with the Supervisors.

In regards to a loud tone of voice, this would be a weak case at it's best, especially without testimony from other Officers corroborating Ptl. Nichols claim. This could be viewed as a judgement call on an individuals opinion of loud tone of voice. There is an apparent conflict between the two members involved and their duties should be separated before the matter escalates.

Unfortunately this incident has brought several concerns.

First and most important, I'm concerned with Ptl. Nichols at the scene and what his priorities are. Ptl. Nichols is not a supervisor but it seems that he is finding himself in a position to evaluate the conduct of other officers in the same rank while they are performing their duty. If in his mind he feels that an Officers conduct, no matter how minor, is inappropriate or unprofessional he takes immediate action himself. In this case, his immediate action diverted the attention of the arresting Officer. This type of conduct is very much a concern for the safety of the Officers.

Secondly, Ptl. Nichols is not a trained police supervisor but he is drawing conclusions and taking the matter into his own hands. This is evident in his statement,

To wit: I felt that his (Ptl. Mulverhill) actions were not only inappropriate but unprofessional as well. I made the determination while on patrol that at some point I would let Mulverhill know that it bothered me the way he conducted himself".

Ptl. Nichols has been the subject of many disciplinary charges from the departments rules and regulations. He is well aware that if he felt that an Officer conducted himself in an inappropriate or unprofessional behavior, he is to notify his superior. That way a trained Supervisor can look into the matter. I was the shift Supervisor during this incident and Ptl. Nichols had plenty of time to bring it to my attention but neglected to do so.

The other concern I have is the action that Sgt. Fountain took in this matter. According to Ptl. Nichols, Sgt. Fountain suggested that the only result in filing a statement against Ptl. Mulverhill was that more problems would develop between certain members. Ptl. Nichols further states that due to the conversation he had with Sgt. Fountain, he decided to drop the matter. In Sgt. Fountain's statement, he makes reference to Ptl. Nichols stating that he was mistreated by Ptl. Mulverhill. Being a first line Supervisor, Sgt. Fountain may have felt that it was in the best interest of the department to negotiate the situation and settle it at that time. This could be viewed as a good police supervision practice if the incident was minor and happened solely on his shift. This incident took place mostly during my shift and he should have advised Ptl. Nichols to bring it to my attention. I have advised the proper procedure in a case like this and I'm confident that there will not be a recurrence.

A.C. Moll,

As requested in your memo the following details surround two incidents that took place during the night shift on 2-6-94. My notes on the matters are at my residence therefore I will submit the details the best I can recall.

While at the scene of a D.W.I. arrest on Pearl St. during the shift Officer D. Fountain was having the defendant conduct field sobriety tests. Present were Officer Mulverhill, Trooper Bill Bronner, intern Troy and myself. Officer Mulverhill conducted the alco-sensor test on the subject. After noting her results Officer Mulverhill discarded the plastic tube at our feet. As he turned to walk away the following conversation took place:

Nichols: Officer Mulverhill

Mulverhill: What

Nichols: (while Pointing to the tube) That doesn't look too good

Mulverhill: I know I threw it there

Nichols: Well you could pick it up

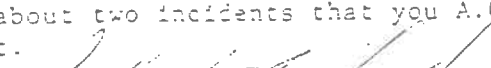
Mulverhill: I'm not picking anything up if you want to pick it then go ahead

Nichols: O.K. I will

I then bent over picked it up and then brought it to my patrol and put it in the car. That was the end of conversations at the scene as the defendant was removed to the station. My concern as to that incident was not that Mulverhill had discarded trash on the ground in the presence of the others but that when I suggested tactfully that it didn't look good. He raised his voice and told me if I wanted it picked up to do it myself. At no time did I raise my voice loud enough for the defendant to hear nor did I order Mulverhill to pick it up. I only suggested it. I felt his actions were not only inappropriate but unprofessional as well. I had made the determination while on patrol that at some point I would let Mulverhill know that it had bothered me the way he conducted himself. I was not going to carry it any further.

While at the station at the end of my shift I was standing over the log book when [Mulverhill came over to my shoulder and stated he had told the intern that he (Mulverhill probably shouldn't of done what he had done at the scene. I told Mulverhill " the only thing I didn't appreciate was that he spoke to me the way he did in front of everyone ". Mulverhill then stepped backed and in a loud voice stated " I'll say what I want, Your not my boss and if you have a problem with me then go see the Chief". I then said "Scott you just brought it up to me". Continuing in a loud voice Mulverhill stated things such as I'll be damned if I'm going to put that in my pocket and If you want to make something of it then see the Chief. I turned back to the log book and ignored him. From that point on I did not say another word. Mulverhill continued in a loud voice. Sgt. Fountain had walked into the room and had to say just forget it twice before Mulverhill stopped. Again I felt that his actions were inappropriate and unprofessional therefore I began to adress my complaint to A.C. Moll on paper in the processing room. Due to the other members in and around the processing room and comments referred to this matter I felt I would finish my complaint to you on my computer at home. Had ^{you} been present at the station I would have brought it to your immediate attention.

After changing clothes I requested to speak with Sgt. Fountain before I left. In the Sgt.'s room I advised Sgt. Fountain that I was submitting a formal complaint to A.C. Moll. The actual conversation with Fountain about this matter was not long at all. We had changed the Topic of discussion and ended up in the communications room for awhile. During my conversation with Fountain he suggested to me that the only result to filing a charge would be that more problems would develop between certain members. He also added that he would let Mulverhill know how I felt. Taking into ~~the~~ consideration what Fountain had told me and the recent problems within the department I decided not to submit a complaint. I would like to add that this statement is not a complaint about Mulverhill but it is only the details as I recall them about two incidents that you A.C.Moll have requested I put into a statement. End Statement.



I, SCOTT M. MULVERHILL an employed by the Village of Malone as a Police Officer and submit the following information for what ever purpose it may serve. I understand my Civil Service rights under Section 75 Sub. 2 to have representation by my certified recognized employee organization and that I wish to waive that right.

I WOULD LIKE TO STATE THAT ON 02/06/94 AT ABOUT 11:45 pm I WAS INVOLVED IN A D.W.I. ARREST WITH PATROLMAN DEAN FOUNTAIN OF A MARIANNE L. JOHNSTON, THE LOCATION OF WHICH WAS AT THE INTERSECTION OF PEARL @ MILWAUKEE STREETS. ASSISTING US IN BACKUP WAS PTL. PATRICK NICHOLS. ALSO AT THE SCENE WAS INTERM TROY DONALDSON, HE WAS RIDING WITH PTL. FOUNTAIN AND MYSELF.

WHILE GOING THROUGH THE ROUTINE D.W.I. FIELD SOBRIETY TESTING, PTL. FOUNTAIN ASKED ME TO CONDUCT A PRE-BREATH SCREENING TEST ON MS. JOHNSTON BY USING THE ALCOSENSOR, WHICH I DID. AS I WAS FINISHING THE TEST A NYS POLICE CRUISER PULLED UP BEHIND ME AND IN SAME WAS TROOPER WILLIAM BROWNER. TROOPER BROWNER ASKED IF EVERYTHING WAS OK AND I STATED YES AND SHOWED HIM THE RESULTS OF THE ALCOSENSOR WHICH READ .15%. I THEN TURNED AWAY FROM TROOPER BROWNER AND OFFICER NICHOLS BEGAN TO SPEAK WITH HIM BEHIND ME. AT THIS TIME I REMOVED THE HOLLOW PLASTIC MOUTHPIECE FROM THE ALCOSENSOR AND THREW SAME BEHIND MY BACK ONTO THE GROUND AND KEEP WATCHING THE DEFENDANT AND PTL. FOUNTAIN. AT THAT TIME MY ATTENTION WAS DRAWN FROM THE DEFENDANT AND PTL. FOUNTAIN BY PTL. NICHOLS AS HE WAS STATING, "PATROLMAN MULVERHILL" AND POINTED TO THE GROUND. I LOOKED AT THE MOUTHPIECE AND THEN TURNED BACK AROUND. PTL. NICHOLS THEN DREW AWAY MY ATTENTION FROM PTL. FOUNTAIN AND DEFENDANT AGAIN AND ADVISED ME THAT I SHOULD PICKUP THE MOUTHPIECE AS THIS DID NOT LOOK GOOD. I ADVISED HIM THAT I ALWAYS DID THIS WITH THE MOUTHPIECES AND THAT IF HE WANTED IT PICKED UP TO PICK SAME UP HIMSELF AND THEN TURNED AWAY AND FINISHED THE ARREST WITH PTL. FOUNTAIN AND LEFT THE SCENE. AT THE END OF SHIFT I TRIED TO EXPLAIN TO OFFICER NICHOLS WHY I DID SAME WITH THE MOUTHPIECE TO THE ALCOSENSOR AND HE BEGAN TO MAKE REMARKS TOWARDS THE FACT THAT HE DID NOT LIKE MY CONDUCT AND I TOLD HIM THAT I DID NOT LIKE HIS CONDUCT TOWARDS MYSELF. SGT. FOUNTAIN WAS PRESENT AT THIS TIME AND ASKED WHAT WE WERE SPEAKING ABOUT AND I INFORMED HIM AND HE STATED THAT HE ALWAYS THROWS THESE MOUTHPIECES OUT IN SAME MANNER AS I DO. IN THE PAST ON EVERY OCCASION THAT I HAVE MADE A DWI ARREST OR CONDUCTED FIELD SOBRIETY TEST FOR DWI'S AND HAVE USED THE ALCOSENSOR, I HAVE ALWAYS DISPOSED OF THESE MOUTHPIECES IN THIS MANNER. I HAVE DONE SAME WITH SUPERVISOR'S AND SENIOR PATROLMAN PRESENT AND ALL OF THEM HAVE ADVISED ME THAT IT WAS IMPROPER.

Date: 02/07/94
To: A/C Moll
From: Ptl. Dean J. Fountain

While working the night shift on 02/06/94 at about 11:45PM; Officer Durant who was off duty came in and advised us that a car was in the snow bank at Milwaukee and Pearl Streets. Officer Mulverhill and I along with our intern, Troy Donaldson went in the patrol car to the scene. Officer Nichols arrived later in the Chevy patrol car. What we found was a blue Grand Am had went up ontop of a snow bank and was stuck. The owner and operator of the car was there trying to get it out. While I was interviewing the operator, Marianne Johnston of Burke, I could smell an odor of alcohol coming from her. After doing several field sobriety test, I asked Ptl. Mulverhill to give her the alco sensor test. After getting the reading of this test I placed the operator under arrest for Driving While Intoxicated and placed the handcuffs on her.

The defendant was then placed in the rear seat of the patrol car and transported back to our station by Ptl Mulverhill and I for processing. After the processing was completed the defendant was released to a friend, Tina Smith.

I was later told by Ptl Mulverhill that after he gave the alco sensor test to the defendant that he threw the tube on the ground behind him and Ptl Nichols told him that he should pick it up as it isn't setting a good example. At 4:00AM which is the change of shifts, I was in the locker room getting ready to go home. Officer Mulverhill came in and said that he and Nichols had more words about him throwing the alco sensor tube on the ground. At the arrest scene I didn't hear the discussion between Mulverhill and Nichols as I was occupied with the defendant, placing her under arrest.

Ptl. Dean J. Fountain

Mr. Dean J. Fountain

POLICE DEPT.
VILLAGE OF MALONE

2 Park Place • Malone, New York 12953 • (518) 483-2424 • FAX (518) 483-2426

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

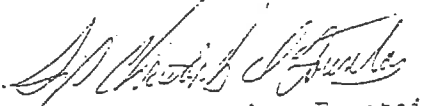
Voluntary Statement

February 8th 1994

Malone Police Dept.
2 Park Place
Malone, New York

On February 7th 1994 I was working the morning shift from 0400hrs. to 12/N. At around or shortly after 4:00am I walked into the communication room and sat down at the front desk. Ptlm. Mulverhill and Ptlm. Nichols were having a discussion of something I was unaware of. After asking three times I finally got an answer from Ptlm. Mulverhill. He stated that he had threw a mouth piece onto the ground in front of the intern and an arrestee. Ptlm. Mulverhill then stated that Ptlm. Nichols had told him to pick the mouth piece up off of the ground. Ptlm. Mulverhill then told Ptlm. Nichols if he had a problem with it to speak with the Chief and that he wasn't his boss. I was then asked by Ptlm. Mulverhill what I did with the mouth piece after I used it and I told him that I threw it away at the scene. I then told the both of them that enough is enough and didn't want to hear anymore arguing between them. Within a few minutes later Ptlm. Nichols was sitting at the typewriter in the processing room starting on a statement directed to Assist. Chief Moll. One sentence was typed out and then the statement was pulled from the typewriter and shredded.

I was approached a short time later by Ptlm. Nichols asking to speak with me. Ptlm. Nichols stated that he was miss treated by Ptlm. Mulverhill when he approached him in the communication room. I told him that Ptlm. Mulverhill was giving him his opinion and in return Ptlm. Nichols was giving him his. At no time did I see any violation between them during the discussion. I stated to Ptlm. Nichols that what ever happened at the arrest scene I was unaware of. I then told him if he felt that he had a violation against Ptlm. Mulverhill then if he wished he should place that statement with the Assist. Chief. Again I told him what I observed in front of me in the communication room I didn't feel that neither were out of line. I then told Ptlm. Nichols that I would express my thoughts to Ptlm. Mulverhill on what occurred in the communication room.


Sgt. Christopher Fountain
Malone Police Department

Questions for Trooper Bronner

Interview conducted 02-22-94 at 1520 Hrs.

A/C-----Ass't Chief Moll

T/B-----Trooper Bonner

A/C-- How long have you been a N.Y. State Trooper?

T/B-- Four years

A/C-- Were you working on 02-07-94?

T/B-- Yes- Midnight shift

A/C-- Did there come a time where you were at a DWI Arrest
that the Malone Village Police were involved in?

T/B-- Yes

A/C-- Where did this take place?

T/B-- Pearl St.

A/C-- How did you know about the arrest?

T/B-- Ride by & Noticed patrol car

A/C-- What was taking place when you arrived?

T/B-- Ptl. Mulverhill was giving alleged defendant an Alco-
Sensor Test (breath test)

A/C-- What Officers were actually involved in the arrest
procedure?

(Question answered earlier)

A/C-- Was an Alco Sensor breath screening test conducted?

(Question answered earlier)

A/C-- Did you witness the test?

(Question answered earlier)

A/C-- Did you notice anything out of the ordinary after the
breath test was completed?

T/B-- No

A/C-- After the Breath Test, did Ptl. Nichols approach Ptl.
Mulverhill?

T/B-- Yes

A/C-- What did Ptl. Nichols do or say to Ptl. Mulverhill?

T/B-- "Officer Mulverhill" and Ptl. Nichols was pointing to
the ground.

A/C-- What was Ptl. Mulverhill doing when Ptl. Nichols did
this?

T/B-- Talking to defendant

A/C-- Did Ptl. Nichols actions or words in any way divert the attention of Ptl. Mulverhill during the arrest procedure?

T/B-- Nichols was trying to get Ptl. Mulverhill's attention, he did get his attention because he called his name twice

A/C-- How many DWI arrests have you been involved in?

T/B-- 100

A/C-- Did most of them involve using the Alco-sensor Breath test?

T/B-- Yes

A/C-- During any of these tests, was the small plastic mouth piece discarded by throwing it in a ditch or off the side of the roadway?

T/B-- Yes, it has been

A/C-- Does the New York State Police have any type of policy on discarding the breath test mouth piece?

T/B-- No, they don't

A/C-- If this type of action took place would you look at this as being inappropriate or unprofessional behavior?

T/B-- No, I would not

A/C-- In your police training on arrest procedures, would discarding the mouth piece on the ground be inappropriate enough to immediately bring it to the attention of the officer involved with the possibility of diverting his attention from the arrest?

T/B-- No, I don't believe it would be

TO: CHIEF JAMES PHILLIPS
MALONE POLICE DEPARTMENT

FROM: SGT RITCHIE

SUBJECT: ABORTION DETAIL

ON FEB. 23, 1994 AT APPROXIMATELY 0930 HRS THIS STATION WAS NOTIFIED BY MAYOR FEELEY THAT HE HAD DRIVEN BY DR. GORMANS OFFICE SEVERAL TIMES AND FOUND THAT THE OFFICER ASSIGNED TO THAT DETAIL WAS JUST SITTING IN THE PATROL VEHICLE. THIS WAS BROUGHT TO MY ATTENTION AND I WENT TO DR. GORMANS OFFICE AND FOUND THAT OFFICER NICHOLS WAS INDEED SITTING IN THE PATROL VEHICLE. HE WAS ADVISED AT THAT TIME THAT THIS DETAIL REQUIRES THE OFFICER ASSIGNED TO BE OUT OF THE VEHICLE AND STANDING IN FRONT OF DR. GORMANS DOOR. AS A RESULT OF THIS I ISSUED AN INNER OFFICE MEMO INSTRUCTING ALL OFFICERS ASSIGNED TO THE ABORTION DETAIL DO SO WITHOUT THE USE OF A PATROL VEHICLE.

SGT W. J. [Signature]

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

BRYAN J. HUGHES
BRIAN S. STEWART

Telephone: (518) 483-4330
Fax: (518) 483-4005

January 24, 1994

Hon. Jan H. Plumadore
Supreme Court Chambers
Harrietstown Town Hall
30 Main Street
Saranac Lake, New York 12983

RE: Nichols v. Village of Malone
Index No. 93-755

Dear Judge Plumadore:

I received the verified reply of Attorney Halley on January 24th. Although the return date for this Article 78 Proceeding has passed, I wanted to comment on the allegations in paragraph 11 of that reply.

Mr. Halley takes the position that whenever an employee's employment record is used in a civil service hearing, he must first be given notice of the information to be considered and then an opportunity to submit a written response. He cites the case of Matter of Bigelow v. Board of Trustees 63 NY2d 470. Mr. Halley was kind enough to cite me to this case long before the hearing commenced and I have done everything within my power to comply with the case. The case involved an employer who used the personnel record when coming up with a punishment after a disciplinary hearing, even though the employment record was never offered or entered as an exhibit.

The papers before the Court will show that the first thing that Mr. Halley did when retained by Mr. Nichols was to demand a copy of Mr. Nichols' personnel record. I immediately complied with this request. I entered the personnel file as an exhibit at the hearing. Mr. Nichols had a full and fair opportunity to contest any material in the record but he did not do so.

Hon. Jan H. Plumadore
RE: Nichols v. Village of Malone
Page 2
January 24, 1994

I have complied with Bigelow and all the cases on point which have been decided since.

Very truly yours,
HUGHES & STEWART, P. C.

By: Brian S. Stewart

BSS:tlt

cc: Thomas P. Halley, Esq.



SHARLENE L. CALLAHAN
CHIEF CLERK II

COURT CLERK'S OFFICE
SUPREME & COUNTY COURTS
FRANKLIN COUNTY COURTHOUSE
63 WEST MAIN STREET
MALONE, NEW YORK 12953
(518) 483-6767 EXT. 749

COPY

January 12, 1994

Honorable Jan H. Plumdore
Supreme Court Chambers
Harrietstown Town Hall
30 Main Street
Saranac Lake, New York 12983

Re: Nichols vs. Village of Malone
Index No. 93-755
IAS No. 16-1-93-0275.P

Dear Judge Plumadore:

Pursuant to our telephone conversation of today with Todd Weber, we are sending you documents which were hand delivered to this office by Brian Stewart on January 12, 1994.

Very truly yours,

Robert V. Gravel

rvg

enclosures

cc: Brian S. Stewart, Esq.
Thomas P. Halley, Esq.

11/14/64 Where is Nichols?

To the editor:

In response to Ms. Nichols letter wishing her dad to teach the DARE program to her, I have a couple questions and comments.

Doesn't it cost the state and village money to train new DARE officers? Are the taxpayers paying for someone's vendetta who may have a bruised ego? Why would anyone in thier right mind who is not motivated by politics or personal gain take an officer with two years experience off the DARE program?

I thought Officer Nichols was punished with 60 days without pay. I don't remember being taken from DARE as one of his conditions. Nichols has an excellent reputation with the staff and children he has came into contact with through the DARE program. I think at the last hearing for Nichols, Chief James Phillips himself sated he intended to train another officer for DARE. Not to punish Nichols, rather to help him. Where is Nichols?

I also remember an interview with Nichols asking him if he could go back to work in his department. He replied in effect "were supposed to be professionals."

Nichols had his day and was given 60 days without pay among other things. I wasn't aware being taken off the DARE program was one of them. Why and who is responsible for pulling him off DARE?

The kids are the only people who will suffer because of the kind of B.S. that takes place behind the doors of the Malone Police Department. If as much effort is put into teaching the kids to stay off booze and dope as it put into fixing bruised egos, the community would be for the better.

How can any one justify taking on experienced officer with a good relationship with kids off this program.

Nichols said it best, "We're supposed to be professional."

Mike Fournier
Malone

January 19, 1994

Hon. Jan H. Plumadore
Supreme Court Chambers
30 Main Street
Saranac Lake, New York 12983-1794

RE: Nichols v Village of Malone
Index No: 93/755

Dear Judge Plumadore:

Enclosed please find Petitioner's reply in regard to the above referenced matter. We also enclose an affidavit of mailing and a self addressed stamped envelope for return of the Court's decision.

Very truly yours,

THOMAS P. HALLEY

cc: Brian Stewart
Hughes & Stewart, PC
31 Elm Street
POB 788
Malone, New York 12953

Patrick Nichols
146 Webster Street
Malone, New York 12953

received 1/24/44

Full text in transcript box

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

PATRICK NICHOLS,

INDEX NO: 93/755

Petitioner,

VERIFIED REPLY

-against-

VILLAGE OF MALONE,

Respondent,

Petitioner, by his attorney, Thomas P. Halley, in reply to the verified answer of the Village of Malone and the affidavit of Brian McKee, states as follows:

1. This reply is made by Thomas P. Halley, as attorney for the Petitioner. It is further verified by said attorney in that all matters contained herein are within the knowledge of said attorney, and directly reflected from the record.

2. In paragraph 11 of his affidavit, Brian McKee argues that he did not permit the testimony of Robert Hanna on the topic of cover-ups "after counsel for petitioner acknowledged that he could not demonstrate a direct connection between Mr. Hanna's planned testimony on a "rumored police cover-up" in the past and the actions of those involved in the matters charged in the Nichols case which was before me."

3. This is absolutely incorrect. The entire testimony of Robert Hanna, and the statements of Petitioner's attorney are contained in pages 156 through 157 of the transcript, copies of which are annexed hereto for the Court's convenience as Exhibit A. The Court will note that the Petitioner's attorney referred to Section 75-b of the Civil Service Law and stated that the purpose of calling Hanna as a witness was to demonstrate that the Petitioner was aware of prior cover-ups involving prior people, thereby demonstrating that he "reasonably believed" that there was improper governmental action, as required by the Civil Service Law. Nowhere in the transcript does counsel for the Petitioner "acknowledge" that he could not demonstrate a connection.

4. There is a further inaccuracy in paragraph 14 of the McKee affidavit. In said paragraph 14, McKee indicates that he "required" closing memoranda in three weeks. However, the record, at page 330 indicates that the transcript will take "about three weeks" to be provided.

received 1/24/94

Full text in
transcript box (#1)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

PATRICK NICHOLS,

INDEX NO: 93/755

Petitioner,

1/19/94

VERIFIED REPLY

-against-

VILLAGE OF MALONE,

Respondent,

Petitioner, by his attorney, Thomas P. Halley, in reply to the verified answer of the Village of Malone and the affidavit of Brian McKee, states as follows:

1. This reply is made by Thomas P. Halley, as attorney for the Petitioner. It is further verified by said attorney in that all matters contained herein are within the knowledge of said attorney, and directly reflected from the record.
2. In paragraph 11 of his affidavit, Brian McKee argues that he did not permit the testimony of Robert Hanna on the topic of cover-ups "after counsel for petitioner acknowledged that he could not demonstrate a direct connection between Mr. Hanna's planned testimony on a "rumored police cover-up" in the past and the actions of those involved in the matters charged in the Nichols case which was before me."
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4. There is a further inaccuracy in paragraph 14 of the McKee affidavit. In said paragraph 14, McKee indicates that he "required" closing memoranda in three weeks. However, the record, at page 330 indicates that the transcript will take "about three weeks" to be provided.

Full text in
transcript (box #1)

State of New York
County of Franklin

Supreme Court

Patrick Nichols,

Petitioner,

v.

Village of Malone,

Respondent.

Verified Answer to Petition

Index No. 93-755

1/11/94

The Respondent, the Village of Malone, through its attorneys Hughes & Stewart, P.C. answers the petition of the petitioner as follows:

1. Admits each and every allegation contained in paragraphs 1, 2, 3, 10, 20, 21, 22, 24, 25, 28, 33, 34, 35, 36, 45, 51, 75, 79 and 80 of the petition.
2. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 5, 6, 7, 8, 14, 15, 16, 17, 42, 47, 48, 49, 55, 58, 63, 72 and 78 of the petition.
3. Denies each and every allegation contained in paragraphs 23, 29, 30, 38, 39, 41, 43, 52, 54, 62, 67, 68, 69, 71, 74 and 77 of the petition.
4. As to the following paragraphs, which purport to restate the contents of documents or statutes which are before the court, respondent affirmatively states that the referenced documents or statutes speak for themselves, and respondent denies each and every other allegation contained therein: 11, 12, 13, 18, 19, 26, 27, 31, 32, 37, 40, 44, 46, 50, 53, 56, 57, 59, 60, 61, 64, 65, 66, 70, 73 and 76.
5. As to paragraph 4 of the petition, respondent affirmatively states that petitioner has been the subject of prior disciplinary proceedings but had never previously been through the procedure set forth by Section 75 of the Civil Service Law while employed by respondent.
6. As to paragraph 9 of the petition, respondent denies knowledge or information sufficient to form a belief as to each and every allegation of the said paragraph except respondent admits that Gerald Moll is the Assistant Chief of the Village of Malone Police Department.

Full text in
transcript box

State of New York
County of Franklin Supreme Court

Patrick Nichols,

Petitioner,

v.

Village of Malone,

Respondent.

RESPONDING AFFIDAVIT OF
HEARING OFFICER

Index No. 93-755

1/11/94

STATE OF NEW YORK)
COUNTY OF FRANKLIN)ss.:

J. Brian McKee, being duly sworn, deposes and says that:


1. I was the hearing officer duly appointed in the underlying civil service proceeding to take testimony regarding alleged violations of police department regulations by the petitioner Patrick Nichols.
2. I make this affidavit to accompany the Village's verified answer to the petitioner's Article 78 petition. I make this affidavit for the purpose of refuting certain allegations made by the petitioner against me.
3. In his Article 78 petition, the petitioner alleges that I was partial and biased against him in my conduct of the hearing held on September 16 and 17, 1993.
4. In particular, the petitioner alleges that I was biased and impartial because I demonstrated a friendship to the Malone Village Police Department citing a March 14, 1991 letter written by me as the owner of the Gateway Motel.
5. The primary purpose of the letter in question was to commend members of the Department, including Police Officer Nichols, for the professional manner in which they had responded to a hold-up alarm transmitted by the Motel. This letter does not show bias on my part against Officer Nichols. Indeed, it shows just the opposite.
6. I showed no partiality or bias to either party to the hearing, and I refer the court to the transcript of the proceedings and to my final report and recommendation which included strong public criticism for management personnel in the Police Department and for the Mayor himself as well as findings unfavorable to the petitioner.
7. Where appropriate and required, I recommended a dismissal of some charges and specifications levied against the petitioner, and I did not concur with the request of the Village of Malone that the petitioner be outright terminated.

JBM

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

MEMO TO: POLICE CHIEF JAMES PHILLIPS
FROM: MAYOR JAMES N. FEELEY 
DATE: JANUARY 11, 1994
RE: BOARD ACTION ON PERSONNEL COMPLAINT FROM
BETZY NICHOLS DATED DECEMBER 20, 1993

The Village Trustees, Village Attorney and I met in executive session during the course of our regular meeting on January 10, 1994, to discuss your investigation of Betzy Nichol's personnel complaint against Sgt. William Ritchie.

After review of your report, and the statements contained therein, the Trustees and I feel that there were no violations of the department's duties and rules of conduct.

As to the point you raise concerning a person outside the department having access to the duties and rules of conduct, these are contained in the appendix of our Village Code book and as such would be considered a public document. If in fact they are an internal document of the department, we should talk about its removal from the code book. I should point out, however, that there are a number of code books in general circulation and removal of the section of the code regarding duties and rules of conduct of the Police Department would thus be somewhat complicated.

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street
P.O. Box #788
Malone, New York 12953

BRYAN J. HUGHES
BRIAN S. STEWART

January 11, 1994

Telephone: (518) 483-4330
Fax: (518) 483-4005

Sharlene Callahan
Supreme Court Clerk
Franklin County Courthouse
63 West Main Street
Malone, New York 12953

Re: Patrick Nichols vs. Village of Malone
Index No. 93-755

Dear Sharlene:

This is an Article 78 proceeding which is pending before Judge Plumadore. Enclosed herewith please find the Village's verified answer and an accompanying affidavit from J. Brian McKee, who was the hearing officer.

In addition and pursuant to CPLR §7804 (e), I am filing with you a certified transcript of the record of the proceedings under consideration consisting of two volumes. They have been certified by Susan M. Niles, Court Reporter from Canton.

In addition, I am filing with you all of the original documentary evidence consisting of the following: Police Department Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 16. Police Department Exhibit 15 was marked but neither offered nor accepted into evidence. Also included are Hearing Officer exhibits 1 and 4. Hearing Officer Exhibits 2 and 3 are not in my possession. I believe that the transcript shows that they are the original charges against Officer Nichols and the amended charges against Officer Nichols which are mentioned hereafter. Also included are respondent's Exhibits A, B, C, D and E.

In addition to the foregoing documents, I am including the following: a copy of the original charges against Officer Nichols dated October 5, 1993, a copy of a letter from Thomas P. Halley, Esq. denying the allegations contained in the original charges on behalf of his client Patrick Nichols, a copy of a letter from Hughes & Stewart, P.C. to Attorney Halley delivering to Attorney Halley copies of the collective bargaining agreement, the departmental rules and regulations and a complete copy of Officer Nichols' personnel file. Also included are a copy of the amended charges, the letter from Attorney Halley dated September 3, 1993 answering the amended charges, a trial memorandum regarding Civil

January 11, 1994

Service Law §75b submitted by the Village of Malone at the hearing, a trial memorandum of law concerning the admissibility of testimony and documents regarding police office personnel matters submitted by the Village of Malone at the hearing and a closing memorandum of the Village of Malone. Also included are the report and recommendations of the Hearing Officer J. Brian McKee, a closing memorandum submitted by Attorney Thomas P. Halley, Esq. on behalf of Patrick Nichols and a copy of a resolution of the Village Board of Trustees of the Village of Malone dated October 20, 1993 imposing certain penalties against Officer Nichols as a result of the disciplinary hearing.

Very truly yours,



HUGHES & STEWART, P.C.
by Brian S. Stewart

BSS/tlw

enclosures

cc: Mayor James Feeley
Thomas P. Halley, Esq.

COPY

State of New York
County of Franklin Supreme Court

Patrick Nichols,

Petitioner,

v.

Village of Malone,

Respondent.

Verified Answer to Petition

Index No. 93-755

The Respondent, the Village of Malone, through its attorneys Hughes & Stewart, P.C. answers the petition of the petitioner as follows:

1. Admits each and every allegation contained in paragraphs 1, 2, 3, 10, 20, 21, 22, 24, 25, 28, 33, 34, 35, 36, 45, 51, 75, 79 and 80 of the petition.

2. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 5, 6, 7, 8, 14, 15, 16, 17, 42, 47, 48, 49, 55, 58, 63, 72 and 78 of the petition.

3. Denies each and every allegation contained in paragraphs 23, 29, 30, 38, 39, 41, 43, 52, 54, 62, 67, 68, 69, 71, 74 and 77 of the petition.

4. As to the following paragraphs, which purport to restate the contents of documents or statutes which are before the court, respondent affirmatively states that the referenced documents or statutes speak for themselves, and respondent denies each and every other allegation contained therein: 11, 12, 13, 18, 19, 26, 27, 31, 32, 37, 40, 44, 46, 50, 53, 56, 57, 59, 60, 61, 64, 65, 66, 70, 73 and 76.

5. As to paragraph 4 of the petition, respondent affirmatively states that petitioner has been the subject of prior disciplinary proceedings but had never previously been through the procedure set forth by Section 75 of the Civil Service Law while employed by respondent.

6. As to paragraph 9 of the petition, respondent denies knowledge or information sufficient to form a belief as to each and every allegation of the said paragraph except respondent admits that Gerald Moll is the Assistant Chief of the Village of Malone Police Department.

7. Denies each and every allegation not specifically admitted or denied herein.

8. Denies that the determination of the Village Board of Trustees was made in violation of lawful procedure and denies that such determination was arbitrary, capricious or an abuse of discretion.

9. Denies that the determination of the Village Board of Trustees was not supported by substantial evidence.

10. Provided herewith is a certified copy of the transcript of the hearing held in the underlying proceeding.

11. Provided herewith are all of the original hearing exhibits.

12. Provided herewith is the "Report and Recommendations" of the hearing officer.

FIRST OBJECTION IN POINT OF LAW

13. The petition should be dismissed without prejudice as being too indefinite to allow the respondent to prepare a defense and for failure to set forth the exact questions presented as required by CPLR §7803.

SECOND OBJECTION IN POINT OF LAW

14. As a matter of law, the Village of Malone Police Department's investigation of other officers and its determination as to whether other officers should be punished has no connection with the charges against the petitioner and is not grounds for a petition under CPLR Article 78.

THIRD OBJECTION IN POINT OF LAW

15. The petitioner sets forth no grounds to believe that the hearing officer was in any way biased against petitioner. The Village of Malone showed good faith by intentionally appointing a hearing officer who had no connection with the incident charged and who had no personal knowledge of the incident charged.

FOURTH OBJECTION IN POINT OF LAW

16. As a matter of law, the petitioner had no defense under Civil Service Law §75-b and the hearing officer's rulings in this respect were in all instances legally correct and proper.

FIFTH OBJECTION IN POINT OF LAW

17. The Village of Malone released the decision to the media soon after receiving it because Officer Nichols specifically demanded in writing that all aspects of this case be made public. This release was made pursuant to inquiry from the media.

SIXTH OBJECTION IN POINT OF LAW

18. If the court should determine that the hearing officer's recommendation of demotion was in any way improper or unauthorized under the Civil Service Law, such recommendation is no grounds for relief since the Village Board of the Village of Malone did not impose any such demotion.

SEVENTH OBJECTION IN POINT OF LAW

19. Petitioner knew the identity of the hearing officer prior to the commencement of the hearing and was provided a copy of the hearing officer's letter (petitioner's exhibit E) prior to the hearing.

20. Petitioner made no motion to disqualify the hearing officer prior to the disciplinary hearing and thus petitioner has waived any objection he may have had concerning the alleged bias of the hearing officer.

EIGHTH OBJECTION IN POINT OF LAW

21. Petitioner knew the results of the Police Chief's investigation of Assistant Chief Gerald Moll prior to the commencement of the disciplinary hearing at issue.

22. Petitioner made no motion to terminate the disciplinary hearing on such grounds and has thus waived any objections on such grounds.

NINTH OBJECTION IN POINT OF LAW

23. The instant petition contains the following documentary exhibits which were not admitted at the hearing and which may not be considered on this Article 78 proceeding: Exhibit A (computer memo dated July 13, 1993); Exhibit C (Newspaper article without date "Report Says Cop in Clear"); Exhibit D (Newspaper article without date "Feared Reprisals").

24. The aforesaid documents should be stricken from the petition or the petition should be dismissed.

WHEREFORE, respondent demands that the petition herein be dismissed and for such other and further relief as to the court may seem just and proper.

Dated:

Yours, etc.
HUGHES & STEWART, P.C.
Attorneys for the Village of Malone
31 Elm Street - P.O. Box 788
Malone, New York 12953

TO:

Thomas P. Halley
Attorney for Petitioner
297 Mill Street
Poughkeepsie, New York 12601

VERIFICATION

I have read the foregoing VERIFIED ANSWER TO PETITION subscribed by me and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

VILLAGE OF MALONE

Dated: 1-11-94

by

James Feeley

MAYOR JAMES FEELEY

Sworn to before me this

11th day of January, 1994.

Elizabeth J. Besette
Notary Public

ELIZABETH J. BESSETTE
NOTARY PUBLIC OF THE STATE OF NEW YORK
STATE #175305193 FRANKLIN COUNTY #55
MY COMMISSION EXPIRES 2004

COPY

State of New York
County of Franklin Supreme Court

Patrick Nichols,

Petitioner,

v.

Village of Malone,

Respondent.

RESPONDING AFFIDAVIT OF
HEARING OFFICER

Index No. 93-755

STATE OF NEW YORK)
COUNTY OF FRANKLIN) ss.:

J. Brian McKee, being duly sworn, deposes and says that:

1. I was the hearing officer duly appointed in the underlying civil service proceeding to take testimony regarding alleged violations of police department regulations by the petitioner Patrick Nichols.

2. I make this affidavit to accompany the Village's verified answer to the petitioner's Article 78 petition. I make this affidavit for the purpose of refuting certain allegations made by the petitioner against me.

3. In his Article 78 petition, the petitioner alleges that I was partial and biased against him in my conduct of the hearing held on September 16 and 17, 1993.

4. In particular, the petitioner alleges that I was biased and impartial because I demonstrated a friendship to the Malone Village Police Department citing a March 14, 1991 letter written by me as the owner of the Gateway Motel.

5. The primary purpose of the letter in question was to commend members of the Department, including Police Officer Nichols, for the professional manner in which they had responded to a hold-up alarm transmitted by the Motel. This letter does not show bias on my part against Officer Nichols. Indeed, it shows just the opposite.

6. I showed no partiality or bias to either party to the hearing, and I refer the court to the transcript of the proceedings and to my final report and recommendation which included strong public criticism for management personnel in the Police Department and for the Mayor himself as well as findings unfavorable to the petitioner.

7. Where appropriate and required, I recommended a dismissal of some charges and specifications levied against the petitioner, and I did not concur with the request of the Village of Malone that the petitioner be outright terminated.

JB

8. Although I have been a former employee of the Police Department, I have also been a friend to the petitioner Officer Nichols. I have personally supported him when he came to me and asked me to financially support the DARE program which he was then managing. I also accepted his request that I be the key note speaker at one of the DARE graduation ceremonies.

9. I have had extensive schooling and training in industrial and labor relations, and I have had extensive experience in disciplinary matters, including four years as the director of a two thousand person agency. I have always been able to demonstrate my integrity and professionalism in disciplinary matters despite my personal friendship or working relationship with the parties thereto, and I have always attempted to act in such matters without bias or partiality.

10. During the course of the hearing, I was called upon to make a number of evidentiary rulings. I attempted to exercise common sense in my evidentiary rulings, and I believed then and believe now that all of my evidentiary rulings were reasonable, appropriate and legal.

11. With respect to the Petitioner's allegation that he suspected a cover-up of his charges by management in the police department, I found that such charge was without merit. I did not permit the testimony of defense witness Hanna on the topic of cover-ups after counsel for petitioner acknowledged that he could not demonstrate a direct connection between Mr. Hanna's planned testimony on a "rumored police cover-up" in the past and the actions of those involved in the matters charged in the Nichols case which was before me.

12. I believe that my rulings with respect to the "Whistleblower Law" were in all respects proper. In my opinion, that defense was without merit. Officer Nichols' complaint was not timely because he waited from April 2nd to July 13, 1993 to raise charges against an officer. He did not raise those charges until just after having been disciplined by the officer he then complained about. He did not permit the police department management a reasonable amount of time to investigate his charges before by-passing the chain of command and making unauthorized contacts and disclosures outside the police department, despite being assured, in writing, by the Chief of Police that his charges were being investigated and that disciplinary action would be taken where warranted by the facts.

13. Petitioner's attorney has complained that he was not given adequate time to submit a closing memorandum prior to the issuance of my report and recommendation.

14. At the close of the evidentiary hearing, I instructed both petitioner's attorney and the attorney for the Village of Malone that I required a closing memorandum within three weeks, which would have been October 8, 1993.

15. I received a closing memorandum from the attorney for the Village of Malone on October 7, 1993.

16. I subsequently ^{had} conversations with petitioner and his counsel pointing out that I had not received their closing memorandum. I provided petitioner and his counsel with my personal federal express account number to expedite transmittal of petitioner's closing memorandum.

17. I never agreed that submission of closing memoranda by counsel would await receipt and review by them of the transcript of the hearings. Nevertheless, upon receipt of the transcripts on or about October 12, 1993 a copy was transmitted by me to petitioner's counsel by Federal Express.

18. I made my report and recommendation which was dated October 13, 1993.

19. On or about October 15, 1993, I received a closing memorandum from petitioner's attorney. I reviewed that memorandum and found nothing therein which was not already raised during the hearing. I then wrote to the Mayor of the Village of Malone indicating to him that I had reviewed the memorandum from petitioner's attorney but that I did not feel compelled to make any changes in my report and recommendation.

Dated: 11/9/93

J. Brian McKee

Sworn to before me this
_____ day of _____, 1994.

Brian S. Stewart
Notary Public

BRIAN S. STEWART
Notary Public - State of New York
Franklin County
Commission Expires Sept. 30, 1995

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

December 28, 1993

BRYAN J. HUGHES
BRIAN S. STEWART

Telephone: (518) 483-4330

Fax: (518) 483-4005

Mayor James N. Feeley
Village of Malone Offices
16 Elm Street
Malone, New York 12953

Re: Nichols vs. Village of Malone (Appeal)

Dear Jim:

Enclosed is a draft of a verified answer to the petition.
Please let me know whether it meets with the approval of the Board.

We will need the original transcript report from McKee and all
the original exhibits.

Very truly yours,

HUGHES & STEWART, P.C.
by Brian S. Stewart

BSS/tlw
enclosure

SIGNED IN THE ABSENCE OF
TO AVOID DELAY IN MAILING

Full text in
transcript box

State of New York
County of Franklin Supreme Court

Patrick Nichols,

Petitioner,

v.

Village of Malone,

Respondent.

Verified Answer to Petition

Index No. 93-755

1/11/94

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J. Brian McKee
11 Charles Street
Malone, New York 12953-1209

Residence
(518) 483-4998
Office
(518) 483-1013
(518) 483-4200
(800) 551-0611

28 December 1993

Received
12/30/93

Honorable Jan H. Plumadore
New York State Supreme Court Justice
Supreme Court Chambers
Harrietstown Town Hall
30 Main Street
Saranac Lake, New York 12983

Re: Notice of Petition
Index 93-755
Patrick Nichols v. Village
of Malone

Dear Judge Plumadore:

The Village of Malone has furnished me with a copy of cited NOTICE OF PETITION and while I am not personally a party to that action, Petitioner makes numerous references to my actions as Hearing Officer in the matter of disciplinary proceedings filed against Petitioner pursuant to Section 75 of the Civil Service Law of the State of New York. In the NOTICE OF PETITION, Petitioner accuses me of being partial and biased against him in my conduct of the hearing held on 16 and 17 September 1993 and variously attacks my integrity and professionalism.

As a local and federal law enforcement officer for over thirty years and a law enforcement executive for most of my adult life, I respectfully deny Petitioner's allegations and wish to go on record with you as indicating my total willingness to appear before you in this matter; to give testimony under oath; and to refute Petitioner's allegations. If it is appropriate to do so, I not only welcome such an opportunity, but respectfully request it.

Respectfully,

J. BRIAN MCKEE

✓ cc: Brian S. Stewart, Esq.

State of New York
Village of Malone Civil Service Law §75

Village of Malone,

Complainant,

v.

Patrick Nichols,

Respondent.

MEMORANDUM OF LAW

**Testimony and Documents Regarding Personnel Matters
of Police Officers Other Than Officer Nichols are Not
Admissible.**

I) Personnel Matters Regarding Other Officers are Not Relevant.

During the course of this hearing the respondent, Patrick Nichols, will try to introduce testimony and/or documents concerning personnel matters of other employees of the Malone Village Police Department. Because of the peculiar facts of the current disciplinary proceeding, it may be relevant that Officer Nichols made a written complaint against another officer. The identity of that officer and the date of that incident may be necessary for identification purposes. However, the details of that incident are not subject to disclosure.

Under Civil Service Law §75, the Hearing Officer is not required to strictly apply the rules of evidence. However, it goes without saying that the Hearing Officer is authorized to use his good judgment on evidentiary matters in order to prevent the hearing from becoming a morass of irrelevant data.

Officer Nichols is charged with violating established Police Department Regulations by disclosing details of an internal investigation to unauthorized persons. It is irrelevant whether the underlying complaint has merit. In fact, for purposes of this hearing, the Department will assume, without admitting, that Mr. Nichols' complaint had merit. Mr. Nichols disobedience to the rules is still a matter properly subject to the most severe discipline.

**II) Officer Nichols, Who Continues to be a Police Officer, is
Prevented From Disclosing Internal Police Affairs.**

Officer Nichols has been suspended but has not been terminated. He continues to be a Police Officer subject to all of the pertinent rules and regulations. The following

Regulations prohibit Officer Nichols from testifying regarding the disciplinary investigation against another officer.

- 10.1.27 Public criticism of a member of the department
- 10.1.28 Releasing departmental information without permission
- 11.5 Disclosing official business of the department without permission

III) The Police Department is Legally Prohibited From Disclosing Disciplinary Records Unless Given Express Permission.

Civil Rights Law §50-a became effective in 1976. A copy is attached as Exhibit A. The law clearly provides that the Department may not release its personnel records except with permission or with a court order. Neither has been obtained in this case.

In the event that the respondent seeks to enter evidence concerning another officer, and if the Hearing Officer determines that such records or evidence is relevant enough to be admitted, then the Department will be in an impossible position. On the one hand, the Department will need to clarify or disprove the respondent's evidence. On the other hand, it will be totally prevented from doing so by statute.

Such a position would, in effect, deprive the Village of Malone of its rights to due process in this hearing.

CONCLUSION

Neither testimony nor documents concerning may be admitted if they concern disciplinary matters relating to a Police Officer other than Patrick Nichols.

Respectfully submitted,
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Attorneys for the Village of Malone
P.O. Box 788 - 31 Elm Street
Malone, New York 12953
Tel: (518) 483-4330

attorney or his deputies or assistants, a corporation counsel or his deputies or assistants, a town attorney or his deputies or assistants, a village attorney or his deputies or assistants, a grand jury, or any agency of government which requires the records described in subdivision one, in the furtherance of their official functions.

HISTORY:

Add, L 1976, ch 413, eff June 21, 1976, amd, L 1981, ch 778, § 1, eff July 27, 1981.
Section heading, amd, L 1981, ch 778, § 1, eff July 27, 1981.

CROSS REFERENCES:

Police officer, definition of, CLS CPL § 1.20.

RESEARCH REFERENCES AND PRACTICE AIDS:

Law Reviews:

1976 Survey of New York Law: Local Government. 28 Syracuse L Rev, No. 1, p. 127, Winter, 1977.

CASE NOTES

Plaintiffs in civil action could not obtain discovery of personnel records and file of city police officer without compliance with Civil Rights Law provision regarding confidentiality of such records, even though officer had been separated from service. *Guzman v New York* (1977) 91 Misc 2d 270, 397 NYS2d 870.

The police personnel records of the arresting officer sought by defendant for the purpose of impeaching the officer's credibility are not discoverable exculpatory *Brady* material which would bear directly on the question of defendant's guilt or discoverable *Rosario* material consisting of an officer's prior statements relating to the subject matter of his testimony to be used for impeachment purposes only after direct examination (see *People v Rosario* (1961) 9 NY2d 286, 213 NY52d 448, 173 NE2d 881, 7 ALR3d 174, cert den 368 US 866, 7 L Ed 2d 64, 82 S Ct 117). The personnel records of a police officer, which often contain raw data, uncorroborated complaints and much that is privileged and confidential, should not be examined by a Magistrate, prosecutor or defense counsel each time an arrest is made. Under section 50-a of the Civil Rights Law, a clear showing of facts sufficient to warrant a request for records must be demonstrated even before an *in camera* inspection by the court will be ordered. If the records are determined to be material and relevant to the action, they may then be supplied to the party requesting them. Mere speculation and surmise that some information may be revealed which may provide defense counsel with some facts to impeach the witness is insufficient to warrant an examination of the police personnel records. *People v Lugo* (1978) 93 Misc 2d 195, 402 NYS2d 759.

A defendant charged with a speeding traffic violation is entitled to disclosure of certain personnel

records of the arresting police officer relating to the officer's ability to use radar equipment and to visually estimate the speed of moving vehicles as an aid in cross-examination on the issue of credibility. The information sought by defendant in the officer's personnel records is properly discoverable under section 50-a of the Civil Rights Law, which provides a means to obtain all "personnel records, used to evaluate performance toward continued employment or promotion, under the control of any police agency or department", and is not exempted from public disclosure under any provisions of the Freedom of Information Law (Public Officers Law, art 6). To protect against the unbridled disclosure of police personnel records, each determination of applications for disclosure must be made on an *ad hoc* basis with the court being the final arbiter as to whether the defendant has demonstrated the relevancy and materiality of the information in the personnel records to warrant disclosure. *People v Gutterson* (1978) 93 Misc 2d 1105, 403 NYS2d 998.

A portion of defendant police officer's personnel file, specifically those records used to evaluate performance toward continued employment or promotion, may be made available to the District Attorney upon a clear showing of facts sufficient to warrant an *in camera* inspection by the Judge after such inspection, only the relevant and material portion shall be made available to the requesting party. People v Zanders (1978) 95 Misc 2d 82, 407 NYS2d 410.

The District Attorney's office is entitled, in a criminal action in which the defendant, a taxi driver charged with resisting arrest and harassment, alleges that the arresting officer has harassed other taxi drivers, to have discovery of the officer's personnel records which include three known complaints allegedly for similar incidents, since the

ART 5

District Attorney is specifically exempted from the confidentiality provision of section 87(2)(b) of the Civil Rights Law (personnel records of police officers). People v Bar-Noy, (1978) 152, 410 NYS2d 967.

The synopses of negative findings police officers by the Civilian Control Board (New York City Charter, § 27-2.2) and the results of departmental investigations by police officers, are considered by the Civilian Control Board in evaluating "performance toward the public" for employment or promotion" and there is no provision in the ambit of section 50-a of the Civilian Control Board which authorizes an *in camera* review of the records of a police officer upon "a review of facts sufficient to warrant the records of review" and then disclose the records of review if the material is deemed to be in the public interest. Accordingly, if section 50-a is given full utility, the first standard regarding review must be interpreted liberally. It is usually no way for a defendant to prove that his personnel file will contain so that the Civilian Control Board can inform defendants that the case will hinge on the findings of the police officers, that the Civilian Control Board stated the physical contact and that the witnesses will corroborate such facts. It is to justify an *in camera* inspection of the officers' personnel records as to misconduct on their part; to rec-

§ 50-b. Right of privacy;

1. The identity of any hundred thirty of the pe time of the alleged com report, paper, picture, I custody or possession of such a victim shall be n officer or employee shall or other document, whic in subdivision two of thi

2 The provisions of sub
prohibit disclosure of in

a. Any person charged same victim; the counsel employees charged with records relating to the lawful discharge of their or

b. Any person who, upon notice to the victim of an alleged sex offense, determines that a cause exists for disclosure upon notice to the victim for the care of the victim and the duty of prosecuting

State of New York
Village of Malone Civil Service Law §75

Village of Malone,

Complainant,

v.

Patrick Nichols,

Respondent.

TRIAL MEMORANDUM REGARDING
CIVIL SERVICE LAW §75-B

INTRODUCTION

In 1984, the State of New York enacted Civil Service Law §75-b. Sometimes called the "Whistleblower Law," it is clearly intended to protect public employees who disclose certain information provided that the employee complies with the law. A copy of the law is attached as Exhibit A.

POINT I

Only certain information may be disclosed.

Only the following information may be disclosed by an employee under the "Whistleblower Law." First, information may be disclosed regarding the violation of a law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety. Secondly, information may be disclosed which the employee reasonably believes to be true and reasonably constitutes an "improper governmental action." "Improper governmental action" means an action taken by a governmental agency or employee, in the course of official duties, which is in violation of any federal, state or local law, rule or regulation. See Civil Service Law §75-b (2)(a). It is far from clear in this proceeding that the information disclosed by Patrick Nichols meets either of the two criteria.

POINT II

Prior to disclosure, the appointing authority must be given time to take action.

A disgruntled employee is not allowed to disclose confidential information without taking certain preliminary steps. That employee must first provide the information to the appointing authority or his designee and allow such person reasonable time to take appropriate action unless there is imminent and serious danger to the public health or safety. Civil Service Law §75-b (2)(b).

There has never been any allegation of imminent or serious danger to the public health or safety regarding any incident at the police department building on April 3, 1993. Consequently, Officer Nichols was first required to report the information to the appointing authority or its designee. In this case, the appointing authority for patrolmen is the Chief. Even if the appointing authority was deemed to be the Village Board, the Chief is clearly their designee. The police regulations clearly provide that employees may not bring complaints directly to the Mayor or the Village Board, but may only do so with the permission of the Chief of Police. Regulations §10.1.28 and 11.5.

In this matter, the evidence demonstrates that Officer Nichols communicated details of an internal investigation to the District Attorney within three days of the date the original complaint was filed. Within three weeks, he had disclosed such information to the Mayor, a former Chief of Police, a civilian named Scott Mattamore, and perhaps others. Under any interpretation of the facts, Officer Nichols did not allow Chief Phillips adequate time to conduct his investigation.

POINT III

Civil Service Law §75-b is not a defense unless the disciplinary action is based solely on a violation by the employer of §75-b.

A public employee may not insulate himself from discipline merely by filing a complaint against his employer or a fellow employee. That would result in an intolerable situation in which public employees would be beyond control. Instead, the legislature provided a defense which may be used only when the employee is being disciplined solely as a result of his whistleblowing activities. Civil Service Law §75-b (3)(a).

POINT IV

Under §75-b, a public employee may disclose confidential matters only to a governmental body.

The purpose of the Whistleblower Law is to correct improprieties within government. The State of New York, in enacting that law, limited permissible disclosure to "governmental bodies" which would presumably have the power to correct the situation. Civil Service Law §75-b (2)(a).

The evidence has shown that Patrick Nichols disclosed details of an internal investigation to two civilians, former Chief Richard Brown, and Scott Mattamore.

CONCLUSION

Civil Service Law §75-b serves a very important function and provides immunity if it is strictly followed. In this case, Officer Nichols did not follow the requirements of that law. If he had and if he had allowed his superior sufficient time to investigate the matter, then the determination of the wrong doing by the Village Board would have been the end of the matter.

Date: September 16, 1993

Respectfully Submitted,
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Services, 1987, 126 A.D.2d 831, 510 N.Y.S.2d 745, affirmed 69 N.Y.2d 970, 516 N.Y.S.2d 659, 509 N.E.2d 354.

200. Record

Town supervisor's determination determining police sergeant to patrolman was not based on an independent review of the record where supervisor did not have a copy of the hearing transcript prior to rendering his determination; evidence indicated that earliest transcript could have been received was 28 days after determination had been made. *Ligresti v. Honors*, 1990, — A.D.2d — 557 N.Y.S.2d 216.

201. Bills of particulars

Bills of particulars, while not required, are available under this section. *Owen*

v. Town Bd. of Town of Wallkill, 1983, 94 A.D.2d 768, 462 N.Y.S.2d 715.

Town board erroneously applied Town Law § 155 in hearing instead of this section, with its additional protection, and thus board's termination determination had to be annulled because of board's failure to give lieutenant available procedural rights, specifically right to demand bill of particulars. *Id.*

202. Transcript, cost of

Nurse employed by county health facility was entitled to reimbursement for cost of transcript of step four grievance hearing. *Stoker v. Tarentino*, 1984, 101 A.D.2d 651, 475 N.Y.S.2d 562, affirmed as modified on other grounds and remanded 64 N.Y.2d 994, 489 N.Y.S.2d 43, 478 N.E.2d 184.

§ 75-b. Retaliatory action by public employers

1. For the purposes of this section the term:

(a) "Public employer" or "employer" shall mean (i) the state of New York, (ii) a county, city, town, village or any other political subdivision or civil division of the state, (iii) a school district or any governmental entity operating a public school, college or university, (iv) a public improvement or special district, (v) a public authority, commission or public benefit corporation, or (vi) any other public corporation, agency, instrumentality or unit of government which exercises governmental power under the laws of the state.

(b) "Public employee" or "employee" shall mean any person holding a position by appointment or employment in the service of a public employer except judges or justices of the unified court system and members of the legislature.

(c) "Governmental body" shall mean (i) an officer, employee, agency, department, division, bureau, board, commission, council, authority or other body of a public employer, (ii) employee, committee, member, or commission of the legislative branch of government, (iii) a representative, member or employee of a legislative body of a county, town, village or any other political subdivision or civil division of the state, (iv) a law enforcement agency or any member or employee of a law enforcement agency, or (v) the judiciary or any employee of the judiciary.

(d) "Personnel action" shall mean an action affecting compensation, appointment, promotion, transfer, assignment, reassignment, reinstatement or evaluation of performance.

2. (a) A public employer shall not dismiss or take other disciplinary or other adverse personnel action against a public employee regarding the employee's employment because the employee discloses to a governmental body information: (i) regarding a violation of a law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety; or (ii) which the employee reasonably believes to be true and reasonably believes constitutes an improper governmental action. "Improper governmental action" shall mean any action by a public employer or employee, or an agent of such employer or employee, which is undertaken in the performance of such agent's official duties without

not such action is within the scope of his employment, and which is in violation of any federal, state or local law, rule or regulation.

(b) Prior to disclosing information pursuant to paragraph (a) of this subdivision, an employee shall have made a good faith effort to provide the appointing authority or his or her designee the information to be disclosed and shall provide the appointing authority or designee a reasonable time to take appropriate action unless there is imminent and serious danger to public health or safety. For the purposes of this subdivision, an employee who acts pursuant to this paragraph shall be deemed to have disclosed information to a governmental body under paragraph (a) of this subdivision.

3. (a) Where an employee is subject to dismissal or other disciplinary action under a final and binding arbitration provision, or other disciplinary procedure contained in a collectively negotiated agreement, or under section seventy-five of this title or any other provision of state or local law and the employee reasonably believes dismissal or other disciplinary action would not have been taken but for the conduct protected under subdivision two of this section, he or she may assert such as a defense before the designated arbitrator or hearing officer. The merits of such defense shall be considered and determined as part of the arbitration award or hearing officer decision of the matter. If there is a finding that the dismissal or other disciplinary action is based solely on a violation by the employer of such subdivision, the arbitrator or hearing officer shall dismiss or recommend dismissal of the disciplinary proceeding, as appropriate, and, if appropriate, reinstate the employee with back pay, and, in the case of an arbitration procedure, may take other appropriate action as is permitted in the collectively negotiated agreement.

(b) Where an employee is subject to a collectively negotiated agreement which contains provisions preventing an employer from taking adverse personnel actions and which contains a final and binding arbitration provision to resolve alleged violations of such provisions of the agreement and the employee reasonably believes that such personnel action would not have been taken but for the conduct protected under subdivision two of this section, he or she may assert such as a claim before the arbitrator. The arbitrator shall consider such claim and determine its merits and shall, if a determination is made that such adverse personnel action is based on a violation by the employer of such subdivision, take such action to remedy the violation as is permitted by the collectively negotiated agreement.

(c) Where an employee is not subject to any of the provisions of paragraph (a) or (b) of this subdivision, the employee may commence an action in a court of competent jurisdiction under the same terms and conditions as set forth in article twenty-C of the labor law.

4. Nothing in this section shall be deemed to diminish or impair the rights of a public employee or employer under any law, rule, regulation or collectively negotiated agreement or to prohibit any personnel action which otherwise would have been taken regardless of any disclosure of information.

(Added L.1984, c. 660, § 1; amended L.1986, c. 899, § 1.)

Historical and Statutory Notes

1986 Amendment. Subd. 2, par. (a). ed provision defining "improper governmental action". L.1986, c. 899, § 1, eff. Aug. 2, 1986, inserted provisions relating to the re- Effective Date. Section effective

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11 Charles Street
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J. Brian McKee
Luddrick M. James, Jr.



(518) 483-4998
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15 October 1993

Honorable James N. Feeley
Mayor, Village of Malone
16 Elm Street
Malone, New York 12953

Re: Village of Malone vs.
Patrick Myron Nichols

Dear Mayor Feeley:

Reference is made to my letter of 13 October 1993, captioned as above.

I forward herewith an unsigned brief received by Federal Express this afternoon which is identified as a brief prepared by Mr. Thomas P. Halley, attorney for the Respondent in cited case, in support of his closing arguments in the 16-17 September 1993 hearing.

I have closely reviewed the aforementioned brief and given full consideration to the statements included therein. There is nothing contained therein which was not already raised during the hearing and, accordingly, I am not compelled to make any change to my memorandum report of 13 October 1993.

Respectfully,

A handwritten signature in cursive script, appearing to read "J. Brian McKee".

J. BRIAN MCKEE

former is li v En 559, official ce in case sub- t er- ossly n v 26 F ent, g a nal- e of ich ses, ten lly ng en he r- of s a d- i- n d- d- 48. Jury questions

have been granted, since plaintiff alleged that defendant intended to make future uses of her nude photographs in a manner unrelated to her arrest story, and since plaintiff had indicated probable success on the merits, possible irreparable injury through the widespread publication of renewed photographs, and a balance of equities in her favor. *Barrows v Rozansky* (1985, 1st Dept) 111 App Div 2d 105, 489 NYS2d 481.

In action arising out of newspaper article related to drug abuse, brought against journalist and owner of newspaper, plaintiffs failed to state viable claim for invasion of privacy since challenged article dealt with newsworthy item and invasion of privacy action must deal with matter published for trade or advertising purposes. *Virelli v Goodson-Todman Enterprises, Ltd.* (1989, 3d Dept) 142 App Div 2d 479, 536 NYS2d 571, 15 Media L R 2447, appeal after remand (3d Dept) 159 App Div 2d 23, 558 NYS2d 314, 18 Media L R 1111 and (not followed by *Anderson v Strong Memorial Hosp.* (NY) 573 NYS2d 828).

Plaintiff stated cause of action against publishing company for violation of CLS Civ R §§ 50 and 51 by use of plaintiff's name in book to furnish "a sense of historical accuracy," and placing of plaintiff's name and quotes from book uttered by character with plaintiff's name and office in prominent place in flap jacket of book and in print advertising, for it could not be said, as matter of law, that readers of novel, described in flap jacket as being "set on the cutting edge between documented fact and masterfully crafted fiction," would believe that work was fictitious and that there was no connection between character in book and plaintiff. *Marcinkus v NAL Pub., Inc.* (1987) 138 Misc 2d 256, 522 NYS2d 1009.

Professional musician who donated his services as band member at charity rock concerts stated cause of action under CLS Civ R § 51 for invasion of privacy for improper use of his name and portrait in commercial reproduction of film and sound track of concerts as record album and videotape since it was not clear that he sold or disposed of his rights under statute or that press release promoting videotape was properly within "newsworthiness" exception. *Ippolito v Ono-Lennon* (1988) 139 Misc 2d 230, 526 NYS2d 877, mod on other grounds (1st Dept) 150 App Div 2d 300, 542 NYS2d 3.

Professional entertainer states valid claim for invasion of privacy under CLS Civil Rights Law §§ 50 and 51 against author of unauthorized biography of plaintiff, through allegations that biography contains false and fabricated reports of plaintiff's statements, impressions, and emotions, and that author knew statements to be false or recklessly disregarded whether statements were false. *Sinatra v Wilson* (1977, SD NY) 2 Media L R 2008.

1992 Supp

graph without obliterating plaintiff's face and without verifying copy received from printer amounted to gross irresponsibility and to substantial deviation from accepted standards of newspaper practice. *Fils-Aime v Enlightenment Press, Inc.* (1986) 133 Misc 2d 559, 507 NYS2d 947.

B. Damages

Court properly awarded plaintiff physician \$50,000 in compensatory damages and \$25,000 in punitive damages in action under CLS Civ R § 51 for unauthorized use of her name, photograph and professional title on advertising calendar where it was shown that defendant (medical services corporation) had acted knowingly. *Beverly v Choices Women's Medical Center, Inc.* (1991) 78 NY2d 745, 579 NYS2d 637, 587 NE2d 275, 19 Media L R 1724, 21 USPQ2d 1313.

51. Injunction

In action brought against publisher and distributor for improper use of plaintiff's name for advertising and trade purposes in violation of CLS Civ R §§ 50 and 51 in connection with publication of novel, plaintiff was not entitled to preliminary in-

junction requiring recall and destruction of all copies of book and any advertisements or promotions referring to plaintiff, and prohibiting use of plaintiff's name in flap jacket, since (1) no violation of statutes had been established, (2) book contained express disclaimer to effect that actions and motivations portrayed were entirely fictitious and should not be considered real or factual, (3) defendants asserted that they would suffer great monetary loss if forced to recall books, and (4) defendants represented that they no longer intended to run advertisements involving plaintiff, which plaintiff did not contradict. *Marcinkus v NAL Pub., Inc.* (1987) 138 Misc 2d 256, 522 NYS2d 1009.

In action under CLS Civ R Law §§ 50 and 51 by fashion model against magazine for its alleged unconsented publication of nude photographs of plaintiff, trial court's preliminary injunction prohibiting further publication, distribution, and sale of issue containing photographs will be reversed in light of failure to show sufficient risk of irreparable harm that cannot be compensated by money damages. *Hansen v High Soc. Magazine, Inc.* (1980, NY App Div) 6 Media L R 1618.

§ 50-a. Personnel records of police officers', firefighters and correction officers

1. All personnel records, used to evaluate performance toward continued employment or promotion, under the control of any police agency or department of the state or any political subdivision thereof including authorities or agencies maintaining police forces of individuals defined as police officers in section 1.20 of the criminal procedure law and such personnel records under the control of a sheriff's department or a department of correction of individuals employed as correction officers and such personnel records under the control of a paid fire department or force of individuals employed as firefighters or firefighter/paramedics shall be considered confidential and not subject to inspection or review without the express written consent of such police officer, firefighter, firefighter/paramedic or correction officer except as may be mandated by lawful court order.

[For subs 2-4, see parent volume]

HISTORY:

Section heading, amd, L 1986, ch 757, § 1, eff Aug 2, 1986.

The 1986 act added at fig 1 "firefighters".

Sub 1, amd, L 1986, ch 757, § 1, eff Aug 2, 1986.

RESEARCH REFERENCES AND PRACTICE AIDS:

44 NY Jur 2d, Defamation and Privacy § 189.

92 NY Jur 2d, Records and Recording § 24.

Annotations:

Validity and construction of statute giving employee the right to review and comment upon personnel record maintained by the employer. 64 ALR4th 619.

Law Reviews:

1982 Survey of New York Law. 34 Syracuse Law Review p. 359.

CASE NOTES

An order dismissing an information charging defendants with petty larceny and criminal trespass in the third degree after the prosecution failed to comply with a subpoena duces tecum

requiring the production of a police detective's personnel file, would be affirmed, since it could not be said that the dismissal of the information was an abuse of discretion, notwithstanding the

Picture Classics, Inc. (1932) 235 AD
7 NYS 800, affd 261 NY 504, 185 NE 711.
ph "Howard Hughes Game", however
was an item of commerce which did not
the level of unrestricted dissemination and
e violated Civil Rights Law §§ 50 and 51.
on against said game was restricted to
s, such as manufacturing, distributing, sell-
in the State of New York and could not
to other jurisdictions. Rosemont Enter-
ic. v Urban Systems, Inc. (1973). 1st Dep't
d 544, 345 NYS2d 17.

n broadcast journalists who appeared in
regarding insulation product were en-
n injunction prohibiting the use of certain
newscast in a film promoting insulation.
Reilly v Rapperswill Corp. (1971) 30
12, 377 NYS2d 488.

ction for a permanent injunction and
plaintiffs seek a temporary injunction to
defendant-publishers from publishing
pictures, names or biographical accounts
ves or purported first person narratives in
n with a book aimed at demonstrating
le poverty and miserable living conditions
n area of New York City. Where the
complained of has been widely known
ough its reprinting in a magazine and
ales and reviews of the book, a tempo-
riction would be more harmful to defen-
shers than its denial would be to the
money damages appeared to be the result
ught." Smith v Goro (1970) 60 Misc.2d
NYS2d 47.

of Plaintiff's Photograph Under

complaint against the defendant.

New York, City of _____
and name and reputation in the

mes hereinafter mentioned, the
l existing under and by virtue of

mes hereinafter mentioned, the
a publication and/or magazine
under the name of _____

l for commercial purposes, did
of the plaintiff, use a portrait
ith _____ [a sordid story of
re _____, with reference to
nected with the photograph of
iated with and dealing in and
ited States Laws]; further, that
t caused numerous copies of its

magazine to be distributed to various newspaper stands, book stores and other places,
for sale to the public at large in the City of _____, vicinity and State of New
York. That said story and photograph appeared in a publication known as _____,
in the _____, 19____, issue on pages _____, _____, _____, and _____
thereof. The name of the story was "_____" by _____.

5. That the photograph inserted in said magazine was not a photograph of
_____, but was in fact and in truth a photograph and picture of the plaintiff.

6. That the use by the defendant of the plaintiff's photograph and portrait, as
aforesaid, has caused her to be shamed, held up to public disgrace, and ridicule in the
community in which she lives; that by reason of such use of photograph of said
plaintiff, she has sustained and will continue to sustain intense mental suffering and
distress.

7. That the use by the defendant of the plaintiff's photograph and portrait as
aforesaid was entirely unauthorized and without the plaintiff's oral or written consent,
and such use by the defendant was entirely unlawful; that by reason of such use,
plaintiff has been damaged in the sum of _____ Dollars (\$_____)

WHEREFORE, plaintiff demands judgment against the defendant in the sum of
\$_____, together with exemplary damages and the costs and disbursements of the
action.

Attorneys for Plaintiff

Address _____
Telephone No. _____

[Verification]

[Adapted from papers in Thompson v Close-Up, Inc. 277 AD 848, 98 S2d 300 (1950)]

§ 50-a. Personnel records of police officers and correction officers

1. All personnel records, used to evaluate performance toward continued
employment or promotion, under the control of any police agency or
department of the state or any political subdivision thereof including
authorities or agencies maintaining police forces of individuals defined as
police officers in section 1.20 of the criminal procedure law and such
personnel records under the control of a sheriff's department or a depart-
ment of correction of individuals employed as correction officers shall be
considered confidential and not subject to inspection or review without the
express written consent of such police officer or correction officer except as
may be mandated by lawful court order.

2. Prior to issuing such court order the judge must review all such requests
and give interested parties the opportunity to be heard. No such order shall
issue without a clear showing of facts sufficient to warrant the judge to
request records for review.

3. If, after such hearing, the judge concludes there is a sufficient basis he
shall sign an order requiring that the personnel records in question be sealed
and sent directly to him. He shall then review the file and make a
determination as to whether the records are relevant and material in the
action before him. Upon such a finding the court shall make those parts of
the record found to be relevant and material available to the persons so
requesting.

4. The provisions of this section shall not apply to any district attorney or
his assistants, the attorney general or his deputies or assistants, a county



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From (Your Name) Please Print MALLEY, THOMAS ATTY		Your Phone Number (Very Important) (914) 452-9120		Department/Floor No.	
Company MALLEY, THOMAS ATTY		Company McKee & James Invest & Sec Svcs		Department/Floor No.	
Street Address 297 MILL STREET		Exact Street Address (We Cannot Deliver to P.O. Boxes or P.O. Zip Codes.) Finney Blvd Rt. 30		City Malone	
City POUGHKEEPSIE		State NY		ZIP Required 12953	

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SERVICES (Check only one box)		DELIVERY AND SPECIAL HANDLING (Check services required)		FEDERAL EXPRESS USE	
Priority Overnight (Delivery by next business morning) 1 <input type="checkbox"/> YOUR PACKAGING 2 <input checked="" type="checkbox"/> FEDEX LETTER 3 <input type="checkbox"/> FEDEX PAK 4 <input type="checkbox"/> FEDEX BOX 5 <input type="checkbox"/> FEDEX TUBE Economy Two-Day (Delivery by second business day) 6 <input type="checkbox"/> ECONOMY		Standard Overnight (Delivery by next business afternoon No Saturday delivery) 51 <input type="checkbox"/> YOUR PACKAGING 52 <input type="checkbox"/> FEDEX LETTER 53 <input type="checkbox"/> FEDEX PAK 54 <input type="checkbox"/> FEDEX BOX 55 <input type="checkbox"/> FEDEX TUBE Government Overnight (Restricted for authorized users only) 46 <input type="checkbox"/> GOVT LETTER 47 <input type="checkbox"/> GOVT PAK 48 <input type="checkbox"/> GOVT TUBE Freight Service (For packages over 150 lbs.) 80 <input type="checkbox"/> TWO-DAY FREIGHT		1 <input type="checkbox"/> HOLD FOR PICK-UP (Fill in Box H) 2 <input checked="" type="checkbox"/> DELIVER WEEKDAY 3 <input type="checkbox"/> DELIVER SATURDAY (Extra charge) (Not available to all locations) 4 <input type="checkbox"/> DANGEROUS GOODS (Extra charge) 5 <input type="checkbox"/> 6 <input type="checkbox"/> DRY ICE Lbs. 7 <input type="checkbox"/> OTHER SPECIAL SERVICE 8 <input type="checkbox"/> 9 <input type="checkbox"/> SATURDAY PICK-UP (Extra charge) 10 <input type="checkbox"/> 11 <input type="checkbox"/> 12 <input type="checkbox"/> HOLIDAY DELIVERY (if offered) (Extra charge)	
		PACKAGES Total Total Total		WEIGHT In Pounds Only Total	
		YOUR DECLARED VALUE DIM SHIPMENT (Chargeable Weight) L x W x H 1 <input type="checkbox"/> Regular Stop 2 <input type="checkbox"/> Drop Box 3 <input type="checkbox"/> On-Call Stop 4 <input type="checkbox"/> B.S.C. 5 <input type="checkbox"/> Station		Emp. No. Date Received By: X Date/Time Received FedEx Employee Number	
				Base Charges Declared Value Charge Other 1 Other 2 Total Charges	
				REVISION DATE 2/92 PART #137204 NCREC 5/92 FORMAT #126 126 © 1991-92 FEDEX PRINTED IN U.S.A.	



RICHARD H. GIRGENTI
DIRECTOR OF CRIMINAL JUSTICE
AND
COMMISSIONER
DIVISION OF CRIMINAL JUSTICE SERVICES

STATE OF NEW YORK
DIVISION OF CRIMINAL JUSTICE SERVICES
EXECUTIVE PARK TOWER
STUYVESANT PLAZA
ALBANY, NY 12203-3764

JOHN W. HERRITAGE
DEPUTY COMMISSIONER
518 457-6101
BUREAU FOR MUNICIPAL POLICE
TRAINING UNIT
518 457-2667
D.A.R.E. PROGRAM
518 457-2666
1 800 SAY-DARE
LAW ENFORCEMENT ACCREDITATION
518 485-1415
INTERNAL OPERATIONS
518 485-7620
TECHNICAL SUPPORT UNIT
518 485-1414
SECURITY GUARD PROGRAM
518 457-4135

February 17, 1994

Chief James Phillips
Malone Police Department
2 Park Place
Malone, NY 12953

Dear Chief Phillips:

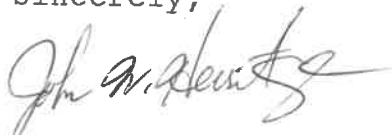
As you know, the New York State Division of Criminal Justice Services, Bureau for Municipal Police is responsible for statewide coordination of the Drug Abuse Resistance Education (D.A.R.E.) program. Responsibilities include training, certifying, decertifying, monitoring and evaluating instructors. They also include maintaining program and instructor integrity.

According to conversations my staff had with you, it is my understanding that Police Officer Patrick Nichols recently served a sixty day suspension (without pay) and loss of one week of vacation pay. The suspension and loss of pay resulted from him being found guilty of forty-two departmental charges. I also understand that a public hearing was held in relation to this matter.

Since Officer Nichols is trained and certified as a D.A.R.E. instructor, I would like to review this incident and related conduct to determine if Officer Nichols' certification as a D.A.R.E. instructor should be continued or revoked. Accordingly, I am requesting copies of all investigative reports, as well as all departmental charges (along with subsequent dispositions) associated with this incident.

Thank you for your cooperation and continued support of the D.A.R.E. program. Please send the requested information directly to Senior Training Technician Alton Hoke, Jr. at the address listed on the previous page. If you have any questions, please do not hesitate to contact me directly at (518) 457-6101 or Mr. Hoke at (518) 457-2666.

Sincerely,

A handwritten signature in dark ink, appearing to read "John W. Herriage", written in a cursive style.

John W. Herriage
Deputy Commissioner

2-4-93

Problems:

PH. Nichols

1. Several Counseling sessions w/ all supervisors
2. Sweat pants incident

Comments to other patrolman & supervisors

1. ~~The~~ I have so much backing now they wouldn't think of taking me off the DARE Program
2. I knew Mall would back down
3. I'll be leaving here next year and I'm going to just laugh in their face

3. Projected man hours for remainder of DARE Program 64 Hours
4. Fail to perform Duty: Schedule of Events for Graduation
5. Meet at station at 12/24 so I could attend class
6. Boxes around station: Reynolds's Job
7. Termination of DARE - advised of rules & regulation.

- 8, Time checked off Duty in logbook
- 9, Leaving DARE projects all over station
- 10, Not getting OK from Reyome on projects
- 11

Asked before advising hours
Personal or Professional

Never stated Free time

Changes of DARE Program (Threat)

Threats of other Duties

Personal Attorney

**MALONE LIONS CLUB
BOX 248
LONE, NY 12953**



January 27, 1994

Police Chief James Phillips
Malone Village Police Dept.
2 Park Place
Malone, New York 12953

Re: Dare Program

Dear Chief Phillips:


Enclosed herein please find a check for the Malone Lions Club donation to the Dare Program. This donation came about after a rather lengthy Board of Directors meeting and it was requested that I summarize the sentiments of our organization regarding the Dare Program, as administered through the Malone Village Police Department.

First and foremost the goals of the Dare Program are laudable and the implementation to date has been very successful. Our main concern over the Dare Program is its recent politicization by the substitution and removal of a very well respected police officer, Patrick Nichols. Officer Nichols earned the respect of his students. This respect verily continues to this date. Unfortunately, with the situation that occurred regarding the Malone Village Police Department and Officer Nichols, some members of the Board of Directors felt our support for the Dare Program should be drastically curtailed if not eliminated, because of the removal of a very effective Dare officer. After thorough discussion, it was determined that our support for the youth of Malone should not be diminished.

This letter is not written as chastisement or public criticism of the Dare Program as administered through the Malone Village Police Department, but merely to express the concern of some of the members of the Board.

In the event that the Dare Program needs additional funds, please do not hesitate to contact our organization.

Very truly yours,


THOMAS H. McCANN
President

POLICE DEPT.
VILLAGE OF MALONE

2 Park Place • Malone, New York 12953 • (518) 483-2424 • FAX (518) 483-2426

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

February 4, 1994

Malone Lions Club
Box 248
Malone, NY 12953

Dear Mr. McCann & Malone Lions Board Members:

I would like to take a moment to express my appreciation for the donation that your organization made to the DARE Program. The Malone DARE Program has been active for many years, thanks to the help of local businesses and organizations. One can only hope that our efforts can guide our youths to a drug free world.


In reviewing the contents of the letter that accompanied your donation, I don't feel it is appropriate at this time for me to comment on the inner workings of the Police Department. I can, however, express my discouragement on the conclusions that some of you made with the limited information that you had. It is unfortunate that some people found it necessary to drag the DARE Program and our local children into a very complex police disciplinary proceeding even though the DARE Program and the children had nothing to do with the incident.

While doing an inventory of the DARE supplies, it was discovered that Officer Nichols had taken it upon himself to stamp the DARE book markers with the Malone Lions Club name and address on it. In looking further, we couldn't find any other organization or business that had received this recognition. The Malone DARE Program has made every effort to give equal and fair recognition to ALL organizations and

businesses that have donated to the program. It is my understanding that Officer Nichols is a well recognized member of the Malone Lions Club. Because of the many people that donate to DARE, I can't allow only your organization to be recognized on literature that is sent home with the children. This is just a minor incident of many that caused the Change in the DARE instructor. Hopefully this will give the board a broader view of this situation.

Again, thank you for your continued support. Enclosed is a copy of one of the book markers.

Sincerely,


James E. Phillips
Chief of Police

cc. Mayor James Feeley
Village Board

POLICE DEPT.
VILLAGE OF MALONE

2 Park Place • Malone, New York 12953 • (518) 483-2424 • FAX (518) 483-2426

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

To: Patrolman Patrick Nichols
From: Asst. Chief Gerald K. Moll
Ref: Memo dated 01-28-93


Ptl. Nichols,

I have reviewed your request of mileage during the DARE Program and regret to inform you that I have to deny your request. As you know, all the schools that you teach in are within the village limits and transportation could have been provided from the patrols. I therefore believe that you used your own vehicle on your own accord and will have to bare the expenses.

Your second request on having the Village of Malone pay for your childrens day care expenses has also been researched. Nowhere, either contractual or rules, can I find anything that places the Village liable for your day care expenses. Unfortunately I must also deny that request.

Chief Phillips and myself have reviewed the schedule for the next two months and found that due to the excessive amount of overtime, and the current budget constraints, we have to make a change in the DARE Program. For the remainder of the DARE Program this year, JAO Reyome will complete the classes. Please get with JAO Reyome to go over various paperwork and make this transition change run as smooth as possible.

Sincerely,



A/C Gerald K. Moll

POLICE DEPT.
VILLAGE OF MALONE

2 Park Place • Malone, New York 12953 • (518) 483-2424 • FAX (518) 483-2426

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

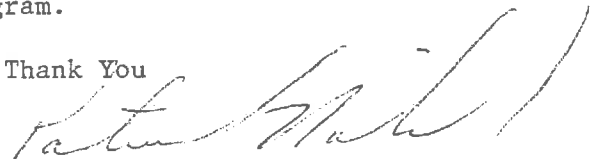
To: Chief Phillips
From: Patrolman Nichols, P
Ref: D.A.R.E.

Chief Phillips,

On this date I was advised in writing and verbally by Assistant Chief Moll that my position as D.A.R.E. Officer was being terminated due to budgetary reasons. On 1-27-93 I was advised by Moll that my hours would change from 6:00 a.m.. He further stated that I would now begin my shift at 8:00 and proceeded to ask me if there would be a personal conflict with the new hours. I advised him that child care cost would increase from \$30.00 monthly to \$120.00 monthly. He stated that as D.A.R.E. Officer I should be willing to make sacrifices without complaint. I brought to his attention the many sacrifices that I felt I was already making and the fact I use my own vehicle as advised by you in the fall of 1991. Later that evening I discussed the options with my spouse in regards to the day care matter as this was an added expense we were not prepared for. I decided that since this would be a sacrifice that required spending my own money in order to conduct the program I felt justified in requesting compensation from the Village as no other member of this Dept. has been required to spend his own money because of a specialized duty. After being advised by Moll I was no longer teaching D.A.R.E. for the year I expressed my concern to him about the impact to the students if I were not aloud to follow through with the graduation. This did not make a difference. I then told him I would disregard the request for day care expenses if it meant I could finish this years program. I had also stated that I felt if I did not request compensation for the program this year that it would be necessary for me each year after this to pay the extra costs,

On the 27th Moll did discuss his concern in reducing overtime but at no time remarked about budgetary constraints by the Village. This issue only became a concern after my request for compensation. At this point I would gladly disregard my previous mentioned request and would also be willing to come to further compromise in regards to the program so that I may finissh the remaing 5 lessons. I believe the few overtimes that would be created in the next few weeks would not cause as mush of an inconvenience to the Village as the impact that will be felt by the students by me not completing the program. After this program is completed then I could understand returning the program back to Officer Reyome. Please advise if this matter can be discussed further so that I may continue with the program.

Thank You



Officer Patrick M Nichols

VILLAGE OF MALONE POLICE DEPT.

2 PARK PLACE
MALONE, NEW YORK 12953
(518) 483-2424

TO: Patrolman Nichols

ADDRESS:

DATE: 01-26-93

SUBJECT: D.A.R.E.

Just to follow up on our conversation, please provide me with your schedule of events for the DARE Program and the projected manhours needed to prepare for such events. I think it maybe to your advantage to use Interrogation Room#2 (near stairs) for your DARE paperwork & test correcting. This is a more isolated room and will give you better concentration on your work.

SIGNED: A/C Moll

A.C. Moll,

The following is a fairly accurate list of what is yet to be completed for the remainder of the 1992-93 D.A.R.E. program. In the case that I have forgotten to list a particular item I will let the supervisor know. PMN

	Hrs. required
1) 1-29-93 Lunch for Role Models from 11:30 to 1:00 at Pizza Hut	1½
2) Complete and hand deliver D.A.R.E. membership certificates to businesses	2 to 3
3) Complete graduation diplomas	4
4) Contact dignitaries and confirm their attendance at graduation	2
5) confirm arrangements for graduation and the party	2
6) Planning graduation agenda	2
7) Preparing graduation speech	2
8) Decorating auditorium and skateland preparation	8 to 10
9) Graduation and party	8
10) Essay Judging	3 to 4
11) Poster Judging	3 to 4
12) Grading Books	4 to 6
13) Lesson Preparation	5
14) Packaging gifts	8

Could very possibly reach about 65 hours in time needed other than actual teaching.



VILLAGE OF MALONE POLICE DEPT.

2 PARK PLACE
MALONE, NEW YORK 12953
(518) 483-2424

TO: A.C. Miller

ADDRESS: _____

DATE: 1-28-93

SUBJECT: _____

Request Compensation by Village for
mileage accrued during time and date for performing
added cost of my car expenses. Please advise

SIGNED: _____

Ed Nichols

POLICE DEPT.
VILLAGE OF MALONE

2 Park Place • Malone, New York 12953 • (518) 483-2424 • FAX (518) 483-2426

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

JANUARY 27th 1993

To: All PERSONNEL

Ref: DEPARTMENT CHANGES

DARE OFFICER:

DARE Program duties have been changed. From this date, JAO Reyome will be teaching the DARE Program to complete this year.

FILING CRs: SHIFT SUPERVISOR or SENIOR PATROLMAN on afternoons will be responsible for categorizing CRs, placing category number in log book, and CARD FILING. Leave CRs on the clipboard. SGT. FOUNTAIN will file CRs and complete all tally logs.

DISPATCHER BOX: SHIFT SUPERVISOR or SENIOR PATROLMAN on morning shift will be responsible for filing ALL paperwork that is placed in the dispatchers box. This will also include accident reports.

OFFICES: The process room should be used when completing arrest paperwork and CRs. Try and keep the front desk open for incoming calls and dispatching. The Interrogation room will be used when questioning a subject in private. Use of JAO Office, Det. Office and Sergeants Office will not be used without prior authorization.

Dept. Meeting: THERE WILL BE A MANDATORY DEPARTMENT MEETING ON FEBUARY 6th AFTER THE WINTER CARNIVAL PARADE.

Any questions or concerns on the above information, see me.

A/C Moll

DISCIPLINARY REPRIMAND

Ptl. Patrick Nichols

Complications in DARE Program

Several complaints about Ptl. Nichols conduct coming from both supervisors and fellow patrolman.

Ref: Not sharing duties
Insubordination

Counseling session w/Nichols dicussing the complaints and if there was any professional or personal reason why he felt that he had to work from 6:00 am. to 2:00 pm. Mon.-Fri.

Ptl. Nichols stated that there was no special reasons why he requested these hours.

Due to case work load and manpower complications Ptl. Nichols was advised that his hours had to be changed to 8:00 am to 4:00 pm.

DARE Officers duites posted 01-27-93

01-28-93 Ptl. Nichols submitted memo requesting compensation for mileage for use of personal vehicle and day care expenses for his children because his hours were changed.

Chief reviewed all paperwork including recent request and found that the complications having Ptl. Nichols in the DARE Program was not going to stop and was causing an adverse effect on the effectiveness & efficiency of the department.

Chief ordered changes in the DARE Program and have JAO Reyome complete the year and place Ptl. Nichols back to his normal working duties.

Change posted 01-28-93

Letter from Ptl. Nichols to Chief in an attempt to disregard his request for compensation for day care and mileage. + stay w/DARE

Request denied by the Chief

Phone calls received at station from a few teachers concerned about having JAO Reyome complete the class

Phone calls to Trustee Robert Frasier on concerns having Ptl. Nichols taken off the DARE Program

Discussed matter w/Chief and it was decided to leave Ptl. Nichols on the working schedule and allow him to teach DARE classes if there was a full shift and no conflict with the duties as a patrolman.

Discussed above with Ptl. Nichols and he stated that he was willing to teach some classes.

Feedback from several patrolman and supervisors on comments made by Ptl. Nichols after your discussion.

1. I have so much backing now, they wouldn't think of taking me off the DARE Program
2. I knew Moll would back down
3. I'll be leaving here next year and I'm going to just laugh in their face

Ptl. Nichols contacted Robert Frasier to discuss the inner workings of the DARE Program

Ptl. Nichols asked Chief for a meeting to discuss the DARE Program. Meeting set up for 02-04-93

Chief call me and requested my presence at this meeting

Double checked with supervisors to reaffirm their claims on problems that they are having with Ptl. Nichols

02-04-93 Meeting (Chief, Ptl. Nichols and myself)

Ptl. Nichols asked that I not be present during this meeting

Request denied by Chief

Ptl. Nichols was advised of his recent conduct, insubordinate comments.

Ptl. Nichols given a copy of several pages of the department rules & regulations and following sections were explained.

- 10.1.27
- 10.1.40
- 10.1.77
- 10.1.78

Ptl. Nichols was advised by myself that his conduct over this matter was not acceptable and further that if the Chief ordered a personnel investigation, I would be conducting the investigation and from what information that I have at this point, my recommendation would be a two week suspension.

2-4-93

- 10.1.17 Using coarse, profane or insolent language to any civilian while on duty
- .18 Failure to treat any person civilly and respectfully, while on duty
- .19 Willful maltreatment of any person.
- .20 Knowingly make a false report, written or oral.
- .21 Failure to wear the regulation uniform when on duty or on official business unless otherwise authorized by the Chief of Police or Commanding officer.
- .22 Failure to maintain a neat and clean appearance of self, uniform and equipment.
- .23
- .24
- .25 Receiving or attempting to receive a fee, gift, present or other thing of value from a person under arrest or from someone else on behalf of the arrested person.
- .26 Receiving, soliciting or attempting to solicit a bribe in any form.
- X .27 Publicly criticizing the official actions of a Department member. 04
- .28 Disseminating or releasing any information contained in a Department record except in conformance with Department procedures.
- .29 Failure to pay a just indebtedness within a reasonable time.
- .30 Failure to identify self by name, rank and shield number when requested.
- .31 Failure to seize, record, process and dispose of recovered or prisoner's property in conformance with Department orders and procedure.
- .32 Failure to handle stray or dead animals in conformance with Department orders and procedure.

10.1.33 Failure to notify a Superior Officer that a member of the Department is violating a rule or order of the Department.

.34 Deliberate violation of Civil Service Laws or Regulations pertaining to police management and control.

.35 Possessing or transporting when on duty or on Department property any intoxicating liquor, dangerous drug or narcotics except when in performance of police duty or when authorized by competent medical authority. In the latter instance the Chief of Police will be notified in writing of the need for such prescription by the member concerned.

.36 Defacing or neglecting to protect and preserve Department property.

.37 Failure to obey Department orders concerning other employment, occupations or professions.

.38 Engaging directly or indirectly in the forbidden ownership, maintenance or operation of a taxi cab, tavern or retail liquor establishment.

.39 Allowing the publication of any photograph of oneself in the regulation uniform which advertises any commodity or commercial enterprise without the permission of the Chief of Police.

.40 Communicating or corresponding with other police agencies or individuals concerning police matters except as provided by departmental procedures.

.41 ~~Participating in, or~~ contributing to, any partisan political activity or campaign.

.42 Failure to keep Department vehicle in public view while assigned to general patrol duty except when authorized by a Superior Officer.

.43 Concealing Department vehicle for the sole purpose of apprehending traffic violators except when authorized by a Superior Officer.

.44 Permitting any person not on official business to ride in a Department vehicle unless specifically authorized.

- ~~10.1.69~~ Accepting any food or beverage or other valuable consideration without cost or at reduced cost at any time because of his official position as a member of the Department.
- ~~70~~ Receiving any gift, present or gratuity from any subordinate.
- ~~71~~ Giving any gift, present or gratuity to another Department member or a member of his family without the specific approval of the Chief of Police, excluding donation not to exceed five dollars given in honor of retirement or to hospitalized or deceased members, provided approval of the Chief of Police is obtained for the donations. Party, dinner and entertainment fees will be paid for individually by persons attending without prior collection through Department channels.
- .72 Failure to submit a written report that he is under investigation by another law enforcement agency to the Chief of Police within 24 hours of becoming aware of such investigation.
- .73 Refusal to sign an immunity waiver when so ordered in a matter connected with his official duties.
- ~~74~~ Refusal to testify on the grounds of possible self-incrimination.
- .75 Participation by Department members or urging the participation by other members in any strike, slow-down, or other concerted action which is in any degree adverse to the maintenance of the public safety or welfare.
- .76 Affiliation with any organization or body, the constitution or regulations of which would in any way exact prior consideration, and prevent him from performing his Departmental duties. However, membership in any union or other organization in connection with and relating solely to approved secondary employment of members of the Department and required membership in military reserve units are specifically excepted from this regulation.
- (.77) No member of the Department may seek the influence or intervention of any person outside the Department for the purpose of personal preferment, advantage, transfer or advancement.

Feb 2, 3, 4

JAO

Reyome

Feb 9 (Dav's)

10:45 - 11:30

JAO Reyome

11:30 - 12:15

JAO Reyome

1:15 - 2:00

PTL Nichols

Feb. 10 (Flanders)

ALL CLASSES

JAO Reyome

Feb. 11 (Holy Family)

9:30 - 10:30

JAO Reyome

10:30 - 11:30

JAO Reyome

(St Joseph's)

12:30 - 1:30

PTL Nichols

1:30 - 2:30

PTL Nichols

Feb. 16th

(Davis)

ALL CLASSES

JAO Reyome

Feb 17th

(Flanders)

9:45 - 10:30

PTL Nichols

10:30 - 11:15

PTL Nichols

11:15 - 12:15

PTL Nichols

Feb 18th

(Holy Family)

9:30 - 10:30

PTL Nichols

10:30 - 11:30

PTL Nichols

(St Joseph's)

12:30 - 1:30

JAO Reyome

1:30 - 2:30

JAO Reyome

Feb. 23 (DAVES) 10:45 - 11:30 PH. Nichols

11:30 - 12:15 PH. Nichols

1:15 - 2:00 JAD REYOME

Feb 24 (Flanders) ALL CLASSES JAD REYOME

Feb 25 (Holy Family) ALL CLASSES JAD REYOME

Graduation

A.C. Moll,

As requested the following is the agenda for the D.A.R.E. graduation. The ceremony will begin at the middle school at 9:15 a.m. and will open with Maury Fountain and Jason Savage singing Forever Young by Rod Stewart. I will then welcome all in attendance and proceed with the pledge. Guest speakers will be Thomas Helmer, Chief Phillips, Mayor Gokey, Melissa Anderson and Brian McKee. Awards for Essays, Posters and Excellence will be given out. The diplomas will be presented followed by my speech to the students. As I pass through the rows of students the singers will be ending with Wind beneath my wings and The greatest Love of All.

~~I would like to request I be allowed to conduct the final classes voluntarily, as this is the time I usually judge the essay's. The students read them in this class which gives me an opportunity to narrow down to three finalist per class. Otherwise I am going to have to bring them all home and read them individually which will take awhile. This is the week of the 23rd, 24th and 25th. Please advise.~~



Ptl. Nichols,

I see no problem with the agenda but I don't see JAO Reyome's name mentioned. I want JAO Reyome actively involved in the preparation of the graduation and the ceremony itself. Judging, speeches and diplomas being handed out will involve both of you. Work this out with JAO Reyome in order to help you with the work load.

A/C Moll

Problems with Nichol's in DARE Program

Several complaints from supervisors on Nichols conduct during the DARE Program.

1. Not advising supervisor of his activities during their shift.
2. DARE projects left all over the station
3. Not being available when needed for assistance on other police duties.
4. not changing into uniform when reporting for duty at 6:00 am. sitting at from desk in sweat pants and stated that he was teaching the physical education class at 9:00 am. Not performing any police duties for three hours.
5. Refused to give schedule of events for graduation when requested by a supervisor
6. Refused to meet with supervisor at station at 12/N in order to have supervisor attend DARE Class
7. Refused to comply with order to go on foot patrol on Main St. and walked over to Flanders School to introduce himself to teachers after being told to go on foot patrol on Main St.
8. Made comments to other patrolman that if it wasn't for the DARE Program he would quit this job.
9. Made comments to other patrolman that the Chief wouldn't think of taking him off the DARE Program because he had so much backing now.
10. Projected man hours that were submitted to Ass't Chief for the remainder of the DARE Program way off base to hours actually needed.

A.C. Moll,

The following is a fairly accurate list of what is yet to be completed for the remainder of the 1992-93 D.A.R.E. program. In the case that I have forgotten to list a particular item I will let the supervisor know. PMN

	Hrs. required
1) 1-29-93 Lunch for Role Models from 11:30 to 1:00 at Pizza Hut	1½
2) Complete and hand deliver D.A.R.E. membership certificates to businesses	2 to 3
3) Complete graduation diplomas	4
4) Contact dignitaries and confirm their attendance at graduation	2
5) confirm arrangements for graduation and the party	2
6) Planning graduation agenda	2
7) Preparing graduation speech	2
8) Decorating auditorium and skateland preparation	8 to 10
9) Graduation and party	8
10) Essay Judging	3 to 4
11) Poster Judging	3 to 4
12) Grading Books	4 to 6
13) Lesson Preparation	5
14) Packaging gifts	8

Could very possibly reach about 65 hours in time needed other than actual teaching.



Husband, Officer Did Right Thing

To the editor:

In regards to the public hearing concerning my husband, Patrick Nichols, I wish to personally thank everyone who has supported us through the last six weeks or so. Your caring and concern, shown in several ways, has greatly helped to ease the difficult times and reinforced our reasons for keeping Malone our home.

My husband is a caring, honest, faithful man, dedicated to his career and the other officers whom he serves with. Mr. Stewart and Chief (James) Phillips have accused my husband of acting with malice and for personal gain. Just what have we gained from this? My husband's career and personal values have come under fire, our family is concerned for their personal safety, our financial situation has been made unstable and uncertain, and his relationship with co-workers had been jeopardized.

Those of you who know my husband, know that he is not a "problem cop." If my husband is viewed as a "problem cop" it is because he has problems with wrongdoing within the department and allowing them to be buried. He has a problem with the motto of the police department being "To Protect and Serve" when laws are being blatantly broken. Patrick's actions in this matter were not self-serving, as the retaliation against him obviously was. Patrick can't make waves as long as he is suspended, and I'm sure intimidation was the deciding factor for this suspension.

Just to clarify one point brought out in this public hearing. The prosecution accused my husband of violating the rules and regulations during the DARE incident. Well, Mr. Stewart you accused the wrong person. I was the one who went public with the situation, contacting parents and teachers — unbeknownst to my husband. They contacted trustee Bob Fraser, who, in turn, contacted us.

During the initial meeting, Patrick was under a "gag order" (again allowing the police to hide behind their rules and regulations), making Patrick unable to talk about the turn of events, but I could.

It was obvious the actions taken by the chief and/or assistant chief were unwarranted and unjustified — I say this because during the course of this situation, there were several different reasons given for the hour-switching, ranging from excessive overtime, insubordination (which was unproven — there was nothing to indicate this in Patrick's personnel file) and complaints from other officers about Pat's "easy hours."

We weren't and still aren't sure what the problem was. These were hours assigned to my husband by the chief to prevent Patrick from receiving the excessive overtime as had been realized the previous year and to enable Patrick to instruct the program to the best of his ability. After donating as many

hours as he could at his family's expense and having to fight for everything he got from the department, my husband drew the line and questioned the need to switch. At that point, he was removed from the program, much to Patrick's devastation.

Within 24 hours, JAO Reyome was in the schools to announce the change — jeopardizing the bond that developed between Patrick and the children. My husband, based on comments made to me from teachers, parents and children, is a fabulous DARE teacher, spending lunch hours and recesses interacting with the children — always caring and concerned for his DARE kids. It's as if we not only have two immediate children, but we have almost 500 in our extended family. Assistant Chief (Gerald) Moll and Chief Phillips didn't once consider the feelings of these children, nor did JAO Reyome.

As a certificate DARE instructor, JAO Reyome should have placed the bond Patrick had developed with the children ahead of his own ego and stepped aside.

If my husband is guilty of anything in the DARE situation it is having a wife who supports him, who has a big mouth, and who isn't intimidated by the rules and regs of the police department.

For several months earlier this year, my husband was distracted and distant, deep in his own thoughts. Although I tried several times to draw out what was bothering him, he refused to discuss it with me. The only comment he eventually made was that something had happened at the station that he felt was morally wrong.

My husband actually feared that if he did his job and reported the improper conduct, he would be retaliated against. The effects of the DARE incident were still very vivid in his mind. But after a great deal of soul searching he chose to do the right thing, and filed his report, which resulted in his suspension. Despite the stress and pressure, the suspension has placed on us, I am so very proud of my husband for doing the right thing. It has allowed us to walk with our heads held high.

The disrespect referred to Chief Phillips that he cleared Patrick has brought to the surface existed long before this situation. The people in this area are not blind or deaf, many have lived here all their lives, and the workings of the police department are no surprise to them.

There have been many incidents of improper conduct involving the police department reported to Patrick and I over the course of his suspension but the general feeling is, "what would not be mishandled or buried completely like they usually are. We need a department that is by law, not able to investigate their own. That presents too much of a conflict of interest, and personal feelings play too much of a part in any internal investigation.

And we need to have a police department that does not retaliate or punish its officers for reporting wrongdoings within the department.

I personally feel the village was misinformed and pressured to act quickly on this matter, suspending the wrong person. I firmly believe my husband has been made the scapegoat in all this — simply because he filed a complaint concerning the mistreatment of a person in police custody and the official misconduct of a supervisor. He is being punished for upholding the law, that he swore to uphold when he became an officer, while some of the police department supervisors, who are the real problem, are still secure in their positions.

Again, thank you one and all for your continued support. We appreciate the warmth and caring shown to Patrick, myself and our children. There are far too many people to mention, but your well wishes and thoughts have been a great source of comfort to us during this time. You have helped enforce the feeling that what Patrick did was right.

Betsy Nichols
Malone