

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

Village of Malone,

Complainant,

v.

Patrick Nichols,

Respondent.

CHARGES

12/31/93

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 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.

EXHIBIT J

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

Answers to Notice of Petition Ptlm. Nichols against Village
of Malone
Index No. 93-755
Chief Phillips Notes

- #4. 12-02-91 Reprimanded incident with Asst. Chief Marlow.
04-17-92 Reprimanded by Chief Phillips causing over
\$500 in unauthorized Over Time.
08-30-92 Insubordination with Sgt. Moll Ref: Log Book.
01-28-93 Taken off DARE program due to disciplinary
problems.
02-04-93 Two Hour council session W/Asst Chief Moll &
Chief Phillips where Ptlm Nichols was
informed of several violations of Rules of
Conduct he reviewed rules and said he
understood them.
- #5. Ptlm Nichols was not present at the station when
Mattimore was in holding cell.
- #7. Mattimore lied under testimony. Investigation conducted
In regards to Asst. Chief Moll and the bleach incident.
Reviewed by Village Attorney and Attorney Brian Stewart
and Village Board there was no wrongdoing found by any
of them to warrant any type of disciplinary action
being taken against Asst. Chief Moll. Ptlm Nichols was
not present during the incident and further Mr.
Mattimore has never filed a complaint with this
department.
- #8. Same as # 7
- #10. Ptlm. Nichols not authorized to conduct any
investigation of this sort clearly violates rules and
regulations Ptlm. Nichols waited 102 days after
incident to report.
- #11. Ptlm. Nichols informed other Officers the week that he
was given a letter of reprimand for a complaint against
himself and a fellow officer in regards to another
incident that happened at the K of C on June 1, 1993.
This was during the week of July 1, 1993 just before
Ptlm. Nichols made me aware of it and told officers
that he was going to get certain officers.
- #12. Sgt. Fountain informed Asst. Chief Moll of this on July
12, 1993. Sgt. Fountain never informed me I stopped in
the office when Sgt. Fountain was talking with Asst.
Chief Moll and heard the name Mattimore but I had no

idea what they were talking about.

- #13. I served Ptlm. Nichols with a disciplinary letter of reprimand on July 13, 1993 in regards to the K of C incident that was received on the 1st of June 1993. Ptlm. Nichols was well aware of this as he was given a letter from Asst. Chief Moll a week prior to my giving him his letter saying basically what my letter said to him I had instructed Asst. Chief to give it to him because I was on Vacation and would not be back until the 13 of July. After Ptlm Nichols was given the letter of reprimand he then told me that he had something for quite a while and thought that this was a good time to give it to me. Ptlm. Nichols then left my office and came back about 2 hours with the complaint against the Asst. Chief in regards to the Mattimore incident.
- #14. The computer printout was just notes that I had jotted down I had already talked with all parties that were involved in the incident and all the information that I had collected contradicted what Ptlm. Nichols had put into his statement.
- #17. The DA did not testify and this is Ptlm. Nichols saying what the DA said and not the DA saying it. I talked with the DA about the incident the ADA was one of the attorneys that said there was no wrong doing on Asst' Chief Moll's part.
- #27. I sent the report to the Village Board along with my recommendations and left the final determination to them in regards to the investigation. A/C Moll was brought into executive session to only get his permission on releasing the information to the news media.
- #28. The bleach incident and Ptlm Nichols disciplinary problems are not related in any way Ptlm. Nichols testified that he was not even aware of the section 75 b until after he was dismissed.
- #35. Brian McKee was a part time employee of the Malone Police Department in 1962. He is the retired Director of the US Naval Investigative. There are no members on the department who ever worked with Mr. McKee.
- #36 to #46 I wasn't aware of the letter in question until the hearing. The rules and regulations clearly define what an officer can except and what they can't except. The letter looks like it was a letter of appreciation and in checking the complaint I find that Officer Nichols was one of the Officers that responded to the complaint. Former Chief Brown never posted the letter on the bulletin board so everyone could see it he made

copies and gave to the officers that responded to the alarm, as a letter of commendation. No officer ever took Mr. McKee up on his offer as it was in violation of the rules and regulations and as such would of been charged.

- #47 Ptlm. Nichols never informed me of the Mattimore incident until July 13, 1993 after I had served him with a letter of reprimand in regards to another incident.
- #48 I was never informed that Ptlm. Nichols was conducting any type of investigation if I had been aware of it I would of ordered him to stop and turn over whatever information that he had to me.
- #49. The other supposedly cover up was investigated by the DA's Office and punishment was imposed on the Officer in question.
- #50. Ptlm. Nichols talking to Mr. Hanna was in direct
to violation to the department rules and regulations.
#54
- #61 The only information that was released to the press was from Ptlm. Nichols. Every time that they asked me for information I told them I could not comment.

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

May 31, 1994

Mr. John Lawliss
162 Margaret Street
Plattsburgh, New York 12901-1838

Re: Hearing - Patrick Nichols

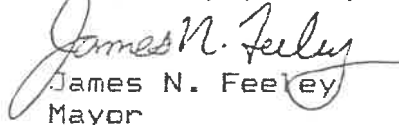
Dear Mr. Lawliss:

This letter will confirm our telephone conversation of May 31, 1994, in the matter of the Village of Malone vs Patrolman Patrick Nichols Hearing.

Patrolman Nichols, through his attorney, has requested and was granted an adjournment in his Civil Service Hearing, at which you are the designated Hearing Officer.

The new date and time of said hearing is now scheduled for June 16, 1994, at 9:30 a.m. in the Malone Village Meeting Room at 14 Elm Street, Malone.

Sincerely yours,


James N. Feeley
Mayor

JNF:ejb

cc: Brian Stewart, Esq.

matter will be terminated if Officer Nichols agrees to resign from his position with the Malone Village Police, grants a General Release to the Village of Malone, its officers and employees, and if he agrees never to seek reemployment with the Village of Malone in any capacity.

If Mr. Nichols accepts this resolution prior to 5:00 p.m. Tuesday, the Village will agree to pay him all unreimbursed vacation, comp days and personal days. I understand that this amounts to \$4,480.48.

Very truly yours,

HUGHES & STEWART, P.C.

A handwritten signature in cursive script that reads "Brian S. Stewart". The signature is written in dark ink and is positioned above the printed name.

Brian S. Stewart

BSS/mew

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

June 6, 1994

Dale Lamitie

F
M

Dear Dale:

The hearing for Patrick Nichols will be held Thursday, June 16th commencing at 9:30 a.m. It will take place at the Village Office on Elm Street. I will need you there at 9:30 a.m. I will try to get you in and out as quick as possible, but I can not say with certainty how long you will be there.

If you have any questions, please feel free to give me a call.

Very truly yours,

HUGHES & STEWART, P.C.

Brian S. Stewart

BSS/mew

THOMAS P. HALLEY

ATTORNEY AT LAW

June 14, 1994

287 MILL STREET
POUGHKEEPSIE, N. Y. 12601
(914) 462-8120
FAX (914) 462-8192

Brian S. Stewart, Esq.
Hughes & Stewart
31 Elm Street
POB 788
Malone, NY 12953

VIA FAX 518-483-4885

RE: Matter of Patrick Nichols

Dear Mr. Stewart:

This is in reply to your letter of June 13, 1994.

Officer Nichols' rejects the offer and proposed resolution contained in that letter.

Very truly yours,



THOMAS P. HALLEY

THOMAS P. HALLEY

ATTORNEY AT LAW

June 14, 1994

287 MILL STREET
POUGHKEEPSIE, N. Y. 12601
(914) 452-2120
FAX (914) 452-2192

Brian S. Stewart, Esq.
Hughes & Stewart
31 Elm Street
POB 788
Malone, NY 12953

VIA FAX 518-483-4055

RE: Matter of Patrick Nichols

Dear Mr. Stewart:

This is in reply to your letter of June 13, 1994.

Officer Nichols' rejects the offer and proposed resolution contained in that letter.

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

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

June 13, 1994

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

RE: MATTER OF PATRICK NICHOLS

Dear Tom:

I previously sent you a letter detailing the sections of the March 17th transcript wherein I thought Patrick Nichols had lied. In addition to those sections, I believe the following sections of the transcript constitute lies on the part of Office Nichols:

Page 174, lines 11 through 14

Page 174, lines 16 through 17

Page 175, lines 15 through 17

Page 176, lines 8 through 10

Page 180, lines 2 through 6

Page 181, lines 12 through 13

Page 181, lines 15 through 16

Page 181, lines 24 through 25

Page 182, lines 2 through 7

Page 182, lines 19 through 24.

Officer Nichols' perjury was referred to the Franklin County District Attorney. The District Attorney obtained an Order of Court transferring the matter to the District Attorney of Clinton County for prosecution. I have been in contact with the District Attorney of Clinton County and I have obtained her permission to convey to you an offer that the criminal investigation in the

EXHIBIT N

2-23-94

PROBLEMS SINCE PATROLMAN NICHOLS HAS RETURNED TO WORK

- 11-20-93 Returned to work
From 11-20-93 to 12-13-93 Ptl. Nichols issues 8 7
traffic tickets. 6 of the tickets are to out of
town residents. 7
- 12-11-93 Ptl. Nichols chases a out of town vehicle down
Rt#37 out of the Village without notifying the Desk
Sergeant. Direct violation of rules and
regulations.
- 12-13-93 Ptl. Nichols's wife, Betsy, files a complaint
against Sgt. Ritchie in regards to an accident that
she witnessed and Ptl. Nichols investigated.
Mrs. Nichols signed complaint sights actual
department policy sections that she feels Sgt.
Ritchie violated. Sgt. Ritchie is cleared of any
wrong doing.
- 12-15-93 Ptl. Nichols is having coffee with Village Trustee
Greg Dame. Mr. Dame admits to Mayor Feeley that
Ptl. Nichols did discuss the complaint filed
against Sgt. Ritchie and also discussed setting up
a civilian review board. This was an unauthorized
meeting with a Village Official. The same thing
that he was found guilty on several counts and was
off suspension less than 25 days.
- 12-16-93 Improper entry made in the log book by Ptl.
Nichols.
- 12-18-93 Ptl. Nichols files his appeal on the charges that
he was found guilty on. His appeal contains
documents and newspaper articles that were not used
in the original hearing. Local news media reports
appeal bringing more discredit to the police
department.
- 12-28-93 While conducting inventory of the DARE literature,
many DARE Leaflets were located with the Malone
Lions Club stamp on them. Several other
organizations and businesses donated the same &
more to the DARE Program but only the Malone Lions
Club was recognize on these leaflets. Ptl. Nichols
is an active member of the Malone Lions Club and
there is information that the club sold
personalized children books from Ptl. Nichols
private business.

- 12-29-93 In reviewing the accident reports, Ptl. Nichols seems to have a very slanted enforcement on IN TOWN and OUT OF TOWN RESIDENTS.
- 01-??-94 Ptl. Nichols's 11 year old daughter submits a Letter to Editor expressing her discontent of not having her father teach DARE. The letter discussed several members and an unknown member posts a copy of the letter in the locker room. On the copy are comments stating that this is the lowest thing this department has ever seen.
- 01-??-94 Another Letter to the Editor is in the Malone Telegram from Michael Fournier supporting Ptl. Nichols and wanting him back in the DARE Program. Fournier has been arrested by our department several times in which one arrest results taking a AK-47 from his possession. Fournier was seen at Ptl. Nichols residence just prior to this letter in the Telegram and has been seen there several time since then.
- 11-27-94 Malone Lions Club sends a \$500.00 donation for the DARE program. Along with the check is a letter stating their discontentment over not having Ptl. Nichols teaching DARE and the way the situation was handled. Further discredit to the department.
- 02-07-94 During a DWI arrest, Ptl. Mulverhill conducts breath screening test at the scene and drops a small plastic mouth piece on the ground. This apparently discusses Ptl. Nichols and he brings it to the attention of Ptl. Mulverhill while he and Ptl. Fountain were taking the subject into custody. Ptl. Nichols diverts Ptl. Mulverhill's attention and states that it doesn't look good dropping the mouth piece on the ground. This is done in front of a New York State Trooper and a college intern. Ptl. Nichols feels that Ptl. Mulverhill's conduct was inappropriate and unprofessional but neglects to advise his shift supervisor.

02-14-94 Ptl. LaChance advised Ass't Chief that Ptl. Nichols attempted to release paperwork on a pending investigation to an outside agency without authorization. Ptl. Nichols attempted to release the information to a volunteer, Jackie LaPlante, at Val Haven. LaPlante was an supporter of Ptl. Nichols and wrote a Letter to the Editor on his behalf. Ptl. LaChance stopped Ptl. Nichols from releasing information without authorization.

02-23-94 Ptl. Nichols found sitting in the patrol car in front of Dr. Gorman's Office during the weekly abortion protest by Mayor Feeley. Sgt. Ritchie had to instruct Ptl. Nichols to stand on the sidewalk. This detail has been going on for 4 years and Officers have been instructed on the requirements for this detail.

VILLAGE OF MALONE POLICE DEPT.

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

TO: Chief Phillips ADDRESS:

DATE: 11-26-93 SUBJECT:

I have reread the rules and regulations and understand them. PMN

SIGNED: 

Chief,

Sgt. Ritchie called me at home and advised that for the past two nights vehicles have been vandalized near International Border. Apparently he got an irate call from the owner of Flemings Furniture (victim of criminal mischief) and that this subject also called the Mayor. Mayor called Sgt. Ritchie and asked what could be done. I talked with the Mayor and authorized 8 hours overtime for last night ONLY. We posted a man inside International Border.

After setting this up, the Mayor then went on to say that when the owner of Flemings called him, he started stating his comments on our police department, his dissatisfaction, and how Pat Nichols was suspended for doing the right thing. I suggested to the Mayor that these comments and future comments like this should be noted in order to show the reputation damage done by the actions of Nichols.

I believe that this little ad that Nichols put in the paper may hurt him considerably if the Village decides to go ahead with your new charges. This shows that Nichols is admitting to getting the public support he was unauthorized to solicit.

A/C Moll

A Special Thanks

We wish to express our sincere thanks to the many friends, relatives and co-workers who have come to our aid in the way of moral and financial support. During our recent and present difficult times your phone calls, short visits, gifts, money and positive comments have helped a great deal in enabling our family to continue without great loss. The overwhelming positive response from the community will indeed help us to whether the remaining subsequent processes. We thank you from deep within our hearts.

Pat, Betzy, Holly & Nathan Nichols

MALONE VILLAGE POLICE DEPARTMENT

JAMES E. PHILLIPS
CHIEF OF POLICE

GERALD K. MOLL
ASSISTANT CHIEF

DEPARTMENT POLICY

REF: HIGH SPEED PURSUIT DRIVING

DATE: 05-01-93

All Officers should understand that pursuit driving at high speeds is inherently dangerous to you, to the occupants of the pursuit vehicles and others. It can result in a serious accident causing injuries, death and the destruction of property. A reckless regard for the safety of others may subject you, as the pursuit driver, to criminal charges or a civil damaged lawsuit.

In deciding whether to pursuit a vehicle, you must use good judgment and carefully consider the following factors in evaluating whether the risks of pursuit are warranted.

1. Availability of alternate means to stop a vehicle or apprehend a suspect (s).
 - a. You may have sufficient information to secure an arrest warrant for later execution.
2. The safety of other motorist and pedestrians.
3. The nature of the offense.
 - a. A traffic infraction does not justify the risk of a high speed pursuit.
 - b. If an occupant of the fleeing vehicle is known to be wanted for a felony or serious misdemeanor, high speed pursuit driving MAY be justified.
4. The road and weather conditions.
5. The traffic conditions.
6. The time of day.
7. The kind of vehicle involved.
8. Your knowledge of the area.

9. The population density of the area.

Except in an extreme emergency, DO NOT pursue a vehicle when you are transporting passengers or prisoners.

When you decide to pursue a vehicle, conduct the following:

1. Use ALL emergency lights and siren.
2. Attempt to obtain a physical description of the driver and the vehicle.
3. Obtain permission from the on duty supervisor to engage in pursuit.
4. Notify the desk officer of the pursuit and keep him informed of your location, direction of travel and all other pertinent information.

During the pursuit:

1. Attempt to keep the vehicle in sight.
2. Continually reevaluate the risks of continuing the pursuit
 - a. If at some point you consider the risk to be unacceptable, TERMINATE THE PURSUIT.
3. Unless it is absolutely necessary, AVOID physical contact with the pursuit vehicle.
4. DO NOT fire a weapon from or at a moving vehicle unless the occupants of the other vehicle are using deadly physical force against you or another person.
5. Be alert to the possibility that the driver may deliberately abandon his vehicle in your path or attempt to run you off the road.
6. Do not drive your patrol vehicle under full acceleration for long periods without periodically releasing the accelerator.

Desk Officer:

1. Discontinue other non-emergency activities, and assist the officer(s) pursuing the vehicle.
2. Immediately notify an on duty supervisor so that he can authorize the continuance or terminate the pursuit.

December 14, 1993

Dear Mr. Fraser:

On December 13, 1993 at approximately 12:50 pm, while leaving the Wead Library, I witnessed an accident on the corner of Elm and Morton Streets. Within seconds of the accident, I drove through the Elks Club driveway to report it to the Police Department. When I arrived at the Station, I entered the inside lobby and waited because Sgt. Wm. Ritchie was at the desk dispatching a squad car to the scene. (Someone else had phoned it in, I assume.) While he was dispatching the car, he looked up, and I was met with a look of thorough disgust. Without taking the time to inquire as to why I was there, he immediately turned his back to me when he was finished, crossed the room and continued to file paperwork, completely ignoring me. NEVER ONCE did this man acknowledge my presence. I waited 1-1/2 minutes, but when it was obvious he wasn't going to acknowledge me, I left the Station - furious.

As soon as I arrived back at my office, I phoned Chief Phillips to inform him of the treatment I had just received from Sgt. Ritchie. The Chief was polite and courteous, but his only response was that "there are a lot of bad feelings" (because of my husband's Public Hearing). I explained to the Chief that I was at the Station as a citizen reporting an accident, not on personal business, but that Sgt. Ritchie never gave me the opportunity to explain that fact. The Chief offered to list me as a witness to the accident and dismissed my complaint against Sgt. Ritchie without any hesitation.

I found Sgt. Ritchie's behavior deplorable, unprofessional, and totally unacceptable as a public employee. His personal feelings obviously are overruling his professionalism, and this is not the type of conduct that should be in a Supervisory capacity.

Based on the events I have just described, I wish to file a personnel complaint based on the Rules and Regulations of the Malone Police Department violated by Sgt. Ritchie. I realize, all too well, that Ass't Chief Moll is usually the person in charge of investigating all personnel complaints, but I feel given the prior situation with Patrick, any complaints made to A/C Moll or the Chief, especially from me, would fall on deaf ears. I therefore am formally making them to you, as a member of the Police Committee of the Malone Village Board.

Section 6.2.2 Perform assigned duties in a professional manner.

Section 10.1.9 Incompetency or inefficiency in the performance of duty.

Section 10.1.18 Failure to treat any person civilly and respectfully.

If this man, (who implicated himself in the Public Hearing against my husband, Patrick Nichols), cannot separate his professional obligations from his personal feelings, then he should be assigned different duties. If he is so consumed with his "get even" attitude and is capable of treating me, a citizen and taxpayer, who was at the Station under legitimate circumstances, with such discourtesy, disrespect and arrogance, it makes one wonder what kind of treatment my husband has to endure from him. This man should not be allowed to continue in his capacity as a Sergeant if he is not capable of doing so with professionalism, regardless of who he's dealing with.

I hope this matter will be looked into thoroughly, and proper, fitting action will be taken against Sgt. Ritchie. I will be happy to answer any questions you may have regarding this matter.

Sincerely,

Betsy Nichols


*Just a footnote. I spoke to Patrick later regarding the above mention accident. It seems there were injuries sustained that required the need for the Rescue Squad. After seeing this accident (having been involved in a similar one myself), I knew I had to react quickly as someone undoubtedly was injured. Sgt. Ritchie's personal problems with my husband and me could have caused a delay in getting this victim the care needed, if I had been the only one attempting to report this accident.

cc; Thomas Halley

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.

DATE	NUMBER	CHARGE	DISPOSITION
05-10-89	3973	Harassment	
06-28-90	"	DUI/REFUSAL	Dismissed
06-28-90	"	DUI	
4-4-91	"	Assault	125 FINE 510- 31st Feb
"	"	MISFEASING	Dismissed
"	"	CRIMINAL TRESPASS	Dismissed
8-10-92	"		
3-2-93	"	Harassment 2nd	
5-27-93	"	AGG Harassment 2nd	
6-28-93	"	TAMP WITNESS 4th	

NEW YORK : COUNTY OF FRANKLIN
(VILLAGE) COURT: (~~DOVER~~) (VILLAGE) OF MALONE

The People of the State of New York

vs.

MICHAEL J FOURNIER

Defendant

Accusatory Instrument
Complaint - General

Patrick M Nichols, residing at
Malone New York, by this information makes
written accusation as follows:

That Michael J Fournier, on the 4th
day of April, 19 91, in the Village, of Malone,
County of Franklin, New York, did
commit the offense of Menacing,
a (misdemeanor) (~~felony~~) in violation of Section 120.15
of the Penal Law of the State of New York, in that ~~he~~ he did, at the aforesaid time and place*

Count One: when by physical menace he intentionally places another person in fear
of imminent serious physical injury:

The facts upon which this information is based are as follows:

That on the 4th day of April 1991 at or about 4:30 a.m. while located
at 94 Gentle Breeze Drive in the Village the defendant did intentionally point
a loaded AK-47 rifle at his estranged wife threatening to kill her:

Patrick Nichols has a side line business selling personalized Children's Books.

During the 1993 D.A.R.E. Program, Ptl. Nichols advised D.A.R.E. Coordinator, Ron Reyome, & Ass't Chief Moll that he was going to offer a special rate to one of his D.A.R.E. Classes on his Children Books. Ptl. Nichols was advised that this was improper. Ptl. Nichols also was going to have a reading class in the Training Room at the Police Station with the D.A.R.E. Students using his personalized books. Again he was advised that this was improper if he used the books from his side line business.

Ptl. Nichols became a member of the Malone Lions Club. This club donates annually to the Malone D.A.R.E. Program. The Malone Lions Club sold Ptl. Nichols personalized Childrens Books to area children.

During an inventory of the D.A.R.E. Literature, the book marks (sample enclosed) were located with the Malone Lions Club stamp on them. This was the only organization that received this recognition.



DRUG ABUSE RESISTANCE EDUCATION

MALONE LIONS CLUB
BOX 248
MALONE, NY 13353

8 WAYS TO SAY NO!

1. Say "No Thanks"
2. Give an excuse or a reason
3. Broken Record
4. Walk Away
5. Change the Subject
6. Avoid the Situation
7. Cold Shoulder
8. Strength in Numbers





THOMAS M. KEMP



FLANDERS SCHOOL

OCT. 29 1993

Chief Phillips
Walton Police Department
East Main Street
Walton, 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 Yanco
Mr. Thomas Helmer

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

Wants Dad To Teach DARE

To the editor:

My name is Holly Nichols.

I am 11 years old and in fifth grade at Davis School.

For three years, I have been waiting to have my dad Pat Nichols to teach me DARE. Every year I have been told how much fun my dad was in DARE classes. But he won't be teaching me DARE this year because

we have a new DARE teacher.

I like Mr. Simonsen he is our neighbor and is a very nice man. But it's not the same. I really wanted my dad to teach me and now he can't. I am very unhappy. Daddy said it should not matter who teaches me the program, cause it's the lessons that are important. He said Officer Simonsen will do a good job. Even my brother, Nathan, is upset and he is only in third grade.

Mommy told me when daddy went back to work that he was still the DARE officer cause no one told him he wouldn't be. They didn't tell him that would be part of his punishment. I was so glad. But now mommy said he isn't going to be and I would really like to know why. My dad was a good teacher and really likes kids. He's a good person and has taught me alot of neat things. He was very proud when he became a DARE teacher, it meant alot to him. I thought it was so cool having my dad as the DARE teacher. I think it was very unfair and very mean to take DARE away from my father after he did such a good job for all those other kids. I really love my dad. No matter what anyone else says, I think he's the greatest.

Holly Nichols
Malone

11/14/94 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



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:

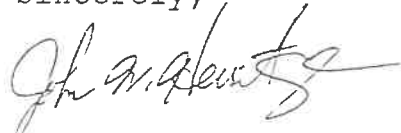
As you know, the New York State Division of Criminal Justice Services, Bureau for Municipal Police is responsible for statewide coordination of the Drug Abuse Resistance Education (D.A.R.E.) program. Responsibilities include training, certifying, decertifying, monitoring and evaluating instructors. They 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. Herritage", written in a cursive style.

John W. Herritage
Deputy Commissioner

ACCIDENT REPORTS FROM 12-93 TO 02-01-94

- 12-13-94 Accident Elm St. & Morton St.
Out of town at fault -----2 tickets
- 12-14-93 Steak & Seafood Parking Lot
Hit & Run with possibility that driver had no
knowledge of striking vehicle. Drive is William
Creighton (strong advocate of Nichols) with history
of accidents and tickets. Creighton at fault,
unsafe backing. No tickets issued.
- 12-17-93 Webster & Francis St.
Minor damage to victims vehicle
Out of Town at fault -----1 ticket issued
- 12-23-94 Yando's Parking Lot
Unsafe backing by In town operator
-----no ticket-----
- 12-24-93 Pleasant St. & Main St.
In town operator slid on roads striking out of town
vehicle.
Report blames road conditions, no fault to in town
operator and NO TICKET
- 12-28-93 Main & Harrison
Out of town operator slid due to road conditions
striking in town vehicle.
No mention of #66 icy roads and out of town driver
issued ticket.
- 12-28-93 Pearl & College
Icy road conditions noted on report (#66)
Out of town operator issued ticket for hitting
in town vehicle.
- 12-28-93 Park & Elm
Very minor damage accident
Out of town operator ticketed for striking in town
vehicle.
- 01-01-94 Constable & Third
Unsafe backing by 17 year old in town driver
No tickets issued
- 01-13-94 Main & Amsden
Very minor damage accident
Out of town operator issued ticket for hitting
in town vehicle.

THE 4 MONTHS PRIOR TO ELECTION, PTL. NICHOLS INVESTIGATED 8 ACCIDENTS. MANY INVOLVED IN TOWN AND OUT OF TOWN RESIDENTS, NONE OF THE REPORTS REFLECT BIAS CONCLUSIONS.

EVIDENCE OF ISSUING TICKETS TO OUT OF TOWN RESIDENTS PRIOR TO ELECTION AND AFTER ELECTION BY PTL. NICHOLS.

From 08-07-92 to Election

32 tickets issued to Malone Residents

11 tickets issued to out of town residents

76% of tickets were issued to Malone Residents

From Election to 02-04-93

13 tickets issued to Malone Residents

28 tickets issued to out of town residents

33% of tickets were issued to Malone Residents

Thats 230% change in the way Nichols is issuing tickets

While working the night shift, Ptl. Nichols pulled over numerous vehicles.

02-05-94 Three Malone residents were pulled over and the stop only lasted between 30 seconds and 45 seconds and no tickets were issued.

One out of town vehicle was pulled over and a ticket was issued for uninspected.

02-06-94 Three Malone Residents were pulled over and the stop lasted under two minutes and no tickets wre issued.

One out of town resident was pulled over and was issued a ticket.

State of New York - Department of Motor Vehicles
POLICE ACCIDENT REPORT

POLICE AGENCY COPY 1

Accident Date 12/13/73 Mo. Day Year	Day of Week Mo	Time 12:50 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	No. of Vehicles 2	No. Injured 1	No. Killed 0	Non-Highway <input type="checkbox"/>	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
---	-------------------	--	----------------------	------------------	-----------------	---	---	--	--

Name - exactly as printed on license
KIMBERLY E. VEEVE R

DMV USE	Name - exactly as printed on license TREPON NORMAN A
------------	---

Sex F	Un- Licensed <input type="checkbox"/>	No. of Occup. 1	Public Property Damaged 8	State of License 114
----------	---	-----------------------	------------------------------------	----------------------------

Name - exactly as printed on registration	Date of Birth
SAME AS DRIVER	Mo Day Year

Name - exactly as printed on registration	Date of Birth
SAME AS DRIVER	Mo. Day Year

Number and Street	Hazardous Material Code
-------------------	-------------------------

Number and Street	Hazardous Material Code
-------------------	-------------------------

City	State	Zip Code
------	-------	----------

City	State	Zip Code
------	-------	----------

Plate Number	State of Reg.	Yr. & Vehicle Make	Vehicle Type	Ins. Code
FD 12614	PA	90 CHEV	PAS	211

Plate Number	State of Reg.	Yr. & Vehicle Make	Vehicle Type	Ins. Code
Y9V-865	PA	79 Ford	Pass	148

Check if involved vehicle is <input type="checkbox"/> more than 95" wide, <input type="checkbox"/> more than 34' long.		ACCIDENT DIAGRAM					Check if involved vehicle is <input type="checkbox"/> more than 95" wide, <input type="checkbox"/> more than 34' long.	
Rear End	Left Turn	Right Angle	Right Turn	Head On				

VEHICLE 1 DAMAGE

ACCIDENT DIAGRAM				
Rear End	Left Turn	Right Angle	Right Turn	Head On

Check if involved vehicle is ☐ more than 95"
wide, ☐ more than 34' long.

Diagram illustrating the inspection of a vehicle chassis. The top view shows the chassis from above, labeled "No Damage". The bottom view shows the chassis from below, labeled "Undercarriage".

1.	3.	5.	7.
Overtaking	Left Turn	Right Turn	Sideswipe
2.	0.	4.	8.

Below the traffic signs, there is a diagram of a car with the number '2' inside, and a diagram of a car with the number '1' inside, both with arrows indicating their direction of travel. To the right of these diagrams is a compass rose with the letters 'W', 'E', and 'S' indicating West, East, and South respectively.

No Damage ☐ Undercarriage ☐

By _____
Vehicle Towed _____

9. 

Vehicle Towed	By
---------------	----

Reference	To	Marker	DMV USE ONLY	County	<input type="checkbox"/> City	<input type="checkbox"/> Town	<input checked="" type="checkbox"/> Village
- 3 0 -				DEAN			THALONG
7 2 0 7				Route No. and Street Name			Miles <input type="checkbox"/> Feet <input type="checkbox"/> S <input type="checkbox"/> W of
1 6 7 9				on ST-30			<input checked="" type="checkbox"/> At Intersection with
				VIL-ELMN			VIL-MERTON

Ticket/Arrest		Other <input type="checkbox"/>	Ticket/Arrest Number(s) (2) 964161 - 964162		Date/Time	
Opr 1 <input type="checkbox"/>	Pedestrian <input type="checkbox"/>		Violation Section(s) (2) 1129-A - 509-1		Nearest Intersecting Route/Street	
Opr 2 <input checked="" type="checkbox"/>	Bicyclist <input type="checkbox"/>					

Accident Description/Officer's Notes VEHICLE #1 MAKING RIGHT TURN
WHEN DRIVING STRUCK IN REAR BY VEHICLE #2. DAMAGE
TO BOTH VEH.
VEHICLE SPIN AROUND AND INTO CURB ONTO
LAWN.

WITNESS DETEN A1121463
CARL WRIGHT

8	9	10	11	12	13	14	15	16	17	18	Names - If Deceased, Give Date of Death
---	---	----	----	----	----	----	----	----	----	----	---

[illegible]

Officer's Rank and Name	Badge No.	Department	Precinct/Post/ Troop/Zone	Station/Beat/ Sector	Reviewing Officer	Date/Time Review
PT 4 11/1/05	59	MD	4638		Cr	12/10/12

State of New York - Department of Motor Vehicles
POLICE ACCIDENT REPORT

POLICE AGENCY COPY 1

Page 1 of 1 Pages

Local Codes

Accident Date 12/14/93 Mo./Day/Year	Day of Week TU	Time 12:00 AM <input type="checkbox"/> PM <input checked="" type="checkbox"/>	No. of Vehicles 2	No. Injured 0	No. Killed 0	Non-Highway <input checked="" type="checkbox"/>	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input checked="" type="checkbox"/>	Police Photos Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
---	-------------------	---	----------------------	------------------	-----------------	--	---	---	--

Vehicle 1
 Name - exactly as printed on license
PARKED UNATTENDED
 Number and Street
 City State Zip Code

Vehicle 2
 Name - exactly as printed on license
CREIGHTON, WILLIAM D
 Number and Street
 City State Zip Code

Driver 1
 Date of Birth Sex Un-Licensed No. of Occup. Public Property Damaged State of License

Driver 2
 Date of Birth Sex Un-Licensed No. of Occup. Public Property Damaged State of License

Name - exactly as printed on registration
GOLAN, RICHARD A

Name - exactly as printed on registration
SAME AS DRIVER 1

Vehicle 1
 Plate Number State of Reg. Yr. & Vehicle Make Vehicle Type Ins. Code

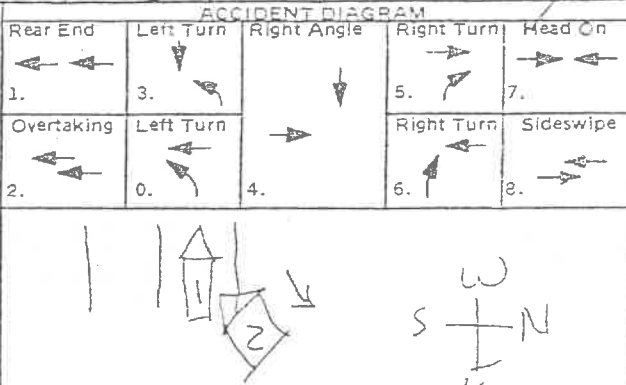
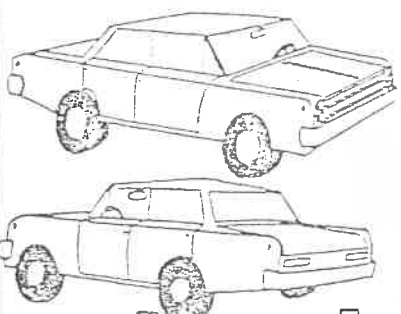
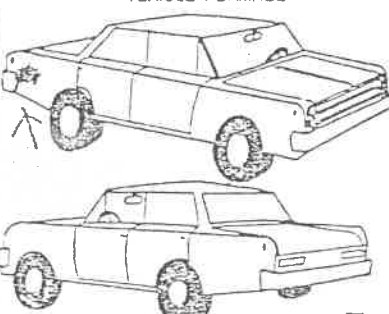
Vehicle 2
 Plate Number State of Reg. Yr. & Vehicle Make Vehicle Type Ins. Code

Check if involved vehicle is ☐ more than 95" wide, ☐ more than 34" long.

Check if involved vehicle is ☐ more than 95" wide, ☐ more than 34" long.

VEHICLE 1 DAMAGE

VEHICLE 2 DAMAGE



No Damage ☐ Undercarriage ☐

No Damage ☒ Undercarriage ☐

Vehicle Towed By

Vehicle Towed By

Reference Marker DMV USE ONLY County City Town
 Route No. and Street Name
FRANK STARK
 on **PARKING LOT ST-11 VIR-MIN SEAFOOD**

Ticket/Arrest Other ☐ Ticket/Arrest Number(s)
 Opr 1 ☐ Pedestrian ☐ Violation Section(s)
 Opr 2 ☐ Bicyclist ☐

Accident Description/Officer's Notes
VEHICLE 2 WHEN BACKING OUT OF SPACE STRUCK AND CAUSED DAMAGE TO VEH #1. VEH #2 LEFT SCENE. DRIVER #2 NOT AWARE OF COLLISION.

Names - If Deceased, Give Date of Death

8	9	10	11	12	13	14	15	16	17	18	Names - If Deceased, Give Date of Death
12	1	3	1	36 M							OPERATOR

Officer's Rank and Name **FRANK STARK** Badge No. **59** Department **1012** Precinct/Post Troop/Zone **1012/1** Station/Beat Sector **1012/1** Reviewing Officer **CR** Date/Time Reviewed **12/14/93 1200**

USE COVER SHEET
G

0841 12/22/93 00660547 BMVG39914 PART 001 OF 001
PTST BMVG 0841
2400
RECORD - NYSPIN WANTED PERSONS FILE
/CREIGHTON, WILLIAM D
B/111457. SEX/M. RAC/U

#231
Asfsonwide

N 0841-0841 12/22/93 00660581 BMVG39915 PART 001 OF 001
NCIC PTST BMVG 0841
NY0162400
NO NCIC WANT DOB/111457 NAM/CREIGHTON, WILLIAM D SEX/M RAC/U

> MOR

N 0841-0841 12/22/93 00660631 BMVG39917 PART 001 OF 001

DATE	NUMBER	CHARGE	DISPOSITION
12-30-85	039156-5	Fail to keep RT.	
10-6-89	015475	speed 45/30	
6-1-93	733053-6	Speed 57/30	

Produced Pursuant to Protective Order

85013

OFFENSE REPORT

Complainant RICHARD JOE GOKEY

Case No. 22-A-3100

Address Scott Drive

Phone

Offense Hit & Run

Place of Occurrence Steak/Seafood parking lot

Report received by vnm

at 12/N

M. Date 12/14

19 93

How reported phone

Date and time offense committed

Officer Assigned Nichols

Time of investigation

M. Date

Suspects and/or persons arrested

Wm Creighton Jr 45 Gentle Br Dr

DETAILS OF OFFENSE (State fully all other circumstances of this offense and its investigation)

Reported that a vehicle had just struck his and drove off w/o reporting the incident. Complainant does not think that the above was aware of any contact.

Nichols assigned/vnm

Spoke with Joe and his wife at which time they directed me to the scene. Joe added that an employee of steak and seafood knows who hit the car. Spoke with manager who stated his bartender Lisa Myers saw Bill Creighton who is also an employee back into Gokey's car. Located Bill and advised him of matter. He was not aware that he caused the damage. Fresh marking on his car convinced him along with the witness. Accident report completed and drivers exchanges completed and given to both owners. Closed PMN

REPORT MADE BY

Date

DE

POLICE ACCIDENT REPORT

POLICE AGENCY COPY 1

Page 1 of 1 Pages

Local Codes

Accident Date 12/17/93 Day of Week FR Time 12:10 ☐ AM ☒ PM No. of Vehicles 2 No. Injured 0 No. Killed 0 Non-Highway ☐ Not Investigated at Scene ☐ Left Scene ☐ Police Photos ☐ Yes ☒ No

Name - exactly as printed on license

DURANT, SHERRI A

DMV USE

Name - exactly as printed on license

KUTRAW, GEORGE E

DMV USE

Name - exactly as printed on registration

Date of Birth

Mo./Day/Year

Name - exactly as printed on registration

Date of Birth

Mo./Day/Year

Number and Street

Hazardous Material Code

City

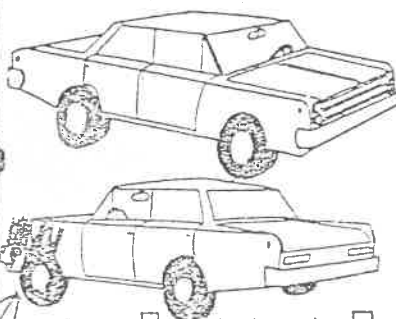
State

Zip Code

Plate Number G3G-286 State of Reg N.Y. Yr. & Vehicle Make 92 Ford Vehicle Type PAS Ins. Code FFA Plate Number HV-2113 State of Reg N.Y. Yr. & Vehicle Make 88 Chevy Vehicle Type Com Ins. Code Z40

Check if involved vehicle is ☐ more than 95" wide, ☐ more than 34" long.

VEHICLE 1 DAMAGE

No Damage ☐ Undercarriage ☐

Vehicle Towed By

ACCIDENT DIAGRAM

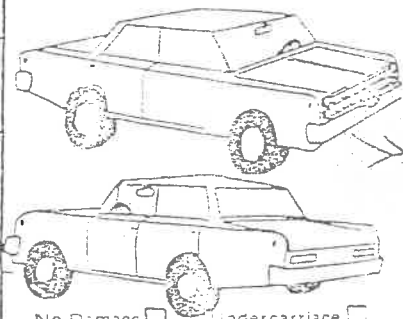
Rear End 1. Left Turn 3. Right Angle 5. Right Turn 7. Head On

Overtaking 2. Left Turn 4. Right Turn 6. Sideswipe 8.

9.

Check if involved vehicle is ☐ more than 95" wide, ☐ more than 34" long.

VEHICLE 2 DAMAGE

No Damage ☐ Undercarriage ☐

Vehicle Towed By

Reference Marker

DMV USE ONLY

County FRAN☐ City☐ Town☒ Village

Route No. and Street Name

on V.R. WEBSTER

☐ Miles ☐ Feet ☐ S ☐ W of

☒ At Intersection with

Ticket/Arrest

Other ☐Ticket/Arrest Number(s) (1) - 564202Opr 1 ☐Pedestrian ☐Opr 2 ☐Bicyclist ☐Violation Section(s) (1) - 1142-A

Nearest Intersecting Route/Street

Accident Description/Officer's Notes

DRIVER OF VEHICLE #1 STATED SHE DID NOT SEE VEH #2 APPROACHING SO THEREFORE ENTERED PATH OF VEH #2. VEH #2 STRUCK AND DAMAGED VEH #1.

USE COVER SHEET

G

8 9 10 11 12 13 14 15 16 17 18 Names - If Deceased, Give Date of Death

1	1	3	1	20	F												OPERATION
2	4	5	1	1	M												DURANT, COLEEN
3	1	3	1	36	M												OPERATION
4	2	3	3	1	26	F											KUTRAW, DOMIN
5																	
6																	
7																	
8																	

SIGN

Officer's Rank and Name PTC 1142-ABadge No. 1142-ADepartment FRANPrecinct/Post Troop/Zone 1142-AStation/Beat Sector 1142-AReviewing Officer 1142-ADate/Time Reviewed 12-17-93

POLICE ACCIDENT REPORT

POLICE AGENCY COPY 1

Page 1 of 1 Pages
Local Codes

Accident Date: 12/23/93 Day of Week: TH Time: 11:05 AM No. of Vehicles: 2 No. Injured: 0 No. Killed: 0 Non-Highway: ☒ Not Investigated at Scene: ☐ Left Scene: ☐ Police Photos: ☒ Yes ☐ No

Vehicle 1
Name - exactly as printed on license: LAVARNWAY, LEDNA
Number and Street: BX 36

Vehicle 2
Name - exactly as printed on license: RUNDALL, AUDREY A.
Number and Street: DUKE RD

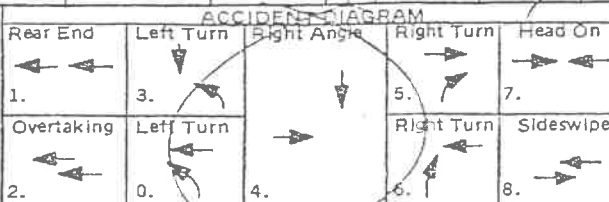
Name - exactly as printed on registration: LAVARNWAY, DANIEL
Date of Birth: [REDACTED]

Name - exactly as printed on registration: RUNDALL GORDON
Date of Birth: [REDACTED]

Plate Number: HTL-218 State of Reg: N.Y. Yr. & Vehicle Make: 92 PONTI Vehicle Type: PAS Ins. Code: 117

Plate Number: FLH-89 State of Reg: N.Y. Yr. & Vehicle Make: 92 CHR. PAS Ins. Code: 231

Check if involved vehicle is ☐ more than 95" wide, ☐ more than 34" long.



Check if involved vehicle is ☐ more than 95" wide, ☐ more than 34" long.

Vehicle 1 Damage
No Damage ☒ Undercarriage ☐

Vehicle 2 Damage
No Damage ☐ Undercarriage ☐

Reference Marker: [REDACTED] DMV USE ONLY: [REDACTED] County: FRANK City: [REDACTED] Town: [REDACTED] Village: [REDACTED]
Route No. and Street Name: PARKING LOT AT ST-11

Vehicle Towed: [REDACTED] By: [REDACTED] To: [REDACTED]
Miles: [REDACTED] Feet: [REDACTED] N S E W of: [REDACTED] At Intersection with: [REDACTED]

Ticket/Arrest: Other ☐ Ticket/Arrest Number(s): [REDACTED]
Opr 1 ☐ Pedestrian ☐ Violation Section(s): [REDACTED]
Opr 2 ☐ Bicyclist ☐

Nearest Intersecting Route/Street: [REDACTED]

Accident Description/Officer's Notes: VEHICLE #1 BACKING FROM PARKING SPACE AND STRUCK VEH #2.

	8	9	10	11	12	13	14	15	16	17	18	Names - If Deceased, Give Date of Death
A	1	1	3	1	70	F						OPERATOR
	2	1	3	1	57	F						OPERATOR
	2	3	3	1	70	F						LLOYD, CHARLENE
D												
E												
F												
G												

Officer's Rank and Name: HTL NICHOLS Badge No.: 59 Department: MPD Precinct/Post Troop/Zone: 01624 Station/Beat Sector: [REDACTED] Reviewing Officer: [REDACTED] Date/Time Reviewed: 1/8/94 1030

USE COVER SHEET
G

POLICE ACCIDENT REPORT

1. Page 1 of 1 Pages

Local Codes

DMV COPY

19
66

Accident Date 12/24/93 Mo. Day Year	Day of Week FR	Time 1145 AM	No. of Vehicles 2	No. Injured 0	No. Killed 0	Non-Highway <input type="checkbox"/>	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
---	-------------------	-----------------	----------------------	------------------	-----------------	---	---	--	--

Vehicle 1

Name - exactly as printed on license
 TROMBLEY, LEO ARNOLD P

DMV USE

Name - exactly as printed on registration
 SAME AS DRIVER

Date of Birth
 Mo. Day Year

Number and Street
 City State Zip Code

Plate Number
 FRH-680

State of Reg.
 NY

Yr. & Vehicle Make
 89 FORD

Vehicle Type
 PAS

Ins. Code
 199

Vehicle 2

Name - exactly as printed on license
 KETTEL, RAYMOND J

DMV USE

Name - exactly as printed on registration
 SHATKAW, DAVID D

Date of Birth
 Mo. Day Year

Number and Street
 City State Zip Code

Plate Number
 FRH-637

State of Reg.
 NY

Yr. & Vehicle Make
 86 DODGE

Vehicle Type
 PAS

Ins. Code
 290

Check if involved vehicle is ☐ more than 95" wide, ☐ more than 34' long.

VEHICLE 1 DAMAGE

No Damage ☐ Undercarriage ☐

Vehicle Towed By

ACCIDENT DIAGRAM

Check if involved vehicle is ☐ more than 95" wide, ☐ more than 34' long.

VEHICLE 2 DAMAGE

No Damage ☐ Undercarriage ☐

Vehicle Towed By

Reference Marker

DMV USE ONLY

County
 FRANK

City ☐ Town ☐ Village ☒

Route No. and Street Name
 on V.R. PLEASANT

Nearest Intersecting Route/Street
 ST-11
 V.R. MAIN

Ticket/Arrest Other ☐

Opr 1 ☐ Pedestrian ☐ Violation Section(s)

Opr 2 ☐ Bicyclist ☐

Ticket/Arrest Number(s)

Accident Description/Officer's Notes

1st VEH #1 MAKING RIGHT TURN IT SLID TO SIDE STRIKING AND DAMAGING VEH #2.

8	9	10	11	12	13	14	15	16	17	18	Names - If Deceased, Give Date of Death
A	2	1	3	1	30	M					OPERATOR
A	2	3	3	1	45	M					LEONARD, DARTON
A	1	1	3	1	67	M					OPERATOR
D											
E											
F											
G											

Officer's Rank and Name
 PTL RICHARDS

Badge No.
 59

Department
 MPD

Precinct/Post Troop/Zone
 1262X

Station/Beat/Sector

Reviewing Officer

Date/Time Reviewed

USE COVER SHEET

G

POLICE ACCIDENT REPORT

DMV COPY

Page 1 of 1 Pages
Local Codes

Accident Date 12/29/93 Day of Week TU Time 11:42 AM
No. of Vehicles 2 No. Injured 0 No. Killed 0 Non-Highway ☐ Not Investigated at Scene ☐ Left Scene ☐ Police Photos Yes ☐ No ☒

VEHICLE 1
Name - exactly as printed on license
QUINN, FRANK W

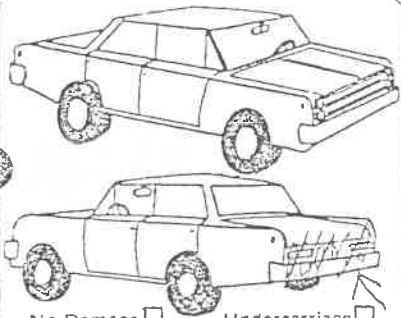
VEHICLE 2
Name - exactly as printed on license
BUSHY, GREGORY A

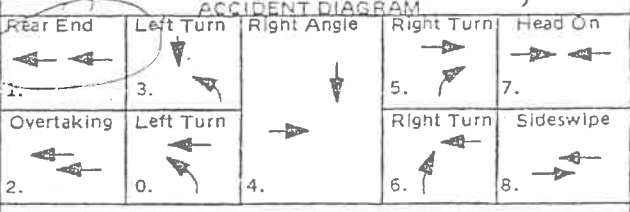
Mo./Day/Year
Name - exactly as printed on registration
SAME AS DRIVER

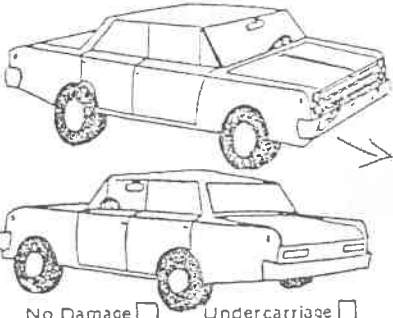
Mo./Day/Year
Name - exactly as printed on registration
BUSHY, CHRISTINE L

Plate Number FLR448 State of Reg NY Yr. & Vehicle Make 90 FORD Vehicle Type PAS Ins. Code 226
Plate Number RN1422 State of Reg NY Yr. & Vehicle Make 88 Dodge Vehicle Type Com Ins. Code 011

Check if involved vehicle is ☐ more than 95" wide, ☐ more than 34" long.

VEHICLE 1 DAMAGE

No Damage ☐ Undercarriage ☐
Vehicle Towed By



Check if involved vehicle is ☐ more than 95" wide, ☐ more than 34" long.
VEHICLE 2 DAMAGE

No Damage ☐ Undercarriage ☐
Vehicle Towed By

Reference Marker DMV USE ONLY County FRANK City ☐ Town ☐
Route No. and Street Name
on SR 11
V.R. HARRISON

Ticket/Arrest Other ☐ Ticket/Arrest Number(s) (2)-964228
Opr 1 ☐ Pedestrian ☐ Violation Section(s) (2)-1129-A
Opr 2 ☒ Bicyclist ☐

Accident Description/Officer's Notes
DRIVER OF VEH #2 STATED HE SLID INTO VEH #1 WHEN APPLYING BRAKES TO STOP. DAMAGE TO BOTH VEHICLES.

8	9	10	11	12	13	14	15	16	17	18	Names - If Deceased, Give Date of Death
A	1	1	3	1	24	M					OPERATOR
B	2	1	3	1	24	M					OPERATOR
C	2	2	3	1	5	F					BUSHY BRITTANY
D	2	3	3	1	7	F					BUSHY JORDI
E											
F											
G											

SIGN OFFICER'S Rank and Name P. J. JACKSONS Badge No. 59 Department MPD Precinct/Post Troop/Zone 01624 Station/Beat/Sector Reviewing Officer Date/Time Reviewed

POLICE ACCIDENT REPORT

DMV COPY

Page 1 of 1 Pages
Local Codes

Accident Date 12/24/93 Day of Week TU Time 11:10 ☒ AM ☐ PM No. of Vehicles 2 No. Injured 1 No. Killed 0 Non-Highway ☐ Not Investigated at Scene ☐ Left Scene ☐ Police Photos ☐ Yes ☒ No

Name - exactly as printed on license

LOWTHER, LEAMON E. JR.

DMV USE

Name - exactly as printed on license

DEBARSEILLERS, C

DMV USE

Name - exactly as printed on registration

SAME AS DRIVER

Date of Birth

Mo. Day Year

Name - exactly as printed on registration

SAME AS DRIVER

Date of Birth

Mo. Day Year

Number and Street

Hazardous Material Code

Number and Street

Hazardous Material Code

City

State

Zip Code

City

State

Zip Code

Plate Number

State of Reg.

Yr. & Vehicle Make

Vehicle Type

Ins. Code

Plate Number

State of Reg.

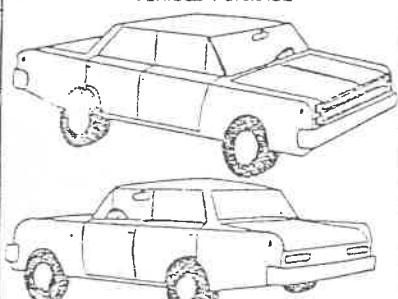
Yr. & Vehicle Make

Vehicle Type

Ins. Code

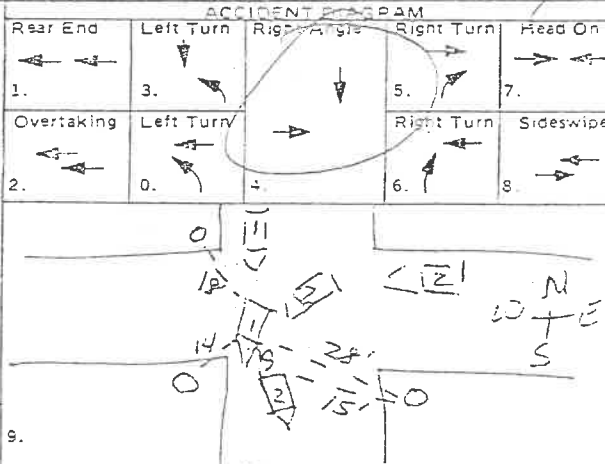
If damaged vehicle is truck, check if width is ☐ 96" ☐ 102"

VEHICLE 1 DAMAGE

No Damage ☐ Undercarriage ☐

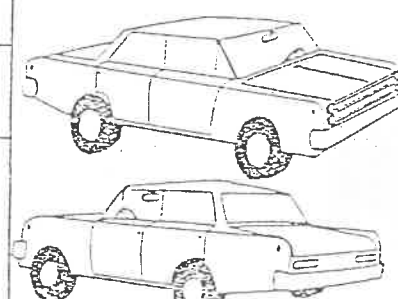
Vehicle Towed By

To



If damaged vehicle is truck, check if width is ☐ 96" ☐ 102"

VEHICLE 2 DAMAGE

No Damage ☐ Undercarriage ☐

Vehicle Towed By

To

Reference

Marker

DMV USE ONLY

County

City

Town

Route No. and Street Name

FRANK
on V.R. PEARL

Village

Miles

Feet

S of

W of

at Intersection with

V.R. COLLEGE

Ticket/Arrest

Other ☐

Ticket/Arrest Number(s)

(2) - 96472Opr 1 ☐Pedestrian ☐Opr 2 ☒Bicyclist ☐

Violation Section(s)

(2) - 1142-A

Nearest Intersecting Route/Street

Accident Description/Officer's Notes

DRIVER, VEH #2 STATED HE WAS CROSSING INTERSECTION AFTER STOPPING AT STOP SIGN. HE ADDED THAT AS HE ENTERED INTERSECTION THE BACK TIRES BEGAN TO SPIN. HE WAS UNABLE TO REGAIN TRACTION PRIOR TO COLLISION WITH VEH #1.

WITNESS: MICHAEL M. WILSON - 412-57

8	9	10	11	12	13	14	15	16	17	18	Names - If Deceased, Give Date of Death
A	1	1	3	1	3	11					<u>OPERATOR</u>
B	1	3	3	1	50	16	12	6	4-17-1902		<u>WILSON, STELLA</u>
C	2	1	3	1	21	11					<u>OPERATOR</u>
D											
E											
F											
G											

SIGN HERE

Officer's Rank and Name

Det. [Signature]

Badge No.

57

Department

100

Precinct/Post

51624

Station/Beat

Sector

Reviewing Officer

Date/Time Reviewed

State of New York - Department of Motor Vehicles
POLICE ACCIDENT REPORT

POLICE AGENCY COPY 1

Page 1 of 1 Pages

Local Codes

Accident Date 12-25-83 Day of Week TU Time 7:55 AM No. of Vehicles 2 No. Injured 0 No. Killed 0 Non-Highway ☐ Not Investigated at Scene ☐ Left Scene ☐ Police Photos Yes ☐ No ☒

Name - exactly as printed on license

SEXTON, SPANIER, L

DMV USE

Name - exactly as printed on license

LAFLEUR, LEE, E

DMV USE

Number and Street

Name - exactly as printed on registration

SAME AS DRIVER

Date of Birth

Name - exactly as printed on registration

TICKER, CLAYTON, L

Date of Birth

Mo./Day/Year

Number and Street

Hazardous Material Co

City

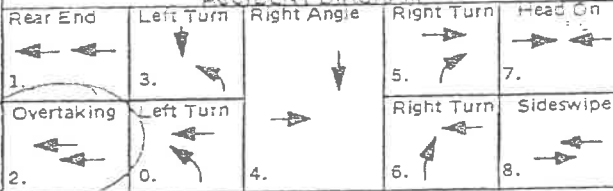
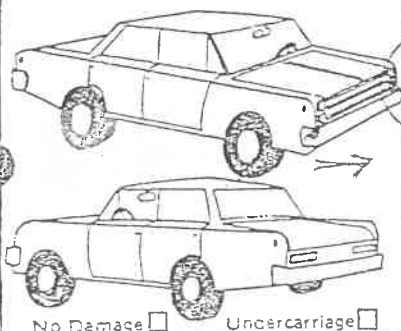
State

Zip Code

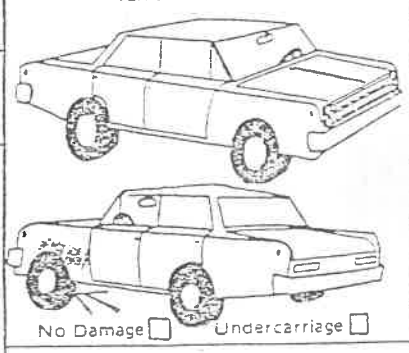
Plate Number R4N-611 State of Reg. NY Yr. & Vehicle Make 83 LINCOLN Vehicle Type PAS Ins. Code 999 97602L Plate Number 84 PLAT State of Reg. NY Yr. & Vehicle Make 0766 Ins. Code 325

Check if involved vehicle is ☐ more than 95" wide, ☐ more than 34" long.

VEHICLE 1 DAMAGE

Check if involved vehicle is ☐ more than 95" wide, ☐ more than 34" long.

VEHICLE 2 DAMAGE



Vehicle Towed By

Reference Marker

DMV USE ONLY

County

City

Town

Village

Route No. and Street Name

on V.R. PARK

Miles ☐ Feet ☐ N ☐ S ☐ E ☐ W of

At Intersection with

Ticket/Arrest

Other ☐

Ticket/Arrest Number(s) (1) - 964227

Opr 1 ☒Pedestrian ☐

Violation Section(s)

(1) - 1122-A

Accident Description/Officer's Notes

VEH #2 TURNING LEFT AND STRUCK BY VEH #1 ON DRIVERS SIDE. DRIVER OF VEH #1 STATING SHE DID NOT REALIZE VEH #2 WAS GOING TO TURN.

Names - If Deceased, Give Date of Death

OPERATOR DEPARTING

DEPARTING

DEPARTING

DEPARTING

DEPARTING

DEPARTING

DEPARTING

DEPARTING

DEPARTING

DEPARTING

19 13

20

21

22

23 1

24 8

25 13

26 3

27 1

28 1

29

30

USE COVER SHEET

G

DMV-104A

Officer's Rank and Name: [Signature] Badge No. 55 Department: [Signature] Precinct/Post Troop/Zone: [Signature] Station/Beat Sector: [Signature] Reviewing Officer: [Signature] Date/Time Reviewed: 11/14/83 150

State of New York - Department of Motor Vehicles
POLICE ACCIDENT REPORT

POLICE AGENCY COPY 1.

Page 1 of 1 Pages

Local Codes

Accident Date
01/01/94
Mo. Day YearDay of Week
SA
Mo. Day YearTime
8:15
AM PMNo. of Vehicles
2No. Injured
0No. Killed
0Non-Highway
☐Not Investigated at Scene
☐Left Scene
☐Police Photos
Yes ☐ No ☒

Name - exactly as printed on license

PARKED UNATTENDED

Number and Street

City

State

Zip Code

Date of Birth
Mo. Day Year

Sex

Un-Licensed
☐

No. of Occup.

Public Property
Damaged ☐

State of License

Name - exactly as printed on registration

LAVIANE, KIRK, D

Date of Birth
Mo. Day Year

Name - exactly as printed on license

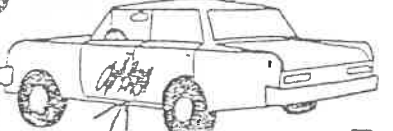
BOVEA, JASON, P

Name - exactly as printed on registration

BOVEA, CRAIG, A

Date of Birth
Mo. Day YearPlate Number
23635AAState of Reg.
NYYr. & Vehicle Make
85 FordVehicle Type
ComIns. Code
999Plate Number
C583LWState of Reg.
NYYr. & Vehicle Make
84 CHEVVehicle Type
ComIns. Code
190Check if involved vehicle is ☐ more than 95" wide, ☐ more than 34' long.

VEHICLE 1 DAMAGE

No Damage ☐ Undercarriage ☐

Vehicle Towed By

Vehicle Towed To

Reference Marker
- 30 -
72 09
16 82

DMV USE ONLY

County

City

Town

Village

Route No. and Street Name

on ST-30

V.R-CONSTABLE

About 120

Miles ☐ Feet ☐ N ☐ S ☐ E ☐ W of

At Intersection with

V.R-THIRD

Ticket/Arrest

Other ☐

Ticket/Arrest Number(s)

Opr 1 ☐Pedestrian ☐Opr 2 ☐Bicyclist ☐

Violation Section(s)

Accident Description/Officer's Notes

DRIVER VEH #2 STATED HE BACKED INTO VEH #1 CAUSING DAMAGE TO BOTH.

19

20

21

22

23

24

25

26

27

28

29

30

USE COVER SHEET

G

Names - If Deceased, Give Date of Death

OPERATOR
LAVIANE, COREY

SIGN

Officer's Rank and Name

P.L. NICHOLS

Badge No.

59

Department

MPD

Precinct/Post

01624

Station/Beat/Sector

Reviewing Officer

Date/Time Reviewed

0720
1/3/94

State of New York - Department of Motor Vehicles
POLICE ACCIDENT REPORT

POLICE AGENCY COPY 1

Page 1 of 1 Pages		POLICE AGENCY COPY 1																	
Local Codes		JANUARY, 94																	
Accident Date 01/23/94		Day of Week TU		Time 1255 AM		No. of Vehicles 2		No. Injured 0		No. Killed 0		Non-Highway		Not Investigated at Scene		Left Scene		Police Photos Yes No	
Name - exactly as printed on license SMITH, ANN, E										Name - exactly as printed on license SELKIRK, JAMES, A									
DMV USE										DMV USE									
Mo./Day/Year										Mo./Day/Year									
Name - exactly as printed on registration DRIVER										Name - exactly as printed on registration DRIVER									
Number and Street										Number and Street									
City										City									
State										State									
Zip Code										Zip Code									
Plate Number FLX-649		State of Reg. NY		Yr. & Vehicle Make 88 CHEV		Vehicle Type PAS		Ins. Code 413		Plate Number C147LV		State of Reg. NY		Yr. & Vehicle Make 83 OLDS		Vehicle Type PAS		Ins. Code 413	
Check if involved vehicle is <input type="checkbox"/> more than 95" wide, <input type="checkbox"/> more than 34" long.										Check if involved vehicle is <input type="checkbox"/> more than 95" wide, <input type="checkbox"/> more than 34" long.									
VEHICLE 1 DAMAGE										VEHICLE 2 DAMAGE									
No Damage <input type="checkbox"/> Undercarriage <input type="checkbox"/>										No Damage <input type="checkbox"/> Undercarriage <input type="checkbox"/>									
Vehicle Towed By SMITH										Vehicle Towed By									
Reference Marker										Reference Marker									
DMV USE ONLY										DMV USE ONLY									
County FRANK										County									
Route No. and Street Name 51-11										Route No. and Street Name									
on VA-MAIN										on									
Ticket/Arrest Other										Ticket/Arrest Other									
Opr 1 <input type="checkbox"/> Pedestrian <input type="checkbox"/>										Opr 1 <input type="checkbox"/> Pedestrian <input type="checkbox"/>									
Opr 2 <input type="checkbox"/> Bicyclist <input type="checkbox"/>										Opr 2 <input type="checkbox"/> Bicyclist <input type="checkbox"/>									
Violation Section(s) (2) 964482										Violation Section(s) (2) 1142-A									
Accident Description/Officer's Notes DRIVER OF VEH #1 STATING THAT SHE WAS										Accident Description/Officer's Notes DRIVER OF VEH #1 STATING THAT SHE WAS									
STUCK ON PASSENGER SIDE BY VEH #2. DRIVER OF VEH #2										STUCK ON PASSENGER SIDE BY VEH #2. DRIVER OF VEH #2									
STATING HE WAS ATTEMPTING TO TURN LEFT AFTER										STATING HE WAS ATTEMPTING TO TURN LEFT AFTER									
STOPPING - DAMAGE TO BOTH.										STOPPING - DAMAGE TO BOTH.									
Names - If Deceased, Give Date of Death										Names - If Deceased, Give Date of Death									
A 1 1 3 1 32 F										A 1 1 3 1 32 F									
B 2 1 3 1 32 M										B 2 1 3 1 32 M									
C										C									
D										D									
E										E									
F										F									
G										G									
SIGN										SIGN									
Officer's Rank and Name MICHAEL										Officer's Rank and Name MICHAEL									
Badge No. 59										Badge No. 59									
Department 3124										Department 3124									
Precinct/Post										Precinct/Post									
Station/Seat/										Station/Seat/									
Reviewing Officer										Reviewing Officer									
Date/Time Reviewed 01/23/94-10:40am										Date/Time Reviewed 01/23/94-10:40am									

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
 MV-104A (6/92)

POLICE AGENCY COPY 1

Page 1 of 1 Pages
 Local Codes

Accident Date: 1/15/94 Day of Week: SAT Time: 2:40 AM ☒ PM
 No. of Vehicles: 2 No. Injured: 1 No. Killed: 1 Non-Highway: ☐ Not Investigated at Scene: ☐ Left Scene: ☐ Police Photos: ☒ Yes ☐ No

VEHICLE 1 Name — exactly as printed on license: COOK, DANIEL J DMV USE
 VEHICLE 2 Name — exactly as printed on license: LAMICA, BEATRICE M DMV USE



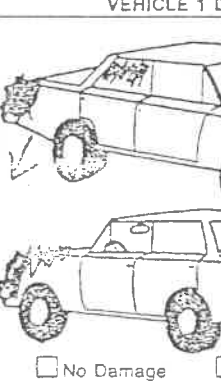
Name — exactly as printed on registration: SAME AS ABOVE Date of Birth: SAME AS ABOVE
 Number and Street: _____ Hazardous Material Code: _____

City: _____ State: _____ Zip Code: _____

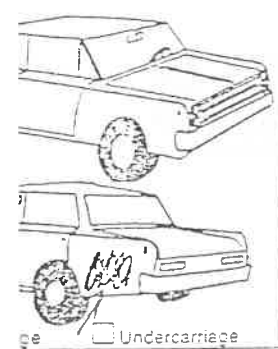
Plate Number: KH 8966 State of: NY Yr. & Vehicle Make: _____ Vehicle Type: _____ Ins. Code: _____

Check if involved vehicle:
☐ is a commercial motor vehicle
☐ is more than 95 inches long
☐ is more than 34 feet long
☐ was operated with an overweight permit
☐ was operated with an over-dimension permit

Report done proper. Most of paperwork completed by Sgt. Marlow



Vehicle 2 Damage:
☐ is a commercial motor vehicle
☐ is more than 95 inches long
☐ is more than 34 feet long
☐ was operated with an overweight permit
☐ was operated with an over-dimension permit



Vehicle Towed: By SMITH To SMITH'S 9. Vehicle Towed: By SMITH To SMITH'S

Reference Marker: 3 0 9 1 6 8 4 DMV USE ONLY County: FRA City: _____ Town: _____
 Route No. and Street Name: on 430

Ticket/Arrest: ☒ Opr 1 ☐ Pedestrian ☐ Opr 2 ☐ Bicyclist Ticket/Arrest Number(s): (1) - 964279 Violation Section(s): (1) - 59-7
 Nearest Intersecting Route/Street: 4th St.

Accident Description/Officer's Notes: #1 TRAVELING TOWARDS CONSTATABLE ST ON 4th ATTEMPTED TO STOP FOR STOP SIGN SLID THROUGH INTERSECTION INTO PARK CH- VEH #2

8	9	10	11	12	13	14	15	16	17	BY	TO	18	Names - If Deceased Give Date of Death
1	1	3	1	33	M	-	-	-	-	-	-	-	OPERATOR
2	1	3	1	58	K	5	12	6	9959	1602	-	-	OPERATOR

Officer's Name and Number: J. L. MILHOLDS Badge No.: 59 Department: 01624 Precinct/Post: 30 Station/Beat/Sector: 721 Date/Time Reviewed: 1-19-94

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
MV-104A (6/92)

POLICE AGENCY COPY 1

Page 1 of 1 Pages

Local Codes

Accident Date 012594 Day of Week TU Time 11:40 ☐ AM ☒ PM No. of Vehicles 2 No. Injured 3 No. Killed 0 Non-Highway ☐ Not Investigated at Scene ☐ Left Scene ☐ Police Photos ☒ Yes ☐ No

VEHICLE 1
Name — exactly as printed on license PERKIN, JOHN, R. JR DMV USE HYNES, KIMBERLY, C.
VEHICLE 2 ☐ BICYCLIST ☐ PEDESTRIAN

Name — exactly as printed on registration SAME: AS DRIVER Date of Birth SAME: AS DRIVER
Mo. / Day / Year

Number and Street 40 Hazardous Material Code 011

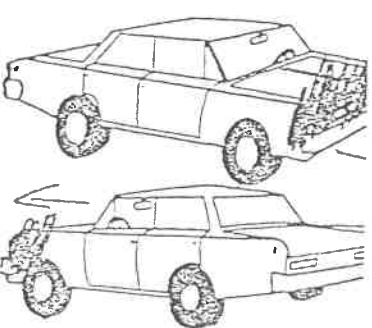
City FLY State NY Zip Code 11701

Plate Number FLY-621 State of Reg. NY Yr. & Vehicle Make 87 N. H. Vehicle Type TRUCK Ins. Code 011

Check if involved vehicle:
☐ is a commercial motor vehicle;
☐ is more than 95 inches wide;
☐ is more than 34 feet long;
☐ was operated with an overweight permit
☐ was operated with an overdimension permit

Report done
Proper.
Extensive damage
w/ injury

VEHICLE 1 DAMAGE



☐ No Damage ☐ Undercarriage

Vehicle Towed By SMITH'S Towed To SMITH'S

Reference Marker FRANK DMV USE ONLY FRANK County FRANK City FRANK Town FRANK

Route No. and Street Name on V.R. RAYMOND ☐ Miles ☐ N ☐ E ☐ Feet ☐ S ☐ W of At Intersection with

Ticket/Arrest ☐ Other ☐ Pedestrian ☐ Bicyclist Ticket/Arrest Number(s) (2)-964291 Violation Section(s) (2)-597 Nearest Intersecting Route/Street VR-ELM

Accident Description/Officer's Notes DRIVER OF VEH #2 STATING SHE WAS TRAVELLING ABOVE SPEED LIMIT AND APPROACHED THE STOP SIGN FASTER THAN ANTICIPATED AND COULD NOT STOP WITHOUT PASSING INTO INTERSECTION AND INTO THE PATH OF VEH #1. DAMAGE TO BOTH VEH #2 THEN STRUCK AND DAMAGED A U.S. POSTAL DROP BOX.

6	9	10	11	12	13	14	15	16	17 BY	TO 18	Names - If Deceased Give Date of Death
1	1	4						6	947	1602	OPERATOR
2	1	4	1	21	F	8	12	6	947	1602	OPERATOR
2	3	4	1	14	F	1	4	6	947	1602	HYNES, KERI

Officer's Name NYC 11111 Badge No. 25 Department 01624 Precinct/Post 1111 Station/Beat 1111 Reviewing Officer 1111 Date/Time Reviewed 01/21/94

19	—
20	—
21	9
22	80
23	6
24	7
25	5
26	7
27	7
28	7
29	—
30	—
USE COVER SHEET	
J	

MOBILE DRIVER TEST		VEHICLE 1		VEHICLE 2		<input type="checkbox"/> BICYCLIST	<input type="checkbox"/> PEDESTRIAN
Name — exactly as printed on license KROUL X, DENISE, M		DMV USE		Name — exactly as printed on license LINEHAN, DANIEL, P			

Name — exactly as printed on registration SAME AS DRIVER	Date of Birth Mo. / Day / Year	Name — exactly as printed on registration LINEHAN, WENDY K	Date of Birth Mo. / Day / Year
Number and Street	Hazardous Material Code		


Number and Street		Full Postal Code	
City	State	Zip Code	

Plate Number	State of Reg.	Yr. & Vehicle Make	Vehicle Type	Ins. Code	Plate Number	State of Reg.	Yr. & Vehicle Make	Vehicle Type
TZR-486	NY	85 MERC	PAS	999	IFR-406	NY	CHEV	

Check if involved vehicle:	ACCIDENT DIAGRAM					Check if involved vehicle:
<input type="checkbox"/> is a commercial motor vehicle;	Rear End	Left Turn	Right Angle	Right Turn	Head On	<input type="checkbox"/> is a commercial motor vehicle;
<input type="checkbox"/> is more than 95 inches wide;						<input type="checkbox"/> is more than 95 inches wide;
<input type="checkbox"/> is more than 34 feet long;						<input type="checkbox"/> is more than 34 feet long;
<input type="checkbox"/> was operated with an over-						<input type="checkbox"/> was operated with an over-
<input type="checkbox"/> was operated with an over-						<input type="checkbox"/> was operated with an over-

VEHICLE 1 DRIVER: [Signature] + [Signature] town ticket
VEHICLE 2 DAMAGE: [Signature]

VEHICLE DAMAGE:



☐ No Damage ☐

Diagram illustrating the removal of the rear wheel and the installation of the Undercarriage.

Vehicle By SMI
Towed To SMI

Reference Marker			
1	1	1	1
7	2	0	7
1	1	6	5

ROUTE NO. AND STREET NAME *ABOUT 120* ☐ Miles ☐ N ☐ E of
 on *ST-11* ☒ Feet ☐ S ☐ W
V.R.-MAIN
☐ At intersection with
ST-30
2-96427E *V.R.-FINNEY*
1129A Nearest intersecting Route Street

Ticket/Arrest <input type="checkbox"/> Opr 1 <input checked="" type="checkbox"/> Opr 2	<input type="checkbox"/> Other <input type="checkbox"/> Pedestrian <input type="checkbox"/> Bicyclist	Ticket/Arrest Number(s) (2) 964278 Violation Section(s) (2) 1129A
--	---	--

DRIVER OF VEH #1 STATED SHE WAS TURNING LEFT AND WAS STRUCK ON DRIVERS SIDE BY VEH #2. DRIVER OF VEH #2 STATED HE BELIEVED VEH #1 WAS TURNING RIGHT. HE THEN STATED THAT WHEN HE REALIZED VEH #1 WAS ACTUALLY TURNING LEFT IT WAS TOO LATE TO STOP HIMSELF TO COLLIDE WITH VEH #1. *LANE MARKINGS COVERED BY SNOW

8	9	10	11	12	13	14	15	16	17 BY	TO 18	Names - If Deceased Give Date of Death
1	1	4	1	24	F						OPERATOR
2	1	5	1	34	M						OPERATOR
2	3	5	1	31	F						WENDY LINEHAN
2	6	1	1	35	M						KENNETH HARRIGAN

Officer's Printed Name	Badge No.	Department	Project/Post	Station/Beat/ Sector	Reviewing Officer	Date/Time
MTL NICHOLS	59	6024	7/27			

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

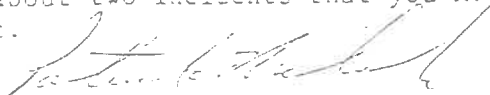
Mulverhill: I'm not picking anything up if you want to pick it then go ahead

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 am 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 .13%. 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 ADVISIT TO ME THEN UP 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

Pr. 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

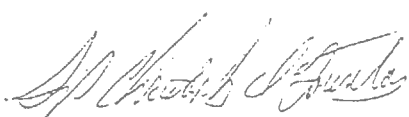
Voluntary Statement

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 arestee. 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 opionion 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 infront 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

This incident is an obvious example that
Ptl. Nichols can not work unsupervised and
can never be left alone at the station. It also
is another example of the discredit he has brought
to the Malone Police Department.

ry 26, 1994

Chief James E. Phillips
A/Chief Gerald K. Moll

On the 16th day of February 1994, I was working the 8:00PM to 4:00AM shift as shift supervisor. Working with me were Patrolmen Steve Stone and Patrick Nichols. At about 8:00pm, this dept. received a phone call and I answered it and the person on the other end demanded to speak with Pat. I then asked who was calling and she stated Jackie LaPlant. I then asked her if I could help her, and she became rather rude with me and stated she did not want to talk to me but again demanded to speak with Officer Nichols. I then put her on hold and asked Ptlm. Nichols if he knew a Jackie LaPlant and if he wanted to speak with her. He said yes he did and picked up the phone. I then started talking to one of the other members of this dept. I heard parts of the conversation that Officer Nichols was having with LaPlant and he said at one point that he would get an item to her that night. He then hung the phone up and picked up the police log book and started walking towards the copier machine. I then asked him what he was doing and he stated that Jackie LaPlant was a volunteer for Ombudsman and needed a copy of a log entry concerning a Kenneth Faubert trespassing on George Gingra's property. Officer Nichols then said that she needed this to have something done to Faubert. I then told Officer Nichols that he was not going to make a copy of the entry unless the Chief or the Assistant Chief gives the release. I also told Officer Nichols that nothing goes out of this office unless the Chief and Assistant Chief ok's it. He then put the log book down and stated that he thought that the log book was public information and he did not see the problem with her getting a copy. I told him there probably isn't any problem with her getting a copy but that she would have to go through the proper channels to get it. I then told Officer Nichols that he should call LaPlant back and inform her that she would have to request this through the Chief or Assistant Chief. Officer Nichols then called LaPlant back and stated that his shift supervisor ordered him not to release the log entry but also told her that the log book was public information and he did not know why he could not release it or make a copy of it. He then advised her to contact the Chief in the morning for the information.

Clyde F. LaChance

Patrolman Clyde F. LaChance

SUPPLEMENTARY REPORT

Classification

NO.

Name of Complainant

Address

Phone No.

Offense

DETAILS OF OFFENSE, PROGRESS OF INVESTIGATION, ETC.:
(Investigating Officer must sign)

Page No. Two

Date 02-16 1994

02-15-94 Ptl. LaChance advised me that a Jackie LaPlante from Val Haven called the station and talked with Ptl. Nichols wanting a copy of our report. Ptl. LaChance advised LaPlante that she would have to speak with the Ass't Chief or Chief.

02-16-94 0900 Hrs. Marge Miller came to the station and stated that she was waiting for Jackie LaPlante as she wanted some information on a Val Haven resident. The report was pulled and discovered that Ptl. Russell didn't finish the investigation yet as two other people had to be interviewed. I advised Marge that we couldn't release any reports at this time but could answer any questions that Jackie may have.

LaPlante came in requesting the report. I advised her the same as I advised Miller and she seemed to take offense to it. She continued and I advised her not to get snippy and would answer any questions that she would have. She then stated "Are you threatening me?". This whole conversation took place in front of Sgt. Fleury, Ptl. Mulverhill, Ptl. Simonsen and Marge Miller. After she made the comment, I felt that there was more to this than what I knew. I walked out of the room and gave the report to Sgt. Fleury and advised him to take care of the matter. LaPlante left the station.

I then asked Marge if there was something more to this than I'm aware of. She didn't know. I then advised Marge that if her office feels that the subject is that much of a threat to the community, I can assign another officer to complete the investigation now. Marge didn't feel that was necessary.

Called Lesley Lyon Office of Aging Coordinator, she advised that LaPlante was a Ombudsman volunteer. I advised her of the situation and she stated she would look into the matter.

GKM

INVESTIGATING OFFICER(S)

26 REPORT MADE BY

DATE

27 CASE FILED

28 THIS CASE IS

Active ☐ 29 APPROVED BY

Yes ☐ No ☐ Cleared by arrest ☐ Unfounded ☐ Inactive ☐ Other ☐

SUPPLEMENTARY REPORT

NO. _____

Classification _____

Address _____

Phone No. _____

Name of Complainant _____

Offense _____

DETAILS OF OFFENSE, PROGRESS OF INVESTIGATION, ETC.:
(Investigating Officer must sign)

Date _____ 19____

Page No. Three

1040 Hrs. Marge Miller called back apologizing for LaPlante's behavior. She further said that LaPlante's feelings do not reflect the feelings of the Office of the Aging or Val Haven.

GKM

INVESTIGATING OFFICER(S) _____

26 REPORT MADE BY _____

DATE _____

27 CASE FILED

Yes ☐ No ☐

28 THIS CASE IS

Cleared by arrest ☐

Unfounded ☐

Inactive ☐

Active ☐

29 APPROVED BY _____

Other ☐

Questions About Police Hearing

To the editor:

Concerning the hearing held for Pat Nichols and his supposed violations.

I like many others attended the two-day hearing and after listening to the testimony, many things that were said bothered me. When Chief (James) Phillips was brought to the witness stand, he stated in effect, that he tries to run this town militarily. I for one do not care to have myself or my town run militarily, and if I do I will join the military service. Chief Phillips then was asked by Pat Nichols' attorney, if he questions, Mr. Mattimore, the subject in question, about the incident at the village lockup. He replied that Mr. Mattimore was a felon and he felt it was not appropriate, to ask him about the incident.

He was asked this question twice and both times he gave the same reply. Someone better inform Troop "B", that they are doing it wrong, as I do believe that they try very hard to get all sides of any incident or complaint. As to the police officer who stated not one of his fellow officers, as well as himself, wanted to work with Pat Nichols. This statement makes me, as well as other people in the gallery wonder, why would you worry about who you work

with if you are clean? This was quite a query in and outside of the hearing room.

If this incident had happened to one of my sons, I and my family would have sued the Malone Village and the Malone Village Police Department for every nickel in their coffers.

What Chief Phillips does not seem to realize is that, there are good and bad cops.

If with all his education he cared to read a few out of town newspapers or watch the news on television, he would find that this happens every day and in bigger and better police department than this one. I, for one, know that by no stretch of the imagination is Pat Nichols going to win this hearing, but I do hope that he takes this matter all the way up the legal ladder, if not for himself, but for all our young people in this town, there was a unanimous feeling, as I left the hearing room. All this never would have occurred, if someone would have been kind enough to allow the young man to relieve himself.

Jackie LaPlant
Malone

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. *[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

July 29, 1994

VIA FAX TRANSMISSION

THOMAS P. HALLEY, ESQ.
Attorney at Law
297 Mill street
Poughkeepsie, New York 12601

RE: Village of Malone v. Patrick Nichols
Civil Service §75

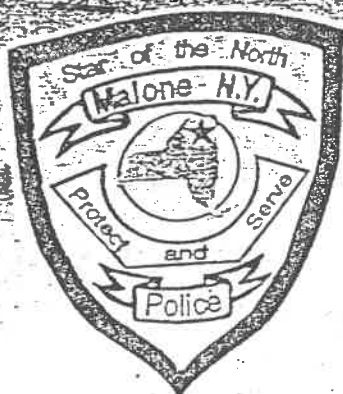
Dear Tom:

I understand that John Lawliss has delivered his decision in this matter to Mayor Feeley. I have not received a copy yet and I presume you have not either. I have instructed Mayor Feeley to fax a copy to you.

I have not had a chance to review the decision yet but I understand that the Hearing Officer has recommended that Mr. Nichols be dismissed.

The purpose of this letter is to notify you that the Board of Trustees of the Village of Malone will meet on August 22, 1994 at 6:30 p.m. The Board will first meet in executive session to determine Officer Nichols' guilt or innocence after reviewing the Hearing Officer's recommendation and the transcripts of the hearing. Subsequent to the determination, and only if the determination is one of guilty, the Board will then review Officer Nichols' personnel record in compliance with the requirements of Bigelow vs. Board of Trustees 63 NY2d 407.

We had previously delivered copies of Officer Nichols' personnel record to you but another one is enclosed. According to the Bigelow decision, Officer Nichols has the right to submit a written response to any item contained in the personnel record, whether in the nature of correcting errors or submitting evidence in mitigation.



POLICE DEPARTMENT
Village of Malone
2 Park Place
Malone, New York 12953-1601

(518) 483-2424
(518) 483-2426 FAX

James E. Phillips
Chief of Police

PATRICK NICHOLS

PERSONNEL FILE

POLICE PERSONNEL RECORD

Name Nichols, Patrick M.

Address Webster St. Malone

Date of Birth Mo. 4 Day 18 Year 63

Marital Status Married

No. Dependents 3 Date of Appointment 06-17-94 Phone

Civil Service Exam Passed on

Promotional Exam Passed on

Service Pistol Serial No.

Date	Personal Data	Date	Personal Data
06-17-88	Date of Appointment	08-05-93	Suspended on 46 counts of misconduct
05-26-89	Completed breathalyzer cert.	09-16-93	Disciplinary hearing (open to public) on charges
09-20-89	Commended for his P.R. accomplishments	10-13-93	Ptl. Nichols found guilty on 38 charges--hearing officer recommends dismissal
10-03-90	Commendation from American Legion		
12-31-90	Commended by supervisor for exceptional police work	10-20-93	Village Board gives 60 day suspension, reprimand and \$100.00 fine.
03-02-91	Commended for exceptional police work on burglary	11-20-93	Returns from suspension
03-02-91	Completed D.A.R.E. School	11-26-93	Ptl. Nichols submits memo stating that he read and understands dept. rules and regulations
12-02-91	Incident with Asst. Chief Marlow	12-11-93	Ptl. Nichols charges car outside Village and falls to notify station---advised of dept. policy---
12-22-91	Letter from Barbara Lee Ref: DARE Teaching	12-13-93	Ptl. Nichols wife files personnel complaint against Sgt. Ritchie--invest. finds no wrong doing----
04-17-92	Reprimanded by Chief for causing over \$500.00 in O.T.	12-15-93	Ptl. Nichols discusses wife's comp. with Trustee Bame---Ptl. Nichols counseled by Chief----
08-30-92	Insubordination w/Sgt. Moll Ref: Log Book	12-18-93	Ptl. Nichols files appeal on disciplinary action
01-28-93	Taken off D.A.R.E. classes due to problems	01-01-94	All four Sergeants give Ptl. Nichols BELOW STANDARD rating on evaluation
01-28-93	Letter from Thomas Kemp over DARE (same day)	02-07-94	Falls to notify Supervisor of behavior of another member that he felt was inappropriate & unprofessional
01-28-93	Letter from Flanders School over DARE (same day)		
02-04-93	Two hour counsel session w/Ass't Chief, Chief & Ptl. Nichols informing him of several violations of rules		
04-17-93	Commended by Sgt. Ritchie for assisting at WICY		
06-01-93	Personnel comp. against Ptl. Nichols from Karon Russel		
11-13-93	Letter of reprimand for conduct during Russell case		
01-13-93	Personnel complaint filed against Ass't Chief Ref: Sgt of Scott Mattimore on 04-03-93		

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

File ~~Malone~~
Malone vs Nichols

August 4, 1994

Mr. Patrick Maguire
[Redacted Address]
[Redacted City, State, Zip]

Dear Pat:

Enclosed herewith is a copy of the August 4, 1994, Press-Republican newspaper article. I have highlighted quotes from an attorney, who represents a Village employee in a personnel matter, who states that they will begin federal litigation against various unnamed Village officials.

Though no formal notice of action against the Village has been given, I forward this article to you so that you can give as much advanced notice to the Village's insurance company as possible.

Please do not hesitate to call and advise me of any communications which you receive from the insurance company, or any questions you might have, regarding this matter.

Sincerely,

James N. Feeley
James N. Feeley
Mayor

JNF:ejb
Enc

cc: Board of Trustees
Village Attorney
Brian Stewart, Esq.

August 4, 1994

Penelope Clute
Special Prosecutor
Clinton County District Attorney
Clinton County Government Center
137 Margaret Street
Plattsburgh, NY 12901

RE: Patrick Nichols

Dear Ms. Clute:

I enclose a copy of my letter of July 8, 1994. To date, I have not heard from you.

I renew my request for the information contained in that letter.

Is it correct that your office granted permission to Mr. Stewart convey the stated offer to this office? If so, is that offer accurately reflected in Mr. Stewart's letter of June 13, 1994?

I am sure that you understand the seriousness of the alleged against Officer Nichols. I would therefore respectfully request a response to my prior letters.

Very truly yours,

THOMAS P. HALLEY

cc.: Patrick Nichols
146 Webster Street
Malone, New York 12953

EXHIBIT 6

August 5, 1994

Mayor and Village Board of Malone
16 Elm Street
Malone, New York 12593

RE: Village of Malone v Nichols

Dear Mayor and Village Board:

Pursuant to a recent letter, I was advised that the Village Board intends to consider the above matter at its meeting of August 22, 1994.

Please be advised that Officer Nichols will be submitting a statement to the Village Board on or before that date.

Please advise as to the address to which such statement should be sent, and the names of each individual Village Board to whom it should be addressed.

Very truly yours,

THOMAS P. HALLEY

cc.: Patrick Nichols
146 Webster Street
Malone, New York 12953

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

July 8, 1994

Penelope Clute
Clinton County District Attorney
County Government Center
Plattsburgh, New York 12901-2933

RE: Matter of Patrick Nichols

Dear Ms. Clute:

Thank you for your letter of June 29, 1994.

I am still unsure as to two questions posed in my prior letter of June 22, 1994.

Is it correct that your office granted permission to Mr. Stewart to convey the offer to this office? If so, is that offer accurately reflected in Mr. Stewart's letter of June 13, 1994? Thank you for your continuing attention and response.

Very truly yours,

THOMAS P. HALLEY

cc.: Patrick Nichols
146 Webster Street
Malone, New York 12953

EXHIBIT *P*

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

August 8, 1994

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

RE: VILLAGE OF MALONE VS.
PATRICK NICHOLS

Dear Tom:

In response to your letter of August 5th, please submit one (1) copy of Officer Nichols' statement to the Village Board, % The Village Clerk, by mail or by hand delivery, to the Village Clerk at 16 Elm Street, Malone, New York 12953. The Village Board members who will be addressing this issue are: Earl LaVoie, Robert Fraser, Gregory Dame and Gary Grant.

When this matter was in its opening stages you expressed some concern about the constitutional "free speech" issues involved in this matter. I told you at that time that the Village would be interested in reviewing your position on the matter and I asked you to submit a brief. I told you that if the brief was convincing the Village would give consideration to withdrawing the charges against Officer Nichols which were implicated. We never received that brief.

I believe that it would be appropriate for you to submit such a brief now on behalf of Office Nichols.

By copy of this letter to the Village Clerk, I am informing her that if any such legal brief is submitted it is to be immediately distributed to me and to the Village Trustees. Officer Nichols' statement with respect to his personnel file is to be held by the Village Clerk until after the Trustees make a determination as to Officer Nichols' guilt or innocence.

Very truly yours,

HUGHES & STEWART, P.C.


Brian S. Stewart

BSS/mew

cc: James Feeley
Elizabeth J. Bessette
Chief James Phillips

THOMAS P. HALLEY

ATTORNEY AT LAW

August 9, 1994

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

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

RE: Village of Malone v Nichols

Dear Mr. Stewart:

I am in receipt of your letter of August 8, 1994. Officer Nichols' statement will be delivered to the Village Board in care of the Village Clerk on or before 5 PM on August 22, 1994.

The remainder of your letter deals with the issue of the violations of the constitutional right to free speech. It did not appear to me to be necessary or appropriate to provide a brief on the issue of the First Amendment prior to the hearing. If the Village did not feel that such charges were appropriate, they should never have been brought to begin with. If you, as the Village Attorney, had any doubt about the charges, I am sure you would have directed the Village Board to withdraw such charges. The appropriate time to address these legal issues was at the conclusion of the hearing. I offered to do this at the conclusion of the hearing. The Hearing Officer, however, advised me that he was not going to entertain a brief, and directed me not to submit one.

The First Amendment issues are not a part of the record before the Hearing Officer. I see no basis for such arguments to now become a part of the record before the Village Board. It is unfortunate that the Hearing Officer did not see fit to accept a brief. I do not believe that he has the legal background or experience which would permit him to comprehend the First Amendment issues at stake. It was for this reason that I offered to provide a legal brief. If the Hearing Officer chose to proceed without the benefit of said legal argument, I am not in a position to correct any claimed deficiencies.

Very truly yours,



THOMAS P. HALLEY

cc.: Patrick Nichols
146 Webster Street
Malone, New York 12953

CLINTON COUNTY DISTRICT ATTORNEY

PENELOPE D. CLUTE

Clinton County Government Center

137 Margaret Street

Plattsburgh, NY 12901

(518) 565-4770



ASSISTANT DISTRICT ATTORNEYS

Catherine M. Paul

Joseph Lavorando

Thomas M. Murnane

Oliver L. Bickel

August 12, 1994

Thomas P. Halley, Esq.
297 Mill Street
Poughkeepsie, NY 12601

RE: Patrick R. Nichols

AUG 12 1994

Dear Mr. Halley:

As you are aware, I was appointed Special Prosecutor for Franklin County with respect to allegations that your client testified falsely in the administrative hearing regarding whether he circulated a petition.

Our review of the testimony of your client and other witnesses indicates that there is probable cause to believe that Mr. Nichols made false statements under oath. Consequently, I intend to present evidence to the Franklin County Grand Jury regarding perjury 1st degree, under Penal Law 210.15.

We have researched whether there is any bar to criminal prosecution on the basis that your client was compelled to testify at the administrative hearing and, therefore, received immunity. In my view, the case law indicates that he would be immune if he testified to something incriminating, but he has no protection for perjury. See *People v Middleton*, 54 NY2d 474 (1980); *People v Tomasello*, 21 NY2d 143 (1967).

I am writing to advise you of my intentions and to allow you two weeks to submit any cases you have to indicate that your client may not be prosecuted for perjury under these circumstances.

If I do not hear from you by August 29, 1994, I will schedule the case for the Grand Jury, and advise you of the date and time, in the event your client wishes to testify or request the Grand Jury to call witnesses.

Sincerely,

A handwritten signature in dark ink, appearing to read "Penelope D. Clute".

Penelope D. Clute

Special Prosecutor, Franklin County

EXHIBIT R

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

August 15, 1994

Honorable Penelope Clute
Clinton County District Attorney
County Government Center
137 Margaret Street
Plattsburgh, New York 12901

RE: PATRICK NICHOLS

Dear Penny:

Enclosed herewith please find a copy of the Civil Service
Transcript per your request.

Very truly yours,

HUGHES & STEWART, P.C.


Brian S. Stewart

BSS/mew
Enc.

Full text in
transcript box

STATE OF NEW YORK
COUNTY OF FRANKLIN

VILLAGE OF MALONE

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:

Village of Malone,

Complainant,

-against-

Patrick Nichols,

Respondent.

Representing the Village of Malone:

BRIAN S. STEWART, ESQ.
31 Elm Street
Post Office Box 788
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 16th day of June, 1994,
before JOHN H. LAWLISS, 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

** COPY **

THOMAS P. HALLEY

ATTORNEY AT LAW

August 19, 1994

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

Board of Trustees - Village of Malone
c/o The Village Clerk
16 Elm Street
Malone, NY 12935

RE: Village of Malone v Patrick Nichols

Gentlemen:

Civil Service Law provides that an employee be allowed to address his employer prior to a disciplinary penalty being imposed. Officer Nichols was not given this opportunity in the Fall of 1993. He welcomes the opportunity which is given to him at this time. He hopes, however, that he will not be charged in the future with any violations of the rules and regulations of the Police Department as a result of making these statements to the Board in regard to his own case.

There are two very important aspects of the case which should be noted by the Board before it makes a final determination in this matter. The first concern relates, of course, to the finding of guilt on the part of the Hearing Officer as to the charges brought against Officer Nichols on May 3, 1994. The second concern is the recommendation of the Hearing Officer that Officer Nichols not be returned to his position as a Village Police Officer, based upon his belief that such return to duty would create disruption within the Department.

As you know, the majority of the charges pertain to comments made to the local media by Officer Nichols. It is alleged in the charges that these comments brought discredit to members of the Police Department, or to the Department itself. However, during cross examination, Chief Phillips, at pages 59 through 74 of the transcripts, Chief Phillips was asked on numerous occasions how these statements brought discredit to members of the Police Department. His answers were generally that he "believed" that Officer Nichols was referring to certain members of the Police Department, and anyone "with a second grade education could come up with the same conclusion that I did." The same series of questions were asked to Assistant Chief Moll, at page 92 through 105 of the transcript. Again, the same general answers were given by him that the reference was to official business, the Police Department as a whole, or to Officer Nichols own statement and activities. Neither the Chief nor the Assistant Chief could identify any particular individual who had been

EXHIBIT 1

discredited in Officer Nichols' statements, nor could they state how or in what manner discredit was brought upon the Police Department, other than to continue to state that they believed there was discredit brought upon the Department. Perhaps Chief Phillips best expressed the reality of the charges when he stated, at page 64 of the transcript, that Officer Nichols was bringing discredit to the Department because he was "trying to get people on to his side of an issue in regards to a personnel matter." However, the personnel matter referred to was Officer Nichols own charges, which, at that time, had been widely publicized throughout the media.

There was not one specific incident brought forth at the hearing as to any particular individual who was discredited by any of the statements of Officer Nichols. These statements were publicized in the summer of 1993, well before this Board reinstated Officer Nichols in October of 1993. If the statements were so inflammatory, derogatory, and discrediting, why did the Village Board take no action with regard to such statements in October of 1993?

The remaining charges make reference to petitions that circulated in support of Officer Nichols. He was charged with participating in the circulation of the petitions and with lying about this incident during a five hour interrogation. It should be noted that out of the entire five hours of questioning, which was performed by Chief Phillips and Assistant Chief Moll, without the benefit of Officer Nichols having an attorney present, the Village now relies on several quotes which are taken out of context. Officer Nichols continuously stated during the five hour interrogation that he was not sure, could not specifically remember, and was uncertain as to specifics relating to the circulating of petitions.

Hearing Officer Lawless states that there was credible testimony that Officer Nichols did approach four persons and asked them to sign the petitions. It should be noted that one of the four persons referred to by Hearing Officer Lawless was originally to be a witness for the prosecution, but was later dropped by them and called as a witness by the defense. The witnesses called by the prosecution to prove these charges were Scott Smith of Smith Towing, Ed Ritzman, a customer, and Dale Lamitie, an employee. Hearing Officer Lawless failed to include in his report the admission on the part of Scott Smith that he received a lot of towing business from the Police Department. He stated, at page 155 of the transcript in response to the question "and you are the favorite towing operator of the Village Police?" was "they use me quite often, yes." Hearing Officer Lawless considers Smith a "credible witness." It

should be remembered that Chief Phillips has often stated that Scott Matimore is not a "credible witness" because of Matimore's criminal record. Interestingly, the following series of questions took place during Scott Smith's cross examination:

"Q. Have you ever been arrested?

A. Yes. I have.

Q. For what?

A. Disorderly conduct.

Q. Anything else?

A. Not that I can recall.

Q. Well, ever been arrested for anything, burglary or arson?

A. That was the original charge and it was, through the Courts, dropped off to disorderly conduct, and I had one case that was acquitted."

Scott Smith further testified at page 157 of the transcript that he did not see anyone else sign the petitions in question.

The testimony of Dale Lamitie, at pages 162 through 167 of the transcript demonstrates that Officer Nichols did not ask Dale Lamitie to the sign petition. Indeed, when Dale Lamitie was asked whether the statements made by Officer Nichols during the course of the interrogation were true, he answered that they were, in fact true, and correct. Dale Lamitie indicated that he did not see anyone else sign the petitions. Nor was he asked to sign by Officer Nichols. Indeed, his statement was, at pages 165 through 166 of the transcript

"A. I asked what the petition was about.

Q. Okay. What did he say to you?

A. Read it.

Q. Any what did you say?

A. I read it.

Q. What did you say after you got done reading it?

A. What did I say I said -- well, I just signed it, okay and Carl Thomas signed it right behind me."

The witness did not recall who asked Carl Thomas to sign it, and had no idea how the petition got from him to Carl Thomas. Edward A. Ritzman was called as a witness by the Village, and testified that Officer Nichols asked him to sign the petition. Edward Ritzman also identified himself as a former employee of the State Police for some 23 years. It is unknown what the relationship was between Ritzman and Hearing Officer Lawless. (Perhaps this will come out in a subsequent proceeding). In this regard, Officer Nichols called as a character witness Robert Benjamin, who was similarly retired from the NYS Police. Robert Benjamin testified, at page 196 of the transcript, about the outstanding reputation of Officer Nichols, and particularly his reputation for honesty and telling the truth. When asked about the reputation of Edward Ritzman as a fellow Trooper, Robert Benjamin stated at page 197: "I'd say that he's got a poor reputation." Hearing Office Lawless considered Ritzman a credible witness.

The report by Hearing Officer Lawless contains numerous inaccuracies. For example, Hearing Officer Lawless states in his report that Ken Cring testified, that he, Cring, "assisted" in drawing up the petitions. A review of the Cring testimony does not indicate the use of the word "assisted" at any time. The entire testimony of Ken Cring with regard the petitions is as follows, taken from page 200 of the transcript:

"Q. I take it, sir, you were engaged in some of these petitions on his behalf?

A. Yes, sir.

Q. Would you tell me just generally what you did?

A. I actually wrote the petition and made several copies, distributed one myself."

There is absolutely no basis for the Hearing Officer's statement that Ken Cring assisted in drawing up the petitions.

On page 16 of his report, Officer Lawless states that objections made by both counsels were generally overruled. This is not true. Each and everyone of the defense objections were overruled, and all but one of the prosecution's objections were sustained. Hearing Officer Lawless also states that Officer Nichols can no longer operate within the Police Department in a professional and effective manner. He neglects to include testimony of a

number of witnesses in this regard. Specifically, Officer Dean Fountain stated, at page 189 of the transcript, that he was "nervous" working with Officer Nichols because of the problems that Officer Nichols was going through, and that Officer Fountain did not want to be dragged into the middle of it like he was in the course of the hearing. Officer Fountain's concern with being in the "middle of it" went so far that he did not want to participate in the five hour interrogation as Officer Nichols' union representative. At page 190 of the transcript, Officer Fountain recalls his concerns, acknowledging that when he was asked why don't you want to go in, he said, in effect "I have a wife and kid." Officer Steve Stone further specifically testified, at page 194 of the transcript, that he, Officer Stone, still trusts Officer Nichols. On every occasion when this attorney attempted to find out who were the officers who stated complaints about Officer Nichols, or indicated that they did not want to work with him, the Village Attorney objected, and the objection was upheld by Hearing Officer Lawless. Thus, we were prevented from determining the nature of the complaints, and whether any person was, in fact specifically dissatisfied with Officer Nichols, or whether this was just "hearsay" or "rumor." In what was described as a "search for the truth" by Hearing Officer Lawless, these facts were not permitted to come up. Indeed, this line of questioning gave rise to perhaps the most troubling aspect of the actions of this Hearing Officer. At page 74 of the transcript, the question was posed as to who were the officers the Chief claimed were afraid to be assigned with Nichols. This question was objected to by the Village Attorney. The Hearing Officer sustained the objection and made the following comments at page 75 of the transcript:

"If Officer Nichols does go back to work, it's just going to create havoc in the department as far as the other people being named here ... We have the Chief of Police who was here under oath testifying that he had some problems with the other people who did not want to work with him when he came back, and he had to change some work schedules. I think this stands by itself. I'm going to sustain the objection, and the Chief does not have to name the other police officers. He is under oath. We accept what he says."

Incredibly, we have a situation where only one witness has been called, the Chief of Police, and the Hearing Officer has already determined that if Officer Nichols goes back to work "its just going to create havoc in the department." Perhaps most importantly, and most seriously, the Hearing Officer has already stated "we accept what he says" in relation to the Chief's testimony. Thus, no amount of cross examination could apparently change the mind of the Hearing Officer. The

great unanswered question is who the Hearing Officer was referring to when he said "we accept what he says." It was understood that this was an independent Hearing Officer, who was not acting by or on behalf of anyone, but rather was acting impartially. We question who the allegiances are in his statement that "we accept what he says." Following this statement by the Hearing Officer, this attorney respectfully requested that the Hearing Officer excuse himself from the case because "it sounds like there is already an indication he shouldn't go back to work. I say this with respect, but I heard the statement and I am troubled by it." The Hearing Officer refused to disqualify himself stating at page 76 of the transcript that "I am saying that if he does go back to work and those four people are named in a small department like this in the Village, it is going to create all kinds of problems." The Hearing Officer then goes on to state that he has never met Officer Nichols, and does not recall meeting the Chief.

The question still remains as to what relationship, if any, the Hearing Officer had with any of the other persons testifying in this case, or with any members of the Village Administration, or their relatives. This question cannot be answered at this point. The impartiality of a hearing officer is often not discovered during the course of a hearing. Indeed, it was only revealed during the course of the June 17th hearing, under cross examination of the Chief of Police, at page 56, that the Chief of Police had asked prior Hearing Officer Brian McKee to be his best man at his upcoming wedding. Nonetheless, the Chief and Brian McKee have insisted to date, that Hearing Officer McKee was completely unbiased.

Due to the demonstrated close friendship on the part of Hearing Officer McKee and Chief Phillips, any prior disciplinary actions taken against Officer Nichols should not be considered by this Village Board in this case. The Village Board should judge this case on the facts alone as they exist at this time. As noted, the Village Board has never previously expressed any concern about the statements made by Officer Nichols during the summer of 1993. If the Village Board believes that Officer Nichols did not correctly answer questions posed to him during a five hour interrogation, it would be appropriate for the Village Board to read the entire transcript of that interrogation, and determine whether or not an individual, faced by two people whom he has accused of wrong doing, has willfully and intentionally given untrue statements during the course of this questioning. The Hearing Officer's report as indicated above is baseless and does not accurately reflect the record of this case. Indeed, the Hearing Officer himself admits, at page 16 of his report, that he allowed testimony into

evidence that "was not relevant." It is said that Officer Nichols is feared or mistrusted by unnamed, faceless members of the Department. Every effort to identify his potential accusers was denied by the Hearing Officer. The Hearing created a sense of fear, without giving us the right to confront the very people who allegedly expressed such fear.

Pat Nichols believes in the Village and in this Department. To him, honesty, integrity and experience are ways of life, not just words or a letterhead.

Officer Nichols has not broken any rules and regulations. He has reported what he felt to be violations of State and Federal Laws, which laws he is legally obligated to uphold. Officer Nichols is not a liar. He is not malicious, retaliatory, or vindictive as certain individuals would like this Board to believe. There are indeed two sides to every story. I am advised that on one occasion a Board Trustee told a common friend that the friend did not know both sides of the story. However, this friend of both the Board member and Officer Nichols attended both hearings, and has read to some degree the transcripts of both hearings. I would respectfully request that the Village Trustees read all of the transcripts, both of the hearing and the interrogation. Do not base your opinion solely on conversations with Officer Nichols' accusers.

When a police officer witnesses or becomes aware of blatant and illegal wrong doing, he is required to right the wrong. This is what Officer Nichols did. This is what Americans have been fighting for over two hundred years. This case is not about Officer Nichols losing his job or ending his career. This case is about your community. There are nearly 10,000 people being served by you and by Officer Nichols. If Officer Nichols loses, then, I believe, all the honest and good people of the Village of Malone also lose, and lose big. If Officer Nichols loses, there will not be sense of trust and faith in this community, but rather a sense of fear, anger, and mistrust and, yes, a discredit to the Police Department. This is a step backward, which should not be allowed by this Village Board.

We request that you reinstate Officer Nichols to his position as a Village Police Officer, and return to him the six weeks of pay that were taken from him, as well as any other benefits that may have been lost. You cannot, of course, under any circumstances, return to him his peace of mind, nor can you relieve his family from the personal hell that they have suffered. I have said before and said again that if Officer Nichols is guilty of anything, he is guilty of being a "good cop." He is perhaps a little too good for certain people, who do not want him asking questions or opening

doors, or shedding light on dark secrets. This is, however, what he pledged to do, and what he continues to do. I believe that he is a respected person in this community, and indeed, is more respected than his accusers. These are the things that his family keeps in mind when they wonder how such a series of events could occur in their home town, to someone who is only trying to do what he is sworn to do - to uphold the law. I would ask that this Village Board do likewise. Please do not permit political or retaliatory motives of a certain select few to control the will of the People. The People who have elected you and hope that you carry out their desires.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'THOMAS P. HALLEY', written over a horizontal line.

THOMAS P. HALLEY

cc: Patrick Nichols
146 Webster Street
Malone, NY 12953

Full text in
transcript box

PROPOSED RESOLUTION - FINDING GUILT

@ 8/22/94

VILLAGE BOARD, VILLAGE OF MALONE

WHEREAS, Police Officer Patrick Nichols was charged on April 20, 1994 with certain violations of Police Departmental Rules and Regulations, a copy of which charges are attached hereto and

WHEREAS, a hearing was held on June 16, 1994 pursuant to Civil Service Law §75 on said charges and

WHEREAS, said hearing was held before John Lawliss, a person designated in writing by the Malone Village Board to hold such hearing, and

WHEREAS, the said hearing Officer has presented his report dated, July 28, 1994 finding as follows:

As to charge # 1 finding Officer Nichols guilty with regard to violations of Departmental Rules and Regulations § 10.1.1; 10.1.77; 10.1.27; and 10.1.34.

As to charge # 2 finding Officer Nichols guilty with regard to violation of Departmental Rules and Regulations § 10.1.4

As to charges # 3, 4 and 5 finding Officer Nichols guilty with regard to violations of Departmental Rules and Regulations § 11.5; 10.1.27; and 10.1.34.

As to the charge # 6 finding Officer Nichols guilty with regard to violations of Departmental Rules and Regulations § 11.5 and 10.1.34 and finding Officer Nichols not guilty with respect to § 10.1.4 and,

WHEREAS, charges 1, 3, 4, 5 and 6 relate generally to Officer Nichols' solicitation of petition signatures and communications with news media and strict application of the Departmental Rules and Regulations under these circumstances gives rise to serious and difficult issues concerning Officer Nichols' constitutional right of free speech

NOW, therefore be it

RESOLVED, that the Village Board of the Village of Malone hereby finds that Patrolman Patrick Nichols gave misleading and false information to his superiors on March 17, 1994, while under oath, and therefore is guilty of insubordination pursuant to Departmental Rules and Regulations § 10.1.4.

and therefore be it

RESOLVED, that the Village Board of the Village of Malone hereby find that Patrolman Patrick Nichols gave misleading and false information to his superiors on March 17, 1994, while under oath, and therefore is guilty of insubordination pursuant to Departmental Rules and Regulations Sec. 10.1.4.

Attest: _____ Pages: 9

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 August 22, 1994.

SEAL

Elizabeth J. Bessette
Elizabeth J. Bessette
Malone Village Clerk

At a regular meeting of the Village Board of Trustees, Village of Malone, New York, on August 22, 1994, it was moved by Trustee Robert Fraser and seconded by Trustee Gary Grant that the following resolution be duly adopted:

RESOLUTION - SETTING PENALTY

WHEREAS, this Board has found Patrolman Patrick Nichols guilty of the charge of insubordination for giving false and misleading information to his superiors while under oath on March 17, 1994; and

WHEREAS, Patrolman Nichols has been represented by legal counsel throughout this Civil Service Section 75 proceeding; and

WHEREAS, the Village of Malone caused a copy of Patrolman Nichols' personnel file to be mailed to his counsel by UPS Delivery Service on August 3, 1994, with notice that such file would be used by this Board in determining any appropriate penalty in the event of a finding of guilt, and allowing Officer Nichols and his counsel an opportunity to submit information with respect to such personnel file; and

WHEREAS, the Village Board has reviewed all evidence submitted on behalf of Patrolman Nichols, the transcript of the hearing held on June 16, 1994, the report of Hearing Officer John H. Lawliss dated July 28, 1994, and the said personnel file.

NOW, THEREFORE, BE IT RESOLVED, that the Village Board finds that the actions of Patrolman Nichols in giving false and misleading information to his superiors on March 17, 1994, while under oath, constitutes unacceptable behavior in a Police Officer of the Village of Malone; and it is

RESOLVED, that the Village Board finds that Patrolman Nichols' history of employment, as shown by his personnel file, demonstrates clearly that he has been and continues to be disruptive to the morals and

functioning of the Village Police Department, that he is unable to accept criticism or punishment in a constructive fashion, and that he is unable to function within the clearly established chain of command; and it is further

RESOLVED, that Patrick Nichols be and he hereby is dismissed from service with the Police Department of the Village of Malone.

Ayes 4

Nayes 0

RESOLUTION HEREBY ADOPTED

Elizabeth J. Bessette

Elizabeth J. Bessette
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 August 22, 1994.

SEAL

Elizabeth J. Bessette

Elizabeth J. Bessette
Village Clerk

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

August 25, 1994

HAND DELIVERED

Mrs. Elizabeth J. Bessette
Malone Village Clerk
16 Elm Street
Malone, New York 12953

RE: Village of Malone -vs.- Patrick Nichols

Dear Liz:

Civil Service Law §75 requires that a copy of the charges, the written answer, the transcript of the hearing and the determination of the Village Board be filed with your office, the Village Police Department and the Franklin County Civil Service Department.

I understand from speaking with Mayor Feeley that Dick Robare will be examining the existing contract with the Police Department to determine what payments, if any, are due to Mr. Nichols upon his termination.

I am enclosing herewith a copy of the transcript certified by the stenographer.

Very truly yours,

HUGHES & STEWART, P.C.


Brian S. Stewart

BSS/tlt
Encl.

See transcript
for full text.

CIVIL SERVICE LAW §75

VILLAGE OF MALONE,

Employer,

v.

PATRICK NICHOLS,

Employee.

CHARGES OF MISCONDUCT

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

- 1) During the first part of September 1993, Police Officer Patrick Nichols, while on suspension, did knowingly intentionally solicit four persons to sign a petition, the object of which was to influence the opinions and votes of the Board Members of the Village Board of the Village of Malone with respect to a personnel matter then pending in front of such Board involving Officer Patrick Nichols. This action violated the following Departmental Rules and Regulations:

Regulation Section:

- 10.1.1 Discredit upon Department
- 10.1.77 Seeking the influence or intervention of a person outside the Department for purpose of personal preferment or advantage.
- 10.1.27 Publicly criticizing the official actions of a Department member.
- 10.1.34 Deliberate violation of regulations pertaining to police management and control.

- 2) On March 17, 1994, while being questioned by supervisor regarding the solicitation of signatures on the aforesaid petition, Officer Nichols failed to disclose the full scope of his behavior in soliciting signatures for such petition. His answers to direct questions about the direct solicitation of such signatures were misleading and false. This action violated the following Departmental Rules and Regulations:

Regulation Section:

- 10.1.4 Insubordination.
- 10.1.20 Knowingly making a false report, written or oral.

- 3) In the Malone Telegram published on August 17, 1993, respondent did criticize the Police Department stating "There is somebody else who should be suspended for 30 days". This action violated the following Departmental Rules and Regulations:

Regulation Section:

PROPOSED RESOLUTION - FINDING GUILT

VILLAGE BOARD, VILLAGE OF MALONE

WHEREAS, Police Officer Patrick Nichols was charged on April 20, 1994 with certain violations of Police Departmental Rules and Regulations, a copy of which charges are attached hereto and

WHEREAS, a hearing was held on June 16, 1994 pursuant to Civil Service Law §75 on said charges and

WHEREAS, said hearing was held before John Lawliss, a person designated in writing by the Malone Village Board to hold such hearing, and

WHEREAS, the said hearing Officer has presented his report dated, July 28, 1994 finding as follows:

As to charge # 1 finding Officer Nichols guilty with regard to violations of Departmental Rules and Regulations § 10.1.1; 10.1.77; 10.1.27; and 10.1.34.

As to charge # 2 finding Officer Nichols guilty with regard to violation of Departmental Rules and Regulations § 10.1.4

As to charges # 3, 4 and 5 finding Officer Nichols guilty with regard to violations of Departmental Rules and Regulations § 11.5; 10.1.27; and 10.1.34.

As to the charge # 6 finding Officer Nichols guilty with regard to violations of Departmental Rules and Regulations § 11.5 and 10.1.34 and finding Officer Nichols not guilty with respect to § 10.1.4 and,

WHEREAS, charges 1, 3, 4, 5 and 6 relate generally to Officer Nichols' solicitation of petition signatures and communications with news media and strict application of the Departmental Rules and Regulations under these circumstances gives rise to serious and difficult issues concerning Officer Nichols' constitutional right of free speech

NOW, therefore be it

RESOLVED, that the Village Board of the Village of Malone hereby finds that Patrolman Patrick Nichols gave misleading and false information to his superiors on March 17, 1994, while under oath, and therefore is guilty of insubordination pursuant to Departmental Rules and Regulations § 10.1.4.

THOMAS P. HALLEY

ATTORNEY AT LAW

August 29, 1994

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

VIA FAX 518-565-4777

Penelope D. Clute, Esq.
Clinton County District Attorney
County Government Center
137 Margaret Street
Plattsburgh, New York 12901-2933

RE: Matter of Patrick Nichols

Dear Ms. Clute:

This is in reply to your letter of August 12, 1994, which was mailed on August 15, 1994, and received by me on August 17, 1994. I enclose a copy of your letter and a photocopy of the envelope.

I have reviewed the cases cited in your letter, but I do not believe them to be applicable to this case. The cases cited in your letter do not directly deal with forced or compelled testimony in an administrative process. Further, Officer Nichols was neither offered or granted immunity. He was denied access to counsel, and was told that he must answer the questions under a threat of loss of his job. The United States Supreme Court, in *Garrity v New Jersey*, 385 US 493, held that a statement obtained from a police officer under such circumstances is coerced, and any such statement obtained from him may not be used against him in any manner whatsoever. The Supreme Court held subsequently that answers elicited upon the threat of loss of employment are compelled and inadmissible in evidence. (*Lefkowitz v Turley*, 414 US 70, at 85). I believe that the most recent statement in this regard by the NYS Court of Appeals was contained in Matter of Matt v LaRocca, 71 NY2d 154, at 159.

There should be no dispute that the matters in issue, relating to the soliciting of signatures on a petition, are not duty related or work related incidents, since they clearly did not take place while Officer Nichols was on duty, and clearly concern issues of free speech and a citizen's right to petition the government.

In light of the above, it is my considered opinion that there is a constitutional bar to criminal prosecution of Officer Nichols. It is my further opinion that a criminal prosecution of this type, in contravention, of clearly established constitutional rights, gives rise to an action for injunctive relief, whether that be in State or Federal

EXHIBIT S

Court. Accordingly, I would respectfully request that you advise, in advance, of your intentions in regard to presentation of this matter to a Grand Jury. Please advise not only this office, but also the Law Office of Thomas H. McCann, at 66 West Main Street, Malone, NY 12953, telephone 518-483-5900.

I would also appreciate a reply to my letter of August 4, 1994 which referred to my letter of July 8, 1994, and, in turn, my letter of June 22, 1994. Specifically, is it correct that your office granted permission to Mr. Stewart to convey the offer of no criminal prosecution to this office? If so, is that offer accurately reflected in Mr. Stewart's letter of June 13, 1994. You had previously indicated in your letter of June 29, 1994, that the questions seem "quite moot." I respectfully disagree. While there is a general theory of prosecutorial immunity in Section 1983 Federal Court actions, this immunity is not absolute when it is applied to investigatory and administrative functions. (Robinson v Via, 821 F.2d 913). I would therefore again request a response to these questions as they directly relate to the civil rights of Officer Nichols, and bear upon the currently contemplated proceedings. To date, there has been no indication that your office granted permission to Mr. Stewart, nor has there been any indication that the offer is accurately reflected. It must therefore be presumed, in the absence of any objection from your office, that there was no express permission granted, and/or that the offer was not accurately reflected.

If I do not hear from you by September 15, 1994, I will advise Officer Nichols that the lack of response or objection should permit him to continue that presumption.

Thank you again for your continuing attention to this case.

Very truly yours,



THOMAS P. HADLEY

cc: Patrick Nichols
146 Webster Street
Malone, NY 12953

Thomas McCann, Esq.
66 West Main Street
Malone, NY 12953

Full text in
transcript box

COPY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

Patrick Nichols,

Index No. 94-589

Petitioner,

NOTICE OF PETITION *Regral was*

-against-

Village of Malone,

Respondent.

FILED

OCT-21-1994

FRANKLIN COUNTY
CLERK'S OFFICE

PLEASE TAKE NOTICE that upon the annexed petition of Patrick Nichols, verified on the 21 day of October 1994, and on all the administrative proceedings previously had 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 23rd day of November 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 22nd of August 1994, 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.

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

October 25, 1994

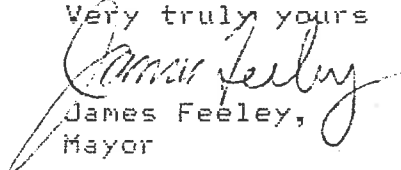
Brian Stewart, Esq.
31 Elm Street
Malone, New York 12953

Dear Brian:

At the Village's regular board meeting of October 24, 1994, we passed a resolution to hire you in the matter of the appeal of Patrick Nichols V. The Village of Malone.

This date I delivered to your office materials that are to be submitted with the appeal. If anything is missing, or if I may be of some further assistance, please do not hesitate to contact me.

Very truly yours


James Feeley,
Mayor

JF/cdy

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

October 25, 1994

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

RE: NICHOLS VS. VILLAGE OF MALONE

Dear Jim:

Enclosed herewith is an answer to the petition in regards to the above. If it meets with your approval please give me a call.

Very truly yours,

HUGHES & STEWART, P.C.


Brian S. Stewart

BSS/mew
Enc.

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 ~~set~~ *required* ~~forth in 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.

→ The Village of Malone released the decision to the media soon after receiving it because office Nichols specifically ^{demanding} requested in writing that all aspects of this case be made public. This release was made pursuant to inquiry from the media.

FIFTH OBJECTION IN POINT OF LAW

17. The Village of Malone has no knowledge as to whether the hearing officer's decision was released to the public prior to being released to the petitioner's attorney. ~~If this set of circumstances is true, it is unfortunate but not grounds for reversal of any decision of the Malone Village Board.~~

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:

by _____
MAYOR JAMES FEELEY

Sworn to before me this
_____ day of _____, 199____.

Notary Public

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

October 28, 1994

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

RE: NICHOLS VS. MALONE
FRANKLIN COUNTY INDEX NO. 94-589

Dear Tom:

Enclosed is a copy of my letter to the County Clerk filing all of the appropriate papers pursuant to Article 78. Also enclosed is a copy of the Village's statement of material facts and answer.

Although your Petition establishes a hearing date of November 23rd, it appears that no RJI has been filed and therefore this matter will not be heard.

Very truly yours,

HUGHES & STEWART, P.C.


Brian S. Stewart

BSS/new
Enclosures

cc: Mayor James Feeley

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

August 25, 1994

HAND DELIVERED

Mrs. Elizabeth J. Bessette
Malone Village Clerk
16 Elm Street
Malone, New York 12953

RE: Village of Malone -vs.- Patrick Nichols

Dear Liz:

Civil Service Law §75 requires that a copy of the charges, the written answer, the transcript of the hearing and the determination of the Village Board be filed with your office, the Village Police Department and the Franklin County Civil Service Department.

I understand from speaking with Mayor Feeley that Dick Robare will be examining the existing contract with the Police Department to determine what payments, if any, are due to Mr. Nichols upon his termination.

I am enclosing herewith a copy of the transcript certified by the stenographer.

Very truly yours,

HUGHES & STEWART, P.C.

Brian S. Stewart

BSS/tlt
Encl.

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

November 1, 1994

Franklin County Clerk
Courthouse
63 West Main Street
Malone, New York 12953

RE: PATRICK NICHOLS VS. VILLAGE OF MALONE
SUPREME COURT INDEX NO. 94-589

Dear Sirs:

Enclosed herewith for filing please find the Respondent's statement of material facts, the Respondent's verified answer, the certified transcript of the Civil Service Hearing conducted on June 16, 1994, the file folder containing all of the original exhibits in the Civil Service matter, the Hearing Officer's report and recommendation, a copy of Officer Nichols' personnel file, the written submission prepared by petitioner's attorney on 8/19/94 and a certification by the Malone Village Clerk of the action taken by the Village Board terminating the Petitioner.

Very truly yours,

HUGHES & STEWART, P.C.


Brian S. Stewart

BSS/mew
Enclosures

cc: Thomas P. Halley, Esq.

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

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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.

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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 (#1)

STATE OF NEW YORK
COUNTY OF FRANKLIN

VILLAGE OF MALONE

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:

Village of Malone,

Complainant,

-against-

Patrick Nichols,

Respondent.

Representing the Village of Malone:

BRIAN S. STEWART, ESQ.
31 Elm Street
Post Office Box 788
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 16th day of June, 1994,
before JOHN H. LAWLISS, 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

** COPY **

Honesty

Integrity

Experience

Lawliss Investigative Agency

Full text in
transcript
Box (#1)

July 28, 1994.

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

Re: Village of Malone v. Patrick Nichols

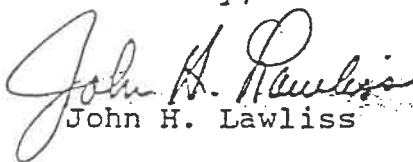
Dear Mayor Feeley:

Pursuant to my being appointed Hearing Officer in the above matter, I have conducted a hearing in this matter regarding disciplinary proceedings against Police Officer Patrick Nichols which was held in Malone, New York on June 16, 1994. My report of findings and recommendations in this matter is attached to this letter.

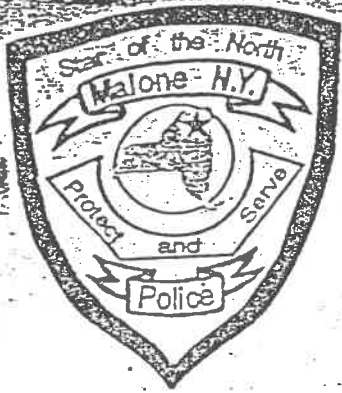
Also please find my bill for services rendered.

If I can be of further assistance to you in this matter or any other matter, please do not hesitate to contact me.

Sincerely,


John H. Lawliss

Enclosures
JHL/lms



POLICE DEPARTMENT
Village of Malone
2 Park Place
Malone, New York 12953-1601

See 7/29/94 for
full text

(518) 483-2424
(518) 483-2426 FAX

James E. Phillips
Chief of Police

PATRICK NICHOLS

PERSONNEL FILE

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.

Full text
in transcript
Box (#1)

PROPOSED RESOLUTION - SETTING PENALTY

VILLAGE BOARD, VILLAGE OF MALONE

WHEREAS, this Board has found Patrolman Patrick Nichols guilty of the charge of insubordination for giving false and misleading information to his superiors while under oath on March 17, 1994 and

WHEREAS, Patrolman Nichols has been represented by legal counsel throughout this Civil Service § 75 proceeding, and

WHEREAS, The Village of Malone caused a copy of Patrolman Nichols' personnel file to be mailed to his counsel by UPS Delivery Service on August 3, 1994 with notice that such file would be used by this Board in determining any appropriate penalty in the event of a finding of guilt, and allowing Officer Nichols and his counsel an opportunity to submit information with respect to such personnel file, and

WHEREAS, the Village Board has reviewed all evidence submitted on behalf of Patrolman Nichols, the transcript of the hearing held on June 16, 1994 the report of Hearing Officer John H. Lawliss, dated July 28, 1994 and the said personnel file,

NOW therefore be it

RESOLVED, that the Village board finds that the actions of Patrolman Nichols in giving false and misleading information to his superiors on March 17, 1994, while under oath constitutes unacceptable behavior in a Police Officer of the Village of Malone and it is

RESOLVED, that the Village Board finds that Patrolman Nichols' history of employment as shown by his personnel file demonstrates clearly that he has been and continues to be disruptive to the morale and functioning of the Village Police Department, that he is unable to accept criticism or punishment in a constructive fashion, and that he is unable to function within the clearly established chain of command, and it is further

RESOLVED, that Patrick Nichols be and he hereby is dismissed from service with the Police Department of the Village of Malone.

RESOLVED, by unanimous decision of the Village Board that Patrick Nichols be and he hereby is dismissed from service with the Police Department of the Village of Malone.

Ayes 4

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 August 22, 1994.

SEAL

Elizabeth J. Bessette
Elizabeth J. Bessette
Malone Village Clerk

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

November 10, 1994

Hon. Jan Plumadore JSC
Supreme Court Chambers
Harrietstown Town Hall
30 Main St.
Saranac Lake, NY 12983

RE: NICHOLS V. VILLAGE OF MALONE
INDEX NO. 94-589

Dear Judge Plumadore:

Enclosed herewith please find a copy of the Respondent's Statement of Pertinent and Material Facts and a copy of the Respondent's Verified Answer. The originals were filed with the Franklin County Clerk prior to your assignment as Judge in this matter.

Also enclosed herewith please find a folder containing all of the original exhibits.

Also enclosed are a copy of the transcript of the hearing, a copy of the Hearing Officer's report and recommendation, a copy of the Resolution of the Village Board of the Village of Malone finding Mr. Nichols guilty of charge No. 2, a copy of the Resolution of the Village Board terminating Mr. Nichols and a copy of Thomas Halley's letter, dated August 19, 1994.

The originals of these documents were filed with the County Clerk prior to your assignment as Judge in this matter.

Very truly yours,

HUGHES & STEWART, P.C.

Brian S. Stewart

BSS/mew
Enclosures

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

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 (#1)

STATE OF NEW YORK
COUNTY OF FRANKLIN

VILLAGE OF MALONE

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:

Village of Malone,

Complainant,

-against-

Patrick Nichols,

Respondent.

Representing the Village of Malone:

BRIAN S. STEWART, ESQ.
31 Elm Street
Post Office Box 788
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 16th day of June, 1994,
before JOHN H. LAWLISS, 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

** COPY **

Honesty

Integrity

Experience

Lawliss Investigative Agency

Full text in
transcript
Box (#1)

July 28, 1994.

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

Re: Village of Malone v. Patrick Nichols

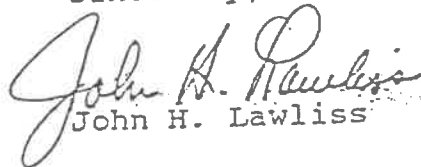
Dear Mayor Feeley:

Pursuant to my being appointed Hearing Officer in the above matter, I have conducted a hearing in this matter regarding disciplinary proceedings against Police Officer Patrick Nichols which was held in Malone, New York on June 16, 1994. My report of findings and recommendations in this matter is attached to this letter.

Also please find my bill for services rendered.

If I can be of further assistance to you in this matter or any other matter, please do not hesitate to contact me.

Sincerely,


John H. Lawliss

Enclosures

JHL/lms

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

RESOLUTION - FINDING GUILT

At a regular meeting of the Village Board of Trustees, Village of Malone, New York, on August 22, 1994, it was moved by Trustee Robert Farrow and seconded by Trustee Gary Grant that the following resolution be duly adopted:

WHEREAS, Police Officer Patrick Nichols was charged on April 20, 1994 with certain violations of Police Departmental Rules and Regulations, a copy of which charges are attached hereto and

WHEREAS, a hearing was held before John Lawliss, a person designated in writing by the Malone Village Board to hold such hearing and,

WHEREAS, the said Hearing Officer has presented his report dated July 26, 1994 finding as follows:

As to charge #1 finding Officer Nichols guilty with regards to violations of Departmental Rules and Regulations Sec. 10.1.1; 10.1.77; 10.1.27 and 10.1.34.

As to charge #2 finding Officer Nichols guilty with regards to violation of Departmental Rules and Regulations Sec. 10.1.4.

As to charges #3, 4 and 5 finding Officer Nichols guilty with regards to violations of Departmental Rules and Regulations Sec. 11.5; 10.1.27; and 10.1.34.

As to charge #6 finding Officer Nichols guilty with regard to violations of Departmental Rules and Regulations Sec. 11.5 and 10.1.34 and finding Officer Nichols not guilty with respect to Sec. 10.1.4 and,

WHEREAS, charges 1,3,4,5 and 6 relate generally to Officer Nichols' solicitation of petition signatures and communications with the news media and strict application of the Departmental Rules and Regulations under these circumstances give rise to serious and difficult issues concerning Officer Nichols' constitutional right of free speech

EXHIBIT

U

AND therefore be it

RESOLVED, that the Village Board of the Village of Malone hereby find that Patrolman Patrick Nichols gave misleading and false information to his superiors on March 17, 1994, while under oath, and therefore is guilty of insubordination pursuant to Departmental Rules and Regulations Sec. 10.1.4.

Attest _____ Pages _____

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 August 22, 1994.

SEAL

Elizabeth J. Bessette

Elizabeth J. Bessette
Malone Village Clerk

At a regular meeting of the Village Board of Trustees, Village of Malone, New York, on August 22, 1994, it was moved by Trustee Robert Fraser and seconded by Trustee Gary Grant that the following resolution be duly adopted:

RESOLUTION - SETTING PENALTY

WHEREAS, this Board has found Patrolman Patrick Nichols guilty of the charge of insubordination for giving false and misleading information to his superiors while under oath on March 17, 1994; and

WHEREAS, Patrolman Nichols has been represented by legal counsel throughout this Civil Service Section 75 proceeding; and

WHEREAS, the Village of Malone caused a copy of Patrolman Nichols' personnel file to be mailed to his counsel by UPS Delivery Service on August 3, 1994, with notice that such file would be used by this Board in determining any appropriate penalty in the event of a finding of guilt, and allowing Officer Nichols and his counsel an opportunity to submit information with respect to such personnel file; and

WHEREAS, the Village Board has reviewed all evidence submitted on behalf of Patrolman Nichols, the transcript of the hearing held on June 16, 1994, the report of Hearing Officer John H. Lawliss dated July 28, 1994, and the said personnel file.

NOW, THEREFORE, BE IT RESOLVED, that the Village Board finds that the actions of Patrolman Nichols in giving false and misleading information to his superiors on March 17, 1994, while under oath, constitutes unacceptable behavior in a Police Officer of the Village of Malone; and it is

RESOLVED, that the Village Board finds that Patrolman Nichols' history of employment, as shown by his personnel file, demonstrates clearly that he has been and continues to be disruptive to the morals and

functioning of the Village Police Department, that he is unable to accept criticism or punishment in a constructive fashion, and that he is unable to function within the clearly established chain of command; and it is further

RESOLVED, that Patrick Nichols be and he hereby is dismissed from service with the Police Department of the Village of Malone.

Ayes 4

Nayes 0

RESOLUTION HEREBY ADOPTED

Elizabeth J. Bessette
Elizabeth J. Bessette
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 August 22, 1994.

SEAL

Elizabeth J. Bessette
Elizabeth J. Bessette
Village Clerk

THOMAS P. HALLEY

ATTORNEY AT LAW

August 19, 1994

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

Board of Trustees - Village of Malone
c/o The Village Clerk
16 Elm Street
Malone, NY 12935

RE: Village of Malone v Patrick Nichols

Gentlemen:

Civil Service Law provides that an employee be allowed to address his employer prior to a disciplinary penalty being imposed. Officer Nichols was not given this opportunity in the Fall of 1993. He welcomes the opportunity which is given to him at this time. He hopes, however, that he will not be charged in the future with any violations of the rules and regulations of the Police Department as a result of making these statements to the Board in regard to his own case.

There are two very important aspects of the case which should be noted by the Board before it makes a final determination in this matter. The first concern relates, of course, to the finding of guilt on the part of the Hearing Officer as to the charges brought against Officer Nichols on May 3, 1994. The second concern is the recommendation of the Hearing Officer that Officer Nichols not be returned to his position as a Village Police Officer, based upon his belief that such return to duty would create disruption within the Department.

As you know, the majority of the charges pertain to comments made to the local media by Officer Nichols. It is alleged in the charges that these comments brought discredit to members of the Police Department, or to the Department itself. However, during cross examination, Chief Phillips, at pages 59 through 74 of the transcripts, Chief Phillips was asked on numerous occasions how these statements brought discredit to members of the Police Department. His answers were generally that he "believed" that Officer Nichols was referring to certain members of the Police Department, and anyone "with a second grade education could come up with the same conclusion that I did." The same series of questions were asked to Assistant Chief Moll, at page 92 through 105 of the transcript. Again, the same general answers were given by him that the reference was to official business, the Police Department as a whole, or to Officer Nichols own statement and activities. Neither the Chief nor the Assistant Chief could identify any particular individual who had been

EXHIBIT 1

discredited in Officer Nichols' statements, nor could they state how or in what manner discredit was brought upon the Police Department, other than to continue to state that they believed there was discredit brought upon the Department. Perhaps Chief Phillips best expressed the reality of the charges when he stated, at page 64 of the transcript, that Officer Nichols was bringing discredit to the Department because he was "trying to get people on to his side of an issue in regards to a personnel matter." However, the personnel matter referred to was Officer Nichols own charges, which, at that time, had been widely publicized throughout the media.

There was not one specific incident brought forth at the hearing as to any particular individual who was discredited by any of the statements of Officer Nichols. These statements were publicized in the summer of 1993, well before this Board reinstated Officer Nichols in October of 1993. If the statements were so inflammatory, derogatory, and discrediting, why did the Village Board take no action with regard to such statements in October of 1993?

The remaining charges make reference to petitions that circulated in support of Officer Nichols. He was charged with participating in the circulation of the petitions and with lying about this incident during a five hour interrogation. It should be noted that out of the entire five hours of questioning, which was performed by Chief Phillips and Assistant Chief Moll, without the benefit of Officer Nichols having an attorney present, the Village now relies on several quotes which are taken out of context. Officer Nichols continuously stated during the five hour interrogation that he was not sure, could not specifically remember, and was uncertain as to specifics relating to the circulating of petitions.

Hearing Officer Lawless states that there was credible testimony that Officer Nichols did approach four persons and asked them to sign the petitions. It should be noted that one of the four persons referred to by Hearing Officer Lawless was originally to be a witness for the prosecution, but was later dropped by them and called as a witness by the defense. The witnesses called by the prosecution to prove these charges were Scott Smith of Smith Towing, Ed Ritzman, a customer, and Dale Lamitie, an employee. Hearing Officer Lawless failed to include in his report the admission on the part of Scott Smith that he received a lot of towing business from the Police Department. He stated, at page 155 of the transcript in response to the question "and you are the favorite towing operator of the Village Police?" was "they use me quite often, yes." Hearing Officer Lawless considers Smith a "credible witness." It

should be remembered that Chief Phillips has often stated that Scott Matimore is not a "credible witness" because of Matimore's criminal record. Interestingly, the following series of questions took place during Scott Smith's cross examination:

"Q. Have you ever been arrested?

A. Yes. I have.

Q. For what?

A. Disorderly conduct.

Q. Anything else?

A. Not that I can recall.

Q. Well, ever been arrested for anything, burglary or arson?

A. That was the original charge and it was, through the Courts, dropped off to disorderly conduct, and I had one case that was acquitted."

Scott Smith further testified at page 157 of the transcript that he did not see anyone else sign the petitions in question.

The testimony of Dale Lamitie, at pages 162 through 167 of the transcript demonstrates that Officer Nichols did not ask Dale Lamitie to sign the petition. Indeed, when Dale Lamitie was asked whether the statements made by Officer Nichols during the course of the interrogation were true, he answered that they were, in fact true, and correct. Dale Lamitie indicated that he did not see anyone else sign the petitions. Nor was he asked to sign by Officer Nichols. Indeed, his statement was, at pages 165 through 166 of the transcript

"A. I asked what the petition was about.

Q. Okay. What did he say to you?

A. Read it.

Q. Any what did you say?

A. I read it.

Q. What did you say after you got done reading it?

A. What did I say I said -- well, I just signed it, okay and Carl Thomas signed it right behind me."

The witness did not recall who asked Carl Thomas to sign it, and had no idea how the petition got from him to Carl Thomas. Edward A. Ritzman was called as a witness by the Village, and testified that Officer Nichols asked him to sign the petition. Edward Ritzman also identified himself as a former employee of the State Police for some 23 years. It is unknown what the relationship was between Ritzman and Hearing Officer Lawless. (Perhaps this will come out in a subsequent proceeding). In this regard, Officer Nichols called as a character witness Robert Benjamin, who was similarly retired from the NYS Police. Robert Benjamin testified, at page 196 of the transcript, about the outstanding reputation of Officer Nichols, and particularly his reputation for honesty and telling the truth. When asked about the reputation of Edward Ritzman as a fellow Trooper, Robert Benjamin stated at page 197: "I'd say that he's got a poor reputation." Hearing Office Lawless considered Ritzman a credible witness.

The report by Hearing Officer Lawless contains numerous inaccuracies. For example, Hearing Officer Lawless states in his report that Ken Cring testified, that he, Cring, "assisted" in drawing up the petitions. A review of the Cring testimony does not indicate the use of the word "assisted" at any time. The entire testimony of Ken Cring with regard the petitions is as follows, taken from page 200 of the transcript:

"Q. I take it, sir, you were engaged in some of these petitions on his behalf?

A. Yes, sir.

Q. Would you tell me just generally what you did?

A. I actually wrote the petition and made several copies, distributed one myself."

There is absolutely no basis for the Hearing Officer's statement that Ken Cring assisted in drawing up the petitions.

On page 16 of his report, Officer Lawless states that objections made by both counsels were generally overruled. This is not true. Each and everyone of the defense objections were overruled, and all but one of the prosecution's objections were sustained. Hearing Officer Lawless also states that Officer Nichols can no longer operate within the Police Department in a professional and effective manner. He neglects to include testimony of a

number of witnesses in this regard. Specifically, Officer Dean Fountain stated, at page 189 of the transcript, that he was "nervous" working with Officer Nichols because of the problems that Officer Nichols was going through, and that Officer Fountain did not want to be dragged into the middle of it like he was in the course of the hearing. Officer Fountain's concern with being in the "middle of it" went so far that he did not want to participate in the five hour interrogation as Officer Nichols' union representative. At page 190 of the transcript, Officer Fountain recalls his concerns, acknowledging that when he was asked why don't you want to go in, he said, in effect "I have a wife and kid." Officer Steve Stone further specifically testified, at page 194 of the transcript, that he, Officer Stone, still trusts Officer Nichols. On every occasion when this attorney attempted to find out who were the officers who stated complaints about Officer Nichols, or indicated that they did not want to work with him, the Village Attorney objected, and the objection was upheld by Hearing Officer Lawless. Thus, we were prevented from determining the nature of the complaints, and whether any person was, in fact specifically dissatisfied with Officer Nichols, or whether this was just "hearsay" or "rumor." In what was described as a "search for the truth" by Hearing Officer Lawless, these facts were not permitted to come up. Indeed, this line of questioning gave rise to perhaps the most troubling aspect of the actions of this Hearing Officer. At page 74 of the transcript, the question was posed as to who were the officers the Chief claimed were afraid to be assigned with Nichols. This question was objected to by the Village Attorney. The Hearing Officer sustained the objection and made the following comments at page 75 of the transcript:

"If Officer Nichols does go back to work, it's just going to create havoc in the department as far as the other people being named here ... We have the Chief of Police who was here under oath testifying that he had some problems with the other people who did not want to work with him when he came back, and he had to change some work schedules. I think this stands by itself. I'm going to sustain the objection, and the Chief does not have to name the other police officers. He is under oath. We accept what he says."

Incredibly, we have a situation where only one witness has been called, the Chief of Police, and the Hearing Officer has already determined that if Officer Nichols goes back to work "its just going to create havoc in the department." Perhaps most importantly, and most seriously, the Hearing Officer has already stated "we accept what he says" in relation to the Chief's testimony. Thus, no amount of cross examination could apparently change the mind of the Hearing Officer. The

great unanswered question is who the Hearing Officer was referring to when he said "we accept what he says." It was understood that this was an independent Hearing Officer, who was not acting by or on behalf of anyone, but rather was acting impartially. We question who the allegiances are in his statement that "we accept what he says." Following this statement by the Hearing Officer, this attorney respectfully requested that the Hearing Officer excuse himself from the case because "it sounds like there is already an indication he shouldn't go back to work. I say this with respect, but I heard the statement and I am troubled by it." The Hearing Officer refused to disqualify himself stating at page 76 of the transcript that "I am saying that if he does go back to work and those four people are named in a small department like this in the Village, it is going to create all kinds of problems." The Hearing Officer then goes on to state that he has never met Officer Nichols, and does not recall meeting the Chief.

The question still remains as to what relationship, if any, the Hearing Officer had with any of the other persons testifying in this case, or with any members of the Village Administration, or their relatives. This question cannot be answered at this point. The impartiality of a hearing officer is often not discovered during the course of a hearing. Indeed, it was only revealed during the course of the June 17th hearing, under cross examination of the Chief of Police, at page 56, that the Chief of Police had asked prior Hearing Officer Brian McKee to be his best man at his upcoming wedding. Nonetheless, the Chief and Brian McKee have insisted to date, that Hearing Officer McKee was completely unbiased.

Due to the demonstrated close friendship on the part of Hearing Officer McKee and Chief Phillips, any prior disciplinary actions taken against Officer Nichols should not be considered by this Village Board in this case. The Village Board should judge this case on the facts alone as they exist at this time. As noted, the Village Board has never previously expressed any concern about the statements made by Officer Nichols during the summer of 1993. If the Village Board believes that Officer Nichols did not correctly answer questions posed to him during a five hour interrogation, it would be appropriate for the Village Board to read the entire transcript of that interrogation, and determine whether or not an individual, faced by two people whom he has accused of wrong doing, has willfully and intentionally given untrue statements during the course of this questioning. The Hearing Officer's report as indicated above is baseless and does not accurately reflect the record of this case. Indeed, the Hearing Officer himself admits, at page 16 of his report, that he allowed testimony into

evidence that "was not relevant." It is said that Officer Nichols is feared or mistrusted by unnamed, faceless members of the Department. Every effort to identify his potential accusers was denied by the Hearing Officer. The Hearing created a sense of fear, without giving us the right to confront the very people who allegedly expressed such fear.

Pat Nichols believes in the Village and in this Department. To him, honesty, integrity and experience are ways of life, not just words or a letterhead.

Officer Nichols has not broken any rules and regulations. He has reported what he felt to be violations of State and Federal Laws, which laws he is legally obligated to uphold. Officer Nichols is not a liar. He is not malicious, retaliatory, or vindictive as certain individuals would like this Board to believe. There are indeed two sides to every story. I am advised that on one occasion a Board Trustee told a common friend that the friend did not know both sides of the story. However, this friend of both the Board member and Officer Nichols attended both hearings, and has read to some degree the transcripts of both hearings. I would respectfully request that the Village Trustees read all of the transcripts, both of the hearing and the interrogation. Do not base your opinion solely on conversations with Officer Nichols' accusers.

When a police officer witnesses or becomes aware of blatant and illegal wrong doing, he is required to right the wrong. This is what Officer Nichols did. This is what Americans have been fighting for over two hundred years. This case is not about Officer Nichols losing his job or ending his career. This case is about your community. There are nearly 10,000 people being served by you and by Officer Nichols. If Officer Nichols loses, then, I believe, all the honest and good people of the Village of Malone also lose, and lose big. If Officer Nichols loses, there will not be sense of trust and faith in this community, but rather a sense of fear, anger, and mistrust and, yes, a discredit to the Police Department. This is a step backward, which should not be allowed by this Village Board.

We request that you reinstate Officer Nichols to his position as a Village Police Officer, and return to him the six weeks of pay that were taken from him, as well as any other benefits that may have been lost. You cannot, of course, under any circumstances, return to him his peace of mind, nor can you relieve his family from the personal hell that they have suffered. I have said before and said again that if Officer Nichols is guilty of anything, he is guilty of being a "good cop." He is perhaps a little too good for certain people, who do not want him asking questions or opening

doors, or shedding light on dark secrets. This is, however, what he pledged to do, and what he continues to do. I believe that he is a respected person in this community, and indeed, is more respected than his accusers. These are the things that his family keeps in mind when they wonder how such a series of events could occur in their home town, to someone who is only trying to do what he is sworn to do - to uphold the law. I would ask that this Village Board do likewise. Please do not permit political or retaliatory motives of a certain select few to control the will of the People. The People who have elected you and hope that you carry out their desires.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Halley', written over a horizontal line.

THOMAS P. HALLEY

cc: Patrick Nichols
146 Webster Street
Malone, NY 12953

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

PETITION RE: PATRICK NICHOLS:

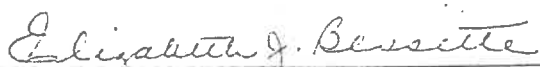
A 32 page petition was presented to Mayor Feeley with the following heading:

"We, the undersigned, support the actions taken by Officer Pat Nichols, and feel that he should retain his position on the Malone Police Department regardless of the outcome of the public hearing, for the following reasons:

- 1) He acted in good faith with an honorable intent.
- 2) He acted in the best interest of the public.
- 3) His actions took courage and fortitude.
- 4) His motivation was not self-serving.
- 5) He is an ethical person who believes in justice and fair play."

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 an item from a meeting of the Village Board of Trustees held September 13, 1993.

SEAL



Elizabeth J. Bessette
Malone Village Clerk

23
We, the undersigned, support the actions taken by Officer Pat Nichols, and feel that he should retain his position on the Malone Police Department regardless of the outcome of the public hearing, for the following reasons:

- 1) He acted in good faith with an honorable intent.
- 2) He acted in the best interest of the public.
- 3) His actions took courage and fortitude.
- 4) His motivation was not self-serving.
- 5) He is an ethical person who believes in justice and fair play.

Scott Nicholls

NAME

ADDRESS

1. Bob Charland

2. Debbie Harrelly

3. Janita DeCoste

4. Michelle Langlois

5. Cindy H. Adams

6. Michael Holmes

7. Patti Burnett

8. Katharine L. Stender

9. Tony Gots

10. Bob D. Mearns

11. Rip Cassano

12. Bob Fackler

13. Mike [unclear]

14. Doree Granitz Sr

15. Earl Thomas

16. Jim Ambrose

17. Michael [unclear]

18. David C. [unclear]

19. SCOTT P. PVE

20. Paul [unclear]

21. Danell [unclear]

Malone
PA 023
[unclear]

- 1) He acted in good faith with an honorable intent.
- 2) He acted in the best interest of the public.
- 3) His actions took courage and fortitude.
- 4) His motivation was not self-serving.
- 5) He is an ethical person who believes in justice and fair play.

ADDRESS

ADDRESS

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Full text in
transcript box (#1)

1
2 STATE OF NEW YORK
3 COUNTY OF FRANKLIN : VILLAGE OF MALONE
4 -----

5 In the Matter of an Examination of PATRICK NICHOLS,
6 a Patrolman on the Village of Malone Police Department,
7 held at the offices of the Malone Village Police Department,
8 Malone, New York, on the 17th of March, 1994.
9

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12
13
14 P R E S E N T:

15 James Phillips, Chief of Police

16 Gerold Moll, Assistant Chief of Police

17 Patrick Nichols, Patrolman, Malone Village
18 Police Department

19 Dean Fountain, Union President
20
21

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

March 24, 1994

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

RE: Nichols v Village of Malone

Dear Judge Plumadore:

Enclosed please find an original and copy of a proposed order in regard to the above-referenced matter, along with an affidavit of mailing to the attorney for the respondent.

Please provide a signed copy with date of entry in the enclosed self-addressed stamped envelope.

Very truly yours,

/s/

THOMAS P. HALLEY

cc.: Brian Stewart
Patrick Nichols

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

March 29, 1994

BRYAN J. HUGHES
BRIAN S. STEWART

Telephone: (518) 483-4330

Fax: (518) 483-4005

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

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

Dear Judge Plumadore:

I have received Tom Halley's proposed Order, and I believe that it accurately reflects your decision.

Very truly yours,

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

BSS/tlw
cc: Mayor James Feeley

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

April 12, 1994

Brian Stewart
41 Elm Street
Malone, N.Y. 12953

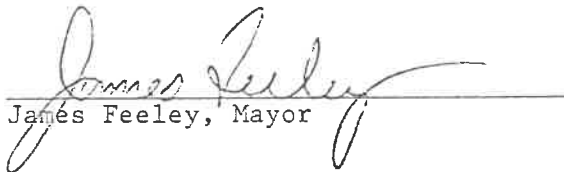
Dear Brian:

Last night the Trustees approved a motion to hire you as the attorney representing the Village in the personnel matter of the Village vs. Patrick Nichols.

I have enclosed some materials for your review and propose that we meet sometime next week, preferably sometime in the afternoon of April 20th.

Certainly if in the meantime, you have any questions or if I may be of any assistance, please do not hesitate to call.

Sincerely,


James Feeley, Mayor

JF/cb

ADOPTION OF 1994-95 VILLAGE BUDGET:

Trustee Lavoie made a motion, seconded by Trustee Grant and carried (Mayor Feeley voting in favor and Trustee Fraser opposed) to adopt the 1994-95 Village Budget as proposed.

WASTEWATER TREATMENT PLANT SLUDGE TO BE STORED:

Mayor Feeley advised that the New York State Department of Environmental Conservation has granted permission for the Village to store sludge, from the Wastewater Treatment Plant, on old leach beds, until the regional landfill is open.

DPW SPRING CLEANUP:

Mayor Feeley advised that the Town Highway Superintendent will accept leaves on the Cady Road when the Department of Public Works has its spring cleanup, later this month. All leaves must be bagged. Leaves and branches must be separated. The DPW will use its chipper on the branches.

Anyone with complaints about damaged lawns, due to Village plows, should contact the DPW and be put on the list.

EXECUTIVE SESSION:

Trustee Grant made a motion, seconded by Trustee Lavoie and unanimously carried to go into executive session to discuss personnel and contract negotiations.

Trustee Lavoie made a motion, seconded by Trustee Grant and unanimously carried to return from executive session to the regular meeting.

ATTORNEY BRIAN STEWART HIRED RE: PATRICK NICHOLS MATTER:

Mayor Feeley advised that during executive session the decision was made to retain Attorney Brian Stewart, to represent the Village, in the Patrick Nichols matter. It was further decided to authorize Village Attorney Andrew Schrader to make contacts regarding the appointment of a hearing officer in this regard.

MAIN STREET TREES:

Trustee Lavoie referred to the trees on Main Street, some of which are damaged, etc. The Rotary Club and the New York State Department of Transportation are to do some tree work on Main Street.

MIREP PROJECT - TOWN TO ACT AS LEAD AGENCY IN REVIEW OF ENVIRONMENTAL IMPACT STATEMENT:

Trustee Fraser made a motion, seconded by Trustee Lavoie and unanimously carried to give consent to the Town of Malone to act as the lead agency in the review of the Environmental Impact Statement of the Malone International Raceway Entertainment Park (MIREP) Project on the East Main Street Road.

WATER CONFERENCE:

Mayor Feeley grants permission for Alfred Pritchard and Frank Riley to attend the Water Conference to be held in Tupper Lake on October 26, 1994.

ATTORNEY BRIAN STEWART HIRED - APPEAL OF PATRICK NICHOLS:

Trustee Lavoie made a motion, seconded by Trustee Grant and unanimously carried to hire Attorney Brian Stewart, to represent the Village, in the matter of the appeal of Patrick Nichols -vs- Village of Malone.

CHANGE ORDER - SANITARY SEWER CONSTRUCTION:

Trustee Dams made a motion, seconded by Trustee Grant and unanimously carried, to approve Change Order Number 6, Sanitary Sewer Construction Project, as follows:

Contractor: H. Schickel General Contracting

The following items of work are deducted from the Contract and are to be performed by others as stated in letters from the Village of Malone dated September 19, 1994 and October 13, 1994.

1. Finish clean-up and restoration by others	\$3,250.00
2. Connect house at 41 Brown Street to sewer	1,530.00
3. Repair damage to 41 Brown Street property	1,500.00
4. Additional engineering work connected with above items	<u>1,200.00</u>
	\$7,480.00

The Board briefly discussed this project and H. Schickel General Contracting. Schickels bond and/or negligence carrier should cover the additional expense. Retainage does not cover the additional expense. Schickel is not a responsible bidder, not having completed the project. We will put bond holder on notice and notify Schickel tomorrow of our intent.

HALLOWEEN CURFEW:

Police Chief Phillips advised that curfew on Halloween is 7:30 p.m. for small children.

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

April 20, 1994

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


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

Re: Patrolman Patrick Nichols

Dear Jim:

Enclosed herewith please find a proposed set of charges against Patrolman Patrick Nichols. If they meet with your approval, they should be personally served on Pat by the Chief of Police at the Police Station.

Very truly yours,



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

BSS/tlw
enclosure

Full text
in transcript box

DISCIPLINARY CHARGES CIVIL SERVICE LAW ARTICLE 75

POLICE DEPARTMENT Complainant

V.

PAK NICHOLS Respondent

Malone Police Department hereby charges Police
Patrick Nichols pursuant to Civil Service Law S75 as

During the first part of September 1993 Police
officer Patrick Nichols while on suspension did
actively solicit persons to sign a petition which
dated. We, the undersigned, support the actions
taken by Officer Pat Nichols, and feel that he should
retain his position on the Malone Police Department
regardless of the outcome of the public hearing, for
the following reasons.

- 1) He acted in good faith with an honorable intent.
- 2) He acted in the best interest of the public
- 3) His actions took courage and fortitude.
- 4) His motivation was not self-serving.
- 5) He is an ethical person who believes in justice and
fair play.

He violated the following departmental rules and
policies.

- 0.1.1 (Four Counts) Discredit upon Department
- 0.1.77 (Four Counts) Seeking the influence or
intervention of a person outside the
Department for purpose of personal preferment
or advantage.
- 1.5 Disclosing official business of the
Department without permission.
- 0.1.27 (Two Counts) Publicly criticizing the
official actions of a department member.
- 0.1.4 (Two Counts) Insubordination or disrespect
toward Superior Officer

VILLAGE OF MALONE,

Employer,

v.

CHARGES OF MISCONDUCT

PATRICK NICHOLS,

Employee.

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

- 1) During the first part of September 1993, Police Officer Patrick Nichols, while on suspension, did knowingly and intentionally solicit four persons to sign a petition, the object of which was to influence the opinions and votes of the Board Members of the Village Board of the Village of Malone with respect to a personnel matter then pending in front of such Board involving Officer Patrick Nichols. This action violated the following Departmental Rules and Regulations:

Regulation Section:

10.1.1 Discredit upon Department

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

10.1.27 Publicly criticizing the official actions of a Department member.

10.1.34 Deliberate violation of regulations pertaining to police management and control.

- 2) On March 17, 1994, while being questioned by superiors regarding the solicitation of signatures on the aforesaid petition, Officer Nichols failed to disclose the full scope of his behavior in soliciting signatures for such petition. His answers to direct questions about the direct solicitation of such signatures were misleading and false. This action violated the following Departmental Rules and Regulations:

Regulation Section:

10.1.4 Insubordination.

10.1.20 Knowingly making a false report, written or oral.

- 3) In the Malone Telegram published on August 17, 1993, the respondent did criticize the Police Department stating "There's somebody else who should be suspended for 30 days". This action violated the following Departmental Rules and Regulations:

Regulation Section:

11.5. A member of the Force or Department shall treat as confidential the official business of the Police Department. He shall not talk for publication, nor be interviewed, nor make public speeches, nor shall impart information relating to the official business of the Department.

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- 4) In the Plattsburgh Press Republican publication dated August 17, 1993, the respondent did publicly criticize the actions of the Police Department stating "In June 1988, I took an oath to serve the public. I did what I did because it was in the best interest of the public, and this attempt to shut me up isn't going to work. Does it make sense to take a man out of work for 30 days for doing the right thing"? This action violated the following Departmental Rules and Regulations:

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- 5) In the Plattsburgh Press Republican publication dated August 18, 1993, respondent did publicly criticize the official business of the Police Department stating that he feared retaliation from the Chief of Police and also stating "Retaliation is the number one reason I waited so long, that is the reason a lot of others are waiting before they say anything. They fear retaliation too. But I made the decision I'd see this through, and I want the public to know what's going on." Respondent also confirmed that he also filed a complaint against another officer earlier in the year regarding another unrelated incident. This action violated the following Departmental Rules and Regulations:

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- 10.1.27 Publicly criticizing the official actions of a Department member.
- 6.2.7 Treat Superior Officers with respect.
- 10.1.4 Insubordination.
- 10.1.34 Deliberate violation of regulations pertaining to police manage and control.

6) On October , 19 3 at 12:10 p.m., Mayor Feeley notified Officer Nichols by telephone from his office, while Chief Phillips and Elizabeth Bessette were present, that even though he was suspended, he was still a member of the Malone Police Department and as such was still covered by the department rules and regulations. The Mayor told Officer Nichols to read rule 11.5 before he made any statements to Channel 5 WPTZ News. Even after Officer Nichols was advised by the Mayor to read section 11.5 of the rules and regulations regarding talking publicly, Officer Nichols gave an interview to a reporter for Channel 5 WPTZ News. This action violated the following Departmental Rules and Regulations:

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- 10.1.4 . Insubordination.

WHEREFORE, the Village of Malone intends to conduct a hearing pursuant to Civil Service Law §75 in order to make determinations with respect to these charges and to determine the appropriate and legal response.

PLEASE TAKE NOTICE, that written answers to the foregoing charges must be served upon the attorneys for the Village within eight days of the service of these charges upon the respondent.

Dated: April 20, 1994

Yours, etc.
HUGHES & STEWART, P.C.
Attorneys for the Village of Malone
31 Elm Street, P.O. Box 788
Malone, New York 12953
Telephone: (518) 483-4330

518-483-4005

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

April 25, 1994

*****CONFIDENTIAL*****

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

Re: Patrolman Patrick Nichols

Dear Jim:

Enclosed are three copies of the formal charges. Please have Chief Phillips serve one on Pat when you think that it is timely.

I suggest that the hearing officer be lined up and hearing dates arranged prior to service. Then Pat can be suspended without pay at the same time he is served.

Very truly yours,

HUGHES & STEWART, P.C.

BRIAN S. STEWART

BSS/ajs
Encls.

See transcript
box for full text.

CIVIL SERVICE LAW §75

VILLAGE OF MALONE,

Employer,

v.

CHARGES OF MISCONDUCT

PATRICK NICHOLS,

Employee.

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

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- 2) On March 17, 1994, while being questioned by superiors regarding the solicitation of signatures on the aforesaid petition, Officer Nichols failed to disclose the full scope of his behavior in soliciting signatures for such petition. His answers to direct questions about the direct solicitation of such signatures were misleading and false. This action violated the following Departmental Rules and Regulations:

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- 3) In the Malone Telegram published on August 17, 1993, the respondent did criticize the Police Department stating "There's somebody else who should be suspended for 30 days". This action violated the following Departmental Rules and Regulations:

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VILLAGE OF MALONE,

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~~Full Text in~~
~~Complaint~~
CHARGES OF MISCONDUCT

5/3/94

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Dated: April 20, 1994

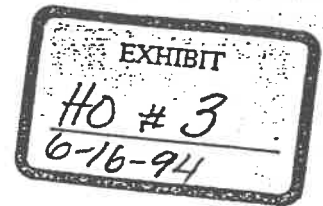
Yours, etc.
HUGHES & STEWART, P.C.
Attorneys for the Village of Malone
31 Elm Street, P.O. Box 788
Malone, New York 12953
Telephone: (518) 483-4330

518-518-483-4005

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570



May 3, 1994

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

Dear Mr. Nichols:

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 attached charges are preferred against you.

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

You are allowed until the 11th of May, 1994, to 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, on or before 5:00 o'clock in the afternoon on said 11th day of May 1994.

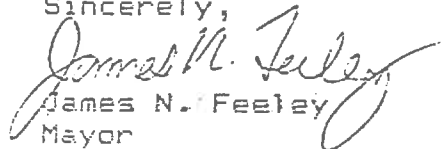
You are entitled to a hearing on the above charges and to be represented at such hearing by an attorney, or a representative of your union. You should be prepared, at such hearing, to present such witnesses and other proof as you may have in your defense against these charges. Such hearing will be held at 9:00 a.m. on June 1, 1994, in the Malone Village Meeting Room, located at 14 Elm Street, Malone, New York.

If you are found guilty of any of the 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 \$100.00, or a reprimand.

I am enclosing herewith the letter Patrolman Nichols received along with a copy of the charges preferred against him. Also enclosed is a copy of the Manual of Procedure in Disciplinary Actions which I obtained from the Franklin County Civil Service Office. You may find sections of it useful.

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

Sincerely,


James N. Feeley
Mayor

JNF:ejb
Encs.

CIVIL SERVICE LAW §75

VILLAGE OF MALONE,

Employer,

v.

PATRICK NICHOLS,

Employee.

COPY

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10.1.34 Deliberate violation of regulations pertaining to police management and control.

10.1.4 Insubordination.

WHEREFORE, the Village of Malone intends to conduct a hearing pursuant to Civil Service Law §75 in order to make determinations with respect to these charges and to determine the appropriate and legal response.

PLEASE TAKE NOTICE, that written answers to the foregoing charges must be served upon the attorneys for the Village within eight days of the service of these charges upon the respondent.

Dated: April 20, 1994

Yours, etc.
HUGHES & STEWART, P.C.
Attorneys for the Village of Malone
31 Elm Street, P.O. Box 788
Malone, New York 12953
Telephone: (518) 483-4330

May 5, 1994

Mayor James Feeley
Village of Malone
16 Elm St.
Malone, NY 12953

Dear Sir:

Per Civil Service Law, I am hereby requesting a copy of the transcript produced at the meeting held March 17, 1994 between myself, Chief Phillips and Ass't Chief Moll. I understand from my Union Rep that as one of the violations placed against me directly relates to that meeting, it is my right to receive a copy.

Please forward one as soon as possible to my home address.

A handwritten signature in cursive script, appearing to read "Patrick M. Nichols".

Patrick M. Nichols

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

May 3, 1994

Mr. Patrick Nichols


Dear Mr. Nichols:

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 attached charges are preferred against you.

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

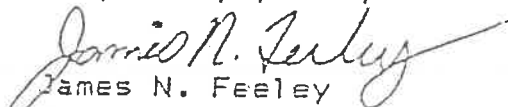
You are allowed until the 11th of May, 1994, to make and file your answer, in writing, to these charges. Such answer should reach the office of the undersigned, at 16 Elm Street, Malone, New York, on or before 5:00 o'clock in the afternoon on said 11th day of May 1994.

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 9:00 a.m. on June 1, 1994, in the Malone Village Meeting Room, located at 14 Elm Street, Malone, New York.

If you are found guilty of any of the 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 \$100.00, or a reprimand.

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
Enc

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

May 9, 1994

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

Patrick Nichols


Dear Officer Nichols:

Enclosed herewith please find a copy of the transcript that
you requested on May 5, 1994.

Very truly yours,

HUGHES & STEWART, P.C.

Brian S. Stewart

BSS/mew
Enc.

CC: James Feeley

1
2 STATE OF NEW YORK
3 COUNTY OF FRANKLIN

: VILLAGE OF MALONE

4

5 In the Matter of an Examination of PATRICK NICHOLS,
6 a Patrolman on the Village of Malone Police Department,
7 held at the offices of the Malone Village Police Department,
8 Malone, New York, on the 17th of March, 1994.
9

10
11
12
13 P R E S E N T:

14 James Phillips, Chief of Police

15 Gerold Moll, Assistant Chief of Police

16 Patrick Nichols, Patrolman, Malone Village
17 Police Department

18 Dean Fountain, Union President
19
20
21

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

NEW YORK STATE UNION OF POLICE ASSOCIATIONS, INC.

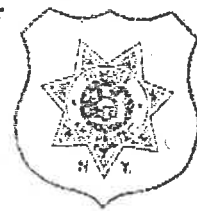
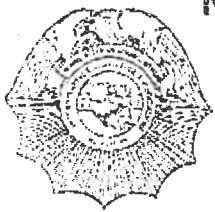
LOCAL - 8

AFFILIATED

INTERNATIONAL UNION OF POLICE ASSOCIATIONS

AFL-CIO

1134 UNION AVENUE — ROUTE 300 NORTH
 NEWSBURGH, NEW YORK 12550
 (514) 566-4066



ANTHONY V. SOLFARO
 PRESIDENT

May 9, 1994

Brian Stewart, Esq.
 HUGHES & STEWART, P.C.
 Attorneys for the Village of Malone
 31 Elm Street
 P.O. Box 788
 Malone, New York 12953

VIA FAX AND MAIL

Re: Patrick Nichols - Disciplinary Hearing

Dear Brian,

Pursuant to our telephone conversation on May 6, 1994 concerning the above referenced matter, you advised me that on behalf of Officer Nichols, we could respond by fax directly to you concerning Mayor Feeley's May 3, 1994 letter and enclosed Notice of Discipline.

not yet good to
 I advised you that F. Hollis Griffin, Esq. will be representing Officer Nichols at the upcoming Hearing. Based on my request, we mutually agreed that the Hearing scheduled for June 1, 1994, be re-scheduled to June 3, 1994 at the Malone Village Meeting Room, located at 14 Elm Street starting at 9:00 a.m.

Lastly, you advised me that John Lawless has been appointed Hearing Officer in this matter. On behalf of Officer Nichols, this letter shall acknowledge that he was served with a copy of the Notice of Discipline on or about May 3, 1994. On behalf of Officer Nichols, please be advised that he denies all charges and specifications contained in the Notice of Discipline dated April 20, 1994.

Brian Stewart, Esq.

May 9, 1994

Page two

On behalf of Officer Nichols, please direct all future correspondence concerning this matter to his council, as follows:

F. Hollis Griffin, Esq.

FURY & KENNEDY

5 East Central Avenue

Pearl River, New York 10965

(914) ~~753~~-4300 *NOT in Service*

735

For 914 735 6312

By this letter, we request that you provide Mr. Griffin, no later than May 20th, with notes and memoranda of the following materials which are necessary to adequately prepare a defense to the charges against Officer Nichols, including:

1. All memoranda, written or audio tape reports, and statements made by witnesses to the incidents that have given rise to the charges and specifications against Patrick Nichols.

2. All memoranda, written or audio tape reports, and statements made by Officer Patrick Nichols to the incidents that have given rise to the charges and specifications against him.

3. A list of all witnesses that will appear for the purposes of offering testimony at the hearing;

4. Access to and copies of Officer Nichols personnel file, with the exception of material deemed confidential, as it relates to his pre-employment background investigation;

5. All applicable rules and regulations of the Village of Malone Police Department, relating to charges against Officer Nichols;

6. Specific date, time and location of the violations or conduct charge concerning Officer Nicholas.

Brian Stewart, Esq.
May 9, 1994
Page three

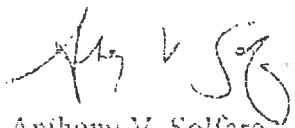
In addition, we ask for written confirmation of the following:

- a) name, business address and telephone number of the party who will be presenting evidence at the disciplinary hearing on behalf of the Village of Malone and Police Department;
- b) confirmation that a Court Reporter will be present at the hearing to enable all the parties and hearing officer to receive a transcript of the proceedings;
- c) confirmation that Officer Nichols will receive a transcript of the proceedings at no charge to him.

In the event that the information requested is not provided to us, a request will be made to the Hearing officer assigned to this matter, for an order directing the provision of the requested materials, at the time of the hearing.

On behalf of Officer Nichols, Mr. Griffin, the PBA and myself, thank you for your cooperation in this matter.

Sincerely,



Anthony V. Solfaro
President

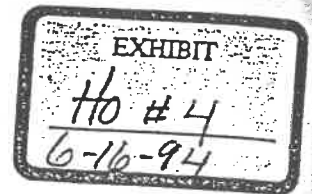
AVS:dvv
encs.

cc: F. Hollis Griffin, Esq.
Patrick Nichols

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570



May 10, 1994

Mr. John H. Lawliss
162 Margaret Street
Plattsburgh, New York

12901-1838

Dear Mr. Lawliss:

This letter is to confirm our telephone conversation regarding 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 scheduled for Friday, June 3, 1994, at 9:00 a.m. in the Village Meeting Room, 14 Elm Street, Malone, New York. 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, be forwarded to the Village Board for their review and final decision as soon after the completion of the hearing as possible.


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 any or all 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.

The Village Board took official action on May 9, 1994, hiring you as the Hearing Officer in this matter. Your hourly fee is \$35.00 and mileage reimbursement of \$.30 per mile is acceptable.

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
Enc

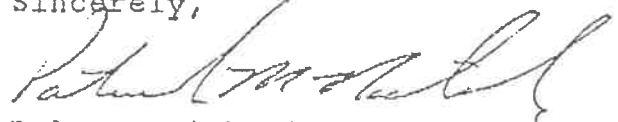
May 10, 1994
Patrick M Nichols
146 Webster St.
Malone, N.Y. 12953

Sgt. Chris Fountain
Union President
Malone P.B.A.

Chris,

As per our phone conversation on May 10, 1994 I am advising the union in writing that I am not in need of union representation as I have retained my own attorney. I advised the P.B.A. representative Anthony Salfaro by leaving a message on his phone recorder. I would appreciate it if you could fax a copy of this letter to Salfaro.

Sincerely,



Ptl. Patrick Nichols

THOMAS P. HALLEY

ATTORNEY AT LAW

May 10, 1994

297 MILL STREET
POUGHKEEPSIE, N. Y. 12601
(914) 452-8120
FAX (914) 452-8192

VIA FEDERAL EXPRESS

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

RE: Patrick Nichols

Dear Mayor Feeley:

This is in reply to your letter of May 3, 1994, and the Civil Service charges served upon Patrick Nichols.

This office hereby appears on behalf of Patrick Nichols, and enters a general denial to the charges and specifications, and further demands a bill of particulars as more specifically set forth herein.

Patrick Nichols further demands a public hearing pursuant to Section 75 of the Civil Service Law, at which hearing he will be represented by the undersigned.

Please advise as to the identity of the hearing officer.

The employee demands a bill of particulars with regard to the following items:

1. As to the first charge, identify the "four persons" referred to therein, and further identify the manner in which the employee "did knowingly and intentionally solicit" said persons to sign a petition.
2. With regard to the second charge, specify the manner in which the employee "failed to disclose the full scope of his behavior" as set forth therein, and specify the manner in which the answers were "misleading and false."
3. With regard to the sixth charge, specify the substance of the "interview" referred to therein.

The employee demands a full and complete copy of the rules and regulations of the police department which will be relied upon by the Village in the prosecution of these charges.

Please take notice that the employee reserves all of the rights to which he is entitled under the Laws of the State of New York, the Constitution of the State of New York, and the

United States Constitution. This general denial and request for hearing should not be deemed in any event or manner a waiver of said rights, and the employee specifically reserves the right or rights to which he might be entitled as set forth above.

Very truly yours,



THOMAS P. HALLEY

cc: Hughes & Stewart, P.C.
31 Elm Street - POB 788
Malone, NY 12953
VIA FAX AND FEDERAL EXPRESS

Patrick Nichols
146 Webster St
Malone, NY 12953



NEW YORK STATE UNION OF POLICE ASSOCIATIONS, INC.

LOCAL - 8

AFFILIATED
INTERNATIONAL UNION OF POLICE ASSOCIATIONS
AFL-CIO

1134 UNION AVENUE — ROUTE 300 NORTH
NEWBURGH, NEW YORK 12550
(914) 566-4066



ANTHONY V. SOLFARO
PRESIDENT

May 12, 1994

Brian Stewart, Esq.
HUGHES & STEWART, P.C.
Attorneys for the Village of Malone
31 Elm Street
P.O. Box 788
Malone, New York 12953

Re: Patrick Nichols - Disciplinary Hearing

Dear Brian,

Pursuant to our telephone conversation on May 11th and your request, this letter shall serve to confirm and advise you that Mr. Nichols has retained his own attorney on the above matter and shall not be represented by either the PBA or our organization (see enclosed).

Please direct all future correspondence concerning this matter to Mr. Nichols' attorney.

Sincerely,

Anthony V. Solfaro
President

AVS:dvv

encs.

cc: Chris Fountain, PBA President
F. Hollis Griffin, Jr., Esq.
Patrick Nichols

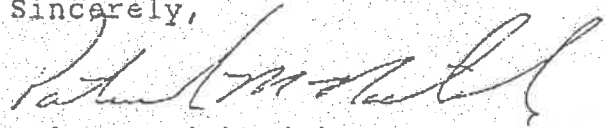
May 10, 1994
Patrick M Nichols
146 Webster St.
Malone, N.Y. 12953

Sgt. Chris Fountain
Union President
Malone P.B.A.

Chris,

As per our phone conversation on May 10, 1994 I am advising the union in writing that I am not in need of union representation as I have retained my own attorney. I advised the P.B.A. representative Anthony Salfaro by leaving a message on his phone recorder. I would appreciate it if you could fax a copy of this letter to Salfaro.

Sincerely,



Ptl. Patrick Nichols

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

May 13, 1994

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

F. Hollis Griffin, Esq.
Fury & Kennedy
5 East Central Ave.
Pearl River, NY 10965

Dear Mr. Griffin:

I understand that you will be representing Patrick Nichols in upcoming Civil Service § 75 hearing. Mr. Nichols is a patrolman with the Malone Village Police Department and the County of Franklin.

I have recently received a letter from Anthony Solfaro, President of the New York State Union of Police Association's, Inc. In his second paragraph he recites that he and I mutually agreed that the hearing scheduled for June 4, 1994 should be rescheduled to June 3, 1994. We did not mutually agree to this. I agreed that I would investigate the possibility of this change with the hearing officer who has only just been appointed. As soon as I get some feedback from him I will let you know. In the meantime the matter is still scheduled for June 1, 1994. I did tell Mr. Solfaro that if the hearing officer could hear the matter on June 3, that I would not object.

This letter will constitute acknowledgment that Mr. Solfaro's letter to me dated May 9, 1994 constitutes a denial by Patrick Nichols of all the charges.

As you know Mr. Nichols is entitled to be represented by an Attorney or by a representative of his union. I don't intend to abridge any of Mr. Nichols' rights. On the other hand I do not intend to be double teamed on this matter. Mr. Solfaro's letter says that all future correspondence concerning this matter should be directed to you. I take this as an indication that you are the person who will be representing Mr. Nichols' in this matter.

Mr. Solfaro's letter contains certain discovery demands many of which I find to be unreasonable and not permitted by any statutes or case decisions which I have been able to find.

Enclosed with a mailed copy of this letter you will find a copy of the transcript of Mr. Nichols' interview on March 17, 1994. Also enclosed you will find a copy of Mr. Nichols' personal file and a copy of the rules and regulations of The Malone Police Department.

The specific date time and location of the violations for misconduct by Officer Nichols were fully set forth in the charges. We have no additional information to supply in this regard.

If you know of any statutes or case decisions which require me to provide you with a list of witnesses or all memorandum or statements made by such witnesses please provide me with the same. In the meantime that request is denied.

I am formally confirming that I am the attorney who will be presenting evidence at the disciplinary hearing on behalf of the Village of Malone and the Police Department. I am confirming that a court reporter has been retained to create a transcript of the proceedings. I don't find a requirement in the statute that Mr. Nichols be given a free copy of the transcript. However, we did so in the last hearing involving Mr. Nichols and we will do so again in this hearing.

In the event that you do find a case or statute requiring the Village to provide you with the information which I have refused, please take notice that The Village of Malone requests the same information from Officer Nichols. In particular, we would request the following:

- 1) All memorandum written or audio tape reports, and statements made by witnesses to the incidents that have given rise to the charges and specifications against Patrick Nichols.
- 2) All memorandum written or audio tape reports and statements made by Officer Patrick Nichols to the incidents that have given rise to the charges and specifications against him.
- 3) A list of all witnesses with addresses and telephone numbers, who will appear for the purposes of offering testimony on behalf of Officer Nichols at the hearing.

Very truly yours,

HUGHES & STEWART, P.C.

Brian S. Stewart

BSS/mew
enc.

cc: James Feeley
Anthony Solfaro



STATE OF NEW YORK
COUNTY OF FRANKLIN

VILLAGE OF MALONE

Full text in
transcript box

In the Matter of an Examination of PATRICK NICHOLS,
a Patrolman on the Village of Malone Police Department,
held at the offices of the Malone Village Police Department,
Malone, New York, on the 17th of March, 1994.

P R E S E N T:

James Phillips, Chief of Police

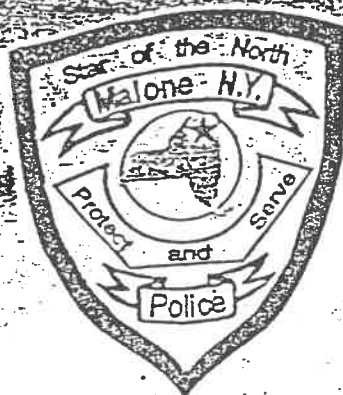
Gerold Moll, Assistant Chief of Police

Patrick Nichols, Patrolman, Malone Village
Police Department

Dean Fountain, Union President

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

** COPY **



POLICE DEPARTMENT
Village of Malone
2 Park Place
Malone, New York 12953-1601

Full text
in Village work
product @
6/16/94

(518) 483-2424
(518) 483-2426 FAX

James E. Phillips
Chief of Police

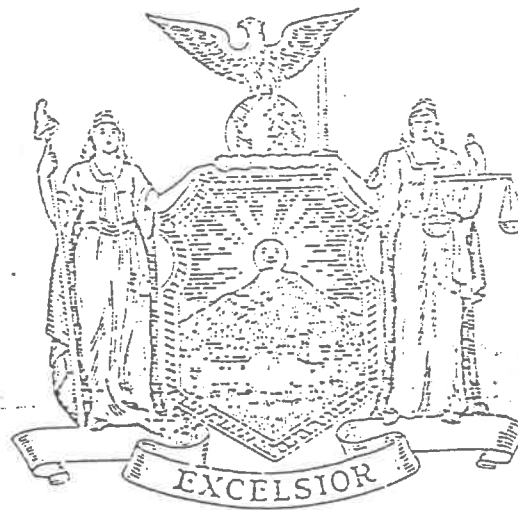
PATRICK NICHOLS

PERSONNEL FILE

Full text
at 7/29/94

DUTIES AND RULES of CONDUCT

Police Department
Village of Malone
New York



Bureau for Municipal Police
Division of Criminal Justice Services
Executive Park Tower
Stuyvesant Plaza
Albany, New York 12203



OFFICE
OF
FRANKLIN COUNTY
DISTRICT ATTORNEY
COURT HOUSE
63 WEST MAIN STREET
MALONE, N.Y. 12953
(518) 483-6767 EXT. 544
FAX (518) 483-0141
FAX (518) 483-6767 EXT. 545

Richard H. Edwards
District Attorney

Andrew O. Schrader
Assistant District Attorney

John D. Delchance
Assistant District Attorney
56 Lake Street
Tupper Lake, New York 12986
Phone: (518) 359-9191
Fax: (518) 359-7311

M. Gayle Seymour
Special Assistant to
District Attorney

May 20th, 1994

Mr. Patrick Nichols
[REDACTED]
Malone, New York 12953

Dear Sir:

RE: INVESTIGATION

The subject matter of the items provided this office has been the subject of an independent FBI investigation. That being the case, there is no need for a duplicative separate investigation.

If the Federal authorities refer the matter to this office for possible state prosecution, the matter would be reviewed at that time.

Very truly yours,

Richard H. Edwards
Richard H. Edwards
District Attorney

RHE/mgs

OFFICE OF
FRANKLIN COUNTY DISTRICT ATTORNEY
FAX # 518-483-6767 Ext. 545

FROM Richard Edwards
TO Chief Phillips
FAX # 2426
DATE _____
NUMBER OF PAGES 1
PEOPLE V. _____

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

May 23, 1994

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

RE: VILLAGE OF MALONE VS
PATRICK NICHOLS

Dear Tom:

I acknowledge receipt of your letter dated May 10th. I acknowledge your general denial on behalf of Patrick Nichols. I further acknowledge Patrick Nichols request that the hearing be held in a public manner pursuant to §75 of the Civil Service Law.

If you will pardon the informality I will give you in this letter as much of the information which you demanded by bill of particulars as is reasonable and proper.

You asked that the four witnesses be identified. They are, Scott Smith, of Malone, New York, Dale Lamitie, of Malone, New York, Edward Ritzmann, of Malone, New York and Carl Thomas, of Malone, New York. Scott Smith is the owner of Smith's Towing. Dale Lamitie is one of his employees. Carl Thomas is a former employee of Mr. Smith and is currently under indictment for welfare fraud. Edward Ritzmann is a process server and former State Trooper. I have statements from each of the four men, but I consider this material to be prepared for purposes of litigation and I believe that it would be improper to release those statements.

You asked the manner in which Pat did knowingly and intentionally solicit the persons to sign a petition. I am enclosing a copy of the transcript of a question and answer session between the Police Department and Officer Nichols held before a stenographer and notary public on March 17, 1994. The section of the transcript dealing with the petitions extends from page 56-60. Based on my interviews with the witnesses and upon their statements it appears that Mr. Nichols actively circulated the petition in question in an attempt to go over the head of his superior officer and directly influence the decision making process of the Village Board of Trustees with respect of the prior disciplinary proceeding. In particular, Officer Nichols statement on page 57 at lines 21-23 was false. His statement at page 58 lines 20-25 is

false. His statement at page 59 line 7 is false. His statement at page 59 line 25 and continuing on to page 60 at lines 2-9 is false. Mr. Nichols actively sought out my four witnesses and asked them to sign the petition. They did not first inquire of him about the petition. He did not merely concede to their request to sign a petition.

You asked for a copy of the rules and regulations of the Police Department. They have not changed since the last Civil Service hearing. If you would like another copy of the rules please let me know. Otherwise, I will assume that you have a copy in your possession.

Very truly yours,

HUGHES & STEWART, P.C.


Brian S. Stewart

BSS/mew

cc: Mayor James Feeley
Chief James Phillips

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

May 31, 1994

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

Re: Hearing - Patrick Nichols

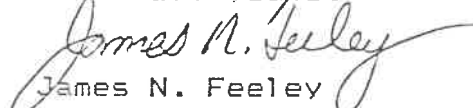
Dear Mr. Halley:

The Village of Malone is willing to grant an adjournment in the matter of the Village of Malone vs Patrick Nichols.

The new date and time, as agreed upon, is June 16, 1994, at 9:30 a.m.

As the adjournment is at your request, Patrolman Nichols continues his suspension without pay.

Sincerely yours.


James N. Feeley
Mayor

JNF:ejb

cc: Brian Stewart, Esq.

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

May 31, 1994

Mr. John Lawliss

[REDACTED]
Plattsburgh, New York 12901-1838

Re: Hearing - Patrick Nichols

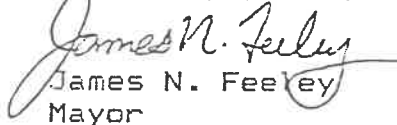
Dear Mr. Lawliss:

This letter will confirm our telephone conversation of May 31, 1994, in the matter of the Village of Malone vs Patrolman Patrick Nichols Hearing.

Patrolman Nichols, through his attorney, has requested and was granted an adjournment in his Civil Service Hearing, at which you are the designated Hearing Officer.

The new date and time of said hearing is now scheduled for June 16, 1994, at 9:30 a.m. in the Malone Village Meeting Room at 14 Elm Street, Malone.

Sincerely yours,


James N. Feeley
Mayor

JNF:ejb

cc: Brian Stewart, Esq.

JUN 13 '94 04:29

P.1

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

June 13, 1994

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

RE: MATTER OF PATRICK NICHOLS

Dear Tom:

I previously sent you a letter detailing the sections of the March 17th transcript wherein I thought Patrick Nichols had lied. In addition to those sections, I believe the following sections of the transcript constitute lies on the part of Office Nichols:

Page 174, lines 11 through 14

Page 174, lines 16 through 17

Page 175, lines 15 through 17

Page 176, lines 8 through 10

Page 180, lines 2 through 6

Page 181, lines 12 through 13

Page 181, lines 15 through 16

Page 181, lines 24 through 25

Page 182, lines 2 through 7

Page 182, lines 19 through 24.

Officer Nichols' perjury was referred to the Franklin County District Attorney. The District Attorney obtained an Order of Court transferring the matter to the District Attorney of Clinton County for prosecution. I have been in contact with the District Attorney of Clinton County and I have obtained her permission to convey to you an offer that the criminal investigation in the

EXHIBIT N

matter will be terminated if Officer Nichols agrees to resign from his position with the Malone Village Police, grants a General Release to the Village of Malone, its officers and employees, and if he agrees never to seek reemployment with the Village of Malone in any capacity.

If Mr. Nichols accepts this resolution prior to 5:00 p.m. Tuesday, the Village will agree to pay him all unreimbursed vacation, comp days and personal days. I understand that this amounts to \$4,480.48.

Very truly yours,

HUGHES & STEWART, P.C.

A handwritten signature in cursive script that reads "Brian S. Stewart". The signature is written in dark ink and is positioned above the printed name.

Brian S. Stewart

BSS/mew

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

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

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

BRYAN J. HUGHES
BRIAN S. STEWART

June 6, 1994

Dale Lamitie
PO Box 793
Malone, New York 12953

Dear Dale:

The hearing for Patrick Nichols will be held Thursday, June 16th commencing at 9:30 a.m. It will take place at the Village Office on Elm Street. I will need you there at 9:30 a.m. I will try to get you in and out as quick as possible, but I can not say with certainty how long you will be there.

If you have any questions, please feel free to give me a call.

Very truly yours,

HUGHES & STEWART, P.C.

Brian S. Stewart

BSS/new

THOMAS P. HALLEY

ATTORNEY AT LAW

June 14, 1994

287 MILL STREET
POUGHKEEPSIE, N. Y. 12601
(914) 462-9120
FAX (914) 462-9182

Brian S. Stewart, Esq.
Hughes & Stewart
31 Elm Street
POB 788
Malone, NY 12953

VIA FAX 518-483-4935

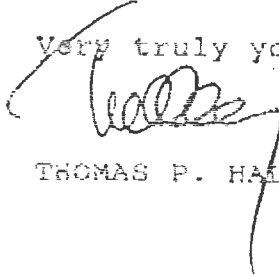
RE: Matter of Patrick Nichols

Dear Mr. Stewart:

This is in reply to your letter of June 13, 1994.

Officer Nichols' rejects the offer and proposed resolution contained in that letter.

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

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

June 20, 1994

Mayor James Feeley
16 Elm Street
Malone, New York 12953

Dear Jim:

I think the hearing went quite well. Thank you for allowing me to represent the Village again in this matter. I continue to have some concerns about an appeal on constitutional grounds with respect to the charges of speaking to the media. However, if Jack Lawliss accepts our proof that Pat is a liar, then I believe that we are home free. The proof was strong. On the other hand, it has to be difficult for a cop to believe that another cop has lied.

I am enclosing a bill for services, which I hope you and the board will find reasonable. Thanks again for letting me be of service.

Very truly yours,

HUGHES & STEWART, P.C.


Brian S. Stewart

BSS/mew
enc.

Full text in transcript
box (#1)

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

Village of Malone,

Complainant,

v.

Patrick Nichols,

Respondent.

MEMORANDUM OF LAW

Submitted by complainant
in 2nd §75 hearing.

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

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

June 23, 1994

Mr. Douglas Vensel
12 Center Street
Malone, New York 12953

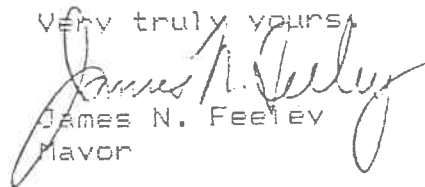
Dear Mr. Vensel:

This will confirm our conversation of June 22, 1994, and your written request that a memorandum of law be provided to you pertaining to the extension of unpaid suspension of a public employee.

Both Brian Stewart and I informed counsel to Patrick Nichols of the impending extension of the unpaid suspension. The extension was a result of the unilateral request of Attorney Thomas Halley for an adjournment of the hearing date. Mr. Halley agreed to all conditions and was mailed two letters regarding this matter, one from me and one from Brian Stewart.

The Village feels it is on sound legal ground and that it is incumbent on Patrick Nichols and his attorney to prove otherwise.

Very truly yours,


James N. Feeley
Mayor

JNF:ejb

CLINTON COUNTY DISTRICT ATTORNEY

PENELOPE D. CLUTE

Clinton County Government Center

137 Margaret Street

Plattsburgh, NY 12901

(518) 565-4770



ASSISTANT DISTRICT ATTORNEYS

Catherine M. Paul

Joseph Lavorando

Thomas M. Murnane

Oliver L. Bickel

June 29, 1994

JUL 06 1994

Thomas P. Halley, Esq.
297 Mill Street
Poughkeepsie, NY 12601

RE: Patrick Nichols

Dear Mr. Halley:

Franklin County Court Judge Robert Main appointed me as Special Prosecutor regarding the perjury allegations against Mr. Nichols. A copy of that Order is enclosed. To date, that is the extent of the matters referred to my office.

Your June 22, 1994 letter encloses a June 13 letter to you from Brian S. Stewart. As I read it, by its terms, the offer made therein expired on Tuesday, June 14, 1994 at 5:00 PM. Therefore, the questions you address to me seem quite moot.

Sincerely,

Penelope D. Clute
Special Prosecutor
for Franklin County

encl.

EXHIBIT ()

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

July 6, 1994

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

RE: MALONE VS. PATRICK NICHOLS

Dear Tom:

I have received a copy of the Transcript and I trust you have also. I recall that there may have been an unresolved discussion regarding the need for post-hearing memorandum. I would appreciate it if you would communicate with Mr. Lawless and resolve that issue so that it does not become a subject of appeal.

Very truly yours,

HUGHES & STEWART, P.C.

Brian S. Stewart

BSS/mew

cc: Jack Lawliss

THOMAS P. HALLEY

ATTORNEY AT LAW

July 8, 1994

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

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

RE: Village of Malone v Nichols

Dear Mr. Stewart:

This is in reply to your letter of July 6, 1994, regarding the submission of a brief and legal arguments to the hearing officer.

On page 242 of the transcript of the hearing, the hearing officer was asked by me whether he would be in touch with me before there was a decision rendered. He answered: "yes, I will, one way or the other, but at least I will be in touch with you."

I do not have either a phone number or an address for the hearing officer. I presume, however, that he is a person of his word, and that he will indeed be in touch with me as promised.

Very truly yours,



THOMAS P. HALLEY

cc.: Patrick Nichols
146 Webster Street
Malone, New York 12953

CLINTON COUNTY DISTRICT ATTORNEY

PENELOPE D. CLUTE

Clinton County Government Center
137 Margaret Street
Plattsburgh, NY 12901
(518) 565-4770



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Catherine M. Paul
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June 29, 1994

JUL 06 1994

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297 Mill Street
Poughkeepsie, NY 12601

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Your June 22, 1994 letter encloses a June 13 letter to you from Brian S. Stewart. As I read it, by its terms, the offer made therein expired on Tuesday, June 14, 1994 at 5:00 PM. Therefore, the questions you address to me seem quite moot.

Sincerely,

A handwritten signature in dark ink, appearing to read "Penelope D. Clute", written over the typed name.

Penelope D. Clute
Special Prosecutor
for Franklin County

encl.

EXHIBIT ○

July 8, 1994

Penelope Clute
Clinton County District Attorney
County Government Center
Plattsburgh, New York 12901-2933

RE: Matter of Patrick Nichols

Dear Ms. Clute:

Thank you for your letter of June 29, 1994.

I am still unsure as to two questions posed in my prior letter of June 22, 1994.

Is it correct that your office granted permission to Mr. Stewart to convey the offer to this office? If so, is that offer accurately reflected in Mr. Stewart's letter of June 13, 1994? Thank you for your continuing attention and response.

Very truly yours,

THOMAS P. HALLEY

cc.: Patrick Nichols
146 Webster Street
Malone, New York 12953

EXHIBIT *P*

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

July 14, 1994

JOHN LAWLISS
162 Margaret Street
Plattsburgh, New York 12901

Re: Village of Malone vs. Patrick Nichols

Dear Mr. Lawliss:

Enclosed is a copy of a letter I recently received from Thomas Halley. Mr. Halley apparently does not have your address even though it is set forth on the first or second page of the transcript.

I would appreciate it if you would get in touch with Mr. Halley regarding the necessity of a final brief.

With best personal regards, I remain,

Very truly yours,

HUGHES & STEWART, P.C.

BRIAN S. STEWART

BSS/ajs
Encl.

c.c.: Thomas P. Halley
James Feeley

THOMAS P. HALLEY
ATTORNEY AT LAW

received
7-8-94

227 MILL STREET
POUGHKEEPSIE, N. Y. 12601
(914) 452-6120
FAX (914) 452-6122

July 8, 1994

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

RE: Village of Malone v Nichols

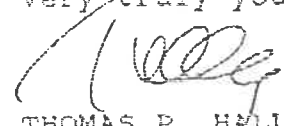
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Very truly yours,



THOMAS P. HALLEY

cc.: Patrick Nichols
146 Webster Street
Malone, New York 12953

Honesty

Integrity

Experience

Lawliss Investigative Agency

Full text in
transcript box

July 28, 1994.

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

Re: Village of Malone v. Patrick Nichols

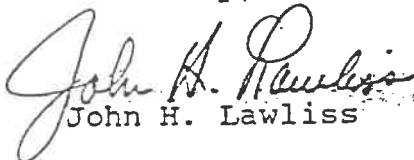
Dear Mayor Feeley:

Pursuant to my being appointed Hearing Officer in the above matter, I have conducted a hearing in this matter regarding disciplinary proceedings against Police Officer Patrick Nichols which was held in Malone, New York on June 16, 1994. My report of findings and recommendations in this matter is attached to this letter.

Also please find my bill for services rendered.

If I can be of further assistance to you in this matter or any other matter, please do not hesitate to contact me.

Sincerely,


John H. Lawliss

Enclosures
JHL/lms

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

July 29, 1994

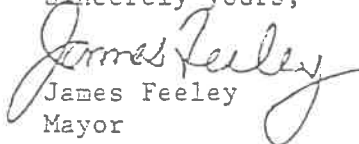
Thomas P. Halley
297 Mill Street
Poughkeepsie, New York 12601

Dear Mr. Halley:

Enclosed is a copy of the hearing officer's report in the matter of the Village of Malone v. Patrick Nichols.

I correspond with you to inquire of you as to whether or not you wish to have the finds of this report made public. Please communicate with this office your desire by 4:00 P.M., Monday, August 1, 1994.

Sincerely yours,


James Feeley
Mayor

JF/cdy

Encs.

**Original Mailed 7/29/94

Copy Faxed 7/29/94

Honesty

Integrity

Experience

Lawliss Investigative Agency

Full text
in transcript box

July 28, 1994.

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

Re: Village of Malone v. Patrick Nichols

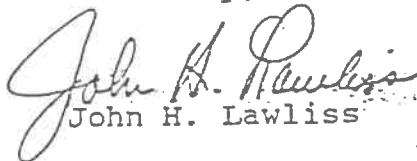
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Sincerely,


John H. Lawliss

Enclosures
JHL/lms