

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

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

Chief Phillips,

On this date I was advised in writing and verbally by Assistant Chief Moll that my position as D.A.R.E. Officer was being terminated due to budgetary reasons. On 1-27-93 I was advised by Moll that my hours would change from 6:00 a.m.. He further stated that I would now begin my shift at 8:00 and proceeded to ask me if there would be a personal conflict with the new hours. I advised him that child care cost would increase from \$90.00 monthly to \$120.00 monthly. He stated that as D.A.R.E. Officer I should be willing to make sacrifices without complaint. I brought to his attention the many sacrifices that I felt I was already making and the fact I use my own vehicle as advised by you in the fall of 1991. Later that evening I discussed the options with my spouse in regards to the day care matter as this was an added expense we were not prepared for. I decided that since this would be a sacrifice that required spending my own money in order to conduct the program I felt justified in requesting compensation from the Village as no other member of this Dept. has been required to spend his own money because of a specialized duty. After being advised by Moll I was no longer teaching D.A.R.E. for the year I expressed my concern to him about the impact to the students if I were not aloud to follow through with the graduation. This did not make a difference. I then told him I would disregard the request for day care expenses if it meant I could finish this years program. I had also stated that I felt if I did not request compensation for the program this year that it would be necessary for me each year after this to pay the extra costs.

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

Thank You

Patrick M. Nichols
Officer Patrick M. Nichols

EXHIBIT *Id*

Resp. B

9-16-93

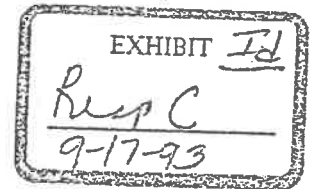
POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

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



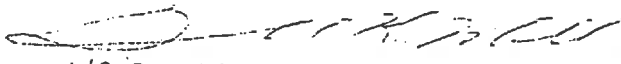
Ptl. Nichols,

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

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

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

Sincerely,


A/C Gerald K. Moll

- EXHIBIT #6 -

VILLAGE OF MALONE POLICE DEPT.

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

TO: Chief Phillip

ADDRESS: _____

DATE: 07-27-93

SUBJECT: Statement Given on 7-14-93

Chief,

Could I please have a copy of my statement which I was ordered to give in reference to Complaint against A/C Moll.

Thank you,

SIGNED: Patricia North M. Mulvihill



Chief verbally refused to give Mulvihill his statement.

EXHIBIT 6

3/14/95

STATE OF NEW YORK

SUPREME COURT

COUNTY OF FRANKLIN

PATRICK NICHOLS,

Petitioner,

-against-

VILLAGE OF MALONE,

Respondent.

*
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* Index #94-589
* CC #16-1-94-0224.P
* Our File #P-1775
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*
*

HON. JAN H. PLUMADORE
SUPREME COURT JUSTICE

DECISION

Petitioner filed the instant petition challenging the results of a Civil Service Law §75 disciplinary hearing. The Hearing Officer found he had violated a variety of police departmental rules with respect to soliciting signatures on a petition seeking to influence the Village Board concerning his employment status, lying about same when questioned by Chief Phillips and Assistant Chief Moll, criticized the Malone Police Department in three newspaper interviews given without permission and gave a television interview without permission. Petitioner challenges:

- the Hearing Officer's impartiality;
- the admission of evidence of uncharged acts and Petitioner's statements to Chief Phillips and Assistant Chief Moll;
- the omission by permission from Chief Phillips' testimony of the names of the officers who would not work with Petitioner;
- the apparent inconsistency of the Village Board's adopting the finding of guilt for lying concerning the solicitation but not the guilt finding as to the solicitation itself.

The Hearing Officer demonstrated no partiality. While he overruled virtually all of Mr. Halley's objections, he properly observed that strict rules of evidence did not apply and did on at

least one occasion (transcript p. 21) rein in Mr. Stewart's course of inquiry.

The Hearing Officer had no particular acquaintance with anyone in the Police Department or Village government (unlike, as it later developed, the Hearing officer from the 1993 proceedings and Chief Phillips). His on-the-record statement that Petitioner's return to duty would "raise havoc" in this small police force was adequately explained (p. 76) and standing alone is indicative of no "bias" sufficient to overturn the result.

The uncharged and unparticularized incidents testified to by Chief Phillips should not have been admitted, except perhaps on the question of the penalty to be imposed. Is that sufficient to overturn the result: it is not. It was not arbitrary or capricious for the Village to adopt the Hearing Officer's finding that Petitioner lied concerning soliciting signatures, a pure credibility (and thus substantial evidence) question. None of the uncharged events concerned Petitioner's credibility or dealt with matters of moral turpitude, only poor professional judgment, and none dealt with his relations with the media.

The Hearing Officer's failure to force Chief Phillips to divulge the names of officers who had complained about Petitioner's conduct is also of little consequence as it later came out via various witnesses that most of the officers distrusted Petitioner.

The fact that Petitioner received no warnings before being interviewed on March 17, 1994 by Chief Phillips and Assistant Chief Moll might prevent criminal charges from being brought, but it does not effect civil disciplinary proceedings (Matter of Matt v. LaRocca, 71 NY2d 154, 159-160).

Dismissal, harsh though it may seem, is appropriate, particularly where a police officer is found guilty of lying (Eberhart v. Robbins, 25 N.Y.S.2d 336, 339; Matter of Zazycki v.

Nichols v. Village of Malone -- Page 3


City of Albany, 94 AD2d 925; see also Winn v. Eschweiler, 149 AD2d 716), and is even available for instances of disruptive speech (Waters v. Churchill, 114 S.Ct. 1878, 128 L Ed2d 686, 703). The Village Board was aware of Waters, supra and its convolutions before voting on the Hearing Officer's findings, and Mr. Halley did not provide them with any citations which would mandate some other result. It was thus entitled to only adopt the finding that Petitioner lied about soliciting signatures so as to avoid the Waters free speech thicket.

As with the Court's March 14, 1994 Decision, however, the within discussion only demonstrates that Respondent is not entitled (here) to dismissal nor Petitioner to judgment on the law. There is squarely a question of substantial evidence concerning whether Petitioner lied to Phillips and Moll about soliciting signatures, and, as before, that must by statute be decided by the Appellate Division.

Mr. Halley to submit order on notice.

ENTER:

DATED: March 14, 1995
Chambers, Saranac Lake, New York


HON. JAN H. PLUMADORE
SUPREME COURT JUSTICE

EXHIBIT

Village # 7
6-16-94

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 pursue 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 motorists 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

9. The population density of the area.

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

When you decide to pursue a vehicle, conduct

1. Use ALL emergency lights and siren.
2. Attempt to obtain a physical description of the vehicle.
3. Obtain permission from the on duty supervisor in pursuit.
4. Notify the desk officer of the pursuit and informed of your location, direction of travel and 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 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. If the occupants of the other vehicle are using physical force against you or another person, you may use force to protect yourself or others.
5. Be alert to the possibility that the driver will deliberately abandon his vehicle in your path to attempt to run you off the road.
6. Do not drive your patrol vehicle under full throttle for long periods without periodically releasing the accelerator.

Desk Officer:

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

Supervisor: ~~shall~~

1. Monitor the pursuit situation.
2. If you consider continued pursuit to be necessary and justified, limit the number of patrol vehicles assisting in the pursuit operation to avoid heightening the risk.
3. If you consider that the situation and circumstances do not warrant continued pursuit, ORDER the officer(s) to terminate it.
4. Before the end of your tour, supervisor must submit a full detail report of the pursuit. Report must include, but not limited to, the offense committed, details and location of pursuit, justification to continue and the end results of the pursuit. Report will be submitted to the Chief of Police or the Assistant Chief if the Chief is not available.

MALONE VILLAGE POLICE DEPARTMENT

JAMES E. PHILLIPS
CHIEF OF POLICE

GERALD K. MOLL
ASSISTANT CHIEF

DEPARTMENT POLICY

REF: REVIEWING DEPARTMENT RULES AND REGULATIONS

DATE: 05-11-93

All personnel will read and review all department policies, rules and regulations on an annual basis. This must be completed by the 20th of January every year. A check sheet will be posted for your signature when this is completed. Anyone not understanding any of the rules or policies will bring this to the attention of their immediate supervisor.

Any updated rules or policies will be posted for each officer to review and a copy will be posted in the rules and regulation book.

VILLAGE OF MALONE POLICE DEPT.

2 PARK PLACE

MALONE, NEW YORK 12953

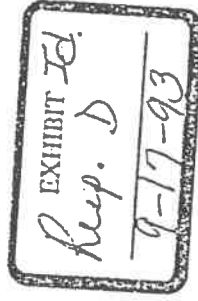
(518) 483-2424

TO: Chief Phillips

DATE: June 21, 1993

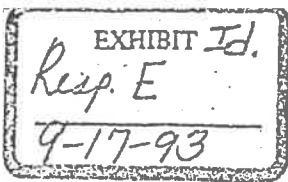
ADDRESS: _____

SUBJECT: supplementary employment



Chief it is my understanding that either approval must be given by you before I accept employment for additional income. On June 20 County Legislator Gary Perryea requested that I run for election as a town supervisor along with him as he is seeking election to the town supervisor position. At this point I still undecided but would highly consider such a move with your written permission. Thank you.

SIGNED: P. Nichols



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

TO: Ptlm Patrick Nichols

ADDRESS: Malone PD

DATE: 6-22-93

SUBJECT: Town Political Position

I do not have a problem with your running for political office for the Town of Malone. section 208-d.1 of the General Muncipal Law and Attorney General Informal Opinions 92-37 and 94-24 say that there is not a conflict of interest in regards to holding 2 public officers position.

The only thing is that the Police Dept. is your major job and comes before the other position

SIGNED: James E. P. [Signature]

§ 208-d

GENERAL MUNICIPAL LAW
Art. 10

Library References

Municipal Corporations § 187(5).
C.J.S. Municipal Corporations § 188,
189.

Notes of Decisions

1. Compensation authorized in line of duty without his fault during Village in Westchester County may disability. 10 Op-State Compt. 257, pay compensation to policeman injured 1954.

§ 208-d.1 Extra work by members of certain police forces

Notwithstanding the provisions of any general, special or local law or any rule or regulation of any police department or commissioner or head thereof, any member of a police force of a housing authority of any municipality may engage in extra work for another employer outside his regular hours of duty for not exceeding twenty hours a week provided that such extra work does not interfere or conflict with his regular duties as a member of the police force of such a housing authority or his availability for emergency duty nor affect his physical condition to the extent that it impairs his ability to efficiently perform such duties and further provided that the type of employment shall first be approved by the appropriate housing police department or housing police chief. (Added L.1967, c. 736, § 1.)

1 Other sections 208-d are set out above and below.

Historical Note

Effective Date. Section effective May 2, 1967, pursuant to L.1967, c. 736, § 2.

§ 208-d.1 Extra work by members of a police force in cities

Notwithstanding the provisions of any general, special or local law or any rule or regulation of any police department or commissioner or head thereof, any member of a police force of a city may engage in extra work for another employer outside his regular hours of duty for not exceeding twenty hours a week provided that such extra work does not interfere or conflict with his regular duties as a member of the force or his availability for emergency duty nor affect his physical condition to the extent that it impairs his ability to efficiently perform such duties and further provided

FIREMEN AND POLICEMEN
Art. 10

that the type of employment shall first be approved by the appropriate police department or police commissioner (Added L.1967, c. 812, § 1.)

1 Two other sections 208-d are set out above.

Historical Note

Effective Date. Section effective May 2, 1967, pursuant to L.1967, c. 812, § 2.

Library References

Municipal Corporations § 188.
C.J.S. Municipal Corporations § 574.

Notes of Decisions

Approval 2
Military duty 3
Quantities within section 1
Prohibition of extra work 4
Special services to private persons 5
Tort liability 6

1. Municipalities within section

The provisions of this section pertaining to extra work by members of certain police forces and police forces in cities do not apply to villages. *Tyrella v. Village of Centre Island*, 1976, 54 A.D.2d 985, 389 N.Y.S.2d 22.

2. Approval

A policeman of a city may not accept outside employment without the approval of the Police Commissioner or Police Chief of his city. 1967, Op. Atty. Gen. (Inf.) 153.

3. Military duty

The four of duty restrictions and outside employment restrictions pertaining to policemen do not affect performance of military duty. 1976, Op. Atty. Gen. (Inf.) 130.

4. Prohibition of extra work

An order issued by the mayor of a city which categorically prohibits work by a

§ 208-e. Extra work by members of ce

Notwithstanding the provisions of any law or any rule or regulation of any police

POLICE DEPT. - EXHIBIT #3
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

Chief Phillips,

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

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

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

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

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

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

Officer Patrick M Nichols

Patrick M Nichols

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

EXHIBIT A

— EXHIBIT # 4 —

PERSONNEL COMPLAINT

JULY 13, 1993

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

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

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

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

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

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

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

21-77 / 1

EXHIBIT C

VILLAGE OF MALONE POLICE DEPT.

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

TO: Chief Phillips

ADDRESS:

DATE: July 21, 1993

SUBJECT: Personnel Comp.

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

SIGNED: Patrick M Nichols



POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

EXHIBIT #5

TO: PTLM PATRICK NICHOLS

FROM: CHIEF *James E. Phillips*
JAMES E. PHILLIPS

DATE: JULY 21, 1993

SUBJECT: PERSONNEL COMPLAINT FILED DATED JULY 13, 1993

I APPRECIATE YOUR CONCERN IN REGARDS TO THE COMPLAINT THAT YOU FILED. THE COMPLAINT IS UNDER INVESTIGATION AND AS YOU ARE AWARE ACTIONS AGAINST PERSONNEL ARE COVERED UNDER THE PRIVACY ACT AND I CAN NOT DISCUSS WITH YOU ANY PART OF THE INVESTIGATION. ALL I CAN SAY IS THAT IT WILL BE TREATED THE SAME AS OTHER INVESTIGATIONS THAT ARE BROUGHT AGAINST MEMBERS OF THIS DEPARTMENT AND IF DISCIPLINARY ACTION IS REQUIRED IT WILL BE TAKEN.

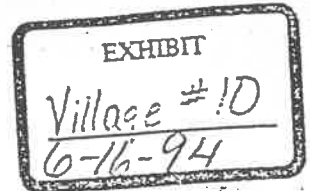
EXHIBIT *[initials]*

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief



To: All Personnel

10-10-92

Subject: Abortion detail

For the past several months, this department has successfully handled the abortion protest in Malone. There has been suggestions from some members to update this detail and to make sure that it is performed in a uniform manner each week. Ptl. Fountain made a schematic of the area showing the "restricted" zone highlighted. A member of the "Choice" faction stated that an Officer escorted some of Gorman's patients through this restricted area after being brought there by the escorts. This could develop into a problem by possibly being bias and showing favoritism. To simplify things, the Escorts are only allowed to bring patients to the restricted area. The patient will then be able to walk to the office from that point. The main purpose for the restricted area is for the Officers protection and to assist in securing the rights of both factions. Most Officers are not allowing anyone to stand or even place a foot in this area. This seems to be working quite well. So far there doesn't seem to be a problem with some of the Escorts walking through the area to get to Gorman's Office to use the restroom. This issue has been going on for a long time and with the colder weather coming the people seem to have shorter tempers. It is under the Officers discretion to step in and quell this before it goes too far. From time to time, input from Officers directly involved in this detail is necessary to maintain our success in this situation.

A/C Gerald Moll

cc. Chief Phillips

↑ N

HARRISON
PLACE

34

DR. GORMAN'S
OFFICE
O.D.R.

108"

PARKING LANE

WEST MAIN ST.

PARKING LANE

PARKING LANE

AMSDEN
STREET

Village # 13
6-16-94

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLINTIME STARTED :
TIME ENDED :

DATE: October 21, 1993 PLACE: Malone PD

I, Carl Thomas am 30 years of age, born on [REDACTED] my address is [REDACTED] my occupation is Mechanic, and degree of education is 10th grade.

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

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

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

witness: [Signature]

witness:

Signed: Carl Thomas

PAGE

OF 1

PAGES

EXHIBIT

Village # 14

6-16-94

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED
TIME ENDED

DATE October 21, 1993 PLACE Malone PD

I, Dale Lamitie am 35 years of age, born on [REDACTED]
my address is [REDACTED] and degree of education
is 9th.

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

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

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

witness:

witness:

Signed:

PAGE 1 OF

PAGES

EXHIBIT

Village #15

6-16-94

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED :
TIME ENDED :

DATE Oct 27, 1993 PLACE Malone PD.

I, Edward Ritmann am 59 years of age, my address is [REDACTED] Occupation is Retired, and degree of education is 14yrs.

I would like to state that sometime during the early part of September 1993 I was at Smith's 24hr Towing in the Village of Malone N.Y., on the above mentioned time I was in the company of the owner of the business, Scott Smith, A person known to me as Pat Nichols approached us and asked if we would sign a petition that he had. He showed me the petition and I read it over. It said something to the effects that I was in favor of what he was doing and that he should be reinstated to his position on the local police department, after reading his petition I told him that I wasn't in any position to sign until I heard both sides of the story. The only knowledge of the situation was from what I had read or heard through the news media. Pat understood my feelings and went over and talked with Scott Smith.

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

*Affirmed under penalty of Law
this 27 day of Oct, 19 93

witness: [Signature]

witness:

Signed: [Signature]

PAGE

1

OF 1

PAGES

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.

- 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.

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.

- 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:

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.

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.

- 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:

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.

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 management and control.

- 6) On October 21, 1993 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:

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.

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

10.1.4 Insubordination.

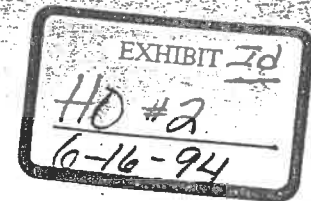
WHEREFORE, the Village of Malone intends to conduct a hearing pursuant to Civil Service Law §75 in order to make determinations with respect to these charges and to determine the appropriate and legal response.

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

THOMAS P. HALLEY
ATTORNEY AT LAW



May 10, 1994

287 MILL STREET
POUGHKEEPSIE, N.Y. 12601
(914) 432-8120
(914) 432-8122

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

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.

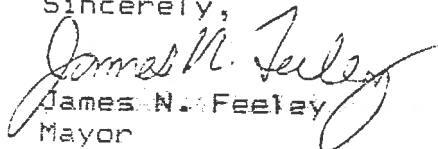
You are entitled to a hearing on the above charges and to be represented at such hearing by an attorney, or a representative of your union. You should be prepared, at such hearing, to present such witnesses and other proof as you may have in your defense against these charges. Such hearing will be held 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.

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

EXHIBIT

H0 #4
6-16-94

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,

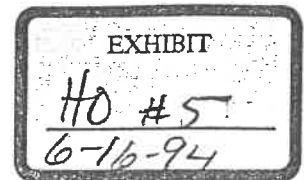

James N. Feeley
Mayor

JNF:ejb
Enc

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

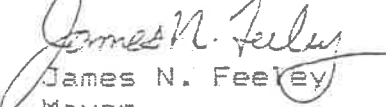
Dear Mr. Lawliss:

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.

EXHIBIT 12

The Malone Telegram

© 1993 Malone Telegram

(USPS - 326 - 840)

Malone, New York 12953, Tuesday, August 17, 1993

Vol. 83 No. 216

Single Copy Price 35¢

Tuesday

ature

ild tonight but warm
humid tomorrow. More
ails on Page 2.

cal

tle Queen



family Dawn Rolley is a
son with local roots.

Page 5

Cop Cries Misconduct Then Gets Suspended

SHARON K. HUGHES
Telegram Staff Writer

Malone Village Mayor James Feeley has suspended Pat Nichols, a village police officer, for 30 days without pay, but Nichols says another officer is the one who should be punished.

Nichols was suspended Aug. 5, with the approval of the village board. The charges are tied to a complaint he made of mistreatment of a suspect in village police custody on April 3, according to Officer Nichols.

Nichols' complaint specifically concerns the actions of the force's assistant chief, Gerald Moll, according to sources contacted by the Telegram who insisted on remaining anonymous.

Tom Hally, a lawyer for the Federation of Police, is representing Nichols in the case.

According to Hally, village police officers arrested a man in the early morning hours April 3 and put him in the station's holding cell.

The man apparently urinated on the floor of the room, which Hally described as unventilated. The officer who was the subject of Nichols' complaint then allegedly poured bleach on the floor of the room.

The prisoner became ill, Hally continued. He did not know whether the man received any medical attention.

Nichols apparently reported the incident to Chief of Police James Phillips. When he later asked what was done to the officer, Phillips told him that it was a confidential matter and he wasn't going to comment, Hally said.

Hally added that Nichols then reported the incident to Mayor Feeley, District Attorney Richard Edwards, and the FBI.

lating departmental rules, saying he should not release information about internal investigations, remove departmental records, or communicate with other agencies about departmental investigations without going through proper channels, Hally added.

Neither Phillips or Feeley would confirm the charges which, according to Feeley, are being amended.

Phillips said he couldn't comment on either the Nichols case or Nichols' complaint against another officer because both officers are protected under the

privacy act. To release the name of any officer under investigation would be in violation of that act, Phillips said.

Phillips confirmed an investigation was conducted into an officer besides Nichols and Feeley said he had a completed investigation which he would bring before the village board. Phillips said the two investigations were not connected.

Nichols showed him a memorandum with the name whited out of the officer he was accusing, said the district attorney, Edwards. Nichols told Edwards he was going to proceed



Patrick Nichols



Gerald Moll

through police department channels but might bring the complaint back to him at some later date. He never came back, Edwards said.

Nichols is entitled to a civil

service hearing on the charges against him. He has requested that hearing be public. According to Mayor Feeley, the hearing was originally scheduled for

(Turn to Cops on Page 2)

Souvenir



Ex-Local Man Shot at Cops, Killed Himself

GLOVERSVILLE (AP) — Investigators are trying to deter-

Cops

(Continued from Page 1)

Aug. 24 but has been postponed to a later date which has yet to be determined.

Brian McKee, the retired head of Naval investigations worldwide and the owner of the Gateway Motel here, will serve as the hearing officer.

Both Feeley and Hally said they'd like to have the hearing as soon as possible.

Police Blotter

According to the village police blotter, Nichols and Moll both came on duty at 7:40 p.m. April 2. Moll logged out at 4:45 a.m. April 3 and Nichols at 5:30 a.m. Officers Steve Stone and Scott Mulverhill were also on duty. Police arrested two men that night, Scott Mattimore and John Baker, both of North Bangor.

"There are two sides to every story," Phillips said. "When the hearing is convened I'm sure the press will get the facts."

If Nichols is proven innocent of the charges, the village will have to repay him for salary lost during the suspension, Hally said.

If he is found guilty the village board of trustees will determine his punishment, according to Feeley. Under Article 75 of the civil service law he can be reprimanded, fined up to \$100, suspended without pay for up to two months, demoted, or dismissed from service, Feeley said.

"There's somebody else who should have been suspended for 30 days," Nichols said.

"I've always done my job. I have nothing to hide."

His family and friends have been supporting him emotionally and financially during his suspension, Nichols said.

"I can't tell you how I feel and how my family feels. I have done nothing wrong."

Officer suspended after jail-incident report

Staff Writer
Majors Bureau

man was arrested at 1:15 a.m. on burglary charges, and while in a holding cell in the police station the prisoner asked to go to the bathroom. An officer on duty at the time refused the request and the prisoner urinated on the R-1000 floor.

The officer then threw some Chlorox in there on the floor. This is an enclosed holding cell (with a solid door), and there is no vent other than under the door. After that the prisoner seemed to be sick and complained of nausea," Hally said.

A few weeks later, Nichols submitted a letter to Chief James Phillips concerning the incident, and in response received a memo stating that the matter was

subordination, removing departmental records, seeking intervention without using proper channels, violating the Freedom of Information law and violating the right of privacy.

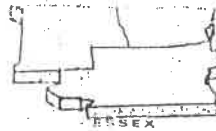
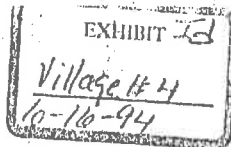
"Officer Nichols is suspended for violating Article 75 of the Civil Service Law dealing with personnel. That's really the extent of my comments other than to say we've hired outside legal counsel," Brian Stewart, board

that he had to report the wrong doing. The charges against him generally relate to his handling over certain documents, which he felt he had to do," Hally said, saying that Nichols has requested a Civil Service hearing which will be held publicly. Nichols also reported the incident to the Federal Bureau of Investigation after his suspension because of his concern over the violation of the prisoners' civil rights.

Feely also said that a tentative hearing date of Aug. 24 has been postponed by mutual agreement and that he has appointed Malone resident Brian McCabe as the hearing officer. He said he expects a new hearing date to be announced soon.

"I just want this to transpire in a relatively quick time frame for the good of all," he said.

WEDNESDAY,
AUGUST 18, 1993



REG

Suspended cop feared reprisals

By ALISON CALKINS
Staff Writer
Malone Bureau

MALONE — The fear of retaliation by Malone officials was what kept recently suspended Malone Village Police Officer Patrick Nichols from speaking out sooner about the alleged mistreatment of a prisoner in police custody.

In a formal complaint earlier this month to Malone Mayor James Feeley, Nichols charged that on April 3, a police officer on duty threw bleach into the police station's holding cell, which is a small room with a solid door, after a prisoner who was not allowed to go to the bathroom urinated on the floor. Three days after the complaint was lodged, Nichols was suspended by Feeley for up to 30 days for violating departmental regulations.

Nichols said Tuesday that although he will wait until the Civil Service hearing to tell the whole story, he waited until recently to report the incident because he feared retaliation by Police Chief James Phillips, and because he wanted to be sure he had a good case.

"Retaliation is the number one reason I waited so long," he said. "That's the same 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."

Although officials and Nichols's attorney have refused to name the officer in Nichols's complaint, Nichols's brother-in-law was willing to tell all. He identified the officer as Assistant Chief Gerald Moll.

"I learned it was Moll from a source in the police department. Everyone in town knows it's Moll. It's not a secret," said Doug Vensil, who works for the New York State Department of Corrections. "I'm a bit peeved at the whole situation, and there's a lot of other people who are upset at the way this whole situation came about. Gerry Moll is the one who's in the wrong here, and Vensil said that this situation is only the tip of a deep rooted problem."

"There's a general feeling in the village that cover-ups regarding the actions of both on and off duty officers are common. I firmly believe something's going

Both sides await hearing

By ALISON CALKINS
Staff Writer
Malone Bureau

MALONE — The charges against suspended Malone Village Police Officer Patrick Nichols are being amended before the case goes to a Civil Service hearing.

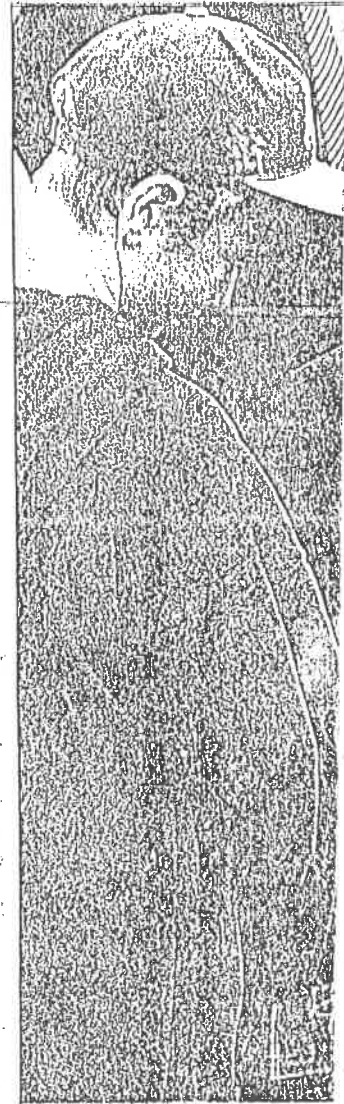
Monday, Mayor James Feeley said he signed the order suspending Nichols under Article 75 of the Civil Service law, the section of law that states the rules for removing and disciplining civil service employees. Tuesday, Feeley said those charges were being amended. According to Tom Hally, Nichols's attorney with the Federation of Police union, the list of charges against Nichols is lengthy and includes insubordination, removing departmental records, communicating with other agencies without going through proper channels, violating the Freedom of Information law, and violating the right to privacy.

Feeley said that under Civil Service law it is permissible to amend the charges and that Village Attorney Brian Stewart is at work doing so. He also said he won't discuss the changes until they are completed and that a hearing date sometime in early to mid-September is being arranged.

Article 75 also states the rules by which the hearing officer is selected and according to those rules, the Village Board is the body that does the selecting, according to Feeley. He said the board chose Malone businessman and former U.S. Navy internal investigations officer Brian McKee for the job.

"My perception is that this individual might have an in-depth understanding of personnel problems and an understanding of the chain of command and need for discipline," Feeley said, adding that he has only a minor more aware of his public resume. "The board made the decision and there was more than one person discussed."

Feeley also said that as he understands the rules, there is no provision allowing Nichols to object to a hearing officer



on. Things are definitely not right down there and things are getting stinkier by the minute."

Franklin County District Attorney Richard Edwards said he was contacted once by Nichols a few weeks ago and that at this point his office is not involved in any investigation into the matter.

"He contacted me and showed me a memoranda with names whited out. He said he'd allow his police department to investigate and he might come back. That's all I've heard," Edwards said. "I was asked if I'd review the situation and I responded that if he came back I'd look into it. He never came back."

Edwards also said that the man allegedly mistreated, Scott Mattimore, hasn't filed any charges against the village police for violations of his rights. According to the police blotter, Nichols and Moll were both on duty April 3 when the alleged incident occurred along with officers Steve Stone and Scott Mulverhill. Mattimore was arrested on burglary charges, and Edwards said Mattimore later pleaded guilty to criminal mischief for breaking a window in the holding cell. Phillips, Moll and Mattimore couldn't be contacted for com-

ment Tuesday.

chosen by the board and that everyone concerned was ready to get the show on the road.

"We are anxious but contained to have our part of the story out there," Feeley said.

If Nichols is found guilty, the board of trustees will decide his punishment, and under Article 75 that punishment can be a reprimand, up to a \$100 fine, up to two months suspension without pay, a demotion, or the loss of his job, according to Feeley. If innocent, the village must pay the salary Nichols lost while he was suspended.

ment Tuesday.

Nichols confirmed that he also filed a complaint against another officer earlier in the year regarding another unrelated incident, but refused further comment because the matter is still pending. Vensil said he knew Nichols had filed a previous complaint about another issue he believed was covered up by police officials.

"There are a lot of things that have been swept under the rug and Pat hates to see these types of things going on, that's all," he said. "I believe now they're just trying to get even with him for saying anything."

EXHIBIT 7d

Village #5

6-16-94

MALONE POLICE DEPARTMENT
INCIDENT REPORT

8-A-4613

COMPLAINANT: [REDACTED]

CASE#

8-A-4613

ADDRESS: [REDACTED]

LOG: 8452

PHONE: [REDACTED]

OFFENSE: Criminal Mischief

INCIDENT LOCATION: [REDACTED]

RECEIVED BY: MVF

AT: 0750

DATE: 10/27/93

DATE/TIME COMMITTED

DATE/TIME INVESTIGATED:

OFFICER ASSIGNED: Simonsen

SUSPECT/PERSON ARRESTED:

DETAILS OF INCIDENT: Complainant called and reported that two tires on the company vehicle had been cut. Complainant further stated that he reported the same type of incident on 10/26. He then went on to say that this police department was something else and that if Officer Nichols was working this type of thing wouldn't have happened.

Patrol spoke to Mr. [REDACTED] who was upset that his tires on his new delivery truck were punctured. He could not believe that with the taxes he pays that we can't watch his vehicles. The front passengers and drivers tires were flat. I tried to talk to him but he would not talk. I went to take pictures and puncture holes that I found in the drivers tire. I spoke to [REDACTED] who told me that they saw nothing but will keep an eye out and if they see something they will contact the department. I talked to people that live in the apartment on Mill Street but they did not see anything either. I then went back and talked with the complainant and told him that we would need estimates of the damage. It was found later that the inside back wheels were also flat. The complainant said that he was going to contact the Mayor. I asked him if there was anyone that he was having problems with and he told me that he could think of anyone. I told him that we would try to check behind his building more often. Will have nightshift keep an extra eye on the building.

MRS

EXHIBIT

Village # 11

6-16-94

Memo to Ptl. Nichols

Memo dated March 8th 1994

Ptl. Nichols,

Please report to the Chief's Office on March 17th 1994 at 10:00 am. I would like to discuss a few items with you. The matter may be a potential subject of disciplinary action. Please be advised that you have the right to representation by your certified employee organization at this meeting.

Chief James E. Phillips

EXHIBIT

Village # 7
6-16-94

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 pursue 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

9. The population density of the area.

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

When you decide to pursue a vehicle, conduct

1. Use ALL emergency lights and siren.
2. Attempt to obtain a physical description of the vehicle.
3. Obtain permission from the on duty supervisor in pursuit.
4. Notify the desk officer of the pursuit and informed of your location, direction of travel and 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 unacceptable, TERMINATE THE PURSUIT.
3. Unless it is absolutely necessary, AVOID contact with the pursuit vehicle.
4. DO NOT fire a weapon from or at a moving vehicle. The occupants of the other vehicle are using physical force against you or another person.
5. Be alert to the possibility that the driver deliberately abandon his vehicle in your path attempt to run you off the road.
6. Do not drive your patrol vehicle under full throttle for long periods without periodically releasing the accelerator.

Desk Officer:

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

Supervisor:

1. Monitor the pursuit situation.
2. If you consider continued pursuit to be necessary and justified, limit the number of patrol vehicles assisting in the pursuit operation to avoid heightening the risk.
3. If you consider that the situation and circumstances do not warrant continued pursuit, ORDER the officer(s) to terminate it.
4. Before the end of your tour, supervisor must submit a full detail report of the pursuit. Report must include, but not limited to, the offense committed; details and location of pursuit, justification to continue and the end results of the pursuit. Report will be submitted to the Chief of Police or the Assistant Chief if the Chief is not available.

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief



To: All Personnel

10-10-92

Subject: Abortion detail

For the past several months, this department has successfully handled the abortion protest in Malone. There has been suggestions from some members to update this detail and to make sure that it is performed in a uniform manner each week.

Ptl. Fountain made a schematic of the area showing the "restricted" zone highlighted. A member of the "Choice" faction stated that an Officer escorted some of Gorman's patients through this restricted area after being brought there by the escorts. This could develop into a problem by possibly being bias and showing favoritism.

To simplify things, the Escorts are only allowed to bring patients to the restricted area. The patient will then be able to walk to the office from that point. The main purpose for the restricted area is for the Officers protection and to assist in securing the rights of both factions. Most Officers are not allowing anyone to stand or even place a foot in this area. This seems to be working quite well.

So far there doesn't seem to be a problem with some of the Escorts walking through the area to get to Gorman's Office to use the restroom.

This issue has been going on for a long time and with the colder weather coming, the people seem to have shorter tempers. It is under the Officers discretion to step in and quell this before it goes too far.

From time to time, input from Officers directly involved in this detail is necessary to maintain our success in this situation.

A/C Gerald Moll

cc. Chief Phillips

N
↑

HARRISON
PLACE

34

DR. COOPER'S
OFFICE
DODGE

108'

PARKING LANE

WEST MAIN ST.

PARKING LANE

PARKING LANE

AMSDEN
STREET

EXHIBIT

Village #16
6-46-94

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED :
TIME ENDED :

DATE: September 24, 1993

PLACE: Malone PD

I, Scott Smith am 28 years of age, born on [REDACTED] my address is [REDACTED] my occupation is Businessman, and degree of education is 12.

I would like to state that during the early part of September 1993 I was at my place of business, Smith's 24hr Towing located on 66 West Main St within the Village of Malone NY, when I was approached by Malone Police Officer Patrick Nichols. Pat had a petition with him and he asked me to sign it. I looked at it and found that it stated that: 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. Pat went on and explained to me that he felt that there was a cover up going on at the police department and he told me about an incident when they had a person in police custody and Scott Mulverhill had told him that A/C Moll had poured bleach on the floor when the prisoner had urinated on the floor and that the prisoner had broken the window in the holding cell to get air and that he felt that it wasn't a criminal matter. He also told me that [REDACTED] the DA with the same matter and that he felt that the Police Chief Jim Phillips shouldn't be in the position he was in. After he told me his side of the story I signed the petition and gave it back to him. I was the first person to sign it but he went to others under my employ but I don't know if anyone else signed it.

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

*Affirmed under penalty of Law
this 24 day of Sept, 19 93

Signed: [Signature]

witness: [Signature]

witness: [Signature]

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

August 26, 1993

BRYAN J. HUGHES
BRIAN S. STEWART

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

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

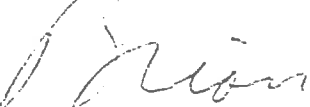
Re: Village of Malone v. Patrick Nichols

Dear Tom:

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

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

Very truly yours,



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

BSS/tlw
enclosure
cc: Mayor James Feeley
Chief Phillips

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

Village of Malone,

Complainant,

v.

Patrick Nichols,

Respondent.

CHARGES

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

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

- 6.2.33 Requirement to immediately notify Desk Officer of an unusual occurrence.
- 10.1.1 Discredit upon Department.
- 10.1.4 Insubordination or disrespect to a superior officer.

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

- 10.1.1 Discredit to Department.
- 10.1.4 Insubordination or disrespect to a superior officer.
- 10.1.27 Public criticism of a member of the Department.
- 10.1.28 Releasing departmental information without permission.

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

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

11.5 Disclosing official business of the Department without permission.

3)

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

6.2.7 Treat members of the Department with respect.

10.1.4 Insubordination or disrespect to a superior officer.

10.1.17 Failure to treat any person civilly.

4)

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

6.2.7 Treat members of the Department with respect.

10.1.4 Insubordination or disrespect to a superior officer.

10.1.17 Failure to treat any person civilly.

5)

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

10.1.1 Discredit to Department.

10.1.4 Insubordination or disrespect to a superior officer.

10.1.27 Public criticism of a member of the Department.

THOMAS P. HALLEY

ATTORNEY AT LAW

September 3, 1993

**297 MILL STREET
POUGHKEEPSIE, N. Y. 12601**

(914) 452-9120

FAX (914) 452-9192

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

RE: Village of Malone v Patrick Nichols

Dear Brian:

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

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

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

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

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

Very truly yours,


THOMAS P. HALLEY

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

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

DATE October 21, 1993 PLACE Malone Police Department

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

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

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

Signed: *James E. Phillips*

PAGE 1 OF 1 PAGES

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

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

BRYAN J. HUGHES
BRIAN S. STEWART

September 30, 1993

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

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

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

Re: Village of Malone vs. Patrick Nichols

Dear Jim & Jim:

Brian McKee has given us the opportunity to file a closing memorandum, and I think we should take advantage of the opportunity. It will allow us to tie up the case, make a few legal arguments and supply Mr. McKee with enough cases to be able to make a finding for us, if he so chooses.

In my draft of the closing memorandum, I have tried to pay special attention to the argument that Mr. Nichols must be terminated, because he has caused severe disruption in the Department and because his personnel file showed five prior incidents of discipline.

Please review the enclosed and let me know what you think before I send it on the Mr. McKee.

Very truly yours,

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

BSS/tlw
enclosure

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.

COPY

CLOSING MEMORANDUM
OF
THE VILLAGE OF MALONE

In the Village of Malone's opening statement, the point was made that there is less to this case than meets the eye. Promised evidence of grand conspiracies and elaborate cover-ups were not proven. Mr. Nichols' supposed defense under the Whistleblower Law, Civil Service Law §75-b, evaporated. Mr. Nichols testified that he did not discover that law until after this proceeding was brought. Mr. Nichols' behavior did not conform to the requirements of that law. He did not give his superiors a reasonable time to investigate the conduct which he considered offensive. In fact, he did not even report it to the Chief of Police until over one hundred days after it occurred.

What we are left with is a series of eight specifications, the facts of which are not seriously disputed. The charges center on Mr. Nichols' failure to obey the clearly established chain of command, the conducting of an unauthorized investigation and the resulting insubordination that these actions showed. Each specification, by itself, might not justify punishment any more severe than a letter of reprimand. Taken together, and in light of Mr. Nichols' personnel file, dismissal is the only real option.

Not every disciplinary action can or should result in dismissal. In the case of Wansart vs. Feinstein, 48 M2d 12, 264 NYS2d 30, dismissal was not held to be warranted, but the court elaborated the factors that would justify dismissal. They are: a) a bad work record; b) disruption of the institution; c) violations which are repetitive in nature; and d) a number of breaches after full warning.

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

October 7, 1993

Telephone: (518) 483-4330

Fax: (518) 483-4005

BRYAN J. HUGHES
BRIAN S. STEWART

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

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

Re: Village of Malone vs. Patrick Nichols

Dear Sirs:

Enclosed herewith please find the Closing Memorandum of the Village of Malone in the above-reference matter.

Very truly yours,



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

BSS/tlw
enclosure

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

Village of Malone,

Complainant,

v.

Patrick Nichols,

Respondent.

CLOSING MEMORANDUM
OF
THE VILLAGE OF MALONE

Full text in
handwritten box
COPY

In the Village of Malone's opening statement, the point was made that there is less to this case than meets the eye. Promised evidence of grand conspiracies and elaborate cover-ups were not proven. Mr. Nichols' supposed defense under the Whistleblower Law, Civil Service Law §75-b, evaporated. Mr. Nichols testified that he did not discover that law until after this proceeding was brought. Mr. Nichols' behavior did not conform to the requirements of that law. He did not give his superiors a reasonable time to investigate the conduct which he considered offensive. In fact, he did not even report it to the Chief of Police until over one hundred days after it occurred.

What we are left with is a series of eight specifications, the facts of which are not seriously disputed. The charges center on Mr. Nichols' failure to obey the clearly established chain of command, the conducting of an unauthorized investigation and the resulting insubordination that these actions showed. Each specification, by itself, might not justify punishment any more severe than a letter of reprimand. Taken together, and in light of Mr. Nichols' personnel file, dismissal is the only real option.

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

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

12 October 1993

BY FEDEX

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

Re: Village of Malone vs.
Patrick Myron Nichols

Dear Mr. Halley:

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

Respectfully,

J. BRIAN MCKEE

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

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-

Volume I

Patrick Nichols,

Respondent.

Representing the Village of Malone:

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

Representing the Respondent:

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

ARTICLE 75 PROCEEDING,

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

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

1
2 STATE OF NEW YORK
3 COUNTY OF FRANKLIN

VILLAGE OF MALONE

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

Village of Malone,

Complainant,

-against-

Volume II

Patrick Nichols,

Respondent.

Representing the Village of Malone:

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

Representing the Respondent:

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

ARTICLE 75 PROCEEDING,

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

ACC-U-SCRIBE REPORTING SERVICE
Suzanne M. Niles, Notary Public
11 Main Street

PO Box 762
Canton, New York 13617
(315) 379-9216

Watertown - (315) 786-DEPO

** ORIGINAL **

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

Village of Malone,

Complaint,

-against-

Patrick Nichols,

Respondent.

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

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

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

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

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

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

Charge number three was dismissed on consent by the Village.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED: Poughkeepsie, New York
October 13, 1993

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

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



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

J. Brian McKee
Luddrick M. James, Jr.

13 October 1993

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

Re: Village of Malone vs.
Patrick Myron Nichols

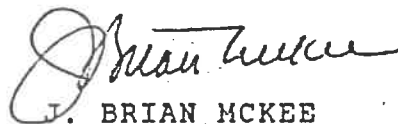
Dear Mayor Feeley:

Pursuant to your letter of 11 August 1993, I have conducted a hearing in the matter of disciplinary proceedings against Police Officer Patrick Myron Nichols and my report, with recommendations, is forwarded herewith.

My statement for services rendered is also enclosed.

Should you or the Village Board desire to meet with me to discuss my report and recommendations, I am willing to make myself available for that purpose.

Respectfully,


J. BRIAN MCKEE



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

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

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 Myron Nichols,

Respondent

REPORT AND RECOMMENDATIONS

To: Honorable James N. Feeley, Mayor
Village of Malone

By your designation dated 11 August 1993, made part of the record herein, the above entitled matter was referred to me to hear and report with recommendations pursuant to Section 75(2) of the Civil Service Law.

Transmitted herewith is the record, with exhibits.

The notice and statement of charges was served on the Respondent on 5 August 1993 and he signed a written receipt for them (see Volume I, page 5, of the record). The respondent, through his counsel, answered the charges by letter dated 10 August 1993; denied the charges; and asserted as a defense, his rights provided under Section 75b of the Civil Service Law ("Retaliatory Action by Public Employers").

A hearing was held before me at the offices of the Village of Malone on 16 and 17 September 1993. The Respondent, Patrick Myron Nichols, appeared in person and by Thomas P. Halley, Esq., 297 Mill Street, Poughkeepsie, New York 12601. Special Village Attorney Brian S. Stewart, Esq., appeared in behalf of the Village of Malone.

SUMMARY OF TESTIMONY

The following witnesses testified at the hearing on 16 September 1993:

For the Village of Malone -

Chief James Phillips
Mayor James N. Feeley
Sergeant William Ritchie
Police Officer Scott Mulverhill
Police Officer Clyde LaChance

For the Respondent -

Mr. Scott Mattimore
Mrs. Betsy Nichols
Mr. Robert Hanna
Sergeant Vernon Marlow
Mr. Steve Hardy

All witnesses were duly sworn and their testimony is summarized as follows:

Chief James E. Phillips - testified that he has 18 years experience with the Village Police Department, including 3 years as the Assistant Chief and 3 years as the Chief, as well as 24 years of military service - currently as a Major in the Army Reserve (Inactive). Chief Phillips testified as to the need for strict accountability and discipline within the police department and indicated that Police Officer Nichols, who was hired in June 1988, was fully aware of and familiar with the rules and regulations of the Department and had so signified his complete awareness of their requirements as late as 11 May 1993.

Continuing, Chief Phillips testified that on or about 1 June 1993, he received a complaint concerning Police Officer Nichols' performance during police activity at the Knights of Columbus building on Elm Street, Malone, and referred the complaint to Assistant Chief Gerald Moll for investigation and recommendations. According to Chief Phillips, he subsequently received Assistant Chief Moll's report; agreed with its findings of inadequate performance on the part of Police Officer Nichols; and, after consultation with the Mayor, downgraded the disciplinary action to a letter of reprimand to be retained in file for a period of one year. Six weeks after receiving the complaint, Police Officer Nichols was personally advised of the disciplinary action being awarded by Chief Phillips during a meeting at the Police Headquarters on 13 July 1993.

Chief Phillips further testified that when advised he was being given a letter of reprimand, Police Officer Nichols stated his intentions to appeal the punishment and that within an hour or two returned to the Chief and filed a complaint against Assistant Chief Moll for an incident which occurred at the Police Headquarters on 2 April 1993. Chief Phillips testified that as the next senior member of the department, he immediately undertook an investigation predicated upon the complaint by Police Officer Nichols. After taking statements from the police officers immediately involved in the alleged incident and collecting data concerning the extensive criminal record of the prisoner involved, Mr. Scott Mattimore, he began to make notes in his personal computer, a part of the Police Headquarters computer system, concerning his findings.

Chief Phillips testified that on or about 21 July 1993, Police Officer Nichols sent him a memorandum asking for the status of the Chief's investigation relative to the complaint he (Police Officer Nichols) had made concerning Assistant Chief Moll's actions toward Mr. Mattimore. The Chief related that he responded by memorandum on the same date; advising that the matter was under active investigation; and assuring Nichols that if disciplinary action was required, it would be awarded.

As background, Chief Phillips testified that supervisory personnel had experienced prior performance problems with Police Officer Nichols, including his failure to perform fully his police duties when not actively involved with DARE instructional assignments. When certain administrative actions were taken in that regard, Police Officer Nichols reportedly went outside the department to discuss those actions with a Village Trustee who subsequently encouraged the Police Chief to return Police Officer Nichols to DARE duties.

Chief Phillips stated that until 13 July 1993, no member of the department had complained concerning the incident of 2 April 1993 and, at no time, has the union filed any type of grievance or complaint concerning the disciplinary action awarded Police Officer Nichols.

Continuing, the Chief testified as to Police Officer Nichols unauthorized contacts with District Attorney Richard Edwards, former Police Chief Richard Brown, and Mayor James Feeley. In addition, Chief Phillips entered into evidence, without objection, the Malone Police Department personnel file for Police Officer Nichols. It was also reported that Police Officer Nichols had been formally counselled on 4 February 1993 and asked to again review the department's Rules and Regulations and to certify his complete understanding of those documents.

Mayor James Feeley testified as to his conversations with Police Officer Nichols, between 13 July and 5 August 1993, relative to Police Officer Nichols' charges against Assistant Chief Moll and showed him documentation from Police Department files concerning the matter and Chief Phillips' ongoing investigation of the matter. In addition, Police Officer Nichols reported to the Mayor that he had consulted District Attorney Edwards concerning the matter and that he suspected a "cover-up" on the part of the Chief's investigation. Continuing, Mayor Feeley testified that Police Officer Nichols further indicated his plan to notify the Federal Bureau of Investigation concerning the matter and, also, that he had been in contact with the prisoner involved in the April 1993 incident at Police Headquarters and was keeping that individual (Mattimore) apprised of "his own investigation"; of Chief Phillips' investigation; and of the individual's civil rights and his possible redress through a civil suit against the Village.

Mayor Feeley testified that he did not believe it proper for a police officer to be in his office inquiring as to the Mayor's conversations with the Police Chief over police department internal matters. According to the Mayor, Police Officer Nichols asked the Mayor to hold as confidential his (Police Officer Nichols) meetings with the Mayor. When reminded of the department's rules and regulations about unauthorized outside contacts, Police Officer Nichols, according to the Mayor, terminated the conversation.

Sergeant William Ritchie testified as to Police Officer Nichols' stated intentions to consult with the District Attorney and the Federal Bureau of Investigation concerning the Moll-Mattimore incident and how Police Officer Nichols actions and comments were disrupting the department; creating mistrust among the personnel; and causing extensive preoccupation with non-police activity. Sergeant Ritchie indicated he did not believe Police Officer Nichols could return to duty as a police officer without causing further disruption.

Police Officer Scott Mulverhill testified that before doing so, Police Officer Nichols told him that he intended to file charges against Assistant Chief Moll for "misusing a prisoner, for abuse of a prisoner" and that sometime between 13 July and 5 August 1993, he was present when Police Officer Nichols consulted with former Police Chief Richard Brown concerning the proper chain of command "to go above the chief." Police Officer Mulverhill testified that he warned Police Officer Nichols that if he intended to go the Mayor, he had to talk to the Chief. Police Officer Mulverhill testified that he did not tell Sergeant Ritchie that he did not believe Police Officer Nichols could return to duty without causing a disruption within the Police Department, but did acknowledge that he felt that way and would not want to work in the future with Police Officer Nichols who had been his partner in the past.

Police Officer Clyde LaChance testified that in July 1993, Police Officer Nichols told him that he felt he had sufficient information to file some type of charges against Assistant Chief Moll and that he intended to make his charges to the Chief. In mid-July 1993, while reviewing the department computer system from the desk terminal, he found a file entitled "Jim"; retrieved the file; found it to be Chief Phillips' notes concerning his investigation of Police Officer Nichols' complaint concerning Assistant Chief Moll; invited Nichols' attention to the screen; and, at the request of Nichols, made a copy of Chief Phillips' documentation and gave it to Police Officer Nichols. In addition, Police Officer LaChance testified as to Police Officer Nichols' stated intention to go to the Mayor concerning the Chief's investigation - which he considered, for unstated reasons, to be a "cover-up" - and of the fact that he (LaChance) counselled Nichols to first consult with the Union Attorney as to proper procedures. Continuing, LaChance testified that Police Officer Nichols declined his suggestion and indicated he planned to consult the Mayor and the District Attorney. Further, LaChance testified as to other conversations with Police Officer Nichols wherein he confirmed his contact with the District Attorney and also with the prisoner in the April incident (Scott Mattimore). When he again counselled Police Officer Nichols to follow proper procedure in his complaint against Assistant Chief Moll, Police Officer Nichols again declined his suggestions and stated he "wanted to make them sweat like they made him sweat." Police Officer LaChance testified that he did not believe that Police Officer Nichols had any basis for believing that Chief Phillips was conducting any type of coverup in his investigation of Assistant Chief Moll based on Police Officer Nichols complaint.

At this point in the proceedings, Counsel for the Village of Malone withdrew charge number three relating to an alleged remark by Police Officer Nichols wherein he reportedly described Chief Phillips as "stupid."

Mr. Scott Mattimore testified as to his arrest and incarceration on 2 April 1993 and he subsequent conversations with Police Officer Nichols about his "treatment" in the police station and Police Officer Nichols intent "to look into it." Mr. Mattimore outlined his criminal history and of the fact that now Assistant Chief Moll had previously arrested him for the theft of a school bus. Mr. Mattimore stated that he never complained concerning his "treatment" on the night of 2 April 1993.

Mrs. Betsy Nichols, wife of Police Officer Nichols, testified as to telephone conversations Police Officer Nichols allegedly had with Sergeant Ritchie of the Police Department concerning the Moll - Mattimore incident.

Mr. Robert Hanna was called by the Respondent's Counsel and asked to give testimony concerning what he (Hanna) believed to be a "coverup" in the Police Department. In response to an objection by Counsel for the Village of Malone as to a lack of relevancy, I did not allow questioning to proceed if the anticipated testimony of Mr. Hanna related to some prior incident or incidents not related to the charges at hand.

Sergeant Vernon Marlow testified that his supervisory problems with Police Officer Nichols related to "a few minor things."

Mr. Steve Hardy testified that Police Officer Nichols had previously worked for him (1983 to 1987); that he was a good worker; and that he (Police Officer Nichols) had no problem following direction.

The following witnesses, being duly sworn, testified on 17 September 1993 and their testimony is summarized as follows:

Police Officer Ronald Reyome
Mrs. Kathy Cunningham
Police Officer Patrick Nichols
Mr. Ken Cring
Mayor James Feeley
Mr. Bobby Peacore
Sergeant Chris Fountain
Sergeant William Ritchie

Police Officer Ronald Reyome testified that during a conversation with Police Officer Nichols concerning Nichols' stated

desire to "fight" the letter of reprimand he had been given, he should first consult with the Union Attorney and when Police Officer Nichols exhibited unspecified charges he intended to bring against Assistant Chief Moll, he counselled him again to seek the guidance of the Union Attorney inasmuch as it appeared that his planned actions against Assistant Chief Moll were in retaliation for the letter of reprimand he had just received. Reyome further testified that he counselled Police Officer Nichols that it was not his responsibility to conduct an investigation of the Moll - Mattimore incident. When asked why he had waited 102 days to bring charges against Assistant Chief Moll, Police Officer Nichols reportedly indicated to Officer Reyome that "he would tell people he was doing a thorough investigation." When Police Officer Nichols told Police Officer Reyome that he had been in contact with Mr. Mattimore, Reyome reportedly "told him right then and there he was definitely going against rules and regulations." In addition, Police Officer Reyome testified as to Police Officer Nichols possession of information from the police computer system which had been prepared by Chief Phillips, which he stated he felt he had a right to possess. In addition, Nichols reportedly told Reyome that if the charges he intended to give to Chief Phillips concerning Assistant Chief Moll "wasn't solved promptly, that he was going to the Mayor and going to go to the District Attorney for possible criminal prosecution. He later told Reyome that he had seen the Mayor and the District Attorney. Police Officer Reyome testified as to the disruption caused the department by what he termed as retaliatory actions by Police Officer Nichols.

Mrs. Kathy Cunningham testified as a character witness on behalf of Police Officer Nichols.

Police Officer Patrick M. Nichols testified as to his second-hand knowledge of the Moll-Mattimore incident and of his history of service as the DARE instructor for the Malone Police Department. In regards to his personal investigation into the Moll-Mattimore incident, Police Officer Nichols stated that all members of the department, other than the Chief and Assistant Chief, talked to him concerning the investigation during its pendency. He confirmed that Police Officer LaChance had given him documentation from the department's computer system which had apparently been entered by Police Chief Phillips concerning his investigation of Police Officer Nichols' complaint concerning Assistant Chief Moll and further testified that after reviewing the Chief's notes in the computer, he suspected that the Chief had made up his mind and he therefore suspected a possible coverup by the Chief to protect Assistant Chief Moll.

Police Officer Nichols acknowledged his contact with the District Attorney "several days after I submitted my report" and stated he did so because of allegations he had received of "past situations that were inappropriately dealt with" and because Chief Phillips had not made a log entry of the personnel complaint he had filed concerning Assistant Chief Moll. Police Officer Nichols also related that he had gone to the Federal Bureau of Investigation concerning the matter and to the Mayor who allegedly asked him to keep him advised of developments. In addition, Police Officer Nichols testified that Sergeant Vernon Marlow, who was aware of his actions to seek redress outside the police department, told him his actions were protected as a "whistleblower."

In response to questions by the Hearing Officer, Police Officer Nichols testified that he consulted with Sergeant Fountain, his Union President, who agreed with his plans to report his complaint concerning Assistant Chief Moll to the Mayor and the Village Board without the approval of the Chief of Police.

Mr. Ken Cring testified as a character witness for Police Officer Nichols.

Sergeant Chris Fountain was called by the Hearing Officer and testified that he was told by Police Officer Nichols that he intended to file a complaint with the Chief of Police concerning Assistant Chief Moll and that when Police Officer Nichols indicated his intent to go to the Mayor concerning the matter, he (Sergeant Fountain) urged him to first consult with the Union Attorney and to follow proper channels.

Mayor James Feeley testified that he told Police Officer Nichols that it was all right for him to maintain contact with the Mayor.

Supply Sergeant Bobby Peacore gave testimony concerning National Guard procedures and discharges as they relate to information in Police Officer Nichols personnel file that he received a General Discharge under Honorable Conditions from the New York National Guard.

Sergeant William Ritchie testified that he was on duty on the morning of 3 April 1993 and stated that it was never reported to him by anyone that Mr. Scott Mattimore wished to make a complaint about his treatment as a prisoner nor that he had made such a complaint to Police Officer Nichols nor that Police Officer Nichols was conducting an investigation of such a matter.

A closing memorandum was provided by Counsel for the Village of Malone on 7 October 1993 and is forwarded herewith for information and review. A closing memorandum was not provided by Counsel for the Respondent as of the date of this report. Two contacts were made with Respondent on 7 and 13 October 1993 to alert him to this fact.

ANALYSIS OF TESTIMONY

Respondent does not challenge the charges as they relate to Police Officer Nichols meeting with non-members of the Malone Village Police Department to discuss the charges relating to the 2 April 1993 incident involving Scott Mattimore and Assistant Chief Moll; nor does he deny that he failed to apprise Assistant Chief Moll's immediate senior, Chief James Phillips, of his receipt of what he perceived to be a complaint by Scott Mattimore against Assistant Chief Moll or of his intention to personally conduct a criminal investigation of what he believed to be mistreatment of Mattimore while he was in custody (holding room) at the Malone Village Police Department Headquarters on the night of 2 April 1993. In addition, Police Officer Nichols acknowledges that he waited until 13 July 1993 to file said charges with Chief Phillips; that act following immediately Police Officer Nichols being awarded a letter of reprimand for misconduct in a separate and unrelated incident. The investigation of that personnel complaint was conducted by Assistant Chief Moll and there is no evidence submitted to suggest that the investigation was not fairly and impartially conducted. It is noted that the Chief of Police, after discussion with the Mayor, downgraded the punishment recommended by Assistant Chief Moll for Police Officer Nichols.

Police Officer Nichols does not contest the charge that he suspected Chief Phillips of engaging in a "cover-up" and there is testimony from various members of the Department, supervisory and non-supervisory, that he made comments to this effect to them and to others.

While there is evidence that Police Officer Nichols met with former Chief Richard Brown; the only evidence provided is that he questioned Brown on the chain of command. There is no evidence introduced that he discussed the alleged incident of 2 April 1993; that he engaged in unsubordination or disrespect, except possibly by innuendo.

Police Officer Nichols does not contest the charge that he met with Scott Mattimore on more than one occasion to discuss the 2 April 1993 incident or that he was conducting a criminal investigation of the Assistant Chief of Police without formally notifying the Chief of Police prior to 13 July 1993.

Police Officer Nichols does not contest the charge that he met with the Mayor, in direct violation of departmental rules and regulations, of which he indicated complete awareness and understanding, with the District Attorney or with the Federal Bureau of Investigation to further his investigation of the Assistant Chief of Police and his reassignment to duties other than that of the DARE instructor.

I do not find convincing the claim of Police Officer Nichols that he engaged in the aforementioned prohibited conduct because he suspected that the Chief of Police might engage in a "cover up" and fail to take appropriate action regarding suspected wrongdoing by the Assistant Chief of Police. This position by Police Officer Nichols is further weakened by the fact that he waited until 13 July 1993, just after he was disciplined for another offense, to raise charges against the investigating officer (Moll) for alleged conduct on 2 April 1993 and then waited only a few days before bypassing the chain of command and making unauthorized contacts and disclosures outside the department - despite being assured, in writing, by the Chief of Police that he was conducting an investigation of the charges made by Police Officer Nichols concerning Assistant Chief Moll and would take disciplinary action where warranted by the facts.

Police Officer Nichols' personnel file reflects laudatory conduct as the department's DARE instructor and a series of incidents involving his failure to follow established departmental procedures. Police Officer Nichols further testified as to his departure from a prior place of employment because of "problems" with superiors.

There is testimony by members of the department, supervisory and non-supervisory, that they counselled Police Officer Nichols not to violate departmental rules and regulations in his quest to investigate and charge the Assistant Chief of Police with misconduct. In fact, each testified that Police Officer Nichols declined their recommendations/suggestions and moved forward to engage in the prohibited conduct.

There is adequate testimony to believe that return of Police Officer Nichols to full duty within the department would be disruptive and lead to additional confrontation of established departmental authority by Police Officer Nichols.

FINDINGS OF FACT

From the evidence submitted, I find the following:

- (a) Charge 1 - that Police Officer Nichols failed to report his concern relative to the alleged actions of Assistant Chief Moll to competent authority within the Police Department or to allow Chief Phillips sufficient time to conduct his investigation of the allegations. As a result, his laying of charges against Assistant Chief Moll gives every indication of being retaliatory in nature.
- (b) Charge 2 - that Police Officer Nichols, fully aware that his actions were contrary to departmental rules and regulations, made unauthorized contacts with non-departmental personnel, including a known criminal, to discuss his intentions to levy charges against Assistant Chief Moll, whose conduct of an unrelated internal investigation resulted in a letter of reprimand being awarded to Police Officer Nichols.
- (c) Charge 3 - withdrawn by the Village of Malone.
- (d) Charge 4 - that Police Officer Nichols, without reasonable grounds, publicly accused Chief Phillips of engaging in a "coverup" in his investigation of the allegations made by Nichols against Assistant Chief Moll.
- (e) Charge 5 - As previously stated, there is insufficient evidence introduced to show that Police Officer Nichols discussed the alleged incident of 2 April 1993 with former Police Chief Brown.

(f) Charge 6 - that Police Officer Nichols met with Mr. Scott Mattimore, a known criminal, to discuss the 2 April 1993 incident for the purpose of conducting an unauthorized investigation.

(g) Charges 7, 8 and 9 - that Police Officer Nichols, aware that his actions were not authorized, met repeatedly with the Mayor to discuss the 2 April 1993 incident and his termination as the department's DARE instructor.

Therefore:

As to Charge 1, I find Respondent guilty with regard to violations of departmental rules and regulations 6.2.33, 10.1.1 and 10.1.4

As to Charge 2, I find Respondent guilty with regard to violations of departmental rules and regulations 10.1.1, 10.1.4, 10.1.27 and 10.1.28, 10.1.40, 10.1.77 and 11.5

As to Charge 4, I find Respondent guilty with regard to violations of departmental rules and regulations 6.2.7, 10.1.4 and 10.1.17

As to Charge 5, I find Respondent Not Guilty with regard to all aspects of the charge.

As to Charge 6, I find Respondent guilty with regard to violations of departmental rules and regulations 8.1, 10.1.1, 10.1.4, 10.1.27, 10.1.28 and 11.5. I find the Respondent Not Guilty of violation of section 10.1.77.

As to Charges 7, 8 and 9 - I find Respondent guilty of violations of departmental rules and regulations 10.1.1, 10.1.4, 10.1.28, 10.1.77 and 11.5. I find the Respondent not guilty of violation of section 10.1.78.

RECOMMENDATIONS

The Respondent has knowingly, and without good cause, violated the rules and regulations of the Malone Village Police Department; accused supervisors and co-workers of misconduct which was not proved by subsequent investigation; thereby brought unwarranted discredit upon the Department

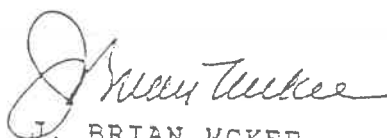
I am convinced that the misconduct of Police Officer Nichols requires serious disciplinary action, but this is tempered, to a degree, by his obvious excellent performance as a DARE instructor for the department. I am not convinced of his ability to perform adequately as a full-time patrol officer and give due consideration to the fact that the department can not afford a full-time DARE instructor.

The claim by Respondent, through his counsel, that he violated the rules and regulations cited in the charges and is protected under Section 75-b of the Civil Service Law (Retaliatory Actions by Public Employers) is not convincing due to the lengthy delay in filing of the complaint by Police Officer Nichols and because of his failure to make a good faith effort to provide the allegations to competent authority and to give "reasonable time to take appropriate action unless there is imminent and serious danger to public health or safety."

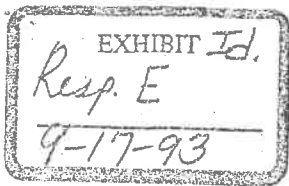
While Police Officer Nichols alone is fully responsible for his misconduct, I must stress for the record that Sergeants Marlow, Ritchie and Fountain appear to have been fully aware, or at least highly suspect, of Police Officer Nichols openly stated intent to violate the departmental rules and regulations cited in this case. They could have, and should have, taken positive supervisory action long before the matter resulted in the filing of allegations by Police Officer Nichols on 13 July 1993. They must share in the criticism for the misconduct of Police Officer Nichols reaching the point that it did. In addition, Police Officer LaChance, by his actions, only incited Police Officer Nichols to further misconduct; must be made aware through appropriate disciplinary action of his improper actions in improperly disclosing police information to Police Officer Nichols.

In view of the foregoing and with full consideration to all aspects of this matter, I respectfully recommend that Police Officer Nichols be demoted in grade and title and reassigned to duties within the government of the Village of Malone and outside the Malone Village Police Department. If this is not possible due to an inability to place Police Officer Nichols elsewhere in Village Government, then I recommend that he be discharged from employment by the Village of Malone.

13 October 1993



J. BRIAN MCKEE
Hearing Officer



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

TO: Ptlm Patrick Nichols

ADDRESS: Malone PD

DATE: 6-22-93

SUBJECT: Town Political Position

I do not have a problem with your running for political office for the Town of Malone. section 208-d.1 of the General Municipal Law and Attorney General Informal Opinions 92-37 and 94-24 say that there is not a conflict of interest in regards to holding 2 public officers position.

The only thing is that the Police Dept. is your major job and comes before the other position

SIGNED: *James E. Quinn*

§ 208-d

GENERAL MUNICIPAL LAW
Art. 10

Library References

Municipal Corporations § 187(5).
C.J.S. Municipal Corporations §§ 188,
189.

Notes of Decisions

1. Compensation authorized in line of duty without his fault during Village in Westchester County may disability. 10 Op.State Compl. 257, pay compensation to policeman injured 1951.

§ 208-d.1 Extra work by members of certain police forces

Notwithstanding the provisions of any general, special or local law or any rule or regulation of any police department or commissioner or head thereof, any member of a police force of a housing authority or any municipality may engage in extra work for another employer outside his regular hours of duty for not exceeding twenty hours a week provided that such extra work does not interfere or conflict with his regular duties as a member of the police force of such a housing authority or his availability for emergency duty nor affect his physical condition to the extent that it impairs his ability to efficiently perform such duties and further provided that the type of employment shall first be approved by the appropriate housing police department or housing police chief. (Added L. 1967, c. 736, § 1.)

¹ Other sections 208-d are set out above and below.

Historical Note

Effective Date. Section effective May 2, 1967, pursuant to L. 1967, c. 736, § 2.

§ 208-d.1 Extra work by members of a police force in cities

Notwithstanding the provisions of any general, special or local law or any rule or regulation of any police department or commissioner or head thereof, any member of a police force of a city may engage in extra work for another employer outside his regular hours of duty for not exceeding twenty hours a week provided that such extra work does not interfere or conflict with his regular duties as a member of the force or his availability for emergency duty nor affect his physical condition to the extent that it impairs his ability to efficiently perform such duties and further provided

FIREMEN AND POLICEMEN
Art. 10

that the type of employment shall first be approved by the appropriate police department or police commissioner. (Added L. 1967, c. 812, § 1.)

¹ Two other sections 208-d are set out above.

Historical Note

Effective Date. Section effective May 2, 1967, pursuant to L. 1967, c. 812, § 2.

Library References

Municipal Corporations § 188.
C.J.S. Municipal Corporations § 574.

Notes of Decisions

Approval 2
Military duty 3
Municipalities within section 1
Prohibition of extra work 4
Special services to private persons 5
Tort liability 6

1. Municipalities within section

The provisions of this section pertaining to extra work by members of certain police forces and police forces in cities do not apply to villages. Trella v. Village of Centre Island, 1976, 5d A.D.2d 985, 389 N.Y.S.2d 22.

2. Approval

A policeman of a city may not accept outside employment without the approval of the Police Commissioner or Police Chief of his city. 1967, Op.Atty.Gen. (Inf.) 153.

3. Military duty

The type of duty restrictions and outside employment restrictions pertaining to policemen do not affect performance of military duty. 1976, Op.Atty.Gen. (Inf.) 130.

4. Prohibition of extra work

An order issued by the mayor of a city which categorically prohibits work by a

§ 208-e. Extra work by members of

Notwithstanding the provisions of any law or any rule or regulation of any po

VILLAGE OF MALONE POLICE DEPT.

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

TO: Charles Phillips

DATE: June 21, 1993

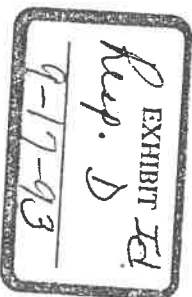
ADDRESS: _____

SUBJECT: supplementary employment

Chief, in my understanding, that prior approval must be given by you before I accept employment for additional income. On June 20 County legislator Gary Peryea requested that I run for election as a town councilman along with him as he is seeking election to the town supervisor position. At this point I still undecided but would highly consider such a move with your written permission. Thank You

SIGNED: _____

P. Nichols



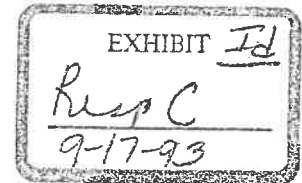
POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

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




Ptl. Nichols,

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

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

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

Sincerely,


A/C Gerald K. Moll

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

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

Chief Phillips,

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

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

Thank You

Patrick M. Nichols
Officer Patrick M Nichols

EXHIBIT Id

Resp. B

9-16-93

PERSONNEL COMPLAINT

JULY 13, 1983

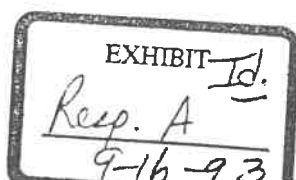
RECEIVED A STATEMENT FROM OFFICER PATRICK NICHOLS STATING THAT ASST. CHIEF GERALD MOLL HAD VIOLATED SEVERAL RULES AND REGULATIONS OF THE MALONE POLICE DEPARTMENT. DURING THE NIGHT OF APRIL ONE 1983. COPY OF STATEMENT ATTACHED.

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

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

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

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



PATRICK NICHOLS

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

DATED 8-5 1993

Patrick Nichols

WITNESS

WITNESS

[Signature]
[Signature]

EXHIBIT

#0 #4

9-16-93

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

August 11, 1993

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

Dear Sir:

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

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

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

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

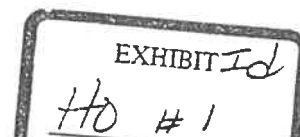
Your fee of \$200.00 is perfectly acceptable to both me and the Village Board. I will, at a mutually convenient time, deliver to you the letter Patrolman Nichols received outlining the charges preferred against him.

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

Sincerely,

James N. Feeley
James N. Feeley
Mayor

JNF:ejb



PLAINTIFF'S DOCUMENTARY EVIDENCE

ITEM

ITEM	IN FILE			MARKED AS		OFFERED	ENTERED
	Union Contract	X	PO 23				
Copy of Resolution Adopting Regulations - 3/11/74		X				✓	✓
Old Police Regulations		X	4			✓	✓
Copy of Resolution Adopting Regulations - Malone Village Board Meeting 5/24/93		X	5			✓	✓
Revised Police Regulations		X	2			✓	✓
Acknowledgment of Review of Regulations		X	3			✓	✓
Certificate of Conviction - Harassment		X	6				
Certificate of Conviction - Attempted Petit Larceny		X	7			✓	✓
Certificate of Conviction - Criminal Mischief 4th		X	8			✓	✓
Memo by Nichols to Chief Regarding Status		X	9			✓	✓
Memo by Chief to Nichols Regarding Status		X	10			✓	✓
Nichols' Memo Requesting Compensation RE: DARE 1/28/93		X	11			✓	✓
Duty Roster		X	12			✓	✓

MENTI

[illegible]

Archives

by itself

Mayn.

EVIDENCE FOR CHARGE #1

1. Statements:

Scott Smith, Carl Thomas, Dale Lamitie, Ed Ritzman

2. Petitions

3. Certified letter from Elizabeth Bessette on when petitions were submitted to Village Board:
Nichols father and brother submitted petitions

4. Malone Telegram ad that Nichols paid for thanking everyone for their support.

5. Articles after petitions were filed with Village

6. Page #66 & #67 of transcript reflects that Nichols knew and understood 10.1.77 and that only a member can violate that section.

7. Admission to involvement in petitions from transcript

Page #57 line 24 question

Page #58 line 2 answer

Page #59 line 13 question

Page #59 line 15 answer

Page #62 line 19 question & answer

Page #63 line 3 question

Page #63 line 4 answer

Page #67 line 15 question

Page #67 line 18 answer

Page #68 line 22 question

Page #68 line 24 answer

Page #176 Nichols comment on threats with statements

Page #178 Nichols offered to read statements but refused

Page #181 & 182 Nichols comments on involvement

EVIDENCE FOR CHARGE #2

Transcript from page #56 to #70

Transcript from page #169 to END

May want to have some documentation in regards to a Police Officer's training on remembering things.

May want to review the transcript from Nichols first Hearing to find out how detailed he could be about certain events.

May want to show other discrepancies with Nichols comments

EVIDENCE FOR CHARGE #3, 4, 5

Original newspaper articles

Transcript from page #109 to #145

Page #112 Line 22	The only thing I recall about all these is referring to my attorney
Page #114 Line 13	(same thing)
Page #114 Line 22	Admitted to making comments
Page #115 Line 12	(answer any questions) Thats Possible
Page #125 Line 4	Didn't give your side of story?
Page #132 Line 21	Considerable news coverage
Page #133 Line 5	Door to Door campaign
Page #134 Line 1	Public Trust
Page #135	Fair reporting

Nichols Appeal:

Evidence submitted by Nichols pursuant to CPLR 4532 for appeal Section # 26, Exhibit C. This article was submitted as evidence to support his appeal.

Questions that could be asked:

Petitions:

When did you first hear about the petitions?

When did you first find out that Ptl. Nichols was actively involved in the petitions?

Did you attempt to take any action against Ptl. Nichols after you discovered that he might have been involved?

NOTE: Attempted to introduce them at first hearing

After the petitions were not allowed at the last hearing, did you attempt to bring charges against Ptl. Nichols in regards to the petitions?

When was this?

What did the Village Board do and why?

Why do you feel that these petitions were used?

Do you feel it helped influence the Village Board?

What disturbed you about the wording of the petitions?

What type of discredit did these petitions bring to the department?

How long have you known Scott Smith?, Ed Ritzman, Carl Thomas and Dale Lamitie?

Doesn't Scott Smith do most of the towing for the Village Police?

Why is Smith's Towing called most of the time?

Did you interview Smith and the other three?

Does Smith's Towing do favors for the police department or it's members?

Is Ptl. Nichols still bound by the rules and regulations while he is on suspension?

Does Ptl. Nichols know this?

NOTE: Page 274 line #6-#9 transcript from first hearing, Nichols admits that he is still a police officer even though he is under suspension.

Who presented the petition to the Village Board?

Who made the petitions?

Who is Ken Cring?

Is Ken Cring a business partner of Ptl. Nichols in a private business?

Do you feel that Ptl. Nichols sought the influence or intervention outside of the department for person preferment?

Do feel that he got this influence?

NOTE: Paid ad in Malone Telegram thanking everyone for support

Charge #2 March 17th meeting?

What were the reasons that you called a meeting with Ptl. Nichols for March 17th?

Note: Selective Enforcement
Selective Accident Enforcement
Ptl. Mulverhill incident
Fingerprinting incident
Involvement in petitions
News media comments made
Selling books to D.A.R.E. Students
Special treatment for Lions Club (D.A.R.E.)

How many things did you want to discuss with Ptl. Nichols?

Did you give him sufficient time to obtain representation?

Did you call this meeting yourself or was there other people that requested that you have this meeting?

Is it normal to hire a stenographer to record a meeting with one of your subordinates?

Why would you take such action?

Isn't it a little extreme?

Questioning a person about his conduct is one thing but interrogating an employee for over five hours is another, how can you justify that?

Note: There were 3 differant breaks taken and several more offered. Ptl. Nichols was very evasive in his answers to even the simplest questions and the stenographer had to read many questions back to Ptl. Nichols.

Did he evade even the simplest questions, is that why it took so long?

How many breaks did you give him?

Was he working at the time?

Was he being paid overtime for this meeting?

Did you offer more breaks?

Did he ever refuse to take breaks?

Did he ever ask to leave?

Did you ever refuse him to leave the room?

Did you ever refuse to let him use the phone?

Prior to the meeting, did Ptl. Nichols ever ask you what the meeting was about?

Did he ever ask for a postponement of the meeting after he found out a stenographer was involved?

While asking Ptl. Nichols questions, what concerned you the most?

What basic police duty questions was Ptl. Nichols having difficulty in answering?

Why would that concern you?

Do you think he was just scarred and couldn't remember?

Did you ever threaten him with his job?

What were your thoughts about Ptl. Nichols memory and being a trained police officer?

Why would that concern you?

What did you find strange about his selective type of memory?

When he was being questioned about the petitions, did you give him the opportunity to change his answers?

Did you give him an opportunity to look at the petitions?

Did he take you up on this?

Did he review the statements?

Did he refuse to review the statements?

At the end of the meeting did you give Ptl. Nichols an opportunity to ask questions?

Did you give Ptl. Nichols a chance to recant anything he said?

After that you went to the Village Office with the stenographer, the Mayor and the Village Attorney. What was that meeting about?

After the stenographer read certain parts of the transcript, was there a strong indication that Ptl. Nichols may have committed a felony?

Why is it necessary to suspend a police officer in this circumstance?

Would you be remiss in your duties if you let Ptl. Nichols return to work after that March 17 meeting?

Charge #3 #4 & #5 Newspapers

How do you know that Ptl. Nichols made such a comment?

NOTE: Page #110 Line #23 didn't deny saying that
Page #111 Line #10 admits to getting call from Sharon Hughes
Page #114 Line #22 Admits to making comments
Page #115 Line #12 Admits to making comments

Do you believe everything you read in the papers?

Do you think that the news media was fair and accurate in it's reporting?

Why do you feel that it was one sided?

NOTE: Chief and Ptl. Nichols testified approx. the same amount at the last hearing. Ptl. Nichols side of the story reflected 31 column inches in the local paper. The chief's side reflected 3 col. inches.

Did Ptl. Nichols feel that it was fair and accurate reporting?

NOTE: Page #135 Line #15 Fair reporting

Why do you think that Ptl. Nichols felt that the Plattsburgh Press Republican was fair and accurate in it's reporting on August 17 1993?

NOTE: Used this article in his appeal

When a person is running for political office, isn't it to his advantage to try and get considerable news coverage?

Was Ptl. Nichols running for political office during his disciplinary problems?

Do you feel that Ptl. Nichols was getting considerable news coverage about his disciplinary problems?

Did he feel that he was getting considerable coverage?

NOTE: Page #132 Line #24 considerable coverage

Do you think that this considerable news coverage helped Ptl. Nichols win his election?

NOTE: Ptl. Nichols was the top vote getter

How did the circumstances involving Ptl. Nichols disciplinary problems give the public a one sided story during his campaign?

NOTE: Page #133 Line #5 admits to discuss his case during his door to door campaign

Public Trust and discredit to dept.

Are police supervisors trained on relationships with the media and how things should be released?

Why is that important?

Is there a liability factor there?

Can releasing the wrong information jeopardize criminal cases?

Can it jeopardize the public trust of a police dept.?

Why is having public trust in a police dept. important?

Do you need to have public trust in order for the dept. to reach it's goals?

If the public trust is jeopardized, could that cause complications for the patrol officers and the department in general?

Has your department seen a lack of public trust because of the actions of Ptl. Nichols?

NOTE: Letter from Lions Club
Letters to the Editor
Flemings Furniture
D.A.R.E. Graduation
Jackie LaPlante
NY State pulling D.A.R.E Certification
Letter from Thomas Kemp over D.A.R.E.
Phone call Ptl. Stone received 05-07-94
Extensive amount of news coverage
Page #124 Line #15 I'm one person talking to 100s

Do you think that the public was getting a one sided story?

Why didn't you talk more about the disciplinary problems?

Under most situations, aren't disciplinary proceedings held in private to protect the Public Trust?

But Ptl. Nichols has the right to go public doesn't he?

This is his choice not the choice of the Village or the police dept.?

Lets go back to releasing information to the public, wouldn't it look like everything would be one sided if only you released information?

Are you saying that you didn't really want to release anything?

Would that look like you were keeping things from the public?

Are you saying that there are certain things that the public really shouldn't concern themselves with or is too complex to explain through the media?

Do you think that policies and regulations in a police department are complex?

Does it take training and experience to fully understand these rules and their importance?

Does the general public have this type of training and experience to understand these policies?

Are these department rules and policies in place to protect the safety of the public and the safety of the police officers?

Are your departments policies and rules simular to just about ever police department in N.Y. State?

Police work is a fairly dangerous job, is it dangerous in Malone?

Have you had any Police Officers injured recently?

How many and how bad?

What about discredit and disruption inside the police dept.?

Has the actions of Ptl. Nichols caused disruption inside the dept.?

How far has this disruption gone, has some of the younger trained patrol officers looked to transfer to other departments?

Since Ptl. Nichols has been suspended, are things still disruptive?

Has anyone shown an interest in transferring to another department since Ptl. Nichols left?

Isn't it true that most members requested not to work with Ptl. Nichols and they wouldn't even ride in the same patrol car with him?

How does that disrupt the management of a police department the size of Malone?

Is there a manpower scheduling problem?

Lately in the media, you have express the increase of crime and police activity in Malone, do you have the time or resources to deal with having Ptl. Nichols on the police department?

CROSS

Have you ever heard of the first amendment right?

Where do you get off taking away someones constitutional right?

So what you are saying is that you, as Chief of Police, can do just about anything, commit crimes, and no one under your command has the right to disclose that information?

Isn't it true that someone else should have been suspended?

Isn't it true that other members feared retaliation?

Wasn't Ptl. Nichols correct in talking about retaliation because thats exactly what you are doing right now?

What about your policy on releasing information to the news?

Is that followed to the letter of the law?

Isn't it true that Ptl. Nichols acted in the best interest of the public?

Have you ever heard about the Serpico case in N.Y. City?

You probably think he was wrong also?

What would have happened if he would have followed your rules and regulations?

Explain to me the difference between the two cases then?

Isn't it true that the public believes in Pat Nichols and supports his actions and showed this support at the election by making him the top vote getter?

This upset you didn't it?

Note: Gave Ptl. Nichols letter congradulating him on the results of the election

Did you ever here of public record?

Don't you work for the public?

Shouldn't you answer to the public?

Isn't it true that other members don't want to work with Ptl. Nichols because he might rat on them too?

Charge #6 Mayor Feeley

Were you present when Mayor Feeley placed a call to Ptl. Nichols at his residence?

What was the purpose of the call?

Was WPTZ going to his residence to interview Ptl. Nichols?

Did you authorize Ptl. Nichols to be interviewed by WPTZ for any reason?

Why do you think he fully understood the Mayor's reason he call Ptl. Nichols and reminded him about section 11.5?

NOTE: Page #130 Line #7 Then the Mayor call and said something about this, not to speak to the media.

What did WPTZ report from the interview with Ptl. Nichols?

Is that all he talked about was the D.A.R.E. Program?

He didn't talk about his disciplinary problems or charges?

Hasn't Ptl. Nichols been allowed to talk with the Media in regards to the D.A.R.E. Program?

Why wouldn't he be allowed this time?

Do you think his continuous reference to the D.A.R.E. Program just confused the issues at hand and in turn just brought more discredit to the department and the D.A.R.E. Program itself?

Was he still the D.A.R.E. Officer?

Did he consider himself the D.A.R.E. Officer?

NOTE: Part of his last charges stemmed from Nichols going to the Mayors house because he believed that he was not going to be the D.A.R.E. Officer and Ptl. Simonsen was taking his place.

Is Ptl. Nichols still a certified D.A.R.E. Officer?

How did N.Y. State end up pulling his D.A.R.E. Certification?

Is this something that you initiated or did N.Y. State request the information on Ptl. Nichols Disciplinary problems?

What does this mean to the Village and Police Dept.?

NOTE: Cost of training
Sending Officer away for training & manpower problems
Questions the integrity of the department

Has this whole disciplinary problem with Ptl. Nichols and the continuous mention of the D.A.R.E. Program hurt D.A.R.E.?

Was this shown when the new D.A.R.E Officer tried to set up a graduation for the D.A.R.E Students?

Was the new D.A.R.E. Officer involved in Ptl. Nichols

Has this new D.A.R.E. Officer experienced problems because of the actions of Ptl. Nichols?

Is this why it was important not to have Ptl. Nichols speak to any media, whether it was for the disciplinary problems or the D.A.R.E. Program?

Why do you think Ptl. Nichols would talk about the D.A.R.E. Program?

NOTE: Dare Program was used to his advantage several times during his hearing and gained him public support. Many letters to editor to prove this. Page # 40 Line #3 I don't think being the D.A.R.E. Officer hurt me.

Evidence

#	Description	Offered	Entered
#01	Charges	✓	✓
H02	Answer	✓	✓
H03	Letter to Nichols 8/3/43	✓	✓
H04	vil to Lawless 5/10/43	✓	✓
H05	vil to Lawless confirming info to G.H.	✓	✓
vil 1	Rules	✓	✓
vil 2	M.Tel. 8/17/43	✓	✓
vil 3	Preso. 8/17/43	✓	✓
vil 4	Preso. ^{Reg. Reg.} 8/18/43	✓	4 ✓
vil 5	inc. Report 8/27/43	✓	✓
vil 6	Pedition	✓	✓ 6
vil 7	High Speed Police	✓	7 ✓
vil 8	Mulverhill Report	✓	8 ✓
vil 9	Mouthpiece	✓	✓
vil 10	A portion detail	✓	✓
vil 11	Notice withdrawal	✓	✓
vil 12	Transcript	✓	✓
13	Thomas	✓	✓
14	Lamotte	✓	✓
15	Fitzman	✓	✓
16	Smith	✓	✓

Evidence

[illegible]

Evidence

[illegible]

James Phillips

Chief Q&A

1. NAME

2. POSITION, YEARS

Intelligence News. Spec training. Military History - training

3. DESCRIBE PERSONNEL FILES IN GENERAL, INTRODUCE PAT'S.

3A. Tell about Bates.

4. WERE YOU A MEMBER OF THE FORCE WHEN PAT WAS HIRED? DID HE READ AND AGREE TO THE POLICE DEPT REGS BEFORE JOINING THE FORCE?

How many times has he read the rules.

5. READ REG. SECTION 11.5 REGARDING SPEAKING FOR PUBLICATION.

6. DURING SUMMER AND FALL OF '93 DID YOU GIVE OFFICER NICHOLS PERMISSION TO MAKE NEGATIVE COMMENTS ABOUT THE POLICE DEPT TO THE PRESS? HOW ABOUT COMMENTS REGARDING ONGOING PERSONNEL MATTERS, INCLUDING HIS OWN? *ask*

* INTRODUCE:

MALONE TELEGRAM 8/17/93 "SOMEBODY ELSE WHO SHOULD BE SUSPENDED"

PRESS REPUBLICAN 8/17/93 "THIS ATTEMPT TO SHUT ME UP ISN'T GOING TO WORK."

PRESS REPUBLICAN 8/18/93 "FEARS RETALIATION."

4th paragraph of article in 10/1/93 column.

6A) *Article in 10/1/93 column. Not the article in 10/1/93 column. -10.1.77 outside influence*

7. HAS PAT'S BEHAVIOR HAD ANY NOTICEABLE IMPACT ON THE MORALE OF THE DEPARTMENT?

A. IT HAS DECREASED MORALE. THE OTHER OFFICERS ARE AFRAID TO WORK WITH HIM BECAUSE OF THE WAY HE LASHES OUT PERSONALLY AGAINST ANY PERSON HE DISAGREES WITH. I HAVE SEVERAL OFFICERS WHO HAVE INDICATED THAT THEY MAY GO ELSEWHERE IF PAT RETURNS AGAIN. THERE IS A GENERAL FEELING ON THE PART OF THE PATROLMEN THAT PAT CANNOT OBEY AN ORDER AND THAT HE WILL PLACE HIS OWN INTERESTS ABOVE THE INTERESTS OF THE DEPARTMENT AND HIS FELLOW OFFICERS.

8. HAS PAT'S BEHAVIOR HAD ANY ADVERSE IMPACT ON RELATIONS WITH THE STATE TROOPERS OR BORDER PATROL? *Shall*

A.

9. HAS PAT'S BEHAVIOR HAD ANY ADVERSE IMPACT ON THE DEPARTMENT'S ABILITY TO DO ITS JOB IN THE VILLAGE?

A.

*incident at Flemings Furniture
office responding*

* INTRODUCE PETITION

10. AT SOME POINT DID YOU BECOME AWARE OF THE EXISTENCE OF THIS PETITION?

11. DID THERE COME A TIME WHEN THE DEPARTMENT LEARNED THAT OFFICER NICHOLS MAY HAVE BEEN INVOLVED IN PERSONALLY CIRCULATING THE PETITION?

12. WAS THIS A PROBLEM FOR YOU, AND IF SO, WHY?

A. 10.1.1 DISCREDIT

10.1.77 SEEKING OUTSIDE INTERVENTION FOR PERSONAL ADVANTAGE

10.1.27 PUBLIC CRITICISM

10.1.34 DELIBERATE VIOLATION OF THE RULES

13. WHAT ACTION WAS TAKEN?

A. OBTAINED SWORN STATEMENTS FROM WITNESSES.

14. WHEN DID PAT RETURN TO DUTY FROM HIS LAST SUSPENSION?

A. done 11/30 but took 2 weeks rest
Back on 12/6

15. WAS HIS PERFORMANCE AS A PATROLMAN SATISFACTORY OR UNSATISFACTORY?

A. NO. FOR INSTANCE, BEFORE HIS SUSPENSION OFFICER NICHOLS HAD THE LOWEST PERFORMANCE RATING IN THE DEPARTMENT IN TERMS OF ARRESTS AND TICKETS. WHEN HE CAME BACK HE STARTED ISSUING A VERY LARGE NUMBER OF TRAFFIC TICKETS BUT MANY IF NOT MOST WERE FOR THINGS LIKE MISSING LIGHTS. GIVE OTHER EXAMPLES. THE DEPARTMENT STARTED TO GET FEEDBACK FROM SOME OF THE LOCAL JUDGES THAT THESE TICKETS DEMONSTRATED A LACK OF COMMON SENSE.

I HAD THE SHIFT SUPERVISORS EVALUATE ALL THE PATROLMEN. FOUR OUT OF FOUR RATED PAT BELOW STANDARD.

WE STARTED TO GET INDICATIONS OF OTHER PROBLEMS AS WELL. A REVIEW OF PAT'S TRAFFIC TICKETS SEEMED TO SHOW THAT A DISPROPORTIONATELY HIGH NUMBER WERE BEING ISSUED TO PEOPLE WHO LIVED OUTSIDE THE TOWN, AS OPPOSED TO PEOPLE WHO LIVED INSIDE THE TOWN. I NEEDED TO SOMEHOW MAKE SURE THAT PAT, WHO IS INVOLVED IN POLITICS IN THE TOWN OF MALONE, WASN'T SHOWING SOME KIND OF FAVORITISM TO HIS POLITICAL CONSTITUENTS.

WE FOUND SOME DARE PAMPHLETS THAT HAD BEEN STAMPED WITH THE LION'S CLUB LOGO. ~~WE HAD NOT AUTHORIZED THIS AND APPARENTLY THE SAME COURTESY HAD NOT BEEN EXTENDED TO ANY OTHER SERVICE CLUB THAT CONTRIBUTED TO THE DARE PROGRAM.~~

THERE WAS AN INCIDENT ON 12/11/93 IN WHICH PAT WAS SEEN CHASING A VEHICLE OUTSIDE THE VILLAGE BORDERS WITHOUT NOTIFYING THE DESK SERGEANT. THIS WAS A VIOLATION OF THE RULES. - 0 tickets

ON 2/7/94 DURING A DWI ARREST AT WHICH NICHOLS AND OFFICER MULVERHILL WERE PRESENT MULVERHILL ADMINISTERED AN ALCO SENSOR TEST AND THEN DISCARDED THE PLASTIC MOUTHPIECE ON THE GROUND. NICHOLS

High Speed
Pursuit
Policy

informed
that this
was
10/7/94

8

Feb. 1994 incident

CRITICIZED MULVERHILL FOR IT IN FRONT OF THE DEFENDANT, A STATE TROOPER ANOTHER VILLAGE POLICE OFFICER AND A COLLEGE INTERN. IN ADDITION TO BEING EMBARRASSING. THIS COULD HAVE BEEN DANGEROUS IF MULVERHILL'S ATTENTION HAD BEEN DIVERTED FROM THE DEFENDANT, WHERE IT NEEDED TO BE FOCUSED.

ON 2/14/94 OFFICER NICHOLS ATTEMPTED TO RELEASE PAPERWORK ON A PENDING INVESTIGATION TO AN OUTSIDE AGENCY WITHOUT MY PERMISSION.

ON 2/23/94 OFFICER NICHOLS WAS ASSIGNED TO DUTY IN FRONT OF DR. GORMAN'S OFFICE. ONE OF THE OFFICERS IS ASSIGNED THERE EVERY WEDNESDAY TO MAKE SURE THAT THE ABORTION DEMONSTRATIONS DO NOT GET OUT OF CONTROL. PART OF THE DUTY IS TO STAND ON THE SIDEWALK NEAR THE FRONT OF THE DOOR. THIS HAS BEEN GOING ON FOR FOUR YEARS AND EACH OF THE PATROLMEN IS FAMILIAR WITH THE REQUIREMENTS. ON THIS PARTICULAR DAY THE MAYOR NOTICED THAT OFFICER NICHOLS WAS SITTING IN THE PATROL CAR. SGT. RITCHIE WAS DISPATCHED TO THE SCENE WHERE HE HAD TO ORDER OFFICER NICHOLS TO STAND ON THE SIDEWALK.

IT ALSO BECAME APPARANT THAT PAT WAS ENGAGING IN RETRIBUTION AGAINST ANY PERSON WHO CRITICIZED HIM. ON 7/13/93 PAT WAS DISCIPLINED BY ASST CHIEF MOLL FOR AN INCIDENT AT THE K OF C. ON THAT SAME DAY HE FILED A SET OF MISCONDUCT CHARGES AGAINST THE ASSISTANT CHIEF. THE VILLAGE BOARD LATER FOUND THESE CHARGES TO BE UNFOUNDED. AT THE LAST ART 75 HEARING, IT WAS DETERMINED THAT PAT FILED THE CHARGES TO RETALIATE AGAINST ASST CHIEF MOLL.

ON 7/27/93 HE ACCUSED ME OF ENGAGING IN A COVER UP. HE COMPLAINED TO THE DA AND SUBSEQUENTLY TO THE FBI. THERE HAS BEEN NO ALLEGATION FROM ANY OF THOSE AGENCIES THAT I DID ANYTHING WRONG.

THE LAST ART. 75 HEARING WAS PRESIDED OVER BY J. BRIAN MCKEE. WHEN PAT LOST AND WAS DISCIPLINED HE FILED AN APPEAL ARGUING THAT THE HEARING OFFICER WAS BIASED. JUDGE PLUMADORE DIDN'T AGREE.

AFTER THE CONCLUSION OF THE LAST ART. 75 HEARING, OFFICER NICHOLS FILED A REPORT CLAIMING THAT THE ATTORNEY FOR THE VILLAGE HAD BEEN GUILTY OF SUBBORNING PERJURY. A COMMITTEE WAS CREATED BY THE MAYOR TO LOOK INTO THIS AND IT WAS DETERMINED THAT THIS WAS NOT TRUE.

OFFICER RITCHIE TESTIFIED AGAINST PAT AT THE LAST HEARING. ON 12/13/93 OFFICER NICHOLS WIFE FILED A COMPLAINT AGAINST OFFICER RITCHIE. AFTER INVESTIGATION THERE WAS FOUND TO BE NO BASIS FOR THE COMPLAINT.

ON 3/6/94 THERE WAS AN INCIDENT IN WHICH OFFICER NICHOLS FINGERPRINTED A DEFENDANT WITHOUT REMOVING AND SECURING HIS SERVICE REVOLVER. THIS WAS A MISTAKE IN VERY BASIC POLICE PRACTICE WHICH COULD HAVE PUT HIMSELF AND THE REST OF THE DEPARTMENT IN SERIOUS DANGER.

16. WHAT DID YOU DECIDE TO DO? - *supplaining right about my handling of the situation so as not to make a mistake*
A. HOLD A QUESTIONING SESSION, UNDER OATH, IN COMPLIANCE WITH THE LABOR LAW. THE SESSION WAS RECORDED BY A STENOGRAPHER. *charge on wrong info*

17. WHEN AND WHERE WAS IT HELD?

* INTRODUCE TRANSCRIPT.

8/30
P. 174 9-14, 16-17
175 15-17
~~176 15-17~~
180 2-6

18. IS THIS TRANSCRIPT TRUE AND CORRECT?

19. PLEASE READ FROM PAGE 58 LINE 18 TO PAGE 60 LINE 21.

20. DOES THAT ACCURATELY REFLECT WHAT YOU SAID TO OFFICER NICHOLS AND WHAT HE SAID TO YOU?

21. HOW DID THESE STATEMENTS COMPARE TO THE VERSION YOU GOT FROM YOUR WITNESSES?

~~22. WHICH VERSION DID YOU BELIEVE?~~

23. WHY?

A. FOUR WITNESSES CONTRADICTED PAT. SOME OF PAT'S STATEMENTS WERE SELF CONTRADICTORY. FOR INSTANCE HE SAID HE DIDN'T ASK ANYONE TO SIGN THE PETITION AND THEN HE SAID HE DIDN'T RECALL. ON PAGES 59 AND 60 HE DESCRIBES A SITUATION WHERE SOME PEOPLE SIGNED THE PETITION IN FRONT OF HIM. HE DIDN'T SAY THAT THIS HAPPENED TWO DIFFERENT TIMES, BUT IT DID. THAT WAS CLEAR FROM THE PLACEMENT OF SOME OF THE WITNESSES SIGNATURES ON DIFFERENT PAGES OF THE PETITION.

24. WHY WOULD A TRAINED POLICE OFFICER LIE ABOUT SOMETHING SO SIMPLE AS COLLECTING A SIGNATURE ON A PETITION?

A. BECAUSE WHAT HE DID WAS A DIRECT VIOLATION OF THE RULES, PARTICULARLY THE RULE AGAINST SEEKING OUTSIDE HELP TO INFLUENCE THE

DEPARTMENTAL DECISIONS OF THE CHIEF OR THE VILLAGE BOARD. THIS IS EXACTLY WHAT HE WAS SUSPENDED FOR THE LAST TIME.

25. WHAT ACTION DID YOU TAKE?

26. WHAT, IF ANYTHING DID OFFICER NICHOLS DO?

A. SHORTLY AFTER PAT WAS SUSPENDED THIS LAST TIME HE APPARANTLY WROTE TO THE DISTRICT ATTORNEY REQUESTING THAT MULTIPLE FELONY AND MISDEMEANOR CHARGES BE FILED AGAINST ME AND THE ASSISTANT CHEIF. SOMEHOW THE DETAILS OF THIS LETTER APPEARED THE NEXT DAY IN SEVERAL NEWSPAPERS. THE DISTRICT ATTORNEY HAS DECLINED TO TAKE ANY ACTION ON OFFICER NICHOLS REQUEST.

181- 9-13 ; 15-16, 24-25

182 2-7, 4-24

27 why is it important for a police officer not to lie?

A-when he lies to me I loose control over

the Dept

-when he lies the public loses confidence in Dept

and can't do our job

-when he lies under oath the entire judicial system is compromised

(188) Moral Now

Moll Q & A

- 1) Name
- 2) Position
- 3) Training esp. personnel matters
- 4) Recognize articles.
anything in them derogatory
- 5) Give Nicks permission to speak to
press about these matters?
- 6) Any impact of articles on morale.
 -) Morale of Dept when they learned
Pat was ~~leaving~~ coming back.
Lack of trust lack of communication.
 - 8) Problems w/ Pat after he
came back.
 - a) Problems w/ Ticks.
 - Lack of discretion
 - Seemingly discriminatory application
 - b) Chasing vehicle outside
limits w/out calling lost
sergeant.
 - c) Mulverhill incident.

- d) 2/14/44 - attempted
release of paperwork
e) 2/23/44 M Gorman's
april.
f) 3/4/44 fingerprint.
w/out removing weapon.

g) what was decided

h) Transcript true &
accurate.

i) ~~transcript~~ read p. lines

58 - line 18 to 60 line 21
174 9-14, 16-17
175 15-17
180 2-6
181 9-13, 5-16
181 → 24 to 25 and 182 2-7
182 19-24

why is it important for police
man not to lie

1st Draft

PRELIMINARY STATEMENT

The Village of Malone will show that Officer Nichols repeatedly violated the police Department Regulations at a time in late summer and fall of 1993 when he was already suspended for violating the rules. We will show that he repeatedly made disparaging comments about the Department and Officers of the Department in direct violation of the rules. *We will show that he did two times on August 17, 1993 and again on August 18, 1993,

We will show that he was specifically told not to speak on television on 10/21/93 by the Mayor, in the presence of the Chief of police, but that he did so anyway, within a matter of minutes.

We will show that, in an attempt to bring political pressure on the village Board for his personal advantage in an ongoing disciplinary proceeding, Nichols circulate and collected signatures on a petition. This not only violated the departmental regulations, but violated one of the same rules he was then charged with.

These activities on the part of Officer Nichols have destroyed morale on the force, has created problems between the force and the state police and Border Patrol, and have made the already difficult job of Village Patrolman much more difficult.

We will show that after Nichols was disciplined as a result of the last Article 75 hearing, the Department put him back on duty and refrained from immediately filing additional charges, although they might have done so. Nevertheless, a number of areas of concern began to arise concerning the quality of his performance as a patrolman. A decision was made to have officer Nichols appear at a questioning session, under oath, to resolve these questions. That session was conducted on March 17, 1994 in full compliance with the applicable provisions of the Civil Service Law. During the course of that meeting Officer Nichols deliberately and knowingly lied about his past conduct in order to make it appear that he had not violated a police department regulation.

This police officer lied repeatedly to his superiors in order to protect himself from further disciplinary proceedings. A police officer who lies is unacceptable. He must be terminated.

CIX Malone, NY

C. J. ...

finding out that he had broken a rule -- the rule against going outside the chain of command in order to influence the Village Board. This was the same violation he had been previously charged with and found guilty of. At the time he lied he was under oath. The Chief knew that Officer Nichols was lying because he had four sworn affidavits from persons involved. Some of the affidavits were from supporters of Officer Nichols.

Given the evidence, the Chief had no choice but to suspend Officer Nichols in order to preserve the integrity of the justice system.

The evidence will show that Officer Nichols is perfectly capable of being a good cop, but that he has developed a bad attitude. An attitude so bad that he became willing to do almost anything, even to lie to the Chief of Police, while under oath, in order to protect himself.

Memo to Ptl. Nichols

Memo dated March 8th 1994

Ptl. Nichols,

Please report to the Chief's Office on March 17th 1994 at 10:00 am. I would like to discuss a few items with you. The matter may be a potential subject of disciplinary action. Please be advised that you have the right to representation by your certified employee organization at this meeting.

Chief James E. Phillips

OPENING

The village of Malone is here today because it has no other way of dealing with officer Nichols.

What we will show is that, in September 1993, while on suspension and facing a disciplinary hearing for violations of police department rules, Officer Nichols continued to engage in a pattern of violating those same rules. In particular, he engaged in a pattern of making unauthorized statements to the press which included derogatory remarks about the Department in general, and about particular members, some of whom he named, and some of whom he did not.

In response the Village of Malone was patient, and did nothing at the time, even though these statements had a devastating impact on departmental morale.

In November, when Officer Nichols returned from suspension, the problems continued. We will show that he attempted to boost his performance rating by handing out a lot of junk tickets, like broken taillights.

In January, the shift sergeants evaluated all the patrolmen. Four out of four sergeants rated Officer Nichols poorly.

A review of Officer Nichols' traffic tickets raised the possibility that he was discriminating against out of towners.

Officer Nichols had previously been the DARE officer. The Department found DARE materials stamped with the logo of a service club of which Officer Nichols was a member.

In early December, 1993, Officer Nichols was observed chasing a vehicle outside of the village limits. He did this without notifying the desk sergeant, in violation of the rules.

In February things really started to go down hill. We will show that he had a run in with another patrolman during an arrest. Pat thought the other patrolman was guilty of littering. Instead of making a report, he confronted the officer when the officer's attention should have been focused on the defendant who was under arrest.

A week later he was caught trying to release information on an ongoing criminal investigation without the chief's consent.

Then we will show that he tried to slough off duty at the weekly abortion protests by sitting in his car when he should have been standing on the sidewalk.

Finally, we will show that in early March, he violated elemental police practice by fingerprinting someone without first removing and securing his service revolver.

Despite these problems, the Village refrained from filing new charges. Instead, they decided to take a low-key approach by having a counselling and questioning session, in compliance with the labor law. This session was conducted before a stenographer, and Officer Nichols was placed under oath.

At this session, Officer Nichols had valid answers for some of the Village's concerns. On other points the answers were not completely satisfactory, but neither did there seem to be sufficient cause to bring charges. What happened at that session to change the course of events is that Officer Nichols intentionally lied to his superiors in order to keep them from

Memo to Ptl. Nichols

Memo dated March 8th 1994

Ptl. Nichols,

Please report to the Chief's Office on March 17th 1994 at 10:00 am. I would like to discuss a few items with you. The matter may be a potential subject of disciplinary action. Please be advised that you have the right to representation by your certified employee organization at this meeting.

Chief James E. Phillips

Given to Pat
at 10:17 PM
3-8-94

Ptl. Stone was Nichols partner for several years and stated many times that he didn't like working with him. Ptl. Stone was present during the K of C incident and also received a letter of reprimand in his file for one year. After the letter was placed in his file, he told the Chief that Nichols was wrong on how he handled the situation and that Ptl. Stone was upset because Nichols dragged him into it. After Nichols first learned that he and Ptl. Stone was getting a letter of reprimand, Nichols drove right to Ptl. Stone's house and discussed the matter and his discontent.

Ptl. Stone maybe in a very good position to testify to Nichols actions after he received the letter of reprimand. How much time he spent on the Mattimore incident and the approx. time that this Mattimore incident became real important to Nichols.

Ptl. Stone has been very vocal about his discontent about working with Nichols and voiced this at a department members meeting held on Oct. 23, 1993. Ptl. Stone stated that he has had his fill of working with Nichols and does not want to work with him.

Ptl. Stone also took a call from a mother that complained about an investigation and advised this lady that she could notify the Chief. This lady (name unknown) then stated that the Chief would just "Whitewash" it just like he did over the Pat Nichols deal. She further stated that she was just going to go to the media. This conversation took place on May 7, 1994.

Ptl. Stone is also the President of the Malone Call Fireman and was a member when Pat Nichols was a member and the problems that lead up to Nichols leaving the fire department.

When Ptl. Stone was Nichols partner, there were many times that Ptl. Nichols would have extended stops at Ken Cring's residence and his own residence on Webster St. He is also in a very good position to witness the different style of law enforcement and the way Nichols treated people.

DALE LAMITIE Q & A

1. NAME, ADDRESS
2. BUSINESS
3. DO YOU KNOW OFFICER NICHOLS? HOW LONG HAVE YOU KNOWN HIM?
4. HAVE YOU EVER SEEN THIS PETITION BEFORE, OR ANY PART OF IT?
5. IS THIS YOUR SIGNATURE ON THE FRONT PAGE, MARKED PAGE 23, LINE 14?
6. HOW DID YOU COME TO SIGN THIS DOCUMENT?
7. GO THROUGH TRANSCRIPT P.58 TO P. 60 AND ASK IF EACH LINE IS TRUE OR FALSE.
8. DID PAT APPROACH ANYONE ELSE REGARDING THE PETITION IN YOUR PRESENCE.
9. WERE SCOTT SMITH OR ED RITZMANN PRESENT WHEN PAT ASKED YOU TO SIGN? DO YOU KNOW WHETHER EITHER OF THEM WERE SHOWN THE PETITION AT THE SAME TIME IT WAS SHOWN TO YOU?

REYOME Q & A

1. NAME
2. RANK, EXPERIENCE
3. HAVE YOU BEEN FAMILIER WITH DEPARTMENTAL MORALE OVER THE LAST YEAR?
4. HAVE OFFICER NICHOLS COMMENTS IN THE PRESS INFERRING THAT VARIOUS MEMBERS OF THE FORCE SHOULD BE SUSPENDED OR CHARGED WITH A CRIME, OR HIS COMMENTS ABOUT RETALIATION AFFECTED MORALE AT ALL? IF SO, HOW?
5. HAS OFFICER NICHOLS BEHAVIOR ALTERED RELATIONS BETWEEN THE DEPARTMENT AND THE STATE TROOPERS OR THE BORDER PATROL?
6. HAS ALL THE PUBLICITY HAD ANY IMPACT ON YOUR ABILITY TO DO YOUR JOB?

Advertill

postal case - let back 1 min.

July

morale multistep case postal case Fleming's
Ritzman Shut down from 6:00
effect of by test
sections by sections by sections by

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED :
TIME ENDED :

DATE October 21, 1993 PLACE Malone PD

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

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

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

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

witness: *[Signature]*

witness:

Signed: *Carl Thomas*

PAGE

1 OF 1

PAGES

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

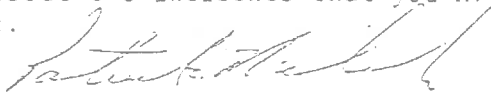
Mulverhill: I'm not picking anything up if you want to pick it then go ahead

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.



VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED :
TIME ENDED :

DATE October 21, 1993 PLACE Malone PD

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

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

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

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

witness:

witness:

Signed:

Dale Lamitie

PAGE 1 OF

PAGES

SCOTT SMITH Q A

1. NAME, ADDRESS
2. BUSINESS
3. DO YOU KNOW OFFICER NICHOLS? HOW LONG HAVE YOU KNOWN HIM?
4. HAVE YOU EVER SEEN THIS PETITION BEFORE, OR ANY PART OF IT?
5. IS THIS YOUR SIGNATURE ON PAGE 2 LINE 1?
6. HOW DID YOU COME TO SIGN THIS DOCUMENT?
7. GO THROUGH TRANSCRIPT P 58 TO P. 60 AND ASK IF EACH LINE IS TRUE OR FALSE.
8. DID PAT APPROACH ANYONE ELSE REGARDING THE PETITION IN YOUR PRESENCE?
9. WAS DALE ^{Lamitie} ~~LAMICA~~ PRESENT WHEN PAT ASKED YOU TO SIGN? DO YOU KNOW WHETHER DALE SIGNED ON THE SAME DAY THAT YOU DID?

C:\WP51\Smith QA.

MALONE POLICE DEPARTMENT
INCIDENT REPORT

8-A-4613

COMPLAINANT: [REDACTED]

CASE#

8-A-4613

ADDRESS: [REDACTED]

LOG: 3452

PHONE: [REDACTED]

OFFENSE: Criminal Mischief

INCIDENT LOCATION: [REDACTED]

RECEIVED BY: MVF

AT: 0750

DATE: 10/27/93

DATE/TIME COMMITTED

DATE/TIME INVESTIGATED:

OFFICER ASSIGNED: Simonsen

SUSPECT/PERSON ARRESTED:

DETAILS OF INCIDENT: Complainant called and reported that two tires on the company vehicle had been cut. Complainant further stated that he reported the same type of incident on 10/26. He then went on to say that this police department was something else and that if Officer Nichols was working this type of thing wouldn't have happened.

Patrol spoke to Mr. [REDACTED] who was upset that his tires on his new delivery truck were punctured. He could not believe that with the taxes he pays that we can't watch his vehicles. The front passengers and drivers tires were flat. I tried to talk to him but he would not talk. I went to take pictures and puncture hole that I found in the drivers tire. I spoke to [REDACTED] who told me that they saw nothing but will keep an eye out and if they see something they will contact the department. I talked to people that live in the aptment on Mill street but they did not see anything either. I then went back and talked with the complaint and told him that we would need estimates of the damage. It was found later that the inside back wheels were also flat. The complainant said that he was going to contact the Mayor. I asked him if there was anyone that he was having problems with and he told me that he could think of anyone. I told him that we would try to check behind his building more often. Will have night shift keep an extra eye on the building.

MRS

MALONE POLICE DEPARTMENT
INCIDENT REPORT

8-A-4613

COMPLAINANT: [REDACTED]

CASE# 8-A-4613

ADDRESS: [REDACTED]

LOG: 3452

PHONE: [REDACTED]

OFFENSE: Criminal Mischief

INCIDENT LOCATION: [REDACTED]

RECEIVED BY: MVF

AT: 0750

DATE: 10/27/93

DATE/TIME COMMITTED

DATE/TIME INVESTIGATED:

OFFICER ASSIGNED: Simonsen

SUSPECT/PERSON ARRESTED:

DETAILS OF INCIDENT: Complainant called and reported that two tires on the company vehicle had been cut. Complainant further stated that he reported the same type of incident on 10/26. He then went on to say that this police department was something else and that if Officer Nichols was working this type of thing wouldn't have happened.

Patrol spoke to Mr. [REDACTED] who was upset that his tires on his new delivery truck were punctured. He could not believe that with the taxes he pays that we can't watch his vehicles. The front passengers and drivers tires were flat. I tried to talk to him but he would not talk. I went to take pictures and puncture hole that I found in the drivers tire. I spoke to [REDACTED] who told me that they saw nothing but will keep an eye out and if they see something they will contact the department. I talked to people that live in the aptment on Mill street but they did not see anything either. I then went back and talked with the complaint and told him that we would need estimates of the damage. It was found later that the inside back wheels were also flat. The complainant said that he was going to contact the Mayor. I asked him if there was anyone that he was having problems with and he told me that he could think of anyone. I told him that we would try to check behind his building more often. Will have night shift keep an extra eye on the building.

MRS

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED :
TIME ENDED :

DATE September 24, 1993

PLACE Malone PD

I, Scott Smith am 28 years of age, born on [REDACTED] my address is [REDACTED] my occupation is Businessman, and degree of education is 12.

I would like to state that during the early part of September 1993 I was at my place of business, Smith's 24hr Towing located on 66 West Main St within the Village of Malone NY, when I was approached by Malone Police Officer Patrick Nichols. Pat had a petition with him and he asked me to sign it. I looked at it and found that it stated that: 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. Pat went on and explained to me that he felt that there was a cover up going on at the police department and he told me about an incident when they had a person in police custody and Scott Mulverhill had told him that A/C Moll had poured bleach on the floor when the prisoner had urinated on the floor and that the prisoner had broken the window in the holding cell to get air and that he felt that it wasn't a criminal matter. He also told me that ^{he had} gone to the DA with the same matter and that he felt that the Police Chief Jim Phillips shouldn't be in the position he was in. After he told me his side of the story I signed the petition and gave it back to him. I was the first person to sign it but he went to others under my employ but I don't know if anyone else signed it.

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

*Affirmed under penalty of Law
this 24 day of Sept, 19 93

witness:

Signed:

witness:

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED :
TIME ENDED :

DATE Oct 27, 1993 PLACE Malone PD

I, Edward Ritmann am [REDACTED]
my address is [REDACTED]
Retired, and degree of education is 14yrs. my occupation is

I would like to state that sometime during the early part of September 1993 I was at Smith's 24hr Towing in the Village of Malone N.Y., on the above mentioned time I was in the company of the owner of the business, Scott Smith. A person known to me as Pat Nichols approached us and asked if we would sign a petition that he had. He showed me the petition and I read it over. It said something to the effects that I was in favor of what he was doing and that he should be reinstated to his position on the local police department, after reading his petition I told him that I wasn't in any position to sign. Until I heard both sides of the story. The only knowledge of the situation was from what I had read or heard through the news media. Pat understood my feelings and went over and talked with Scott Smith.

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

*Affirmed under penalty of Law
this 27 day of Oct, 19 93

Signed: 

witness: 

witness:

MAYOR Q & A

1. NAME

2. POSITION

3. ON OCTOBER 20, 1993 DID YOU PRESIDE AT A VILLAGE BOARD MEETING DURING WHICH A PETITION WAS PRESENTED TO THE BOARD CONCERNING OFFICER NICHOLS?

4. IS THIS THE PETITION? - *How did you first come to know?*
9/13/93

5. ON 2/23/94 DID YOU SEE OFFICER NICHOLS ON DUTY OUTSIDE DR GORMAN'S OFFICE ON MAIN ST.?

6. WAS ANYTHING UNUSUAL?

7. WHAT DID YOU DO?

8. DID YOU HAVE A TELEPHONE CONVERSATION WITH OFFICER NICHOLS ON OCT 21, 93? WHAT DID YOU SAY TO HIM AND WHAT DID HE SAY TO YOU?

What led up to that conversation
9. WHAT WERE YOUR REASONS FOR TELLING HIM NOT TO SPEAK?

A. IT WAS THE DAY AFTER THE VILLAGE BOARD ACTION ON HIS SUSPENSION. I FELT THAT ~~THERE WAS A DANGER OF HIS USING THE DARE PROGRAM FOR HIS OWN PUBLICITY AND THAT THIS WOULD BE DETRIMENTAL TO THE DARE PROGRAM.~~

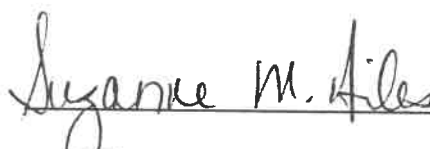
violation of rule 11.5

*Did Chief come & complain. Fairly hard.
what did you decide to do.*

*11.) Anonymous letters.
local business men complained*

C E R T I F I C A T E

I, SUZANNE M. NILES, being a Court Reporter and Notary Public in and for the State of New York, do hereby certify that the foregoing transcript is a true, accurate, and complete record of my stenotype notes, taken to the best of my ability, in the matter of The Village of Malone v Patrick Nichols, held in Malone, New York, on the 16th day of June, 1994.



SUZANNE M. NILES

Court Reporter, Notary Public

ACC-U-SCRIBE REPORTING SERVICE

11 Main Street

PO Box 762

Canton, New York 13617

(315) 379-9216

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

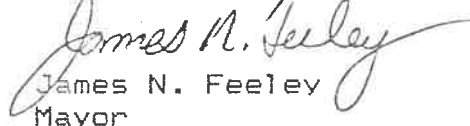
Dear Mr. Halley:

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.

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.

A handwritten signature in cursive script, appearing to read "Brian S. Stewart", written over the typed name.

Brian S. Stewart

BSS/mew

cc: Mayor James Feeley
Chief James Phillips



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 G. Schrader
Assistant District Attorney

John D. Deibach
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 Chris 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

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.

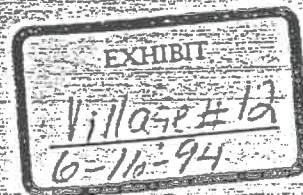
Very truly yours,

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

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

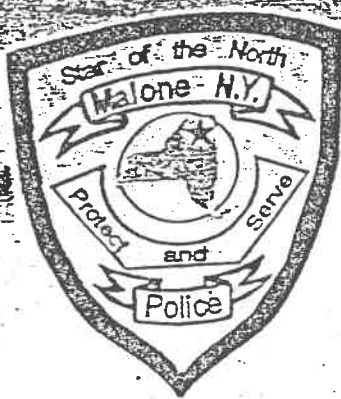
PO Box 762

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

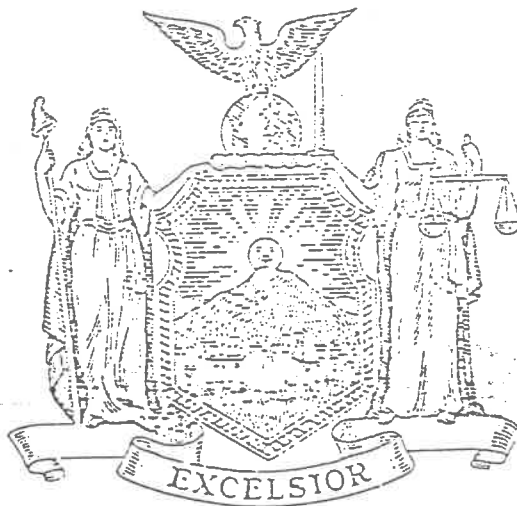
PATRICK NICHOLS

PERSONNEL FILE

duties and rules of conduct

Full text
at 7/29/94

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



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

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
146 Webster Street
Malone, New York 12953

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

4 : VILLAGE OF MALONE
5 -----
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12
13

14 In the Matter of an Examination of PATRICK NICHOLS,
15 a Patrolman on the Village of Malone Police Department,
16 held at the offices of the Malone Village Police Department,
17 Malone, New York, on the 17th of March, 1994.
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25

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

** ORIGINAL **

NEW YORK STATE UNION OF POLICE ASSOCIATIONS, INC.

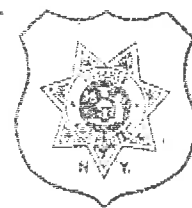
LOCAL - 8

AFFILIATED

INTERNATIONAL UNION OF POLICE ASSOCIATIONS

AFL-CIO

1134 UNION AVENUE — ROUTE 300 NORTH
NEWBURGH, NEW YORK 12550
(814) 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 agreed 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 26th, 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 its 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;

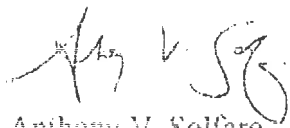
b) confirmation that a Court Reporter will be present at the hearing to enable all the parties and hearing officer to receive a transcript of the proceedings;

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

encls.

cc: F. Hollis Griffin, Esq.
Patrick Nichols

THOMAS P. HALLEY
ATTORNEY AT LAW

297 MILL STREET
POUGHKEEPSIE, N. Y. 12601
(914) 432-0120
(914) 432-0192

May 10, 1994

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

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

EXHIBIT

H0 #4
6-16-94

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