

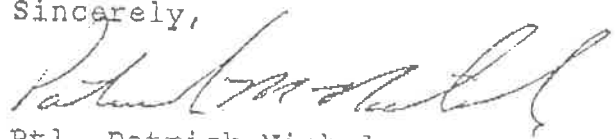
May 10, 1994  
Patrick M Nichols  
146 Webster St.  
Malone, N.Y. 12953

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

Chris,

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

Sincerely,



Ptl. Patrick Nichols

May 5, 1994

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

Dear Sir:

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

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

A handwritten signature in dark ink, appearing to read "Patrick M. Nichols", with a stylized flourish at the end.

Patrick M. Nichols

*Village of Malone New York*

16 Elm Street  
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

May 3, 1994

Mr. Patrick Nichols  
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.

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

Very truly yours,

  
James N. Feeley  
Mayor

JNF:ejb  
Enc

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

BRYAN J. HUGHES  
BRIAN S. STEWART

Telephone: (518) 483-4330

Fax: (518) 483-4005

April 25, 1994

\*\*\*\*\*CONFIDENTIAL\*\*\*\*\*

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

Re: Patrolman Patrick Nichols

Dear Jim:

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

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

Very truly yours,

HUGHES & STEWART, P.C.

BRIAN S. STEWART

BSS/ajs  
Encls.

See transcript  
box for full text.

CIVIL SERVICE LAW §75

VILLAGE OF MALONE,

Employer,

v.

CHARGES OF MISCONDUCT

PATRICK NICHOLS,

Employee.

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

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

Regulation Section:

10.1.1 Discredit upon Department

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

10.1.27 Publicly criticizing the official actions of a Department member.

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

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

Regulation Section:

10.1.4 Insubordination.

10.1.20 Knowingly making a false report, written or oral.

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

Regulation Section:

VILLAGE OF MALONE,

Employer,

v.

PATRICK NICHOLS,

Employee.

CHARGES OF MISCONDUCT

~~Full Text in~~  
~~Complaint~~

5/3/94

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

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

Regulation Section:

10.1.1 Discredit upon Department

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

10.1.27 Publicly criticizing the official actions of a Department member.

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

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

Regulation Section:

10.1.4 Insubordination.

10.1.20 Knowingly making a false report, written or oral.

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

Regulation Section:

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

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

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

518-483-4005

VILLAGE OF MALONE,

Employer,

v.

# CHARGES OF MISCONDUCT

PATRICK NICHOLS,

Employee.

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

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

## Regulation Section:

10.1.1 Discredit upon Department

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

10.1.27 Publicly criticizing the official actions of a Department member.

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

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

## Regulation Section:

10.1.4 Insubordination.

10.1.20 Knowingly making a false report, written or oral.

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

## Regulation Section:

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

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

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

518-483-4005

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

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

BRYAN J. HUGHES  
BRIAN S. STEWART

April 20, 1994

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

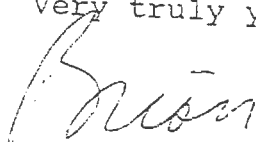
Mayor James Feeley  
Village of Malone Offices  
16 Elm Street  
Malone, New York 12953

Re: Patrolman Patrick Nichols

Dear Jim:

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

Very truly yours,



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

BSS/tlw  
enclosure

Full text  
in transcript box

DISCIPLINARY CHARGES CIVIL SERVICE LAW ARTICLE 75

POLICE DEPARTMENT Complainant

V.

PAK NICHOLS Respondent

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

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

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

ion violated the following departmental rules and  
ons.

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

*Village of Malone New York*

16 Elm Street  
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

April 12, 1994

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

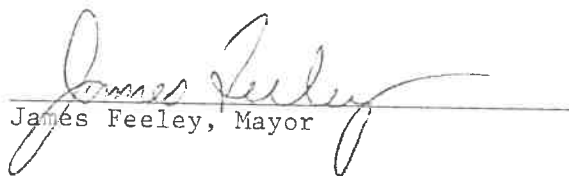
Dear Brian:

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

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

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

Sincerely,

  
James Feeley, Mayor

JF/cb

**ADOPTION OF 1994-95 VILLAGE BUDGET:**

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

**WASTEWATER TREATMENT PLANT SLUDGE TO BE STORED:**

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

**DPW SPRING CLEANUP:**

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

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

**EXECUTIVE SESSION:**

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

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

**ATTORNEY BRIAN STEWART HIRED RE: PATRICK NICHOLS MATTER:**

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

**MAIN STREET TREES:**

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



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

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

WATER CONFERENCE:

Mayor Feeley grants permission for Alfred Pritchard and Frank Riley to  
attend the Water Conference to be held in Tupper Lake on October 24,  
1994.

ATTORNEY BRIAN STEWART HIRED - APPEAL OF PATRICK NICHOLS:

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

CHANGE ORDER - SANITARY SEWER CONSTRUCTION:

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

Contractor: H. Schickel General Contracting

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

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

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

HALLOWEEN CURFEW:

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

**HUGHES & STEWART, P. C.**

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

BRYAN J. HUGHES  
BRIAN S. STEWART

March 29, 1994

Telephone: (518) 483-4330

Fax: (518) 483-4005

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

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

Dear Judge Plumadore:

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

Very truly yours,

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

BSS/tlw  
cc: Mayor James Feeley

March 24, 1994

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

RE: Nichols v Village of Malone

Dear Judge Plumadore:

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

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

Very truly yours,

/s/

THOMAS P. HALLEY

cc.: Brian Stewart  
Patrick Nichols

COPY

Full text in  
transcript box.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF FRANKLIN

PATRICK NICHOLS,

Petitioner,

-against-

VILLAGE OF MALONE,

Respondent.

INDEX NO.: 93/755  
CC #16-1-93-0275.P

ORDER

HON. JAN H. PLUMADORE  
SUPREME COURT JUSTICE

Petitioner having filed a petition pursuant to Article 78 of the CPLR challenging the results of a Civil Service Disciplinary Hearing conducted pursuant to Civil Service Law Section 75, said petition having been verified the 18th day of December, 1993; and the respondent having answered said petition by answer verified the 11th day of January, 1994, with an accompanying affidavit sworn to the 11th day of January, 1994, and the petitioner having submitted a reply by his attorney verified the 19th day of January, 1994 and the matter having come before this court for decision and determination, and the court having rendered a decision dated March 14, 1994;

NOW UPON DUE DELIBERATION IT IS,

ORDERED, ADJUDGED, and DECREED, that portion of the petition which alleges partiality on the part of a hearing

Full text in  
transcript box (#1)

1  
2 STATE OF NEW YORK  
3 COUNTY OF FRANKLIN

: VILLAGE OF MALONE  
-----

4  
5 In the Matter of an Examination of PATRICK NICHOLS,  
6 a Patrolman on the Village of Malone Police Department,  
7 held at the offices of the Malone Village Police Department,  
8 Malone, New York, on the 17th of March, 1994.  
9

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

14 James Phillips, Chief of Police

15 Gerold Moll, Assistant Chief of Police

16 Patrick Nichols, Patrolman, Malone Village  
17 Police Department

18 Dean Fountain, Union President  
19

20  
21  
22 ACC-U-SCRIBE REPORTING SERVICE  
23 Suzanne M. Niles, Notary Public  
24 11 Main Street  
25 PO Box 762  
Canton, New York 13617  
(315) 379-9216  
Watertown - (315) 786-DEPO  
\*\* ORIGINAL \*\*



STATE OF NEW YORK  
SUPREME COURT CHAMBERS  
HARRIETSTOWN TOWN HALL  
30 MAIN STREET  
SARANAC LAKE, NEW YORK 12983

(518) 891-3816 • (518) 891-3870



JAN H. PLUMADORE  
JUSTICE

March 15, 1994

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

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

RE: NICHOLS v. VILLAGE OF MALONE  
Index No. 93-755  
CC No. 16-1-93-0275.P  
Our File No. P-1545

Counsellors:

Enclosed herewith please find Decision with respect to the  
above named matter. All papers are forwarded herewith to  
Thomas P. Halley, Esq. for filing in Franklin County.

Very truly yours,

*Jan H. Plumadore*

HON. JAN H. PLUMADORE  
Supreme Court Justice

JHP:pk  
Enc.

STATE OF NEW YORK

SUPREME COURT COUNTY OF FRANKLIN

PATRICK NICHOLS,

Petitioner,

-against-

VILLAGE OF MALONE,

Respondent.

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

Index #93-755  
CC #16-1-93-0275.P  
Our File #P-1545

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 his reporting, investigation and discussion of an incident involving the treatment of a prisoner and Petitioner's termination as a DARE instructor. Petitioner challenges:

- the Hearing Officer's impartiality;
- the failure of Respondent and the Hearing Officer to provide him with the results of the Malone Police Chief's investigation regarding the prisoner incident via Civil Rights Law §50-a;
- the prevention of his inquiry into alleged "other cover-ups" in and by the Malone Police Department;
- the Hearing Officer's application of Civil Service Law §75-b's "whistleblower" provisions to these charges and the facts underlying them;
- Petitioner's own personnel file was used against him without notice or an opportunity to be heard as to its contents.

Full decision  
in transcript  
box

STATE OF NEW YORK

SUPREME COURT

COUNTY OF FRANKLIN

PATRICK NICHOLS,

Petitioner,

-against-

VILLAGE OF MALONE,

Respondent.

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

Index #93-755

CC #16-1-93-0275.P

Our File #P-1545

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 his reporting, investigation and discussion of an incident involving the treatment of a prisoner and Petitioner's termination as a DARE instructor. Petitioner challenges:

- the Hearing Officer's impartiality;
- the failure of Respondent and the Hearing Officer to provide him with the results of the Malone Police Chief's investigation regarding the prisoner incident via Civil Rights Law §50-a;
- the prevention of his inquiry into alleged "other cover-ups" in and by the Malone Police Department;
- the Hearing Officer's application of Civil Service Law §75-b's "whistleblower" provisions to these charges and the facts underlying them;
- Petitioner's own personnel file was used against him without notice or an opportunity to be heard as to its contents.



except as he excluded it supra, and made findings with respect thereto. The challenge to these findings, and to those not directly related to the "whistleblower" defense, raise questions regarding whether they were supported by substantial evidence. Since, as set forth supra, there are no dispositive objections in point of law akin to affirmative defenses raised herein (CPLR 3211 (a)); Hop-Wah v. Coughlin, 118 AD2d 275, rev'd on the other grounds 69 NY2d 791), this matter will be transferred to the Appellate Division Third Department pursuant to CPLR 7804(g).

Finally, Petitioner's own personnel file was offered and received into evidence without objection. He cannot be heard to challenge its admission now.

Mr. Halley to submit order on notice. Counsel are hereby notified that the Appellate Division will not hear this matter based solely on any physical transfer of the papers before this Court (see 22 NYCRR §800.4 and attachment hereto).

ENTER:

DATED: March 14, 1994  
Chambers, Saranac Lake, New York

Jan H. Plumadore  
HON. JAN H. PLUMADORE  
SUPREME COURT JUSTICE

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

**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

March 3, 1994

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

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

PERSONAL & CONFIDENTIAL

Re: Malone Police Department

Dear Jim:

Thank you for letting me review and comment on the new information compiled with respect to Officer Nichols. The information tends to group itself in two major sets of complaints. The first is that Officer Nichols is engaging in an intentional pattern of discrimination against out of town residents. The second is that Officer Nichols has engaged in a pattern of behavior calculated to bring discredit upon the Department. In this last group, I note that he has had a questionable announcement published in the newspaper, that he has circulated petitions intending to directly influence the Village Board's governance of the Police Department and that he may have solicited letters to the newspaper which were critical of the Department.

There were numerous other incidents set forth in the information that you gave me, most of which I considered to be of a minor nature.

The alleged discrimination against out of town residents is particularly troubling. Nevertheless, I do not think it will be adequate to result in his dismissal. The period of time that Mr. Nichols has been back at work is a short one. The statistics which the Department has offered us could have been skewed by that short period of time. If Officer Nichols issued an unusually high or low number of tickets since he has been back at work, that too could have skewed the statistical results. It would be extremely important to review the statistics involving in town and out of town arrests by the other officers of the Police Department during the same period of time. The information which you provided me with measures Officer Nichols recent performance as against his past performance and that is important. It is also important to measure his performance against the performance of the other members of the force.

TO: MAYOR JAMES FEELEY  
RE: MALONE POLICE DEPARTMENT

Officer Nichols will argue that every case is different and that each case calls for the exercise of a certain amount of discretion. He will testify that not every stop can or should result in a ticket. We will be hard pressed to disagree with that, and you can be sure that you will have a logical sounding explanation for every incident in which he failed to issue a ticket to an in town resident.

Officer Nichols' fallback position will be that if any discrimination did take place it was certainly unconscious and unintentional. In effect, he is going to say that if you did not want this result then you should not have let me run for political office.

The ads that Nichols placed in the Malone Telegram thanking his friends and supporters for their support during his difficult ordeal is certainly questionable. It does not mention the Police Department or any of its officers by name. There is a fine line between a police officer's right of free speech and his obligation not to bring discredit upon the Department. This advertisement may have gone over the line, but it is a close call.

Nichols' solicitation of signatures for the petition to influence the conduct of the Village Board with respect to his case seems to me to be a clear violation of the rules regarding the bringing of discredit upon the Department and also the rule against attempting to influence the conduct of the Village Trustees. Nevertheless, it is not the kind of charge that is going to be understood by the general public.

It seems likely that Mr. Nichols solicited letters from his wife, his daughter and Mr. Faubare which were critical of the Department and which were published in the local paper. However, we are not going to be able to prove that he solicited those letters.

My analysis is that the proposed charges are not sufficiently serious to guarantee a dismissal of Officer Nichols. At this point, I would deal with them on an internal basis. I believe that Officer Nichols should be given a counseling letter outlining these problems, indicating the seriousness of the problems and warning him to correct his behavior. A counseling letter is not punishment, does not require a Section 75 hearing and will not prevent the bringing of charges at a later date based upon these allegations.

TO: MAYOR JAMES FEELEY  
RE: MALONE POLICE DEPARTMENT

If Mr. Nichols can not get along with the members of his department or is disrespectful then clearly the Chief can and should schedule Officer Nichols for duty in a manner that best suits Officer Nichols' talents and best serves the Department as a whole.

I realize that things may not be pleasant at the Police Department. However, not every problem employee can be fired at will. Bringing weak charges against Officer Nichols will only serve to make the problem worse and will make the Department and the Village vindictive in the eyes of the public.

Of all the present charges, I think the charges concerning discrimination against out of town residents are the most serious. If this pattern is clearly opposed to the patterns established by the rest of the Department and if it continues for a period of at least six months and if it continues in spite of the counseling letter that I have recommended, then I think that civil service charges would be warranted.

Very truly yours,



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

BSS/tlw

COPY

Full text in  
transcript box

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF FRANKLIN

PATRICK NICHOLS,

Petitioner,

-against-

VILLAGE OF MALONE,

Respondent.

INDEX NO.: 93/755  
CC #16-1-93-0275.P

ORDER

HON. JAN H. PLUMADORE  
SUPREME COURT JUSTICE

3/94

Petitioner having filed a petition pursuant to Article 78 of the CPLR challenging the results of a Civil Service Disciplinary Hearing conducted pursuant to Civil Service Law Section 75, said petition having been verified the 18th day of December, 1993; and the respondent having answered said petition by answer verified the 11th day of January, 1994, with an accompanying affidavit sworn to the 11th day of January, 1994, and the petitioner having submitted a reply by his attorney verified the 19th day of January, 1994 and the matter having come before this court for decision and determination, and the court having rendered a decision dated March 14, 1994;

NOW UPON DUE DELIBERATION IT IS,

ORDERED, ADJUDGED, and DECREED, that portion of the petition which alleges partiality on the part of a hearing

*Village of Malone New York*

16 Elm Street  
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

File ~~Malone~~  
Malone vs Nichols

August 4, 1994

Mr. Patrick Maguire  
Sid G. Spear Insurance Company  
95 West Main Street  
Malone, New York 12953

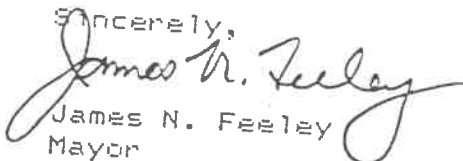
Dear Pat:

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

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

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

Sincerely,

  
James N. Feeley  
Mayor

JNF:ejb  
Enc

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

PRESS-REPUBLICAN  
PLATTSBURGH, N.Y.



# REGIONAL

## Hearing Officer: Fire Malone Patrolman

PAGE 1  
THURSDAY, AUGUST 4, 1994

By AUSTON CALKINS  
Staff Writer  
Albany Bureau

**MALONE** — The Malone police officer suspended twice for breaking department rules should be fired, according to the findings of the latest hearing.

Patrolman Patrick Nichols was suspended last year for violating department rules after reporting the alleged mistreatment of a prisoner in police custody.

After a hearing in which Hearing Officer Brian McKee recommended that Nichols be given a job other than in the Police Department — or be fired if that was impossible — Nichols was returned to duty in the Police Department by the Village Board.

Then, on March 17, 1994, he was suspended again on charges that included breaking departmental regulations for talking to the press without

permission, and for being untruthful about a petition he was circulating in his own support.

The second hearing was conducted by Hearing Officer John Lawliss, who recommended that Nichols be fired.

In his report, Lawliss wrote that Nichols's actions "show a pattern of ongoing disregard for authority... a blatant disregard for authority... indicating that he seems more interested in his own image in the community than that of the department... (and that) he obviously is not concerned about the consequences of his actions as they pertain to the overall reputation of his department."

Lawliss wrote that some of Nichols's fellow officers voiced concerns that if Nichols returned to duty, "it would have a serious negative impact on the morale of the department which would adversely affect its service to the public." The fate of Nichols's employment now rests

again with the Village Board. It is expected to announce its decision during an Aug. 22 meeting.

Last year, Nichols was elected to the Malone Town Board where he is currently serving.

Nichols's attorney, Thomas Halley, said the second hearing was as much a travesty of justice as the first. He said the Village Board's decision will affect what happens next.

"If they decide to fire Pat, then we will take them to court in State Supreme Court for a review of the board's determination. But regardless of what the village does, we will begin litigation in Federal District Court in Albany on a number of civil rights violations and federal statutory violations," Halley said.

He also explained that the action in federal court would not be against the Village Board, but would be against various individuals involved in violating Nichols's rights.

Halley said he believed the worst travesty in the

latest hearing was that Lawliss apparently made some decisions early on in the hearing.

Halley specifically referred to the transcript of the proceedings in which Lawliss said, "... If Officer Nichols does go back to work it's just going to create havoc in the department as far as the other people being named here... if he does go back to work... it's going to create all kinds of problems."

What's troubling, according to Halley, is that Lawliss made that decision after hearing testimony from the first witness — Malone Police Chief James Phillips — and without hearing any other witnesses.

"The man had already made up his mind before he heard any testimony. It's obvious that Pat will never get a fair hearing in Malone. So we're going to take it outside the village and the county to make sure he does," Halley said.

Nichols refused comment on the advice of his attorney, but said he is curious as to what the decision of the Village Board will be.



August 4, 1994

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

RE: Patrick Nichols

Dear Ms. Clute:

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

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

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

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

Very truly yours,

THOMAS P. HALLEY

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

EXHIBIT 6

July 8, 1994

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

RE: Matter of Patrick Nichols

Dear Ms. Clute:

Thank you for your letter of June 29, 1994.

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

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

Very truly yours,

THOMAS P. HALLEY

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

EXHIBIT P

August 5, 1994

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

RE: Village of Malone v Nichols

Dear Mayor and Village Board:

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

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

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

Very truly yours,

THOMAS P. HALLEY

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

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

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

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

BRYAN J. HUGHES  
BRIAN S. STEWART

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

August 8, 1994

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

RE: VILLAGE OF MALONE VS.  
PATRICK NICHOLS

Dear Tom:

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

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

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

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

Very truly yours,

HUGHES & STEWART, P.C.

  
Brian S. Stewart

BSS/mew

cc: James Feeley  
Elizabeth J. Bessette  
Chief James Phillips

**THOMAS P. HALLEY**

ATTORNEY AT LAW

August 9, 1994

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  
PO Box 788  
Malone, New York 12953

RE: Village of Malone v Nichols

Dear Mr. Stewart:

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

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

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

Very truly yours,



THOMAS P. HALLEY

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

CLINTON COUNTY DISTRICT ATTORNEY

PENELOPE D. CLUTE

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



ASSISTANT DISTRICT ATTORNEYS

Catherine M. Paul  
Joseph Lavorando  
Thomas M. Murnane  
Oliver L. Bickel

August 12, 1994

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

AUG 12 1994

RE: Patrick R. Nichols

Dear Mr. Halley:

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

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

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

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

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

Sincerely,

  
Penelope D. Clute  
Special Prosecutor, Franklin County

EXHIBIT R

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

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

BRYAN J. HUGHES  
BRIAN S. STEWART

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

August 15, 1994

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

RE: PATRICK NICHOLS

Dear Penny:

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

Very truly yours,

HUGHES & STEWART, P.C.

  
Brian S. Stewart

BSS/mew  
Enc.



Full text in  
transcript box

STATE OF NEW YORK  
COUNTY OF FRANKLIN

:

VILLAGE OF MALONE

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

Village of Malone,

Complainant,

-against-

Patrick Nichols,

Respondent.  
-----

Representing the Village of Malone:

BRIAN S. STEWART, ESQ.  
31 Elm Street  
Post Office Box 788  
Malone, New York 12953

Representing the Respondent:

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

ARTICLE 75 PROCEEDING,

in the above matter, held at the Malone Village Offices,  
Malone, New York, on the 16th day of June, 1994,  
before JOHN H. LAWLISS, Designated Hearing Officer.

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

11 Main Street  
PO Box 762  
Canton, New York 13617  
(315) 379-9216  
Watertown - (315) 786-DEPO

\*\* COPY \*\*

THOMAS P. HALLEY

ATTORNEY AT LAW

August 19, 1994

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

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

RE: Village of Malone v Patrick Nichols

Gentlemen:

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

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

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

EXHIBIT 1

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

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

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

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

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

"Q. Have you ever been arrested?

A. Yes. I have.

Q. For what?

A. Disorderly conduct.

Q. Anything else?

A. Not that I can recall.

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

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

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

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

"A. I asked what the petition was about.

Q. Okay. What did he say to you?

A. Read it.

Q. Any what did you say?

A. I read it.

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

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

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

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

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

A. Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

Very truly yours,



THOMAS P. HALLEY

cc: Patrick Nichols  
146 Webster Street  
Malone, NY 12953

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

#### RESOLUTION FINDING GUILT

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

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

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

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

As to charge #1 finding Officer Nichols guilty with regard to violations of Departmental Rules and Regulations Section 10.1.1; 11.1.77; 10.1.27; and 10.1.34.

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

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

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

WHEREAS: charges #1, 2, 4, 5 and 6 relate generally to Officer Nichols solicitation of petition signatures and communications with news media and strict application of the Departmental Rules and Regulations under these circumstances gives rise to serious and difficult issues concerning Officer Nichols' constitutional right of free speech.

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

Ayes 4

Nays 0

RESOLUTION HEREBY ADOPTED

Elizabeth J. Bessette  
Elizabeth J. Bessette  
Village Clerk

I, Elizabeth J. Bessette, Village Clerk of the Village of Malone, do hereby certify that the foregoing is a true and correct copy, and the whole thereof, of a resolution adopted at a meeting of the Village Board of Trustees held August 22, 1994.

SEAL

Elizabeth J. Bessette  
Elizabeth J. Bessette  
Village Clerk

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

RESOLUTION - SETTING PENALTY

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

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

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

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

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

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

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

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

Ayes 4

Nayes 0

RESOLUTION HEREBY ADOPTED

Elizabeth J. Bessette  
Elizabeth J. Bessette  
Village Clerk

I, Elizabeth J. Bessette, Village Clerk of the Village of Malone, do hereby certify that the foregoing is a true and correct copy, and the whole thereof, of a resolution adopted at a meeting of the Village Board of Trustees held August 22, 1994.

SEAL

Elizabeth J. Bessette  
Elizabeth J. Bessette  
Village Clerk

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

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

BRYAN J. HUGHES  
BRIAN S. STEWART

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

August 25, 1994

HAND DELIVERED

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

RE: Village of Malone -vs.- Patrick Nichols

Dear Liz:

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

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

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

Very truly yours,

HUGHES & STEWART, P.C.

  
Brian S. Stewart

BSS/tlt  
Encl.

See transcript box  
for full text

CIVIL SERVICE LAW §75

VILLAGE OF MALONE,

Employer,

v.

PATRICK NICHOLS,

Employee.

CHARGES OF MISCONDUCT

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

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

Regulation Section:

10.1.1 Discredit upon Department

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

10.1.27 Publicly criticizing the official actions of a Department member.

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

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

Regulation Section:

10.1.4 Insubordination.

10.1.20 Knowingly making a false report, written or oral.

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

Regulation Section:

Full text in  
transcript box

STATE OF NEW YORK  
COUNTY OF FRANKLIN : VILLAGE OF MALONE

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

Village of Malone,  
Complainant,  
-against-

Patrick Nichols,  
Respondent.  
-----

Representing the Village of Malone:

BRIAN S. STEWART, ESQ.  
31 Elm Street  
Post Office Box 788  
Malone, New York 12953

Representing the Respondent:

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

ARTICLE 75 PROCEEDING,

in the above matter, held at the Malone Village Offices,  
Malone, New York, on the 16th day of June, 1994,  
before JOHN H. LAWLISS, Designated Hearing Officer.

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

11 Main Street  
PO Box 762  
Canton, New York 13617  
(315) 379-9216  
Watertown - (315) 786-DEPO  
\*\* COPY \*\*



PROPOSED RESOLUTION - FINDING GUILT

VILLAGE BOARD, VILLAGE OF MALONE

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

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

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

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

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

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

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

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

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

NOW, therefore be it

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

PROPOSED RESOLUTION - SETTING PENALTY

VILLAGE BOARD, VILLAGE OF MALONE

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

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

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

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

NOW therefore be it

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

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

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

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

Ayes 4

Nays 0

RESOLUTION HEREBY ADOPTED

Elizabeth J. Bessette  
Elizabeth J. Bessette  
Malone Village Clerk

I, Elizabeth J. Bessette, Village Clerk of the Village of Malone, do hereby certify that the foregoing is a true and correct copy, and the whole thereof, of a resolution adopted at a meeting of the Village Board of Trustees held August 22, 1994.

SEAL

Elizabeth J. Bessette  
Elizabeth J. Bessette  
Malone Village Clerk

**THOMAS P. HALLEY**

ATTORNEY AT LAW

297 MILL STREET  
POUGHKEEPSIE, N. Y. 12601  
(914) 432-9120  
FAX (914) 432-9192

August 29, 1994

VIA FAX 518-565-4777

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

RE: Matter of Patrick Nichols

Dear Ms. Clute:

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

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

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

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

**EXHIBIT** S

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

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

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

Thank you again for your continuing attention to this case.

Very truly yours,



THOMAS P. HADLEY

cc: Patrick Nichols  
146 Webster Street  
Malone, NY 12953

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

Full text in  
transcript box

COPY

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF FRANKLIN

Index No. 94-589

Patrick Nichols,

Petitioner,

NOTICE OF PETITION

-against-

Village of Malone,

Respondent.

FILED

OCT 21 1994

FRANKLIN COUNTY  
CLERK'S OFFICE

PLEASE TAKE NOTICE that upon the annexed petition of Patrick Nichols, verified on the 21 day of October 1994, and on all the administrative proceedings previously had herein, an application will be made to this court, at a term thereof, to be held at the Court House at Malone, New York, on the 23rd day of November 1994 at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for a judgment reversing and annulling the determination of the Village Board of the Village of Malone, made the 22nd of August 1994, pursuant to the provisions of Section 75 and Section 76 of the Civil Service Law of the State of New York, and granting such other and further relief as the court may deem just and proper.

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

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

October 25, 1994

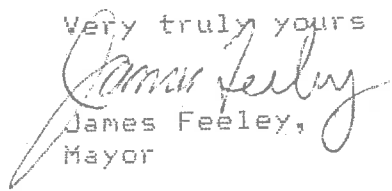
Brian Stewart, Esq.  
31 Elm Street  
Malone, New York 12953

Dear Brian:

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

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

Very truly yours

  
James Feeley,  
Mayor

JF/cdy

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

BRYAN J. HUGHES  
BRIAN S. STEWART

Telephone: (518) 483-4330

Fax: (518) 483-4005

October 25, 1994

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

RE: NICHOLS VS. VILLAGE OF MALONE

Dear Jim:

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

Very truly yours,

HUGHES & STEWART, P.C.

  
Brian S. Stewart

BSS/new  
Enc.



State of New York  
County of Franklin Supreme Court

Patrick Nichols,

Petitioner,

v.

Village of Malone,

Respondent.

Verified Answer to Petition

Index No. 93-755

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

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

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

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

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

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

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

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

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

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

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

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

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

#### FIRST OBJECTION IN POINT OF LAW

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

#### SECOND OBJECTION IN POINT OF LAW

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

#### THIRD OBJECTION IN POINT OF LAW

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

#### FOURTH OBJECTION IN POINT OF LAW

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

→ The Village of Malone released the decision to the media room after receiving it because office Nichols specifically ~~requested~~ <sup>demanding</sup> in writing that all aspects of this case be made public. This release was made pursuant to inquiry from the media.

FIFTH OBJECTION IN POINT OF LAW

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

SIXTH OBJECTION IN POINT OF LAW

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

SEVENTH OBJECTION IN POINT OF LAW

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

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

EIGHTH OBJECTION IN POINT OF LAW

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

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

NINTH OBJECTION IN POINT OF LAW

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

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

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

Dated:

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

TO:

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

#### VERIFICATION

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

VILLAGE OF MALONE

Dated:

by

\_\_\_\_\_  
MAYOR JAMES FEELEY

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_.

\_\_\_\_\_  
Notary Public

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

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

BRYAN J. HUGHES  
BRIAN S. STEWART

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

October 28, 1994

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

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

Dear Tom:

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

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

Very truly yours,

HUGHES & STEWART, P.C.

  
Brian S. Stewart

BSS/mew  
Enclosures

cc: Mayor James Feeley

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

BRYAN J. HUGHES  
BRIAN S. STEWART

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

November 1, 1994

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

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

Dear Sirs:

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

Very truly yours,

HUGHES & STEWART, P.C.

  
Brian S. Stewart

BSS/mew  
Enclosures

cc: Thomas P. Halley, Esq.

Full text in  
transcript  
Box (#1)

State of New York  
County of Franklin      Supreme Court

Patrick Nichols,

Petitioner,

v.

Village of Malone,

Respondent.

Verified Answer to Petition

Index No. 93-755

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

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

Full text in  
transcript Box (#1)

STATE OF NEW YORK  
COUNTY OF FRANKLIN

VILLAGE OF MALONE

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

Village of Malone,

Complainant,

-against-

Patrick Nichols,

Respondent.

Representing the Village of Malone:

BRIAN S. STEWART, ESQ.  
31 Elm Street  
Post Office Box 788  
Malone, New York 12953

Representing the Respondent:

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

ARTICLE 75 PROCEEDING,

in the above matter, held at the Malone Village Offices,  
Malone, New York, on the 16th day of June, 1994,  
before JOHN H. LAWLISS, Designated Hearing Officer.

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

11 Main Street

PO Box 762

Canton, New York 13617

(315) 379-9216

Watertown - (315) 786-DEPO

\*\* COPY \*\*



Honesty

Integrity

Experience

# Lawliss Investigative Agency

Full text in  
transcript  
Box (#1)

July 28, 1994.

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

Re: Village of Malone v. Patrick Nichols

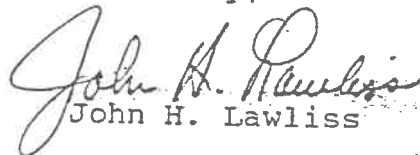
Dear Mayor Feeley:

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

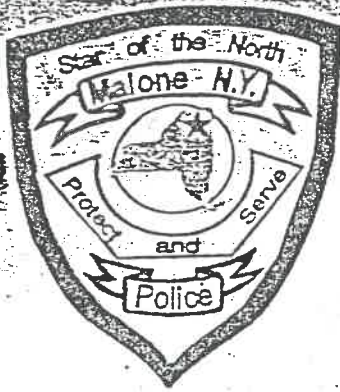
Also please find my bill for services rendered.

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

Sincerely,

  
John H. Lawliss

Enclosures  
JHL/lms



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

See 7/29/94 for  
full text

(518) 483-2424

(518) 483-2426 FAX

James E. Phillips  
Chief of Police

PATRICK NICHOLS

PERSONNEL FILE

Full text  
in transcript  
Box (#1)

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

-----  
Village of Malone,

Complaint,

-against-

Patrick Nichols,

Respondent.  
-----

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

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

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

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

RESOLUTION - SETTING PENALTY

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

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

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

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

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

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

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

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

Ayes 4

Nayes 0

RESOLUTION HEREBY ADOPTED

Elizabeth J. Bessette  
Elizabeth J. Bessette  
Village Clerk

I, Elizabeth J. Bessette, Village Clerk of the Village of Malone, do hereby certify that the foregoing is a true and correct copy, and the whole thereof, of a resolution adopted at a meeting of the Village Board of Trustees held August 22, 1994.

SEAL

Elizabeth J. Bessette  
Elizabeth J. Bessette  
Village Clerk

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

BRYAN J. HUGHES  
BRIAN S. STEWART

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

November 10, 1994

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

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

Dear Judge Plumadore:

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

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

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

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

Very truly yours,

HUGHES & STEWART, P.C.

*Brian S. Stewart*  
Brian S. Stewart

BSS/mew  
Enclosures

Full text in  
transcript  
Box (#1)

State of New York  
County of Franklin      Supreme Court

Patrick Nichols,

Petitioner,

v.

Village of Malone,

Respondent.

Verified Answer to Petition

Index No. 93-755

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

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

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

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

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

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

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

Full text in  
transcript Box (#1)

STATE OF NEW YORK  
COUNTY OF FRANKLIN

VILLAGE OF MALONE

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

Village of Malone,

Complainant,

-against-

Patrick Nichols,

Respondent.

Representing the Village of Malone:

BRIAN S. STEWART, ESQ.  
31 Elm Street  
Post Office Box 788  
Malone, New York 12953

Representing the Respondent:

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

ARTICLE 75 PROCEEDING,

in the above matter, held at the Malone Village Offices,  
Malone, New York, on the 16th day of June, 1994,  
before JOHN H. LAWLISS, Designated Hearing Officer.

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

PO Box 762  
Canton, New York 13617  
(315) 379-9216  
Watertown - (315) 786-DEPO  
\*\* COPY \*\*



Honesty

Integrity

Experience

# Lawliss Investigative Agency

Full text in  
transcript  
Box (#1)

July 28, 1994.

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

Re: Village of Malone v. Patrick Nichols

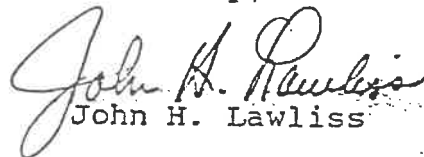
Dear Mayor Feeley:

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

Also please find my bill for services rendered.

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

Sincerely,

  
John H. Lawliss

Enclosures

JHL/lms

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

RESOLUTION - SETTING PENALTY

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

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

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

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

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

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

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

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

Ayes 4

Nayes 0

RESOLUTION HEREBY ADOPTED

Elizabeth J. Bessette  
Elizabeth J. Bessette  
Village Clerk

I, Elizabeth J. Bessette, Village Clerk of the Village of Malone, do hereby certify that the foregoing is a true and correct copy, and the whole thereof, of a resolution adopted at a meeting of the Village Board of Trustees held August 22, 1994.

SEAL

Elizabeth J. Bessette  
Elizabeth J. Bessette  
Village Clerk

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

### RESOLUTION - FINDING GUILT

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

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

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

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

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

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

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

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

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

EXHIBIT

U

and therefore he is

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

At a meeting of the Village Board of the Village of Malone, held on the 17th day of August, 1994, the following resolution was adopted:

RESOLUTION HEREBY ADOPTED

Elizabeth J. Bessette  
Elizabeth J. Bessette  
Malone Village Clerk

I, Elizabeth J. Bessette, Village Clerk of the Village of Malone, do hereby certify that the foregoing is a true and correct copy, and the whole thereof, of a resolution adopted at a meeting of the Village Board of Trustees held August 22, 1994.

SEAL

Elizabeth J. Bessette  
Elizabeth J. Bessette  
Malone Village Clerk

THOMAS P. HALLEY

ATTORNEY AT LAW

August 19, 1994

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

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

RE: Village of Malone v Patrick Nichols

Gentlemen:

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

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

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

EXHIBIT 1

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

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

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

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

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

"Q. Have you ever been arrested?

A. Yes. I have.

Q. For what?

A. Disorderly conduct.

Q. Anything else?

A. Not that I can recall.

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

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

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

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

"A. I asked what the petition was about.

Q. Okay. What did he say to you?

A. Read it.

Q. Any what did you say?

A. I read it.

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



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

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

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

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

A. Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,



THOMAS P. HALLEY

cc: Patrick Nichols  
146 Webster Street  
Malone, NY 12953

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

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

BRYAN J. HUGHES  
BRIAN S. STEWART

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

June 20, 1994

Mayor James Feeley  
16 Elm Street  
Malone, New York 12953

Dear Jim:

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

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

Very truly yours,

HUGHES & STEWART, P.C.

  
Brian S. Stewart

BSS/mew  
enc.



# REGIONAL

PAGE D-1  
THURSDAY, AUGUST 4, 1994

## Hearing officer: Fire Malone patrolman

By ALISON CALKINS  
Staff Writer  
Malone Bureau

**MALONE** — The Malone police officer suspended twice for breaking department rules should be fired, according to the findings of the latest hearing.

Patrolman Patrick Nichols was suspended last year for violating departmental rules after reporting the alleged mistreatment of a prisoner in police custody.

After a hearing in which Hearing Officer Brian McKee recommended that Nichols be given a job other than in the Police Department — or be fired if that was impossible — Nichols was returned to duty in the Police Department by the Village Board.

Then, on March 17, 1994, he was suspended again on charges that included breaking departmental regulations for talking to the press without

permission, and for being untruthful about a petition he was circulating in his own support.

The second hearing was conducted by Hearing Officer John Lawliss, who recommended that Nichols be fired.

In his report, Lawliss wrote that Nichols's actions "show a pattern of ongoing disregard for authority . . . a blatant disregard for authority . . . indicating that he seems more interested in his own image, in the community than that of the department's . . . (and that) he obviously is not concerned about the consequences of his actions as they pertain to the overall reputation of his department."

Lawliss wrote that some of Nichols's fellow officers voiced concerns that if Nichols returned to duty, "it would have a serious negative impact on the morale of the department which would adversely affect its service to the public."

The fate of Nichols's employment now rests

again with the Village Board. It is expected to announce its decision during an Aug. 22 meeting.

Last year, Nichols was elected to the Malone Town Board where he is currently serving.

Nichols's attorney, Thomas Halley, said the second hearing was as much a travesty of justice as the first. He said the Village Board's decision will affect what happens next.

"If they decide to fire Pat, then we will take them to court in State Supreme Court for a review of the board's determination. But regardless of what the village does, we will begin litigation in Federal District Court in Albany on a number of civil rights violations and federal statutory violations," Halley said.

He also explained that the action in federal court would not be against the Village Board, but would be against various individuals involved in violating Nichols's rights.

Halley said he believed the worst travesty in the

latest hearing was that Lawliss apparently made some decisions early on in the hearing.

Halley specifically referred to the transcript of the proceedings in which Lawliss said, "... If Officer Nichols does go back to work it's just going to create havoc in the department as far as the other people being named here ... if he does go back to work ... it's going to create all kinds of problems."

What's troubling, according to Halley, is that Lawliss made that decision after hearing testimony from the first witness — Malone Police Chief James Phillips — and without hearing any other witnesses.

"The man had already made up his mind before he heard any testimony. It's obvious that Pat will never get a fair hearing in Malone. So we're going to take it outside the village and the county to make sure he does," Halley said.

Nichols refused comment on the advice of his attorney, but said he is curious as to what the decision of the Village Board will be.

Honesty

Integrity

Experience

# Lawliss Investigative Agency

Full text in  
transcript box

July 28, 1994.

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

Re: Village of Malone v. Patrick Nichols

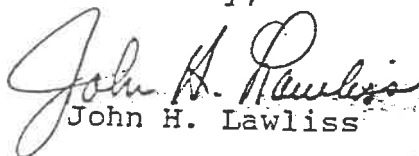
Dear Mayor Feeley:

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

Also please find my bill for services rendered.

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

Sincerely,

  
John H. Lawliss

Enclosures

JHL/lms



*Village of Malone New York*

16 Elm Street  
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

July 29, 1994

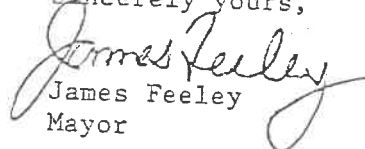
Thomas P. Halley  
297 Mill Street  
Poughkeepsie, New York 12601

Dear Mr. Halley:

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

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

Sincerely yours,

  
James Feeley  
Mayor

JF/cdy.

Encs.

\*\*Original Mailed 7/29/94

Copy Faxed 7/29/94

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

BRYAN J. HUGHES  
BRIAN S. STEWART

Telephone: (518) 483-4330

Fax: (518) 483-4005

July 29, 1994

VIA FAX TRANSMISSION

THOMAS P. HALLEY, ESQ.

Attorney at Law

297 Mill street

Poughkeepsie, New York 12601

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

Dear Tom:

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

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

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

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

sed a marked intersection  
imes or over an extreme  
In the special circum-  
se, the drivers' familiarity  
egligence by the municipi-  
ing additional warnings.  
s of the present case do  
treatment.

ntiff presented evidence  
rt a determination that:  
tted installing a needed  
eckliff Place without an  
a reasonable basis; the  
o stop at the proper point  
ewart Avenue; and that  
have been averted had a  
place. Insofar as there  
ice to the contrary, these  
stions of fact for resolu-

order of the Appellate  
e affirmed, with costs.

dissenting).

the order of the Appel-  
etting aside, as a matter  
of liability against the  
the reason stated in the  
and dissenting in part  
e John T. Casey (100  
668, 473 N.Y.S.2d 864)  
ld be said that in failing  
gn or warning sign the  
duty owed to plaintiff,  
ce from which the jury  
conclude that such a  
imate cause of the acci-  
*Atkinson v. County of*  
l 840, 843, 464 N.Y.S.2d  
4.)

ITLER, MEYER, SI-  
YE, JJ., concur with

nts and votes to reverse  
on.  
with costs.

63 N.Y.2d 473 BIGELOW v. BD. OF TRUSTEES OF INC. VILLAGE  
Cite as 483 N.Y.S.2d 173 (Cl.App. 1984)

173

472 N.E.2d 1001

63 N.Y.2d 470

1470 In the Matter of Kevin D.  
BIGELOW, Appellant,

v.

BOARD OF TRUSTEES OF the INCOR-  
PORATED VILLAGE OF  
GOUVERNEUR, Respondent.

Court of Appeals of New York.

Nov. 20, 1984.

Appeal was taken from a judgment of  
the Supreme Court, Special Term, St. Law-  
rence County, Carroll S. Walsh, Jr., J., dis-  
missing petition to annul determination dis-  
missing employee from service as police  
officer. The Supreme Court, Appellate Di-  
vision, 98 A.D.2d 933, 470 N.Y.S.2d 925,  
affirmed, and permission to appeal was  
granted. The Court of Appeals, Jones, J.,  
held that after a civil service employee has  
been found guilty of misconduct, and be-  
fore public employer considers material in-  
cluded in employee's employment record in  
determining an appropriate sanction, em-  
ployee must be given notice of data to be  
considered and an opportunity to submit a  
written response relative to such informa-  
tion.

Reversed and remitted.

1. Officers and Public Employees  $\S$ 72(1)

In determination of an appropriate  
sanction for a proved present act of mis-  
conduct, a public employee's past history  
contained in a departmental file, including  
both material which is commendatory and  
that which reflects unfavorably on employ-  
ee, is relevant and appropriately taken into  
account.

2. Officers and Public Employees  $\S$ 69.8

After a civil service employee has been  
found guilty of misconduct, and before  
public employer considers material included  
in employee's employment record in deter-  
mining an appropriate sanction, employee  
must be given notice of data to be con-

sidered and an opportunity to submit a  
written response relative to such informa-  
tion.

1472 Thomas J. Snider, Massena, for appellant.  
Robert J. Leader, Carmel, for respon-  
dent.

OPINION OF THE COURT

JONES, Judge.

After a civil service employee has been  
found guilty of misconduct the public em-  
ployer may consider material included in  
the employee's employment record in deter-  
mining an appropriate sanction; however,  
the employee must first be given notice of  
the data to be considered and an opportuni-  
ty to submit a written response relative to  
such information.

By this article 78 proceeding petitioner  
employee challenges his dismissal by re-  
spondent Village Board from a position as  
village police officer after a departmental  
hearing pursuant to section 75 of the Civil  
Service Law on five charges that had been  
lodged against him. The hearing officer  
had exonerated petitioner of four of the  
charges but found him guilty of the fifth  
involving issuance of a bad check. Noting  
that the record before him was silent as to  
petitioner's employment record, he had rec-  
ommended that a 30-day suspension with-  
out pay be imposed as a sanction.

The Village Board, after reviewing a  
transcript of the hearing, adopted the find-  
ings of fact made by the hearing officer 1473  
and found petitioner guilty of the bad  
check charge. In connection with fixing  
the penalty, however, without notice to the  
officer it also reviewed his record of em-  
ployment maintained by the Chief of Police,  
which included documents disclosing that a  
charge of violation of the Conservation  
Law on July 15, 1975 had been compro-  
mised by petitioner's payment of a fine and  
that, with respect to two charges of disobe-

dience of an order and dereliction of duty on May 2, 1980, petitioner had waived the right to a hearing and accepted a sanction of temporary loss of duty without pay. The notice of determination thereafter issued by the Board advised petitioner of the Board's acceptance of the hearing officer's findings and of its own finding of guilt and stated that "after reviewing your record of employment in connection with fixing a penalty" it was imposing a punishment of dismissal.

Petitioner thereafter instituted this article 78 proceeding to annul his dismissal, challenging the action of the Board in inspecting his personnel file and considering its contents in imposing the penalty that it did. Supreme Court found no impropriety on the part of the Board, noting that the employment record had been considered by neither the hearing officer nor the Board in the determination of petitioner's guilt and that consideration of the contents of such record was permissible for determination of an appropriate penalty for the proved charge. Rejecting a claim by petitioner that the penalty was irrational, arbitrary and capricious, the court observed that, even without resort to petitioner's employment record, the penalty imposed was rational.

The Appellate Division, 98 A.D.2d 933, 470 N.Y.S.2d 925, affirmed Special Term's dismissal of the petition, casting doubt on the propriety of the Board's examination of the contents of petitioner's employment record without its having been introduced at the hearing or petitioner having been given an opportunity to respond to its contents, but concluding that, because the penalty imposed was appropriate for the violation established "regardless of petitioner's prior employment record" (98 A.D.2d, at p. 934, 470 N.Y.S.2d 925), remittal for reconsideration of the penalty was unnecessary. On petitioner's appeal by our leave, we reverse.

<sup>1474</sup> [1] It must be observed at the outset that this is not an instance in which material outside the record of the disciplinary hearing was considered in the adjudicatory

determination of petitioner's guilt—the practice that we condemned in *Matter of Simpson v. Wolansky*, 38 N.Y.2d 391, 380 N.Y.S.2d 630, 343 N.E.2d 274. Here, recourse to petitioner's employment record maintained by the Chief of Police was had—and properly so—only after there had been a decision, based on the hearing transcript, that the police officer's misconduct had been established. In the determination of an appropriate sanction for a proved present act of misconduct an employee's past history contained in the departmental file, including both material which is commendatory and that which reflects unfavorably on the employee, is relevant and appropriately taken into account (*Matter of Gibides v. Powers*, 45 N.Y.2d 994, 413 N.Y.S.2d 115, 385 N.E.2d 1043; *Matter of Bal v. Murphy*, 43 N.Y.2d 762, 401 N.Y.S.2d 1011, 372 N.E.2d 799; *Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 240, 356 N.Y.S.2d 833, 313 N.E.2d 321). Accordingly, in the present case the Village Board was entitled, and in the responsible discharge of its duty it might even be said required, to give attention to the documents disclosing earlier dispositions of charges of violation of statute and of misconduct in connection with petitioner's employment.

[2] Fundamental fairness to petitioner (although not rising to the dignity of constitutional entitlement), as well as regard for the integrity of the Board's consideration of his employment record, however, required that examination of the documents in his file not be ex parte. Petitioner should have been informed of the adverse material which was contained in his personnel file prior to the Board's determination of sanction and at a time sufficient to have permitted him an opportunity to furnish to the Board a written response. Such notice to an employee for whom discipline is impending will permit discovery of any error in the compilation of the employment record as well as afford the employee an opportunity to put before the disciplining body any relevant ameliorating data so as to assure that the body is in a position to

make a considered judgment as to the chance to be attached to the incidents. In the present case, petitioner does not dispute the accuracy of the documents contained in his personnel file or the dispositions of the charges against him; the question is not necessarily whether every disciplined employee, ever, seek to tender material in mitigation, i.e., the reason for his dismissal. The basis of the charge is the Violation of Conservation Law. Whether or not discipline is a matter which would offer challenge to the Board is not in his file or would require prior notice of the matter. The matter would in either event

In a somewhat similar case, in the interest of non-arbitrary mental fairness, encourage the Board to enter a sentence in a case. *Pelle v. Perry*, 36 N.Y.2d 518, 324 N.E.2d 310, § 1, amdg CPL 3.

Because such prior notice is required in petitioner's case, the Board is entitled to respond to Village Board's procedure with the procedure to afford petitioner an opportunity to respond to the responsive submission failing to have given the content of his petition disregarded, as the Board suggested because in it which petitioner had self provided adequate material irrespective of his personnel file. There can be no assumption that the Board, which was not in substance with authority to impose a sanction, would in the face of whatever might have furnished data included in his personnel file or the material of the matter exercise of its judgment required (*Matter of Co. v. State Lig. A.* 41 N.Y.S.2d 969, 462 )

petitioner's guilt—the  
 idemned in *Matter of*  
*y*, 38 N.Y.2d 391, 380  
 .E.2d 274. Here, re-  
 s employment record  
 Chief of Police was  
 —only after there had  
 l on the hearing tran-  
 officer's misconduct  
 In the determination  
 nction for a proved  
 nduct an employee's  
 l in the departmental  
 aterial which is com-  
 hich reflects unfavor-  
 is relevant and ap-  
 account (*Matter of*  
 N.Y.2d 994, 413 N.Y.  
 1043; *Matter of Bal*  
 1 762, 401 N.Y.S.2d  
*Matter of Pell v.*  
 .Y.2d 222, 240, 356  
 2d 321). According-  
 e the Village Board  
 the responsible dis-  
 might even be said  
 ention to the doc-  
 ller dispositions of  
 statute and of mis-  
 with petitioner's em-

ness to petitioner  
 he dignity of consti-  
 well as regard for  
 ard's consideration  
 ord, however, re-  
 of the documents  
 parte. Petitioner  
 ed of the adverse  
 ined in his person-  
 ard's determination  
 sufficient to have  
 unity to furnish to  
 onse. Such notice  
 m discipline is im-  
 very of any error  
 the employment  
 the employee an  
 e the disciplining  
 urating data so as  
 is in a position to

## MATTER OF JULIUS P.

Cite as 483 N.Y.S.2d 175 (Cl.App. 1984)

make a considered judgment of the signifi-  
 cance to be attached to prior, unfavorable  
 incidents. In the present case, petitioner  
 does not dispute the accuracy of the doc-  
 uments contained in his file which record  
 the dispositions of the 1975 and 1980  
 1475 charges against him; this of course would  
 not necessarily be so in the instance of  
 every disciplined employee. He does, how-  
 ever, seek to tender matter in mitigation—  
 i.e., the reason for his conduct which was  
 the basis of the charge of violation of the  
 Conservation Law. Whether an employee  
 on whom discipline is about to be imposed  
 would offer challenge to the records includ-  
 ed in his file or would submit mitigating  
 information concerning the data contained,  
 prior notice of the material to be considered  
 would in either event be a prerequisite.

In a somewhat similar context we have,  
 in the interest of nonconstitutional funda-  
 mental fairness, encouraged disclosure of  
 matter that may enter into the determina-  
 tion of a sentence in a criminal action (*Peo-  
 ple v. Perry*, 36 N.Y.2d 114, 120, 365 N.Y.  
 S.2d 518, 324 N.E.2d 878; cf. L.1975, ch.  
 310, § 1, amdg CPL 390.50).

Because such prior notice was lacking in  
 petitioner's case, the matter must be remit-  
 ted to respondent Village Board for compli-  
 ance with the procedure here described and  
 to afford petitioner opportunity for a writ-  
 ten responsive submission. The error in  
 failing to have given petitioner notice of  
 the content of his personnel file cannot be  
 disregarded, as the court below has sug-  
 gested because in its view the charge of  
 which petitioner had been found guilty it-  
 self provided adequate basis for dismissal  
 irrespective of his employment record.  
 There can be no assurance that the Village  
 Board, which was vested in the first in-  
 stance with authority to select an appropri-  
 ate sanction, would have imposed dismissal  
 in face of whatever submission petitioner  
 might have furnished with respect to the  
 data included in his personnel file. A re-  
 mittal of the matter to that body for the  
 exercise of its judgment is therefore re-  
 quired (*Matter of Admiral Wine & Liq.*  
*Co. v. State Liq. Auth.*, 61 N.Y.2d 858, 473  
 N.Y.S.2d 969, 462 N.E.2d 146; cf. *Matter*

*of von Wiegen*, 63 N.Y.2d 163, 481 N.Y.  
 S.2d 40, 470 N.E.2d 838).

Accordingly, the order of the Appellate  
 Division should be reversed, with costs, and  
 the case remitted to Supreme Court with  
 direction to return it to the Village Board  
 for determination of an appropriate penalty  
 in accordance herewith.

COOKE, C.J., and JASEN, WACHTLER,  
 MEYER, SIMONS and KAYE, JJ., concur.

1476 Order reversed, with costs, and matter  
 remitted to Supreme Court, Essex County,  
 with directions to return it to the Village  
 Board for further proceedings in accord-  
 ance with the opinion herein.



472 N.E.2d 1003

63 N.Y.2d 477

1477 In the Matter of JULIUS P.

Monroe County Department of Social  
 Services, Respondent.

Margaret P., Appellant.

Court of Appeals of New York.

Nov. 27, 1984.

County department of social services  
 brought proceeding to terminate natural  
 mother's parental rights to her child on  
 basis of abandonment. The Family Court,  
 Monroe County, Leonard E. Maas, J., dis-  
 missed the petition, and the Supreme  
 Court, Appellate Division, 100 A.D.2d 741,  
 473 N.Y.S.2d 633, reversed. On appeal, the  
 Court of Appeals, Simons, J., held that: (1)  
 evidence supported finding that natural  
 mother had abandoned her child, and (2)  
 agency had no obligation to encourage con-  
 tact between parent and child.

Affirmed.

July 8, 1994

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

RE: Matter of Patrick Nichols

Dear Ms. Clute:

Thank you for your letter of June 29, 1994.

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

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

Very truly yours,

THOMAS P. HALLEY

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

EXHIBIT *P*

CLINTON COUNTY DISTRICT ATTORNEY

PENELOPE D. CLUTE

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



ASSISTANT DISTRICT ATTORNEYS

Catherine M. Paul  
Joseph Lavorando  
Thomas M. Murnane  
Oliver L. Bickel

JUL 0 8 1994

June 29, 1994

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

RE: Patrick Nichols

Dear Mr. Halley:

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

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Penelope D. Clute", is written over a faint, larger version of the same signature.

Penelope D. Clute  
Special Prosecutor  
for Franklin County

encl.

EXHIBIT 0

CLINTON COUNTY DISTRICT ATTORNEY

PENELOPE D. CLUTE

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



ASSISTANT DISTRICT ATTORNEYS

Catherine M. Paul  
Joseph Lavorando  
Thomas M. Murnane  
Oliver L. Bickel

JUL 06 1994

June 29, 1994

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

RE: Patrick Nichols

Dear Mr. Halley:

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

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

Sincerely,

Penelope D. Clute  
Special Prosecutor  
for Franklin County

encl.

EXHIBIT ○



**HUGHES & STEWART, P. C.**

Attorneys and Counselors at Law

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

BRYAN J. HUGHES  
BRIAN S. STEWART

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

July 6, 1994

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

RE: MALONE VS. PATRICK NICHOLS

Dear Tom:

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

Very truly yours,

HUGHES & STEWART, P.C.

Brian S. Stewart

BSS/mew

cc: Jack Lawliss

**THOMAS P. HALLEY**

ATTORNEY AT LAW

July 8, 1994

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

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

RE: Village of Malone v Nichols

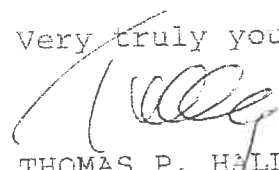
Dear Mr. Stewart:

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

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

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

Very truly yours,



THOMAS P. HALLEY

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

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

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

BRYAN J. HUGHES  
BRIAN S. STEWART

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

July 14, 1994

JOHN LAWLISS  
162 Margaret Street  
Plattsburgh, New York 12901

Re: Village of Malone vs. Patrick Nichols

Dear Mr. Lawliss:

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

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

With best personal regards, I remain,

Very truly yours,

HUGHES & STEWART, P.C.

BRIAN S. STEWART

BSS/ajs

Encl.

c.c.: Thomas P. Halley  
James Feeley

THOMAS P. HALLEY  
ATTORNEY AT LAW

July 8, 1994

received  
7-8-94

887 MILL STREET  
POUGHKEEPSIE, N. Y. 12601  
(914) 462-0180  
FAX (914) 462-0182

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

RE: Village of Malone v Nichols

Dear Mr. Stewart:

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

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

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

Very truly yours,

  
THOMAS P. HALLEY

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

# *Village of Malone New York*

16 Elm Street  
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

June 23, 1994

[REDACTED]  
Malone, New York 12953

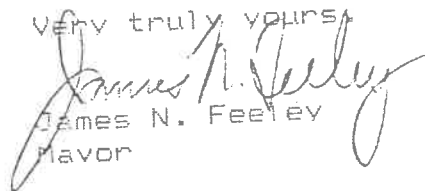
Dear Mr. Vensel:

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

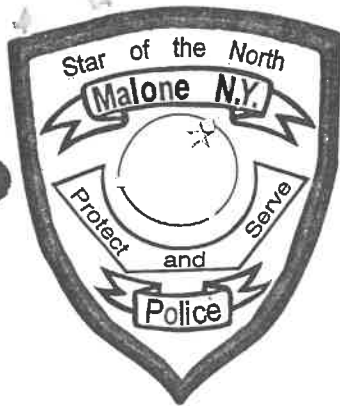
Both Brian Stewart and I informed counsel to Patrick Nichols of the impending extension of the unpaid suspension. The extension was a result of the unilateral request of Attorney Thomas Halley for an adjournment of the hearing date. Mr. Halley agreed to all conditions and was mailed two letters regarding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

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

Very truly yours,

  
James N. Feeley  
Mayor

JNF:ejb



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

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

James E. Phillips  
Chief of Police

**Release of Personnel Records**

I, Patrolman Stephen J. Stone, am a permanent Civil service Employee for the Village of Malone Police Department. I'm aware that under Civil Service Privacy Laws, the contents of my personnel file can not be released without a court order to anyone outside my immediate employer with out my permission.

In July 1993, I was given a letter of reprimand for an incident that took place at the K of C on Elm St. This letter was placed in my file for one year and has since been removed.

I give Chief James E. Phillips permission to give copies of the investigative report and all paperwork concerning this incident to the Clinton County District Attorney's Office for what ever purpose they may serve.

12-17-95  
Date

*Stephen J. Stone*  
Patrolman Stephen J. Stone

12-17-95  
Date

*[Signature]*  
Witness

3370

## OFFENSE REPORT

Complainant Karon Russell

Case No. \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Offense Personnel Comp.

Place of Occurrence \_\_\_\_\_

Report received by GKM at 2140 M. Date 06-01 19 93 How reported phoneDate and time offense committed \_\_\_\_\_ Officer Assigned A/C Moll

Time of investigation \_\_\_\_\_ M. Date \_\_\_\_\_

Suspects and/or persons arrested \_\_\_\_\_

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

Comp. is regards to CR# 3366 (motor vehicle) involving Jack Russell and Ptl. Nichols. Jack Russell and Karon Russell wished to file statements against Ptl. Nichols for his conduct while handling the complaint. Statements taken from both the Russell's and their employee, Raymond Gero. Will follow up 06-05-93.

GKM

Completed statements and reviewed CR filed by Ptl. Nichols at 0200 Hrs. Interviewed Ptl. Stone and he typed out his own statement, completed at 0345. Will interview Ptl. Nichols and follow up when I return from days off. 06-05-93.

GKM

06-15-93 Interviewed Ptl. Nichols (see statement for details) He figured Bingo was letting out very soon and when second call came in, there were many people in the area when they arrived the second time.

06-15-93 Interviewed Lee LaFleur, he could not hear any of the comments Russell made but heard Ptl. Nichols state " If you don't shut up I'm going to arrest you" LaFleur felt that the police were there because he was blocking the driveway and figured he had to move. He was advised that he could park there providing that he

REPORT MADE BY \_\_\_\_\_

Date \_\_\_\_\_

# SUPPLEMENTARY REPORT

NO. \_\_\_\_\_

Classification \_\_\_\_\_

Name of Complainant \_\_\_\_\_

Address \_\_\_\_\_

Phone No. \_\_\_\_\_

Offense Karon Russell

\_\_\_\_\_

Personnel Comp. \_\_\_\_\_

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

Page No. two

Date 06-15 19 93

move the car if someone wanted to go in or out.

Went to K of C and looked over the parking area in question. Lee LaFleur physically showed the location of the vehicle and that it was blocking half of the driveway.

GKM

07-05-93 Chief Reviewed paperwork and concurred with my recommendation, he further requested that I talk with the officers involved as he is currently on sick leave due to a back injury.

GKM

07-06-93 Reviewed paperwork with Chief and Mayor Feeley.

GKM

07-07-93 0400 Hrs. Talked with Ptl. Nichols and advised him of the personnel complaint again and further that there were four rules that were violated. Verbally went over each rule and Ptl. Nichols had a hard time understanding why we felt the rules were violated. He further gave the indication that he will dispute the findings and having a letter placed in his file. He was advised to review the procedure and was given a copy of his statement.

GKM

07-07-93 Interviewed Deny Lefebvre 15 Williams St. 483-6342. Lefebvre was the other PDQ Cab driver. (see statement for details) Lefebvre stated that he had a 15 year old female in her cab at the time of the incident. This girl started crying and was scared because of Russell's actions.

GKM

INVESTIGATING OFFICER(S) \_\_\_\_\_

26 REPORT MADE BY \_\_\_\_\_

DATE \_\_\_\_\_

27 CASE FILED

28 THIS CASE IS

Active ☐ 29 APPROVED BY

Yes ☐ No ☐

Cleared by arrest ☐

Unfounded ☐

Inactive ☐

Other ☐



VILLAGE OF MALONE POLICE DEPT.

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

TO: Chief James Phillips ADDRESS: \_\_\_\_\_  
DATE: 06-02-93 SUBJECT: Personnel Complaint

Chief,

I have not completed the Personnel Complaint against Ptl. Nichols. Four Statements were taken and I will complete it when I go on Mornings. Needless to say, Jack Russell was well advised NOT to go to your residence or to call you at home if something like this happens again.

SIGNED: A/C Moll

3366

## OFFENSE REPORT

Complainant K of C Malone Case No. \_\_\_\_\_Address Elm St. Phone \_\_\_\_\_Offense Motor Vehicle Place of Occurrence \_\_\_\_\_Report received by GKM at 2134 M. Date 06-01 19 93 How reported phoneDate and time offense committed \_\_\_\_\_ Officer Assigned Stone/ Nichols

Time of investigation \_\_\_\_\_ M. Date \_\_\_\_\_

Suspects and/or persons arrested \_\_\_\_\_

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

Patrol was dispatched to the K of C on Elm St. to investigate a car blocking a driveway. Upon arrival spoke with Lee Lafleur of P.D.Q. taxi who was parked on the street. His vehicle was parked facing east with the rear of the car at the edge of the driveway to the K of C. He stated he did not call us but that maybe Jack Russell of Adirondack Taxi did. AS I was speaking with Lafleur I observed a second PDQ cab parked in the driveway and across the sidewalk facing the street. Also noticed two Adirondack cabs beside the PDQ cab. The two adirondack cabs were also in the driveway and behind one another. I then approached Jack Russell and asked him if he called at which time he said yes a began to demand that the cabs from P.D.Q. be ordered to move as one was parked in the driveway and on the sidewalk. I told Jack that as long as the PDQ cabs moved when someone was gaining access or leaving or walking on the sidewalk that they were fine where they were unless a represntative from the K of C wanted them out. At the time I was explaining this to Russell there were drivers in both of the PDQ cabs and none in Russell's cabs. I then advised the PDQ cab in the driveway that they would have to allow pedestrians to walk on the sidewalk. He was also told that if someone from the K of C wanted them to move they would have to. I went into the K of C and found BINGO in process and noone free to speak with. AS I was entering the K of C Russell was loudly using obscene language as he was speaking to someone in a parked car. I advised him not to use anymore obscene language or he would be arrested for same. He stated he was talking to his wife. I repeated and added this was the last time I would tell him. No further complaints. Closed PMN

REPORT MADE BY \_\_\_\_\_ Date \_\_\_\_\_

In regards to a motor vehicle complaint received on June 1, 1993 at 2134 hrs.. Myself and Officer Stone responded to the K of C on Elm St. to investigate a car blocking a driveway. Upon arrival Officer Stone parked the patrol in the eastbound lane beside a P.D.Q. cab. We both exited the patrol. I interviewed the driver of the P.D.Q. cab Lee LaFleur. He said that he was not the one that called but maybe Jack Russel of Adirondack cab called. At the time I was speaking to LaFleur I observed another P.D.Q. cab parked in the driveway facing Elm St. and same was partially on the sidewalk. The driver was in the car. I also noticed two adirondack cabs parked on the east side of the P.D.Q. cab facing the same direction and were also in the driveway. There were no drivers in the Adirondack cab. I then turned and approached Officer Stone and Jack Russell. I asked Jack if he wanted us at which time he began demanding that the P.D.Q. cabs be ordered to move as one was blocking the driveway and on the sidewalk. I asked Jack if he was the one that called and he said yes. I explained to him I would tell the cab drivers that if someone wanted to get in or out of the driveway they would have to move their cars but that I could not make them move if there was no one wanting to get in or out. I asked Jack if he was leaving and he said not until he gets his fares. Which I understood to be passengers. I then advised the P.D.Q. cabs of the matter. I told Officer Stone I would contact someone from the K of C to find out if they wanted the cabs out of the driveway. As I was walking to the K of C Officer Stone turned the car around to face West. I was walking up the stairs to the K of C at which time I heard Jack Russell using obscene language as he was speaking to someone in a very loud tone. Due to the many number of people in the area I advised Russell that he must stop yelling obscene language or it could result in his arrest./ He made another obscene comment at which time I advised him this was his last warning about the language. Once inside the K of C I could not get anyones attention due to BINGO. I walked out of the building and directly to the patrol car. About 3 or 4 minutes after departure we were advised to return. Upon arrival we spoke with Lee LaFleur at which time he stated that he was just harassed by Jack Russell and wanted us to know this because Russell had also made threats against members of the Police Dept.. Advised LaFleur we would make note of same. We then left for the final time.

A handwritten signature in dark ink, appearing to be "Peter Stone", is written over the bottom right portion of the typed text.

JUNE 1st 1993

While on patrol was dispatched to a vehicle blocking a driveway at the K of C on Elm St. Upon arrival saw three taxis in the driveway of the K. of C., two Adirondack and one P.D.Q. , only the P.D.Q taxi had a driver in it, this taxi was the closest to the street. There was another P.D.Q. taxi parked on the side of Elm St. but it was not blocking the driveway. Ptlm. Nichols and myself exited the patrol car and spoke first with the driver of the taxi parked on the side of Elm St. to see if he had called and he stated he had not. Also saw Jack Russell standing next to a car parked on Elm St. and asked if he had made the call, he stated yes that he could not get his taxi out because of the P.D.Q. taxi parked in the driveway. As we where speaking to Russell the P.D.Q. taxi pulled out of the driveway, asked Russell if he was going anywhere and he said not now but would when his fare came out. Advised Russell it was a private driveway and we could not issue any parking tickets and that all he had to do was asked them to move and they would have to. Spoke with the driver of the P.D.Q. taxi on the side of the street and he wanted to know if they could park there to pick up their fare. Advised them they could only do this if no one else was coming or going in the driveway and would have to move immediately if someone else came, at this point the taxi that had been parked there pulled back in, he was informed of what was said by radio from the driver we where speaking to. Russell was still standing a couple of car lengths down from our location and said " they never do anything for me, they never listen to me", advised Russell again that it was a private driveway and that we had not received any formal complaint form the owner yet. I then directed Ptlm. Nichols to check inside with someone from the K of C. as they had not yet come outside to speak with us. Ptlm. Nichols then walked towards the front doors and I went to move the patrol car out of traffic. Before leaving the driver of the P.D.Q. taxi parked on the side of the street, asked what to do if Russell came over to him as he was sure he would. Advised him to stay in his vehicle and not to exchange words but to call this dept. I then went up the street and turned the patrol car around and picked up Ptlm. Nichols, we had only reached Main St. when we where dispatched back to the scene for Russell harassing one of P.D.Q.s drivers. Responded back and spoke with the driver on the side of the street as the taxi that was in the driveway was gone, he said Russell had come over calling him and the other driver obscene names, and he wanted him to stop as this has been an ongoing problem. Advised him that there was not much we could do about name calling, and the driver said that everyone was leaving for tonight and he would speak with his boss later. Patrol headed down Elm St. and saw both Adirondack taxi headed same way and saw P.D.Q pulling away from K. of C. also.

Ptlm J.Q. Stone

VOLUNTARY STATEMENT

DATE: 06-02-93

TIME: 0025 HRS.

I, Raymond N. Gero, am 29 years of age and my address is [REDACTED]

I would like to state that I'm employed by Adirondack Taxi and was working on June 1st 1993. At about 9:10 pm. I brought my cab to the K of C because bingo was getting out. We do this every Tuesday. I parked my cab in the driveway off to the side so other vehicles could get by. Adirondack also had two other cabs at the K of C. One in front of me in the driveway and the other on Elm St. in front of the building. PDQ cab driver, Lee Lafleur, drove up and parked behind a vehicle that was parked in front of the K of C. The PDQ cab was blocking part of the driveway to the K of C. My boss, Jack Russell had a delivery to make but couldn't get out of the driveway without possibly causing some damage to the vehicles. Jack had the dispatch call the village police and they showed up. Officer Nichols got out of the patrol car and talked with Lee first. Officer Nichols then asked Jack if he called the police. Jack told him yes and that he needed the PDQ cab moved because he had a call. Officer Nichols told Jack that he had no business calling the police because Jack didn't own the K of C. The other officer stated that he was going to move the patrol car and told Officer Nichols to go inside. The patrol car pulled away, Jack and I were near the cab that was parked in the street. Officer Nichols walked towards the building and Jack was talking to his wife. Officer Nichols stopped near the top step of the K of C, turned around and said "if you don't watch your foul language, I will arrest you". Jack told Officer Nichols that he wasn't speaking to him that he was talking to his wife. Just before Officer Nichols turned and said this, Jack said to his wife, "I'm going to have this fucking thing checked out in the morning". Jack did not yell this. It was a tone of voice just like when you are talking to someone. After a short time the officers left the area and the PDQ cabs were still there blocking everyone in. People started walking out of the K of C and Lee started hollering at Jack Russell and challenging him to the fight. Lee was calling Jack a mother fucker. This was when there was about 20 to 30 people outside of the K of C. There was alot hollering between Jack and Lee. The PDQ cab that was backed in left the area. The police car returned after the hollering was over. It pulled along Lee Lafleur's cab and they talked to Lee. The police car then pulled away and the PDQ cab started to move. We then were able to drive away.

Affirmed under penalty of law this 1st day of June 1993

*Raymond N. Gero*

*AKC [Signature]*

VOLUNTARY STATEMENT

DATE: 06-01-93

TIME: 2330 HRS.

I, Karen Russell, am 34 years of age and my address is [REDACTED]  
[REDACTED]

I would like to state that I'm co-owner of Adirondack Taxi and on June 1st 1993 at about 9:00 pm. I brought my cab to the K of C because bingo was to be let out. I parked in front of the K of C on the side of the street. My husband and Raymond zero brought two other cabs to the K of C and parked them in the driveway. This is something that our taxi cabs do every night that K of C has bingo. When we park the cabs in the driveway, we pull to the far side so other vehicles can enter or exit. The K of C has never complained about this. Tonight PDQ Taxi brought two cabs to the K of C. One parked on the side of the street which was driven by Lee Lafleur. The other cab showed up and backed into the driveway on an angle. This cab blocked the driveway and across the sidewalk. My husband couldn't get his cab out of the driveway and he had a delivery to go on. We then had our dispatcher call the police and the Village Police arrived. One of the officers asked Jack if he called the police and we told him yes. Jack and Raymond went to Officer Nichols and I heard Officer Nichols say that Jack didn't own the driveway. Jack then came over to talk to me and the officers went and talked to the PDQ cab drivers. I think the PDQ cab backed up a little. Officer Nichols walked to the front of the K of C and was ready to go inside. Officer Nichols then turned around and he looked like he was upset and he hollered something at Jack. Jack didn't say anything to Officer Nichols before this, but was talking to me. After Officer Nichols hollered this to Jack, Jack told him that he was talking to his wife. I yelled the same thing but was not sure if the officer heard me. Officer Nichols then came back from the K of C, and the patrol car left the area. The PDQ cabs were still blocking the driveway and no vehicles including our two cabs were able to leave the K of C. Jack and Raymond started to go to their cabs and Lee Lafleur got out of his cab and tried to pick a fight with my husband. By that time the people were leaving the K of C. People got into the cabs Jack had to wait about five minutes before he could get out.

Affirmed under penalty of law this  
1st day of June 1993.

Karen Russell

VOLUNTARY STATEMENT

DATE: 06-01-93

TIME: 2225 HRS.

I, JACK RUSSELL AM 34 YEARS OF AGE, , MY ADDRESS  
IS [REDACTED]  
MY [REDACTED]

I would like to state that I own Adirondack Taxi and on June 1st 1993 at about 9:30 pm. I had three of my taxi cabs near the K of C because of Bingo. Every week I bring my taxi cabs to the K of C when bingo lets out. Many times I have parked my cabs on the east side of the driveway. The driveway is wide enough so we can park cabs in the driveway and vehicles can still exit or enter. Tonight I had two cabs in the driveway at that location and one cab parked on the side of the street in front of the K of C. PDQ Taxi then pulled a cab on the side of the street behind my cab, patially blocking the driveway and blocking both the cab in the street and the cab in the driveway. Another PDQ cab backed into the driveway on an angle, completely blocking the driveway and was also across the sidewalk. I then had my radio dispatcher notify the Police. Village Police arrived and Officer Nichols got out of the car and asked me if I called the police. I told him yes because my cars were blocked and we couldn't get out. Officer Nichols then told me that I didn't own the driveway or the road. The other officer told Officer Nichols that he had to move the patrol car because it was blocking traffic. Officer Nichols started to walk to the K of C and the other officer moved the patrol car. My wife was in the cab that was parked on Elm St. and we were discussing what was going on. I told my wife that I couldn't understand that nothing could be done because of the way PDQ parked their cabs. Officer Nichols was standing on the steps of the K of C and turned around and yelled to me, "watch your dirty mouth or I'm gonna arrest you like I did before". I then said "what for, putting in a complaint". Raymond Jeror and my wife was present when Officer Nichols said this.

The Officers left the area and the PDQ cabs were never moved and I was still blocked in. A short time later the officers came back. They pulled up along side of the PDQ cab that was parked in the street, stopped and the driver of the cab, Lee Lafleur, started yelling something. The police then pulled away and Lee started yelling at me and saying that I was a cop calling cock sucker. The police car was about 10 to 20 feet up the road when he said this. Lee then threatened to punch me in the mouth. About five minutes later the PDQ cab finally moved so I could pull from the driveway.

AFFIRMED UNDER PENALTY OF LAW THIS  
1ST DAY OF JUNE 1993.

*Jack R. Russell*

I'm giving this statement in regards to an incident that took place in June 1993 and it was a bingo night at K of C. I drive taxi for PDQ Taxi and I parked my cab with the back end of my cab across the driveway. Jack Russell also had cabs at the same location. The Malone Police showed up and went to talk with the other PDQ cab driver, Lee Lefleur. Lee transmitted over the CB to me "Deny, move your car". I started to move my cab and then while the police were still standing near Lee's cab, Lee again transmitted over the CB saying never mind, they said that I didn't have to move it. Lee was pointing to the police officers when he said that. I put the cab back in park and waited there. Then the police walked over to Jack Russell, for a short time, not even two minutes and left. While the police were driving away, Jack started yelling that he pays taxes and that the police don't do anything. The Police left the area and drove down Elm St. towards Main St.

Bingo had already let out and I had a customer in my cab. Jack continued to yell "Fuck-you, and Fuck This" and he tried to pick a fight with Lee LeFleur. The customer that I had in my cab was a 14 or 15 year old female and she started crying and she was scared that Jack was going to start a fight with Lee. This girls name is Crissy Rich and lives 34 Rennie St. Crissy came out when the police were talking to Jack and got in my cab. I waited for my cab to fill up and then left the area.

Affirmed under penalty of law  
this 7th day of July 1993

A handwritten signature, likely "Jack Russell", is written over a horizontal line. The signature is in cursive and includes a small star or asterisk at the beginning.



**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 James Phillips

From: Asst. Chief Gerald Moll

Ref: Personnel complaint from Jack Russell  
Log # 3366 June 1st 1993  
Complaint against Ptl. Steve Stone &  
Ptl. Patrick Nichols

I have completed the investigation on the above listed personnel complaint. The investigation shows cause of mishandling a complaint by the Officers from Jack Russell. Upon reviewing the statements, V&T Law and checking the area in question, the following department rules and regulations were violated:

6.1 General Duties                      Preservation of public peace

8.3 Attention to locations vulnerable of crime

8.12 Preventive action against development of crime

8.13 Enforcement of traffic violations

**RECOMMENDATION:**

In regards to not enforcing the V&T Law on the parking violation, I feel that verbal counseling and instruction on the law would clear up any misconception.

The most disturbing portion of this complaint is that the patrol officers left the area. This department has been hounded by complaints from the taxi companies and their on going disputes have led to several arrests. Both subjects have been arrested for violent acts involving public order. The officers took very little action and left both subjects in the immediate area knowing that several people would be leaving the K of C. This subjected the public to abusive and obscene language and easily could have escalated.

This type of officers response can not be tolerated and a written reprimand should be placed in their personnel file for a period of three years.

**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: Assistant Chief Moll

From: Chief Phillips

Ref: Personnel Comp. from Jack Russell

I reviewed your investigation on the personnel complaint from Jack Russell. I concur with your recommendation on a written reprimand to both officers for disciplinary action. Due to my recent absence of work from a back injury, please discuss this matter with the officers involved.

  
Chief James Phillips

**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: MAYOR JAMES FEELEY  
VILLAGE OF MALONE, NY

FROM: CHIEF JAMES E PHILLIPS

SUBJECT: PERSONNEL COMPLAINT (FROM JACK RUSSELL)  
AGAINST OFFICER NICHOLS AND STONE

THE INVESTIGATION INTO THE PERSONNEL COMPLAINT FILED BY JACK RUSSELL HAS BEEN COMPLETED AND PRESENTED TO ME BY ASST. CHIEF MOLL.

I HAVE CAREFULLY REVIEWED THE STATEMENTS AND FIND THAT PTLM STONE AND NICHOLS VIOLATED ARTICLES OF THE RULES AND REGULATIONS.

SPECIFICALLY: 6.1 GENERAL DUTIES (PRESERVATION OF PEACE)  
8.3 ATTENTION TO LOCATIONS VULNERABLE OF  
CRIME  
8.12 PREVENTIVE ACTION AGAINST DEVELOPMENT  
OF CRIME  
8.13 ENFORCEMENT OF TRAFFIC VIOLATIONS

BOTH OFFICERS HAVE BEEN GIVEN A LETTER OF REPRIMAND THAT IS TO BE KEPT IN THEIR PERSONNEL FILE FOR 1 YEAR. BOTH PARTIES HAVE BEEN EXPLAINED THAT THEY HAVE A RIGHT TO GRIEVE THE CHARGES ACCORDING TO THE CONTRACT WITH THE VILLAGE POLICE DEPARTMENT.

COPIES OF THE INVESTIGATION IS FORWARDED WITH THIS LETTER.

cc - TRUSTEE EARL LAVOIE  
TRUSTEE ROBERT FRASER

**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 Steve Stone

From: Chief James E. Phillips

Date: July 10th 1993

Ref: Personnel Complaint from Jack Russell

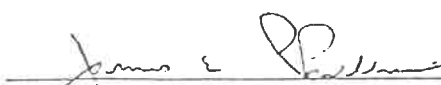
The investigation into alleged acts of mishandling a complaint involving Jack Russell has been completed and submitted to me by Ass't Chief Gerald Moll.

I have carefully reviewed the statements and feel that the action taken during this complaint did not comply with several departmental rules.

Specifically:

- 6.1 General Duties (Preservation of peace)
- 8.3 Attention to locations vulnerable of crime
- 8.12 Preventive action against development of crime
- 8.13 Enforcement of traffic violations

As you have been informed by Ass't Chief Moll, a letter of reprimand will be placed in your personnel file for one year. Although you were required to review all the department rules and regulations on 05-11-93, you are directed to reread the rules and regulations again. Any misunderstanding that you have on any department rules should be brought to the attention of your first line supervisor.

  
Chief James E. Phillips

**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

STEVE STONE

I, THE UNDERSIGNED, ACKNOWLEDGE THAT I HAVE RECEIVED A COPY OF THE SET OF CHARGES PREFERRED AGAINST ME BY THE MALONE POLICE DEPARTMENT AND SET FORTH IN A LETTER TO ME FROM CHIEF JAMES E. PHILLIPS DATED JULY 10, 1993.

DATED July 13<sup>th</sup> 1993

WITNESS

James E. Phillips

Steve Stone

**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: Chief James E. Phillips

Date: July 10th 1993

Ref: Personnel Complaint from Jack Russell

The investigation into alleged acts of mishandling a complaint involving Jack Russell has been completed and submitted to me by Ass't Chief Gerald Moll.

I have carefully reviewed the statements and feel that the action taken during this complaint did not comply with several departmental rules.

Specifically:

- 6.1 General Duties (Preservation of peace)
- 8.3 Attention to locations vulnerable of crime
- 8.12 Preventive action against development of crime
- 8.13 Enforcement of traffic violations

As you have been informed by Ass't Chief Moll, a letter of reprimand will be placed in your personnel file for one year. Although you were required to review all the department rules and regulations on 05-11-93, you are directed to reread the rules and regulations again. Any misunderstanding that you have on any department rules should be brought to the attention of your first line supervisor.

  
Chief James E. Phillips

**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

PATRICK NICHOLS

I, THE UNDERSIGNED, ACKNOWLEDGE THAT I HAVE RECEIVED A COPY OF THE SET OF CHARGES PREFERRED AGAINST ME BY THE MALONE POLICE DEPARTMENT AND SET FORTH IN A LETTER TO ME FROM CHIEF JAMES E. PHILLIPS DATED JULY 10, 1993.

DATED July 13- 1993

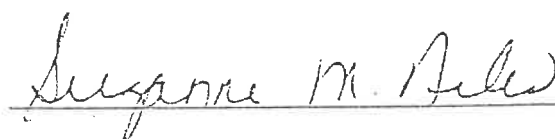
Patrick Nichols

WITNESS

James E. Phillips

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 Examination of Officer Patrick Nichols, held in Malone, New York, on the 17th day of March, 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