

1
2 STATE OF NEW YORK
3 COUNTY OF FRANKLIN

VILLAGE OF MALONE

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

Village of Malone,

Complainant,

-against-

Volume I

Patrick Nichols,

Respondent.

Representing the Village of Malone:

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

Representing the Respondent:

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

ARTICLE 75 PROCEEDING,

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

ACC-U-SCRIBE REPORTING SERVICE
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** COPY **

A.

I N D E X

DEPARTMENT'S

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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James Phillips	11	40	--	--
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Examination - by the Hearing Officer - page 39

James Feeley	85	95	--	--
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William Ritchie	103	109	111	--
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Examination - by the Hearing Officer - page 111

Scott Mulverhill	112	116	118	118
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Clyde LaChance	120	126	--	131
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Opening Statements - by Mr. Stewart - page 5

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Conference in Chambers - page 81

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B.

<u>RESPONDENT'S</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>WITNESSES:</u>				
Scott Mattimore	133	142	152	--
Betsy Nichols	153	--	--	--
Robert Hanna	156	--	--	--
Vernon Marlow	157	--	--	--
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* * * * *

C.

I N D E X

Police Department's Exhibits

<u>Number:</u>	<u>Description</u>	<u>Ident.</u>	<u>Evidence</u>
1	Union Contract	10	10
2	Resolution		
	dated 5-24-93	10	10
3	Revised Rules and		
	Regulations	10	10
4	Resolution dated 3-11-74	11	11
5	PD's Rules and		
	Regulations	11	11
6	Notice	19	20
7	Certificate of Conviction	24	25
8	Certificate of Conviction	25	26
9	Certificate of Conviction	26	26
10	Memo	27	28
11	Memo dated 7-21-93	28	29
12	Memo	30	31
13	Patrick Nichols'		
	personnel file	39	39
14	Memo	89	90
15	Petition	93	--

* * * * *

D.

Respondent's Exhibits

<u>Letter:</u>	<u>Description</u>	<u>Ident.</u>	<u>Evidence</u>
A	Personnel Complaint	42	--
B	Memo	55	--

Number: Hearing Officer's Exhibits

1	Letter dated 8-11-93	2	2
2	Charges	4	4
3	Response to Charges	4	4
4	Receipt	5	5

* * * * *

Village of Malone v Nichols

(The hearing commenced at 9:30 a.m.)

THE HEARING OFFICER: I'd like to call this hearing to order. For the purpose of the record, my name is Brian McKee. I am the Hearing Officer appointed by the Mayor and the Village Board. I would ask the hearing stenographer, Suzanne Niles, who will be our reporter here, to enter that as Hearing Officer Exhibit Number One for the record so that we have it.

(Hearing Officer's Exhibit One was marked for identification and received in evidence.)

THE HEARING OFFICER: The purpose of today's hearing under the Civil Service Law, Section 75 and 76, is to receive evidence and hear testimony relative to charges drawn by the Village of Malone against Police Officer Patrick Nichols, and it's my job as the Hearing Officer to conduct the hearing and to receive that evidence and testimony.

The Mayor has asked me to make comment, per the code enforcement officer, that we're just about at a limit of 113, which is the authorized occupancy for the room. I would ask you to observe the four fire exits, two back and two

Village of Malone v Nichols

front, and the fact there is no smoking. And as I mentioned before, this is a very serious matter, and I would ask that the people in attendance make sure that we conduct ourselves in a proper manner without disruptions, et cetera.

Representing the Village of Malone is Special Village Attorney Brian S. Stewart. I note his presence for the record. I also note the presence of Police Officer Nichols, and will Counsel for the police officer please identify yourself for the record.

MR. HALLEY: Thomas P. Halley, H-A-L-L-E-Y.

THE HEARING OFFICER: I also want to note for the record that while this hearing is normally held in executive session, in accordance with Civil Service Law, Police Officer Nichols asked that it be open to the public in toto.

Is that correct?

MR. HALLEY: That's correct.

THE HEARING OFFICER: If both parties are ready to proceed, I will ask Attorney Stewart on the record to read the charges, unless the Counsel for the Respondent is willing to waive the reading.

1 Village of Malone v Nichols

2 MR. HALLEY: I have no problem with waiving
3 them, Your Honor.

4 THE HEARING OFFICER: Is that acceptable?

5 MR. STEWART: That's acceptable.

6 THE HEARING OFFICER: If you will enter as
7 our Exhibit Two the charges as drawn by the
8 Village.

9 (Hearing Officer's Exhibit Two was marked for
10 identification and received in evidence.)

11 THE HEARING OFFICER: On the table here is a
12 letter from Mr. Halley dated August 10th, '93,
13 which purports to be Police Officer Nichols'
14 response to the charges. Is that correct?

15 MR. HALLEY: That's correct.

16 THE HEARING OFFICER: Without objection,
17 we'll enter that as Exhibit Three.

18 (Hearing Officer's Exhibit Three was marked
19 for identification and received in evidence.)

20 THE HEARING OFFICER: For the record,
21 Mr. Stewart, can you tell us when and how the
22 charges were served upon Police Officer Nichols,
23 date wise and the manner?

24 MR. STEWART: If you give me a moment.

25 THE HEARING OFFICER: Sure.

Opening Statements - By Mr. Stewart

MR. STEWART: The charges were served on Officer Nichols on August 5, 1993, and he signed a written receipt for them, which I will give you, if you'd like to enter that as one of your exhibits.

THE HEARING OFFICER: We would.

(Hearing Officer's Exhibit Four was marked for identification and received in evidence.)

THE HEARING OFFICER: At this point, I would ask the attorneys or Police Officer Nichols, starting with the Special Village Attorney, if you have any opening statements that you'd like to make.

MR. STEWART: Mr. McKee, thank you. There is less to this case than meets the eye, a lot less. A number of different names have been stirred up surrounding this matter. There's been some discussion regarding a criminal named Scott Mattimore, who is not on trial here, and he's only involved in the most tangential way. There's been a lot of discussion regarding a bottle of Chlorox or a bottle of bleach. The Assistant Chief was apparently present at some incident in the police office department April 2nd or 3rd,

1 Opening Statements - By Mr. Stewart

2 1993, but hearing the shocking part, it's not
3 relevant.

4 For the purpose of this hearing and only for
5 the purpose of this hearing, the Village will
6 accept, but not admit, the fact that it would have
7 been appropriate for someone acting in good faith
8 on August 3rd -- I'm sorry, April 3rd, 1993, to
9 ask for a review of whta happened that night.
10 Beyond that, it is irrelevant whether Assistant
11 Chief Moll was an evil monster bent on depriving
12 someone of their civil rights or whether he was
13 really
14 Mr. Clean.

15 What this case is about is a collection of
16 police regulations. We will show these
17 regulations were originally written by the State
18 of New York for the benefit of municipal police
19 departments, that they were first adopted by the
20 Village of Malone in 1974. We'll show that no one
21 in the Department has ever objected to any of
22 those regulations. We'll show that Officer
23 Nichols became intimately familiar with the rules,
24 and we'll show that Officer Nichols was engaged,
25 and may still be engaged in a pattern of

1 Opening Statements - By Mr. Stewart
2 disobeying those rules.

3 The evidence will lead to the indefinite
4 conclusion that Mr. Nichols' charges against his
5 boss were not made in good faith, that they were
6 made three months after the fact, and in a fit of
7 peek after Mr. Nichols was disciplined for
8 something else.

9 We'll show Mr. Nichols, almost immediately
10 after making the report, began informing persons
11 outside the Department of his charges before
12 giving the Chief, Chief Phillips, a reasonable
13 opportunity to conduct an investigation, all in
14 violation of established rules. We'll show that
15 Mr. Nichols had no right or reason for doing
16 that.

17 We'll show that Mr. Nichols leaped to his own
18 conclusions without good reason and began accusing
19 the Chief of engaging in a cover-up. This was not
20 true, and it was gross insubordination. We'll
21 show that Patrolman Nichols, in violation of the
22 regulations, engaged in his own unauthorized
23 investigation. He went so far as to have someone
24 get access to the Chief's personnel file on his
25 office computer system and to print out personal

1 Opening Statements - By Mr. Stewart
2 notes.

3 Finally, in a matter having to do with
4 bleach, we'll show that Officer Nichols met with
5 the Mayor in direct contradiction of the rules and
6 regulations in an attempt to win back his former
7 position as DARE officer after having been
8 previously counselled for exactly the same type of
9 behavior. That was against the rules.

10 That's the sum and substance of the charges.
11 Now, no one is going to deny Pat is an engaging
12 young man, hopefully with a bright future ahead of
13 him. We'll show, however, that he has a thick
14 personnel file in the police department, that he
15 has proven himself incapable of following
16 established rules and regulations, unless they fit
17 his own personal objectives, and that he's caused
18 significant disruption to the police department.

19 After I have shown you those things, I will
20 ask you to make a recommendation to the Village
21 Board. That recommendation will not be based on
22 a motive to punish Mr. Nichols or to cause him any
23 more grief than he's already been through. All I
24 will ask you to do is what is best to get the
25 village police department back in working order.

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Opening Statements - By Mr. Halley

Thank you.

THE HEARING OFFICER: Mr. Halley.

MR. HALLEY: The Civil Service Law of the State of New York specifically provides that a public employer shall not take disciplinary action against a public employee because that employee has reported improper governmental action to another authority. That's what this case is all about. That's what Pat Nichols did.

When he became a police officer, he took an oath. He swore to uphold a Code of Ethics. That code says he will not permit personal feelings, prejudices or friendships to influence his decisions. He swore that he would enforce the law courteously and appropriately without fear or favor.

When he saw wrongdoing, he spoke up about it. When nothing happened, he took the next step. He didn't do anything inappropriate. If he's guilty of anything, he's guilty of being too good a police officer. That's what the Village is upset with.

Thank you.

THE HEARING OFFICER: Thank you,

Opening Statements - By Mr. Halley

Mr. Halley. Mr. Stewart, are you prepared to call your first witness?

MR. STEWART: I am, Your Honor, and before I proceed, I have certain exhibits to admit, which I believe will be admitted without objection. The first of these is the current police Union contract, which I'd ask to have marked and admitted as Police Department Exhibit Number One.

MR. HALLEY: No objection.

(Police Department's Exhibit One was marked for identification and received in evidence.)

MR. STEWART: The second Police Department Exhibit is a certified copy of Resolution, of a Village Board Resolution, dated May 24, 1993, authorizing certain replies of the police department regulations.

MR. HALLEY: No objection.

(Police Department Exhibit Two was marked for identification and received in evidence.)

MR. STEWART: As Number Three, a copy of the police department revised regulations.

MR. HALLEY: No objection.

(Police Department's Exhibit Three was marked for identification and received in evidence.)

1 James Phillips - Direct

2 MR. STEWART: As Number Four, a Certificate
3 of Resolution of the Village Board, dated
4 March 11, 1974, adopting old village regulations.

5 MR. HALLEY: No objection.

6 (Police Department's Exhibit Four was marked
7 for identification and received in evidence.)

8 MR. STEWART: Number Five is a copy of the
9 old Village Police Department regulations.

10 MR. HALLEY: No objection.

11 (Police Department's Exhibit Five was marked
12 for identification and received in evidence.)

13 MR. STEWART: I would call Assistant Chief
14 Jim Phillips.

15 James Phillips,
16 having been called as a witness, being duly sworn, testified
17 as follows:

18 DIRECT EXAMINATION

19 BY MR. STEWART:

20 Q. Would you state your name, please.

21 A. James E. Phillips.

22 Q. Are you employed, Mr. Phillips?

23 A. Yes, I am.

24 Q. How are you employed?

25 A. I am employed as Police Chief for the Village of

James Phillips - Direct

Malone, New York.

Q. How many years have you been on the police force in the Village of Malone?

A. This is my 18th year.

Q. How many years as Assistant Chief?

A. I had three years as Assistant Police Chief.

Q. How many years have you been Chief?

A. I started my third year September 5th.

Q. Do you have any military background?

A. Yes, I do.

Q. What is that?

A. I have had 24 -- over 24 years of service in the military, I had five years active duty, I served as a squad leader in Vietnam responsible for ten men. After that I went to Officer Kennedy School, commissioned as Second Attendant in the US Army, I completed Infantry Officer's Basic Course, Infantry Officer's Advanced Course, I attended Command General Staff College, and I currently am a Major in the US Army Reserves, inactive.

Q. What educational training have you received to teach you how to be a police officer?

A. I have been to the Basic Police Course, I have a degree in Business Administration with a minor in Police Science, I have been to Radar Breathalyzer school, Hostage

James Phillips - Direct

Negotiations School and several other courses within the Department.

Q. What are the duties of the Chief of Police of the Village of Malone?

A. The duties of the Chief of Police is, Chief Executive Officer of the police department, is responsible for the Department and the actions of the Department and responsible to make sure all laws of the State of New York are enforced, all village ordinances and the other laws that are applicable to the Department.

Q. Is there currently an Assistant Chief in the police department?

A. Yes, there is.

Q. What are the duties as far as Assistant Chief?

A. The Assistant Chief has the same duties that I have, except he's assigned other specific-type duties.

Q. Who conducts personnel investigations as a general rule?

A. The rules and regulations describe that the Assistant Chief is the officer that conducts all personnel investigations in the Department.

Q. What's the size of the Village of Malone Police Department?

A. They're a 17-member police department.

James Phillips - Direct

Q. Do you know the population of the Village of Malone?

A. Around 8,000 residents.

Q. Do you know how many complaints the Village Police Department received in the month of June, 1993?

A. In June, 1993, the Village Police Department received 503 complaints.

Q. How about July of '93?

A. 540 complaints.

Q. How about August of '93?

A. 559 complaints.

Q. Can you tell me what the past practice has been within the police department with respect to discipline procedures, how are they conducted?

A. It depends on how the complaint is filed. If it's filed from a citizen within the community, then there is an entry made in the log book. If it's filed by a member of the Department, there is not an entry made in the log book. There is an internal investigation done. The Assistant Chief is assigned that investigation, he conducts the investigation, then based on his findings, he submits a report to me. If it's of a minor nature, I set the discipline for the offense. If it's a major violation, then it requires civil service action, and I report it to the

James Phillips - Direct

Village Board and they take appropriate action in regards to it.

Q. How many discipline procedures were there in the police department in 1992, if you recall?

A. There was one disciplinary action in 1992.

Q. How about 1993? ^{60's} ^

A. There has been 67 disciplinary actions this year.

Q. Now, Chief, I am going to show you Exhibit Number Three, Police Department Exhibit Number Three. I am going to ask you to do a few things for me. Can you turn to rule 10.11 -- 10.1.1, excuse me.

A. Okay.

Q. Can you read the intro-paragraph to 10.1 and read subparagraph one.

A. "A member of the Department shall not violate, either by commission or omission, any of the following acts: 10.1.1, conduct which brings discredit upon the Department."

Q. How about 10.1.4?

A. "Violation of any duly constituted law -- " or four, excuse me, "Insubordination or disrespect towards a Superior Officer."

Q. 10.1.27, please.

A. "Publicly criticizing the official actions of a Department member."

James Phillips - Direct

Q. 10.1.28.

A. "Disseminating in releasing any information contained in a Department record, except in conformance with the Department procedures."

Q. 10.1.77, please.

A. "No member of the Department may seek the influence or intervention of any person outside the Department for the purpose of personal preferment, advantage, transfer or advancement."

Q. And finally, 11.5.

A. "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 he impart information relating to the official business of the Department to anyone, except under due process of law and as directed, or with the permission of the Chief of Police."

Q. Thank you. I am not going to ask you to read any more. Chief, a cynical writer or smart editorial writer might say that those are rules designed to protect the police department to cover up dirty laundry. Is that the case?

A. No, it is not.

Q. What are these rules for?

A. The police department is as close to a military

James Phillips - Direct

organization as you can get. A military organization's members are strictly controlled in their conduct under the Article of the Uniform Code of Military Justice. Police officers are also held strictly accountable under the Duties and Rules of Conduct. Such members are strictly accountable for their actions. A police officer is the only person in the performance of his or her duties that must make split-second decisions and is authorized, if necessary, to take another human being's life in the performance of these duties.

The rules have to be strictly enforced, and the officers are to be held strictly accountable for them in order to maintain the integrity of the police department. As to the Code of Conduct, it is true that certain people live in glass houses; police officers are such people, and a police officer has to keep his private life and his professional life unsoiled, as he has to set an example to the public by his actions.

If a police officer violates the Code of Conduct, he not only compromises his integrity, he compromises the integrity of the police department. People do not say, "Look what Officer Smith did," they say, "Look what the police department did." It is true police officers are human beings and, as such, make mistakes, but they have to be

James Phillips - Direct

accountable to these mistakes and accountable for their actions.

Police officers have a given responsibility that, everytime they testify or have to go to a court hearing, if every little thing is known about their disciplinary actions within the Department, if that action is a corrective measure and if we learn by our mistakes, if a guy is criticized because he didn't follow a proper procedure and he's told about that, he takes that as a constructive measure, he makes sure it doesn't happen again. But when a police officer goes to court, his integrity cannot be questioned. His authority cannot be questioned. If he testifies and everything that happens within a police department is made known public, then the credibility of the police officer is lost and the true meaning of what he's testifying about is lost in that process, and that's the reasons that I feel they are important.

Q. Thank you. Do you recall when Pat Nichols was hired by the police department?

A. In June of 1988.

Q. Did Officer Nichols become familiar with the work rules?

A. Yes, he did.

Q. How do you know that?

1 James Phillips - Direct

2 A. There is a copy of the work rules posted in the
3 patrolmen's area that they have access to at all times. The
4 rules were updated in May of this year, and all the officers
5 initialed them and said they understood and knew the rules,
6 what they were.

7 MR. STEWART: I'd like to have this document
8 marked Police Department Exhibit Number Six.

9 THE HEARING OFFICER: What's the date?

10 MR. STEWART: 5-11-93.

11 (Police Department's Exhibit Six was marked
12 for identification.)

13 BY MR. STEWART:

14 Q. Showing you this document marked Police Department
15 Exhibit Number Six for identification, do you recognize it?

16 A. This is the Notice that I had put up on 5-11-93,
17 advising everybody that the rules had been updated and that
18 the personnels' copy of the rules were in their three-ring
19 binder that was available at all times for each member.
20 They were to review and read the entire copy provided, any
21 questions were to be brought to their immediate supervisor,
22 and after they had completed this review, they were to
23 initial after their name -- in the column after their name.

24 Q. Did Officer Nichols initial it?

25 A. Yes, he did.

1 James Phillips - Direct

2 Q. Do you recognize his initials?

3 A. Yes, I do.

4 MR. STEWART: I'd move this be accepted as
5 Police Department Exhibit Number Six.

6 MR. HALLEY: No objection.

7 (Police Department's Exhibit Six was marked
8 received in evidence.)

9 BY MR. STEWART:

10 Q. Did you receive a complaint about a certain
11 patrolman on or about June 1, 1993?

12 A. Yes, I did.

13 Q. What did that relate to?

14 A. It related to an incident that took place at the
15 Knights of Columbus on Elm Street.

16 Q. Who investigated that matter?

17 A. Assistant Chief Gerald Moll.

18 Q. How many police officers were the subject of that
19 investigation?

20 A. Two police officers.

21 Q. Did the investigating officer make recommendations
22 as to punishment?

23 A. Yes, he did.

24 Q. What was the recommendation?

25 A. He recommended that a letter of reprimand be

James Phillips - Direct

placed in the officer's file for a period of three years.

Q. What punishment, if any, did you impose?

A. I talked to the Mayor, Jim Feeley, in regards to the incident, and we decided that three years was excessive for the complaints and that we reduced that to a one-year period of time.

Q. How long did it take from the time that you received that report to the time discipline was imposed?

A. It took six weeks.

Q. Is that a normal period of time to conduct an investigation and impose discipline?

A. Yes, it is.

Q. Was Officer Nichols one of those officers?

A. Yes, he was.

Q. How was the discipline imposed?

A. Officer Nichols was brought into my office, I gave him a copy of the letter of reprimand, I advised him to read the letter of reprimand, and I told him what his next steps were if he didn't agree with the letter.

Q. Did Officer Nichols say anything to you?

A. Officer Nichols at that time said that he was going to appeal it and that he had something for me he's had for quite a while, and he said he was going to give it to me at that time.

James Phillips - Direct

Q. What happened next?

A. Officer Nichols left the office, he went back into the other part of the office. About an hour, hour and a half later, he came back into my office. That's when he filed a complaint against Assistant Chief Moll.

Q. Was that complaint in writing or oral?

A. It was in writing.

Q. Who was assigned to investigate the charges against Assistant Chief Moll?

A. I was assigned to investigate the charges.

Q. At any time did you assign Officer Nichols to do any investigation in that matter?

A. No, I did not.

Q. What day did all this take place?

A. On July 13th.

Q. Of this year?

A. Of this year.

Q. Did you do any investigatory action on July 13th?

A. July 13th, I called Assistant Chief Moll, who was on vacation, and he was to be on vacation until July 31st. I was able to contact him up at the Meacham campsite. I talked to him by phone. I told him that I would just like to hear his side of the stone -- or of the story over the phone, and then when he got back from vacation on the 31st, that I would

James Phillips - Direct

like a statement from him in regards to that incident.

Q. I didn't ask you something important. What date was this underlying incident alleged to have taken place on?

A. April 2nd, 1993.

Q. Do you have a computer system in the police department?

A. Yes, we do.

Q. Can you describe it for me in layman's terms?

A. Well, I am a layman, so it will have to be in my terms. It's a -- we have six computers within the station, we have a terminal and a mainframe on each of the stations with a networking frame set up in our supervisor's office. My personal computer says, "Good morning, Chief, this is your personal computer," or something to that effect. I keep notes, type letters and various other things I use with my computer.

Q. Did you write yourself a note regarding this investigation?

A. Yes, I did.

Q. When did you do that?

A. On July 14th.

Q. For whose benefit was that note?

A. That was just some notes I had jotted down for myself.

James Phillips - Direct

Q. Did there come a time when you contacted village court -- withdrawn. The incident on April 2nd or 3rd, 1993, did it in any way involve a criminal in your custody?

A. It involved a defendant that was under arrest for criminal charges in the department.

Q. What was his name?

A. Scott Mattimore.

Q. On April 3rd, 1993, do you know what Scott Mattimore was charged with?

A. I know he was charged with criminal mischief and petit larceny. I don't know the exact charges. When I received the complaint from Patrolman Nichols, I contacted the Court to see if there had been dispositions in regards to the charges that he had been charged with.

Q. Did you obtain certificates from the village court of some kind?

A. Yes, I did, I received the certified copies of the Record of Convictions in regards to that incident.

MR. STEWART: I'd like to have this marked Police Department Exhibit Number Seven for identification.

(Police Department's Exhibit Seven was marked for identification.)

BY MR. STEWART:

1 James Phillips - Direct

2 Q. Chief, I show you Police Department Exhibit Number
3 Seven for identification. Do you recognize it?

4 A. Yes, I do, it's the Certificate of Conviction that
5 I received on the 14th day of July, 1993, from the local
6 justice court.

7 Q. Of what crime?

8 A. Harassment, 240.26, against Scott Mattimore.

9 MR. STEWART: I'd ask to admit Police
10 Department Exhibit Number Seven.

11 MR. HALLEY: No objection.

12 (Police Department's Exhibit Seven was marked
13 received in evidence.)

14 MR. STEWART: I'd like to have this marked
15 Police Department Exhibit Number Eight.

16 (Police Department's Exhibit Eight was marked
17 for identification.)

18 BY MR. STEWART:

19 Q. Chief, I show you Police Department Exhibit Number
20 Eight. Do you recognize it?

21 A. It's another Certificate of Conviction against
22 Scott Mattimore in regards to attempted petit larceny. It
23 was also dated the 14th of July, 1993.

24 MR. STEWART: I move to admit that as Police
25 Department Exhibit Number Eight.

1 James Phillips - Direct

2 MR. HALLEY: No objection.

3 (Police Department's Exhibit Eight was marked
4 received in evidence.)

5 MR. STEWART: I'd ask this be marked Police
6 Department Exhibit Number Nine for
7 identification.

8 (Police Department's Exhibit Nine was marked
9 for identification.)

10 A. This is another Certificate of Conviction dealing
11 with Scott Mattimore, this one is criminal mischief in the
12 fourth degree. It was also dated the 14th of July, 1993.

13 MR. STEWART: I'd move to admit that as
14 Police Department Exhibit Number Nine.

15 MR. HALLEY: Objection.

16 (Police Department's Exhibit Nine was marked
17 received in evidence.)

18 BY MR. STEWART:

19 Q. Now, Chief, with respect to this investigation
20 about the April 2nd or April 3rd incident, did there come a
21 time when you took a statement from Officer Scott Mulverhill?

22 A. Yes, there was. The morning of July 14th I had
23 Detective Sergeant Fleury come into my office, and I told him
24 that I would like him to obtain a statement from Patrolman
25 Mulverhill and Patrolman Stone in regards to the incident in

1 James Phillips - Direct

2 question.

3 Q. Did you eventually get a statement from Patrolman
4 Steven Stone?

5 A. Yes, I did.

6 Q. Did there come a time when you took a statement
7 from Assistant Chief Gerald Moll regarding this incident?

8 A. Yes, there was, on July 31st when he came back
9 from vacation, I secured the statement from him.

10 Q. During this process, did there come a time when
11 Officer Nichols inquired what the status of the investigation
12 was?

13 A. Yes, there was, on July 21st, Officer Nichols
14 submitted a memo to me and asked me what I did in regards to
15 the complaint that he had filed against Assistant Chief
16 Moll.

17 MR. STEWART: I'd ask to have this exhibit
18 marked as Police Department Number Ten for
19 identification.

20 (Police Department's Exhibit Ten was marked
21 for identification.)

22 BY MR. STEWART:

23 Q. I show you Police Department Exhibit Ten for
24 identification. Do you recognize it, Chief?

25 A. Yes, that's a copy of the memo that he had sent to

1 James Phillips - Direct
2 me in regards to the complaint that he had filed.

3 MR. STEWART: I move to admit Police
4 Department Exhibit Number Ten.

5 MR. HALLEY: No objection.

6 (Police Department's Exhibit Ten was marked
7 received in evidence.)

8 BY MR. STEWART:

9 Q. Chief, did you respond to that request?

10 A. Yes, I sent Officer Nichols a memo back stating
11 that the incident was under investigation, and I reassured
12 him that there was nothing being done to cover it up. I
13 advised him I could not tell him about the investigation due
14 to the privacy nature in regards to the personal actions of
15 another officer, but I reassured him if disciplinary action
16 was required, it would be given.

17 MR. STEWART: I'd like to have this marked
18 Police Department 11 for identification.

19 (Police Department's Exhibit 11 was marked
20 for identification.)

21 THE HEARING OFFICER: The date?

22 MR. STEWART: July 21, 1993.

23 BY MR. STEWART:

24 Q. I show you Police Department 11 for
25 identification. Do you recognize it?

1 James Phillips - Direct

2 A. That's a memo that I had sent -- a copy of the
3 memo I sent to Patrolman Nichols in regards to his memo that
4 he had submitted to me on July 21st.

5 Q. What was the date of your memo back?

6 A. July 21, 1993.

7 MR. STEWART: Move to have that admitted as
8 Police Department Exhibit Number 11.

9 MR. HALLEY: No objection.

10 (Police Department's Exhibit 11 was marked
11 received in evidence.)

12 BY MR. STEWART:

13 Q. Chief, what is the DARE program?

14 A. The DARE program is a Drug Awareness Resistance
15 Education program the police department has in conjunction
16 with the Malone Central School District.

17 Q. Who were the DARE officers for the '92/'93 school
18 year?

19 A. Officer Ron Reyome and Officer Patrick Nichols.

20 Q. During the '92/'93 school year, did you experience
21 any problems with Officer Nichols as a DARE officer?

22 A. Not problems as a DARE officer, but problems as
23 being a police officer.

24 Q. Can you explain what you mean by that?

25 A. Officer Nichols was spending all his time on DARE

1 James Phillips - Direct

2 and not doing any of the other duties that he was supposed to
3 do while he wasn't working with DARE.

4 Q. As a result of that situation, what happened?

5 A. We had a supervisor's meeting the early part of
6 January, and the meeting consisted of problems that the
7 supervisors were encountering with Officer Nichols. They had
8 numerous complaints that they had filed with me. After the
9 meeting was over, I talked with Assistant Chief Moll, and it
10 was decided we had to change the hours of Officer Nichols
11 from 6:00 -- his hours were scheduled 6:00 to 2:00 with
12 weekends off. But the biggest complaint from the supervisors
13 between 6:00 and 8:00 or 6:00 and 9:00 when he had to teach
14 DARE is, he wasn't doing any other duties. It was decided to
15 change his hours at that time from 6:00 to 2:00 to 8:00 to
16 4:00. I instructed Officer Moll at that time to advise
17 Officer Nichols that we were going to change his hours, which
18 he did.

19 Q. What happened next?

20 A. After I had changed his hours, I received a memo
21 from Officer Nichols stating that, due to the change of his
22 hours, that he wanted reimbursement for his baby-sitting
23 expense and for mileage that he had incurred in the Village
24 in regard to his DARE duties.

25 (Police Department's Exhibit 12 was marked

1 James Phillips - Direct
2 for identification.)

3 BY MR. STEWART:

4 Q. I show you Police Department Exhibit 12 for
5 identification. Do you recognize it?

6 A. Yes, it is a memo that Officer Nichols gave to
7 Assistant Chief Moll on 1-28-93 requesting compensation for
8 mileage and for upcoming added expenses for day-care
9 expenses.

10 MR. STEWART: Move to offer Police Department
11 Exhibit 12.

12 MR. HALLEY: No objection.

13 (Police Department's Exhibit 12 was marked
14 received in evidence.)

15 BY MR. STEWART:

16 Q. Did you respond to Officer Nichols' request for
17 additional compensation?

18 A. I instructed Assistant Chief Moll to write him
19 back a memo disregarding -- telling him it wasn't the
20 Village's responsibility to pay for his baby-sitting
21 expenses, and that if he needed reimbursement for his
22 mileage, that he could have utilized the patrols at any time
23 to go to the schools that he had to go to, that both requests
24 were denied.

25 Q. What happened next?

1 James Phillips - Direct

2 A. At that time, after I received the memo and
3 discussed it with Assistant Chief Moll, it was obvious that
4 the disruption within the police department was getting out
5 of hand, and it was decided, because of the budgetary reasons
6 and everything, that there was only a few weeks left in the
7 DARE program, that we would relieve Officer Nichols of his
8 responsibility as DARE officer.

9 Q. Did there come a time when you reversed that
10 decision?

11 A. Yes, after he was notified that he would no longer
12 be teaching DARE, he submitted another memo requesting that I
13 rescind his memo that he sent me in regards to baby-sitting
14 services and for mileage and he would donate his time. I
15 also received several calls from teachers in regards to the
16 incident, and I also received a telephone call from a Village
17 Trustee in regards to the incident at that time.

18 Q. Which Village Trustee was that?

19 A. Robert Fraser.

20 Q. What did he tell you?

21 A. He told me that Officer Nichols had gone to him
22 and told him that I had taken him off the DARE program.

23 Q. Was it a violation of the rules for Officer
24 Nichols to approach a Village Trustee on these kinds of
25 matters?

1 James Phillips - Direct

2 A. Yes, it was.

3 Q. What happened as a result of that?

4 A. Officer Nichols was brought into the police
5 department, I told him I wanted to see him in regards to the
6 matter. When he got there, I told him Assistant Chief Moll
7 and myself would be conducting the counseling session. He
8 asked if Assistant Chief Moll would be -- not be allowed into
9 the counseling session at that time. I denied his request.
10 At that time, Officer Nichols was brought into the office, he
11 was shown the rules and regulations, the ones that he was --
12 that he had violated in regards to this, we told him we were
13 not bringing him up on formal charges at this time, but that
14 we were strongly counseling him in regards to it, and that he
15 was to read to us each of the rules he violated, and he was
16 asked if he read and understood each of those rules at that
17 time.

18 Q. Was one of those rules 11.5?

19 A. Yes, it was.

20 Q. As of August 5, 1993, had you made a decision as
21 to who would be the DARE officer for the '93/'94 school year?

22 A. No, I had not.

23 Q. Had you made any indication to Officer Nichols
24 that his future as a DARE officer was in trouble?

25 A. No, I had not. We had gained another component to

1 James Phillips - Direct

2 the DARE program this year, which was a high school program,
3 and in talking with Officer Reyome, he said there was no way
4 possible he could handle all of the programs. So, what I was
5 trying to do was to get another officer to go to the DARE
6 program, and maybe between Officer Nichols and the other
7 officer, we would be able to fulfill the middle school, plus
8 the elementary portion of the program without costing a large
9 amount of overtime.

10 Q. Is it possible that Officer Nichols could have
11 misunderstood the rules about contacting Trustees regarding
12 his assignment as DARE officer?

13 A. It is not possible.

14 Q. Has any member of the police department or its
15 Union ever filed a grievance with respect to any of these
16 rules?

17 A. No, they have not.

18 Q. Up until July 13, 1993, had any member of the
19 police department or the Union ever filed a grievance with
20 respect to the form of disciplinary procedures enforced at
21 the police department?

22 A. No, they had not.

23 Q. Did you ever give permission to Officer Nichols to
24 talk with the District Attorney --

25 A. No, I didn't.

1 James Phillips - Direct

2 Q. -- about his complaints regarding Officer Moll?

3 A. No, I did not.

4 Q. Did you ever give Officer Nichols permission to
5 discuss that matter with former Chief Richard Brown?

6 A. No, I did not.

7 Q. Did you ever give Officer Nichols permission to
8 discuss that matter with the Mayor?

9 A. No, I did not.

10 Q. Did you ever give permission to Officer Nichols to
11 talk with the Mayor regarding Officer Nichols' role as a DARE
12 officer?

13 A. No, I did not.

14 Q. Did former Chief Richard Brown ever contact you
15 regarding the incident on April 2nd or 3rd, '93, alleged to
16 have involved Assistant Chief Moll?

17 A. No, he has not.

18 Q. Does the State of New York have any policies
19 issued to the police departments regarding the neutralization
20 of bodily fluids?

21 A. Yes, they do.

22 Q. Can you tell us what the rules are?

23 A. Rules related to Hepatitis B and the AIDS virus,
24 it is a federal rule that the state has adopted that each
25 department is supposed to have specific rules in regards to

1 James Phillips - Direct

2 that. Any bodily fluid is supposed to be cleaned,
3 disinfected as soon as possible.

4 Q. Did Officer Nichols ever tell you whether he
5 enjoyed his job as police officer?

6 A. Officer Nichols commented to me several times he
7 did not like his job as police officer, and once his ten
8 years was in, he was leaving to find other employment.

9 Q. Did you have any discussion with the Mayor during
10 the week of August 1st regarding Officer Nichols?

11 A. Yes, I did.

12 Q. What was the first such discussion?

13 A. The first discussion I had is when I had brought
14 over the final recommendations in regards to the incident
15 that was filed against Officer Nichols on June 1st. I
16 brought him over the paperwork. The Mayor informed me at
17 that time that he had a meeting set up with Officer Nichols
18 for 1 o'clock.

19 Q. Did he tell you what that was going to be about?

20 A. No, he didn't know what the meeting was going to
21 be about. He thought it was in regards to his disciplinary
22 action that he said he was going to appeal.

23 Q. Was that the sum and substance of that
24 conversation?

25 A. That conversation, yes.

James Phillips - Direct

1
2 Q. What is the next conversation you had with the
3 Mayor during the week of August 1st concerning Officer
4 Nichols?

5 A. That afternoon about 4 o'clock or 4:30, the Mayor
6 came to my house and he told me that Officer Nichols went in
7 there and that he had filed -- he had made complaints against
8 me and that I was trying to cover up the incident in regards
9 to the Mattimore incident, which I had already reported to
10 the Mayor, and he said it caught him off guard, he was really
11 surprised that he did that, and he thought I should be aware
12 of it.

13 Q. Was that the sum and substance of that
14 conversation?

15 A. Yes, it was.

16 Q. Did you have any other conversations with the
17 Mayor that week regarding Officer Nichols?

18 A. Yes, I believe on the morning of the -- I'm not
19 sure what date it was, either the 4th -- I believe it was the
20 morning of the 4th or the evening of the 3rd, the Mayor
21 called me around 9:00, 9:30 and stated to me Officer Nichols
22 had just left his house, and the Mayor seemed quite upset
23 over that. And he made the statement that he even locked the
24 windows to his house, as far as he was concerned.

25 (Interruption in proceedings).

1 James Phillips - Direct

2 THE HEARING OFFICER: I'd like to interrupt
3 for one second. I want to ensure that the
4 properness of the hearing is continued. If it's
5 not, I will ask the officer to remove anybody that
6 is not willing to comply with that. Thank you.

7 BY MR. STEWART:

8 Q. I'm sorry, what were you saying, Chief?

9 A. I had finished my statement.

10 Q. Did you have any other conversations with the
11 Mayor that week regarding Officer Nichols?

12 A. The only conversation I had with him is that he
13 felt we should move as quickly forward as possible in regards
14 to the charges against Officer Nichols and asked me if I
15 could give him the paperwork as soon as I could.

16 Q. Does the police department keep personnel files on
17 its employees?

18 A. Yes, it does.

19 Q. What goes in that?

20 A. Letters of commendation, background checks when
21 they're hired, any disciplinary-type actions, anything to
22 deal with any schools, any of that type stuff is entered into
23 that record.

24 MR. STEWART: I'd like to have this marked
25 as Police Department Exhibit Number 13 for

1 James Phillips - By the Hearing Officer
2 identification.

3 (Police Department's Exhibit 13 was marked
4 for identification.)

5 BY MR. STEWART:

6 Q. Chief, I show you Police Department Exhibit 13 for
7 identification. Do you recognize that?

8 A. Yes, I do, it's a copy of Patrolman Nichols'
9 personnel file.

10 MR. STEWART: I move to enter that as Police
11 Department Exhibit Number 13.

12 MR. HALLEY: No objection.

13 (Police Department's Exhibit 13 was marked
14 received in evidence.)

15 MR. STEWART: I have no further questions of
16 the Chief at this time.

17 THE HEARING OFFICER: Before I turn it over
18 to Counsel, I'd like two items for clarification.

19 EXAMINATION BY

20 THE HEARING OFFICER:

21 Q. The date that a memo was sent by the Chief back to
22 Police Officer Nichols wherein he indicated that you were
23 proceeding in a cover-up, et cetera, can you tell me how it
24 was delivered to Officer Nichols?

25 A. I believe it was hand delivered or I had left it

1 James Phillips - Cross

2 in his mailbox.

3 Q. In the mailbox?

4 A. In his mailbox.

5 Q. The other question I had was the date of the
6 counseling session that was held wherein he was asked to
7 review certain rules and regulations.

8 A. February 4th, 1993.

9 THE HEARING OFFICER: Thank you.

10 Mr. Halley

11 CROSS-EXAMINATION

12 BY MR. HALLEY:

13 Q. Chief, why was it that when the complaint was
14 filed against Moll, you were the one who did the personnel
15 investigation?

16 A. Because I was the next logical person, seeing that
17 under the rules and regulations, Assistant Chief Moll is the
18 one to do the investigation on the other officers, and I was
19 his superior officer. I have complete control of the conduct
20 of the members of the Department.

21 Q. Did you feel that it was inappropriate for Moll to
22 do his own investigation of his own misconduct?

23 A. That's common sense, that it would be
24 inappropriate for a subject to investigate their own
25 misconduct.

James Phillips - Cross

Q. What if there is a complaint of misconduct made against both the Assistant Chief and you, who would perform the investigation?

A. The person would go through the chain of command, through myself, and I would give him permission or her permission to talk to whoever they wanted to talk to in regards to that. There is a police committee that I am answerable to at the Village Board.

Q. Who is on that police committee?

A. Trustees Earl Lavoie and Bob Fraser.

Q. Is the Mayor the current Executive Officer of the Village?

A. Yes, he is.

Q. So, am I correct in understanding that, if somebody wanted to file a complaint against you and the Assistant Chief for misconduct, the proper person to conduct that an investigation would be the police committee?

A. I am the Chief Executive Officer of the police department. Whoever wants to file a complaint has to go through me to get permission. Officer Nichols was advised of this during his counseling session on February 4th of '93, and he was advised if he had any complaints against me or any other members, that all he had to do was tell me he wanted to go see somebody and I would give him permission to do that.

James Phillips - Cross

Q. Hasn't Officer Nichols accused you of a cover-up?

A. The paper has.

Q. That's the statement he's made, he's charged with saying you were stupid, among other things, for not investigating the Mattimore incident, isn't that correct?

A. The Mattimore incident was investigated. It took a little over two weeks for the investigation, which is way short of any other personnel investigation that's ever been done by the police department.

Q. But isn't Officer Nichols really accusing you of some sort of wrongdoing in this Mattimore incident?

A. I was never -- I don't believe so.

Q. Okay. When did you write that computer memo?

A. On July 14th.

(Respondent's Exhibit A was marked for identification.)

BY MR. HALLEY:

Q. Chief, I want to show you what's been marked Respondent's Exhibit A and ask if you recognize it.

MR. STEWART: Objection, Your Honor, what we're going to get into are the documents concerning someone else's personnel investigation. That is absolutely prohibited for disclosure under Civil Rights Law section 50-A

1 James Phillips - Cross

2 without a Court Order or the permission of that
3 officer. I have a Memorandum of Law on the
4 point.

5 MR. HALLEY: I will address the legal issue
6 shortly.

7 THE HEARING OFFICER: Wait one second. I
8 will take a look at this.

9 MR. HALLEY: Sure.

10 THE HEARING OFFICER: Were you intending to
11 proceed along the lines that it existed or were
12 you intending to get into the facts of the
13 situation?

14 MR. HALLEY: Let me get at it a different
15 way.

16 THE HEARING OFFICER: Let me rule on this
17 motion, then, first. I would agree that any of
18 the details or identifying data concerning another
19 person in that memo is certainly covered under
20 protection of the law. I agree with you, Counsel,
21 Mr. Halley, the fact that the computer report
22 exists, the dating of it or whatever, is certainly
23 admissible, if you desire.

24 MR. STEWART: I'd be willing to stipulate to
25 that.

1 James Phillips - Cross

2 MR. HALLEY: Okay, fine.

3 BY MR. HALLEY:

4 Q. Did you make a report to the Village Board in late
5 August of 1993 in which you stated that you had fully
6 investigated the Moll and Mattimore incident and you found no
7 wrongdoing by Gerald Moll?

8 MR. STEWART: Again, the same objection,
9 Your Honor, the details of the Chief's report to
10 the Village Board are documents regarding
11 someone's personnel investigation that are
12 prohibited from disclosure. The only thing
13 that's not prohibited from disclosure is the
14 ultimate decision of the Village Board. As to
15 that, I will stipulate.

16 MR. HALLEY: I think we can stipulate that
17 there was a report made in the Malone Evening
18 Telegram dated August 24, 1993, which says --

19 THE HEARING OFFICER: The source is what?

20 MR. HALLEY: A report made by the Malone
21 Village Board, a report in the Telegram dated
22 August 24.

23 THE HEARING OFFICER: I would concur. If
24 you want to introduce information from the Village
25 Board, that is certainly legal under the law, but

1 James Phillips - Cross
2 not from Chief Phillips' investigation.

3 BY MR. HALLEY:

4 Q. Did you, in fact, make a report to the Village
5 Board in late August of 1993 regarding the Mattimore
6 incident?

7 A. Not in late August of 1993.

8 Q. Well, sometime in August of '93?

9 A. August 4th of 1993.

10 Q. Okay. And were your findings that there was no
11 wrongdoing by the police department?

12 MR. STEWART: Objection as to the contents
13 of that report.

14 MR. HALLEY: It's a matter of public record.

15 MR. STEWART: What the Village Board decides
16 and their statement is a matter of public record,
17 but the Chief testifying as to his own report is
18 not. I object to that.

19 MR. HALLEY: I think confidentiality has
20 been waived.

21 THE HEARING OFFICER: You have allowed the
22 Chief to comment on the fact that he conducted an
23 investigation.

24 MR. STEWART: Yes.

25 THE HEARING OFFICER: I think that it's

1 James Phillips - Cross

2 admissible to respond whether or not he forwarded
3 that to the Village Board. I would uphold any
4 objection to the specifics of that investigation.

5 MR. HALLEY: I am not sure if I may inquire
6 as to whether he made a finding there was no
7 wrongdoing by the Department.

8 THE HEARING OFFICER: That gets into the
9 specifics, in my opinion.

10 MR. HALLEY: All right.

11 BY MR. HALLEY:

12 Q. Can I ask if you made that finding July 14 after
13 Officer Nichols reported it to you?

14 A. On July 14th, after I had interviewed Gerry Moll
15 by telephone, I had already obtained the statement from
16 Officer Scott Mulverhill and I had already received the
17 records of conviction in regards to the incident. The only
18 other person that I had not talked to at that time was
19 Officer Steve Stone. Based on the information that I had
20 received from those sources, I made the determination --

21 MR. STEWART: Objection, I am going to
22 object as to what his determinations were, for the
23 same reasons I have been objecting all along.

24 THE HEARING OFFICER: You were reaching the
25 point of allowing the Chief to disclose the vast

James Phillips - Cross

majority of his investigation up to the point of determination, and I will respect the finding of determination as being between he and the Village Board and the Mayor and not public record from the Chief, but from the Village Board.

BY MR. HALLEY:

Q. Chief, you called Moll right away, you testified to that, is that correct?

A. That's correct.

Q. You called Fleury right away, is that correct?

A. I called Gerry on the 13th and I had Officer Fleury come into my office the morning of the 14th and told him that I needed him to secure statements from Officer Mulverhill and from Officer Stone. Officer Stone was on days off from the 14th until around the 20th, I believe, so he was not able to obtain a statement from him during that period of time.

Q. So, you didn't get a statement from Stone until after you typed this note to yourself in your computer?

A. Those were notes I typed to myself in the computer, my personal computer.

Q. My question is, you didn't talk to Stone until after you typed these notes on the computer, is that correct?

A. Based on everything that I had received up to that

James Phillips - Cross

point, Officer Nichols filed a complaint against an officer based on hearsay information. The officers that were present that I had talked to contradicted everything that Officer Nichols had told me that had happened in regards to that incident. The only person left that I had to talk to was Officer Stone. Based on the information that I had, I jotted some notes as to what I had found to that point, and that was it.

Q. My question, sir, is, when you jotted those notes on July 14, 1993, had you yet spoken to Officer Stone?

A. I had not spoken to Officer Stone as of yet.

Q. Now, you testified at the beginning of your Direct about your training as a police officer and other matters. Am I correct in understanding that when you investigated this Mattimore incident, you did a full, complete, thorough investigation?

A. You are correct.

Q. And you understand when you heard a complaint from Pat Nichols, that there might be two sides to every story?

A. I don't understand your question.

Q. When you do an investigation, do you believe or do you understand that during the course of an investigation, that there might be two sides to every story?

A. I look at the investigation as regards to facts.

1 James Phillips - Cross

2 I do not look at hearsay as being facts.

3 Q. I agree with you. You don't want to rely on
4 hearsay.

5 A. Officer Nichols was not at the station when the
6 incident took place. He based his complaints to me based on
7 conversations that he had held with other people. The people
8 that I had talked to that he based his information on
9 contradicted what he had told me.

10 Q. But do you acknowledge, sir, during the course of
11 an investigation, as a general rule, there are two sides to
12 every story?

13 A. That's true.

14 Q. Okay. During your complete, thorough
15 investigation of the Mattimore incident, when did you talk to
16 Mattimore?

17 A. I did not talk to Mattimore.

18 Q. Never?

19 A. Mr. Mattimore had never filed a complaint with the
20 Department, and I did not talk to him in regards to the
21 incident because he had pled guilty to the charges he was
22 charged with that night.

23 Q. All right. Let me make sure I am clear. You
24 just said you couldn't rely on Nichols because it was a
25 hearsay statement, because it was hearsay?

1 James Phillips - Cross

2 A. That's true.

3 Q. Why didn't you go right to the source and talk to
4 Mattimore?

5 A. It was not the common practice of the police
6 department to talk to convicted felons whose testimony is not
7 reliable due to the fact Officer Nichols was keeping
8 Mr. Mattimore compromised of the situation.

9 Q. How was he keeping him compromised of the
10 situation?

11 A. He was advising him as to what he was doing in
12 regards to his investigation. That's information I received
13 from the Mayor, and Officer Nichols told the Mayor about
14 that.

15 Q. That was hearsay, of course, that information from
16 the Mayor?

17 A. The Mayor can testify to it.

18 Q. But you heard that from the Mayor, that was
19 hearsay?

20 A. That's correct.

21 Q. So, your complete, thorough investigation was
22 based upon your conversation with police officers, but not
23 with what I will call the victim of the bleach incident,
24 Mr. Mattimore?

25 A. My investigation was based on reliable testimony,

1 James Phillips - Cross

2 not non-reputable testimony.

3 Q. In fact, you had made up your mind already that it
4 was non-reputable, hadn't you?

5 MR. STEWART: Objection.

6 THE HEARING OFFICER: Sustained.

7 BY MR. HALLEY:

8 Q. How do you know it was? How do you know it was
9 reputable without hearing the other side?

10 A. The other side was being apprised of the
11 situation, and it's not common practice, like I told you, to
12 talk to convicted felons about investigations which Officer
13 Nichols had filed a complaint about.

14 Q. How does this plea of guilty -- these pleas of
15 guilty demonstrate to you that the bleach incident didn't
16 happen in the way Pat Nichols described it?

17 A. The credible testimony told me it did not happen
18 the way Officer Nichols said it.

19 Q. And that credible testimony came from
20 police officers?

21 A. That's correct.

22 Q. But you never spoke with Mattimore?

23 A. That's correct.

24 Q. Okay. Is it your position, then, that because he
25 pled guilty to something, his testimony would not be

James Phillips - Cross

believed?

A. That's not the reason. If he had a complaint, why didn't he file a complaint at that time? Officer Nichols did not file this complaint. Three months and two weeks after the incident, and only when he was given a verbal reprimand, did he say, "I have had something for you for quite awhile, I guess this is the time to give it to you."

Q. Wasn't Mattimore in jail at the time this incident occurred?

A. Mattimore got out of jail the first part of June. I was given this complaint the 13th of July.

Q. When you said he never filed a complaint, he being Mr. Mattimore, for April, May and June, he was in jail, is that correct?

A. That's correct, but he could have picked up the phone and called the Department to file a complaint.

Q. And you could have picked up the phone and talked to him?

A. No, because I wasn't aware of the incident until after he was out of jail.

Q. When you became --

A. By the time I was aware of it, I was also aware that Officer Nichols had been talking to Mr. Mattimore. I didn't know what he had told Mr. Mattimore.

1 James Phillips - Cross

2 Q. Wouldn't it have been easy to go to
3 Mr. Mattimore and find that out?

4 A. I don't believe that would be appropriate to go to
5 Mr. Mattimore.

6 Q. Because he heard from Police Officer Nichols what
7 the story was?

8 A. And I also heard, yes, that's true. If
9 Mr. Mattimore would have filed a complaint, I would have
10 talked to him and taken his statement. Mr. Mattimore did not
11 file any complaints.

12 Q. And you had no reason to talk to him?

13 A. That's correct.

14 Q. You made up your mind there was no wrongdoing
15 based upon the testimony of the officers?

16 MR. STEWART: Objection as to how he made up
17 his mind or what the contents of his report were
18 for the --

19 MR. HALLEY: I will withdraw the question.

20 MR. STEWART: -- for the same reason I
21 objected before.

22 BY MR. HALLEY:

23 Q. Now, you testified about the DARE program and this
24 request that Pat Nichols made. Was there anything illegal
25 or wrong about his request to be reimbursed for such

James Phillips - Cross

expenses?

A. I believe it's inappropriate. There has been no record since I have been Chief of Police or any other time anybody was paid for baby-sitting expenses because of their hours that they have to work on the police department.

Q. Well, didn't he send you a memo before, which said, "I paid a lot of money out of my own pocket, I'd like to get reimbursement"?

A. If Officer Nichols put in more than what was required in the DARE program, he did that on his own. That's up to him, but he was not required to do those things that he did in regards to the DARE program.

Q. Okay. Did he tell you the new hours of the DARE program would cause a personal conflict with his day-care?

A. When he first talked about the hours change, there was no problem with it. It was after we implemented the hours change that became a problem.

Q. And did he tell you that the hours change was going to cause him increased child care?

A. I got a memo in regards to that.

Q. And did you tell him that he should be willing to make some sacrifices without complaint?

A. I believe Assistant Chief Moll told him that. That was in the memo that he gave to Assistant Chief Moll.

1 James Phillips - Cross

2 Q. Did he tell you he's using his own vehicle, he'd
3 like to get some mileage expense?

4 A. That was in the memo that he had addressed to
5 Assistant Chief Moll. We told him that he could use any of
6 the police vehicles and the patrol could bring him to
7 wherever he wanted to go.

8 (Respondent's Exhibit B was marked for
9 identification.)

10 THE HEARING OFFICER: Is there a date for
11 this?

12 MR. HALLEY: It's not dated.

13 THE HEARING OFFICER: Let's take a ten-minute
14 recess.

15 (A brief recess was taken.)

16 THE HEARING OFFICER: Come to order,
17 please. Chief, I remind you you're under oath,
18 you remain under oath. Mr. Halley.

19 BY MR. HALLEY:

20 Q. I show you what's has been marked Respondent's B
21 for identification. Do you recognize that?

22 A. Yes, I do.

23 Q. Is that a memo that Pat Nichols sent you regarding
24 the DARE program?

25 A. That was a memo that he had sent me after he was

1 James Phillips - Cross

2 terminated from the DARE program.

3 Q. Did he tell you that he would, "gladly disregard
4 the request for compensation if you just let me finish up the
5 last five sessions"?

6 A. As I testified before, he tried to, you know, he
7 said that he would absorb the baby-sitting costs and the cost
8 for mileage if I let him continue with the program.

9 Q. My question, sir, is, did Officer Nichols tell you
10 he would gladly disregard the request for compensation if you
11 just let him finish the remaining five sessions?

12 A. He did do that after he was terminated from the
13 program, yes.

14 Q. And you said you received a number of calls from
15 people about the DARE program in regard to Pat Nichols, is
16 that correct?

17 A. That's correct.

18 Q. Didn't all these people say, "Please keep him on,
19 he's doing a great job"?

20 A. I advised the people that had called that it was a
21 personnel matter and that the reason that Officer Nichols was
22 taken off the program was not really any of their business,
23 and that --

24 Q. I'm sure you did, sir. My question is, didn't the
25 people advise you they wanted him kept on because of the

1 James Phillips - Cross

2 great job he was doing?

3 A. Two people called and said that, that's correct.

4 Q. Okay. Who requested the meeting that you talked
5 about where you and Moll remanded Officer Nichols?

6 A. I requested that meeting.

7 Q. Did Officer Nichols request anyone else attend?

8 A. I don't recall if he did.

9 Q. How about a Village Councilman?

10 A. I don't know if he did or not, he might have.

11 Q. Are you familiar with the Civil Service Law, sir?

12 A. Yes, I am.

13 Q. Are you familiar with the requirements for giving
14 somebody a written reprimand?

15 A. Our contract that we have with the Village through
16 our negotiations covers written reprimands.

17 Q. I understand that. Are you familiar with the
18 Civil Service Law requirements for giving written reprimands?

19 A. He never used the Civil Service --

20 Q. Isn't it correct that a grievance has been filed
21 with regard to that reprimand?

22 A. I'm not sure. The reprimand still stays in the
23 personnel file until if a grievance decides to overturn it.

24 Q. You're not sure if a grievance was filed?

25 A. I haven't been made aware of that. I know he made

1 James Phillips - Cross

2 intentions he wanted to file a grievance, because I advised
3 him of his rights.

4 Q. You were not aware of any grievance that was filed
5 by or on behalf of Pat Nichols?

6 A. All I know is that Pat said he was going to file a
7 grievance.

8 Q. Now, you indicated in your Direct testimony that
9 this bleach incident was somehow tied to rules and
10 regulations regarding bodily fluids?

11 A. It's the blood-borne pathogen standard all
12 health -- anybody that's at any exposure risk is required by
13 state/federal law to have implemented.

14 Q. Are these rules and regulations in writing?

15 A. Yes, they are.

16 Q. Do you have a copy of them?

17 A. Yes, I do.

18 Q. Do you have them?

19 A. I don't have them here.

20 Q. Can you produce them?

21 A. Yes, I can.

22 MR. HALLEY: Can we have a short recess?

23 THE HEARING OFFICER: Any objection,
24 Counsel?

25 MR. STEWART: I won't object to that.

1 James Phillips - Cross

2 THE HEARING OFFICER: Okay, ten minutes?

3 MR. HALLEY: Whatever it takes.

4 (A brief recess was taken.)

5 THE HEARING OFFICER: We'll call the hearing
6 back to order. Chief, I will remind you you're
7 still under oath. Mr. Halley.

8 BY MR. HALLEY:

9 Q. You have produced some sort of book, sir?

10 A. Yes, I have, this is our Exposure Control Plan for
11 the Malone Police Department.

12 Q. Tell us where your relevant section is that
13 relates to somebody pouring bleach on urine.

14 A. There is no section in here that regulates that.
15 That's a Department policy that has to be redeveloped for
16 each department.

17 Q. Let me ask you, sir, when bleach was poured into
18 the holding cell where Scott Mattimore was, was there any
19 rule or regulation dealing with that?

20 A. The thing that was dealing with that is in the
21 plan. It says anytime a bodily fluid is spilled or exposed,
22 the first thing they're supposed to do is disinfect the
23 fluid, then clean the fluid up.

24 Q. Is that in that book?

25 A. I'm not the Control Exposure Officer, Officer Moll

1 James Phillips - Cross

2 is.

3 Q. You indicated, I believe, there were rules and
4 regulations dealing with that, is that right?

5 A. I am stating that the Exposure Control Plan under
6 29 CFR part 1910-1030, states that if there is a bodily fluid
7 or exposure to a bodily fluid, that the fluid must be
8 disinfected and cleaned up. That's what I'm saying.

9 Q. Would you show me where it says that?

10 MR. STEWART: Your Honor, I don't object to
11 the question, but if we're going to answer that
12 question, perhaps another adjournment is in
13 order.

14 THE HEARING OFFICER: Are you asking for an
15 adjournment?

16 MR. STEWART: I am asking for one.

17 THE HEARING OFFICER: How long do you need?

18 MR. STEWART: Five, ten minutes.

19 THE HEARING OFFICER: Any objection,
20 Counsel?

21 MR. HALLEY: No.

22 (A brief recess was taken.)

23 THE HEARING OFFICER: I've got to remind
24 you, Chief, you are under oath.

25 THE WITNESS: Okay.

James Phillips - Cross

BY MR. HALLEY:

Q. Did we find it?

A. Yes, I did.

Q. Okay. Could I see it, please.

A. Sure.

Q. Under the housekeeping section right here, maybe just read it into the record, then.

A. Okay. Under housekeeping section, page 22, "Decontaminate work surfaces with an appropriate disinfectant after completion of procedures, immediately when overtly contaminated after any spill of blood or other potentially infections materials, at the end of the work shift when surfaces have become contaminated since the last cleaning."

Q. Did you believe that pouring bleach into the holding cell was appropriate?

MR. STEWART: Objection as to the details of the incident that night or what the Chief might or might not believe.

MR. HALLEY: Well, sir, Patrick Nichols is charged with violating certain rules and regulations because he reported a certain incident.

MR. STEWART: That's true, he did report it,

1 James Phillips - Cross

2 and we're not objecting to that. It's when he
3 starts talking about it outside the Department
4 that we have filed charges.

5 MR. HALLEY: Civil Service Law Section 75-B
6 specifically permits him to assert as a defense
7 that he reported improper governmental action to
8 another governmental agency.

9 MR. STEWART: Your Honor, I have a trial
10 Memorandum of Law regarding what 75-B says, and
11 it's very specific as to what Officer Nichols
12 could and could not do.

13 THE HEARING OFFICER: I have read Section B
14 in anticipation of this rule, and I would like to
15 read into the record, maybe, prior to my decision,
16 the information under the section that you're
17 quoting. "An employee shall have made a good
18 faith effort to provide the appointing authority
19 or his or her designee the information to be
20 disclosed and shall provide appointing authority
21 or designee a reasonable time to take appropriate
22 action, unless there is an imminent and serious
23 nature to public health or safety."

24 I have not heard evidence, at least
25 introduced to date, that would cite the imminent

James Phillips - Cross

and the serious danger. To the contrary, the Village has introduced testimony that, as an early stage in the investigation, they did make Officer Nichols aware that the investigation was ongoing. So, I don't think that, at this point, unless you have further evidence to introduce, that you're citing the retaliatory action is appropriate.

MR. HALLEY: I would submit to you, Your Honor, that if someone pours bleach into a holding cell, that can cause a prisoner to become ill, that may be a danger to someone who's in a holding cell. I would further submit, if I am allowed to demonstrate these facts, I will demonstrate that's precisely what happened. This prisoner became very ill because of what was poured into the holding cell. My line of questioning with regard to the Chief was, did he believe that pouring bleach into that holding cell is an appropriate disinfectant.

MR. STEWART: In my opening statement, Your Honor, I said, and I maintain, that the Village will stipulate that on August -- sorry, April 2nd or 3rd, 1993, Officer Nichols or someone in his position had the right to file charges or request

1 James Phillips - Cross

2 an investigation concerning that incident. More
3 than that, I don't think it's relevant.

4 MR. HALLEY: I think it's highly relevant.

5 THE HEARING OFFICER: Why, Counsel, do you
6 believe that it's relevant, the specifics of the
7 act or the failure to act or the improper act or
8 whatever it may turn out to be, when the charges
9 are not related to the action of the bleach and
10 the urine combination, but rather to actions that
11 happened 90-plus days afterwards?

12 MR. HALLEY: The charges in many instances
13 talk about releasing departmental information
14 without permission. We believe section 75-B of
15 the Civil Service Law provides a defense for a
16 person when he reports to another governmental
17 agency improper governmental action.

18 THE HEARING OFFICER: Are you asking for a
19 ruling on it at this point?

20 MR. HALLEY: No, I'm not, I'm asking I be
21 permitted to get to a line of questioning which
22 relates to what Officer Nichols reported, if he
23 honestly believed there was improper governmental
24 action because someone poured bleach in a small
25 holding cell and caused a prisoner to become ill.

1 James Phillips - Cross

2 He has an absolute right to report that
3 information without obtaining permission from the
4 person whom he believes is covering it up.

5 MR. STEWART: I am not going to object to
6 the fact that reports were made. I am not going
7 to object if testimony is offered as to who they
8 were made to. I am going to object as to what the
9 contents of those reports were.

10 THE HEARING OFFICER: On the grounds of --

11 MR. STEWART: On the ground, number one,
12 Civil Service Law 50-A gets into someone else's
13 personnel record, which has not been released, and
14 as to which there is no Court Order of releasing.
15 And second, it's not relevant to the charges at
16 hand.

17 MR. HALLEY: We're not speaking about
18 someone's personnel records. That question has
19 nothing to do with it. The relevancy I already
20 spoke to you about.

21 THE HEARING OFFICER: I will allow any
22 questions that relate to, specifically, did an act
23 occur or an incident occur on the 2nd of April in
24 the holding cell area or in the police station if
25 you can prove their relevancy to the charges

1 James Phillips - Cross
2 before that were brought against Officer
3 Nichols. I will not allow any testimony relative
4 to the actions or the lack of actions of any of
5 the personnel involved in that incident.

6 Is that acceptable to you, Counsel?

7 MR. HALLEY: It's not acceptable. Note my
8 objection for the record.

9 THE HEARING OFFICER: Noted.

10 MR. HALLEY: I will continue with other
11 questioning.

12 BY MR. HALLEY:

13 Q. Chief, after you received that request from
14 Patrolman Nichols for extra compensation from the DARE
15 program, you got mad, didn't you?

16 A. Did I get mad?

17 Q. Yes.

18 A. No, I didn't get mad.

19 Q. Did you tell Scott Mulverhill after you heard
20 about that request, "I'm going to show Nichols who runs this
21 department"?

22 A. That's not true.

23 Q. Did you tell Scott Mulverhill after you received
24 that request, "Nichols has gone too far this time"?

25 A. I did not.

1 James Phillips - Cross

2 Q. Were you told by Councilman Fraser to restore
3 Nichols back to the DARE program?

4 A. I was not.

5 Q. Were you happy that Officer Nichols reported the
6 Mattimore incident to the District Attorney's office?

7 A. Was I happy?

8 Q. Yes.

9 A. I had no indifference whether he reported it or he
10 didn't report it.

11 Q. Didn't bother you at all?

12 A. It bothered me he went outside the chain of
13 command, didn't follow proper procedure after he had already
14 been counselled several times in regard to proper procedure.

15 Q. Are you familiar with the Village Code, sir?

16 A. Yes, I am.

17 Q. Are you familiar with Section 30, which requires
18 complaints about members of the police force to be entered
19 into the blotter?

20 A. I don't believe that's a current code.

21 Q. Do you have the current code handy?

22 A. It is rules and regulations of the police
23 department.

24 Q. Isn't there a difference between the rules and
25 regulations of the police department and the Village Code of

1 James Phillips - Cross

2 Ordinances?

3 A. I don't know what you're saying. You will have to
4 show me what you're referring to.

5 Q. Is there a copy of the Village Code here?

6 MR. STEWART: I assume there is.

7 MR. HALLEY: Could we have one?

8 (Pause in proceedings)

9 BY MR. HALLEY:

10 Q. Let with me withdraw the question for the time
11 being.

12 A. I think that section you're referring to is
13 repealed, and the rules and regulations were adopted in its
14 place.

15 Q. When was it repealed?

16 A. In May.

17 Q. What year?

18 A. This year.

19 Q. Okay. Do you have any indication what took its
20 place?

21 A. The rules and regulations, the duties and rules of
22 conduct of the police department.

23 Q. Okay. Let me just show you the Code of the
24 Village of Malone, New York, and direct your attention to
25 page 7610. I'm going to use the book that you produced as a

James Phillips - Cross

copy of the Code of Ordinances. Would you agree with me, sir, Section 30 in that book requires all complaints against members of the force, whether made by members of the force or by citizens, to be entered in the blotter at the time the complaint is made?

A. That's what it says here.

Q. Okay. That has to be done within 24 hours after the complaint is made, correct?

A. That's what it says here.

Q. Was the complaint filed by Officer Nichols entered into the blotter within 24 hours after it was made?

A. It was given to the Board within 24 hours of the time the complaint was filed. Like I said, my policy is, if a person outside the Department filed a complaint, that is entered into the log blot.

Q. I understand it's your policy, sir.

A. I am the Chief Executive Officer.

Q. It was given to the Board within 24 hours, is that correct?

A. I don't believe this is the regulation that's in effect at this time.

Q. Just let me backdraft. Did you say the complaint Officer Nichols made about the Mattimore incident was given to the Board within 24 hours?

1 James Phillips - Cross

2 A. I made the Mayor aware of it the next day on the
3 14th, yes, it was.

4 Q. Didn't you just testify, sir, that when you talked
5 to the Mayor August 2nd, he didn't know anything about that,
6 he never heard about it before?

7 A. No, I did not.

8 Q. Didn't the Mayor say he knew nothing about it?

9 A. He did know. I did not testify to that.

10 Q. Okay. You made the Mayor aware of the Mattimore
11 incident on the 14th of July in writing or orally?

12 A. I went to his office and spoke to him personally.

13 Q. And apparently after two weeks or so went by,
14 Officer Nichols began to speak to the Mayor and the District
15 Attorney and the others about the incident, is that correct?

16 A. I don't believe that's correct. I believe three
17 days after the incident, Officer Nichols talked to the
18 District Attorney.

19 Q. Okay. Now, let's go through the specific
20 regulations. Is a police officer supposed to report
21 potential crimes to the District Attorney's Office?

22 A. Through his proper chain of command, yes.

23 Q. What do you say is the proper chain of command,
24 sir?

25 A. If it is a patrolman, he goes to the next

1 James Phillips - Cross

2 immediate supervisor, his supervisor goes to the Chief of
3 Police, then the Chief of Police does the reporting, if
4 anybody does any reporting as to personnel-type violations.

5 Q. So, it's ultimately up to the Chief of Police to
6 decide whether or not it's going to go outside the
7 Department?

8 A. That's correct.

9 Q. Okay. What is the policy that's followed when an
10 officer makes a complaint about the Assistant Chief or the
11 Chief, is it still up to the Chief to decide whether or not
12 to go outside the Department?

13 A. Like I said before, they still have to go through
14 the proper chain of command, and the Chief would give
15 permission for whoever filed the complaint to go forward.
16 There has never been a complaint filed against me in regards
17 to this incident.

18 Q. Again, sir, you would be the one to decide whether
19 or not a complaint against the Assistant Chief would go
20 outside the Department?

21 A. That's correct, I would make the Mayor and Village
22 Board aware of the thing, of any type complaints, and then,
23 yes, they would make the determination as to where it went
24 from there.

25 Q. And you could also say, "It's not going outside

1 James Phillips - Cross

2 the Department, I'm going to do my own investigation, make my
3 own findings," correct?

4 MR. STEWART: Objection, improper
5 hypothetical.

6 THE HEARING OFFICER: Sustained.

7 BY MR. HALLEY:

8 Q. In this case when you received the complaint about
9 a fellow officer from Patrolman Nichols, didn't you make your
10 own investigation and your own findings?

11 A. I started my own investigation and I reported to
12 my superior in regard to the incident, and I was instructed
13 to do the investigation.

14 Q. The investigation which you have testified to
15 consisted of asking for the police officer's side of the
16 story?

17 A. Not only the police officer's side of the story.

18 Q. Did you ask for Mattimore's side?

19 A. No, I did not ask for Mattimore's side.

20 Q. Who did you ask besides police officers?

21 A. I went to the court, I got certified copies of the
22 Records of Conviction where Mr. Mattimore pled guilty to the
23 charges. Mr. Mattimore had never filed any complaint with
24 the Department, never received any type of medical treatment
25 as a result of the alleged incident. In my investigative --

1 James Phillips - Cross

2 in my experience, I determined that it was not necessary to
3 talk to Mr. Mattimore in regards to this.

4 Q. Okay. How do you believe -- let's go through the
5 charges. Is there a copy of the charges in front of you?
6 What do you believe Officer Nichols failed to do on July 13,
7 1993, which violated the requirement he immediately notify
8 the desk officer of an unusual occurrence?

9 A. What was your question?

10 Q. What do you believe Officer Nichols failed to do
11 on July 13, 1993, which violated the requirement that he
12 immediately notify the desk officer of an unusual occurrence?

13 A. He should have went to his superior officer or
14 desk officer who was in charge that night and told them he
15 felt there was a violation of the subject's whatever in
16 regards to the incident.

17 Q. Who was the officer in charge?

18 A. That was Assistant Chief Moll.

19 Q. Okay.

20 A. Then if he didn't want to go to Assistant Chief
21 Moll, he should have went to the next supervisor who was
22 coming on, and he should have made some reference to me in
23 regards to the incident.

24 Q. You're saying what he should have done April 2nd,
25 1993, was tell Chief Moll what Chief Moll had just done?

1 James Phillips - Cross

2 A. No, I didn't say that. The duties and the chain
3 of command is specific. The officer -- if he wasn't happy
4 with reporting it to him, he should have went to another
5 supervisor, or if he felt he had to bypass him, he should
6 have come directly to me in regards to it. I was not made
7 aware of the situation until the incident on July 13th after
8 he was served the written reprimand.

9 Q. 6.233 doesn't say come to you, it says go to the
10 desk officer, correct?

11 A. That's correct.

12 Q. How did he bring discredit on the Department
13 July 13, 1993 by filing a complaint against a fellow officer?

14 A. I think he brought discredit upon the Department
15 through the investigation, that his bases for his complaints
16 were unfounded.

17 Q. That's your opinion that resulted from your
18 thorough investigation, right?

19 A. What's that?

20 Q. That's your opinion that it was unfounded?

21 A. It's not only my opinion, it's a record of the
22 Village Board meeting that there was no misconduct against
23 the officer in question in regards to that.

24 Q. So, how does it bring discredit on the Department
25 to report potential wrongdoing by another Department member?

James Phillips - Cross

MR. STEWART: Objection. It's a
misconstruction of the charge, the first charge,
and it fails to take into account the retaliatory
nature of what Officer Nichols is alleged to have
done. I don't mind him being asked about the
charges, but being asked about something that
doesn't constitute the charge is a problem to me.
I object.

BY MR. HALLEY:

Q. The first charge says, on July 13, 1993, he filed
with you "A written complaint against a fellow officer
regarding an incident which was lacking in grounds sufficient
to result in discipline, which was filed as a retaliatory
act," and that is claimed to have brought discredit upon the
Department. How did that bring discredit on the Department?

A. I think anytime the Department is mentioned in
regards to anything, if you have read the papers in regards
to these incidents, I would definitely say that brought
discredit to the police department.

Q. The charge is he filed a complaint with you.

A. What's that?

Q. Charge number one is that he filed a complaint
with you, right?

A. I don't understand your question, sir.

James Phillips - Cross

Q. Charge one says he filed with you a written complaint against an officer, not that he went to the paper or the District Attorney or anyone else, is that right?

A. That's correct.

Q. How did filing a complaint with you about a fellow officer bring discredit on the Department?

A. I think anytime an officer files charges against another officer that lacks substance, that brings discredit upon everybody within the Department. The officers are reluctant to do their jobs if, you know -- I mean, it's just, if an officer has to go on a call and the officer that is filing frivolous complaints is with that officer, that officer is going to second-guess himself in regards to any action that he's going to take in regards to any type of complaint.

Q. Okay. How was it insubordinate and disrespectful to a superior officer?

A. It was disrespectful and insubordinate because of the fact that it was a retaliatory act and that it was against a superior officer who had just got done reprimanding him for another personnel complaint.

Q. So, if I understand you, sir, basically, the problem with Officer Nichols is he filed unfounded, baseless complaints, is that really the problem?

1 James Phillips - Cross

2 MR. STEWART: Object, I believe the Chief's
3 testimony speaks for itself.

4 BY MR. HALLEY:

5 Q. Let me ask it a different way. If the complaint
6 he filed against the fellow officer were founded, if it had a
7 basis, would you have felt that he was guilty of bringing
8 discredit on the Department?

9 A. If there had been a basis for the complaint, no, I
10 would not have felt that way.

11 Q. You said, I believe, "We agreed there was no
12 basis," is that correct? You believe there was no basis?

13 A. I submitted my report to the Village Board and I
14 left them the final determination of what the outcome of the
15 investigation was to be. I made my recommendations, and I
16 presented it to the Board for their final determination in
17 regards to the incident.

18 Q. And the Board made that determination roughly in
19 August, correct?

20 A. I'm not sure what date that the Board made that
21 determination. I was on vacation, I believe, at the time
22 that they made that determination.

23 Q. Skipping down to charge number two regarding
24 meeting with the Franklin County District Attorney, how did
25 meeting with the District Attorney bring discredit to the

James Phillips - Cross

Department?

A. I believe when you go to an outside agency and bring up problems that you have within a Department without going through the Department first, that that brings discredit to the Department.

Q. Well, he went to you before he went to the District Attorney, didn't he?

A. Apparently, yes.

Q. Okay.

A. And I reassured him on the 21st that I was conducting a thorough investigation and everything, and if discipline was required, it would be given. I reassured him of that. That's what the note says.

Q. Mm-mm. You also wrote a note July 14th, which said you don't feel there was any basis --

MR. STEWART: Objection to the contents of that note.

THE HEARING OFFICER: Sustained.

MR. HALLEY: Note my continuing objection to it.

THE HEARING OFFICER: Noted.

BY MR. HALLEY:

Q. Chief Moll is a friend of yours, isn't he?

A. Everybody on the Department is.

James Phillips - Cross

Q. Is Assistant Chief Moll a friend of yours?

A. Yes, he is.

Q. You got very upset when you heard a friend of yours was being accused of misconduct by Officer Nichols, is that right?

A. That's not correct.

Q. Didn't bother you at all?

A. It bothered me to some extent a fellow officer would file a complaint where there was no basis for a complaint and base it on hearsay.

Q. Mm-mm. You didn't think it was appropriate to base a complaint on hearsay, so therefore, you went out and you spoke directly to the person -- strike that. You did not go out and speak to the person, the hearsay was based on what someone else told you?

MR. STEWART: Objection, asked and answered. We have asked that same question about six times now. It's been answered the same way each time.

MR. HALLEY: I will withdraw the question.

BY MR. HALLEY:

Q. But that's what this is all about, isn't it, sir, an unfounded complaint was made against the Assistant Chief?

MR. STEWART: Objection as to what it's all

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Conference in Chambers

about. The charges speak for themselves.

MR. HALLEY: I have nothing further.

THE HEARING OFFICER: Sustained. Do you have any further questions for the Chief? Do either one of you expect to recall him?

MR. HALLEY: No.

MR. STEWART: I don't believe so, no.

(The witness was excused.)

THE HEARING OFFICER: Mr. Stewart.

MR. STEWART: Your Honor, at this time pursuant to prior stipulation between the parties, which I believe is still in effect, I would submit as Police Department Exhibit Number 14, an affidavit of Richard Edwards.

MR. HALLEY: I object, Your Honor, I don't believe this is a complete statement.

THE HEARING OFFICER: Complete in what regard? It appears to be one page signed by a person purporting to be the District Attorney.

MR. HALLEY: It does not set forth the entire conversation.

MR. STEWART: Your Honor, could we meet in chambers on that?

THE HEARING OFFICER: Sure.

Conference in Chambers

(The following occurred in chambers.)

MR. STEWART: Tell him what the problem is on this.

MR. HALLEY: Edwards and Nichols had this conversation. What's in there is accurate, but there was another part to it. The other part is that Edwards said, "If the facts are what you told me, Pat, it sounds like there was a crime committed." I'm trying to paraphrase it.

MR. STEWART: And we think that statement was said by Dick, Dick admits it, and if Dick were able to come and testify, which he's not because he's in the middle of a trial term, and Tom were to try and introduce that aspect of the testimony, I would then stand up and object for the same reason I have been objecting all morning, based on Civil Service Law 50-A, it gets into the details of somebody else's personnel investigation. That's why I didn't put it in.

THE HEARING OFFICER: Are you going to mention his name?

MR. HALLEY: No, he's going to say, "If what you told me is correct, it sounds like there could have been a crime committed."

Conference in Chambers

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2 THE HEARING OFFICER: He is not going to
3 mention any other officer's name?

4 MR. HALLEY: No.

5 THE HEARING OFFICER: Let me read this. Did
6 Officer Nichols ever return, or is this -- other
7 than the portion that it left out, has there been
8 any other contact between the District Attorney
9 and Officer Nichols?

10 MR. STEWART: None that I know of.

11 THE HEARING OFFICER: Do you have any
12 objection to entering into -- stipulating relative
13 to the criminal aspect, so long as there is no
14 names of officers used?

15 MR. STEWART: Well, I do.

16 THE HEARING OFFICER: It doesn't take much
17 to infer, but --

18 MR. STEWART: Right, it doesn't take
19 anything to infer, plus, Pat's statement, as Pat
20 admitted to Dick, was only one of hearsay. It's
21 very troublesome for me to have some kind of
22 testimony hanging out there that the District
23 Attorney says maybe there was a crime committed if
24 there is no direct evidence of that.

25 THE HEARING OFFICER: Were you intending to

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Conference in Chambers

put Pat on the stand to testify to his full conversation with District Attorney.

MR. HALLEY: Yes.

THE HEARING OFFICER: Then it's going to come out, anyway. Let it come out, then.

MR. HALLEY: The thing is, if Edwards were here, I could ask him on Cross, "Did you tell him you thought there was a probability the crime was committed?"

MR. STEWART: But the affidavit idea was your idea.

MR. HALLEY: He said that it's missing one thing. I don't want to bring Edwards here, either. I talked to the guy.

THE HEARING OFFICER: I would be willing to admit this, with the clear understanding on the record that there is further conversation alleged, which is not in this memorandum, period.

MR. STEWART: Okay. Is that acceptable to you?

MR. HALLEY: Are you going to object when Pat says what he told him?

MR. STEWART: I am going to reserve my rights to that, yeah.

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Conference in Chambers

MR. HALLEY: Then I can't agree.

THE HEARING OFFICER: The alternative is to wait.

MR. STEWART: And have Edwards come back another time, that way you won't have to hold up the hearing. He said he might be available around noon if we needed him.

THE HEARING OFFICER: I would say, let's try to stipulate if you want to put this in now, with the stipulation that we'll seek the District Attorney's personal testimony as soon as he's available.

MR. STEWART: If we're going to do that, if we're going to bring him in, we don't want him to read it.

MR. HALLEY: I don't care if he reads the damn thing. It's okay by me.

THE HEARING OFFICER: What do you want to do?

MR. STEWART: I want to call Dick and see if he can come down and testify.

THE HEARING OFFICER: Okay.

(End of conference in chambers.)

THE HEARING OFFICER: Come to order,

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1 James Feeley - Direct

2 please.

3 MR. STEWART: At this time, I'd call Village
4 Mayor James Feeley.

5 James Feeley,

6 having been called as a witness, being duly sworn, testified
7 as follows:

8 DIRECT EXAMINATION

9 BY MR. STEWART:

10 Q. Would you state your name and address, please.

11 A. My name is James Feeley, I live at 155 Webster
12 Street, Malone, New York.

13 Q. How are you employed?

14 A. I am employed as Special Assistant to the
15 New York State Assembly Minority Leader and Mayor of the
16 Village of Malone.

17 Q. When were you elected Mayor of the Village of
18 Malone?

19 A. In March of this year.

20 Q. At the time you became Mayor until July 13, 1993,
21 did you ever have any conversations with Patrick Nichols
22 concerning complaints of his against Assistant Chief
23 Gerry Moll?

24 A. No.

25 Q. From July 13, 1993, until August 5, 1993, did you

1 James Feeley - Direct

2 have any such communication with Officer Nichols?

3 A. Yes, I did.

4 Q. What was the first such time you had a
5 conversation with Officer Nichols?

6 A. On August 2nd -- on July 31, he had requested time
7 to meet with me, and the time we agreed upon was Monday,
8 August 2nd.

9 Q. On July 31, did he tell you what the meeting was
10 going to be about?

11 A. No, he didn't.

12 Q. Did you say anything else to him and did he say
13 anything else to you on July 31st?

14 A. No, he -- we just agreed upon the date and the
15 time of the meeting.

16 Q. Where was that meeting to take place?

17 A. In my office here at the village office.

18 Q. And did you have such a meeting with
19 Officer Nichols?

20 A. Yes, I did.

21 Q. When did that happen?

22 A. Approximately 1:00 p.m. on Monday, August 2nd.

23 Q. Tell me everything Officer Nichols said to you
24 during that meeting and everything you said to him, as best
25 you can recall.

James Feeley - Direct

A. Officer Nichols came to my office and told me that he had filed a personnel complaint against Assistant Chief Gerald Moll relating to an incident that took place on April 2nd. He told me that he thought Assistant Chief Moll was in violation of official misconduct and of numerous rules and regulations of the police department's Code of Conduct and rules and regulations. He told me that he thought the investigation on the complaint that he had filed with the Chief was being covered up. He showed me a copy of the complaint that he had filed with the Chief of Police stating what he thought had transpired that night, telling me both in the statement and verbally that he thought Assistant Chief Moll had acted with a certain amount of intent, that he had damaging statements from the individual that was in custody that night and damaging statements from Mulverhill and Stone, Steve Stone.

He showed me a document that he had obtained from the Chief's computer, had five or six paragraphs that the Chief had written that related to Pat having filed a complaint, that he had started speaking with the principles involved that evening, that Pat's complaint was based on hearsay, as Pat has not witnessed the events that had occurred within the police department, that statement or statements that he had -- that the Chief at that time

1 James Feeley - Direct

2 indicated that there was direct conflict into what Pat had
3 claimed had happened and that the officer at that point had
4 been interviewed.

5 Pat told me that he had been to the District
6 Attorney's Office with a copy of his complaint, which he had
7 whited out the name of the officer involved that he had filed
8 a complaint about, told me that he was concerned that the
9 investigation was being covered up and that if he wasn't
10 gaining satisfaction from the District Attorney's Office or
11 my office, that he would proceed to a higher authority, and
12 that we discussed who that would be, the US Attorneys'
13 Office, the Federal Bureau of Investigation, and he then told
14 me that he thought the FBI would be a suitable organization
15 for the investigation of a cover-up and/or violations of the
16 individual's civil rights.

17 He spoke about having met with the individual that
18 was in custody that night, telling me that he was keeping him
19 appraised of his own investigation and what was transpiring
20 concerning the investigation with the Chief of Police, told
21 me that he was considering advising that individual about
22 violations of that person's civil rights and that he might
23 have regress through a civil suit against the Village.

24 Q. Did you have any discussions that day about the
25 DARE program?

1 James Feeley - Direct

2 A. Not to my recollection.

3 Q. Did he ask you if you knew about his allegations
4 against Assistant Chief Moll?

5 A. Yes, he did.

6 Q. What did you tell him?

7 A. At first, I danced around that, tried to avoid
8 answering it.

9 Q. Why?

10 A. I didn't think that it was proper for an off-duty
11 village patrolman to be in my office inquiring of me the
12 nature of my conversations with the Chief of Police over
13 matters that involve the police department.

14 Q. Did you get a note from Officer Nichols on or
15 about August 3rd?

16 A. Yes, I did.

17 MR. STEWART: I'd like to have this
18 document, dated 8-3-93, marked as Police
19 Department Exhibit Number 14 for identification.

20 (Police Department's Exhibit 14 was marked
21 for identification.)

22 BY MR. STEWART:

23 Q. Showing you Police Department Exhibit 14, do you
24 recognize it?

25 A. Yes, I do.

1 James Feeley - Direct

2 Q. What is it?

3 A. It's a note/memo on Village of Malone Police
4 Department letterhead that was left on my desk in the village
5 office on August 3rd.

6 MR. STEWART: Move to admit that as Police
7 Department Exhibit Number 14.

8 MR. HALLEY: No objection.

9 (Police Department's Exhibit 14 was marked
10 received in evidence.)

11 BY MR. STEWART:

12 Q. Would you read the note, please?

13 A. It's addressed to Mayor Feeley, dated
14 August 3rd, "Jim, Sergeant Ritchie advised me shortly after
15 speaking with you this past evening that Phillips told him he
16 knew I was meeting with you in your office. He also told
17 Ritchie that if I were the one that requested the meeting,
18 that I would be disciplined. No surprise, of course. I ask
19 that for the time being, the context of our meeting remain
20 confidential due to the circumstances. Sincerely, Pat
21 Nichols," signed "P. Nichols."

22 Q. When, if ever, is the next time that you had a
23 communication with Officer Nichols?

24 A. That would have been August 4th shortly after
25 8:00 p.m. in the evening, I received a telephone call from

1 James Feeley - Direct

2 Officer Nichols.

3 Q. Can you describe that telephone conversation to
4 us?

5 A. Yes. Pat Nichols phoned me, he told me that he
6 was looking at an officer that was very concerned, that the
7 Chief knew that his name had been mentioned in this memo that
8 I just read. At this point, I'm a little concerned about how
9 information is traveling around the police department between
10 different individuals, whether it's a conversation I hold
11 with the police, and certain individuals seem to know it's
12 transpired.

13 I asked Officer Nichols if he was looking at a
14 officer, and he responded to me, "Yes, I am looking at that
15 officer," and then he asked me if I was keeping the context
16 of the meetings and our communication confidential. At that
17 time, I responded that, "Pat, you know the rules and
18 regulations of your department, and I hope that you would
19 abide by them." He said, "Well, I guess that's it," and hung
20 up the phone.

21 Q. Did you say anything else or did he say anything
22 else to you during that telephone conversation?

23 A. No, that would be the extent of the conversation.

24 Q. During this time frame, from the end of August to
25 the 3rd day of -- I'm sorry, the end of July, '93, to about

1 James Feeley - Direct

2 the 3rd day of August, '93, did you have any conversations
3 with Officer Nichols regarding his assignment as DARE
4 officer?

5 A. Yes.

6 Q. When was that, if you recall?

7 A. That would have been August 2nd, I believe, a
8 Monday. I was on the front porch of my home, and Officer
9 Nichols pulled in driving a patrol car while he was on duty.
10 I got off my porch and went down to the car, we exchanged
11 greetings and he told me that he had been that day totally
12 removed from responsibilities as a DARE officer.

13 Q. Where is your house?

14 A. 155 Webster Street.

15 Q. Did he ask you to take any action with respect to
16 his assignment as DARE officer?

17 A. No, he did not.

18 Q. Did he tell you why he was telling you this?

19 A. No, he had informed me that the position of DARE
20 officer had been offered to Officer Simonsen and that Officer
21 Simonsen was told he'd have to respond in a very immediate
22 sense or lose that opportunity. Officer Nichols told me that
23 he advised Officer Simonsen to accept the position, as it
24 would be good for Officer Simonsen's career.

25 Q. This conversation at your home, how long did it

James Feeley - Direct

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take?

A. I'd put it in a 15- to 20-minute range.

Q. Did it take place inside the home or outside the home?

A. It took place in my driveway with Officer Nichols seated in the patrol car and myself on the passenger side leaning through the window of the car.

Q. Was anyone else present?

A. My three-year-old daughter.

Q. Other than your three-year-old daughter?

A. My wife came out, who came out to retrieve my three-year-old daughter.

Q. What was the date of the last Village Board meeting?

A. Last Monday.

Q. Was a petition presented at that time?

A. Yes, it was.

MR. STEWART: I'd like to have this marked Police Department Exhibit 15 for identification.

(Police Department's Exhibit 15 was marked for identification.)

BY MR. STEWART:

Q. Mayor, I show you Police Department Exhibit Number 15 for identification. Do you recognize it?

1 James Feeley - Direct

2 A. Yes, I do.

3 Q. Is that, in fact, a page of the petition that was
4 presented or one identical to it?

5 A. Yes.

6 Q. How many signatures, if you know, were on the
7 total petition presented to the Village Board?

8 A. In excess of 500, but I don't know the exact
9 number, I don't recall.

10 MR. STEWART: Move to admit it as Police
11 Department Exhibit 15.

12 MR. HALLEY: Object, totally irrelevant, has
13 nothing to do with the charges.

14 MR. STEWART: I intend to inquire, Your
15 Honor, as to whether it was drafted and circulated
16 by Officer Nichols and whether it constitutes a
17 continuing violation of the rules and
18 regulations.

19 MR. HALLEY: Now we're getting into
20 additional, new charges that aren't charged and
21 set forth if the charges aren't specific. That's
22 absolutely impermissible. I strenuously object.

23 THE HEARING OFFICER: I agree with Counsel.
24 If it's not included in the current charges, while
25 it may constitute additional charges, these aren't

1 James Feeley - Cross

2 before this Hearing Board at the present time.

3 MR. STEWART: No further questions for the
4 Mayor.

5 CROSS-EXAMINATION

6 BY MR. HALLEY:

7 Q. Mayor, when is the first time you heard about this
8 Mattimore incident?

9 A. July 14th, the day after.

10 Q. How did you hear about it?

11 A. The Chief of Police informed me.

12 Q. Did he tell you at that time he believed it was
13 unfounded?

14 A. He told me that he was continuing with the
15 investigation, that there were certain principals that were
16 on vacation that couldn't be reached for statements, and that
17 he would complete the investigation and it would be forwarded
18 to me.

19 Q. Did he tell you at the time he believed it was
20 unfounded?

21 MR. STEWART: Objection, again, Your Honor,
22 getting into whatever the Chief thought at that
23 early date is irrelevant. I have raised this
24 objection before.

25 THE HEARING OFFICER: Go ahead.

1 James Feeley - Cross

2 MR. HALLEY: I don't think it's irrelevant.
3 The basis of Mr. Nichols' claim --

4 THE HEARING OFFICER: It's the Chief's
5 opinion, the question being asked is whether or
6 not the Chief told you it was unfounded or
7 founded, one or the other, and I would accept that
8 question.

9 A. He told me that initial inquiries of officers
10 involved led him to believe that Pat's statement was based
11 totally on hearsay, the complaint was based on hearsay and
12 secondhand information. And at that point, I believe he
13 added one statement that led him to believe that was
14 unfounded.

15 BY MR. HALLEY:

16 Q. Did he indicate this was his conclusion or this
17 was a tentative --

18 A. That it was a preliminary investigation, that it
19 wasn't complete, the officer was on vacation, wasn't expected
20 to return until the end of the month, another officer was on
21 days off.

22 Q. Did he tell you whose statement it was that raised
23 the belief it was unfounded?

24 A. No, he didn't.

25 Q. Now, Chief Phillips has stated, at least in

1 James Feeley - Cross

2 newspaper articles, he may have stated to you -- correct me
3 if I am wrong -- that statements were taken from all parties
4 involved. Did he tell you that?

5 A. He told me that he had reached one officer by
6 phone and was waiting for that person to return from
7 vacation, and another officer was on days off and a statement
8 would be taken from him when he returned to duty.

9 Q. When the investigation into this incident was
10 concluded by the Chief of Police, did he tell you that
11 statements were taken from all parties involved?

12 A. Yes.

13 Q. Do you know whether or not he took a statement
14 from the prisoner?

15 A. I know that he did not.

16 Q. Did you believe the prisoner was a party involved
17 in this incident?

18 A. He was involved in the incident.

19 Q. Do you believe that Chief Phillips took statements
20 from all parties involved?

21 MR. STEWART: Objection as to relevance,
22 what he believed or did not believe.

23 THE HEARING OFFICER: Overruled. I will
24 accept the question.

25 A. Chief Phillips' report states he spoke to all

1 James Feeley - Cross
2 parties involved.

3 BY MR. HALLEY:

4 Q. But he didn't speak to the prisoner, who was a
5 party involved, is that correct?

6 A. I know he's spoken to that individual, but that
7 nothing was included in the statement. They had other
8 dealings with this individual since then.

9 THE HEARING OFFICER: Was his report clear?
10 Was Chief Phillips' report clear to you in reading
11 it that he had not interviewed Mr. Mattimore?

12 THE WITNESS: Yes.

13 THE HEARING OFFICER: There was no
14 concealing?

15 THE WITNESS: No.

16 BY MR. HALLEY:

17 Q. So, when he makes the statement that his report is
18 based on statements taken from all parties involved, that's
19 inaccurate, isn't it?

20 A. Phrased that way, yes.

21 Q. Okay. On this August 2nd meeting in your office,
22 who was present?

23 A. Myself and Officer Nichols.

24 Q. How long did the conversation take?

25 A. Again, approximately 15, 20 minutes.

James Feeley - Cross

Q. Did you talk about Nichols, other than the internal investigation?

A. I think it all, to my recollection, all revolved around that.

Q. Okay. And he asked you to keep that meeting confidential, is that correct?

A. No, he did not.

Q. Well, you offered into evidence a memorandum, which was dated August 3rd. Does that refresh your memory?

A. It is refreshing to the point on August 3rd, I had communication from him that he asked me to keep confidential our August 2nd meeting.

Q. August 3rd he asked you to keep it confidential, is that correct?

A. Yes, it is.

Q. Did you keep it confidential after August 3rd?

A. No.

Q. Did you tell him that you weren't going to keep it confidential?

A. Yes, when I was asked directly by him on August 4th if I was keeping it confidential, I responded by saying that he was aware of his Department's rules, and then I told him I wouldn't comment on it and that he was aware of his Department's rules and regulations and I hoped he would

James Feeley - Cross

abide by them.

Q. Did you say to him, "I am not keeping it confidential"?

A. No, I did not.

Q. And you said you had another meeting with him at your house, is that correct?

A. Yes.

Q. During the course of that meeting, did he tell you that the retaliation is beginning?

A. I don't recall if he used those specific words.

Q. Did he say words to the effect, "They're going to be coming after me for what I have done, they're going to take action against me"?

A. He spoke of support that he felt that he had within the Department for continuing on his chosen course. I do not recall that he said that retaliatory action was taking place or that they were coming to get him.

Q. In any of those meetings that you had in August, in any one of your conversations you had with Officer Nichols from July and August of 1993, did he ever make any threats to you?

A. No, he did not.

Q. Did you ever fear for your life?

A. I feared, I was concerned over my personal safety.

James Feeley - Cross

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Q. Why?

3

A. Just a feeling I had.

4

Q. He made no threats to you?

5

A. No, he did not.

6

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Q. What meeting was that where you had the concern about your personal safety?

8

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A. That started after he had come to my house, I think it was the August 2nd meeting in my driveway.

10

Q. Okay. Did it start that day?

11

A. It started when he pulled into my driveway.

12

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Q. Did he say anything that led you to believe he was going to affect your personal safety?

14

A. No, he did not.

15

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Q. You said your three-year-old daughter was there during the time this took place?

17

A. Yes.

18

Q. Did you fear for her personal safety?

19

20

A. Both my spouse and I had discussed after that fact that we were a little concerned.

21

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23

Q. Okay. During the course of these conversations you had with him, isn't it true a good deal of the conversations revolved around politics?

24

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A. In the meeting in the driveway, it did. The meeting in my office on August 2nd, I don't recall any

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[illegible]

1 James Feeley - Cross

2 mention of politics.

3 MR. HALLEY: I have nothing further.

4 THE HEARING OFFICER: One question to the
5 Mayor and Mr. Stewart: The Mayor made reference
6 to Officer Nichols showing him a copy of a memo of
7 charges that Officer Nichols indicated he had
8 delivered to the Chief. Do we have those in
9 evidence?

10 MR. STEWART: No, I have not put them in
11 evidence, no.

12 THE HEARING OFFICER: Do you intend to?

13 MR. STEWART: No, because I think it would
14 be a violation of Officer Moll's rights under
15 Section 50-A of the Civil Service Law. I don't
16 intend to do that.

17 THE HEARING OFFICER: Do either of you
18 intend to recall the Mayor?

19 MR. HALLEY: No.

20 THE HEARING OFFICER: You are excused,
21 Mr. Mayor, thank you.

22 (The witness was excused.)

23 MR. STEWART: Call Sergeant
24 William Ritchie.

25 William Ritchie,

1 William Ritchie - Direct
2 having been called as a witness, being duly sworn, testified
3 as follows:

4 DIRECT EXAMINATION

5 BY MR. STEWART:

6 Q. Tell us your name, please.

7 A. William Ritchie.

8 Q. Are you employed?

9 A. Yes, I am.

10 Q. How are you employed?

11 A. Village of Malone Police Department.

12 Q. What rank do you have?

13 A. Sergeant.

14 Q. How long have you had that rank?

15 A. For the last five years.

16 Q. How long have you been a member of the police
17 department?

18 A. Last 12 years.

19 Q. Have you received any special training as a police
20 officer?

21 A. Yes, I have.

22 Q. What is that?

23 A. Considerable training in investigative services,
24 I'm certified by New York State as a first-line supervisor,
25 I'm certified by New York State as a police instructor,

1 William Ritchie - Direct
2 police firearm instructor, also, the training officer for the
3 Village of Malone Police Department.

4 Q. Did you ever serve in the military?

5 A. Yes, I have.

6 Q. And can you describe that Service?

7 A. I was in the Military Police Corps. for three
8 years, I had extensive training in leadership courses, I was
9 a shift supervisor for the Military Police in Schofield
10 Barracks, Hawaii.

11 Q. Thank you. Were you on duty the evening of
12 August 2nd?

13 A. Yes, I was.

14 Q. What were your hours of duty?

15 A. 8:00 p.m. until 4:00 a.m.

16 Q. Who else was on duty that night?

17 A. August 2nd was myself, Officer Nichols and
18 Patrolman Reyome.

19 Q. How about August 3rd, were you on duty that date?

20 A. Yes, sir, I was.

21 Q. Who was on duty that night?

22 A. That night was myself, Patrolman Collette,
23 Patrolman Nichols.

24 Q. Can you tell us what Officer Nichols whereabouts
25 were on the evening of August 2nd from the time he came on

1 William Ritchie - Direct
2 duty -- excuse me, I mean August 3rd?

3 A. August 3rd, shortly after we signed on, I went out
4 in one patrol vehicle, and I didn't know the physical
5 whereabouts of Officer Nichols. There came a time shortly
6 after going on patrol that I heard Officer Nichols call out
7 of service on Willow Street. I didn't think too much of it
8 at that time, but there was a time 45 minutes to an hour
9 later, I didn't hear him call back in service and I searched
10 the Willow Street area to see what the problem was.

11 Q. Is there a bridge on Willow Street?

12 A. Yes, there is.

13 Q. What was the condition of the bridge on that date?

14 A. The bridge was closed on that date.

15 Q. Could you drive all the way through on Willow
16 Street?

17 A. No, you couldn't.

18 Q. Describe to me how you searched Willow Street to
19 see if that patrol was there.

20 A. From Main Street to the bridge, I went up and down
21 Willow Street to see if the vehicle was on the side of the
22 road or in a driveway. When I couldn't go any further, I
23 went around to the other side via College Avenue to see if
24 the car was there, which it wasn't there.

25 Q. What did you do then?

William Ritchie - Direct

1
2 A. At that time I got on the car radio and asked
3 Patrolman Nichols if he would meet me at the parking lot at
4 the end of Willow and College Avenue.

5 Q. Did he meet you there?

6 A. Yes, he did, a couple minutes later.

7 Q. Did he come by foot or car?

8 A. He was in the other patrol vehicle.

9 Q. Where did he come from?

10 A. He came up College Avenue from the Pearl Street
11 area.

12 Q. Are you familiar with the street layouts in the
13 Village of Malone?

14 A. Yes, I am.

15 Q. Did he come from the direction of Willow Street?

16 A. No, he didn't.

17 Q. I want to address some questions to the period of
18 time from July, 1993, until August, 1993. Can you describe
19 Officer Nichols' general activity while on duty in the police
20 department building during that period of time?

21 A. Generally, Officer Nichols seemed to be
22 preoccupied with his personal situation and the situation
23 with the Assistant Chief.

24 MR. HALLEY: I am going to have to object at
25 this point. Could you tell me what charge this is

1 William Ritchie - Direct
2 relating to?

3 MR. STEWART: It's relating to the
4 disruption -- it's relating to most of the
5 charges, it's relating to the disruption of the
6 police department and what occurred as a result of
7 actions of Officer Nichols, and I am trying to get
8 into the description of that disruption.

9 MR. HALLEY: We just heard testimony about
10 the night of August 4th and where he was. It has
11 absolutely nothing to do with the charges, as far
12 as I can see. Tell me which charge you're talking
13 about. I may be wrong.

14 MR. STEWART: That had to do, Mr. Halley,
15 with his description of how Officer Nichols wasn't
16 out of service on the night he talked to the
17 Mayor.

18 THE HEARING OFFICER: I will accept that. I
19 will allow the continued line of questioning.

20 MR. HALLEY: Note my objection.

21 THE HEARING OFFICER: I will, so long as you
22 lead it up to the relevance to the charges.

23 BY MR. STEWART:

24 Q. Can you describe for me Officer Nichols' behavior
25 during that period of time?

1 William Ritchie - Direct

2 A. Yes, sir. While in the station, in particular, a
3 change of shift, he seemed preoccupied with, again, the
4 situation involving himself and Assistant Chief Moll, stating
5 several times how much he was unsatisfied with what was
6 taking place, that he was considering going to the District
7 Attorney and the FBI.

8 Q. Did the filing of charges against Assistant Chief
9 Moll, did that result in any disruption in the police
10 department?

11 A. Yes, it has.

12 Q. Can you describe that disruption?

13 A. Again, a lot of officers seemed to be preoccupied
14 with the situation that's going on, there was a lot of
15 mistrust that's been caused between patrolmen, supervisors
16 and the Assistant Chief. It just seemed preoccupation plays
17 on their minds a little more than police work has.

18 Q. In your opinion as a Sergeant in the Malone Police
19 Department, do you believe Officer Nichols could return to
20 the police department without causing disruption?

21 A. No, sir, I don't believe that.

22 Q. Why not?

23 A. I believe that, in speaking with most of the
24 officers there, there is a common distrust between them and
25 Officer Nichols that has been formed by this action.

1 William Ritchie - Cross

2 MR. STEWART: No further questions.

3 CROSS-EXAMINATION

4 BY MR. HALLEY:

5 Q. What is the distrust?

6 A. The distrust is that they believe every move they
7 make is going to be reported to someone by Officer Nichols.

8 Q. Well, if they do something in violation of the
9 rules and regulations, shouldn't they be reported?

10 A. Yes, they should.

11 Q. So, what are they mistrusting?

12 A. The mistrust is -- you have to have trust in the
13 officer. You cannot second guess decisions when you're out
14 there. The time it takes to second-guess yourself because
15 Officer Nichols is your partner could result in somebody
16 being hurt, either yourself, or even worse, an innocent
17 person.

18 Q. Tell me how someone is going to get hurt because
19 Officer Nichols is their partner.

20 A. Because of a mistrust they have in him.

21 Q. And the mistrust, you said, is because he might
22 report a violation of rules and regulations?

23 A. No, I didn't say that.

24 Q. What is the mistrust, then?

25 A. Mistrust is the belief that Officer Nichols is out

1 William Ritchie - Cross

2 to get everybody in the department.

3 Q. Okay. And I take it that belief comes from his
4 reporting something about Assistant Chief Moll, is that
5 correct?

6 A. That belief is what I have been speaking about
7 with the other officers at change of shift and the rumors
8 going around in the office.

9 Q. Could you identify the officer that told you that?

10 A. Every officer working for the police department.

11 Q. Did you have a conversation with Pat Nichols in
12 the early morning of early August when he talked about the
13 Moll incident?

14 A. I don't recall any specifics -- early morning of
15 what?

16 Q. Roughly August 4th at 7 o'clock in the morning --
17 I'm sorry, 7 o'clock at night.

18 A. I don't recall any conversations.

19 Q. Do you recall calling him before you went to work
20 that date?

21 A. No, I don't.

22 Q. Do you recall calling him before he went to work
23 that day?

24 A. No.

25 Q. Do you recall saying to him you couldn't help him

William Ritchie - Cross

out anymore because Moll was coming after you?

A. No, I didn't.

Q. Did you ever tell him Moll was harassing you?

A. No, sir, I never did.

Q. Any mistrust in the police department as a result of actions taken against Moll?

A. Not that I am aware of, sir.

MR. HALLEY: I have nothing further.

MR. STEWART: I have one question.

REDIRECT EXAMINATION

BY MR. STEWART:

Q. Did you participate in the telephone call with Pat Nichols to Mayor Feeley on the evening of August 4th?

A. No, sir, I did not.

THE HEARING OFFICER: That's it? I have one question.

EXAMINATION

BY THE HEARING OFFICER:

Q. As a superior officer, on the occasion when Police Officer Nichols allegedly indicated to you that he was contemplating going outside the police department, specifying federal agencies, whatever, which, apparently, both of you knew was not provided for in the regulations, did you give him any counsel or advice?

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[illegible]

1 Scott Mulverhill - Direct

2 A. I might have advised him, sir, to seek either his
3 own counsel or call the Union for advice from your Union
4 attorney.

5 THE HEARING OFFICER: Thank you. Either of
6 you have any further questions?

7 MR. HALLEY: Nothing.

8 MR. STEWART: Nothing further.

9 THE COURT: Do you intend to recall him?

10 MR. STEWART: No.

11 (The witness was excused.)

12 Scott Mulverhill,
13 having been called as a witness, being duly sworn, testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. STEWART:

17 Q. I'm going to ask you to keep your voice up.
18 There's a lot of people here who want to hear you. May I
19 have your name, please.

20 A. Scott Mulverhill.

21 Q. Are you employed?

22 A. Yes, I am.

23 Q. How are you employed?

24 A. As a patrolman for the Malone Village Police
25 Department.

1 Scott Mulverhill - Direct

2 Q. How long have you been a patrolman with the police
3 force?

4 A. Three years and four months.

5 Q. Do you have a working relationship with Officer
6 Nichols?

7 A. Yes, I do.

8 Q. Are you familiar with the approximate date on
9 which Officer Nichols filed charges against Assistant Chief
10 Moll?

11 A. I believe it's July 13th.

12 Q. Did you know at the time when he filed them?

13 A. Did I know at that time?

14 Q. Were you aware?

15 A. I was aware, yes.

16 Q. Did you ever have any conversations with Officer
17 Nichols regarding these charges?

18 A. Yes, I did.

19 Q. Tell me about the first conversation. When did it
20 happen, if you recall?

21 A. I don't recall that.

22 Q. Can you tell me what he said to you and what you
23 said to him?

24 A. I can tell you what was said. Pat told me that he
25 was going to make a complaint against Assistant Chief Moll

1 Scott Mulverhill - Direct

2 for misusing a prisoner, for abuse of a prisoner, and that
3 was it.

4 Q. Did you say anything to him?

5 A. I don't recall. I said something to him, but I
6 don't recall what it was.

7 Q. Did you ever have another conversation?

8 A. Yeah, we had conversations.

9 Q. Tell me about the next one, if you remember.

10 A. I don't exactly remember.

11 Q. Did there come a time when you witnessed a
12 conversation between Officer Nichols and former Chief Richard
13 Brown?

14 A. I was there when Pat talked with Assistant Chief
15 Brown.

16 Q. And if you recall, when did that take place?

17 A. Approximately -- I don't remember the date, no.

18 Q. Was it before or after July 13, 1993?

19 A. After.

20 Q. Was it before or after August 5, 1993, the date on
21 which Officer Nichols was suspended?

22 A. Before.

23 Q. Where did this conversation take place?

24 A. Tessies' Diner.

25 Q. Do you know how to spell Tessies'?

1 Scott Mulverhill - Direct

2 A. T-E-S-S-I-E-S.

3 Q. Can you tell us what Officer Nichols said to
4 former Chief Brown and what former Chief Brown said to
5 Nichols, as best you can remember?

6 A. I can't remember exactly what was said at all or
7 exactly what was talked about. All I know is, Pat went there
8 to find out the proper chain of command to go above the
9 Chief.

10 Q. You don't recall any of the conversation?

11 A. I can't swear.

12 Q. Did you overhear Assistant -- I'm sorry, former
13 Chief Brown telling Officer Nichols to look in the Village
14 Code book?

15 A. I didn't overhear him saying that, no. At the
16 diner I didn't hear anything.

17 Q. Did you ever hear Officer Nichols claim that Chief
18 Phillips was covering up the investigation?

19 A. He told me he felt Chief Phillips was covering up
20 the investigation.

21 Q. When did he tell you that?

22 A. When exactly I don't know, when we were working.

23 Q. Okay. Was it before or after July 13, 1993?

24 A. I believe it was before and after.

25 Q. And was it before or after the date when Officer

1 Scott Mulverhill - Direct

2 Nichols was suspended?

3 A. Before.

4 Q. Did you ever advise Pat as to what the proper
5 procedures were and what the proper regulations were
6 regarding contacting people outside the Department about
7 departmental investigations?

8 A. Yes, I told Pat that, in order to go to the Mayor,
9 he had to talk to the Chief.

10 Q. Do you recall when you told him that?

11 A. I don't recall, no.

12 Q. Was it before or after July 13th, 1993?

13 A. I don't recall that, either.

14 MR. STEWART: I don't have any further
15 questions of this witness.

16 THE HEARING OFFICER: Mr. Halley.

17 CROSS-EXAMINATION

18 BY MR. HALLEY:

19 Q. Officer, you told him that, in order to go to the
20 Mayor, he had to go first to the Chief, correct?

21 A. Yes.

22 Q. Did he ask procedure if he felt the Chief was
23 trying to cover something up?

24 A. I don't understand what you're asking.

25 Q. Did he say to you, "Okay, I'm supposed to go to

1 Scott Mulverhill - Cross

2 the Chief before I go to the Mayor," but did he
3 then say, "What do I do if the Chief is engaged in a
4 cover-up?"

5 A. That was his object in mind, he wanted to turn --
6 to go above Jim, and I told Pat that he had to ask the Chief
7 to talk to the Mayor.

8 Q. Okay. Have you had any conversations with
9 Sergeant Ritchie during the last six months regarding
10 Pat Nichols?

11 A. Not that I recall, no.

12 Q. Have you told Sergeant Ritchie Pat Nichols' return
13 to the police force would be disruptive?

14 A. No.

15 Q. Have you told Sergeant Ritchie that Pat Nichols is
16 mistrusted, and if he comes back, there is going to be a lot
17 of mistrust?

18 A. No.

19 Q. I believe you have testified that you are
20 currently a police officer of the Village of Malone?

21 A. Yes.

22 MR. HALLEY: Okay. Nothing further.

23 MR. STEWART: I have a few follow-up.

24 REDIRECT EXAMINATION

25 BY MR. STEWART:

Scott Mulverhill - Recross

Q. Officer Mulverhill, do you believe Officer Nichols can come back to the force without creating disruption?

A. Not without a disruption, no. What exactly do you mean by disruption, problems?

Q. Yes.

A. No.

Q. Officer Nichols was your partner before all this happened, isn't that true?

A. Yes.

Q. If you had a say in the matter, would he still be your partner if he came back?

MR. HALLEY: Objection, it's a hypothetical.

THE HEARING OFFICER: Sustained.

A. If I had to work with him, I'd work with him.

BY MR. STEWART:

Q. Would it be your desire to work with him?

A. No.

MR. STEWART: No further questions.

THE HEARING OFFICER: Mr. Halley.

RE CROSS-EXAMINATION

BY MR. HALLEY:

Q. Why wouldn't it be your desire to work with him?

A. Why wouldn't I want to work with him?

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Scott Mulverhill - Recross

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Q. Right.

A. I wouldn't work with him, I wouldn't want to because I feel there'd be problems, and I don't want --

Q. Problems like what?

A. Between him and the Chief.

Q. Okay.

A. I just don't want to be involved in that.

Q. You don't want to be involved in problems between Pat Nichols and the Chief?

A. Right.

MR. HALLEY: Okay. Nothing further.

THE HEARING OFFICER: Either of you plan to recall?

MR. HALLEY: No.

MR. STEWART: No.

(The witness was excused.)

MR. STEWART: Call Officer Clyde LaChance. Your Honor, I am informed Officer LaChance is on his way and is going to take about ten minutes. Should we break for lunch or would you like --

THE HEARING OFFICER: No, I'd prefer to hold off and take him and then break for lunch about 1 o'clock or thereabouts.

Clyde LaChance,

1 Clyde LaChance - Direct

2 having been called as a witness, being duly sworn, testified
3 as follows:

4 DIRECT EXAMINATION

5 BY MR. STEWART:

6 Q. State your name, please.

7 A. Clyde LaChance.

8 Q. And are you employed?

9 A. Yes, I am.

10 Q. How are you employed?

11 A. I work as police officer for the Malone Village
12 Police Department.

13 Q. How long have you been a police officer?

14 A. I'm on my eleventh year.

15 Q. Now, Officer LaChance, did you ever have any
16 discussions with Officer Nichols about his charges against
17 Assistant Chief Moll?

18 A. Yes, I have.

19 Q. About how many conversations were there, if you
20 remember?

21 A. They were intermittent, several, I guess you could
22 say.

23 Q. Do you remember the first such conversation?

24 A. Just the fact that he felt that he had enough
25 information to file some type of charges against the

1 Clyde LaChance - Direct
2 Assistant Chief.

3 Q. Do you remember when that took place?

4 A. That was sometime in July.

5 Q. What was the next conversation that you had with
6 him regarding his charges, do you recall?

7 A. The only thing that I can recall is the fact that
8 he said he had enough charges to bring against the Assistant
9 Chief and that he was going to submit his letter to them, to
10 the Chief, in that regards.

11 Q. Did there come a time when he told you he was
12 going to ask the Chief the status of the investigation
13 against Assistant Chief Moll?

14 A. Yes.

15 Q. Do you remember when that was?

16 A. No, I don't recall the date.

17 Q. Do you remember anything about that conversation?

18 A. Just the fact that he was going to -- just the
19 fact that he was going to submit a memo to the Chief seeing
20 what the results -- or how the investigation to his complaint
21 was going.

22 Q. Officer LaChance, do you know how to work the
23 computer in the police department office?

24 A. Yes, I do.

25 Q. Did there come a time when you were operating the

Clyde LaChance - Direct

computer in the presence of Officer Nichols?

A. Yes, there was.

Q. And about when was that?

A. Approximately the middle of July, I do believe.

Q. Can you tell us what happened?

A. Just -- I was going to get a new computer system, happened to be running down through the programs that was on the computer, when I came up to a program called "Jim." I was assuming it was one of my partners might have saved a letter, so I brought it up, it happened to be something to do with regards to the incident concerning Officer Moll.

Q. Was Officer Nichols there at the time?

A. Yes.

Q. What did he say to you and what did you say to him?

A. I said, "Look at what's on the screen," and he just wanted a copy, so a copy was given to him.

Q. Did there come a time when Officer Nichols said he was going to speak to the Mayor?

A. He mentioned the fact he was going to speak to the Mayor.

Q. Did he say about what he was going to speak to the Mayor?

A. He felt that Chief Phillips was covering the case

1 Clyde LaChance - Direct

2 up, so he decided he wanted to speak to the Mayor about it.

3 Q. Did you advise him as to what the proper procedure
4 would be?

5 A. I told him that I figured he should probably
6 contact the Union attorney and have him advise Pat how to go
7 about it.

8 Q. Did Pat respond to that?

9 A. Pat stated that, no, he felt he had the right to
10 go to the Mayor at the time.

11 Q. Did he say why he thought he would go to the
12 Mayor?

13 A. No.

14 Q. Did there come a time when Pat told you he was
15 going to contact the District Attorney or the FBI?

16 A. This is right after he felt that the Chief was
17 covering it up, he said he was going to contact the
18 District Attorney in regards to this.

19 Q. Do you remember when that was?

20 A. No, I don't recall the date.

21 Q. Did he ever come back to you and tell you that he
22 had, in fact, contacted the District Attorney?

23 A. Yes.

24 Q. Do you remember when he told you that?

25 A. It was just approximately a couple weeks before

Clyde LaChance - Direct

fair week.

Q. Did he tell you what he told the District Attorney?

A. He just gave him -- supposedly gave him the information that he had.

Q. Did there come a time when Pat admitted to you that he had contacted a certain individual named Scott Mattimore?

A. Yes.

Q. Do you remember when that conversation took place?

A. It was a few days after the District Attorney.

Q. Can you describe what Pat told you and what you told him?

A. He just said Scott Mattimore was willing to testify in any type of hearing, if there was such one, and that he had a pair of pants that had bleach on it.

Q. Did he say who had the pair of pants?

A. Well, I took it as Pat had them.

Q. Did he tell you how he came to the conclusion that Mr. Mattimore was willing to testify?

A. No, I'm assuming he spoke with him.

Q. Did there come a time when you encouraged Pat to be low-key about his charges against Assistant Chief Moll?

A. Yes, in fact, I kind of told Pat that if he's

1 Clyde LaChance - Direct

2 going to do something, for one thing, he should keep it
3 low-keyed and definitely go through the Union so they could
4 give him step-by-step procedures how to compete with any type
5 of complaint that he had.

6 Q. What did he say?

7 A. He said -- he just basically said, no, he wanted
8 to make them sweat like they made him sweat.

9 Q. Were those his exact words?

10 A. Yes.

11 Q. Did you have a conversation with Officer Nichols
12 at the police headquarters just before he was suspended on
13 August 5?

14 A. On August 5?

15 Q. On August 5.

16 A. It's a possibility, I don't remember the dates.

17 Q. Did Officer Nichols ever tell you whether he
18 enjoyed his job?

19 A. No.

20 Q. No, he did not tell you or no, he didn't enjoy his
21 job?

22 A. No, he didn't enjoy it.

23 Q. Did he say why?

24 A. No, he really didn't say, just that he said that
25 he was glad he got into the DARE program because that gave

1 Clyde LaChance - Direct

2 him a different view on police work.

3 Q. If Officer Nichols returns to the police
4 department, would you like to be his partner?

5 A. No.

6 Q. Why not?

7 A. I just have different ways of working, and I don't
8 think Pat works the same type of way that I would.

9 Q. How do you mean?

10 A. He answers calls completely different than I would
11 answer a call. It's just the way -- how you jell when you
12 work with a partner.

13 Q. All right.

14 MR. STEWART: No further questions.

15 THE HEARING OFFICER: Mr. Halley.

16 CROSS-EXAMINATION

17 BY MR. HALLEY:

18 Q. So, who was it that printed up the memo off the
19 computer?

20 A. I did.

21 Q. Have you been threatened with disciplinary charges
22 for doing that?

23 A. No.

24 Q. Do you know if the Chief originally charged Pat
25 with disciplinary action for doing that?

Clyde LaChance - Cross

A. No, I don't.

Q. When he told you he thought the Chief was engaging in a cover-up, did you believe he had a basis for making that statement?

A. Did I believe he had a basis?

Q. Yes.

A. No.

Q. When you saw the message on the computer that was typed by Chief Phillips, what did you say to Pat?

MR. STEWART: Objection, that's really a back door way of asking what the memo said. I objected to that before, I object to it again. It's a violation of Officer Moll's 50-A rights under the Civil Service Law.

BY MR. HALLEY:

Q. Without mentioning Officer Moll's name or what the memo said, what did you say to Pat?

A. I told him I didn't think he could use it, for one thing, it was where everybody could get to it, anybody could have put it into the computer. And another thing is that it wasn't signed, there was no signature or nothing.

Q. Did you say to him, "Look what we got here"?

A. I said, "Look what's on the screen."

Q. And you read what was on the screen?

Clyde LaChance - Cross

1 A. Yes, I did.

2 Q. Did you say, "It looks like the Chief has his mind
3 made up"? Did you say that?

4 A. No.

5 Q. Did you say anything of that substance?

6 A. No, I did not.

7 Q. When he said he had a lot of stuff on Assistant
8 Chief Moll, was that before or after you saw his message on
9 the computer?

10 A. Excuse me?

11 Q. Was that before or after you saw this message on
12 the computer?

13 A. This is before the computer.

14 Q. How much before?

15 A. I don't know the dates.

16 Q. Do you know a day, week or month?

17 A. Probably a week or two.

18 Q. The computer incident took place when?

19 A. Sometime in July.

20 Q. So, it's your testimony that at least a week or
21 two before that computer incident, he told you he had a lot
22 of stuff on the Assistant Chief?

23 A. He said he had enough to bring him up on charges.

24 Q. Okay. Thank you.

1 Clyde LaChance - Cross

2 THE HEARING OFFICER: Two questions.

3 EXAMINATION

4 BY THE HEARING OFFICER:

5 Q. Did Police Officer Nichols indicate to you at all
6 why he felt the Chief was covering up the complaint that he
7 had made on Assistant Chief Moll?

8 A. Like I said, I can only assume, but it's just
9 probably because of what he saw on the screen.

10 Q. That's the statement he made after he saw the
11 screen?

12 A. Yes.

13 Q. Did he make reference to anything on the screen
14 that caused him to believe there was a cover-up underway?

15 A. I'm sorry?

16 Q. Did he make reference to anything on the screen
17 that led him to believe there was a cover-up underway?

18 A. No, I would say not, because of the fact, like I
19 said, there was no signature, anybody could have put that on
20 there.

21 Q. But did Police Officer Nichols make any comments
22 as to why he believed -- not what you assume -- but rather
23 what he believed?

24 A. No.

25 Q. But you say he felt there was a cover-up?

Clyde LaChance - Cross

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A. Yes.

Q. Now, two other questions: Is there any markings on the computer screen that would indicate whatever menu or whatever you had called up, that it belonged to the Chief of Police?

A. No.

Q. No privacy markings or anything along that line?

A. No, you could access every computer in that -- every computer terminal at that time.

Q. From which computer?

A. Any computer I wanted, and it would come on.

Q. Not just the front desk?

A. No, you could be in the back room and still access the front desk computer or the Chief's computer or any other computer in the Department.

Q. Did you know you were accessing the Chief's computer when you brought that up?

A. No, I did not. As a matter of fact, it wasn't the Chief's computer that I was on. It was the Communication's. What happened, somehow it got saved on every computer in that Department.

THE HEARING OFFICER: Either of you have further questions?

MR. HALLEY: Yes.

Clyde LaChance - Recross

RECROSS-EXAMINATION

BY MR. HALLEY:

Q. Let me make sure I understand what you said. You assumed he made this comment about the cover-up because of what you saw on the screen. Is that right?

A. I assume he made the statement that he felt the Chief was covering up because of that complaint or that letter on the computer.

Q. Okay. And didn't you then say to him, "You might be right about the cover-up"?

A. No, I didn't say that.

Q. Did you say anything when you read the memo?

A. I just said, "Look at this."

Q. Did you express an opinion one way or another about a cover-up?

A. No, I did not.

Q. Okay.

MR. HALLEY: Nothing further.

MR. STEWART: No further questions.

THE HEARING OFFICER: Either of you intend to recall?

MR. HALLEY: No.

MR. STEWART: No.

(The witness was excused.)

1 Clyde LaChance - Recross

2 THE HEARING OFFICER: Mr. Stewart.

3 MR. STEWART: Your Honor, at this time we'll
4 note that I have introduced no evidence concerning
5 charge number three. I intend to introduce no
6 evidence, and I would stipulate to withdrawing the
7 charge. That's a charge where, allegedly, the
8 Respondent called Police Chief Phillips stupid.

9 THE HEARING OFFICER: We note for the record
10 you are withdrawing that charge.

11 MR. STEWART: I have one more witness, and
12 that is Officer Ronald Reyome, who is engaged in a
13 conference in Lake George today. He will be here
14 early tomorrow morning.

15 THE HEARING OFFICER: Mr. Halley, your
16 plans?

17 MR. HALLEY: We have several witnesses, if
18 we could have them around 2 o'clock, Judge.

19 THE HEARING OFFICER: Today?

20 MR. HALLEY: I'd like to conclude today. I
21 will not conclude, but I have several witnesses
22 available.

23 THE HEARING OFFICER: Okay. We'll adjourn
24 at this time for lunch and reconvene at 2:00 p.m.

25 (Subsequent to a lunch recess, the following

2025 Engineering & Technology Education and Skills Development Strategy

[illegible]

1 Scott Mattimore - Direct
2 transpired.)

3 THE HEARING OFFICER: We'll reconvene at
4 this point. I believe that, Mr. Stewart, you had
5 rested?

6 MR. STEWART: Except for my next witness
7 tomorrow morning.

8 THE HEARING OFFICER: Tomorrow morning.
9 Mr. Halley, is 8 o'clock suitable for you?

10 MR. HALLEY: I can do that, sure.

11 THE HEARING OFFICER: Mr. Halley.

12 MR. HALLEY: I have to check with my
13 witnesses.

14 THE HEARING OFFICER: Early start, easy go.

15 MR. HALLEY: Okay. May I proceed?

16 MR. HALLEY: Scott Mattimore.

17 DIRECT EXAMINATION

18 BY MR. HALLEY:

19 Q. Would you state your name and address for the
20 record, please.

21 A. Scott Mattimore, RD 2, Cady Road, Malone,
22 New York.

23 Q. I'm going to direct your attention to April 1st,
24 going into April 2nd, 1993. Do you recall being arrested by
25 the Village of Malone Police that day?

1 Scott Mattimore - Direct

2 A. Yes.

3 Q. Would you tell us what happened when you got to
4 the police station?

5 MR. STEWART: Objection, relevancy, and
6 we're still riding smack dab into Civil Rights Law
7 50-A. I have submitted a Memorandum of Law on
8 that. I don't know what Mr. Mattimore is going to
9 say. I can't put anything even in front of the
10 witness and possibly discredit him or contradict
11 what he said. It would be a violation of
12 Officer Moll's rights.

13 THE HEARING OFFICER: Any comment?

14 MR. HALLEY: We're not introducing a
15 personnel file. This witness is testifying as to
16 what happened. He's not going to produce the
17 document. He's going to say what he saw, what he
18 heard, what he observed. 50-A of the Civil Rights
19 Law refers to personnel records used to evaluate
20 performance and other such personnel records.
21 We're not talking about personnel records. I'm
22 not looking to inspect them or review them. The
23 relevance has to do with Section 75-B.

24 As previously indicated, there is a belief
25 that there was improper governmental action

1 Scott Mattimore - Direct

2 taken. Officer Nichols believed there was
3 improper governmental action. If I were not to
4 have this witness, that defense would be subject
5 to dismissal on the grounds that I have not shown
6 improper action.

7 MR. STEWART: If we get into whatever
8 evidence Mr. Mattimore might have with respect to
9 Section 75-B of the Civil Service Law, it is
10 Mr. Halley's requirement to show that the
11 information was given to Mr. Nichols' bosses, and
12 that within a reasonable time, they didn't do
13 anything. There hasn't been any such proof.

14 MR. HALLEY: I haven't had any proof, that's
15 correct. I am starting my case now.

16 THE HEARING OFFICER: Can you educate me on
17 the relevancy of -- the potential relevancy of
18 Mr. Mattimore's testimony concerning the incident
19 at the police station to the specific charge which
20 doesn't relate at all to the rightness or the
21 wrongness of what happened in the police station?

22 MR. HALLEY: Civil Service Law 75-B provides
23 a public employer will not take disciplinary
24 action against a public employee because the
25 employee discloses to a governmental body

1 Scott Mattimore - Direct
2 information regarding a violation of a law, rule
3 or regulation which violation presents a
4 substantial, specific nature to the public
5 employee or which the employee reasonably believes
6 to be true and construes improper governmental
7 action.

8 I believe his testimony will demonstrate
9 Pat Nichols observed what he reasonably believed
10 to be improper governmental action, and,
11 thereafter, I will provide by subsequent witnesses
12 what he did, why he did it and how the opportunity
13 was presented for investigation.

14 THE HEARING OFFICER: I still don't
15 understand the relevancy of this man's potential
16 testimony to the subsequent reporting or
17 non-reporting or via the chain or not via the
18 chain of command.

19 MR. HALLEY: The charge is that Pat Nichols
20 accused the Chief of a cover-up. Part of the
21 defense is there was, in fact, a cover-up. He
22 accused him of something that was true, and he
23 shouldn't be disciplined.

24 THE HEARING OFFICER: Is Mr. Mattimore going
25 to testify relative to Chief Phillips'

1 Scott Mattimore - Direct
2 investigation?

3 MR. HALLEY: In part, he will.

4 THE HEARING OFFICER: On your word that he's
5 going to testify relative to facts that directly
6 pertain to Chief Phillips' investigation, I will
7 allow that line of questioning.

8 MR. HALLEY: I'm going to ask him what
9 happened on April 2nd, 1993.

10 THE HEARING OFFICER: I will allow it.

11 MR. STEWART: Note my continuing objection
12 on the record.

13 THE HEARING OFFICER: We will.

14 BY MR. HALLEY:

15 Q. What happened when you got arrested?

16 A. I was put in a holding cell at the village police
17 department, and I was quite calm at the time. Like 15, 20
18 minutes went by, I asked if I could use the bathroom because
19 there was no facility right inside the holding cell, and I
20 asked two or three times at that time. Then somebody put a
21 piece of paper over the window and taped it so I could not
22 look out it.

23 Q. Describe the holding cell. How big is it?

24 A. It's probably five feet by eight.

25 Q. Any windows?

1 Scott Mattimore - Direct

2 A. One window on the door.

3 Q. Glass or screen?

4 A. It's glass with a screen mesh on the inside.

5 Q. And you say somebody put a piece of paper over the
6 window?

7 A. Over the window.

8 Q. Go ahead.

9 A. I continued to ask to use the bathroom and I got
10 no reply. Then I said, "Well, I'm going to go on the floor."

11 Q. And did you?

12 A. Yes, I did.

13 Q. What happened next?

14 A. After that, I could hear the mop bucket being
15 pushed towards the door, then I observed it, looking down at
16 the door, that you could see a mop being used to wipe up what
17 I had done.

18 Q. Mm-mm.

19 A. After that, somebody splashed some, what I
20 believe, was bleach or Chlorox in underneath the door, and at
21 that time it started getting -- I started getting nauseous
22 and my eyes were burning, so I started hitting on the, door
23 asking them to open up the door because it was getting hard
24 to breathe in there.

25 Q. What happened next? Did the door open?

1 Scott Mattimore - Direct

2 A. No, it did not.

3 Q. What did you do?

4 A. I did it three, four more times, and still nothing
5 happened. I said, "I'm going to hit this window with my fist
6 and break it," so I could breathe, and nothing still
7 happened. So, I hit the window and broke the window to get
8 some air in there, and approximately a minute later, they
9 opened up the door, came in with handcuffs and shackles and
10 shackled me to the bench. They finished wiping up the mess,
11 and then after that happened, about half an hour or so, they
12 were bringing somebody else in there and they said they
13 needed to use the room because the person was going over the
14 wall, was being kind of violent, and they needed it for
15 somebody else.

16 Q. Any further incidents or was everything relatively
17 normal after that?

18 A. After that, they put me in the damper room,
19 everything was going fine. I had asked if I could smoke a
20 cigarette, and they said to ask whoever was in charge if I
21 could smoke. I asked the officer in charge and he said no,
22 and then about 15 minutes later after that, I guess it would
23 be Officer Moll, his shift had ended, and then I asked
24 somebody else if I could smoke and they said no problem.
25 They let me smoke back there until they brought me for

1 Scott Mattimore - Direct

2 arraignment.

3 Q. Who were the officers who were present during the
4 bleach incident?

5 A. The only one I can recall was Officer Moll. I
6 can't even -- I don't know who else was out there. People
7 were going in and out.

8 Q. After this incident occurred -- strike that. Did
9 the Chief of Police or the District Attorney or Assistant
10 Chief Moll ever interview or question you or ask you anything
11 about this incident?

12 A. No.

13 Q. Anyone from the police department ask you
14 about it?

15 A. About what happened after?

16 Q. Yes.

17 A. Yes, something had happened down the road after I
18 went to jail and served my time for it.

19 Q. Okay. Who was that?

20 A. Pat Nichols.

21 Q. What did he ask you?

22 A. He asked me what had happened. Apparently, he
23 knew what had happened without me telling him about it, and
24 he said he was going to look into it.

25 Q. When was that?

1 Scott Mattimore - Direct

2 A. Had to be in June, I'm not sure of the date, but
3 it was after June 11th.

4 Q. Now, there has been some prior testimony, sir,
5 that you pled guilty to a number of things as a result of
6 that arrest?

7 A. Yes, I did.

8 Q. Is that right?

9 A. Yes.

10 Q. Do you know why you pled guilty, is there a
11 reason?

12 A. One, the District Attorney offered me a bargain to
13 drop a burglary charge if I took what they offered me.

14 Q. Okay. And you did that with the advice of your
15 attorney?

16 A. Yes, and it was a Public Defender because I could
17 not afford an attorney.

18 Q. The District Attorney ever question you about this
19 incident?

20 A. No, he didn't.

21 Q. Anybody ever question you about this incident?

22 A. Nobody.

23 Q. Did you have a conversation with somebody two days
24 ago about the incident?

25 A. Yes.

1 Scott Mattimore - Cross

2 Q. Who was that?

3 A. FBI.

4 Q. They called you or did you call them?

5 A. He came to me.

6 MR. HALLEY: I have nothing further.

7 THE HEARING OFFICER: Mr. Stewart.

8 CROSS-EXAMINATION

9 BY MR. STEWART:

10 Q. Mattimore, have you ever been convicted of a
11 felony?

12 A. Yes, I have.

13 Q. What felonies have you been convicted of?

14 A. Stealing a car, I really couldn't recall all of
15 them right now.

16 Q. How many of them are there?

17 A. I couldn't even tell you right now. I don't keep
18 track of it.

19 Q. Have you ever been convicted of a felony in
20 another state?

21 A. No, I haven't.

22 Q. Are you a fugitive from justice from the State of
23 Florida on grand theft charges?

24 A. No, there was not grand theft charges. I was -- I
25 did get extradited to Florida, but they dropped the charges

1 Scott Mattimore - Cross

2 when I got there, all of them.

3 Q. Were you arrested in 1981 by Officer Moll?

4 A. 1981?

5 Q. Yes.

6 A. I don't even recall it, no.

7 Q. Do you recall stealing a Malone Central School
8 bus?

9 A. Yes, I do.

10 Q. Were you arrested for that incident by
11 Officer Moll?

12 A. I don't know who the officer was but, yes, I was
13 arrested for it.

14 Q. Were you intoxicated on the evening of April 2nd
15 and April 3rd?

16 A. I had been drinking, but I wasn't so drunk that I
17 didn't know what I was doing.

18 Q. When did you start drinking that day?

19 A. It was kind of late in the evening, approximately
20 around 10:00.

21 Q. What were you drinking?

22 A. Beer.

23 Q. How many beers did you have that night?

24 A. I had approximately two six-packs.

25 Q. But you weren't drunk?

1 Scott Mattimore - Cross

2 A. Throughout the night, no, I wasn't totally
3 intoxicated, no.

4 Q. What's "totally intoxicated"?

5 A. I knew what I was doing.

6 Q. You could walk?

7 A. I could walk, I could talk.

8 Q. Okay. Were you charged with any crimes as a
9 result of breaking the window in the police department?

10 A. Yeah, I was charged.

11 Q. With what crime?

12 A. Criminal mischief.

13 Q. Criminal mischief, fourth?

14 A. Yeah.

15 Q. And you were represented by an attorney?

16 A. Public Defender.

17 Q. Did there come a time when you went before the
18 Judge and pled guilty to that charge?

19 A. Yes, I did.

20 Q. And did the Judge ask you if you were, in fact,
21 guilty of that charge?

22 A. No, he didn't, because it was -- like I said, the
23 District Attorney offered a bargain that if I pled guilty to
24 the three charges, that they would drop the burglary charge.
25 I signed the piece of paper on it. I was in the jail at the

1 Scott Mattimore - Cross

2 time. I went in front of the Judge, I pled guilty to all the
3 charges, which my lawyer told me to do after I agreed.

4 Q. Did you ever, on that night while your cell was
5 being mopped, did you ever lunge towards the mop or grab it?

6 A. No, I didn't, I didn't move unless I was told to.

7 Q. You weren't told to break the window, were you?

8 A. Well, when you're gasping for air, you're going to
9 do something, aren't you?

10 Q. Did you ever file a complaint with the police
11 department in regards to your treatment that night?

12 A. No, I didn't.

13 Q. Did you ever complain to anyone, other than
14 Officer Nichols, about your treatment at the hands of the
15 police department that night?

16 A. The only one I told was my lawyer.

17 Q. Did you tell your lawyer that before or after you
18 pled guilty?

19 A. Before.

20 Q. Did anyone wearing a uniform attempt to punch you
21 or hit you that night?

22 A. No.

23 Q. When you testified the bleach came in under the
24 door, was the door opened or was the door closed?

25 A. The door was closed.

1 Scott Mattimore - Cross

2 Q. If you know, how big a gap is there between the
3 bottom of the door and the floor?

4 A. There is at least a half an inch.

5 Q. Did the mop come inside the door, if you know?

6 A. I could see a couple strands of it come through,
7 yes.

8 Q. Did you have a baseball bat in your possession
9 sometime during the evening of April 2nd or April 3rd?

10 A. There was a baseball bat in the house.

11 Q. In fact, you tried to hit somebody with it, didn't
12 you?

13 A. No, I didn't hit anybody with it.

14 Q. Did you try?

15 A. No, I didn't. Matter of fact, somebody tried to
16 hit me with it.

17 Q. When was the first time that Officer Nichols came
18 to you after this event?

19 A. After I had gotten out of jail, it was after
20 June 11th.

21 Q. How long after June 11th was it?

22 A. Maybe two, three weeks.

23 Q. Was there one meeting or more than one meeting?

24 A. I spoke to him twice.

25 Q. Tell me about the first conversation.

1 Scott Mattimore - Cross

2 A. First conversation was at 43 Duane Street, he was
3 called down so I could remove some of my belongings out of an
4 apartment without being harassed.

5 Q. Was he wearing his uniform at the time?

6 A. Yes, he was.

7 Q. Carry on.

8 A. And after I had got my belongings out, he had told
9 me that he was going to look into it, about the bleach being
10 underneath the door, because, obviously, somebody had seen
11 somebody do it.

12 Q. Did he say anything else to you?

13 A. No, no, just that he was going to be checking into
14 it.

15 Q. What did you say to him?

16 A. I said okay.

17 Q. Have you told me everything about that
18 conversation that you remember?

19 A. Yes.

20 Q. What is the second conversation you said you had
21 with him?

22 A. The second conversation was approximately, like,
23 three weeks later. Again, I was walking and I seen Pat, he
24 stopped, he was in his car, and he told me that he was still
25 checking into it, that there has been things that's happened

1 Scott Mattimore - Cross

2 in the police station that shouldn't be going on, just to
3 hang in tight, that someone probably would be talking to me.

4 Q. Did he say what those things were that were going
5 on that shouldn't be going on?

6 A. Nothing other than what happened to me.

7 Q. Was he wearing his uniform during the second
8 conversation?

9 A. Yes, he was.

10 Q. The car you mentioned, was it a patrol car?

11 A. Yes.

12 Q. Do you remember what month that second
13 conversation took place?

14 A. Had to be in August.

15 Q. August?

16 A. Yeah -- wait a minute -- yeah, had to be in
17 August, yeah.

18 Q. Do you remember when in August?

19 A. Maybe it was the end of July, I don't recall, I'm
20 pretty sure it was the end of July, because I had gotten in
21 trouble on August 5th. It was before that.

22 Q. How many officers arrested you that night, and I'm
23 speaking of April 2nd or 3rd?

24 A. I believe I seen three officers that night.

25 Q. Do you know who they were?

1 Scott Mattimore - Cross

2 A. I didn't know any of their names, only one I knew
3 was Pat Nichols.

4 Q. Did you know Pat before?

5 A. Yes, I went to school with Pat.

6 Q. Oh, where was that?

7 A. Junior-high.

8 Q. Here in Malone?

9 A. Yeah.

10 Q. Do you have any other background connection with
11 Pat Nichols?

12 A. No.

13 Q. You never lived with him or anything?

14 A. No.

15 Q. Just asking. Did you go to Mr. Nichols or did
16 Mr. Nichols come to you regarding this incident?

17 A. Well, he had mentioned -- like I said, he was
18 there at a call to be at that apartment or at that address
19 for me to remove some of my stuff.

20 Q. Did you have a pair of pants that you were wearing
21 the night you were arrested?

22 A. Yes, I was wearing pants.

23 Q. Did they somehow become stained with bleach?

24 A. Yes, they are.

25 Q. Where are they now?

1 Scott Mattimore - Cross

2 A. They're at my house.

3 Q. Did Officer Nichols at some point take them from
4 you?

5 A. No, he never touched them.

6 Q. Was there a time on the evening you were arrested
7 after the door was opened, the door to the cell was opened,
8 that you were let out and then put back in the cell?

9 A. I don't recall, no.

10 Q. You don't recall that?

11 A. Except for if it was just to mop that area, that
12 would be the only time I got out of there, because I know as
13 soon as the door opened up, they had the chains and stuff
14 ready to shackle me down.

15 Q. So, the cell was mopped and then you were put back
16 in, is that right?

17 A. I'm not sure if I stood out of it or not.

18 Q. Could that have happened?

19 A. No, I don't think so. I think if they're going to
20 shackle me down, they're going to keep me in that room. I
21 don't believe they would let me out.

22 Q. I'm not asking what you believe. What do you
23 remember?

24 A. I remember being in there and not coming out until
25 they brought somebody else in. That's what he told me,

Scott Mattimore - Cross

somebody that was violent.

Q. So, you don't remember them mopping the inside of the cell?

A. Yeah, I remember them mopping it.

Q. They did mop the inside of the cell?

A. Yes.

Q. Before or after the door was opened?

A. It had to be after the door was opened.

Q. That would make sense, wouldn't it?

A. Yes, it would.

Q. Was the door subsequently closed on you after the inside of the cell was mopped?

A. No, it wasn't, not until after they shackled me, and then it was. As a matter of fact, it was closed for a while, yes, then they had opened up the door.

Q. What was the condition of the floor after it was mopped, was it wet?

A. Damp.

Q. Is it possible that you got bleach on your pants at that point?

A. No --

Q. Why not?

A. -- not unless my legs could bend off that seat and touch the floor.

1 Scott Mattimore - Redirect

2 Q. Where were your feet?

3 A. They were -- I was sitting on a bench.

4 Q. Were where your feet?

5 A. On the floor.

6 MR. STEWART: No further questions.

7 REDIRECT EXAMINATION

8 BY MR. HALLEY:

9 Q. Were there bleach marks on your jeans?

10 A. Yes, there were, about seven inches up on my pant
11 leg.

12 Q. Which leg?

13 A. Left and right.

14 Q. Front or back?

15 A. Front.

16 Q. You testified that Pat Nichols told you to -- I
17 don't want to put words in your mouth -- "Just wait, somebody
18 will be talking to you"?

19 A. Yes.

20 Q. Where was that conversation?

21 A. That conversation was the second time I talked to
22 him.

23 Q. Did he indicate to you that he was worried he
24 might have a problem if he investigated?

25 A. Yes, he said his job would probably be on the line

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1 Betsy Nichols - Direct
2 if he couldn't prove it.

3 Q. And somebody subsequently contacted you?

4 A. Yes.

5 Q. That was the FBI on Tuesday?

6 A. Right.

7 Q. Anybody else in between?

8 A. Nobody.

9 MR. HALLEY: Nothing further.

10 MR. STEWART: No further questions.

11 THE HEARING OFFICER: Either of you intend
12 to recall?

13 MR. HALLEY: No, you're excused, thank you.

14 (The witness was excused.)

15 MR. HALLEY: Betsy Nichols, please.

16 Betsy Nichols,
17 having been called as a witness, being duly sworn, testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. HALLEY:

21 Q. What is your name and address?

22 A. Betsy Nichols, 146 Webster Street, Malone,
23 New York.

24 Q. You are Pat Nichols' wife?

25 A. Yes, I am.

1 Betsy Nichols - Direct

2 Q. I direct your attention to the telephone call that
3 was made to your house around August 4th, 1993 --

4 A. Mm-mm.

5 Q. -- from Sergeant William Ritchie. Do you recall
6 that phone conversation?

7 A. Yes, I do.

8 Q. What happened?

9 A. I answered the phone, he said, "Hi, Betsy, it's
10 Bill Ritchie. Can I talk to Pat?"

11 Q. What time of day was it?

12 A. Early evening.

13 Q. What time of day was it in relation to when Pat
14 was working that day?

15 A. I believe it was just before he was going into
16 work, seems to me he was trying to get ready for work.

17 Q. Did you hear any of the conversation?

18 A. Yes, I did.

19 Q. What was it?

20 A. At one point Pat apologized to Bill because, from
21 the sound of Pat's side of the conversation, Moll --

22 Assistant Chief Moll had called Bill and was making comments
23 concerning Pat and --

24 MR. STEWART: Objection. I'm confused, but
25 I think she's testifying as to what Bill Ritchie

1 Betsy Nichols - Direct
2 said while she's not listening on the phone, and
3 that is an unusual form of hearsay. I never heard
4 of it before.

5 BY MR. HALLEY:

6 Q. Whose conversation are you repeating?

7 A. I am repeating Pat's side of the conversation and
8 the gist of the conversation that I was getting based on
9 Pat's words. I will tell you what Pat said. He apologized
10 to Bill Ritchie. He said, "Bill, I'm sorry, I didn't mean to
11 drag you into this, I'm sorry Assistant Chief Moll called
12 you, I don't understand his reasonings for it." And I kind
13 of sat there in the kitchen just because it seemed like
14 everybody was starting to get dragged into this.

15 MR. STEWART: Objection to what it seemed
16 like.

17 THE HEARING OFFICER: Sustained.

18 A. Okay. And Pat continued the conversation and I
19 was in the living room, which is just off from where the
20 phone is, and he told Bill he appreciated the information and
21 that he would try to take care of it.

22 Q. Okay.

23 MR. HALLEY: Nothing further.

24 MR. STEWART: I have no questions.

25 THE HEARING OFFICER: Either of you intend

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1 Robert Hanna - Direct
2 to recall?

3 MR. HALLEY: No.

4 (The witness was excused.)

5 MR. HALLEY: Robert Hanna.

6 Robert Hanna,
7 having been called as a witness, being duly sworn, testified
8 as follows:

9 DIRECT EXAMINATION

10 BY MR. HALLEY:

11 Q. Mr. Hanna, did you have a conversation with
12 Pat Nichols during the past several months regarding what you
13 believed to be a cover-up in the police department?

14 A. Yes, I did.

15 Q. Would you tell me what you said to him?

16 A. I told Pat the way I felt, that in my own opinion,
17 the incident that happened to --

18 MR. STEWART: Objection, that has nothing to
19 do with this case. I am not exactly sure which
20 incident he's referring to, but Mr. Hanna has no
21 connection to the charges that are presently in
22 front of this Court.

23 THE HEARING OFFICER: Can you lay any --

24 MR. HALLEY: Well, I'd refer to Section 75-B
25 of the Civil Service Law, when an employee

1 Vernon Marlow - Direct

2 reasonably believes something to be true,
3 reasonably believes there is improper governmental
4 action, he is entitled to this defense, and that
5 is whether or not the action was taken within the
6 scope of his employment. If he reasonably
7 believes there is a cover-up, he is entitled to
8 this defense. And one of the reasons he might
9 believe there is a cover-up is because he was
10 aware of prior cover-ups involving similar people.

11 THE HEARING OFFICER: I can't accept the
12 prior cover-ups, it's not directly related.

13 MR. HALLEY: Note my objection.

14 THE HEARING OFFICER: Noted. Mr. Stewart.

15 MR. STEWART: No questions.

16 (The witness was excused.)

17 Vernon Marlow,

18 having been called as a witness, being duly sworn, testified
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. HALLEY:

22 Q. Sergeant, would you state your name for the
23 record.

24 A. Sergeant Vernon Marlow, 2 Park Place, Village of
25 Malone.

Vernon Marlow - Direct

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Q. Were you a Sergeant in the Malone Village Police Department at all times during 1992 and '93?

A. At all times?

Q. When did you become a Sergeant?

A. I got promoted in '81.

Q. Was Pat Nichols working under your command in the DARE program in the winter of '92 and '93?

A. I am not directly involved, nor was I ever directly involved with the DARE program, no.

Q. Was Pat Nichols working for you in the police department under your command?

A. Yes, he was.

Q. Did you ever have a problem with him?

A. A few minor things.

Q. Okay. Were you ever aware of any problem that you became aware of with the DARE program?

A. Other than the fact of possibly spending a little too much time with the program, yeah.

Q. Anything else?

A. With respect to the DARE program?

Q. Yeah.

A. Not that I recall right now, no.

MR. HALLEY: I have nothing further.

MR. STEWART: I have no questions of this

LAWYER'S NOTES

[illegible]

MAN VANDER GALT & MFG. CO., LOUISVILLE, KY.

1 Steve Hardy - Direct
2 witness.

3 (The witness was excused.)

4 Steve Hardy,
5 having been called as a witness, being duly sworn, testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. HARDY:

9 Q. Mr. Hardy, we need your name and address.

10 A. Steve Hardy, 8 Porter Avenue, Malone, New York.

11 Q. Do you know Pat Nichols?

12 A. Yes, I do.

13 Q. How do you know him?

14 A. Pat was an employee of my company from the fall of
15 1983 until the early fall of '87, for about four years, give
16 or take a week or two.

17 Q. How would you describe his performance, generally?

18 A. Excellent, always did a fine job, very
19 enthusiastic about his work, he was not afraid to tackle any
20 situation, he was very much interested in the image that the
21 company projected and that he projected and worked very hard
22 to make sure that he did his part as well as he possibly
23 could.

24 Q. How was he with following the rules and
25 regulations of the company?

1 Steve Hardy - Direct

2 A. Fine, no problems.

3 Q. Do you know what his reputation is for
4 truthfulness?

5 A. Well, as far as our company is concerned, it's
6 excellent. I have never known Pat to lie, he's a very
7 honest, straightforward, sincere person.

8 MR. HALLEY: I have nothing further.

9 MR. STEWART: No questions.

10 (The witness was excused.)

11 MR. HALLEY: Under the circumstances, I
12 suggest we reconvene until tomorrow morning at
13 8 o'clock.

14 THE HEARING OFFICER: Okay, thank you very
15 much.

16 (The hearing was adjourned at 2:35 p.m.)

17 * * * * *

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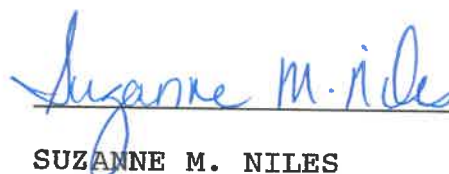
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C E R T I F I C A T E

I, SUZANNE M. NILES, 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 Article 75 Hearing, Village of Malone v Patrick Nichols, held in Malone, New York, on the 16th day of September, 1993.



SUZANNE M. NILES

Court Reporter, Notary Public

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