

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

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

8 Village of Malone,
9 Complainant,
10 -against-
11 Patrick Nichols,
12 Respondent.
13 -----

14 Representing the Village of Malone:

15 BRIAN S. STEWART, ESQ.
16 31 Elm Street
17 Post Office Box 788
18 Malone, New York 12953

19 Representing the Respondent:

20 THOMAS P. HALLEY, ESQ.
21 297 Mill Street
22 Poughkeepsie, New York 12601

23 ARTICLE 75 PROCEEDING,

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

26
27 ACC-U-SCRIBE REPORTING SERVICE
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35

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I N D E X
Village's Exhibits

<u>Number:</u>	<u>Description</u>	<u>Ident.</u>	<u>Evidence</u>
1	Malone Police Department Rules and Regulations	2	12
2	Malone Evening Telegram article dated 8-17-93	2	13
3	Press Republican article dated 8-17-93	2	14
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1	Charges	2	2
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3	Letter dated 5-3-94	2	2
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1 Article 75 Hearing - Patrick Nichols

2 (The hearing commenced at 10:00 a.m.)

3 (Village Exhibits One through Twelve,
4 respectively, were marked for identification.)

5 (Hearing Officer's Exhibits One through Five,
6 respectively, were marked for identification and
7 received in evidence.)

8 THE HEARING OFFICER: This hearing is called
9 to order on June the 16th, 1994, at approximately
10 10:00 a.m. This hearing is being held pursuant to
11 Section 75 of the Civil Service Law to determine
12 charges of misconduct filed against police officer
13 Patrick Nichols of the Malone Police Department.

14 My name is John Lawliss. My official address
15 is 162 Margaret Street in Plattsburgh, New York,
16 and I have been appointed as Hearing Officer in
17 this case by the Village Board.

18 This hearing is open to the public. However,
19 I would like to stipulate now that, if there is
20 anybody in this room that is going to testify in
21 this hearing, either for Patrolman Nichols or for
22 the Village, to leave the hearing room and they
23 can stay in the hearing room after they testify.

24 Is there anybody here that is going to
25 testify in this case?

Article 75 Hearing - Patrick Nichols

(No response)

THE HEARING OFFICER: Okay. The Counsel for the Village is Mr. Stewart of Malone, New York, and Counsel for the defense is Thomas P. Halley, H-A-L-L-E-Y of Poughkeepsie, New York.

Mr. Stewart, are you ready to proceed?

MR. STEWART: Yes, we are, Your Honor. Before we commence, I should state in meeting prior to the opening of the hearing, certain exhibits marked Hearing Officer's Exhibit Numbers One through Five were offered into evidence and accepted. I would just like to recite what those are for the record.

Hearing Officer Exhibit Number One is a copy of the charges; Hearing Officer Exhibit Number Two is a copy of an answer to the charges; Hearing Officer Exhibit Number Three is a copy of a letter from the Village to Officer Nichols enclosing the charges, dated May 3, 1994; Hearing Officer Exhibit Number Four is a letter from the Village of Malone to the Hearing Officer, John Lawliss, dated May 10, 1994, appointing you as Hearing Officer; Hearing Officer Exhibit Number Five is a letter from the Village

1 Opening Statements - by Mr. Stewart
2 of Malone to John Lawliss confirming an
3 adjournment in the date of the hearing until
4 today's date, June 16th, 1994.

5 With that, I'd just like to give a brief
6 opening statement if I could. The Village of
7 Malone is here today reluctantly, and after having
8 tried to explore other alternatives and other
9 options to resolve these problems, they were
10 unable to do so. The problems commenced, for
11 purposes of this hearing, in August when
12 Officer Nichols engaged in a media campaign,
13 intended to try certain matters of private
14 internal disciplinary actions in the newspaper.
15 Those actions on Officer Nichols' part continue to
16 this day. These actions were designed not only to
17 try private disciplinary actions in the paper, but
18 were intended to harm the police morale of the
19 department and did so during that time,
20 particularly.

21 Officer Nichols will be shown to have engaged
22 in a pattern of conduct where he solicited
23 signatures on a petition. The object of the
24 petition was to influence the Village Board in a
25 disciplinary matter involving him. All these

1 Opening Statements - by Mr. Stewart
2 things were a violation of the village or the
3 police department regulations.

4 Officer Nichols eventually came back to work
5 with the police department in late November of
6 1993. Morale in the department was bad. It got
7 worse. Officer Nichols continued to violate the
8 rules and regulations of the department. Some of
9 them were big violations and some of them were
10 small violations, but they continued. The
11 department acted in restraint, did not bring
12 immediate charges against him, took a wait and see
13 attitude. They waited and saw and saw that things
14 got worse.

15 Things got to a critical mass in early March
16 of 1994. No one would work with Officer Nichols.
17 No one trusted Officer Nichols. He continued to
18 engage in a pattern of violating departmental
19 rules and regulations and challenging authority.
20 The department, again acting in restraint, did not
21 immediately bring charges against him, but instead
22 conducted an outside questioning and counselling
23 session on St. Patrick's Day, March 17, 1994.

24 Officer Nichols was given about ten days'
25 notice of this in writing. He was given the

1 Opening Statements - by Mr. Stewart
2 opportunity to have a representative from his
3 union with him at the session, and the session was
4 recorded by a stenographer so there wouldn't be
5 any questions about who said what.

6 In the course of that session, Officer
7 Nichols, under oath, lied to his superiors not
8 once, but repeatedly, about his conduct and in
9 soliciting signatures on that petition I
10 mentioned. When that happened, he was suspended.
11 You cannot have a police officer who lies, and you
12 especially cannot have a police officer who lies
13 under oath.

14 This hearing may continue on all day today.
15 There will be a lot of charges back and forth. I
16 don't want to lose the forest for the trees. The
17 sum and substance of the Plaintiff's --
18 Petitioner's, the Village's complaint, is that
19 Officer Nichols is a liar.

20 Thank you.

21 THE HEARING OFFICER: Mr. Halley.

22 MR. HALLEY: Thank you, Your Honor. As has
23 been indicated, last year Officer Nichols was
24 brought up on charges. Those charges generally
25 arose from his reporting to various people,

1 Opening Statements - by Mr. Stewart
2 including the District Attorney of this county,
3 what he believed to be a cover-up of criminal
4 activity. That did not sit too well, because the
5 people he accused of the cover-up and the people
6 he accused of participating in the criminal
7 activity were the Chief of Police and the
8 Assistant Chief.

9 I can understand the Chief of Police and the
10 Assistant Chief don't like Officer Nichols.
11 They'd like to get rid of him, because if somebody
12 was going to accuse me of a crime, I'd probably
13 feel exactly the same way. That's not a reason
14 to get rid of Officer Nichols. I think what
15 really happened there is that he got upset when
16 they didn't get rid of him last year.

17 If you look at these charges, you can see
18 that, except for one charge, they all took place
19 in August, September and October of 1993. Why did
20 they wait so long? Apparently, nothing happened
21 from last September up to March that caused any
22 problems, or I suspect we'd see that in the
23 charges.

24 It appears that the Chief and his associates
25 were waiting for something to happen, and when

Opening Statements - by Mr. Halley

nothing happened, they figured they had to take the next step and get rid of Officer Nichols. So they waited until after the Village elections had passed. No need to cause controversy before the elections.

They brought him in on March 17, 1994 for what's been described as a questioning, for what I will call an interrogation, because he was sat in a room for five hours and examined. And guess who questioned him, Chief Phillips and Assistant Chief Moll, the same two people that he had accused of criminal wrongdoing and a cover-up. Hardly a pleasant situation for Officer Nichols, but he sat there for five hours and answered the questions as best as he could.

When the transcript was finally produced, 185 pages, he was questioned on things like where he had breakfast, what he did with the Lion's Club, who he gave tickets to. They come up with about four pages worth, five pages worth of what they considered to be lies.

The evidence will show they are not lies. The evidence will show he answered the questions truthfully and as best he could. All of the

Opening Statements - by Mr. Halley

remaining charges basically accuse him of trying to influence the Village Board, of trying to defend himself in public against Civil Service charges, of stating the charges had no basis.

Under the New York State Civil Service Law, an employee has an absolute right to have a public hearing, as we can see today, and I would suspect he has the absolute right to comment on that hearing, and when certain things are said in the paper, he can say, "here's my response."

He is accused, of all things, of signing a petition for soliciting signatures for a petition to go to the Village Board of Malone. He is a resident of the Village of Malone. I would think that's something any resident should have the right to do.

In very simple terms, Your Honor, I don't think the rights granted to you by the Constitution of this state and the United States, the rights of First Amendment, of free speech, the ability to petition your government, the ability to defend yourself, I don't think all these rights should go in some back closet because suddenly he is now a police officer. I think he has every

Opening Statements - by Mr. Halley

right to say what he said and do what he did. He didn't do anything wrong. He got some people upset with him. Those people weren't able to get rid of him last year, and they're trying to do it again this year.

That's really what this is all about, because if Officer Nichols is guilty of anything, he's guilty of being a good cop. When he sees something wrong, he tries to right it. When he sees what he believes to be criminal activity, he reports it regardless of where the chips fall. I say there is nothing wrong with that. I say that is probably what you want from a police officer. The people he accused don't want that; they want to get rid of him because he is a very dangerous person. He is a good cop, and I hope after this hearing is concluded, he will stay that.

Thank you.

MR. STEWART: The Village would call Chief James Phillips.

James E. Phillips,
having been called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION

James E. Phillips - Direct

BY MR. STEWART:

Q. Would you state your name, please.

A. James E. Phillips.

Q. How are you employed?

A. I'm employed as a Chief of Police for the Village of Malone, New York.

Q. How long have you been a member of the police force?

A. 18 years.

Q. How long have you been Chief?

A. Three years in September.

Q. What training have you received as a police officer?

A. I received basic police officers' training, intermediate police training, breathalyzer, radar training, hostage negotiations training, and trained as a criminal investigator.

Q. Now, do you have any experience with the United States military?

A. Yes, I do.

Q. What is that experience?

A. I have over 25 years of the United States military. I have served in various capacities. I served as a squad leader, as a platoon leader, as a company executive

1 James E. Phillips - Direct
2 officer, as a company commander, battalion training officer,
3 and a battalion intelligence officer. I have attended
4 various schools of the military, including NCO school,
5 officer candidate school, infantry officer basic school,
6 officer advanced course, and also the command and general
7 staff college.

8 Q. I'm going to show you a document that's already
9 been marked Village Exhibit Number One for identification.
10 I'm going to ask you if you recognize it.

11 A. Yes, I do.

12 Q. What is that?

13 A. It's a copy of the Malone Village Police
14 Department rules and regulations.

15 MR. STEWART: I'd offer that into evidence at
16 this time.

17 MR. HALLEY: Absence the evidence of its
18 adoption by the Village, I'd object.

19 THE HEARING OFFICER: I will accept it as
20 offered into evidence.

21 MR. HALLEY: Note my exception.

22 (Village Exhibit One was marked received in
23 evidence.)

24 BY MR. STEWART:

25 Q. During September or fall of '93, did you give

James E. Phillips - Direct

Officer Nichols permission or ask him to make comments, positive or negative, about the village police department to the media?

A. No, I did not.

Q. Did you authorize him to make comments to the media concerning ongoing personal matters, including his own?

A. No, I did not.

Q. I'm going to show you this article and ask if you recognize it.

A. Yes, I do.

Q. What is it?

A. It's a copy of the Malone Telegram dated August 17th, 1993.

Q. What does the title read on the top? Is there any article there involving the police department?

A. Yes, there is.

Q. What does it say?

A. "Cop cries misconduct, then gets suspended."

MR. STEWART: I'd offer that into evidence at this time.

MR. HALLEY: No objection.

THE HEARING OFFICER: So rule.

(Village Exhibit Two was marked received in evidence.)

James E. Phillips - Direct

BY MR. STEWART:

Q. Now, Chief, have you ever seen that article before?

A. Yes, I have.

Q. Did you read it when it came out?

A. Yes, I did.

Q. Is there anything in that article that you consider to be derogatory to the police department?

A. Yes.

Q. Can you read us that language?

A. "'There's somebody else who should have been suspended for 30 days,' Nichols says. 'I've always done my job. I have nothing to hide.'" (reading)

Q. I'm going to show you this and ask you to identify it (indicating). It's been marked as Village Exhibit Number Three for identification.

A. Yes, I recognize it. It's a copy of the Press Republican Regional section dated Tuesday, August 17th, 1993.

MR. STEWART: I'd offer that into evidence at this time.

MR. HALLEY: No objection.

THE HEARING OFFICER: So rule.

(Village Exhibit Three was marked received in

James E. Phillips - Direct

evidence.)

BY MR. STEWART:

Q. Have you ever seen that article before?

A. Yes, I have.

Q. Is there anything in that article that you -- well, withdrawn. When did you first see it?

A. The day that it was published.

Q. Is there anything in that article that you consider to be derogatory to the police department?

A. Yes, there is.

Q. And would you read that language for us, please.

A. "'In June, 1988, I took an oath to serve the public. I did what I did because it was in the best interests of the public, and this attempt to shut me up isn't going to work,' he said, saying that he's looking forward to the public hearing where the whole story will be told. Does it make since to take a man out of work for 30 days for doing the right thing?'" (reading)

Q. Does the article say to whom those comments are attributed?

A. To Officer Nichols.

Q. Okay, one more. Showing you this article marked Village Exhibit Number Four for identification, do you recognize that?

1 James E. Phillips - Direct

2 A. Yes, I do.

3 Q. What is it?

4 A. It's a copy of the Press Republican Regional
5 section dated Wednesday, August 18th, 1993.

6 MR. STEWART: I would offer that into
7 evidence at this time.

8 MR. HALLEY: No objection.

9 THE HEARING OFFICER: So rule.

10 (Village Exhibit Four was marked received in
11 evidence.)

12 BY MR. STEWART:

13 Q. Have you ever seen that article before?

14 A. Yes, I have.

15 Q. When did you first see it?

16 A. The day that it was printed.

17 Q. Have you read it?

18 A. Yes, I have.

19 Q. Is there anything in that article that you
20 consider to be derogatory to the police department?

21 A. Yes, there was.

22 Q. And what is that? Let me withdraw that question,
23 Chief, and ask this: Would you please read for me the fourth
24 paragraph of the first column on that exhibit.

25 A. "'Retaliation is the number one reason I waited so

1 James E. Phillips - Direct

2 long,' he said. 'That's the same reason a lot of others are
3 waiting before they say anything. They fear retaliation,
4 too. But I made the decision I'd see this through, and I
5 want the public to know what's going on.'"

6 Q. Chief, are you familiar with the rules of conduct
7 of the police department?

8 A. Yes, I am.

9 Q. And in your opinion, which rules were violated by
10 these three newspapers if the quotes therein were true?

11 A. Several of the rules and regulations were
12 violated. The public criticism of the police department was
13 one of the rules; criticizing the official actions of the
14 police department was one of the other rules; an officer
15 trying to use -- using the media to gain some type of
16 official, preferential treatment was one of the other rules,
17 and it was a violation of the rules in itself.

18 Q. Chief, if you know, did these newspaper articles
19 have any impact on the morale of the police department?

20 A. They had a lot of impact on the morale of the
21 police department.

22 Q. Can you describe that for us, please.

23 A. Yes. The morale was probably the lowest at this
24 point in time than it has been in the history since -- or
25 since I have been with the department for the last 18 years.

1 James E. Phillips - Direct

2 The officers were very concerned of all the bad publicity
3 that the department was getting in regards to this incident.
4 Officers weren't answering calls, and in one particular case,
5 they answered a call to a local business that a vehicle
6 had -- his tires had been slashed, and he made the remark to
7 the person that took the complaint --

8 MR. HALLEY: Object, unless this is
9 firsthand. It sounds like it's double hearsay.

10 THE HEARING OFFICER: Chief, do you know who
11 the officer was?

12 THE WITNESS: Yes, I do.

13 THE HEARING OFFICER: Could you name the
14 officer?

15 THE WITNESS: Detective Fleury took the call.

16 THE HEARING OFFICER: What's his first name?

17 THE WITNESS: Michael Fleury.

18 THE HEARING OFFICER: Proceed.

19 A. When Detective Fleury took the complaint, in
20 taking the information from the owner of the store, the store
21 owner made a remark that if Officer Nichols had been working,
22 that his tires would not have been slashed. When Officer
23 Simonsen went to talk to the store owner, he had a very hard
24 time talking with him. All he kept saying was, "I'm going to
25 call the Mayor about this," and he kept referring to Officer

James E. Phillips - Direct

Nichols. "It wouldn't have happened if Officer Nichols had been working."

The officers were coming up to me at the time that Officer Nichols was suspended, and they were expressing their concerns to me that they didn't want to work with Officer Nichols. They told me that they feared that he would take them down with them, as they referred to me. I had three officers that put in for lateral transfers -- two of those officers were accepted for transfers to another department -- if they had to work with Officer Nichols. It became necessary for me to change my whole schedule around and to order two officers to work with Officer Nichols.

The officers also complained to me that they were afraid that Pat would bring them up on something in a retaliatory manner like he had did to people in the past. They were afraid that the incident that happened with the Assistant Chief Moll where Assistant Chief Moll did a personnel investigation against Patrolman Nichols in regards to a personnel complaint filed by a local citizen, when Officer -- Assistant Chief Moll issued a letter of reprimand to Patrolman Nichols and to Patrolman Stone, who is the other officer involved in the incident, Patrolman Nichols, within an hour of receiving his letter of reprimand, filed misconduct charges against Assistant Chief Moll for an

1 James E. Phillips - Direct
2 incident that happened four months prior to that. A
3 subsequent investigation cleared Assistant Chief Moll of any
4 wrongdoing, and he was cleared by the Village Board. Ten
5 days after Assistant Chief Moll (sic) filed the misconduct
6 charges against Assistant Chief Moll, he went to the District
7 Attorney and told the District Attorney --

8 Q. I'm sorry, let me interrupt. You just said,
9 Chief, Assistant Chief Moll filed complaints against
10 himself. I don't think that is what you meant.

11 A. Okay, no. Okay.

12 (The previous answer was read by the court
13 reporter.)

14 A. Ten days after Patrolman Nichols filed the
15 misconduct charge against Assistant Chief Moll, he then went
16 to the District Attorney and --

17 Q. Who was "he"?

18 A. Patrolman Nichols went to the District Attorney
19 and stated to the District Attorney that I was engaged in a
20 cover-up of Assistant Chief Moll's incident. When he didn't
21 get any satisfaction from the District Attorney, he
22 subsequently went to the FBI. After the last Article 75
23 hearing, the Hearing Officer handed down his report and found
24 Officer Nichols guilty of the charges that were lodged
25 against him, and stated that the only reason that Officer

1 James E. Phillips - Direct
2 Nichols filed the misconduct charges against Assistant Chief
3 Moll were for total retaliatory reasons only. Judge
4 Plumadore agreed with that decision.

5 In his appeal, Officer Nichols stated that the
6 Hearing Officer was biased because --

7 MR. HALLEY: Objection. I don't understand
8 what this has to do with the charges. We're
9 talking about bringing discredit to the department
10 by making these statements to the press. All
11 these statements were made in August and
12 September, but we're getting into a whole nother
13 area.

14 THE HEARING OFFICER: I agree. I think we're
15 getting a little far afield. If we could kind of
16 narrow it down and get back on target.

17 MR. STEWART: The point was to show a
18 retaliatory pattern on Officer Nichols' part, to
19 show the other officers were afraid of him.

20 MR. HALLEY: He's not charged with making
21 other officers afraid. He is charged with making
22 statements to the press, so far, that were in
23 violation of certain rules and regulations.

24 THE HEARING OFFICER: I believe that a lot of
25 this has to do with the morale, whether it be --

1 James E. Phillips - Direct
2 started out with the newspaper and probably
3 snowballed a little bit. I will let you continue
4 with your testimony.

5 A. Right after the hearing was completed, after
6 Officer Nichols, in his appeal, claimed that the Hearing
7 Officer was biased, Judge Plumadore disagreed with that. The
8 next -- shortly after that, the Village Mayor received a
9 letter from Mr. Nichols' attorney, Thomas Halley, filed
10 suborn perjury charges against Mr. Stewart. The Mayor did an
11 investigation and assigned the Police Committee to
12 investigate these charges.

13 MR. HALLEY: I have to object. I have no
14 idea what this gentleman -- is he claiming I sent
15 a letter of some kind?

16 MR. STEWART: It's true, Your Honor, I was
17 accused of suborn perjury at the last hearing.

18 THE HEARING OFFICER: Is that letter
19 available?

20 MR. STEWART: It could be made available,
21 yes.

22 THE HEARING OFFICER: I would like to have it
23 made available.

24 MR. STEWART: Can I have a moment?

25 THE HEARING OFFICER: Sure.

1 James E. Phillips - Direct

2 (Pause in proceedings.)

3 MR. STEWART: I don't have multiple copies of
4 these, Your Honor.

5 THE HEARING OFFICER: Would you read back the
6 testimony of the Chief, just the last few
7 sentences?

8 (The previous answer was read by the court
9 reporter.)

10 THE HEARING OFFICER: I find nothing in this
11 letter, sir, that you handed me that would
12 substantiate that.

13 MR. HALLEY: I'm going to ask, Your Honor, we
14 keep to the charges here. We're again getting far
15 afield. If we want to talk about other things
16 that happened intentionally, that's fine, but
17 that's not what the charges are.

18 THE HEARING OFFICER: Sir, this is, as you
19 know, a search for the truth here, and I don't
20 want to rule anything out on another side that may
21 have an influence on this. As you know, we do not
22 follow the strict rules of a criminal trial. It's
23 more in search for the truth than it is following
24 policy and procedure. The Chief just stated
25 something, and I just want to get to the bottom of

1 James E. Phillips - Direct
2 it, whether we have something here to substantiate
3 what he said or not.

4 After reading two or three letters here, I
5 find nothing in here that substantiates what you
6 said about Mr. Hughes writing a letter charging --

7 MR. STEWART: Mr. Halley.

8 THE HEARING OFFICER: -- Mr. Halley charging
9 Mr. Hughes -- or Stewart with any improprieties.
10 I do find that there was some concern about
11 Mr. Hughes (sic) prepping witnesses prior to the
12 hearing. However, this is normal procedure that
13 attorneys go over with their witnesses, not
14 telling them what to say, but having an idea
15 what's going on so that they can question them and
16 intelligently during a hearing or a trial. So I
17 see nothing unusual with this at all.

18 BY MR. STEWART:

19 Q. Chief, did there come a time when Officer Nichols
20 came back to work after his last suspension?

21 A. Yes, there was.

22 Q. Do you recall when that was?

23 A. That was November 20th, 1993.

24 Q. How did things go?

25 A. Not very well.

James E. Phillips - Direct

Q. What do you mean by that?

A. There was a big problem within the department. When Officer Nichols would come into work and go in the locker room, everybody in the locker room would leave the locker room. When Officer Nichols came out of the locker room before shift or after shift, they would go back into the locker room. I had to change the working schedule in order to get two officers that would work with him. I had to order two officers to work with him. I had to make sure that there was a senior officer working at all times when Officer Nichols worked. I have two cars out on patrol when, normally, there would be one because the officers refused to ride with him, and there was just a continuing problem.

Q. Now, an opening statement was made by Mr. Halley that, during this period of time, there were no violations of the police department regulations made by Mr. Nichols -- Officer Nichols; is that true?

A. That's not true.

Q. Can you tell us what he did that violated the rules?

A. There was several instances.

MR. HALLEY: I'm going to object to any instances being brought up at this hearing, unless they're in these charges. I'm going to strongly

1 James E. Phillips - Direct
2 object to anything beyond what's in the charges.
3 Here we go again.

4 THE HEARING OFFICER: Sir, I'm going to
5 overrule that on the grounds that, as I said, this
6 is in search of the truth, and after I get the
7 transcript, I will decide if there is any
8 reference to what Chief --

9 MR. HALLEY: Note my objection.

10 THE HEARING OFFICER: Proceed.

11 A. There was one incident shortly after
12 Officer Nichols came back to work on December 11th, 1993. It
13 was a Saturday. I was coming into town. It was on my day
14 off, and as I was approaching probably a mile or so from the
15 village limits, I observed a police car with its red lights
16 on chasing a vehicle. I pulled to the right side of the road
17 to let both vehicles pass safely.

18 As the vehicle went by, I observed that the
19 patrol vehicle was, in fact, one of my vehicles. I then
20 immediately went to the police station and asked the
21 supervisor who was working, Sergeant Ritchie, what the patrol
22 had outside of the village on Fort Covington Street Road.
23 Officer Ritchie told me that he did not know that the car was
24 outside of the village and didn't know that it had left the
25 area. I had Officer Ritchie call the patrol and ask him

1 James E. Phillips - Direct

2 where their location was.

3 He called the patrol and Officer Nichols came back
4 on the radio, stated that he was on Finney Boulevard. I then
5 instructed Officer Ritchie to call Patrolman Nichols back to
6 the station and to go over with him again the department
7 policy in regards to leaving the village and high-speed
8 pursuits policy. Sergeant Ritchie did what I told him to do.

9 Q. Had he violated that policy?

10 A. Yes, he had.

11 Q. In what way?

12 A. First of all, he did not notify the desk that he
13 was in pursuit of a vehicle. Second, any time that a village
14 patrol car leaves the village in any type of pursuit, they're
15 supposed to notify the desk officer that they are in pursuit
16 and get his permission to continue with the pursuit.

17 Q. I'm going to show you something that's a little
18 bit out of order. It's marked Village Exhibit Number
19 Seven. Do you recognize that?

20 A. Yes, I do.

21 Q. What is that?

22 A. It's a Malone Police Department high-speed pursuit
23 driving policy.

24 MR. STEWART: I would at this time move that
25 into evidence as Village Exhibit Number Four, it

1 James E. Phillips - Direct
2 would have to be.

3 MR. HALLEY: Note my continuing objection,
4 Your Honor. This is another attempt by the
5 Village to come up with new stuff against Officer
6 Nichols. This isn't in the charges. It's highly
7 prejudicial.

8 THE HEARING OFFICER: Circumstances
9 throughout these charges, I see deliberate
10 violations of regulations pertaining to police
11 management and control. I would say based on what
12 I have heard here so far, that what is being
13 testified to now is violations of regulations
14 pertaining to police management and control, and I
15 will accept that and go on with -- I overrule your
16 objection. Go on with your testimony.

17 MR. HALLEY: Note my exception.

18 (Village Exhibit Seven was marked received in
19 evidence.)

20 BY MR. STEWART:

21 Q. I may get a little out of order here, Chief, but
22 I'm going to show you this document.

23 MR. STEWART: That last exhibit probably
24 should have been Village Exhibit Number Five.

25 THE HEARING OFFICER: You called it Seven,

1 James E. Phillips - Direct

2 sir. You want to change that to Five?

3 MR. STEWART: I don't want to get everybody
4 confused, that's all.

5 THE HEARING OFFICER: What is it now, Five or
6 Seven?

7 MR. STEWART: Keep it as Number Seven.

8 BY MR. STEWART:

9 Q. Chief, I'm going to show you that document and ask
10 you if you recognize it.

11 A. Yes, I do.

12 Q. What is it?

13 A. It is the petition. It was filed with the Village
14 Board on behalf of Officer Pat Nichols.

15 Q. Do you remember when you first saw it, if you
16 recall?

17 A. I don't recall when I first saw the petition. I
18 heard about a petition that was being -- going around
19 sometime in the first part of September.

20 MR. STEWART: I'd offer that as an exhibit.

21 MR. HALLEY: No objection.

22 THE HEARING OFFICER: So marked. What
23 exhibit is that?

24 MR. STEWART: That should be Village Exhibit
25 Number Six.

1 James E. Phillips - Direct

2 THE HEARING OFFICER: And that is the
3 petition that was circulated?

4 MR. STEWART: Yes.

5 (Village Exhibit Six was marked received in
6 evidence.)

7 THE HEARING OFFICER: Proceed.

8 BY MR. STEWART:

9 Q. Chief, I got you a little bit out of order.
10 That's my fault, I apologize. From the time that Officer
11 Nichols came back, did you have any other problems with him
12 violating departmental regulations?

13 A. Yes, I did.

14 Q. What was the next such time?

15 A. The next such time was Officer Nichols had
16 received a phone call from a lady that worked for another
17 agency, and she wanted some information from the blotter in
18 regards to an ongoing criminal investigation that was being
19 conducted by the police department. Officer Nichols was in
20 the process of making a copy of that for her when the officer
21 in charge of the shift, Patrolman LaChance, ordered him to
22 stop making it, that the only person that could release that
23 information was myself or the Assistant Chief. At that time,
24 Officer LaChance had Patrolman Nichols call the lady back and
25 explain to her that he could not release that information.

1 James E. Phillips - Direct

2 MR. HALLEY: Note my continuing objection to
3 these additional incidents of misconduct.

4 THE HEARING OFFICER: Overruled.

5 A. The next morning the lady called the Assistant
6 Police Chief, and she was advised that she wasn't entitled to
7 the information that she had wanted at that time because of
8 the ongoing felony criminal investigation. She became very
9 belligerent at the station. Her supervisor was there. They
10 left the station a short time later. The supervisor to this
11 lady called the department and apologized for her actions at
12 the station.

13 Q. Were there any other instances where you felt that
14 Officer Nichols was violating the departmental rules?

15 A. Yes, there was. I had received an investigation
16 from Assistant Chief Moll about an incident that took place
17 on a DWI arrest.

18 MR. HALLEY: Note my continuing objection
19 again for the record.

20 THE HEARING OFFICER: Overruled.

21 A. During the DWI arrest, Officer Scott Mulverhill,
22 Patrolman Pat Nichols, Patrolman Dean Fountain, Trooper
23 Bronner from the New York State Police, and they had an
24 intern riding along with our patrol at that time -- Officer
25 Dean Fountain had just made an arrest for driving while

1 James E. Phillips - Direct
2 intoxicated, and Officer Scott Mulverhill was administering
3 an Alco-Sensor test to the defendant of the DWI. After he
4 had administered the Alco-Sensor test, he flipped the
5 mouthpiece onto the ground. Officer Nichols, at this time,
6 distracted Officer Mulverhill not once, but twice, and
7 pointed to the Alco-Sensor mouthpiece on the ground. This
8 was at the same time they were arresting the defendant, and
9 it placed all the officers in jeopardy, as the defendant
10 hadn't been placed in -- hadn't been secured yet.

11 Q. Did you eventually get a report on the incident
12 from Officer Nichols?

13 A. Yes, I did.

14 Q. I'm going to show you that item marked Village
15 Exhibit Number Eight for identification. Do you recognize
16 it?

17 A. Yes, I do, that's the copy of the statement that
18 Officer Nichols submitted to Assistant Chief Moll.

19 MR. STEWART: Move that into evidence.

20 MR. HALLEY: Note my continuing objection.

21 THE HEARING OFFICER: It will be marked as
22 evidence.

23 (Village Exhibit Eight was marked received in
24 evidence.)

25 BY MR. STEWART:

1 James E. Phillips - Direct

2 Q. Chief, you talked about a mouthpiece in this
3 incident. Can you describe one for me?

4 A. The mouthpiece is a small, plastic, hard plastic
5 item that snaps into place on a small alcohol-detecting
6 device, and it's approximately three inches long, probably
7 three-eighths of an inch to a quarter of an inch in diameter.

8 Q. I'm going to show you an item marked Village
9 Exhibit Number Nine and ask if you can identify the kind of
10 item that it is.

11 A. That's one of the mouthpieces that is used on the
12 Alco-Sensor device.

13 Q. Is that the same kind of mouthpiece that would
14 have been used in this incident that we're talking about?

15 A. Yes, it is.

16 Q. Are you indicating that is the exact mouthpiece
17 that was used in this incident?

18 A. No, I am not.

19 MR. STEWART: I'd offer that as Village
20 Exhibit Number Nine.

21 MR. HALLEY: Note my continuing objection.

22 THE HEARING OFFICER: Overruled.

23 (Village Exhibit Nine was marked received in
24 evidence.)

25 BY MR. STEWART:

James E. Phillips - Direct

Q. Were there any other problems with Officer Nichols obeying the police department rules and regulations?

A. Yes, there was.

Q. What was that?

A. Sometime after that, there was a -- the patrol had arrested a female approximately 18 years of age for an assault complaint. She had just assaulted her mother. The defendant was very violent and belligerent and had to be placed into the holding cell at the police department. Officer Nichols was at the station, and he was directed to fingerprint the defendant because fingerprints need to be taken for the charges that she was charged with.

MR. HALLEY: Note my continuing objection.

THE HEARING OFFICER: Overruled.

A. While Patrolman Nichols fingerprinted this defendant, he failed to remove his duty weapon from his holster, causing a serious breach of safety within the department that could have caused serious physical injury to himself and to the other people that were at the station. It is basic police procedure that, any time a defendant is fingerprinted, that the officer either unload his weapon or remove his duty weapon and secure it into another area.

Q. Why?

A. Because of police officer safety and the public's

1 James E. Phillips - Direct

2 safety.

3 Q. Did you have any other problems with Officer
4 Nichols obeying police department regulations?

5 A. Yes, I did. There was an incident where I
6 received a call from a local judge, Andy Simays, stating that
7 he was concerned by the tickets that Officer Nichols was
8 writing.

9 MR. HALLEY: Note my continuing objection.

10 THE HEARING OFFICER: Overruled.

11 A. He stated that he was finding that the tickets
12 were very minute in nature and that they showed a lack of
13 common sense.

14 Q. Did you then review Officer Nichols' tickets?

15 A. Yes, I did.

16 Q. What did you find?

17 A. I found that prior to Officer Nichols' suspension
18 and his return to duty, that he had the lowest number of
19 tickets on the police department. After he came back to
20 work, he had one of the highest numbers of tickets, but
21 looking at the tickets closely, the tickets were very -- very
22 petty-type tickets. There was one ticket for failing to
23 affix a registration sticker to the windshield that could
24 have been affixed right at that time. There was a lot of
25 tickets that were issued because of a taillight out or

1 James E. Phillips - Direct
2 headlight out. There was one ticket issued that Judge Simays
3 apprised me of, and I called the owner of the establishment
4 to verify it. Officer Nichols had wrote a ticket because a
5 vehicle didn't have a bumper on it. Checking into the
6 matter, I found the vehicle had just been picked up at a body
7 repair shop because the frame had been bent, and that in
8 order for them to straighten the frame at the shop, they had
9 to remove the bumper. The car dealership sent another
10 vehicle to follow this vehicle back to its dealership so
11 there wouldn't be no problem because it didn't have a bumper
12 on it. Officer Nichols stopped the vehicle within a couple of
13 blocks of its intended designation and wrote the driver for a
14 no bumper.

15 Q. Does the department have a policy with respect to
16 standing guard over the weekly abortion protests on
17 Main Street?

18 A. Yes, they do.

19 MR. STEWART: May I have a moment, Your Honor?

20 My copy of the policy is in the other room.

21 (Pause in proceedings.)

22 BY MR. STEWART:

23 Q. Chief, I'm going to show you that item marked
24 Village Exhibit Number Ten for identification and ask you if
25 you can identify it, please.

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2 A. Yes, I do, it's our abortion detail policy that we
3 have at the Malone Village Police Department.

4 Q. When did that go into effect?

5 A. October 10th, 1992.

6 Q. Has Officer Nichols ever seen it?

7 A. Yes, he has.

8 Q. Did you ever have a problem with Officer Nichols
9 violating it?

10 A. Yes, I did.

11 Q. Would you describe for us what that problem was?

12 A. I don't know the exact date, but I received a call
13 from Mayor Feeley stating to me that he had just drove by the
14 abortion protest and that the officer who was assigned the
15 detail was sitting in the police car. He asked me what the
16 story was. I told him I did not know, but I would check into
17 it and correct the problem. I then went out to the other
18 office and instructed the supervisor to go to the scene of
19 the abortion protest and advise the officer to get out of the
20 patrol vehicle and to stand at his post that he is supposed
21 to be standing at during the abortion detail.

22 Q. And what about that violated the policy?

23 A. The policy was put into effect because every
24 Wednesday for the last several years we have had abortion
25 protests in front of Doctor Gorman's on West Main Street. In

1 James E. Phillips - Direct
2 order to keep a uniformed officer and so all the officers
3 would do everything the same, we developed a policy, and in
4 that policy we coned out a small area in front of the door
5 for the officer to stand and we called it his secured area,
6 that nobody was allowed into that secured area, only to go
7 upstairs, that people had to do business or go to the
8 bathroom and so forth. But that was the officer's secured
9 area, and that's where he was instructed to be so he could
10 solve any problems between the two groups that are up there
11 every week. That's why it was put into effect.

12 MR. STEWART: I have lost track. I don't
13 know whether I offered that into admission or
14 not. I will do so now.

15 MR. HALLEY: Note my continuing objection.

16 THE HEARING OFFICER: Overruled. So marked.
17 That's Exhibit One?

18 THE WITNESS: Ten.

19 (Village Exhibit Ten was marked received in
20 evidence.)

21 BY MR. STEWART:

22 Q. Chief, can you describe the general morale and
23 atmosphere in the department the first week of March of '94?

24 A. The general morale, like I had stated before, for
25 this whole ordeal was at the lowest point that it had ever

1 James E. Phillips - Direct
2 been since my 18 years on the department.

3 Q. And whose fault was that?

4 A. Officer Nichols' fault.

5 Q. What, if anything, did you decide to do at that
6 point?

7 A. At that point, after all of the things that had
8 been building up, the newspaper articles, the petition that
9 was passed around, the continued violations of the rules and
10 regulations, I decided to hold a meeting with Officer Nichols
11 to discuss these concerns that I had with him and to address
12 the problem.

13 Q. And how did you go about doing that?

14 A. I sent Officer -- I typed up a memo. I had
15 Assistant Chief Moll give Officer Nichols a copy of the memo.

16 Q. Let me interrupt you. Do you recognize this
17 document marked Village Exhibit Number 11?

18 A. Yes, I do.

19 Q. Can you describe it for me?

20 A. It's a copy of the memo that I had directed to
21 Patrolman Nichols.

22 MR. STEWART: I'd offer that into evidence.

23 MR. HALLEY: No objection.

24 THE HEARING OFFICER: So received.

25 (Village Exhibit 11 was marked received in

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evidence.)

BY MR. STEWART:

Q. Did you give Officer Nichols any advance notice of this session?

A. Yes, I did.

Q. How much notice did you give him?

A. I gave him ten days' notice.

Q. Did you give Officer Nichols an opportunity to be represented by a member of his union at that session?

A. Yes, I did.

Q. And in fact, was he represented by a member of the union at that session?

A. Yes, he was.

Q. Who was present at the session?

A. I was present at the session, Assistant Chief Moll was present at the session, Dean Fountain as the vice president of the local PBA was present, and Officer Nichols was present, and Ms. Niles was present as court stenographer.

Q. Was a transcript generated as a consequence of this session?

A. Yes, there was.

Q. I show you Village Exhibit Number 12 for identification. Do you recognize that?

A. Yes, I do.

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2 Q. What is that?

3 A. It's a transcript of the meeting that we had, that
4 I had between myself, Assistant Chief Moll and Officer
5 Patrick Nichols.

6 Q. Does it bear an original certification by the
7 court stenographer somewhere in the front or perhaps near the
8 back?

9 A. Yes, it does.

10 MR. STEWART: I would offer that into
11 evidence.

12 MR. HALLEY: As a transcript of the
13 proceedings?

14 MR. STEWART: Yes.

15 MR. HALLEY: No objection.

16 THE COURT: So marked.

17 (Village Exhibit 12 was marked received in
18 evidence.)

19 BY MR. STEWART:

20 Q. Have you read that transcript?

21 A. Yes, I have.

22 Q. Does it fully and accurately and fairly represent
23 the questions that were put to Officer Nichols and the
24 responses by Officer Nichols?

25 A. Yes, it does.

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2 Q. I'm going to back up now. I'm going to show you
3 again Village Exhibit Number Six, the petition. Did there
4 come a time when the village police department learned that
5 perhaps Officer Nichols had been involved in personally
6 circulating that petition or pieces of it?

7 A. Yes, there was.

8 Q. Approximately when was that?

9 A. I would say around the middle -- towards the end
10 of September of '93.

11 Q. And what action, if any, did the village take,
12 village police department take to investigate that?

13 A. I assigned Detective Mike Fleury the assignment of
14 investigating to see if there was any basis that
15 Officer Nichols had been directly involved in the petition.

16 Q. And did Detective Fleury report back to you with
17 some report?

18 A. Yes, he did. He submitted a report back to me
19 that contained four statements of individuals that stated
20 that Officer Nichols had brought the petition to them and
21 asked them to sign the petition.

22 Q. Now, Chief, I'm going to ask you to do a little
23 reading from this transcript. I want you to start on page
24 58, line 18, and I want you to read from there until page
25 60, line 21.

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2 A. Question: "Did you ever ask anyone to support you
3 by signing one of these petitions?" Answer: "I didn't ask
4 anybody to sign. There was one occasion where somebody asked
5 me if they could sign one and I let them, but that was
6 because they were found as I was leaving the local garage.
7 And a guy -- actually, there was a couple people there that
8 wanted to sign, and I said, 'Well, that's up to you.'"

9 Question by Assistant Chief Moll: "Can you answer
10 the question, please? Did you ever ask anyone to support you
11 by signing one of these petitions? Did you ever ask anyone
12 to support you by signing one of these petitions? Yes or
13 no?"

14 A. "I don't recall if that ever happened.

15 Question by Chief Phillips: "Is that a yes or no?"

16 Answer: "That is a I don't remember for sure. I
17 don't remember asking anybody, but again, there is a lot of
18 occasions where people asked about them and so --"

19 Question: "Did you point them in the direction to
20 go if they wanted to sign one?"

21 Answer: "Yeah, I told them the names of some
22 people that were responsible."

23 Question by Assistant Chief Moll: "The petition
24 that was in your wife's car, that was at a local garage?"

25 Answer: "Yeah."

1 James E. Phillips - Direct

2 Question: "And it would be to my understanding
3 that you're saying that someone approached you at the garage
4 and you remembered seeing a petition in the car, and how did
5 it get from the car to where maybe that person at least
6 reviewed it?"

7 Answer: "I was in the garage and, in fact, they
8 were still working on the car when I got there and they asked
9 me about the petition. I said, 'Well, yeah, but, you know,
10 my wife and some other people are involved in that,' and then
11 somebody pointed out to me there was one on the car seat.
12 And I said, 'Okay, let's take a look,' and they signed it.
13 They asked me if they could sign it. I said, 'Yeah, you're
14 the one putting your name on there,' but there again, that's
15 the only situation that I can remember that I physically
16 was --'"

17 Question by Chief Phillips: "At the time, did you
18 discuss with anybody that was in the garage any of the
19 circumstances surrounding your previous disciplinary
20 proceeding that you were under at that time?"

21 Answer: "I can't remember the extent of the
22 conversations. I know the concern was to get -- I can't even
23 remember who was there. I know some of his employees were
24 there." (reading)

25 Q. Are you up to line 21 yet?

1 James E. Phillips - Direct

2 A. Oh, I'm sorry.

3 Question: "Do you have copies of these petitions
4 at your residence?"

5 Answer: "I may in my files of all the particulars
6 surrounding the suspension. It may be included in that."
7 (reading)

8 Q. Would you also read for me from page 174, lines 9
9 through 14.

10 A. Repeat the numbers, please.

11 Q. Yeah, page 174, lines 9 through 14.

12 MR. HALLEY: Objection. Again, Your Honor,
13 this is not specified in the Bill of Particulars.
14 The Bill of Particulars specifically references
15 those pages that the Chief just testified to. It
16 does not reference any wrongdoing with regard to
17 pages 174 or thereafter.

18 MR. STEWART: I think my letter to you,
19 Mr. Halley, references these exact lines were
20 published in the newspaper yesterday.

21 MR. HALLEY: They were not brought up in the
22 context of the Civil Service Hearing. If they are
23 going to be, we're entitled to at least eight
24 days' notice. They're not in the Bill of
25 Particulars.

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2 MR. STEWART: Are you saying I didn't give
3 you a transcript?

4 MR. HALLEY: When I asked specifically what
5 it was he's accused of saying that was a lie or
6 falsehood, I was referenced to a number of pages
7 between 55 and 60. I was not referenced to pages
8 174 or thereafter.

9 THE HEARING OFFICER: Overruled.

10 MR. HALLEY: Note my objection.

11 BY MR. STEWART:

12 Q. Chief, would you please read 174, lines 9
13 through 14?

14 A. Question: "Did you ask anyone in Scott Smith's
15 Towing garage to sign your petition?"

16 Answer: "I don't recall that. I don't believe
17 that I asked anybody. Scott was one of the ones that signed
18 it. I believe Scott asked people to sign it. I didn't ask
19 anybody there." (reading)

20 Q. Would you also read from the same page, lines 16
21 and 17?

22 A. Answer: "I didn't go up to anybody and say, 'Would
23 you sign this,' no." (reading)

24 Q. Would you read from page 175, lines 15 through 17?

25 A. Answer: "I did not ask Ed Richmond (sic); Scott

1 James E. Phillips - Direct

2 Smith asked Ed Richmond. In fact, at that time, I was
3 getting ready to leave and he said something to Richmond
4 about the petition." (reading)

5 Q. Would you read from page 180, lines 2 through 6?

6 A. Answer: "If, in fact, that is what those
7 statements say, that I approached them initially, if I made
8 the initial suggestion or whatever in regards to the
9 petitions, I'm telling you that that is not the way it
10 happened. That's what I'm telling you based on what you are
11 telling me." (reading)

12 Q. Would you read from page 181, lines 9 through 13?

13 A. Question: "I'm asking you, did you ask any of
14 these people that have signed the petition to sign it? It's
15 a simple question."

16 A. "Shouldn't be anybody on here. I didn't ask
17 anybody." (reading)

18 Q. Now, on the same page would you read lines 15
19 through 16?

20 A. Answer: "I told you earlier in my testimony that I
21 did not go up to anybody and say, 'Would you sign these
22 petitions.'" (reading)

23 Q. Would you also read from the bottom of page 181,
24 lines 24 and 25, and then continue over on the top of page
25 182, lines 2 through 7?

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2 A. Answer: "I'm going to have to say that, again, I
3 don't recall ever going up to anybody and saying, 'Would you
4 sign these petitions. These petitions were not created by
5 me, and other than delivering one to somebody that I recall
6 delivering one to and allowing a few people at Smith's garage
7 to sign them in my presence, that was the limit of my -- as
8 far as I can recall, that was the limitation as to my
9 association with these." (reading)

10 Q. Would you read from page 182, lines 19
11 through 24?

12 A. Answer: "I'm saying I don't recall ever going up
13 to anybody and saying, 'Would you sign that petition.'
14 That's what I'm saying to answer your question. I don't
15 recall ever doing it, and that's as thorough as I can be on
16 that. The reason it's difficult to recall is, again, there
17 are those situations where I do recall bringing one to the
18 courthouse." (reading)

19 Q. Chief, how did these statements of Officer Nichols
20 that you just read, how do they compare with the sworn
21 statements that you have previously acquired?

22 A. They didn't compare at all. There was the
23 statement that we had obtained that stated that Officer
24 Nichols approached --

25 MR. HALLEY: Object, unless we have the

1 James E. Phillips - Direct
2 statements in evidence. They should be in
3 evidence.

4 MR. STEWART: I will put the statements in
5 evidence. Easily done.

6 THE HEARING OFFICER: Counsel, any objection
7 to this being marked an exhibit?

8 (Village Exhibits 13 through 16,
9 respectively, were marked for identification.)

10 BY MR. STEWART:

11 Q. Chief, I'm going to show you those exhibits that
12 have been marked 13, 14, 15 and 16 and ask you if you can
13 identify each of them in order.

14 A. These are the statements that Officer -- Detective
15 Fleury had taken in regards to the ones that I had asked him
16 to do the investigation in regards to the petitions.

17 Q. Number 13 is from whom?

18 A. From Carl Thomas.

19 Q. And Number 14 is from whom?

20 A. Dale Lamitie.

21 Q. And Number 15 is from whom?

22 A. Edward Ritzmann.

23 Q. And Number 16 is from whom?

24 A. Scott Smith.

25 MR. STEWART: I'd offer each of these

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2 exhibits into evidence at this time.

3 MR. HALLEY: Object, unless the people are
4 here to be cross examined.

5 MR. STEWART: They are. They will be here
6 this afternoon.

7 MR. HALLEY: Let's wait for them to come,
8 then.

9 THE HEARING OFFICER: Overrule. We'll accept
10 those. These are sworn affidavits and signed
11 by --

12 MR. HALLEY: Note my exception.

13 MR. STEWART: For the interest of clarity, I
14 want to be clear, they will all be here with the
15 exception of Carl Thomas, whom I have not called
16 as a witness.

17 (Village Exhibits 13 through 16,
18 respectively, were marked received in evidence.)

19 BY MR. STEWART:

20 Q. Chief, why is it important for a policeman not to
21 lie?

22 A. Because when a policeman lies, he loses the public
23 trust that he must have in order to perform his job as a
24 police officer. Once you lose the trust, you can never get
25 your trust back.

James E. Phillips - Direct

Q. How has the morale been on the force -- well, withdraw the question. Did you take any actions against Officer Nichols immediately upon discovering these lies?

A. At the conclusion of the meeting, it was obvious to me that wide conflicting -- Officer Nichols' testimony was conflicting with the statements that we had. I then called the Mayor and I set up a meeting with the Mayor, the village attorney, who was also the Assistant District Attorney, and Assistant Chief Moll, and we brought the stenographer with us to the village office so we could go through parts of the transcript or part of the meeting that we had, some of the testimony.

Q. As a result of this meeting, was any action taken against Officer Nichols?

A. The decision of the village attorney, Mayor and myself was that at this point, Officer Nichols would be suspended with pay pending further investigation of the allegations by the District Attorney in regards to the perjury charges.

Q. If you know, how long did it take to get the transcript back from the stenographer?

A. I'm not sure, it seemed -- probably within a week or so, a couple of weeks we had it back.

Q. Did you hear again from Officer Nichols after he

1 James E. Phillips - Direct
2 was suspended with pay?

3 A. I received a couple of correspondence. One was in
4 regards to some personal items that he was inquiring about,
5 and I believe that's all the correspondence that I had.

6 Q. Did you subsequently see your name in the
7 newspaper involving this matter?

8 A. Yes, I did.

9 Q. And what was that all about?

10 A. The day that I had brought the paperwork to the
11 District Attorney's office, when I got to the District
12 Attorney's office, I was informed that Officer Nichols had
13 just been there prior to my reporting to the District
14 Attorney and that he had filed some alleged accusations
15 against myself, the Mayor and Assistant Chief Moll. The next
16 day when the Fort Covington Sun was published, the headlines
17 in the paper said that, "village hierarchy under alleged --"
18 I forget the exact title, but stated that the Mayor, myself,
19 and Assistant Chief Moll had committed several felonies and
20 numerous misdemeanors, and I was shocked to see that.

21 Subsequently, the District Attorney wrote a letter
22 to Patrolman Nichols, stating that he would not investigate
23 the matter any further, that the matter had already been
24 looken (sic) into by the FBI, and if the FBI had come up with
25 anything, that he would check into it at that time. The

1 James E. Phillips - Cross
2 District Attorney then told me that Officer Nichols sent him
3 a letter criticizing him for his actions in regards to his
4 not following through on Officer Nichols' alleged
5 violations.

6 MR. STEWART: I have no further questions of
7 the Chief.

8 THE HEARING OFFICER: Mr. Halley.

9 CROSS-EXAMINATION

10 BY MR. HALLEY:

11 Q. What do you say, Chief, the District Attorney told
12 Pat Nichols with regard to the FBI investigation?

13 A. I believe the -- I don't have the letter in front
14 of me, but I believe the content of the letter was that, due
15 to the fact that another agency had already reviewed this
16 matter, and namely the FBI, that unless they found something
17 that he should follow through on, that he wasn't going to go
18 any further with it.

19 Q. Are you aware if the FBI told the District
20 Attorney that they had absolutely no problem with him
21 proceeding with those criminal charges?

22 A. There was a -- well, I know what the letter stated
23 that was sent to Patrolman Nichols.

24 Q. Well, are you aware of a letter that was sent or
25 advice was given to the District Attorney's office in early

1 James E. Phillips - Cross

2 June?

3 A. I'm not in early June.

4 MR. HALLEY: Let's mark this for
5 identification.

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

8 MR. HALLEY: It's the only copy. If you'd
9 like to make copies, you can.

10 MR. STEWART: No objection.

11 BY MR. HALLEY:

12 Q. I'd like you to read that letter, sir, and then
13 I'm going to ask you a question or two about it.

14 (Pause in proceedings)

15 A. Okay.

16 Q. Are you familiar with that letter?

17 A. Well, no, I am not. I'm familiar with it because
18 I just read it.

19 Q. Okay. Are you familiar with the FBI telling
20 Officer Nichols that the information he, Nichols, provided to
21 the District Attorney's office is not within FBI
22 jurisdiction?

23 A. I wasn't aware the FBI had wrote a letter to
24 Nichols until I just read that one.

25 Q. Were you aware that the District Attorney had been

1 James E. Phillips - Cross

2 advised by separate communication any action the District
3 Attorney wanted to make in this complaint would in no way
4 interfere with the FBI investigation or the civil rights
5 matter involving Moll and Mattimore?

6 A. That's what the letter said.

7 Q. Okay. Officer Nichols charged you with -- I'm
8 sorry. Officer Nichols made allegations that you committed
9 state crimes, correct?

10 A. Along with federal crimes.

11 Q. How does the allegation of the state crimes
12 interfere with the FBI investigation, if you know?

13 A. As far as I know, there are no charges.

14 Q. I'm not talking about charges, sir. How does the
15 allegation of a state crime interfere with the federal
16 investigation?

17 A. I don't know if it does interfere with an
18 investigation.

19 Q. You may have mentioned -- you made mention during
20 the Direct testimony that the Judge on Mr. Nichols' appeal
21 found the Hearing Officer was not biased; is that correct?

22 A. That's correct.

23 Q. How well do you know that Hearing Officer?

24 A. He's a friend of mine.

25 Q. Very good friend?

James E. Phillips - Cross

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A. Yes, sir, he is.

Q. Did you ask him to be your best man?

A. Yes, I did.

Q. But he wasn't biased?

A. Not according to Judge Plumadore.

Q. When did you ask him to be your best man, before
or after the Nichols hearing?

A. I don't recall.

Q. Do you have a copy of the charges, sir?

A. No, I don't.

Q. I'd like you to look at them, particularly the
closing line of each of the introductory paragraphs. Am I
correct, sir, that numbers one through six generally recite a
certain set of facts?

(No response)

Q. The first paragraph of one through six generally
recite a certain set of facts, is that correct?

A. It states a set of facts and refers to certain
regulations that were violated.

Q. Okay. And the end of each paragraph at the end --
sorry, the end of the introductory paragraph in one through
six, am I correct that the following sentence appears at the
end of each paragraph: "this action," referring to that set
of facts, "violated the following rules and regulations"?

James E. Phillips - Cross

A. That's correct.

Q. So am I correct, sir, that when "this action" is described, the words "this action" refer to six separate sets of facts; is that correct?

A. That's correct.

Q. And after each separate set of facts when you describe the action, you then say that, "This action violated the following rules and regulations," correct?

A. That's correct.

Q. Where in those charges of misconduct did you describe the actions you testified to about Officer Nichols in November, December, January and February of this past year?

A. Those things that I testified earlier were not charges that I was charging Officer Nichols with.

Q. Thank you.

A. Those were concerns that I had in regards to Officer Nichols' performance as a police officer.

Q. And you were so concerned about them, that you wanted to do something about it, but they are not specified in these charges of misconduct, correct?

A. That's not correct.

Q. Where are they specified in these charges of misconduct dated April 20, 1994?

James E. Phillips - Cross

A. Like I told you before, the reason I did not charge Officer Nichols with these charges is because these were things that drew attention to me in regards to his performance as a police officer, and that's what prompted the meeting on March 17th, so I could discuss those matters, and after the meeting I did not follow through with charging him with those things that I had concerns about.

Q. Why not?

A. Because I didn't want to.

Q. Isn't it your obligation, sir, to charge somebody with violating the departmental rules and regulations?

A. I don't believe that everybody should be charged for every little minute violation --

Q. Okay.

A. -- under Article 75 of the Civil Service, I believe.

Q. You don't believe Officer Moll should be charged with anything either, correct?

A. That's correct.

Q. Let's get into what you said about "A subsequent investigation cleared Officer Moll." You remember testifying to that on Direct?

A. That's correct.

Q. Was that an investigation you performed, sir?

James E. Phillips - Cross

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A. Yes, it was.

Q. During the course of the investigation, you did not interview either Officer Nichols or the victim; is that correct?

A. That's correct, I interviewed Officer Moll.

Q. Who did you interview besides Officer Moll?

A. I interviewed the two officers that were at the station when the incident happened. Like the Hearing Officer stated, Officer Nichols bringing up Assistant Chief Moll's incident was total retaliatory in nature.

Q. When you say the Hearing Officer stated that, which Hearing Officer are you referring to?

A. Mr. McKee.

Q. The one who was your best man?

A. Well, Mr. McKee is a professional, and I'm sure his personal feelings and professional feelings can be overlooked or not mingle with each other, as Judge Plumadore agreed.

Q. That's your opinion, sir.

A. That's Judge Plumadore's opinion, too, sir.

Q. Now, how do you say that the statement Officer Nichols made to the Malone telegram August 17, 1993, "There is somebody else who should be suspended for 30 days," how do you say that that was publicly criticizing

James E. Phillips - Cross

official actions of a department member?

A. I think any time that you make allegations against a police department, when you make general rationalizations to the fact another member of the department should be penalized or punished, you are reflecting the whole department. You are not just picking on one individual. You are criticizing the whole police department, and I think that definitely brings discredit to the department.

Q. Anytime somebody criticizes another member of the department, that brings a discredit?

A. Not every time, but in certain instances, yes. When the public media is used as a spectacle to create an alleged illusion of improprieties when there was none, then I believe that discredits the police department.

Q. Did you think it caused any discredit to the police department when Mayor Feeley said Officer Nichols was malicious, unfounded, retaliatory and vindictive?

A. I believe the Mayor was just telling the truth.

Q. Okay. Well, how do you know that Officer Nichols wasn't just telling the truth when he said, "There is somebody else who should be suspended for 30 days"?

A. Because I did a complete and thorough investigation, and the Village Board found the Assistant Police Chief not guilty of anything.

James E. Phillips - Cross

Q. That's the complete and thorough investigation where you never interviewed Nichols and never interviewed the victim, correct?

A. The victim never reported the incident --

Q. Did you ever --

A. It was four months after the incident, and Officer Nichols had, I'm sure -- in fact, the incident that happened, the defendant pled guilty and served 90 days in jail for the charges he was charged with.

Q. My question, sir, was whether or not that incident -- you never interviewed the victim and never interviewed Officer Nichols?

MR. STEWART: Objection, it's been asked and answered a couple of times.

Q. Okay. Who was he publicly criticizing when he made the statement, "There's somebody else who should be suspended for 30 days"?

A. I think he was publicly criticizing the whole department.

Q. You think that, but in that statement, "There's somebody else who should be suspended for 30 days," who was he talking about?

A. To me, that criticizes the whole department.

Q. To you, to you, sir. Okay.

1 James E. Phillips - Cross

2 MR. STEWART: Your Honor, I don't know if --
3 I want to point out that under Civil Service Law
4 50-A, a police department, a police officer's
5 personnel record is confidential. Now, if we're
6 talking about the Chief or we're talking about
7 Assistant Chief Moll, if we're talking about
8 Officer Nichols, that's one thing, but if there is
9 somebody else in the department we're trying to
10 drag into this muck, I don't think it's
11 appropriate, and I think it would be in violation
12 of Civil Rights Law Section 50-A.

13 THE HEARING OFFICER: Okay. Let me ask you
14 this, Chief: Is this person that you believe that
15 he's talking about, is it either you or Assistant
16 Chief Moll?

17 A. I believe it is Assistant Chief Moll.

18 THE HEARING OFFICER: Thank you.

19 BY MR. HALLEY:

20 Q. But he did not name Moll in that statement, did
21 he?

22 A. He did not, no, that's why I say when you make
23 general rationales that somebody within the police department
24 should have been suspended besides him, then you are
25 attacking everybody on the department. It makes the whole

James E. Phillips - Cross

department look bad.

Q. Okay. When he says, "There is somebody else who should have been suspended for 30 days," did he identify the person as a police officer or a member of the police department?

A. Did he?

Q. Did he use the word "police"?

A. Can I take a minute to --

Q. If he made a reference to police or police department in that statement, please let me know.

A. It says, "Nichols' complaint specifically concerns the actions of the force's Assistant Chief, Gerald Moll."

Q. That's a complaint that he filed somewhere, correct?

A. Then a couple paragraphs later he says, "Somebody else should be suspended." I mean, what else am I supposed to interpret it as?

Q. You can interpret it any way you wish, sir.

A. That is my answer.

Q. Anywhere in that statement does he identify either a member of the police department or does he identify that he's speaking of the police department?

A. Like I told you, a few paragraphs before that he mentions Assistant Chief Moll's name. In that other one, he

James E. Phillips - Cross

1 didn't specifically, but anybody that looks at it can
2 determine that, in fact, he is referring to that above
3 article, above paragraph.
4

5 Q. How do you know anybody can do that?

6 A. Well --

7 Q. I withdraw the question. What confidential
8 official business was he speaking about when he
9 said, "Somebody else should be suspended for 30 days"?

10 A. I believe --

11 Q. Not what you believe, sir. What was he speaking
12 about? What was the confidential business he revealed or
13 eluded to?

14 A. He was criticizing the police department in its --
15 I'm trying to think of the word to use, that when you make
16 general rationales like this, you are criticizing everybody.
17 You are bringing discredit to the department. You are making
18 allegations of something, that this has happened or this
19 hadn't happened when, in fact, they haven't, and it's trying
20 to get people onto his side of an issue in regards to a
21 personnel matter. That's my answer.

22 Q. Okay. It bothers you he's trying to get people on
23 his side?

24 A. No, it doesn't bother me, but it is a violation of
25 the rules for a police officer to get personally involved in

1 James E. Phillips - Cross

2 trying to sway peoples' decisions in his right to due
3 process, in his rights to Civil Service hearings.

4 Q. It's your statement, sir, that he has no right to
5 make a comment in regards to his own Civil Service hearing?

6 A. When the facts only pertain to when
7 Officer Nichols became a police officer.

8 Q. No, my question is, sir, are you saying that he
9 has no right to make a comment?

10 A. I'm trying to answer your question, but I have to
11 do it in the way that I can, sir.

12 Q. Let me ask you this, then. I will withdraw the
13 question. Do you believe or do you understand that he had a
14 right to speak about his own Civil Service case?

15 A. Not in regards to police department business.

16 Q. Okay. Let me ask you what police department
17 business he was talking about when he said, "There is
18 somebody else who should be suspended for 30 days."

19 A. I believe --

20 Q. Not what you believe.

21 A. Well --

22 Q. What do the records reflect?

23 A. I think I have answered the question, that he was
24 referring to Assistant Chief Moll.

25 Q. You believe.

James E. Phillips - Cross

A. Well, I think anybody with a second-grade education could come up with the same conclusion that I did, sir.

Q. What public criticism of the official actions of a department member were contained in his statement, "In June, '88, I took an oath to serve the public. I did what I did because it was in the best interests of the public, and this attempt to shut me up isn't going to work"? Who was he criticizing there, what official actions of the department there?

A. I think he was criticizing my actions in regards to his suspension. I believe he was criticizing the actions in regards to the -- his alleged concerns of the allegations against Assistant Chief Moll, and I think when you mention one person within the department or imply that there is somebody within the department, I think it reflects on the whole department.

Q. So it's your statement, sir, that the official actions of the department member are the cause of your bringing of charges?

A. That's correct.

Q. Okay. Who actually preferred these charges, did you or the Village Board?

A. The Village Board preferred the charges.

James E. Phillips - Cross

Q. Am I correct, sir, that you have no authority to bring charges on your own, that they have to be preferred by the Village Board?

A. That's not correct.

Q. You cannot bring Civil Service charges without Board approval?

A. Not without Board approval, but I can suspend an officer on my own authority.

Q. The Board, then, has to take formal action, correct?

A. That's correct.

Q. It's the Board that suspends somebody for 30 days, correct?

A. Correct.

Q. So when Officer Nichols says, "Does it make sense to take a man out of work for 30 days for doing the right thing," who took him out of work for 30 days?

A. The Board took him out on my recommendation.

Q. Are members of the Board members of the police department?

A. No, they are not.

Q. No, they are not. So the suspension was recommended by you, but was approached, acted upon by the Board; is that right?

James E. Phillips - Cross

A. That's correct.

Q. When he talks about, "attempt to shut me up," what is he talking about?

A. I don't know what he's talking about.

Q. How do you know he was criticizing a member of the police department?

A. Because of his prior his statement in the paper. I mean, he says somebody else should be under suspension for 30 days, so --

Q. When he says, "This attempt to shut me up isn't going to work," who is he talking about? Who was he referring to?

A. Nobody was trying to shut him up, but he may have had these allegations that people were.

Q. Who was he referring to as trying to shut him up?

A. I believe the police department.

Q. Does it say that in the statement?

A. Which one are you referring to now, sir?

Q. August 17th, Plattsburgh Press Republican.

A. I believe he's criticizing everybody. He stated that he reported the incident to me. He wasn't satisfied, so he went to the Mayor. He wasn't satisfied with the Mayor, so he went to the District Attorney. He wasn't satisfied with the District Attorney, so he went to the FBI. I believe he

1 James E. Phillips - Cross

2 advised everybody and his brother in his article.

3 Q. Is everybody and his brother members of the police
4 department?

5 A. No, but I'm --

6 Q. Okay. But you did not take any official action,
7 you said, except for recommending a suspension and charges,
8 correct?

9 A. I did what was required of me under my rules and
10 regulations and brought the charges to the Village Board, and
11 they filed the charges, and that's what we did. That was
12 what happened.

13 Q. The August 17 article to the Plattsburgh
14 Press Republican, which is the subject of the charges,
15 beginning with, "In June of 1988," and ending with, "doing
16 the right thing," does he mention your name at all?

17 A. In that, yes.

18 Q. Where is your name?

19 A. Where are you at?

20 Q. It's the quote that you brought him up on charges
21 about, number four, begins with, "In June of 1988," and ends
22 with, "doing the right thing." My question is, in that
23 quote, which is the subject of that charge, does he mention
24 your name at all?

25 A. No, he does not.

James E. Phillips - Cross

Q. Does he mention the police department at all?

A. Not in that paragraph, no.

Q. What confidential or official business of the police department do you believe that he disclosed in that statement?

A. First of all, he discussed an incident that involved a prisoner that took place at the station.

Q. Where is that contained in the quote, which begins, "In June of '88," and ends with the words, "doing the right thing?" Where does he mention the prisoner? Where does he mention the station? Where does he mention the incident?

A. It was several paragraphs before.

Q. In the paragraph which begins, "In June of 1988," and ending with, "doing the right thing," what confidential or official business of the police department is he disclosing?

A. Well, nothing in that paragraph, but he is referring to the other paragraphs.

Q. In fact, his suspension and charges were already a matter of public record at that time, correct?

A. I'm not sure.

Q. The article begins with, "Officer Nichols was suspended for 30 days," doesn't it?

James E. Phillips - Cross

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A. Yes, sir.

Q. Actually, the headline says, "Officer suspended,"
doesn't it?

A. Yes, sir.

Q. Okay. So there is no dispute it was a matter of
public record he was suspended, right?

A. Yes, sir.

Q. How did that information get to the newspaper that
he was suspended?

A. I believe it was Officer Nichols that gave it to
the newspapers.

Q. How do you know that?

A. Because I know we didn't give it to them because
it was a personnel matter and we were trying to -- under the
protection of the Civil Service federal laws, we kept the
matter secret.

Q. Except under the Civil Service laws, he has an
absolute right to disclose it, doesn't he? He has an
absolute right to have a public hearing?

A. That's correct.

Q. So was he violating Civil Service laws by making
public his charges or making public the contents of the
hearing?

A. He didn't violate Civil Service laws, but he

1 James E. Phillips - Cross
2 violated department rules and regulations.

3 Q. So it's a question of whether Civil Service laws
4 or departmental rules and regulations apply, so you side with
5 the departmental rules and regulations?

6 A. A police department has to have strict rules and
7 regulations in order for it to function properly in order to
8 maintain the trust of the public.

9 Q. Do you believe these rules and regulations apply
10 no matter what the Civil Service law says?

11 A. I believe Officer Nichols waived his rights as to
12 that when he took the oath to become a police officer,
13 because he agreed to obey the rules and regulations of the
14 police department and to obey the officers appointed over
15 him.

16 Q. Number five, there is a reference to an article,
17 August 18, Plattsburgh Press Republican, beginning with the
18 statement, "Retaliation is the number one reason," and ending
19 with, "I want the public to know what's going on."

20 Is your name mentioned anywhere in that quote?

21 A. No, it's not.

22 Q. Does he identify anyone in that quote?

23 A. No, he does not.

24 Q. What official or confidential business of the
25 police department did he reveal in that quote?

1 James E. Phillips - Cross

2 A. Well, first he stated, "Retaliation is the number
3 one reason I waited so long."

4 Q. What was he referring to? Who did he say was
5 retaliating against him?

6 A. Referring to me as Chief of Police.

7 Q. Where is that quote, sir? Where does he say that
8 you're retaliating?

9 A. He doesn't say me directly, but that's my
10 interpretation of it.

11 Q. Okay. So, then, what is the official business of
12 the police department that's revealed? Is it your
13 retaliation or something else?

14 A. Officer Nichols revealed other personnel matters
15 within the police department that those officers have a right
16 to keep private, and it is not up to Officer Nichols who he
17 feels or what he feels should be released or not released to
18 the news media.

19 Q. In that quote, sir, which was identified by the
20 village's attorney as the fourth paragraph of that article,
21 in that quote what is he revealing about the police
22 department and other officers that they don't want to have
23 revealed?

24 A. He is stating that, "'Retaliation is the number
25 one reason I waited so long,' he said. 'That's the same

James E. Phillips - Cross

reason a lot of others are waiting before they say anything.'"

Q. Does he identify who the "others" are?

A. No, but it's obvious he is referring to a fellow police officer.

Q. Where does he say fellow police officer in that article?

A. He does not say fellow police officer.

Q. Who were the offices you claim were afraid to be assigned with Nichols?

MR. STEWART: Your Honor, if this proceeding ends up with Officer Nichols going back to work for the village police department and the Chief answers that question, I don't know how I'm going to make that police department work. I understand why he's asking it, but it's totally unfair.

MR. HALLEY: It's not unfair, Your Honor. I objected to it. I said it's got nothing to do with other people. He said we wanted you to know that other people were afraid to work with him, but we can't ask who those other people are and we can't get into the specifics? Are we just going to leave it out there?

THE HEARING OFFICER: I'm going to sustain

James E. Phillips - Cross

that objection. I think he brings up a good point. If Officer Nichols does go back to work, it's just going to create havoc in the department as far as the other people being named here. Now we have the Chief of Police --

MR. HALLEY: I'm sorry, I want to make sure that statement was on the record.

THE HEARING OFFICER: We have the Chief of Police who was here under oath testifying that he had some problems with the other people who did not want to work with him when he came back, and he had to change some work schedules. I think this stands by itself. I'm going to sustain the objection, and the Chief does not have to name the other police officers. He is under oath. We accept what he says.

MR. HALLEY: Okay. Read back the statement by the Hearing Officer, "If Officer Nichols ever came back to work --"

(The record was read by the court reporter.)

MR. HALLEY: Okay. I respectfully request that if that is accurately the way you feel, you excuse yourself as Hearing Officer. That statement you made to me sounds like there is

1 James E. Phillips - Cross

2 already an indication he shouldn't go back to
3 work. I say that with respect, but I heard the
4 statement and I am troubled by it.

5 THE HEARING OFFICER: I spent 33 years in the
6 state police and wound up as a commander for five
7 years. I understand what morale is in a police
8 organization. I'm not saying Mr. Nichols is or
9 isn't going back to work. I am saying if he does
10 go back to work and those four people are named in
11 a small department like this in the village, it's
12 going to create all kinds of problems.

13 Based on my reasoning and my experience as a
14 police commander, I'm saying that the Chief does
15 not have to answer that. And for those reasons --

16 MR. HALLEY: Again, Your Honor, I say that
17 with all respect. I had to say it for the record.

18 THE HEARING OFFICER: I will not relieve
19 myself as Hearing Officer. I have never met
20 Mr. Nichols. I don't recall meeting the Chief. I
21 may have or I may not. I would not have
22 recognized him, nor Mr. Stewart.

23 (A brief recess was taken.)

24 BY MR. HALLEY:

25 Q. Chief Phillips, you indicated in your Direct

1 James E. Phillips - Cross

2 testimony the reason for bad morale was all Officer Nichols'
3 fault, correct?

4 A. That's correct.

5 Q. How do you know that?

6 A. Because the officers relayed that to me. I could
7 just tell by being a police officer for as long as I have
8 been that that was the reason; that was the only talk that
9 was going on at the station.

10 Q. How did you know that the morale wasn't bad
11 because they were concerned about the treatment of Officer
12 Nichols in the police department?

13 A. I know that wasn't true.

14 Q. How do you know it wasn't true?

15 A. Because all the officers have come up to me and,
16 you know, expressed their opinions to me.

17 Q. All the officers?

18 A. That's correct, all the officers.

19 Q. You don't want to name them? I'm just asking.

20 A. I was told not to name them, sir.

21 Q. Okay.

22 MR. HALLEY: I have nothing further.

23 MR. STEWART: A little Recross (sic). I
24 left out an exhibit, and if the stenographer could
25 help me, I didn't think there was an Exhibit

James E. Phillips - Redirect

Number Five offered into evidence yet.

REDIRECT EXAMINATION

BY MR. STEWART:

Q. I'm going to show you this item marked Village Exhibit Number Five for identification and ask if you can identify it.

A. This is a copy of an incident report that was received by the Malone Police Department on the 27th of October, 7:50 a.m. in the morning regarding a criminal mischief complaint from a local business.

Q. And did you previously testify to this incident?

A. Yes, I did.

Q. And there is some blackouts on it. Do you know what information has been deleted?

A. The name, address, phone number and incident location on the report, and also any reference to a name has been crossed off.

MR. STEWART: I'd offer that into evidence as Village Exhibit Number Five.

MR. HALLEY: Note my continuing objection.

THE HEARING OFFICER: What is it exactly?

THE WITNESS: It was a criminal mischief complaint. We have an incident report system that, every time that we get a call that requires

1 James E. Phillips - Redirect
2 some type of investigation, we do an incident
3 report.

4 THE HEARING OFFICER: I'd like to see it for
5 just a minute. Who does this pertain to?

6 MR. STEWART: Your Honor, the Chief
7 previously testified to an incident in which a
8 local businessman said that if Officer Nichols was
9 still on the force, then he would have had better
10 service, and I had meant to introduce this
11 incident report at that time and I just omitted
12 to.

13 THE HEARING OFFICER: All right. It will be
14 accepted.

15 (Village Exhibit Number Five was marked
16 received in evidence.)

17 BY MR. STEWART:

18 Q. Chief Phillips, how many members are there on the
19 village police department?

20 A. There are 17 members.

21 Q. Do you have power to suspend anybody who doesn't
22 belong to the village police department?

23 A. That doesn't belong to --

24 Q. That doesn't belong to the police department.

25 A. No, I do not.

1 James E. Phillips - by the Hearing Officer

2 MR. STEWART: No further questions.

3 MR. HALLEY: Nothing further.

4 THE HEARING OFFICER: I have got a couple
5 things here I'd like to clarify.

6 EXAMINATION BY

7 THE HEARING OFFICER:

8 Q. You mentioned something, Chief, about a mouthpiece
9 being dropped and something about Patrolman Nichols'
10 actions. I'm not sure I understand what you're saying.

11 A. Okay, sir. In the complaint that Officer Nichols
12 filed, he stated that when Officer Mulverhill flipped the
13 mouthpiece onto the ground, that that was conduct unbecoming
14 of a police officer. My contention was -- that was right
15 after he was given the Alco-Sensor test. The defendant was
16 put into hand irons and placed under arrest, and at that time
17 it shouldn't have been -- Officer Nichols should have waited
18 until the defendant was secured and placed in the vehicle,
19 then he could have brought that to Officer Mulverhill's
20 attention, because I think it could have distracted him from
21 effecting the arrest.

22 Q. On the issue of the abortion clinic assignment of
23 Trooper Nichols (sic), was that just one incident or were
24 there other incidents during his assignment there or just the
25 one where he was sitting in the car and he should have been

1 James E. Phillips - by the Hearing Officer
2 at his post?

3 A. Just that one incident.

4 Q. Was that documented and brought to his attention?

5 A. Yes, it was.

6 Q. You mentioned that when he came back from
7 suspension, his vehicle and traffic arrests went up. Had he
8 been counseled about that, that he had been not making enough
9 arrests?

10 A. No, he hadn't been.

11 Q. Did they go up appreciably or did they double or
12 triple?

13 A. I don't know the exact figure, but it went up
14 considerably, I would say almost tripled to what they were
15 prior to the incident.

16 Q. And on the petition that's been entered into
17 evidence, how many people signed this petition?

18 A. It was approximately 300 people that signed the
19 petition.

20 MR. STEWART: I don't have anything further.

21 MR. HALLEY: Nothing further.

22 (The witness was excused.)

23 MR. STEWART: Your Honor, it's approaching
24 noon. My next witness is going to be Assistant
25 Chief Gerry Moll. I don't expect to have him on

1 Gerold Moll - Direct

2 the stand very long. It's up to you whether we go
3 forward now or break for lunch. I don't care.

4 MR. HALLEY: Prefer to proceed.

5 THE HEARING OFFICER: Bring him on.

6 MR. STEWART: Village calls Assistant Chief
7 Gerold Moll.

8 Gerold Moll,
9 having been called as a witness, being duly sworn, testified
10 as follows:

11 DIRECT EXAMINATION

12 BY MR. STEWART:

13 Q. State your name, please.

14 A. My name is Gerold Moll.

15 Q. And how are you employed?

16 A. I'm employed by the Malone Village Police
17 Department.

18 Q. In what position?

19 A. I hold the rank of Assistant Chief.

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

22 A. Yes, I have.

23 Q. What training?

24 A. I started with the police department 15 years ago,
25 I went through the basic requirements as a police officer,

1 Gerold Moll - Direct
2 through the basic courses. I have also had various training,
3 such as breathalyzer school, crime scene investigation,
4 photography, various training like that. When I became a
5 supervisor in 1988, I also went through the required
6 supervisor training to become a police supervisor.

7 Q. Have you received any training in personnel
8 matters?

9 A. Yes, I have.

10 Q. What is that?

11 A. I passed all the required Civil Service tests for
12 Chief of Police and Assistant Chief of Police, and also
13 supervisor training covered various aspects of dealing with
14 personnel.

15 Q. I'm going to ask that you look at Village Exhibit
16 Number Two, which is in front of you somewhere, a Malone
17 Telegram article. Do you recognize that?

18 A. Yes, I do.

19 Q. Have you read it?

20 A. Yes, I have.

21 Q. When did you first read it?

22 A. I read it the night it came out.

23 Q. Did it cause you any concern?

24 A. Yes, it did.

25 Q. Why?

1 Gerold Moll - Direct

2 A. It caused me concern because a member of our
3 department made comments that were made in a public
4 newspaper.

5 Q. Can you be a little specific about what comments
6 in that article concerned you?

7 A. It's towards the end of the article. It
8 states, "There is someone else who should have been suspended
9 for 30 days. I have always done my job. I have nothing to
10 hide."

11 Q. Why does that concern you?

12 A. Because it definitely draws a question in regards
13 to this comment that was made by Officer Nichols. It draws a
14 question in regards to who he is talking about, what member
15 of the police department, and brings discredit to the police
16 department in general.

17 Q. Are you familiar with the police department rules
18 and regulations?

19 A. Yes, I am.

20 Q. I think they're in front of you marked as Village
21 Exhibit Number One. In your opinion, do those comments made
22 by Officer Nichols to the press, if true, violate any
23 departmental rules and regulations?

24 A. Yes, it did.

25 Q. Which ones?

Gerold Moll - Direct

A. One, under the Rules of Conduct, there is a section 10.1.1: "Conduct which brings discredit upon the department"; publicly -- excuse me, 10.1.27: "Publicly criticizing the official actions of a department member"; 10.1.77: "No member of the department may seek the influence or intervention of any person outside the department for the purpose of personal preferment, advantage, transfer or advancement"; 11.5: "A member of the force or department shall treat as confidential the official business of the police department, shall not talk for publication nor be interviewed, nor make public speeches; nor shall he impart information related 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."
(reading)

Q. Would you take a look at Village Exhibit Number Three, the Plattsburgh Press Republican article, 8-17-93. Do you recognize that article involving Officer Nichols?

A. Yes, I do.

Q. Have you ever read it before?

A. Yes, I have.

Q. When?

A. When it came out, the day it came out.

Q. Anything in that article that concerns you as a

1 Gerold Moll - Direct

2 member of this police force?

3 A. Yes, there are comments made by Officer Nichols in
4 this article, the front page of the Regional section, "'In
5 June, 1988, I took an oath to serve the public. I did what I
6 did because it was in the best interests of the public, and
7 this attempt to shut me up isn't going to work,' he said,
8 saying that he's looking forward to the public hearing where
9 the whole story will be told. 'Does it make sense to take a
10 man out of work for 30 days for doing the right thing?'"
11 (reading)

12 Q. Which departmental rules and regulations, if any,
13 do you feel those statements violated?

14 A. Do you want me go through them again? I would say
15 the same rules that I just voiced.

16 Q. Would you look at Village Exhibit Number Five --
17 I'm sorry, Four, the Press Republican article dated
18 August 18, '93? It's a xerox copy. Have you seen that
19 before?

20 A. Yes, I have.

21 Q. When?

22 A. The day it came out.

23 Q. Did you read this then?

24 A. Yes, I did.

25 Q. Is there anything in that article that you felt

Gerold Moll - Direct

violated departmental rules and regulations?

A. Yes.

Q. What?

A. The comments made by Officer Nichols to the Press Republican in this article. Would you like me to read them?

Q. Yes, please.

A. Officer Nichols stated, "Retaliation is the number one reason why I waited so long. That's the same reason a lot of others are waiting before they say anything. They fear retaliation, too. But I made the decision I'd see this through, and I want the public to know what's going on."
(reading)

Q. And in your opinion, what rules and regulations were violated by those statements?

A. The same rules that I just gave.

Q. Can you describe for me the morale in the police department in October of last year?

MR. HALLEY: Note my continuing objection.

THE HEARING OFFICER: Overruled. Go ahead.

A. October -- towards the end of October, 1993, the morale was probably, in my 15-year history with the Malone Village Police Department, at its lowest state.

Q. Assistant Chief, Officer Nichols came back to work

1 Gerold Moll - Direct

2 when, do you recall?

3 A. November 20th, 1993.

4 Q. From then until early March, did morale improve or
5 get worse or stay the same?

6 A. Morale was continuously at an all-time low. It
7 did not improve whatsoever.

8 Q. Did you receive any complaints from any officers?
9 I'm not asking you for their names, but did you receive
10 complaints from any officers regarding Patrolman Nichols?

11 A. Yes, I received many complaints.

12 MR. HALLEY: Note my objection.

13 THE HEARING OFFICER: Overruled.

14 BY MR. STEWART:

15 Q. Can you tell us what the sum and substance of the
16 complaints were?

17 A. When Officer Nichols came back -- I should back
18 up. When the Village handed down their penalty of this last
19 suspension, the anxiety of all the officers at the police
20 department was quite high. October 23rd all the members of
21 our department attended a funeral and were at the station,
22 and it was a general consensus that they wanted to have a
23 informal discussion in the training room at the station.
24 That discussion, with the exception of Officer --

25 Q. I'm not asking for any names.

Gerold Moll - Direct

A. Okay. I was going to list officers that weren't there.

Q. No, I'd prefer you not.

A. Okay.

Q. Were there some officers not there?

A. Yes, two.

Q. Go ahead.

A. The officers asked for a very informal meeting to stress their views, their concerns, and with the exception of one officer, that particular officer had the view that he had a wait-and-see attitude. Every officer stressed their concerns, did not want Officer Nichols back to the Malone Police Department and did not want to work with him.

When he did return to work, we actually received -- the Chief and I received letters from patrolmen saying they did not want to work with him as a partner. They also stated that they would seek transfers if they're forced to work with him. We have direct knowledge that we had one officer have an interview outside the department because he was going to transfer.

We had no other choice but to put Officer Nichols with two partners, at which time we received requests and granted the requests that they not have to ride with him in the patrol car. When Officer Nichols came back to work, they

1 Gerold Moll - Direct

2 wouldn't even enter the locker room if he was in there.

3 They'd wait until he got dressed, and when he came out, they
4 would go in and change their uniform.

5 Q. Were you present at a questioning session with
6 Officer Nichols in March?

7 A. Yes, I was.

8 Q. Do you recall when that was?

9 A. That was March 17th at 10:00 a.m.

10 Q. I'm going to ask you to take a look at
11 Village Exhibit Number 12, the transcript of that meeting.
12 Have you read that transcript?

13 A. Yes.

14 Q. Does it accurately reflect the questions put to
15 Officer Nichols and Officer Nichols' responses?

16 A. To the best of my knowledge, yes.

17 Q. Now, at the conclusion of that meeting, the
18 questioning session, did you come to the conclusion about
19 Officer Nichols' truthfulness and veracity when it came to
20 questions concerning the circulation of a petition, which has
21 been previously marked as Village's Exhibit Number Six?

22 A. Yes, I was very concerned about his response to
23 the questions in regards to these petitions.

24 Q. What concerned you?

25 A. We had statements from people that signed the

Gerold Moll - Direct

petition stating something totally different, opposite what Officer Nichols stated under oath, which in turn showed a strong indication of perjury. He was asked several times if he wished to recant, asked if he wanted to read the statements to refresh his memory. He refused to do so. He was given ample opportunity to change his story.

Q. In your opinion, Assistant Chief Moll, is it important for a police officer not to lie?

A. It's probably one of the most important things police officers do.

Q. What impact would it have on the ability of the police department to do its job if it became known that a police officer of this department lied under oath?

A. Credibility is lost. In the criminal cases, the credibility is completely gone.

MR. STEWART: I don't have any further questions.

CROSS-EXAMINATION

BY MR. HALLEY:

Q. Did you lie to Chief Phillips about the Mattimore incident?

A. Did I lie to Chief Phillips about the Mattimore incident?

Q. Right.

Gerold Moll - Cross

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A. Absolutely not.

Q. What did you tell him?

A. Can you be more specific?

Q. I'm asking you, sir, what did you tell him?

A. I told him exactly what took place.

Q. What happened?

A. About the Mattimore incident? In regards to what?

Q. In regard to the Mattimore incident, was there bleach spilled in the cell?

A. In the cell, no.

Q. Around the cell?

A. Outside the cell.

Q. Who spilled it?

A. There was -- I should back up and say it was not spilled. It was poured. I poured it in the hallway and kept the door closed.

Q. Thank you. The article to the Malone Evening Telegram, August 17, 1993, what member of the police department is Officer Nichols referring to?

A. I have no idea. He also made reference in another article in the Press Republican that he filed a complaint against another officer prior to this incident.

Q. The question was, in the Malone Evening Telegram

Gerold Moll - Cross

August 17 article, who was he referring to? Your answer was, "I have no idea"?

A. That's correct.

Q. You don't even know if it's a member of the police department, right?

A. Well, you can take it in substance. It is a article about the police department.

Q. Mm-mm.

A. It is a member of the police department who is on suspension, and he's talking about, "There is someone else who should have been suspended for 30 days."

Q. Does he identify that someone else as a member of the police department?

A. No, he does not.

Q. What confidential or official business of the police department was he revealing when he made the statement, "There is somebody else who should have been suspended for 30 days"?

A. Or official business? I'm just making sure that I have all the comments on the front of the article.

Q. Sir, I'm talking about the statement, "There is somebody else who should be suspended for 30 days." Charge number three says that action violated the rules and regulations relating to confidential and official business of

Gerold Moll - Cross

the police department. My question refers to that quote.

A. Correct.

Q. What confidential or official business of the police department was he revealing or discussing when he made that quote?

A. Anytime the personnel under Civil Service Law -- and as I recall the Civil Rights Law, I believe it's Section 50-B -- gives you certain privacy rights on disciplinary action. If he is referring to a member of the police department, they fall under that statute.

Q. Okay. Well, what official business or confidential business of the police department was he referring to when he says, "There is somebody else who should be suspended for 30 days"?

A. I believe I answered the question.

Q. Well, can we read back your answer? Can you recall what your answer was?

A. We could read it back.

Q. My question is, what police department business was he referring to?

A. I already said that we have a police officer making a comment about someone else should be suspended.

Q. And I agree with you. So far we're in agreement. What police department action or business was he referring

Gerold Moll - Cross

to?

A. He is making a statement, "I have always done my job. I have nothing to hide."

Q. I don't want you to guess or just say anything. If you don't know, you don't know. That's all I'm trying to find out. Do you know what police department business he was talking about?

A. He's talking about the police department. "I have always done my job."

Q. No, no, no, when he says, "There is somebody else who should be suspended for 30 days," do you know what police department business he's talking about?

A. Not the way you are putting it, no.

Q. Okay. By the way, if somebody makes a statement about the police department publicly and it's true, is that a violation of the rules and regulations?

A. You will have to be much more specific in that question.

Q. Okay. Do you understand what it means to make a true statement?

A. Definitely.

Q. Okay. Do you understand what it means to speak about the police department?

A. Yes.

Gerold Moll - Cross

Q. If somebody speaks about the police department and makes a true statement, does that violate any of the rules and regulations of the police department?

A. What position is the subject holding, and he is a member of the police department or member of the community?

Q. Member of the police department.

A. It depends on his -- you are asking a very general question. If you could give me more specifics, I could answer it.

Q. Sure. If Nichols says, "There is somebody else who should be suspended for 30 days," and he's referring to the police department and that's true, is that a violation of the rules and regulations?

A. Yes, I believe it is.

Q. So if any of the statements Nichols is alleged to have made are true, it's still a violation of the rules and regulations?

A. We have very set guidelines in our rules and regulations in regards to talking with media, causing discredit to the police department. These rules and regulations are very well conformed with the Accreditation Program in the State of New York and is probably used throughout every agency in New York State.

Q. How did he bring ridicule or discredit to the

Gerold Moll - Cross

police department by making that statement?

A. That certainly is an agency, so any time you make a statement in regards to a police agency in general and you are a member of that police agency, you are jeopardizing the public trust; you are jeopardizing the integrity and the cooperation that you are going to receive from your community.

Q. Okay. I understand that. But how did the statement, "There is somebody else who should be suspended for 30 days," bring discredit to the police department?

A. How did it bring discredit?

Q. Correct.

A. You want me to give certain -- I can't say specifically that article or if it was another comment that he made in another article.

Q. Did it bring discredit to the police department when Mayor Feeley called him malicious, unfounded, retaliatory and vindictive?

A. I haven't read article.

Q. Well, let me show you the article, then.

A. I haven't read that this morning.

Q. The article dated April 13, 1994, I ask you to read it and we'll ask the question again.

A. Read the highlighted area?

Gerold Moll - Cross

Q. You can read it to yourself. Tell me when you are ready.

(Pause in proceedings).

A. What was your question?

Q. My question is, when Mayor Feeley made the statement about Officer Nichols, which is contained in the fifth paragraph, when he called him malicious, unfounded, retaliatory and vindictive, did that bring discredit to the police department?

A. Mayor Feeley is not a member of our department.

Q. My question is, did that bring discredit to the department?

A. It may have brought discredit to Officer Nichols.

Q. Was he a member of the police department at the time the Mayor made those charges?

A. Yes, he is a member.

Q. So it might have brought discredit to Officer Nichols when Officer Nichols was a member of the police department? Are we in agreement?

A. Yes, it may have.

Q. Okay. How did you feel when you read that article now? Did you agree or disagree with it?

A. Which article?

Q. About Nichols being called malicious, unfounded,

Gerold Moll - Cross

retaliatory and vindictive.

A. Well, knowing the pattern of Officer Nichols, being his supervisor for five years, I would say that it's a fairly fair and accurate report.

Q. In his statement in the Plattsburgh Press Republican in August of '93, beginning with the words, "In June, 1998, I took an oath," and ending with, "Does it make sense to take a man out of work for 30 days for doing the right thing," what confidential or official business of the police department was he talking about?

A. It's bringing question as far as the disciplinary procedure within your police department. He is making statements here that are against rules and regulations.

Q. What was -- I'm not sure I understand your answer. What confidential or official business was he talking about in that statement?

A. We're talking about, "Does it make sense to take a man out of work for 30 days for doing the right thing?"

Q. Right.

A. "In June I took an oath to serve the public. I did what I did because it was in the best interests of the public." All that is comments that should not be made to the news media when you are a member of a police department.

Q. What was the confidential and official business

Gerold Moll - Cross

that he was talking about in that article, in that quote?

A. He was talking about his suspension, his disciplinary action.

Q. Okay. His 30-day suspension and his disciplinary charges, correct?

A. That's correct.

Q. Okay. Does he have a right to make them public under the Civil Service law?

A. Yes, he does.

Q. So how is that a violation of any law if he does what the Civil Service law permits him to?

A. He has right to a public hearing, in which he has elected that right.

Q. How did he violate the Civil Service law, if you know, by making that statement?

MR. STEWART: Object to the phrasing.

Officer Moll didn't say that he did violate the Civil Service law.

A. He violated the department rules and regulations.

BY MR. STEWART:

Q. Do you know if he violated the Civil Service law?

A. That I couldn't answer, I don't know.

Q. Do you know if he has a right to make these types of statements under the Civil Service law?

Gerold Moll - Cross

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A. That I do not know.

Q. Are you familiar with what the procedure is in the police department with regard to priority between rules and regulations and the Civil Service law?

A. In regards to what?

Q. If there is a conflict between the Civil Service law and the rules and regulations, do you know if there is a policy or procedure as to which one takes priority, if one supersedes another, if one conflicts with the other?

A. That -- I'm not up on that, I'm sorry.

Q. What official actions of the police department was Officer Nichols criticizing in that statement beginning with, "In June, '88" and ending with, "doing the right thing"?

A. What official actions? He is criticizing the police department for taking action for his disciplinary problems.

Q. Where does he use the term "police department" in that quote?

A. He doesn't -- I should say he doesn't say "police department." He is making a comment, "Does it make sense to take a man out of work." The village took him out of work. I mean, it's --

Q. The Village Board actually, right?

1 Gerold Moll - Cross

2 A. That's correct.

3 Q. Okay. So if he says the Village Board shouldn't
4 take a man out of work for 30 days, how does that relate to
5 actions of the police department?

6 A. How does it? Because that's part of our
7 disciplinary procedure.

8 Q. If the village suspends somebody for 30 days by
9 way of the Village Board, how is that an action of the police
10 department?

11 A. Because we brought the information.

12 Q. Correct. Isn't it also true that the police
13 department has no authority to suspend somebody for 30 days
14 and bring Civil Service charges?

15 A. That they have no authority to do that?

16 Q. Isn't that correct?

17 A. No, it is not.

18 Q. Is it your testimony, then, sir, that the police
19 department on its own without Village Board approval can
20 suspend somebody for 30 days and bring them up on Civil
21 Service charges?

22 A. If I can review the rules and regulations for a
23 minute.

24 Q. Sure.

25 A. If you turn to Article Two, Section 2.4, it

Gerold Moll - Cross

explains.

(A two-minute recess was taken.)

THE HEARING OFFICER: We're ready to proceed if you remember what the question was.

A. The question was, if I remember correctly, was something to do with the power of the police department to suspend someone without the Village Board being involved. I pointed out Article Two, Section 2.4, "The Chief of Police may, in his discretion, suspend from duty and report to the police committee any member or employee of the department for any violation of the rules and regulations or for any insubordination." (reading)

Q. Who is the Police Committee?

A. That's two trustees.

Q. Okay. So when the Chief suspends somebody, it gets reported to two trustees?

A. That's correct.

Q. The trustees then take the action to the Village Board; is that correct?

A. It's possible, yes.

Q. Okay. Does the Chief have any authority to suspend somebody for 30 days and begin Civil Service hearings on his own?

A. That I couldn't answer.

Gerold Moll - Cross

Q. Okay. What official business of the police department was Officer Nichols revealing when he made that statement beginning with the words, "In June of '88" and ending with, "doing the right thing"?

A. Could you say the first part again?

Q. What confidential or official business of the police department was Officer Nichols talking about when he made the statement beginning with the words, "In June, '88" and ending with, "for doing the right thing"?

A. I believe I have already answered that. We have already -- we have been through that.

Q. What was your answer, if you recall?

A. I don't.

Q. Okay. Is the word police or police department used anywhere in that quote?

A. No.

Q. When Officer Nichols made the statement August 18, 1993, beginning with the words, "Retaliation is the one reason I have waited so long," and ending with, "I want the public to know," what was the confidential or official business of the police department he was referring to?

A. He talks about him waiting so long to file a complaint because he feared retaliation, and that that's the same reason a lot of others are waiting before they say

Gerold Moll - Cross

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anything.

Q. I understand that's what he's talking about, but what was the confidential or official business of the police department he was referring to?

A. Well, he's talking about the whole incident, the whole suspension incident. The whole article is on that, and his comments are related to that.

Q. What suspension, his own suspension?

A. Yes, he's talking about his own suspension.

Q. Okay. Which took place under Section 75 of the Civil Service law, correct?

A. That's correct.

Q. Are you aware of any prohibition in the Civil Service law that prevents him from talking about it publicly?

A. No.

Q. What official action of the police department was he criticizing when he made that statement?

A. He's talking about that everybody is feared for retaliation.

Q. I understand he said people feared retaliation, but what was the official action of the police department member he was talking about?

A. I can't comment on that, no idea.

Gerold Moll - Cross

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Q. You can't comment or you don't know?

A. I have no idea.

Q. Did you perform any part of the investigation into the petitions?

A. The only involvement I had in regards to the petitions is when I was camping at a state campground with my family and a person that I know as a retired state trooper, Ed Ritzmann, walked up to my family and myself. We had official greetings and he then told me Officer Nichols told him in Malone his whole side of the story in regards to the complaints that he filed against me, in regards to that he felt the Chief was covering it up, and after he gave his side of the story, he then had a petition and asked retired Trooper Ed Ritzmann to sign the petition, and Ed Ritzmann told me that he would only sign it if he heard the other side of the story, and at this time he wasn't going to sign it.

Q. Did you interview anybody else with regards to these petitions?

A. Boy, I don't think so, I don't believe so. Detective Fleury took some statements. I interviewed Officer Nichols about the petition.

Q. Did you interview Jamie Durant?

A. Jamie Durant? I was in the Chief's office when we interviewed one of the interns that signed it. I think that

Gerold Moll - Cross

was Cliff Donaldson; I'd have to check.

Q. Did you interview Jamie Durant?

A. I don't recall that, no.

Q. Do you recall driving out 20 miles outside the Malone police jurisdiction to speak to a Jamie Durant?

A. Could you tell me where, because I truthfully do not know what you are talking about.

Q. Bombay, New York.

A. I went to examine -- that wasn't in regards to any petition, if his name is Jamie Durant. I would have to pull my records on that. That wasn't in regards to any petitions.

Q. Do you recall driving to Bombay, New York, with Juvenile Officer Reyome and interviewing someone regarding the Nichols petitions?

A. Not the Nichols petitions. We did interview him on a job site that he was working on, yes.

Q. About what?

A. Because we -- I don't recall who received the information, but information was given to the Chief that Officer Nichols made a comment that if he goes down, Sergeant Marlow was going down and one other officer.

Q. But what about the petitions?

A. I don't believe so. It's possible, I can't say, really. The main concern was that other officers -- he was

1 Gerold Moll - Cross

2 claiming that they did something wrong.

3 Q. Let me ask you this, sir: Do you deny you
4 interviewed Jamie Durant in Bombay, New York, with Juvenile
5 Officer Reyome?

6 A. If we did interview an individual out there --

7 Q. Do you deny that you interviewed Jamie Durant with
8 Juvenile Officer Reyome in Bombay, New York, as to the
9 contents of the petitions relating to Officer Nichols?

10 A. What could possibly give you -- what I have
11 testified to does not give you any conclusion that I deny
12 that at all.

13 Q. Well, are you denying it or not?

14 A. No, I am not denying it. I told you I do not
15 recall. It's possible, it is possible.

16 Q. Okay. Thank you.

17 MR. HALLEY: Nothing further.

18 MR. STEWART: Redirect.

19 REDIRECT EXAMINATION

20 BY MR. STEWART:

21 Q. Officer -- Assistant Chief Moll, in your training
22 and based on your experience as a police officer and
23 administrator, are there reasons for keeping disciplinary
24 matters internal and confidential?

25 A. Very much so.

Gerold Moll - Redirect

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Q. What are those reasons?

A. The only way a police department, especially a police department the size of ours in a small community such as Malone, for us to reach our goals and to have a good community to work with, we have to maintain a very good public trust, cooperation with other agencies, things like that.

Q. Are all disciplinary matters -- do all disciplinary matters result in some kind of punishment?

A. No. Discipline, actually, is a way to correct problems, train officers. A well-disciplined organization, such as a police department, does not mean that everybody's bad. It means that it conforms with the rules and regulations.

Q. In your experience, what is the effect on a police officer if details of internal, confidential disciplinary matters are leaked to the press?

A. It brings discredit to the whole agency.

Q. What does it do to the ability of the police officer to do his job with the public?

A. I think the field officer gets the brunt of it. He's out there. The more cooperation he gets with the public, the more public trust there is. I believe there's less resistance he is going to see on the job.

Gerold Moll - Recross

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

THE HEARING OFFICER: Mr. Halley.

RE CROSS-EXAMINATION

BY MR. HALLEY:

Q. Are Civil Service charges confidential, sir?

A. I would have to read up on it. That part of it I haven't read.

Q. You know for a fact Civil Service hearings take place in public if you wish, right?

A. You do have the right, yes.

Q. Okay. So am I correct in saying that Civil Service hearings are not confidential?

MR. STEWART: Objection. There's quite a bit of law on that. I don't think it's up to this witness to give us a full legal brief on the issue.

MR. HALLEY: I'm not asking for a legal brief on the issue. I'm asking if a Civil Service hearing is held in public, do you consider that to be confidential?

THE WITNESS: Is that your question?

MR. HALLEY: Yes.

A. No.

1 Gerold Moll - by the Hearing Officer

2 Q. Okay. Thank you.

3 THE HEARING OFFICER: I have just a couple of
4 questions.

5 EXAMINATION BY

6 THE HEARING OFFICER:

7 Q. How many members of the Malone Police Department
8 are there? Somebody mentioned --

9 A. We have a total of 17 members including the Chief
10 and myself.

11 Q. How many detectives out of those 17?

12 A. One.

13 Q. And so there is 16 uniformed people; is that
14 correct?

15 A. That's correct.

16 Q. There was some mention twice now -- and I want to
17 be clear -- about a transfer, 17-man police department in
18 Malone. What do you mean by transfer somebody?

19 A. Once you receive your training, your required
20 training, we take them in, and police agencies do what is
21 called a lateral transfer. That way, the municipality
22 doesn't have to retrain the individual. And there were
23 concerns that we were going to lose several members to a
24 transfer like that.

25 Q. Now, is this what they mean by a lateral transfer

1 Gerold Moll - by the Hearing Officer
2 with other agencies?

3 A. Yes.

4 Q. How can you discipline -- what do you have in your
5 rules and regulations as far as disciplining an officer for a
6 violation, other than taking him up on official charges?

7 A. Well, it can be a simple pointing out of the
8 violation when it occurs, it can be a counsel session, it
9 could be a letter of reprimand, that is, what I would call a
10 temporary letter of reprimand in someone's personnel file
11 that can be taken out. It could go as far as a permanent
12 record in his personnel file. Then you can get into your
13 loss of compensation time, you can get into your suspensions,
14 and then dismissal.

15 Q. Does the department, without going through the
16 Village Board, have the power to, say, take away someone's
17 accrued vacation leave as part of their discipline, or is it
18 basically counselling them and/or preferring charges under
19 Article 75?

20 A. My experience since I have had this position has
21 been limited to counseling sessions. If it goes a step
22 further, then we do get the village involved in it.

23 THE HEARING OFFICER: Thank you.

24 (The witness was excused.)

25 THE HEARING OFFICER: It's 12:32. If there

1 Gerold Moll - by the Hearing Officer
2 is no objection to either one of the attorneys, I
3 think we ought to break for lunch. What time do
4 you want to be back here?

5 MR. HALLEY: I would inquire as to how many
6 other witnesses we might have or how much more
7 time, because I have a witness who's going to come
8 about 1:00. I can tell him to --

9 THE HEARING OFFICER: We can be back here. It
10 shouldn't be far to go to lunch. We should be
11 back here at 1:00 or shortly after. I'd like to
12 continue this as soon as we can.

13 MR. HALLEY: Your Honor, can we get a sense
14 how much longer the Village's case is going to
15 take?

16 MR. STEWART: Two witnesses, and then I want
17 to get into five more witnesses. Most of them are
18 going to be very short.

19 MR. HALLEY: How long combined, an hour, two
20 hours?

21 MR. STEWART: Hour or two, two hours for all
22 of them.

23 THE HEARING OFFICER: We'll come back at five
24 after 1:00. We're talking about 3 o'clock.

25 MR. HALLEY: I will tell my witness to be

1 James Feeley - Direct
2 here at 2:30.

3 THE HEARING OFFICER: Let the record show
4 that at 12:45 p.m. we adjourned for lunch.

5 (A lunch recess was taken.)

6 THE HEARING OFFICER: The record should show
7 that the recess is over, and we're back in session
8 at twelve minutes after 1:00.

9 James Feeley,
10 having been called as a witness, being duly sworn, testified
11 as follows:

12 THE HEARING OFFICER: Gentlemen, keep in mind
13 the stenographer can stay late and so can I, so
14 we'd like to wrap this up today if at all
15 possible.

16 MR. HALLEY: Fine.

17 MR. STEWART: Fine.

18 DIRECT EXAMINATION

19 BY MR. STEWART:

20 Q. Would you state your name and position, please.

21 A. My name is James Feeley, Mayor of the Village of
22 Malone, and also a Special Assistant to the New York State
23 Assembly.

24 Q. How long have you been Mayor of the village?

25 A. Since April of 1993.

1 James Feeley - Direct

2 Q. Mayor, I'm going to show you that item marked
3 Village Exhibit Number Six and ask you if you can identify
4 it.

5 A. These are petitions that were presented at a
6 Malone Village Board meeting.

7 Q. Mayor, on February 23, 1994, did you see
8 Officer Nichols on duty outside Doctor Gorman's office?

9 A. Yes, I did.

10 Q. Can you tell us what you saw and what you did?

11 A. I was traveling down Main Street on my way to the
12 Department of Public Works garage, noticed the Malone
13 village -- one of the Malone village patrol vehicles out
14 parked on Main Street in front of Doctor Gorman's office with
15 Patrolman Nichols seated in the driver's seat.

16 MR. HALLEY: I need to note my continuing
17 objection. Thank you.

18 THE HEARING OFFICER: Overruled.

19 A. And I proceeded down to the Department of Public
20 Works garage where I met with personnel down there. I was
21 down there 10, 15 minutes. I returned up Main Street back to
22 my residence, and I noticed that Patrolman Nichols was still
23 seated in the patrol vehicle. I then conducted some personal
24 business at my home, brought my daughter to school and
25 proceeded down to the village office, which I transversed the

1 James Feeley - Direct

2 same route, and still observed Patrolman Nichols seated in
3 the patrol seat in front of Doctor Gorman's office.

4 At that point, I had never seen, as long as I have
5 been back in Malone aware of that detail, any officer seated
6 in the patrol vehicle during the hours of the protest. I
7 called Chief Phillips, asked him if there had been some sort
8 of change in terms of how that detail was conducted, told him
9 what I had observed, and that he told me that he would inform
10 the supervisor on duty that he should go up and ascertain
11 what the situation was.

12 Q. Did you have a telephone conversation with
13 Officer Nichols on or about October 21, 1993?

14 A. Yes, I did.

15 Q. Can you tell us what you said to him and what he
16 said to you?

17 A. Prior to receiving -- or calling Officer Nichols,
18 I had had a conversation with a reporter from Channel 5 news,
19 who informed me he was coming to Malone to interview
20 Officer Nichols, and he was requesting of me an opportunity
21 to interview myself. I then consulted with the Chief of
22 Police over whether, if this transpired, would it be a
23 violation of the rules and regulations of the police
24 department, determined that it was such, and this was perhaps
25 the first and only opportunity that the village had become

1 James Feeley - Direct

2 aware that Officer Nichols was about to break a rule. And at
3 that time, I took it upon myself to phone him, remind him
4 that, even though he was under suspension, he was still a
5 village police officer and subject to the rules and
6 regulations of the Malone Village Police Department, and I
7 asked that he pay particular attention to Rule 11.5.

8 Q. Which dealt with what?

9 A. Making public speeches, conducting -- being
10 interviewed by members of the media, things of that nature.

11 Q. Are you familiar with the police department rules?

12 A. I am.

13 Q. Are you familiar with their adoption by the
14 Village Board of Trustees?

15 A. Yes.

16 Q. When was that adopted?

17 A. May of 1993.

18 Q. Chief -- I'm sorry, Mayor, have you ever made
19 inquiries as to what position the village would be in in
20 terms of insurance if it were determined that a village
21 police officer lied under oath in a criminal matter?

22 A. I have. I have spoken with the village insurance
23 consultant as to what the position of our police professional
24 insurance would be if a village officer had been determined
25 to lie under oath in a criminal matter, and I was informed

James Feeley - Cross

that we would be without insurance coverage at that point, that the village would not be the bearer of insurance coverage because it had been a criminal matter that the officer had participated in.

MR. STEWART: I don't have any further questions.

CROSS-EXAMINATION

BY MR. HALLEY:

Q. Mayor Feeley, you are currently the Mayor?

A. Yes, I am.

Q. Are you running for any other office this year?

A. No, I am not.

Q. When's the next time you will be up for election?

A. That would be November of '95.

Q. Was your term recently extended from March to November?

A. The Village has realigned its elections from a spring election to a fall election. That would extend the terms of currently seated members by approximately eight months.

Q. When did that realignment take place?

A. This spring.

Q. Do you know the date?

A. I don't recall, no.

1 James Feeley - Cross

2 Q. Was it the same day as the village elections?

3 A. I wouldn't think so. The village meetings are on
4 a Monday. Election day is not on a Monday.

5 Q. Do you recall if that took place in early March or
6 late March?

7 A. I don't have a date for you.

8 Q. When Officer Nichols made the alleged comments to
9 Channel 5 WPTZ news, do you know what it was he spoke about?

10 A. The DARE program.

11 Q. Would you tell me what confidential or official
12 business of the police department he revealed?

13 A. Well, the DARE program is an official function of
14 the police department; thus, I would consider that official
15 business in the police department.

16 Q. Anything confidential about it?

17 A. No.

18 Q. If Officer Nichols says, "Yes, I am the DARE
19 officer and am working as a DARE officer and am doing a good
20 job as a DARE officer," anything confidential about that?

21 A. No, but he should seek the permission of the Chief
22 or supervisor before he does so.

23 Q. Anything derogatory about that?

24 A. No.

25 Q. Did anything he said in that interview with

James Feeley - Cross

Channel 5 bring any discredit upon the department?

A. It constituted a continued violation of the rules and regulations of the Malone Village Police Department.

Q. Did anything he said bring discredit on the department?

A. Yes, violations of the department rules and regulations bring discredit on the police department.

Q. When did it first become a matter of public knowledge that his statement to Channel 5 news was a violation of rules and regulations?

A. It became public when he was charged with it and they were released to the media.

Q. So am I correct, then, on October 21, 1993, and for months thereafter, nobody in the general public knew he had violated any rules and regulations, correct?

A. I couldn't speak for the general public and their knowledge of it.

Q. It was not a matter of public knowledge in October, November, and December of '93 that he violated the rules and regulations, right?

A. Again, I can't speak -- I had knowledge of it.

Q. Okay. How does speaking about the DARE program bring discredit to the department?

A. Because without seeking the permission of one who

James Feeley - Cross

has authority to give the permission to speak and make public speeches and be interviewed, that constitutes a violation of the department rules and regulations.

Q. I understand that, sir, but how does speaking about the DARE program bring discredit? I didn't ask you about violations. How does speaking about the DARE program bring discredit?

A. My answer is that it's a continuing violation of the rules and regulations and brings discredit upon the police department.

Q. Is it your testimony, sir, that the majority of the people in the village knew when he spoke about the DARE program that he was violating the rules and regulations?

A. I can't speak to the general public's knowledge of the department rules and regulations.

Q. Is it a fact, sir, the only people who knew that Nichols was potentially violating Rule 11.5 on October 21, 1993 were yourself, the Chief and Elizabeth Bessette?

A. I knew that they were aware of it. As to other persons' knowledge of it, I can't speak.

Q. Nobody else was present when you made the phone call, right?

A. Right, but there are other individuals who reside

James Feeley - Cross

within this community that do know the rules and regulations and know what would constitute a violation of that.

Q. Name me one person in the community who said to you at any time in October, '93 when these charges were brought that Nichols' statements to Channel 5 brought discredit on the department.

A. No one stated that to me.

Q. Do you believe it brings discredit on the department when a member of the Village Board makes derogatory comments about a member of the department?

A. I'd ask you be more specific on that.

Q. Sure. If a Village Board member makes derogatory comments about a member of the police department, does that bring discredit on the department?

A. Again, you know, it's a hypothetical question. I'd ask for a specific --

Q. Okay. If a Village Board member calls a police officer vindictive, does that bring discredit on the department?

A. Well, I would say that if it had been a subject that had been aired, investigated, judged and adjudged that way, yes, I'd say it does not constitute --

Q. So if a Village Board member calls a police officer malicious, that doesn't discredit the department?

James Feeley - Cross

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A. Not in those particular instances, no.

Q. When you called Pat Nichols malicious, unfounded, retaliatory and vindictive, do you think that discredits the police department at all?

A. Well, I was referring to what had been a very well-aired matter, and it was adjudged --

Q. I understand what you're referring to. Do you think it discredited the police department at all?

A. No, I don't.

Q. That was a complimentary statement, right? Did you use words like, "That's great, a wonderful thing is going on"?

A. It was a fact statement.

Q. Didn't discredit the police department?

A. Not in my mind, no.

Q. Officer Phillips was an active employee of the police department when you made that statement?

A. Chief Phillips was, yes.

Q. Was Officer Nichols?

A. Would you rephrase the question?

Q. Was Officer Nichols an active member of the police department when you made that statement?

A. Yes. No, pardon me, he was in the state of suspension.

1 James Feeley - Cross

2 Q. Maybe you'd like to review the article. Is it
3 correct he was on suspension, but he was still an employee of
4 the police department?

5 A. Yes.

6 Q. He was still a member of the police department,
7 correct?

8 A. Yes.

9 Q. Did you tell Channel 5 news in March of 1994 that
10 the Nichols matter was being turned over to the District
11 Attorney for possible criminal action?

12 A. I did speak to Channel 5 and did say that I think
13 that we believed there would be -- it was of such a nature
14 that possibly review by the District Attorney would be in
15 order, yes.

16 Q. When was the matter turned over to the District
17 Attorney for review?

18 A. I don't recall the date.

19 Q. Any time prior to charges being brought?

20 A. Yes.

21 Q. When?

22 A. Well, it was after we had received a transcript
23 back and that had been reviewed.

24 Q. Do you know who reviewed it in the District
25 Attorney's office?

James Feeley - Redirect

A. No, I don't.

Q. Do you know if the village attorney had the opportunity to review it in the District Attorney's office?

A. The transcript or what, all the documents that were forwarded?

Q. Anything.

A. He was included in the meeting with myself, the Chief, Assistant Chief and the stenographer on March 17th, at which the stenographer read back certain portions of that meeting that had yet to be transcribed in a hard copy fashion.

MR. HALLEY: I have nothing further.

MR. STEWART: I have a little Redirect.

REDIRECT EXAMINATION

BY MR. STEWART:

Q. Mayor, if on October 21, 1993 you had to choose a spokesman for the DARE program, would it have been an officer of the village police department who had just immediately prior been found guilty of violating the departmental regulations in a public forum?

A. No, it would not be.

MR. STEWART: No further questions.

THE HEARING OFFICER: Mr. Halley.

MR. HALLEY: I have nothing further.

1 James Feeley - by the Hearing Officer

2 THE HEARING OFFICER: I have got a couple
3 questions for clarification.

4 EXAMINATION BY

5 THE HEARING OFFICER:

6 Q. The phone call that you made to Patrolman Nichols
7 regarding -- advising him to read certain sections of the
8 rules and regulations of the department, did you order him
9 not to speak to the news media?

10 A. I told him that he was bound by the rules and
11 regulations of the department and to pay particular attention
12 to Section 11.5.

13 Q. Which, in effect, says what?

14 A. Read that rule and regulation and abide by it.

15 Q. Okay. Charges were referred to the District
16 Attorney's office. What were those charges that were
17 referred to the District Attorney's office?

18 A. I know that perjury, and I don't know if the
19 inclusion of official misconduct was going to be included.

20 Q. And whatever happened to that referral?

21 A. Eventually, the Franklin County District Attorney,
22 Richard Edwards, made a motion to the Franklin County Court
23 Judge to have that file moved over to the District Attorney's
24 Office in Clinton County.

25 Q. And what is the status of that at this time?

1 Ronald Reyome - Direct

2 A. I don't know.

3 Q. Is it still pending?

4 A. Yes, I would say it would be.

5 Q. Okay.

6 THE HEARING OFFICER: I have no further
7 questions.

8 MR. STEWART: No further questions.

9 MR. HALLEY: No further questions.

10 (The witness was excused.)

11 Ronald Reyome,

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

14 DIRECT EXAMINATION

15 BY MR. STEWART:

16 Q. Would you give us your name and position and
17 employment, please.

18 A. My name is Ronald Reyome, and I am the Juvenile
19 Aid officer, Malone Village Police Department.

20 Q. How long have you been a member of the police
21 department?

22 A. Going on eight years, 1986.

23 Q. Have you been familiar with departmental morale
24 over the last year?

25 A. Yes, I have.

1 Ronald Reyome - Direct

2 Q. And can you describe departmental morale over the
3 last year starting in August, say, of last year?

4 A. I know at specific times and stuff, the morale as
5 far as going on duty and stuff has been down. Officers are
6 giving me a lot of flak in the community and so forth.

7 Q. What kind of flak?

8 A. Just people, like -- simple things like, you know,
9 people at me personally, people come up and ask me what's
10 going on here, you know, with the situation, and wanting to
11 know whether the Chief is right or whether Officer Nichols is
12 right and trying to get information; going in for coffee and
13 walking in on people, and they're usually saying some kind of
14 remark to the situation. It causes problems with the
15 community where people are starting to have doubts in the
16 trust of the police department and so forth.

17 Q. Has it impacted the department's ability to
18 enforce the laws in the village?

19 A. I believe so, to an extent, yes.

20 Q. Have there been any incidents that you have been
21 aware of where it's become an issue in enforcing the laws?

22 A. As far as enforcement, we have had different
23 situations where people have called in complaints and it
24 wasn't handled to their satisfaction. The people have
25 said, "Well, if Officer Nichols was there, it would be

1 Ronald Reyome - Direct

2 handled properly." And I can't recall any specific items on
3 that.

4 Q. Do you recall a matter in which Officer Nichols
5 helped subdue a violent individual?

6 A. Yes, with myself.

7 Q. Did that individual subsequently bring charges
8 against members of the police department?

9 A. Yes, he did.

10 Q. Can you tell me about that?

11 A. We had a received a call from Mental Health that a
12 person was contemplating committing suicide. Officer
13 Nichols was sent, and I was also sent to the scene. There
14 were two troopers also there, and Sergeant Weber was his name
15 from the state police. Apparently, the subject had
16 threatened he was going to kill himself with a gun, and we
17 went into the building and we ended up having to arrest the
18 subject under the Mental Health law. The parents of the
19 subject were there, along with the subject's sister. We
20 already were aware the subject had injuries, so we notified
21 the rescue personnel, fire department, to come down and to
22 transport him in the ambulance. The subject did not want to
23 go. We had to wrestle him and restrain him and transport him
24 down to the hospital.

25 Officer Nichols went in the rescue with him and

1 Ronald Reyome - Direct

2 stayed at the hospital for a period of time. I'm not sure
3 of the length of time. He went to the station and filed the
4 reports. The next day the subject came in and wanted to make
5 a personnel complaint against myself, stressed that
6 Officer Nichols was very professional and that I inflicted
7 some unnecessary injuries to him.

8 The investigation was done, and the parents and
9 everyone said there was no problem with the way I handled the
10 situation. The only thing that was funny was the situation
11 when he came in and stressed that Officer Nichols was very
12 professional. Also, people make certain complaints against
13 police officers; it's a fact of life with the job, but
14 normally they don't come in and tell specifically what they
15 want for punishment.

16 This gentleman requested that I would receive two
17 months suspension, a letter of reprimand, and a week's
18 vacation lost time. The only thing that was suspicious in my
19 mind was the fact that those were the same exact punishments
20 Officer Nichols received in his last hearing as far as to my
21 knowledge. The week's vacation was not made public, so it
22 kind of brought suspicion to my mind whether Officer Nichols
23 had spoke to the subject or not.

24 MR. HALLEY: I object to that. It's so
25 speculative that is no value.

1 Ronald Reyome - Direct

2 THE HEARING OFFICER: Overruled.

3 BY MR. STEWART:

4 Q. Officer Reyome, in your opinion, what would the
5 effect be on morale if Officer Nichols were to come back to
6 work?

7 MR. HALLEY: Objection.

8 THE HEARING OFFICER: Overruled.

9 A. My opinion -- just the general consensus of the
10 officers on a whole, the majority, definite majority, do not
11 want Officer Nichols to come back to work. They feel that
12 they want to go out on a complaint, they want someone, you
13 know, there that's going to support them and not threaten
14 their -- is going to protect their safety.

15 MR. STEWART: I don't have any further
16 questions.

17 THE HEARING OFFICER: Excuse me. Before we
18 proceed, I think there is a gentleman in the back
19 room that's going to be testifying in a short
20 time, but until he does -- he can remain in after
21 he testifies, but not before. I'm sorry about
22 that.

23 CROSS-EXAMINATION

24 BY MR. HALLEY:

25 Q. Officer Reyome, you are the Juvenile Officer?

Ronald Reyome - Cross

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A. Yes, I am.

Q. Generally work outside of headquarters?

A. No, I do not.

Q. Where do you generally work?

A. In the headquarters Monday through Friday 9:00 to
5:00.

Q. You work with everybody else?

A. Shifts rotate, but on the whole, they work in with
me, yes.

Q. Do you usually do road patrol?

A. Yes.

Q. What road patrol do you do?

A. When I work an overtime shift.

Q. How much is that, once a month?

A. A couple times a month, probably.

Q. All right. Did you drive out to Bombay, New York,
to interview Jamie Durant regarding a petition related to
Pat Nichols?

A. I remember driving out to Bombay, New York. I
don't know if the name of the subject was Jamie Durant. I
remember going out with Assistant Chief Moll.

Q. Assistant Chief Moll said he didn't go out to
Bombay to interview somebody.

MR. STEWART: That's not what he said. I

1 Ronald Reyome - Cross
2 object to that.

3 THE HEARING OFFICER: Sustained. That's not
4 what he said.

5 MR. HALLEY: He stated a few things, Your
6 Honor.

7 THE HEARING OFFICER: He said, according to
8 the facts I recall, he admitted going out to
9 interview somebody who may have been this
10 gentleman in question, and you tried to pin him
11 down as to exactly what was said and kind of left
12 it a little bit up in the air because he wasn't
13 sure.

14 MR. HALLEY: All right.

15 BY MR. HALLEY:

16 Q. Let's find out what happened, then. Who went out
17 there?

18 A. Assistant Chief Moll and myself.

19 Q. What was the reason for going outside the Village
20 of Malone?

21 A. There was some information about -- apparently,
22 about Officer Nichols making some accusations about other
23 officers, and we went out to speak to the person.

24 Q. Where did you get the information from?

25 A. I really -- I don't know where it came from.

Ronald Reyome - Cross

Assistant Chief Moll requested I go with him.

Q. So Moll was the one who asked you to go out?

A. Yes, he did.

Q. Who did you talk to?

A. The subject, I believe, might be Jamie Durant. I believe there is a garage out there he owns. I honestly don't recall the subject's name. It was a long time ago, very possibly was.

Q. What did you talk to him about?

A. Basically just sat there, Assistant Chief Moll asked him if he had overheard Officer Nichols saying something about getting some of the other men, I believe.

Q. What was the response?

A. Basically, he didn't say anything that was against Officer Nichols as far as he did say accusations against any other men. The person led me to believe he didn't care for Officer Nichols, but he had nothing against him.

Q. You indicated that in this incident relating to the Mental Health law arrest, you and Nichols were involved in that?

A. Yes, we were.

Q. But a complaint was filed against you?

A. Yes, it was.

Q. And I take it you got irritated by that?

Ronald Reyome - Cross

A. I have had complaints filed by other officers. I did do not anything wrong. I wasn't worried about it.

Q. Were you irritated by it?

A. I was irritated by the fact he wanted the exact same punishment. I wasn't irritated by him, but by the punishment.

Q. Weren't you irritated that a complaint was filed against you?

A. Being a police officer, it comes with the job. It does, personnel complaints are made. I had no other complaints about what I did, my actions.

Q. That didn't bother you? What bothered you was the guy asked --

A. What bothered me was the possibility that Officer Nichols spoke to him about the situation.

Q. What possibility was there? Did you ask Nichols about it?

A. No, I did not.

Q. So when you're saying, sir, there was the possibility Nichols spoke to him, do you have any facts upon which to base that?

A. All I'm saying is he asked me the feelings of the department.

Q. Do you have any facts?

Ronald Reyome - Cross

1 A. No, I do not.

2 Q. Did anyone give you any documents, any statements,
3 any facts that says Nichols spoke to this guy and put him up
4 to asking for that punishment?
5

6 A. I think I have answered that. I said, no, I do
7 not.

8 Q. No, you do not. Wasn't the Nichols punishment a
9 matter of public record?

10 A. I believe so, except for the week's vacation.
11 That's what peaked my interest in it.

12 Q. Now, you also said somebody called up the police
13 department and made a comment that, if Nichols was working,
14 that type of thing wouldn't have happened?

15 A. That was spoken through the department. I did not
16 answer the phone on that, no.

17 Q. But you are familiar with the incident?

18 A. Yes, I am.

19 Q. How did that affect the morale of the department?

20 A. Just the fact that it was saying that that
21 particular person was saying the other officers were not
22 capable of handling the situation and basically putting down
23 the other officers.

24 Q. And putting up Nichols?

25 A. Yes.

Ronald Reyome - Cross

Q. So it bothered you some people think
Officer Nichols is a better cop than all the rest of them?

A. It bothered me other people would think we can't
do our job. I think we have a professional police department
and we do our job well.

Q. Does it affect morale if somebody in the general
public thinks Nichols is a better cop than you?

A. I believe so, yes.

Q. What do you intend to do about it?

A. I don't intend to do anything about it. I am
doing my job. That's all I'll do.

Q. And do you intend to become a better cop?

A. I believe I'm a very good cop.

Q. Apparently, somebody in the public thinks Nichols
is better, right?

A. Possibly so.

Q. Apparently, this person that was involved in the
mental hygiene stuff arrest thought you didn't do quite the
good job, while Nichols did, right?

A. That's very possible.

Q. Did that bother you?

A. No, that doesn't me, whether it's Officer Nichols
or somebody else. I'm not saying I'm the best on the force;
I'm not saying I'm the worst.

Ronald Reyome - Cross

Q. But it doesn't bother you that on at least two separate occasions it's been described that you're not quite the officer Officer Nichols is?

A. No, it has not. That has not been said.

Q. Okay. On one occasion somebody said, "If Nichols was working, this wouldn't have happened," and on another occasion you got the complaint and Nichols didn't?

A. That's correct.

Q. Does that bother you?

A. It bothers me the public doesn't have trust in the police department, yes.

Q. Well, whose fault is it if the public thinks Nichols is a good officer?

A. I think the publicity would affect what's going on. I believe it's Officer Nichols' fault the public does not have a lot of faith in the police department.

Q. No, no, no, my question is: whose fault is that that the public thinks Nichols is a good officer?

A. I don't understand was you're trying to say.

Q. Whose fault is it that somebody in the public thinks things wouldn't have happened if Nichols were here?

A. I didn't -- it's nobody's fault that that person had that particular reason, no.

Q. Whose fault is it that complaint was lodged

1 Ronald Reyome - Cross

2 against you and not Nichols in the mental hygiene incident?

3 A. I do not know.

4 Q. Why should that affect the morale of the
5 department?

6 A. Because of the situation -- I answered the
7 question -- because of the situation if -- just -- that's the
8 trust the men have in Officer Nichols and myself. I felt in
9 my personal belief that Officer Nichols did discuss with this
10 subject about the situation, because it's just too much
11 coincidence that he wanted the exact same punishment that he
12 received.

13 Q. Just so I'm clear, it's not Nichols' fault that
14 the complaint was filed against you and not him, right?

15 A. Not to my knowledge, I don't know.

16 Q. It's not Nichols' fault if somebody thinks, "If
17 Nichols were here, this wouldn't have happened"?

18 A. That wouldn't, no, I don't believe.

19 Q. So how can the bad morale that resulted from these
20 two incident be Nichols' fault?

21 A. I said that already several times, is that if you
22 don't have trust in your officers, people don't have trust in
23 you, then it brings down morale.

24 Q. I understand people don't have trust in you. How
25 is it Nichols' fault that there has been bad morale if it's

Ronald Reyome - Cross

not Nichols' fault that these two incidents occurred?

A. I'm not really of the decision that it wasn't Nichols' fault it occurred. I just have no proof that it is. All I'm saying is, if you don't have trust or faith in your partner, then it brings down morale, and with bad publicity as far as the hearing and running the police department down, people lose trust, and I believe it's brought the morale down. That's my reason.

Q. Have people lost trust when the Mayor calls an officer malicious, unfounded, retaliatory and vindictive?

A. I have no knowledge that he did that.

Q. That will refresh your memory (indicating). Do you think this improved public trust in the police department when the Mayor made a comment like that about a police officer?

A. I probably -- I don't know what the public opinion is. The Mayor is not under the rules and guidelines of the department.

Q. Did the comment reflect the opinion of the police department at all?

A. Not to my knowledge.

MR. HALLEY: I have nothing further.

MR. STEWART: No further questions of this witness.

Ronald Reyome - by the Hearing Officer

THE HEARING OFFICER: I just want
clarification on one point.

EXAMINATION BY

THE HEARING OFFICER:

Q. We talked about -- you discussed the matter where there were personnel complaints made against you by a subject that you, Nichols, and members of the state police arrested under the Mental Health law?

A. Correct.

Q. The day before?

A. The day before he came in and made a personnel complaint, yes.

Q. You arrested him the day before, and the next morning he came in?

A. Right.

Q. During that period of time, Patrolman Nichols spent some time with him?

A. At the hospital, yes.

Q. And when he came in to make a personnel complaint, he told the officer who he talked to -- which was who?

A. I believe Assistant Chief Moll.

Q. -- the punishment that he wanted you to get and that, again, was what?

A. Exactly two month's suspension without pay, a

1 Ronald Reyome - by the Hearing Officer
2 letter of reprimand, and lose a week's vacation.

3 Q. Which is what Patrolman Nichols had gotten for --

4 A. It was a two-month suspension without pay, a
5 letter of reprimand, and a week's vacation.

6 Q. Was that made public?

7 A. As far as I know, the week's vacation was. That's
8 what peaked my suspicion.

9 Q. So the rest of it --

10 A. Because I believe the rest of it, the vacation,
11 was not public as far as I know.

12 Q. So you are drawing the conclusion from that
13 Nichols talked to this man and told him what happened?

14 A. People have made personnel complaints, but they
15 never came in with a specific punishment for the officer.
16 That's what suspected me to believe that something may be
17 going on.

18 THE HEARING OFFICER: I have nothing further.

19 MR. STEWART: Thank you, Officer.

20 (The witness was excused.)

21 MR. STEWART: Call Scott Smith.

22 Scott Smith,

23 having been called as a witness, being duly sworn, testified
24 as follows:

25 DIRECT EXAMINATION

1 Scott Smith - Direct

2 BY MR. STEWART:

3 Q. Would you state your name, please.

4 A. My name is Scott Roy Smith.

5 Q. And where do you work, Mr. Smith?

6 A. I own Smith's Towing Service on Harrison Place.

7 Q. Do you know Officer Nichols?

8 A. Yes, I do.

9 Q. How long have you known him?

10 A. I would say a fair statement would be ten years or
11 so.

12 Q. Friend of yours?

13 A. Yes, we are.

14 Q. I'm going to show you Village's Exhibit Number
15 Six, which is on the desk in front of you, and ask you if you
16 recognize it.

17 A. I recognize the paper, yes, I do, it's a petition.

18 Q. Okay. I'm going to direct your attention to the
19 second page of it. Do you recognize the signatures on that
20 page?

21 A. Yes, my signature.

22 Q. On which line?

23 A. Line number one.

24 Q. How did you come to sign this document?

25 A. I was approached by Pat and asked for support for

1 Scott Smith - Direct

2 a court deal he had going on, and I was asked to read it and,
3 if so interested, sign it, which I did.

4 Q. Where were you at the time?

5 A. My place of business on Harrison Place.

6 Q. Where was the petition at that time physically
7 when you first saw it?

8 A. Pat had it in his hand.

9 Q. Did you ask Pat whether you could sign it?

10 A. I believe the question was brought up if it was
11 okay to do it and wouldn't get him in any trouble. At that
12 time he told me he had talked to his attorney and it was
13 fully legal for him to go ahead with it.

14 Q. There's a transcript in front of you, which has
15 been marked as Village Exhibit Number 12. I'm going to ask
16 you to take a look at it.

17 A. Okay.

18 Q. Would you open up to page 58, line 18 --

19 A. Yep.

20 Q. -- and put your finger there?

21 A. Okay.

22 Q. And then put your finger on page 60, line 21?

23 A. Yep.

24 Q. All right. I want you to read that section.

25 A. Okay. Starting with line 18?

1 Scott Smith - Direct

2 Q. Yes, please.

3 A. "Did you ever ask anyone to support you by signing
4 one of these petitions?" (reading) And then line number 21?

5 Q. No, the whole thing.

6 A. Okay. The whole thing down through?

7 Q. Yep.

8 A. Okay. Q. "Did you ever ask anyone to support you
9 by signing one of these petitions?"

10 A. "I didn't ask anybody to sign. There was one
11 occasion where somebody asked me if they could sign one, and
12 I let them, but that was because they were found as I was
13 leaving the local garage." (reading)

14 Q. Let me stop you there.

15 A. Yes, sir.

16 Q. Is that a true and accurate statement as it
17 applies to your signature of this petition?

18 A. No, he asked us if we would take a look at the
19 petition in support of his keeping his job with the police
20 department.

21 Q. Carry on, please.

22 A. Yep. A. "And a guy -- actually, there was a
23 couple of people there that wanted to sign, and I
24 said, 'Well, that's up to you.'" (reading) Flip right to the
25 next --

1 Scott Smith - Direct

2 Q. Let me stop you. Do you recall him saying that?

3 A. No.

4 Q. Keep going.

5 A. Okay. This is, I guess, by Assistant

6 Chief Moll:

7 Q. "Can you answer the question, please? Did you
8 ever ask anyone to support you by signing one of these
9 petitions? Did you ever ask anyone to support you by signing
10 one of these petitions? Yes or no."

11 A. "I don't recall if that ever happened."

12 And by Chief Phillips: "Is that a yes or no?"

13 A. "That is a I don't remember for sure. I don't
14 remember asking anybody, but again, there is a lot of
15 occasions where people asked about them, and so --"

16 Q. "Did you point them in the direction to go if
17 they wanted to sign one?"

18 A. "Yeah, I told them the names of some people
19 that were responsible."

20 By Assistant Chief Moll: "The petition that was in
21 your wife's car, that was at a local garage?"

22 A. "Yeah."

23 Q. "And it would be to my understanding that
24 you're saying that someone approached you at the garage and
25 you remembered seeing a petition in the car, and how did it

1 Scott Smith - Direct

2 get from the car to where maybe the person at least reviewed
3 it?"

4 A. "It was in the garage and, in fact, they were
5 still working on the car when I got there, and they asked me
6 about the petition. I said, 'Well, yeah, but, you know, my
7 wife and some other people are involved in that,' and then
8 somebody pointed out to me that there was one on the car
9 seat, and I said, 'Okay, let's take a look.'" (reading)

10 Q. Let me stop you there.

11 A. Yes, sir.

12 Q. Does that accurately reflect what happened when
13 you were asked to sign the petition?

14 A. No, it did not.

15 Q. Would you continue going, please.

16 A. Yep.

17 A. "And they signed it. They asked me if they
18 could sign it. I said, 'You're the one putting your name on
19 there,' but there again, that's the only situation that I can
20 remember that I physically was --" looks like it was
21 interrupted.

22 By Chief Phillips: Q. "At the time, did you
23 discuss with anybody that was in the garage any of the
24 circumstances surrounding your previous disciplinary
25 proceeding that you were under at that time?"

1 Scott Smith - Direct

2 A. "I can't remember the extent of the
3 conversations. I know the concern was to get -- I can't even
4 remember who was there. I know some of his employees were
5 there."

6 Q. "Do you have copies of those petitions at your
7 residence?"

8 A. "I may in my files of all the particulars
9 surrounding the suspension; it may be included in
10 that."

11 Q. "Does Mike Fournier work at the bowling alley?"
12 (reading)

13 Q. Okay. Let me direct your attention to page 174.

14 MR. HALLEY: Note my continuing objection to
15 anything but page 174.

16 THE HEARING OFFICER: I missed something
17 here. Would you say --

18 MR. HALLEY: Note my continuing objection as
19 to anything but 174. I previously objected to
20 that.

21 THE HEARING OFFICER: Overruled.

22 BY MR. STEWART:

23 Q. Mr. Stewart, would you please read lines 9
24 through 14?

25 A. Okay.

1 Scott Smith - Direct

2 Q. "Did you ask anyone in Scott Smith's Towing
3 garage to sign your petition?"

4 A. "I don't recall that. I don't believe I asked
5 anybody. Scott was one of the ones that signed it. I
6 believe Scott asked people to sign it. I didn't ask anybody
7 there." (reading)

8 Q. Let me stop you.

9 A. Yep.

10 Q. Is that true?

11 A. No, that is not.

12 Q. Did you ask anyone else to sign the petition?

13 A. No. The only thing I was asked was if Ed was
14 still in the garage, and Ed was in the bathroom at the time,
15 and I told him he'd be out in a minute.

16 Q. Whose Ed?

17 A. Ed Ritzmann.

18 Q. All right. Would you read lines 16 through 17 on
19 that same page.

20 A. Yep.

21 A. "I didn't go up to anybody and say, 'Would you
22 sign this,' no.

23 Q. "Okay. Did you discuss any of the case, your
24 disciplinary proceeding or charges, with anyone at
25 Scott Smith's Towing when this petition was going around in

1 Scott Smith - Direct

2 the garage?" (reading)

3 Q. Mr. Smith, is that true, line 16 through 17?

4 A. No, I don't believe so. It was not talked much
5 about it.

6 Q. Would you read page 175?

7 A. Yep.

8 Q. Lines 15 through 17.

9 A. A."I did not ask Ed Richmond (sic); Scott Smith
10 asked Ed Richmond. In fact, at that time, I was getting
11 ready to leave, and he said something to Richmond about the
12 petition."

13 Q."Did you leave the petition at Scott Smith's
14 Towing?" (reading)

15 Q. Okay. Mr. Smith, is that statement true?

16 A. He asked if he could talk with Ed.

17 Q. Did you ask Ed Ritzmann to sign this petition?

18 A. No, I did not.

19 Q. Would you read page 188, lines 2 through 6.

20 A. A."If, in fact, that is what those statements say,
21 that I approached them initially, if I made the initial
22 suggestion or whatever in regards to the petitions, I'm
23 telling you that that is not the way it happened. That's
24 what I'm telling you based on what you are telling me."
25 (reading)

1 Scott Smith - Direct

2 Q. In that statement, Mr. Nichols is calling you a
3 liar. Are you lying to us now?

4 A. No, I am not.

5 Q. Would you read page 181, lines 9 through 13?

6 A. Okay.

7 Q. "I'm asking you, did you ask any of these
8 people that have signed the petition to sign it? It's a
9 simple question."

10 A. "Shouldn't be anybody on here. I didn't ask
11 anybody."

12 Q. "You didn't ask anybody?"

13 A. "I told you earlier in my testimony that I did
14 not go up to anybody and say, 'Would you sign these
15 petitions.'" (reading)

16 Q. Is that true, Mr. Smith?

17 A. He approached us and asked us to sign it.

18 Q. Would you read on the same page, lines 15 through
19 16.

20 A. A. "I told you earlier in my testimony that I did
21 not go up to anybody and say, 'Would you sign these
22 petitions.'

23 Q. "I'm asking you to look over the petitions.
24 You're welcome to look through the names." (reading)

25 Q. Okay. Is that true, Mr. Smith?

1 Scott Smith - Direct

2 A. In regards to he didn't -- yeah.

3 Q. Lines 15 and 16 where he said he didn't approach
4 anybody, is that true?

5 A. Yes, he approached us on them.

6 Q. I want you to read page 181, lines 24 and 25 and
7 then continue on the next page.

8 A. Okay. Start on 24?

9 Q. Yes.

10 A. Q. "I'm going to have to have to say that, again,
11 I don't recall ever going up to anybody and saying, 'Would
12 you sign these petitions.'" These petitions were not created
13 by me, and other than delivering one to somebody that I
14 recall delivering one to and allowing a few people at Smith's
15 Towing garage to sign them in my presence, that was the limit
16 of my -- as far as I can recall, that was the limitation as
17 to my association with these." (reading)

18 Q. Where are we at?

19 A. We're at line 7; I just finished reading.

20 Q. Would you also read lines 19 through 24 on that
21 page.

22 A. A. "I'm saying I don't recall ever going up to
23 anybody and saying, 'Would you sign that petition.' That's
24 what I'm saying to answer your question. I don't recall ever
25 doing it, and that's as thorough as I can be on that. The

1 Scott Smith - Direct

2 reason it's difficult to recall is, again, there are those
3 situations where I do recall bringing one to the courthouse."

4 Q. Okay. All right. And I hate to keep beating a
5 dead horse, Mr. Smith, but it's your sworn testimony that
6 that's not true, that he did approach you?

7 A. He did approach me.

8 Q. Who else was in the garage at the time this
9 occurred?

10 A. Ed Ritzmann, could have been a number of my
11 employees there. They're in and out all the time.

12 Q. I'm going to ask you to take another look at that
13 petition.

14 A. Yes.

15 Q. You have it there in front of you? Would you look
16 at the first page?

17 A. Okay.

18 Q. Do you recognize any of your employees' signatures
19 on that page, current employees or former?

20 A. Dale Lamitie's on there.

21 Q. What line did he sign on?

22 A. Line number 14.

23 Q. And who else?

24 A. Carl Thomas on line 15.

25 Q. Are there any other lines from there to the end of

Scott Smith - Direct

the page?

A. Yes, there is.

Q. Do they have signatures on them?

A. Yes, they do.

Q. Do any of these people work in your garage?

A. No, not that I can tell.

Q. Did you see Mr. Nichols approach Ed Ritzmann and ask him to sign the petition?

A. Yes, I did.

Q. Did you see Ed Ritzmann -- I'm sorry, did you see Officer Nichols at that time approach any of your employees, Mr. Lamitie or Mr. Thomas, and ask them to sign the petition?

A. No, I did not.

Q. Were you there when they, they Mr. Lamitie and Mr. Thomas, did sign the petition?

A. Not that I can believe, no.

Q. Do you have an opinion whether it was done on the same day or on some other day?

A. I remember they told me they had talked with Pat on it, and I believe it might have been the next day, but I can't be 100 percent positive.

Q. So you think he might have come back and done this over two different days?

A. All I know is they told me they did sign the

1 Scott Smith - Cross

2 petition. We didn't get into any discussion on it.

3 MR. HALLEY: I don't have any further
4 questions for this witness.

5 CROSS-EXAMINATION

6 BY MR. HALLEY:

7 Q. Mr. Smith, you are in the towing business?

8 A. Yes, I am.

9 Q. And you are the favorite towing operator of the
10 village police?

11 A. They use me quite often, yes.

12 Q. More often than anybody, right?

13 A. I couldn't answer that. I don't know they're
14 towing records.

15 Q. Who else do you know that gets towing business
16 from the village police besides yourself in the last year?

17 A. Mike Jock of Mike's Towing, I believe Tony Roscoe
18 has gotten a couple, and when Herbie Rhodes was doing it, he
19 would come into the village, also.

20 Q. How many towing jobs have you done for the village
21 police in the last year?

22 A. We don't keep track of that.

23 Q. No idea how much money you made?

24 A. Not without looking at the records.

25 Q. Who assigns you to do the towing jobs?

Scott Smith - Cross

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A. What would you mean by that, sir?

Q. How is it that you get to do the towing jobs? Who calls you?

A. They go by closest available.

Q. Who calls you, your place of business?

A. Other than the village police?

Q. Mm-mm.

A. Many people in the village.

Q. Who in the village police?

A. Pretty much anybody on desk.

Q. Did you hear Mayor Feeley got upset when he found out you signed this petition?

A. No, I did not.

Q. Did you tell Carl Thomas that if he didn't give a statement against Pat Nichols --

A. No, I did not.

Q. Did you tell Carl Thomas that if he didn't give a statement, that he'd be trouble?

A. No.

Q. You ever been arrested, sir?

A. Yes, I have.

Q. For what?

A. Disorderly conduct.

Q. Anything else?

1 Scott Smith - Cross

2 A. Not that I can recall.

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

5 A. That was the original charge, and it was, through
6 the courts, dropped off to disorderly conduct, and I had one
7 case that was acquitted.

8 Q. All right. So I just asked if you had been
9 arrested for anything other than disorderly conduct. You
10 said you don't recall.

11 A. I was under the impression when it was acquitted,
12 that it was no longer a charge.

13 Q. Now you're telling me you do recall you got
14 arrested for burglary and arson? Do you recall that or not?

15 A. Yes, I do.

16 Q. All right. Did anybody else sign the petition in
17 your presence?

18 A. No, they did not.

19 Q. Did you see Ed Ritzmann sign the petition?

20 A. No, I did not.

21 Q. When did you sign the petition?

22 A. I read it, knowing, you know, what I had heard
23 through the papers and everything. I wasn't aware of what
24 the full charges are, I'm still not. As well as I have known
25 Pat, I did not see where a man should lose his job because of

1 Scott Smith - Cross

2 that, and I was in full agreement if the charges were as
3 severe as they were, that a man should not lose his job.

4 Q. What was the "that" that he shouldn't lose his job
5 over?

6 A. What little bit there was in the papers about the
7 trial involving ammonia on the floor and whatever and the
8 charge that, you know, we heard was laid out that Pat made a
9 complaint. We didn't know the whole deal stemming up to
10 that, and on Pat's side I was ready to support 100 percent.

11 Q. Did you ask anyone to sign the petition that day
12 or any other day?

13 A. No, I did not.

14 Q. Why was Pat in your garage that day?

15 A. We were doing work on one of his vehicles.

16 Q. Where were the petitions when you first saw them?

17 A. Pat approached us with them.

18 Q. Were they in his hand?

19 A. Yes.

20 Q. Did you ever see them in the back seat of his car?

21 A. No, I did not.

22 Q. Has anyone told you that your towing business in
23 the village might be affected by your testimony today?

24 A. No, they have not.

25 Q. Anyone indicated to you any displeasure, anyone

1 Scott Smith - Recross
2 from the village indicated to you any displeasure that you
3 signed this petition?

4 A. No, they have not.

5 MR. HALLEY: I have nothing further.

6 MR. STEWART: No Redirect.

7 THE HEARING OFFICER: I've just got a
8 question.

9 EXAMINATION BY

10 THE HEARING OFFICER:

11 Q. The state police also call you?

12 A. Yes, they do.

13 Q. You are within the village limits?

14 A. Yes, we are.

15 Q. How many other tow trucks within the village?

16 A. Right now, we're the only licensed company in the
17 State of New York and the only towing company in the village
18 that carries proper liability insurance and towing insurance
19 at this time.

20 Q. Thank you.

21 MR. HALLEY: I have a question, I'm sorry.

22 RECROSS-EXAMINATION

23 BY MR. HALLEY:

24 Q. How do you know you are the only ones that carry
25 that insurance?

1 Scott Smith - Recross

2 A. We deal with the state person that comes out that
3 told us that when he come through doing our books and
4 informed us we're the only one up to par right now on the
5 license with the state.

6 Q. How do you know you are the only one that carries
7 that insurance?

8 A. We deal with Tommy Cardinal's insurance company.
9 He's the only firm in Malone that can carry that. We carry
10 it through them, and being friends with everybody else, we
11 talked it over and they choose to do it one way; we choose to
12 do it another.

13 Q. Has any other towing firm told you, "We don't have
14 the proper insurance"?

15 A. Yes, they have.

16 Q. Which ones?

17 A. Tony Roscoe and Mike Jock.

18 Q. Anyone else?

19 A. No.

20 MR. HALLEY: Nothing further.

21 (The witness was excused.)

22 MR. STEWART: Next we would call

23 Dale Lamitie.

24 Dale Lamitie,

25 having been called as a witness, being duly sworn, testified

1 Dale Lamitie - Direct

2 as follows:

3 DIRECT EXAMINATION

4 BY MR. STEWART:

5 Q. Would you tell us your name and place of
6 employment.

7 A. Dale Lamitie, I work at Scott Smith's Towing.

8 Q. Do you know Officer Nichols?

9 A. Yes, I do.

10 Q. How long have you known him?

11 A. Three, four years.

12 Q. Is he a friend of yours or just an acquaintance?

13 A. Acquaintance.

14 Q. Mr. Lamitie, I'm going to show you this exhibit
15 marked Village Exhibit Number Six. I'm going to direct your
16 attention to the first page. Do you recognize that?

17 A. Yes, I do.

18 Q. Is that your signature on the first page, line 14?

19 A. Yes, it is.

20 Q. Do you recall signing it?

21 A. Yes.

22 Q. Can you tell us in your own words what events led
23 up to your signing this petition?

24 A. Pat was having his car worked on in the garage and
25 this right here was inside his car, and Scott asked what it

1 Dale Lamitie - Direct

2 was and I was asked if I would sign it, read it and sign it,
3 and I signed it.

4 Q. Who asked you to read it?

5 A. Pat.

6 Q. Who asked you to sign it?

7 A. He asked if I'd sign it after I read it.

8 Q. But who was it that asked to you sign it?

9 A. Pat.

10 Q. Okay. Now, I'm going to show you this thing
11 marked Village Exhibit Number 12. I'm going to ask you to
12 read parts of it; is that okay?

13 A. Yes.

14 Q. All right. Would you turn to page 58. I want you
15 to put your finger on page 58, line 18. You see that?

16 A. Yes, sir.

17 Q. The numbers are down on the left-hand side. All
18 right. Keep your finger there and now put your finger over
19 on page 60, line 21. All right? I want you to read what's
20 in between.

21 A. In between all this (indicating)?

22 Q. Yeah, starting on line 18, page 58. You have to
23 read it out loud, excuse me, I'm sorry.

24 A. Okay, I'm sorry.

25 Q. "Did you ever ask anyone to support you by

1 Dale Lamitie - Direct
2 signing one of these petitions?"

3 A. "I didn't ask anybody to sign. There was one
4 occasion where somebody asked me if they could sign one, and
5 I let them, but that was because they were found as I was
6 leaving the local garage." (reading)

7 Q. Mr. Lamitie, is that a correct statement?

8 A. Yes, it is.

9 Q. Okay. Would you keep reading?

10 A. A. "And a guy -- actually, there was a couple
11 people there that wanted to sign, and I said, 'Well, that's
12 up to you.'" (reading).

13 Q. All right. Let me stop you there. Is that
14 correct or incorrect?

15 A. That's correct.

16 Q. Now, Mr. Lamitie, what I'm trying to find out here
17 is whether you asked to sign the petition.

18 MR. HALLEY: Objection. It's a leading
19 question.

20 THE HEARING OFFICER: Overruled.

21 MR. HALLEY: Note my exception.

22 BY MR. STEWART:

23 Q. Mr. Lamitie, what I'm trying to find out here is
24 whether you asked to sign the petition or whether somebody
25 asked to you sign the petition.

1 Dale Lamitie - Direct

2 MR. HALLEY: Objection. Again, the village
3 attorney, for obvious reasons, is now trying to
4 contradict his own witness.

5 THE HEARING OFFICER: Overruled. What we're
6 after is the truth. We're not so concerned --
7 maybe as facilitator -- if I might here,
8 Mr. Lamitie, that's a statement that Patrolman
9 Nichols gave. What the attorney for the village
10 is trying to find out is if that's a true and
11 accurate description of what happened the day in
12 the garage that you signed this petition.
13 Proceed.

14 A. I was asked to sign it.

15 BY MR. STEWART:

16 Q. You were asked to sign it?

17 A. Yes, after I read it and stuff, I was asked if I
18 would sign it and I said sure.

19 Q. Okay. Was anybody else present in the garage when
20 you were asked to sign it?

21 A. Carl Thomson -- Thomas was standing beside me.

22 Q. Anybody else?

23 A. Not right beside me, no.

24 Q. Where was Scott Smith at the time?

25 A. I believe he was in the office. I can't say

Dale Lamitie - Cross

that -- you know, I was doing my work and stuff. You can't watch where everybody is going to be and do your work, too.

Q. Did you see Officer Nichols approach Mr. Smith and ask Mr. Smith to sign the petition on that day?

A. No, I can't -- I can't say that.

Q. Did you see Ed Ritzmann there that day?

A. Again, I don't really pay attention who's in and out of the garage, just do my work.

MR. STEWART: I have no further questions.

CROSS-EXAMINATION

BY MR. HALLEY:

Q. Mr. Lamitie, where were you or what were you doing when you first saw the petition?

A. I was standing around Pat's car.

Q. Where was the petition?

A. On the front seat.

Q. Anybody holding it or just on the seat?

A. It was on the front seat.

Q. Do you recall saying to him, "What's that"?

A. No, I don't really.

Q. What do you recall saying to him?

A. I asked what the petition was about.

Q. Okay. What did he say to you?

A. "Read it".

Dale Lamitie - Cross

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Q. And what did you say?

A. I read it.

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

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

Q. Who asked Carl Thomas to sign it?

A. I walked away.

Q. How did the petition get from you to Carl Thomas?

A. I don't recall that.

Q. See anybody else sign it?

A. No.

Q. Do you recall Pat Nichols saying, when somebody wanted to sign it, words to the effect, "Well, that's up to you"?

A. No, I don't remember that, sir.

Q. Do you recall Scott Smith talking about the petitions?

A. No.

Q. Did you ask if you could sign the petition?

A. I didn't ask to sign it, no.

Q. Did you just do it?

A. After I read it, yes.

Q. Anybody force you to sign it?

A. No.

1 Dale Lamitie - Cross

2 Q. Anybody ask you to sign it?

3 A. Like I said, I asked what it was. It was taken
4 (sic) out of his car. I did not take it out of the car, and
5 then I did sign it.

6 Q. Do you remember anybody asking you to sign it?

7 A. No, sir, I don't, but it's been that long ago
8 that --

9 Q. It's okay. Did there come a time when somebody
10 from the village police came to the garage and asked you to
11 sign a statement?

12 A. That came to the garage, no.

13 Q. Did there come a time when you signed a statement
14 for the village police?

15 A. Yes, I did sign it.

16 Q. Okay. Is that this statement here, which has been
17 marked Village Number 14?

18 (No response)

19 Q. My question is, sir, did you sign that statement?

20 A. Yes, I did.

21 Q. Where did you sign it, do you remember?

22 A. I signed it at the police station.

23 Q. Who asked you to come to the police station, if
24 you know?

25 A. I don't know. I just believe, I'm not saying --

Dale Lamitie - Cross

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Q. It's okay.

A. -- who.

Q. Do you remember if Scott Smith told you to come to the police station?

A. Yes, he did.

Q. What did he say to you when he told you to go there?

A. "You have to go to the police station."

Q. He said, "There is going to be trouble if you don't go"?

A. No.

Q. Did you ask him why I have to go to the police station?

A. No, no questions asked. I figured the wrecker called in. That's what I figured it was probably for.

Q. When you got to the police station, was this statement here all typed up shown to you?

A. No.

Q. What did you do when you got to the police station?

A. I was asked what I done.

Q. Mm-mm.

A. And then that's what was said on the statement.

Q. All right.

1 Dale Lamitie - Redirect

2 MR. HALLEY: I have nothing further.

3 REDIRECT EXAMINATION

4 BY MR. STEWART:

5 Q. Mr. Lamitie, I don't want to take up a lot more of
6 your time, but I'm going to show you Village Exhibit Number
7 14, ask you a couple of simple questions. Is that your
8 signature at the bottom?

9 A. Yes, it is.

10 Q. Were you forced to sign that document?

11 A. No, I wasn't.

12 Q. Is that document true?

13 A. Yes, is, to my knowledge it is.

14 Q. Were you in any way threatened or coerced or told
15 that you would be in trouble if you did not sign it?

16 A. No, I wasn't.

17 Q. Thank you.

18 MR. STEWART: No further questions.

19 RECROSS-EXAMINATION

20 BY MR. HALLEY:

21 Q. Is your testimony today true, sir?

22 A. Yes, it is.

23 Q. Thank you.

24 THE HEARING OFFICER: You are excused. Thank
25 you.

1 Edward A. Ritzmann - Direct

2 (The witness was excused.)

3 MR. STEWART: The last witness is
4 Edward Ritzmann.

5 Edward A. Ritzmann,

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 give us your name.

11 A. Edward A. Ritzmann.

12 Q. Are you employed, Mr. Ritzmann?

13 A. No, I am not.

14 Q. Did you used to be employed?

15 A. Yes, sir.

16 Q. Are you retired?

17 A. Yes, sir, I am.

18 Q. From what job are you retired?

19 A. New York State Police.

20 Q. How long were you an employee of the state police?

21 A. Twenty-three years.

22 Q. In what capacity?

23 A. As a trooper.

24 Q. Do you know Officer Patrick Nichols?

25 A. Yes, I do.

1 Edward A. Ritzmann - Direct

2 Q. How long have you known him?

3 A. Eight, nine, ten years, probably.

4 Q. I'm going to show you a document marked Village
5 Exhibit Number Six and ask you if you have seen it or
6 portions of it.

7 A. I believe I have.

8 Q. Okay. Under what circumstances do you believe you
9 have seen it before?

10 A. I was approached by Officer Nichols and requested
11 to sign the petition in his behalf.

12 Q. Can you tell us how that came about? Where were
13 you?

14 A. I was at Scott Smith's Towing Service. I had been
15 in the back room and came out through the main part of the
16 building, and I saw Mr. Nichols out there talking to
17 Mr. Smith, and he approached me and asked me if I'd be
18 interested in signing the petition.

19 Q. Who approached you, Mr. Smith or Mr. Nichols?

20 A. Mr. Nichols.

21 Q. What did he say to you and what did you say to
22 him?

23 A. He asked me if I'd be interested in signing a
24 petition.

25 Q. What did you say?

1 Edward A. Ritzmann - Direct

2 A. I said I'd have to read it over and I'd make my
3 decision then.

4 Q. Mr. Ritzmann, I'm going to show you that big bulky
5 exhibit marked Exhibit 12, Village 12, ask you to turn to
6 page 58, line 18. What I want you to do is read out loud
7 from page 58, line 18, up to page 60, line 21.

8 A. Up to 69, 21?

9 Q. Up to page 60, line 21.

10 A. Okay.

11 Q. "Did you ever ask anyone to support you by
12 signing one of these petitions?"

13 A. "I did not ask anyone to sign. It was one
14 occasion where somebody asked me if I could sign one, and I
15 let them." (reading)

16 Q. Let me stop you there. As it relates to you, is
17 that true?

18 A. It's not true.

19 Q. Would you keep reading, please.

20 A. A. "But that was because they were found as I was
21 leaving the local garage, and a guy -- actually, there was a
22 couple people there that wanted to sign, and I said, 'Well,
23 that's up to you.'" (reading)

24 Q. Did Officer Nichols say to you, "Well, it's up to
25 you"?

1 Edward A. Ritzmann - Direct

2 A. I don't believe he said that to me, no.

3 Q. Would you keep reading, please.

4 A. By Assistant Chief Moll:

5 Q. "Can you answer the question, please? Did you
6 ever ask anyone to support you by signing one of these
7 petitions? Did you ever ask anyone to support you by signing
8 one of these petitions? Yes or no?"

9 A. "I don't recall if that ever happened."

10 Q. "Is that a yes or no?"

11 A. "That is a I don't remember for sure. I don't
12 remember asking anyone" -- excuse me -- "anybody, but again,
13 there is a lot of occasions where people asked about them and
14 so --"

15 Q. "Did you point them in the direction to go if
16 they wanted sign one?"

17 A. "Yeah, I told them the names of some people
18 that were responsible."

19 Q. "The petition that was in your wife's car, that
20 was at the local garage?"

21 A. "Yeah."

22 Q. "And it would be to my understanding that
23 you're saying that someone approached you at the garage and
24 you remembered seeing a petition in the car, and how did it
25 get from the car to where maybe that person at least reviewed

Edward A. Ritzmann - Direct

it?"

A. "It was in the garage, and in fact, they were still working on the car when I got there, and they asked me about the petition. I said, 'Well, yeah, but, you know, my wife and some other people are involved in that,' and then someone pointed out to me there was one on the car seat. And I said, 'Okay, let's take a look at it.'" (reading)

Q. Let me stop you there. Did you point out to Officer Nichols that there was something in the car seat?

A. No, sir.

Q. Okay. Keep going.

A. A. "And they signed it. They asked me if they could sign it. I said, 'You're the one putting your name on it' -- correction -- "You're the one putting your name on there,' but there again, that's the only situation I can remember that I physically was --"

Q. All right, let me stop you there. Did he say that to you, "You are putting your name on there"?

A. No, sir.

Q. All right. Where are we at now? I lost you.

A. 11 on 60.

Q. Okay. Would you turn to page 174 near the end.

MR. HALLEY: Note my continuing objection.

Q. I want you to read lines 9 through 14.

Edward A. Ritzmann - Direct

A. Q. "Did you ask anyone in Scott Smith's Towing garage to sign your petition?"

A. "I don't recall that, I don't believe I asked anyone. Scott was one of the ones that signed it. I believe Scott asked people to sign. I didn't ask anybody there."

(reading)

Q. Is that true as it relates to you?

A. No, it's not true.

Q. Would you read on the same page lines 16 through 17.

A. A. "I didn't go up to anybody and say, 'Would you sign this,' no." (reading)

Q. Is that true?

A. That's not true.

Q. Would you turn to page 175, read lines 15 through 17.

A. A. "I did not ask Ed Richmond (sic); Scott Smith asked Ed Richmond. In fact, at that time, I was getting ready to leave and he said something to Richmond about the petition." (reading)

Q. Is that true?

A. No, that's not true.

Q. Would you turn to page 180, read lines 2 through 6.

Edward A. Ritzmann - Direct

A. "If, in fact, that is what those statements say, that I approached them initially, if I made the initial suggestion or whatever in regards to the petitions, I'm telling you that that is not the way it happened. That's what I'm telling you based on what you are telling me."

(reading)

Q. Mr. Ritzmann, are you lying to us now?

A. No, sir.

Q. Thank you. Would you turn to page 181 and read lines 9 through 13.

A. Q. "I'm asking you, did you ask any of these people that have signed the petition to sign it? It's a simple question."

A. Shouldn't be anybody on there. I didn't ask anybody." (reading)

Q. Is that true?

A. That's not true.

Q. On the same page, would you read lines 15 through 16.

A. A. "I told you earlier in my testimony that I did not go up to anybody and say, 'Would you sign these petitions.'" (reading)

Q. Mr. Ritzmann, is that true?

A. That's not true.

Edward A. Ritzmann - Direct

Q. At the bottom of that page I'd like you to read lines 24 through 25 and then continuing on the next page, lines 2 through 7.

A. A. "I'm going to have to say that, again, I don't recall ever going up to anybody and saying, 'Would you sign these petitions.' These petitions were not created by me, and other than delivering one to somebody that I recall delivering one to and allowing a few people at Smith's garage to sign them in my presence, that was the limit of my -- as far as I can recall, that was the limitation as to my association with these." (reading)

Q. Officer Ritzmann, you were a state trooper for a long time. What effect does it have on the criminal justice system when an officer lies under oath?

A. A large effect.

Q. What effect is that?

A. It takes away the credibility of the officer and the police department.

Q. Thank you, very much.

MR. STEWART: I have no further questions.

CROSS-EXAMINATION

BY MR. HALLEY:

Q. Mr. Ritzmann, were you present when Scott Smith signed the petition?

Edward A. Ritzmann - Cross

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A. I don't believe so.

Q. Did you see anyone sign the petition?

A. I don't believe so.

Q. Where were you when you first saw this petition?

A. I was entering the main portion of the garage after returning from the restroom.

Q. Who did you see?

A. I saw Mr. Smith, I believe, Mr. Nichols, and I believe a gentleman by the name of Carl was there.

Q. What did Mr. Smith say to you, if anything?

A. I don't recall, sir.

Q. What did Mr. Nichols say to you, if anything?

A. At the time, Mr. Nichols asked me if I would like to sign the petition.

Q. Where was the petition when he asked you that?

A. In his hand.

Q. Where was Mr. Smith when he asked you that?

A. In the room someplace, I believe.

Q. How far away?

A. I don't recall.

Q. What did you say to Mr. Nichols?

A. I didn't say anything at that moment. I took the petition, read it over, handed it back to him, and said I wasn't in a position to sign it.

Edward A. Ritzmann - Cross

Q. Do you recall anyone else asking to sign the petition that day?

A. Not offhand, sir, no.

Q. And what exactly did Pat Nichols say to you when he asked you to sign the petition?

A. He asked me if I'd care to sign a petition.

Q. What did you say exactly to the best of your recollection?

A. To his question?

Q. Mm-mm.

A. I don't think I said anything directly to that question.

Q. Did he say anything else to you with regard to signing the petition that day?

A. I don't believe so, sir.

Q. Okay. How long have you known Scott Smith?

A. Many years.

Q. Did Scott Smith ask you to sign the petition?

A. Not that I recall, no.

Q. You previously testified on behalf of Scott Smith, correct?

A. I don't recall. Refresh my memory, please.

Q. Do you recall testifying for Scott Smith in relation to one of his criminal trials?

Edward A. Ritzmann - Cross

A. Not that I recall, no.

Q. You have absolutely no recollection, sir?

A. No, you'd have to refresh my memory.

Q. Okay. Do you deny that your testimony helped get Scott Smith acquitted?

A. I don't deny it, I just don't recall it, sir.

Q. Okay.

MR. HALLEY: I have nothing further. Thank you.

THE HEARING OFFICER: I have just one question.

EXAMINATION BY

THE HEARING OFFICER:

Q. Did you sign that petition that day or not?

A. No, sir, I didn't.

MR. STEWART: No further questions.

THE HEARING OFFICER: You are excused.

(The witness was excused.)

MR. STEWART: The village has no more witnesses.

MR. HALLEY: Call Carl Thomas.

Carl Thomas,

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

1 Carl Thomas - Direct

2 DIRECT EXAMINATION

3 BY MR. HALLEY:

4 Q. Mr. Thomas, what is your address, sir?

5 A. 8 Martin Street.

6 Q. And directing your attention back to September,
7 October, 1993, do you recall being present in Scott Smith's
8 garage and signing a petition relating to Pat Nichols?

9 A. Yes, I do.

10 Q. Were you working for Scott Smith at the time?

11 A. Yes, I was.

12 Q. Did there come a time when you no longer were
13 working for Scott Smith?

14 A. Pardon?

15 Q. Did there come a time when you were no longer
16 working for Scott Smith?

17 A. Yes.

18 Q. How did that occur?

19 A. I just quit the job, oh, probably about four
20 months ago.

21 Q. How did you first become aware of these petitions?

22 A. It was just that day that I signed it. That's the
23 only time I ever seen it or heard it.

24 Q. Where was the petition when you first saw it?

25 A. Pat's car was in the garage at the present time.

1 Carl Thomas - Direct

2 Dale was over by Pat's car. I was over in the other corner
3 of the garage. Dale turned around and Pat asked him if he'd
4 like to sign the petition. Dale said yes, so he came over
5 to me and asked me if I'd like to sign; I said yes.

6 Q. Who asked you?

7 A. Dale did, Dale had it in his hand at the time.

8 Q. What did Dale say to you?

9 A. He just said, "Would you like to sign this
10 petition for Pat," and I said yes.

11 Q. Okay. Did you -- later on were you told by
12 Scott Smith that you had to go to the police station
13 department and make a statement?

14 A. Just I had to show up at the police department;
15 that was it.

16 Q. What did he tell you?

17 A. That I had to go up and be asked some questions,
18 and that was all there was to that.

19 Q. Did he say were you going to give a statement
20 against Nichols?

21 A. No. I went up just like everybody else did.

22 Q. Did he tell you there'd be any trouble?

23 A. No.

24 Q. What do you recall happening at the police
25 department?

Carl Thomas - Direct

A. Just going in and talking to Officer -- I'm trying to think now who it was, but we filled out a statement and I signed it.

Q. Did you read the statement before you signed it?

A. My reading ability is not the best.

Q. Did you read the statement before you signed it?

A. I had it, I read it and he read it to me, also.

Q. Where was Dale Lamitie when you first saw him talking to Pat Nichols?

A. In the garage with me.

Q. How far away?

A. Oh, probably, maybe from here to that camera (pointing).

Q. Okay. Did you hear any of the conversation between Nichols and Lamitie?

A. No, I was working on a van at the time in the corner and wasn't paying much attention to what was going on really.

Q. You previously testified, sir, that Nichols asked Lamitie to sign the petition. Did you hear Nichols say that?

A. I figured that's what he asked him because he had the petition in his hands.

Q. But my question is, did you hear Pat Nichols say

1 Carl Thomas - Cross

2 to Dale Lamitie words to the effect, "Would you sign this
3 petition?"

4 A. Not really.

5 Q. Did Pat Nichols ever ask you to sign the petition?

6 A. No.

7 Q. Who asked you?

8 A. Dale had it in his hand and asked me if I'd like
9 to sign it for Pat, and I said sure.

10 MR. HALLEY: I have nothing further.

11 CROSS-EXAMINATION

12 BY MR. STEWART:

13 Q. Mr. Thomas, do you recall when you were asked to
14 sign your statement the first time around?

15 A. Not right offhand what date and what time.

16 Q. Do you recall -- do you remember the month?

17 A. No.

18 Q. Do you remember the year?

19 A. It was '94.

20 Q. '94, not '93?

21 A. Like I said, it's been so long, everything going
22 on with me, I don't recollect.

23 Q. Could it have been October of '93?

24 A. Could have been.

25 Q. Is that your signature at the bottom?

Carl Thomas - Cross

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A. Yes, it is.

Q. Can you read the date on it?

A. October 21st, 1993.

Q. Do you think that's right or wrong?

A. That's about the time that I remember signing it.

Q. Okay. Did there come a time when Chief Phillips here showed this statement to you again after you had signed it and said, "Is this right"?

A. Yes.

Q. Do you remember when that was?

A. No, not -- I don't recollect what time it was.

Q. Do you remember what month it was?

A. It was -- oh, wait, I don't know if I was still working for Scotty or not. I can't remember right now what time it was.

Q. Could it have been March of 1994?

A. Probably around that time.

Q. Now, Mr. Thomas, your statement has a magic marker line through parts of it. Do you see that?

A. Yes.

Q. Who put that magic marker there, closing out parts of the statement?

A. Officer -- or Chief Phillips.

Q. Why did he do that, do you know?

Carl Thomas - Cross

A. Must have been the parts that I had him change or changed.

Q. You asked him to change parts of it?

A. He just asked me if it was right, and that was then as far as I can remember. I just initialled it.

Q. Are those your initials near the blackouts?

A. Yes, it is.

Q. Did you tell him that there were other sections in that statement that were wrong?

A. Just that part.

Q. Did Chief Nichols (sic) read this whole thing to you?

A. Did Officer Phillips -- or Chief Phillips?

Q. Chief Phillips, I'm sorry, yes.

A. He read it all to me. I told him my reading wasn't very good.

Q. So he read you the whole thing?

A. Mm-mm.

Q. And the sections that are blacked out are the only sections you told him to change?

A. Yes.

MR. STEWART: No further questions.

REDIRECT EXAMINATION

BY MR. HALLEY:

Carl Thomas - Redirect

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Q. Mr. Thomas, do you know Doug Fenzil?

A. No, I don't.

Q. Do you know this individual right here
(indicating)?

A. He came to my office and served the paper.

Q. Do you remember a conversation you had with him
yesterday relating to these petitions and the signing?

A. Yesterday?

Q. Yeah.

A. Not really. We just talked about the weather,
that was about it, and how hot it's been, and my kids were
outside playing in the sprinkler.

Q. When he came to your house, do you recall saying
to him Scott Smith told you that there'd be trouble if you
did not get down to the police station?

A. He just -- Scott never really mentioned anything
about trouble. He just said that I'd better go down and
change -- and talk to Officer Phillips or Chief Phillips
about this statement.

Q. Do you recall saying to Doug Fenzil the last day
or two when he was at your house that Scott Smith
said, "There is going to be trouble," or "Keep yourself out
of trouble?"

A. No.

1 Dean Fountain - Direct

2 Q. What did you tell him Scott Smith said to you?

3 A. Just that Scott said there might be trouble about
4 the petition or whatever, and that was it.

5 Q. Okay. Thank you.

6 MR. STEWART: Nothing more.

7 THE HEARING OFFICER: You're excused.

8 (The witness was excused.)

9 MR. HALLEY: Call Dean Fountain.

10 Dean Fountain,

11 having been called as a witness, being duly sworn, testified
12 as follows:

13 DIRECT EXAMINATION

14 BY MR. HALLEY:

15 Q. How are you currently employed, Officer?

16 A. I'm employed as a police officer with the Malone
17 Village Police Department.

18 Q. How long have you been so employed?

19 A. Since July of '89.

20 Q. Since November of 1993 to approximately May
21 of '93, who was your partner?

22 A. From November of '93 to May of '93?

23 Q. Well, let's say in -- beginning in November of
24 1983, did there come a time and you had a new partner?

25 A. Yes.

1 Dean Fountain - Direct

2 Q. Who was that?

3 A. Officer Nichols.

4 Q. How long was he your partner?

5 A. Probably six months.

6 Q. Did you ever express to anybody in the
7 administration of the police department any complaints about
8 Officer Nichols?

9 A. About working with him?

10 Q. Yeah.

11 A. Yes, I did.

12 Q. What did you say?

13 A. I expressed to Chief Phillips and Assistant Chief
14 Moll the fact that I didn't want to be working with Pat,
15 because I had already had partners assigned to me.

16 Q. Why didn't you want to work with Pat?

17 A. I was nervous from working with Pat because the
18 fact that Pat's going through these problems, and I don't
19 want to be dragged into the middle of it all like I am today.

20 Q. Directing your attention to the evening of
21 March 16th, do you recall having a conversation with Pat and
22 with a Chris Fountain prior to when he was going in for his
23 five-hour questioning?

24 A. Yes, I do.

25 Q. Who was present then the night before?

Dean Fountain - Direct

A. Myself, Sergeant Fountain and Officer Nichols.

Q. Were you asked to go in to the five-hour meeting as Pat's union representative?

A. Yes, I was.

Q. What did you say to that?

A. I expressed my feelings on that, that I didn't want to go into the meeting. Sergeant Fountain had plans and he couldn't make it.

Q. Did Pat ask you why you didn't want to go in?

A. I don't recall.

Q. Do you recall Pat saying to you, "Why don't you want to go in? Can you give me a reason?"

A. Oh, yes, that night in the station with the three of us I was expressing that I didn't want to be brought into the middle of it all. I didn't want any problems with the Chief or the Assistant Chief.

Q. What were you afraid of?

A. I wasn't afraid of anything, actually. At that time I just didn't want any part of this meeting, so I tried to get myself out of the meeting.

Q. Do you recall when you were asked, "Why don't you want to go in," saying words to the effect, "I have a wife and kid?"

A. Yes, I do.

Dean Fountain - Direct

Q. Do you recall, when you were asked to elaborate, saying words to the effect, "You saw what they did to Nichols"?

A. I don't recall saying that.

Q. What do you recall saying?

A. When I mentioned my wife and kids, what I meant was I didn't want them to have to see me go through these hearings, just having it affect them.

Q. Do you recall saying anything about, "I saw what happened to Pat Nichols"?

A. No, I don't recall saying that.

Q. Do you recall making any remark about what happened to Pat Nichols?

A. I don't recall. I'm not saying I didn't. I could have, but I don't recall saying it.

Q. Okay. Thank you.

MR. HALLEY: Nothing further.

CROSS-EXAMINATION

BY MR. STEWART:

Q. Patrolman, do you have an opinion as to what the effect of morale would be if Officer Nichols comes back to work?

A. In our meeting at work, all the officers that were at the meeting, they all expressed their feelings that they

1 Dean Fountain - Redirect

2 didn't want to work with him.

3 MR. STEWART: No further questions.

4 REDIRECT EXAMINATION

5 BY MR. HALLEY:

6 Q. Why don't they want to work with him?

7 A. They all had different reasons. Could have
8 been -- they ranged from Pat being -- taking notes on them,
9 on the guys when they were working. A couple guys threatened
10 to transfer to other departments.

11 Q. Did any of them say that they were afraid of
12 retaliation?

13 A. No.

14 Q. Did anyone say they were afraid of the Chief or
15 the Assistant Chief?

16 A. No.

17 MR. HALLEY: I have nothing further.

18 MR. STEWART: Nothing further.

19 THE HEARING OFFICER: You are excused.

20 (The witness was excused.)

21 Steve Stone,

22 having been called as a witness, being duly sworn, testified
23 as follows:

24 DIRECT EXAMINATION

25 BY MR. HALLEY:

Steve Stone - Direct/Cross

Q. Officer Stone, where are you currently employed?

A. Malone Village Police Department.

Q. How long have you been employed there?

A. Approximately seven years.

Q. Were you Pat Nichols' partner for a length of time?

A. About three to four years.

Q. Did you ever make a personnel complaint against him?

A. No.

Q. Did you recall making a complaint of any kind that you made against him?

A. No.

MR. HALLEY: Nothing further.

CROSS-EXAMINATION

BY MR. STEWART:

Q. Officer Stone, in your opinion, what would the impact on the department's morale be if Officer Nichols comes back to work?

A. I would have to say keep it at a low.

Q. A low?

A. The morale would be low as far as manpower.

MR. STEWART: No further questions.

REDIRECT EXAMINATION

Steve Stone - Redirect

BY MR. HALLEY:

Q. Why is that?

A. A lot of guys don't like working with Pat right now.

Q. Why not?

A. They don't feel that they could trust him.

Q. Why not?

A. I can't speak for everybody. That is just their opinions, that they have been opinionating or saying.

Q. What's your opinion?

A. I have worked with Pat in the past. Right now I prefer not working with him. Before even any of this ever happened, we were having problems communicating. And it's almost like a husband-wife thing, when you start having communication problems, you have got problems.

Q. The question is, sir, do you trust him?

A. Yes.

MR. HALLEY: I have nothing further.

THE HEARING OFFICER: I didn't hear that.

MR. HALLEY: "My question is, do you trust him." Answer: "Yes."

THE HEARING OFFICER: Thank you.

MR. STEWART: No further questions.

(The witness was excused.)

1 Robert Benjamin - Direct

2 Robert Benjamin,

3 having been called as a witness, being duly sworn, testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. HALLEY:

7 Q. Mr. Benjamin, what do you do?

8 A. Real estate business, before that I was with the
9 New York State Police.

10 Q. I take it you are retired from the state police?

11 A. Yes, sir, I did.

12 Q. How long have you known Pat Nichols?

13 A. I would say about six years.

14 Q. Have you known him in his capacity as police
15 officer?

16 A. Yes, that's the only way I knew him, as a police
17 officer, yes.

18 Q. Were you a state trooper when he was a police
19 officer?

20 A. I retired the year he came on the job.

21 Q. Okay. Did you have the occasion to observe him as
22 a police officer?

23 A. Yes, I did.

24 Q. Did you have occasion to observe him in the
25 community?

1 Robert Benjamin - Direct

2 A. Yes, I have.

3 Q. Would you tell us what his reputation is?

4 A. Yeah, I certainly can. He was doing a lot of good
5 things, and he was in the DARE program and he was -- I can
6 remember one instance when he rode a bike from Plattsburgh
7 for some charity. I grew to admire him as a police officer
8 because he was doing so many good things for the community at
9 the time, and the fact that, all of a sudden, the police
10 department was getting respect and I said to my wife several
11 times, I said, "That young man's going to be going places.
12 He's a good police officer." I said, "The kids like him, the
13 community likes him," and my own children used to come home
14 and discuss things they had heard about Pat, and I was
15 impressed with him. I grew interest to admire what he was
16 doing.

17 Q. His reputation as far as telling the truth, do you
18 know what that is?

19 A. I think he's one of the nicest straightforward
20 young men I've met in a long time.

21 Q. How about telling the truth?

22 A. Oh, yes, he's honest, yes.

23 Q. Are you aware of any complaints anybody ever
24 brought against him or told you about?

25 A. Never heard a bad thing about the young man in my

1 Robert Benjamin - Direct

2 life ever.

3 Q. Ever talked to Ed Ritzmann about --

4 A. No.

5 Q. Ever talked to Ed Ritzmann?

6 A. Yes, I have.

7 Q. Do you know what his reputation is?

8 A. Well, I know Ed Ritzmann as a fellow trooper.

9 Q. Do you know what his reputation is? I will make
10 it easy. Could you just say whether it's good, fair or poor?

11 A. I'd say he's got a poor reputation.

12 Q. Thank you.

13 MR. HALLEY: Nothing further.

14 BY MR. HALLEY:

15 Q. I should have asked you, what is his reputation
16 with regard to telling the truth?

17 A. I couldn't say anything about that, sir.

18 MR. HALLEY: Thank you.

19 MR. STEWART: No questions.

20 (The witness was excused.)

21 Richard Brown,

22 having been called as a witness, being duly sworn, testified
23 as follows:

24 DIRECT EXAMINATION

25 BY MR. HALLEY:

Richard Brown - Direct

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Q. Mr. Brown, you currently employed?

A. No, I am not.

Q. I take it you are retired?

A. Yes, I am.

Q. Where did you retire from?

A. Village of Malone.

Q. What was the last position you held in the Village
of Malone?

A. Chief of Police.

Q. Were you the Chief of Police when Pat Nichols was
hired?

A. Yes, I was.

Q. Was he hired on your recommendation?

A. Yes, he was.

Q. How would you describe his performance in office
during the time you were Chief of Police?

A. Good.

Q. Did you ever have occasion to discipline him?

A. Not that I can recall.

Q. Did you ever have a personnel complaint about him?

A. Not that I can recall.

Q. Are you familiar with his reputation in the
community?

A. Fairly well.

Richard Brown - Direct

Q. What is his reputation as far as telling the truth?

A. To my knowledge, it's pretty good.

MR. HALLEY: I have nothing further, sir.

MR. STEWART: No questions.

EXAMINATION BY

THE HEARING OFFICER:

Q. Mr. Brown, how long were you Chief when Patrolman Nichols was on the job? How long did you both work together?

A. I'd have to guess, I'd say about three years.

Q. How long ago did you retire, sir?

A. 1991, September.

Q. September of '91?

A. Yes.

Q. Okay.

THE HEARING OFFICER: Thank you. You're excused.

Ken Cring,

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

DIRECT EXAMINATION

BY MR. HALLEY:

Q. Mr. Cring, where are you currently employed?

1 Ken Cring - Direct

2 A. Franklin Academy Malone High School.

3 Q. Do you know Pat Nichols?

4 A. Very well.

5 Q. How long have you known him?

6 A. Since he was in the second grade.

7 Q. Have you also known him as a police officer?

8 A. Yes, I do.

9 Q. Do you know what his reputation is in the
10 community?

11 A. I think he has an excellent reputation.

12 Q. What is his reputation as far as telling the
13 truth?

14 A. He has always been one to tell the truth.

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

17 A. Yes, sir.

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

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

21 MR. HALLEY: I have nothing further. Thank
22 you.

23 MR. STEWART: I don't have any questions.

24 EXAMINATION BY

25 THE HEARING OFFICER:

John Hardy - Direct

Q. Did you say you were the principal of the school here?

A. No, I'm not that stupid. I just teach up there.

Q. You teach at the high school?

A. Yeah.

Q. Okay. Thank you.

(The witness was excused.)

John Hardy,

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

DIRECT EXAMINATION

BY MR. HALLEY:

Q. Mr. Hardy, where are you currently employed, sir?

A. A.S. Hardy Company.

Q. Okay. Do you know Pat Nichols?

A. Yes, I do.

Q. How do you know him?

A. He was an employee there for approximately four years.

Q. Do you know him also as a police officer?

A. Yes, I do.

Q. Do you know what his reputation is in this community?

A. As far as I know, it's unblemished. It's a good

Betsy Nichols - Direct

record.

Q. What's his reputation as far as telling the truth?

A. My experience is with Pat over four years when he worked with me, there was never any question about the fact he told the truth.

Q. How about since that time?

A. I have no reason to doubt it since then.

MR. HALLEY: Nothing further. Thank you.

MR. STEWART: I don't have any questions.

(The witness was excused.)

Betsy Nichols,

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

DIRECT EXAMINATION

BY MR. HALLEY:

Q. Betsy, you are Pat Nichols' wife?

A. Yes, sir.

Q. Did you circulate some petitions in his behalf?

A. I certainly did.

Q. Was that the petitions which we have previously sign marked as --

A. Yeah, these (indicating).

Q. -- Exhibit Number Six?

A. Yes, sir.

1 Betsy Nichols - Direct

2 Q. There has been some testimony about the petition
3 being in a certain motor vehicle that Pat took over to
4 Smith's Repair and Towing.

5 A. Yes, sir.

6 Q. Do you know why that vehicle was brought over
7 there?

8 A. I don't know which parts were bad, but it died at
9 Hallmart and we had Scott Smith look at it. We took it to
10 Scott and had him look at it.

11 Q. How was it he took it?

12 A. Because he had to take me to work. I had to be to
13 work, so he left me at work with the truck and walked over to
14 Scott Smith's.

15 Q. Okay. And whose vehicle was it?

16 A. It's considered my vehicle.

17 Q. The one you commonly use?

18 A. Yes.

19 Q. Was it the one you used when you were circulating
20 the petitions?

21 A. Yes.

22 Q. Were there petitions in that vehicle?

23 A. Yes.

24 Q. How did they get there?

25 A. I put them there. I carried them with me

1 Patrick Nichols - Direct
2 everywhere.

3 MR. HALLEY: Nothing further.

4 MR. STEWART: I don't have any questions.

5 THE HEARING OFFICER: No questions. You're
6 excused.

7 MR. HALLEY: Could we have two minutes,
8 Your Honor?

9 THE HEARING OFFICER: Sure.

10 (A brief recess was taken.)

11 MR. HALLEY: Call Officer Nichols.

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

15 DIRECT EXAMINATION

16 BY MR. HALLEY:

17 Q. Officer Nichols, your current address, please?

18 A. 146 Webster Street, Malone.

19 Q. Are you still employed by the Village of Malone
20 Police Department, besides your suspension?

21 A. Yes, I am.

22 Q. Did you have a copy of the charges there?

23 A. Yes.

24 Q. Directing your attention to that charge which
25 relates to the circulating of petitions, did there come a

1 Patrick Nichols - Direct

2 time in early September of 1993 when you took what's been
3 identified as your wife's car to Smith's Repairs?

4 A. Yes.

5 Q. Why did you bring it there?

6 A. It had broken down.

7 Q. Basically, did she ask you to take it there for
8 repairs?

9 A. Well, Scott has been doing work for us. That's
10 where we go. She didn't ask me.

11 Q. Had you driven that car recently before you
12 brought it there that you recall?

13 A. Had I driven it?

14 Q. Yeah.

15 A. Probably. I don't generally drive it, but
16 occasionally.

17 Q. What happened when you got to Scott Smith's
18 Towing?

19 A. I'm not certain the first time I went. I went to
20 tell them the car had broken down. They had to tow it down
21 there.

22 Q. Okay. Did there come a time when you got to
23 Scott Smith's Towing and became involved with what we're
24 talking about as petitions?

25 A. Yes.

Patrick Nichols - Direct

Q. What's the first thing you recall about noticing the petitions that day?

A. Just the fact they were drawn to my attention during a conversation with employees at the garage.

Q. Who drew it to your attention?

A. I'm not certain which individual it was.

Q. Do you recall how the attention was drawn?

A. Somebody pointed out to me that they'd seen it in the car.

Q. What did you do when it was pointed out?

A. I don't really remember after that.

Q. Did there come a time when Scott Smith signed the petition?

A. Yes.

Q. How did that happen?

A. As a result of the conversation about the previous suspension or at that time of the suspension and then discussion on the petitions that were in the car.

Q. Who asked who to sign the petition?

A. Again, I don't recall the specifics on how the petition got signed, but it was during a conversation that we had.

Q. Did Scott Smith sign?

A. Yes.

Patrick Nichols - Direct

Q. Did there come a time when Ed Ritzmann was called over to the area?

A. Yes, there was.

Q. How did that happen?

A. I was standing over by the car at that time speaking with one of Scott's employees. They were trying to determine what was wrong with the car.

Q. Which employee, do you remember?

A. I don't recall that, either; it wasn't Scott.

Q. Okay.

A. It was one of the other two, and as we were talking, Scott Smith yelled out, "There's a man that'll sign that," and I looked back at Scott to see what he was referring to, and he was pointing to Ed Ritzmann, who was walking from the back of the garage towards me.

Q. And what happened?

A. I just turned around and looked over towards the car. He had came up and said, "What is that you've got," and that's when I showed him what it was.

Q. You showed him?

A. Yes.

Q. Did you ask him to sign it?

A. No, I didn't.

Q. Mr. Ritzmann has testified that you approached him

1 Patrick Nichols - Direct

2 and asked him to -- specifically asked him to sign the
3 petition. Is he telling the truth?

4 A. No, he's not telling the truth.

5 Q. You are sure?

6 A. Absolutely, a hundred percent.

7 Q. In your opinion, sir, he's lied under oath?

8 A. Yes, he has.

9 Q. How did Dale Lamitie sign the petition?

10 A. I don't recall that, either, him or Carl Thomas.
11 Again, there was discussion as to the petition being in the
12 car and my suspension, and during that they signed it.

13 Q. You gave testimony relating to all these petitions
14 matters. I want to get into that. First, let's talk about
15 how that happened. You were notified by the Chief of Police
16 you were supposed to come see him?

17 A. Right.

18 Q. That's the memo that was dated approximately
19 March 8th?

20 A. That would be about the time, yes.

21 Q. Who gave you that memo?

22 A. Assistant Chief Moll.

23 Q. What did he say to you?

24 A. He handed it to me as he called me back to the
25 station. I was out on patrol to about midnight on a shift,

1 Patrick Nichols - Direct

2 and he handed it to me in a sealed envelope with my name on
3 it and says, "Here, the Chief wanted me to give you this."

4 Q. What did you do?

5 A. I went back out on patrol and opened it up and
6 read it, and it was an order to report on March 17th at 10:00
7 for an interview.

8 Q. Did you report?

9 A. Yes, I did.

10 Q. Who was present when you entered?

11 A. Chief Phillips, Assistant Chief Moll, a
12 stenographer, and union vice president Dean Fountain,
13 Patrolman Fountain.

14 Q. The memo of March 8th from the Chief
15 indicates, "I'd like to discuss a few items with you." Did
16 they, in fact, discuss a few items with you?

17 A. Yes, they did.

18 Q. How long was this questioning?

19 A. Four hours and 50 minutes, if I recall correctly.

20 Q. Where did this take place?

21 A. In the Chief's office at the police station.

22 Q. Who was present, anybody else, besides whom you
23 just mentioned during the entire four hours and 50 minutes?

24 A. No.

25 Q. Were you permitted to make any phone calls?

1 Patrick Nichols - Direct

2 A. Well, I didn't ask, but when I was on break, I
3 made phone calls.

4 Q. Were you read any rights before being asked
5 questions?

6 A. No.

7 Q. Do you know what Miranda rights are?

8 A. Yes, I do.

9 Q. Were you read them?

10 A. No.

11 Q. Were you read any other types of rights? Anybody
12 say anything like, "Anything you say can be held against
13 you?"

14 A. No, not that I recall.

15 Q. Well, anybody advise you as to what might happen
16 in this interview as a result of this interview?

17 A. No.

18 Q. Who did most of the questioning?

19 A. Assistant Chief Moll and Chief Phillips took turns
20 doing the questioning. It's hard to say who asked me most of
21 the questions, but it was the two of them.

22 Q. What did they ask you about?

23 A. Well, they asked me to try to explain why I wrote
24 more people that lived out of the Town of Malone than the
25 people that live in the Town of Malone traffic tickets.

Patrick Nichols - Direct

They asked me why I chose to eat breakfast at Tessie's Diner. They asked me why I was at Tessie's Diner the morning following receiving that note from Assistant Chief Moll to appear at that meeting. They asked me why I was at Tessie's that following morning, which I wasn't. They asked me about the petitions, my involvement in the petitions, asked me quite a few questions on the garage incident, Smith's garage. They asked me about an incident that was discussed earlier in someone's testimony about a traffic stop that was made outside the village, which started in the village.

They asked me about the Alco-Sensor tube that was thrown on the ground regarding another fellow officer. That's just several that come to mind immediately.

Q. There was a number of incidents Chief Phillips spoke about during his Direct testimony that I specifically objected to as not being in the charges, but those incidents, were all of them discussed during the course of this interrogation?

A. From what I recall earlier, yes.

Q. Did you answer all the questions?

A. Yes, I did.

Q. This interrogation took place when?

A. March 17th.

Q. You were subsequently served with disciplinary

1 Patrick Nichols - Direct

2 charges, correct?

3 A. Yes, on May 3rd I believe is the date that I
4 got -- received the charges.

5 Q. Did anything in the disciplinary charges relate,
6 mention or speak about all these other incidents the Chief
7 commented about earlier today?

8 A. No, no.

9 Q. You had told him during the course of this
10 interrogation what happened and here's my response; is that
11 rights?

12 A. Right.

13 Q. Why were they concerned about how many tickets you
14 issued?

15 A. They asked me at one point if I felt it was
16 because of my being elected Town Councilman, that did I feel
17 that because of that, that may have some sort of an effect on
18 as to who I chose to write tickets to.

19 Q. How did they know how many tickets you wrote and
20 who you wrote them to?

21 A. Assistant Chief Moll presented to me a number of
22 NYSPIN, which is the New York State Police Information
23 Network computer -- when you pull a vehicle over, you can run
24 the license plate of a vehicle through it. It sends up what
25 we refer to as a data, which is a sheet of paper that comes

Patrick Nichols - Direct

off the printer and gives you information regarding the vehicle, the owner of the vehicle, things like that. He presented to me during this hearing a number of those with markings that he had made on them, and that's what he was referring to, even asked me to look at a few of them.

Q. Do I understand he kept track of every ticket you issued over a particular period of time?

A. As far as the tickets, yes, he said that they kept specifics, they kept statistics as to percentages on how many people out of town versus percentages of people in town.

While we're on the subject, he also asked something about if I felt I was giving Republicans more of a break than I was Democrats. This was what the traffic information was that we just --

Q. What does it have to do with law enforcement?

A. No relevancy, and I wasn't certain at that time, either.

Q. Okay. Are you familiar -- has anyone told you that the Assistant Chief was doing a large-scale investigation on you heading outside the jurisdiction of the Village of Malone?

A. Had anyone told me that was going on?

Q. Yes.

A. I knew about the questioning period out in

Patrick Nichols - Direct

Bombay. I was familiar with that after that happened.

Q. What did you know about that?

A. Jamie Durant, who happens to be very good friends with my wife and I, notified us.

Q. What did he say happened?

A. He told me that when he had gone down, his father told him Sergeant Ritchie had been looking for him, and then after a short time, we received a phone call or he had called the station -- I'm not certain as to which way the phone call went -- inquiring as to the reason he was being looked for in Bombay. And he told me that he had spoken with the Chief and the Chief wanted to speak to him about a matter. Jamie advised the Chief that he couldn't come to Malone at that time, but that he lived in the village and he'd be glad to speak to him when he was back in the Village of Malone. And he said that Chief Phillips had made it very clear to him it was very urgent and agreed to send somebody down to Bombay to speak to him about the matter.

Q. Did you find out what they discussed, what happened?

A. Yes. He told me that Assistant Chief Moll and Juvenile Aid Officer Reyome had arrived at his garage and asked him questions about the petitions that were being circulated and as to comments that I may have made to Durant

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Patrick Nichols - Direct

in the previous days regarding my suspension at the
department.

Q. Anything else about that matter?

A. Not that comes to mind.

Q. How many years have you been a police officer in
Malone?

A. Six years tomorrow.

Q. How frequently does somebody leave the village and
travel 20 miles to perform any kind of investigation?

A. In my time there I have never, unless Detective
Fleury -- who's been a detective for a couple years -- unless
he does it, but I have never known it to happen.

Q. During the six years that you have been employed
by the Village of Malone Police Department, is there a
process or procedure as to who gets all the towing calls if
the police need something to be towed?

A. Not really. There is no written procedure as to
who is called and when to call.

Q. Have you ever known anyone to get a towing call
during those six years, except for Scott Smith?

A. Occasionally.

Q. What percentage does Scott Smith get?

A. Well, based on when I'm working, I would say --

Q. Only from your personal knowledge.

1 Patrick Nichols - Direct

2 A. Right, right, situations where I have required or
3 requested a tow, over 90 percent of the tows.

4 Q. After the meeting of March 17th, did there come a
5 time when Assistant Chief Moll spoke to you about removing
6 personal items from your locker?

7 A. Yes.

8 Q. When did that take place?

9 A. That was immediately following notification from
10 the Chief of Police, and that was on March 17th, a couple of
11 hours after the meeting ended. He had returned from his
12 meeting with the Mayor.

13 Q. Who had returned from his meeting with the Mayor?

14 A. The Chief and Assistant Chief Moll.

15 Q. They met with the Mayor for about two hours?

16 A. It was close to a couple hours from the time the
17 meeting ended.

18 Q. They came back and then what happened?

19 A. The Chief advised me to remove -- once he gave me
20 the charges and told me I was suspended until further
21 notice, he advised me to remove my personal effects from my
22 locker. He had Assistant Chief Moll and Detective Fleury
23 accompany me to the locker room. I requested to use a
24 plastic -- clear plastic garbage bag to put my items in, and
25 when I was removing items from the locker that I felt were my

Patrick Nichols - Direct

items, my personal things, Assistant Chief Moll told me that -- first he asked me what those item were, and I said, "Well, those are my personal memos and my copies of the traffic tickets that I have written," which an officer uses those if he ever has to appear in traffic court. He said, "Well, you are not taking those," and I said, "Yes, I am, they're mine," and as I was putting them into the bag, he grabbed a hold of my right arm with his left hand and then pulled the items out of my hand with his right hand. And at that point I just said, "Well, I'd like to go speak to the Chief about this."

Q. Did you get a chance to speak to the Chief?

A. Yeah, I did, and I ended up leaving with my two locks; that was it.

Q. Since your reinstatement, has Officer Moll ever brought to your -- I'm sorry, Assistant Chief Moll ever brought to your attention or claimed you have been violating rules and regulations in the department?

A. I got a memo from him once that was in reference to an evaluation that all the officers received, and I'm guessing it was around the end of January or February, in that time frame. And his memo was that I received a low evaluation and that if that was to happen again, that I could be facing more disciplinary action.

Patrick Nichols - Direct

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Q. Who did the evaluation?

A. The four supervisors -- I should say sergeants, Detective Sergeant Fleury, Sergeant Marlow, Sergeant Ritchie and Sergeant Chris Fountain.

Q. Did you ever talk to Sergeant Marlow about your job performance?

A. Yes.

Q. When?

A. It was around the time the evaluations were taking place. The Sergeant had different time frames that they were completing them, so they randomly would speak to the officers, and shortly after the fact, after the time that they were started in the locker room, we had a discussion on it.

Q. What was the discussion?

A. Sergeant Marlow pointed out to me that the areas that he scored me low in were a direct result of previous suspensions and he had no control over his ratings on that; that these were very specific categories and that you had a one, I believe, a one through eight scoring or something to that effect, and he had to score me low because of those categories being very, very low; for example, every person that has ever been suspended or disciplined for whatever reason. That's why he scored me low in those areas. And

Patrick Nichols - Direct

when he was concluding his interview with me or whenever those evaluations were done, he did state to me -- he said that, "I'm going to tell you this: Ever since you ever returned, you have been an exemplary officer, and I will tell anybody that asks me that."

Q. When did he say that?

A. This was during the interview with the evaluation.

Q. January, February?

A. Right.

Q. Of this year?

A. Right.

Q. Did Assistant Chief Moll have Sergeant Ritchie counsel you about anything?

A. Yes.

Q. What was that?

A. That was -- I'm not sure on the time, but that was alluded to earlier in, I believe, the Chief's testimony in regards to having a weapon on my belt at the time of fingerprinting someone. It was immediately following the fingerprinting process that Sergeant Ritchie asked or, actually, Assistant Chief Moll told me that Sergeant Ritchie wanted to speak to me. I spoke with Sergeant Ritchie, he asked me if I was aware of the department policy regarding the removing of a firearm while you're fingerprinting, and I

1 Patrick Nichols - Direct

2 looked at him with doubt, and I just said, "Well, if you say
3 so." And he emptied my gun, loaded it back up and gave it to
4 me, and he said, "Okay, from now on, do that."

5 The following evening when he came to work,
6 Sergeant Ritchie approached me and he said -- he said, "I
7 just want you to know that I was ordered to ask you if --"
8 you know, "I was ordered to speak to you about that," in that
9 same evening.

10 Q. Did he say who ordered him?

11 A. No, he didn't, he just said, "I was ordered to do
12 that," and that same evening I looked up in the department
13 rules and regulations, and there is no department rule or
14 regulation requiring you to remove your firearm from your
15 belt during that process.

16 Q. What is the rule?

17 A. There is nothing in writing.

18 Q. Since you have come back to the force, have you
19 been patrolling without partners?

20 A. Yes.

21 Q. How frequently is somebody patrolling without
22 partners when you are on duty?

23 A. Usually when I'm on duty.

24 Q. What has happened to other officers while you are
25 on duty without a partner?

1 Patrick Nichols - Direct

2 A. Well, they were either in another vehicle by
3 themselves, or if there are three men out, there were two
4 people in another car.

5 Q. Did you ever get two people your car?

6 A. Yes, whenever I worked with Sergeant Marlow.

7 Q. Aside from that?

8 A. Occasionally, Sergeant Fountain would split people
9 up and have them take turns riding with each other.

10 Q. Could you give me an idea when it was that you
11 were directed or set up so you would patrol without a
12 partner?

13 A. Right when I came back from work I was usually
14 without a partner.

15 Q. Under whose direction were you?

16 A. Usually the supervisor, whoever the supervisor is
17 would determine who rides with who and when --

18 Q. Okay.

19 A. -- of that nature.

20 Q. There has been testimony relating to you making a
21 statement to Channel 5 news about the DARE program. Remember
22 that incident?

23 A. Yes.

24 Q. Do you remember Mayor Feeley calling you ahead of
25 time?

Patrick Nichols - Direct

A. Yes, I do.

Q. What did he tell you?

A. He reminded me that I was still a police officer and that I still had to abide by the department rules and regulations, and he referred to one specific rule that related to speaking to the media.

Q. Prior to this incident with Channel 5 news, had you been the DARE officer?

A. Yes.

Q. For how long?

A. Two years.

Q. During those two years, how many times did you make public statements to the media, the press, to the TV regarding the DARE program?

A. A number of times, I can't be exact, but whenever I was approached by the press.

Q. More than five or six?

A. Oh, yeah.

Q. More than a dozen?

A. Probably.

Q. What was the statement you made to Channel 5 news? What was it about?

A. It was about the DARE program, how long I had been teaching, you know, what the DARE program lessons were.

Patrick Nichols - Cross

Q. Was the content of the statement you made to Channel 5 news about the DARE program any different than the other dozen or so statements you have made about the DARE program to the media over the past three years?

A. No.

Q. Did you reveal anything confidential about the police department?

A. There is nothing confidential about the DARE program, no.

Q. During your five-hour interrogation, Pat, did you answer all the questions fully to the best of your knowledge?

A. Yes, I did.

MR. HALLEY: I have nothing further.

CROSS-EXAMINATION

BY MR. STEWART:

Q. Officer Nichols, you said that Ed Ritzmann lied?

A. Yes.

Q. Did Carl Thomas lie, too?

A. I can't say he did or he didn't, because I have testified that I don't particularly recall the exact discussion with Thomas or the other two employees at the garage.

Q. So it's possible that the content of his statement, which is in evidence, could be true?

1 Patrick Nichols - Cross

2 A. Again, I can't say it is or it isn't.

3 Q. Is it possible that it could be true?

4 A. Since I don't know for sure, I suppose it could be
5 possible.

6 THE HEARING OFFICER: Mr. Stewart, could you
7 just speak up a little bit? With the background,
8 I don't know about the stenographer, but it's
9 difficult for me to hear.

10 MR. STEWART: My question was, was it
11 possible that Mr. Thomas' statement, which is in
12 evidence, his written statement, was true, is it
13 possible that it's true, and I believe the answer
14 was, I believe, "It's possible it's true."

15 BY MR. STEWART:

16 Q. My next question, is it your testimony that
17 Scott Smith lied today?

18 A. What are you asking, did he lie?

19 Q. Did you hear him testify earlier today?

20 A. Yes.

21 Q. Did he lie?

22 A. Yes.

23 Q. Did you hear -- well, strike that. You made a
24 comment that you were asked a question during this
25 questioning session about Republican tickets versus

Patrick Nichols - Cross

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Democratic tickets?

A. No, that's not what I said.

Q. What did you say?

A. I said there was reference to me giving breaks to certain Republicans and that -- you want to know who that was?

Q. Yeah.

A. Jason Ellis, who was Rick Ellis' son.

Q. And that was asked in the transcript?

A. I was asked if my party affiliation, something to that effect, had anything to do with my judgment in issuing tickets, and then when he got onto Ellis, when they were talking about Jason Ellis and giving him a break, or possibly it was alleged that I may have given him a break, they asked me if I knew Rick Ellis, who was Jason Ellis' father, and I said yes. Then they asked me if I was Republican Town Chairman, and I said yes.

Q. You mentioned Mr. Durant. I forget his first name.

A. Jamie.

Q. Where is he today?

A. He was advised that he wasn't going to be able to be here because he didn't get a subpoena in time. That was coming from his employer.

Patrick Nichols - Cross

Q. Now, you testified about something Sergeant Marlow told you. Where is Sergeant Marlow today?

A. Sergeant Marlow got a subpoena. I don't know where he is today.

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

A. Yes.

Q. Can you describe that for me?

A. Yes. I received a basic municipal police training when I first came on sometime in 1989. I think it was the winter of 1989, '88, '89. I also took radar/breathalyzer training, two weeks of DARE instructors training, and NYSPIN training.

Q. Who gave the basic municipal police training?

A. Who gave it to me?

Q. Yes. You remember the instructor's name?

A. Oh, yes, I do, Teeple, Mr. Teeple.

Q. Did you ever take a course on law enforcement with Garth Griffin in 1989?

A. That is possible.

Q. Do you recall?

A. You'd have to tell me who Garth Griffin is.

Q. I'm not sure I know. Do you know?

A. I don't know. We had a lot of instructors. I'm

Patrick Nichols - Cross

1
2 not really certain.

3 Q. Do you recall taking a course on history and
4 philosophy of law enforcement?

5 A. That could have been discussed.

6 Q. Do you recall taking notes during the course,
7 during the progress of that course?

8 A. Right, yes, many notes.

9 Q. Do you recall being advised during the progress of
10 that course that an officer, when fingerprinting someone,
11 must always disarm themselves?

12 A. Not to be exact, no.

13 Q. Is it possible that you were taught that and you
14 have forgotten it?

15 A. It could be a possibility.

16 Q. Now, on this telephone conversation you had with
17 the Mayor just before you interviewed with Channel 5, in
18 fact, he referred you to the police department 11.5, didn't
19 he?

20 A. That could be the one. I think it's in here.

21 Q. Do you recall?

22 A. Yes.

23 Q. And was it 11.5 that he referred you to?

24 A. It very well could have been. It refers to not
25 speaking about confidential or official business of the

Patrick Nichols - Cross

police department.

Q. After you got done that telephone conversation, did you go and reread section 11.5?

A. I'm very familiar with the section. I did not reread it.

Q. What does it tell you?

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." (reading)

Q. Is there more? Does it go on to say without permission? Is there more to the rule?

A. Not here, it doesn't say that.

Q. You said you were familiar with the rule?

A. Right.

Q. Does it say that?

A. No.

Q. The rule doesn't say that?

A. It's right there.

Q. Let me refresh your recollection. We have a copy of the rules here somewhere. Would you turn to 11.5 and read it?

Patrick Nichols - Cross

A. Yes. Read this one, too (indicating)?

Q. No, 11.5.

A. We have two different rules here. "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." (reading)

Q. You were familiar with that rule?

A. Yes, I am, but we have two different 11.5's here, as well.

Q. Were you familiar with the rule at the time that the Chief called you?

A. Yes. It wasn't the Chief that called me, it was the Mayor.

Q. Excuse me, I'm sorry. Did you go back and reread the rule at that point?

A. No, I did not.

Q. Did you, in fact, talk to somebody from Channel 5?

A. Yes, as directed.

Q. Excuse me?

A. As directed.

Patrick Nichols - Cross

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Q. By?

A. My counsel.

Q. Did the Mayor give you permission to speak to Channel 5?

A. No.

Q. At this period of time, isn't it true that you had just been found guilty of numerous violations of the police department rules and regulations?

A. I'm not certain if that's the right time frame.

Q. When did this happen?

A. Well, yes, to answer your first question, yes.

Q. So you had just been found guilty of violations of departmental rules?

A. Right.

Q. Isn't it true that you took the opportunity to go on TV and talk about the DARE program and use the DARE program in an effort to rehabilitate your own personal reputation?

A. Could you ask that again?

(The pending question was read by the court reporter.)

A. No.

MR. STEWART: I don't have any further questions.

Patrick Nichols - Redirect

MR. HALLEY: I have more.

REDIRECT EXAMINATION

BY MR. HALLEY:

Q. When the Mayor called you October 21, 1993 relating to Channel 5, did he specifically say to you, "You are forbidden to make a statement"?

A. No.

Q. Now, you have presently been the DARE officer, right?

A. Right.

Q. And you previously testified that lots of times you'd make public statements about the DARE program?

A. Right.

Q. Who told you to do that?

A. I would say when I took on the DARE program, it was during Chief Brown -- when he was still the Chief -- and that was just something as public relations, we did anything we could for the DARE program.

Q. Am I correct one of the factors of your job as DARE officer was public relations?

A. Correct.

Q. Chief Brown told you that?

A. I can't recall specifically if he said that, but it was enforced by Chief Brown to do what we could do for the

Patrick Nichols - Redirect

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DARE program.

Q. Again, was the comment that you made to Channel 5 on that day any different in nature or content than the types of comments you previously made when you first became the DARE officer?

A. No, no.

Q. You were asked where Jamie Durant is, and you said he couldn't come?

A. Well, his employer told him that he got his subpoena late and that he couldn't let him go.

Q. Do you know who his employer is?

A. Rick Ellis.

Q. Who is Rick Ellis?

A. He owns Rick Ellis Ford out in Bombay or Fort Covington. I advised Jamie not to put his job in jeopardy.

Q. That's what I was going to say: what did you tell him when he told you that.

MR. HALLEY: I have nothing further.

MR. STEWART: Can I have just a moment, Your Honor?

THE HEARING OFFICER: Sure. Let's take about a two-minute recess.

(A brief recess was taken.)

THE HEARING OFFICER: Are we ready, Counsel?

Patrick Nichols - Recross

MR. STEWART: Yes.

MR. HALLEY: Yes.

THE HEARING OFFICER: Okay.

RE CROSS-EXAMINATION

BY MR. STEWART:

Q. Officer Nichols, referring again to the conversation you had with the Mayor prior to speaking with Channel 5, was there any question in your mind that the Mayor did not want you to speak to the television reporters?

A. I could tell he didn't want me to when he called me.

Q. Let me just get this straight. You did or did not refer to rule 11.5 after the Mayor got off the phone with you?

A. I don't believe I did. I don't recall doing it.

Q. Is it possible that you did?

A. I suppose it could be, but again, if I don't recall doing it, then I suppose it could be possible.

Q. Well, isn't it true that in March when you were questioned in front of the stenographer you did recall and you said that, "I did review that rule prior to speaking with Channel 5?"

A. It's true that in March I could have recalled it then.

Patrick Nichols - Recross

Q. Well, would you turn to page 130 of the transcript in front of you and read the sentence, comments on line 9 and ends on line 10.

A. "I got these rules at home, so I referred to it, yeah." (reading)

MR. STEWART: No further questions.

FURTHER REDIRECT EXAMINATION

BY MR. HALLEY:

Q. Aside from what was in your mind, Pat, you said you didn't think the Mayor wanted you to talk to Channel 5. Did he specifically order you not to talk to Channel 5?

A. No.

MR. HALLEY: Nothing further.

EXAMINATION BY

THE HEARING OFFICER:

Q. I just want to clear up a couple things. Your performance ratings are yearly ratings that you get?

A. As far as the evaluations?

Q. Yes.

A. I have been there six years, and I believe this is either the second or third evaluation, and it was actually, from what I recall, it was the first evaluation I had received since Chief Brown had retired, that I can recall.

Q. So as far as you're concerned, that's the first

1 Patrick Nichols - by the Hearing Officer
2 evaluation you had ever gotten since you have been on the
3 job?

4 A. I had one or two in my first couple of years, and
5 the last one that I recall is the one I returned to after my
6 suspension.

7 Q. The TV interview that you had that the Mayor
8 called you prior to having it and suggested that you should
9 read the rules and regulations --

10 A. Mm-mm.

11 Q. -- how did this interview come about? Who
12 contacted who?

13 A. To the best of my knowledge, from what I recall,
14 Tim Dodd had notified me -- he's the reporter from Channel
15 5 -- requesting an interview. And at that time, I was aware
16 of what I could say and what I couldn't say. And I advised
17 him of that and he said, "Well, it's up to you." He
18 said, "Well, I'm coming to Malone, anyways. If you don't
19 mind, I'd like to stop." "No problem, I will check with my
20 counsel in the meantime." That's what that conversation
21 was. Then I received shortly after that a call from the
22 Mayor, which consisted of what I testified to already. And
23 immediately after that, I contacted my attorney and let him
24 know the situation. When Tim Dodd arrived at my house, I
25 called my attorney again to let him know that he was there.

1 Patrick Nichols - by the Hearing Officer

2 Q. Your attorney, this gentleman here today
3 representing you?

4 A. Right.

5 Q. What did your attorney say?

6 A. Not to speak about any of the case, the
7 suspension.

8 Q. Why did you think that Channel 5 wanted to talk to
9 you, was it just on DARE?

10 A. I believe it probably was because of the
11 suspension, but I didn't go into any of the --

12 Q. There was no discussion about your suspension?

13 A. Actually, no. I told them I just wouldn't do it.

14 Q. The chain of command in the village, the police
15 department, for example, what is your chain of command? How
16 does it run? Who is your first-line supervisor?

17 A. Well, whoever your immediate supervisor would be
18 on that particular shift.

19 Q. A Sergeant usually?

20 A. Generally, yes.

21 Q. And then the next up from the Sergeant --

22 A. Would be the Assistant Chief.

23 Q. Moll?

24 A. Right.

25 Q. And then the Chief?

1 Patrick Nichols - by the Hearing Officer

2 A. And then the Chief, yeah.

3 Q. Does the Mayor outrank the Chief?

4 A. That question I couldn't answer.

5 Q. Do you feel he does or not? Do you feel he has
6 more authority in the department than the Chief does?

7 A. According to the rules and regs., the Police
8 Committee governs the police department, not the Mayor.

9 Q. Not the Mayor, okay.

10 THE HEARING OFFICER: I have no further
11 questions.

12 MR. HALLEY: I have no further questions.

13 MR. STEWART: No further questions.

14 THE HEARING OFFICER: Closing remarks?

15 MR. STEWART: We have proven the charges.
16 Statements were made to the media that had a
17 devastating impact on morale. The statements were
18 derogatory. They did violate the rules, and I
19 think that that's bad.

20 If that were all that happened, we might not
21 be here today. He also did circulate the
22 petitions and asked people to sign them, and his
23 own witness that he called testified to that.

24 I think that's bad, and it does violate the
25 rules. If that were all that happened, we might

1 Closing Statements - by Mr. Stewart
2 not be here today. The reason we're here is
3 because, in addition to doing all that, Officer
4 Nichols got questioned under oath as to various
5 problems, and he was specifically asked questions
6 about circulating the petition, and he did not
7 tell the truth. Witnesses here indicate that he
8 did not tell the truth. And I think a fair
9 reading of all the witnesses today indicates that
10 Officer Nichols did not tell the truth today.

11 An officer who does not tell the truth and,
12 in particular, an officer who does not tell the
13 truth under oath, is absolutely unacceptable and
14 creates a tremendous risk to the village, both
15 monetarily and, more important, I think, creates a
16 tremendous risk to the criminal justice system, as
17 well.

18 If you can't believe a cop, who can you
19 believe? Thank you.

20 THE HEARING OFFICER: Mr. Halley.

21 MR. HALLEY: Thank you, Your Honor. I
22 indicated in my opening statement and I will
23 indicate again, Pat Nichols is viewed as a
24 threat. I can understand the Chief of Police and
25 the Assistant Chief and Mayor don't want somebody

Closing Statements - by Mr. Halley

questioning their tactics. I can understand the Chief of Police and the Assistant Chief and the Mayor wanting to shut him up. They're worried about the Republicans. That's fine, but fight that out in the ball park. They're worried about somebody making statements to the press. That's fine, worry about it, but you fight that out in the court of public opinion. You don't bring somebody up on these charges.

He's got a first amendment right, absolute right to say what he said and do what he did. He's got an absolute right under the Constitution to be given rights before he is interrogated for five hours by his primary accusers. I will provide a brief to that extent. I won't give you the law right now, sir.

He did not do anything wrong. He answered all the questions truthfully. What you have here, at best, is a conflict as to what happened, who said what and how it was said. If you look at the four people he's alleged to have asked to sign the petition, I don't know what happened, because all four of them gave different stories. They contradicted themselves; they contradicted each

Closing Statements - by Mr. Halley

other.

What's going on here, again, as I said, is an attempt, because it didn't succeed before, to get rid of Pat Nichols because Pat Nichols has something over the hierarchy of the police department and this village.

He has brought charges. The FBI has investigated; the Civil Department of the Division of Criminal Justice has investigated. Things are getting hotter and hotter. They don't like that. I can understand you don't like being

investigated. I can understand you don't like being accused of criminal activity, but what you don't do is what you're doing to this man.

If the District Attorney doesn't want to prosecute, let him say that. Don't make an excuse that the FBI is involved or the Department of Justice is involved. If they don't like Pat Nichols because of what he says, then again, fight it out in the press, in the media, whatever. This is all political. But you don't bring somebody up on Civil Service charges and try to destroy his livelihood.

What sense does it make to destroy probably

Closing Statements - by Mr. Halley

the best officer this village has or has had, and that comes from everybody in this community who knows who he is. And I would suggest that a few people are concerned about their own livelihoods, their political futures, and Pat Nichols is standing in their way. The rest of this community, and hopefully the Village Board, understands what he means to this community, understands how his rights have been violated, and they don't want to see him go.

If he is guilty of anything, he's guilty of being a good cop. There is nothing wrong with that. I would ask you to keep him as a good cop. Thank you.

THE HEARING OFFICER: This meeting is closed. This hearing is closed. How long before we can have the transcript, ten days? All right. I will render my decision probably within two weeks of the time I get the transcript.

MR. HALLEY: To be clear, I would like to have the opportunity to provide you with a brief and legal arguments prior to your rendering a decision. You may either give me a fixed date now or notify when you have the transcript or

1 Closing Statements - by Mr. Halley
2 whatever. If you want me to respond in two weeks,
3 I will be happy to do that. If you want me to
4 wait until you get the transcript, I can do that.

5 THE HEARING OFFICER: Do you have any
6 objection?

7 MR. STEWART: I don't have an objection. I'm
8 not sure what the legal issue at stake is.

9 THE HEARING OFFICER: I'm not sure, either.
10 I will be in contact. Leave me your card today
11 before you leave and we'll be in touch.

12 MR. HALLEY: You will be in touch with me
13 before there is a decision rendered?

14 THE HEARING OFFICER: Yes, I will, one way or
15 the other, but at least I will be in touch with
16 you.

17 MR. HALLEY: I understand.

18 THE HEARING OFFICER: Thank you.

19 MR. HALLEY: Thank you.

20 (The hearing concluded at 3:59 p.m.)

21 * * * * *

22

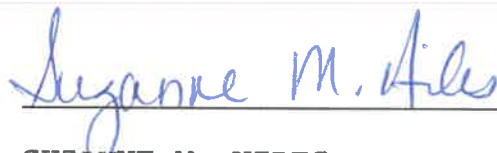
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C E R T I F I C A T E

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



SUZANNE M. NILES

Court Reporter, Notary Public

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