

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

November 3, 1993

Ms. Betzy Nichols
146 Webster Street
Malone, New York 12953

Dear Ms. Nichols:

I am in receipt of a letter from your husband, dated October 27, 1993, that is a response to an order, to him, outlined in a letter to his attorney on October 22, 1993.


In that letter he was ordered to make a written report detailing information he had that certain members of the Malone Police Department were told how to testify or that they were forced to testify in a certain way at a Civil Service Hearing on September 16, 1993, Village of Malone v. Patrick Nichols.

In that letter he stressed that his information was "strictly hearsay" and named you as his source, as an officer had spoken to you about these allegations.

In order for an investigation to be undertaken, it will be necessary for you to name the officer who spoke to you so that appropriate statements can be taken.

Please provide a notarized statement to this department by November 17, 1993, detailing the allegations outlined in your husband's letter, so a proper investigation can be undertaken.

Very truly yours,


James E. Phillips
Chief of Police

November 8, 1993

Chief James E. Phillips
Malone Village Police Dept.
2 Park Place
Malone, NY 12953

Chief:

I am in receipt of your letter of November 3, 1993. As was stated in Mr. Halley's letter to Brian Stewart of November 1st, I have strong concerns whether or not this matter will be properly investigated by the Malone Village Police Dept.

Because I am not willing to jeopardize another Police Officer's job, or his friendship, I will not comply with your request to provide a notarized statement to you regarding this matter. I don't feel it would be in the best interest of the Officer involved, given the previous and continuous mishandling of my husband's situation.

As clearly stated in Mr. Halley's and my husband's letters, I would be willing to make a statement ONLY to a responsible agent or agency. At this time, I personally do not consider the Malone Police Dept. a responsible agent or agency.

Sincerely,


Betzy Nichols

cc; Thomas Halley
Brian Stewart
Robt. Fraser

Patrick M. Nichols
146 Webster St.
Malone, NY 12953
483-1116

Brian S. Stewart
Robert Fraser
James Phillips

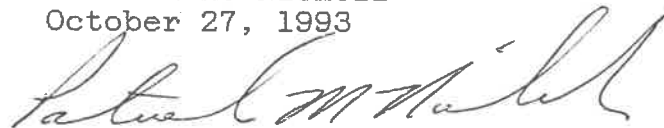
As ordered by the Chief of Police and the Mayor of Malone I am submitting this report containing information regarding allegations of the tampering with a witness. These allegations are in response to the Civil Service Hearing of September 16 & 17, 1993, Village of Malone vs. Patrick Nichols.

It must be made clear the following remarks are strictly hearsay coming from me and therefore my source should also be questioned in order to further substantiate the claim. My source has agreed to offer a statement to a responsible agent or agency assigned to investigate the aforementioned allegations.

During the afternoon of October 8, 1993 my wife Betzy advised me that she had a conversation with an Officer that had testified at the Civil Service Hearing on the 16th. She stated the Officer told her he was advised while being prepared for testimony by Stewart as to what he could and could not say and what he would and would not say. He was also told he could not elaborate on details in order to clarify his answers. My wife further stated that the Officer also told her that he was given orders to stay away from me (Pat) on or off duty or charges would also be brought against him.

The above information is as accurate as I recall and it is being submitted in response to a written order received on October 26, 1993. Copies, as ordered, are being sent to Robert Fraser (Trustee), James Phillips (Police Chief) and Brian Stewart (Attorney for Village of Malone).

Patrick M. Nichols
October 27, 1993



HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

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

OCT 28 1993

October 22, 1993

Telephone: (518) 483-4830
Fax: (518) 483-4005

BRYAN J. HUGHES
BRIAN S. STEWART

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

Re: Village of Malone vs. Patrick Nichols

Dear Tom:

Congratulations on what I think was a good outcome for your client. Although the Village Board found him guilty, it is apparent that they thought a little leniency was in order. Hopefully, we can now move beyond this episode.

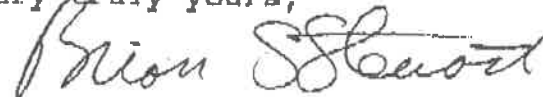
In my telephone conversation with you on August 21st, you indicated something to me which was extremely troublesome. If I recall correctly, you said that Mr. Nichols told you that he had been informed by certain members of the police department that they were told how to testify or that they were forced to testify in a certain way, or words to that effect. As far as I know, this is incorrect. However, I cannot have that kind of allegation floating around the Village of Malone and not do the proper investigation.

Please instruct Officer Nichols to make a written report of his charge and to submit three copies in envelopes marked personal and confidential. One copy is to go to Chief Phillips. The second copy is to go to Trustee Robert Fraser. The third copy is to come to my office.

Officer Nichols is not to conduct an investigation. I want the details of exactly what he was told and who said it to him. Beyond that, Pat is to do no more.

The report must be mailed no later than Friday, October 29th. Officer Nichols should consider this an order coming to him directly from the Chief and the Mayor. I am sending it through your office as a courtesy, because you were the one who first made me aware of these allegations.

Very truly yours,



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

BSS/tlw

cc: Mayor James Feeley
Trustee Robert Fraser
Chief James Phillips

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

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

October 22, 1993

BRYAN J. HUGHES
BRIAN S. STEWART

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

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

Re: Village of Malone vs. Patrick Nichols

Dear Tom:

Congratulations on what I think was a good outcome for your client. Although the Village Board found him guilty, it is apparent that they thought a little leniency was in order. Hopefully, we can now move beyond this episode.

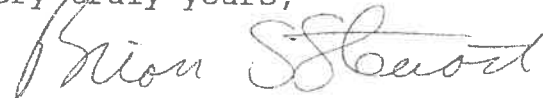
In my telephone conversation with you on August 21st, you indicated something to me which was extremely troublesome. If I recall correctly, you said that Mr. Nichols told you that he had been informed by certain members of the police department that they were told how to testify or that they were forced to testify in a certain way, or words to that effect. As far as I know, this is incorrect. However, I cannot have that kind of allegation floating around the Village of Malone and not do the proper investigation.

Please instruct Officer Nichols to make a written report of his charge and to submit three copies in envelopes marked personal and confidential. One copy is to go to Chief Phillips. The second copy is to go to Trustee Robert Fraser. The third copy is to come to my office.

Officer Nichols is not to conduct an investigation. I want the details of exactly what he was told and who said it to him. Beyond that, Pat is to do no more.

The report must be mailed no later than Friday, October 29th. Officer Nichols should consider this an order coming to him directly from the Chief and the Mayor. I am sending it through your office as a courtesy, because you were the one who first made me aware of these allegations.

Very truly yours,



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

BSS/tlw

cc: Mayor James Feeley
Trustee Robert Fraser
Chief James Phillips

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

December 6, 1993

Ms. Betzy Nichols
146 Webster Street
Malone, New York 12953

Dear Ms. Nichols:

As a result of your refusal to cooperate with any investigation conducted by the Malone Police Department, and the declination of both the New York State Police and the Franklin County District Attorney's Office to investigate your allegations, I assigned the Police Committee of the Village Board to investigate your allegations.

On November 29th and December 1st all members of the Malone Police Department, who were called by the Village to testify at your husband's hearing on September 16, 1993, were interviewed by Trustees Fraser and Lavoie.

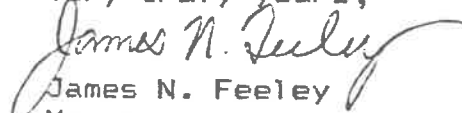
The Committee was to determine:

1. If any officer was forced, coerced or otherwise made to testify in any manner other than truthfully.
2. Did any officer, since the hearing, have any discussions of their testimony with you, and
3. If any officer had talked with you, did they tell or imply to you that they were advised or pressured by attorney Brian Stewart, or by anyone else, as to what they could and could not say at the hearing.

The Committee has reported back to me and the findings of their investigation are that no officer was made to testify in any manner other than truthfully and no officer had any communication with you concerning their testimony of September 16, 1993.

As such, unless other pertinent information develops, the Village Board of Trustees and I will consider this matter closed.

Very truly yours,


James N. Feeley
Mayor

JNF:ejb

cc: Trustees

Brian Stewart

Chief James Phillips

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

MEMO TO: POLICE COMMITTEE

FROM: MAYOR FEELEY 

RE: INVESTIGATION

DATE: NOVEMBER 16, 1993

Per our conversations, I am assigning you the task of investigating the allegations of Pat and Betzy Nichols that an officer who testified in Pat Nichols' Civil Service Hearing was forced, by Special Village Attorney Brian Stewart, to testify in a certain way or ways.

As the Nichols are refusing to name the officer involved, it will be up to you to interview all members of the Police Department who testified at the hearing on September 16, 1993.

Village Attorney Andrew Schrader will provide guidance, and a number of proper questions, to aide you in your investigation.

I would ask that you schedule your interviews with the members of the Police Department as quickly as possible and report back to me no later than November 29, 1993.

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

November 15, 1993

BRYAN J. HUGHES

BRIAN S. STEWART

Telephone: (518) 483-4330

Fax: (518) 483-4005

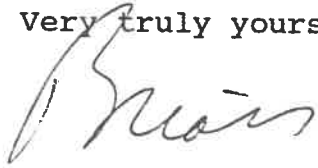
Mayor James Feeley
Village of Malone Offices
16 Elm Street
Malone, New York 12953

Re: Patrick Nichols

Dear Jim:

Enclosed is a copy of a letter from Chief Phillips to Betzy Nichols and a copy of her response dated November 8th. I received these on the 10th of November. Betzy is refusing to name the officer who allegedly said that I told him how to testify. The Chief might be within his rights to drop the investigation at this point. However, it would probably be advisable to take the next step and to have someone question the officers who testified in an attempt to determine whether any of them feel that I instructed them to lie or change their testimony.

Very truly yours,



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

BSS/tlw
enclosures

Chief

November 1, 1993

Brain S. Stewart
Hughes & Stewart, P.C.
31 Elm Street
Malone, New York 12953

RE: Village of Malone v Patrick Nichols

Dear Brian:

You should have a copy of Pat Nichols' statement to yourself, Trustee Fraser and Chief Philips. He has provided me with a copy. I should advise you that there is a concern on the part of Betzy Nichols regarding this matter. Pat notes in his letter that his wife has agreed to offer a statement to a responsible agent or agency. I note that there is a concern on the part of Betzy Nichols that this incident may not be fully or properly investigated. I am not taking a position as to whether or not this is accurate. I am merely stating to you what the concern is. Obviously, a major portion of the Civil Service Hearing related to whether or not the Police Department could adequately investigate itself. I think that Betzy Nichols continues to share this concern.

Again, I do not wish to imply any wrong doing, or potential for wrong doing, or claim that any inappropriate actions have taken place. I am just relaying the concern that has been expressed to me. Anything that you can do to relieve this concern would be most appreciated.

Thank you for your attention and courtesies on this matter to date.

Very truly yours,

THOMAS P. HALLEY

cc: Patrick Nichols
146 Webster St.
Malone NY 12953

✓

POINTS TO CONSIDER ON BRIAN STEWARTS LETTER

1. What is considered minor in nature:

Intentionally distracting the attention of a police officer taking a person into custody because he dropped a small plastic mouth piece on the ground. Officers are trained to be alert and cautious when making an arrest for the safety of himself and others.

Being instructed by a supervisor to check in and out of service and following a well written high speed chase policy, Ptl. Nichols fails to perform such duty. This couldn't possibly be minor in nature. High speed chases have caused many municipalities, including Malone, lawsuits and serious injuries. These insubordinate acts can not be tolerated.

2. No statistics were skewed on any records. All other patrolman were checked on tickets issued in and out of town. Performance ratings prior to election were done. (records attached)

3. Discretion:

How can any officer do a complete and accurate check of a vehicle, the driver, and discuss the probable cause for stop in 30 seconds.

4. He was advised by the Chief that he had permission to run for political office providing that it did not interfere with his performance and requirements as a police officer. The Chief could not arbitrarily deny his running for office based on an assumption of what might happen.

5. Malone Telegram ad thanking for support:

This was not submitted as a separate charge but evidence that could be used showing his pattern. An inference can be drawn with this evidence and the close time proximity of the ad and the results of the charges. Further, this would be difficult for Ptl. Nichols to testify to if he elects to take the stand. This will also hold true for the letters to the editor and if he actively got involved in writing them.

6. Solicitation of signatures:

This incident only had a brief investigation into what was discussed with names on the petition. Only four people out of hundreds were interviewed. Satisfying the general public opinion is a concern and proper release of information on this charge should help. You will never have the public fully understand the complexity and importance of rules and regulations on governing a police force.

8. Dealing with Ptl. Nichols internally on proposed charges. Lets take one charge and the history of the progressive disciplinary actions and chances that Ptl. Nichols has had to change his conduct.

Charge: Section 11.5 Disclosing official police business without permission

01-28-93 Given copy of 11.5 by A/C and went over rule

02-04-93 He violates 11.5 after receiving copy. Two
7 DAYS hour counsel session with Ptl. Nichols

07-??-93 Again Ptl. Nichols violates 11.5
5-months

07-??-93 Again Violates 11.5
Days Later

08-05-93 Ptl. Nichols is suspended on 16 counts of violating section 11.5

08-??-93 While on suspension for 11.5, he violates 11.5 many times.

10-20-93 Ptl. Nichols is guilty of several counts of 11.5 and village suspends him on these charges

10-20-93 Ptl. Nichols violates 11.5 minutes after his penalty is released

10-21-93 Ptl. Nichols again violates 11.5 even after
next Day his penalty and warning from Mayor.

12-15-93 25 days after he returns from work he violates 11.5 and is counseled by the Chief

As far as charges not sufficient serious enough to guarantee dismissal. In researching previous cases on police discipline, we couldn't find any case involving so many violations of department rules and regulations. Ptl. Nichols actions has totally breached the public trust of this police department and has had an adverse effect on the efficiency and performance of it's members.

Ptl. Nichols is not getting along with other members of the department and none of the Patrolman want to work with him. Unfortunately, the working schedule can not afford to have a member off the normal staffing shifts.

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

PATROLMANS PERFORMANCE RATING

OFFICER: PATRICK NICHOLS

PERIOD: MAY, JUNE, JULY 1993

ARREST DURING THREE MONTH PERIOD: 4

TICKETS DURING THREE MONTH PERIOD: 6

AVERAGE PERFORMANCE FOR DEPARTMENT DURING PERIOD:

ARREST: 9.5 PER PATROLMAN

TICKETS: 20.4 PER PATROLMAN

NOTE: PATROLMAN NICHOLS PERFORMANCE RATING IS THE LOWEST IN THE DEPARTMENT FOR THE THREE MONTH PERIOD.

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

Night Shift Tour March 4, 1994
8:00 pm. to 4:00 am.

8:00 pm.	Ptl. Nichols is fingerprinting a female subject that was arrested for Assault 3rd. Ptl. Nichols has on his loaded service weapon
10:35 pm.	Ptl. Nichols pulls over a Malone resident, stop lasts 25 seconds--no ticket--
10:38 pm.	Ptl. Nichols pulls over a Malone resident, stop lasts 15 seconds--no ticket--
11:00 pm.	Ptl. Nichols pulls over a non Malone resident and arrests subject for DWI
2:15 am.	Ptl. Nichols fingerprints a female subject at the station and this time takes off his service weapon. Ptl. Nichols leaves the station to transport subject home and returns 10 minutes later because he forgot his service weapon.
3:03 am.	Ptl. Nichols responds to a disorderly at Nicci's and arrests a female for disorderly conduct and transports subject to station. Subject is intoxicated and claims police brutality. (never files formal complaint)
4:30 am.	Morning shift finds subjects purse containing marihuana and money in the back of Ptl. Nichols patrol car.

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

BRYAN J. HUGHES
BRIAN S. STEWART

March 3, 1994

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

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

PERSONAL & CONFIDENTIAL

Re: Malone Police Department

Dear Jim:

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

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

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

TO: MAYOR JAMES FEELEY
RE: MALONE POLICE DEPARTMENT

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

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

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

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

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

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

TO: MAYOR JAMES FEELEY
RE: MALONE POLICE DEPARTMENT

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

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

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

Very truly yours,



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

BSS/tlw

Fingerprinting Incident & Ptl. Mulverhill

Q. As a trained police officer what is the importance of Officer safety while working?

Q. What is the common practice when fingerprinting a suspect with regards to wearing your duty weapon?

*(Alert)
suspect*

Q. In your police training, have you been instructed on Officer safety procedures when taking a suspect into custody?

Q. Should a Police Officer be alert and cautious when taking someone into custody?

Q. Why is this important?

Q. On March 4, 1994 you were fingerprinting a female suspect that was arrested for assault and you still had on your loaded duty weapon, why is that?

*Evaluating, not
threatened how
long?
YES*

Q. Is there such a thing as a Routine Traffic Stop?

Q. Why not?

Q. If you would have remembered to remove your duty weapon, would that have provided more safety to yourself and others at the station?

Q. Is there a Penal Law charge of Obstructing Governmental Administration?

Q. Have you ever been involved in an arrest that involved Obstructing Governmental Administration?

Q. Would this type of charged be used in order for Officer safety so no one obstructs a police officer while making an arrest?

Q. Did you remove your duty weapon during another arrest on March 4, 1994?

Violent

Q. Where did you place the weapon?

Q. Did you leave the station in order to give the subject a ride home?

Q. Did you leave your duty weapon at the station?

Q. If you were taking someone into custody that was intoxicated and someone diverted your attention, would that compromise your safety?

Q. Why is that?

Q. Would this be a concern to yourself and your fellow Officers?

Q. What would have happened if there was a serious call from the time that you left the station without your duty weapon to the time that you returned?

Q. Would your response been delayed because you had to return to the station for your duty weapon?

Q. Could this have jeopardize Officer Safety?

(A) Q. Were you disturbed over an incident during a DWI arrest involving Ptl. Mulverhill?

Q. When you were asked to give a statement in regards to the problems that you had during this DWI arrest, did you feel that you violated any department rules or regulations? *No*

Q. Can you tell me what disturbed you?

Q. Your statement said that you felt that his conduct was inappropriate and unprofessional? *read statement*

Q. Why did you feel that way?

Q. Was his conduct life threatening? *no*

Q. Could his conduct cause immediate physical harm to anyone? *no*

Q. Was Ptl. Mulverhill involved in taking a suspect into custody for DWI? *no different officer*

Q. Did you bring this inappropriate and unprofessional conduct to the attention of Ptl. Mulverhill? *yes*

Q. How did you bring it to his attention?

Q. Was it ~~absolutely~~ necessary to bring this conduct to his attention while the arrest was taking place? *yes*

Q. Did Ptl. Mulverhill answer when you called his name? *yes*

Q. Would that in any way divert the attention of Ptl. Mulverhill during this arrest? *no*

(B) Q. Are you aware of Section 10.1.33 and 6.2.33 of the department rules and regulations?

- Q. Why would these sections be important?
- Q. The conduct that you thought was inappropriate and unprofessional, did you ever let your immediate supervisor know?
- Q. Why didn't you comply with section 10.1.33 and 6.2.33?
- Q. If you would have complied with Section 10.1.33 and 6.2.33, could that have prevented the incident that occurred during the shift change at 4:00 am.?
- Q. In order to follow section 10.1.33, do you have anything you wish to advise the Chief of Police? NO
- Q. Is it common police practice to carry a note book?
- Q. Does your department rules and regulations state that officers carry a note book? 8.10
- Q. Isn't it true the notations in an officers note book could be used as evidence in a criminal case? YES
- Q. In fact doesn't some Defense Attorney's ask for any and all documentation in regards to criminal cases?
- Q. Would you consider this type of documentation part of normal police functions and property of the police department? YES
- Q. When is the last time you reviewed the department rules and regulations?
- Q. Are you in business with Ken Cring? YES
- Q. Do you understand the rules and regulations?
- Q. Do you have a home computer? YES
- Q. In reviewing your statement on the Ptl. Mulverhill incident, you make reference to notes at home? YES
- Q. Are these notes on your home computer? NO
- Q. Is this home computer used in your personal business? YES + TOWN
- Q. Who uses or has access to this computer?

- Q. Are there any notes either on paper or in your computer at home or anywhere else on any matters involving the Malone Village Police Dept.? *notes at Home*
- Q. Do you understand the importance of police department rules and regulations? *YES*
- Q. What type of home computer do you have? *IBM*
- Q. Do you have any files or documentation of any kind on fellow officers of the Malone Village Police Department? *YES →*
- Q. Is your home computer compatible with the computer at the Malone Village Police Department?

D.A.R.E. Program

- Q. Are you a trained D.A.R.E. Instructor? *YES*
- Q. Being a D.A.R.E. Instructor, do you think that position may have helped you in your recent disciplinary action? *no way*
- Q. Did you ever solicit funds to support the D.A.R.E. Program? *Didn't hurt 2 years of knowing*
- Q. When a business or organization donates to the D.A.R.E. Program, were there any benefits promised besides the satisfaction of helping the program? *(President) Help two organizations (Rotary) case 'on poster*
- Q. Would a small business that donated \$10.00 be treated the same as one that donated \$500.00? *Carry*
- Q. Do you know Michael Fournier? *YES Hurry Fournier Case*
- Q. Did you order D.A.R.E. supplies for the program?
- Q. Do you know Victor Fellion? *YES*
- Q. Are you familiar with the D.A.R.E. book markers?
- Q. Did you hand any of these book markers to your students?
- Q. Did you stamp the D.A.R.E. Book Markers with the Malone Lions Club stamp on them?
- Q. Where did you get the stamp? *Malone Lions*
- Q. Who paid for the stamp?
- Q. Why did you stamp the book markers?
- Q. Did any other businesses or organizations get their name on any D.A.R.E. literature?
- Q. Did you ask for any stamps from any other business?
- Q. Why not?
- Q. Are you a member of the Malone Lions Club?
- Q. Were you or are you an officer of the Malone Lions Club?

Petitions & Selling of Books

- Q. In the past two months has Michael Fournier been to your residence? *Unknown Couple times a year*
- Q. Are you aware of the criminal background of Michael Fournier? *Yes*
- Q. Did you or do you own a business that sells personalized children books? *Yes*
- Q. What is the name of that business? *Yours truly Enterprises*
- Q. When did you start this business? *2 years ago*
- Q. Did you file a DBA? *Yes*
- Q. Do you keep records of the names of customers that you sell to? (where are these records kept) *Home Yes*
- Q. Did you ever get permission from the Chief of Police to start and get involved in such a business, as stated in our department rules and regulations?
- Q. Were any of these books purchased by the Malone Lions Club? *Yes*
- Q. Did you tell Juvenile Officer Ronald Reyome that you were going to offer these books at a discount rate to one of your DARE Classes? *No*
- ~~Q. Did Officer Reyome advise you on this? (if yes what?)~~ *I don't recall*
- Q. Did you or anyone else in the Malone Central School District offer these books to any students? (WHO? AND WHAT SCHOOL) *No BB Douts Kathy Shredder*
(was any of these students in your DARE Classes)
- Q. Did you know that a 32 page petition was going to be presented to the Village Board on your behalf? *Yes*
- Q. Did you know what these petitions were for? *Yes*
- Q. Did you see these petitions? *Yes*
- Q. When is the first time you ever saw these petitions? *Pick up wife's car*
- Q. Who made these petitions?

Called at Home
Kathy - Courthouse
Kathy Cunningham

- Q. Did you help word or write these petitions? *NO*
- Q. Did you ever ask anyone to post one of these petitions at a place of business or in an organization? *Inquiry*
- Q. Do you know Rick Spitaro? *Do that on your own*
- Q. Did you ever ask anyone to support you by signing one of these petitions? *Yes*
- Q. Did you bring one of the petitions to Tessey's Diner? *I don't remember*
- Q. Do you know Cindy Fleury? *NO NOT ME*
- Q. Did you ever explain your side of the disciplinary charges when asking people to sign the petitions?
- Q. Does Michael Fournier work at the Malone Bowling Alley? *I don't know*
- Q. Do you have any relatives or close friends that work at the Malone Bowling Alley?
- Q. Was the petition circulated at the Malone Bowling Alley? *Yes*
- Q. Did you ask anyone to bring the petition to the Malone Bowling Alley?
- Q. Did you ever bring one of these petitions to the Franklin County Court House and ask a woman if you could post it?
- Q. Do you know Mike Hoit? *NO*
- Q. What were the petitions for?
- Q. Were one of these petitions ever brought to the Malone Lions Club?
- Q. Who brought that petition to the Malone Lions Club? *Ken Cring*
- Q. Are you aware of section 10.1.27 & section 10.1.77 of the department rules and regulations?
- Q. Did you ever read those sections? *Yes*
- Q. Did you understand these sections? *Yes*
- Q. Have you ever been counseled on these sections? *Maybe*
- Q. Have you ever filed a formal grievance on department rules or regulations?

Q. Do you know the importance of that section? *Yes*

Q. Do you feel that the events that took place with the petitions may have violated these sections? *NO*

Talking with News Media

Q. Do you know Sharon Hughes?

Q. Do you know Will Dolittle?

Q. Is there any other reporters from the Malone Telegram that you know?

Q. Press Republican?

Q. Tom Grady?

Q. On August 17, 1993 in an article in the Telegram, you were quoted as saying "There's someone else who should be suspended for 30 days". Was that someone a member of the police department?

Q. Who was that person?

Q. Also on August 17, 1993 did you comment to the Press Republican-----read article-----

Q. On August 18, 1993 did you comment to the Press Republican about fear of the Chief of Police for retaliation-----read article-----

Q. Also in August 1993 did you comment to Tom Grady -----read article-----

Q. After your disciplinary hearing, the hearing officer found you guilty of many charges. Some of the charges that you were found guilty of are section 11.5 and 10.1.27 correct?

Q. Do you understand these sections?

Q. After receiving your penalty for the charges, were you interviewed by Tom Graser-----read article-----

Q. The D.A.R.E. Program was mentioned quite a bit in the news media and also the disciplinary hearing that you had public correct?

Q. Did you contact and talk with the news media because that you felt that the people of the community had the right to know?

Q. Do you think that all this publicity hurt the D.A.R.E. Program?

Anette Scott

Doug Buchanan

Yes

100's of People

Didn't help it

ACCIDENT REPORTS & TRAFFIC TICKETS

- Q. You have been trained in traffic enforcement?
- Q. Would it be safe to say that in most accidents, someone is at fault?
- Q. The accident report that is filled out should reflect who is at fault whether a ticket is issued or not, correct?
- Q. If a driver is at fault, such as fail to yield right of way, this would help the victim of the accident, for insurance purpose, if it was reported that way, correct?
- Q. If a person backed into a car, would it be safe to say that it was unsafe backing? *Yes*
- Q. If a vehicle went out of control on slippery roads, would it be safe to say that the person was traveling too fast for conditions? *Yes*
- Q. Do you find it necessary to write a ticket at every accident? *no*
- Q. Do you remember pulling over a vehicle that was registered to Rick Ellis Pontiac? *Yes*
- Q. Who was driving the vehicle? *Machanic Duane St.*
- Q. Who is that?
- Q. What did you pull him over for? *sticker*
- Q. Who is Jason Ellis? *(Rick Ellis) (Yes)*
- Q. If you don't write a ticket at an accident, is there a column that is used for contributing factors showing who was at fault?
- Q. If a person has a history of accidents and tickets, would you be more incline to write them a ticket at an accident? *not necessarily*
- Q. What do you need to pull over a vehicle on a traffic stop? *Violation*

Did you ever pull over Jason?

Traffic Stops

- Q. After the stop is made, what should police officers be looking for?
- Q. When working the night shift, would you be more incline to check for operators driving under the influence of alcohol? *no. (Yes)*
- Q. Do you remember a speeding ticket to Brian Bouyea of Plattsburgh you recently wrote? *Yes*
- Q. What type of observations would you look for to make certain that an operator wasn't operating a motor vehicle while in an intoxicated condition?
- Q. Is there more of a chance that a person operating a motor vehicle while intoxicated during the night hours? *Yes*
- Q. Do you feel that extra precaution should be used making a traffic stop during the night shift in order to make sure the operator wasn't driving while intoxicated? *no more than any other stop*
- Q. In order to discuss your probable cause and conduct the appropriate checks to make sure a person isn't driving under the influence, how long do you think the average traffic stop should take during the night shift to conduct a complete and proper vehicle stop? *ability*
- Q. Can Police Officers use discretion when they are enforcing traffic and penal laws, correct? *Yes they can.*
- Q. What type of criteria do use for traffic stops?
- Q. Could this type of discretion be viewed as a judgement call by the Officer?
- Q. How would you describe what type of judgement this is?
- Q. Have you ever arrested a close friend? ~~or a relative?~~ *Friends*
- Q. Recently, have you ever pull over a car and hand a driver anything besides a traffic ticket? *(Equipment)*
- Q. So if your neighbor broke the law, you don't have any problem if you decided to arrest him? *NO when it comes to the law*
- Q. Do you feel that your discretion in traffic enforcement has changed from the way you worked prior to your suspension and after your suspension? *NO*

Q. So when you pull over a vehicle and conduct a thorough check and interview the driver, you don't base any of your discretionary powers based on people that live in Malone? *no*

Q. Do you have any documentation in regards to all the vehicles that you pulled over? *no*

Q. ~~What type of documentation would that be?~~

Q. ~~Where is this documentation?~~

Tickets in locker

PULL OUT TRAFFIC STOP DATAS

Q. While you were working the night shift you pulled over four vehicles, three people were from the town of Malone and one was from out of town. Can you explain why all three Town of Malone residents were not given a traffic ticket but the out of town operator was?

Q. In using your police discretionary powers, did you base this discretion after you completed your traffic stop procedures? *yes*

Q. When you called in the traffic stop, a supervisor marked down the plate and checked the time, why did most of the traffic stops for Town of Malone residents only last 30 to 40 seconds on average?

Q. Is your position as a Town of Malone Councilmen unconsciously compromised your judgement when using discretion?

Q. Would you be surprised if I told you that this didn't happen just one night?

Q. Can you explain why it happened the next night also?

Q. Has the Town of Malone Councilman position compromised your judgement in police enforcement?

Q. The traffic tickets were calculated prior to the election and after the election. Can you explain why there is a 240% change in the way you enforce traffic laws giving favor to Town of Malone residents?

- Q. Did you think that you should be allowed to teach the D.A.R.E. Program this year?
- Q. Did you ever contact WPTZ in order to go on T.V. to be interviewed about your departmental charges?
- Q. After you received your penalty of the charges, did you contact WPTZ?
- Q. Did you receive a call from the Mayor advising you of the rules and regulations giving special attention to section 11.5?
- Q. Even after you received this call from the Mayor, did you still allow yourself to be interviewed by WPTZ and also go on camera? *Yes*
- Q. Do you feel that there was considerable news coverage regarding your disciplinary charges? *Yes*
- Q. While you were on suspension, did you conduct a door to door campaign for your town position? *Yes*
- Q. While doing this did you ever discuss ~~or plead~~ your case to anyone during your door to door campaign? *Yes*
- Q. Is it important to secure and maintain the public trust in a police department? *Yes*
- Q. Why?
- Q. During any of these news media contacts, did you ever try to dissuade or discourage them from talking to you? *refuse Yes*
- Q. Do you think that the coverage on your disciplinary charges and hearing was fair and accurate?
- Q. Are you aware of the strict police department rules in regards to public speaking and making public speeches in regards to police matters? *Some Policy aware*
- Q. Why do you think these rules are important?
- Q. Do you feel that all the news coverage and publicity over your own disciplinary charges jeopardized the public trust in the Malone Police Dept.?

(YES)

READ OVER THESE QUESTIONS TO YOURSELF FIRST, MAKE SURE IT APPLIES

- Q. Are you aware of the results of your appeal on your recent charges?
- Q. When did you first become aware of the results?
- Q. Did you contact the news media in regards to this finding?
- Q. Earlier you testified that you felt the people had the right to know and thats why you contacted the news media. Why didn't you feel it was necessary to contact the media after you found out the results?
- Q. Wouldn't that look like you are selecting what you want released and what you don't want released?

-
- Q. Who owns Tessey's Diner?
- Q. Do you go there?
- Q. How often? *Morning shift*
- Q. Is the owner of Tessey's Diner a relative of Trustee Greg Dame? *Aunt*
- Q. Does Greg Dame go to the Diner? *yes*
- Q. How often? *no*
- Q. You are aware that as a patrolman, you can not meet with a Village Trustee and discuss police matters unless you have proper authorization? *Fully*
- Q. On Dec. 15, 1993, did you stop at Tessey's Diner?
- Q. Was Greg Dame there?
- Q. Did you have any discussion with Greg Dame? *yes*
- Q. Did that discussion involve a matter in the police department? *yes*

How often wife Made Complaints

- Q. Was the discussion about the formal charges that your wife placed against Sgt. Ritchie?
- Q. Was the discussion about an idea of setting up a police review board for the Malone Police Dept.? *Yes*
- Q. What did you discuss with Greg Dame on these matters?
- Q. Did you have authorization to discuss police matters with a Village Official?
- Q. Why did you put yourself at a location that you knew had a high possibility that a Village Official would be?
- Q. Do you think it may not be appropriate for you to discuss with a Village Trustee a formal personnel complaint that your wife placed against one of your supervisors?
- Q. When you had this discussion, was the investigation completed by the Chief of Police?
- Q. Did you have any knowledge that the investigation that your wife placed against Sgt. Ritchie was completed?
- Q. Were you present when your wife came to the station to report a accident?
- Q. On Tuesday, March 8, 1994, you were advised that the Chief of Police wished to talk with you in his office on this date, correct?
- Q. On the morning of March 9th, 1994 at about 7:00 pm. were you in Tessy's Diner?
- Q. Do you remember who was in the diner?
- Q. Who did you sit with?
- Q. You know that Greg Dame is a Village Official and the others are not members of this department, correct?
- Q. Do you remember who was sitting near you but not with the people you mentioned?
- Q. While at Tessy's Diner, did you ever discuss the memo that you received from the Chief of Police?
- Q. Did you ever ask for advise from Richard Brown?

FANS

- Q. Joe Gokey?
- Q. Greg Dame?
- Q. Do you know if any other member past or present met with Dick Brown, Joe Gokey or Greg Dame since that day?
- Q. Did you ever make the comment that if you were ever brought up on any more charges, other members of the department will also have to be charged?
- Q. Do you know Susan Buck?
- Q. Hal Taylor?
- Q. Were you at the Town Office last week?
- Q. While at the Town Office, did you ever discuss the recent memo from the Chief of Police?
- Q. While at the Town Office did you ever comment or give reference to, If they bring me up on charges, they will have to bring other members up on charges also?
- Q. Did you ever make the comment to anyone, either at the Town Office or elsewhere?

Go Back
to Petitions
Smith's Towing
Ed Ritzman

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

March 17, 1994

MEMO TO: PATROLMAN PATRICK NICHOLS

FROM: POLICE CHIEF JAMES PHILLIPS

In accordance with Section 2.4 of the Rules and Regulations of the Malone Village Police Department I am suspending you until further notice, with pay, pending my report to the Police Committee, for your violation of said Rules and Regulations.

TO: NEWS MEDIA

FROM: CHIEF JAMES E. PHILLIPS

DATE: MARCH 18, 1994

NEWS RELEASE

UNDER THE AUTHORITY GIVEN TO ME IN THE MALONE POLICE DEPARTMENT RULES AND REGULATIONS AND WITH A MEETING WITH THE VILLAGE ATTORNEY ANDREW SCHRADER I HAVE SUSPENDED OFFICER PATRICK NICHOLS WITH PAY UNTILL FURTHER NOTICE.

I WILL SUBMIT MY INVESTIGATION TO THE DISTRICT ATTORNEY'S OFFICE AND TO THE POLICE COMMITTEE FOR THEIR REVIEW AND ANY ACTION THAT THEY WISH TO PURSUE.

ON MARCH 8, 1994 A MEETING WAS SCHEDULED FOR MARCH 17, 1994 BETWEEN OFFICER NICHOLS AND MY OFFICE THE OUTCOME OF THAT MEETING LEAD TO THE SUSPENSION.

Statement if he refuses to answer

I'm going to advise you that your refusal to answer these questions will be considered acts of insubordination.

The questions is a direct order for an answer; and it is the departments position that your failure to answer that question in the face of a direct order constitutes insubordination.

Read #1 _____

Read #2 _____

Read #3 _____

QUESTIONING EMPLOYEES - DISCIPLINARY INVESTIGATIONS

Subdivision 2 of Section 75 of the Civil Service Law has been amended and now provides that:

"an employee who at the time of questioning appears to be a potential subject of disciplinary action shall have a right to representation by his or her certified or recognized employee organization under Article fourteen of this chapter and shall be notified in advance, in writing, of such right. If representation is requested a reasonable period of time shall be afforded to obtain such representation. If the employee is unable to obtain representation within a reasonable period of time the employer has the right to then question the employee. A hearing officer under this section shall have the power to find that a reasonable period of time was or was not afforded. In the event the hearing officer finds that a reasonable period of time was not afforded then any and all statements obtained from said questioning as well as any evidence or information obtained as a result of said questioning shall be excluded, provided, however, that this subdivision shall not modify or replace any written collective agreement between a public employer and employee organization negotiated pursuant to Article fourteen of this chapter."

The bill [A-3410-b; S-1987-b] provides that the amendment is to take effect immediately. The act was signed by the Governor on July 21, 1993.

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

ry 26, 1994

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

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

Clyde F. LaChance

Patrolman Clyde F. LaChance

SUPPLEMENTARY REPORT

Classification

NO.

Name of Complainant

Address

Phone No.

Offense

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

Page No. Two

Date 02-16 1994

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

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

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

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

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

GKM

INVESTIGATING OFFICER(S)

26 REPORT MADE BY

DATE

27 CASE FILED

28 THIS CASE IS

Active ☐

29 APPROVED BY

Yes ☐ No ☐

Cleared by arrest ☐

Unfounded ☐

Inactive ☐

Other ☐

SUPPLEMENTARY REPORT

NO. _____

Classification _____

Name of Complainant _____

Address _____

Phone No. _____

Offense _____

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

Page No. Three

Date _____ 19____

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

GKM

INVESTIGATING OFFICER(S) _____

26 REPORT MADE BY _____

DATE _____

27 CASE FILED

Yes ☐ No ☐

28 THIS CASE IS

Cleared by arrest ☐

Unfounded ☐

Inactive ☐

Other ☐

29 APPROVED BY _____

Questions About Police Hearing

To the editor:

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

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

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

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

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

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

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

Jackie LaPlant
Malone

Chief,

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

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

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

A/C Moll

A Special Thanks

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

Pat, Betzy, Holly & Nathan Nichols

TO: CHIEF JAMES PHILLIPS
MALONE POLICE DEPARTMENT

FROM: SGT RITCHIE

SUBJECT: ABORTION DETAIL

ON FEB. 23, 1994 AT APPROXIMATELY 0930 HRS THIS STATION WAS NOTIFIED BY MAYOR FEELEY THAT HE HAD DRIVEN BY DR. GORMANS OFFICE SEVERAL TIMES AND FOUND THAT THE OFFICER ASSIGNED TO THAT DETAIL WAS JUST SITTING IN THE PATROL VEHICLE. THIS WAS BROUGHT TO MY ATTENTION AND I WENT TO DR. GORMANS OFFICE AND FOUND THAT OFFICER NICHOLS WAS INDEED SITTING IN THE PATROL VEHICLE. HE WAS ADVISED AT THAT TIME THAT THIS DETAIL REQUIRES THE OFFICER ASSIGNED TO BE OUT OF THE VEHICLE AND STANDING IN FRONT OF DR. GORMANS DOOR. AS A RESULT OF THIS I ISSUED AN INNER OFFICE MEMO INSTRUCTING ALL OFFICERS ASSIGNED TO THE ABORTION DETAIL DO SO WITHOUT THE USE OF A PATROL VEHICLE.

SGT W. *[Signature]*

DISCREDIT TO PD

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

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

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

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



DRUG ABUSE RESISTANCE EDUCATION

MALONE LIONS CLUB
BOX 248
MALONE, NY 12953

8 WAYS TO SAY NO!

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





RICHARD H. GIRGENTI
DIRECTOR OF CRIMINAL JUSTICE
AND
COMMISSIONER
DIVISION OF CRIMINAL JUSTICE SERVICES

STATE OF NEW YORK
DIVISION OF CRIMINAL JUSTICE SERVICES
EXECUTIVE PARK TOWER
STUYVESANT PLAZA
ALBANY, NY 12203-3764

JOHN W. HERRITAGE
DEPUTY COMMISSIONER
518 457-6101
BUREAU FOR MUNICIPAL POLICE
TRAINING UNIT
518 457-2667
D.A.R.E. PROGRAM
518 457-2666
1 800 SAY-DARE
LAW ENFORCEMENT ACCREDITATION
518 485-1415
INTERNAL OPERATIONS
518 485-7620
TECHNICAL SUPPORT UNIT
518 485-1414
SECURITY GUARD PROGRAM
518 457-4135

February 17, 1994

Chief James Phillips
Malone Police Department
2 Park Place
Malone, NY 12953

Dear Chief Phillips:

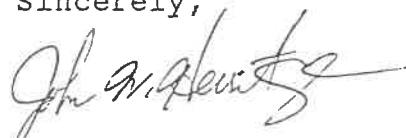
As you know, the New York State Division of Criminal Justice Services, Bureau for Municipal Police is responsible for statewide coordination of the Drug Abuse Resistance Education (D.A.R.E.) program. Responsibilities include training, certifying, decertifying, monitoring and evaluating instructors. They also include maintaining program and instructor integrity.

According to conversations my staff had with you, it is my understanding that Police Officer Patrick Nichols recently served a sixty day suspension (without pay) and loss of one week of vacation pay. The suspension and loss of pay resulted from him being found guilty of forty-two departmental charges. I also understand that a public hearing was held in relation to this matter.

Since Officer Nichols is trained and certified as a D.A.R.E. instructor, I would like to review this incident and related conduct to determine if Officer Nichols' certification as a D.A.R.E. instructor should be continued or revoked. Accordingly, I am requesting copies of all investigative reports, as well as all departmental charges (along with subsequent dispositions) associated with this incident.

Thank you for your cooperation and continued support of the D.A.R.E. program. Please send the requested information directly to Senior Training Technician Alton Hoke, Jr. at the address listed on the previous page. If you have any questions, please do not hesitate to contact me directly at (518) 457-6101 or Mr. Hoke at (518) 457-2666.

Sincerely,

A handwritten signature in dark ink, appearing to read "John W. Herritage". The signature is fluid and cursive, with a prominent initial "J" and a stylized "H".

John W. Herritage
Deputy Commissioner

1/14/94 **Where is
Nichols?**

To the editor:

In response to Ms. Nichols letter wishing her dad to teach the DARE program to her, I have a couple questions and comments.

Doesn't it cost the state and village money to train new DARE officers? Are the taxpayers paying for someone's vendetta who may have a bruised ego? Why would anyone in thier right mind who is not motivated by politics or personal gain take an officer with two years experience off the DARE program?

I thought Officer Nichols was punished with 60 days without pay. I don't remember being taken from DARE as one of his conditions. Nichols has an excellent reputation with the staff and children he has came into contact with through the DARE program. I think at the last hearing for Nichols, Chief James Phillips himself sated he intended to train another officer for DARE. Not to punish Nichols, rather to help him. Where is Nichols?

I also remember an interview with Nichols asking him if he could go back to work in his department. He replied in effect "were supposed to be professionals."

Nichols had his day and was given 60 days without pay among other things. I wasn't aware being taken off the DARE program was one of them. Why and who is responsible for pulling him off DARE?

The kids are the only people who will suffer because of the kind of B.S. that takes place behind the doors of the Malone Police Department. If as much effort is put into teaching the kids to stay off booze and dope as it put into fixing bruised egos, the community would be for the better.

How can any one justify taking on experienced officer with a good relationship with kids off this program.

Nichols said it best, "We're supposed to be professional."

**Mike Fournier
Malone**

DATE	NUMBER	CHARGE	DISPOSITION
05-10-89	3973	Harassment	
06-28-90	"	DWI/REFUSAL	DISMISSED
07-3-90	"	DWI	
4-4-91	"	Assault	1/25 FINE 5100 31 st P.S.D.
"	"	MENACING	DISMISSED
"	"	Criminal TRESPASS	DISMISSED
8-10-92	"		
3-2-93	"	Harassment 2 nd	
5-27-93	"	ASS Harassment 2 nd	
6-28-93	"	TAMP WITNESS 4 th	

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

The People of the State of New York

vs.

MICHAEL J FOURNIER

Defendant

Accusatory Instrument
Complaint - General

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

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

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

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

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

The foregoing factual allegations are based upon personal knowledge of the complainant (and upon information) and belief, the sources of
complainant's information and belief being, statement of one Rahcel Fournier being attached to and made
apart hereof:

Husband, Officer Did Right Thing

To the editor:

In regards to the public hearing concerning my husband, Patrick Nichols, I wish to personally thank everyone who has supported us through the last six weeks or so. Your caring and concern, shown in several ways, has greatly helped to ease the difficult times and reinforced our reasons for keeping Malone our home.

My husband is a caring, honest, faithful man, dedicated to his career and the other officers whom he serves with. Mr. Stewart and Chief (James) Phillips have accused my husband of acting with malice and for personal gain. Just what have we gained from this? My husband's career and personal values have come under fire, our family is concerned for their personal safety, our financial situation has been made unstable and uncertain, and his relationship with co-workers had been jeopardized.

Those of you who know my husband, know that he is not a "problem cop." If my husband is viewed as a "problem cop" it is because he has problems with wrongdoing within the department and allowing them to be buried. He has a problem with the motto of the police department being "To Protect and Serve" when laws are being blatantly broken. Patrick's actions in this matter were not self-serving, as the retaliation against him obviously was. Patrick can't make waves as long as he is suspended, and I'm sure intimidation was the deciding factor for this suspension.

Just to clarify one point brought out in this public hearing. The prosecution accused my husband of violating the rules and regulations during the DARE incident. Well, Mr. Stewart you accused the wrong person. I was the one who went public with the situation, contacting parents and teachers — unbeknownst to my husband. They contacted trustee Bob Fraser, who, in turn, contacted us.

During the initial meeting, Patrick was under a "gag order" (again allowing the police to hide behind their rules and regulations), making Patrick unable to talk about the turn of events, but I could.

It was obvious the actions taken by the chief and/or assistant chief were unwarranted and unjustified — I say this because during the course of this situation, there were several different reasons given for the hour-switching, ranging from excessive overtime, insubordination (which was unproven — there was nothing to indicate this in Patrick's personnel file) and complaints from other officers about Pat's "easy hours."

We weren't and still aren't sure what the problem was. These were hours assigned to my husband by the chief to prevent Patrick from receiving the excessive overtime as had been realized the previous year and to enable Patrick to instruct the program to the best of his ability. After donating as many

hours as he could at his family's expense and having to fight for everything he got from the department, my husband drew the line and questioned the need to switch. At that point, he was removed from the program, much to Patrick's devastation.

Within 24 hours, JAO Reyome was in the schools to announce the change — jeopardizing the bond that developed between Patrick and the children. My husband, based on comments made to me from teachers, parents and children, is a fabulous DARE teacher, spending lunch hours and recesses interacting with the children — always caring and concerned for his DARE kids. It's as if we not only have two immediate children, but we have almost 500 in our extended family. Assistant Chief (Gerald) Moll and Chief Phillips didn't once consider the feelings of these children, nor did JAO Reyome.

As a certificate DARE instructor, JAO Reyome should have placed the bond Patrick had developed with the children ahead of his own ego and stepped aside.

If my husband is guilty of anything in the DARE situation it is having a wife who supports him, who has a big mouth, and who isn't intimidated by the rules and regs of the police department.

For several months earlier this year, my husband was distracted and distant, deep in his own thoughts. Although I tried several times to draw out what was bothering him, he refused to discuss it with me. The only comment he eventually made was that something had happened at the station that he felt was morally wrong.

My husband actually feared that if he did his job and reported the improper conduct, he would be retaliated against. The effects of the DARE incident were still very vivid in his mind. But after a great deal of soul searching he chose to do the right thing, and filed his report, which resulted in his suspension. Despite the stress and pressure, the suspension has placed on us, I am so very proud of my husband for doing the right thing. It has allowed us to walk with our heads held high.

The disrespect referred to Chief Phillips that he claimed Patrick has brought to the fore existed long before this situation. The people in this area are not blind or deaf, many have lived here all their lives, and the workings of the police department are no surprise to them.

There have been many incidents of improper conduct involving the police department reported to Patrick and I over the course of his suspension but the general feeling is, "why bother to report it, it would only be mishandled or buried completely like they usually are." We need a department that is by law, not able to investigate their own. That presents too much of a conflict of interest and personal feelings play too much of a part in any internal investigation.

And we need to have a police department that does not retaliate or punish its officers for reporting wrongdoings within the department.

I personally feel the village was misinformed and pressured to act quickly on this matter suspending the wrong person. I firmly believe my husband has been made the scapegoat in all this — simply because he filed a complaint concerning the mistreatment of a person in police custody and the official misconduct of a supervisor. He is being punished for upholding the law that he swore to uphold when he became an officer, while some of the police department supervisors, who are the real problem, are still secure in their positions.

Again, thank you one and all for your continued support. We appreciate the warmth and caring shown to Patrick, myself and our children. There are far too many people to mention but your well wishes and thoughts have been a great source of comfort to us during this time. You have helped enforce the feeling that what Patrick did was right.

Betsy Nichols
Malone

Wants Dad To Teach DARE

To the editor:
My name is Holly Nichols.
I am 11 years old and in fifth
grade at Davis School.

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

we have a new DARE teacher.

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

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

Holly Nichols
Malone

MALONE LIONS CLUB
BOX 248
LONE, NY 12953



January 27, 1994

Police Chief James Phillips
Malone Village Police Dept.
2 Park Place
Malone, New York 12953

Re: Dare Program

Dear Chief Phillips:

Enclosed herein please find a check for the Malone Lions Club donation to the Dare Program. This donation came about after a rather lengthy Board of Directors meeting and it was requested that I summarize the sentiments of our organization regarding the Dare Program, as administered through the Malone Village Police Department.

First and foremost the goals of the Dare Program are laudable and the implementation to date has been very successful. Our main concern over the Dare Program is its recent politicization by the substitution and removal of a very well respected police officer, Patrick Nichols. Officer Nichols earned the respect of his students. This respect verily continues to this date. Unfortunately, with the situation that occurred regarding the Malone Village Police Department and Officer Nichols, some members of the Board of Directors felt our support for the Dare Program should be drastically curtailed if not eliminated, because of the removal of a very effective Dare officer. After thorough discussion, it was determined that our support for the youth of Malone should not be diminished.

This letter is not written as chastisement or public criticism of the Dare Program as administered through the Malone Village Police Department, but merely to express the concern of some of the members of the Board.

In the event that the Dare Program needs additional funds, please do not hesitate to contact our organization.

Very truly yours,


THOMAS H. McCANN
President

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

February 4, 1994

Malone Lions Club
Box 248
Malone, NY 12953

Dear Mr. McCann & Malone Lions Board Members:

I would like to take a moment to express my appreciation for the donation that your organization made to the DARE Program. The Malone DARE Program has been active for many years, thanks to the help of local businesses and organizations. One can only hope that our efforts can guide our youths to a drug free world.

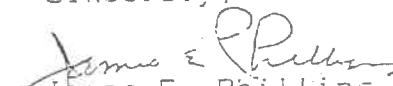
In reviewing the contents of the letter that accompanied your donation, I don't feel it is appropriate at this time for me to comment on the inner workings of the Police Department. I can, however, express my discouragement on the conclusions that some of you made with the limited information that you had. It is unfortunate that some people found it necessary to drag the DARE Program and our local children into a very complex police disciplinary proceeding even though the DARE Program and the children had nothing to do with the incident.

While doing an inventory of the DARE supplies, it was discovered that Officer Nichols had taken it upon himself to stamp the DARE book markers with the Malone Lions Club name and address on it. In looking further, we couldn't find any other organization or business that had received this recognition. The Malone DARE Program has made every effort to give equal and fair recognition to ALL organizations and

businesses that have donated to the program. It is my understanding that Officer Nichols is a well recognized member of the Malone Lions Club. Because of the many people that donate to DARE, I can't allow only your organization to be recognized on literature that is sent home with the children. This is just a minor incident of many that caused the Change in the DARE instructor. Hopefully this will give the board a broader view of this situation.

Again, thank you for your continued support. Enclosed is a copy of one of the book markers.

Sincerely,


James E. Phillips
Chief of Police

cc. Mayor James Feeley
Village Board



THOMAS M. KEMP



FLANDERS SCHOOL

OCT. 29 1993

Chief Phillips
Malone Police Department
East Main Street
Malone, NY 12953

Dear Chief,

This letter is in response to inquiries from my students regarding the D.A.R.E. program. Would it be possible for you to inform me, and perhaps copies could be sent to the other fifth grade teachers in the district, as to the current state of the D.A.R.E. program? My students are quite anxious about the program and I felt a letter from you would help explain what is happening and, perhaps, become some of their anxiety.

Thank you.

Sincerely,


CC:
Mr. Dean Yando
Mr. Thomas Helmer

CHARGES

DISCIPLINARY CHARGES CIVIL SERVICE LAW ARTICLE 75

MALONE POLICE DEPARTMENT Complainant

V.

PATRICK NICHOLS Respondent

The Malone Police Department hereby charges Police Officer Patrick Nichols pursuant to Civil Service Law S75 as follows:

- 1) During the first part of September 1993 Police Officer Patrick Nichols while on suspension did actively solicit persons to sign a petition which stated. We, the undersigned, support the actions taken by Officer Pat Nichols, and feel that he should retain his position on the Malone Police Department regardless of the outcome of the public hearing, for the following reasons.
- 1) He acted in good faith with an honorable intent.
 - 2) He acted in the best interest of the public
 - 3) His actions took courage and fortitude.
 - 4) His motivation was not self-serving.
 - 5) He is an ethical person who believes in justice and fair play.

This action violated the following departmental rules and regulations.

- 10.1.1 (Four Counts) Discredit upon Department
- 10.1.77 (Four Counts) Seeking the influence or intervention of a person outside the Department for purpose of personal preferment or advantage.
- 11.5 Disclosing official business of the Department without permission.
- 10.1.27 (Two Counts) Publicly criticizing the official actions of a department member.
- 10.1.4 (Two Counts) Insubordination or disrespect toward Superior Officer

10.1.28 Releasing any information contained in a department record

10.1.34 Deliberate violation of regulations pertaining to police management and control. (Patrolman Nichols was on suspension from the same type of charges)

2) In Malone Telegram publication Vol.88 No. 216 of August 17, 1993, the respondent did criticize the police department stating "There's somebody else who should be suspended for 30 days".

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

10.1.27 Publicly criticizing the official actions of a department member.

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

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

11.5 A member of the force shall treat as confidential the official business of the department. He shall not talk for publication.

10.1.27 Publicly criticizing the official actions of a department member.

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

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

11.5 A member of the force shall treat as confidential the official business of the police department. He shall not talk for publication.

10.1.27 Publicly criticizing the official actions of a department member.

6.2.7 Treat Superior Officers with respect

10.1.4 Insubordination

10.1.34 Deliberate violation of regulations pertaining to police management and control

5) In an early August 1994 issue of the Ft. Covington Sun newspaper, Ptl. Nichols is interviewed by the Editor, Thomas Grady. Printed from that interview, Ptl. Nichols states: "basically, I have done nothing inappropriate and I stood by that decision then, and I stand by it now until my hearing, which will be public. I am doing what a police officer is required, unfortunately, a 30 days suspension was taken out on me, and this is where we stand. I have done nothing wrong". Nichols said he initiated it being put out to the press. "I felt that the public has a right to know everything up to my suspension".

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

10.1.27 Publicly criticizing the official actions of a department member.

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

6)

In the Malone Telegram, Vol. 88 No. 271 a front page article was printed on the results of the board meeting which made the final determination of the discipline. Article by staff writer, Thomas Graser, Ptl. Nichols states, "I was not planning to comment", Nichols said after the meeting was adjourned. "I feel good. What can I say? I am going back to work." There will be some hard feelings when he returns to work, Nichols admitted. "We can handle that," he said. "We're grown men. We're professionals." The case may still be appealed, Nichols said. "I'm not satisfied with any punishment," he said. "I feel I haven't done anything wrong. I don't deserve any punishment." These same comments were made just after the board meeting to WICY which was taped and played on the radio news broadcast.

- 11.5 (Two Counts) A member of the force or department shall treat as confidential the official business of the department. He shall not talk for publication.
- 10.1.27 (Two Counts) Publicly criticizing the official actions of a department member.
- 10.1.34 (Two Counts) Deliberate violation of regulations pertaining to police management and control.

7)

On October 21, 1993 at 12:10PM Mayor Feeley notified Officer Nichols by telephone from his office. Chief Phillips and Elizabeth Bessette were present. Mayor Feeley told Officer Nichols that even though he was suspended he was still a member of the Malone Police Dept. and as such was still covered by the department rules and regulations the Mayor told Officer Nichols to read rule 11.5 before he made any statements to Channel 5 WPTZ News. Even after Officer Nichols was advised by the Mayor to read section 11.5 of the rules and regulations regarding talking publicly Officer Nichols went ahead and did it anyway.

11.5 A member of the force 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.

10.1.34 Deliberate violation of regulations pertaining to police management and control

10.1.4 Insubordination

8) On December 11, 1993, at 6:00 pm. Ptl. Nichols chased a vehicle out of the Village on Rt.#37. Sgt. Ritchie was the supervisor of the shift. Ptl. Nichols did not notify Sgt. Ritchie of the pursuit or request permission to continue the chase outside the Village. There is a well defined policy on High Speed Pursuit driving along with requesting permission for continuing outside the Village. Ptl. Nichols signed a memo on Nov. 26, 1993 that he read these policies and understood them. On Nov. 20, 1994, (Ptl. Nichols first day back from suspension) he was ordered by Ass't Chief to check in and out of service every time he gets out of the patrol car.

6.2.1 Conform to department rules and regulations, orders and procedures.

10.1.3 Disobedience of an order

9) On December 15, 1994 Ptl. Nichols stops at Tessie's Diner and has coffee with Village Trustee Greg Dame. Greg Dame advised the Mayor that Ptl. Nichols did discuss matters within the police department. Ptl. Nichols discussed the incident with Sgt. Ritchie and the complaint filed by Ptl. Nichols wife and also discussed the Village of Malone setting up a Civilian Review Board. This was an unauthorized meeting with a Village Official. This is an offense that he was recently charged with and was off suspension less than 25 days.

10.1.78 No member of the department shall initially contact the Board of Trustees on police problems except through regular channels or by permission of the Chief of Police.

10.1.4 Insubordination

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

10) In Sept. 1993, an inventory of the desk that is used by Ptl. Nichols during his D.A.R.E. Program. Located in the desk was D.A.R.E. literature that had been stamped Malone Lions Club. The D.A.R.E. Program receives donations from many businesses and organizations including the Malone Lions Club. No other business or organization was recognized by stamping literature that was sent home with the D.A.R.E. students. Ptl. Nichols is co-owner of a personalized children book business and is also a member of the Malone Lions Club. The Malone Lions Club purchased a quantity of these personalized books from Ptl. Nichols business.

11.8 Prejudice of good order, conduct unbecoming of an Officer.

10.1.67 Soliciting or accepting a reward or anything of value for any service rendered as a department member.

10.1.16 Immoral and unethical behavior.

11) Ptl. Nichols won in a November 1993 Town of Malone Councilman Election. Ptl. Nichols returned from suspension on 11-20-93. Since his return, he has investigated several motor vehicle accidents. Upon reviewing the accident reports and enforcement of traffic laws, there is evidence showing selective enforcement to citizens inside his voting district. Further review of traffic tickets issued to Town of Malone residents both before and after election reflect a excessive shift in Ptl. Nichols enforcement.

11.8 Prejudice of good order, conduct unbecoming of an Officer.

10.1.16 Immoral and unethical behavior.

10.1.1. Conduct which brings discredit upon the department.

12) On December 6, 1994, at 11:45 pm. Ptl. Nichols is at the scene of a DWI Arrest on Pearl St. While at the scene, Ptl. Mulverhill conducts a Breath Test on the subject and throws the small plastic disposable mouth piece on the ground and concentrates on taking the subject into custody. Ptl. Nichols feels that throwing the mouth piece on the ground to be offensive. In his words:

"Inappropriate and unprofessional behavior"

Ptl. Mulverhill's conduct is not that uncommon within our department and other area police departments. Ptl. Nichols feels that Ptl. Mulverhill's conduct is so "inappropriate and unprofessional" that he diverts the attention of Ptl. Mulverhill while taking a subject into custody by calling Ptl. Mulverhill's name twice and pointing to the ground. Ptl. Nichols neglects to bring this conduct which he feels is inappropriate and unprofessional to his immediate supervisor and decides to take the matter into his own hands. To Wit:

I had made the determination while on patrol that at some point I would let Mulverhill know that it bothered me the way he conducted himself.

Ptl. Nichols had over four hours to bring this conduct to his immediate supervisors attention but neglected to do so.

10.1.33 Failure to notify a Superior Officer that a member is violating a rule or order of the department.

11.8 Disorder or neglect to the prejudice of good order, efficiency or discipline.
Conduct unbecoming of an Officer.

6.2.33 Immediately notify the Desk Officer of an unusual occurrence.

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

PETITION RE: PATRICK NICHOLS:

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

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

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

I, Elizabeth J. Bessette, Village Clerk of the Village of Malone, do hereby certify that the foregoing is a true and correct copy, and the whole thereof, of an item from a meeting of the Village Board of Trustees held September 13, 1993.

SEAL

Elizabeth J. Bessette
Elizabeth J. Bessette
Malone Village Clerk

23

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

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

Scott Nesbitt

[Redacted Address]

NAME

ADDRESS

- 1 Rita Charland
- 2 Theresa Harrelly
- 3 Anita DeCoste
- 4 Michelle Langlois
- 5 Cindy H. Flannery
- 6 Michael Torgeson
- 7 Patti Burnett
- 8 Katharine L. Stender
- 9 Tony Gutz
- 10 Brand Marsh
- 11 Rip Cassanova
- 12 Ben Fuchler
- 13 Mike [unclear]
- 14 Dale Granville Jr
- 15 Earl Thomas
- 16 Jim Ambrose
- 17 Michael [unclear]
- 18 David C. [unclear]
- 19 Scott P. Prie
- 20 Paul [unclear]
- 21 Donnell Lawrence

[Redacted Address]

[Redacted Address]

Malone

23

[Signature]

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

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

	NAME	ADDRESS
1	<u>Seamus J. [Signature]</u>	<u>Malone N.Y. 12953</u>
2	<u>Kathleen M. [Signature]</u>	<u>Malone N.Y. 12953</u>
3	_____	_____
4	_____	_____
5	_____	_____
6	_____	_____
7	_____	_____
8	_____	_____
9	_____	_____
10	_____	_____
11	_____	_____
12	_____	_____
13	_____	_____
14	_____	_____
15	_____	_____
16	_____	_____
17	_____	_____
18	_____	_____
19	_____	_____
20	_____	_____

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED :
TIME ENDED :

DATE September 24, 1993

PLACE Malone PD

I, Scott Smith am 28 years of age, born on 4/23/65, my address is Rt 30 Malone NY, my occupation is Businessman, and degree of education is 12.

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

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

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

witness:

Signed:

witness:

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED :
TIME ENDED :

DATE Oct 27, 1993 PLACE Malone PD

I, Edward Ritmann am 59 years of age, born on 7/29/34,
my address is 125 Grandview Dr. Malone N.Y., my occupation is
Retired, and degree of education is 14yrs.

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

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

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

witness: 

Signed: 

witness:

PAGE 1 OF 1 PAGES

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED :
TIME ENDED :

DATE October 21, 1993 PLACE Malone PD

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

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

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

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

witness:

witness:

Signed:

PAGE 1 of

PAGES

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED :
TIME ENDED :

DATE October 21, 1993 PLACE Malone PD

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

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

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

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

witness: *[Signature]*

witness:

Signed: *Carl Thomas*

PAGE

1 OF 1

PAGES

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN
:

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

DATE October 21, 1993 PLACE Malone Police Department

I, James E. Phillips am 42 years of age, born on December 12, 1950 address is P.O. Box 356 Malone NY 12953 my occupation is Police Chief for the Village of Malone, NY and degree of education is 15 years. I would like to state that on the above date while I was at the Mayor's Office located at 16 Elm Street in the Village of Malone, NY. At 12:10PM Mayor Feeley called Officer Pat Nichols on the speaker phone. I was present when the phone call was made and also Elizabeth Bessette was present. When Pat answered the phone Mayor Feeley told Pat who was calling, and said to him I hear Channel 5 is coming to interview you Pat acknowledge that they were. The Mayor then told Pat that he was still a member of the Police Department even though he was on suspension and he advised him to read section 11.5 of the rules of conduct before he made any statement to the press. Pat then said he would contact his attorney.

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

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

Signed: 

PAGE 1 OF 1 PAGES

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

TO: Chief Phillips

ADDRESS: _____

DATE: 11-26-93

SUBJECT: _____

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

SIGNED: _____

Pat Kelly

TO: Patrolman Patrick Nichols

FROM: Chief James E. Phillips

DATE: December 23, 1993

MEMORANDUM

Pat I would like to take this opportunity to congratulate you on your recent election to the Town of Malone Board of Supervisors.

I just have a couple of concerns that I have, that I thought I should make you aware of.

1. In the memo that I sent you dated June 22, 1993 I said I have no problem with you holding political office as long as it does not interfere with your job as a police officer.
2. I can see a problem where members of the board call the Police Station looking for you or members of the public. When Gary worked on the Police Dept. there was a big problem with the number of calls that he got involving Town business, while he was working as a police officer. I was not the Chief at that time and as such had no say in it. I hope that you would make it clear to your fellow board members of your schedule so they can contact you at other times than while you are working as a police officer. I have no problems with you getting phone calls at the station from family members or friends as members get now.

MALONE VILLAGE POLICE DEPARTMENT

JAMES E. PHILLIPS
CHIEF OF POLICE

GERALD K. MOLL
ASSISTANT CHIEF

DEPARTMENT POLICY

REF: HIGH SPEED PURSUIT DRIVING

DATE: 05-01-93

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

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

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

9. The population density of the area.

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

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

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

During the pursuit:

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

Desk Officer:

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

LAW NOTES

PUBLIC EMPLOYMENT LAW NOTES

OFF-DUTY CONDUCT THAT DISCREDITS AN EMPLOYER

Robertson v Eccleston, _ A22d _

The off-duty misconduct of an employee may result in disciplinary action being taken against the individual if the employer believes that such misconduct "brings discredit" upon the agency. In the Robertson case the Appellate Divisions considered a number of issues, among them the quality of the evidence necessary to show "discredit" was brought on the agency as a result to the employee's off-duty conduct.

According to the ruling, Joseph Angelino, a City of Norwich police officer and Michael Robertson, a Chenango County deputy sheriff, both dressed in civilian clothing, were off-duty, when Angelino confronted two pedestrians, Migdal and his female companion. There was an altercation between Angelino and Migdal during which Robertson restrained Migdal's companion from aiding him. Cutting, another off-duty deputy sheriff witnessed the event. Migdal reported the incident to the sheriff's department and was taken by ambulance to a hospital.

Served with disciplinary charges pursuant to §75 of the Civil Service Law, Robertson was found guilty of (1) conduct which brought discredit upon the sheriff's office; (2) failure to perform a lawful duty; and (3) other charges related to his treatment of individuals. The Sheriff adopted the findings of the hearing officer and imposed the penalty of dismissal. Robertson sued seeking to have the Sheriff's determination annulled.

One of the arguments advanced by Robertson in the appeal was that the sheriff's decision was not supported by substantial evidence because no "proof of media coverage causing adverse publicity or discredit to the Sheriff's Department" was introduced during the disciplinary hearing. The Appellate Division said that this contention was "ludicrous." The court said that Migdal, his companion, their relatives, hospital employees and members of the sheriff's department were all aware of the events which, "standing alone, were sufficient to discredit the Department." This suggests that proof that there had been a wide dissemination of the adverse information such as might result from a story in a newspaper is not critical to showing that an employer has been discredited.

As to the proof presented against Robertson, the Appellate Division said that it found "the testimony of the witnesses supports the finding that [Robertson] was equally responsible for the assault upon Migdal, for his restraint of [Migdal's companion], for the warnings he gave Migdal, for his failure to obtain medical care [for Migdal] and for his failure to report the incident." The court said that "the determinations made by the chief officer of a police agency are entitled to substantial deference because 'he, and not the courts, is accountable to the public for the integrity of [his] Department.'"

The Appellate Division also ruled that imposing the penalty of dismissal was not so disproportionate to the offense as to shock its conscience, citing the Pell doctrine [Pell v Board of Education, 34 NY2d 222]. The court also found unpersuasive Robertson's claim that the regulations of the "Sheriff's Department were unconstitutionally vague" and that his argument that he "somehow did not understand how his actions that night were violative of the proscribed conduct is irrational and unworthy of further comment."

DRUG TESTS - FOR DRUGS CONSUMED OFF-DUTY

American Federation of Government Employees v Martin, 91-15829, 9th Circuit

In another case involving off-duty employee behavior, the U.S. Circuit Court of Appeals for the 9th Circuit held that the testing of government workers for drugs on the basis of a "reasonable suspicion" that the employees tested engaged in off-duty drug use did not violate the constitutional rights of the individuals tested. The case involved the testing of U.S. Department of Labor employees having responsibilities in safety, health care, motor vehicle operators and individuals working in "security-sensitive" areas.

Conceding that such testing could constitute an invasion of privacy, the court indicated that here public safety and national security were more important and thus resulted in a diminished expectation of an employee's personal privacy.

One critic of employer testing of workers for drugs said that there is little difference between testing for on-duty or off-duty drug use, concluding that "as soon as you have any testing, that privacy battle has been lost." Another observer commented that in his view, "if the standards thus far approved by the courts with respect to the testing of employees for on-duty use of drugs are applied to testing workers with respect to their off-duty use of drugs, the courts would probably approve the employer's off-duty testing policies."

ACCESS TO POLICE PERSONNEL RECORDS

Poughkeepsie Police Benevolent Association, Inc. v City of Poughkeepsie, _ AD2d _

§50-a of the Civil Rights Law limits access to the personnel records of police officers over their objections without a court order.

The Poughkeepsie Police Benevolent Association (PBA), contending that the City had released a summary of the "internal investigation of instances of police misconduct" to the public, attempted to obtain a court order prohibiting the City from releasing such information in the future. When Supreme Court Justice Benson denied PBA's request and

SEVERITY OF THE DISCIPLINARY PENALTY

Jones v NYC Board of Education, 100 AD2d 222

Challenges to disciplinary actions usually involve claims that the finding of guilty of some or all of the charges is not supported by substantial evidence and, in any event, the penalty imposed is too severe.

The Jones case is atypical in that Jones did not ask the court to review whether there was substantial evidence to support a finding that he was guilty of various acts of misconduct. Instead, Jones merely appealed the penalty imposed upon him - dismissal. He won a ruling by a Supreme Court justice that annulled the penalty and remanded the matter back to the appointing authority for the imposition of a "lesser penalty."

The Appellate Division reversed the lower court's determination, holding that although "his penalty, while obviously severe, is not, under all the circumstances, so disproportionate to the offenses in question as to shock one's sense of fairness," citing *Pell v Board of Education*, 34 NY2d 222.

The appellate division noted that the hearing panel had found that Jones had failed to improve his performance despite many warnings and opportunities to do so. It said that it was significant that the disciplinary hearing panel concluded that in view of Jones failure

to change despite these warnings, "he would not improve his skills if permitted to return to work."

COUNSELING MEMORANDA AND DISCIPLINARY ACTION

Heslop v Newfield CSO, AD

Disciplinary charges pursuant to §75 of the Civil Service Law were filed against Heslop, a school bus driver, alleging that he had used physical force against two students on two separate occasions. A hearing officer found Heslop guilty of both charges and recommended that he be dismissed. The district adopted the findings and recommendations of the hearing officer and terminated Heslop.

One of the issues raised by Heslop on appeal was that he had been given a "counseling memorandum" concerning the first incident in which he was warned that "the reporting of one more incident of violence ... would result in further disciplinary action." This, he contended, constituted "double jeopardy" as he was being punished for the same offense twice.

The Appellate Division rejected Heslop argument on this point. It was noted that the Court of Appeals had reviewed a similar question and had decided that counseling memoranda containing a warning and an admonition to comply with the policy of a school district is not a form of punishment in and of itself [*Holt v Webutuck CSD*, 52 NY^{2d} 625]. Accordingly, issuing such a memorandum does not prevent the district from later instituting disciplinary action based on the same event and, further, the memorandum itself could be introduced as evidence in the course of the disciplinary proceeding.



As to the use of counseling reports in a disciplinary cases, sometimes the issue of compliance with a contract requirement mandating "progressive discipline" is raised. The introduction of "counseling memoranda" to demonstrate that the employee was advised of his or her violation of rules or misconduct or inappropriate or inadequate performance and instructed as to the corrective action to be taken may prove critical in determining the guilt of the party charged and, if found guilty, the penalty to be imposed.

sanction for showing disrespect to superior officer.

Harold & Salant, Eastchester (Chris Harold, of counsel), for petitioner.

William M. Kavanaugh, Corp. Counsel, Newburgh, for respondent.

Before MOLLEN, P.J., and THOMPSON, RUBIN and SPATT, JJ.

MEMORANDUM BY THE COURT.

Proceeding pursuant to CPLR article 78 to review a determination of the respondent City Manager of the City of Newburgh, dated April 9, 1986, which after a hearing, found the petitioner guilty of violating (1) Article XII(2) of the Rules and Regulations of the City of Newburgh Police Department (hereinafter the Rules) for disrespect to a superior officer, (2) Article XIII(12) of the Rules for failure to conduct himself in a manner that would foster the greatest harmony and cooperation between officers, (3) Article II(5) of the Rules for insubordination in the making of ridiculing statements to a superior officer, and (4) Article II(1) of the Rules for insubordination in failing to carry out a direct order of a superior officer, and demoted him from the position of detective to patrolman.

ADJUDGED that the determination is confirmed and the proceeding is dismissed on the merits, without costs or disbursements.

[1-3] We find substantial evidence in the record to support the determination of the respondent finding the petitioner guilty of insubordination and related charges (see, CPLR 7803[4]; *Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 230, 231, 356 N.Y.S.2d 833, 313 N.E.2d 321). A police force is a quasi-military organization demanding strict discipline (*Matter of De Bois v. Rozzi*, 114 A.D.2d 848, 494 N.Y.S.2d 755) and much deference is to be accorded the internal discipline of, and the penalties imposed upon, its members (see, *Matter of Meyer v. Rozzi*, 108 A.D.2d 859, 495 N.Y.S.2d 363). The petitioner's showing of disrespect to

his superior officer cannot be sanctioned since such behavior poses a serious threat to the discipline and the efficiency of the agency's operation. Under the circumstances, the sanction of demotion in rank is not disproportionate to the offense (see, *Matter of Wahl v. Lehman*, 67 A.D.2d 930, 413 N.Y.S.2d 32).



136 A.D.2d 618

Karen SECOR, etc., et al., Appellants,

v.

Lois M. O'DELL, Respondent.

Supreme Court, Appellate Division,
Second Department.

Jan. 19, 1988.

Motorist allegedly injured in vehicular accident brought action against other motorist involved in the accident. The Supreme Court, Dutchess County, Benson, J., granted summary judgment for defendant motorist, and adhered to that original determination on reargument. Plaintiff motorist appealed from both orders. The Supreme Court, Appellate Division, held that genuine issue of material fact existed as to whether plaintiff motorist was unable to perform substantially all acts constituting her usual and customary daily activities during not less than 90 of the 180 days immediately following accident, so as to preclude summary judgment for defendant motorist on theory plaintiff motorist had not sustained "serious injury" within meaning of insurance law.

Reversed.

1. Appeal and Error §790(3)

Order granting defendant summary judgment dismissing complaint was superseded by order entered upon reargument that adhered to original determination, and

COMMENTS

STATUTE OF LIMITATIONS FOR CHALLENGING DISMISSAL Hoestery v Cathedral City [Calif.], CA9, 90-55141

Hoestery, an city employee subject to dismissal only for cause, involuntarily resigned from his position due to alleged coercion and intimidation by his superior. The "resignation" took effect two days later, on November 30, 1986. Exactly one year later he filed a law suit, claiming the denial of a pre-termination hearing violated his rights under 42 USC 1983.

A critical issue in this case was whether Hoestery's claim was time-barred. The district court ruled that the statute of limitations began to run "on the date of the notification of the discharge," here November 28, 1986. Accordingly, Hoestery filed his suit two days too late.

The Circuit Court, reversed, ruling that the statute of limitations is triggered only when the employee receives the notice of the termination decision and that the notice indicates that the decision is final and no further administrative action would be taken. In the absence of written notice, it would be only on the last day of employment that the employee could become aware that the employer's decision was final and that no further action regarding the termination would be initiated. The Circuit Court ruled that the statute of limitations began to run on Hoestery's last day of employment, November 30, 1986 and thus the suit he filed on November 30, 1987 was timely.

POLICE OFFICERS SUBJECT TO "STRICT DISCIPLINE"

Poitevien v Brown, _ AD2d _

Found guilty of charges alleging improper sexual acts, failure to identify himself as a police officer and other unsuitable conduct, Poitevien was dismissed from his position with the NYC Police Department.

On appeal the Appellate Division affirmed Poitevien's termination, indicating that the hearing officer's determination that testimony against him was creditable, together with other evidence, constituted substantial evidence to support a finding of guilt. As to the penalty, the court said it was appropriate in view of the compelling interest in maintaining strict discipline in the Police Department.

PUBLIC EMPLOYMENT LAW NOTES

EFFECT OF PRIOR DISCIPLINARY RECORDS

Sapp v Gleason, 590 NYS^{2d} 119

Sapp, a firefighter, failed to respond to a reported alarm of a fire as assigned. Brought up on disciplinary charges, he was found guilty as charged and dismissed. In the course of the disciplinary hearing the hearing officer was provided with records of prior disciplinary actions taken against Sapp. The hearing officer was told that these records were not to be used by him to determine Sapp's guilty or innocence but were to be used only in the event he found Sapp guilty and then for the purpose of determining the penalty to be imposed. Sapp challenged the hearing officer's determination and the penalty imposed.

The Appellate Division held that Sapp had not be deprived of his right to a fair hearing notwithstanding the fact that the hearing officer was provided with his disciplinary record prior to making any determination as to his guilt of the charges then pending, noting that the hearing officer was told not consider this evidence in determining Sapp's guilt and had stated that the material would be used only in assessing any sanction to be imposed.

AUTHORITY OF THE ARBITRATOR

SUNY - College at Buffalo v United University Professions, _ AD^{2d} _

This decision by the Appellate Division explores the issue of the authority of an arbitrator to resolve a conflict arising under a collective bargaining agreement. In this case the college claimed that the arbitrator exceed her authority in determining that a faculty member's duties as an associate professor were greater than her half-time employment status in violation of the salary and benefit terms of the controlling collective bargaining agreement.

The college argued that agreement did not allow an arbitrator to "grant continuing permanent appointment" or to "substitute his/her judgment" where the agreement or the procedural steps of the policies of the State University's board of trustees provided for the exercise of such judgment. Claiming that the policies state that an employee's professional obligation includes teaching, research, university service and other duties, the college contended that the arbitrator substituted her judgment for that to the college and the arbitration award contravened the faculty member's "continuing employment" [i.e., tenure] status. It asked the courts to vacate the arbitrator's award.

The appellate division said that it disagreed with the college's position. It concluded that the agreement defined a grievance as a "dispute concerning the interpretation, application or claimed violation of a specific term or provision" of the agreement. The court found that the arbitrator had limited herself to the issues before her concerning the violation of certain specific clauses of the agreement and, in so doing, exercised her authority

ABUSE OF SICK LEAVE

Halligan v NYC Police Department, 567 NYS2d 47

Halligan was charged and found guilty of three charges of misconduct involving improper reporting of sick leave, physicians visits and changes of address. The Commissioner imposed the

Page 432

PUBLIC EMPLOYMENT REPORTER

P.O. Drawer 370 Latham, New York 12110 (516) 786-1554

penalty of suspension without pay for 60 days and a one year probationary period.

When Halligan challenged the penalty on the grounds that:

- (1) the findings were against the weight of the evidence and
- (2) the penalty imposed, in any event, was harsher than that recommended by the hearing officer,

The Appellate Division upheld the Commissioner's determination and dismissed the appeal, finding that the determination of guilt was "clearly established by substantial evidence."

The Court also noted that Halligan was on "disciplinary-probation" for earlier violations of sick leave regulations and that it was undisputed that he had failed to file the proper change of address form even though he informed his precinct of his new address. In addition, the fact that Halligan failed to properly report sick leave was uncontroverted. This, said the Court, indicated that there was a rational basis to view Halligan's current violations as deliberate and serious.

PUBLIC EMPLOYMENT LAW NOTES

★ Segrue v City of Schenectady, __ NY2d __, is another case in which a dismissed public employee challenged his disciplinary termination on the grounds that it constituted an excessive penalty. Here the Court of Appeals indicated that when an administrator is considering the appropriate disciplinary penalty to be imposed, it is the nature of the charges sustained against the worker that is the significant consideration. The Segrue decision indicates that where a breach of public trust is involved, imposing the penalty of termination is not shockingly disproportionate to the proven misconduct.

A third case in which the courts upheld the administrator's decision to terminate the employee is Currier v Clifford, 532 NYS2d 473. Currier was charged and found guilty of incompetence and misconduct in his position of heavy equipment operator for the City of Auburn.

The Appellate Division, Fourth Department, ruled that Currier had been provided with a full hearing under §75 of the Civil Service Law and that the proof at the hearing was sufficient to establish both incompetency and misconduct. It noted that "in view of [Currier's] prior work record and history of disciplinary charges, the penalty of dismissal was appropriate."

However, Currier had been suspended from his position on March 24 through the following July 10 when the disciplinary determination was made. The City advised him that it would compensate him for "all unused vacation time, personal leave time and [his] suspended time in excess of 60 days...." for the period March 24 through July 10. The Court said that 30 days was the maximum period of suspension without pay permitted under §75. Auburn was then directed to compensate Currier for any salary he would have earned in excess of this 30 day period.

DEADLINE FOR FILING EEO-1 REPORTS EXTENDED

If you didn't meet the March 31, 1990 deadline for filing your EEO-1 report, you still have some time. EEOC extended the deadline for filing these reports until September 30, 1990 [see 55 FR 74].

EEO-1 reports require employers to breakdown their workforces by race, ethnicity and gender; State and local governments file the EEO-4 form while elementary and secondary schools are required to file an EEO-5. These reports indicate employment by minority group, sex, occupation and salary range.

EEOC POLICY ON "SEX-REFERENT" LANGUAGE IN JOB ADVERTISING

The Equal Employment Opportunity Commission has issued guidelines concerning the use of sex-referent language in advertisement for

age and 35% of the cost of dependent coverage on behalf of retirees. Employers may elect to pay more, or even the entire cost of such coverage, for retirees and their dependents.

There are no similar requirements under New York State law with respect mandating minimum employer contributions on behalf individuals upon retirement by "non-participating employers" -- public employers who do not participate in the State's plan. Also noted is the fact that a number of school districts have withdrawn from the State's plan in an effort to reduce health insurance costs.

Although some health insurance benefits might be available to most retirees under COBRA [the federal Consolidated Omnibus Budget Reconciliation Act], COBRA does not mandate any employer contribution and, indeed, authorizes the employer to collect a "fee" in connection with a former employee's continued participation in its group health insurance plan.

The Executive Order provides that the Task Force is to make recommendations on "a policy and process for ensuring that retiree benefits are treated equitably" by May 1, 1994.

INSUBORDINATION - PENALTY IMPOSED

Marra v Commack UFSO, 1 AC^{2d}

The penalties that may be imposed following a teacher being found guilty of insubordination may vary from a reprimand to termination, depending on the

circumstances. One factor that may affect the penalty imposed is the repetitive nature of the offenses charged.

The Marra case illustrates this. Marra, a long-tenured teacher, was found guilty of "18 separate allegations of insubordination, conduct unbecoming a teacher, and neglect of duty" by a §3020-a disciplinary hearing panel. The penalty imposed was termination.

Although each offense standing alone might not appear to warrant the ultimate penalty of dismissal, in the Marra case the Appellate Division decided that termination, "although severe," met the standards set in *Pell v Board of Education*, 34 NY^{2d} 222 as it "was not so disproportionate to the offenses, in the light of all of the circumstances, as to be shocking to one's sense of fairness."

NEGOTIATING UNIT PERSONNEL UNIT WORK DETERMINATIONS

Matter of Union-Endicott Maintenance Workers Assoc., 26 PERB 3074

The principal of an Union-Endicott Central School elementary school opened a school for the purposes of team practice on two occasions.

Contending that unit custodians "have exclusivity over the opening and closing of school buildings," the Association filed a complaint with PERB alleging that the principal's actions constituted a transfer of "unit work" in violation of §209-a.1(d) of the Taylor Law and asked PERB to find

PROBLEMS SINCE PATROLMAN NICHOLS HAS RETURNED TO WORK

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

12-29-93 In reviewing the accident reports, Ptl. Nichols seems to have a very slanted enforcement on IN TOWN and OUT OF TOWN RESIDENTS.

01-??-94 Ptl. Nichols's 11 year old daughter submits a Letter to Editor expressing her discontent of not having her father teach DARE. The letter discussed several members and an unknown member posts a copy of the letter in the locker room. On the copy are comments stating that this is the lowest thing this department has ever seen.

01-??-94 Another Letter to the Editor is in the Malone Telegram from Michael Fournier supporting Ptl. Nichols and wanting him back in the DARE Program. Fournier has been arrested by our department several times in which one arrest results taking a AK-47 from his possession. Fournier was seen at Ptl. Nichols residence just prior to this letter in the Telegram and has been seen there several time since then.

11-27-94 Malone Lions Club sends a \$500.00 donation for the DARE program. Along with the check is a letter stating their discontentment over not having Ptl. Nichols teaching DARE and the way the situation was handled. Further discredit to the department.

02-07-94 During a DWI arrest, Ptl. Mulverhill conducts breath screening test at the scene and drops a small plastic mouth piece on the ground. This apparently discusses Ptl. Nichols and he brings it to the attention of Ptl. Mulverhill while he and Ptl. Fountain were taking the subject into custody. Ptl. Nichols diverts Ptl. Mulverhill's attention and states that it doesn't look good dropping the mouth piece on the ground. This is done in front of a New York State Trooper and a college intern. Ptl. Nichols feels that Ptl. Mulverhill's conduct was inappropriate and unprofessional but neglects to advise his shift supervisor.

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

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

ACCIDENT REPORTS

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

12-13-94 Accident Elm St. & Morton St.
Out of town at fault -----2 tickets

12-14-93 Steak & Seafood Parking Lot
Hit & Run with possibility that driver had no
knowledge of striking vehicle. Drive is William
Creighton (strong advocate of Nichols) with history
of accidents and tickets. Creighton at fault,
unsafe backing. No tickets issued.

12-17-93 Webster & Francis St.
Minor damage to victims vehicle
Out of Town at fault -----1 ticket issued

12-23-94 Yando's Parking Lot
Unsafe backing by In town operator
-----no ticket-----

12-24-93 Pleasant St. & Main St.
In town operator slid on roads striking out of town
vehicle.
Report blames road conditions, no fault to in town
operator and NO TICKET

12-28-93 Main & Harrison
Out of town operator slid due to road conditions
striking in town vehicle.
No mention of #66 icy roads and out of town driver
issued ticket.

12-28-93 Pearl & College
Icy road conditions noted on report (#66)
Out of town operator issued ticket for hitting
in town vehicle.

12-28-93 Park & Elm
Very minor damage accident
Out of town operator ticketed for striking in town
vehicle.

01-01-94 Constable & Third
Unsafe backing by 17 year old in town driver
No tickets issued

01-18-94 Main & Amsden
Very minor damage accident
Out of town operator issued ticket for hitting
in town vehicle.

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

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

From 08-07-92 to Election

32 tickets issued to Malone Residents

11 tickets issued to out of town residents

76% of tickets were issued to Malone Residents

From Election to 02-04-93

13 tickets issued to Malone Residents

26 tickets issued to out of town residents

33% of tickets were issued to Malone Residents

Thats 230% change in the way Nichols is issuing tickets

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

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

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

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

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

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

POLICE AGENCY COPY 1

1	Page 1 of 1 Pages	Local Codes	Accident Date 12/13/93 Mo, Day Year	Day of Week Mo	Time 12:50 AM	No. of Vehicles 2	No. Injured 1	No. Killed 0	Non-Highway <input type="checkbox"/>	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	19		
2	Name - exactly as printed on license KING, GENEVIEVE R						DMV USE	Name - exactly as printed on license TREPON, NORMAN A						DMV USE	20
3	Name - exactly as printed on registration SAME AS DRIVER						Date of Birth Mo, Day Year	Name - exactly as printed on registration SAME AS DRIVER						Date of Birth Mo, Day Year	21
4	City State Zip Code						Hazardous Material Code	City State Zip Code						Hazardous Material Code	22
5	Plate Number FD614	State of Reg. NY	Yr. & Vehicle Make 90 CHEV	Vehicle Type PAS	Ins. Code 211	Plate Number 9V-865	State of Reg. NY	Yr. & Vehicle Make 79 FORD	Vehicle Type PAS	Ins. Code 148	Check if involved vehicle is <input type="checkbox"/> more than 95" wide, <input type="checkbox"/> more than 34' long.			23	
6	ACCIDENT DIAGRAM												24		
7	VEHICLE 1 DAMAGE												25		
8	VEHICLE 2 DAMAGE												26		
9	Vehicle Towed By												27		
10	Reference Marker												28		
11	Ticket/Arrest												29		
12	Accident Description/Officer's Notes												30		
13	WITNESS												USE COVER SHEET		
14	Names - If Deceased, Give Date of Death												G		
15	SIGN														

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

POLICE AGENCY COPY 1

Page 1 of 1 Pages		Local Codes	
Accident Date 12/14/93 Mo./Day/Year	Day of Week TU	Time 12:00 AM PM	No. of Vehicles 2
No. Injured 0	No. Killed 0	Non-Highway <input checked="" type="checkbox"/>	Not Investigated at Scene <input type="checkbox"/>
Left Scene <input type="checkbox"/>	Police Photos Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
Name - exactly as printed on license PARKED UNATTENDED		Name - exactly as printed on license CREIGHTON, WILLIAM D	
Number and Street		Number and Street	
City		City	
State		State	
Zip Code		Zip Code	
Date of Birth Mo./Day/Year	Sex	Un-Licensed <input type="checkbox"/>	No. of Occup. 1
Public Property Damaged <input type="checkbox"/>	State of License	Sex	Un-Licensed <input type="checkbox"/>
No. of Occup. 1	Public Property Damaged <input type="checkbox"/>	State of License	
Name - exactly as printed on registration GOLEY, RICHARD, A		Name - exactly as printed on registration SAME AS DRIVER	
Number and Street		Number and Street	
City		City	
State		State	
Zip Code		Zip Code	
Plate Number FRH-551	State of Reg. NY	Yr. & Vehicle Make 89 BUICK	Vehicle Type PAS
Ins. Code 231	Plate Number PDF-66	State of Reg. NY	Yr. & Vehicle Make 86 CLW
Vehicle Type PAS	Ins. Code 383		
Check if involved vehicle is <input type="checkbox"/> more than 95" wide, <input type="checkbox"/> more than 34' long.		Check if involved vehicle is <input type="checkbox"/> more than 95" wide, <input type="checkbox"/> more than 34' long.	
VEHICLE 1 DAMAGE		VEHICLE 2 DAMAGE	
No Damage <input type="checkbox"/> Undercarriage <input type="checkbox"/>		No Damage <input checked="" type="checkbox"/> Undercarriage <input type="checkbox"/>	
By Vehicle Towed To		By Vehicle Towed To	
Reference Marker		Reference Marker	
DMV USE ONLY		DMV USE ONLY	
County FRANK		County FRANK	
City <input type="checkbox"/>		City <input type="checkbox"/>	
Town <input type="checkbox"/>		Town <input type="checkbox"/>	
Route No. and Street Name PARKING LOT STEAK		Route No. and Street Name PARKING LOT STEAK	
on ST-11 VIL-MIN SEAFOOD		on ST-11 VIL-MIN SEAFOOD	
Ticket/Arrest Opr 1 <input type="checkbox"/> Pedestrian <input type="checkbox"/> Opr 2 <input type="checkbox"/> Bicyclist <input type="checkbox"/>		Ticket/Arrest Opr 1 <input type="checkbox"/> Pedestrian <input type="checkbox"/> Opr 2 <input type="checkbox"/> Bicyclist <input type="checkbox"/>	
Violation Section(s)		Violation Section(s)	
Accident Description/Officer's Notes VEHICLE (1) WHEN BACKING OUT OF SPACE STRUCK RND (CAUSED) DAMAGE TO VEH #1. VEH (2) LEFT SCENE. DRIVER #2 NOT AWARE OF COLLISION.		Accident Description/Officer's Notes VEHICLE (1) WHEN BACKING OUT OF SPACE STRUCK RND (CAUSED) DAMAGE TO VEH #1. VEH (2) LEFT SCENE. DRIVER #2 NOT AWARE OF COLLISION.	
Names - If Deceased, Give Date of Death		Names - If Deceased, Give Date of Death	
Operator		Operator	
Officer's Rank and Name P. J. NICHOLES		Officer's Rank and Name P. J. NICHOLES	
Badge No. 59		Badge No. 59	
Department MID		Department MID	
Precinct/Post Troop/Zone 01324		Precinct/Post Troop/Zone 01324	
Station/Beat/ Sector		Station/Beat/ Sector	
Reviewing Officer Or		Reviewing Officer Or	
Date/Time Reviewed 12/15/93 1200		Date/Time Reviewed 12/15/93 1200	

USE
COVER
SHEET
G

0841 12/22/93 00660547 BMVG39914 PART 001 OF 001
PTST BMVG 0841
2400
RECORD - NYSPIN WANTED PERSONS FILE
7CREIGHTON, WILLIAM D
B/111457. SEX/M. RAC/U

#231
Nationwide

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

N 0841-0841 12/22/93 00660605 BMVG39916 PART 001 OF 001
NYMV DALL BMVG 0841
EALCREIGHTON, WILLIAM, D 11/14/57
TODAY'S DATE: 12/22/1993 TIME: 08:41:36
I #: C18191 95606 377213-57 CLIENT ID#: 518589615
REIGHTON, WILLIAM, D DOB: 11/14/1957 SEX: M
45 GENTLE BREEZE DR HEIGHT: 6-4 EYE COLOR: HAZEL
MALONE NY 12953 COUNTY: FRAN
RESTRICTIONS: CORRECTIVE LENSES
LICENSE CLASS *D* STATUS: VALID EXPIRATION: 11/14/1996
***** CONVICTIONS/BAIL FORFEITURES *****
CONVICTION: SPEED IN ZONE 040/030
VIOLATION: 06/01/1993 CONVICTED ON: 09/27/1993
LOCATION: FRANKLIN COUNTY, VILLAGE OF MALONE
PENALTY: FINE- \$60 POINTS: 3
COMM VEH: UNKNOWN HAZMAT: UNKNOWN
> MOR

N 0841-0841 12/22/93 00660631 BMVG39917 PART 001 OF 001
NYMV DMOR BMVG 0841
EALCREIGHTON, WILLIAM, D 11/
CONVICTION: FLD TO STOP-SCHL BUS
VIOLATION: 03/25/1991 CONVICTED ON: 05/03/1991
LOCATION: FRANKLIN COUNTY, VILLAGE OF MALONE
PENALTY: POINTS: 5 DISCHARGE: CONDITIONAL
COMM VEH: UNKNOWN HAZMAT: UNKNOWN
***** ACCIDENTS *****
ACCIDENT DATE: 11/07/1991 PERSONAL INJURY COUNTY: FRAN CASE #: 91-677745
POLICE REPORT FILED
ACCIDENT DATE: 03/05/1990 PROPERTY DAMAGE COUNTY: FRAN CASE #: 90-225580
MOTORIST REPORT FILED
>

[illegible]

85013

OFFENSE REPORT

Complainant RICHARD JOE GOKEY

Case No. 22-A-3/00

Address Scott Drive

Phone

Offense Hit & Run

Place of Occurrence Steak/Seafood parking lot

Report received by vnm

at 12/N

M. Date 12/14

19 93

How reported phone

Date and time offense committed

Officer Assigned Nichols

Time of investigation

M. Date

Suspects and/or persons arrested

Wm Creighton Jr 45 Gentle Br Dr

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

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

Nichols assigned/vnm

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

REPORT MADE BY

Date

DF

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

POLICE AGENCY COPY 1

1		Page 1 of 1 Pages		Local Codes		19		7	
2		Accident Date 12/17/93 Mo. Day Year		Day of Week FR		Time 12:10 AM PM		No. of Vehicles 2	
3		No. Injured 0		No. Killed 0		Non-Highway <input type="checkbox"/>		Not Investigated at Scene <input type="checkbox"/>	
4		Left Scene <input type="checkbox"/>		Police Photos Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		20			
5		VEHICLE 1 Name - exactly as printed on license DURANT, SHERRI A		DMV USE		VEHICLE 2 Name - exactly as printed on license PUTRAW, GEORGE E		DMV USE	
6		Sex F		Un-Licensed <input type="checkbox"/>		No. of Occup. 2		Public Property Damaged <input type="checkbox"/>	
7		State of License NY		Sex M		Un-Licensed <input type="checkbox"/>		No. of Occup. 2	
8		State of License NY		Public Property Damaged <input type="checkbox"/>		21			
9		Name - exactly as printed on registration [REDACTED]		Date of Birth [REDACTED]		Name - exactly as printed on registration MCCANN, EILEEN		Date of Birth 11/1/77	
10		Number and Street [REDACTED]		Hazardous Material Code		Number and Street [REDACTED]		Hazardous Material Code	
11		City 1		State		Zip Code		24	
12		Plate Number G3G-286		State of Reg. NY		Yr. & Vehicle Make 92 Ford		Vehicle Type PAS	
13		Ins. Code 999		Plate Number HV-213		State of Reg. NY		Yr. & Vehicle Make 88 CHEV	
14		Vehicle Type Car		Ins. Code 240		25			
15		Check if involved vehicle is more than 95" wide, <input type="checkbox"/> more than 34" long.		Check if involved vehicle is more than 95" wide, <input type="checkbox"/> more than 34" long.		26			
16		VEHICLE 1 DAMAGE		VEHICLE 2 DAMAGE		27			
17		No Damage <input type="checkbox"/> Undercarriage <input type="checkbox"/>		No Damage <input type="checkbox"/> Undercarriage <input type="checkbox"/>		28			
18		Vehicle Towed By		Vehicle Towed By		29			
19		Reference		Marker		DMV USE ONLY		County FRAN	
20		Ticket/Arrest Opr 1 <input type="checkbox"/> Pedestrian <input type="checkbox"/> Opr 2 <input type="checkbox"/> Bicyclist <input type="checkbox"/>		Other <input type="checkbox"/>		Ticket/Arrest Number(s) (1) - 964202		Violation Section(s) (1) - 1142-A	
21		Accident Description/Officer's Notes		Driver of Vehicle #1 stated she did not see VEH #2 approaching so therefore entered path of VEH #2. VEH #2 struck and damaged VEH #1.		22			
22		Route No. and Street Name on VIL WEBSTER		Village MALONE		23			
23		Nearest Intersecting Route/Street VIL FRANCIS		24					
24		Names - If Deceased, Give Date of Death		25					
25		Operator DURANT, SHERRI		26					
26		Operator PUTRAW, DONALD		27					
27		28		29					
28		30		USE COVER SHEET					
29		G		30					
30		31		32					
31		33		34					
32		35		36					
33		37		38					
34		39		40					
35		41		42					
36		43		44					
37		45		46					
38		47		48					
39		49		50					
40		51		52					
41		53		54					
42		55		56					
43		57		58					
44		59		60					
45		61		62					
46		63		64					
47		65		66					
48		67		68					
49		69		70					
50		71		72					
51		73		74					
52		75		76					
53		77		78					
54		79		80					
55		81		82					
56		83		84					
57		85		86					
58		87		88					
59		89		90					
60		91		92					
61		93		94					
62		95		96					
63		97		98					
64		99		100					
65		101		102					
66		103		104					
67		105		106					
68		107		108					
69		109		110					
70		111		112					
71		113		114					
72		115		116					
73		117		118					
74		119		120					
75		121		122					
76		123		124					
77		125		126					
78		127		128					
79		129		130					
80		131		132					
81		133		134					
82		135		136					
83		137		138					
84		139		140					
85		141		142					
86		143		144					
87		145		146					
88		147		148					
89		149		150					
90		151		152					
91		153		154					
92		155		156					
93		157		158					
94		159		160					
95		161		162					
96		163		164					
97		165		166					
98		167		168					
99		169		170					
100		171		172					
101		173		174					
102		175		176					
103		177		178					
104		179		180					
105		181		182					
106		183		184					
107		185		186					
108		187		188					
109		189		190					
110		191		192					
111		193		194					
112		195		196					
113		197		198					
114		199		200					
115		201		202					
116		203		204					
117		205		206					
118		207		208					
119		209		210					
120		211		212					
121		213		214					
122		215		216					
123		217		218					
124		219		220					
125		221		222					
126		223		224					
127		225		226					
128		227		228					
129		229		230					
130		231		232					
131		233		234					
132		235		236					
133		237		238					
134		239		240					
135		241		242					
136		243		244					
137		245		246					
138		247		248					
139		249		250					
140		251		252					
141		253		254					
142		255		256					
143		257		258					
144		259		260					
145		261		262					
146		263		264					
147		265		266					
148		267		268					
149		269		270					
150		271		272					
151		273		274					
152		275		276					
153		277		278					
154		279		280					
155		281		282					
156		283		284					
157		285		286					
158		287		288					
159		289		290					
160		291		292					
161		293		294					
162		295		296					
163		297		298					
164		299		300					
165		301		302					
166		303		304					
167		305		306					
168		307		308					
169		309		310					
170		311		312					
171		313		314					
172		315		316					
173		317		318					
174		319		320					
175		321		322					
176		323		324					
177		325		326					
178		327		328					
179		329		330					
180		331		332					
181		333		334					
182		335		336					
183		337		338					
184		339		340					
185		341		342					
186		343		344					
187		345		346					
188		347		348					
189		349		350					
190		351		352					
191		353		354					
192		355		356					
193		357		358					
194		359		360					
195		361		362					
196		363		364					
197		365		366					
198		367		368					
199		369		370					
200									

POLICE ACCIDENT REPORT

POLICE AGENCY COPY 1

Page 1 of 1 Pages

Local Codes

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

Vehicle 1 Name - exactly as printed on license LAVARNWA LEDNA
Vehicle 2 Name - exactly as printed on license RUNDALL, AUDREY A.

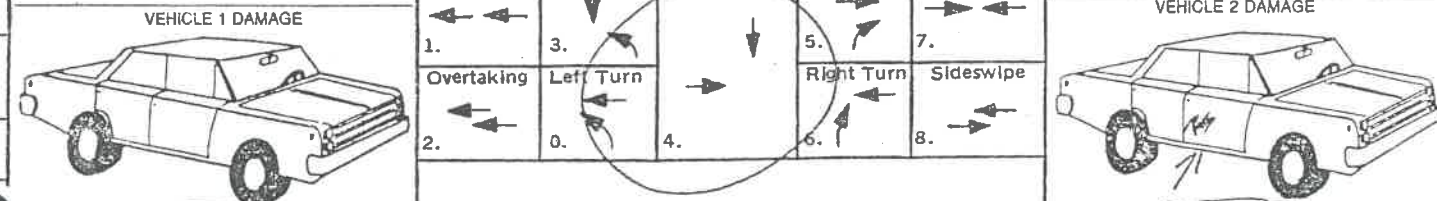
Sex Un-Licensed No. of Occup. Public Property Damaged State of License
Vehicle 1 F ☐ 1 ☐ N.Y.
Vehicle 2 F ☐ 2 ☐ N.Y.

Name - exactly as printed on registration LAVARNWA, DANIEL RUNDALL, GORDON
Date of Birth Mo./Day/Year 11/1/61 11/1/61
Number and Street Hazardous Material Code DYKE RD.

City State Zip Code
Vehicle 1 WHIPPLEVILLE N.Y. 12995
Vehicle 2 N. BANGOR N.Y. 12966

Plate Number State of Reg. Yr. & Vehicle Make Vehicle Type Ins. Code
Vehicle 1 HTL-218 N.Y. 92 PONTI PAS 117
Vehicle 2 FLH-89 N.Y. 92 CHRY PAS 231

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



Vehicle 1 Damage: No Damage ☒ Undercarriage ☐
Vehicle 2 Damage: No Damage ☐ Undercarriage ☐

Vehicle Towed By: 9. To: Village of MALONE

Reference Marker DMV USE ONLY County FRANK City ☐ Town ☐
Route No. and Street Name on PARKING LOT AT JORDO'S BIGN. R. RAYMOND

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

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

USE COVER SHEET

Names - If Deceased, Give Date of Death

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

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

POLICE ACCIDENT REPORT

DMV COPY

1	Page 1 of 1 Pages		Local Codes																19										
Accident Date 12/28/93 Mo. Day Year					Day of Week TU		Time 11:42 AM		No. of Vehicles 2		No. Injured 0		No. Killed 0		Non-Highway <input type="checkbox"/>		Not Investigated at Scene <input type="checkbox"/>		Left Scene <input type="checkbox"/>		Police Photos Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		20						
Name - exactly as printed on license QUINN, FRANK W					DMV USE		Name - exactly as printed on license BUSHEY, GREGORY A					DMV USE		21															
Sex m					Un-Licensed <input type="checkbox"/>		No. of Occup. 1		Public Property Damaged <input type="checkbox"/>		State of License NY		Sex m		Un-Licensed <input type="checkbox"/>		No. of Occup. 3		Public Property Damaged <input type="checkbox"/>		State of License NY		22						
Name - exactly as printed on registration SAME AS DRIVER					Date of Birth Mo. Day Year		Name - exactly as printed on registration BUSHEY, CHRISTINE L					Date of Birth Mo. Day Year		23															
Number and Street 84 CATHERINE					Hazardous Material Code		City MALONE					State NY		Zip Code 12953		24													
Plate Number FLR448		State of Reg NY		Yr. & Vehicle Make 90 Ford		Vehicle Type PAS		Ins. Code 226		Plate Number RN1422		State of Reg NY		Yr. & Vehicle Make 88 Dodge		Vehicle Type Com		Ins. Code 011		25									
Check if involved vehicle is <input type="checkbox"/> more than 95" wide, <input type="checkbox"/> more than 34' long.					ACCIDENT DIAGRAM										Check if involved vehicle is <input type="checkbox"/> more than 95" wide, <input type="checkbox"/> more than 34' long.					26									
VEHICLE 1 DAMAGE					VEHICLE 2 DAMAGE										27														
No Damage <input type="checkbox"/> Undercarriage <input type="checkbox"/>					No Damage <input type="checkbox"/> Undercarriage <input type="checkbox"/>										28														
Vehicle Towed By					Vehicle Towed By										29														
Reference Marker					DMV USE ONLY										30														
Ticket/Arrest Other <input type="checkbox"/>					Ticket/Arrest Number(s) (2)-964228										31														
Opr 1 <input type="checkbox"/> Pedestrian <input type="checkbox"/>					Violation Section(s) (2)-1129-A										32														
Opr 2 <input checked="" type="checkbox"/> Bicyclist <input type="checkbox"/>					Nearest Intersecting Route/Street										33														
Accident Description/Officer's Notes DRIVER OF VEH #2 STATED HE SLID INTO VEH #1 WHEN APPLYING BRAKES TO STOP. DAMAGE TO BOTH VEHICLES.																													
8 9 10 11 12 13 14 15 16 17 18 Names - If Deceased, Give Date of Death																													
A 1 1 3 1 24 M																													
B 2 1 3 1 28 M																													
C 2 2 3 1 5 F																													
D 2 3 3 1 7 F																													
E																													
F																													
G																													
SIGN HERE Officer's Rank and Name PTE JACKELS Badge No. 59 Department MPD Precinct/Post Troop/Zone 0624 Station/Beat/Sector Reviewing Officer Date/Time Reviewed																													

USE
COVER
SHEET

G

POLICE ACCIDENT REPORT

DMV COPY

1 Page 1 of 1 Pages		Local Codes		2 Accident Date 12/27/93 Mo./Day/Year		3 Day of Week TU		4 Time 11:10 AM		5 No. of Vehicles 2		6 No. Injured 1		7 No. Killed 0		8 Non-Highway <input type="checkbox"/>		9 Not Investigated at Scene <input type="checkbox"/>		10 Left Scene <input type="checkbox"/>		11 Police Photos Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
12 Name - exactly as printed on license LOWTHER, LEAMON E JR										13 Name - exactly as printed on license DESGROSEILLERS, C														
14 [Redacted]										15 [Redacted]														
16 [Redacted]										17 [Redacted]														
18 Printed on registration SAME AS DRIVER										19 Printed on registration SAME AS DRIVER														
20 Date of Birth Mo./Day/Year										21 Date of Birth Mo./Day/Year														
22 Number and Street										23 Number and Street														
24 City										25 City														
26 State										27 State														
28 Zip Code										29 Zip Code														
30 Plate Number S-3819					31 State of Reg NY					32 Yr. & Vehicle Make 93 CHEV					33 Vehicle Type Car					34 Ins. Code D11				
35 Plate Number C5400					36 State of Reg NY					37 Yr. & Vehicle Make 93 TOYOT					38 Vehicle Type Pass					39 Ins. Code 158				
40 If damaged vehicle is truck, check if width is <input type="checkbox"/> 96" <input type="checkbox"/> 102"										41 If damaged vehicle is truck, check if width is <input type="checkbox"/> 96" <input type="checkbox"/> 102"														
42 VEHICLE 1 DAMAGE										43 VEHICLE 2 DAMAGE														
44 [Diagram of Vehicle 1 Damage]										45 [Diagram of Vehicle 2 Damage]														
46 No Damage <input type="checkbox"/> Undercarriage <input type="checkbox"/>										47 No Damage <input type="checkbox"/> Undercarriage <input type="checkbox"/>														
48 Vehicle Towed By										49 Vehicle Towed By														
50 Reference Marker										51 Reference Marker														
52 DMV USE ONLY										53 DMV USE ONLY														
54 County PLANK										55 County PLANK														
56 Route No. and Street Name on V.R. PEARL										57 Route No. and Street Name on V.R. PEARL														
58 Ticket/Arrest Opr 1 <input type="checkbox"/> Pedestrian <input type="checkbox"/> Opr 2 <input checked="" type="checkbox"/> Bicyclist <input type="checkbox"/>										59 Ticket/Arrest Opr 1 <input type="checkbox"/> Pedestrian <input type="checkbox"/> Opr 2 <input checked="" type="checkbox"/> Bicyclist <input type="checkbox"/>														
60 Violation Section(s) (2) - 4642.5										61 Violation Section(s) (2) - 1142-A														
62 Accident Description/Officer's Notes DRIVER VEH #2 STATED HE WAS CROSSING INTERSECTION AFTER STOPPING AT STOP SIGN. HE ADDED THAT AS HE ENTERED INTERSECTION THE BACK TIRES BEGAN TO SPIN. HE WAS UNABLE TO REGAIN TRACTION PRIOR TO COLLISION WITH VEH #1.										63 Accident Description/Officer's Notes DRIVER VEH #2 STATED HE WAS CROSSING INTERSECTION AFTER STOPPING AT STOP SIGN. HE ADDED THAT AS HE ENTERED INTERSECTION THE BACK TIRES BEGAN TO SPIN. HE WAS UNABLE TO REGAIN TRACTION PRIOR TO COLLISION WITH VEH #1.														
64 WITNESS: MIKE MILITELLO - WEBSTER ST										65 WITNESS: MIKE MILITELLO - WEBSTER ST														
66 Names - If Deceased, Give Date of Death										67 Names - If Deceased, Give Date of Death														
68 A 1 1 3 1 3 M										69 A 1 1 3 1 3 M														
70 B 1 3 3 1 50 F 16 12 6 417 1602										71 B 1 3 3 1 50 F 16 12 6 417 1602														
72 C 2 1 3 1 21 M										73 C 2 1 3 1 21 M														
74 D										75 D														
76 E										77 E														
78 F										79 F														
80 G										81 G														
82 SIGN HERE										83 SIGN HERE														
84 Officer's Rank and Name P.O. [Redacted]										85 Officer's Rank and Name P.O. [Redacted]														
86 Badge No. 59										87 Badge No. 59														
88 Department 1322										89 Department 1322														
90 Precinct/Post Troop/Zone 21624										91 Precinct/Post Troop/Zone 21624														
92 Station/Beat Sector										93 Station/Beat Sector														
94 Reviewing Officer										95 Reviewing Officer														
96 Date/Time Reviewed										97 Date/Time Reviewed														

USE COVER SHEET

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

1	Page 1 of 1 Pages		LOCAL CODES		POLICE AGENCY COPY 1										19																		
2	Accident Date 12/25/73 Mo. Day Year		Day of Week TU		Time 7:55 AM		No. of Vehicles 2		No. Injured 0		No. Killed 0		Non-Highway <input type="checkbox"/>		Not Investigated at Scene <input type="checkbox"/>		Left Scene <input type="checkbox"/>		Police Photos Yes <input type="checkbox"/> No <input type="checkbox"/>		20												
3	Name - exactly as printed on license SEXTON, SAMUEL L										DMV USE		Name - exactly as printed on license LAFLEUR, LEE E										DMV USE		21								
4	Name - exactly as printed on registration SAME AS DRIVER										Date of Birth Mo. Day Year		Name - exactly as printed on registration TIPKEE, CLAYTON L										Date of Birth Mo. Day Year		22								
5	City 1										State		Zip Code												23								
6	Plate Number R4N-611		State of Reg. NY		Yr. & Vehicle Make 83 LINCOLN		Vehicle Type PAS		Ins. Code 999		Plate Number 97602L		State of Reg. NY		Yr. & Vehicle Make 84 PONTIAC		Vehicle Type OMV		Ins. Code 305		24												
7	Check if involved vehicle is <input type="checkbox"/> more than 95" wide, <input type="checkbox"/> more than 34" long.										Check if involved vehicle is <input type="checkbox"/> more than 95" wide, <input type="checkbox"/> more than 34" long.												25										
8	VEHICLE 1 DAMAGE										VEHICLE 2 DAMAGE												26										
9	No Damage <input type="checkbox"/> Undercarriage <input type="checkbox"/>										No Damage <input type="checkbox"/> Undercarriage <input type="checkbox"/>												27										
10	Vehicle Towed By										Vehicle Towed By												28										
11	Reference Marker										DMV USE ONLY												29										
12	County ALBANY										City ALBANY												30										
13	Route No. and Street Name on V.R. PARK										Miles <input type="checkbox"/> Feet <input type="checkbox"/> At Intersection with V.R. - 2nd												31										
14	Ticket/Arrest Opr 1 <input checked="" type="checkbox"/> Pedestrian <input type="checkbox"/> Opr 2 <input type="checkbox"/> Bicyclist <input type="checkbox"/>										Ticket/Arrest Number(s) (1) - 964227 Violation Section(s) (1) - 1122-A												32										
15	Accident Description/Officer's Notes VEH #2 TURNING LEFT AND STRUCK BY VEH #1 ON DRIVERS SIDE. DRIVER OF VEH #1 STATING SHE DID NOT REALIZE VEH #2 WAS GOING TO TURN.																						33										
16	Names - If Deceased, Give Date of Death																						34										
17	Operator																						35										
18	Operator																						36										
19	SIGN										Officer's Rank and Name PTE. 111/17										Badge No. 55		Department ALBANY		Precinct/Post Troop/Zone 111/24		Station/Beat/ Sector		Reviewing Officer ONE		Date/Time Reviewed 11/8/94 1030		37

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

POLICE AGENCY COPY 1.

1	Page 1 of 1 Pages	Local Codes	19								
2	Accident Date 01/01/94 Mo. Day Year	Day of Week SA	Time 8:15 AM PM	No. of Vehicles 2	No. Injured 0	No. Killed 0	Non-Highway <input type="checkbox"/>	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	20
3	Name - exactly as printed on license PARKED UNATTENDED		DMV USE	Name - exactly as printed on license BOVEA JASON P		DMV USE	21				
4	Number and Street			[REDACTED]			22				
5	City		State	Zip Code			23				
6	Date of Birth Mo. Day Year	Sex M	Un-Licensed <input type="checkbox"/>	No. of Occup. 2	Public Property Damaged <input type="checkbox"/>	State of License NY	24				
7	Name - exactly as printed on registration LAVIANE KIRK D		Date of Birth Mo. Day Year	Name - exactly as printed on registration BOVEA CRAIG A		Date of Birth Mo. Day Year	25				
8	Plate Number 23635AA	State of Reg. NY	Yr. & Vehicle Make 85 Ford	Vehicle Type Com	Ins. Code 999	Plate Number C583LU	State of Reg. NY	Yr. & Vehicle Make 84 CHEV	Vehicle Type Com	Ins. Code 190	26
9	Check if involved vehicle is more than 95" wide, <input type="checkbox"/> more than 34' long.		ACCIDENT DIAGRAM				Check if involved vehicle is more than 95" wide, <input type="checkbox"/> more than 34' long.		27		
10	VEHICLE 1 DAMAGE		VEHICLE 2 DAMAGE				28				
11	1. [Diagram]		1. [Diagram]				29				
12	2. [Diagram]		2. [Diagram]				30				
13	3. [Diagram]		3. [Diagram]								
14	4. [Diagram]		4. [Diagram]								
15	5. [Diagram]		5. [Diagram]								
16	6. [Diagram]		6. [Diagram]								
17	7. [Diagram]		7. [Diagram]								
18	8. [Diagram]		8. [Diagram]								
19	9. [Diagram]		9. [Diagram]								
20	Vehicle Towed To		Vehicle Towed To								
21	Reference		Reference								
22	Marker		Marker								
23	DMV USE ONLY		DMV USE ONLY								
24	County		County								
25	City		City								
26	Town		Town								
27	Village		Village								
28	Route No. and Street Name		Route No. and Street Name								
29	on		on								
30	Ticket/Arrest		Ticket/Arrest								
31	Other		Other								
32	Ticket/Arrest Number(s)		Ticket/Arrest Number(s)								
33	Violation Section(s)		Violation Section(s)								
34	Accident Description/Officer's Notes		Accident Description/Officer's Notes								
35	DRIVER VEH #2 STATED HE BACKED INTO		DRIVER VEH #2 STATED HE BACKED INTO								
36	VEH #1 CAUSING DAMAGE TO BOTH.		VEH #1 CAUSING DAMAGE TO BOTH.								
37	Names - If Deceased, Give Date of Death		Names - If Deceased, Give Date of Death								
38	Operator		Operator								
39	LAVIANE, COREY		LAVIANE, COREY								
40	Officer's Rank and Name		Officer's Rank and Name								
41	Badger No.		Badger No.								
42	Department		Department								
43	Precinct/Post		Precinct/Post								
44	Station/Beat		Station/Beat								
45	Reviewing Officer		Reviewing Officer								
46	Date/Time Reviewed		Date/Time Reviewed								
47	SIGN		SIGN								
48	HERE		HERE								

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

POLICE AGENCY COPY 1

1	Page 1 of 1 Pages		Local Codes		JANUARY, 94		Accident Date 01/18/94		Day of Week TO		Time 1255 PM		No. of Vehicles 2		No. Injured 0		No. Killed 0		Non-Highway <input type="checkbox"/>		Not Investigated at Scene <input type="checkbox"/>		Left Scene <input type="checkbox"/>		Police Photos Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>																									
2	Name - exactly as printed on license SMITH, ANN E										DMV USE		Name - exactly as printed on license SELKIRK, JAMES A										DMV USE																											
3	Sex F										Un-Licensed <input type="checkbox"/>		No. of Occup. 1		Public Property Damaged <input type="checkbox"/>		State of License NY		Sex M										Un-Licensed <input type="checkbox"/>		No. of Occup. 1		Public Property Damaged <input type="checkbox"/>		State of License NY															
4	Name - exactly as printed on registration DRIVER										Date of Birth 1/1/44		Name - exactly as printed on registration DRIVER										Date of Birth 1/1/44																											
5	Number and Street										Hazardous Material Code		Number and Street										Hazardous Material Code																											
6	City										State		Zip Code		City										State		Zip Code																							
7	Plate Number FLX-649		State of Reg. NY		Yr. & Vehicle Make 88 CHEV		Vehicle Type PAS		Ins. Code 413		Plate Number 2147LV		State of Reg. NY		Yr. & Vehicle Make 83 OLDS		Vehicle Type PAS		Ins. Code 413																															
8	Check if involved vehicle is <input type="checkbox"/> more than 95" wide, <input type="checkbox"/> more than 34' long.										Check if involved vehicle is <input type="checkbox"/> more than 95" wide, <input type="checkbox"/> more than 34' long.																																							
9	VEHICLE 1 DAMAGE										VEHICLE 2 DAMAGE																																							
10	Rear End										Left Turn										Right Angle										Right Turn										Head On									
11	1. Overtaking										2. Left Turn										3. Right Turn										4. Sideswipe																			
12	2. Overtaking										3. Left Turn										4. Right Turn										5. Sideswipe																			
13	3. Left Turn										4. Right Turn										5. Sideswipe																													
14	4. Right Turn										5. Sideswipe																																							
15	5. Sideswipe																																																	
16	No Damage <input type="checkbox"/> Undercarriage <input type="checkbox"/>										No Damage <input type="checkbox"/> Undercarriage <input type="checkbox"/>																																							
17	Vehicle Towed By SMITH										Vehicle Towed By																																							
18	To SMITH'S										To																																							
19	Reference Marker										County FRANK										City										Town										Village MALONE									
20	7207										Route No. and Street Name 5-11										Miles 8 N 8 E of										Feet 8 S 8 W of										At Intersection with									
21	1169										on VA-MAIN										V.I.-AMSDEN																													
22	Ticket/Arrest Other <input type="checkbox"/>										Ticket/Arrest Number(s) (2) 964482										Violation Section(s) (2) 1142-A										Nearest Intersecting Route/Street																			
23	Opr 1 <input type="checkbox"/> Pedestrian <input type="checkbox"/>										Opr 2 <input checked="" type="checkbox"/> Bicyclist <input type="checkbox"/>										Accident Description/Officer's Notes DRIVER OF VEH #1 STATING THAT SHE WAS										STUCK ON PASSENGER SIDE OF VEH #2. DRIVER OF VEH #2																			
24	Opr 2 <input checked="" type="checkbox"/> Bicyclist <input type="checkbox"/>										STATING HE WAS ATTEMPTING TO TURN LEFT AFTER										STOPPING. DAMAGE TO BOTH.																													
25																																																		
26																																																		
27																																																		
28																																																		
29																																																		
30																																																		
31																																																		
32																																																		
33																																																		
34																																																		
35																																																		
36																																																		
37																																																		
38																																																		
39																																																		
40																																																		
41																																																		
42																																																		
43																																																		
44																																																		
45																																																		
46																																																		
47																																																		
48																																																		
49																																																		
50																																																		
51																																																		
52																																																		
53																																																		
54																																																		
55																																																		
56																																																		
57																																																		
58																																																		
59																																																		
60																																																		
61																																																		
62																																																		
63																																																		
64																																																		
65																																																		
66																																																		
67																																																		
68																																																		
69																																																		
70																																																		
71																																																		
72																																																		
73																																																		
74																																																		
75																																																		
76																																																		
77																																																		
78																																																		
79																																																		
80																																																		
81																																																		
82																																																		
83																																																		
84																																																		
85																																																		
86																																																		
87																																																		
88																																																		
89																																																		
90																																																		
91																																																		
92																																																		
93																																																		
94																																																		
95																																																		
96																																																		
97																																																		
98																																																		
99																																																		
100																																																		

USE
COVER
SHEET

G

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
MV-104A (6/92)
POLICE AGENCY COPY 1

Page 1 of 1 Pages
Local Codes

Accident Date 1/15/94 Day of Week SAT Time 2:40 AM
No. of Vehicles 2 No. Injured 1 No. Killed 0 Non-Highway ☐ Not Investigated at Scene ☐ Left Scene ☐ Police Photos ☒ Yes ☐ No

VEHICLE 1
Name — exactly as printed on license COOK, DANIEL J
DMV USE [redacted]
Sex [redacted] Unlicensed ☐ No. of Occup. 1 Public Property Damaged ☐ State of License NY

VEHICLE 2
Name — exactly as printed on license LAMICA, PATRICIA M
DMV USE [redacted]
Sex F Unlicensed ☐ No. of Occup. 1 Public Property Damaged ☐ State of License NY

Name — exactly as printed on registration SAME AS ABOVE Date of Birth [redacted]
Number and Street [redacted] Hazardous Material Code [redacted]

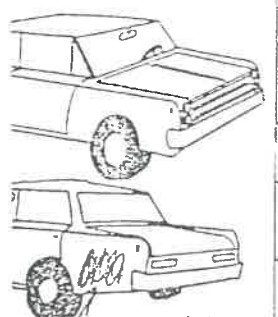
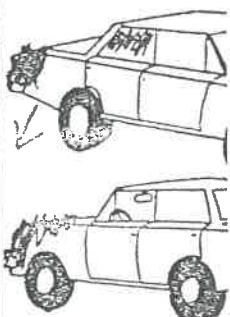
City [redacted] State [redacted] Zip Code [redacted]

Plate Number NY H8966 State of Reg NY Yr. & Vehicle Make [redacted] Vehicle Type [redacted] Ins. Code [redacted]

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

Vehicle 2 Damage
Vehicle: ☐ is a commercial motor vehicle; ☐ is more than 95 inches wide; ☐ is more than 34 feet long; ☐ was operated with an overweight permit; ☐ was operated with an overdimension permit.

VEHICLE 1 DAMAGE



Vehicle Towed By SMITH'S To SMITH'S 9. County FRA City [redacted] Town [redacted] Village MARLONE

Reference Marker 3 7 2 0 9 1 6 8 4 DMV USE ONLY [redacted] Route No. and Street Name on #30

Ticket/Arrest ☒ Arrest ☐ Other ☐ Pedestrian ☐ Bicyclist Ticket/Arrest Number(s) (1) - 964279 Violation Section(s) (1) - 59-7

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

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

	8	9	10	11	12	13	14	15	16	17 BY	18 TO	Names - If Deceased Give Date of Death	
	A	B	C	D	E	F	G	H	I	J	K	L	M
A	1	1	3	1	33	M	-	-	-	-	-	OPERATOR	
B	2	1	3	1	58	F	5	12	6	9999	1602	OPERATOR	
C													
D													
E													
F													
G													
OFFICER'S SIGNATURE AND NAME: [redacted]													
BADGE NO. 59		DEPARTMENT 0162		PRECINCT/POST TROOP/ZONE 170		STATION/BEAT/SECTOR		REVIEWING OFFICER [redacted]		DATE/TIME REVIEWED 1-19-94			

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

POLICE AGENCY COPY 1

Page 1 of 1 Pages

Local Codes

Accident Date: 8/25/94
Day of Week: TU
Time: 11:40 AM
No. of Vehicles: 2
No. Injured: 3
No. Killed: 0
Non-Highway: ☐
Not Investigated at Scene: ☐
Left Scene: ☐
Police Photos: ☒ Yes ☐ No

VEHICLE 1
Name: exactly as printed on license: PERRY, JOHN, R. JR.
DMV USE: [Redacted]
Sex: [Redacted] Unlicensed: ☐ No. of Occup.: 1 Public Property Damaged: ☐ State of License: 11-4

VEHICLE 2
Name: exactly as printed on license: HYNES, KIMBERLY C.
DMV USE: [Redacted]
Sex: [Redacted] Unlicensed: ☐ No. of Occup.: 2 Public Property Damaged: ☒ State of License: 11-4

Name - exactly as printed on registration: SAME: AS DRIVER
Date of Birth: [Redacted]
Mo. / Day / Year: [Redacted]

Number and Street: [Redacted] Hazardous Material Code: [Redacted]

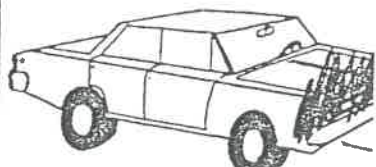
City: [Redacted] State: [Redacted] Zip Code: [Redacted]

Plate Number: FLV-621 State of Reg.: NY Yr. & Vehicle Make: 87 N. Vehicle Type: [Redacted] Ins. Code: [Redacted]
Plate Number: [Redacted] State of Reg.: NY Yr. & Vehicle Make: 94 VANT Vehicle Type: PAS Ins. Code: 011

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

Report done
Proper.
Extensive damage
w/ injury

VEHICLE 1 DAMAGE



☐ No Damage ☐ Undercarriage

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

Reference Marker: [Redacted]
DMV USE ONLY: [Redacted]
County: FRANK City: [Redacted] Town: [Redacted]
Route No. and Street Name: on V.R. RAYMOND
Miles: ☐ Feet: ☐ N: ☐ S: ☐ E: ☐ W: ☐
At Intersection with: V.R. ELM

Ticket/Arrest: ☐ Other: ☐
Opr 1: ☐ Pedestrian: ☐
Opr 2: ☐ Bicyclist: ☐
Ticket/Arrest Number(s): (2)-964291
Violation Section(s): (2)-597
Nearest Intersecting Route/Street: V.R. ELM

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

8	9	10	11	12	13	14	15	16	17 BY	TO 18	Names - If Deceased Give Date of Death
1	1	4						6	997	1602	OPERATOR
2	1	4	1	21	F	8	12	6	997	1602	OPERATOR
2	3	4	1	4	F	1	4	6	997	1602	HYNES, KERI

Officer's Rank and Name: [Redacted]
Badge No.: 59
Department: 01624
Precinct/Post Troop/Zone: MPD
Station/Beat Sector: [Redacted]
Reviewing Officer: [Redacted]
Date/Time Reviewed: 8/25/94

<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	No. of Vehicles 2	No. Injured 0	No. Killed 0	Non-Highway <input type="checkbox"/>	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<input checked="" type="checkbox"/> VEHICLE 2				<input type="checkbox"/> BICYCLIST		<input type="checkbox"/> PEDESTRIAN	

1	Plate Number	State of Reg.	Yr. & Vehicle Make	Vehicle Type	Ins. Code	Plate Number	State of Reg.	Yr. & Vehicle Make	Vehicle Type	Ins. Code
	T77-486	NY	85 MERC	PAS	999	IFR-406	NY	CHEVY		Z31

4/

Both operations
out of town

☐ No Damage ☐

☐ Undercarriage

Vehicle Towed	By <i>SM</i>	To <i>SM</i>	<input type="checkbox"/> Village <input checked="" type="checkbox"/> <i>MALDON</i>												
Reference Marker															
<table border="1"> <tr><td>1</td><td>1</td><td>1</td></tr> <tr><td>7</td><td>2</td><td>0</td></tr> <tr><td>1</td><td>1</td><td>6</td></tr> <tr><td>5</td><td></td><td></td></tr> </table>	1	1	1	7	2	0	1	1	6	5			Route No. and Street Name on <i>ST-11</i> <i>V.R. MAPIN</i>		ABOUT 120 <input type="checkbox"/> Miles <input type="checkbox"/> N <input type="checkbox"/> E <input type="checkbox"/> Feet <input type="checkbox"/> S <input checked="" type="checkbox"/> W of <input type="checkbox"/> At Intersection with
1	1	1													
7	2	0													
1	1	6													
5															

Ticket/Arrest <input type="checkbox"/> Opr 1 <input checked="" type="checkbox"/> Opr 2	<input type="checkbox"/> Other <input type="checkbox"/> Pedestrian <input type="checkbox"/> Bicyclist	Ticket/Arrest Number(s) (2) 964278 Violation Section(s) (2) 1129A	ST-30 V.R-FINNEY Nearest intersecting Route/Street
--	---	--	--

Accident Description/Officer's Notes DRIVER OF VEH #1 STATED SHE WAS TURNING LEFT AND WAS STRUCK ON DRIVERS SIDE BY VEH #2. DRIVER OF VEH #2 STATED HE BELIEVED VEH #1 WAS TURNING RIGHT. HE THEN STATED THAT WHEN HE REALIZED VEH #1 WAS ACTUALLY TURNING LEFT IT WAS TOO LATE TO STOP PRIOR TO COLLISION WITH VEH #1. *LANE MARKINGS COVERED BY SNOW

[illegible]

SIGN HERE	Officer's Rank and Name	Badge No.	Department	Precinct/Post Troop/Zone	Station/Beat/ Sector	Reviewing Officer	Date/Time Received
	PTC NICHOLS <i>[Signature]</i>	59	0624	MB		<i>[Signature]</i>	

Patrick M. Nichols
146 Webster St.
Malone, NY 12953
483-1116

Brian S. Stewart
Robert Fraser
James Phillips

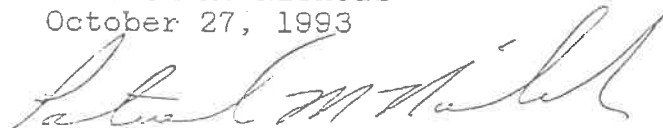
As ordered by the Chief of Police and the Mayor of Malone I am submitting this report containing information regarding allegations of the tampering with a witness. These allegations are in response to the Civil Service Hearing of September 16 & 17, 1993, Village of Malone vs. Patrick Nichols.

It must be made clear the following remarks are strictly hearsay coming from me and therefore my source should also be questioned in order to further substantiate the claim. My source has agreed to offer a statement to a responsible agent or agency assigned to investigate the aforementioned allegations.

During the afternoon of October 8, 1993 my wife Betzy advised me that she had a conversation with an Officer that had testified at the Civil Service Hearing on the 16th. She stated the Officer told her he was advised while being prepared for testimony by Stewart as to what he could and could not say and what he would and would not say. He was also told he could not elaborate on details in order to clarify his answers. My wife further stated that the Officer also told her that he was given orders to stay away from me (Pat) on or off duty or charges would also be brought against him.

The above information is as accurate as I recall and it is being submitted in response to a written order received on October 26, 1993. Copies, as ordered, are being sent to Robert Fraser (Trustee), James Phillips (Police Chief) and Brian Stewart (Attorney for Village of Malone).

Patrick M. Nichols
October 27, 1993



November 8, 1993

Chief James E. Phillips
Malone Village Police Dept.
2 Park Place
Malone, NY 12953

Chief:

I am in receipt of your letter of November 3, 1993. As was stated in Mr. Halley's letter to Brian Stewart of November 1st, I have strong concerns whether or not this matter will be properly investigated by the Malone Village Police Dept.

Because I am not willing to jeopardize another Police Officer's job, or his friendship, I will not comply with your request to provide a notarized statement to you regarding this matter. I don't feel it would be in the best interest of the Officer involved, given the previous and continuous mishandling of my husband's situation.

As clearly stated in Mr. Halley's and my husband's letters, I would be willing to make a statement ONLY to a responsible agent or agency. At this time, I personally do not consider the Malone Police Dept. a responsible agent or agency.

Sincerely,

Betzy Nichols
Betzy Nichols

cc; Thomas Halley
Brian Stewart
Robt. Fraser

December 14, 1993

Dear Mr. Fraser:

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

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

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

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

Section 6.2.2 Perform assigned duties in a professional manner.

Section 10.1.9 Incompetency or inefficiency in the performance of duty.

Section 10.1.18 Failure to treat any person civilly and respectfully.

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

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

Sincerely,

Betzy Nichols

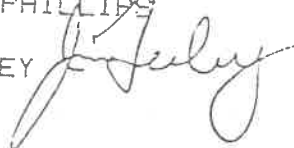
*Just a footnote. I spoke to Patrick later regarding the above mention accident. It seems there were injuries sustained that required the need for the Rescue Squad. After seeing this accident (having been involved in a similar one myself), I knew I had to react quickly as someone undoubtedly was injured.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

cc; Thomas Halley

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

MEMO TO: POLICE CHIEF JAMES PHILLIPS
FROM: MAYOR JAMES N. FEELEY 
DATE: JANUARY 11, 1994
RE: BOARD ACTION ON PERSONNEL COMPLAINT FROM
BETZY NICHOLS DATED DECEMBER 20, 1993

The Village Trustees, Village Attorney and I met in executive session during the course of our regular meeting on January 10, 1994, to discuss your investigation of Betzy Nichol's personnel complaint against Sgt. William Ritchie.

After review of your report, and the statements contained therein, the Trustees and I feel that there were no violations of the department's duties and rules of conduct.

As to the point you raise concerning a person outside the department having access to the duties and rules of conduct, these are contained in the appendix of our Village Code book and as such would be considered a public document. If in fact they are an internal document of the department, we should talk about its removal from the code book. I should point out, however, that there are a number of code books in general circulation and removal of the section of the code regarding duties and rules of conduct of the Police Department would thus be somewhat complicated.

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Gerald K. Moll
Assistant Chief

To: Chief James E. Phillips

From: Ass't Chief Gerald K. Moll

Date: February 21, 1994

Ref: DWI Arrest on Feb. 6, 1994

Attached are the statements in regards to the DWI Arrest that took place on Feb. 6, 1994. The only statement that was not secured was a statement from the College Intern. At this time I didn't feel that it was necessary to subject this intern to a internal police department problem.

In reviewing the statements, it is obvious that Ptl. Mulverhill discarded the small mouth piece on the ground at the arrest scene. This has been a common practice with our department and most officers for years. As noted in Trooper Bonner's statement, it is a common practice with the New York State Police as well. There is no department policy addressing on how Officers discard the breath test mouth piece.

As far as any inappropriate or unprofessional behavior on the part of Ptl. Mulverhill at the scene and in the station, Ptl. Nichols makes reference to Ptl. Mulverhill raising his voice. In any of the statements taken, no other Officers gives this indication on anything out of the ordinary took place. Our department rules and regulations do specify that members should treat each other with respect, courtesy and civil at all times. There was no mention of abusive or obscene language on the part of Ptl. Mulverhill. The level of loud tone of voice would be the question. In absence of any corroboration to Ptl. Nichols claim, I'm reluctant to say whether there is a clear violation.

Recommendation:

On discarding the small plastic mouth piece, at the present time there is no department policy on discarding the Breath Test mouth piece. However, the main priority is the safety of the Officers and equipment. The mouth piece has to be removed before it is secured back in it's case. For health exposure reasons, the Officer should not place the mouth piece in his clothing and should also limit touching the mouth piece with bare hands. Thus Officers can flick the mouth piece off the Alco-Sensor Unit and onto the ground. This will allow the Officer to give full concentration to taking the subject into custody, which is a primary concern. After the subject is in custody, Officers can put on protective gloves and pick up the mouth piece. This can easily be reviewed by Officers with the Supervisors.

In regards to a loud tone of voice, this would be a weak case at it's best, especially without testimony from other Officers corroborating Ptl. Nichols claim. This could be viewed as a judgement call on an individuals opinion of loud tone of voice. There is an apparent conflict between the two members involved and their duties should be separated before the matter escalates.

Unfortunately this incident has brought several concerns.

First and most important, I'm concerned with Ptl. Nichols at the scene and what his priorities are. Ptl. Nichols is not a supervisor but it seems that he is finding himself in a position to evaluate the conduct of other officers in the same rank while they are performing their duty. If in his mind he feels that an Officers conduct, no matter how minor, is inappropriate or unprofessional he takes immediate action himself. In this case, his immediate action diverted the attention of the arresting Officer. This type of conduct is very much a concern for the safety of the Officers.

Secondly, Ptl. Nichols is not a trained police supervisor but he is drawing conclusions and taking the matter into his own hands. This is evident in his statement,

To wit: I felt that his (Ptl. Mulverhill) actions were not only inappropriate but unprofessional as well. I made the determination while on patrol that at some point I would let Mulverhill know that it bothered me the way he conducted himself".

Ptl. Nichols has been the subject of many disciplinary charges from the departments rules and regulations. He is well aware that if he felt that an Officer conducted himself in an inappropriate or unprofessional behavior, he is to notify his superior. That way a trained Supervisor can look into the matter. I was the shift Supervisor during this incident and Ptl. Nichols had plenty of time to bring it to my attention but neglected to do so.

The other concern I have is the action that Sgt. Fountain took in this matter. According to Ptl. Nichols, Sgt. Fountain suggested that the only result in filing a statement against Ptl. Mulverhill was that more problems would develop between certain members. Ptl. Nichols further states that due to the conversation he had with Sgt. Fountain, he decided to drop the matter. In Sgt. Fountain's statement, he makes reference to Ptl. Nichols stating that he was mistreated by Ptl. Mulverhill. Being a first line Supervisor, Sgt. Fountain may have felt that it was in the best interest of the department to negotiate the situation and settle it at that time. This could be viewed as a good police supervision practice if the incident was minor and happened solely on his shift. This incident took place mostly during my shift and he should have advised Ptl. Nichols to bring it to my attention. I have advised the proper procedure in a case like this and I'm confident that there will not be a reoccurrence.

A.C. Moll,

As requested in your memo the following details surround two incidents that took place during the night shift on 2-6-94. My notes on the matters are at my residence therefore I will submit the details the best I can recall.

While at the scene of a D.W.I. arrest on Pearl St. during the shift Officer D. Fountain was having the defendant conduct filed sobriety tests. Present were Officer Mulverhill, Trooper Bill Bronner, intern Troy and myself. Officer Mulverhill conducted the alco-sensor test on the subject. After noting her results Officer Mulverhill discarded the plastic tube at our feet. As he turned to walk away the following conversation took place:

Nichols: Officer Mulverhill

Mulverhill: What

Nichols: (while Pointing to the tube) That doesn't look too good

Mulverhill: I know I threw it there

Nichols: Well you could pick it up

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

Nichols: O.K. I will

I then bent over picked it up and then brought it to my patrol and put it in the car. That was the end of conversations at the scene as the defendant was removed to the station. My concernas to that incident was not ^{only} that Mulverhill had discarded trash on the ground in the presence of the others but that when I suggested tactfully that it didn't look good. He raised his voice and told me if I wanted it picked up to do it myself. At no time did I raise my voice loud enough for the defendant to hear nor did I order Mulverhill to pick it up. I only suggested it. I felt his actions were not only inappropriate but unprofessional as well. I had made the determination while on patrol that at some point I would let Mulverhill know that it had bothered me the way he conducted himself. I was not going to carry it anyfurther.

While at the station at the end of my shift I was standing over the log book when]Mulverhill came over to my shoulder and stated he had told the intern that he (Mulverhill) probably shouldn't of done what he had done at the scene. I told Mulverhill " the only thing I didn't appreciate was that he spoke to me the way he did in front of everyone ". Mulverhill then stepped backed and in a loud voice stated " I'll say what I want, Your not my boss and if you have a problem with me then go see the Chief". I then said "Scott you just brought it up to me". Continuing in a loud voice Mulverhill stated things such as I'll be damned if I'm going to put that in my pocket and If you want to make something of it then see the Chief. I turned back to the log book and ignored him. From that point on I did not say another word. Mulverhill continued in a loud voice. Sgt. Fountain had walked into the room and had to say just forget it twice before Mulverhill stopped. Again I felt that his actions were inappropriate and unprofessional therefore I began to adress my complain to A.C. Moll on paper in the processing room. Due to the other members in and around the processing room and comments referred to this matter I felt I would finish my complaint to you on my computer at home. Had ^{you} been present at the station I would have brought it to your immediate attention.

After changing clothes I requested to speak with Sgt. Fountain before I left. In the Sgt.'s room I advised Sgt. Fountain that I was submitting a formal complaint to A.C. Moll. The actual conversation with Fountain about this matter was not long at all. We had changed the Topic of discussion and ended up in the communications room for awhile. During my conversation with Fountain he suggested to me that the only result to filing a charge would be that more problems would develop between certain members. He also added that he would let Mulverhill know how I felt. Taking into ~~the~~ consideration what Fountain had told me and the recent problems within the department I decided not to submit a complaint. I would like to add that this statement is not a complaint about Mulverhill but it is only the details as I recall them about two incidents that you A.C.Moll have requested I put into a statement. End Statement.

Scott Moll

I, SCOTT M. MULVERHILL am employed by the Village of Malone as a Police Officer and submit the following information for what ever purpose it may serve. I understand my Civil Service rights under Section 75 Sub. 2 to have representation by my certified recognized employee organization and that I wish to waive that right.

I WOULD LIKE TO STATE THAT ON 02/06/94 AT ABOUT 11:45 pm I WAS INVOLVED IN A D.W.I. ARREST WITH PATROLMAN DEAN FOUNTAIN OF A MARIANNE L. JOHNSTON, THE LOCATION OF WHICH WAS AT THE INTERSECTION OF PEARL @ MILWAUKEE STREETS. ASSISTING US IN BACKUP WAS PTL. PATRICK NICHOLS. ALSO AT THE SCENE WAS INTERM TROY DONALDSON, HE WAS RIDING WITH PTL. FOUNTAIN AND MYSELF.

WHILE GOING THROUGH THE ROUTINE D.W.I. FIELD SOBRIETY TESTING, PTL. FOUNTAIN ASKED ME TO CONDUCT A PRE-BREATH SCREENING TEST ON MS. JOHNSTON BY USING THE ALCOSENSOR, WHICH I DID. AS I WAS FINISHING THE TEST A NYS POLICE CRUISER PULLED UP BEHIND ME AND IN SAME WAS TROOPER WILLIAM BROWNER. TROOPER BROWNER ASKED IF EVERYTHING WAS OK AND I STATED YES AND SHOWED HIM THE RESULTS OF THE ALCOSENSOR WHICH READ .13%. I THEN TURNED AWAY FROM TROOPER BROWNER AND OFFICER NICHOLS BEGAN TO SPEAK WITH HIM BEHIND ME. AT THIS TIME I REMOVED THE HOLLOW PLASTIC MOUTHPIECE FROM THE ALCOSENSOR AND THREW SAME BEHIND MY BACK ONTO THE GROUND AND KEEP WATCHING THE DEFENDANT AND PTL. FOUNTAIN. AT THAT TIME MY ATTENTION WAS DRAWN FROM THE DEFENDANT AND PTL. FOUNTAIN BY PTL. NICHOLS AS HE WAS STATING, "PATROLMAN MULVERHILL" AND POINTED TO THE GROUND. I LOOKED AT THE MOUTHPIECE AND THEN TURNED BACK AROUND. PTL. NICHOLS THEN DREW AWAY MY ATTENTION FROM PTL. FOUNTAIN AND DEFENDANT AGAIN AND ADVISED ME THAT I SHOULD PICKUP THE MOUTHPIECE AS THIS DID NOT LOOK GOOD. I ADVISED HIM THAT I ALWAYS DID THIS WITH THE MOUTHPIECES AND THAT IF HE WANTED IT PICKED UP TO PICK SAME UP HIMSELF AND THEN TURNED AWAY AND FINISHED THE ARREST WITH PTL. FOUNTAIN AND LEFT THE SCENE. AT THE END OF SHIFT I TRIED TO EXPLAIN TO OFFICER NICHOLS WHY I DID SAME WITH THE MOUTHPIECE TO THE ALCOSENSOR AND HE BEGAN TO MAKE REMARKS TOWARDS THE FACT THAT HE DID NOT LIKE MY CONDUCT AND I TOLD HIM THAT I DID NOT LIKE HIS CONDUCT TOWARDS MYSELF. SGT. FOUNTAIN WAS PRESENT AT THIS TIME AND ASKED WHAT WE WERE SPEAKING ABOUT AND I INFORMED HIM AND HE STATED THAT HE ALWAYS THROWS THESE MOUTHPIECES OUT IN SAME MANNER AS I DO. IN THE PAST ON EVERY OCCASION THAT I HAVE MADE A DWI ARESST OR CONDUCTED FIELD SOBRIETY TEST FOR DWI'S AND HAVE USED THE ALCOSENSOR, I HAVE ALWAYS DISPOSED OF THESE MOUTHPIECES IN THIS MANNER. I HAVE DONE SAME WITH SUPERVISOR'S AND SENIOR PATROLMAN PRESENT AND HAVE NEVER BEEN ADVISED TO PICK THEM UP THAT IT WAS IMPROPER.

Date: 02/07/94
To: A/C Moll
From: Ptl. Dean J. Fountain

While working the night shift on 02/06/94 at about 11:45PM, Officer Durant who was off duty came in and advised us that a car was in the snow bank at Milwaukee and Pearl Streets. Officer Mulverhill and I along with our intern, Troy Donaldson went in the patrol car to the scene. Officer Nichols arrived later in the Chevy patrol car. What we found was a blue Grand Am had went up ontop of a snow bank and was stuck. The owner and operator of the car was there trying to get it out. While I was interviewing the operator, Marianne Johnston of Burke, I could smell an odor of alcohol coming from her. After doing several field sobriety test, I asked Ptl. Mulverhill to give her the alco sensor test. After getting the reading of this test I placed the operator under arrest for Driving While Intoxicated and placed the handcuffs on her.

The defendant was then placed in the rear seat of the patrol car and transported back to our station by Ptl Mulverhill and I for processing. After the processing was completed the defendant was released to a friend, Tina Smith.

I was later told by Ptl Mulverhill that after he gave the alco sensor test to the defendant that he threw the tube on the ground behind him and Ptl Nichols told him that he should pick it up as it isn't setting a good example. At 4:00AM which is the change of shifts, I was in the locker room getting ready to go home. Officer Mulverhill came in and said that he and Nichols had more words about him throwing the alco sensor tube on the ground. At the arrest scene I didn't hear the discussion between Mulverhill and Nichols as I was occupied with the defendant, placing her under arrest.

Ptl. Dean J. Fountain
Mr. Dean J. Fountain

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

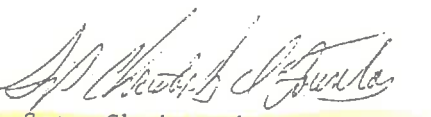
Voluntary Statement

February 8th 1994

Malone Police Dept.
2 Park Place
Malone, New York

On February 7th 1994 I was working the morning shift from 0400hrs. to 12/N. At around or shortly after 4:00am I walked into the communication room and sat down at the front desk. Ptlm. Mulverhill and Ptlm. Nichols were having a discussion of something I was unaware of. After asking three times I finally got an answer from Ptlm. Mulverhill. He stated that he had threw a mouth piece onto the ground in front of the intern and an arestee. Ptlm. Mulverhill then stated that Ptlm. Nichols had told him to pick the mouth piece up off of the ground. Ptlm. Mulverhill then told Ptlm. Nichols if he had a problem with it to speak with the Chief and that he wasn't his boss. I was then asked by Ptlm. Mulverhill what I did with the mouth piece after I used it and I told him that I threw it away at the scene. I then told the both of them that enough is enough and didn't want to hear anymore arguing between them. Within a few minutes later Ptlm. Nichols was sitting at the typewriter in the processing room starting on a statement directed to Assist. Chief Moll. One sentence was typed out and then the statement was pulled from the typewriter and shredded.

I was approached a short time later by Ptlm. Nichols asking to speak with me. Ptlm. Nichols stated that he was miss treated by Ptlm. Mulverhill when he approached him in the communication room. I told him that Ptlm. Mulverhill was giving him his opionion and in return Ptlm. Nichols was giving him his. At no time did I see any violation between them during the discussion. I stated to Ptlm. Nichols that what ever happened at the arrest scene I was unaware of. I then told him if he felt that he had a violation against Ptlm. Mulverhill then if he wished he should place that statement with the Assist. Chief. Again I told him what I observed infront of me in the communication room I didn't feel that neither were out of line. I then told Ptlm. Nichols that I would express my thoughts to Ptlm. Mulverhill on what occurred in the communication room.


Sgt. Christopher Fountain
Malone Police Department

Questions for Trooper Bronner

Interview conducted 02-22-94 at 1520 Hrs.

A/C-----Ass't Chief Moll

T/B-----Trooper Bonner

A/C-- How long have you been a N.Y. State Trooper?

T/B-- Four years

A/C-- Were you working on 02-07-94?

T/B-- Yes- Midnight shift

A/C-- Did there come a time where you were at a DWI Arrest
that the Malone Village Police were involved in?

T/B-- Yes

A/C-- Where did this take place?

T/B-- Pearl St.

A/C-- How did you know about the arrest?

T/B-- Ride by & Noticed patrol car

A/C-- What was taking place when you arrived?

T/B-- Ptl. Mulverhill was giving alleged defendant an Alco-
Sensor Test (breath test)

A/C-- What Officers were actually involved in the arrest
procedure?
(Question answered earlier)

A/C-- Was an Alco Sensor breath screening test conducted?
(Question answered earlier)

A/C-- Did you witness the test?
(Question answered earlier)

A/C-- Did you notice anything out of the ordinary after the
breath test was completed?

T/B-- No

A/C-- After the Breath Test, did Ptl. Nichols approach Ptl.
Mulverhill?

T/B-- Yes

A/C-- What did Ptl. Nichols do or say to Ptl. Mulverhill?

T/B-- "Officer Mulverhill" and Ptl. Nichols was pointing to
the ground.

A/C-- What was Ptl. Mulverhill doing when Ptl. Nichols did
this?

T/B-- Talking to defendant

A/C-- Did Ptl. Nichols actions or words in any way divert the attention of Ptl. Mulverhill during the arrest procedure?

T/B-- Nichols was trying to get Ptl. Mulverhill's attention, he did get his attention because he called his name twice

A/C-- How many DWI arrests have you been involved in?

T/B-- 100

A/C-- Did most of them involve using the Alco-sensor Breath test?

T/B-- Yes

A/C-- During any of these tests, was the small plastic mouth piece discarded by throwing it in a ditch or off the side of the roadway?

T/B-- Yes, it has been

A/C-- Does the New York State Police have any type of policy on discarding the breath test mouth piece?

T/B-- No, they don't

A/C-- If this type of action took place would you look at this as being inappropriate or unprofessional behavior?

T/B-- No, I would not

A/C-- In your police training on arrest procedures, would discarding the mouth piece on the ground be inappropriate enough to immediately bring it to the attention of the officer involved with the possibility of diverting his attention from the arrest?

T/B-- No, I don't believe it would be

STATE OF NEW YORK

SUPREME COURT

COUNTY OF FRANKLIN

PATRICK NICHOLS,

Petitioner,

-against-

VILLAGE OF MALONE,

Respondent.

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

HON. JAN H. PLUMADORE
SUPREME COURT JUSTICE

DECISION

Petitioner filed the instant petition challenging the results of a Civil Service Law §75 disciplinary hearing. The Hearing Officer found he had violated a variety of police departmental rules with respect to his reporting, investigation and discussion of an incident involving the treatment of a prisoner and Petitioner's termination as a DARE instructor. Petitioner challenges:

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

There has been no showing of partiality by the Hearing Officer sufficient to overturn the results of the hearing. The fact that two years earlier the Hearing Officer praised members of the Malone Police Department generally for their response to an alarm at his business and inappropriately offered them free accommodations does not mean he had an interest or conflict sufficient to preclude him from presiding. There has been no showing of the extent of his friendship with the Police Chief nor how, in a community the size of Malone (village population 6,777), that alone would require disqualification under the Code of Judicial Conduct (see, e.g., Grant v. Senkowski, 146 AD2d 948). Indeed, the Hearing Officer arguably could still have heard the case even if Petitioner had pending a separate legal proceeding directly against him (H.O.) (People v. Muka, 72 AD2d 649; Judiciary Law §14, Washington County Cease, Inc. v. Persico, 120 Misc.2d 207; King v. United States, 434 F.Supp. 1141, 576 F.2d 432, cert. denied 439 U.S. 850).

The Petitioner has also not persuasively argued that he was entitled to the results of Chief Phillips' investigation into the prisoner mistreatment allegations as a matter of law. If he had made application to a court pursuant to Civil Rights Law §50-a subdivisions 1.-3. he may well have been granted access to the material sought (Becker v. City of New York, 162 AD2d 488), but he did not. The instant result may seem to be inequitable given that the Village Attorney could have obtained and/or released the computer memo and notes in question under the authority of §50-a subdivision 4. and that the results thereof (exoneration of the Assistant Chief) had already been made public, but that is the state of the law in this area.

The alleged "other cover-ups" were irrelevant to the proceedings challenged here.

The Hearing Officer considered Petitioner's "whistleblower" (Civil Service Law §75-b) arguments and proof,

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

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

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

ENTER:

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

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

Malone
Village Clerk

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

Patrick Nichols,

Index No.

93-755

Petitioner,

NOTICE OF PETITION

-against-

Village of Malone,

Respondent.

PLEASE TAKE NOTICE that upon the annexed petition of Patrick Nichols, verified December 18, 1993, the annexed affidavit of THOMAS P. HALLEY, sworn to on the 16th day of December 1993, and the exhibits attached herein, an application will be made to this court, at a term thereof, to be held at the Court House at Malone, New York, on the 20th day of January, 1994 at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for a judgment reversing and annulling, the determination of the Village Board of the Village of Malone, made the 20th of October, 1993, pursuant to the provisions of Section 75 and Section 76 of the Civil Service Law of the State of New York, and granting such other and further relief as the court may deem just and proper.

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

DATED: Poughkeepsie, NY
December 9, 1993

THOMAS P. HALLEY
Attorney for Petitioner
297 Mill Street
Poughkeepsie, NY 12601
(914) 452-9120

TO: Village Board
Village of Malone
Malone, New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

Patrick Nichols,

Index No. 93-755

Petitioner,

PETITION

-against-

Village of Malone,

Respondent.

Petitioner, Patrick Nichols, respectfully alleges as follows:

1. Petitioner resides at 146 Webster Street, Malone, County of Franklin, State of New York.

2. At all times hereinafter mentioned, Petitioner was such a resident of Malone, in the County of Franklin, New York, and was also in the employ of the Police Department of the Village of Malone, New York.

3. Petitioner was appointed to the Village of Malone Police Department on June 17, 1988.

4. Prior to April of 1993, the Petitioner had never been the subject of any disciplinary proceeding, as provided in Section 75 of the Civil Service Law of the State of New York.

5. On or about April 2, 1993, the Petitioner was present when a person identified as Scott Mattimore, having been arrested by the Village of Malone Police Department, was brought to the jail holding cell of the Village Police.

6. The following three paragraphs are based upon testimony of Mattimore given at the Civil Service Hearing.

7. During Mattimore's incarceration, he was confined to a small room. After being in the room for a short time, he felt it necessary to go to the bathroom. Mattimore asked the officers several times to allow him to go the bathroom. He was not permitted to do so. After sometime, he told the officers in attendance that he was going to urinate in the room if they did not let him go outside the cell. Mattimore then noticed something being put over a small window on the door so that he could no longer look out into the hall. At that point, Mattimore decided to urinate on the floor as he believed he was not going to be released.

8. While Mattimore urinated, he noticed a liquid coming into the room underneath the door. He began to lose his breathe because of strong odor of what smelled like bleach. He immediately requested that the door be opened as he could not breath. He heard someone say that he should have thought of that before. He continued to ask for someone to open the door claiming that if he did not get some air, he would have to break a window. He testified that he was starting to get nauseous, and his eyes were burning. He started hitting on the door because it was getting hard to breathe. He then hit the window and broke the window to get some air, and approximately one minute later the door was opened. He was then handcuffed and shackled to a bench.

9. The only person that Mattimore can remember as being in charge of the incident was Officer Moll, who was subsequently identified as the Assistant Chief of the Village of Malone Police Department.

10. Thereafter, Officer Nichols began a investigation of what came to be know as the "Mattimore incident" or the "bleach incident".

11. The Petitioner made it clear to fellow officers that he was going to file a personnel complaint against the Assistant Chief and was going to report the incident to the Chief of Police. (Transcript page 290).

12. Officer Chris Fountain testified that he, Fountain went to the Chief and the Assistant Chief and made them aware of the possibility that Nichols was going to file a complaint against the Assistant Chief. (Transcript page 296).

13. Shortly thereafter, the Chief of Police filed a formal reprimand against Officer Nichols. Upon receiving the reprimand, Officer Nichols stated to the Chief of Police that he was near completion of the report that he been working on for quite some time and was going to have it ready in a few days. The Chief advised him to take a couple of hours and complete the report and give it to him forthwith. (Transcript, page 214). The report accused Assistant Chief Moll of complicity in the bleaching incident.

14. Shortly thereafter, Officer Nichols was shown a printout on a computer terminal that was typed by the Chief of Police regarding the Moll incident.

15. A copy of this printout was attempted to be offered as evidence, but was not permitted by the Hearing Officer. Nonetheless, said document, marked Respondent's Exhibit A is annexed hereto made a part hereof and designated Exhibit A herein.

To who & where
Nichols was advised
of his right to
a lawyer
(same day)

Based on
this
testimony

is this
proper

16. After seeing this computer printout, the Petitioner was advised by fellow Officer Clyde LaChance that it appears you [Nichols] "were correct about that cover-up". The Petitioner then began to discuss the incident with the District Attorney's Office, and with the FBI. → *direct violation*

17. Petitioner sought guidance from the District Attorney's office. Upon review of the matter with the District Attorney by way of a memo which had specific names deleted, the District Attorney indicated if the facts shown were proved to be true, he, the District Attorney believed that a crime had been committed. *Based on who's testimony*

18. The District Attorney advised Petitioner that if further evidence developed regarding a cover-up, then, in such case, the Petitioner should return, at which time an investigation into the both the bleach incident and the cover-up would occur. (Transcript pages 226-227) *Further evidence never developed*

19. While no follow-up comments were made by the FBI, Mattimore himself testified at the hearing that he had recently been questioned (in September of 1993) by the FBI regarding the incident.

20. In early August of 1993, on two occasions, the petitioner discussed the matter with the Mayor of the Village of Malone.

21. The Mayor at no time discouraged or dissuaded Officer Nichols from discussing the matter with him.

22. Shortly after his discussions with the Mayor, and after advising the Mayor, that he, Nichols, had reported the matter to the District Attorney's Office, disciplinary charges were filed.

23. A copy of the disciplinary charges is annexed hereto made a part hereof and designated Exhibit B.

24. A hearing was held pursuant to Section 75 of the Civil Service Law on September 16 and 17, 1993.

25. After the charges were preferred against Petitioner but before the hearing was held, the Village Board made a determination, on or about August 23, 1993, that Assistant Chief Gerald Moll was not guilty of any wrong doing in the bleach incident. *50*

26. A copy of a newspaper article from the Malone Telegram dated August 24, 1993, reporting said findings by the Village Board is annexed hereto made a part hereof and designated Exhibit C. This article, along with other articles, is submitted pursuant to CPLR 4532.

27. As can be said from Exhibit C, a report was received from the Chief of Police clearing the Assistant Chief. The Mayor of the Village is quoted as saying: "The Board reviewed the investigation and is in full agreement with its finding." Assistant Chief Moll was apparently brought into the Executive Session to discuss the report prior to its release to the public.

asking
permission
to
release

28. It is clear that the Village Board following the charges against Nichols stemming from the bleach incident, made an independent finding, based upon a report submitted by the Chief of Police, that Assistant Chief Moll had not committed any wrong doing in said incident.

50

29. Petitioner respectfully submits that such a finding, after the charges were presented to Nichols, and before the disciplinary hearing, effectively settled the Nichols' case against Nichols, and in favor of Moll prior to the convening of the hearing.

30. It is respectfully submitted that it is logically and factually impossible to clear Moll of any wrong doing and thereafter find Nichols not guilty of any wrong doing. In simple terms, if Moll is found innocent, Nichols must be found guilty and vice versa.

31. As the testimony at the disciplinary hearing indicated, Officer Nichols was never questioned with regard to the Police Chief's investigation of the Moll incident, nor was he ever questioned by the Village Board prior to the Village Board clearing Assistant Chief Moll.

32. Petitioner further testified that he had reviewed statements from two other officers regarding the bleach incident, and that said reports corroborated his own. (Transcript pages 220-222).

33. As Hearing Officer in this Section 75 Civil Service Proceeding, the Village Board appointed J. Brian McKee.

34. The Mayor of the Village publicly stated that there was no provision allowing Officer Nichols to object to the hearing officer chosen by the Board. A copy of said statement as reported in the Plattsburgh Press of August 18, 1993 is annexed hereto made a part hereof designated Exhibit D.

35. Brian McKee is a former Village of Malone Police Officer, and is the owner of the Gateway Motel in Malone.

36. On March 14, 1991, Hearing Officer McKee wrote a letter to the former Chief of Police of the Malone Police Department, a copy of which is annexed hereto made a part hereof, designated Exhibit E.

37. In said letter, Hearing Officer McKee stated as follows: "Please remember that courtesy accommodations are always available here to any member of the Police Department or those outside the Department to whom you would like to extend free lodging. It's our way of saying thanks to your Department for the outstanding service provided every day of the week. Remember, the coffee pot is always on and you and all your people are always welcome."

38. The foregoing clearly demonstrates that Hearing Officer McKee was hardly an unbiased or impartial Hearing Officer. He was a person who was very much familiar with the workings of the Village Police Department, and who had gone so far as to offer free accommodations at his motel to members of the Police Department and their guests.

39. It is respectfully submitted that the making of such an offer for free accommodations, to Police Officers and their guests, by McKee was, in and of itself, a violation of Section 805-A of the General Municipal Law of the State New York, which is designated "Code of Ethics".

40. Said Section provides that no municipal Officer or employee shall directly or indirectly accept or receive any gift having a value of \$75 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise or in any other form, under circumstances in which it could be reasonably inferred that the gift was intended to influence him or expected to influence him, or was intended as a reward for any official action on his part. Thus, any municipal Officer who accepted the free accommodations offered by Hearing Officer McKee, was subject to the penalties contained to the General Municipal Law, which included suspension or removal from office or employment.

41. The Petitioner was therefore faced with a situation in which his fate was being determined by a Hearing Officer who was a friend of the Police Department, and by a Hearing Officer who had, himself, shown a complete and utter disregard for the Code of Ethics for municipal employees contained in the General Law of the State of New York.

42. Had the Petitioner ever accepted the offer for free accommodations made by the Hearing Officer, the Petitioner could have been fired for such conduct. Nonetheless, the Village still seeks to ask this Court to believe that Brain McKee was an impartial Hearing Officer who was qualified to judge whether the Petitioner followed rules and regulations, and engaged in unethical behavior.

43. Any doubt about Hearing Officer McKee's bias, interest, and prejudice, is resolved by a statement made by McKee following the release of his recommendation to

terminate the Petitioner. McKee is quoted in the Tuesday, October 19, 1993 edition of the Telegram that "he didn't think his being an honorary member of the Police Department and a friend of [Chief Philips] affected his judgment."

44. This Hearing Officer was called upon to decide whether the Petitioner was guilty of the charges investigated by the Hearing Officer's friend, the Chief of Police, which charges generally allege that the Petitioner brought discredit upon the Chief's Department.

45. Throughout the course of the hearing, the Petitioner raised the defense provided by Section 75-b of the Civil Service Law, also known as the "Whistle Blower Law."

46. Said Section provides that a public employer should not dismiss or take other disciplinary action against the public employee because the employee discloses to a "governmental body" matters which the employee "reasonably believes to be true" and "reasonably believes" constitutes improper governmental action.

47. Here, Petitioner observed a number of things relating to the Mattimore/bleach incident, and attempted to report the same to the Chief of Police. When he reasonably believed that there was a cover-up taking place because of the Chief's inaction from April to July of 1993, he spoke to the District Attorney of the County, the FBI, and the Mayor.

48. As testimony indicated during the course of the hearing, the bleach incident was common knowledge throughout the Police Department in April of 1993. Indeed, the Chief of Police was advised before he, the Chief, issued the reprimand to the Petitioner, that the Petitioner was investigating the incident.

49. The Petitioner attempted to prove as part of his direct case that his reasonable belief was based upon the prior report of a cover-up in the Police Department. To that extent, the Petitioner called as a witness Robert Hanna.

50. Mr. Hanna was specifically asked, at page 156 of the transcript, whether he had a conversation with the Petitioner during the past several months regarding what he, Hanna believed to be a cover-up in the Police Department. Hanna replied that he did have such a conversation. When asked to relate the details of the conversation, the Village Attorney objected.

51. Petitioner's attorney referred to Section 75b of the Civil Service Law, and stated that the Petitioner was required to demonstrate that he reasonably believed that there was a cover-up going on. Petitioner's attorney further stated: "and one of the reason he might believe there is a

cover-up is because he was aware of prior cover-ups involving similar people." The Hearing Officer stated: "I can't accept the prior cover-ups, its not directly related." Petitioner's attorney noted the objection and the witness was excused.

52. It is respectfully submitted that the failure to permit the Petitioner to establish this defense is, by itself, a violation of his statutory rights under Section 75-b of the Civil Service Law.

53. Petitioner directly testified, on page 210-211 of the transcript, that he believed there might be a cover-up of the Mattimore incident because of allegations made by a resident of Malone that involved him and an Officer in the Village Police Department, and that said residents allegations were that the matter had been covered up although the resident had witnesses and proof that certain things happened but were falsely reported to the Village Board.

54. Nonetheless, without the direct testimony of the actual witness, Robert Hanna, the Petitioner was prevented from proving his defense.

55. During the course of the hearing, Petitioner's attorney also attempted to submit into evidence the determination of the Village Board clearing Assistant Chief Moll. Petitioner's attorney sought to fully cross examine Police Chief Philips regarding the Chief's whitewashing of the Moll incident as contained in his investigation and findings.

56. Every attempt by the Petitioner's attorney to cross examine the Chief on this point was objected to by the Village, and said objection was sustained by the Hearing Officer.

57. This was objected to by the Village Attorney on the grounds that it was prohibited by Section 50A of the Civil Rights Law. The objection was sustained by the Hearing Officer (Transcript pages 42-44).

58. For example, Petitioner's attorney attempted to submit into evidence Respondent's Exhibit A which was Philips own computer memo which has been previously annexed hereto.

59. As can be seen at pages 44-47 of the Transcript, Petitioner's attorney attempted to question the Chief with regard to his report to the Village Board in which he stated he had fully investigated Moll and Mattimore and found no wrong doing by Moll.

60. The Village Attorney objected on the grounds that the documents related to a personnel matter and were prohibited from disclosure by Section 50-A of the Civil

Rights Law. The Hearing Officer stated he would "uphold any objection to the specifics of that investigation".

61. The investigation on the part of the Chief of Police to the Village Board was previously disclosed to the newspaper as indicated in Exhibit C.

62. The computer memo and the contents of the investigation and findings are not the contents of a "personnel file" of a Police Officer as protected by Section 50-A of the Civil Service Law. Indeed, as Petitioner's counsel stated during the course of the hearing, any objection to confidentiality should have been waived when the matter was released to the public. (Transcript, page 450).

63. Petitioner's attorney continued to attempt to elicit on cross examination what was the substance of the Chief's investigation into the Moll incident. Continuing objections were made by the Village, which were sustained by the Hearing Officer. (Transcript page 46-47).

64. Petitioner's attorney attempted to question the Chief of Police as to whether his investigation, and clearing of Assistant Chief Moll, failed to include conversations with Mattimore and the Petitioner. When Petitioner's attorney questioned the Chief as to whether his mind was already made up prior to conducting the investigation, the question was objected to and sustained by the Hearing Officer. (Transcript, page 51).

65. Petitioner's attorney further attempted to cross examine Chief Philips with regard to the actions or inactions of any Police personnel involved in the Mattimore incident. After strenuous objection and discussion, the Hearing Officer ruled "I will not allow any testimony relative to the actions or a lack of action of any of the personnel involved in that incident." Petitioner's counsel noted his objection for the record. (Transcript, page 65-66).

66. Finally, Petitioner's counsel again attempted to demonstrate that Chief's reassurances to the Petitioner that he was conducting a thorough investigation were erroneous and untrue. Petitioner's counsel specifically asked, in response to the Chief's statement that he assured Nichols on the 21st of July that he was conducting a thorough investigation, about the Chief's note of July 14 in which he felt there was no basis to the charges. The Village attorney objected to any discussion of the Chief's own notes, and the objection was sustained. (Transcript, page 78).

67. As a result of the foregoing, Petitioner was not permitted a full and thorough cross examination of his primarily accuser.

68. Pursuant to the foregoing, the provisions of the Whistle Blower Law were not permitted to be established.

69. The Petitioner was not allowed to establish his defense.

70. Despite the objections on the part of the Village Attorney that anything even remotely relating to another officer could not be discussed at the hearing because of Civil Rights Law Section 50-A, the need for such confidentiality disappeared during the Petitioner's cross-examination. As is set forth in detail on pages 267-270, 273-274, 281-283, and 313-314, the contents of the Petitioner's personnel file were fully discussed in the hearing.

71. The consideration of the Plaintiff's prior personnel history, and a prior disciplinary incident, without permitting the Petitioner to be heard by the Village Board, is in violation of the provisions of the Civil Service Law.

72. As part of the continuing prejudice on the part of the Hearing Officer, he issued his findings and recommendations without reviewing the brief and arguments of the Petitioner's attorney. The Hearings Officer's report was released to the press before it was given to the Petitioner or his attorney. Petitioner and his attorney did not receive notice of the recommendations of Brian McKee until after it was released to the press. The details of the same are set forth in the accompanying affidavit of Petitioner's attorney.

73. The recommendation of the Hearing Officer was that the Petitioner "be demoted in grade and title and reassigned to duties within the government of the Village of Malone and outside the Malone Village Police Department. If this is not possible due to an inability to place Police Officer Nichols elsewhere in the Village Government, then I recommend that he be discharged from employment by the Village of Malone."

74. Such a statement clearly disregards the requirements of the Civil Service Law of the State of New York. It seeks to put a Police Officer outside the Police Department, in some unknown function, subject to the "inability" of the Village Government to do so. In essence, the Hearing Officer recommended that the Petitioner be discharged from his employment by the Village.

75. Upon receiving the recommendation of the Hearing Officer, the Village Board met on October 20, 1993 and made a determination, a copy which is annexed hereto made a part hereof designated Exhibit F.

76. Said determination was that the Petitioner be reprimanded, fined \$100, and suspended without pay for a period of 60 days.

77. It is respectfully submitted that in light of all the facts and circumstances of this case as set forth above, this punishment is shocking to one's sense of fairness, is an abuse of discretion, is against the weight of the evidence, and is with out merit or justification or authority of law.

78. The Petitioner has no adequate remedy at law.

79. The Petitioner now seeks relief from this Court under and in accordance with the provision of Article 78 of the CPLR.

80. No previous application has been made to any Court or Judge for the relief set forth herein.

WHEREFORE, Petitioner respectfully requests a judgment pursuant to Article 78 of the CPLR vacating and annulling as arbitrary, capricious, unlawful, unreasonable, and without substantial basis in fact or in law, the action of the Respondent which placed the Petitioner on a sixty day suspension, fined him \$100 and gave him a reprimand, and further requests judgment reinstating the Petitioner to the position which he previously enjoyed, with all back pay, benefits and the like, and granting such other and further relief as the Court may deem just and proper.

DATED: Poughkeepsie, NY
December 9, 1993


PATRICK NICHOLS

PERSONNEL COMPLAINT

JULY 13, 1993

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

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

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

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

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

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

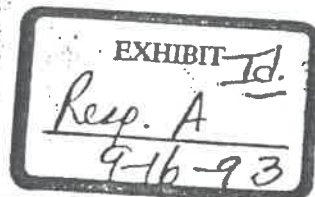


EXHIBIT A

18 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

August 5, 1993

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

Dear Sir:

In accordance with the provisions of Section 75 of the Civil Service Law, and provisions of your collective bargaining agreement, you are hereby notified that the following charges are preferred against you.

CHARGES

Malone Village Police Department Rules & Regulations:

- 10.1.4 Insubordination or disrespect towards superior officer
- 10.1.28 Releasing information contained in a department record
- 10.1.34 Deliberate violation of regulations pertaining to police management and control
- 10.1.57 Removing departmental records except as for in departmental orders
- 11.5 Member of department shall treat as confidential the official business of the police department. He shall not 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.
- 10.1.40 Communicating with other police agencies concerning police matters except as provided by departmental procedures
- 10.1.77 Seeking influence or intervention of any person outside the department for the purpose of personal preferment
- 10.1.78 No member or members of the department shall initially contact the Board of Trustees on Police problems except through regular channels or by permission of the Chief of Police

EXHIBIT B

Civil Rights Law:

50.a Right of privacy, personnel records of police officers

Public Officers Law:

B7 Freedom of Information Law, access to agency records

95 Personal Privacy Protection, access to records

New York State Penal Law:

156.10 Computer trespass

156.30 Unlawful duplication of computer related material

SPECIFICATIONS

(Received from Police Chief James Phillips)

Information from Mayor Feeley stating that Patrolman Nichols scheduled a meeting with the Mayor. Mayor Feeley thought that the meeting was to discuss the recent disciplinary action that was brought against Patrolman Nichols. Mayor Feeley stated that it took him off guard with Patrolman Nichols started talking about the Mattimore incident. During this meeting Patrolman Nichols also discussed his feelings that the incident was being covered up by myself. Patrolman Nichols then turned over a copy of a document from our department's new computer. This document was a copy of my personal notes that I made while conducting the personnel investigation on one of my subordinates.

This document was stored in my personal computer that could only be accessed from the other computers by calling up my computer which is computer number six. On screens would have shown CHIEF'S PERSONAL COMPUTER. Next WORD PROCESSING program would have to be entered. Once inside my word processing, the files that I had in memory could be accessed. The file was labeled JIM. Once JIM was entered, the screen would have shown notes for a personnel investigation that I was conducting on another officer. At the top of the screen were the words "PERSONAL COMPLAINT".

Patrolman Nichols let another officer under my command know that he was able to access my personal computer. Patrolman Nichols also made the comment to this officer that he couldn't believe how stupid I was for leaving the notes in my computer.

Patrolman Nichols submitted a memo on July 21, 1993 requesting the results of the personnel complaint that he filed against another officer. I responded to his memo explaining that investigations on personnel were covered under the Privacy Act and he was assured that the investigation was being conducted.

Even after being advised that Personnel Investigations were covered under the Privacy Act, Patrolman Nichols took it upon himself to hand over a document involving the personnel investigation of another officer without permission or authorization. Due to Patrolman Nichols actions and comments, I feel that the above departmental rules and laws may have been violated.

Information from Franklin County District Attorney, Richard Edwards, stating that Patrolman Nichols came to his office about two weeks ago to discuss the Mattimore incident. Patrolman Nichols handed over a copy of the statement that he submitted to me and his accusations against Assistant Chief Gerald Moll. The statement had "whiteout" used to block the name of Assistant Chief Moll. Patrolman Nichols discussed his concerns of a cover-up with my investigation into the incident and what course of action he could take.

Patrolman Nichols took it upon himself to meet with the District Attorney shortly after he submitted his statement to me. His allegations were being investigated. Mayor was advised and statements were being taken. A preliminary interview was conducted over the phone with Assistant Chief Moll and a statement was to be secured when he returned from vacation.

Information from Mayor Feeley stating that Patrolman Nichols had stopped at the Mayor's house on the night of August 2, 1993 while working the night shift. Patrolman Nichols discussed that he was being terminated from the DARE Program and that Patrolman Simonsen was going to take his place.

Patrolman Nichols has made it well known among the department that he no longer wishes to be involved with the DARE Program. Patrolman Nichols also stated this on February 4, 1993 to Assistant Chief Moll and myself.

The night that Patrolman Nichols met with the Mayor, there was no final determination as to the 1993-94 DARE Program. Nothing was confirmed as to Patrolman Simonsen teaching DARE or Patrolman Nichols terminated from DARE. This meeting with the Mayor was not authorized and the information released to the Mayor by Patrolman Nichols was premature and against policy.

Patrolman Nichols did not seek permission from myself to set up these meetings. His comments and actions were an attempt to bring discredit to this police department and myself. The above rules and regulations of the department may have been violated.

You are allowed until the 16th day of August, 1993, within which you may make and file your answer in writing to these charges. Such answer should reach the office of the undersigned at 16 Elm Street, Malone, New York, at or before four o'clock in the afternoon on said 16th day of August, 1993.

You are entitled to a hearing on the above charges and to be represented at such hearing by an attorney, or a representative of your union. You should be prepared at such hearing to present such witnesses and other proof as you may have in your defense against these charges. Such hearing will be held at six o'clock in the evening on August 24, 1993, in the Malone Village Meeting Room located at 14 Elm Street, Malone, New York.

If you are found guilty of any of the above charges, the penalty or punishment imposed on you may consist of either dismissal from the service, demotion in grade and title, suspension without pay for a period not exceeding two months, a fine not exceeding \$100., or a reprimand.

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

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

Very truly yours,

James N. Feeley
James N. Feeley
Mayor

JNF:ejb

Report Says Cop in Clear

Assistant Chief Acted Correctly, Chief Says

THOMAS GRASER
Telegram Staff Writer

A report received by the Malone Village Board Monday night cleared the village's assistant police chief, Gerald Moll, of any wrongdoing.

The report was submitted by the chief of police, James Phillips.

Moll was being investigated for the alleged mistreatment of a man being held in custody at the police station in April of this year.

"The board reviewed the investigation and is in full agreement with its findings," Mayor James Feeley said after an hour-long executive session during Monday night's regular board meeting.

At one point during the executive session Moll was summoned from the meeting room into the office where the session was being held, apparently to help word the statement the mayor would read.

Moll was accused by another officer, Pat Nichols, of pouring bleach under the station's holding cell door while a prisoner

was in the cell.

Nichols has since been suspended for allegedly failing to go through the proper channels in reporting the incident.

A public hearing has been requested by Nichols to challenge his suspension.

The board agreed Monday to pay J. Brian McKee \$200 to act as the hearing officer.

Feeley said the board would have no further comment on the charges made against Moll.



Gerald Moll

EXHIBIT C

feared reprisals

By ALTON CALKINS
Staff Writer
Malone Bureau

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

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

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

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

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

"I learned it was Moll from a source in the police department. Everyone in town knows it's Moll. It's not a secret," said Doug Vensil, who works for the New York State Department of Corrections. "I'm a bit peeved at the whole situation, and there's a lot of other people who are upset at the way this whole situation came about. Gerry Moll is the one who's in the wrong here, and nothing's been done about it." Vensil said that this situation is only the tip of a deep rooted problem.

"There's a general feeling in the village that cover-ups regarding the actions of both on and off duty officers are common. I firmly believe something's going on. Things are definitely not right down there and things are getting stinkier by the minute."

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

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

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

Both sides await hearing

By ALTON CALKINS
Staff Writer
Malone Bureau

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

Monday, Mayor James Feeley said he signed the order suspending Nichols under Article 76 of the Civil Service law, the section of law that states the rules for removing and disciplining civil service employees. Tuesday, Feeley said those charges were being amended. According to Tom Hally, Nichols' attorney with the Federation of Police union, the list of charges against Nichols is lengthy and includes: insubordination, removing departmental records, communicating with other agencies without going through proper channels, violating the Freedom of Information law, and violating the right to privacy.

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

Article 76 also states the rules by which the hearing officer is selected and according to those rules, the Village Board is the body that does the selecting, according to Feeley. He said the board chose Malone businessman and former U.S. Navy Internal Investigations officer Brian McKee for the job.

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

Feeley also said that as he understands the rules, there is no provision allowing Nichols to object to the hearing officer chosen by the board and that everyone concerned was ready to get the show on the road.

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

If Nichols is found guilty, the board of trustees will decide his punishment, and under Article 76 that punishment can be a reprimand, up to a \$100 fine, up to two months suspension without pay, a demotion, or the loss of his job, according to Feeley. If innocent, the village must pay the salary Nichols lost while he was suspended.

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

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

...the lecture explores how fish survive

...the lecture explores how fish survive

EXHIBIT

D



GATEWAY MOTEL

Finney Blvd. • Rt. 30 • Malone, NY 12953
(518) 483-4200

J. Brian McKee
L.M. "Rick" James, Jr.

14 March 1991

Chief Richard Brown
Malone Police Department
21 Pearl Street
Malone, New York 12953

Dear Dick,

Yesterday, 13 March 1991, one of our desk clerks accidentally activated the duress signal and the central station asked your department to respond to the alarm.

I sincerely regret the "false" nature of the alarm and know the serious consequences of a serious response to hold-up alarms, but as a former member of your department, I could not have been prouder of the performance of the responding police officers. Their approach to the area and their entry to the building were textbook correct and polished by a lot of obvious street smarts! As a veteran of 32 years in the business who got his start in the profession in the Malone PD, believe me when I say that I have never seen it done any better.

Please remember that courtesy accommodations are always available here to any member of the police department or those outside the department to whom you would like to extend free lodging. It's our way of saying thanks to your department for the outstanding service provided every day of the week. Remember, the coffee pot is always on and you and all your people are always welcome.

With a lot of respect, admiration and recollection of the "good old days",

Sincerely,

J. BRIAN MCKEE

EXHIBIT E

18 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

rec'd 10/25

RESOLUTION

At a special meeting of the Village Board of Trustees, Village of Malone, New York, on October 20, 1993, it was moved by Trustee Robert Fraser and seconded by Trustee Earl Lavoie that the following resolution be duly adopted:

BE IT RESOLVED that the Malone Village Board takes the following actions against Malone Village Police Officer Patrick Nichols:

- A. A reprimand
- B. A fine of \$100.
- C. Suspension without pay for a period of sixty (60) days, thirty (30) of which have already been served.

Ayes 3 Nays 0

RESOLUTION HEREBY ADOPTED

Elizabeth J. Bessette
Elizabeth J. Bessette
Malone Village Clerk

I, Elizabeth J. Bessette, Village Clerk of the Village of Malone, do hereby certify that the foregoing is a true and correct copy, and the whole thereof, of a resolution adopted at a meeting of the Village Board of Trustees held October 20, 1993.

SEAL

Elizabeth J. Bessette
Elizabeth J. Bessette
Malone Village Clerk

EXHIBIT *F*

18 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

October 22, 1993

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

Dear Sir:

After careful review of the report and recommendations of the hearing officer and the disciplinary proceedings against you on the charges contained in my letter of August 5, 1993, addressed to you, the Village Trustees have in fact decided that you are guilty of the charges as outlined in the hearing officer's report. (copy enclosed)

The punishment imposed on you by the Village Board is contained in a resolution passed by the Trustees at a special meeting of the Board on October 20, 1993. (copy of resolution enclosed)

You are entitled to report for work on November 20, 1993, as per the posted schedule.

Very truly yours,

James Feeley
James Feeley
Mayor

JF/cdy
encs.

cc: Thomas P. Halley

* also enclosed was copy of McKee's decision

INDIVIDUAL VERIFICATION

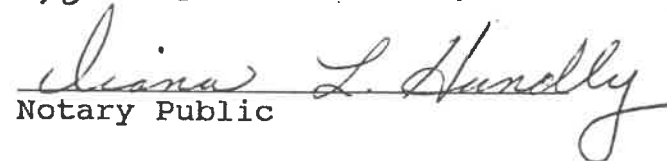
STATE OF NEW YORK)
COUNTY OF FRANKLIN)ss.: —

I, PATRICK NICHOLS being duly sworn, deposes and say:
I am the PETITIONER in the within action;

I have read the foregoing NOTICE OF PETITION AND
PETITION and know the contents thereof; the same is true to
my own knowledge, except as to the matters therein stated to
be alleged on information and belief, and as to those matters
I believe it to be true.


PATRICK NICHOLS

Sworn to before me this
18th day of December, 1993.


Notary Public

DIANA L. HANDLY
Notary Public, State of New York
No 4861700 - Franklin County
My Commission Expires July 21, 1994.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

Patrick Nichols,

Index No. 93-755

Petitioner,

AFFIDAVIT

-against-

Village of Malone,

Respondent.

STATE OF NEW YORK)
COUNTY OF DUTCHESS) ss.:

THOMAS P. HALLEY being an attorney at law, duly admitted to practice in the State of New York, affirms the following under penalties of perjury:

1. He is the attorney for the Petitioner herein, and make this affidavit in support of Petitioner's application to this court for judgment reversing the determination of the Respondent Village Board which imposed disciplinary penalties upon him pursuant to Section 75 of the Civil Service Law.

2. Following the conclusion of the Disciplinary Hearing on September 17, 1993, I requested the opportunity to submit a brief which specifically addressed and gave legal arguments relating to legal matters in the case. This request was reflected on at 315 of the Transcript at which I stated: "It will be several weeks before we get the transcript, which is understandable."

3. In an off the record conversation with the Hearing Officer, I requested approximately three weeks to submit the brief, with the understanding that the transcript would be received by that time.

4. On or about October 8, 1993, I received a telephone a telephone call from Hearing Officer McKee. The Hearing Officer inquired of me as to when he would receive my brief.

5. I advised hearing McKee that I was awaiting the transcript of the hearing so that I could have it in front of me when I wrote the brief. He stated that he would send me such a transcript by Federal Express, and that I should, in turn, submit my brief to him by Federal Express. He provided me with his Federal Express number so that I might use it to transmit the brief.

6. Thereafter, by letter dated October 12, 1993, a copy of which is annexed hereto, made a part hereof, and

designated Exhibit A, the transcripts were sent to me by the Hearing Officer.

7. During the telephone conversation which took place on or about October 8, 1993, I advised the Hearing Officer that I would complete the brief over the holiday weekend (Columbus Day), and have it in final form so that it would be sent to him for receipt on October 16, 1993.

8. The Hearing Officer agreed with this procedure.

9. As indicated above, I received the transcripts on or about October 13, 1993. I completed the brief after reviewing the transcripts, and sent the brief to the Hearing Officer, by Federal Express, on October 15, 1993.

10. On the morning of October 16, 1993, I called the Hearing Officer at his office. The call was answered by an answering machine. I left a message with the Hearing Officer that I was confirming that the brief had been sent by Federal Express, and if he did not receive the same by noon that day, he should contact me so that I could send him another copy by fax or some other means. I did not hear from the Hearing Officer any further.

11. On or about Monday October 19, 1993, I received a telephone call from the Petitioner. He told me that he had received telephone calls from the local media asking his opinion with regard to the Hearing Officer's decision. He referred the media to me.

12. Shortly thereafter, I received several phone calls from local newspapers. The newspapers in each case advised me that they had received a copy of the Hearing Officer's Report and Recommendations, and wanted a comment.

13. My general comments to the media were that I could not believe the lack of professionalism and discourtesy on the part of the Hearing Officer in failing to communicate with the Petitioner or his attorney, but rather permitting the Report and Recommendations to be released to the media first.

14. I subsequently received a copy of the Hearing Officer's Report and Recommendations. Said Report and Recommendations were dated October 13, 1993, and were submitted with a cover letter of the same date to the Mayor of the Village.

15. I was, of course, astounded to find that the Hearing Officer had written and submitted the report without even waiting to receive the brief which he knew was going to be coming back to him by Federal Express on October 16, 1993.

16. As previously indicated, the transcript of the hearing were sent to me by the Hearing Officer's letter of October 12, 1993. His Report and Recommendations consisting of some fourteen pages, is dated October 13, 1993.

17. The Hearing Officer knew full well that I would not receive the transcript until the day after it was sent to me, which date is coincidentally the same date of his Report and Recommendations.

18. The Hearing Officer was very much aware, pursuant to our telephone conversation, that I would be submitting my brief to him, through his own Federal Express account, on October 16, 1993.

19. Not only did the Hearing Officer choose to write his Report and Recommendations without reviewing my closing brief, but he apparently either intentionally or wantonly lead me to believe that no Report or Recommendations would be issued until such time as he received my brief.

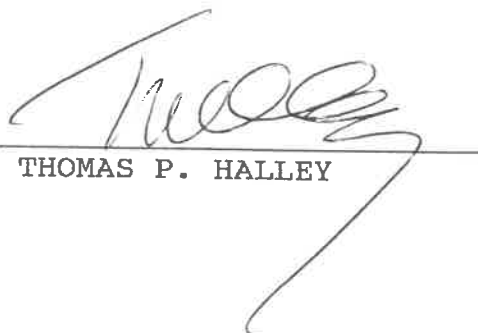
20. Since my admission to the practice of law in the New York State in 1977, I have been involved in over 100 public sector disciplinary cases, as an attorney for the municipality, and attorney for the employee, or as an Hearing Officer.

21. I have never seen a situation and never been partied to a situation in which the Hearing Officer makes a determination without permitting the employee to submit a written closing argument, nor have I seen or been involved in a case where the Report and Recommendations of the Hearing Officer are released to the public before notification of the same is given to the employee or his attorney.

22. I join in the request by the Petitioner for an Order pursuant to the provisions of Section 75 and Section 76 of the Civil Service Law reversing and annulling the determination of the Village Board in this case.

WHEREFORE, your affirmant respectfully requests the court grant the relief set forth in the Petition, along with such other and further relief as the court may deem just and proper.

DATED: Poughkeepsie, New York
December 16, 1993


THOMAS P. HALLEY



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

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

12 October 1993

BY FEDEX

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

Re: Village of Malone vs.
Patrick Myron Nichols

Dear Mr. Halley:

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

Respectfully,


J. BRIAN MCKEE

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

EXHIBIT A

State of New York
County of Franklin

Supreme Court

Patrick Nichols,

Petitioner,

v.

Village of Malone,

Respondent.

Verified Answer to Petition

Index No. 93-755

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

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

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

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

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

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

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

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

FIRST OBJECTION IN POINT OF LAW

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

SECOND OBJECTION IN POINT OF LAW

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

THIRD OBJECTION IN POINT OF LAW

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

FOURTH OBJECTION IN POINT OF LAW

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

FIFTH OBJECTION IN POINT OF LAW

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

SIXTH OBJECTION IN POINT OF LAW

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

SEVENTH OBJECTION IN POINT OF LAW

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

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

EIGHTH OBJECTION IN POINT OF LAW

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

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

NINTH OBJECTION IN POINT OF LAW

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

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

*noted that
petitioner
everything be
made public
demanded*

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

Dated:

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

TO:

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

VERIFICATION

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

VILLAGE OF MALONE

Dated:

by _____
MAYOR JAMES FEELEY

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

Notary Public