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 discused 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. Richie 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 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 stricking 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.

MV-104A (6/88)

State of New York - Department of Motor Vehicles

POLICE ACCIDENT REPORT

POLICE AGENCY COPY 1

Page 1 of 1 Pages

Local Codes

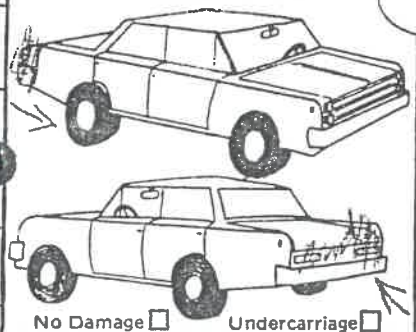
Accident Date	Day of Week	Time	No. of Vehicles	No. Injured	No. Killed	Non-Highway	Not Investigated at Scene	Left Scene	Police Photos
12/13/93 Mo./Day/Year	MO	12:50 ☐ AM ☒ PM	2	1	0	☐	☐	☐	Yes ☐ No ☒

VEHICLE 1 ☒ VEHICLE 2 ☐ BICYCLIST ☐ PEDESTRIAN

	Vehicle 1	Vehicle 2
Name - exactly as printed on license	KING, GENEVIEVE R	[redacted]
DMV USE		
Sex	F	[redacted]
Un-Licensed	☐	☐
No. of Occup.	1	1
Public Property Damaged	☐	☐
State of License	NY	NY
Name - exactly as printed on registration	SAME AS DRIVER	SAME AS DRIVER
Date of Birth Mo./Day/Year	[redacted]	[redacted]
Number and Street	[redacted]	[redacted]
Hazardous Material Code		
City / State / Zip Code	[redacted]	[redacted]
Plate Number	FRD614	YAV-865
State of Reg.	NY	NY
Yr. & Vehicle Make	90 CHEV	79 FORD
Vehicle Type	PAS	PAS
Ins. Code	211	148

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

VEHICLE 1 DAMAGE



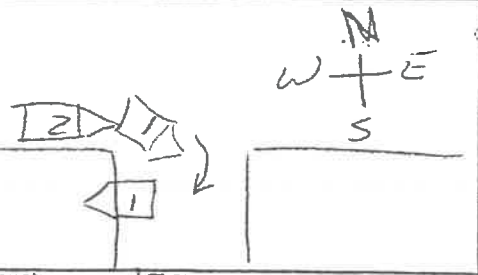
No Damage ☐ Undercarriage ☐

Vehicle Towed By

To

ACCIDENT DIAGRAM

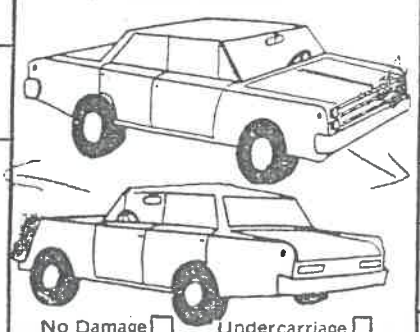
Rear End 1.	Left Turn 3.	Right Angle	Right Turn 5.	Head On 7.
Overtaking 2.	Left Turn 0.	4.	Right Turn 6.	Sideswipe 8.



9.

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

VEHICLE 2 DAMAGE



No Damage ☐ Undercarriage ☐

Vehicle Towed By

To

Reference	Marker
3	0
12	19
16	19

DMV USE ONLY

County FRANK ☐ City ☐ Town ☒ Village MALONE

Route No. and Street Name ST-30 on VIC-ELM

☐ Miles ☐ N ☐ E ☐ Feet ☐ S ☐ W of ☒ At Intersection with VIC-MORTON

Ticket/Arrest ☐ Other ☐ Opr 1 ☐ Opr 2 ☒ Pedestrian ☐ Bicyclist ☐

Ticket/Arrest Number(s) (2) 964161 - 964162

Violation Section(s) (2) 1129-A - 509-1

Nearest Intersecting Route/Street

Accident Description/Officer's Notes VEHICLE #1 MAKING RIGHT TURN AT WHEN WAS STRUCK IN REAR BY VEH #2. DAMAGE TO BOTH VEH. VEHICLE SPUN AROUND AND INTO CURB ONTO LAWN.

WITNESS LEROY NICHOLS
GARY WRIGHT

USE COVER SHEET G

	8	9	10	11	12	13	14	15	16	17	18	Names - If Deceased, Give Date of Death
A	1	1	3	1	65	F	4	12	6	FA7	602	KING, GENEVIEVE
B	2	1	3	1	34	M	—	—	—	—	—	TROTTOW, NORMAN
C												
D												
E												
F												
G												

INVOLVED

SIGN HERE

Officer's Rank and Name T/L NICHOLS

Badge No. 59 Department MPD Precinct/Post Troop/Zone 61529 Station/Beat/Sector

Reviewing Officer CW

Date/Time Reviewed 12/16/93 12:00 PM

MV-104A (6/88)

State of New York - Department of Motor Vehicles

POLICE ACCIDENT REPORT

Page 1 of 1 Pages

POLICE AGENCY COPY 1

Local Codes

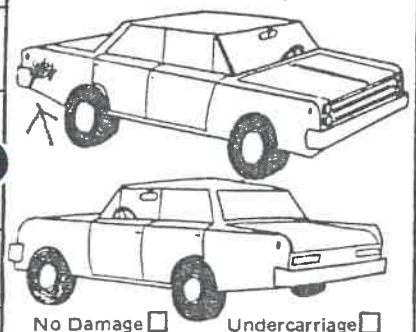
Accident Date	Day of Week	Time	No. of Vehicles	No. Injured	No. Killed	Non-Highway	Not Investigated at Scene	Left Scene	Police Photos
12/14/93 Mo./Day/Year	TU	12:00 ☐ AM ☒ PM	2	0	0	☒	☐	☒	Yes ☐ No ☒

VEHICLE 1 ☒ VEHICLE 2 ☐ BICYCLIST ☐ PEDESTRIAN

VEHICLE 1	DMV USE	VEHICLE 2	DMV USE
Name - exactly as printed on license: PARKED UNATTENDED		Name - exactly as printed on license: CREIGHTON, WILLIAM, J	
Number and Street		[redacted]	
City / State / Zip Code			
Date of Birth Mo./Day/Year / Sex / Un-Licensed ☐ / No. of Occup. / Public Property Damaged ☐ / State of License		[redacted] / Sex: M / Un-Licensed ☐ / No. of Occup.: 1 / Public Property Damaged ☐ / State of License: NY	
Name - exactly as printed on registration: GOLEY, RICHARD, A		Name - exactly as printed on registration: SAME AS DRIVER	
[redacted]		Number and Street / Hazardous Material Code	
		City / State / Zip Code	
Plate Number: FRH-551 / State of Reg.: NY / Yr. & Vehicle Make: 89 BUICK / Vehicle Type: PAS / Ins. Code: 231		Plate Number: PDF-1da / State of Reg.: N.Y. / Yr. & Vehicle Make: 86 Lin / Vehicle Type: PAS / Ins. Code: 383	

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

VEHICLE 1 DAMAGE



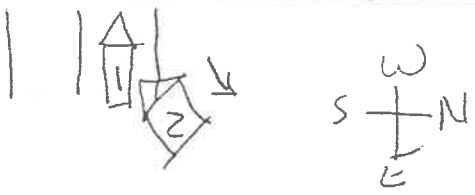
No Damage ☐ Undercarriage ☐

Vehicle Towed By

To

ACCIDENT DIAGRAM

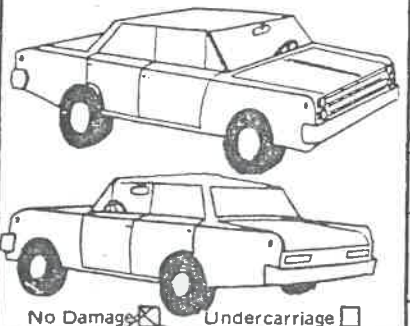
Rear End	Left Turn	Right Angle	Right Turn	Head On
1.	3.		5.	7.
Overtaking	Left Turn		Right Turn	Sideswipe
2.	0.	4.	6.	8.



9.

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

VEHICLE 2 DAMAGE



No Damage ☒ Undercarriage ☐

Vehicle Towed By

To

Reference Marker

DMV USE ONLY

County: FRANK ☐ City ☐ Town ☒ Village: MALONE

Route No. and Street Name: on PARKING LOT ST-11 VIL-MAIN STEAK N SEAFOOD

☐ Miles ☐ Feet ☐ N ☐ S ☐ E ☐ W of ☐ At Intersection with

Ticket/Arrest Other ☐ Opr 1 ☐ Opr 2 ☐ Pedestrian ☐ Bicyclist ☐

Ticket/Arrest Number(s)

Violation Section(s)

Nearest Intersecting Route/Street

Accident Description/Officer's Notes: VEHICLE (2) WHEN BACKING OUT OF SPACE STRUCK AND CAUSED DAMAGE TO VEH #1. VEH (2) LEFT SCENE. DRIVER #2 NOT AWARE OF COLLISION.

USE COVER SHEET G

INVOLVED

	8	9	10	11	12	13	14	15	16	17	18	Names - If Deceased, Give Date of Death
A	2	1	3	1	36	M						OPERATOR
B												
C												
D												
E												
F												
G												

SIGN	Officer's Rank and Name	Badge No.	Department	Precinct/Post Troop/Zone	Station/Beat/ Sector	Reviewing Officer	Date/Time Reviewed
	P.F. [illegible]	59	MPD	01324		CM	12/15/93 1200

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

#23 Nationwide

N 0841-0841 12/22/93 00660581 BMVG39915 PART 001 OF 001
NCIC PTST BMVG 0841
NY0162400
NO NCIC WANT [redacted] 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
[redacted] #: [redacted] CLIENT ID#: [redacted]
REIGHTON,WILLIAM,D [redacted] SEX: M
[redacted] HEIGHT: 6-4 EYE COLOR: HAZEL
COUNTY: FRAN
RESTRICTIONS: CORRECTIVE LENSES
LICENSE CLASS *D* STATUS: VALID EXPIRATION: 11/14/1996
********** CONVICTIONS/BAIL FORFEITURES **********
[redacted]

N 0841-0841 [redacted]
NYMV DMOR BMVG 0841
EALCREIGHTON,WILLIAM,D 11/
[redacted]
********** ACCIDENTS **********
[redacted]

DATE	NUMBER	CHARGE	DISPOSITION
12-30-85	039156-5	Fail to keep RT.	
10-6-89	015475	speed 45/30	
6-1-93	733053-6	Speed 57/30	

#5013

OFFENSE REPORT

Complainant RICHARD JOE GOKEY Case No. 93-A-3100

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

MV-104A (6/88)

State of New York - Department of Motor Vehicles

POLICE ACCIDENT REPORT

Page 1 of 1 Pages

POLICE AGENCY COPY 1

Local Codes

Accident Date (Mo./Day/Year)	Day of Week	Time	No. of Vehicles	No. Injured	No. Killed	Non-Highway	Not Investigated at Scene	Left Scene	Police Photos
12/17/93	FR	1210 AM/PM	2	0	0	☐	☐	☐	Yes ☐ No ☑

VEHICLE 1

Name - exactly as printed on license: DURANT, SHERRI, A

DMV USE

[redacted]

Sex	Un-Licensed	No. of Occup.	Public Property Damaged	State of License
F	☐	2	☐	NY

Name - exactly as printed on registration

Date of Birth (Mo./Day/Year)

Number and Street

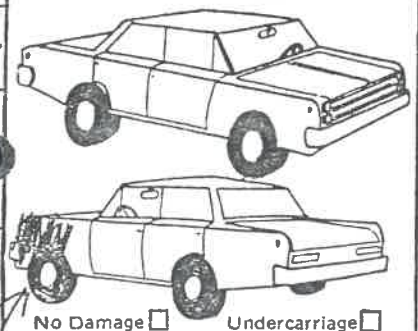
Hazardous Material Code

City / State / Zip Code

Plate Number	State of Reg.	Yr. & Vehicle Make	Vehicle Type	Ins. Code
GBG-286	NY	92 Ford	PAS	999

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

VEHICLE 1 DAMAGE



No Damage ☐ Undercarriage ☐

Vehicle Towed By

To

VEHICLE 2

Name - exactly as printed on license: PUTNAM, GEORGE, E

DMV USE

[redacted]

Sex	Un-Licensed	No. of Occup.	Public Property Damaged	State of License
[redacted]	☐	2	☐	NY

Name - exactly as printed on registration: MCCANN, EILEEN

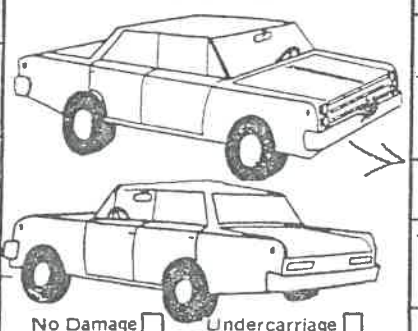
Date of Birth (Mo./Day/Year)

[redacted]

Plate Number	State of Reg.	Yr. & Vehicle Make	Vehicle Type	Ins. Code
HV-2113	NY	88 CHEV	COM	240

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

VEHICLE 2 DAMAGE



No Damage ☐ Undercarriage ☐

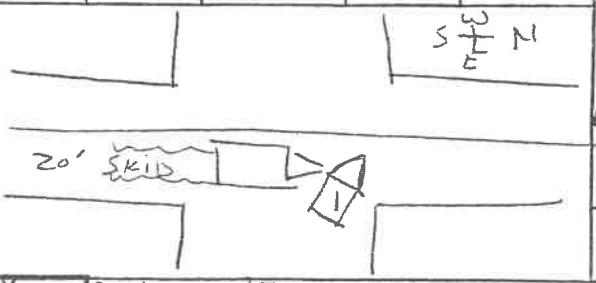
Vehicle Towed By

To

ACCIDENT DIAGRAM

Rear End 1. | Left Turn 3. | Right Angle | Right Turn 5. | Head On 7.

Overtaking 2. | Left Turn 0. | | Right Turn 6. | Sideswipe 8.



9.

Reference Marker

DMV USE ONLY

County: ALLEGAN ☐ City ☐ Town ☑ Village: MALONE

Route No. and Street Name: on V.R. - WEBSTER

☐ Miles ☐ N ☐ E ☐ W of ☑ At Intersection with V.R. - FRANCIS

Nearest Intersecting Route/Street

Ticket/Arrest: Other ☐ Opr 1 ☐ Opr 2 ☐ Pedestrian ☐ Bicyclist ☐

Ticket/Arrest Number(s): (1) - 964202

Violation Section(s): (1) - 1142-A

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.

USE COVER SHEET G

INVOLVED

	8	9	10	11	12	13	14	15	16	17	18	Names - If Deceased, Give Date of Death
A	1	1	3	1	20	F						OPERATOR
B	1	4	5	1	1	M						DURANT, COREY
C	2	1	3	1	36	M						OPERATOR
D	2	3	3	1	26	F						PUTNAM, DONNA
E												
F												
G												

SIGN	Officer's Rank and Name	Badge No.	Department	Precinct/Post Troop/Zone	Station/Beat/ Sector	Reviewing Officer	Date/Time Reviewed
	PFC NICHOLS	55	MPD			DM	12-22-93

POLICE ACCIDENT REPORT

Page 1 of 1 Pages

POLICE AGENCY COPY 1

Local Codes

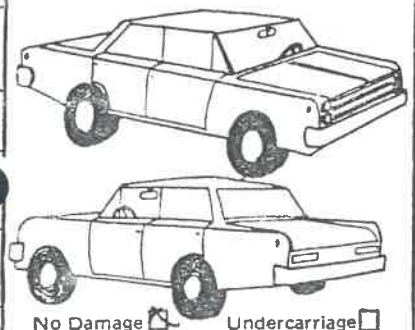
Accident Date (Mo./Day/Year)	Day of Week	Time	No. of Vehicles	No. Injured	No. Killed	Non-Highway	Not Investigated at Scene	Left Scene	Police Photos
12/23/93	TH	11:05 ☒ AM ☐ PM	2	0	0	☒	☐	☐	Yes ☐ No ☒

VEHICLE 1 ☐ VEHICLE 2 ☐ BICYCLIST ☐ PEDESTRIAN

	VEHICLE 1	VEHICLE 2
Name - exactly as printed on license	LAVARNWAY, LEDNA	RUNDALL, AUDREY A.
DMV USE		
[redacted]	[redacted]	[redacted]
Sex	F	F
Un-Licensed	☐	☐
No. of Occup.	1	2
Public Property Damaged	☐	☐
State of License	N.Y.	N.Y.
Name - exactly as printed on registration	LAVARNWAY, DANIEL	RUNDALL, GORDON
Date of Birth (Mo./Day/Year)	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
Plate Number	HJK-218	FLH-895
State of Reg.	N.Y.	N.Y.
Yr. & Vehicle Make	92 PONTI	92 CHRY
Vehicle Type	PAS	PAS
Ins. Code	117	231

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

VEHICLE 1 DAMAGE



No Damage ☒ Undercarriage ☐

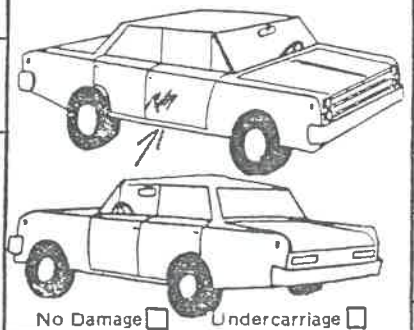
ACCIDENT DIAGRAM

1. Rear End	3. Left Turn	5. Right Turn
2. Overtaking	0. Left Turn	4. Right Angle
6. Right Turn	7. Head On	8. Sideswipe

PARKING LOT

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

VEHICLE 2 DAMAGE



No Damage ☐ Undercarriage ☐

Vehicle Towed By

To

9.

Vehicle Towed By

To

Reference	Marker	DMV USE ONLY

County FRANK ☐ City ☐ Town ☐ Village MALONE

Route No. and Street Name PARKING LOT AT Lando's Rig on ST-11 N.R. RAYMOND

☐ Miles ☐ N ☐ E of ☐ Feet ☐ S ☐ W ☒ At Intersection with

Ticket/Arrest ☐ Other ☐ Opr 1 ☐ Opr 2 ☐ Pedestrian ☐ Bicyclist ☐

Ticket/Arrest Number(s) —

Violation Section(s) —

Nearest Intersecting Route/Street

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

USE COVER SHEET G

ALL INVOLVED

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

SIGN HERE	Officer's Rank and Name	Badge No.	Department	Precinct/Post Troop/Zone	Station/Beat/ Sector	Reviewing Officer	Date/Time Reviewed
	SGT NICHOLS	59	MPD	01621		CPW	1/8/94 1030

MV-104A (6/88)

State of New York - Department of Motor Vehicles

POLICE ACCIDENT REPORT

Page 1 of 1 Pages

DMV COPY

Local Codes

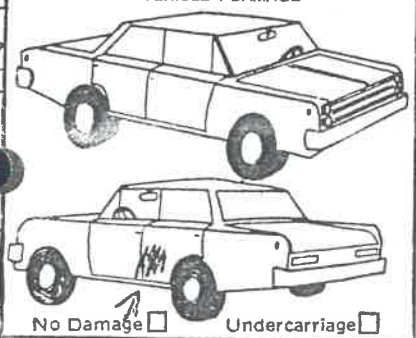
Accident Date	Day of Week	Time	No. of Vehicles	No. Injured	No. Killed	Non-Highway	Not Investigated at Scene	Left Scene	Police Photos
12/24/93 Mo./Day/Year	FR	1145 AM/PM	2	0	0	☐	☐	☐	Yes ☐ No ☒

VEHICLE 1 ☒ **VEHICLE 2** ☐ BICYCLIST ☐ PEDESTRIAN

	VEHICLE 1	VEHICLE 2
Name - exactly as printed on license	TRUMBLEY, LEONARD P	PETELL, RICHARD P
DMV USE		
[redacted]		
Sex	M	M
Un-Licensed	☐	☐
No. of Occup.	1	2
Public Property Damaged	☐	☐
State of License	NY	NY
Name - exactly as printed on registration	SAME AS DRIVER	SHAFLAW, DOUG D
Date of Birth Mo./Day/Year		
Number and Street		[redacted]
Hazardous Material Code		
City / State / Zip Code		
Plate Number	FRH-680	FAY-637
State of Reg.	NY	NY
Yr. & Vehicle Make	89 FORD	86 DODGE
Vehicle Type	PAS	PAS
Ins. Code	199	290

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

VEHICLE 1 DAMAGE



No Damage ☐ Undercarriage ☐

Vehicle Towed By

To

ACCIDENT DIAGRAM

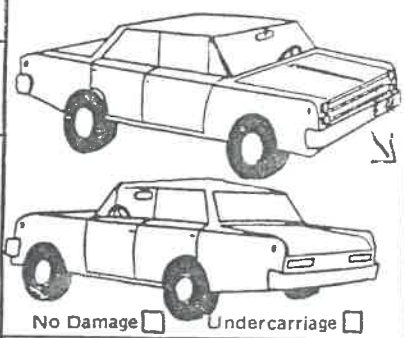
Rear End 1. | Left Turn 3. | Right Angle | Right Turn 5. | Head On 7.

Overtaking 2. | Left Turn 0. | 4. | Right Turn 6. | Sideswipe 8.

9.

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

VEHICLE 2 DAMAGE



No Damage ☐ Undercarriage ☐

Vehicle Towed By

To

Reference Marker

DMV USE ONLY

County FRANK ☐ City ☐ Town ☒ Village MALONE

Route No. and Street Name on V.R. PLEASANT

☐ Miles ☐ N ☐ E of ☐ Feet ☐ S ☐ W ☒ At Intersection with ST-11 V.R.-MAIN

Nearest Intersecting Route/Street

Ticket/Arrest ☐ Other ☐ Opr 1 ☐ Opr 2 ☐ Pedestrian ☐ Bicyclist ☐

Ticket/Arrest Number(s) —

Violation Section(s) —

Accident Description/Officer's Notes AC VEH #1 MAKING RIGHT TURN IT SLID TO SIDE STRIKING AND DAMAGING VEH #2.

USE COVER SHEET **G**

ALL INVOLVED

	8	9	10	11	12	13	14	15	16	17	18	Names - If Deceased, Give Date of Death
A	2	1	3	1	30	M	—	—	—	—	—	OPERATOR
B	2	3	3	1	45	M	—	—	—	—	—	LAJOMBE, DALTON
C	1	1	3	1	67	M	—	—	—	—	—	OPERATOR
D												
E												
F												
G												

SIGN HERE	Officer's Rank and Name	Badge No.	Department	Precinct/Post Troop/Zone	Station/Beat/ Sector	Reviewing Officer	Date/Time Reviewed
	PTL NICHOLS	59	MPD				

MV-104A (6/88)

State of New York - Department of Motor Vehicles

POLICE ACCIDENT REPORT

Page 1 of 1 Pages

DMV COPY

Local Codes

Accident Date Mo./Day/Year	Day of Week	Time	No. of Vehicles	No. Injured	No. Killed	Non-Highway	Not Investigated at Scene	Left Scene	Police Photos
12/28/13	TU	11:42 ☒ AM ☐ PM	2	0	0	☐	☐	☐	Yes ☐ No ☒

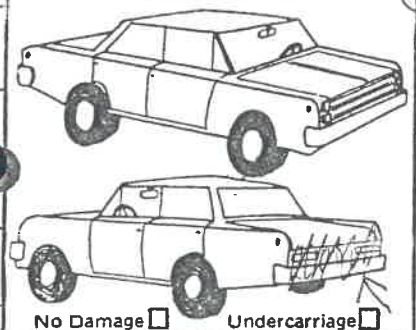
VEHICLE 1 ☒ VEHICLE 2 ☐ BICYCLIST ☐ PEDESTRIAN

Name - exactly as printed on license	DMV USE	Name - exactly as printed on license	DMV USE
QUIMBY, FRANK W		BUSHEY, GREGORY A	
[redacted]		[redacted]	
Name - exactly as printed on registration / Date of Birth Mo./Day/Year		Name - exactly as printed on registration / Date of Birth Mo./Day/Year	
SAME AS DRIVER		BUSHEY, CHRISTINE L	
[redacted]		[redacted]	

Plate Number	State of Reg.	Yr. & Vehicle Make	Vehicle Type	Ins. Code	Plate Number	State of Reg.	Yr. & Vehicle Make	Vehicle Type	Ins. Code
FLR448	NY	90 FORD	PAS	226	JGN1422	NY	88 Dodg	Com	011

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

VEHICLE 1 DAMAGE



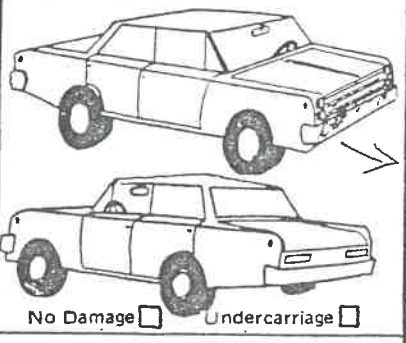
No Damage ☐ Undercarriage ☐

ACCIDENT DIAGRAM

Rear End	Left Turn	Right Angle	Right Turn	Head On
1.	3.		5.	7.
Overtaking	Left Turn		Right Turn	Sideswipe
2.	0.	4.	6.	8.

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

VEHICLE 2 DAMAGE



No Damage ☐ Undercarriage ☐

Vehicle Towed By

To

Vehicle Towed By

To

Reference	Marker
1	1
7 2 0 7	
1 1 6 9	

DMV USE ONLY

County FRANK ☐ City ☐ Town ☒ Village MALONE

Route No. and Street Name on SR 11 VC-MAIN

☐ Miles ☐ Feet ☐ N ☐ S ☐ E ☐ W of ☒ At Intersection with VC-HARRISON

Ticket/Arrest ☐ Other

Opr 1 ☐ Pedestrian ☐

Opr 2 ☒ Bicyclist ☐

Ticket/Arrest Number(s) (2)-96228

Violation Section(s) (2)-1129-A

Nearest Intersecting Route/Street

Accident Description/Officer's Notes DRIVER OF VEH #2 STATED HE SLID INTO VEH #1 WHEN APPLYING BRAKES TO STOP. DAMAGE TO BOTH VEHICLES.

USE COVER SHEET G

INVOLVED	8	9	10	11	12	13	14	15	16	17	18	Names - If Deceased, Give Date of Death
A	1	1	3	1	39	M						QUIMBY, FRANK
B	2	1	3	1	28	M						BUSHEY, GREGORY
C	2	2	3	1	5	F						BUSHEY, BRITTANY
D	2	3	3	1	7	F						BUSHEY, JODI
E												
F												
G												

SIGN HERE	Officer's Rank and Name	Badge No.	Department	Precinct/Post Troop/Zone	Station/Beat/ Sector	Reviewing Officer	Date/Time Reviewed
	PFC. MICHAELS	59	MPD	0624			

MV-104A (8/87)

State of New York - Department of Motor Vehicles

POLICE ACCIDENT REPORT

Page 1 of 1 Pages

DMV COPY

Local Codes

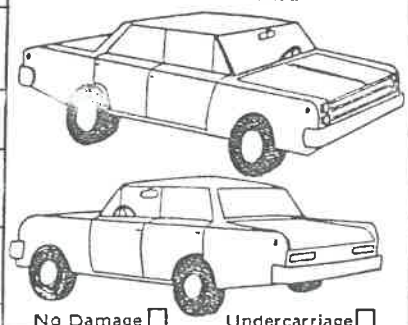
Accident Date Mo. Day Year	Day of Week	Time	No. of Vehicles	No. Injured	No. Killed	Non-Highway	Not Investigated at Scene	Left Scene	Police Photos
12 28 13	TU	11:10 ☒ AM ☐ PM	2	1	0	☐	☐	☐	Yes ☐ No ☒

VEHICLE 1 ☒ VEHICLE 2 ☐ BICYCLIST ☐ PEDESTRIAN

	VEHICLE 1	VEHICLE 2
Name - exactly as printed on license	LOWTHER, LEAMON, E, JR	DESROSIERS, C
DMV USE		
Name - exactly as printed on registration	SAME AS DRIVER	SAME AS DRIVER
Date of Birth Mo. Day Year	/ /	/ /
Number and Street	[redacted]	[redacted]
Hazardous Material Code		
City State Zip Code		
Plate Number	SL-39A9	C540CC
State of Reg.	NY	NY
Yr. & Vehicle Make	93 CHEV	93 TOYOT
Vehicle Type	COM	PAS
Ins. Code	011	158

If damaged vehicle is truck, check if width is ☐ 96" ☐ 102"

VEHICLE 1 DAMAGE



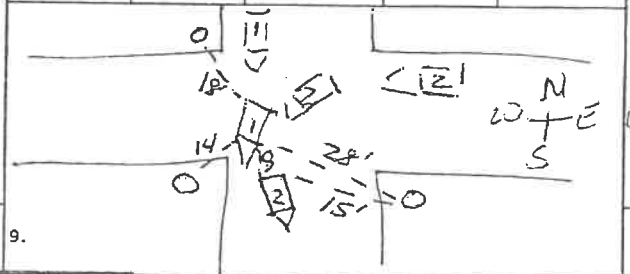
No Damage ☐ Undercarriage ☐

Vehicle Towed By

To

ACCIDENT DIAGRAM

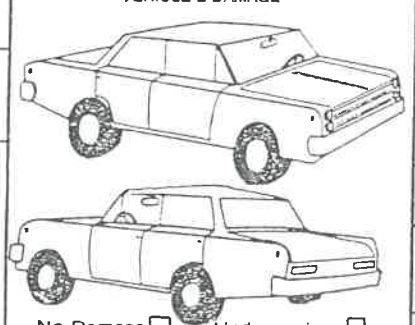
Rear End	Left Turn	Right Angle	Right Turn	Head On
1.	3.		5.	7.
Overtaking	Left Turn		Right Turn	Sideswipe
2.	0.	4.	6.	8.



9.

If damaged vehicle is truck, check if width is ☐ 96" ☐ 102"

VEHICLE 2 DAMAGE



No Damage ☐ Undercarriage ☐

Vehicle Towed By

To

Reference Marker	DMV USE ONLY

County FLANK ☐ City ☐ Town ☐ Village MALONE

Route No. and Street Name on VT PEARL

☐ Miles ☐ Feet ☐ N ☐ S ☐ E ☐ W of ☒ At Intersection with VT-COLLEGE

Ticket/Arrest ☐ Other ☐ Ticket/Arrest Number(s) (2) -964224

Opr 1 ☐ Opr 2 ☒ Pedestrian ☐ Bicyclist ☐ Violation Section(s) (2) -1142-A

Nearest Intersecting Route/Street

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.

USE COVER SHEET F

WITNESS: MIKE MULLEN - WEBSTER ST

INVOLVED	8	9	10	11	12	13	14	15	16	17	18	Names - If Deceased, Give Date of Death
A	1	1	3	1	37	M						OPERATOR
B	1	3	3	1	50	F	6	12	6	4TA	1602	VESHAUL, STELLA
C	2	1	3	1	21	M						OPERATOR
D												
E												
F												
G												

SIGN HERE	Officer's Rank and Name	Badge No.	Department	Precinct/Post Troop/Zone	Station/Beat/ Sector	Reviewing Officer	Date/Time Reviewed
	PFC RICHARDS	59	MPD	0624			

MV-104A (6/88)

State of New York - Department of Motor Vehicles

POLICE ACCIDENT REPORT

POLICE AGENCY COPY 1

Page 1 of 1 Pages

Local Codes:

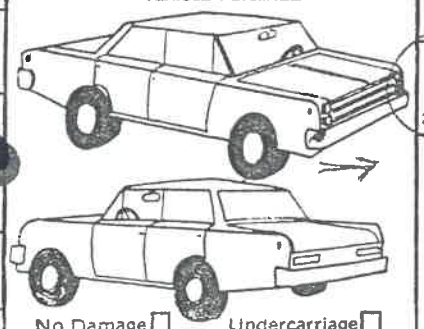
Accident Date	Day of Week	Time	No. of Vehicles	No. Injured	No. Killed	Non-Highway	Not Investigated at Scene	Left Scene	Police Photos
12/28/93 Mo./Day/Year	TU	7:55 AM/PM	2	0	0				Yes / No

VEHICLE 1 | VEHICLE 2 | BICYCLIST | PEDESTRIAN

	VEHICLE 1	VEHICLE 2
Name - exactly as printed on license	SEXTON, SANDRA L	LAFLEUR, LEE, E
DMV USE		
Name - exactly as printed on registration	SAME AS DRIVER	TUCKER, CLAYTON, JR
Date of Birth Mo./Day/Year		
Number and Street		
Hazardous Material Code		
City / State / Zip Code		
Plate Number	R4N1-611	97602L
State of Reg.	NY	NY
Yr. & Vehicle Make	83 LINCO	84 PONT
Vehicle Type	PAS	OMV
Ins. Code	999	385

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

VEHICLE 1 DAMAGE



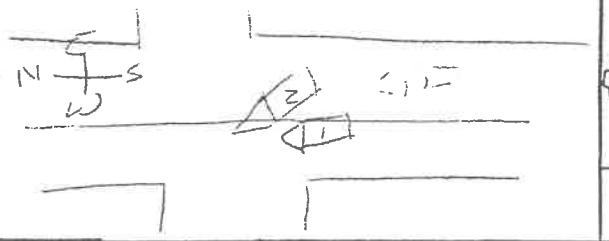
No Damage ☐ Undercarriage ☐

Vehicle Towed By

To

ACCIDENT DIAGRAM

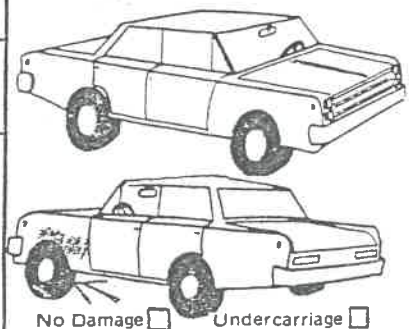
Rear End 1.	Left Turn 3.	Right Angle	Right Turn 5.	Head On 7.
Overtaking 2.	Left Turn 0.	4.	Right Turn 6.	Sideswipe 8.



9.

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

VEHICLE 2 DAMAGE



No Damage ☐ Undercarriage ☐

Vehicle Towed By

To

Reference Marker

DMV USE ONLY

County FRANK ☐ City ☐ Town ☑ Village MALONE

Route No. and Street Name on W. R. PARK

☐ Miles ☐ N ☐ E ☐ S ☐ W of ☐ Feet ☑ At Intersection with W. MAIN - 2ND

Ticket/Arrest Other ☐ Ticket/Arrest Number(s) (1) - 964227

Opr 1 ☑ Opr 2 ☐ Pedestrian ☐ Bicyclist ☐ Violation Section(s) (1) - 1122-A

Nearest Intersecting Route/Street

Accident Description/Officer's Notes: VEH #2 TURNING LEFT AND STRUCK LV VEH #1 ON DRIVERS SIDE. DRIVER OF VEH #1 STATING SHE DID NOT REALIZE VEH #2 WAS GOING TO TURN.

USE COVER SHEET G

INVOLVED

	8	9	10	11	12	13	14	15	16	17	18	Names - If Deceased, Give Date of Death
A	1	1	3	1	28	F						OPERATOR
B	2	1	3	1	24	M						OPERATOR
C												
D												
E												
F												
G												

SIGN

Officer's Rank and Name: PTL HIGGINS

Badge No. 55 | Department MPD | Precinct/Post Troop/Zone 01624 | Station/Beat/Sector | Reviewing Officer DM | Date/Time Reviewed 1/8/94 1030

MV-104A (6/88)

State of New York - Department of Motor Vehicles

POLICE ACCIDENT REPORT

Page 1 of 1 Pages

POLICE AGENCY COPY 1.

X

Local Codes

Accident Date Mo./Day/Year	Day of Week	Time	No. of Vehicles	No. Injured	No. Killed	Non-Highway	Not Investigated at Scene	Left Scene	Police Photos
01/01/94	SA	8:15 AM ☒ PM	2	0	0	☐	☐	☐	Yes ☐ No ☒

VEHICLE 1 ☐ VEHICLE 2 ☐ BICYCLIST ☐ PEDESTRIAN

VEHICLE 1

Name - exactly as printed on license: PARKED UNATTENDED

Number and Street:

City / State / Zip Code:

Date of Birth Mo./Day/Year: / / | Sex: | Un-Licensed ☐ | No. of Occup.: | Public Property Damaged ☐ | State of License:

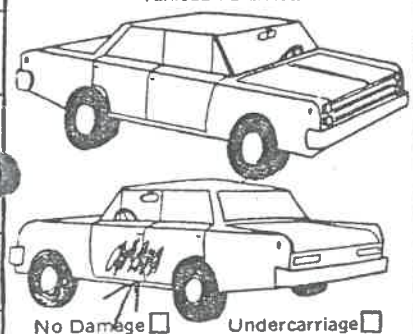
Name - exactly as printed on registration: LAVIGNE, KIM, D

[redacted]

Plate Number: 23635AA | State of Reg.: NY | Yr. & Vehicle Make: 85 FORD | Vehicle Type: COM | Ins. Code: 999

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

VEHICLE 1 DAMAGE



No Damage ☐ Undercarriage ☐

Vehicle Towed By:

To:

VEHICLE 2

DMV USE

Name - exactly as printed on license: BOVEA, JASON, P

[redacted]

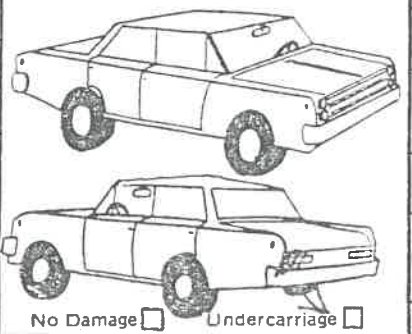
Name - exactly as printed on registration: BOVEA, CRAIG, A

[redacted]

Plate Number: C583LW | State of Reg.: NY | Yr. & Vehicle Make: 84 CHEV | Vehicle Type: COM | Ins. Code: 190

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

VEHICLE 2 DAMAGE



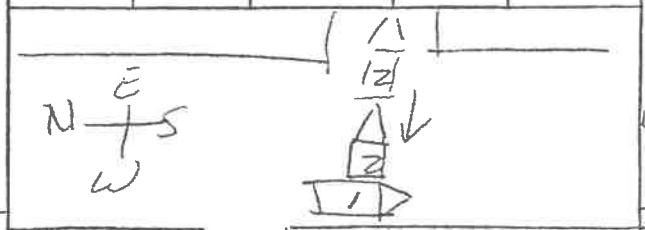
No Damage ☐ Undercarriage ☐

Vehicle Towed By:

To:

ACCIDENT DIAGRAM

Rear End	Left Turn	Right Angle	Right Turn	Head On
1.	3.		5.	7.
Overtaking	**Left Turn**		**Right Turn**	**Sideswipe**
2.	0.	4.	6.	8.



9.

Reference	Marker
-	3 0 -
7 2 0	9
1 6 8	2

DMV USE ONLY

County: FRAN ☐ City ☐ Town ☒ Village: MALONE

Route No. and Street Name: ABOUT 120 ☐ Miles ☒ Feet ☒ N ☐ S ☐ E ☐ W of ☐ At Intersection with V.R- THIRD

on ST-30 V.R-CONSTABLE

Ticket/Arrest ☐ Other ☐ | Ticket/Arrest Number(s) | Nearest Intersecting Route/Street

Opr 1 ☐ Opr 2 ☐ Pedestrian ☐ Bicyclist ☐ | Violation Section(s)

Accident Description/Officer's Notes: DRIVER VEH #2 STATED HE BACKED INTO VEH #1 CAUSING DAMAGE TO BOTH.

USE COVER SHEET G

		8	9	10	11	12	13	14	15	16	17	18	Names - If Deceased, Give Date of Death
ALL INVOLVED	A												
	B	2	1	3	1	17	M						OPERATOR
	C	2	3	3	1	15	M						LAPLANT, COREY
	D												
	E												
	F												
	G												

SIGN HERE	Officer's Rank and Name	Badge No.	Department	Precinct/Post Troop/Zone	Station/Beat/ Sector	Reviewing Officer	Date/Time Reviewed
	P.L. NICHOLS	59	MPD	01624			0700 1/3/94

MV-104A (6/88)

State of New York - Department of Motor Vehicles

POLICE ACCIDENT REPORT

Page 1 of 1 Pages

POLICE AGENCY COPY 1

Local Codes: JANUARY, 94

Accident Date	Day of Week	Time	No. of Vehicles	No. Injured	No. Killed	Non-Highway	Not Investigated at Scene	Left Scene	Police Photos
01/18/94 Mo./Day/Year	TU	1255 ☐ AM ☒ PM	2	0	0	☐	☐	☐	Yes ☐ No ☒

VEHICLE 1 | VEHICLE 2 | BICYCLIST | PEDESTRIAN

VEHICLE 1

Name - exactly as printed on license: SMITH, ANN E [redacted] DMV USE

Name - exactly as printed on registration: DRIVER | Date of Birth Mo./Day/Year

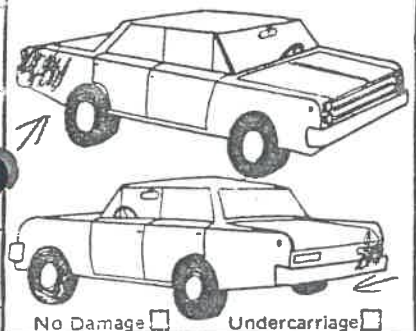
Number and Street | Hazardous Material Code

City | State | Zip Code

Plate Number	State of Reg.	Yr. & Vehicle Make	Vehicle Type	Ins. Code
FLX-649	N.Y.	88 CHEV	PAS	413

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

VEHICLE 1 DAMAGE



No Damage ☐ Undercarriage ☐

Vehicle Towed By SMITH To SMITH'S

VEHICLE 2

Name - exactly as printed on license: SELKIRK, JAMES A [redacted] DMV USE

Name - exactly as printed on registration: DRIVER | Date of Birth Mo./Day/Year

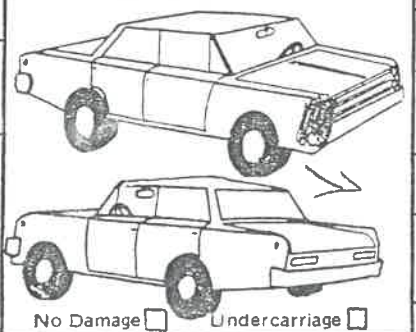
Number and Street | Hazardous Material Code

City | State | Zip Code

Plate Number	State of Reg.	Yr. & Vehicle Make	Vehicle Type	Ins. Code
CH47LV	NY	83 OLDS	PAS	413

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

VEHICLE 2 DAMAGE



No Damage ☐ Undercarriage ☐

Vehicle Towed By — To —

ACCIDENT DIAGRAM

Rear End 1.	Left Turn 3.	Right Angle	Right Turn 5.	Head On 7.
Overtaking 2.	Left Turn 0.	4.	Right Turn 6.	Sideswipe 8.

9.

Reference	Marker
7 2 0 7	1 1 6 9

DMV USE ONLY

County FRANK ☐ City ☐ Town ☐ Village MALONE

Route No. and Street Name: on ST-11 VR-MAIN

☐ Miles ☐ Feet ☐ N ☐ S ☐ E ☐ W of ☒ At Intersection with V.R-AMSDEN

Nearest Intersecting Route/Street

Ticket/Arrest: Other ☐ | Opr 1 ☐ | Opr 2 ☐ | Pedestrian ☐ | Bicyclist ☐

Ticket/Arrest Number(s): (2) 964482

Violation Section(s): (2) 1142-A

Accident Description/Officer's Notes: DRIVER OF VEH #1 STATING THAT SHE WAS STUCK ON PASSENGER SIDE BY VEH #2. DRIVER OF VEH-2 STATING HE WAS ATTEMPTING TO TURN LEFT AFTER STOPPING. DAMAGE TO BOTH.

USE COVER SHEET G

	8	9	10	11	12	13	14	15	16	17	18	Names - If Deceased, Give Date of Death
A	1	1	3	1	32	F						OPERATOR
B	2	1	3	1	32	M						OPERATOR
C												
D												
E												
F												
G												

INVOLVED

SIGN HERE	Officer's Rank and Name	Badge No.	Department	Precinct/Post Troop/Zone	Station/Beat/ Sector	Reviewing Officer	Date/Time Reviewed
	PTL MICHAELS	59	01624	MPD		DF	01/28/94 - 10:40AM

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 Mo. / Day / Year	Day of Week	Time	No. of Vehicles	No. Injured	No. Killed	Non-Highway	Not Investigated at Scene	Left Scene	Police Photos
1 / 15 / 94	SAT	2:40 ☐AM ☑PM	2	1	—	☐	☐	☐	☐ Yes ☑ No

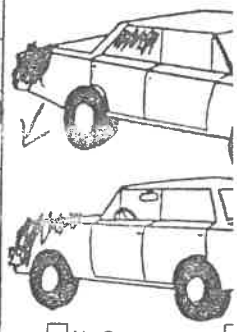
VEHICLE 1	DMV USE	☑ VEHICLE 2 ☐ BICYCLIST ☐ PEDESTRIAN	DMV USE
Name — exactly as printed on license: COOK, DANIEL J		Name — exactly as printed on license: LAMICA, BEATRICE M	
[redacted]		[redacted]	
Name — exactly as printed on registration: SAME AS ABOVE		Name — exactly as printed on registration: SAME AS ABOVE	
Date of Birth Mo. / Day / Year		Date of Birth Mo. / Day / Year	
Number and Street: —		Number and Street: —	
Hazardous Material Code		Hazardous Material Code	
City: — State Zip Code		City: — State Zip Code	
Plate Number: HH8966		Plate Number	
State of Reg.: NY		State of	
Yr. & Vehicle Make		Yr. & Vehicle Make	
Vehicle Type		Vehicle Type: SUBN	
Ins. Code		Ins. Code: 236	

Check if involved vehicle:
- ☐ is a commercial motor
- ☐ is more than 95 inches
- ☐ is more than 34 feet lo
- ☐ was operated with an
- ☐ was operated with an

d vehicle:
- cial motor vehicle;
- 95 inches wide;
- 34 feet long:
- with an overweight permit;
- with an overdimension permit.

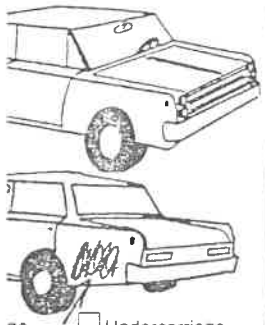
Report done proper. Most of paperwork completed by Sgt. Marlow

VEHICLE 1 D



☐ No Damage ☐

ICLE 2 DAMAGE



ge ☐ Undercarriage

Vehicle Towed By SMITH To SMITH'S

Vehicle Towed By SMITH To SMITH'S

Reference Marker: 3 0 / 1 2 0 9 / 1 6 8 4

DMV USE ONLY

County FRA ☐ City ☐ Town ☑ Village MALONE

Route No. and Street Name on #30

☐ Miles ☐ N ☐ E ☐ Feet ☐ S ☐ W of ☑ At Intersection with 4th St.

Nearest Intersecting Route/Street

Ticket/Arrest ☑ Opr 1 ☐ Opr 2 ☐ Other ☐ Pedestrian ☐ Bicyclist

Ticket/Arrest Number(s): (1) - 964279

Violation Section(s): (1) - 597

Accident Description/Officer's Notes: #1 TRAVELING TOWARDS CONSTABLE ST on 4th ATTEMPTED TO STOP FOR STOP SIGN S/RD THROUGH INTERSECTION IN TO PATH OF VEH #2

USE COVER SHEET

J

	8	9	10	11	12	13	14	15	16	17 BY	TO 18	Names - If Deceased Give Date of Death
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												

ALL INVOLVED

SIGN HERE

Officer's Rank and Name	Badge No.	Department	Precinct/Post Troop/Zone	Station/Beat/ Sector	Reviewing Officer	Date/Time Reviewed
SGT NICHOLS	59	016254	MPD		D.M.	1-19 9:4

New York State Department of Motor Vehicles

POLICE ACCIDENT REPORT

MV-104A (6/92)

Page 1 of 1 Pages

Local Codes

POLICE AGENCY COPY 1

Accident Date Mo. / Day / Year	Day of Week	Time	No. of Vehicles	No. Injured	No. Killed	Non-Highway	Not Investigated at Scene	Left Scene	Police Photos
01/25/94	TU	11:40 ☐AM ☒PM	2	3	0	☐	☐	☐	☒Yes ☐No

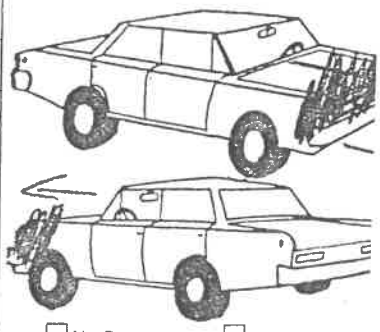
☐VEHICLE 1 ☒VEHICLE 2 ☐BICYCLIST ☐PEDESTRIAN

	VEHICLE 1	DMV USE	VEHICLE 2	DMV USE
Name — exactly as printed on license	PERRY, JOHN A JR		HAYNES, KIMBERLY C	
Name — exactly as printed on registration	SAME AS DRIVER		SAME AS DRIVER	
Date of Birth Mo. / Day / Year				
Number and Street	[redacted]		[redacted]	
Hazardous Material Code				
City				
State	NY			
Zip Code	[redacted]			
Plate Number	FLV-621		[redacted]	
State of Reg.	NY			
Yr. & Vehicle Make	87 NI[illegible]		94 HYUN	
Vehicle Type	PAS		PAS	
Ins. Code	[illegible]		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.

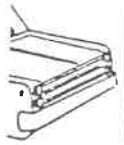
Report done
Proper.
Extensive damage
w/injury

VEHICLE 1 DAMAGE



☐ No Damage ☐ Undercarriage

Vehicle Towed By SMITH To SMITHS



☐ Undercarriage

Towed By [illegible] To SMITHS

Reference Marker	DMV USE ONLY	County FRANK ☐City ☐Town ☒Village MALONE
		Route No. and Street Name on V.R. RAYMOND
		☐Miles ☐N ☐E ☐Feet ☐S ☐W of ☒At Intersection with V.R. ELM

Ticket/Arrest ☐Other ☐Opr 1 ☒Opr 2 ☐Pedestrian ☐Bicyclist

Ticket/Arrest Number(s) (2)-964291

Violation Section(s) (2)-597

Nearest Intersecting Route/Street

Accident Description/Officer's Notes: DRIVER OF VEH #2 STATING SHE WAS TRAVELING 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.

USE COVER SHEET J

INVOLVED	8	9	10	11	12	13	14	15	16	17 BY	TO 18	Names - If Deceased Give Date of Death
A	1	1	4						6	9997	1602	OPERATOR
B	2	1	4	1	21	F	8	12	6	9997	1602	OPERATOR
C	2	3	4	1	14	F	1	4	6	9997	1602	HAYNES, KERI
D												
E												
F												
G												

SIGN HERE

Officer's Rank and Name: PO SMITH

Badge No. 59 | Department 0624 | Precinct/Post Troop/Zone MPD | Station/Beat/Sector | Reviewing Officer | Date/Time Reviewed 0700 2/1/94

New York State Department of Motor Vehicles

POLICE ACCIDENT REPORT

MV-104A (6/92)

Page 1 of 1 Pages

Local Codes

POLICE AGENCY COPY 1

Accident Date (Mo. / Day / Year)	Day of Week	Time	No. of Vehicles	No. Injured	No. Killed	Non-Highway	Not Investigated at Scene	Left Scene	Police Photos
01 / 15 / 94	SA	1:40 ☐AM ☒PM	2	0	0	☐	☐	☐	☐Yes ☒No

VEHICLE 1

Name — exactly as printed on license: PROULX, DENISE, M

DMV USE

[redacted]

Name — exactly as printed on registration: SAME AS DRIVER

Date of Birth (Mo. / Day / Year)

Number and Street

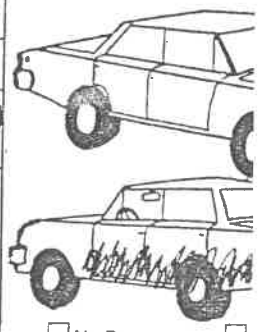
Hazardous Material Code

City State Zip Code

Plate Number	State of Reg.	Yr. & Vehicle Make	Vehicle Type	Ins. Code
TTR-486	NY	85 MERC	PAS	999

Check if involved vehicle:
- ☐ is a commercial motor vehicle;
- ☐ is more than 95 inches v
- ☐ is more than 34 feet long
- ☐ was operated with an ov
- ☐ was operated with an ov

VEHICLE 1 DA



☐ No Damage ☐

Vehicle Towed By SM
To SM

VEHICLE 2 ☐BICYCLIST ☐PEDESTRIAN

Name — exactly as printed on license: LINEHAN DANIEL P

DMV USE

[redacted]

Name — exactly as printed on registration: LINEHAN WENDY K

Date of Birth (Mo. / Day / Year)

[redacted]

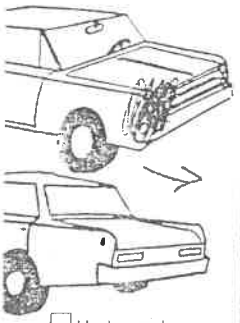
Plate Number	State of Reg.	Yr. & Vehicle Make	Vehicle Type	Ins. Code
IFK-406	NY	CHEVY		Z31

ACCIDENT DIAGRAM

Rear End | Left Turn | Right Angle | Right Turn | Head On

Check if involved vehicle:
- ☐ is a commercial motor vehicle;
- inches wide;
- feet long;
- th an overweight permit;
- th an overdimension permit.

E 2 DAMAGE



☐ Undercarriage

y

o

Out of town ticket

Both operators

out of town

Reference Marker: 1 1 / 2 0 7 / 1 1 6 5

Route No. and Street Name: on ST-11 V.R-MAIN

ABOUT 120 ☐Miles ☒Feet ☐N ☐S ☐E ☒W of ☐At Intersection with ST-30 V.R-FINNEY Nearest Intersecting Route/Street

Village MALONE

Ticket/Arrest ☐Other ☐Opr 1 ☒Opr 2 ☐Pedestrian ☐Bicyclist

Ticket/Arrest Number(s): (2) 964278

Violation Section(s): (2) 1129-A

Accident Description/Officer's Notes: DRIVER OF VEH #1 STATED SHE WAS TURNING LEFT AND WAS STRUCK ON DRIVERS SIDE BY VEH #2. DRIVER 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 WITNESS: KATHY McGOVERN - 164 W. MAIN STREET - (483-8118)

USE COVER SHEET: J

	8	9	10	11	12	13	14	15	16	17 BY	TO 18	Names - If Deceased Give Date of Death
A	1	1	4	1	24	F						OPERATOR
B	2	1	4	1	34	M						OPERATOR
C	2	3	4	1	31	F						WENDY LINEHAN
D	2	6	1	1	35	M						KENNETH HARRIGAN
E												
F												
G												

INVOLVED

SIGN HERE

Officer's Rank and Name: SGT. NICHOLS

Badge No.: 59

Department: 0424

Precinct/Post Troop/Zone: MD

Station/Beat/Sector

Reviewing Officer

Date/Time Reviewed

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

Patrick M Nichols

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 complaint to A.C. Moll on paper in the processing room. Due to the other members in and around the processing room and comments referred to this matter I felt I would finish my complaint to you on my computer at home. Had you been present at the station I would have brought it to your immediate attention.

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

Patrick Nichols

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 @ MILWUAKEE 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
Pt. 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 shreded.
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

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

_____ _____ NO. _____
Classification

Name of Complainant | Address | Phone No.

Offense

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

Page No. Two Date 02-16 19 94

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 that 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

ESTIGATING OFFICER(S) _____ 26 REPORT MADE BY _____ DATE _____

27 CASE FILED Yes ☐ No ☐ | 28 THIS CASE IS Cleared by arrest ☐ Unfounded ☐ Active ☐ Inactive ☐ Other ☐ | 29 APPROVED BY _____

FORM LE6-3R
PRICE GROUP A

SUPPLEMENTARY REPORT

_____ Classification NO. _____

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 ☐ Active ☐ Inactive ☐ Other ☐

29 APPROVED BY _____

FORM LE6-3R
PRICE GROUP A

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 Nichol's 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 seen 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 other young people in this town, this 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. Ritchie.

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.

D.A.R.E. AMERICA

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

SCHOOL POLICE D.A.R.E. PARENTS

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,

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
~~07-7-90~~	~~"~~	~~DWI~~	
4-4-91	"	Assault	Release 5100 31st Pct
"	"	Menacing	Dismissed
"	"	Criminal Trespass 1st	Dismissed
8-10-92	"		
3-2-93	"	Harassment 2nd	
5-27-93	"	~~Harassment~~ ASS 2nd	
6-28-93	"	Temp Witness 4th	

NEW YORK : COUNTY OF FRANKLIN

(VILLAGE) COURT: (XXXXX)(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 (s)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 complainants information and belief being, statement of one Rahcel Fournier being attached to and made apart hereof:

ORK : COUNTY OF Franklin

GE) COURT: (TOWN)(VILLAGE) OF Malone

People of the State of New York

vs.

ael Fournier

Defendant

Accusatory Instrument
Complaint - General

Patrick M Nichols, residing at Malone, N.Y., by this information makes written accusation as follows:

That Michael Fournier, on the 4th day of April, 19 91, in the Village, of Malone, County of Franklin, New York, did commit the offense of Assault in the third degree, a (misdemeanor) (~~violation~~) in violation of Section 120.00 of the Penal Law of the State of New York, in that (S)he did, at the aforesaid time and place*

Count One: When; with intent to cause physical injury to another person, he causes such injury to such person or to a third person.

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. the defendant Michael Fournier did physically injure a Rachael Fournier by hitting her in the face and eyes with his hands. He also dragged her, choked her with his hands and bent her legs. As a result Rachael received injuries to her eyes and right arm and nose. He did this while located at 94 Gentle Breeze Drive in the Village of Malone.

The foregoing factual allegations are based upon personal knowledge of the complainant (and upon information) and belief, the sources of complainants information and belief being. Statement from Rachael Fournier being attached to and made apart here of.

P. D. Copy

...RY INSTRUMENT
...TION — GENERAL C.P.L. 100.15 FORM NO. 256 WILLIAMSON LAW BOOK CO., ROCHESTER, N. Y.

...E OF NEW YORK : COUNTY OF Franklin

Justice COURT Village OF Malone

The People of the State of New York
against
Michael J. Fournier
Defendant

Information

Robert D. Fountain, residing at Malone, N.Y., by this information makes written accusation as follows:

That Michael J. Fournier, on the 28th day of February, 19 93, at 54 Academey Street, in the Village of Malone, County of Franklin, New York, did commit the offense of Harassment, a (~~misdemeanor~~) (violation) in violation of Se...n 240.26 of the Penal Law of the State of New York, in that (s)he did, at the aforesaid time and place*

Count One: with intent to harass, annoy or alarm another person he strikes, shoves, kicks or otherwise subjects him to physical contact or attempts or threatens to do the same or he engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose.

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

That the above named defendant Michael J. Fournier at about 5:15PM did intentionally start yelling and screaming obscenities at the above named defendant Robert D. Fountain. The defendant then repeatedly called the complainant's residence by telephone and threatened to shoot the complainant in the back and the defendant had been asked not to keep calling.

ATORY INSTRUMENT
RMATION — GENERAL C.P.L. 100.15 FORM NO. 256 WILLIAMSON LAW BOOK CO., ROCHESTER, N. Y. 14609

STATE OF NEW YORK : COUNTY OF Franklin

Justice COURT Village OF Malone

The People of the State of New York
against
Michael Fournier
Defendant

Information

Rachel L Fournier, residing at

54 Academy St Malone NY 12953, by this information makes written accusation as follows:

That Michael Fournier, on the 15th,16th,17th day of May, 19 93, at 54 Academy St,

in the Village of Malone,

County of Franklin, New York, did commit the offense of Aggravated Harassment Second Degree

, a (misdemeanor) (~~XXXXXXX~~ in violation of Section 240.30 subl of the Penal Law of the State of New York, in that (~~X~~)he did, at the aforesaid time and place*

Count One: With intent to Annoy another person he causes communication to be initiated by telephone in a manner likely to cause Annoyance or Alarm .

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

On the above dates at several different times the defendant has made telephone calls of an annoying manner to the complainant after being told several times to stop calling her residence.

AL C.P.L. 100.15 FORM NO. 256 WILLIAMSON LAW BOOK CO., ROCHESTER, N.Y. 14609

YORK : COUNTY OF Franklin

COURT Village OF Malone

The People of the State of New York
against
Michael Fournier
Defendant

Information

Rachel Fournier, residing at 54 Academy St Malone NY 12953, by this information makes written accusation as follows:

That Michael Fournier, on the 15th,16th,17th day of May, 19 93, at 54 Academy St, in the Village of Malone, County of Franklin, New York, did commit the offense of Tampering with a witness in the Fourth Degree, a (misdemeanor) (~~felony~~) in violation of Section 215.10 of the Penal Law of the State of New York, in that (x)he did, at the aforesaid time and place*

Count One: When knowing that a person is or is about to be called as a witness in an action or proceeding, he wrongfully induces or attempts to induce such person to absent himself from, or otherwise to avoid or seek to avoid appearing or testifying at such action or proceeding.

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

That on the above mentioned date and time the defendant did compel one Rachel Fournier into getting another person to drop criminal charges filed againts the defendant. He accomplished this by instilling a fear into Rachel Fournier that if he did not drop the charges he would take her back into court and would further have Rachels young children testify against his accuser.

Malone Telegram 7-27-95

Letters to the Editor

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 by Chief Phillips that he claims Patrick has brought to the force 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.

Betzy 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. Every year I have been told how much fun my dad was in DARE classes. But he won't be teaching 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 really wanted my dad to teach me and now he can't. I am very unhappy. Daddy said it should not matter who teaches me the program, 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, becalm some of their anxiety.

Thank you.

Sincerely,

cc:
Mr. Dean Yando
Mr. Thomas Helmer

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, now 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]

NAME	ADDRESS
1 Rita Charland	[redacted]
2 Diane Hardy	
3 Anita DeCoste	
4 Michelle Landrois	
5 Cindy M Flory	
6 Michael Boryea	
7 Patti Burnett	
8 Katherine L. Stender	
9 Troy Goetz	
10 Brad Marsh	
11 Kip Cassavaw	
12 Bro Bechler	
13 [illegible]	
14 Dale Lamitie Sr	
15 Carl Thomas	
16 Kim Jandreau	
17 Michael Sel[illegible]	
18 David C. [illegible]	26
19 Scott P Prue	
20 Randy Trend	
21 Daniel Lawrence	

Malone N.Y.

Bk 33

(2)

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	Scott R Smith	Malone N.Y. 12953
2	Kathleen M. Vanier	Malone N.Y. 12953
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VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED :
TIME ENDED :

DATE September 24,1993 PLACE Malone PD

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

I would like to state that during the early part of September 1993 I was at my place of business, Smith's 24hr Towing located on 66 West Main St within the Village of Malone NY, when I was approached by Malone Police Officer Patrick Nichols. Pat had a petiton 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 witness:
this 24 day of Sept,19 93

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 [redacted]
my address is [redacted] 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 petiton 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 postion on the local police department, after reading his petiton I told him that I wasn't in any postion to sign it until I heard both sides of the story. The only knowledge ofthe 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:

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED :
TIME ENDED :

DATE October 21, 1993PLACE Malone PD

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

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

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

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

witness:

witness:

Signed:

Dale Lamitie

PAGE 1 OF PAGES

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 [redacted] address is [redacted] my occupation is Mechanic, and degree of education is 10th grade

I would like to state that sometime during the early part of September 1993 I was at my place of employment, Smith's 24hr Towing Service, I believe it was sometime in the morning hours when I was approached by Pat Nichols. Pat asked me if I would sign a petition on his behalf. He gave me the petition and I looked at it. It already had some names on it so I signed it. I didn't even read it and Pat never went into what it was about, after I had signed it I gave it back to Pat and he went over to one of my co-workers, Dale 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 21day of Oct 1993

witness: [signature]

Signed: Carl Thomas

witness:

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

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

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

Signed: James E Phillips

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 Mitchell

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.

OFF-DUTY CONDUCT THAT DISCREDITS AN EMPLOYER

Robertson v Eccleston, _ AD2d _

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.'"

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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

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SEVERITY OF THE DISCIPLINARY PENALTY

Jones v NYC Board of Education, _ AD2d

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 CSD, _ AD[2d] _

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, 485 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 Hoesterey'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, Hoesterey 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.

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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

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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

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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.

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, 552 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

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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 UFSD, _ AD2d _

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 may 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 NY2d 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

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THE 4 MONTHS PRIOR TO ELECTION, PTL. NICHOLS INVESTIGATED 8 ACCIDENTS. MANY INVOLVED IN TOWN AND OUT OF TOWM 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 11-93

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.

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

October 29, 1996

MEMO TO: BRIAN MCKEE
GERALD MOLL
JAMES PHILLIPS

FROM: ELIZABETH J. BESSETTE

RE: PATRICK NICHOLS MATTER

Enclosed herewith please find copy of the STIPULATION FOR DISMISSAL BY ALL PARTIES, in the above referenced lawsuit, which has been signed by everyone except John Lawliss and Jim Brooks.

I trust this is the information you desire.

Regards.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PATRICK NICHOLS,

Plaintiff,

- against -

JAMES FEELEY, JAMES PHILLIPS, GERALD MOLL, GREGORY DAME, EARL LAVOIE, ROBERT FRASIER, GARY GRANT, BRIAN STEWART, BRIAN McKEE and JOHN LAWLISS,

Defendants.

94-CV-1418, TJM/DS (TJM) (DS)

AND AS AMENDED

PATRICK NICHOLS,

Plaintiff,

- against -

JAMES FEELEY, JAMES PHILLIPS, GERALD MOLL, GREGORY DAME, EARL LAVOIE, ROBERT FRASIER, and GARY GRANT,

Defendants.

STIPULATION FOR DISMISSAL BY ALL PARTIES

It is hereby stipulated by all of the parties appearing in the above-entitled action, as amended, and by their attorneys, the above-entitled action be dismissed, with prejudice, and without costs and fees.

It is further stipulated that this stipulation be submitted

to the court for an order of dismissal, with prejudice, and without costs or fees.

Patrick Nichols, plaintiff

James Feeley, defendant

Gerald Moll, defendant

Gregory Dame, defendant

Earl LaVoie, defendant

James Phillips, defendant

Robert Fraser a/s/a Robert Frasier

Gary Grant, defendant

Brian Stewart, defendant

Brian McKee, defendant

John Lawliss, defendant

Brooks & Meyer

Thomas P. Halley, Esq.
Attorney for plaintiff
Patrick Nichols
Bar Roll No. 103979
297 Mill Street
Poughkeepsie, New York 12601

James M. Brooks, Esq.
Attorney for all defendants
Bar Roll No. 101226
2 Olympic Drive
Lake Placid, NY 12946

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PATRICK NICHOLS

Plaintiff,

vs.

94-CV-1418
(TJM-DS)

JAMES FEELEY, et al.

Defendant.

ORDER

Plaintiff's counsel, by letter dated September 16, 1996, advises this court that the decision from the Appellate Division of the State of New York, with regard to an Article 78 review of the civil service hearing was not favorable to the plaintiff.

Plaintiff is prepared to discontinue this case, with prejudice.

WHEREFORE, it is,

ORDERED, that Counsel shall present to the court a stipulation of discontinuance within 30 days of the date of this Order, and it is,

ORDERED, that the Clerk serve a copy of this order upon the parties, and close this matter.

Dated: September 19, 1996
Watertown, New York

U. S. Magistrate Judge

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

J. Brian McKee
Luddrick M. James, Jr.

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

13 October 1993

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

Re: Village of Malone vs.
Patrick Myron Nichols

Dear Mayor Feeley:

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

My statement for services rendered is also enclosed.

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

Respectfully,

J. BRIAN MCKEE

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

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

STATE OF NEW YORK
COUNTY OF FRANKLIN ::: VILLAGE OF MALONE

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

Village of Malone,

Complainant

- against-

Patrick Myron Nichols,

Respondent

REPORT AND RECOMMENDATIONS

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

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

Transmitted herewith is the record, with exhibits.

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

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

SUMMARY OF TESTIMONY

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

For the Village of Malone -

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

For the Respondent -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANALYSIS OF TESTIMONY

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

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

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

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

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

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

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

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

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

FINDINGS OF FACT

From the evidence submitted, I find the following:

(a) Charge 1 - that Police Officer Nichols failed to report his concern relative to the alleged actions of Assistant Chief Moll to competent authority within the Police Department or to allow Chief Phillips sufficient time to conduct his investigation of the allegations. As a result, his laying of charges against Assistant Chief Moll gives every indication of being retaliatory in nature.

(b) Charge 2 - that Police Officer Nichols, fully aware that his actions were contrary to departmental rules and regulations, made unauthorized contacts with non-departmental personnel, including a known criminal, to discuss his intentions to levy charges against Assistant Chief Moll, whose conduct of an unrelated internal investigation resulted in a letter of reprimand being awarded to Police Officer Nichols.

(c) Charge 3 - withdrawn by the Village of Malone.

(d) Charge 4 - that Police Officer Nichols, without reasonable grounds, publicly accused Chief Phillips of engaging in a "coverup" in his investigation of the allegations made by Nichols against Assistant Chief Moll.

(e) Charge 5 - As previously stated, there is insufficient evidence introduced to show that Police Officer Nichols discussed the alleged incident of 2 April 1993 with former Police Chief Brown.

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

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

Therefore:

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

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

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

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

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

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

RECOMMENDATIONS

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

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

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

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

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

13 October 1993

J. BRIAN MCKEE
Hearing Officer

Subpoena for a Witness to Attend the Grand Jury of the Supreme Court.

(ORIGINAL)

In the Name of the People of the State of New York:

TO Assistant Police Chief Gerald Moll

Malone Village Police Dept, Malone, NY

YOU ARE COMMANDED to appear before the Grand Jury of the County of ~~Clinton~~ Franklin, at the Court House, in the ~~City~~ Village of Malone of ~~Plattsburgh~~, in the County of ~~Clinton~~ Franklin, N. Y., on the 9th day of May 19 95, at 1:30 o'clock pm., as a witness in a criminal action prosecuted by the people of the State of New York against

Patrick Nichols

Dated at Plattsburgh, N. Y. this 2nd day of May 19 95

Asst District Attorney of Clinton County

COPY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

Patrick Nichols,

Petitioner,

-against-

Village of Malone,

Respondent.

Index No. 94-589

NOTICE OF PETITION

Original Was

FILED

OCT 21 1994

FRANKLIN COUNTY
CLERK'S OFFICE

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

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

DATED: Poughkeepsie, NY
October 20, 1994

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

COPY

Patrick Nichols,

Petitioner,

-against-

Village of Malone,

Respondent.

Index No.

PETITION

Original w/p

FILED
OCT 21 1994
FRANKLIN COUNTY
CLERK'S OFFICE

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. On or about March 17, 1994, Petitioner was directed to appear before the Chief of Police of the Village of Malone by a memo which indicated that he could have a Union representative accompanying him.

5. Upon arriving at the meeting, Petitioner was interrogated for approximately five hours by said Chief of Police and the Assistant Chief. while accompanied by Local Union V.P.

6. Petitioner was never given rights with regard to the use of his testimony pursuant to the holdings of the United States Supreme Court and the Court of this State, which prohibit the use of forced or compelled testimony against a person where testimony is forced or compelled under threat of loss of employment, or under threat of criminal action.

not true he was not forced

7. Following said interrogation, disciplinary charges were issued against the Petitioner, and a hearing on said charges was conducted on June 16, 1994 before John Lawliss, Hearing Officer.

8. During the course of the administrative hearing, the Hearing Officer officer demonstrated his bias, interest, and prejudice in a number of ways.

9. The first witness called by the Village was the Chief of Police. During the course of the Chief's testimony, the Chief testified that return of the Petitioner to work in the Village Police Department would create havoc and that a number of Police Officers did not wish to be working with Petitioner.

10. When Petitioner's attorney attempted to cross examine the Chief of Police with regard to the names of these individuals, the Hearing Officer upheld the objection of the Village Attorney.

11. The Hearing Officer further stated that if the Petitioner was to return to work, "its just going to create havoc in the department as far as the other people begin named here." The Hearing Officer sustained the objection and further stated "the Chief does not have to name the other police officers. He is under oath. We accept what he says." (emphasis added).

12. The foregoing testimony on the part of the Hearing Officer demonstrates such bias, interest, and hostility.

13. During the course of the hearing, the Hearing Officer continuously refused to permit any identification of any individuals who claimed that there would be problems with the Petitioner or with morale if he returned to work.

14. During the course of the hearing, the Hearing Officer upheld all but one of the objections on the part of the Village, and denied each and every objection on the part of Petitioner's attorney.

15. Petitioner's attorney objected during the course of the hearing that the Hearing Officer was allowing testimony in with regard to prior un-charged bad acts, of the Petitioner and prior claims of lying under oath on the part of the Petitioner, which were not the subject of the charges.

16. These matters were permitted to come into evidence, over the objection of the Petitioner's Attorney, with a statement by the Hearing Officer that this was a search for the truth. The Hearing Officer confirmed this procedure in his report and recommendations at page 16 thereof, when he stated that he wanted all available information relative to the case and that "both counsels were advised that the procedures used were necessary to obtain the truth in this matter, even if some of the testimony was not irrelevant." ?

17. Petitioner's attorney requested the opportunity to present a legal brief following the conclusion of the hearing so that the legal issues could be addressed by the Hearing Officer.

18. The Hearing Officer refused this request.

19. Following the hearing, the Hearing Officer issued a report and recommendation finding the Petitioner guilty of all charges, and recommending that he be terminated.

not true found N.G on one charge

20. The report and recommendation and findings of the Hearing Officer are inadequate, consisting of conclusory statements without rationale.

21. Thereafter, Petitioner's attorney was advised that the Petitioner could present a written response to the Village Board prior to them making a decision, to be considered once they made a finding of guilt or innocence, but before a penalty was to be imposed.

?

22. Petitioner did so.

23. On August 22, 1994, the Village Board met in Executive Session, for approximately 15 minutes, and made a decision to find the Petitioner guilty of one of the charges, and to terminate him.

24. Following said Executive Session, Petitioner asked the Board if they had considered his written response. The Board indicated that they had.

25. Petitioner then read aloud his response to the Board, which took approximately 20 minutes, and questioned the Board to as how they could have considered his response during the 15 minute executive session, and still had time to make a determination as to guilt or innocence, and issue the penalty.

26. The Board did not provide a response to this question.

27. Upon information and belief, the determination of the Board was decided prior to the Executive Session of August 22, 1994, in that the determination was written and presented to them, by a person or persons unknown prior to that time.

28. The findings of the Board are, in themselves, contradictory, in that they find the Petitioner not guilty of the charge or charges of soliciting signatures on petitions, but find him guilty of stating under oath that he had not

not true Board took no action on other charges

solicited such signatures on such petitions.

29. It is respectfully submitted that in light of all the facts and circumstances of this case, the determination of the Hearing Office is without legal basis, without basis in fact, and is arbitrary and capricious, and inadequate.

29. Further, in light of the facts and circumstances of this case as set forth above, the determination of the Village Board herein is arbitrary and capricious, and without legal or factual basis, contradictory, and made in violation of law.

31. Petitioner has not adequate remedy at law.

32. Petitioner now seeks relief from this Court under and accordance with the provisions of Article 78 of the CPLR.

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

WHEREFORE, Petitioner respectfully request judgment pursuant to Article 78 of the CPLR vacating and annulling as arbitrary, capricious, unlawful, unreasonable, and without substantial basis in fact or law, the actions of the Respondent which terminated the Petitioner from his employment with the Respondent Village, and reinstating him 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: Malone, NY
October 20, 1994

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

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
21st day of October 1994

Notary Public

SUSAN MATTESON BUCK
Notary Public, State of New York
No. 4990111
Qualified in Franklin County
Commission Expires December 23, 95

New York State Supreme Court

Appellate Division – Third Department

In the Matter of PATRICK NICHOLS,

Petitioner,

against

72779A
72779B

VILLAGE OF MALONE,

Respondent.

(Proceeding No. 1)

In the Matter of PATRICK NICHOLS,

Petitioner,

against

VILLAGE OF MALONE,

Respondent.

(Proceeding No. 2)

BRIEF FOR PETITIONER

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

Table of Contents

FACTS AND PRELIMINARY STATEMENT

The Appellant was employed by the Village of Malone as a member of the Village Police Department, having attained permanent Civil Service status. He was subjected to two separate civil service disciplinary proceedings.

In the first proceeding, he was charged with violations of the rules and regulations of the Police Department resulting from his communicating with the Chief of Police, the Mayor, the District Attorney and other individuals as to his belief that there had been a cover-up of criminal wrongdoing on the part of the Assistant Chief of Police.

A hearing was conducted pursuant to Section 75 of the Civil Service Law. Following that hearing, the Village Board of the Village of Malone suspended the Appellant for sixty days without pay, in addition to the prior thirty-day pre-hearing suspension.

The Appellant then returned to work as a full-time police officer in the Village of Malone. On March 17, 1994, the Appellant was directed to appear before the Chief of Police and the Assistant Chief to answer a series of questions. Following an approximately four to five hour interrogation, administrative charges were again pressed against the appellant. This second set of charges related to his alleged circulation of a petition throughout the Village seeking his reinstatement on the earlier charges, his comments in regard to those civil service proceedings, and

his allegedly untruthful statements to his superiors when asked about the petitions.

A second civil service hearing was conducted on June 16, 1994. Following that administrative proceeding, the Village Board terminated the Appellant's employment.

The Appellant brought two separate proceedings pursuant to Article 78 seeking to reverse and annul the determinations of the Village Board. In each case, the State Supreme Court denied the Petitioner any relief and referred the matter to the Appellate Division.

The Appellant moved for an extension of time to perfect the proceedings and to consolidate the same.

By order of this Court dated and entered August 22, 1995, said motion was granted.

POINT 1

THE APPELLANT WAS DENIED THE ELEMENTS OF A FAIR TRIAL.

In administrative proceedings, no essential element of a fair trial can be dispensed with unless waived. (Matter of Hecht v. Monaghan, 307 NY 461, 470). In addition, the party whose rights are being determined must be fully apprised of the claims of the opposing party, of the evidence to be considered, and must be given the opportunity to cross examine witnesses, to inspect documents, and to offer an explanation or rebuttal. (Matter of Hecht v. Monaghan, Supra; matter of Simpson v. Wolansky 38 NY 2d 391, 395). A public employee has a constitutional right to due process, which

includes the basic right to cross examine adverse witnesses. A claimed need for confidentiality in a given situation must be balanced against the likelihood that the denial of access will materially prejudice the accused. (Matter of Friedel v. Board of Regents, 296 NY 347, 352).

In the instant case, there are two separate civil service proceedings in which the Appellant was denied his constitutional due process rights. Each will be considered separately.

The first hearing was presided over by Hearing Officer Brian McKee. The charges stemmed from the Appellant having begun an internal investigation of an incident . in which a prisoner was placed in the holding cell in the Village of Malone Police Department. At some point in time, bleach was allegedly splashed into the holding cell and onto the prisoner, who began to lose his breath. The Appellant believed that the Assistant Chief of the Village Police Department was the person in charge at the time and may have had some responsibility for the bleach incident.

The Appellant 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, Petition, paragraph 11). Indeed, a fellow officer testified that he, the officer, went to the Chief and the Assistant Chief and made them aware of the possibility that such a personnel complaint was going to

be filed by the Appellant. (Petition, paragraph 12, Transcript, page 296).

Shortly after hearing this from the officer, the Chief of Police filed a reprimand against the Appellant. The Appellant, thereafter, filed his internal report with the Chief. (Petition, paragraph 13, Transcript, page 214).

Several days thereafter the Appellant was shown a printout on a computer terminal that had been typed by the Chief of Police. That printout apparently clears the Assistant Chief of any wrongdoing. (Petition, pages 14-16, Exhibit A).

In the course of the administrative hearing, the Appellant, through his attorney, attempted to have this computer memo introduced into evidence. The purpose of introducing said evidence was to establish the reasonableness of the Appellant's belief of a cover-up, and to establish the reasonableness of the Appellant's subsequent actions. These are necessary elements of the Appellant's defense raised pursuant to Section 75-b of the Civil Service Law.

The Village objected to the introduction of said computer memo on the grounds that it violated Civil Rights Law Section 50-a. (Transcript, pages 42-44). When inquiry was then made by Appellant's counsel regarding the contents of the computer memo, the Hearing Officer objected to the

same and refused to allow the contents into evidence. (Transcript, pages 65-66).

The Appellant further sought to establish that in late August of 1993 the Chief of Police had made a report to the Village Board of the Village of Malone in which he stated that he had fully investigated the bleach incident and found no wrongdoing by the Assistant Chief. Additionally, the Appellant south to establish that the Village Board had accepted these findings, prior to the civil service hearing. Every attempt to admit this report or these statements into evidence was objected to on the part of the Village, and said objections were sustained by the Hearing Officer. (Transcript pages 44-47).

The Appellant argued in his first Petition that the Hearing Officer was not impartial and that he had, therefore, been denied a fair trial. (See Petition, paragraphs 33-44).

Subsequently, the Appellant's claims regarding the partiality on the part of the Hearing Officer in the first proceeding were resolved in the second proceeding. In the June 1994 hearing, the Chief of Police described said prior Hearing Officer as a "very good friend" of his, and admitted that he had asked said Hearing Officer to be the best man at his wedding. (Transcript, pages 55-56).

It should, therefore, come as no surprise that the Hearing Officer in the first hearing, being a close friend of the Chief of Police, the chief complaining witness, would not

allow any evidence permitted regarding the Chief's investigation into the Appellant's allegation, or any matters relating to police internal affairs. As the Petition alleges in paragraph 43 thereof, the Hearing Officer was quoted in a local newspaper, following the Village Board's determination, that he (the Hearing Officer) didn't think that his being an honorary member of the Police Department and a friend of the Chief affected his judgment. However, the Appellant argues that such a close relationship on the part of the Hearing Officer, on its face, requires the Hearing Officer to disqualify himself from the matter.

The objections raised by the Village pursuant to Section 50-a of the Civil Rights Law had no merit. The Courts have held that this Section has as its purpose the prevention of fishing expeditions into a personnel file of a police officer. It is not, however, meant to block discovery of relevant materials, particularly where the information is necessary to a party's preparation of the case, even if that material may reveal matters that cause embarrassment or possible harm to another party or non-party. (King v. Conde, 121 FRD 180, affirmed 926 F2d 142; Burke v. New York City Police Department, 115 FRD 220). A police department internal affairs report relating to an incident is not protected from disclosure by the public interest privilege for confidential government communications. (Becker v. New York City, 162 AD2d 488). Indeed, there would be no

availability of an injunction to preclude the use of these investigative reports. (Poughkeepsie PBA v. City of Poughkeepsie, 184 AD2d 501).

It is respectfully submitted that the Appellant's right to a fair hearing was compromised when the Hearing Officer failed to permit him to introduce evidence regarding his knowledge of prior cover-ups, and failed to allow him to address the alleged "complete and thorough investigation" which cleared the Assistant Chief. The credibility of said Assistant Chief, as well as the Chief of Police in this investigation, which cleared his assistant, were of utmost importance to the hearing. The foreclosure of the Appellant's right to this information, under these circumstances, amounted to a deprivation of the right to a fair hearing. (Matter of Spitalieri v. Quick, 96 AD2d 611, 612).

The Appellant is constitutionally entitled to an unprejudiced decision by a Hearing Officer. Any determination based upon a pre-judged or biased evaluations must be set aside. (Worder v. Board of Regents, 53 NY2d 186, 197). Here, the hearing officer was a very good friend of the chief complainant - the Chief of Police - and was indeed the best man at his wedding. The Hearing Officer should, therefore, have disqualified himself from acting with respect to the charges against the Appellant. (McLaughlin v. North Bellmore Union Free School District, 73 AD2d 935).

During the course of the first hearing, the Appellant relied upon the provisions of Section 75-b of the Civil Service Law. One of the aspects of this statute is that the party must demonstrate his reasonable belief that a cover-up was taking place. As part of his direct case, therefore, the Appellant called a witness to testify as to whether said witness had had a conversation with the Appellant in the past regarding an alleged cover-up in the Police Department. (Petition, paragraphs 49-53; Transcript, pages 156-157). The Hearing Officer held that this testimony could not be introduced because evidence of prior cover-ups was "not directly related." (Transcript, page 157).

The Petitioner was not allowed to establish his defense under Section 75-b of the Civil Service Law. In addition, the Hearing Officer and the Village Board completely failed to address the Petitioner's defense pursuant to that statute. The statute, in subsection 3(a) thereof provides that when an employee is subject to a disciplinary proceeding under Section 75 of the Civil Service Law, he may assert such a defense before the Hearing Officer. The statute then specifically provides that: "the merits of such defense shall be considered and determined as part of the arbitration award or Hearing Officer's decision of the matter." It is respectfully submitted that the statute makes consideration of this defense mandatory, and that the Hearing Officer's decision must include such a consideration and a

determination of the defense. This Hearing Officer, as well as the Village Board, completely failed to address or even remotely consider Section 75-b of the Civil Service Law. The Hearing Officer, as noted, continuously refused to permit the Appellant to call witnesses to establish this defense.

The contents of the Appellant's personnel file were used for purposes of cross-examining him on the part of the Village. This is set forth in detail on pages 267-270, 273-274, 281-283 and 313-314 of the Transcript. The alleged need for confidentiality of police personnel files pursuant to Section 50-a of the Civil Rights Law apparently disappeared when it was necessary to cross-examine the Appellant. In any case, the use of the Appellant's personnel file in this manner was violative of the due process requirements of the Civil Service Law. (Matter of Bigelow v. Board of Trustees, 63 NY2d 470; matter of Smith v. Tomlinson, 111 AD2d 245, 246).

On the basis of the foregoing, any disciplinary action taken against the Appellant with regard to the first hearing should be reversed and annulled.

In the second hearing, the charges were based upon an interrogation at which the Appellant was required to answer questions directed to him by the Chief of Police and the Assistant Chief. He was advised of this disciplinary hearing and told he was entitled to have a union representative present. He was not, however, advised of any constitutional

rights prior to the interrogation. The questioning took approximately four hours and fifty minutes and was directed by the Chief of Police and the Assistant Chief, the persons whom the Appellant had previously accused of a cover-up. (Transcript, pages 209-211).

A public employee should be accurately and adequately apprised of his constitutional rights in return for answering potentially incriminating work-related questions as a matter of fundamental fairness. It would offend the Constitution to require a public servant to answer questions, even those relating to the performance of such servant's official duties, upon the threat of dismissal, and to then make use of them in subsequent proceedings. (People v. Avant, 33 NY2d 265, 271; Lefkowitz v. Turley, 414 US 70, 78-79; Gardner v. Broderick, 392 US 273, 276-277; Garrity v. New Jersey, 385 US 493, 500). Answers elicited upon threat of loss of employment are compelled and are inadmissible in evidence. (People v. Avant, Supra; Shales v. Leach, 119 AD2d 990).

The second set of charges against the Petitioner allege that he stated:

> (a) There is somebody else who should be suspended for thirty days; (b) I took an oath to serve the public and did what was in the best interest of the public. The attempt to shut me up isn't going to work. Does it make sense to take a man out of work for thirty days for doing the right thing? (c) Retaliation is the number one reason why I waited so long. There are a lot of other people who also fear retaliation.

It is respectfully submitted that none of the statements on the part of the Appellant name any particular individual within or outside of the Police Department. It is further respectfully submitted that his statements are matters of public concern. As the Court held in Shales v. Leach, Supra, a public servant may only be compelled to respond to narrow, specific and relevant questions concerning his official duties. Such questioning did not meet this requirement.

Under state law, no employee in the public sector can be discharged for the exercise of his state constitutionally-protected rights or activities. (Matter of Bergamini v. Manhattan Bronx STOA, 62 NY2d 897, 898; Matter of State Division of Human Rights v. County of Onondaga Sheriff's Department, 71 NY2d 623, 630).

During the course of the second administrative hearing, numerous errors were made by the Hearing Officer. In the second hearing, the first witness called by the Village was the Chief of Police. During the course of the Chief's testimony, he testified that the return of the Petitioner to his employment in the Village Police Department would create havoc and that a number of police officers did not wish to be working with the Appellant. (Petition, paragraphs 9-11). (Transcript, 38-39). The Chief testified that morale was at the lowest point in the Department in eighteen years, and that it was the fault of the Appellant. (Transcript 38-

39)**. The Village further introduced, during the direct testimony of the Chief of Police, a series of incidents of alleged misconduct on the part of the Appellant which had never previously been set forth in the charges or specifications. All of these incidents were allowed into the testimony, over the objection of the Appellant's attorney. (Transcript, pages 25-35). When Appellant's attorney objected to any misconduct other than that which was in the charges, the Hearing Officer overruled the objection, stating that "this is in search of the truth." (Transcript page 26).

When the attorney for the Appellant attempted, on cross-examination, to find out the names of the fellow officers who claimed to be afraid of being assigned with the Appellant, this line of questioning was objected to by the Village. (Transcript, page 74). In sustaining the objection, the Hearing Officer stated as follows:

> "I think he brings up a good point. If Officer Nichols does go back to work, it's just going to create havoc in the Department as far as the other people being named here...We have the Chief of Police who was here under oath testifying that he had some problems with the other people who did not want to work with him when he came back, and he had to change some work schedules. I think this stands by itself. I am going to sustain the objection and the Police does not have to name the other police officers. He is under oath. <u>We accept what he says</u>." (Emphasis added, Transcript page 75; Petition, paragraphs 10-12).

Upon hearing this statement on the part of the Hearing Officer, the attorney for the Appellant asked the Hearing Officer to disqualify himself on the grounds that he had demonstrated his bias and interest in favor of the Chief of Police, and against the Appellant. The Hearing Officer refused to disqualify himself. The Appellant argues that such statements on the part of the Hearing Officer indicate that he had already made a credibility determination with regard to the Chief and the charges, at a time when the only witness who had testified was the Chief of Police, and his cross-examination had not yet been completed.

With regard to the prior uncharged incidences of misconduct, the Hearing Officer confirmed that he was allowing the same in over objection in his report and recommendations, at page 16 thereof, when he stated that he wanted all available information to this case and that "both counsels were advised that the procedures used were necessary to obtain the truth in this matter, even if some of the testimony was not relevant." (Petition, paragraph 16). As previously argued, this is improper.

It is respectfully submitted that the report and recommendations and findings of the Hearing Officer are inadequate and consist of conclusory statements without rationale. Such a procedure is not permissible. (Matter of Langhorne v. Jackson, __ AD2d __ July 14, 1994, Third Department). Further, the Hearing Officer in the second

CONCLUSION

The Appellant was denied a fair hearing in the first Civil Service case. The Appellant was denied a fair hearing in the second Civil Service case. The Appellant has been denied his due process rights. The determinations in both instances should be reversed in all respects.

Dated: Poughkeepsie, New York
October 4, 1995

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September 30, 1993

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

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

Re: Village of Malone vs. Patrick Nichols

Dear Jim & Jim:

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

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

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

Very truly yours,

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

BSS/tlw
enclosure

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

Village of Malone,

Complainant,

v.

Patrick Nichols,

Respondent.

CLOSING MEMORANDUM
OF
THE VILLAGE OF MALONE

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

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

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

There is another factor applicable to disciplinary actions in Police Departments. It has been held that Police Departments are quasi-military organizations in which obedience to rules of conduct is more important than in other less highly organized and less dangerous professions, Richichi vs. Galligan, 136 AD2d 616, 523 NYS2d 862; Donofrio vs. Rochester, 144 AD2d 1027, 534 NYS2d 630 app den 73 NY2d 708.

In a disciplinary hearing, review of the employee's personnel record is not only permissible, it is recommended by the courts, Bigelow vs. Board of Trustees, 63 NY2d 470, 483 NYS2d 173. Even when the personnel file was not introduced into evidence at the hearing, it can be reviewed if certain procedural guidelines are used, Bigelow, 483 NYS2d at pp 174-175. That is not a problem in this case because the entire personnel file was entered as the Village's Exhibit 13, without objection.

In December 1991, Mr. Nichols was criticized by then Assistant Chief Vernon Marlow, for failing to supply a Town Justice with a supporting deposition on a traffic ticket. Without a supporting deposition, a ticket must be dismissed. Mr. Nichols wrote to the judge and said he couldn't recall the incident. When criticized, Mr. Nichols wrote a note to Chief Phillips complaining of "harassment."

In April 1992, Mr. Nichols was criticized in writing by Chief Phillips for calling in twelve hours of unauthorized overtime to watch someone in the local hospital. The Chief wrote that calling in persons to perform overtime activities is not something which a patrolman is authorized to do. Mr. Nichols' unauthorized usurpation of power in that incident cost the Village of Malone over $500 in overtime.

A small, but illustrative event occurred on August 26th through August 30, 1992. Mr. Nichols made unauthorized entries in the police log while signing off and on duty. He was orally corrected by the Sergeant Gerald Moll. Mr. Nichols failed to follow these directions, making a comment that a senior member of the force signed off differently too. As a result, Sergeant Moll

was forced to give an order to Mr. Nichols, in writing.

In January and early February 1993, Mr. Nichols was reprimanded in writing for conduct relating to the DARE program. In summary, he neglected his non-DARE duties. In an effort to correct this deficiency, his hours were changed. That resulted in an unjustified and outrageous request for additional compensation for the use of a private car and for child care. This request was later withdrawn. Mr. Nichols was removed as a DARE officer. He then communicated with a member of the Board of Trustees about his displeasure concerning his reassignment. This was in direct violation of the Police Department Regulations. About the time he was reinstated to the DARE position he made three insubordinate remarks:

1) I have so much backing now, they wouldn't think of taking me off the DARE program.
2) I knew Moll would back down.
3) I'll be leaving here next year, and I'm going to just laugh in their face.

Mr. Nichols was reprimanded and made to re-read portions of the Police Department Regulations. These portions included section 10.1.77 regarding a prohibition on seeking the influence of persons outside the department for transfer or advantage and section 10.1.76 regarding a prohibition against speaking with members of the Village Board of Trustees except with permission.

On July 13, 1993, Mr. Nichols received a written letter of reprimand, along with another officer, for failing to take reasonable action to maintain the peace at an incident at the Knights of Columbus on June 1, 1993. Testimony at the hearing on the current disciplinary action showed how Mr. Nichols reacted when given this letter of reprimand. He said to the Chief words to the effect of "I have something for you too". One and a half to two hours later, he filed a written complaint against Officer Moll for an incident that occurred on or about April 2, 1993, over one hundred days before.

Mr. Nichols' personnel file demonstrates repeated disobedience to well established regulations, a tendency to assume authority outside the duties of a patrolman and a disturbing tendency to be rude and insubordinate when criticized or disciplined. Finally, it is clear that Mr. Nichols has engaged in a pattern of claiming harassment when disciplined.

All of these incidents, taken as a whole have clearly created disruption within the Police Department. Chief Phillips and Sergeant Ritchie both testified regarding the unwillingness of other patrolmen to work with Mr. Nichols. His own partner, Scott Mulverhill, testified to the same effect.

In many ways, the current specifications constitute repetition of previous violations. Specification #1 charges Mr. Nichols with bringing purely retaliatory charges against Assistant Chief Moll. He accused Assistant Chief Vernon Marlow of harassment when Marlow criticized Nichols for failure to provide a supporting deposition. When Mr. Nichols disobeyed a direct order regarding signing on and off the log, he complained that a superior officer didn't do it right either. Mr. Nichols has demonstrated a pattern of casting blame on others when being disciplined for relatively minor offenses.

In specifications #2, 5, 6, 7, 8 and 9, Mr. Nichols is accused of having gone outside the chain of command to complain about an internal investigation. He also went outside the chain of command when disciplined by then Assistant Chief Marlow for failing to provide a supporting deposition. He complained about the discipline in writing to the Chief. "I am bringing this to your attention for my own records. No further action is requested on your part." Mr. Nichols was outside the chain of command when he took it upon himself to call in other personnel for twelve hours of unauthorized overtime service. He also went outside the chain of command when he complained to a Village Trustee about his DARE assignment. In fact, Mr. Nichols now admits contacting the Mayor without permission after having previously been disciplined for exactly the same offense.

In specification #4, Mr. Nichols is charged with being insubordinate by having improperly accused the Chief of engaging in a cover-up.

This is very similar to the incident in which he accused the Assistant Chief Moll of harassment. The attitude displayed is similar to his attitude in the DARE incident, where he was quoted as saying, "I knew Moll would back down."

A consistent pattern of misconduct justifies dismissal, Gunther vs. Cahill, 90 AD2d 995, 465 NYS2d 908. Mr. Nichols has demonstrated a consistent pattern of disobedience to regulations and orders, disregard of the chain of command, insubordination and a tendency to blame others when he is being disciplined. It is no wonder that the Department finds this employee to be extremely disruptive. Mr. Nichols has demonstrated no ability to learn from prior discipline, and under the circumstances, the only reasonable alternative is to recommend that he be discharged.

Dated: _____

Respectfully Submitted,
HUGHES & STEWART, P.C.
Attorneys for the Complainant
P.O. Box 788 - 31 Elm Street
Malone, New York 12953
(518) 483-4330

N.Y. 605, 16 N.E.2d 121) and that his death prior to the termination of the life estate did not affect his power to transfer his remainderman interest by will (Fulton Trust Co. v. Phillips, 218 N.Y. 573, 113 N.E. 558, L.R.A.1918E, 1070; Connelly v. O'Brien, 166 N.Y. 406, 60 N.E. 20).

The decree should be affirmed.

Decree affirmed, with costs to each party filing a brief payable from the estate.

GIBSON, P. J., and HERLIHY, REYNOLDS and HAMM, JJ., concur.

48 Misc.2d 12

Application of Bruce W. WANSART, Eggertsville, New York, Petitioner, for a Judgment under Article 78 of the Civil Practice Law and Rules v. Samuel FEINSTEIN, Director, West Seneca State School, New York State Department of Mental Hygiene, West Seneca, New York, Respondent.

Supreme Court, Erie County.
Oct. 21, 1965.

Proceeding under CPLR § 7801 et seq. for a review of a decision discharging the petitioner from his position at the New York State West Seneca State School. The Supreme Court, Frank J. Kronenberg, J., held that petitioner would not be dismissed from his position at the school for (1) not responding promptly to request by acting charge of the ward to go to another ward to obtain medicine, (2) for ignoring repeated requests to take children to Protestant church services, and (3) for failure to sign out upon suspension when told to do so during investigation of (1) and (2).

Determination annulled in part and affirmed in part.

1. States ⇐53

An employee would not be dismissed from his position at New York State West Seneca State School for (1) not responding promptly to request by acting charge of the ward to go to another ward to obtain medicine, (2) for ignoring repeated requests to take children to Protestant church services, and (3) for failure to sign out upon suspension when told to do so during investigation of (1) and (2).

2. Officers ⇐66

Dismissal from public service is excessive where the worker's work record has been basically good, no matter how long the term, and the

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Kavinoky, Cook, Hepp
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Louis J. Lefkowitz, Ne
of counsel, for respondent.

FRANK J. KRONENI

This matter has been l
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Usher, 4 A.D.2d 808, 165
of Ramapo, 10 A.D.2d 9

The Respondent urges
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The facts, as the Court

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episode in which he is found guilty is not of such a nature that the operation and function of the institution is totally disrupted or is not of a repetitive nature, or the trier of fact determines in the first instance that a number of serious breaches of conduct have occurred after full and adequate warning.

Kavinoky, Cook, Hepp & Sandler, Buffalo, Charles R. Sandler, Buffalo, of counsel, for petitioner.

Louis J. Lefkowitz, New York City, Alfred B. Silverman, Buffalo, of counsel, for respondent.

FRANK J. KRONENBERG, Justice.

This matter has been brought on under Article 78 C.P.L.R. for a review of a certain decision of the Respondent discharging the Petitioner from his position at the New York State West Seneca State School. Said decision was rendered June 2, 1965.

[1] The Petitioner in his moving papers and briefs argues very strenuously and cites many cases to the effect that the charges of which the Petitioner was found guilty were not sufficiently serious in and of themselves to warrant dismissal from the service. In a lengthy brief he cites many cases, urging the principle that dismissal from the service must only be invoked under the most extreme circumstances. People ex rel. Rigby v. Anderson, 198 App.Div. 283, 190 N.Y.S. 300; Bancroft v. Usher, 4 A.D.2d 808, 165 N.Y.S.2d 187; Pitt v. Town Board of Town of Ramapo, 10 A.D.2d 958, 201 N.Y.S.2d 947, and other authorities.

The Respondent urges upon this Court the general principle that the charges were of a serious nature, severely affect the discipline and operation of the School and its important function caring for the children under the New York State Department of Mental Hygiene and citing authority to the effect that a decision of the presiding officer is not so limited as to preclude dismissal based on the facts in the record before this Court.

The facts, as the Court views them, are as follows:

That on or about the 28th day of March, 1965, the Petitioner was asked to go to another ward to obtain some medication by the Acting Charge of the ward. He did not respond promptly, sat down in a chair and read a book and, ultimately, the person requesting went and got the medicine himself. The Court in reviewing this episode fails to find that apart from gross discourtesy, sufficient willful disobedience was made out in the record to warrant a finding that in and of itself would sustain dismissal from the service; in fact a record in respect to this episode indicates that apparently any emergency, if it existed, was not made specifically known to the Petitioner. Certainly some punishment is ap-

propriate for this but the Court does not feel that on this episode alone the Petitioner should be dismissed from the service.

The second and third episodes somewhat merge into one episode. This episode, from reading the record, is one from which no rational explanation can be given to the benefit of the Petitioner. A repeated request by one person after another to carry out a simple function such as taking the children to Protestant church services was made time and time again and the Petitioner refused, offering no adequate explanation as can be demonstrated from this record. This episode displays insubordination in its most arrogant manifestation. This insubordination is somewhat exaggerated, possibly out of context, by the fact that children missed obviously important religious services. This is one serious episode of inexcusable insubordination incapable of any rational explanation.

The third specific this Court considers is that during the investigation of these incidents the Petitioner was told to sign out upon suspension and failed to do so. A reasonable conclusion can easily be arrived at. In view of all of the acrimony which obviously existed at the time, the Petitioner's misunderstanding as to the consequences of his signing out should hardly in and of itself bring down upon his head dire consequences at the hands of this Court although, again, a modest punishment might be appropriate.

We then return to the single episode in this matter of a most serious nature to which this Court must address itself. Many cases handed up or recited to the Court on the bench cite general propositions only in favor and against the general theories enunciated. One of the keystone cases urged by the Respondent is Nagin v. Zurmuhlen, 6 A.D.2d 677, 173 N.Y.S.2d 899. This case and two cases cited by the Petitioner are the closest in factual basis to the matter at hand. The Court is somewhat surprised with the liberality given by previous Appellate Courts to certain acts of obvious misconduct in respect to the consequences of that misconduct. The Nagin case (supra) is a case where a *suspension* of a physician for one year was upheld arising out of charges involving the improper prescribing of narcotics while connected with the institution involved. In Mendoza v. Jacobs, 14 A.D.2d 521, 217 N.Y.S.2d 122, the employee in question was caught in an evident attempt to burglarize the snack bar in the hospital in New York City. Although later charges failed to show sufficient evidence of burglary, it was evident that he illegally entered the snack bar nonetheless. The Court in this matter said a dismissal was disproportionate to the misconduct.

Fuller v. Stanley, 11 A.D.2d 1073, 206 N.Y.S.2d 637, and Pitt v. Town Board of Town of Ramapo (10 A.D.2d 958, 201 N.Y.S.2d 947 supra) show other single episodes resulting in dismissal which required the Court to return the matter to the hearing official or tribunal, as the case may be, for a modification and imposition of a less severe penalty.

[2] It would appear as they can be gleaned worker's work record h term, and assuming furt is not of such a nature t is totally disrupted or is trier of fact determines breaches of conduct hav a dismissal from the ser its political subdivisions operating its departmen However, other punishi day of liberality toward those that have run afc feels that a dismissal fr a dishonorable discharg thorities cited herein tha have been combined witl One, is not sufficient tc service. Consequently, spondent solely in respe determination in all othe the Respondent for rec lesser penalty on all thr

In

In the Matter of The Judi of KINGSTON TRUST C and Testam

George V. D. HUTTON, Jr Eleanor H. Washbur Church of Saugerties, Women, Anna T. W Mildred O'Bryon, Re Trustee, etc.

Supreme Court,

Proceedings in the account of a successor tr

[2] It would appear to this Court from the reading of specific facts as they can be gleaned from the specific cases cited, that assuming the worker's work record has been basically good, no matter how long the term, and assuming further that the episode in which he is found guilty is not of such a nature that the operation and function of the institution is totally disrupted or is not of a repetitive nature, or, further, that the trier of fact determines in the first instance that a number of serious breaches of conduct have occurred after full and adequate warning, that a dismissal from the service is excessive. The function of the state and its political subdivisions in properly and efficiently, and with discipline, operating its departments and governmental functions must be upheld. However, other punishments are provided in the statute and in this day of liberality towards those that have committed crimes as youths, those that have run afoul of the law on the first occasion, the Court feels that a dismissal from civil service is equivalent in some respects to a dishonorable discharge from military service and agrees with the authorities cited herein that this particular offense, inexcusable as it may have been combined with the discourtesies exhibited under Specification One, is not sufficient to justify a dismissal of the Petitioner from the service. Consequently, this Court annuls the determination of the Respondent solely in respect to the punishment imposed and affirms the determination in all other respects and returns and remits the matter to the Respondent for reconsideration and imposition of an appropriate lesser penalty on all three specifications.

24 A.D.2d 83

In re WASHBURN'S WILL.

In the Matter of The Judicial Settlement of the Final Account of Proceedings of KINGSTON TRUST COMPANY, as Successor Trustee under the last Will and Testament of John T. Washburn, Deceased.

George V. D. HUTTON, Jr., as Administrator With the Will Annexed, etc., of Eleanor H. Washburn, Deceased, Kingston Hospital, Trinity Episcopal Church of Saugerties, Ellen Russell Finger Home for Aged and Indigent Women, Anna T. Washburn, Appellants, v. Irving RIBSAMEN, Jr., Mildred O'Bryon, Respondents, Kingston Trust Company, as Successor Trustee, etc.

Supreme Court, Appellate Division, Third Department.

Oct. 29, 1965.

Proceedings in the matter of the judicial settlement of the final account of a successor trustee under the will of a decedent, wherein the

the assets he received is substantially less than the value of the assets distributed to defendant. We disagree.

[2] As required by Domestic Relations Law § 236(B)(5)(d)(10), the court took into account the tax consequences to each party when it made the distribution (*see, Schanback v. Schanback*, 130 A.D.2d 332, 519 N.Y.S.2d 819). Moreover, a substantial amount of the assets awarded to the plaintiff consists of tax-deferred IRAs and employer-funded pension funds, the value of which will grow considerably by the time the plaintiff begins to receive taxable income from them. Any taxes which will be incurred upon the plaintiff's future receipt of these benefits will be more than offset by the increased value of the assets, and we discern no abuse of discretion in the manner by which the assets were distributed. We note, moreover, that there was no evidence offered at trial to support the plaintiff's theory that the stated value of the assets he received is, because of potential tax liability, less than that which was fixed by the trial court, and we discern no abuse of discretion in the denial of plaintiff's posttrial motion.

[3] There was also no error in the award of maintenance to the wife. The fact that the couple may have lived frugally during their marriage does not preclude the court from awarding the defendant the sum which the plaintiff now contends is too high. The record reveals that the court considered all the factors listed in Domestic Relations Law § 236(B)(6) and we see no reason to disturb the award. The defendant, who had not worked during most of the 20–year length of the parties' marriage, can never hope to earn as much as the plaintiff now does, although she plans to teach full-time once she completes her doctoral program. Furthermore, the court limited the maintenance to a period of six years and the plaintiff's substantial earnings will allow him to pay the maintenance without hardship.

[4] Considering the financial circumstances of each party, the award to the defendant of $20,000 for attorneys fees is well within the discretion available to the court under Domestic Relations Law § 237.

We have considered the plaintiff's remaining contentions and find them to be without merit.

136 A.D.2d 616

Eugene RICHICHI, Petitioner,

v.

Matthew GALLIGAN, etc., Respondent.

Supreme Court, Appellate Division, Second Department.

Jan. 19, 1988.

Member of city police force initiated Article 78 proceeding to review determination of city manager demoting him from position of detective to patrolman. The Supreme Court, Appellate Division, held that: (1) substantial evidence supported determination finding detective guilty of insubordination and related charges, and (2) sanction of demotion in rank was not disproportionate to offense.

Determination confirmed.

1. Municipal Corporations ⇐185(10)

Substantial evidence in the record supported determination of city manager finding detective guilty of insubordination and related charges.

2. Municipal Corporations ⇐185(12)

A police force is a quasi-military organization demanding strict discipline, and much deference is to be accorded the internal discipline of, and the penalties imposed upon, its members.

3. Municipal Corporations ⇐185(1)

Demotion in rank from position of detective to patrolman was an appropriate sanction for showing disresp officer.

Harold & Salant, Eastches rold, of counsel), for petitio

William M. Kavanaugh, Newburgh, for respondent.

Before MOLLEN, P.J., a THOMPSON, RUBIN and

MEMORANDUM BY TH

Proceeding pursuant to (to review a determination dent City Manager of the burgh, dated April 9, 1986 hearing, found the petition lating (1) Article XII(2) of Regulations of the City of lice Department (hereinaft disrespect to a superior of XIII(12) of the Rules for f himself in a manner that greatest harmony and coo officers, (3) Article II(5) insubordination in the mal statements to a superior Article II(1) of the Ru dination in failing to ca order of a superior offic him from the position of d man.

ADJUDGED that the confirmed and the proce on the merits, without ments.

[1–3] We find subst the record to support th the respondent finding th of insubordination and re CPLR 7803[4]; *Matter c Educ.*, 34 N.Y.2d 222, 2 2d 833, 313 N.E.2d 321). quasi-military organiz strict discipline (*Matter zi*, 114 A.D.2d 848, 494 much deference is to be nal discipline of, and th upon, its members (*see, Rozzi*, 108 A.D.2d 859, The petitioner's showi

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, 485 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).

WEST KEY NUMBER SYSTEM

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

Howard R. Relin by Mel Bressler, Rochester, for respondent.

Before DOERR, J.P., and BOOMER, GREEN, PINE and DAVIS, JJ.

MEMORANDUM:

Upon remittitur for a hearing pursuant to *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69, the hearing court found that the prosecutor had provided racially neutral reasons for his exercise of peremptory challenges to black potential jurors. In our view, this finding is not reliable and cannot be sustained. Almost four years had passed since defendant's trial, the voir dire by the attorneys had not been recorded, and the Judge who had presided at the trial had died. The record of the hearing reveals that the memories of the remaining participants in voir dire had dimmed, and the notes of the voir dire taken by the prosecutor were too sketchy and unenlightening to allow for effective review. Based on these circumstances, we reverse the conviction and grant a new trial (*see, People v. Scott*, 70 N.Y.2d 420, 426, 522 N.Y.S.2d 94, 516 N.E.2d 1208).

Judgment unanimously reversed on the law and new trial granted.

144 A.D.2d 1027

Matter of Louis DONOFRIO, Respondent,

v.

CITY OF ROCHESTER, Gordon Urlacher, Individually and as Chief of Police of the City of Rochester Police Department, Paul Bringewatt, Individually and as Commissioner of Public Safety of the City of Rochester Police Department, Appellants.

Supreme Court, Appellate Division, Fourth Department.

Nov. 15, 1988.

Police officer brought Article 78 proceeding to review his dismissal. The Supreme Court, Monroe County, Corning, affirmed dismissal, and appeal was taken. The Supreme Court, Appellate Division, held that: (1) special term had no authority to pass upon propriety of penalty imposed and (2) penalty of dismissal was not arbitrarily imposed.

Judgment vacated; determination confirmed.

1. Municipal Corporations ⇐185(12)

In Article 78 proceeding to review discharge of petitioner from his position as police officer, special term of Supreme Court had no authority to pass upon propriety of penalty imposed; where issue raised was whether determination was supported by substantial evidence, proceeding had to be referred to appellate division, and special term could pass only upon objections in point of law. McKinney's CPLR 7801 et seq., 7804(g).

2. Municipal Corporations ⇐185(1)

Penalty of dismissal was not arbitrarily imposed on police officer upon determination that he had possessed lock picks with intention of using them to commit trespass, and had lied at formal investigatory hearing concerning his arrest for that offense.

Louis N. Kash, Corp. Counsel by Jeffrey Eichner, Rochester, for appellants.

Charles A. Schiano, Jr., P.C., Rochester, for respondent.

Before DOERR, J.P., and BOOMER, GREEN, PINE, DAVIS, JJ.

MEMORANDUM:

[1] In this CPLR article 78 proceeding brought to review the determination of the Commissioner of Public Safety and the Chief of Police to discharge petitioner from his position as a police officer, Special Term had no authority to pass upon the propriety

the penalty imposed. Where, a issue is raised whether the de was supported by substantial e proceeding must be referred ppellate Division and Special Te ass only upon objections in poin CPLR 7804[g]). As noted by McLaughlin in his Practice Comm McKinney's Consolidated Laws 7804, "the apparent purpose of (su of CPLR 7804 referring to obje point of law) is to permit a moti any ground specified in CPLR 321 An objection in point of law, t does not include a claim that the imposed is excessive. Neverthe may consider that all issues in the ing have been properly transferr

[2] We determine that the cha supported by substantial evidenc over, we cannot say that the p dismissal was so disproportiona offenses as to shock the conscier court (*see, Matter of Pell v. Educ. of Union Free School Dis Towns of Scarsdale & Mamaron chester County*, 34 N.Y.2d 222, 2d 833, 313 N.E.2d 321).

Petitioner was charged with attempting to gain entry with loc an apartment in the State of Fl out the consent of the owner a sion of lock picks with the inten them to commit a trespass. The were supported by substantial Although the occupant of the described by petitioner as an female acquaintance of his, tes he did have permission to enter ment at the time of the incident recording of her telephone con the testimony of the Florida pol otherwise.

Petitioner was also charged w the professional standards sec Rochester Police Department d mal investigation concerning h Florida on criminal charges. shows that petitioner told th charge of the investigation that of his arrest he did not posses and that he had not previous

of the penalty imposed. Where, as here, the issue is raised whether the determination was supported by substantial evidence, the proceeding must be referred to the Appellate Division and Special Term may pass only upon objections in point of law (CPLR 7804[g]). As noted by Joseph McLaughlin in his Practice Commentaries to McKinney's Consolidated Laws, CPLR 7804, "the apparent purpose of (subdivision [f] of CPLR 7804 referring to objections in point of law) is to permit a motion under any ground specified in CPLR 3211 * * *." An objection in point of law, therefore, does not include a claim that the penalty imposed is excessive. Nevertheless, we may consider that all issues in the proceeding have been properly transferred to us.

[2] We determine that the charges were supported by substantial evidence. Moreover, we cannot say that the penalty of dismissal was so disproportionate to the offenses as to shock the conscience of the court (*see, Matter of Pell v. Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d 222, 356 N.Y.S. 2d 833, 313 N.E.2d 321).

Petitioner was charged with unlawfully attempting to gain entry with lock picks to an apartment in the State of Florida without the consent of the owner and possession of lock picks with the intention to use them to commit a trespass. These charges were supported by substantial evidence. Although the occupant of the apartment, described by petitioner as an "intimate" female acquaintance of his, testified that he did have permission to enter the apartment at the time of the incident, the police recording of her telephone complaint and the testimony of the Florida police indicate otherwise.

Petitioner was also charged with lying to the professional standards section of the Rochester Police Department during a formal investigation concerning his arrest in Florida on criminal charges. The record shows that petitioner told the officer in charge of the investigation that on the date of his arrest he did not possess lock picks and that he had not previously secluded himself in the closet of the complainant. The record further shows that a Florida police officer saw petitioner using lock picks to enter the apartment of the complainant and that the officer took the lock picks from petitioner. The record shows also that petitioner admitted to two witnesses that he had previously entered the complainant's apartment without her knowledge and secluded himself in her closet.

On this evidence, respondents could properly conclude that petitioner was guilty of deliberately lying at a formal investigatory hearing. In spite of the fact that petitioner has over thirty years of service in the police department, respondents did not act arbitrarily in imposing a penalty of dismissal. Respondents will be severely hampered in performing their obligation to the public to maintain an effective and disciplined police force if they cannot terminate police officers who deliberately make false statements during the course of formal investigations. A police department, as a quasi-military organization, demands strict discipline (*Richichi v. Galligan*, 136 A.D.2d 616, 523 N.Y.S.2d 862; *Matter of De Bois v. Rozzi*, 114 A.D.2d 848, 494 N.Y.S.2d 755).

Judgment insofar as appealed from vacated on the law, determination unanimously confirmed, and petition dismissed without costs.

144 A.D.2d 1032

PEOPLE of the State of New York, Respondent,

v.

Andrew B. MILLAR, Appellant.

Supreme Court, Appellate Division, Fourth Department.

Nov. 15, 1988.

Defendant pled guilty and was convicted by the Supreme Court, Monroe County,

472 N.E.2d 1001

63 N.Y.2d 470

|470 |In the Matter of Kevin D. BIGELOW, Appellant,

v.

BOARD OF TRUSTEES OF the INCORPORATED VILLAGE OF GOUVERNEUR, Respondent.

Court of Appeals of New York.

Nov. 20, 1984.

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

Reversed and remitted.

1. Officers and Public Employees ⇐72(1)

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

2. Officers and Public Employees ⇐69.8

After a civil service employee has been found guilty of misconduct, and before public employer considers material included in employee's employment record in determining an appropriate sanction, employee must be given notice of data to be considered and an opportunity to submit a written response relative to such information.

|Thomas J. Snider, Massena, for appellant. |472

Robert J. Leader, Carmel, for respondent.

OPINION OF THE COURT

JONES, Judge.

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

By this article 78 proceeding petitioner employee challenges his dismissal by respondent Village Board from a position as village police officer after a departmental hearing pursuant to section 75 of the Civil Service Law on five charges that had been lodged against him. The hearing officer had exonerated petitioner of four of the charges but found him guilty of the fifth involving issuance of a bad check. Noting that the record before him was silent as to petitioner's employment record, he had recommended that a 30-day suspension without pay be imposed as a sanction.

The Village Board, after reviewing a transcript of the hearing, adopted the findings of fact made by the hearing |officer |473 and found petitioner guilty of the bad check charge. In connection with fixing the penalty, however, without notice to the officer it also reviewed his record of employment maintained by the Chief of Police, which included documents disclosing that a charge of violation of the Conservation Law on July 15, 1975 had been compromised by petitioner's payment of a fine and that, with respect to two charges of disobe-

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

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

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

474 [1] It must be observed at the outset that this is not an instance in which material outside the record of the disciplinary hearing was considered in the adjudicatory determination of petitioner's guilt—the practice that we condemned in *Matter of Simpson v. Wolansky*, 38 N.Y.2d 391, 380 N.Y.S.2d 630, 343 N.E.2d 274. Here, recourse to petitioner's employment record maintained by the Chief of Police was had—and properly so—only after there had been a decision, based on the hearing transcript, that the police officer's misconduct had been established. In the determination of an appropriate sanction for a proved present act of misconduct an employee's past history contained in the departmental file, including both material which is commendatory and that which reflects unfavorably on the employee, is relevant and appropriately taken into account (*Matter of Gibides v. Powers*, 45 N.Y.2d 994, 413 N.Y.S.2d 115, 385 N.E.2d 1043; *Matter of Bal v. Murphy*, 43 N.Y.2d 762, 401 N.Y.S.2d 1011, 372 N.E.2d 799; *Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 240, 356 N.Y.S.2d 833, 313 N.E.2d 321). Accordingly, in the present case the Village Board was entitled, and in the responsible discharge of its duty it might even be said required, to give attention to the documents disclosing earlier dispositions of charges of violation of statute and of misconduct in connection with petitioner's employment.

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

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

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

Because such prior notice was lacking in petitioner's case, the matter must be remitted to respondent Village Board for compliance with the procedure here described and to afford petitioner opportunity for a written responsive submission. The error in failing to have given petitioner notice of the content of his personnel file cannot be disregarded, as the court below has suggested because in its view the charge of which petitioner had been found guilty itself provided adequate basis for dismissal irrespective of his employment record. There can be no assurance that the Village Board, which was vested in the first instance with authority to select an appropriate sanction, would have imposed dismissal in face of whatever submission petitioner might have furnished with respect to the data included in his personnel file. A remittal of the matter to that body for the exercise of its judgment is therefore required (*Matter of Admiral Wine & Liq. Co. v. State Liq. Auth.*, 61 N.Y.2d 858, 473 N.Y.S.2d 969, 462 N.E.2d 146; cf. *Matter of von Wiegen*, 63 N.Y.2d 163, 481 N.Y.S.2d 40, 470 N.E.2d 838).

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

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

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

472 N.E.2d 1003
63 N.Y.2d 477

In the Matter of JULIUS P.

Monroe County Department of Social Services, Respondent.

Margaret P., Appellant.

Court of Appeals of New York.

Nov. 27, 1984.

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

Affirmed.

late Division, held that defendant forfeited his right to claim that he was deprived of a speedy trial by entering a plea of guilty, but the defendant could still make a post-judgment application challenging the knowing nature of his guilty plea.

Affirmed.

Criminal Law ⇐273.4(1), 998(7)

Defendant forfeited his right to claim that he was deprived of a speedy trial by entering a plea of guilty, but the defendant could still make a postjudgment application challenging the knowing nature of his guilty plea. McKinney's CPL § 30.30; U.S. C.A. Const.Amend. 6.

Robert E. Stevens, Rochester, for appellant.

Lee Clary, Watertown, for respondent.

Before HANCOCK, J.P., and DOERR, DENMAN, BOOMER, SCHNEPP, JJ.

MEMORANDUM:

When defendant entered a plea of guilty, he forfeited his right to claim that he was deprived of a speedy trial pursuant to CPL 30.30 (*People v. Suarez*, 55 N.Y.2d 940, 449 N.Y.S.2d 176, 434 N.E.2d 245; *People v. Friscia*, 51 N.Y.2d 845, 433 N.Y.S.2d 754, 413 N.E.2d 1168). Defendant's attempt to preserve that issue for review by obtaining the consent of the District Attorney and the approval of the court is of no avail (see *People v. O'Brien*, 56 N.Y.2d 1009, 1010, 453 N.Y.S.2d 638, 439 N.E.2d 354; *People v. Howe*, 56 N.Y.2d 622, 450 N.Y.S.2d 477, 435 N.E.2d 1092). Our determination, however, is without prejudice to a postjudgment application by defendant, if he be so advised, challenging the knowing nature of his guilty plea (see *People v. O'Brien*, 84 A.D.2d 567, 568, 443 N.Y.S.2d 255, affd. 56 N.Y.2d 1009, 453 N.Y.S.2d 638, 439 N.E.2d 354).

Judgment unanimously affirmed.

90 A.D.2d 995

In the Matter of the Application of Joseph L. GUNTHER, Respondent,

v.

William S. CAHILL, Jr., as Mayor of the City of Oswego, New York, Appellant.

Supreme Court, Appellate Division, Fourth Department.

Nov. 9, 1982.

Article 78 proceeding was brought to annul mayor's dismissal of petitioner from his position with city's department of public works. The Supreme Court, Special Term, Onondaga County, Inglehart, J., annulled dismissal and ordered reinstatement, and Mayor appealed. The Supreme Court, Appellate Division, held that: (1) since only issue was that of substantial evidence the proceeding should have been transferred to Appellate Division, and (2) dismissal is not an excessive penalty where a municipal employee has a consistent pattern of misconduct.

Reversed; determination confirmed and petition dismissed.

1. Courts ⇐484

Where only issue in Article 78 proceeding to annul mayor's determination dismissing petitioner from his position with department of public works was that of substan-

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tial evidence the proceedi
been transferred from spec
pellate Division. McKinney
seq., 7804(g).

2. Municipal Corporations

Findings of mayor disn
from his position with depa
works was supported by
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received two prior suspens
and had been warned tha
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would result in terminatio

3. Municipal Corporations

Dismissal is not an e
where a municipal emplo
veals a consistent patter

Doren P. Norfleet, Oswe

Blitman & King by Jule
cuse, for respondent.

Before SIMONS, J.P., a
DENMAN, MOULE and

MEMORANDUM:

[1] Respondent, Mayo
peals from a judgment
entered February 27, 198
the petition in this article
annul the Mayor's determ
petitioner from his positio
Department of Public
Term also ordered petitio
his former position. Sin
raised was that of substan
proceeding should have be
the Appellate Division
The record now being bef
will treat the proceeding
properly transferred.

[2, 3] The record sho
ings of the hearing offic
the Mayor, are supporte

tial evidence the proceeding should have been transferred from special term to Appellate Division. McKinney's CPLR 7801 et seq., 7804(g).

2. Municipal Corporations ⇐213

Findings of mayor dismissing petitioner from his position with department of public works was supported by substantial evidence, including fact that petitioner had received two prior suspensions without pay and had been warned that further violations of department policies and work rules would result in termination.

3. Municipal Corporations ⇐218(3)

Dismissal is not an excessive penalty where a municipal employee's record reveals a consistent pattern of misconduct.

Doren P. Norfleet, Oswego, for appellant.

Blitman & King by Jules L. Smith, Syracuse, for respondent.

Before SIMONS, J.P., and CALLAHAN, DENMAN, MOULE and SCHNEPP, JJ.

MEMORANDUM:

[1] Respondent, Mayor of Oswego, appeals from a judgment of Special Term entered February 27, 1982, which granted the petition in this article 78 proceeding to annul the Mayor's determination to dismiss petitioner from his position with the City's Department of Public Works. Special Term also ordered petitioner reinstated to his former position. Since the only issue raised was that of substantial evidence, this proceeding should have been transferred to the Appellate Division (CPLR 7804[g]). The record now being before this court, we will treat the proceeding as if it had been properly transferred.

[2, 3] The record shows that the findings of the hearing officer, as adopted by the Mayor, are supported by substantial evidence (*300 Gramatan Ave. Assoc. v. State Div. of Human Rights*, 45 N.Y.2d 176, 408 N.Y.S.2d 54, 379 N.E.2d 1183). Further, the penalty of dismissal imposed by the Mayor is not "shocking to one's sense of fairness" (*Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 356 N.Y.S.2d 833, 313 N.E.2d 321). Petitioner had received two prior suspensions without pay and been warned that any further violations of Department of Public Works' policies and work rules would result in his termination. Dismissal is not an excessive penalty where an employee's record reveals a consistent pattern of misconduct (*Matter of Santarella v. New York City Dept. of Correction*, 53 N.Y.2d 948, 441 N.Y.S.2d 444, 424 N.E.2d 278.)

Judgment unanimously reversed, determination confirmed with costs and petition dismissed.

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90 A.D.2d 994

The DIOCESE OF BUFFALO, New York, Appellant,

The New York State Office of Mental Retardation and Developmental Disabilities, Intervening Appellant,

v.

Helen A. BUCZKOWSKI, et al., Respondents,

Eileen DePaolo, Intervening Respondent.

Supreme Court, Appellate Division, Fourth Department.

Nov. 9, 1982.

Religious organization brought special proceeding, seeking to overturn decision of city zoning board of appeals denying use permit which would allow petitioner to change building from residential care institution for predelinquent and delinquent young men to an intermediate care facility for the developmentally handicapped. The