

Questions that could be asked:

Petitions:

When did you first hear about the petitions?

When did you first find out that Ptl. Nichols was actively involved in the petitions?

Did you attempt to take any action against Ptl. Nichols after you discovered that he might have been involved?

NOTE: Attempted to introduce them at first hearing

After the petitions were not allowed at the last hearing, did you attempt to bring charges against Ptl. Nichols in regards to the petitions?

When was this?

What did the Village Board do and why?

Why do you feel that these petitions were used?

Do you feel it helped influence the Village Board?

What disturbed you about the wording of the petitions?

What type of discredit did these petitions bring to the department?

How long have you known Scott Smith?, Ed Ritzman, Carl Thomas and Dale Lamitie?

Doesn't Scott Smith do most of the towing for the Village Police?

Why is Smith's Towing called most of the time?

Did you interview Smith and the other three?

Does Smith's Towing do favors for the police department or it's members?

Is Ptl. Nichols still bound by the rules and regulations while he is on suspension?

Does Ptl. Nichols know this?

NOTE: Page 274 line #6-#9 transcript from first hearing, Nichols admits that he is still a police officer even though he is under suspension.

Who presented the petition to the Village Board?

Who made the petitions?

Who is Ken Cring?

Is Ken Cring a business partner of Ptl. Nichols in a private business?

Do you feel that Ptl. Nichols sought the influence or intervention outside of the department for person preferment?

Do feel that he got this influence?

NOTE: Paid ad in Malone Telegram thanking everyone for support

Charge #2 March 17th meeting?

What were the reasons that you called a meeting with Ptl. Nichols for March 17th?

How many things did you want to discuss with Ptl. Nichols?

Did you give him sufficient time to obtain representation?

Did you call this meeting yourself or was there other people that requested that you have this meeting?

Is it normal to hire a stenographer to record a meeting with one of your subordinates?

Why would you take such action?

Isn't it a little extreme?

Questioning a person about his conduct is one thing but interrogating an employee for over five hours is another, how can you justify that?

Did he evade even the simplest questions, is that why it took so long?

How many breaks did you give him?

Was he working at the time?

Was he being paid overtime for this meeting?

Did you offer more breaks?

Did he ever refuse to take breaks?

Did he ever ask to leave?

Did you ever refuse him to leave the room?

Did you ever refuse to let him use the phone?

Prior to the meeting, did Ptl. Nichols ever ask you what the meeting was about?

Did he ever ask for a postponement of the meeting after he found out a stenographer was involved?

While asking Ptl. Nichols questions, what concerned you the most?

What basic police duty questions was Ptl. Nichols having difficulty in answering?

Why would that concern you?

Do you think he was just scarred and couldn't remember?

Did you ever threaten him with his job?

What were your thoughts about Ptl. Nichols memory and being a trained police officer?

Why would that concern you?

What did you find strange about his selective type of memory?

When he was being questioned about the petitions, did you give him the opportunity to change his answers?

Did you give him an opportunity to look at the petitions?

Did he take you up on this?

Did you give him an opportunity to review the statements you had?

Did he review the statements?

Did he refuse to review the statements?

At the end of the meeting did you give Ptl. Nichols an opportunity to ask questions?

Did you give Ptl. Nichols a chance to recant anything he said?

After that you went to the Village Office with the stenographer, the Mayor and the Village Attorney. What was that meeting about?

After the stenographer read certain parts of the transcript, was there a strong indication that Ptl. Nichols may have committed a felony?

Why is it necessary to suspend a police officer in this circumstance?

Would you be remiss in your duties if you let Ptl. Nichols return to work after that March 17 meeting?

Charge #3 #4 & #5 Newspapers

How do you know that Ptl. Nichols made such a comment?

NOTE: Page #110 Line #23 didn't deny saying that
Page #111 Line #10 admits to getting call from Sharon Hughes
Page #114 Line #22 Admits to making comments
Page #115 Line #12 Admits to making comments

Do you believe everything you read in the papers?

Do you think that the news media was fair and accurate in it's reporting?

Why do you feel that it was one sided?

NOTE: Chief and Ptl. Nichols testified approx. the same amount at the last hearing. Ptl. Nichols side of the story reflected 31 column inches in the local paper. The chief's side reflected 3 col. inches.

Did Ptl. Nichols feel that it was fair and accurate reporting?

NOTE: Page #135 Line #15 Fair reporting

MAYBE USED IN PTL. NICHOLS CROSS EXAMINATION

Why do you think that Ptl. Nichols felt that the Plattsburgh Press Republican was fair and accurate in it's reporting on August 17 1993?

NOTE: Used this article in his appeal

When a person is running for political office, isn't it to his advantage to try and get considerable news coverage?

Was Ptl. Nichols running for political office during his disciplinary problems?

Do you feel that Ptl. Nichols was getting considerable news coverage about his disciplinary problems?

Did he feel that he was getting considerable coverage?

NOTE: Page #132 Line #24 considerable coverage

Do you think that this considerable news coverage helped Ptl. Nichols win his election?

NOTE: Ptl. Nichols was the top vote getter

How did the circumstances involving Ptl. Nichols disciplinary problems give the public a one sided story during his campaign?

NOTE: Page #133 Line #5 admits to discuss his case during his door to door campaign

Public Trust and discredit to dept.

Are police supervisors trained on relationships with the media and how things should be released?

Why is that important?

Is there a liability factor there?

Can releasing the wrong information jeopardize criminal cases?

Can it jeopardize the public trust of a police dept.?

Why is having public trust in a police dept. important?

Do you need to have public trust in order for the dept. to reach it's goals?

If the public trust is jeopardized, could that cause complications for the patrol officers and the department in general?

Has your department seen a lack of public trust because of the actions of Ptl. Nichols?

NOTE: Letter from Lions Club
Letters to the Editor
Flemings Furniture
D.A.R.E. Graduation
Jackie LaPlante
NY State pulling D.A.R.E Certification
Letter from Thomas Kemp over D.A.R.E.
Phone call Ptl. Stone received 05-07-94
Extensive amount of news coverage
Page #124 Line #15 I'm one person talking to 100s

Do you think that the public was getting a one sided story?

Why didn't you talk more about the disciplinary problems?

Under most situations, aren't disciplinary proceedings held in private to protect the Public Trust?

But Ptl. Nichols has the right to go public doesn't he?

This is his choice not the choice of the Village or the police dept.?

Lets go back to releasing information to the public, wouldn't it look like everything would be one sided if only you released information?

Are you saying that you didn't really want to release anything?

Would that look like you were keeping things from the public?

Are you saying that there are certain things that the public really shouldn't concern themselves with or is too complex to explain through the media?

Do you think that policies and regulations in a police department are complex?

Does it take training and experience to fully understand these rules and their importance?

Does the general public have this type of training and experience to understand these policies?

Are these department rules and policies in place to protect the safety of the public and the safety of the police officers?

Are your departments policies and rules simular to just about ever police department in N.Y. State?

Police work is a fairly dangerous job, is it dangerous in Malone?

Have you had any Police Officers injured recently?

How many and how bad?

What about discredit and disruption inside the police dept.?

Has the actions of Ptl. Nichols caused disruption inside the dept.?

How far has this disruption gone, has some of the younger

trained patrol officers looked to transfer to other departments?

Since Ptl. Nichols has been suspended, are things still disruptive?

Has anyone shown an interest in transferring to another department since Ptl. Nichols left?

Isn't it true that most members requested not to work with Ptl. Nichols and they wouldn't even ride in the same patrol car with him?

How does that disrupt the management of a police department the size of Malone?

Is there a manpower scheduling problem?

Lately in the media, you have express the increase of crime and police activity in Malone, do you have the time or resources to deal with having Ptl. Nichols on the police department?

CROSS

Have you ever heard of the first amendment right?

Where do you get off taking away someones constitutional right?

So what you are saying is that you, as Chief of Police, can do just about anything, commit crimes, and no one under your command has the right to disclose that information?

Isn't it true that some else should have been suspended?

Isn't it true that other members feared retaliation?

Wasn't Ptl. Nichols correct in talking about retaliation because thats exactly what you are doing right now?

What about your policy on releasing information to the news?

Is that followed to the letter of the law?

Isn't it true that Ptl. Nichols acted in the best interest of the public?

Have you ever heard about the Serpico case in N.Y. City?

You probably think he was wrong also?

What would have happened if he would have followed your rules and regulations?

Explain to me the difference between the two cases then?

Isn't it true that the public believes in Pat Nichols and supports his actions and showed this support at the election by making him the top vote getter?

This upset you didn't it?

Did you ever have of public record?

Don't you work for the public?

Shouldn't you answer to the public?

Isn't it true that other members don't want to work with Ptl. Nichols because he might rat on them too?

Charge #6 Mayor Feeley

Were you present when Mayor Feeley placed a call to Ptl. Nichols at his residence?

What was the purpose of the call?

Was WPTZ going to his residence to interview Ptl. Nichols?

Did you authorize Ptl. Nichols to be interviewed by WPTZ for any reason?

Why do you think he fully understood the Mayor's reason he call Ptl. Nichols and reminded him about section 11.5?

NOTE: Page #130 Line #7 Then the Mayor call and said something about this, not to speak to the media.

What did WPTZ report from the interview with Ptl. Nichols?

Is that all he talked about was the D.A.R.E. Program?

He didn't talk about his disciplinary problems or charges?

Hasn't Ptl. Nichols been allowed to talk with the Media in regards to the D.A.R.E. Program?

Why wouldn't he be allowed this time?

Do you think his continuous reference to the D.A.R.E. Program just confused the issues at hand and in turn just brought more discredit to the department and the D.A.R.E. Program itself?

Was he still the D.A.R.E. Officer?

Did he consider himself the D.A.R.E. Officer?

NOTE: Part of his last charges stemmed from Nichols going to the Mayors house because he believed that he was not going to be the D.A.R.E. Officer and Ptl. Simonsen was taking his place.

Is Ptl. Nichols still a certified D.A.R.E. Officer?

How did N.Y. State end up pulling his D.A.R.E. Certification?

Is this something that you initiated or did N.Y. State request the information on Ptl. Nichols Disciplinary problems?

What does this mean to the Village and Police Dept.?

NOTE: Cost of training
Sending Officer away for training & manpower problems
Questions the integrity of the department

Has this whole disciplinary problem with Ptl. Nichols and the continuous mention of the D.A.R.E. Program hurt D.A.R.E.?

Was this shown when the new D.A.R.E Officer tried to set up a graduation for the D.A.R.E Students?

Was the new D.A.R.E. Officer involved in Ptl. Nichols disciplinary problems?

Has this new D.A.R.E. Officer experienced problems because of the actions of Ptl. Nichols?

Is this why it was important not to have Ptl. Nichols speak to any media, whether it was for the disciplinary problems or the D.A.R.E. Program?

Why do you think Ptl. Nichols would talk about the D.A.R.E. Program?

NOTE: Dare Program was used to his advantage several times during his hearing and gained him public support. Many letters to editor to prove this.
Page # 40 Line #3 I don't think being the D.A.R.E. Officer hurt me.

PTL. NICHOLS DISCIPLINARY ACTION

EVENTS IN CHRONOLOGIC ORDER

- 03-28-90 Written instructions to Ptl. Nichols from Former Chief, Richard Brown, on proper chain of command.
- 04-17-92 Reprimand by Chief for causing over \$500.00 in overtime pay and not following rules
- 08-30-92 Insubordination on verbal order by Sergeant Moll in regards to making entries in official log book
- 01-28-93 Taken off DARE Program due to total disruption within the department on conduct by Ptl. Nichols Ass't Chief informed Ptl. Nichols of this and had Ptl. Nichols read section 10.1.77 & 10.1.78
- 02-04-93 Two hour counsel session with Ass't Chief and Chief informing Ptl. Nichols of several violations Handed over copies of sections that he violated, including section 10.1.77 & 10.1.78 & 10.1.27 & 10.1.40. Ptl. Nichols was asked to read the sections and asked if he understood them. Ptl. Nichols stated he understood the sections and he was advised that this type of conduct would not be tolerated. Chief decided not to bring formal charges against Ptl. Nichols in hopes that counsel session and oral reprimand would take care of the matter.
- 05-11-93 Updated copy of departmental rules and regulations posted and each Officer required to sign. Ptl. Nichols signed that he read over the rules.
- 06-01-93 Personnel Complaint from Karon Russell against Ptl. Nichols
- 07-08-93 Personnel Complaint investigation completed and counsel session with Ptl. Nichols & Ass't Chief conducted in Chief's Office. N.Y. State V&T Laws reviewed and discussed. Review of sections 6.1, 8.3 8.12, 8.13 reviewed and discussed. Ptl. Nichols advised that a letter of reprimand would be placed in his file for three years due to leaving the scene of this incident.
- 07-08-93 Sgt. Fountain stops at station and stated that Ptl. Nichols contacted him stating that he was upset about the results of the investigation. Ptl. Nichols made the comment to Sgt. Fountain, how can Moll do this when he sends us on a call on Webster

St. and doesn't tell us the nature of the call and also pours bleach under the cell door when someone was inside causing this guy to break the window.

- 07-??-93 Ptl. Nichols talks with Officer Reyome (former Union President) and started talking about the letter that was going into his file. Reyome asked if he was going to fight it, Ptl. Nichols said yes but hadn't contacted the Union yet. Officer Reyome advises Ptl. Nichols to contact the Union. Ptl. Nichols then shows Officer Reyome paperwork that he has typed up in order to file a complaint against Ass't Chief Moll on an incident that happened several months ago. Ptl. Nichols stated that he has been doing a thorough investigation on Ass't Chief Moll's conduct and has talked to the person that was arrested about the incident. Officer Reyome advises Ptl. Nichols that he was going against Dept. policy by contacting this subject. He stated that he was going to turn over his paperwork to the Chief and further stated that if he felt that the Chief didn't handle the matter correctly, he was going to the Mayor and the D.A. for possible criminal prosecution. Officer Reyome advises Ptl. Nichols that he should go to the Union before he continues.
- 07-12-93 Chief discusses case with Mayor and they decide to have the letter in file for only one year.
- 07-13-93 Chief informs Ptl. Nichols that letter will be placed in file for only one year and further he is to read and review all the departmental rules and regulations even though he read them 05-11-93. Ptl. Nichols made the comment to the Chief, "I have something that I have been holding onto for some time but now that this has happened I guess this is a good time to give you it officer Nichols then leaves the Chiefs office and comes back about 1 1/2 hours later and brings in a typed personnel complaint against Ass't Chief Moll. Chief reviews complaint and information contained in Ptl. Nichols statement. Statement implicates Ptl. Stone & Ptl. Mulverhill as actual witnesses to the incident. Ptl. Mulverhill interviewed and statement taken. Ass't Chief located at Campground at Meachum Lake, advised of the complaint and interviewed over the phone. Ass't Chief on vacation until July 31st and was advised to submit statement at that time. July 14th through July 18th Ptl. Stone on days off. Justice Court contacted on disposition of individual that was arrested during incident. File started on Chief's Personal Computer

on the investigation reflecting notes and thoughts. Mayor advised of the personnel complaint filed against Ass't Chief by Ptl. Nichols.

- 07-14-93 Disposition records obtained from Justice Court showing that subject pled guilty to the charges.
- 07-20-93 Ran Criminal History on subject involved.
- 07-??-93 Ptl. Nichols shows Officer Reyome a document in the department computer and further told Officer Reyome that he had made a copy of the letter and was going to give it to the Mayor. Officer Reyome again advises Ptl. Nichols to contact the Union before he does anything.
- 07-??-93 Ptl. Nichols tells Ptl. LaChance that he doesn't feel that the Chief was doing anything about the complaint that he put in against Ass't Chief Moll, Ptl. Nichols tells Ptl. LaChance that he was going to submit a memo asking him about the complaint.
- 07-21-93 Memo from Ptl. Nichols requesting results of personnel complaint he filed against Ass't Chief Moll. Letter sent back to Ptl. Nichols explaining that the investigation was being conducted, Privacy Act, & assuring him that the investigation was being treated the same as other personnel investigations.
- 07-22-93 Statement secured from Ptl. Stone on incident
- 07-??-93 (Week of July 24th) While working mornings, Ptl. Mulverhill & Ptl. Nichols go to Tessy's Diner and meet with Richard Brown. Ptl. Nichols tells Brown about the complaint that he made against Ass't Chief Moll and that he was dissatisfied on the way it was handled. Ptl. Nichols asked Brown on what he could do next.
- 07-??-93 Ptl. Nichols obtains a copy of a document in the computer with the help of Ptl. LaChance. Ptl. Nichols reads the document and tells Ptl. LaChance that the Chief was definitely covering up the complaint he made against Ass't Chief Moll. Ptl. LaChance tells Ptl. Nichols that anybody could have typed this in the computer and that it doesn't have much value.
- 07-27-93 Ptl. Nichols tells Det. Sgt. Mike Fleury that the Chief was very stupid as he was able to access into the Chiefs computer and get information that the Chief had in regards to Asst. Chief Molls

investigation.

- 07-??-93 Ptl. Nichols tells Ptl. LaChance that he is going to the Mayor because he felt he had enough on the Chief to bring him up on charges. Ptl. LaChance tells Ptl. Nichols that he should contact the Union first because going to the Mayor may be a violation of departmental rules.
- 07-??-93 Ptl. Nichols tells Ptl. LaChance that he was going to the D.A. with his information because he felt that Ass't Chief could be brought up on criminal charges. Ptl. Nichols tells Ptl. LaChance that he spoke with Mattimore and also obtained the pants that Mattimore was wearing the night of the incident. Ptl. Nichols also states that there maybe some FBI involvement if he doesn't get some satisfaction with the D.A. Ptl. LaChances tells Ptl. Nichols that he should not talk about what he is doing, Ptl. Nichols said that he doesn't care because he wants them (Chief & A/C) to sweat the way they made him (Nichols) sweat.
- 07-31-93 Ass't Chief returns from vacation and submits statement
- 07-31-93 During a work bee at the Franklin County Fair Grounds, Ptl. Nichols request a meeting with the Mayor. Mayor thought meeting was to discuss recent disciplinary action that was taken against Ptl. Nichols
- 08-02-93 Officer Reyome and Ptl. Nichols working night shift together. Ptl. Nichols told Officer Reyome that he felt that he had enough on Phillips and Moll that there may be some job openings on the department. He further stated that he had been to the Mayor and the D.A.
- 08-02-93 Ptl. Nichols asked Sgt. Ritchie who he should talk to if he had a problem with the Chief. Sgt. Ritchie advises him to contact the Union or an attorney for advice.
- 08-02-93 Ptl. Nichols meets with the Mayor at the Mayor's office. Ptl. Nichols starts talking about the Personnel investigation that he made against Ass't Chief Moll. Ptl. Nichols using words such as cover up by the Chief of Police. Ptl. Nichols tells the Mayor that he is keeping Mattimore appraised of the the investigation. Ptl. Nichols shows the Mayor a document that is a copy of notes that the Chief made during the personnel investigation. Ptl. Nichols states that he has been to the D.A. and

also mentions Grogan who is a FBI Agent. Ptl. Nichols mentions that he is continuing his investigation and has put alot of thought into this. Mayor gives document back to Ptl. Nichols.

- 08-02-93 (Monday) Chief returns from days off and compiles all information regarding personnel complaint made by Ptl. Nichols.
- 08-02-93 While working the night shift, Ptl. Nichols drives patrol car to Mayor's house and starts talking to Mayor about the DARE Program. Ptl. Nichols tells the Mayor that he has been terminated from the DARE Program. (No notice of termination to the DARE Program was ever given to Ptl. Nichols) Ptl. Nichols also tells the Mayor that the Chief offered the DARE Program to Ptl. Simonsen and that he only gave Ptl. Simonsen a day to make a decision. Mayor continually changes the subject of conversation to avoid discussing police department matters. Mayor is starting to get concern about Ptl. Nichols conduct and his stable frame of mind.
- 08-03-93 District Attorney Richard Edwards confirms that Ptl. Nichols was at his office about two weeks ago and showed him a document that had names blanked out and claimed that there was a cover up.
- 08-03-93 Memo from Ptl. Nichols left at Mayor's Office asking the Mayor to keep meetings with him confidential.
- 08-03-93 Complete file on personnel investigation reviewed by Chief.
- 08-04-93 Outline on Personnel Investigation against Ass't Chief Moll type up.
- 08-04-93 While working the night shift, Ptl. Nichols telephones the Mayor at his house and it became necessary for the Mayor to advise Ptl. Nichols to follow the departments rules and regulations. Mayor becomes very concerned with Ptl. Nichols frame of mind, phones the Chief at home and also locks windows in his own home.
- 08-05-93 Mayor contacts Chief asking him to submit charges and evidence to his office. Mayor wants this today because he is very concerned with Ptl. Nichols state of mind.
- 08-05-93 Mayor signs paperwork and Ptl. Nichols is suspended from regular duties.

08-05-93 Final determination on Chief's Investigation on Personnel complaint filed against Ass't Chief Moll submitted to Mayor and board for final determination.

08-10-93 Letter from Thomas P. Halley representing Ptl. Nichols and requested a public hearing.

08-16-93 Brian Stewart advises that he has talked with Halley and that in order to protect the right of privacy of Ass't Chief Moll, no other officers names will be identified at the hearing.

08-16-93 Brian Stewart interviews Ptl. Mulverhill at the station. Ptl. Mulverhill states that Ptl. Nichols met with Richard Brown and discussed the case.

08-16-93 Tom Grady Ft. Cov. Sun calls seeking comments on a officer being suspended. Grady stated that Ptl. Nichols attorney had a press release. Alison Calkins comes to station seeking log book for April 3rd 1993.

08-17-93 Malone Telegram, Nichols publically criticizes the police department stating "There's somebody else who should have been suspended for 30 days"

08-18-93 Plattsburgh Press Rubublican, Nichols publically criticizes department, stating he feared retaliation by the Chief, Others fear retaliation, Nichols confirmed he filed a complaint against another officer earlier this year.

08-18-93 Malone Telegram interviews Scott Mattimore. Mattimore states that Ptl. Nichols has talked with him twice about the incident since he got out of jail. Mattimore was released from Jail 06-11-93

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March 3, 1994

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

PERSONAL & CONFIDENTIAL

Re: Malone Police Department

Dear Jim:

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

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

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

TO: MAYOR JAMES FEELEY
RE: MALONE POLICE DEPARTMENT

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

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

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

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

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

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

TO: MAYOR JAMES FEELEY
RE: MALONE POLICE DEPARTMENT

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

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

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

Very truly yours,



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

BSS/tlw

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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

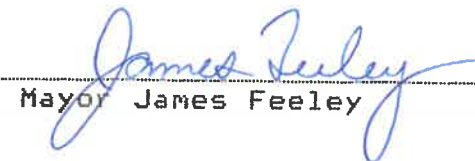
VILLAGE OF MALONE
16 Elm Street
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TO: Patrolman Patrick Nichols
FROM: Mayor James Feeley
DATE: October 22, 1993
RE: Punishment Imposed On You By Village Board

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

You are hereby reprimanded for your actions and violations of the department's duties and rules of conduct and this reprimand shall be attached to the hearing officer's report and made a permanent part of your personnel file.

I am also directing you to reread and acknowledge your understanding of the duties and rules of conduct of the police department. If you have any misunderstanding of the department's rules, please bring them to the attention of your immediate supervisor.



Mayor James Feeley



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JAMES BRIAN MCKEE

Mr. McKee, a native of Malone, New York and a 1961 graduate of Cornell University (major: Industrial and Labor Relations), entered on duty with the U.S. Naval Investigative Service in 1962 as a civilian special agent at the New York City Resident Agency. This followed a tour of active duty with the U.S. Army (Military Intelligence) and employment with the Malone (New York) Police Department. While attending Cornell University, Mr. McKee was also employed as a full-time police officer at Ithaca, New York.

Following additional NIS posting as the Resident Agent at Albany, New York, Mr. McKee served a five year tour in Europe. During this tour of duty, Mr. McKee was trained and certified as a Department of Defense polygraph examiner. From 1971 to 1974, Mr. McKee served as the Special Agent in Charge of the NIS Resident Agency at Washington, D.C.

Following a similar tour as the Special Agent in Charge at Camp Pendleton, California, Mr. McKee was reassigned as the Special Agent in Charge at New York City. He was transferred in 1979 to NIS Headquarters where he served tours as the Senior Staff Assistant to the Director, as the Assistant Director for Administration and finally as the first Assistant Director for Law Enforcement and Physical Security Programs - a Department of the Navy billet created to bring together all facets of management of the Navy's total law enforcement and security missions, operations and resources.

Mr. McKee directed a number of highly publicized espionage investigations in the 1980's which resulted in the arrest and conviction of more than ten persons actively engaged in espionage against the United States. This included the Moscow Embassy spy scandals, the Walker espionage ring, the Morrison espionage case and others.

Mr. McKee was reassigned in 1984 as the Regional Director for the NIS Northeast Region and in 1986 was selected for Senior Executive Service rank and duty as the second civilian Director of the Naval Investigative Service, a two thousand person federal law enforcement agency.

Mr. McKee is a graduate of the Federal Executive Institute and, while Director of NIS, was active in and served on various committees of the International Association of Chiefs of Police, the National Sheriff's Association and INTERPOL. Mr. McKee served

for three years as one of the United States delegates to the INTERPOL General Assembly. In addition, Mr. McKee served on various committees of the Law Enforcement Explorer Scout Program.

He is the recipient of numerous awards and commendations, including Presidential Commendations by Presidents Reagan and Bush for outstanding management in the field of law enforcement and by Attorneys General Meese and Thornburgh for outstanding federal service. At the time of his retirement in 1990, Mr. McKee was recognized on the floor of the United States Senate for his many contributions to the law enforcement profession. He has additionally been recognized by the federal law enforcement agencies of Canada, Australia, New Zealand, Bermuda, Japan and the Philippines for special contributions to international law enforcement efforts. The United States Secret Service presented its Honor Award to Mr. McKee in recognition of his contributions to Presidential security and the New York City Police Department has inducted Mr. McKee into its Honor Legion in recognition of his contributions to the operations of that agency.

Mr. McKee is an experienced criminal investigator with strong capabilities in the criminal investigative, foreign counterintelligence and personnel and physical security areas of the profession.

Mr. McKee retired from federal service in 1990 and now maintains his residence at Malone, New York. He owns and operates the McKee and James Investigative and Security Services, Inc., an association of former and retired special agents from the F.B.I., Customs Service and the Naval Investigative Service. The firm provides investigative services to the U. S. Customs Service, the Drug Enforcement Administration, the Department of State, the U.S. Air Force, local governments, private attorneys and numerous large corporations. He is also the owner of the Gateway Motel of Malone.

Mr. McKee's most recent TOP SECRET/SCI clearance was issued by SSO Navy on 4 November 1989, based on a satisfactory SBI PR completed by DIS on 3 May 1989. SCI access was originally granted on 18 June 1984. In connection with the numerous special accesses granted, Mr. McKee completed a satisfactory/non-derogatory polygraph screening. Since retirement, Mr. McKee has maintained his TOP SECRET security clearance in connection with the various contracts he holds with federal agencies. He additionally held an AEC Q clearance while associated with the Knolls Atomic Power Laboratory as the Resident NIS Agent thereat.

Mr. McKee is a licensed Private Investigator in the State of New York and holds the appropriate bond and licenses.

Since his retirement, Mr. McKee has been active in the United Way of Franklin County; serving for the past three years as the Campaign Chairman for that public service organization. In addition, Mr. McKee is a member of the American Legion and the Malone Lodge of Elks; serving as a Trustee for the latter organization.

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James Phillips - Direct

Q. 10.1.28.

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

Q. 10.1.77, please.

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

Q. And finally, 11.5.

A. "A member of the Force or Department shall treat as confidential the official business of the Police Department. He shall not talk for publication, nor be interviewed, nor make public speeches, nor shall he impart information relating to the official business of the Department to anyone, except under due process of law and as directed, or with the permission of the Chief of Police."

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

A. No, it is not.

Q. What are these rules for?

A. The police department is as close to a military

James Phillips - Direct

like a statement from him in regards to that incident.

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

A. April 2nd, 1993.

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

A. Yes, we do.

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

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

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

A. Yes, I did.

Q. When did you do that?

A. On July 14th.

Q. For whose benefit was that note?

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

1 James Phillips - Direct

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

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

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

15 A. Yes, it was.

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

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

25 (Interruption in proceedings).

James Phillips - Cross

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

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

Q. Who is on that police committee?

A. Trustees Earl Lavoie and Bob Fraser.

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

A. Yes, he is.

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

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

James Phillips - Cross

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

A. The paper has.

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

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

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

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

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

A. On July 14th.

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

BY MR. HALLEY:

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

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

James Phillips - Cross

not from Chief Phillips' investigation.

BY MR. HALLEY:

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

A. Not in late August of 1993.

Q. Well, sometime in August of '93?

A. August 4th of 1993.

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

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

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

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

MR. HALLEY: I think confidentiality has been waived.

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

MR. STEWART: Yes.

THE HEARING OFFICER: I think that it's

James Phillips - Cross

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

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

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

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

A. You are correct.

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

A. I don't understand your question.

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

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

1 James Phillips - Cross

2 I do not look at hearsay as being facts.

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

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

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

13 A. That's true.

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

17 A. I did not talk to Mattimore.

18 Q. Never?

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

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

James Phillips - Cross

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

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

A. That's correct.

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

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

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

A. What's that?

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

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

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

1 James Feeley - Direct

2 have any such communication with Officer Nichols?

3 A. Yes, I did.

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

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

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

11 A. No, he didn't.

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

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

16 Q. Where was that meeting to take place?

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

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

20 A. Yes, I did.

21 Q. When did that happen?

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

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

1 James Feeley - Cross

2 MR. HALLEY: I don't think it's irrelevant.

3 The basis of Mr. Nichols' claim --

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

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

15 BY MR. HALLEY:

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

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

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

24 A. No, he didn't.

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

James Feeley - Cross

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

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

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

A. Yes.

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

A. I know that he did not.

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

A. He was involved in the incident.

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

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

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

A. Chief Phillips' report states he spoke to all

1 James Feeley - Cross
2 parties involved.

3 BY MR. HALLEY:

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

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

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

12 THE WITNESS: Yes.

13 THE HEARING OFFICER: There was no
14 concealing?

15 THE WITNESS: No.

16 BY MR. HALLEY:

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

20 A. Phrased that way, yes.

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

23 A. Myself and Officer Nichols.

24 Q. How long did the conversation take?

25 A. Again, approximately 15, 20 minutes.

James Feeley - Cross

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

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

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

A. No, he did not.

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

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

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

A. Yes, it is.

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

A. No.

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

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

1 Chris Fountain - Cross by Mr. Halley

2 to my supervisors, which is the Chief and the Assistant
3 Chief, and made them aware of the situation.

4 Q. You told them Pat was investigating the Mattimore
5 thing?

6 A. I didn't say he was investigating it, I said it's
7 possible he's going to file a complaint, which is my
8 responsibility.

9 Q. What happened then? When did you go to the Chief
10 and say he might be filing a complaint?

11 A. Very shortly after, I can't give you a date, I
12 don't know.

13 Q. One other matter, there's been testimony that Pat
14 met with the Mayor. Before he met with the Mayor, do you
15 remember having a conversation with him about the context of
16 your Union status when he said, "I'm thinking about going to
17 the Mayor"?

18 A. In reference to a previous personnel complaint?

19 Q. No, this one.

20 A. Not this one.

21 Q. August of '93.

22 A. My discussion with Officer Nichols was with the
23 personnel investigation that was being done with Pat Nichols,
24 nothing to do with this. Pat's aware of what I'm talking
25 about.

APPELLATE DIVISION SUPREME COURT
THIRD JUDICIAL DEPARTMENT

PATRICK NICHOLS,

Petitioner-Appellant,

- against -

VILLAGE OF MALONE,

Respondent-Respondent.

* * * * *

RESPONDENT'S MEMORANDUM OF LAW

INDEX NO.: 93-755

CC #16-1-93-0275.P

* * * * *

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POINT I

IN ORDER TO EXTEND HIS TIME TO PERFECT PROCEEDING,
APPELLANT MUST SHOW REASONABLE EXCUSE AND FACTS
SHOWING MERIT TO THE PROCEEDING

§800.12 of the Supreme Court Rules provides that no brief or record may be filed after the nine (9) month deadline, except upon order of the Court. Such order must be supported by an affidavit setting forth a reasonable excuse for the delay and facts showing merit to the proceeding. Craven v. Flacke, 95 AD2d 964; Ponenti v. Regan, 99 AD2d 642 mot for lv to app den 62 NY2d 603; Bassett v. Powers, 126 AD2d 867 mot for lv to app den 69 NY2d 610; Gray v. Stecer, 150 AD2d 962.

POINT II

THE EXISTENCE OF A RELATED PROCEEDING IS NOT A REASONABLE

EXCUSE FOR APPELLANT'S DELAY IN THIS MATTER

Under certain circumstances, the existence of a related appeal or procedural matter has been held sufficient reason to justify the late perfection of an appeal or proceeding. In Chuttick v. Collins, 24 AD2d 540, a motion under CPLR §3216 was made to extend the time for filing a note of issue. In that case a venue question was then on appeal. It made eminent sense not to file a note of issue while the venue question was outstanding, and the Court so held.

In worker's compensation cases there has sometimes been a conflict between the Worker's Compensation Board rules for certification of a record on appeal and the rules of this Court governing the time within which an appeal must be perfected. In that type of case motions under §800.12 have been granted. See e.g. Garcia v. Brassiere Restaurant, 59 AD2d 628; Burns v. Miller Construction, 59 AD2d 630.

It appears to be the rule that when an outstanding appeal or other procedural matter creates an otherwise unresolvable conflict with an established time limitation reason should prevail and an appropriate extension should be granted. On the other hand, if the appeal or procedural matter does not create such a conflict, no extension of time need be granted. In Barnard v. Tops Friendly Markets, 99 AD2d 654 mot lv app den 61 NY2d 608, the defendant moved to dismiss under CPLR §3216 for failure of the plaintiff to file a note of issue. The plaintiff sought to justify his delay by pointing out that there was an appeal pending in a companion cause of action. The Appellate Division found that Special Term did not abuse its discretion when it granted the motion. The appeal complained of was not perfected until twenty (20) days after the notice of motion to dismiss was served.

In this case the second Article 78 Proceeding was not commenced until October 20, 1994, approximately seven (7) months after the transfer order was signed by Special Term in the first Article 78 Proceeding. Appellant has failed to point to any matter or issue in the second Article 78 Proceeding the resolution of which would in any way bear upon this Court's resolution of the first Article 78 Proceeding. In fact the two (2) proceedings are related only by the identity of the petitioner. The matters are not factually related. The pendency of the second Article 78 Proceeding is no excuse for Appellant's failure to perfect the first proceeding.

POINT III

LACK OF A REASONABLE EXCUSE ALLOWS DISMISSAL
OF THE PROCEEDING REGARDLESS OF THE MERITS

§800.12 requires the showing of a reasonable excuse and a meritorious appeal or proceeding. Lack of either requirement can result in a dismissal of the appeal or proceeding. In particular, lack of a reasonable excuse lead to a dismissal in matter of Commissioner of St. Lawrence County Social Services v. Downs, 122 AD2d 966, without regard to the merits of the underlying matter.

POINT IV

FAILURE OF APPELLANT TO INCLUDE AFFIDAVIT OF MERITS

REQUIRES DISMISSAL

§800.12 of this Court's rules requires the showing of facts establishing merit to the appeal or proceeding. Lack of an affidavit of merit resulted in a dismissal in Jones v. Axelrod, 131 AD2d 922, without reference by the Court to any excuse for late filing. In this case there has been submitted no affidavit of merit and no affidavit at all from the Appellant himself.

In this context the showing of merit to this proceeding requires a showing that the Village Board imposed a punishment on Appellant pursuant to Civil Service Law §75 without substantial evidence. The lack of any documentary evidence or affidavits in support of Appellant's position dooms this motion.

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CONCLUSION

The Appellant has shown no reasonable excuse for his failure to perfect this proceeding. The Appellant has made no factual showing of the merit of this proceeding and has shown only a single fact of an unrelated and irrelevant nature upon which he bases the current motion. The motion to extend Appellant's time to perfect should be denied and the proceeding should be deemed dismissed pursuant to §800.12.

Respectfully submitted,

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Dated: January 9, 1995

To: Thomas Halley, Esq.
Attorney for Appellant
297 Mill Street
Poughkeepsie, New York 12601

APPELLATE DIVISION SUPREME COURT
THIRD JUDICIAL DEPARTMENT

PATRICK NICHOLS,

Petitioner-Appellant,

- against -

VILLAGE OF MALONE,

Respondent-Respondent.

State of New York)
) ss.
County of Franklin)

AFFIDAVIT IN OPPOSITION
TO MOTION TO EXTEND TIME
TO PERFECT PROCEEDING

Index No.: 93-755

CC # 16-1-93-0275.P

BRIAN S. STEWART, being duly sworn, deposes and says that:

1. I am the attorney for the Village of Malone, Respondent herein.
2. An order of transfer in the underlying Article 78 Proceeding was drafted by Appellant's attorney and signed by Special Term on March 30, 1994.
3. Nine (9) months from the date of such transfer expired on or about December 30, 1994 and Appellant has not filed a brief or a record.
4. On December 29, 1994 Appellant moved under §800.12 of this Court's rules for an order extending his time to perfect this proceeding.
5. On such a motion the moving party is required to show a reasonable excuse and facts showing merit to the proceeding or appeal.
6. This matter is an Article 78 Proceeding in which Appellant alleges that there was insufficient evidence elicited at a Civil Services §75 Hearing to justify respondent's punishment of petitioner. All other grounds raised in this Article 78 Proceeding were determined in the respondent's favor by Special Term. No Notice of Appeal was filed from that decision.
7. Appellant's punishment consisted of a sixty (60) day suspension without pay from his job as Patrolman with the Malone Village Police Department.

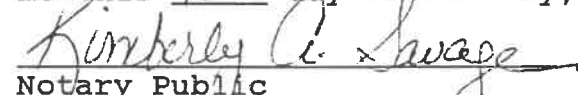
8. Subsequent to his punishment Appellant was charged a second time with work rule violations. Another hearing under Civil Service Law §75 was held on June 16, 1994. This time, the Village Board terminated the Appellant on August 22, 1994. A second Article 78 Proceeding was then commenced by Appellant on or about October 20, 1994 which is still pending in Franklin County Supreme Court.
9. Appellant's "reasonable excuse" for his failure to perfect this proceeding is that the second Article 78 Proceeding is still pending. As a matter of law and of fact this is insufficient. The second Article 78 Proceeding was commenced approximately seven (7) months after Supreme Court's transfer order in this case. The two (2) matters are unrelated procedurally or factually. Nothing in the matter currently before this Court is in any way dependent upon the outcome of the second Article 78 Proceeding.
10. Appellant's motion consists of an affidavit by his attorney alleging discovery, in the second Civil Service Hearing, that the Hearing Officer in the first Civil Service Hearing and the Chief of Police were and are friends. The motion contains no proof of bias, prejudice or animosity on the part of the Hearing Officer in the first Civil Service Hearing. There is no other substantial excuse alleged for the late filing.
11. Paragraph 15 of the Affirmation in Support of Appellant's Motion states that this "new" information was discovered on June 16, 1994, more than six (6) months ago.
12. Mere friendship between a hearing officer and a chief of police, even if proof of such had been shown, would not be enough, by itself, to demonstrate bias or the appearance of impropriety. As Judge Plumadore pointed out in his decision in this matter dated March 14, 1994 "there has been no showing of the extent of his friendship with the Police Chief nor how, in a community the size of Malone (Village population 6,777), that alone would require disqualification under the Code of Judicial Conduct."
13. The so-called "new evidence" is not relevant to the question of substantial evidence. Instead, it appears to be relevant only to a question of whether lawful procedure was followed. That question has been previously decided by Special Term in favor of Respondent. Appellant filed no Notice of Appeal from that portion of Special Term's order.

14. Moreover, the motion contains no general affidavit of merit and no affidavit at all from the Appellant which in any way justifies or tends to show the Appellant's basic contention, regarding an alleged lack of substantial evidence.

14. The Appellant has failed to show any reasonable excuse for his failure to perfect his appeal in this matter. Moreover, he has failed to establish facts showing that this matter has any merit. Consequently, this proceeding should be deemed dismissed pursuant to Rule 800.12.


Brian S. Stewart

Subscribed and Sworn to before
me this 10th day of January, 1995


Notary Public

KIMBERLY A. SAVAGE
Notary Public, State of New York
No. 4966828
Qualified in Franklin County 1995
Commission Expires October 2, 1995

TO: Mayor, Village Board & Chief of Police
FROM: Village Attorney
RE: Patrick Nichols

On July 18, 1996, the Supreme Court, Appellate Division, Third Department handed down a ruling on Patrick Nichols v. Village of Malone.

The Court addressed two separate disciplinary decisions. The first decision alleged Mr. Nichols violated various rules and regulations of the police department by engaging in unauthorized meetings with individuals outside the department and accusing certain of his colleagues of "covering up" a particular incident that occurred in a holding cell. The second decision alleged that Mr. Nichols provided false and misleading information to his superiors during the course of an investigation.

Following a hearing on the first charge, Mr. Nichols was suspended without pay for 60 days and fined \$ 100.00. After the second hearing his employment was terminated.

The Appellate Court addressed two technical issues in the Appeal, which are not relevant for our purposes, and then noted that the respondent, Mr. Nichols' was guilty of insubordination, and the determination of his termination, was amply supported by the record. Therefore, Mr. Nichols CPLR article 78 proceeding reviewing his termination was dismissed.

I have spent a significant amount of time researching Mr. Nichols apparent opinion regarding former Chief Phillips, because I wanted to explore any possible avenue so we wouldn't be surprised at the Monday's meeting. In a nutshell, it is my legal opinion that Mr. Nichols is no more entitled to reinstatement then a person walking off the street and asking for a position on the police force. I strongly advise that the board not entertain any discussion on the issue until a court of the State of New York orders you to do so. The December 15, 1998 letter of James Phillips has no legal bearing on Mr. Nichols case, and is an entirely unrelated issue. It is worth noting that while Mr. Phillips did apologize for

an error in judgment, he admitted to no specific crime and his case has simply been adjourned in contemplation of dismissal.

If Mr. Nichols wants a job as a village police officer he can go to the courthouse and meet with the civil service department, or have a court direct you to reappoint him, any other avenues of discussion, without some definitive legal foundation, would be a waste of your valuable time. I have left a copy of the case and a copy of Mr. Phillips' letter with Elizabeth for your review.

Should you have any questions please don't hesitate to call me at 483-3608 or at 481-1542.

→ Review and make
recommendation to the Bd.
→ 1. issue for executive session
2. go into executive session
with Rt.

Presentation to Malone Village Board Jan. 11, 1999
Nichols reinstatement to Police Dept.

OUTLINE

- I) Introduction
 - A) Background
 - C) Tone of meeting
- II) Purpose (two part)
 - A) Consider Nichols reinstatement to the P.D.
 - 1) Basis - 3 Violations of the Equal Protection Law (rvw. & copy)
 - a) Violation #1 Village Gov't informed of possible official misconduct against Chief Phillips on two separate occasions but handles both extremely different.

Narrative description:

In the first occasion Village is informed of possible Official Misconduct by Chief Phillips by a Police Officer from within the Dept.. The Village through it's actions and in-actions aggressively **discourages** any investigation against Phillips. The Mayor alerts Phillips as to the allegations and who the source (Nichols) of the complaint is. Phillips is then permitted to file charges against Nichols. At no time throughout a civil service proceedings against Nichols does the Village pursue an investigation against Phillips to substantiate Nichols claim.

In the second occasion Village receives information from someone outside of the Police Dept., a peace Officer, of possible official misconduct by Phillips. The Village aggressively **encourages** an investigation against Phillips by it's actions. A private investigator is hired to substantiate the allegations of misconduct against Phillips even though the information is from a non-member of the Police Dept.. Once the allegations are further substantiated the Village pursues criminal charges by sending information to the District Attorney's office. Phillips later arrested for official misconduct.

Argument:

It would be argued that the Village deprived Nichols of "equal protection of the laws " as provided for in the 14th Amendment "equal protection of the law clause " in that he was not treated as equally as another person in a similar situation.

Equal protection: People in the same circumstances be treated alike under the law.

Similar circumstances are that on two separate occasions Village receives information regarding criminal conduct against the same person by two different people. One of which is a Peace Officer and the other a Police Officer.

Summary: The Village followed completely different procedures regarding two similar matters of official misconduct against the same person. Both matters involving informants of similar authority. One was thoroughly investigated and the other was not at all investigated. The presence of an investigation in the second resulted in criminal charges against Phillips which lends credibility to Nichols complaint. The fact that the Village gave credibility to one authority informant and none to the other clearly shows a difference in equal and fair protection. Both authority informants are required by law to either enforce or report violations of misdemeanors or felonies. The different courses of actions by the Village has seriously negatively impacted Nichols.

- b) Violation #2 Village Gov't treats employees involved in separate but similar matters extremely different.

Narrative description:

In the first occasion the name of the source of the complaint against Phillips (Nichols) was conveyed to Phillips by a Village Board member (pg 99 ln 18). Phillips suspended Nichols alleging that Nichols had violated a number of Dept. rules & regs of the Dept.. Primarily the charges related to Nichols having discussed Police matters, complaint against Phillips, with specifically a Village Board member and the D.A. without first getting Phillips permission to do so. (11.5) Phillips later testifies that even though it was he being investigated that rule 11.5 required his permission.(pg 41 & pg 16 ln 12). Nichols asserted in his defense that since the Chief was the suspect that the next in the chain of command be notified, the Mayor and or D.A.. There was no consideration or allowance for this assertion as a defense by the Chief, hearing officer or the Village, thus a precedent. Nichols subsequently suspended for 60 days without pay, fined \$100.00 and reprimanded.

In the second occasion it is understood the Villages investigation was able to coöperate the allegations against Phillips from an officer (John Doe) within the Dept.. It is further understood that John Doe did not get permission to discuss Police matters with a Village representative (private investigator) and or the D.A. nor has he been disciplined as Nichols for doing so. John Doe's name has not been conveyed to the Chief of police as was Nichols in first occasion.

Argument:

It would be argued that the Village deprived Nichols of life, liberty & property in that he was denied the " equal protection of the laws " by having treated him extremely unequally and unfairly in comparison to another person in a similar situation..

Equal protection: People in the same circumstances be treated alike under the law.

Circumstances are that both Nichols and John Doe as required by rule 11.5 did not get permission from their Chief to discuss Police matters with a Village representative (Mayor or investigator), or the D.A.. Other similar circumstances in that the information being discussed suggested Official Misconduct against the same person.

Summary: At the point on both occasions in which the Village had received information supporting official misconduct by Phillips the Village clearly treated both Police sources extremely different. Both were involved in almost exact situations in that they disclosed such information to the same parties and both did so without permission from the Chief. The precedent was established in the first occasion when Nichols was charged, found guilty and suspended for 60 days without pay. Although the same set of rules apply to all officers the Village has chosen to disregard them in the second matter. The differential treatment has seriously negatively impacted Nichols.

- c) Violation #3 Village handles criminal allegations against two Police employees extremely different.

Narrative description:

In the first occasion the Village receives information from Chief Phillips alleging that Officer Nichols has broken several Dept. rules & regs.. Most specifically that Nichols had committed perjury. Perjury is a criminal offense. The Village suspended Nichols, held a civil service hearing and then fired Nichols based on the recommendation of the hearing officer. **Ironically, the Village found Nichols not guilty of soliciting signatures on a petition but somehow found him guilty of lying when he denied having solicited signatures.** Several months later a Grand Jury considered the matter of perjury against Nichols and returned a No Bill due to lack of evidence. The Grand Jury relies on a preponderance of the evidence as does a municipality in a civil proceedings. The evidence being equal for both the Village and the Grand Jury in that three eyewitnesses testified that Nichols did not do what he was being accused and only one was testifying to the contrary. Same burden of proof, same evidence- different outcomes.

In the second occasion the Village receives information alleging that Chief Phillips has committed several counts of Official Misconduct. Official Misconduct is a criminal offense. The Village takes no civil action against Phillips during the entire time the matter is being investigated. Phillips is later arrested for Official Misconduct. The Village decides not to take any civil action against Phillips which it has every right to.

Argument:

It would be argued that the Village deprived Nichols of " equal protection of the laws " in that he was not treated as equally as another person in a similar situation.

Equal protection: People in the same circumstances be treated alike under the law.

Similar circumstances are that both parties were Police Officers employed by the same Village Gov't.. Both had been accused of committing crimes.

Summary: The Village followed a completely different process for substantiating criminal allegations and for determining guilt. Upon determining such guilt they imposed extreme civil penalties on one employee and none on the other. It is completely apparent that the Village had far less evidence in the case that resulted in a far greater penalty. They also did so knowing that Nichols was asserting that Phillips was merely retaliating for having earlier been accused by Nichols of a police cover up by Phillips. These completely different courses of action by the Village has seriously negatively impacted Nichols.

It is with this recently surfaced information and apparent but unintended discrimination that I respectfully request this Village Board to reinstate me to the police Dept.. A resolution supported by a set of new facts and new information calling for my reinstatement would be a fair and equal solution as well as a diplomatic end to a potentially course and costly court affair. I call on your courage and fairness to vote to reinstate me.

B) Consider fair & reasonable conditions of reinstatement

1) Basis for conditions

- a) damages and losses resulting from unfair treatment
(reputation, integrity, stress to family, financial, ridicule,
career and personal protection)
- b) Cover up (1st suspension)
 - 1) Computer letter w/points of contention (provide copy of
letter and supporting documents)
 - 2) Letter not allowed in as evidence for my defense
 - 3) Nichols found guilty by hearing officer who was later
best man in Phillips wedding.
- c) Retaliation (2nd suspension)
 - 1) 5 hr interrogation over 100 questions
 - 2) Charged with lying to Phillips
 - 3) Hearing Officer stating he believes Phillips testimony
without having heard any other witnesses
 - 4) Scott Smith employees testimony and Smith's connection to
P.D.
 - 5) Grand Jury No Bill (lack of evidence)
 - 6) Found guilty by hearing officer and fired by Village

POINT BEING MADE is that there is information supporting suspicion of a cover up and subsequent retaliation. Therefor if Nichols had been kept anonymous and protected that there may have well been criminal charges levied against Phillips. Thus preventing retaliation against Nichols in both hearings, unnecessary legal fees by both Nichols and Village of Malone, no disciplinary action, no termination and no differences in treatment between Nichols and Officer John Doe.

EXHIBIT 4

PERSONNEL COMPLAINT

JULY 13, 1993

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

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

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

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

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

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

This letter found in computer and given to me
by Officer Lachance.

Pat Moll

Basis for suspecting a cover up

The attached document is an exact copy of a memo found on the computer at the Police Dept. several days after I filed a written complaint regarding the mistreatment of a man in Police custody. The memo was found by Officer Lachance (pg 127 ln 24) and presented to me by LaChance.

Chain of events and points supporting an intent to cover up:

- 01) My complaint filed July 13th
- 02) Phillips testifies that he was not aware of my complaint until July 13 (pg 74 ln 6)
- 03) Sgt. Fountain testifies he alerted Phillips of my complaint prior to July 13 (pg 296 ln 2)
- 04) Phillips testifies he wrote memo on July 14th (pg 23 ln 22)
- 05) Feeley testifies that Phillips told him on July 14 complaint was unfounded (pg 96 ln 9)
- 06) Phillips later testifies it took over two weeks to complete investigation (pg 42 ln 7) **The computer memo suggest contrary and he had already advised Feeley on July 14 the complaint was unfounded which was only one day after he received the complaint.**
- 07) Feeley testifies that on July 14 Phillips stated that all parties involved had given statements. (pg 97 line 12)
- 08) Phillips later testifies that he did not get a statement from one officer until July 22. (48 ln 12) and never got a statement from the victim. (pg 49 ln 17) **This contrary to computer memo**
- 09) Nichols on July 16 meets with D.A. about concerns of a coverup
- 10) About July 19 LaChance provides Nichols a copy of Chief's findings that had been written on July 14.
- 11) Stone on July 21 stating he had not yet been interviewed.
- 12) Nichols on July 21 requests status of his complaint from Phillips
- 13) Memo on July 21 to Nichols from Phillips stating investigation not complete **The computer memo indicates otherwise.**
- 14) Steve Stone stating on July 22 he was interviewed for the first time.
- 15) Feeley testifies he was aware that not everyone involved had given a statement (98-20 & 97-15)
- 16) Nichols meets Feeley on Aug. 2 to appraise of cover up (pg 86 ln 22)
- 17) Phillips testifies Feeley comes to his house Aug 2 after meeting with Nichols to alert him to the complaint of a cover up. (pg 37 ln 5)
- 18) Phillips then testifies he files the report on August-4 (pg 45 ln 9)

Disputable facts from computer memo as either misleading and inaccurate statements or intentionally omitted pertinent information.

- 01) para #1, "omits" criminal allegations of Official Misconduct
- 02) para #2, "misleading" suggest complaint was filed as retaliation by Nichols. Testimony from Sgt. Fountain warning Phillips of Nichols intent to file the complaint prior to Nichols being reprimanded on July 13th. Nichols defense suggest Phillips reprimanding Nichols in an attempt to intimidate Nichols and discourage him from filing complaint.
- 03) para #2, "inaccurate" not all information was hearsay
- 04) para #2, "inaccurate" suggest Nichols was not the one who should have filed the complaint. Phillips later testifies that since my immediate supervisor was the accused that I should then go to Phillips himself.
- 05) para #3, "inaccurate" Officer Stone had not yet been talked to about the matter
- 06) para #3, "misleading" The victim did plead guilty to the charge but did so as part of plea bargain which threw out several other charges.
- 07) para #3, "misleading" policy is accurate but this complaint suggest that an Officer created the circumstances that left the victim no alternative but to break the window.
- 08) para #4, "inaccurate" there were in fact department rules of conduct in effect
- 09) para #5, "misleading" exonerates officer of wrongdoing. Later testifies it took several weeks to investigate and at the time this memo was written he had not interviewed all parties.
- 10) para #6, "misleading" the bleach was not just spilled but nearly an entire gallon poured at the base of the door and pushed under.
- 11) para #6, "misleading" does not give consideration to hazard of mixing bleach with urine without first diluting bleach as required. The combination without dilution makes ammonia and when in a small unventilated room as the victim was in creates a serious health risk. (bleach manf. and poison control center).
- 12) para #6, "inaccurate" Department Blood Borne Policy requires bleach to be diluted 10 part water to 1 part bleach. This policy violated by Officer.
- 13) "omits" Department policy requires any person in custody being detained in the holding cell must be secured to the bench. This violation of a Dept. rule by the Officer in charge would have prevented the victim from urinating in the cell. Which incidentally the victims plea for the use of a urinal were ignored as well as his pleas for ventilation after the bleach was inappropriately used.

It is with this information that I ask the Board to consider the following conditions with reinstatement.

- 1) Full seniority to date from hire date of June 88
- 2) Full retirement paid to date from hire date of June 88
- 3) Placed at pay scale using start date June 88
- 4) Legal fees incurred in defense against Village as per receipts \$7,200.00
- 5) Waiver from N.Y.S. for Police School
- 6) Recertified to all previously held certifications within 1 yr
(excluding D.A.R.E.)
- 7) One years worth of sick time, holiday time, vacation time and personal time to be accrued.
- 8) A resolution removing Moll the authority to be in anyway involved in investigating complaints against me or taking disciplinary action against me.
Thus giving such authority to next in command.
- 9) The Villages resolution to reinstatement of Nichols include
 - a) An apology for unfair and unequal treatment regarding his allegations of a cover up within the Police Dept..
 - b) An apology to his family for all they have endured.
 - c) Reference to his reinstatement having been a cooperative effort between the Nichols family and the Village Board after reviewing and considering recently surfaced information.
- 10) The resolution to reinstate be printed in the Malone, Plattsburgh, Saranac Lake and Tupper Lake papers.

In return I will agree:

- 1) Not to initiate any legal action against Village Board members approving these resolutions with a majority approval.
- 2) Not to seek any back pay (salary) for time out.
- 3) Not to Suggest publicly that the reinstatement implies any wrong doing on Moll's part. (preventing action by victim of bleach incident)

CLOSING:

I ask that you deal with these issues separately. The issue of reinstatement must be considered first with great emphasis placed on fair and equal treatment. Should the Board decide against this request then there is no need to consider my second request at which time we will pursue the alternative, legal action.

Should the Board approve reinstatement I ask that you give great consideration to my second request. The conditions as listed are reasonable and would address with satisfaction the issues of reputation, integrity, stress, financial, ridicule, career and personal protection.

The alternative would be to seek compensation for damages and losses which if successful would be much more costly to the Village. The cost to simply defend a legal action would be greater to the Village than the cost of the requested conditions as listed above.

Finally I request the Board schedule a public hearing on Jan 25th for the purpose of allowing public comment on the issue of " a request for reinstatement to the Police Dept. by Pat Nichols ".

This hearing would benefit both the Board and myself. On the evening I was fired many residents wished to speak on my behalf. Only after I was fired were they allowed to speak. This act before the board only alienated the people from it's Gov't. and created immediate animosity. Comments from the public on this request may provide the Board with a sense of direction. Either decision by the Board with this request will come with a monetary, ethical and moral price. It is my opinion that by including the public in this controversial matter that your decisions can be made with the best interest of the public in mind. Which was not considered 5 years ago. At the same time the outcome of the public hearing will allow me to determine if the interest of the public is to have me reinstated.

With all in this document having been covered on this 11th day of January, 1999 I sincerely thank you for your time & fairness.

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

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

BRYAN J. HUGHES
BRIAN S. STEWART

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

May 10, 1995

James Phillips
2 Park Place
Malone, New York 12953

RE: NICHOLS VS. FEELEY, ET AL

Dear Jim:

Our motion to dismiss Mr. Nichols' complaint was argued in Federal Court in Albany on May 8th. My office received a phone call from Jim Brooks at noon on that day. Jim indicated that the case had been dismissed in its entirety.

With respect to the claims against the individual trustees, the two hearing officers and the attorney, the claim was dismissed "with prejudice" meaning that it can never be brought again.

With respect to the claim against the Mayor, the Chief and the Assistant Chief the claim was dismissed without prejudice. This means that Nichols can try and redraft and reserve a complaint against those defendants if he does so within the next thirty (30) days. If he takes this course the Judge made clear that the complaint would have to be clear and succinct and specify "what the hell the claim is." The Judge apparently agreed with Jim Brooks' argument that Nichols' complaint was confusing and poorly drafted.

If Nichols chooses to redraft his complaint he can also include a claim against the Village Trustees in their representative capacity, not their individual capacities. This claim would be limited to one seeking to get his job back. Monetary damages would not be allowed on that claim.

TO: James Phillips
RE: NICHOLS VS. FEELEY, ET AL

May 10, 1995
Page - 2 -

The outcome of the motion was an excellent one and the best that could possibly have been hoped for.

Thank you all for your patience in dealing with this unpleasant matter.

Very truly yours,

HUGHES & STEWART, P.C.


Brian S. Stewart

BSS/mew

cc: James Brooks, Esq.

LAW OFFICES
BROOKS & MEYER

2 OLYMPIC DRIVE
LAKE PLACID, NEW YORK 12846

518-523-1555
FAX: 518-523-4486

JAMES M. BROOKS
RICHARD B. MEYER

May 9, 1995

VIA FAX/MAIL

Titan Indemnity Company
Attn: Neal Plummer, Litigation Analyst
P.O. Box 60007
San Antonio, Texas 78209

Re: Nichols v. Feeley, et al
Your Insured: Village of Malone, NY
Claim No. 42369

Dear Neal:

On May 8th oral argument on the motion for dismissal of claims against 8 of the 10 defendants and other relief was heard and decided by Chief Judge McAvoy in Albany, New York. I submit this letter report of the result of the motion by a terse summary of Judge McAvoy's decision:

1. The claims against Hearing Officer Brian McKee are dismissed with prejudice, he being entitled to absolute immunity;
2. The claims against Hearing Officer John Lawliss are dismissed with prejudice, he being entitled to absolute immunity;
3. The claims against prosecuting attorney Brian Stewart are dismissed with prejudice, he being entitled to absolute immunity;
4. The claims against Village legislators Dame, Lavoie, Fraser and Grant seeking money damages are dismissed with prejudice, they being entitled to absolute legislative quasi-judicial immunity;
5. The claims against village legislators Dame, Lavoie, Fraser and Grant seeking declaratory and injunctive relief are dismissed without prejudice, plaintiff having the right if he be so advised to serve an amended complaint within 30 days following

the entry of an order dismissing the present action against said defendants limited to claims seeking declaratory/injunctive relief and further limited to the relevant fact contentions seeking such relief set forth in the existing complaint;

6. On the court's own motion the claims against defendant Mayor James Feeley, defendant Police Chief James Phillips and defendant Assistant Police Chief Moll are dismissed without prejudice, with leave to plaintiff to serve an amended complaint if he be so advised clearly and succinctly stating the alleged constitutional torts he claims said defendants are to be charged with, if any, which said claims shall not go beyond the fact situations/claims expressed in the original complaint. In that regard the claim against Mayor Feeley may include a similar claim for declaratory and injunctive relief as against Village legislators Dame, Lavoie, Fraser and Grant as stated in 5 above.

As anticipated and noted in prior correspondence, Judge McAvoy already had his decision in written format in his own personal notes. He read the decision from the bench after oral arguments. This process followed by Judge McAvoy required us to purchase the transcript from the stenographer, a method which then provides the court with a free copy for its own files for future reference, makes some money for the stenographer and costs the party who prevails to incur that expense. I ordered the transcript and it should be received within the next 30 days.

Judge McAvoy directed I prepare and submit a proposed order. I am preparing same and expect to be submitting it by the end of the week.

I am pleased with the result and assume Titan and the defendants are pleased and relieved. In Judge McAvoy's oral decision from the bench he cited most of the judicial precedent submitted by our memorandum of law as support for his rulings, which made his decision professionally satisfying to me. I believe we have established some very relevant and significant judicial precedent for those municipalities in the State of New York like the Village of Malone forced to deal with the processes of New York State's Civil Service Law Article 75.

I am faxing a copy of this letter to Attorney Stewart, Attorney Bessette and John Lawliss so they are advised of the specifics of the result of the motion, with cautionary advices to all to limit public comment. The order has not yet been signed and it is anticipated that plaintiff Nichols will ultimately serve

an amended complaint. The litigation will proceed until completely resolved by way of my next motion. I provide those cautionary words so that careless statements are not made to the media that can adversely impact future defense of the action. No case is over until it is over by passage of the final time to appeal, and we are not at that point in time.

Yours very truly,



James M. Brooks

JMB/pb

cc: Brian Stewart, Esq.
James Bessette, Esq.
John Lawliss

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

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

BRYAN J. HUGHES
BRIAN S. STEWART
DEREK P. CHAMPAGNE

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

July 23, 1996

James Feeley, Mayor
Village of Malone
14 Elm Street
Malone, NY 12953

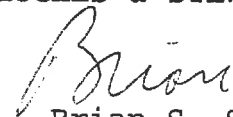
RE: Patrick Nichols vs Malone

Dear Jim:

Enclosed is a copy of the Decision of the Appellate Division.

Very truly yours,

HUGHES & STEWART, P.C.



Brian S. Stewart

BSS/bb

Enc

cc: Chief James Phillips
James Brooks, Esq.

COPY

*Supreme Court - Appellate Division
Third Judicial Department*

Decided and Entered: July 18, 1996

72779A
72779B

In the Matter of PATRICK
NICHOLS,
Petitioner,

MEMORANDUM AND JUDGMENT

VILLAGE OF MALONE, Respondent.

(And Another Related Proceeding.)

Calendar Date: April 24, 1996

Before: Mikoll, J.P., Mercure, Crew III, Yesawich Jr. and
Peters, JJ.

Thomas P. Halley, Poughkeepsie, for petitioner.

Hughes & Stewart P.C. (Brian S. Stewart of counsel),
Malone, for respondent.

Crew III, J.

Proceedings pursuant to CPLR article 78 (transferred to this court by two orders of the Supreme Court, entered in Franklin County) to review two determinations of respondent which, inter alia, terminated petitioner's employment as a police officer with respondent.

At all times relevant to these proceedings, petitioner was employed as a police officer by respondent's police department. In August 1993, petitioner was served with a statement of charges alleging that he violated various rules and regulations of respondent's police department by, among other things, engaging in unauthorized meetings with individuals outside the department and accusing certain of his colleagues of "covering up" a particular incident that occurred in respondent's jail. Following a hearing, petitioner was suspended in October 1993 for

60 days without pay, with a credit for 30 days already served, and fined \$100. Petitioner commenced a proceeding pursuant to CPLR article 78 challenging that determination in December 1993 (hereinafter proceeding No. 1), which was transferred to this court by order of Supreme Court in March 1994.

In the interim petitioner returned to work but was again served with a statement of charges in April 1994 alleging, inter alia, that he provided false and misleading information to his superiors during the course of an investigation. A hearing on these charges was held and, ultimately, petitioner's employment was terminated. Petitioner thereafter commenced another CPLR article 78 proceeding challenging his dismissal (hereinafter proceeding No. 2), which was transferred to this court by order of Supreme Court in April 1995.

In the context of proceeding No. 1 petitioner, as so limited by his brief, contends that he was denied a fair and impartial hearing due to the Hearing Officer's purported bias and the Hearing Officer's decision to exclude particular evidence and curtail certain testimony. We cannot agree. The mere fact that the Hearing Officer was formerly employed as a police officer by respondent was not sufficient to disqualify him from presiding over petitioner's hearing, and the record as a whole fails to substantiate petitioner's claim of bias (see generally, Matter of Roberts v Stolzenberg, 202 AD2d 854). Additionally, to the extent that petitioner attempted to introduce proof of alleged prior unrelated "cover ups" by respondent's police department, the Hearing Officer properly excluded such proof as irrelevant to the issues at hand. Further, assuming, without deciding, that the Hearing Officer erred in failing to admit into evidence or permit questioning relating to certain documents prepared by respondent's Chief of Police, our review of the record reveals that the Hearing Officer's rulings in this regard did not preclude petitioner from establishing his defense and, as such, any error may be deemed harmless.

Of the numerous claims raised by petitioner in proceeding No. 2, only two warrant discussion. During the course of petitioner's disciplinary hearing, testimony was elicited from respondent's Chief of Police regarding various infractions purportedly committed by petitioner following his return to duty in November 1993. Although evidence of this uncharged misconduct plainly should not have been received into evidence, a review of the underlying determination reveals that such evidence was not considered in reaching a determination as to guilt (see

generally, Matter of Finigan v Lent, 189 AD2d 935, 939, appeal dismissed 81 NY2d 1067, lv denied 82 NY2d 657).¹ Additionally, we reject petitioner's assertion that the determination is not supported by substantial evidence in the record as a whole. In this regard, although petitioner contends that the Hearing Officer's findings of guilt are inconsistent, we note that respondent ultimately sustained only one of the numerous charges against petitioner, finding him guilty of insubordination, and that determination, in turn, is amply supported by the record. Petitioner's remaining contentions have been examined and found to be lacking in merit.

Mikoll, J.P., Mercure, Yesawich Jr. and Peters, JJ.,
concur.

ADJUDGED that the determinations are confirmed, without costs, and petitions dismissed.

ENTER:

/s/ ~~Michael J. Novack~~

Michael J. Novack
Clerk of the Court

¹ To the extent that it also was inappropriate for the Hearing Officer to consider such evidence in recommending a penalty, inasmuch as the penalty of dismissal is fully supported by the record, any error in this regard may be deemed harmless.

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953 ,

BRYAN J. HUGHES
BRIAN S. STEWART

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

August 8, 1994

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

**RE: VILLAGE OF MALONE VS.
PATRICK NICHOLS**

Dear Tom:

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

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

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

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

Very truly yours,

HUGHES & STEWART, P.C.

Brian S. Stewart

BSS/mew

cc: James Feeley
Elizabeth J. Bessette
Chief James Phillips✓

Chief Moll

To: Mayor & Trustees
From: Village Attorney
Re: Police Officer reappointment request
Date: January 21, 1999

Attorney - Client Work product
Confidential

Executive Session

At the Previous Village Board meeting, Mr. Nichols took issue with my legal opinion that the discussion he desired was not a proper subject for Executive session. Mr. Nichols was apparently relying on Art. 7 section 105 (d) of the Opening Meetings Law, which states in part, that upon a majority vote a public body may conduct an executive session to discuss proposed, pending or current litigation.

In the past year the Village was criticized for having too many executive sessions, and thus allegedly denying the public the full facts of matters and issues being considered by the Village. It is still my opinion that the threat of litigation does not warrant an executive session, in this particular case. Weatherwax v. Town of Stony Point (2nd Dept. 1983) 97 A.D.2d 840 (Case stated that Town attorney's belief that decision adverse to a retired employee would almost certainly lead to litigation, did not justify conducting business in executive session).

In my opinion, after a thorough review of Mr. Nichols' 25 pages submitted to the Mayor and Trustees, the matter still does not reach the level of proposed, pending or current litigation.

The Village should not allow private individuals to "box" the Village into executive sessions by threatening litigation. Mr. Nichols executive session request at the last Board meeting was also not specific enough or of such a nature to justify an executive session with him. Therefore, it was and is still my position that under Gordon v. Monticello Inc., (3 Dept. 1994) 207 A.D.2d 55 and Daily Gazette Co., Inc. v. Town Bd.,

Town of Cobleskill, 1981, 111 Misc. 2d 303, and other cases reviewed, that it was and is not proper for the Board to enter executive session with Mr. Nichols.

Review of Mr. Nichols Proposal

For the sake of clarity I will use Mr. Nichols outline numbers and letters whenever possible.

II) A) 1) a) **Alleged Violation # 1** The Village government informed of possible official misconduct against Chief Phillips on two separate occasions but handles both extremely different.

Analysis: Mr. Nichols attempts to compare an issue which was reviewed by a Supreme and Appellate Court, with one which is entirely unrelated. This argument is fatally flawed and giving it consideration, ignores previous court decisions and present case law. Specifically present cases indicate that an employees' personnel file and other relevant factors are considered in any equal protection argument that an employee was treated differently than another. I am quite certain that the differing personnel files would provide the Board with ample defense of any litigation based upon this claim.

Additionally, Mr. Nichols may very well be prohibited under New York State and Federal law from bringing litigation which has essentially already been before a State and Federal Court, this is more commonly known as the Doctrine of Collateral Estoppel.

II) A) 1) b) **Alleged Violation #2** Village *Government* treats employees involved in separate but similar matters extremely different.

Analysis: It is my opinion that the alleged violation number 2 falls squarely under the case Patrick Nichols v. Village of Malone, in that decision the Court examined in its entirety the appropriate sanction for the conduct the hearing examiner found and then upheld this decision and sanction. Mr. Nichols sheds no "new" evidence on his prior case

and any alleged difference in his treatment from the alleged other person will likely be handled as the allegation above, should it go to court.

II) A) 1) c) Alleged Violation #3 Village handles criminal allegations against two Police employees extremely different.

Analysis: The first point to clarify is that Mr. Nichols statement regarding the Grand Jury's legal standard is incorrect. Additionally the Grand Jury proceedings are secret, and we have no basis to know what testimony was received by the Grand Jury.

Analysis of Mr. Nichols allegation of equal protection would again appear to be covered by Mr. Nichols' prior court case. The allegations regarding different treatment between Mr. Nichols and the former Chief of police would likely fail under present case law, as the employees' entire history, position and personnel file, would be reviewed in any examination of equal treatment.

Worth noting is the statement that Mr. Phillips had no civil penalties, this could obviously be explained in litigation as being due to his early retirement, and not the Board's unequal treatment.

II) B) The entirety of page five is covered by the previous court case, and the allegation of a cover-up has not been substantiated by any evidence.

Page 6 (No apparent roman numerals) - This page is an unsigned, unauthored letter dated prior to the Pat Nichols v. Village of Malone litigation, and would appear to have been available to Mr. Nichols in his prior court cases. If this letter is a "new" discovery, then the Police committee should ask the Chief to determine whether it is proper for internal memorandums to be disseminated outside the department (assuming this actually is one), if it was used in the previous litigation then two courts have already determined it's significance.

Page 7 & 8 (No apparent roman numerals) - The contents of this page relate entirely to the case Pat Nichols v. Village of Malone, this case and its related case have already been decided, and there appeals are exhausted.

Page 9 Reinstatement - As previously stated an unequivocal reinstatement of Mr. Nichols would clearly violate New York State Civil Service law. There simply is no mechanism whereby the Village could (if they wanted to) reappoint Mr. Nichols. I would also advise you that to do this would clearly ignore the previous Trustees and Mayors first hand assessment of the facts, the hearing examiners finding, and a Supreme Court and Appellate Court decisions.

Page 10 Closing - The initial paragraph clearly contains a threat to the board. The remainder of the page dealing with a public hearing is not appropriate for this issue as employment in civil service should clearly be based upon fitness and merit, not public opinion.

Letter by Mr. Nichols dated 1-17-99

Mr. Nichols letter refers to a conversation whereby I explained to him, he was requesting the Board to ignore State Law by asking for reappointment. When confronted with this, Mr. Nichols contacted the New York State Civil Service Commission regarding ways he might be eligible for his previous position. The Commission stated that if the Village rescinded his termination, the commission might consider reappointing Nichols if he had resigned.

While technically speaking the above avenue (in theory) could lead to reappointment, I must advise you that such a course would have grave consequences. Specifically, this course of conduct would open the Village up to a multitude of potential lawsuits. The suits could arise from members of the force, applicants on the civil service list, officers who wish to transfer to Malone and the police union. I cannot advise the Trustees to even consider opening the Village up to such a liability, especially in light of the apparantly weak case of Mr. Nichols. Mr. Nichols has essentially proposed, through cryptic hearsay allegations, that this Board ignore an Appellate Court decision regarding his actions and conduct while being employed as a Village police officer, and I cannot advise the Board to do so.

In summary, My legal advice to the board is as follows: equal protection of the law does not require that all persons be dealt with identically, but rather that there must be a valid reason for differentiating among members of the same class. Even assuming every allegation made by Mr. Nichols as true, I do not see any instances which cannot be explained by valid reasons. Therefore, his proposed litigation (or threat) is not likely to prevail in a court of law, this is if it would even survive the doctrine of collateral estoppel.

I would recommend the board not continue to entertain this request due to the precedent it would set and the potential for additional litigation. Simply stated, should the Trustees choose to not continue to entertain Mr. Nichols requests, the Mayor on behalf of the Trustees should advise Mr. Nichols in writing, that he is being removed from the village agenda. The reason for this removal being that the request for reinstatement and the request to rescind his termination are viewed as covered by the previous litigation and absent a court order, this Board will not place themselves in the position of reopening and reexamining matters which have already been addressed in two separate lawsuits against the Village.

10
Executive Session of the Malone
Village Board, held on the 9th day
of August, 1993, the following were
present:

JAMES N. FEELEY

MAYOR

EARL LAVOIE
THOMAS HICKOK

TRUSTEE
TRUSTEE

EXECUTIVE SESSION:

Trustee Lavoie made a motion, seconded by Trustee Hickok and
unanimously carried to authorize Mayor Feeley to ask J. Brian McKee if
he would accept the designation of the Board as a Hearing Officer in a
personnel matter. This motion further authorized the Mayor to
negotiate a fee for said service.

RESPECTFULLY SUBMITTED,

Elizabeth J. Besette
ELIZABETH J. BESSETTE
Village Clerk

SIGN APPLICATION:

Raymond & Sharon Hutchins
97 Pleasant Street
Malone, New York

Application approved by Building Inspector Franklin Fisher.

SIX MONTH PERMIT TO STORE VEHICLE:

Robert Lavarney
1 Woodward Street
Malone, New York

Application to store 1985 Oldsmobile approved by Building Inspector Franklin Fisher.

AUDIT REPORT FOR MALONE HOUSING AUTHORITY:

Received from the U.S. Department of Housing and Urban Development, Buffalo, New York, the Independent Audit Report of books and records of Malone Housing Authority, for period April 1, 1992 through March 31, 1993, and will be placed on file in the Village Clerk's Office.

ALICE HYDE HOSPITAL - 80TH ANNIVERSARY:

September 15, 1993 is the 80th Anniversary of Alice Hyde Hospital Association and Mayor Feeley proclaims that, on September 15, 1993, for a 24 hour period, Park Street shall be known as Alice Hyde Hospital Street.

FEE AUTHORIZED FOR HEARING OFFICER:

Trustee Fraser made a motion, seconded by Trustee Lavoie and unanimously carried to adopt a resolution authorizing payment, not to exceed \$200., to be paid J. Brian McKee as Hearing Officer in a personnel matter.

8/23/93

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 (Five Counts) Discredit upon Department
- 10.1.77 (Five 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
- 10.1.14 (Five counts) Violation of a duly constituted law:
Section 195.00 N.Y. Penal Law Sub. 1
Official Misconduct

- 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)
- 10.1.14 Violation of a duly constituted law
Section 210.15 N.Y. Penal Law
Perjury in the first degree
- 10.1.20 Knowingly make a false oral report

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

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

10.1.27 Publicly criticizing the official actions of a department member.

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

3)

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

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

10.1.27 Publicly criticizing the official actions of a department member.

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

4)

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

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

10.1.27 Publicly criticizing the official actions of a department member.

6.2.7 Treat Superior Officers with respect

10.1.4 Insubordination

10.1.34 Deliberate violation of regulations pertaining to police management and control

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

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

10.1.27 Publicly criticizing the official actions of a department member.

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

6)

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

11.5 **(Two Counts)** A member of the force or department shall treat as confidential the official business of the department. He shall not talk for publication.

10.1.27 **(Two Counts)** Publicly criticizing the official actions of a department member.

10.1.34 **(Two Counts)** Deliberate violation of regulations pertaining to police management and control.

7)

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

11.5 A member of the force shall treat as confidential the official business of the Police Department. He shall not talk for publication, nor be interviewed, nor make public speeches, nor shall he impart information relating to the official business of the Department to anyone except under due process of law and as directed or with the permission of the Chief of Police.

10.1.34 Deliberate violation of regulations pertaining to police management and control

10.1.4 Insubordination

2

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

10.1.4 Insubordination

10.1.20 Knowingly make a false oral report

10.1.14 Violation of any duly constituted law
Section 210.15 N.Y. Penal Law
Perjury in the first degree

9.6 Calling the attention of conflicting orders

8.2 Responsible for diligent performance of duties

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.

6.2.33 Notify desk officer of an unusual occurrence

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.

10.1.14 Violation of duly constituted laws
 Section 210.15 N.Y. Penal Law
 Perjury in the first degree

10.1.20 Make a false oral report

11) On October 20th, 1993, Patrolman Nichols was at the Village Board when his penalty was handed down on his disciplinary charges. After the penalty was announced by the Malone Village Board, Ptl. Nichols allowed himself to be interviewed by Malone Radio WICY owner Monte Coughlin. Ptl. Nichols talked on tape stating that he was unhappy with any disciplinary action because he didn't do anything wrong. He further stated that he still considers himself the D.A.R.E. Officer for the department.

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

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.

12) On March 4th, 1994, while working the night shift, Patrolman Nichols was fingerprinting a female subject that was under arrest for assault. It was discovered that Ptl. Nichols was fingerprinting this subject and still had on his loaded duty weapon. Later that same night, Ptl. Nichols fingerprinted another subject and removed his loaded duty weapon and placed it inside a cabinet. Ptl. Nichols left the station without his duty weapon on and returned a short time later.

10.1.9 Incompetency

11.8 Neglect of good order, efficiency or discipline

10.1.5 Inattention to duty

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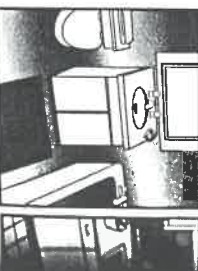


EXTRA LARGE WASHER



LAUNDRY USE

Test for color fastness by color. If uncertain about dye colorfastness, test by applying one drop of a solution made of 1 tablespoon of bleach to a hidden part of seam. Be sure to test all colors. After 1 minute, blot dry. No color change means the article can be safely bleached. Avoid bleaching wool, silk, acetate, spandex and non-fast colors. Pre-soak, pre-treat, or pre-treat stains and heavy soils, rinse with 1/4 cup Clorox bleach to 1 gallon of cool water. If not, add bleach to the wash water before the laundry is put in. Or add 1/2 cup Clorox bleach to a quart of water and add to the wash cycle after the wash cycle has begun. For heavily soiled items, add slightly more Clorox bleach.



HOUSEHOLD USE

It is a violation of Federal law to use this product in a way inconsistent with its labeling. Toilet bowls. Flush toilet. Pour 1 cup of Clorox bleach into the bowl. Let stand 10 minutes before flushing. Kitchen sinks. Cover stains with 2/3 cup of Clorox bleach. Let stand 10 minutes before rinsing. Bathtubs and showers, floors, vinyl, etc. Flush drain, if applicable. Clean with Clorox bleach per gallon of warm water. Before rinsing. QUESTIONS or COMMENTS? Please call 1-800-4-A-CLOROX or write us at: Clorox Consumer Service, P.O. Box 24305, Oakland, CA 94623

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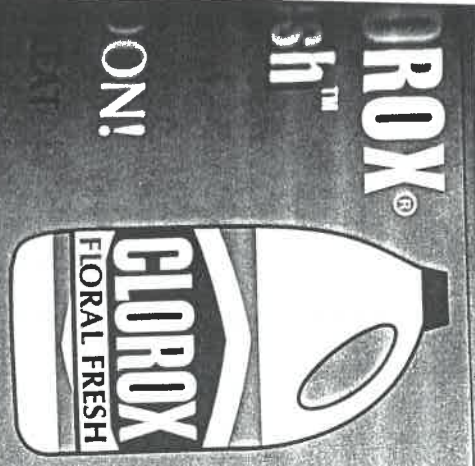
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Soil laundry by color. It
fabric by applying one cup
Clorox bleach per 14 cups
to check all colors. After 1
means the article can be
silk, mohair, leather, rayon
To handwash, soak in
to remove loose soil and
solution of 1/4 cup Clorox
Add Clorox bleach to detergent
and detergent with the water
for best results. After the
soiled loads add 1/4 cup
wash 5 minutes after the
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1 CUP



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STANDARD WASHER

EXTRA LARGE: 1000

LAUNDRY USE

Suit laundry by color. If uncertain about the fabric by applying one drop of a solution made of 1 cup Chlorox Bleach plus 1/4 cup water to hidden part of seam to check all colors. After 1 minute, blot dry. No color change means the article can be safely bleached. Avoid overbleaching; silk, mohair, leather, spandex and non-fast colors. To handwash, disintest, or pretreat stains let 5 minutes to remove loose soil and fully soak garment for 5 minutes. Add Chlorox Bleach to dispenser, if available. If not, add solution of 1/4 cup Chlorox bleach to 1 gallon of cool water. Soak item for 10 minutes. Wash as usual. Rinse and detergent with the wash water before the laundry. For best results, dilute bleach with a quart of water and wash 5 minutes after the wash cycle has begun. For colored loads, add extra; more Chlorox Bleach.

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**Removes stains • Safe for most color-fast washables • Boosts cold water
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EXTRA LARGE WASHER



1
CUP

1 1/2
CUPS

USE

If uncertain about dye colorfastness, test
a few drops of a solution made of 1 tablespoon
of bleach water to hidden part of seam. Be sure
to wait 1 minute, blot dry. No color change
is safely bleached. Avoid bleaching wool,
silk, or non-fast colors.

For greasy stains and heavy soils, rinse
with hot water, then soak garment for 5 minutes in a
solution of 1/2 cup of bleach to 1 gallon of cool water.
If available, if not, add bleach
to water before the laundry is put in. Or
soak with a quart of water and add to
the wash cycle has begun. For heavily
soiled items, use Clorox Bleach.

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HOUSEHOLD USE

It is a violation of Federal law to use this product in a manner
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Toilet bowls. Flush toilet. Pour 1 cup of Clorox bleach into bowl.
Brush. Let stand 10 minutes before flushing again.

Kitchen sinks. Cover stains with 2/3 gallon of water. Add
adding 1/2 cup of Clorox bleach. Let stand 5 minutes before
rinsing.

**Bathbubs and showers, floors, vinyl, tile, woodwork and ap-
pliances.** Flush drain, if applicable. Clean with a solution of 3/4 cup
Clorox bleach per gallon of warm water. Let stand 5 minutes
before rinsing.

QUESTIONS or COMMENTS? Please call (800) 285-2297
or write us at: Clorox Consumer Services,
P.O. Box 24305, Oakland, CA 94623

1890-1H EPA REG. NO. 5813-1 Patent Dec. 28, 1990

Do not swallow. May irritate skin. For prolonged use, wear gloves. Practical treatment. If in eyes, wash
with clean water. Immediately remove contaminated clothing and wash skin thoroughly with water. Physical and chemical
hazards. Do not mix with other household chemicals, such as toilet bowl
cleaner. To do so will release hazardous gases. Prolonged contact with metal may cause pitting or discoloration.
Do not reuse empty container; instead, rinse and put in trash collection.

Malone
Village Clerk
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

Patrick Nichols,

Index No. 93-755

Petitioner,

NOTICE OF PETITION

-against-

Village of Malone,

Respondent.

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

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

DATED: Poughkeepsie, NY
December 9, 1993

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

For 914-452-9192

TO: Village Board
Village of Malone
Malone, New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

Index No. 93-755

Patrick Nichols,

Petitioner,

PETITION

-against-

Village of Malone,

Respondent.

Petitioner, Patrick Nichols, respectfully alleges as follows:

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

A 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

transcript
redo
18. The District Attorney advised Petitioner that if further evidence developed regarding a cover-up, then, in such case, the Petitioner should return, at which time an investigation into the both the bleach incident and the cover-up would occur. (Transcript pages 226-227)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Letter speaks for itself

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

D

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

D

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

action speaks for itself

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

D

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

24 I

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

D

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Determ
spears

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

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

DKI

78. The Petitioner has no adequate remedy at law.

A


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

A

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

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

DATED: Poughkeepsie, NY
December 9, 1993


PATRICK NICHOLS

PERSONNEL COMPLAINT

JULY 13, 1993

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

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

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

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

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

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

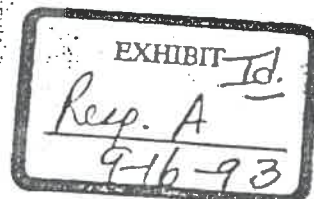


EXHIBIT A

18 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

August 5, 1993

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

Dear Sir:

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

CHARGES

Malone Village Police Department Rules & Regulations:

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

EXHIBIT B

Civil Rights Law:

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

Public Officers Law:

87 Freedom of Information Law, access to agency records

95 Personal Privacy Protection, access to records

New York State Penal Law:

156.10 Computer trespass

156.30 Unlawful duplication of computer related material

SPECIFICATIONS

(Received from Police Chief James Phillips)

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

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

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

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

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

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

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

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

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

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

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

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

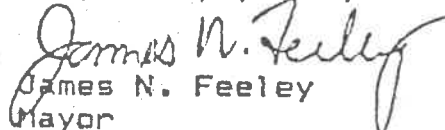
You are entitled to a hearing on the above charges and to be represented at such hearing by an attorney, or a representative of your union. You should be prepared at such hearing to present such witnesses and other proof as you may have in your defense against these charges. Such hearing will be held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

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

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

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

Very truly yours,


James N. Feeley
Mayor

JNF:ejb

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



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

15 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:

Reference is made to my letter of 13 October 1993, captioned as above.

I forward herewith an unsigned brief received by Federal Express this afternoon which is identified as a brief prepared by Mr. Thomas P. Halley, attorney for the Respondent in cited case, in support of his closing arguments in the 16-17 September 1993 hearing.

I have closely reviewed the aforementioned brief and given full consideration to the statements included therein. There is nothing contained therein which was not already raised during the hearing and, accordingly, I am not compelled to make any change to my memorandum report of 13 October 1993.

Respectfully,

A handwritten signature in cursive script, appearing to read "J. Brian McKee".
J. BRIAN MCKEE

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

Village of Malone,
Complaint,

-against-

Patrick Nichols,

Respondent.

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

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

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

Numerous village police officers agreed that Officer Nichols was investigating the April 2nd incident well before the July 13, 1993 complaint. Indeed, one officer specifically testified that he advised the Chief of Police several days before the letter of reprimand was issued that Officer Nichols was investigating the incident and was going to file a report. Thus, it cannot be said that the filing of the complaint was "purely as a retaliatory act" because the complaint was the product of an investigation which under way and almost complete. As to the claim that the complaint was "lacking in grounds sufficient to result in discipline" this has not been demonstrated. Clearly, an incident occurred which gave rise to some harm to Scott Mattimore. The District Attorney indicated that if the facts shown were proven to be true, he believed that a crime has been committed. Scott Mattimore himself testified that he had been recently questioned by the FBI regarding the incident. The fact that these two agencies have seen fit to render such opinions or take such action clearly demonstrates that this is not a case which "was lacking in grounds sufficient to result in discipline". Whether or not such a disciplinary proceeding would give rise to a finding of guilt or innocence is not the question before us. Indeed, this officer contends that this Civil Service proceeding should not give rise to a

finding of guilt. Nonetheless, the filing of the complaint was not only appropriate, but justified and necessary under the circumstances which were known to Officer Nichols at the time. For these reasons, this charge should be dismissed.

Charge number two accuses Officer Nichols of meeting with the Franklin County District Attorney to discuss the bleach incident. This action is clearly protected by the Whistle Blower Law as will be subsequently developed. In any event, the evidence demonstrated that the discussion by Officer Nichols with the District Attorney's office did not name the particular individuals, but rather referred to a report which had names deleted therefrom. Such action can hardly be called a discredit to the department, or a public criticism of members of the department. For the reasons set forth above, this charge should be dismissed.

Charge number three was dismissed on consent by the Village.

Charge number four alleges that Officer Nichols accused the Chief of Police of a "cover-up" in front of another officer. The accusation was made "without reasonable grounds." It is respectfully submitted that the testimony did not show that such an incident occurred. Even if it were to be shown that such a statement were made, it can hardly be said that such a claim was "without reasonable grounds."

Again, as will be further developed, Officer Nichols had every reason to believe that there was going to be and continues to be a cover-up of the April 2, 1993 incident so as to exonerate the Assistant Chief.

Charge number five alleges that Officer Nichols met with former Chief Richard Brown to discuss the April 2, 1993 incident. The evidence is distinctly lacking in regard to this charge. While there is no dispute that Officer Nichols had a conversation with the former Chief at a local diner, there was nothing more than a general discussion regarding police procedures. There was absolutely no showing that the incident of April 2, 1993 was discussed with the former Chief. For the reasons set forth above, this charge should be dismissed.

Charge six alleges that Officer Nichols met with Scott Mattimore on a unspecified number of occasions "for the purpose of conducting an unauthorized investigation." The evidence, however, distinctly shows that the meetings were chance encounters. The conversations between Officer Nichols and Scott Mattimore amounted to nothing more than general statements relating to the incident. Obviously, both Mattimore and Nichols knew about the incident as they were both present. There was hardly an unauthorized investigation being conducted. There was no criticism or discredit

rendered toward the Department in these conversations. There was no information released, or influence sought. For the reasons set forth above, this charge should be dismissed.

Charge number seven relates to a meeting with Mayor James Feeley during which Officer Nichols and the Mayor discussed a number of items, including, but not limited to, the bleach incident. It should be noted that this meeting took place on August 2, 1993, after the complaint had been filed with the Chief of Police. The Mayor at no time discouraged or dissuaded Officer Nichols from discussing the matter with him. Certainly if any departmental rules were being violated, the Mayor would have immediately informed Officer Nichols on this occasion. He did not. It was not until several days later that he advised Officer Nichols that he did not wish to discuss the matter any further. For these reasons, this charge should be dismissed.

Charge number eight alleges that on August 4, 1993 Officer Nichols discussed the April 2nd incident with Mayor Feeley. The context of the discussion does not disclose any discredit to the Department, or seeking of outside influence. Indeed, Officer Nichols had this second discussion with the Mayor after advising that he would get back to him with further information. Again, the Mayor at no time advised Officer Nichols that such a conversation was in violation of

the rules and regulations. For the reasons set forth, this charge should be dismissed.

Charge number nine, alleges that on August 2, 1993 Officer Nichols meet with the Mayor to discuss his termination as a DARE officer. As is noted above, if such a conversation were against departmental rules and regulation, the Mayor would have or should have so advised Officer Nichols. The mayor did not. It is alleged that the respondent had previously been counseled for the identical offense. This is incorrect. As was developed during the course of the hearing, it was a Village Board Member who initiated the contact with Officer Nichols regarding the DARE Program. While this may have been embarrassing to the Chief of Police, the fact that a Village Board calls a Police Officer does not constitute a violation of departmental rules and regulations. The same could be said with the regard to the August 2nd meeting with the Mayor. This was hardly an attempt to seek outside influence or intervention. It was a casual conversation which was freely joined in by the Mayor, and was never reported by the Mayor to the Chief of Police as a violation of the rules and regulations. For the reasons set forth above, this charge should be dismissed.

In any event, the Respondent is entitled the protections of the Whistle Blower Law. This law provides that a public

employer shall not dismiss or take other disciplinary action against a public employee because the employee discloses to a "governmental body" matters which the employee "reasonably believes to be true" and "reasonably believes" constitutes improper governmental action. The term "governmental body" is defined as, among other things, an officer of a public employer, a member of the legislative body of a village, a law enforcement agency, or any member or employee of a law enforcement agency. Thus, the disclosures to the District Attorney and/or to Mayor Feeley come within the definition of "governmental body." As was demonstrated at the hearing, Officer Nichols had a reasonable belief that the complaint was true. He observed a number of things first hand, he spoke to Scott Mattimore to confirm them, and he saw statements filed by two other officers which confirmed the account. He further reasonably believed that there was improper governmental action taking place because he had knowledge of a prior claim of a cover up. As he indicated in his report to the Chief, which constituted the formal complaint against Assistant Chief Moll, various rules and regulations of the department had been violated, as well as the Penal Law of the State of New York.

There is no dispute that the employee must make a good faith effort to provide the appointing authority a reasonable

time to take appropriate action. In this case, there is no dispute that the Assistant Chief knew about the incident as soon as it occurred. Further, supervisory personnel testified at the hearing that they were aware of the incident within a matter of days after it occurred. Therefore, the incident was common knowledge throughout the police department as of mid April 1993. It is respectfully submitted that the period of time from April of 1993 through the middle of July 1993, three months, constitutes a more than reasonable time to take appropriate action. The action taken against Officer Nichols, for example, as a result of his activities in July of 1993, gave rise to charges approximately one month later. Why did the Village Chief of Police wait over three months to conclude this investigation of Moll? The information regarding the incident was in the hands of the Village almost instantaneously. The so called "thorough investigation" conducted by the Chief of Police distinctly failed to include interviewing the victim, and failed to include information from Officer Nichols, who initiated and conducted the investigation.

The Whistleblower Law, in Section 75-b, subsection 3 (a) specifically provides that an employee may assert the law as a defense before the hearing officer. It further provides that the merits of such defense shall be considered

and determined as part of the hearing officer's decision on the matter. It is therefore respectfully requested that in the event that the respondent is found guilty of any of the charges or specifications, that his defense under Section 75-b be discussed and considered and determined.

The Village will undoubtedly argue that Officer Nichols cannot return to work because of the disruption that will be caused. However, there was no disruption caused by any of Officer Nichols activities. There is only a bad feeling within the Department because of a belief that the Chief of Police will watch Officer Nichols very closely in the future. However, this should not serve as a reason to deny Officer Nichols his return to the police officer.

If there was any improper activity in this case, it was caused or occasioned by the actions or inactions of the Chief of Police and his Assistant. It is the Assistant Chief who directly participated in the bleach incident. It is the Chief and the Assistant Chief who then did a perfunctory investigation in an effort to clear the Assistant Chief and not bring discredit on the department. Unfortunately, such activities have brought discredit upon the department. However, the blame should not lie with Officer Nichols. Further, in an effort to cause Officer Nichols to back off his investigation, a reprimand was illegally issued to him.

Civil Service Law Section 75 specifically provides that an employee shall not be subjected "to any disciplinary penalty provided in this Section" except after a hearing upon stated charges pursuant to the Section. The disciplinary penalty provided for in that Law ranges from "reprimand" to "dismissal." Thus, the issuance of a reprimand to Officer Nichols, without complying with the requirements of Section 75 of the Civil Service Law, was improper and should have no bearing on this case.

Officer Nichols was shown to be a dedicated and competent police officer. He was shown to be an honest law abiding citizen. While many of the aspects of this entire proceeding are unfortunate, and reflect badly upon the Village Police Department, Officer Nichols should not be terminated, suspended, or otherwise disciplined. He acted in a manner which he believed to correct, and in conformity with the Law Enforcement Code of Ethics which he took upon becoming a police officer. The Village of Malone would be well served in continuing to have Officer Nichols as a member of its Police Department.

DATED: Poughkeepsie, New York
October 13, 1993

THOMAS P. HALLEY
ATTORNEY FOR RESPONDENT
297 MILL STREET
POUGHKEEPSIE, NY 12601
(914) 452-9120

Report Says Cop in Clear

Assistant Chief Acted Correctly, Chief Says

THOMAS GRASER
Telegram Staff Writer

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

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

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

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

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

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

was in the cell.

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

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

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

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



Gerald Moll

EXHIBIT C

feared reprisals

By ALDON CALKINS
Staff Writer
Malone Bureau

Both sides await hearing

By ALDON CALKINS
Staff Writer
Malone Bureau

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

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

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

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

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

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

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

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

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

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

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

Monday, Mayor James Feeley said he signed the order suspending Nichols under Article 75 of the Civil Service law, the section of law that states the rules for removing and disciplining civil service employees. Tuesday, Feeley said those charges were being amended. According to Tom Hally, Nichols' attorney with the Federation of Police Union, the list of charges against Nichols is lengthy and includes: insubordination, removing departmental records, communicating with other agencies without going through proper channels, violating the Freedom of Information law, and violating the right to privacy.

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

Article 75 also states the rules by which the hearing officer is selected and according to those rules, the Village Board is the body that does the selecting, according to Feeley. He said the board chose Malone businessman and former U.S. Navy Internal Investigations officer Brian McKee for the job.

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

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

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

If Nichols is found guilty, the board of trustees will decide his punishment, and under Article 75 that punishment can be a reprimand, up to a \$100 fine, up to two months suspension without pay, a demotion, or the loss of his job, according to Feeley. If innocent, the village must pay the salary Nichols lost while he was suspended.

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

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

...lecture explores how fish survive

...how fish survive in the wild can lead to

EXHIBIT

D



GATEWAY MOTEL

Finney Blvd. • Rt. 30 • Malone, NY 12953

(518) 483-4200

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

14 March 1991

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

Dear Dick,

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

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

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

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

Sincerely,

J. BRIAN MCKEE

EXHIBIT E

18 Elm Street
MALONE, NEW YORK 12853

Telephone: (518) 483-4570

rec'd 10/25

RESOLUTION

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

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

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

Ayes 3 Nays 0

RESOLUTION HEREBY ADOPTED

Elizabeth J. Bessette
Elizabeth J. Bessette
Malone Village Clerk

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

SEAL

Elizabeth J. Bessette
Elizabeth J. Bessette
Malone Village Clerk

EXHIBIT F

18 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

October 22, 1993

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

Dear Sir:

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

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

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

Very truly yours,


James Feeley
Mayor

JF/cdy
encs.

cc: Thomas P. Halley

X also enclosed was copy of McKee's decision

INDIVIDUAL VERIFICATION

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

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

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


PATRICK NICHOLS

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


Notary Public

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

Patrick Nichols,

Index No. 93-755

Petitioner,

AFFIDAVIT

-against-

Village of Malone,

Respondent.

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

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

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

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

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

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

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

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

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

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

8. The Hearing Officer agreed with this procedure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED: Poughkeepsie, New York
December 16, 1993


THOMAS P. HALLEY

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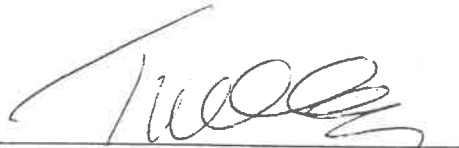
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DATED: Poughkeepsie, New York
December 16, 1993

THOMAS P. HALLEY



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

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

12 October 1993

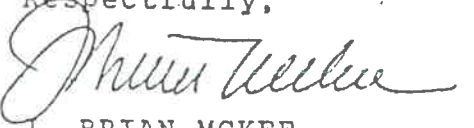
BY FEDEX

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

Re: Village of Malone vs.
Patrick Myron Nichols

Dear Mr. Halley:

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

Respectfully,

J. BRIAN MCKEE

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

12/20/93
Malone
Village Clerk

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

Patrick Nichols,

Index No. 93-755

Petitioner,

NOTICE OF PETITION

-against-

Village of Malone,

Respondent.

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

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

DATED: Poughkeepsie, NY
December 9, 1993

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

TO: Village Board
Village of Malone
Malone, New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

Index No. 93-755

Patrick Nichols,

Petitioner,

PETITION

-against-

Village of Malone,

Respondent.

Petitioner, Patrick Nichols, respectfully alleges as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. The District Attorney advised Petitioner that if further evidence developed regarding a cover-up, then, in such case, the Petitioner should return, at which time an investigation into the both the bleach incident and the cover-up would occur. (Transcript pages 226-227)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

78. The Petitioner has no adequate remedy at law.

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

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

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

DATED: Poughkeepsie, NY
December 9, 1993


PATRICK NICHOLS

PERSONNEL COMPLAINT

JULY 13, 1993

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

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

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

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

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

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

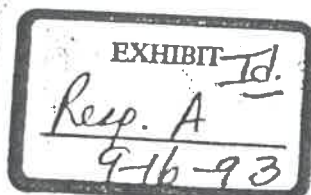


EXHIBIT A

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

August 5, 1993

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

Dear Sir:

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

CHARGES

Malone Village Police Department Rules & Regulations:

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

EXHIBIT B

Civil Rights Law:

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

Public Officers Law:

87 Freedom of Information Law, access to agency records

95 Personal Privacy Protection, access to records

New York State Penal Law:

156.10 Computer trespass

156.30 Unlawful duplication of computer related material

SPECIFICATIONS

(Received from Police Chief James Phillips)

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

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

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

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

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

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

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

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

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

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

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

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

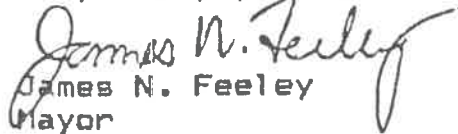
You are entitled to a hearing on the above charges and to be represented at such hearing by an attorney, or a representative of your union. You should be prepared at such hearing to present such witnesses and other proof as you may have in your defense against these charges. Such hearing will be held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

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

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

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

Very truly yours,


James N. Feeley
Mayor

JNF:ejb

Report Says Cop in Clear

Assistant Chief Acted Correctly, Chief Says

THOMAS GRASER
Telegram Staff Writer

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

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

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

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

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

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

was in the cell.

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

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

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

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



Gerald Moll

feared reprisals

By ALTON CALKINS
Staff Writer
Malone Bureau

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

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

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

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

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

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

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

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

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

Edwards also said that the man allegedly mistreated, Scott Mattimore, hasn't filed any charges against the village police for violations of his rights. According to the police blotter, Nichols and Moll were both on duty April 4 when the alleged incident occurred along with officers Steve Stone and Scott Mulverhill. Mattimore was arrested on burglary charges, and Edwards said Mattimore later pleaded guilty to criminal mischief for breaking a window in the holding cell. Phillips, Moll and Mattimore didn't be contacted for comment Tuesday.

Both sides await hearing

By ALTON CALKINS
Staff Writer
Malone Bureau

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

Monday, Mayor James Feeley said he signed the order suspending Nichols under Article 75 of the Civil Service law, the section of law that states the rules for removing and disciplining civil service employees. Tuesday, Feeley said those charges were being amended. According to Tom Hally, Nichols' attorney with the Federation of Police Union, the list of charges against Nichols is lengthy and includes: insubordination, removing departmental records, communicating with other agencies without going through proper channels, violating the Freedom of Information law, and violating the right to privacy.

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

Article 75 also states the rules by which the hearing officer is selected and according to those rules, the Village Board is the body that does the selecting, according to Feeley. He said the board chose Malone businessman and former U.S. Navy Internal Investigations officer Brian McKee for the job.

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

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

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

If Nichols is found guilty, the board of trustees will decide his punishment, and under Article 75 that punishment can be a reprimand, up to a \$100 fine, up to two months suspension without pay, a demotion, or the loss of his job, according to Feeley. If innocent, the village must pay the salary Nichols lost while he was suspended.

ment Tuesday.

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

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

The lecture explores how fish survive

in the wild can lead to

EXHIBIT

D



GATEWAY MOTEL

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

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

14 March 1991

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

Dear Dick,

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

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

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

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

Sincerely,

J. BRIAN MCKEE

EXHIBIT E

18 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

rec'd 10/25

RESOLUTION

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

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

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

Ayes 3

Nays 0

RESOLUTION HEREBY ADOPTED

Elizabeth J. Bessette

Elizabeth J. Bessette
Malone Village Clerk

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

SEAL

Elizabeth J. Bessette

Elizabeth J. Bessette
Malone Village Clerk

EXHIBIT F

18 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

rec'd

October 22, 1993

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

Dear Sir:

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

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

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

Very truly yours,

James Feeley
James Feeley
Mayor

JF/cdy
encs.

cc: Thomas P. Halley

** also enclosed was copy of McKee's decision*

INDIVIDUAL VERIFICATION

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

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

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


PATRICK NICHOLS

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


Notary Public

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

Index No. 93-755

Patrick Nichols,

Petitioner,

AFFIDAVIT

-against-

Village of Malone,

Respondent.

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

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

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

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

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

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

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

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

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

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

8. The Hearing Officer agreed with this procedure.

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

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

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

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

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

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

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

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

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

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

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


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

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

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

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

DATED: Poughkeepsie, New York
December 16, 1993



THOMAS P. HALLEY



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

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

12 October 1993

BY FEDEX

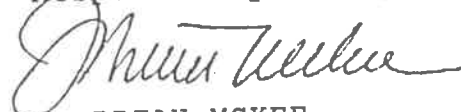
Mr. Thomas P. Halley, Esq.
297 Mill Street
Poughkeepsie, New York 12601

Re: Village of Malone vs.
Patrick Myron Nichols

Dear Mr. Halley:

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

Respectfully,


J. BRIAN MCKEE

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

EXHIBIT A

COPY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

PATRICK NICHOLS,

Petitioner,

-against-

VILLAGE OF MALONE,

Respondent.

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

ORDER

HON. JAN H. PLUMADORE
SUPREME COURT JUSTICE

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

NOW UPON DUE DELIBERATION IT IS,

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

officer, a failure on the part of the respondent and hearing officer to provide petitioner with the results of a certain prisoner incident investigation, the prevention of petitioner's inquiry into other alleged cover ups by the Malone Police Department, the hearing officer's application of Section 75-b of the Civil Service Law, and the use of the petitioner's personnel file in the hearing be in the same hereby be dismissed; and it is further

ORDERED, ADJUDGED, and DECREED, that as to the remaining issues set forth in the petition, which raise questions regarding whether they were supported by substantial evidence, said matters be and they hereby are transferred to the Appellate Division, Third Department, pursuant to CPLR 7804(G).

DATED: MARCH , 1994
SARANAC LAKE, NEW YORK

HON. JAN H. PLUMADORE
SUPREME COURT JUSTICE

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK, COUNTY OF DUTCHESS

I, Patricia Cwik, being sworn, say; I am not a party to this action, am over 18 years of age and reside at Poughkeepsie, New York.

On March 24, 1994 I served the within:

Order

by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

Brian S. Stewart, Esq.
Hughes & Stewart, P.C.
31 Elm Street
P.O.Box 788
Saranac Lake, New York 12983

Sworn to before me this
24th day of March, 1994

/s/

Notary Public

/s/

Patricia Cwik

