

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

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

January 6, 1994

BRYAN J. HUGHES
BRIAN S. STEWART

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

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

PERSONAL & CONFIDENTIAL

Re: Patrick Nichols vs. Village of Malone

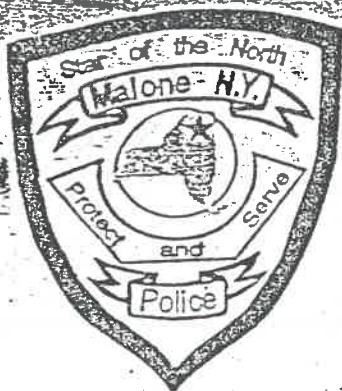
Dear Chief Phillips:

Enclosed is a copy of the entire personnel file of Officer Nichols as it was submitted into evidence at his disciplinary hearing in September 1993. I recommend that you use these documents to create a new personnel file for Officer Nichols. The original has become an exhibit. It is being submitted to Judge Plumadore in connection with the ongoing Article 78 proceeding. It will be quite awhile before I am able to return that document to you. Thank you for your understanding in this matter.

Very truly yours,


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

BSS/tlw
enclosure



POLICE DEPARTMENT
Village of Malone
2 Park Place
Malone, New York 12953-1601

See 7/29/94 for
Full text

(518) 463-2424
(518) 463-2426 FAX

James E. Phillips
Chief of Police

PATRICK NICHOLS

PERSONNEL FILE

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

January 10, 1994

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

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

Re: Patrick Nichols vs. Village of Malone (appeal)

Dear Mr. McKee:

I have read your letter to Judge Main and your correspondence to me dated December 29, 1993. I am preparing an answer for the Village of Malone and Officer Nichols' Article 78 proceeding.

We have the opportunity to submit affidavits along with the answer. I believe it would be appropriate to submit an affidavit from you denying Officer Nichols' allegations that you were somehow biased and that your evidentiary rulings were improper. I have prepared such an affidavit, and it is enclosed.

If the affidavit meets with your approval, I would appreciate it if you would execute it before a notary public and return it to me at your earliest convenience. Thank you for your help in this matter.

Very truly yours,



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

BSS/tlw
enclosure
cc: Mayor James Feeley

Patrick Nichols,
Petitioner,
v.
Village of Malone,
Respondent.

Index No. 93-755

J. Brian McKee, being duly sworn, deposes and says that:

2. I make this affidavit to accompany the Village's verified answer to the petitioner's Article 78 petition. I make this affidavit for the purpose of refuting certain allegations made by the petitioner against me.

3. In his Article 78 petition, the petitioner alleges that I was partial and biased against him in my conduct of the hearing held on September 16 and 17, 1993.

4. In particular, the petitioner alleges that I was biased and impartial because I demonstrated a friendship to the Malone Village Police Department citing a March 14, 1991 letter written by me as the owner of the Gateway Motel.

5. The primary purpose of the letter in question was to commend members of the Department, including Police Officer Nichols, for the professional manner in which they had responded to a hold-up alarm transmitted by the Motel. This letter does not show bias on my part against Officer Nichols. Indeed, it shows just the opposite.

6. I showed no partiality or bias to either party to the hearing, and I refer the court to the transcript of the proceedings and to my final report and recommendation which included strong public criticism for management personnel in the Police Department and for the Mayor himself as well as findings unfavorable to the petitioner.

7. Where appropriate and required, I recommended a dismissal of some charges and specifications levied against the petitioner, and I did not concur with the request of the Village of Malone that the petitioner be outright terminated.

8. Although I have been a former employee of the Police Department, I have also been a friend to the petitioner Officer Nichols. I have personally supported him when he came to me and asked me to financially support the DARE program which he was then managing. I also accepted his request that I be the key note speaker at one of the DARE graduation ceremonies.

9. I have had extensive schooling and training in industrial and labor relations, and I have had extensive experience in disciplinary matters, including four years as the director of a two thousand person agency. I have always been able to demonstrate my integrity and professionalism in disciplinary matters despite my personal friendship or working relationship with the parties thereto, and I have always attempted to act in such matters without bias or partiality.

10. During the course of the hearing, I was called upon to make a number of evidentiary rulings. I attempted to exercise common sense in my evidentiary rulings, and I believed then and believe now that all of my evidentiary rulings were reasonable, appropriate and legal.

11. With respect to the Petitioner's allegation that he suspected a cover-up of his charges by management in the police department, I found that such charge was without merit. I did not permit the testimony of defense witness Hanna on the topic of cover-ups after counsel for petitioner acknowledged that he could not demonstrate a direct connection between Mr. Hanna's planned testimony on a "rumored police cover-up" in the past and the actions of those involved in the matters charged in the Nichols case which was before me.

12. I believe that my rulings with respect to the "Whistleblower Law" were in all respects proper. In my opinion, that defense was without merit. Officer Nichols' complaint was not timely because he waited from April 2nd to July 13, 1993 to raise charges against an officer. He did not raise those charges until just after having been disciplined by the officer he then complained about. He did not permit the police department management a reasonable amount of time to investigate his charges before by-passing the chain of command and making unauthorized contacts and disclosures outside the police department, despite being assured, in writing, by the Chief of Police that his charges were being investigated and that disciplinary action would be taken where warranted by the facts.

13. Petitioner's attorney has complained that he was not given adequate time to submit a closing memorandum prior to the issuance of my report and recommendation.

14. At the close of the evidentiary hearing, I instructed both petitioner's attorney and the attorney for the Village of Malone that I required a closing memorandum within three weeks, which would have been October 8, 1993.

15. I received a closing memorandum from the attorney for the Village of Malone on October 7, 1993.

16. I subsequently have conversations with petitioner and his counsel pointing out that I had not received their closing memorandum. I provided petitioner and his counsel with my personal federal express account number to expedite transmittal of petitioner's closing memorandum.

17. I never agreed that submission of closing memoranda by counsel would await receipt and review by them of the transcript of the hearings. Nevertheless, upon receipt of the transcripts on or about October 12, 1993 a copy was transmitted by me to petitioner's counsel by Federal Express.

18. I made my report and recommendation which was dated October 13, 1993.

19. On or about October 15, 1993, I received a closing memorandum from petitioner's attorney. I reviewed that memorandum and found nothing therein which was not already raised during the hearing. I then wrote to the Mayor of the Village of Malone indicating to him that I had reviewed the memorandum from petitioner's attorney but that I did not feel compelled to make any changes in my report and recommendation.

. Dated:

J. Brian McKee

Sworn to before me this
_____ day of _____, 1994.

Notary Public

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

October 15, 1993

BRYAN J. HUGHES
BRIAN S. STEWART

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

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

Re: Village of Malone vs. Patrick Nichols

Dear Jim:

Now that we have a decision, it would be appropriate to review the procedure that must be complied with in order to have the village board review that recommendation and take action.

The first thing we must do is to make sure that a copy of the original charges, the answer, the transcript and the hearing officer's recommendation are placed on file with the village clerk. The second thing we must do is to make sure that a copy of the transcript has been forwarded to Mr. Nichols or his attorney. The third thing we must do is to send a copy of the charges, answer, transcript and recommendation to Pat Gaglianese at Franklin County to be placed on file in her office. These things are required by Civil Service Law §75 (3).

The matter is then referred to the village board which is supposed to deliberate and make a decision as to what to do. Its options are limited to the following: a reprimand; a fine not to exceed \$100, to be deducted from the salary or wages of such employee; suspension without pay for a period not exceeding two months; demotion in grade and title; or dismissal from the service. The time during which the officer was suspended without pay may be considered as part of the penalty but does not have to be. Civil Service Law §75 (3).

General Construction Law §41 provides that if a public body consists of three or more persons, then a majority of the whole number of such board constitutes a quorum. A quorum of the village board is therefore three members, whether or not you consider the mayor to be a member of the village board. In point of fact, the mayor is considered a member of the village board. Village Law §3-301 (4).

October 15, 1993

TO: MAYOR JAMES FEELEY
RE: VILLAGE OF MALONE VS. PATRICK NICHOLS

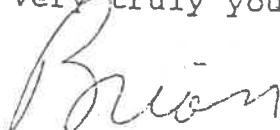
General Construction Law §41 is a bit ambiguous. If you have a quorum, is a vote by a majority of the quorum effective, or does a vote have to pass by a majority of the entire board? Despite an old New York Supreme Court decision to the contrary, the Attorney General's Office has ruled on this question repeatedly and has consistently decided that a vote is only effective if it is passed by a majority of the entire board. 1974 A.G. March 1; 1979 A.G. August 13; 1982 A.G. August 30. The Appellate Division has finally come around to the same conclusion in a case involving a subdivision plat approval. DEP Resources, Inc. vs. Planning Board of Monroe, 131 AD2nd 757.

There is already one vacancy on the village board. I believe that you are disqualified from participating in the village board discussions concerning this matter. I base that conclusion on the case of Sander vs. Owens, 82 Ad2d 968. That was a 1981 case in which a county clerk brought charges against an employee. The Appellate Division concluded that the county clerk was prohibited not only from being the hearing officer but from participating in the ultimate decision making process, because he was the one who forwarded the charges. In our case, you were primarily responsible for forwarding the charges, and you testified to that effect at the hearing.

That means that there are three trustees available to decide this matter. To take any action at all, they are going to have to be unanimous. In my opinion, a vote of two to one in either direction has absolutely no effect and Mr. Nichols will continue to be suspended without pay until the board takes action.

My recommendation is that the matter be scheduled for a special meeting of the village board and that the board conduct its decision making process in executive session. You should not be present at the executive session. In the event that the board decides that it cannot take action, the matter will have to be re-scheduled after a new village board member is appointed.

Very truly yours,



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

BSS/tlw

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN
:

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

DATE October 21, 1993 PLACE Malone Police Department

I, James E. Phillips, do hereby state that

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

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

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

Signed: *James E. Phillips*

PAGE 1 OF 1 PAGES

EXHIBIT

Village # 13
6-16-94

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED :
TIME ENDED :

DATE: October 21, 1993 PLACE: Malone PD

I, Carl Thomas am 30 years of age, born on [REDACTED] my address is [REDACTED] my occupation is Mechanic, and degree of education is 10th grade

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

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

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

witness: [Signature]

witness:

Signed: Carl Thomas

PAGE

OF

PAGES

EXHIBIT

Village # 14
6-16-94

VOLUNTARY STATEMENT

STATE OF NEW YORK
COUNTY OF FRANKLIN

TIME STARTED
TIME ENDED

DATE October 21, 1993 PLACE Malone PD

I, Dale Lamitie, [redacted]
my address is [redacted] and degree of education
is 9th.

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

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

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

witness: [signature]

witness:

Signed: [signature]

PAGE

1 OF

PAGES

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

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

OCT 22 1993

BRYAN J. HUGHES
BRIAN S. STEWART

October 22, 1993

Telephone: (518) 483-4230
Fax: (518) 483-4005

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

Re: Village of Malone vs. Patrick Nichols

Dear Tom:

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

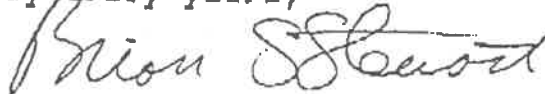
In my telephone conversation with you on ^{CCT} August 21st, you indicated something to me which was extremely troublesome. If I recall correctly, you said that Mr. Nichols told you that he had been informed by certain members of the police department that they were told how to testify or that they were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

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

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

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

Very truly yours,



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

BSS/tlw

cc: Mayor James Feeley
Trustee Robert Fraser
Chief James Phillips

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

October 27, 1993

BRYAN J. HUGHES
BRIAN S. STEWART

Telephone: (518) 483-4330

Fax: (518) 483-4005

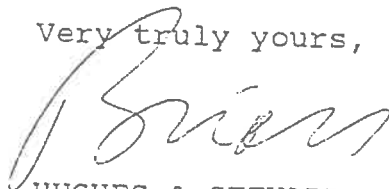
VILLAGE OF MALONE
c/o Mayor James Feeley
Village Office
16 Elm Street
Malone, New York 12953

Re: Village of Malone vs. Patrick Nichols

Dear Mayor Feeley:

Enclosed is another, and I believe final voucher for services rendered in connection with the Nichols matter. This voucher covers the closing memorandum and the special meeting of the village board. I am extremely conscious of the fact that this process is an expensive one, and I have tried to keep my time within reasonable limits and still get the job done. I greatly appreciate your allowing my firm to be of service to you in this matter.

Very truly yours,



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

BSS/tlw
enclosure

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

Brian S. Stewart
Robert Fraser
James Phillips

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

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

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

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

Patrick M. Nichols
October 27, 1993

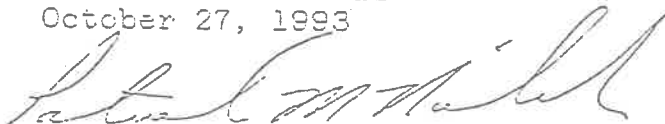


EXHIBIT *Id*

Village #5

6-16-94

MALONE POLICE DEPARTMENT
INCIDENT REPORT

8-A-4613

COMPLAINANT:

CASE#

8-A-4613

ADDRESS:

LOG: 8482

PHONE:

OFFENSE: Criminal Mischief

INCIDENT LOCATION:

RECEIVED BY: MVF

AT: 0750

DATE: 10/27/93

DATE/TIME COMMITTED

DATE/TIME INVESTIGATED:

OFFICER ASSIGNED: *Simmons*

SUSPECT/PERSON ARRESTED:

DETAILS OF INCIDENT: Complainant called and reported that two tires on the company vehicle had been cut. Complainant further stated that he reported the same type of incident on 10/26. He then went on to say that this police department was doing something else and that if Officer Nichols was working this type of thing wouldn't have happened.

Patrol spoke to Mr. *[redacted]* who was upset that his tires on his new delivery truck were punctured. He could not believe that with the taxes he pays that we can't watch his vehicles. The front passengers and drivers tires were flat. I tried to talk to him but he would not talk. I went to take pictures and puncture holes that I found in the drivers tire. I spoke to *[redacted]* who told me that they saw nothing but will keep an eye out and if they see something they will contact the department. I talked to people that live in the apartment on Mill street but they did not see anything either. I then went back and talked with the complainant and told him that we would need estimates of the damage. It was found later that the inside back wheels were also flat. The complainant said that he was going to contact the Mayor. I asked him if there was anyone that he was having problems with and he told me that he could think of anyone. I told him that we would try to check behind his building more often. Will have nightshift keep an extra eye on the building.

MRS



THOMAS M. KEMP



FLANDERS SCHOOL

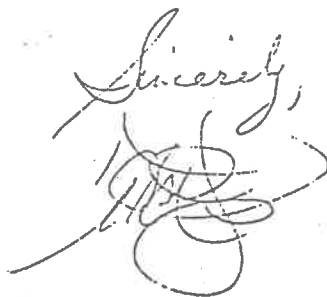
OCT. 29 1993

Chief Phillips
Wylone Police Department
East Main Street
Wylone, WY 82453

Dear Chief,

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

Thank you.

Sincerely,


cc:
Mr. Dean Yorio
Mr. Thomas Skelmer

THOMAS P. HALLEY

ATTORNEY AT LAW

November 1, 1993

297 MILL STREET
POUGHKEEPSIE, N. Y. 12601
(914) 452-9120
FAX (914) 452-9192

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

RE: Village of Malone v Patrick Nichols

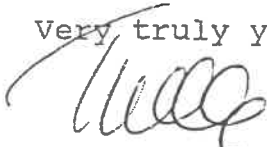
Dear Brian:

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

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

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

Very truly yours,



THOMAS P. HALLEY

cc: Patrick Nichols
146 Webster St.
Malone NY 12953

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

November 2, 1993

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

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

Re: Patrick Nichols

Dear Jim:

Enclosed is a copy of a report I have received from Pat Nichols. It is dated October 27th, and I received it on October 29th. I requested a report detailing allegations that certain members of the police force claim they had felt pressured or forced into testifying a certain way.

Typically for Pat, this report doesn't take me anywhere, because it's filtered behind layers of heresay and undisclosed sources. It does appear as though I am the person named as having done something improper, although the report isn't terribly clear on that either.

As you know, the police officers were questioned in your presence and/or the presence of Chief Phillips or Assistant Chief Moll. I didn't question anyone alone, except for my first interview with Scott Mulverhill. I have absolutely no recollection of telling anyone how to testify or threatening them if they testified in a certain way. There were numerous instances in which I instructed witnesses on the undesirability of heresay.

Since I appear to be accused of some kind of wrongdoing, I don't believe it would be appropriate for me to tell you or the Chief how to conduct an investigation into this matter, except to say that some kind of investigation should be done, and the source of this story should be identified.

Very truly yours,

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

BSS/tlw
enclosure

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

Brian S. Stewart
Robert Fraser
James Phillips

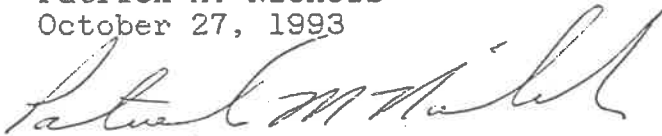
As ordered by the Chief of Police and the Mayor of Malone I am submitting this report containing information regarding allegations of the tampering with a witness. These allegations are in response to the Civil Service Hearing of September 16 & 17, 1993, Village of Malone vs. Patrick Nichols.

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

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

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

Patrick M. Nichols
October 27, 1993



Brian Stewart

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

November 3, 1993

Ms. Betzy Nichols

Malone, New York 12953

Dear Ms. Nichols:

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

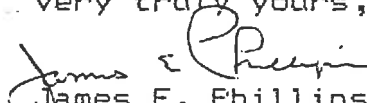
In that letter he was ordered to make a written report detailing information he had that certain members of the Malone Police Department were told how to testify or that they were forced to testify in a certain way at a Civil Service Hearing on September 16, 1993, Village of Malone v. Patrick Nichols.

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

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

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

Very truly yours,


James E. Phillips
Chief of Police

November 8, 1993

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

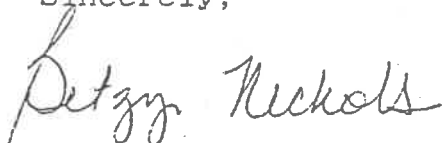
Chief:

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

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

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

Sincerely,


Betzy Nichols

cc; Thomas Halley
Brian Stewart ✓
Robt. Fraser

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

November 15, 1993

BRYAN J. HUGHES

BRIAN S. STEWART

Telephone: (518) 483-4330

Fax: (518) 483-4005

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

Re: Patrick Nichols

Dear Jim:

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

Very truly yours,

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

BSS/tlw
enclosures

Brian Stewart

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

November 3, 1993

Ms. Betzy Nichols

Malone, New York 12953

Dear Ms. Nichols:

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


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

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

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

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

Very truly yours,


James E. Phillips
Chief of Police

November 8, 1993

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

Chief:

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

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

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

Sincerely,

Betsy Nichols

Betsy Nichols

cc; Thomas Halley
Brian Stewart
Robt. Fraser

VILLAGE OF MALONE POLICE DEPT.

2 PARK PLACE

MALONE, NEW YORK 12953

(518) 483-2424

TO: Chief Phillips

ADDRESS:

DATE: 11-26-93

SUBJECT:

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

SIGNED:



Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

December 6, 1993

Ms. Betzy Nichols
[REDACTED]

Malone, New York 12953

Dear Ms. Nichols:

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

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

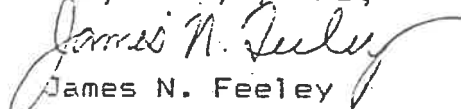
The Committee was to determine:

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

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

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

Very truly yours,


James N. Feeley
Mayor

JNF:ejb

cc: Trustees

Brian Stewart

Chief James Phillips

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

December 6, 1993

Brian Stewart
Attorney at Law
31 Elm Street
Malone, New York 12953

Dear Brian:

Enclosed is a copy of the letter I sent Betzy Nichols, outlining the results of an investigation conducted, at my request, by the Police Committee of the Malone Village Board.

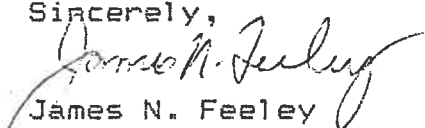
While my personal feelings are that you conducted yourself in a professional and forthright manner, it became apparent that some sort of investigation into Ms. Nichol's allegations would have to be undertaken.

The findings of the Committee's investigation held no surprises for me, though I must say that I am sorry that you found yourself the brunt of Ms. Nichol's misguided and unfounded allegations.

I again want to commend you for the outstanding service you provided the Village and assure you that I find your professionalism and integrity above reproach.

I hope you and your family enjoy the coming holiday season.

Sincerely,


James N. Feeley
Mayor

JNF:ejb
Enc

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

December 6, 1993

Ms. Betzy Nichols
[REDACTED]

Malone, New York 12953

Dear Ms. Nichols:

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

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


The Committee was to determine:

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

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

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

Very truly yours,


James N. Feeley
Mayor

JNF:ejb

cc: Trustees
Brian Stewart
Chief James Phillips

December 14, 1993

Dear Mr. Fraser:

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

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

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

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

Section 6.2.2 Perform assigned duties in a professional manner.

Section 10.1.9 Incompetency or inefficiency in the performance of duty.

Section 10.1.18 Failure to treat any person civilly and respectfully.

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

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

Sincerely,

Betsy Nichols

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

cc; Thomas Halley

Malone
Village Clerk

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

Patrick Nichols,

Petitioner,

-against-

Village of Malone,

Respondent.

Full text w/ petition
in transcript box

Index No. 93-755

NOTICE OF PETITION

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.

TO: Patrolman Patrick Nichols

FROM: Chief James E. Phillips

DATE: December 23, 1993

MEMORANDUM

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

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

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

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

December 28, 1993

BRYAN J. HUGHES
BRIAN S. STEWART

Telephone: (518) 483-4330

Fax: (518) 483-4005

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

Re: Nichols vs. Village of Malone (Appeal)

Dear Jim:

Enclosed is a draft of a verified answer to the petition.
Please let me know whether it meets with the approval of the Board.

We will need the original transcript report from McKee and all
the original exhibits.

Very truly yours,

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

BSS/tlw
enclosure

SIGNED IN THE ABSENCE OF
TO AVOID DELAY IN MAILING

Full text in
transcript box

State of New York
County of Franklin Supreme Court

Patrick Nichols,

Petitioner,

v.

Village of Malone,

Respondent.

Verified Answer to Petition

Index No. 93-755

1/11/94

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

1. Admits each and every allegation contained in paragraphs 1, 2, 3, 10, 20, 21, 22, 24, 25, 28, 33, 34, 35, 36, 45, 51, 75, 79 and 80 of the petition.

2. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 5, 6, 7, 8, 14, 15, 16, 17, 42, 47, 48, 49, 55, 58, 63, 72 and 78 of the petition.

3. Denies each and every allegation contained in paragraphs 23, 29, 30, 38, 39, 41, 43, 52, 54, 62, 67, 68, 69, 71, 74 and 77 of the petition.

4. As to the following paragraphs, which purport to restate the contents of documents or statutes which are before the court, respondent affirmatively states that the referenced documents or statutes speak for themselves, and respondent denies each and every other allegation contained therein: 11, 12, 13, 18, 19, 26, 27, 31, 32, 37, 40, 44, 46, 50, 53, 56, 57, 59, 60, 61, 64, 65, 66, 70, 73 and 76.

5. As to paragraph 4 of the petition, respondent affirmatively states that petitioner has been the subject of prior disciplinary proceedings but had never previously been through the procedure set forth by Section 75 of the Civil Service Law while employed by respondent.

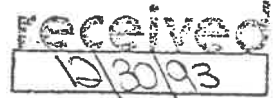
6. As to paragraph 9 of the petition, respondent denies knowledge or information sufficient to form a belief as to each and every allegation of the said paragraph except respondent admits that Gerald Moll is the Assistant Chief of the Village of Malone Police Department.



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

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

28 December 1993



Honorable Jan H. Plumadore
New York State Supreme Court Justice
Supreme Court Chambers
Harrietstown Town Hall
30 Main Street
Saranac Lake, New York 12983

Re: Notice of Petition
Index 93-755
Patrick Nichols v. Village
of Malone

Dear Judge Plumadore:

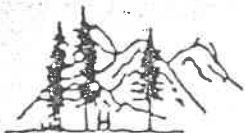
The Village of Malone has furnished me with a copy of cited NOTICE OF PETITION and while I am not personally a party to that action, Petitioner makes numerous references to my actions as Hearing Officer in the matter of disciplinary proceedings filed against Petitioner pursuant to Section 75 of the Civil Service Law of the State of New York. In the NOTICE OF PETITION, Petitioner accuses me of being partial and biased against him in my conduct of the hearing held on 16 and 17 September 1993 and variously attacks my integrity and professionalism.

As a local and federal law enforcement officer for over thirty years and a law enforcement executive for most of my adult life, I respectfully deny Petitioner's allegations and wish to go on record with you as indicating my total willingness to appear before you in this matter; to give testimony under oath; and to refute Petitioner's allegations. If it is appropriate to do so, I not only welcome such an opportunity, but respectfully request it.

Respectfully,

J. BRIAN MCKEE

✓ cc: Brian S. Stewart, Esq.



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

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28 December 1993

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Re: Notice of Petition
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Patrick Nichols v. Village
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Respectfully,

J. BRIAN MCKEE

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 a 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

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.



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

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

29 December 1993

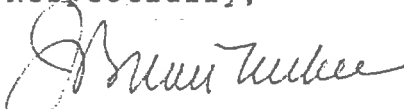
Mr. Brian S. Stewart, Esq.
Hughes and Stewart, P.C.
Attorneys at Law
Post Office Box 788
Malone, New York 12953

Re: Village of Malone vs. Patrick Nichols

Dear Mr. Stewart:

My response to allegations raised by Mr. Nichols in his PETITION dated 9 December 1993 (Index # 93-755 - Supreme Court of the State of New York) is forwarded herewith for your review.

Respectfully,


J. BRIAN MCKEE

RESPONSE BY HEARING OFFICER J. BRIAN MCKEE TO ALLEGATIONS RAISED BY
PATRICK NICHOLS (PETITIONER) AND INCLUDED IN HIS PETITION DATED 9
DECEMBER 1993 (INDEX # 93-755)

Petitioner, in the cited petition, alleged that the undersigned, who served as the Hearing Officer in the matter of disciplinary proceedings filed against Petitioner pursuant to Section 75 of the Civil Service Law of the State of New York, was partial and biased against him in my conduct of the hearing held on 16 and 17 September 1993. In the aforementioned petition, Petitioner alleges that I was biased and impartial because I had demonstrated a friendship for the Malone Police Department, citing a 14 March 1991 letter, written by me as the owner of the Gateway Motel of Malone, wherein I extended courtesy accommodations to the Police Department on an as requested basis. As a former member of the Malone Police Department (1961), I have always had a sense of admiration for the department in which I got my real start in the law enforcement profession. I must point out, however, that the primary purpose of the letter in question was to commend members of the department, including Police Officer Nichols, for the professional manner in which they had responded to a hold-up alarm transmitted by the motel. Members of the department, and other law enforcement agencies in the Malone area, have utilized the motel for out of town guests, temporary lodging, et al, and I have always extended courtesy rates to them. It has always been done in the spirit of friendship with police officers representing agencies with which I was formerly affiliated as an active police officer and never as a improper inducement as suggested by Petitioner. The foregoing hardly suggests partiality or bias on my part. I showed no partiality or bias to either party to the hearing as demonstrated by my report and recommendations which included strong and public criticism for management personnel in the department and for the Mayor himself, as well as findings unfavorable to Petitioner. It must also be pointed out that, where appropriate and required, I recommended dismissal of some charges and specifications levied against Petitioner and did not concur with the request of the Village of Malone that Petitioner be outright terminated. Rather I weighed the evidence presented by both parties and recommended that every effort be made to return Petitioner to full employment in village government, but outside the Police Department.

For the record, I have always considered myself a "friend" of all members of the Malone Police Department because of my past employment in that department. In specific relation to Petitioner, I have personally supported him when he came to me and asked me to financially support the DARE program which he was then managing. I made a significant financial donation to Police Officer Nichols and also accepted his request that I be the keynote speaker at one of the DARE graduation ceremonies.

Page -2-

Because of my knowledge of the operations of a law enforcement agency, and specifically my past association with the Malone Police Department, I am convinced that I was then, and remain, a most qualified person to serve as a hearing officer in a disciplinary proceeding involving a police officer and his or her performance of duty. My college education (Cornell University) involved a major in industrial and labor relations (personnel management, et al) and my 28 1/2 years with a federal law enforcement agency, the last 4 as the director of the 2000 person agency, have given me extensive experience in disciplinary matters.

I have always been able to demonstrate my integrity and professionalism in disciplinary matters, despite my personal friendship or working relationship with the parties thereto, and to act without bias or partiality.

I would point out that I am as much a "friend" with the patrolmen in the Malone Police Department (including Police Officer Nichols) as with the sergeants, Assistant Chief and Chief of Police. If I were forced to identify with management or the street-level police officer, I would have to say the latter. Despite all this, I can say without reservation that I acted throughout the hearing in question in a totally unbiased and impartial manner.

On the matter of Petitioner's claim that his actions in violation of various sections of the department's Rules and Regulations were protected by the "Whistle Blower Law", I continue to hold the conviction that such a claim is without merit. His complaint was not timely (he waited from 2 April to 13 July 1993, just after he was disciplined for another offense, to raise charges against the investigating officer) nor did he permit management a reasonable amount of time to investigate his charges (a matter of a few days) before bypassing the chain of command and making unauthorized contacts and disclosures outside the department - despite being assured, in writing by the Chief of Police, that his charges were being investigated and that disciplinary action would be taken where warranted by the facts.

On the matter of Petitioner's allegation that he suspected, repeat suspected, a "cover up" of his charges by management in the police department, I also found that without merit. I did not permit the testimony of defense witness Hanna on the topic of "coverups" after counsel for Petitioner acknowledged that he could not demonstrate a direct connection between Mr. Hanna's planned testimony on a "rumored police coverup" in the past and the actions of those involved in the actions charged in the Nichols case then before the Hearing Officer.

Page -3-

I enclose herewith two Memoranda of Law, provided during the course of the hearing in question by counsel for the Village of Malone, on which the Hearing Officer relied for guidance in the absence of any contradictory memorandum of law by counsel for Petitioner.

On the matter of post-hearing submission of closing statements by counsels for the Village and Petitioner, it must be pointed out that it was indicated by me to both counsels at the time of the closing of the hearing on 17 September 1993 that I required their input within three weeks (8 October 1993) and, to that end, I telephonically contacted Petitioner on 7 October 1993 to remind him that I had not received a closing memorandum from his counsel. I received a closing memorandum from the Village of Malone on 7 October 1993. During subsequent conversations with Petitioner and his counsel, I pointed out that I had not received their closing memorandum which they had indicated they desired to submit. I further provided my personal FEDEX account number to expedite transmittal of Petitioner's closing memorandum. It was never agreed that submission of closing memoranda by counsels would await receipt and review by them of a transcript of the hearings. Nevertheless, upon receipt of the transcripts on or about 12 October 1993, a copy was transmitted by me to Petitioner's counsel by FEDEX.

As demonstrated by the enclosed copy of my letter of 15 October 1993 to Mayor James N. Feeley, I did closely review the post-hearing closing memorandum of counsel for Petitioner and found nothing contained therein which was not already raised during the hearing and, accordingly, was not compelled to make any change to my report and recommendations of 13 October 1993.

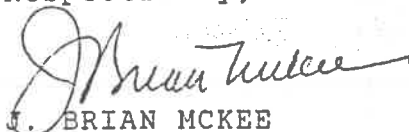
While I have not seen it, I have been advised by the Publisher of the MALONE TELEGRAM that during an interview prior to the hearing of 16 and 17 September 1993, Petitioner told a reporter for that newspaper that he was comfortable with my assignment as Hearing Officer and felt he would receive fair and impartial treatment by me as Hearing Officer.

I respectfully deny Petitioner's allegations that I was biased and partial in my service as the Hearing Officer in Petitioner's disciplinary proceedings and wish to go on record as indicating my total willingness to appear in any judicial proceeding to give testimony under oath and to refute Petitioner's allegations.

Page -4-

Should amplification of my responses be desired, please communicate with me at the letterhead address and I will be happy to respond.

Respectfully,

A handwritten signature in cursive script, appearing to read "J. Brian McKee", written in dark ink.

J. BRIAN MCKEE

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

Village of Malone,

Complainant,

v.

Patrick Nichols,

Respondent.

MEMORANDUM OF LAW

**Testimony and Documents Regarding Personnel Matters
of Police Officers Other Than Officer Nichols are Not
Admissible.**

I) Personnel Matters Regarding Other Officers are Not Relevant.

During the course of this hearing the respondent, Patrick Nichols, will try to introduce testimony and/or documents concerning personnel matters of other employees of the Malone Village Police Department. Because of the peculiar facts of the current disciplinary proceeding, it may be relevant that Officer Nichols made a written complaint against another officer. The identity of that officer and the date of that incident may be necessary for identification purposes. However, the details of that incident are not subject to disclosure.

Under Civil Service Law §75, the Hearing Officer is not required to strictly apply the rules of evidence. However, it goes without saying that the Hearing Officer is authorized to use his good judgment on evidentiary matters in order to prevent the hearing from becoming a morass of irrelevant data.

Officer Nichols is charged with violating established Police Department Regulations by disclosing details of an internal investigation to unauthorized persons. It is irrelevant whether the underlying complaint has merit. In fact, for purposes of this hearing, the Department will assume, without admitting, that Mr. Nichols' complaint had merit. Mr. Nichols' disobedience to the rules is still a matter properly subject to the most severe discipline.

**II) Officer Nichols, Who Continues to be a Police Officer, is
Prevented From Disclosing Internal Police Affairs.**

Officer Nichols has been suspended but has not been terminated. He continues to be a Police Officer subject to all of the pertinent rules and regulations. The following

Regulations prohibit Officer Nichols from testifying regarding the disciplinary investigation against another officer.

- 10.1.27 Public criticism of a member of the department
- 10.1.28 Releasing departmental information without permission
- 11.5 Disclosing official business of the department without permission

III) The Police Department is Legally Prohibited From Disclosing Disciplinary Records Unless Given Express Permission.

Civil Rights Law §50-a became effective in 1976. A copy is attached as Exhibit A. The law clearly provides that the Department may not release its personnel records except with permission or with a court order. Neither has been obtained in this case.

In the event that the respondent seeks to enter evidence concerning another officer, and if the Hearing Officer determines that such records or evidence is relevant enough to be admitted, then the Department will be in an impossible position. On the one hand, the Department will need to clarify or disprove the respondent's evidence. On the other hand, it will be totally prevented from doing so by statute.

Such a position would, in effect, deprive the Village of Malone of its rights to due process in this hearing.

CONCLUSION

Neither testimony nor documents concerning may be admitted if they concern disciplinary matters relating to a Police Officer other than Patrick Nichols.

Respectfully submitted,
HUGHES & STEWART, P.C.
Attorneys for the Village of Malone
P.O. Box 788 - 31 Elm Street
Malone, New York 12953
Tel: (518) 483-4330

former is a v. Ent. 559, official case in sub- t. erossly n v 26 F ent, ig a nal- e of ich ses, ten ily ing en he er- of Fs a id i- n. d

have been granted, since plaintiff alleged that defendant intended to make future uses of her nude photographs in a manner unrelated to her art story, and since plaintiff had indicated probable success on the merits, possible irreparable injury through the widespread publication of renewed photographs, and a balance of equities in her favor. *Barrows v Rozansky* (1985, 1st Dept) 111 App Div 2d 105, 489 NYS2d 481.

In action arising out of newspaper article related to drug abuse, brought against journalist and owner of newspaper, plaintiffs failed to state viable claim for invasion of privacy since challenged article dealt with newsworthy item and invasion of privacy action must deal with matter published for trade or advertising purposes. *Virelli v Goodson-Todman Enterprises, Ltd.* (1989, 3d Dept) 142 App Div 2d 479, 536 NYS2d 571, 15 Media L R 2447, appeal after remand (3d Dept) 159 App Div 2d 23, 558 NYS2d 314, 18 Media L R 1111 and (not followed by Anderson v Strong Memorial Hosp. (NY) 573 NYS2d 828).

Plaintiff stated cause of action against publishing company for violation of CLS Civ R §§ 50 and 51 by use of plaintiff's name in book to furnish "a sense of historical accuracy," and placing of plaintiff's name and quotes from book uttered by character with plaintiff's name and office in prominent place in flap jacket of book and in print advertising, for it could not be said, as matter of law, that readers of novel, described in flap jacket as being "set on the cutting edge between documented fact and masterfully crafted fiction," would believe that work was fictitious and that there was no connection between character in book and plaintiff. *Marcinkus v NAL Pub., Inc.* (1987) 138 Misc 2d 256, 522 NYS2d 1009.

Professional musician who donated his services as band member at charity rock concerts stated cause of action under CLS Civ R § 51 for invasion of privacy for improper use of his name and portrait in commercial reproduction of film and sound track of concerts as record album and videotape since it was not clear that he sold or disposed of his rights under statute or that press release promoting videotape was properly within "newsworthiness" exception. *Ippolito v Ono-Lennon* (1988) 139 Misc 2d 230, 526 NYS2d 877, mod on other grounds (1st Dept) 150 App Div 2d 300, 542 NYS2d 3.

Professional entertainer states valid claim for invasion of privacy under CLS Civil Rights Law §§ 50 and 51 against author of unauthorized biography of plaintiff, through allegations that biography contains false and fabricated reports of plaintiff's statements, impressions, and emotions, and that author knew statements to be false or recklessly disregarded whether statements were false. *Sinatra v Wilson* (1977, SD NY) 2 Media L R 2008.

48. Jury questions

Plaintiff was not entitled to summary judgment in her action alleging invasion of privacy by newspaper for publication of her photograph for trade purposes where factual questions existed as to whether newspaper's actions in publishing photo-

graph without obliterating plaintiff's face and without verifying copy received from printer amounted to gross irresponsibility and to substantial deviation from accepted standards of newspaper practice. *Fils-Aime v Enlightenment Press, Inc.* (1986) 133 Misc 2d 559, 507 NYS2d 947.

49. Damages

Court properly awarded plaintiff physician \$50,000 in compensatory damages and \$25,000 in punitive damages in action under CLS Civ R § 51 for unauthorized use of her name, photograph and professional title on advertising calendar where it was shown that defendant (medical services corporation) had acted knowingly. *Beverley v Choices Women's Medical Center, Inc.* (1991) 78 NY2d 745, 579 NYS2d 637, 587 NE2d 275, 19 Media L R 1724, 21 USPQ2d 1313.

51. Injunction

In action brought against publisher and distributor for improper use of plaintiff's name for advertising and trade purposes in violation of CLS Civ R §§ 50 and 51 in connection with publication of novel, plaintiff was not entitled to preliminary in-

junction requiring recall and destruction of all copies of book and any advertisements or promotions referring to plaintiff, and prohibiting use of plaintiff's name in flap jacket, since (1) no violation of statutes had been established, (2) book contained express disclaimer to effect that actions and motivations portrayed were entirely fictitious and should not be considered real or factual, (3) defendants asserted that they would suffer great monetary loss if forced to recall books, and (4) defendants represented that they no longer intended to run advertisements involving plaintiff, which plaintiff did not contradict. *Marcinkus v NAL Pub., Inc.* (1987) 138 Misc 2d 256, 522 NYS2d 1009.

In action under CLS Civ R Law §§ 50 and 51 by fashion model against magazine for its alleged unconsented publication of nude photographs of plaintiff, trial court's preliminary injunction prohibiting further publication, distribution, and sale of issue containing photographs will be reversed in light of failure to show sufficient risk of irreparable harm that cannot be compensated by money damages. *Hansen v High Soc. Magazine, Inc.* (1980, NY App Div) 6 Media L R 1618.

§ 50-a. Personnel records of police officers¹, firefighters and correction officers

1. All personnel records, used to evaluate performance toward continued employment or promotion, under the control of any police agency or department of the state or any political subdivision thereof including authorities or agencies maintaining police forces of individuals defined as police officers in section 1.20 of the criminal procedure law and such personnel records under the control of a sheriff's department or a department of correction of individuals employed as correction officers and such personnel records under the control of a paid fire department or force of individuals employed as firefighters or firefighter/paramedics shall be considered confidential and not subject to inspection or review without the express written consent of such police officer, firefighter, firefighter/paramedic or correction officer except as may be mandated by lawful court order.

[For subs 2-4, see parent volume]

HISTORY:

Section heading, amd, L 1986, ch 757, § 1, eff Aug 2, 1986.

The 1986 act added at fig 1 "firefighters".

Sub 1, amd, L 1986, ch 757, § 1, eff Aug 2, 1986.

RESEARCH REFERENCES AND PRACTICE AIDS:

44 NY Jur 2d, Defamation and Privacy § 189.

92 NY Jur 2d, Records and Recording § 24.

Annotations:

Validity and construction of statute giving employee the right to review and comment upon personnel record maintained by the employer. 64 ALR4th 619.

Law Reviews:

1982 Survey of New York Law. 34 Syracuse Law Review p. 359.

CASE NOTES

An order dismissing an information charging defendants with petty larceny and criminal trespass in the third degree after the prosecution failed to comply with a subpoena duces tecum

requiring the production of a police detective's personnel file, would be affirmed, since it could not be said that the dismissal of the information was an abuse of discretion, notwithstanding the

Picture Classics, Inc. (1932) 235 AD
NYS 800, affd 261 NY 504, 185 NE 711.
h "Howard Hughes Game", however
was an item of commerce which did not
he level of unrestricted dissemination and
violated Civil Rights Law §§ 50 and 51.
n against said game was restricted to
such as manufacturing, distributing, etc.
in the State of New York and could not
o other jurisdictions. Rosemont Exchanges
c. v Urban Systems, Inc. (1973), 1st Dept.
544, 345 NYS2d 17.

a broadcast journalists who appeared in
regarding insulation product were enjoined
injunction prohibiting the use of certain
newscast in a film promoting insulation.
Reilly v Rapperswill Corp. (1973), 2d
2, 377 NYS2d 488.

tion for a permanent injunction and
plaintiffs seek a temporary injunction to
defendant-publishers from publishing
pictures, names or biographical accounts
ves or purported first person narratives in
n with a book aimed at demonstrating
e poverty and miserable living conditions
1 area of New York City. Where the
complained of has been widely disseminated
ough its reprinting in a magazine and
ales and reviews of the book, a temp-
ction would be more harmful to defen-
shers than its denial would be to the
money damages appeared to be the right
ight." Smith v Goro (1970) 65 M.S. 12
NYS2d 47.

of Plaintiff's Photograph Under

omplaint against the defendant.

New York, City of _____
and name and reputation in the

mes hereinafter mentioned, the
existing under and by virtue of

mes hereinafter mentioned, the
a publication and/or magazine
under the name of _____

for commercial purposes, did
of the plaintiff, use a portrait
with _____ [a sordid story of
ne _____, with reference to
connected with the photograph of
iated with and dealing in and
ited States Laws]; further, that
t caused numerous copies of its

magazine to be distributed to various newspaper stands, book stores and other places,
for sale to the public at large in the City of _____, vicinity and State of New
York. That said story and photograph appeared in a publication known as _____,
in the _____, 19____, issue on pages _____, _____, _____, and _____
thereof. The name of the story was "_____" by _____.

5. That the photograph inserted in said magazine was not a photograph of
_____, but was in fact and in truth a photograph and picture of the plaintiff.

6. That the use by the defendant of the plaintiff's photograph and portrait, as
aforesaid, has caused her to be shamed, held up to public disgrace, and ridicule in the
community in which she lives; that by reason of such use of photograph of said
plaintiff, she has sustained and will continue to sustain intense mental suffering and
distress.

7. That the use by the defendant of the plaintiff's photograph and portrait as
aforesaid was entirely unauthorized and without the plaintiff's oral or written consent,
and such use by the defendant was entirely unlawful; that by reason of such use,
plaintiff has been damaged in the sum of _____ Dollars (\$_____)

WHEREFORE, plaintiff demands judgment against the defendant in the sum of
\$_____, together with exemplary damages and the costs and disbursements of the
action.

24

Attorneys for Plaintiff

Address _____
25

Telephone No. _____

[Verification]

[Adapted from papers in Thompson v Close-Up, Inc. 277 AD 848, 98 S2d 300 (1950)]

§ 50-a. Personnel records of police officers and correction officers

1. All personnel records, used to evaluate performance toward continued
employment or promotion, under the control of any police agency or
department of the state or any political subdivision thereof including
authorities or agencies maintaining police forces of individuals defined as
police officers in section 1.20 of the criminal procedure law and such
personnel records under the control of a sheriff's department or a depart-
ment of correction of individuals employed as correction officers shall be
considered confidential and not subject to inspection or review without the
express written consent of such police officer or correction officer except as
may be mandated by lawful court order.

2. Prior to issuing such court order the judge must review all such requests
and give interested parties the opportunity to be heard. No such order shall
issue without a clear showing of facts sufficient to warrant the judge to
request records for review.

3. If, after such hearing, the judge concludes there is a sufficient basis he
shall sign an order requiring that the personnel records in question be sealed
and sent directly to him. He shall then review the file and make a
determination as to whether the records are relevant and material in the
action before him. Upon such a finding the court shall make those parts of
the record found to be relevant and material available to the persons so
requesting.

4. The provisions of this section shall not apply to any district attorney or
his assistants, the attorney general or his deputies or assistants, a county

CONCLUSION

Civil Service Law §75-b serves a very important function and provides immunity if it is strictly followed. In this case, Officer Nichols did not follow the requirements of that law. If he had and if he had allowed his superior sufficient time to investigate the matter, then the determination of the wrong doing by the Village Board would have been the end of the matter.

Date: September 16, 1993

Respectfully Submitted,
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Malone, New York 12953
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State of New York
Village of Malone Civil Service Law §75

Village of Malone,

Complainant,

v.

Patrick Nichols,

Respondent.

TRIAL MEMORANDUM REGARDING
CIVIL SERVICE LAW §75-B

INTRODUCTION

In 1984, the State of New York enacted Civil Service Law §75-b. Sometimes called the "Whistleblower Law," it is clearly intended to protect public employees who disclose certain information provided that the employee complies with the law. A copy of the law is attached as Exhibit A.

POINT I

Only certain information may be disclosed.

Only the following information may be disclosed by an employee under the "Whistleblower Law." First, information may be disclosed regarding the violation of a law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety. Secondly, information may be disclosed which the employee reasonably believes to be true and reasonably constitutes an "improper governmental action." "Improper governmental action" means an action taken by a governmental agency or employee, in the course of official duties, which is in violation of any federal, state or local law, rule or regulation. See Civil Service Law §75-b (2)(a). It is far from clear in this proceeding that the information disclosed by Patrick Nichols meets either of the two criteria.

POINT II

Prior to disclosure, the appointing authority must be given time to take action.

A disgruntled employee is not allowed to disclose confidential information without taking certain preliminary steps. That employee must first provide the information to the appointing authority or his designee and allow such person reasonable time to take appropriate action unless there is imminent and serious danger to the public health or safety. Civil Service Law §75-b (2)(b).

There has never been any allegation of imminent or serious danger to the public health or safety regarding any incident at the police department building on April 3, 1993. Consequently, Officer Nichols was first required to report the information to the appointing authority or its designee. In this case, the appointing authority for patrolmen is the Chief. Even if the appointing authority was deemed to be the Village Board, the Chief is clearly their designee. The police regulations clearly provide that employees may not bring complaints directly to the Mayor or the Village Board, but may only do so with the permission of the Chief of Police. Regulations §10.1.28 and 11.5.

In this matter, the evidence demonstrates that Officer Nichols communicated details of an internal investigation to the District Attorney within three days of the date the original complaint was filed. Within three weeks, he had disclosed such information to the Mayor, a former Chief of Police, a civilian named Scott Mattamore, and perhaps others. Under any interpretation of the facts, Officer Nichols did not allow Chief Phillips adequate time to conduct his investigation.

POINT III

Civil Service Law §75-b is not a defense unless the disciplinary action is based solely on a violation by the employer of §75-b.

A public employee may not insulate himself from discipline merely by filing a complaint against his employer or a fellow employee. That would result in an intolerable situation in which public employees would be beyond control. Instead, the legislature provided a defense which may be used only when the employee is being disciplined solely as a result of his whistleblowing activities. Civil Service Law §75-b (3)(a).

POINT IV

Under §75-b, a public employee may disclose confidential matters only to a governmental body.

The purpose of the Whistleblower Law is to correct improprieties within government. The State of New York, in enacting that law, limited permissible disclosure to "governmental bodies" which would presumably have the power to correct the situation. Civil Service Law §75-b (2)(a).

The evidence has shown that Patrick Nichols disclosed details of an internal investigation to two civilians, former Chief Richard Brown, and Scott Mattamore.

Services, 1987, 126 A.D.2d 831, 510 N.Y.S.2d 745, affirmed 69 N.Y.2d 970, 516 N.Y.S.2d 659, 509 N.E.2d 354.

200. Record

Town supervisor's determination denoting police sergeant to patrolman was not based on an independent review of the record where supervisor did not have a copy of the hearing transcript prior to rendering his determination; evidence indicated that earliest transcript could have been received was 28 days after determination had been made. *Idrecci v. Honors*, 1990, — A.D.2d — 557 N.Y.S.2d 216.

201. Bills of particulars

Bills of particulars, while not required, are available under this section. *Owen*

v. Town Bd. of Town of Wallkill, 1983, 94 A.D.2d 768, 462 N.Y.S.2d 715.

Town board erroneously applied Town Law § 155 in hearing instead of this section, with its additional protection, and thus board's termination determination had to be annulled because of board's failure to give lieutenant available procedural rights, specifically right to demand bill of particulars. *Id.*

202. Transcript, cost of

Nurse employed by county health facility was entitled to reimbursement for cost of transcript of stop four grievance hearing. *Stoker v. Tarentino*, 1984, 101 A.D.2d 651, 475 N.Y.S.2d 562, affirmed as modified on other grounds and remanded 64 N.Y.2d 994, 489 N.Y.S.2d 43, 478 N.E.2d 184.

§ 75-b. Retaliatory action by public employers

1. For the purposes of this section the term:

(a) "Public employer" or "employer" shall mean (i) the state of New York, (ii) a county, city, town, village or any other political subdivision or civil division of the state, (iii) a school district or any governmental entity operating a public school, college or university, (iv) a public improvement or special district, (v) a public authority, commission or public benefit corporation, or (vi) any other public corporation, agency, instrumentality or unit of government which exercises governmental power under the laws of the state.

(b) "Public employee" or "employee" shall mean any person holding a position by appointment or employment in the service of a public employer except judges or justices of the unified court system and members of the legislature.

(c) "Governmental body" shall mean (i) an officer, employee, agency, department, division, bureau, board, commission, council, authority or other body of a public employer, (ii) employee, committee, member, or commission of the legislative branch of government, (iii) a representative, member or employee of a legislative body of a county, town, village or any other political subdivision or civil division of the state, (iv) a law enforcement agency or any member or employee of a law enforcement agency, or (v) the judiciary or any employee of the judiciary.

(d) "Personnel action" shall mean an action affecting compensation, appointment, promotion, transfer, assignment, reassignment, reinstatement, or evaluation of performance.

2. (a) A public employer shall not dismiss or take other disciplinary or other adverse personnel action against a public employee regarding the employee's employment because the employee discloses to a governmental body information: (i) regarding a violation of a law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety; or (ii) which the employee reasonably believes to be true and reasonably believes constitutes an improper governmental action. "Improper governmental action" shall mean any action by a public employer or employee, or an agent of such employer or employee, which is

not such action is within the scope of his employment, and which is in violation of any federal, state or local law, rule or regulation.

(b) Prior to disclosing information pursuant to paragraph (a) of this subdivision, an employee shall have made a good faith effort to provide the appointing authority or his or her designee the information to be disclosed and shall provide the appointing authority or designee a reasonable time to take appropriate action unless there is imminent and serious danger to public health or safety. For the purposes of this subdivision, an employee who acts pursuant to this paragraph shall be deemed to have disclosed information to a governmental body under paragraph (a) of this subdivision.

3. (a) Where an employee is subject to dismissal or other disciplinary action under a final and binding arbitration provision, or other disciplinary procedure contained in a collectively negotiated agreement, or under section seventy-five of this title or any other provision of state or local law and the employee reasonably believes dismissal or other disciplinary action would not have been taken but for the conduct protected under subdivision two of this section, he or she may assert such as a defense before the designated arbitrator or hearing officer. The merits of such defense shall be considered and determined as part of the arbitration award or hearing officer decision of the matter. If there is a finding that the dismissal or other disciplinary action is based solely on a violation by the employer of such subdivision, the arbitrator or hearing officer shall dismiss or recommend dismissal of the disciplinary proceeding, as appropriate, and, if appropriate, reinstate the employee with back pay, and, in the case of an arbitration procedure, may take other appropriate action as is permitted in the collectively negotiated agreement.

(b) Where an employee is subject to a collectively negotiated agreement which contains provisions preventing an employer from taking adverse personnel actions and which contains a final and binding arbitration provision to resolve alleged violations of such provisions of the agreement and the employee reasonably believes that such personnel action would not have been taken but for the conduct protected under subdivision two of this section, he or she may assert such as a claim before the arbitrator. The arbitrator shall consider such claim and determine its merits and shall, if a determination is made that such adverse personnel action is based on a violation by the employer of such subdivision, take such action to remedy the violation as is permitted by the collectively negotiated agreement.

(c) Where an employee is not subject to any of the provisions of paragraph (a) or (b) of this subdivision, the employee may commence an action in a court of competent jurisdiction under the same terms and conditions as set forth in article twenty-C of the labor law.

4. Nothing in this section shall be deemed to diminish or impair the rights of a public employee or employer under any law, rule, regulation or collectively negotiated agreement or to prohibit any personnel action which otherwise would have been taken regardless of any disclosure of information.

(Added L.1984, c. 650, § 1; amended L.1986, c. 899, § 1.)

Historical and Statutory Notes

1986 Amendment. Subd. 2, par. (a). ed provision defining "improper governmental action".
L.1986, c. 899, § 1, eff. Aug. 2, 1986.
inserted provisions relating to the re-
Effective. Date. Section effective

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

J. Brian McKee
Luddrick M. James, Jr.



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

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



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10/14/93

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To (Recipient's Name) Please Print

Recipient's Phone Number (Very Important)

Company

(914) 452-9120
Department/Floor No.

J. Brien McKee
Company

518 483-4998
Department/Floor No.

PAILEY, THOMAS ATTY
Street Address

McKee & James Inves & Sec Svcs
Exact Street Address (We Cannot Deliver to P.O. Boxes or P.O. Zip Codes.)

City State ZIP Required

1 2 6 0 1

Finney Blvd Rt 30

City Malone

State NY

ZIP Required

12953

OUR INTERNAL BILLING REFERENCE INFORMATION (optional) (First 24 characters will appear on invoice.)

IF HOLD FOR PICK-UP, Print FEDEX Address Here
Street Address

Payment 1 Bill Sender 2 Bill Recipient's FedEx Acct. No. 3 Bill 3rd Party FedEx Acct. No. 4 Bill Credit Card

5 Cash/Check

City State ZIP Required

SERVICES
(Check only one box)

DELIVERY AND SPECIAL HANDLING
(Check services required)

Priority Overnight
(Delivery by next business morning)
1 YOUR PACKAGING
2 FEDEX LETTER
3 FEDEX PAK
4 FEDEX BOX
5 FEDEX TUBE
Economy Two-Day
(Delivery by second business day)
6 ECONOMY
Standard Overnight
(Delivery by next business afternoon, no Sunday delivery)
51 YOUR PACKAGING
56 FEDEX LETTER
52 FEDEX PAK
53 FEDEX BOX
54 FEDEX TUBE
Government Overnight
(Restricted for authorized users only)
46 GOVT LETTER
41 GOVT PACKAGE
Freight Service
(For packages over 150 lbs.)
0 OVERNIGHT FREIGHT
80 TWO-DAY FREIGHT

1 HOLD FOR PICK-UP (Fill in Box H)
2 DELIVER WEEKDAY
3 DELIVER SATURDAY (Extra charge)
(Not available to all locations)
4 DANGEROUS GOODS (Extra charge)
5 DRY ICE
6 OTHER SPECIAL SERVICE
7 SATURDAY PICK-UP (Extra charge)
8 HOLIDAY DELIVERY (If offered) (Extra charge)

PACKAGES
WEIGHT
YOUR DECLARED VALUE
Total Total Total
DIM SHIPMENT (Chargeable Weight)
L x W x H
Received
1 Regular Stop 2 On-Call Stop
3 Drop Box 4 B.S.C.
5 Station

Emp. No. Date Federal Express Use
Cash Received
Return Shipment
Third Party
Cng. To Del. Cng. To Hold
Street Address
City State Zip
Received By:
X
Date/Time Received FedEx Employee Number
Base Charges
Declared Value Charge
Other 1
Other 2
Total Charges
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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



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

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

29 December 1993

Mr. Brian S. Stewart, Esq.
Hughes and Stewart, P.C.
Attorneys at Law
Post Office Box 788
Malone, New York 12953

Re: Village of Malone vs. Patrick Nichols

Dear Mr. Stewart:

My response to allegations raised by Mr. Nichols in his PETITION dated 9 December 1993 (Index # 93-755 - Supreme Court of the State of New York) is forwarded herewith for your review.

Respectfully,

J. BRIAN MCKEE

RESPONSE BY HEARING OFFICER J. BRIAN MCKEE TO ALLEGATIONS RAISED BY
PATRICK NICHOLS (PETITIONER) AND INCLUDED IN HIS PETITION DATED 9
DECEMBER 1993 (INDEX # 93-755)

Petitioner, in the cited petition, alleged that the undersigned, who served as the Hearing Officer in the matter of disciplinary proceedings filed against Petitioner pursuant to Section 75 of the Civil Service Law of the State of New York, was partial and biased against him in my conduct of the hearing held on 16 and 17 September 1993. In the aforementioned petition, Petitioner alleges that I was biased and impartial because I had demonstrated a friendship for the Malone Police Department, citing a 14 March 1991 letter, written by me as the owner of the Gateway Motel of Malone, wherein I extended courtesy accommodations to the Police Department on an as requested basis. As a former member of the Malone Police Department (1961), I have always had a sense of admiration for the department in which I got my real start in the law enforcement profession. I must point out, however, that the primary purpose of the letter in question was to commend members of the department, including Police Officer Nichols, for the professional manner in which they had responded to a hold-up alarm transmitted by the motel. Members of the department, and other law enforcement agencies in the Malone area, have utilized the motel for out of town guests, temporary lodging, et al, and I have always extended courtesy rates to them. It has always been done in the spirit of friendship with police officers representing agencies with which I was formerly affiliated as an active police officer and never as a improper inducement as suggested by Petitioner. The foregoing hardly suggests partiality or bias on my part. I showed no partiality or bias to either party to the hearing as demonstrated by my report and recommendations which included strong and public criticism for management personnel in the department and for the Mayor himself, as well as findings unfavorable to Petitioner. It must also be pointed out that, where appropriate and required, I recommended dismissal of some charges and specifications levied against Petitioner and did not concur with the request of the Village of Malone that Petitioner be outright terminated. Rather I weighed the evidence presented by both parties and recommended that every effort be made to return Petitioner to full employment in village government, but outside the Police Department.

For the record, I have always considered myself a "friend" of all members of the Malone Police Department because of my past employment in that department. In specific relation to Petitioner, I have personally supported him when he came to me and asked me to financially support the DARE program which he was then managing. I made a significant financial donation to Police Officer Nichols and also accepted his request that I be the keynote speaker at one of the DARE graduation ceremonies.

Page -3-

I enclose herewith two Memoranda of Law, provided during the course of the hearing in question by counsel for the Village of Malone, on which the Hearing Officer relied for guidance in the absence of any contradictory memorandum of law by counsel for Petitioner.

On the matter of post-hearing submission of closing statements by counsels for the Village and Petitioner, it must be pointed out that it was indicated by me to both counsels at the time of the closing of the hearing on 17 September 1993 that I required their input within three weeks (8 October 1993) and, to that end, I telephonically contacted Petitioner on 7 October 1993 to remind him that I had not received a closing memorandum from his counsel. I received a closing memorandum from the Village of Malone on 7 October 1993. During subsequent conversations with Petitioner and his counsel, I pointed out that I had not received their closing memorandum which they had indicated they desired to submit. I further provided my personal FEDEX account number to expedite transmittal of Petitioner's closing memorandum. It was never agreed that submission of closing memoranda by counsels would await receipt and review by them of a transcript of the hearings. Nevertheless, upon receipt of the transcripts on or about 12 October 1993, a copy was transmitted by me to Petitioner's counsel by FEDEX.

As demonstrated by the enclosed copy of my letter of 15 October 1993 to Mayor James N. Feeley, I did closely review the post-hearing closing memorandum of counsel for Petitioner and found nothing contained therein which was not already raised during the hearing and, accordingly, was not compelled to make any change to my report and recommendations of 13 October 1993.

While I have not seen it, I have been advised by the Publisher of the MALONE TELEGRAM that during an interview prior to the hearing of 16 and 17 September 1993, Petitioner told a reporter for that newspaper that he was comfortable with my assignment as Hearing Officer and felt he would receive fair and impartial treatment by me as Hearing Officer.

I respectfully deny Petitioner's allegations that I was biased and partial in my service as the Hearing Officer in Petitioner's disciplinary proceedings and wish to go on record as indicating my total willingness to appear in any judicial proceeding to give testimony under oath and to refute Petitioner's allegations.

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Should amplification of my responses be desired, please communicate with me at the letterhead address and I will be happy to respond.

Respectfully,

J. BRIAN MCKEE

@ T-94

Answers to Notice of Petition Ptlm. Nichols against Village
of Malone

Index No. 93-755

Chief Phillips Notes

- #4. 12-02-91 Reprimanded incident with Asst. Chief Marlow.
- 04-17-92 Reprimanded by Chief Phillips causing over
\$500 in unauthorized Over Time.
- 08-30-92 Insubordination with Sgt. Moll Ref: Log Book.
- 01-28-93 Taken off DARE program due to disciplinary
problems.
- 02-04-93 Two Hour council session W/Asst Chief Moll &
Chief Phillips where Ptlm Nichols was
informed of several violations of Rules of
Conduct he reviewed rules and said he
understood them.
- #5. Ptlm Nichols was not present at the station when
Mattimore was in holding cell.
- #7. Mattimore lied under testimony. Investigation conducted
In regards to Asst. Chief Moll and the bleach incident.
Reviewed by Village Attorney and Attorney Brian Stewart
and Village Board there was no wrongdoing found by any
of them to warrant any type of disciplinary action
being taken against Asst. Chief Moll. Ptlm Nichols was
not present during the incident and further Mr.
Mattimore has never filed a complaint with this
department.
- #8. Same as # 7
- #10. Ptlm. Nichols not authorized to conduct any
investigation of this sort clearly violates rules and
regulations Ptlm. Nichols waited 102 days after
incident to report.
- #11. Ptlm. Nichols informed other Officers the week that he
was given a letter of reprimand for a complaint against
himself and a fellow officer in regards to another
incident that happened at the K of C on June 1, 1993.
This was during the week of July 1, 1993 just before
Ptlm. Nichols made me aware of it and told officers
that he was going to get certain officers.
- #12. Sgt. Fountain informed Asst. Chief Moll of this on July
12, 1993. Sgt. Fountain never informed me I stopped in
the office when Sgt. Fountain was talking with Asst.
Chief Moll and heard the name Mattimore but I had no

idea what they were talking about.

- #13. I served Ptlm. Nichols with a disciplinary letter of reprimand on July 13, 1993 in regards to the K of C incident that was received on the 1st of June 1993. Ptlm. Nichols was well aware of this as he was given a letter from Asst. Chief Moll a week prior to my giving him his letter saying basically what my letter said to him. I had instructed Asst. Chief to give it to him because I was on Vacation and would not be back until the 13 of July. After Ptlm Nichols was given the letter of reprimand he then told me that he had something for quite a while and thought that this was a good time to give it to me. Ptlm. Nichols then left my office and came back about 2 hours with the complaint against the Asst. Chief in regards to the Mattimore incident.
- #14. The computer printout was just notes that I had jotted down I had already talked with all parties that were involved in the incident and all the information that I had collected contradicted what Ptlm. Nichols had put into his statement.
- #17. The DA did not testify and this is Ptlm. Nichols saying what the DA said and not the DA saying it. I talked with the DA about the incident the ADA was one of the attorneys that said there was no wrong doing on Asst' Chief Moll's part.
- #27. I sent the report to the Village Board along with my recommendations and left the final determination to them in regards to the investigation. A/C Moll was brought into executive session to only get his permission on releasing the information to the news media.
- #28. The bleach incident and Ptlm Nichols disciplinary problems are not related in any way Ptlm. Nichols testified that he was not even aware of the section 75 b until after he was dismissed.
- #35. Brian McKee was a part time employee of the Malone Police Department in 1962. He is the retired Director of the US Naval Investigative. There are no members on the department who ever worked with Mr. McKee.
- #36 I wasn't aware of the letter in question until the
to hearing. The rules and regulations clearly define what
#46 an officer can except and what they can't except. The letter looks like it was a letter of appreciation and in checking the complaint I find that Officer Nichols was one of the Officers that responded to the complaint. Former Chief Brown never posted the letter on the bulletin board so everyone could see it he made

copies and gave to the officers that responded to the alarm, as a letter of commendation. No officer ever took Mr. McKee up on his offer as it was in violation of the rules and regulations and as such would of been charged.

- #47 Ptlm. Nichols never informed me of the Mattimore incident until July 13, 1993 after I had served him with a letter of reprimand in regards to another incident.
- #48 I was never informed that Ptlm. Nichols was conducting any type of investigation if I had been aware of it I would of ordered him to stop and turn over whatever information that he had to me.
- #49. The other supposedly cover up was investigated by the DA's Office and punishment was imposed on the Officer in question.
- #50. Ptlm. Nichols talking to Mr. Hanna was in direct
to violation to the department rules and regulations.
- #54
- #61 The only information that was released to the press was from Ptlm. Nichols. Every time that they asked me for information I told them I could not comment.

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

January 6, 1994

Telephone: (518) 483-4330

Fax: (518) 483-4005

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

PERSONAL & CONFIDENTIAL

Re: Patrick Nichols vs. Village of Malone

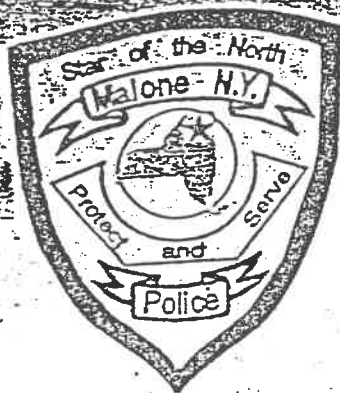
Dear Chief Phillips:

Enclosed is a copy of the entire personnel file of Officer Nichols as it was submitted into evidence at his disciplinary hearing in September 1993. I recommend that you use these documents to create a new personnel file for Officer Nichols. The original has become an exhibit. It is being submitted to Judge Plumadore in connection with the ongoing Article 78 proceeding. It will be quite awhile before I am able to return that document to you. Thank you for your understanding in this matter.

Very truly yours,


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

BSS/tlw
enclosure



POLICE DEPARTMENT
Village of Malone
2 Park Place
Malone, New York 12953-1601

See 7/29/94 for
Full text

(518) 483-2424
(518) 483-2426 FAX

James E. Phillips
Chief of Police

PATRICK NICHOLS

PERSONNEL FILE

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

January 10, 1994

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

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

Re: Patrick Nichols vs. Village of Malone (appeal)

Dear Mr. McKee:

I have read your letter to Judge Main and your correspondence to me dated December 29, 1993. I am preparing an answer for the Village of Malone and Officer Nichols' Article 78 proceeding.

We have the opportunity to submit affidavits along with the answer. I believe it would be appropriate to submit an affidavit from you denying Officer Nichols' allegations that you were somehow biased and that your evidentiary rulings were improper. I have prepared such an affidavit, and it is enclosed.

If the affidavit meets with your approval, I would appreciate it if you would execute it before a notary public and return it to me at your earliest convenience. Thank you for your help in this matter.

Very truly yours,



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

BSS/tlw
enclosure
cc: Mayor James Feeley

State of New York
County of Franklin Supreme Court

Patrick Nichols,

Petitioner,

v.

Village of Malone,

Respondent.

RESPONDING AFFIDAVIT OF
HEARING OFFICER

Index No. 93-755

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

J. Brian McKee, being duly sworn, deposes and says that:

1. I was the hearing officer duly appointed in the underlying civil service proceeding to take testimony regarding alleged violations of police department regulations by the petitioner Patrick Nichols.

2. I make this affidavit to accompany the Village's verified answer to the petitioner's Article 78 petition. I make this affidavit for the purpose of refuting certain allegations made by the petitioner against me.

3. In his Article 78 petition, the petitioner alleges that I was partial and biased against him in my conduct of the hearing held on September 16 and 17, 1993.

4. In particular, the petitioner alleges that I was biased and impartial because I demonstrated a friendship to the Malone Village Police Department citing a March 14, 1991 letter written by me as the owner of the Gateway Motel.

5. The primary purpose of the letter in question was to commend members of the Department, including Police Officer Nichols, for the professional manner in which they had responded to a hold-up alarm transmitted by the Motel. This letter does not show bias on my part against Officer Nichols. Indeed, it shows just the opposite.

6. I showed no partiality or bias to either party to the hearing, and I refer the court to the transcript of the proceedings and to my final report and recommendation which included strong public criticism for management personnel in the Police Department and for the Mayor himself as well as findings unfavorable to the petitioner.

7. Where appropriate and required, I recommended a dismissal of some charges and specifications levied against the petitioner, and I did not concur with the request of the Village of Malone that the petitioner be outright terminated.

8. Although I have been a former employee of the Police Department, I have also been a friend to the petitioner Officer Nichols. I have personally supported him when he came to me and asked me to financially support the DARE program which he was then managing. I also accepted his request that I be the key note speaker at one of the DARE graduation ceremonies.

9. I have had extensive schooling and training in industrial and labor relations, and I have had extensive experience in disciplinary matters, including four years as the director of a two thousand person agency. I have always been able to demonstrate my integrity and professionalism in disciplinary matters despite my personal friendship or working relationship with the parties thereto, and I have always attempted to act in such matters without bias or partiality.

10. During the course of the hearing, I was called upon to make a number of evidentiary rulings. I attempted to exercise common sense in my evidentiary rulings, and I believed then and believe now that all of my evidentiary rulings were reasonable, appropriate and legal.

11. With respect to the Petitioner's allegation that he suspected a cover-up of his charges by management in the police department, I found that such charge was without merit. I did not permit the testimony of defense witness Hanna on the topic of cover-ups after counsel for petitioner acknowledged that he could not demonstrate a direct connection between Mr. Hanna's planned testimony on a "rumored police cover-up" in the past and the actions of those involved in the matters charged in the Nichols case which was before me.

12. I believe that my rulings with respect to the "Whistleblower Law" were in all respects proper. In my opinion, that defense was without merit. Officer Nichols' complaint was not timely because he waited from April 2nd to July 13, 1993 to raise charges against an officer. He did not raise those charges until just after having been disciplined by the officer he then complained about. He did not permit the police department management a reasonable amount of time to investigate his charges before by-passing the chain of command and making unauthorized contacts and disclosures outside the police department, despite being assured, in writing, by the Chief of Police that his charges were being investigated and that disciplinary action would be taken where warranted by the facts.

13. Petitioner's attorney has complained that he was not given adequate time to submit a closing memorandum prior to the issuance of my report and recommendation.

14. At the close of the evidentiary hearing, I instructed both petitioner's attorney and the attorney for the Village of Malone that I required a closing memorandum within three weeks, which would have been October 8, 1993.

15. I received a closing memorandum from the attorney for the Village of Malone on October 7, 1993.

16. I subsequently have conversations with petitioner and his counsel pointing out that I had not received their closing memorandum. I provided petitioner and his counsel with my personal federal express account number to expedite transmittal of petitioner's closing memorandum.

17. I never agreed that submission of closing memoranda by counsel would await receipt and review by them of the transcript of the hearings. Nevertheless, upon receipt of the transcripts on or about October 12, 1993 a copy was transmitted by me to petitioner's counsel by Federal Express.

18. I made my report and recommendation which was dated October 13, 1993.

19. On or about October 15, 1993, I received a closing memorandum from petitioner's attorney. I reviewed that memorandum and found nothing therein which was not already raised during the hearing. I then wrote to the Mayor of the Village of Malone indicating to him that I had reviewed the memorandum from petitioner's attorney but that I did not feel compelled to make any changes in my report and recommendation.

. Dated:

J. Brian McKee

Sworn to before me this
_____ day of _____, 1994.

Notary Public

COPY

State of New York
County of Franklin Supreme Court

Patrick Nichols,

Petitioner,

v.

Village of Malone,

Respondent.

Verified Answer to Petition

Index No. 93-755

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

1. Admits each and every allegation contained in paragraphs 1, 2, 3, 10, 20, 21, 22, 24, 25, 28, 33, 34, 35, 36, 45, 51, 75, 79 and 80 of the petition.

2. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 5, 6, 7, 8, 14, 15, 16, 17, 42, 47, 48, 49, 55, 58, 63, 72 and 78 of the petition.

3. Denies each and every allegation contained in paragraphs 23, 29, 30, 38, 39, 41, 43, 52, 54, 62, 67, 68, 69, 71, 74 and 77 of the petition.

4. As to the following paragraphs, which purport to restate the contents of documents or statutes which are before the court, respondent affirmatively states that the referenced documents or statutes speak for themselves, and respondent denies each and every other allegation contained therein: 11, 12, 13, 18, 19, 26, 27, 31, 32, 37, 40, 44, 46, 50, 53, 56, 57, 59, 60, 61, 64, 65, 66, 70, 73 and 76.

5. As to paragraph 4 of the petition, respondent affirmatively states that petitioner has been the subject of prior disciplinary proceedings but had never previously been through the procedure set forth by Section 75 of the Civil Service Law while employed by respondent.

6. As to paragraph 9 of the petition, respondent denies knowledge or information sufficient to form a belief as to each and every allegation of the said paragraph except respondent admits that Gerald Moll is the Assistant Chief of the Village of Malone Police Department.

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

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

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

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

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

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

FIRST OBJECTION IN POINT OF LAW

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

SECOND OBJECTION IN POINT OF LAW

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

THIRD OBJECTION IN POINT OF LAW

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

FOURTH OBJECTION IN POINT OF LAW

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

FIFTH OBJECTION IN POINT OF LAW

17. The Village of Malone released the decision to the media soon after receiving it because Officer Nichols specifically demanded in writing that all aspects of this case be made public. This release was made pursuant to inquiry from the media.

SIXTH OBJECTION IN POINT OF LAW

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

SEVENTH OBJECTION IN POINT OF LAW

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

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

EIGHTH OBJECTION IN POINT OF LAW

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

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

NINTH OBJECTION IN POINT OF LAW

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

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

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

Dated:

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

TO:

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

VERIFICATION

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

VILLAGE OF MALONE

Dated: 1-11-94

by

James Feeley

MAYOR JAMES FEELEY

Sworn to before me this
11th day of January, 1994.

Elizabeth J. Besette
Notary Public

ELIZABETH J. BESSETTE
NOTARY PUBLIC OF THE STATE OF NEW YORK
STATE #175395193 FRANKLIN COUNTY #55
MY COMMISSION EXPIRES 12-31-94

COPY

State of New York
County of Franklin Supreme Court

Patrick Nichols,

Petitioner,

v.

Village of Malone,

Respondent.

RESPONDING AFFIDAVIT OF
HEARING OFFICER

Index No. 93-755

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

J. Brian McKee, being duly sworn, deposes and says that:

1. I was the hearing officer duly appointed in the underlying civil service proceeding to take testimony regarding alleged violations of police department regulations by the petitioner Patrick Nichols.

2. I make this affidavit to accompany the Village's verified answer to the petitioner's Article 78 petition. I make this affidavit for the purpose of refuting certain allegations made by the petitioner against me.

3. In his Article 78 petition, the petitioner alleges that I was partial and biased against him in my conduct of the hearing held on September 16 and 17, 1993.

4. In particular, the petitioner alleges that I was biased and impartial because I demonstrated a friendship to the Malone Village Police Department citing a March 14, 1991 letter written by me as the owner of the Gateway Motel.

5. The primary purpose of the letter in question was to commend members of the Department, including Police Officer Nichols, for the professional manner in which they had responded to a hold-up alarm transmitted by the Motel. This letter does not show bias on my part against Officer Nichols. Indeed, it shows just the opposite.

6. I showed no partiality or bias to either party to the hearing, and I refer the court to the transcript of the proceedings and to my final report and recommendation which included strong public criticism for management personnel in the Police Department and for the Mayor himself as well as findings unfavorable to the petitioner.

7. Where appropriate and required, I recommended a dismissal of some charges and specifications levied against the petitioner, and I did not concur with the request of the Village of Malone that the petitioner be outright terminated.

[Handwritten signature]

8. Although I have been a former employee of the Police Department, I have also been a friend to the petitioner Officer Nichols. I have personally supported him when he came to me and asked me to financially support the DARE program which he was then managing. I also accepted his request that I be the key note speaker at one of the DARE graduation ceremonies.

9. I have had extensive schooling and training in industrial and labor relations, and I have had extensive experience in disciplinary matters, including four years as the director of a two thousand person agency. I have always been able to demonstrate my integrity and professionalism in disciplinary matters despite my personal friendship or working relationship with the parties thereto, and I have always attempted to act in such matters without bias or partiality.

10. During the course of the hearing, I was called upon to make a number of evidentiary rulings. I attempted to exercise common sense in my evidentiary rulings, and I believed then and believe now that all of my evidentiary rulings were reasonable, appropriate and legal.

11. With respect to the Petitioner's allegation that he suspected a cover-up of his charges by management in the police department, I found that such charge was without merit. I did not permit the testimony of defense witness Hanna on the topic of cover-ups after counsel for petitioner acknowledged that he could not demonstrate a direct connection between Mr. Hanna's planned testimony on a "rumored police cover-up" in the past and the actions of those involved in the matters charged in the Nichols case which was before me.

12. I believe that my rulings with respect to the "Whistleblower Law" were in all respects proper. In my opinion, that defense was without merit. Officer Nichols' complaint was not timely because he waited from April 2nd to July 13, 1993 to raise charges against an officer. He did not raise those charges until just after having been disciplined by the officer he then complained about. He did not permit the police department management a reasonable amount of time to investigate his charges before by-passing the chain of command and making unauthorized contacts and disclosures outside the police department, despite being assured, in writing, by the Chief of Police that his charges were being investigated and that disciplinary action would be taken where warranted by the facts.

13. Petitioner's attorney has complained that he was not given adequate time to submit a closing memorandum prior to the issuance of my report and recommendation.

14. At the close of the evidentiary hearing, I instructed both petitioner's attorney and the attorney for the Village of Malone that I required a closing memorandum within three weeks, which would have been October 8, 1993.

15. I received a closing memorandum from the attorney for the Village of Malone on October 7, 1993.

had ju
16. I subsequently have conversations with petitioner and his counsel pointing out that I had not received their closing memorandum. I provided petitioner and his counsel with my personal federal express account number to expedite transmittal of petitioner's closing memorandum.

17. I never agreed that submission of closing memoranda by counsel would await receipt and review by them of the transcript of the hearings. Nevertheless, upon receipt of the transcripts on or about October 12, 1993 a copy was transmitted by me to petitioner's counsel by Federal Express.

18. I made my report and recommendation which was dated October 13, 1993.

19. On or about October 15, 1993, I received a closing memorandum from petitioner's attorney. I reviewed that memorandum and found nothing therein which was not already raised during the hearing. I then wrote to the Mayor of the Village of Malone indicating to him that I had reviewed the memorandum from petitioner's attorney but that I did not feel compelled to make any changes in my report and recommendation.

Dated: *11-9-*

J. Brian McKee
J. Brian McKee

Sworn to before me this
_____ day of *June*, 1994.


Brian S. Stewart
Notary Public

BRIAN S. STEWART
Notary Public State of New York
Frat. No. _____
Commission Expires Sept. 30, 1995

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 433-4570

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

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

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

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

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

31 Elm Street

P.O. Box #788

Malone, New York 12953

January 11, 1994

BRYAN J. HUGHES
BRIAN S. STEWART

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

Sharlene Callahan
Supreme Court Clerk
Franklin County Courthouse
63 West Main Street
Malone, New York 12953

Re: Patrick Nichols vs. Village of Malone
Index No. 93-755

Dear Sharlene:

This is an Article 78 proceeding which is pending before Judge Plumadore. Enclosed herewith please find the Village's verified answer and an accompanying affidavit from J. Brian McKee, who was the hearing officer.

In addition and pursuant to CPLR §7804 (e), I am filing with you a certified transcript of the record of the proceedings under consideration consisting of two volumes. They have been certified by Susan M. Niles, Court Reporter from Canton.

In addition, I am filing with you all of the original documentary evidence consisting of the following: Police Department Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 16. Police Department Exhibit 15 was marked but neither offered nor accepted into evidence. Also included are Hearing Officer exhibits 1 and 4. Hearing Officer Exhibits 2 and 3 are not in my possession. I believe that the transcript shows that they are the original charges against Officer Nichols and the amended charges against Officer Nichols which are mentioned hereafter. Also included are respondent's Exhibits A, B, C, D and E.

In addition to the foregoing documents, I am including the following: a copy of the original charges against Officer Nichols dated October 5, 1993, a copy of a letter from Thomas P. Halley, Esq. denying the allegations contained in the original charges on behalf of his client Patrick Nichols, a copy of a letter from Hughes & Stewart, P.C. to Attorney Halley delivering to Attorney Halley copies of the collective bargaining agreement, the departmental rules and regulations and a complete copy of Officer Nichols' personnel file. Also included are a copy of the amended charges, the letter from Attorney Halley dated September 3, 1993 answering the amended charges, a trial memorandum regarding Civil

January 11, 1994

Service Law §75b submitted by the Village of Malone at the hearing, a trial memorandum of law concerning the admissibility of testimony and documents regarding police office personnel matters submitted by the Village of Malone at the hearing and a closing memorandum of the Village of Malone. Also included are the report and recommendations of the Hearing Officer J. Brian McKee, a closing memorandum submitted by Attorney Thomas P. Halley, Esq. on behalf of Patrick Nichols and a copy of a resolution of the Village Board of Trustees of the Village of Malone dated October 20, 1993 imposing certain penalties against Officer Nichols as a result of the disciplinary hearing.

Very truly yours,



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

BSS/tlw

enclosures

cc: Mayor James Feeley
Thomas P. Halley, Esq.

Full text in
transcript (box #1)

State of New York
County of Franklin Supreme Court

Patrick Nichols,

Petitioner,

v.

Village of Malone,

Respondent.

Verified Answer to Petition

Index No. 93-755

1/11/94

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

1. Admits each and every allegation contained in paragraphs 1, 2, 3, 10, 20, 21, 22, 24, 25, 28, 33, 34, 35, 36, 45, 51, 75, 79 and 80 of the petition.

2. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 5, 6, 7, 8, 14, 15, 16, 17, 42, 47, 48, 49, 55, 58, 63, 72 and 78 of the petition.

3. Denies each and every allegation contained in paragraphs 23, 29, 30, 38, 39, 41, 43, 52, 54, 62, 67, 68, 69, 71, 74 and 77 of the petition.

4. As to the following paragraphs, which purport to restate the contents of documents or statutes which are before the court, respondent affirmatively states that the referenced documents or statutes speak for themselves, and respondent denies each and every other allegation contained therein: 11, 12, 13, 18, 19, 26, 27, 31, 32, 37, 40, 44, 46, 50, 53, 56, 57, 59, 60, 61, 64, 65, 66, 70, 73 and 76.

5. As to paragraph 4 of the petition, respondent affirmatively states that petitioner has been the subject of prior disciplinary proceedings but had never previously been through the procedure set forth by Section 75 of the Civil Service Law while employed by respondent.

6. As to paragraph 9 of the petition, respondent denies knowledge or information sufficient to form a belief as to each and every allegation of the said paragraph except respondent admits that Gerald Moll is the Assistant Chief of the Village of Malone Police Department.

Full text in
transcript box

State of New York
County of Franklin Supreme Court

Patrick Nichols,

Petitioner,

v.

Village of Malone,

Respondent.

RESPONDING AFFIDAVIT OF
HEARING OFFICER

Index No. 93-755

1/11/94

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Am

1
2 STATE OF NEW YORK
3 COUNTY OF FRANKLIN

VILLAGE OF MALONE

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

7 Village of Malone,

Complainant,

-against-

Volume I

8 Patrick Nichols,

Respondent.

9
10 Representing the Village of Malone:

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

14 Representing the Village of Malone:
15 THOMAS P. HALLEY, ESQ.
16 297 Mill Street
17 Poughkeepsie, New York 12601

18 ARTICLE 75 PROCEEDING,

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

22 ACC-U-SCRIBE REPORTING SERVICE
23 Suzanne M. Niles, Notary Public

24 11 Main Street
25 PO Box 762
Canton, New York 13617
(315) 379-9216
Watertown - (315) 786-DEPO
** ORIGINAL **

1
2 STATE OF NEW YORK
3 COUNTY OF FRANKLIN

VILLAGE OF MALONE

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

Village of Malone,

Complainant,

-against-

Volume II

Patrick Nichols,

Respondent.

Representing the Village of Malone:

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

Representing the Respondent:

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

ARTICLE 75 PROCEEDING,

in the above matter, held at the Malone Village Offices,
Malone, New York, on the 17th day of September, 1993,
before BRIAN MCKEE, Designated Hearing Officer.

ACC-U-SCRIBE REPORTING SERVICE
Suzanne M. Niles, Notary Public
11 Main Street

PO Box 762
Canton, New York 13617
(315) 379-9216
Watertown - (315) 786-DEPO

** ORIGINAL **



SHARLENE L. CALLAHAN
CHIEF CLERK II

COURT CLERK'S OFFICE
SUPREME & COUNTY COURTS
FRANKLIN COUNTY COURTHOUSE
63 WEST MAIN STREET
MALONE, NEW YORK 12953
(518) 483-6767 EXT. 749

COPY

January 12, 1994

Honorable Jan H. Plumadore
Supreme Court Chambers
Harrietstown Town Hall
30 Main Street
Saranac Lake, New York 12983

Re: Nichols vs. Village of Malone
Index No. 93-755
IAS No. 16-1-93-0275.P

Dear Judge Plumadore:

Pursuant to our telephone conversation of today with Todd Weber, we are sending you documents which were hand delivered to this office by Brian Stewart on January 12, 1994.

Very truly yours,

Robert V. Gravel

rvg

enclosures

cc: Brian S. Stewart, Esq.
Thomas P. Halley, Esq.

1/14/94

Where is Nichols?

To the editor:

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

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

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

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

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

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

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

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

Mike Fournier
Malone

Wants Dad To Teach DARE

To the editor:

My name is Holly Nichols.

I am 11 years old and in fifth grade at Davis School.

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

we have a new DARE teacher.

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

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

Holly Nichols
Malone

January 19, 1994

Hon. Jan H. Plumadore
Supreme Court Chambers
30 Main Street
Saranac Lake, New York 12983-1794

RE: Nichols v Village of Malone
Index No: 93/755

Dear Judge Plumadore:

Enclosed please find Petitioner's reply in regard to the above referenced matter. We also enclose an affidavit of mailing and a self addressed stamped envelope for return of the Court's decision.

Very truly yours,

THOMAS P. HALLEY

cc: Brian Stewart
Hughes & Stewart, PC
31 Elm Street
POB 788
Malone, New York 12953

Patrick Nichols
146 Webster Street
Malone, New York 12953

received 1/24/44 ENL text in transcript box

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

----- INDEX NO: 93/755
PATRICK NICHOLS,

Petitioner,

VERIFIED REPLY

-against-

VILLAGE OF MALONE,

Respondent,

Petitioner, by his attorney, Thomas P. Halley, in reply to the verified answer of the Village of Malone and the affidavit of Brian McKee, states as follows:

1. This reply is made by Thomas P. Halley, as attorney for the Petitioner. It is further verified by said attorney in that all matters contained herein are within the knowledge of said attorney, and directly reflected from the record.

2. In paragraph 11 of his affidavit, Brian McKee argues that he did not permit the testimony of Robert Hanna on the topic of cover-ups "after counsel for petitioner acknowledged that he could not demonstrate a direct connection between Mr. Hanna's planned testimony on a "rumored police cover-up" in the past and the actions of those involved in the matters charged in the Nichols case which was before me."

3. This is absolutely incorrect. The entire testimony of Robert Hanna, and the statements of Petitioner's attorney are contained in pages 156 through 157 of the transcript, copies of which are annexed hereto for the Court's convenience as Exhibit A. The Court will note that the Petitioner's attorney referred to Section 75-b of the Civil Service Law and stated that the purpose of calling Hanna as a witness was to demonstrate that the Petitioner was aware of prior cover-ups involving prior people, thereby demonstrating that he "reasonably believed" that there was improper governmental action, as required by the Civil Service Law. Nowhere in the transcript does counsel for the Petitioner "acknowledge" that he could not demonstrate a connection.

4. There is a further inaccuracy in paragraph 14 of the McKee affidavit. In said paragraph 14, McKee indicates that he "required" closing memoranda in three weeks. However, the record, at page 330 indicates that the transcript will take "about three weeks" to be provided.

received 1/24/44

Full text in transcript box (#1)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

INDEX NO: 93/755

PATRICK NICHOLS,

Petitioner,

1/19/44

VERIFIED REPLY

-against-

VILLAGE OF MALONE,

Respondent,

Petitioner, by his attorney, Thomas P. Halley, in reply to the verified answer of the Village of Malone and the affidavit of Brian McKee, states as follows:

1. This reply is made by Thomas P. Halley, as attorney for the Petitioner. It is further verified by said attorney in that all matters contained herein are within the knowledge of said attorney, and directly reflected from the record.

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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

January 24, 1994

Hon. Jan H. Plumadore
Supreme Court Chambers
Harrietstown Town Hall
30 Main Street
Saranac Lake, New York 12983

RE: Nichols v. Village of Malone
Index No. 93-755

Dear Judge Plumadore:

I received the verified reply of Attorney Halley on January 24th. Although the return date for this Article 78 Proceeding has passed, I wanted to comment on the allegations in paragraph 11 of that reply.

Mr. Halley takes the position that whenever an employee's employment record is used in a civil service hearing, he must first be given notice of the information to be considered and then an opportunity to submit a written response. He cites the case of Matter of Bigelow v. Board of Trustees 63 NY2d 470. Mr. Halley was kind enough to cite me to this case long before the hearing commenced and I have done everything within my power to comply with the case. The case involved an employer who used the personnel record when coming up with a punishment after a disciplinary hearing, even though the employment record was never offered or entered as an exhibit.

The papers before the Court will show that the first thing that Mr. Halley did when retained by Mr. Nichols was to demand a copy of Mr. Nichols' personnel record. I immediately complied with this request. I entered the personnel file as an exhibit at the hearing. Mr. Nichols had a full and fair opportunity to contest any material in the record but he did not do so.

Hon. Jan H. Plumadore
RE: Nichols v. Village of Malone
Page 2
January 24, 1994

I have complied with Bigelow and all the cases on point which have been decided since.

Very truly yours,

HUGHES & STEWART, P. C.

By:
Brian S. Stewart

BSS:tlt

cc: Thomas P. Halley, Esq.

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

ry 26, 1994

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

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

Clyde F. LaChance

Patrolman Clyde F. LaChance

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

February 4, 1994

Malone Lions Club
Box 248
Malone, NY 12953

Dear Mr. McCann & Malone Lions Board Members:

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

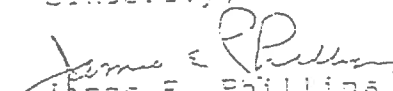
In reviewing the contents of the letter that accompanied your donation, I don't feel it is appropriate at this time for me to comment on the inner workings of the Police Department. I can, however, express my discouragement on the conclusions that some of you made with the limited information that you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

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

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

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

Sincerely,


James E. Phillips
Chief of Police

cc. Mayor James Feeley
Village Board

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

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

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

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



DRUG ABUSE RESISTANCE EDUCATION

MALONE LIONS CLUB
BOX 248
MALONE, NY 12953

8 WAYS TO SAY NO!

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



SUPPLEMENTARY REPORT

NO. _____

Classification _____

Name of Complainant _____

Address _____

Phone No. _____

Offense _____

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

Page No. Two

Date 02-16 1994

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

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

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

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

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

GKM

INVESTIGATING OFFICER(S) _____

26 REPORT MADE BY _____

DATE _____

27 CASE FILED

28 THIS CASE IS

Active ☐ 29 APPROVED BY _____

Yes ☐ No ☐

Cleared by arrest ☐

Unfounded ☐

Inactive ☐

Other ☐

Questions About Police Hearing

To the editor:

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

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

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

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

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

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

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

Jackie LaPlant
Malone



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

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

JOHN W. HERRITAGE
DEPUTY COMMISSIONER
518 457-6101
BUREAU FOR MUNICIPAL POLICE
TRAINING UNIT
518 457-2667
D.A.R.E. PROGRAM
518 457-2666
1 800 SAY-DARE
LAW ENFORCEMENT ACCREDITATION
518 455-1415
INTERNAL OPERATIONS
518 455-7620
TECHNICAL SUPPORT UNIT
518 455-1414
SECURITY GUARD PROGRAM
518 457-4135

February 17, 1994

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

Dear Chief Phillips:

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

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

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

Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

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

VILLAGE OF MALONE POLICE DEPT.

2 PARK PLACE
MALONE, NEW YORK 12953
(518) 483-2424

TO: Chief Phillips


ADDRESS: _____

DATE: 11-26-93

SUBJECT: _____

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

SIGNED: _____



Village of Malone New York

16 Elm Street
MALONE, NEW YORK 12953

Telephone: (518) 483-4570

May 3, 1994

Mr. Patrick Nichols
[REDACTED]

Malone, New York 12953

Dear Mr. Nichols:

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 attached charges are preferred against you.

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


You are allowed until the 11th of May, 1994, to 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, on or before 5:00 o'clock in the afternoon on said 11th day of May 1994.

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 9:00 a.m. on June 1, 1994, in the Malone Village Meeting Room, located at 14 Elm Street, Malone, New York.

If you are found guilty of any of the 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 \$100.00, or a reprimand.

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 [REDACTED] 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
Enc

CIVIL SERVICE LAW §75

VILLAGE OF MALONE,

Employer,

v.

CHARGES OF MISCONDUCT

PATRICK NICHOLS,

Employee.

The Village of Malone hereby charges Police Officer Patrick Nichols pursuant to Civil Service Law §75 as follows:

- 1) During the first part of September 1993, Police Officer Patrick Nichols, while on suspension, did knowingly and intentionally solicit four persons to sign a petition, the object of which was to influence the opinions and votes of the Board Members of the Village Board of the Village of Malone with respect to a personnel matter then pending in front of such Board involving Officer Patrick Nichols. This action violated the following Departmental Rules and Regulations:

Regulation Section:

10.1.1 Discredit upon Department

10.1.77 Seeking the influence or intervention of a person outside the Department for purpose of personal preferment or advantage.

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.

- 2) On March 17, 1994, while being questioned by superiors regarding the solicitation of signatures on the aforesaid petition, Officer Nichols failed to disclose the full scope of his behavior in soliciting signatures for such petition. His answers to direct questions about the direct solicitation of such signatures were misleading and false. This action violated the following Departmental Rules and Regulations:

Regulation Section:

10.1.4 Insubordination.

10.1.20 Knowingly making a false report, written or oral.

- 3) In the Malone Telegram published on August 17, 1993, the respondent did criticize the Police Department stating "There's somebody else who should be suspended for 30 days". This action violated the following Departmental Rules and Regulations:

Regulation Section:

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.

- 4) In the 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"? This action violated the following Departmental Rules and Regulations:

Regulation Section:

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.

- 5) 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 stating "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. This action violated the following Departmental Rules and Regulations:

Regulation Section:

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.
- 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.

6) On October 21, 1993 at 12:10 p.m., Mayor Feeley notified Officer Nichols by telephone from his office, while Chief Phillips and Elizabeth Bessette were present, that even though he was suspended, he was still a member of the Malone Police Department 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 gave an interview to a reporter for Channel 5 WPTZ News. This action violated the following Departmental Rules and Regulations:

Regulation Section:

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

WHEREFORE, the Village of Malone intends to conduct a hearing pursuant to Civil Service Law §75 in order to make determinations with respect to these charges and to determine the appropriate and legal response.

PLEASE TAKE NOTICE, that written answers to the foregoing charges must be served upon the attorneys for the Village within eight days of the service of these charges upon the respondent.

Dated: April 20, 1994

Yours, etc.
HUGHES & STEWART, P.C.
Attorneys for the Village of Malone
31 Elm Street, P.O. Box 788
Malone, New York 12953
Telephone: (518) 483-4330

STATE OF NEW YORK

SUPREME COURT

COUNTY OF FRANKLIN

PATRICK NICHOLS,

Petitioner,

-against-

VILLAGE OF MALONE,

Respondent.

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*
*
*
*
*
*
*
*

Index #93-755

CC #16-1-93-0275.P

Our File #P-1545

HON. JAN H. PLUMADORE

SUPREME COURT JUSTICE

DECISION

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

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

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

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

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

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

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

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

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

ENTER:

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

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

To: Patrolman Patrick Nichols

From: Ass't Chief Gerald Moll

Ref: Performance Evaluations

Date: January 25th 1994

Your first line supervisors have completed your last evaluation and all the Sergeants have rated your performance as below standard. These documents will become part of your personnel file. A below standard rating is not acceptable from members in order for this department to achieve it's goals. I suggest that you check with your supervisors in order to improve your rating. Another below standard rating may result in disciplinary action brought against you.

Ass't Chief Moll

POLICE DEPT.

VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

PATROLMANS PERFORMANCE RATING

OFFICER: PATRICK NICHOLS

PERIOD: MAY, JUNE, JULY 1993

ARREST DURING THREE MONTH PERIOD: 4

TICKETS DURING THREE MONTH PERIOD: 6

AVERAGE PERFORMANCE FOR DEPARTMENT DURING PERIOD:

ARREST: 9.5 PER PATROLMAN

TICKETS: 20.4 PER PATROLMAN

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

POLICE OFFICER EVALUATION

92

Ptln. Patrick Nichols
Employee's Name

59
Employee #

1/1/94
Date

Evaluation Period: From: 8/1/93 To: 1/1/94 Date Hired 6/17/88

Assignment During Evaluation Period: Patrolman

RATING INSTRUCTIONS: Rate observed behavior with reference to the scale provided. While you are encouraged to comment on any behavior you wish, you are required to comment on, and support, all above standard and below standard ratings. Mark box NA/NO if not applicable or not Observed.

RATER: Please initial appropriate line.

BELOW STANDARD X
Employee rated below Standard in 4 or more tasks.

STANDARD
Employee rated below Standard in no more than 3 tasks or has no below standard ratings. but has fewer than 17 above standard ratings.

ABOVE STANDARD
No below standard ratings and rated above 17 or more tasks.

 I agree with this Evaluation.

✓ I disagree with this Evaluation.

Patrick Nichols
Employee Signature

1-4-94
Date:

Patrick Nichols
Rater's Signature

1/1/94
Date:

AKF
Reviewer's Signature

1-2-94
Date:

NOTE: Reviewer must be one rank above Rater.

DIV. COMMANDER Signature

Date:

CATEGORIES	- STAND. +	NA-NO
1. KNOWLEDGE USE & CARE OF EQUIPMENT/WORK AREA	1 2 3 4 <u>X</u> 6 7	
2. FOLLOWING INSTRUCTIONS	1 2 <u>X</u> 4 5 6 7	
3. COMPLIANCE WITH OPERATION MANUAL	<u>X</u> 2 3 4 5 6 7	
4. KNOWLEDGE OF DEPARTMENTAL POLICIES AND PROCEDURES	1 <u>X</u> 3 4 5 6 7	
5. KNOWLEDGE OF CRIM. CODE MUNICIPAL CODE, V&T LAW AND CIVIL LAW.	1 2 3 <u>X</u> 5 6 7	
6. KNOWLEDGE OF COMMUNITY EVENT/CRIME PATTERNS	1 2 3 <u>X</u> 5 6 7	
7. KNOWLEDGE OF CRIME PREVENTION CONCEPTS	1 2 3 <u>X</u> 5 6 7	
8. DRIVING SKILLS NORMAL CONDITIONS	1 2 3 <u>X</u> 5 6 7	
9. DRIVING SKILLS STRESS OR EMERGENCY SITUATIONS	1 2 3 <u>X</u> 5 6 7	
10. REPORT/WRITING ORGANIZATION/DETAILS	1 2 3 <u>X</u> 5 6 7	
11. REPORT/WRITING - GRAMMAR/ SPELLING/NEATNESS	1 2 3 4 <u>X</u> 6 7	
12. REPORT/WRITING APPROPRIATE TIME USED/ PUNCTUALITY OF ASSIGNMENT	1 2 3 <u>X</u> 5 6 7	
13. PROBLEM SOLVING/ DECISION MAKING	1 2 3 <u>X</u> 5 6 7	
14. PERFORMANCE UNDER PRESSURE	1 2 3 <u>X</u> 5 6 7	
15. SELF INITIATIVE	1 2 3 <u>X</u> 5 6 7	
16. OFFICER SAFETY	1 2 3 <u>X</u> 5 6 7	
17. CONTROL OF CONFLICT	1 2 3 <u>X</u> 5 6 7	
18. USE OF RADIO	1 2 3 4 <u>X</u> 6 7	
19. INTERPERSONAL SKILLS	1 2 3 <u>X</u> 5 6 7	

CONTINUED ON PAGE TWO OF _____ PAGES.

POLICE OFFICER EVALUATION
PAGE TWO OF _____ PAGES

92

EMPLOYEE'S NAME _____

PR # _____

DATE: _____

Employee's Signature _____

Date: _____

Rater's Signature _____

Date: _____

CATEGORIES	- STAND. +	NA-NO
20. INVESTIGATIVE SKILLS/ PROCESSING CRIME SCENES	1 2 3 <u>X</u> 5 6 7	
21. TEAMWORK	1 2 3 <u>X</u> 5 6 7	
22. IMPARTIALITY	1 2 3 <u>X</u> 5 6 7	
23. APPEARANCE	1 2 3 4 <u>X</u> 6 7	
24. ATTITUDE	1 2 <u>X</u> 4 5 6 7	
25. ATTENDANCE	1 2 3 4 <u>X</u> 6 7	
26. ORIENTATION SKILL/ RESPONSE TO ASSIGNMENT	1 2 3 4 <u>X</u> 6 7	

EVALUATION NARRATIVE COMMENTS

ALL ratings Lower than FOUR or HIGHER than FOUR must have a Narrative comment. It shall start with the category Number of the Category you are commenting on, then the Comment. Also any NOT OBSERVED shall have a Narrative comment explaining why this was not observed.

#2 Officer has questioned authority

#3 Has recieved counseling for violations of rule, regulation and policy which resulted in suspension

#4 Officer failed to demonstrate knowledge of operation manual and did not understand policy and procedures set forth

#11 Has shown to have reports neatly written and legible. Grammer and spelling is shown to be above average

#18 Has always shown proper radio procedure, transmits clear

#23 Dresses in a neat manner. Always clean and shows proper fitness

#24 Has shown criticism as personal attack. Had engaged in an unprofessional manner which brought discredit to himself

#25 Officer has shown not to be abusive in sick leave and has always been prepared for duty in a timely manner

#26 Has shown to respond very well to locations throughout the village in a timely manner. Knows business and residential areas well.

POLICE OFFICER EVALUATION

92

Nichols, Patrick, M
Employee's Name

Employee #

1/1/94
DateEvaluation Period: From: 8/1/93 To: 1/1/94 Date Hired 06/17/88Assignment During Evaluation Period: Patrolman

RATING INSTRUCTIONS: Rate observed behavior with reference to the scale provided. While you are encouraged to comment on any behavior you wish, you are required to comment on, and support, all above standard and below standard ratings. Mark box NA/NO if not applicable or not Observed.

RATER: Please initial appropriate line.

BELOW STANDARD ☒
Employee rated below
Standard in 4 or more
tasks.

STANDARD ☐
Employee rated below
Standard in no more
than 3 tasks or has no
below standard ratings.
but has fewer than 17
above standard ratings.

ABOVE STANDARD ☐
No below standard
ratings and rated above
17 or more tasks.

☐ I agree with this
Evaluation.

☒ I disagree with
this Evaluation.

Patrick M. Nichols
Employee Signature

1-12-94
Date:

W. J. Ferry, Sgt.
Raters Signature

Date:

P. X. M. V.
Reviewer's Signature

12-28-93
Date:

NOTE: Reviewer must be
one rank above Rater.

DIV. COMMANDER Signature

Date:

CATEGORIES	- STAND. +	NA-NO
1. KNOWLEDGE USE & CARE OF EQUIPMENT/WORK AREA	1 2 3 (4) 5 6 7	
2. FOLLOWING INSTRUCTIONS	1 2 (3) 4 5 6 7	
3. COMPLIANCE WITH OPERATION MANUAL	1 (2) 3 4 5 6 7	
4. KNOWLEDGE OF DEPARTMENTAL POLICIES AND PROCEDURES	1 (2) 3 4 5 6 7	
5. KNOWLEDGE OF CRIM. CODE MUNICIPAL CODE, V&T LAW AND CIVIL LAW.	1 2 3 (4) 5 6 7	
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9. DRIVING SKILLS STRESS OR EMERGENCY SITUATIONS	1 2 3 (4) 5 6 7	
10. REPORT/WRITING ORGANIZATION/DETAILS	1 2 3 (4) 5 6 7	
11. REPORT/WRITING - GRAMMAR/ SPELLING/NEATNESS	1 2 3 4 (5) 6 7	
12. REPORT/WRITING APPROPRIATE TIME USED/ PUNCTUALITY OF ASSIGNMENT	1 2 3 4 (5) 6 7	
13. PROBLEM SOLVING/ DECISION MAKING	1 2 (3) 4 6 7	
14. PERFORMANCE UNDER PRESSURE	1 2 3 (4) 5 6 7	
15. SELF INITIATIVE	1 2 3 (4) 5 6 7	
16. OFFICER SAFETY	1 2 3 4 (5) 6 7	
17. CONTROL OF CONFLICT	1 2 3 (4) 5 6 7	
18. USE OF RADIO	1 2 3 (4) 5 6 7	
19. INTERPERSONAL SKILLS	1 2 3 (4) 5 6 7	

CONTINUED ON PAGE TWO OF 2 PAGES.

POLICE OFFICER EVALUATION

PAGE TWO OF _____ PAGES

92

EMPLOYEE'S NAME _____

PR # _____

DATE: _____

Employee's Signature _____

Date: _____

Rater's Signature _____

Date: _____

CATEGORIES	- STAND. +	NA-NO
20. INVESTIGATIVE SKILLS/ PROCESSING CRIME SCENES	1 2 3 4 5 6 7	
21. TEAMWORK	1 2 3 4 5 6 7	
22. IMPARTIALITY	1 2 3 4 5 6 7	
23. APPEARANCE	1 2 3 4 5 6 7	
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25. ATTENDANCE	1 2 3 4 5 6 7	
26. ORIENTATION SKILL/ RESPONSE TO ASSIGNMENT	1 2 3 4 5 6 7	

EVALUATION NARRATIVE COMMENTS

ALL ratings Lower than FOUR or HIGHER than FOUR must have a Narrative comment. It shall start with the category Number of the Category you are commenting on, then the Comment. Also any NOT OBSERVED shall have a Narrative comment explaining why this was not observed.

- #2 - Officer has difficulty following through with lawful orders and will often question authority. Reluctantly complies w/instructions.
- #3 - Officer has recieved counseling for violations of rules and regulations and has resulted in formal charges and hearing resulting in suspension and repeated reprimands.
- #4 - Officer demonstrate some knowledge of departmental policies and procedures but continually fails to utilize them in the proper manner.
- #10 - Officers reports are well written and are a detailed account of events from start to finish.
- #11 - Officers reports are well organized w/o any spelling or grammatical errors.
- #12 - Officers reports are completed in a timely manner w/minimal effort.
- #13 - Officer is indecisive and often times will question supervisor's opinion.
Has difficulty in making routine decisions.
- #16 - Officer follows proper safety procedures and is aware of the devolopment of potentially dangerous situations.
- #23 - Officers dress is always neat and orderly. Uniforms are clean and crisp.
- #24 - Officer perceives supervisor's criticism as a personal attack. He should try and understand that the criticism should be used to better himself.
- #25 - Officer rarely uses sick time and is always prompt and ready for duty.
- #25 - Officer respond to assignments in timely manner and knows patrol area and surrounding problems.

POLICE OFFICER EVALUATION

92

NICHOLS, PATRICK

Employee's Name

Employee #

Date

Evaluation Period: From: July 31st To: January 1st Date Hired _____Assignment During Evaluation Period: Patrol responsibilities

RATING INSTRUCTIONS: Rate observed behavior with reference to the scale provided. While you are encouraged to comment on any behavior you wish, you are required to comment on, and support, all above standard and below standard ratings. Mark box NA/NO if not applicable or not Observed.

RATER: Please initial appropriate line.

BELOW STANDARD
Employee rated below Standard in 4 or more tasks.

STANDARD
Employee rated below Standard in no more than 3 tasks or has no below standard ratings, but has fewer than 17 above standard ratings.

ABOVE STANDARD
No below standard ratings and rated above 17 or more tasks.

____ I agree with this Evaluation.

____ I disagree with this Evaluation.

Patrick Nichols
Employee Signature

Date: _____

[Signature]
Raters Signature

Date: _____

[Signature]
Reviewer's Signature

1-1-94
Date:

NOTE: Reviewer must be one rank above Rater.

DIV. COMMANDER Signature

Date: _____

CATEGORIES	- STAND. +	NA-NO
1. KNOWLEDGE USE & CARE OF EQUIPMENT/WORK AREA	1 2 3 <u>4</u> 5 6 7	
2. FOLLOWING INSTRUCTIONS	1 2 <u>3</u> 4 5 6 7	
3. COMPLIANCE WITH OPERATION MANUAL	1 <u>2</u> 3 4 5 6 7	
4. KNOWLEDGE OF DEPARTMENTAL POLICIES AND PROCEDURES	1 2 3 <u>4</u> 5 6 7	
5. KNOWLEDGE OF CRIM. CODE MUNICIPAL CODE, V&T LAW AND CIVIL LAW.	1 2 3 <u>4</u> 5 6 7	
6. KNOWLEDGE OF COMMUNITY EVENT/CRIME PATTERNS	1 2 3 <u>4</u> 5 6 7	
7. KNOWLEDGE OF CRIME PREVENTION CONCEPTS	1 2 3 <u>4</u> 5 6 7	
8. DRIVING SKILLS NORMAL CONDITIONS	1 2 3 <u>4</u> 5 6 7	
9. DRIVING SKILLS STRESS OR EMERGENCY SITUATIONS	1 2 3 4 5 6 7	N/D
10. REPORT/WRITING ORGANIZATION/DETAILS	1 2 3 <u>4</u> 5 6 7	
11. REPORT/WRITING - GRAMMAR/ SPELLING/NEATNESS	1 2 3 4 <u>5</u> 6 7	
12. REPORT/WRITING APPROPRIATE TIME USED/ PUNCTUALITY OF ASSIGNMENT	1 2 3 4 <u>5</u> 6 7	
13. PROBLEM SOLVING/ DECISION MAKING	1 2 3 <u>4</u> 5 6 7	
14. PERFORMANCE UNDER PRESSURE	1 2 3 <u>4</u> 5 6 7	
15. SELF INITIATIVE	1 2 <u>3</u> 4 5 6 7	
16. OFFICER SAFETY	1 2 3 <u>4</u> 5 6 7	
17. CONTROL OF CONFLICT	1 2 3 <u>4</u> 5 6 7	
18. USE OF RADIO	1 2 3 4 <u>5</u> 6 7	
19. INTERPERSONAL SKILLS	1 2 3 <u>4</u> 5 6 7	

CONTINUED ON PAGE TWO OF _____ PAGES.

POLICE OFFICER EVALUATION

PAGE TWO OF _____ PAGES

92

Nickols, Patrick
EMPLOYEE'S NAME

PR # _____

DATE: _____

Employee's Signature _____

Date: _____
Rater's Signature _____

CATEGORIES	- STAND. +	NA-NO
20. INVESTIGATIVE SKILLS/ PROCESSING CRIME SCENES	1 2 3 <u>4</u> 5 6 7	
21. TEAMWORK	1 2 3 <u>4</u> 5 6 7	
22. IMPARTIALITY	1 2 3 <u>4</u> 5 6 7	
23. APPEARANCE	1 2 3 4 <u>5</u> 6 7	
24. ATTITUDE	1 2 3 <u>4</u> 5 6 7	
25. ATTENDANCE	1 2 3 <u>4</u> 5 6 7	
26. ORIENTATION SKILL/ RESPONSE TO ASSIGNMENT	1 2 <u>3</u> 4 5 6 7	

EVALUATION NARRATIVE COMMENTS

ALL ratings Lower than FOUR or HIGHER than FOUR must have a Narrative comment. It shall start with the category Number of the Category you are commenting on, then the Comment. Also any NOT OBSERVED shall have a Narrative comment explaining why this was not observed.

2) IN PAST MEMBER HAD TO BE GUIDED

3) MEMBER RETURNING FR/ SUSPENSION DUE TO NUMEROUS VIOLATIONS

7) SHOWS KNOWLEDGE OF DRUG PREVENTION SKILLS THROUGH D.A.R.E. INSTRUCTION

11) REPORTS ARE GOOD REF. GRAMMAR, NEATNESS + SPELLING

12) REPORTS ARE PUNCTUAL

15) IN PAST MEMBER HAD TO BE GIVEN SPECIFIC GOALS BUT IS IMPROVING

18) RADIO USE IS GOOD

19) COMMUNICATES WELL WITH OTHERS

23) HAS PRIDE IN HIS APPEARANCE

26) SAME AS #2 + #15

POLICE OFFICER EVALUATION

92

Patrick Nichols

Employee's Name

Employee #

Date

Evaluation Period: From: 8/1/93 To: 12/31/93 Date Hired

Assignment During Evaluation Period: Patrol

RATING INSTRUCTIONS: Rate observed behavior with reference to the scale provided. While you are encouraged to comment on any behavior you wish, you are required to comment on, and support, all above standard and below standard ratings. Mark box NA/NO if not applicable or not Observed.

RATER: Please initial appropriate line.

BELOW STANDARD ☒
Employee rated below
Standard in 4 or more
tasks.

STANDARD
Employee rated below
Standard in no more
than 3 tasks or has no
below standard ratings.
but has fewer than 17
above standard ratings.

ABOVE STANDARD
No below standard
ratings and rated above
17 or more tasks.

I agree with this
Evaluation.

☒ I disagree with
this Evaluation.

Employee Signature

Date:

Raters Signature

Date:

Reviewer's Signature

Date:

NOTE: Reviewer must be
one rank above Rater.

DIV. COMMANDER Signature

Date:

CATEGORIES	- STAND. +	NA-NO
1. KNOWLEDGE USE & CARE OF EQUIPMENT/WORK AREA	1 2 3 4 5 6 7	
2. FOLLOWING INSTRUCTIONS	1 2 3 4 5 6 7	
3. COMPLIANCE WITH OPERATION MANUAL	1 2 3 5 6 7	
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5. KNOWLEDGE OF CRIM. CODE MUNICIPAL CODE, V&T LAW AND CIVIL LAW.	1 2 3 4 5 6 7	
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CONTINUED ON PAGE TWO OF _____ PAGES.

POLICE OFFICER EVALUATION

PAGE TWO OF _____ PAGES

92

Patrick Nichols
EMPLOYEE'S NAME

PR #

DATE:

Employee's Signature

Date:

[Signature]
Rater's Signature

12/31/93

Date:

CATEGORIES	- STAND. +	NA-NO
20. INVESTIGATIVE SKILLS/ PROCESSING CRIME SCENES	1 2 3 ④ 5 6 7	
21. TEAMWORK	1 2 ③ 4 5 6 7	
22. IMPARTIALITY	1 2 3 ④ 5 6 7	
23. APPEARANCE	1 2 3 ④ 5 6 7	
24. ATTITUDE	1 2 ③ 4 5 6 7	
25. ATTENDANCE	1 2 3 ④ 5 6 7	
26. ORIENTATION SKILL/ RESPONSE TO ASSIGNMENT	1 2 3 ④ 5 6 7	

EVALUATION NARRATIVE COMMENTS

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"See Attached sheet"

POLICE OFFICER EVALUATION
EVALUATION NARRATIVE COMMENTS

EMPLOYEE NAME: Patrick Nichols

DATE: 12/31/93

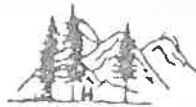
EMPLOYEE SIGNATURE: _____

RATER'S SIGNATURE _____

2m ZSP

- Category # 2 It is unclear if officer does not understand instructions or simply chooses not follow them.
officer does not indicate that he does not understand.
- Category # 4 Again it is unclear if officer does not understand or is simply choosing to circumvent procedure.
- Category # 13 officer sets sight on one solution to a problem and fails to explore other avenues. has an end justifies the means mentality
- Category # 19 Officer has a hard time working with authority figures, displays a closed minded attitude that sets other on the defense.
- Category # 21 Category #19 reflects in the same manner with teamwork,
- Category # 24 Officer takes constructive criticism as a personal attack upon him. Displays his dislike of supervisors and policy to other members.

11chob
Dunbar



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

Richard C. Brown
Chief of Police



Telephone
518-483-2424

VILLAGE OF MALONE

21 Pearl Street
Malone, New York 12953

DATE: October 2, 1990

TO: American Legion Post 219

FROM: Chief Richard Brown

SUBJECT: Letter of Recommendation
Patrolman Patrick Nichols

It is with great pride that I recommend Patrolman Patrick Nichols to receive The American Legion Certificate of Commendation.

Patrolman Nichols joined the Malone Police Department in June of 1988. During the spring of 1989 Patrolman Nichols wanted to do something for people with Diabetes as he had a friend that had the disease. Patrolman Nichols decided to raise money for the NYS American Diabetes Association by bicycling from Malone to Plattsburgh and then back to Malone. Patrolman Nichols called his ride for Diabetes.

" WHEELS OF HOPE "

Patrolman Nichols spent many hours collecting pledges and training for the race, when his ride was over he had collected more than \$5,500.00 for the American Diabetes Association. Because of Patrolman Nichols effort he was named Northeastern Chapter of the American Diabetes Association volunteer of the year.

Patrolman Nichols is a credit to the Malone Police Department and to the Village of Malone.

CONGRATULATIONS

Chief Richard Brown

THE AMERICAN LEGION

Certificate of Commendation



PRESENTED TO

Patrick M. Nichols

FOR OUTSTANDING SERVICE TO THE COMMUNITY THROUGH
CARRYING OUT THE DUTIES OF A POLICE OFFICER IN A MANNER
WHICH REFLECTS CREDIT UPON ALL LAW ENFORCEMENT
OFFICERS AND FOR DEDICATION TO THE PROFESSION ABOVE
AND BEYOND THE CALL OF DUTY.

Richard M. Yedro *Vincent Colasacco*
DEPARTMENT ADJUTANT DEPARTMENT COMMANDER

Ronald E. Quinones *Robert Gallucci*
POST ADJUTANT POST COMMANDER

MALONE AMERICAN LEGION

219

POST NO.

DEPARTMENT OF NEW YORK

3 October 19 90

Village of Malone New York

14 Elm Street

MALONE, NEW YORK 12953

Telephone: (518) 483-4570

September 20, 1989

Mr. Patrick Nichols
82 Park Street
Malone, New York 12953

Dear Pat:

Please accept my personal congratulations on your recent fund raising ride to Plattsburgh.

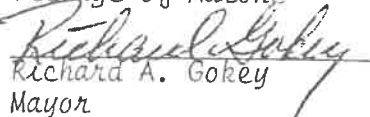
We are most fortunate to have a person of your dedication in our employ.

I am sure that you have received a great deal of satisfaction in helping some very needy people.

With best personal regards, I remain,

Very truly yours,
Village of Malone

By


Richard A. Gokey
Mayor

RG/cdy

cc: Chief Richard Brown

Richard C. Brown
Chief of Police



Telephone
518-483-2424

VILLAGE OF MALONE

21 Pearl Street
Malone, New York 12953

Chief Richard C. Brown
Chief of Police
Malone Police Department
Malone, New York 12953

December 31, 1990

Ref: letter commending Patrolmen Nichols and Mulverhill


On December 24, 1990 I was the night shift supervisor working with Patrolman Nichols and Mulverhill. At about 2130 Hrs. the department received a burglary complaint from 134 Ft. Covington street and Ptlm Nichols and Mulverhill were assigned.

During the course of their investigation the patrolmen followed tracks that had been left in knee deep snow and frigid cold until they discovered that another home had been burglarized at 125 Ft. Covington street. Their investigation continued for approximately two and a half hours in the course of this time the two patrolmen checked from ten to fifteen houses until they developed a footprint that had positively come from the suspect. They then continued the search until they came to 82 Ft. Covington street. Once at that location they found that the matching footprint had gone into the upstairs apartment. Their investigation revealed that the apartment occupant was Robert Richards. They were instructed by me to pick-up Richards at this time and bring him to the station for questioning, but Richards would either not open his door or had left the apartment. (it was later determined that he had in fact left).

Upon completing their report it was turned over to Det. Fleury who then confronted Richards with the information developed by Ptlm Nichols and Mulverhill. Once confronted Richards confessed to not only the two burglaries that night but four other prior burglaries. as a result six burglaries were cleared and most of the stolen property recovered.

I would like to commend these two patrolmen for their outstanding work and devotion to police work. This was not just a case of following footprints from point to point but instead a dedicated effort in adverse conditions, and as such set an outstanding example for the rest of the department.

sincerely,


SGT Wm Ritchie
Malone Police Dept.
Malone, New York

December 22, 1991



Dear Sir:

My husband I are very pleased with Officer Nichols' DARE work. I sit in on each of my daughter's sessions so am very aware of his enthusiasm, preparedness, and patience. A feeling of empathy and interest toward the children is very evident. We are so thankful that our community and police have made such a commit-

Malone

Greetings

from Flanders School
East Main Street
Malone, NY 12953

D.A.R.E.
TO KEEP KIDS
OFF DRUGS.

January 28, 1993

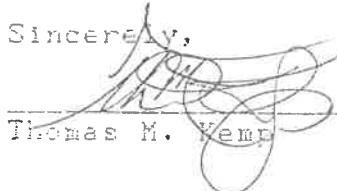
Dear Officer Nichols,

The attached letter was written by the fifth grade students at Flanders, thanking four high school students for sharing their time and thoughts with the Flanders fifth grade D.A.R.E. students.

The future looks bright and rosy when you see fine young women and men like Melissa Anderson, Lorraine Holland, Jason Pelkey and Jay Quenville interact so sensitively and unselfishly with younger students. The future of the fifth grade students is also brighter and rosier as a result of this interaction.

You can be very proud of the fact that you and your fellow police officers have made this a reality in Malone. We'll all reap the benefits in the future. Please accept my thanks on behalf of my students for the D.A.R.E. program. Keep up the exceptional work.

Sincerely,


Thomas M. Kemp

Malone

Greetings

from Flanders School
East Main Street
Malone, NY 12953

D.A.R.E.
TO KEEP KIDS
OFF DRUGS.

January 28, 1993

Dear ,

Thank you for coming to Mr. Kemp's D.A.R.E. class to explain drugs and what they are. It was very nice of you to give up your time and come to our D.A.R.E. class and we all appreciate it.

We're sure you changed alot of peoples' minds about being embarrassed when they make a mistake and about drugs. Thank you for telling us about strength in numbers with the right group.

Once again thanks alot, we all appreciate it.

Sincerely,

Gregory Latreille; President

Clint Soulia; Vice-President

Madonna Snyder; Treasurer

Tyler Ashlaw; Secretary

cc: Mr. Richard Gietaro
Officer Patrick Nichols
Mr. Dean Gardo
Mr. Thomas Helmer

DIVISION OF CRIMINAL JUSTICE SERVICES

STATE OF NEW YORK

Be it hereby known that

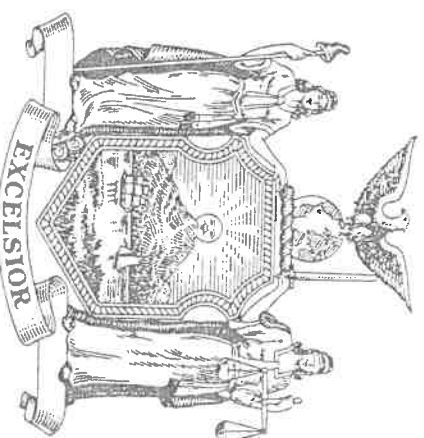
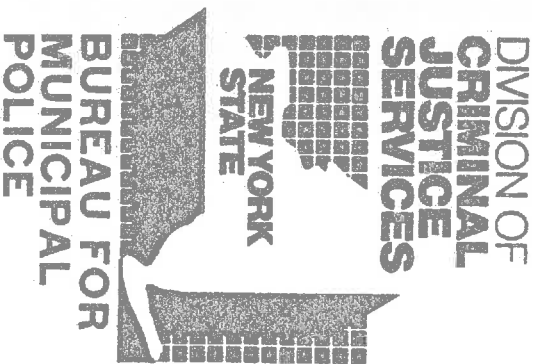
PATRICK NICHOLS

has attended a course
in

DRUG ABUSE RESISTANCE EDUCATION (D.A.R.E.)
IN-SERVICE TRAINING

given under the auspices of
the

NEW YORK STATE D.A.R.E. OFFICERS
ASSOCIATION
JANUARY 15 - 16, 1993



Richard D. Griffith
Director of Criminal Justice
and Commission

John W. Devitt
Deputy Commissioner, Division of
Criminal Justice Services

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

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

Ref: commendable action by three Malone Police Officers.

Sir;

On the evening of April 17, 1993 Officer Nichols who was off duty and at home was listening to the local radio station when something on the radio lead him to believe that there was some sort of problem going on at the radio station. Officer Nichols then called the duty desk and explained his concerns to the On-duty personnel.

At this time Officer's Collette and Simonsen went up to the WICY station on the Porter road. At the station they found an employee of WICY, Patrick Murtagh in a very confused and disoriented state. The two Officers kept Murtagh calm until Murtagh's mother arrived. It was at that time that the Officers learned that Murtagh is a Diabetic and was in Diabetic shock. With the assistance of the two Officers Murtagh's mother was able to administer sugar to Patrick and bring him out of this condition.

Had it not been for the quick action of all three Officers, Mr Murtagh may have suffered further injury or worst. Therefore I would like to recognize them for a job well done and add my personal congratulations.

Respectfully,



Sgt William Ritchie
Malone Police Dept.

16 April 1993

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

Dear Chief Phillips,

My son, Patrick, is a radio announcer for WICY. On Saturday, April 16 at about 10 p.m., Patrick went into insulin reaction while he was working at the station. Officer Pat Nichols, who was off-duty at the time, heard Patrick and thought there was something wrong. He called Officer Bruce Cox at the Station and Officers Mark Simonsen and Craig Collette responded to the call with Trooper Kelvis Melo. They arrived before Patrick lost consciousness and he let them into the building.

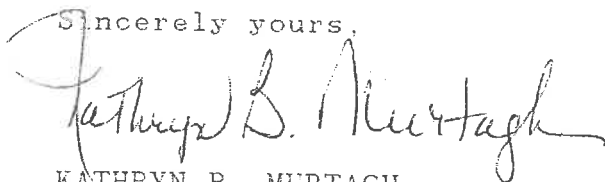
By the time my husband and I arrived, Patrick was unconscious. Had the police not arrived when they did, we may not have been able to get into the building in time to help Patrick and that could have been fatal.

As a taxpayer, as a mother, as a citizen and as a human being, I want you to know how very grateful I am to Officers Nichols, Simonsen, Collette and Cox for acting quickly and averting a disaster. I also want to tell you that we were extremely impressed with their genuine concern for Patrick and their total cooperation with us.

It's a great comfort to us to know that New York's Finest are there for us when we need them.

Patrick is fine. And for that, We will never forget those officers and we will always be extremely grateful to them.

Sincerely yours,



KATHRYN B. MURTAGH
11 Homestead Park
Malone, New York 12953-1613

Copy to: Mayor James Feeley

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

To: Chief James Phillips

From: Asst. Chief Gerald Moll

Ref: Personnel complaint from Jack Russell
Log # 3366 June 1st 1993
Complaint against Ptl. Steve Stone &
Ptl. Patrick Nichols

I have completed the investigation on the above listed personnel complaint. The investigation shows cause of mishandling a complaint by the Officers from Jack Russell. Upon reviewing the statements, V&T Law and checking the area in question, the following department rules and regulations were violated:

- 6.1 General Duties Preservation of public peace
- 8.3 Attention to locations vulnerable of crime
- 8.12 Preventive action against development of crime
- 8.13 Enforcement of traffic violations

RECOMMENDATION:

In regards to not enforcing the V&T Law on the parking violation, I feel that verbal counseling and instruction on the law would clear up any misconception.

The most disturbing portion of this complaint is that the patrol officers left the area. This department has been hounded by complaints from the taxi companies and their on going disputes have led to several arrests. Both subjects have been arrested for violent acts involving public order. The officers took very little action and left both subjects in the immediate area knowing that several people would be leaving the K of C. This subjected the public to abusive and obscene language and easily could have escalated.

This type of officers response can not be tolerated and a written reprimand should be placed in their personnel file for a period of three years.

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

To: Patrolman Patrick Nichols

From: Chief James E. Phillips

Date: July 10th 1993

Ref: Personnel Complaint from Jack Russell

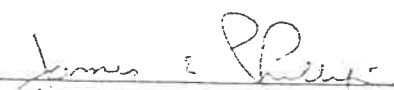
The investigation into alleged acts of mishandling a complaint involving Jack Russell has been completed and submitted to me by Ass't Chief Gerald Moll.

I have carefully reviewed the statements and feel that the action taken during this complaint did not comply with several departmental rules.

Specifically:

- 6.1 General Duties (Preservation of peace)
- 8.3 Attention to locations vulnerable of crime
- 8.12 Preventive action against development of crime
- 8.13 Enforcement of traffic violations

As you have been informed by Ass't Chief Moll, a letter of reprimand will be placed in your personnel file for one year. Although you were required to review all the department rules and regulations on 05-11-93, you are directed to reread the rules and regulations again. Any misunderstanding that you have on any department rules should be brought to the attention of your first line supervisor.


Chief James E. Phillips

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

PATRICK NICHOLS

I, THE UNDERSIGNED, ACKNOWLEDGE THAT I HAVE RECEIVED A COPY OF THE SET OF CHARGES PREFERRED AGAINST ME BY THE MALONE POLICE DEPARTMENT AND SET FORTH IN A LETTER TO ME FROM CHIEF JAMES E. PHILLIPS DATED JULY 10, 1993.

DATED July 13 1993

Patrick Nichols

WITNESS

James E. Phillips

OFFENSE REPORT

3370

Complainant Karon Russell

Case No.

Address

Phone

Offense Personnel Comp.

Place of Occurrence

Report received by GKM at 2140 M. Date 06-01 19 93 How reported phone

Date and time offense committed Officer Assigned A/C Moll

Time of investigation M. Date

Suspects and/or persons arrested

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

Comp. is regards to CR# 3366 (motor vehicle) involving Jack Russell and Ptl. Nichols. Jack Russell and Karon Russell wished to file statements against Ptl. Nichols for his conduct while handling the complaint. Statements taken from both the Russell's and their employee, Raymond Gero. Will follow up 06-05-93.

GKM

Completed statements and reviewed CR filed by Ptl. Nichols at 0200 Hrs. Interviewed Ptl. Stone and he typed out his own statement, completed at 0345. Will interview Ptl. Nichols and follow up when I return from days off. 06-05-93.

CKM

06-15-93 Interviewed Ptl. Nichols (see statement for details) He figured Bingo was letting out very soon and when second call came in, there were many people in the area when they arrived the second time.

06-15-93 Interviewed Lee LaFleur, he could not hear any of the comments Russell made but heard Ptl. Nichols state " If you don't shut up I'm going to arrest you" LaFleur felt that the police were there because he was blocking the driveway and figured he had to move. He was advised that he could park there providing that he

REPORT MADE BY

Date

SUPPLEMENTARY REPORT

Classification

NO. _____

Name of Complainant

Address

Phone No.

Karon Russell

Offense

Personnel Comp.

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

Page No. two

Date 06-15 19 93

move the car if someone wanted to go in or out.

Went to K of C and looked over the parking area in question. Lee LaFleur physically showed the location of the vehicle and that it was blocking half of the driveway.

GKM

07-05-93 Chief Reviewed paperwork and concurred with my recommendation, he further requested that I talk with the officers involved as he is currently on sick leave due to a back injury.

GKM

07-06-93 Reviewed paperwork with Chief and Mayor Feeley.

GKM

07-07-93 0400 Hrs. Talked with Ptl. Nichols and advised him of the personnel complaint again and further that there were four rules that were violated. Verbally went over each rule and Ptl. Nichols had a hard time understanding why we felt the rules were violated. He further gave the indication that he will dispute the findings and having a letter placed in his file. He was advised to review the procedure and was given a copy of his statement.

GKM

07-07-93 Interviewed Deny Lefebvre 15 Williams St. 483-6342. Lefebvre was the other PDQ Cab driver. (see statement for details) Lefebvre stated that he had a 15 year old female in her cab at the time of the incident. This girl started crying and was scared because of Russell's actions.

GKM

INVESTIGATING OFFICER(S)

26 REPORT MADE BY

DATE

27 CASE FILED

28 THIS CASE IS

Active ☐ 29 APPROVED BY

Yes ☐ No ☐

Cleared by arrest ☐

Unfounded ☐

Inactive ☐

Other ☐

OFFENSE REPORT

3366

Complainant K of C Malone Case No. _____Address Elm St. Phone _____Offense Motor Vehicle Place of Occurrence _____Report received by GKM at 2134 M. Date 06-01 19 93 How reported phoneDate and time offense committed _____ Officer Assigned Stone/ Nichols

Time of investigation _____ M. Date _____

Suspects and/or persons arrested _____

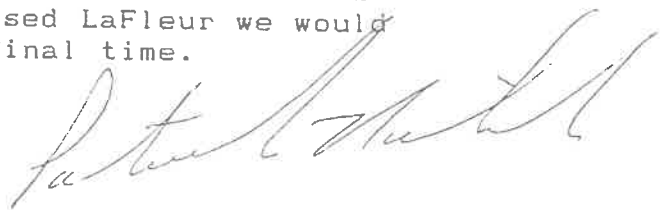
DETAILS OF OFFENSE (State fully all other circumstances of this offense and its investigation)

Patrol was dispatched to the K of C on Elm St. to investigate a car blocking a driveway. Upon arrival spoke with Lee Lafleur of P.D.Q. taxi who was parked on the street. His vehicle was parked facing east with the rear of the car at the edge of the driveway to the K of C. He stated he did not call us but that maybe Jack Russell of Adirondack Taxi did. AS I was speaking with Lafleur I observed a second PDQ cab parked in the driveway and across the sidewalk facing the street. Also noticed two Adirondack cabs beside the PDQ cab. The two adirondack cabs were also in the driveway and behind one another. I then approached Jack Russell and asked him if he called at which time he said yes a began to demand that the cabs from P.D.Q. be ordered to move as one was parked in the driveway and on the sidewalk. I told Jack that as long as the PDQ cabs moved when someone was gaining access or leaving or walking on the sidewalk that they were fine where they were unless a represntative from the K of C wanted them out. At the time I was explaining this to Russell there were drivers in both of the PDQ cabs and none in Russell's cabs. I then advised the PDQ cab in the driveway that they would have to allow pedestrians to walk on the sidewalk. He was also told that if someone from the K of C wanted them to move they would have to. I went into the K of C and found BINGO in process and noone free to speak with. AS I was entering the K of C Russell was loudly using obscene language as he was speaking to someone in a parked car. I advised him not to use anymore obscene language or he would be arrested for same. He stated he was talking to his wife. I repeated and added this was the last time I would tell him. No further complaints. Closed PMN

REPORT MADE BY _____

Date _____

In regards to a motor vehicle complaint received on June 1, 1993 at 2134 hrs.. Myself and Officer Stone responded to the K of C on Elm St. to investigate a car blocking a driveway. Upon arrival Officer Stone parked the patrol in the eastbound lane beside a P.D.Q. cab. We both exited the patrol. I interviewed the driver of the P.D.Q. cab Lee LaFleur. He said that he was not the one that called but maybe Jack Russel of Adirondack cab called. At the time I was speaking to LaFleur I observed another P.D.Q. cab parked in the driveway facing Elm St. and same was partially on the sidewalk. The driver was in the car. I also noticed two adirondack cabs parked on the east side of the P.D.Q. cab facing the same direction and were also in the driveway. There were no drivers in the Adirondack cab. I then turned and approached Officer Stone and Jack Russell. I asked Jack if he wanted us at which time he began demanding that the P.D.Q. cabs be ordered to move as one was blocking the driveway and on the sidewalk. I asked Jack if he was the one that called and he said yes. I explained to him I would tell the cab drivers that if someone wanted to get in or out of the driveway they would have to move their cars but that I could not make them move if there was no one wanting to get in or out. I asked Jack if he was leaving and he said not until he gets his fares. Which I understood to be passengers. I then advised the P.D.Q. cabs of the matter. I told Officer Stone I would contact someone from the K of C to find out if they wanted the cabs out of the driveway. As I was walking to the K of C Officer Stone turned the car around to face West. I was walking up the stairs to the K of C at which time I heard Jack Russell using obscene language as he was speaking to someone in a very loud tone. Due to the many number of people in the area I advised Russell that he must stop yelling obscene language or it could result in his arrest./ He made another obscene comment at which time I advised him this was his last warning about the language. Once inside the K of C I could not get anyones attention due to BINGO. I walked out of the building and directly to the patrol car. About 3 or 4 minutes after departure we were advised to return. Upon arrival we spoke with Lee LaFleur at which time he stated that he was just harassed by Jack Russell and wanted us to know this because Russell had also made threats against members of the Police Dept.. Advised LaFleur we would make note of same. We then left for the final time.



JUNE 1st 1993

While on patrol was dispatched to a vehicle blocking a driveway at the K of C on Elm St. Upon arrival saw three taxis in the driveway of the K. of C., two Adirondack and one P.D.Q. , only the P.D.Q taxi had a driver in it, this taxi was the closest to the street. There was another P.D.Q. taxi parked on the side of Elm St. but it was not blocking the driveway. Ptlm. Nichols and myself exited the patrol car and spoke first with the driver of the taxi parked on the side of Elm St. to see if he had called and he stated he had not. Also saw Jack Russell standing next to a car parked on Elm St. and asked if he had made the call, he stated yes that he could not get his taxi out because of the P.D.Q. taxi parked in the driveway. As we where speaking to Russell the P.D.Q. taxi pulled out of the driveway, asked Russell if he was going anywhere and he said not now but would when his fare came out. Advised Russell it was a private driveway and we could not issue any parking tickets and that all he had to do was asked them to move and they would have to. Spoke with the driver of the P.D.Q. taxi on the side of the street and he wanted to know if they could park there to pick up their fare. Advised them they could only do this if no one else was coming or going in the driveway and would have to move immediately if someone else came, at this point the taxi that had been parked there pulled back in, he was informed of what was said by radio from the driver we where speaking to. Russell was still standing a couple of car lengths down from our location and said " they never do anything for me, they never listen to me", advised Russell again that it was a private driveway and that we had not received any formal complaint form the owner yet. I then directed Ptlm. Nichols to check inside with someone from the K of C. as they had not yet come outside to speak with us. Ptlm. Nichols then walked towards the front doors and I went to move the patrol car out of traffic. Before leaving the driver of the P.D.Q. taxi parked on the side of the street, asked what to do if Russell came over to him as he was sure he would. Advised him to stay in his vehicle and not to exchange words but to call this dept. I then went up the street and turned the patrol car around and picked up Ptlm. Nichols, we had only reached Main St. when we where dispatched back to the scene for Russell harassing one of P.D.Q.s drivers. Responded back and spoke with the driver on the side of the street as the taxi that was in the driveway was gone, he said Russell had come over calling him and the other driver obscene names, and he wanted him to stop as this has been an ongoing problem. Advised him that there was not much we could do about name calling, and the driver said that everyone was leaving for tonight and he would speak with his boss later. Patrol headed down Elm St. and saw both Adirondack taxi headed same way and saw P.D.Q pulling away from K. of C. also.

Ptlm J.G. Stone

VOLUNTARY STATEMENT

DATE: 06-02-93

TIME: 0025 HRS.

[REDACTED] years of age and my address is [REDACTED]

I would like to state that I'm employed by Adirondack Taxi and was working on June 1st 1993. At about 9:10 pm. I brought my cab to the K of C because bingo was getting out. We do this every Tuesday. I parked my cab in the driveway off to the side so other vehicles could get by. Adirondack also had two other cabs at the K of C. One in front of me in the driveway and the other on Elm St. in front of the building. PDQ cab driver, Lee Lafleur, drove up and parked behind a vehicle that was parked in front of the K of C. The PDQ cab was blocking part of the driveway to the K of C. My boss, Jack Russell had a delivery to make but couldn't get out of the driveway without possibly causing some damage to the vehicles. Jack had the dispatch call the village police and they showed up. Officer Nichols got out of the patrol car and talked with Lee first. Officer Nichols then asked Jack if he called the police. Jack told him yes and that he needed the PDQ cab moved because he had a call. Officer Nichols told Jack that he had no business calling the police because Jack didn't own the K of C. The other officer stated that he was going to move the patrol car and told Officer Nichols to go inside. The patrol car pulled away, Jack and I were near the cab that was parked in the street. Officer Nichols walked towards the building and Jack was talking to his wife. Officer Nichols stopped near the top step of the K of C, turned around and said "if you don't watch your foul language, I will arrest you". Jack told Officer Nichols that he wasn't speaking to him that he was talking to his wife. Just before Officer Nichols turned and said this, Jack said to his wife, "I'm going to have this fucking thing checked out in the morning". Jack did not yell this. It was a tone of voice just like when you are talking to someone. After a short time the officers left the area and the PDQ cabs were still there blocking everyone in. People started walking out of the K of C and Lee started hollering at Jack Russell and challenging him to the fight. Lee was calling Jack a mother fucker. This was when there was about 20 to 30 people outside of the K of C. There was alot hollering between Jack and Lee. The PDQ cab that was backed in left the area. The police car returned after the hollering was over. It pulled along Lee Lafleur's cab and they talked to Lee. The police car then pulled away and the PDQ cab started to move. We then were able to drive away.

Affirmed under penalty of law this 1st day of June 1993

Raymond N. Lero

1/c [Signature]

VOLUNTARY STATEMENT

DATE: 06-01-93

TIME: 2330 HRS.

I, Karon Russell, am 34 years of age and my address is [REDACTED]

I would like to state that I'm co-owner of Adirondack Taxi and on June 1st 1993 at about 9:00 pm. I brought my cab to the K of C because bingo was to be let out. I parked in front of the K of C on the side of the street. My husband and Raymond zero brought two other cabs to the K of C and parked them in the driveway. This is something that our taxi cabs do every night that K of C has bingo. When we park the cabs in the driveway, we pull to the far side so other vehicles can enter or exit. The K of C has never complained about this. Tonight PDQ Taxi brought two cabs to the K of C. One parked on the side of the street which was driven by Lee Lafleur. The other cab showed up and backed into the driveway on an angle. This cab blocked the driveway and across the sidewalk. My husband couldn't get his cab out of the driveway and he had a delivery to go on. We then had our dispatcher call the police and the Village Police arrived. One of the officers asked Jack if he called the police and we told him yes. Jack and Raymond went to Officer Nichols and I heard Officer Nichols say that Jack didn't own the driveway. Jack then came over to talk to me and the officers went and talked to the PDQ cab drivers. I think the PDQ cab backed up a little. Officer Nichols walked to the front of the K of C and was ready to go inside. Officer Nichols then turned around and he looked like he was upset and he hollered something at Jack. Jack didn't say anything to Officer Nichols before this, but was talking to me. After Officer Nichols hollered this to Jack, Jack told him that he was talking to his wife. I yelled the same thing but was not sure if the officer heard me. Officer Nichols then came back from the K of C, and the patrol car left the area. The PDQ cabs were still blocking the driveway and no vehicles including our two cabs were able to leave the K of C. Jack and Raymond started to go to their cabs and Lee Lafleur got out of his cab and tried to pick a fight with my husband. By that time the people were leaving the K of C. People got into the cabs Jack had to wait about five minutes before he could get out.

Affirmed under penalty of law this
1st day of June 1993.

Karon Russell

6-2-93 X 7-2-93

VOLUNTARY STATEMENT

DATE: 06-01-93

TIME: 2225 HRS.

I, JACK RUSSELL

AM 34 YEARS OF AGE, ; MY ADDRESS
[REDACTED]

I would like to state that I own Adirondack Taxi and on June 1st 1993 at about 9:30 pm. I had three of my taxi cabs near the K of C because of Bingo. Every week I bring my taxi cabs to the K of C when bingo lets out. Many times I have parked my cabs on the east side of the driveway. The driveway is wide enough so we can park cabs in the driveway and vehicles can still exit or enter. Tonight I had two cabs in the driveway at that location and one cab parked on the side of the street in front of the K of C. PDQ Taxi then pulled a cab on the side of the street behind my cab, partially blocking the driveway and blocking both the cab in the street and the cab in the driveway. Another PDQ cab backed into the driveway on an angle, completely blocking the driveway and was also across the sidewalk. I then had my radio dispatcher notify the Police. Village Police arrived and Officer Nichols got out of the car and asked me if I called the police. I told him yes because my cars were blocked and we couldn't get out. Officer Nichols then told me that I didn't own the driveway or the road. The other officer told Officer Nichols that he had to move the patrol car because it was blocking traffic. Officer Nichols started to walk to the K of C and the other officer moved the patrol car. My wife was in the cab that was parked on Elm St. and we were discussing what was going on. I told my wife that I couldn't understand that nothing could be done because of the way PDQ parked their cabs. Officer Nichols was standing on the steps of the K of C and turned around and yelled to me, "watch your dirty mouth or I'm gonna arrest you like I did before". I then said "what for, putting in a complaint". Raymond Jeror and my wife was present when Officer Nichols said this.

The Officers left the area and the PDQ cabs were never moved and I was still blocked in. A short time later the officers came back. They pulled up along side of the PDQ cab that was parked in the street, stopped and the driver of the cab, Lee Lafleur, started yelling something. The police then pulled away and Lee started yelling at me and saying that I was a cop calling cock sucker. The police car was about 10 to 20 feet up the road when he said this. Lee then threatened to punch me in the mouth. About five minutes later the PDQ cab finally moved so I could pull from the driveway.

AFFIRMED UNDER PENALTY OF LAW THIS
1ST DAY OF JUNE 1993.

Jack R. Russell

I'm giving this statement in regards to an incident that took place in June 1993 and it was a bingo night at K of C. I drive taxi for PDQ Taxi and I parked my cab with the back end of my cab across the driveway. Jack Russell also had cabs at the same location. The Malone Police showed up and went to talk with the other PDQ cab driver, Lee Lefleur. Lee transmitted over the CB to me "Deny, move your car". I started to move my cab and then while the police were still standing near Lee's cab, Lee again transmitted over the CB saying never mind, they said that I didn't have to move it. Lee was pointing to the police officers when he said that. I put the cab back in park and waited there. Then the police walked over to Jack Russell, for a short time, not even two minutes and left. While the police were driving away, Jack started yelling that he pays taxes and that the police don't do anything. The Police left the area and drove down Elm St. towards Main St.

Bingo had already let out and I had a customer in my cab. Jack continued to yell "Fuck-you, and Fuck This" and he tried to pick a fight with Lee LeFleur. The customer that I had in my cab was a 14 or 15 year old female and she started crying and she was scared that Jack was going to start a fight with Lee. This girls name is Crissy Rich and lives 34 Rennie St. Crissy came out when the police were talking to Jack and got in my cab. I waited for my cab to fill up and then left the area.

Affirmed under penalty of law
this 7th day of July 1993

A handwritten signature, likely "Jack Russell", is written over a horizontal line. The signature is in cursive and includes a small 'X' mark at the beginning.

VILLAGE OF MALONE POLICE DEPT.

2 PARK PLACE
MALONE, NEW YORK 12953
(518) 483-2424

TO: Patrolman Nichols

ADDRESS: MVPD

DATE: 08-30-92

SUBJECT: Improper entries in police log

On August 26th 1992 you were advised of the improper entries that you were making in the police log when signing off and on duty. I made several corrections in your presence and your only response was that A/C Marlow signs off different also. Do to your total disregard for this oral instruction, it has become necessary to give you a direct order in writing. You will make complete and proper entries in the police log such as NICHOLS OFF DUTY or NICHOLS ON DUTY. You also expressed a concern about the shift supervisor's not being uniform when supervising your shift. I will bring this up at the next supervisor's meeting in order to correct any complications you have been having along with the contents of this memo.

SIGNED: Sgt. Gerald K. Moll

Sergeant Gerald K. Moll

Chief Phillips,


In regards to item # 1057. It was necessary to call overtime from midnight until 4:00 a.m. and then from 4:00 a.m. until 12/N. Mental Health could not deem the patient mentally incapacitated therefore the Hospital could ^{not} conduct a medical workup unless they had a court order. Speaking with John Wool he stated that the county judge is the only judge who can issue such an order. Judge Main is out of town for the Holiday. The soonest Wool can get to an adjoining county judge is Saturday afternoon. Therefore the Police Dept., according to section 9.41 of the Mental Hygiene law, is responsible for assuring the safe and clean care of the patient until such legal admission to hospital can be made. Speaking with Norm Gervais he stated he can not allow the patient to stay without continual Police observation until such time the court order arrives and then his staff will assume responsibility.

Pat Nichols

The only thing that we are responsible for is to bring the patient to the hospital what they do with them once they get them is their problem not ours. If you feel that the patient is a mental person than you arrest same and bring before local judge.

Also a patrolman is not authorized to call in persons for overtime for special details such as this. You were also in violation of department policy by not calling in a supervisor for the OT.

This episode cost the Village over \$500 dollars in OT


Chief Phillips

Reprimand by
Chief
Phillips

VILLAGE OF MALONE POLICE DEPT.
21 PEARL STREET
MALONE, NEW YORK 12953

TO: PTLM NICHOLS

ADDRESS: _____

DATE: 12/02/91

SUBJECT: Alain Rioux request f/Supporting

Ptln Nichols:

A review of the Justice Court file brought this to my attention. Your response to Judge Coughlin is not acceptable. The fact that you cannot recall the specifics of this incident is irrelevant. You have all pertinent information needed on the ticket itself to comply with the defendants request for a Supporting Deposition. I strongly suggest that you do so and place a copy of same in my box so I can review it.

If you have difficulty in recalling the events in the future I further suggest that you utilize the "hard copy" reverse side marked OFFICER NOTES provided.

SIGNED: Asst/Chief Verdon N. Marlow Jr.

VILLAGE OF MALONE POLICE DEPT.
21 PEARL STREET
MALONE, NEW YORK 12953

TO: CHIEF PHILLIPS

ADDRESS: _____

DATE: 12/02/91

SUBJECT: Ptln Nichols

Chief;

Attached you will find a copy of a request for a Supporting Deposition from one Alain Rioux with reference to a ticket issued by Ptln Nichols and signed by Judge Coughlin. Also attached there is Ptln Nichols response to the request. A review of the Justice Court file by me revealed this situation. You will also find a copy of my memo to Ptln Nichols instructing him to comply with the request immediately. This is just for your information as I feel that you will be approached by the Officer involved.

SIGNED: VNM

VILLAGE OF MALONE POLICE DEPT.
21 PEARL STREET
MALONE, NEW YORK 12953

TO: Chief

ADDRESS: _____

DATE: 12-4-91

SUBJECT: _____

At 7:30 p.m. on 12-3-91 A.C. Marlow requested I join him in your Office. nce inside your Office he advised me to take a seat. As soon as I did he confronted me in regards o the personnel complaint that I had made against him. As he did so he was standing facinf me. e was pointing and yelling to me a majority of the time. His actions towards me in your Office nly support my allegations of Harassment. I was not aware that Marlow would be allowed to onfront me on a one to one basis in regards to my complaint. He did so in a very intimidating ashion and environment. I am bringing this to your attention for my own records. lo further action requested on your part.

SIGNED: A.C. Marlow

Justice Court

14 Elm Street
MALONE, NEW YORK 12953

Telephone (518) 483-5210

TO: Officer Patrick Nichols, MVPD
FROM: M. J. Coughlin, Malone Village Justice
RE: Alain Rioux - DOB: 3/28/47
CHARGE: 1180d (48/30) - 10/26/91
DATE: 11/19/91

PLEASE BE ADVISED THAT THE ABOVE-NAMED
INDIVIDUAL HAS BEEN ARRAIGNED BY M. J. Coughlin,
TOWN/VILLAGE JUSTICE, AND HAS REQUESTED A SUPPORTING
DEPOSITION TO BE SERVED ON Justice Court,
~~ATTORNEY FOR THE~~ ~~WANT~~

Judge,

For some reason
I cannot recall
this incident.

I've reviewed
the ticket and
still cannot
recall it.

P. Nichols

Problem with
Assistant Chief
Marlow

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

Village of Malone,

Complainant,

v.

Patrick Nichols,

Respondent.

CHARGES

The Village of Malone hereby charges Police Officer Patrick Nichols pursuant to Civil Service Law §75 as follows:

- 1) On or about July 13, 1993, Patrick Nichols filed with the Chief of Police a written complaint against a fellow officer regarding an incident on April 2, 1993 which was lacking in grounds sufficient to result ~~to result~~ in discipline and which was filed purely as a retaliatory act in reaction to a letter of reprimand placed in respondent's personnel file on July 13, 1993. This action violated the following departmental rules and regulations:

- 6.2.33 Requirement to immediately notify Desk Officer of an unusual occurrence.
- 10.1.1 Discredit upon Department.
- 10.1.4 Insubordination or disrespect to a superior officer.

- 2) On or about July 16, 1993, respondent met with a non-member of the Department, the Franklin County District Attorney, to discuss the charges relating to the April 2, 1993 incident, without the permission of a superior officer. This action violated the following departmental rules and regulations:

- 10.1.1 Discredit to Department.
- 10.1.4 Insubordination or disrespect to a superior officer.
- 10.1.27 Public criticism of a member of the Department.
- 10.1.28 Releasing departmental information without permission.

- 10.1.40 Communicating with other police agencies concerning police matters except as provided by departmental procedures.
- 10.1.77 Seeking the influence or intervention of a person outside the Department for purpose of advantage.
- 11.5 Disclosing official business of the Department without permission.

3) On or about July 27, 1993, the respondent called Police Chief Phillips "stupid" in the presence of Detective Michael Fleury. This action violated the following departmental rules and regulations.

- 6.2.7 Treat members of the Department with respect.
- 10.1.4 Insubordination or disrespect to a superior officer.
- 10.1.17 Failure to treat any person civilly.

4) On or about July 27, 1993, without reasonable grounds, respondent accused Police Chief Phillips of engaging in a "cover-up" in front of Patrolman Clyde LaChance. This action violated the following departmental rules and regulations:

- 6.2.7 Treat members of the Department with respect.
- 10.1.4 Insubordination or disrespect to a superior officer.
- 10.1.17 Failure to treat any person civilly.

5) Once, between July 13, 1993 and August 5, 1993, the respondent met with a civilian, former Police Chief Richard Brown, to discuss the alleged incident on April 2, 1993. This meeting occurred in the presence of Patrolman Scott Mulverhill. This action violated the following departmental rules and regulations:

- 10.1.1 Discredit to Department.
- 10.1.4 Insubordination or disrespect to a superior officer.
- 10.1.27 Public criticism of a member of the Department.

- 10.1.28 Releasing departmental information without permission.
- 10.1.77 Seeking the influence or intervention of a person outside the Department for purpose of advantage.
- 11.5 Disclosing official business of Department without permission.

6) Between July 13, 1993 and August 5, 1993, respondent met with a civilian, Scott Mattimore, to discuss the April 2, 1993 incident for the purpose of conducting an unauthorized investigation. This action violated the following departmental rules and regulations:

- 8.1 Patrol officers shall be under the direction and control of...[the] commanding officer...
- 10.1.1 Discredit to the Department
- 10.1.4 Insubordination or disrespect to a superior officer.
- 10.1.27 Public criticism of a member of the Department.
- 10.1.28 Releasing departmental information without permission.
- 10.1.77 Seeking the influence or intervention of a person outside the Department for purpose of advantage.
- 11.5 Disclosing official business of the Department without permission.

7) On August 2, 1993, the respondent met with Malone Village Mayor James Feeley to discuss the April 2, 1993 incident, without the permission of a superior officer. This action violated the following departmental rules and regulations:

- 10.1.1 Discredit to the Department.
- 10.1.4 Insubordination or disrespect to a superior officer.
- 10.1.28 Releasing information without permission.
- 10.1.77 Seeking the influence or intervention of a person outside the Department for purpose of advantage.

11.5 Disclosing official business of the
Police Department without permission.

- 8) On August 4, 1993, the respondent telephoned Malone Village Mayor James Feeley to discuss the April 2, 1993 incident, without the permission of a superior officer. This action violated the following rules and regulations:

10.1.1 Discredit to the Department.

10.1.4 Insubordination or disrespect to a
superior officer.

10.1.28 Releasing information without permission.

10.1.77 Seeking the influence or intervention of
a person outside the Department for
purpose of advantage.

11.5 Disclosing official business of the
Police Department without permission.

WHEREFORE the Village of Malone recommends that the respondent be punished pursuant to the provisions of Civil Service Law §75.

Brian S. Stewart, Esq.
HUGHES & STEWART, P.C.
Special Village Attorney
P.O. Box 788 - 31 Elm Street
Malone, New York 12953
(518) 483-4330

TO: Patrolman Patrick Nichols
146 Webster Street
Malone, New York 12953

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

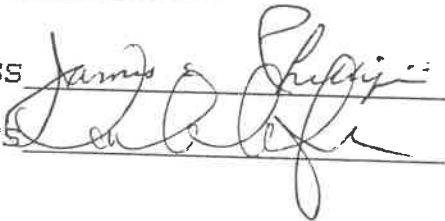
PATRICK NICHOLS

I, THE UNDERSIGNED, ACKNOWLEDGE THAT I HAVE RECEIVED A COPY OF THE SET OF CHARGES PREFERRED AGAINST ME BY THE VILLAGE OF MALONE, NEW YORK AND SET FORTH IN A LETTER TO ME DATED ON THE 5 DAY OF AUGUST 1993.

DATED 8-5 1993

WITNESS

WITNESS



THOMAS P. HALLEY

ATTORNEY AT LAW

August 10, 1993

**297 MILL STREET
POUGHKEEPSIE, N. Y. 12601
(914) 452-9120
FAX (914) 452-9192**

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

RE: Disciplinary Charges - Patrick Nichols

Dear Mayor Feeley:

Please be advised that the undersigned represents the above Patrolman with regard to disciplinary charges issued on August 5, 1993.

On behalf of Patrolman Nichols, we hereby enter a denial of the charges. Patrolman Nichols did not violate any of the rules and regulations of the Malone Village Police Department, nor any of the provisions of the Civil Rights Law, Public Officers Law, or New York State Penal Law.

In addition, Patrolman Nichols specifically asserts as a defense, in the rights provided under Section 75-b of the Civil Service Law of the State of New York.

Please provide me with the name, address and telephone number of the hearing officer who will be conducting the hearing.

Please take notice that Patrolman Nichols demands a public hearing pursuant to the provisions of the Civil Service Law.

Please provide me with as soon as possible with copies of any and all documents in the possession of the Village which relate to the this matter and these charges, whether or not said documents are intended to be introduced at the hearing.

Please also provide me with a complete copy of the Malone Village Police Department Rules and Regulations.

Please also provide me with a complete copy of his personnel file.

All further notices and communications should continue to be addressed to Patrolman Nichols at 146 Webster Street, Malone, New York, and, in addition, should be sent to this office at the above address.

If you have any questions concerning any of the above, please feel free to contact me.

Very truly yours,



THOMAS P. HALLEY

cc: Patrick Nichols
146 Webster Street
Malone, New York 12953

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

J. Brian McKee
Luddrick M. James, Jr.



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

13 October 1993

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

Re: Village of Malone vs.
Patrick Myron Nichols

Dear Mayor Feeley:

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

My statement for services rendered is also enclosed.

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

Respectfully,

J. BRIAN MCKEE



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

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

STATE OF NEW YORK
COUNTY OF FRANKLIN

:::

VILLAGE OF MALONE

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

Village of Malone,

Complainant

- against-

Patrick Myron Nichols,

Respondent

REPORT AND RECOMMENDATIONS

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

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

Transmitted herewith is the record, with exhibits.

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

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

SUMMARY OF TESTIMONY

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

For the Village of Malone -

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

For the Respondent -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANALYSIS OF TESTIMONY

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

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

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

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

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

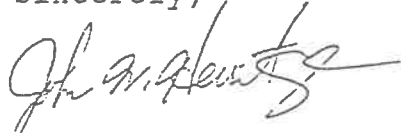
I do not find convincing the claim of Police Officer Nichols that he engaged in the aforementioned prohibited conduct because he suspected that the Chief of Police might engage in a "cover up" and fail to take appropriate action regarding suspected wrongdoing by the Assistant Chief of Police. This position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

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

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

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

Sincerely,

A handwritten signature in dark ink, appearing to read "John W. Herritage", with a stylized flourish at the end.

John W. Herritage
Deputy Commissioner

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Gerald K. Moll
Assistant Chief

To: Chief James E. Phillips

From: Ass't Chief Gerald K. Moll

Date: February 21, 1994

Ref: DWI Arrest on Feb. 6, 1994

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

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

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

Recommendation:

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

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

Unfortunately this incident has brought several concerns.

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

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

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

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

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

A.C. Moll,

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

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

Nichols: Officer Mulverhill

Mulverhill: What

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

Mulverhill: I know I threw it there

Nichols: Well you could pick it up

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

Nichols: O.K. I will

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

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

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

[Signature]

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

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

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

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

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

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

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

Ptl. Dean J. Fountain

Mr. Dean J. Fountain

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

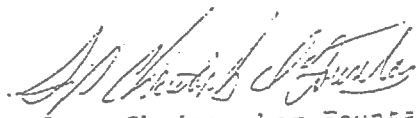
Voluntary Statement

February 8th 1994

Malone Police Dept.
2 Park Place
Malone, New York

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

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


Sgt. Christopher Fountain
Malone Police Department

Questions for Trooper Bronner

Interview conducted 02-22-94 at 1520 Hrs.

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

T/B-----Trooper Bonner

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

T/B-- Four years

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

T/B-- Yes- Midnight shift

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

T/B-- Yes

A/C-- Where did this take place?

T/B-- Pearl St.

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

T/B-- Ride by & Noticed patrol car

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

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

A/C-- What Officers were actually involved in the arrest procedure?

(Question answered earlier)

A/C-- Was an Alco Sensor breath screening test conducted?

(Question answered earlier)

A/C-- Did you witness the test?

(Question answered earlier)

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

T/B-- No

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

T/B-- Yes

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

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

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

T/B-- Talking to defendant

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

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

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

T/B-- 100

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

T/B-- Yes

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

T/B-- Yes, it has been

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

T/B-- No, they don't

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

T/B-- No, I would not

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

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

A.C. Moll,

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

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

Nichols: Officer Mulverhill

Mulverhill: What

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

Mulverhill: I know I threw it there

Nichols: Well you could pick it up

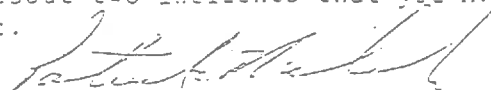
Mulverhill: I'm not picking anything up if you want to pick it then go ahead

Nichols: O.K. I will

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

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

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



TO: CHIEF JAMES PHILLIPS
MALONE POLICE DEPARTMENT

FROM: SGT RITCHIE

SUBJECT: ABORTION DETAIL

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

SGT W. *[Signature]*

COPY

Full text in
transcript box (#1)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

PATRICK NICHOLS,
-against-
VILLAGE OF MALONE,
Petitioner,
Respondent.

INDEX NO.: 93/755
CC #16-1-93-0275.P

ORDER

HON. JAN H. PLUMADORE
SUPREME COURT JUSTICE

3/94

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

HUGHES & STEWART, P. C.

Attorneys and Counselors at Law

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

March 3, 1994

BRYAN J. HUGHES
BRIAN S. STEWART

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

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

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.

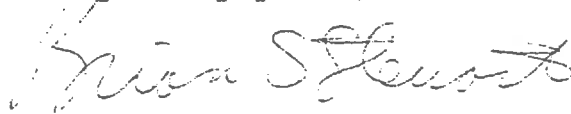
TO: MAYOR JAMES FEELEY
RE: MALONE POLICE DEPARTMENT

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

EXHIBIT

Village # 11

6-16-94

Memento Ptl. Nichols

Memo dated March 8th 1994

Ptl. Nichols,

Please report to the Chief's Office on March 17th 1994 at 10:00 am. I would like to discuss a few items with you. The matter may be a potential subject of disciplinary action. Please be advised that you have the right to representation by your certified employee organization at this meeting.

Chief James E. Phillips

Memo to Ptl. Nichols

Memo dated March 8th 1994

Ptl. Nichols,

Please report to the Chief's Office on March 17th 1994 at 10:00 am. I would like to discuss a few items with you. The matter may be a potential subject of disciplinary action. Please be advised that you have the right to representation by your certified employee organization at this meeting.

Chief James E. Phillips

Given to Pat
at 10:17 PM
3-8-94



STATE OF NEW YORK
SUPREME COURT CHAMBERS
HARRIETSTOWN TOWN HALL
30 MAIN STREET
SARANAC LAKE, NEW YORK 12983

(518) 891-3816 • (518) 891-3870



JAN H. PLUMADORE
JUSTICE

March 15, 1994

Thomas P. Halley, Esq.
297 Mill Street
Poughkeepsie, NY 12601

Brian S. Stewart, Esq.
Hughes & Stewart, P.C.
31 Elm Street
P. O. Box 788
Malone, NY 12953

RE: NICHOLS v. VILLAGE OF MALONE
Index No. 93-755
CC No. 16-1-93-0275.P
Our File No. P-1545

Counsellors:

Enclosed herewith please find Decision with respect to the
above named matter. All papers are forwarded herewith to
Thomas P. Halley, Esq. for filing in Franklin County.

Very truly yours,

Jan H. Plumadore

HON. JAN H. PLUMADORE
Supreme Court Justice

JHP:pk
Enc.

STATE OF NEW YORK

SUPREME COURT COUNTY OF FRANKLIN

PATRICK NICHOLS,

Petitioner,

-against-

VILLAGE OF MALONE,

Respondent.

*
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* Index #93-755
* CC #16-1-93-0275.P
* Our File #P-1545
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HON. JAN H. PLUMADORE
SUPREME COURT JUSTICE

DECISION

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

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



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

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

28 December 1993

Honorable Jan H. Plumadore
New York State Supreme Court Justice
Supreme Court Chambers
Harrietstown Town Hall
30 Main Street
Saranac Lake, New York 12983

Re: Notice of Petition
Index 93-755
Patrick Nichols v. Village
of Malone

Dear Judge Plumadore:

The Village of Malone has furnished me with a copy of cited NOTICE OF PETITION and while I am not personally a party to that action, Petitioner makes numerous references to my actions as Hearing Officer in the matter of disciplinary proceedings filed against Petitioner pursuant to Section 75 of the Civil Service Law of the State of New York. In the NOTICE OF PETITION, Petitioner accuses me of being partial and biased against him in my conduct of the hearing held on 16 and 17 September 1993 and variously attacks my integrity and professionalism.

As a local and federal law enforcement officer for over thirty years and a law enforcement executive for most of my adult life, I respectfully deny Petitioner's allegations and wish to go on record with you as indicating my total willingness to appear before you in this matter; to give testimony under oath; and to refute Petitioner's allegations. If it is appropriate to do so, I not only welcome such an opportunity, but respectfully request it.

Respectfully,

J. BRIAN MCKEE

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 a 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 Phillipines 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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29 December 1993

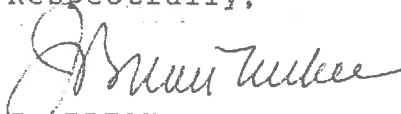
Mr. Brian S. Stewart, Esq.
Hughes and Stewart, P.C.
Attorneys at Law
Post Office Box 788
Malone, New York 12953

Re: Village of Malone vs. Patrick Nichols

Dear Mr. Stewart:

My response to allegations raised by Mr. Nichols in his PETITION dated 9 December 1993 (Index # 93-755 - Supreme Court of the State of New York) is forwarded herewith for your review.

Respectfully,


J. BRIAN MCKEE

RESPONSE BY HEARING OFFICER J. BRIAN MCKEE TO ALLEGATIONS RAISED BY
PATRICK NICHOLS (PETITIONER) AND INCLUDED IN HIS PETITION DATED 9
DECEMBER 1993 (INDEX # 93-755)

Petitioner, in the cited petition, alleged that the undersigned, who served as the Hearing Officer in the matter of disciplinary proceedings filed against Petitioner pursuant to Section 75 of the Civil Service Law of the State of New York, was partial and biased against him in my conduct of the hearing held on 16 and 17 September 1993. In the aforementioned petition, Petitioner alleges that I was biased and impartial because I had demonstrated a friendship for the Malone Police Department, citing a 14 March 1991 letter, written by me as the owner of the Gateway Motel of Malone, wherein I extended courtesy accommodations to the Police Department on an as requested basis. As a former member of the Malone Police Department (1961), I have always had a sense of admiration for the department in which I got my real start in the law enforcement profession. I must point out, however, that the primary purpose of the letter in question was to commend members of the department, including Police Officer Nichols, for the professional manner in which they had responded to a hold-up alarm transmitted by the motel. Members of the department, and other law enforcement agencies in the Malone area, have utilized the motel for out of town guests, temporary lodging, et al, and I have always extended courtesy rates to them. It has always been done in the spirit of friendship with police officers representing agencies with which I was formerly affiliated as an active police officer and never as a improper inducement as suggested by Petitioner. The foregoing hardly suggests partiality or bias on my part. I showed no partiality or bias to either party to the hearing as demonstrated by my report and recommendations which included strong and public criticism for management personnel in the department and for the Mayor himself, as well as findings unfavorable to Petitioner. It must also be pointed out that, where appropriate and required, I recommended dismissal of some charges and specifications levied against Petitioner and did not concur with the request of the Village of Malone that Petitioner be outright terminated. Rather I weighed the evidence presented by both parties and recommended that every effort be made to return Petitioner to full employment in village government, but outside the Police Department.

For the record, I have always considered myself a "friend" of all members of the Malone Police Department because of my past employment in that department. In specific relation to Petitioner, I have personally supported him when he came to me and asked me to financially support the DARE program which he was then managing. I made a significant financial donation to Police Officer Nichols and also accepted his request that I be the keynote speaker at one of the DARE graduation ceremonies.

Page -2-

Because of my knowledge of the operations of a law enforcement agency, and specifically my past association with the Malone Police Department, I am convinced that I was then, and remain, a most qualified person to serve as a hearing officer in a disciplinary proceeding involving a police officer and his or her performance of duty. My college education (Cornell University) involved a major in industrial and labor relations (personnel management, et al) and my 28 1/2 years with a federal law enforcement agency, the last 4 as the director of the 2000 person agency, have given me extensive experience in disciplinary matters.

I have always been able to demonstrate my integrity and professionalism in disciplinary matters, despite my personal friendship or working relationship with the parties thereto, and to act without bias or partiality.

I would point out that I am as much a "friend" with the patrolmen in the Malone Police Department (including Police Officer Nichols) as with the sergeants, Assistant Chief and Chief of Police. If I were forced to identify with management or the street-level police officer, I would have to say the latter. Despite all this, I can say without reservation that I acted throughout the hearing in question in a totally unbiased and impartial manner.

On the matter of Petitioner's claim that his actions in violation of various sections of the department's Rules and Regulations were protected by the "Whistle Blower Law", I continue to hold the conviction that such a claim is without merit. His complaint was not timely (he waited from 2 April to 13 July 1993, just after he was disciplined for another offense, to raise charges against the investigating officer) nor did he permit management a reasonable amount of time to investigate his charges (a matter of a few days) before bypassing the chain of command and making unauthorized contacts and disclosures outside the department - despite being assured, in writing by the Chief of Police, that his charges were being investigated and that disciplinary action would be taken where warranted by the facts.

On the matter of Petitioner's allegation that he suspected, repeat suspected, a "cover up" of his charges by management in the police department, I also found that without merit. I did not permit the testimony of defense witness Hanna on the topic of "coverups" after counsel for Petitioner acknowledged that he could not demonstrate a direct connection between Mr. Hanna's planned testimony on a "rumored police coverup" in the past and the actions of those involved in the actions charged in the Nichols case then before the Hearing Officer.

Page -3-

I enclose herewith two Memoranda of Law, provided during the course of the hearing in question by counsel for the Village of Malone, on which the Hearing Officer relied for guidance in the absence of any contradictory memorandum of law by counsel for Petitioner.

On the matter of post-hearing submission of closing statements by counsels for the Village and Petitioner, it must be pointed out that it was indicated by me to both counsels at the time of the closing of the hearing on 17 September 1993 that I required their input within three weeks (8 October 1993) and, to that end, I telephonically contacted Petitioner on 7 October 1993 to remind him that I had not received a closing memorandum from his counsel. I received a closing memorandum from the Village of Malone on 7 October 1993. During subsequent conversations with Petitioner and his counsel, I pointed out that I had not received their closing memorandum which they had indicated they desired to submit. I further provided my personal FEDEX account number to expedite transmittal of Petitioner's closing memorandum. It was never agreed that submission of closing memoranda by counsels would await receipt and review by them of a transcript of the hearings. Nevertheless, upon receipt of the transcripts on or about 12 October 1993, a copy was transmitted by me to Petitioner's counsel by FEDEX.

As demonstrated by the enclosed copy of my letter of 15 October 1993 to Mayor James N. Feeley, I did closely review the post-hearing closing memorandum of counsel for Petitioner and found nothing contained therein which was not already raised during the hearing and, accordingly, was not compelled to make any change to my report and recommendations of 13 October 1993.

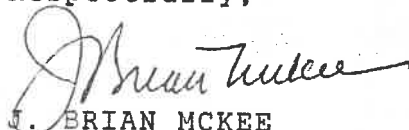
While I have not seen it, I have been advised by the Publisher of the MALONE TELEGRAM that during an interview prior to the hearing of 16 and 17 September 1993, Petitioner told a reporter for that newspaper that he was comfortable with my assignment as Hearing Officer and felt he would receive fair and impartial treatment by me as Hearing Officer.

I respectfully deny Petitioner's allegations that I was biased and partial in my service as the Hearing Officer in Petitioner's disciplinary proceedings and wish to go on record as indicating my total willingness to appear in any judicial proceeding to give testimony under oath and to refute Petitioner's allegations.

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Should amplification of my responses be desired, please communicate with me at the letterhead address and I will be happy to respond.

Respectfully,

A handwritten signature in cursive script, appearing to read "J. Brian McKee", written in dark ink.

J. BRIAN MCKEE



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

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

29 December 1993

Mr. Brian S. Stewart, Esq.
Hughes and Stewart, P.C.
Attorneys at Law
Post Office Box 788
Malone, New York 12953

Re: Village of Malone vs. Patrick Nichols

Dear Mr. Stewart:

My response to allegations raised by Mr. Nichols in his PETITION dated 9 December 1993 (Index # 93-755 - Supreme Court of the State of New York) is forwarded herewith for your review.

Respectfully,

J. BRIAN MCKEE

RESPONSE BY HEARING OFFICER J. BRIAN MCKEE TO ALLEGATIONS RAISED BY
PATRICK NICHOLS (PETITIONER) AND INCLUDED IN HIS PETITION DATED 9
DECEMBER 1993 (INDEX # 93-755)

Petitioner, in the cited petition, alleged that the undersigned, who served as the Hearing Officer in the matter of disciplinary proceedings filed against Petitioner pursuant to Section 75 of the Civil Service Law of the State of New York, was partial and biased against him in my conduct of the hearing held on 16 and 17 September 1993. In the aforementioned petition, Petitioner alleges that I was biased and impartial because I had demonstrated a friendship for the Malone Police Department, citing a 14 March 1991 letter, written by me as the owner of the Gateway Motel of Malone, wherein I extended courtesy accommodations to the Police Department on an as requested basis. As a former member of the Malone Police Department (1961), I have always had a sense of admiration for the department in which I got my real start in the law enforcement profession. I must point out, however, that the primary purpose of the letter in question was to commend members of the department, including Police Officer Nichols, for the professional manner in which they had responded to a hold-up alarm transmitted by the motel. Members of the department, and other law enforcement agencies in the Malone area, have utilized the motel for out of town guests, temporary lodging, et al, and I have always extended courtesy rates to them. It has always been done in the spirit of friendship with police officers representing agencies with which I was formerly affiliated as an active police officer and never as a improper inducement as suggested by Petitioner. The foregoing hardly suggests partiality or bias on my part. I showed no partiality or bias to either party to the hearing as demonstrated by my report and recommendations which included strong and public criticism for management personnel in the department and for the Mayor himself, as well as findings unfavorable to Petitioner. It must also be pointed out that, where appropriate and required, I recommended dismissal of some charges and specifications levied against Petitioner and did not concur with the request of the Village of Malone that Petitioner be outright terminated. Rather I weighed the evidence presented by both parties and recommended that every effort be made to return Petitioner to full employment in village government, but outside the Police Department.

For the record, I have always considered myself a "friend" of all members of the Malone Police Department because of my past employment in that department. In specific relation to Petitioner, I have personally supported him when he came to me and asked me to financially support the DARE program which he was then managing. I made a significant financial donation to Police Officer Nichols and also accepted his request that I be the keynote speaker at one of the DARE graduation ceremonies.

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Because of my knowledge of the operations of a law enforcement agency, and specifically my past association with the Malone Police Department, I am convinced that I was then, and remain, a most qualified person to serve as a hearing officer in a disciplinary proceeding involving a police officer and his or her performance of duty. My college education (Cornell University) involved a major in industrial and labor relations (personnel management, et al) and my 28 1/2 years with a federal law enforcement agency, the last 4 as the director of the 2000 person agency, have given me extensive experience in disciplinary matters.

I have always been able to demonstrate my integrity and professionalism in disciplinary matters, despite my personal friendship or working relationship with the parties thereto, and to act without bias or partiality.

I would point out that I am as much a "friend" with the patrolmen in the Malone Police Department (including Police Officer Nichols) as with the sergeants, Assistant Chief and Chief of Police. If I were forced to identify with management or the street-level police officer, I would have to say the latter. Despite all this, I can say without reservation that I acted throughout the hearing in question in a totally unbiased and impartial manner.

On the matter of Petitioner's claim that his actions in violation of various sections of the department's Rules and Regulations were protected by the "Whistle Blower Law", I continue to hold the conviction that such a claim is without merit. His complaint was not timely (he waited from 2 April to 13 July 1993, just after he was disciplined for another offense, to raise charges against the investigating officer) nor did he permit management a reasonable amount of time to investigate his charges (a matter of a few days) before bypassing the chain of command and making unauthorized contacts and disclosures outside the department - despite being assured, in writing by the Chief of Police, that his charges were being investigated and that disciplinary action would be taken where warranted by the facts.

On the matter of Petitioner's allegation that he suspected, repeat suspected, a "cover up" of his charges by management in the police department, I also found that without merit. I did not permit the testimony of defense witness Hanna on the topic of "coverups" after counsel for Petitioner acknowledged that he could not demonstrate a direct connection between Mr. Hanna's planned testimony on a "rumored police coverup" in the past and the actions of those involved in the actions charged in the Nichols case then before the Hearing Officer.

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I enclose herewith two Memoranda of Law, provided during the course of the hearing in question by counsel for the Village of Malone, on which the Hearing Officer relied for guidance in the absence of any contradictory memorandum of law by counsel for Petitioner.

On the matter of post-hearing submission of closing statements by counsels for the Village and Petitioner, it must be pointed out that it was indicated by me to both counsels at the time of the closing of the hearing on 17 September 1993 that I required their input within three weeks (8 October 1993) and, to that end, I telephonically contacted Petitioner on 7 October 1993 to remind him that I had not received a closing memorandum from his counsel. I received a closing memorandum from the Village of Malone on 7 October 1993. During subsequent conversations with Petitioner and his counsel, I pointed out that I had not received their closing memorandum which they had indicated they desired to submit. I further provided my personal FEDEX account number to expedite transmittal of Petitioner's closing memorandum. It was never agreed that submission of closing memoranda by counsels would await receipt and review by them of a transcript of the hearings. Nevertheless, upon receipt of the transcripts on or about 12 October 1993, a copy was transmitted by me to Petitioner's counsel by FEDEX.

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I respectfully deny Petitioner's allegations that I was biased and partial in my service as the Hearing Officer in Petitioner's disciplinary proceedings and wish to go on record as indicating my total willingness to appear in any judicial proceeding to give testimony under oath and to refute Petitioner's allegations.

Page -4-

Should amplification of my responses be desired, please communicate with me at the letterhead address and I will be happy to respond.

Respectfully,

J. BRIAN MCKEE

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

January 10, 1994

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

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

Re: Patrick Nichols vs. Village of Malone (appeal)

Dear Mr. McKee:

I have read your letter to Judge Main and your correspondence to me dated December 29, 1993. I am preparing an answer for the Village of Malone and Officer Nichols' Article 78 proceeding.

We have the opportunity to submit affidavits along with the answer. I believe it would be appropriate to submit an affidavit from you denying Officer Nichols' allegations that you were somehow biased and that your evidentiary rulings were improper. I have prepared such an affidavit, and it is enclosed.

If the affidavit meets with your approval, I would appreciate it if you would execute it before a notary public and return it to me at your earliest convenience. Thank you for your help in this matter.

Very truly yours,



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

BSS/tlw
enclosure
cc: Mayor James Feeley

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

January 6, 1994

Telephone: (518) 483-4330

Fax: (518) 483-4005

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

PERSONAL & CONFIDENTIAL

Re: Patrick Nichols vs. Village of Malone

Dear Chief Phillips:

Enclosed is a copy of the entire personnel file of Officer Nichols as it was submitted into evidence at his disciplinary hearing in September 1993. I recommend that you use these documents to create a new personnel file for Officer Nichols. The original has become an exhibit. It is being submitted to Judge Plumadore in connection with the ongoing Article 78 proceeding. It will be quite awhile before I am able to return that document to you. Thank you for your understanding in this matter.

Very truly yours,



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

BSS/tlw
enclosure

POLICE PERSONNEL RECORD

Name Nichols, Patrick M.

Address Webster St. Malone

Date of Birth Mo. 4 Day 18 Year 63

Marital Status Married

No. Dependents 3

Date of Appointment 06-17-94 Phone

Civil Service Exam Passed on

Promotional Exam Passed on

Service Pistol Serial No.

Date	Personal Data	Date	Personal Data
06-17-88	Date of Appointment	08-05-93	Suspended on 46 counts of misconduct
05-26-89	Completed breathalyzer cert.	09-16-93	Disciplinary hearing (open to public) on charges
09-20-89	Commended for his P.R. accomplishments	10-13-93	Ptl. Nichols found guilty on 38 charges--hearing officer recommends dismissal
10-03-90	Commendation from American Legion		
12-31-90	Commended by supervisor for exceptional police work	10-20-93	Village Board gives 60 day suspension, reprimand and \$100.00 fine.
03-02-91	Commended for exceptional police work on burglary		
03- -91	Completed D.A.R.E. School	11-20-93	Returns from suspension
12-02-91	Incident with Asst. Chief Marlow	11-26-93	Ptl. Nichols submits memo stating that he read and understands dept. rules and regulations
12-22-91	Letter from Barbara Lee Ref: DARE Teaching		
04-17-92	Reprimanded by Chief for causing over \$500.00 in O.T.	12-11-93	Ptl. Nichols chases car outside Village and falls to notify station---advised of dept. policy----
08-30-92	Insubordination w/Sgt. Moll Ref: Log Book		
01-28-93	Taken off D.A.R.E. classes due to problems	12-13-93	Ptl. Nichols wife files personnel complaint against Sgt. Ritchie--invest. finds no wrong doing-----
01-28-93	Letter from Thomas Kemp over DARE (same day)		
01-28-93	Letter from Flanders School over DARE (same day)	12-15-93	Ptl. Nichols discusses wife's comp. with Trustee Dame---Ptl. Nichols counseled by Chief-----
02-04-93	Two hour counsel session w/Ass't Chief, Chief & Ptl.		
	Nichols informing him of several violations of rules	12-18-93	Ptl. Nichols files appeal on disciplinary action
04-17-93	Commended by Sgt. Ritchie for assisting at WICY	01-01-94	All four Sergeants give Ptl. Nichols BELOW STANDARD rating on evaluations
06-01-93	Personnel comp. against Ptl. Nichols from Karon Russell		
07-13-93	Letter of reprimand for conduct during Russell case	02-07-94	Fails to notify Supervisor of behavior of another member that he felt was inappropriate & unprofessional
07-13-93	Personnel complaint filed against Ass't Chief Ref: a		
	st of Scott Mattimore on 04-03-93		

POLICE PERSONNEL RECORD

Name Nichols, Patrick M

Address _____

Date of Birth Mo. Day Year

Marital Status _____

No. Dependents _____

Date of Appointment _____

Phone _____

Civil Service Exam Passed on _____

Promotional Exam Passed on _____

Service Pistol Serial No. _____

Date	Personal Data	Date	Personal Data
02-14-94	Ptl. Nichols attempts to release paperwork on a incomplete criminal investigation to Jackie LaPlante	05-03-94	Ptl. Nichols served with charges and suspended without pay pending hearing for 06-01-94
02-17-94	New York DCJS requests information on disciplinary problems in order to review Ptl. Nichols keeping his DARE Certification.		
02-23-93	Mayor finds Ptl. Nichols sitting in patrol car at Abortion detail---advised of proper procedure		
03-04-94	Ptl. Nichols fingerprints assault suspect still wearing his loaded duty weapon--advised of proper procedure--		
03-04-94	Ptl. Nichols leaves womans purse in patrol car after arrest and is discovered by next shift.		
03-14-94	Supreme Court Justice Jan Plumadore hands down decision of appeal and finds in favor of Village		
03-17-94	Ptl. Nichols questioned in Chief's Office over several matters. Meeting is transcribed and Ptl. Nichols is suspended with pay--pending investigation--		
04-11-94	Ptl. Nichols submits charges to D.A. Edwards against Mayor, Chief & Ass't Chief, minutes after, reporter Doug Buchanan of the "SUN" newspaper receives anonymous call advising him of the paperwork that Ptl. Nichols found.		

POLICE DEPT.
VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Gerald K. Moll
Assistant Chief

To: Chief James E. Phillips

From: Ass't Chief Gerald K. Moll

Date: February 21, 1994

Ref: DWI Arrest on Feb. 6, 1994

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

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

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

Recommendation:

On discarding the small plastic mouth piece, at the present time there is no department policy on discarding the Breath Test mouth piece. However, the New York State V&T Law section 1220 does prohibit throwing refuse on highways. There isn't a definition for refuse in the V&T or whether a small mouth piece the size of a cigarette would constitute a violation. I would recommend a legal opinion from N.Y. State or the Franklin County D.A.s Office before final determination is made.

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

Unfortunately this incident has brought several concerns.

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

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

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

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

VILLAGE OF MALONE POLICE DEPT.

2 PARK PLACE
MALONE, NEW YORK 12953
(518) 483-2424

TO: Patrolman Nichols

DATE: 02-06-94

ADDRESS: _____

SUBJECT: _____

I have received word that you experienced a problem during the night shift of Feb. 6th 1994 which I was the supervisor. Apparently you discussed this in great length with Sgt. Fountain and was submitting a statement. Submit a detailed statement of the event and the problems that you had during my shift.

SIGNED: _____

A/C Mo11

VILLAGE OF MALONE POLICE DEPT.

2 PARK PLACE
MALONE, NEW YORK 12953
(518) 483-2424

TO: Sgt. Fountain

ADDRESS: MVPD

DATE: 02-06-94

SUBJECT: Ptl. Nichols

I have received word that Ptl. Nichols had a problem during my shift on Feb. 6th 1994 and he discussed this with you in great length after I left at 0400 Hrs. If Ptl. Nichols had a problem during my shift, he neglected to bring it to my attention. Submit a detailed statement in regards to what Ptl. Nichols discussed with you and what action you took.

SIGNED: A/C Mo11

A.C. Moll,

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

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

Nichols: Officer Mulverhill

Mulverhill: What

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

Mulverhill: I know I threw it there

Nichols: Well you could pick it up


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

Nichols: O.K. I will

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

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

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



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

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

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

POLICE DEPT. VILLAGE OF MALONE

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

James E. Phillips
Chief of Police

Vernon N. Marlow Jr.
Assistant Chief

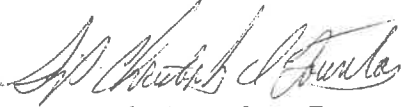
Voluntary Statement

February 8th 1994

Malone Police Dept.
2 Park Place
Malone, New York

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

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


Sgt. Christopher Fountain
Malone Police Department

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

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

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

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

Ptl. Dean J. Fountain

Mr. Dean J. Fountain

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

FINDINGS OF FACT

From the evidence submitted, I find the following:

- (a) Charge 1 - that Police Officer Nichols failed to report his concern relative to the alleged actions of Assistant Chief Moll to competent authority within the Police Department or to allow Chief Phillips sufficient time to conduct his investigation of the allegations. As a result, his laying of charges against Assistant Chief Moll gives every indication of being retaliatory in nature.
- (b) Charge 2 - that Police Officer Nichols, fully aware that his actions were contrary to departmental rules and regulations, made unauthorized contacts with non-departmental personnel, including a known criminal, to discuss his intentions to levy charges against Assistant Chief Moll, whose conduct of an unrelated internal investigation resulted in a letter of reprimand being awarded to Police Officer Nichols.
- (c) Charge 3 - withdrawn by the Village of Malone.
- (d) Charge 4 - that Police Officer Nichols, without reasonable grounds, publicly accused Chief Phillips of engaging in a "coverup" in his investigation of the allegations made by Nichols against Assistant Chief Moll.
- (e) Charge 5 - As previously stated, there is insufficient evidence introduced to show that Police Officer Nichols discussed the alleged incident of 2 April 1993 with former Police Chief Brown.

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

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

Therefore:

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

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

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

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

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

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

RECOMMENDATIONS

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

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

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

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

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

13 October 1993

J. BRIAN MCKEE
Hearing Officer

VILLAGE OF MALONE
16 Elm Street
Malone, New York 12953
(518) 483-4570

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