

19-7199

No 18A1286

ORIGINAL

Supreme Court, U.S.  
FILED

JUL 06 2019

OFFICE OF THE CLERK

UNITED STATES SUPREME COURT

PAUL TOOLY

STATE UNIVERSITY OF NEW YORK AT POTSDAM,  
John F Schwaller INDIVIDUALLY, AND MARY DOLLAN INDIVIDUALLY  
Defendants

WRIT OF CERTIORARI

To United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

Paul Tooly  
7259 U.S. Highway 11  
Potsdam, N.Y. 13676

Cell 315-323-6678

**QUESTIONS PRESENTED**

**QUESTIONS I WOULD LIKE THE SUPREME COURT JUSTICES TO ANSWER:**

John Schaller, the then President of The State University of New York (SUNY) at Potsdam, should not be allowed qualified immunity for many reasons.

*A The importance of this case to the public as well as to the law* is whether the reporting of workplace violence/bullying (and to protect the safety of University students working nearby ..finally to a lawyer) is in jeopardy for every employee (if the then President of SUNY Potsdam, Schwaller, qualifies for Qualified Immunity, especially given all of our evidence of retaliation shown in court documents.)

The first two of them:

1. I found by going through his appeal court records and comparing it to other statements that was stated in the same court record showed numerous lies.(All are noted and compared.)
2. He retaliated against me with malicious intent for reporting work place violence to a lawyer (my receipt is attached) after I reported this to SUNY Potsdam and they did nothing about it.

## LIST OF PARTIES

The following is a list of all parties to the proceedings in the Court below as required by Rule 24.1(b) and Rule 29.1 of the Rules of the Supreme Court of the United States.

1. Paul Tooly - Petitioner

2. John F. Schaller - INDIVIDUALLY

3. William A. Scott - New York State Attorney General - Albany

The Capitol

Albany, N.Y. 12224

518 776 2255

Email: William.scott@ag.ny.gov

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

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**SECTION 1**

**Background for Statement of the Case**

**TRUE STORY OF JOHN F. SCHWALLER & MARY DOLAN NOT HAVING A**

**WORKABLE WORKPLACE VIOLENCE PROCEDURE IN PLACE**

(Note: Once I read section 72 of the Civil Service Law and SUNY Potsdam Violence Prevention Policy, I felt relaxed because I had my lawyer's receipt

**SECTION 2**

My lawyer was listening when Mary Dolan (Head of Human Resources)

called and informed me not to come to work the next work day. My lawyer advised me to ask how come, which I did. She went away from the phone, came back, and said, "You will be getting a letter in the mail."

**THIS IS THE TIME ALL THE RETALIATION STARTED**

**SECTION 3**

*In accordance with the provision of section 72(3) of the civil service law, it is my judgment that your continued presence on the job severely infers with the operation of the Central Printing and Receiving Department ... ...*

infers - conclude [information] from evidence and reasoning rather from explicit statements

:

Note: none of this evidence and reasoning ever showed up on my two separate charges for the supposedly one wrong doing..

**SECTION 4**

*Hi Paul,*

*Can you please complete your time sheets for the month of April (03/31/11 -4/27/11)*

*And also for the month of May(4/28/11-5/25/11 and June (5/26/11-6/22/11)*

*You will need to charge sick leave accruals beginning 5/18/11 per Human Resources. Enclosed are three blank time sheets. If you have question please call me.*

*Donna Burgoyne*

*Payroll Examiner II Human Resources Phone (315)267-2099 Fax (315)267-2170 etc*

## SECTION 5

**Appendix 16A** (their Court page A52) **Mary Dolan** states:

**Item 43** *The plaintiff's allegations that I interfered with his right to participate in a grievance process or otherwise contest the disciplinary charges, and denied him his right to counsel are baseless*

## SECTION 6

*Mary Dolan's letter to me*

*In response to your letter dated July 14, 2011, please be advised that the interrogation will proceed on Monday July 18, 2011 at 10:00. We have rescheduled the interrogation twice, have been in contact with your attorney who has stated he will not be at the hearings and advised you of your right to CSEA representation*

## SECTION 7

**Appendix 83 & 84** -Mary Dolan deposition dated 1-20-2016

Line 8 Q. ---Did you ever speak to Mr. Hartt?

Line 9 A.-- I don't recall.

Line 18 Q. ---So were are clear, nothing was ever made in writing to Mr. Hartt explaining the nature of charges against Mr. Tooly whether it be letter, e-mail, text message, whatever?

**Line 22 A.-- No , I tried multiple times to get a hold of Mr. Hartt though**

## SECTION 8

On Thursday, June 30, 2011 letter states *on Wednesday, July 6, 2011 for me to be questioned on committing acts for which formal disciplinary action may be initiated against you.*

My letter July 2, 2011 stating *I contacted my lawyer and I am waiting for his response*

July 6, 2011 is a letter from my lawyer, Mr. Hartt **VIA FAX & USPS**

*--If you would please forward to me the purpose of the proposed upcoming hearing/conference I will be meeting with my client late next week--*

July 6, 2011 via certified mail, a letter from Mary Dolan to *report Friday July 8, 2011 for questioning regarding acts for which formal disciplinary action may be initiated against you--On July 6, 2011 You notified Human Resources that your lawyer was unavailable Friday July 8, 2011 at 10:00 am. Please have your lawyer fax written and signed confirmation that he/she is unavailable July 8, 2011*

July 11, 2011 Is my letter that Mary Dolan wanted that my lawyer, James Hartt, could speak on my behalf

July 12, 2011 letter from Mary Dolan. *I have received report that you may have committed acts for which formal disciplinary actions may be initiated against you..you are hear by directed to report to the office of Human Resource at 10:00 am Monday, July 18 so you can be questioned on this matter*

*July 14, 2011 as per phone conversation with you. You already agreed to set the meeting after my lawyer appointment during the week of 7/18/2011 thru 07/22/2011 (this letter was sent by express mail )*

## SECTION 9

Mary Dolan is answering a question from my lawyer on why there are different dates on the sheriffs stamps when he received my second set of charges and the date he delivered the charges. He received them on and stamped them on Friday, however he delivered them on Monday and the letter inside was dated Monday. Withholding this until Monday gave Albany time to return my grievance saying: wrong place, wrong building.

**Appendix 50 (Diary)** Address I sent my first grievance: the Office of Employee Relations SUNY System Administration, T7 State University Plaza Albany, NY. 12246

**Appendix 51** Address that my grievance of the first charges was returned from

Office of Employee Relations State Univ. Plaza F216 Albany N.Y.12246

**Appendix 52** letter from Karen Elk at Albany headquarters who said it was the wrong address..(from the **TWO** above Appendixes) stating:

*Dear Mr. Tooly, We received your grievance, but it has been submitted on wrong form and was sent to the wrong office. Please submit on the correct form and it should be sent to the Disciplinary Panel to Grieve your Article 33.*

**(My notes on the paper...(Karen did not give me correct address ---I finally got the right address from Mary Dolan...a different building and zip code.)**

**Appendix 53 & 54** copy of my grievance form that I sent in-- the heading is:

**STATE/CSEA  
GRIEVANCE FORM**

## SECTION 10,

Where I was supposed to send my grievance to my second set of charges and my grievance to my 18 mo. Third set of charges that I was nowhere near SUNY Potsdam but got charge even I was supposed of men terminated 18 mo ago. Office of Employee Relations SUNY System Administration, F216 State University Plaza Albany, NY. 12246

## SECTION 11

First set of charges and I was ---(their page A71) John F Schwaller's employment termination letter

July 18, 2011

*Dear Paul Tooly, This letter will serve as official notification that your employment with SUNY Potsdam has been terminated effective July 18, 2011, close of business*

*Sincerely,  
His signature  
Then printed  
John F. Schwaller*

## SECTION 12

**Appendix 58, 56,& 57** my second charge penalty  
**Appendix 58** dated August 8, 2011

*Dear Paul:*

*The Notice of Discipline dated July 18, 2011 is withdrawn. Enclosed please find the new Notice of Discipline.*

*Sincerely,*

*Signed Melissa Proulx for Mary Dolan*

*(Then there is typed words)*

*Mary Dolan  
Director of Human Resources*

**NOTICE THE PRESIDENT OF SUNY POTSDAM TERMINATED ME THEN A THIRD CLASS WORKER THAT WORKS FOR MARY DOLAN THE HEAD OF HUMAN RESOURCES SAID I WAS NOT TERMINATED. She did not want to sign it.**

## SECTION 13

- **MARY DOLAN deposition dated: 1-20-2016** stated:

Line 16,17-(Mary Dolan) *As of August 8, he is suspended, and as of today, he is still suspended*

Line 18 19, 20 My attorney, Mr. Spicer- Question: *Why the change from termination to suspended without pay?*

Line 21 Mary Dolan's Answer: *It is on advice of counsel.*

## SECTION 14

**(Diary) dated June 1, 2011 letter**

**06/01/2011**

*Dear President John F. Schwaller*

*Civil Service law of New York 72(1) It states a written notice of the facts providing the basis for the judgment of the appointing authority that the employee is not fit to perform the duties of his or her position shall be provided to the employee and the Civil Service department having jurisdiction prior to the conduct of the medical examination.*

*Please send me the written facts providing the basis for the judgment.*

*In your third paragraph of the letter you gave me "pursuant to subdivision 1 of section 72 of the Civil Service Law"*

*Thank you, Paul Tooly*

**(their page A58) states : on June 7 2011letter which is one day late for me to go to the medical exam. But still this was in the second set of charges missing the medical exam.**

*Dear Mr. Tooly, Your June 1, 2011 to provide you with written facts in regard to the involuntary leave you have been placed on is denied----*

*Sincerely, John F Schwaller*

## SECTION 15

**Motion 3 of 12** It is about the first charge in the second set of charges.

This charge would not be there if I had grieved the second set of charges, because Mary Dolan is not an attorney, and when she sent it in, it would've been returned, making another false charge.

(their page A53) Mary Dolan's signature

(their page A46) #13 states :

*I drafted that letter for Dr Schwaller and I did so following consultation with legal counsel. I am not an attorney and based upon my consultation with legal counsel in the office of labor relation at SUNY System Administration, it was my understanding that under these circumstances the plaintiff was not entitled, in advance of the EHS examination to an additional written statement beyond what was contained in Dr. Schwaller's May 17, 2011 letter to him of the reason he was being directed to go for an EHS examination Remember in* SECTION 3

*In accordance with the provision of section 72(3) of the civil service law, it is my judgment that your continued presence on the job severely infers with the operation of the Central Printing and Receiving Department*

infers - conclude [information] from evidence and reasoning rather from explicit statements

Note: none of this evidence and reasoning ever showed up on my two separate charges for the supposedly one wrong doing..

## SECTION 16

is about Mary Dolan and then SUNY POTSDM President John F. Schwaller Scheming to get me off the suspension list to the termination list.

**Mary Dolan and John F. Schwaller schemed to get me off the payroll list, as being without pay and terminated. The reason? To save their own jobs. This notice came 16 months AFTER I was already officially terminated by the SUNY President John F Schwaller.**

B. On Tuesday, November 27, 2012 SUNY Potsdam President John Schwaller made a surprise announcement that he is stepping down. This was on every local tv channel, radio channels and in the newspapers. It was to be in effect at the END OF JULY Schwaller steps down

C. On November 30, 2012 I received a letter from HR stating: You may have committed a crime. You are to report to Human Resources.

letter from HR stating you may have committed a crime

## SECTION 17

1. **APPENDIX 110 A** in it states :

18 U.S. Code 100.1 Statements or entries

**total 16 Times on motion pages where Supreme Court Judges make a decision guilty or not**

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--

(1) falsifies, conceals, or covers up by trick, scheme, or device a material fact;

(2) makes any materially false, fictitious fraudulent statement or representation: or

(3) makes or uses any false writing or document knowing the same to contain any materially, false, factious statement or entry;

**shall be fined under this title, imprisoned not more than 5 years**

## SECTION 18

Panic: No Work Place Violence Polices were in place- Not worried about University students

John F Schwaller did not report to his Federal Court summons on time. Page 10

I expected to get help soon after 8/2011 when I wrote to the Public Integrity Bureau of New York State (PIB). All this did was give the Attorney General's Office information on my case to help defend SUNY Potsdam, which you can read about later

See **APPENDIX 4-8** of my letter asking PIB for help (their page from their court records A93, A94, A95, A96, and A97)

Date sent: 8/21/2011 Date Attorney General received: 8/29/2011

TABLE OF AUTHORITIES		PAGES
1. <i>BIBLE Exodus 23:6 Do not deny justice to your poor people in their lawsuits.</i>		36
2. APPENDIX 110 A in it states :		
18 U.S. Code 100.1 Statements or entries generally	8,9,15,15,17,17,18,21,22,23,	
	25,25,26,27,30,& 32	
<b>total 16 Times on motion pages where Supreme Court Judges make a decision guilty or not</b>		
(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--		
(1) falsifies, conceals, or covers up by trick, scheme, or device a material fact;		
(2) makes any materially false, fictitious fraudulent statement or representation: or		
(3) makes or uses any false writing or document knowing the same to contain any materially, false, factious statement or entry;		
<b>shall be fined under this title, imprisoned not more than 5 years</b>		
3. <b>Laws of New York S75-b 2. (a) is in Appendix 78</b>		
A public employer shall not dismiss or take other disciplinary or adverse personnel actions against a public employee ----etc		20
4. <b>Laws of New York S 740 2 is in APPENDIX 77.</b>		20
Prohibitions. An employer shall not take any retaliatory personnel actions against an employee because such employee does any of the following:		
(a)discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of the law, rule or regulation which violation creates and presents a substantial and specific		
danger to the public health or safety, ---etc.		
5. New York Civil Service law 72 Leave for Ordinary Disability is in Appendix 78		20
6. <b>State University of New York at Potsdam Workplace Violence Prevention and Procedures is in Appendix 9-14,</b>		3,34,
Appendix 12	page 4 of 7	second paragraph down it states:

## TABLE OF AUTHORITIES

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This policy shall be deemed supplemental to all state and federal laws all personnel rules and regulation, and all student codes of conduct shows this is from State University of New York at Potsdam Workplace Violence Prevention Policy and Procedures

**7. State of New York** (the State and The Civil Service Employees Association, INC.) (CSEA) is in **Appendix 31-40** shows agreement between the Executive Branch of

**Appendix 36 shows the TIME AND ATTENDANCE SCHEDULE** 9

Unauthorized absence including improper use of sick leave/unscheduled:

1<sup>st</sup> and 2nd Notice of Discipline

Minimum penalty - written reprimand	<b>Maximum Penalty-</b> <b>fine of two days pay or equivalent</b>
--	--

**8. United States Department of Labor OSHA** 19-20  
is in **APPENDIX 75-76**

**APPENDIX 76** states under: **WORKERS' RIGHTS** 19,20  
the fifth bullet point down

Exercise their rights under the law without retaliation, including reporting an injury or raising health and safety concerns with their employer or OSHA cited authorities page 1 of 3

9.U.S. and New York State Constitution guarantee rights to all citizens is in **Appendix 79** 20

**10. United States Amendments to Constitution** (attached) 15,21

TABLE OF AUTHORITIES

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**11. 17-3564-cv attached**

United States Court of Appeals for the Second Circuit

**JOINT APPENDIX VOLUME I OF II – PAGES A1-230**

**12 17-3564-cv attached**

United States Court of Appeals for the Second Circuit

**JOINT APPENDIX VOLUME II OF II – PAGES A231-453**

**13. 17-3564-cv attached**

United States Court of Appeals for the Second Circuit

**BRIEF FOR APPELLANT AND SPECIAL APPENDIX**

**14. Copy of my Annual Performance Evaluation my date 1 /25/11  
is in APPENDIX 1 & 2 Diary**

**2**

Case 17-3564, Document 34, 02/13/2018, 2234620, Page 1 of 234

**17-3564-cv**

United States Court of Appeals for the Second Circuit

PAUL TOOLY,

*Plaintiff-Appellee, v.*

JOHN F. SCHWALLER,

*Defendant-Appellant.*

STATE UNIVERSITY OF NEW YORK AT POTSDAM,

MARY DOLAN, *Defendants.*

On Appeal from the United States District Court

for the Northern District of New York

**JOINT APPENDIX**

**VOLUME I OF II – PAGES A1-230**

ERIC T. SCHNEIDERMAN

Attorney General of the

State of New York

Joseph M. Spadola, of Counsel

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## TABLE OF AUTHORITIES

## PAGE

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 Lewis G. Spicer, of Counsel  
 Attorney for Plaintiff-Appellee  
 499 South Warren Street  
 Suite 500B  
 Syracuse, New York 13202  
 (315) 460-6472

Case 17-3564, Document 35, 02/13/2018, 2234630, Page 1 of 227

**17-3564-cv**

United States Court of Appeals  
 for the Second Circuit

PAUL TOOLY,  
*Plaintiff-Appellee*,

v.

JOHN F. SCHWALLER,  
*Defendant-Appellant*.

STATE UNIVERSITY OF NEW YORK AT POTSDAM, MARY DOLAN,  
*Defendants*.

On Appeal from the United States District Court  
 for the Northern District of New York

**JOINT APPENDIX****VOLUME II OF II – PAGES A 231-453**

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 Syracuse, New York 13202  
 Suite 500B

## **Statement of Case**

Petitioner Paul Tooly, having first hand knowledge of the events in this case, respectfully petitions for writ of certiorari to review the bench judgment of the United States Court of Appeals for the Second Circuit. The legal items used are those of a layperson without any formal or informal legal training. Paul Tooly respectfully ask this Court's indulgence.

### **Background for Statement of the Case**

#### **TRUE STORY OF JOHN F. SCHWALLER & MARY DOLAN NOT HAVING A WORKABLE WORKPLACE VIOLENCE PROCEDURE IN PLACE**

(Note: Once I read section 72 of the Civil Service Law and SUNY Potsdam Violence Prevention Policy, I felt relaxed because I had my lawyer's receipt when I reported work place violence. I expected this situation to be over quickly (I did not believe in my wildest dream that it would take this long.) (Appendix 1 & 2 Diary - copy of my work record; you can see this below) I also have a CDL license where I passed all on-demand drug and alcohol tests.

I expected to get help soon after 5/23/2011 from the New York State Department of Labor (**Appendix 3 Diary**) Joseph A Fuller, Supervising Safety and Health Inspector, Public Employee Safety and Health writes:

Dear Mr Tooly, I am in receipt of the document you sent to the N.Y. Dept of Labor on May 23, 2011. After reviewing the document, it seems that one issue you bring up relates to the safety of the students. The Public Employees Safety and Health Bureau covers public employees in N.Y. This coverage does not extend to students.----- this letter also has my hand written notes on it at that time. ( I clearly stated these students were working)

I expected to get help soon after 8/2011 when I wrote to the Public Integrity Bureau of New York State (PIB). All this did was give the Attorney General's Office information on my case to help defend SUNY Potsdam, which you can read about later.

See APPENDIX 4-8 of my letter asking PIB for help (their page from their court records A93, A94, A95, A96, and A97)

Date sent: 8/21/2011 Date Attorney General received: 8/29/2011

**PAGE 1**

**STATE OF NEW YORK OFFICE OF THE ATTORNEY GENERAL** These letters were not returned to me, but given to SUNY Potsdam. (I found this out from the Federal Court papers, which proves that they knew about this case so they could advise how to defend against it.)

**Appendix 16A** (their Court Page A52) **Mary Dolan** states:

**Item 43** *The plaintiff's allegations that I interfered with his right to participate in a grievance process or otherwise contest the disciplinary charges, and denied him his right to counsel are baseless.*

( As you will notice in my Statement of Case below, it is not baseless)

Appendix 4 (their page A93) is a letter I wrote to the PIB {Public Integrity Bureau)

5<sup>th</sup> paragraph down 5<sup>th</sup> line down

'as now SUNY Potsdam and Albany has suppress documents, suppression of evidence, obstruction of justice on what happen on facts 1 thru 4 below. By this way when I filled a grievance on their charges that they did not give me or my lawyer reasonable time to get together. I sent my grievance as instructed by the-----

I received a letter stating " We have received your Grievance but it was submitted on the wrong form and was sent to the wrong office -----'

4 lines down it states:

'My rebuttal was so strong SUNY Potsdam charge me again for the same thing only in different words and had the same address to send to the first time.----'

You will read that they wanted me terminated (or tried). They tried three separate times; the last one was 18 months later. (*I am still listed as suspended pending termination per their court records.*)

**my deposition Dated** 12-3-2015

**MARY DOLAN** had her deposition after me dated: 1-20-2016

**Appendix 1 & 2(Diary)-** Copy of my Annual Performance Evaluation (my date 1 /25/11) states:

*Paul is a hard working employee, always willing to complete any task assigned*-signed Dan Wilson  
(When I was hired, I had to have a commercial driver's license which is regulated by the Federal Motor Carrier Safety Administration (FMGSA) , part of the U.S. Department of Transportation. It requires employers to perform random drug tests on commercial truck operators.) **PAGE 2**

**Appendix 16** (last line shows I was a class A driver) Keep in mind that *Central Printing and the Receiving Department are two separate departments and two separate buildings. I am only in Central Printing for 2 hours in the morning (where the workplace violence happened with University students who work their all day long.)*

Please note: I did not travel 140 miles away for a medical exam to be “fit for work” for many reasons. I was worried about being far away from my senior citizen father and my sickly mother, especially after reporting workplace violence and I didn’t know if Lee Smith, the foreman, was going to take revenge on me at home, as he had many complaints against him through the union and nothing was ever done. I also believe this was done in retaliation by John F. Schwaller, the then President of The State University of New York at Potsdam. I did not go to my SUNY Potsdam Human Resources (HR) because they never gave my lawyer, Mr. Hartt, any information on what the interrogation was about. Were they going to do anything about the workplace violence occurring in the printing department or do anything about the safety of the University students who were working there. However, I went to see my lawyer, Mr. Hartt, with two preprinted express mail envelopes to see which one I should mail. One stated I was not going to go because HR/Mary Dolan never gave my lawyer any information on what was going to be discussed at the interrogation. The second letter stated that I was going to be at the interrogation because my lawyer felt it was ok. I sent the first letter because she never gave/sent my lawyer anything.

### **Statement of Case**

***I AM ASKING THE JUDGES FOR 12 EASY MOTIONS which any one motion would deny John F Schwaller qualified immunity***

**Appendix 9-14 (page 4 & 5 of SUNY Potsdam Violence Prevention Policy and Procedures)**

Human Resources is responsible for the assisting the Chief of Police and supervisors in responding to workplace violence, **assisting the President in facilitating appropriate responses to reported incidents of workplace violence.**

### **Appendix 12 & 13 President**

The President shall have ultimate responsibility for oversight of the workplace violence policy and response to reported incidents of workplace violence, in consultation with the appropriate Vice President and Human Resources

Human Resources is responsible for assisting the Chief of Police and supervisors in responding to workplace violence, **assisting the President in facilitating appropriate responses to reported incidents of workplace violence**, referring to University Police workplace violence incidents reported to HR, and **consulting with, as necessary**, counseling services to secure professional intervention.

The appendix info above shows that it was Mary Dolan and John F Schwaller's job to have a workplace violence policy in place *and that they panicked when I went to see a lawyer to tell him about the work place violence that was going on*. I reported workplace violence with two or three University students close by with no effort on SUNY Potsdam's part to correct it. (As what has happened for years, even before I worked there, as shown to me by the Union President who hand gestured me a stack of complaints over 14 inches high and stating, "Nothing's been done yet.")

On May 11, 2011 I asked my supervisor, Dan Wilson, for vacation time to see a lawyer to report work place violence. At the time, I thought that I needed all of my vacation time so when I found out I did not need all of my days, I tried to call Dan twice to tell him I only needed 4 more days. He was not there at the time, however, he called me back and we made arrangements for me to take only **4 days** of vacation time.

When I was at my lawyer's office reporting workplace violence, I mentioned other instances the foreman had with other employees and of other instances with me. I felt that it needed to be resolved. I told my lawyer everything that was happening in Central Printing and that even my old supervisor, Ron Reily, had to come back from retirement because the Union did not want Lee Smith to be promoted to supervisor or even the part time replacement supervisor due to numerous complaints. My lawyer was listening when Mary Dolan (Head of Human Resources) called and informed me not to come to work the next work day. My lawyer advised me to ask how come, which I did. She went away from the phone, came back, and said, "You will be getting a letter in the mail."

## **THIS IS THE TIME ALL THE RETALIATION STARTED**

**Appendix 15 - their court pg A55 dated May17, 2011**

*In accordance with the provision of section 72(3) of the civil service law, it is my judgment that your continued presence on the job severely infers with the operation of the Central Printing and Receiving Department ... ...*

*infers - conclude [information] from evidence and reasoning rather from explicit statements*

**Note: none of this evidence and reasoning ever showed up on my two separate charges for the supposedly one wrong doing..**

*I am advising you that pursuant to the subdivision 5 of section 72 of the Civil Service Law you are being placed on immediate mandatory leave effective May 18, 2011. While you are on this leave you may charge any of your accruals. When these are exhausted, you may be eligible for sick leave for half pay.*

**You are accordingly immediately directed to undergo a medical examination conducted by Employee Health Services....**

**Appendix 17 (Diary) my lawyer's receipt for 5/17/11 (when I reported workplace violence to my lawyer)**

**Appendix 18 (Diary) my receipt from Becky to call Sue Stebbins proves I talked to Sue**

**Appendix 19 (Diary) copy of the date when I should have had my first workplace violence training ever, which was to be MAY 18, 2011 at 2:00-3:00 pm (the day they did not want me back to work)**

**Appendix 15 their court pg A55 John Schaller (May 17, 2011) suspension letter--- shows I still could be on campus at this time, not like the letter I got later on August. 8 2011**

**Appendix 16 B their court pg A79 letter dated August 8, 2011 states:**

*You are hereby prohibited from entering or remaining on the premises of the SUNY Potsdam.*

I was to have a medical exam at the following address: **Riverfront Medical**

**Appendix 20 (their page A56) states :**

*Dear Paul, This letter is to confirm that on June 6, 2011 at 10:45 you have an appointment at Riverfront Medical in Liverpool NY---You must show picture ID at the front desk such as driver license or a SUNY Potsdam ID card -address is:*

**Riverfront Medical  
1020 7<sup>th</sup> North Street  
Suite 220  
Liverpool N.Y. 13088**

**(THERE WILL BE A MOTION LATER USING  
RIVERFRONT MEDICAL--as a coverup )**

**Appendix 21 (Diary) dated      June 1, 2011 letter**

**06/01/2011**

*Dear President John F. Schwaller*

*Civil Service law of New York 72(1) It states a written notice of the facts providing the basis for the judgment of the appointing authority that the employee is not fit to perform the duties of his or her position shall be provided to the employee and the Civil Service department having jurisdiction prior to the conduct of the medical examination.*

*Please send me the written facts providing the basis for the judgment.*

*In your third paragraph of the letter you gave me "pursuant to subdivision 1 of section 72 of the Civil Service Law"*

*Thank you, Paul Tooly*

**Appendix 23    their page    A57    June 3, 2011 letter that they used in court**

**06/03/2011**

*Dear President John F. Schaller*

*I have not received your letter of written facts providing the basis for the judgment of me not being fit for work that I asked for. I am supposed to get this before the medical evaluation. I am waiting for you letter.*

*Thank You, Paul Tooly*

**Appendix 22 (their page A58) states :**

*Dear Mr. Tooly,    Your June 1, 2011 to provide you with written facts in regard to the involuntary leave you have been placed on is denied----*  
*Sincerely, John F Schwaller*

**Appendix 24 (their page A59) states:**

*Dear Paul, Since you did not attend the June 6, 2011 appointment this letter confirms that your appointment at Riverfront Medical in Liverpool NY has been rescheduled for June 27, 2011 at 10:45 am.----- You must show picture ID at the front desk such as driver license or a SUNY Potsdam ID card The address is:*

**Riverfront Medical  
1020 7<sup>th</sup> North Street  
Suite 220  
Liverpool N.Y13088**

**START OF MOTIONS - Motion 1 of 12 (Switching my June 1 letter to the shorter version June 3, 2011 letter in Federal Court papers)**

**ABOVE Appendix 21 (Diary)** My letter of **June 1, 2011** to John Schwaller requesting written facts

**BELOW Appendix 22** copy of his **June 7, 2011** letter denying my written facts.

**Appendix 22** (their page A58) states :

*Date June 7, 2011  
Dear Mr. Tooly,*

*Your June 1, 2011 to provide you with written facts in regard to the involuntary leave you have been placed on is denied----*

*Sincerely,  
John F Schwaller*

**BELOW Appendix 23** my June 3, 2011 letter that John F Schwaller used in his Federal Court papers

in place of my original letter of June 1, 2011 which proved why he had to give me the written request.

**Appendix 25 Diary)** dates I sent the letters out.

Certified mail receipt  
Stamped **June 1 2011 USPS 13676**

Certified mail receipt  
Stamped **June 3 2011 USPS13676**

**Appendix 26** (their page A450) Judge Hurd signature on October 2, 2017

**Appendix 27** Judge Hurd states :

*While Tooly submitted a written request on June 3, 2011 providing the basis for his medical examination such letter did not put the defendants on notice.*

**Appendix 22** (their page A58) clearly states: *Your request of June 1, 2011 to provide you with written facts in regard to the involuntary leave you have been place on... is denied.*

**Appendix 15** John F Schwaller letter to me that states: *you are being place on immediate involuntary leave-----*

**You are accordingly immediately directed to undergo a medical examination conducted by Employee Health Services**

**Supreme Court Judges please make this motion 1 of 12**

John F Schwaller, using June 3, 2011 letter for the June 1 letter in his Federal Appeal, is subject to 18 U.S. Code 100.1

(1 ) falsifies, conceals, or covers up by trick, scheme, or device a material fact:

HOW MANY \_\_\_\_\_ YES \_\_\_\_\_ NO

**Appendix 28 First set of charges** That I received \_\_\_\_\_ dated: July 18, 2011

*The charge of misconduct or incompetence is preferred against you for:*

**Charge 1: On May 11, 2011, you abandoned your job (see below definition of job abandonment)**

***Charge 2: On June 6, 2011 you failed to report to this scheduled Employee Health Services (EHS) medical exam. On June 27, 2011 you failed to report to the rescheduled EHS exam.***

***Charge 3: On July 18, 2011 you failed to report to your interrogation by 10:00 am***

*In arriving at the proposed penalty for the above charges your entire work record has been taken into consideration.*

*The penalty is: Termination from state services effective July 18, close of business.*

**Appendix 29 (their page A71) John F Schwaller's sends my **employment termination letter****

July 18, 2011

*Dear Paul Tooly, This letter will serve as official notification that your employment with SUNY Potsdam has been terminated effective July 18, 2011, close of business*

*Sincerely, His signature Then printed John F. Schwaller*

**PAGE 8**

**Supreme Court Judges, please make this motion 2 of 12** ( They sent their letter for the reason why I had to have medical exam after the date of medical exam, and because of this, I got charged)

Mary Dolan and John F Schwaller schemed by not sending a the letter until June 7<sup>th</sup> (**Appendix 22 ABOVE**) so I would miss the **medical exam on June 6**, in order to save their own jobs and to have something to charge me for. The letter they sent me denied me the reasons.

John F Schwaller is subject to 18 U.S. Code 100.1

(1 ) falsifies, conceals, or covers up by trick, scheme, or device a material fact:

HOW MANY \_\_\_\_\_ YES \_\_\_\_\_ NO

**THE FIRST SET OF CHARGES that is above in Appendix 28 WAS SIMPLE TO GRIEVE.**

The reason it was so simple to grieve and they would lose is because on the SUNY Headquarters webpage , abandoned job meant:

#### **Appendix 30 ABANDONED JOB**

*(To qualify must be unauthorized and the employee 's whereabouts must be totally unknown)*

**Appendix 31-40 is about the contract between the State of New York and , The Civil Service Employee Association (CSEA) the union**

Suspension without pay Ex Parte Hearing - BACK PAY, - JOB ABANDONMENT, What you get for 1<sup>ST</sup> AND 2<sup>nd</sup> Notice of discipline for DAYS Of UNAUTHORIZED ABSENCE of 3 consecutive workdays or less (it is a written reprimand fined of 2 days pay or equivalent) - AND a Table of Contents: OF THE CONTRACT

#### **Appendix 35 Article 36**

Job abandonment (a) Any employee absent from work without authorization for 14 consecutive calendar days shall be deemed to have resigned from his or her position if the employee has not personally contacted his or her facility-----

Even using their reasoning, I had at the most, ½ day absent from work.

I sent in my grievance :

I filled out my first and only grievance so I would not be terminated, but I sent it to TWO places at two different times.

**Appendix 41 - MARY DOLAN** deposition dated: 1-20-2016 stated:

Line 16,17-(Mary Dolan) *As of August 8, he is suspended, and as of today, he is still suspended.*

Line 18 19, 20 My attorney, Mr. Spicer- Question: *Why the change from termination to suspended without pay?*

Line 21 Mary Dolan's Answer: *It is on advice of counsel.*

Currently, I am listed as: SUSPENDED WITHOUT PAY because THEY CANNOT LEGALLY DO ANYTHING TO TERMINATE ME, however, there are no kind doings on their part. SUNY POTSDAM CAN NOT SEND IN THE FIRST SET OF CHARGES BECAUSE I WOULD EASILY WIN THE GRIEVANCE, and THEY CAN NOT SEND IN THE SECOND SET OF CHARGES because THE ARBITRATOR WOULD SEE THAT THEY CHANGED THE CHARGES ( and would recall what I wrote earlier) THE ARBITRATOR CANNOT HAVE AN EX PARTE HEARING because THEY NEVER SENT ANYTHING IN, and my letting the ARBITRATOR KNOW SUNY POTSDAM WOULD KEEP ON CHANGING THE CHARGES UNTIL THEY FOUND SOMETHING THAT WOULD STICK. I wrote on my grievance (something to the effect of) : "See you in court, I will not be at the grievance hearing," as they continued to change the charges.

Where I was to send in my grievance to the first set of charges, AND the second set of charges was to: THE OFFICE OF EMPLOYEE RELATIONS, SUNY SYSTEM ADMINISTRATION, T7, STATE UNIVERSITY PLAZA, ALBANY, N.Y. 12246

What happened to my grievance to my first set of charges? It was it was sent back from: OFFICE OF EMPLOYEE RELATIONS, SUNY SYSTEM ADMINISTRATION, T7, STATE UNIVERSITY PLAZA, ALBANY, N.Y. 12246

My grievance was returned to me from OFFICE OF EMPLOYEE RELATIONS with writing on **PAGE 10**

it, stating : wrong place, wrong building **but** they gave me the right department, which was **“Disciplinary Panel”**.. **but** with no address on the returned grievance package to send it to. (The exact wording is on my returned grievance package.) After the first grievance was returned, I wrote to Mary Dolan asking her where am I supposed to send in my second set of charges, as Albany sent back my first grievance on the first set of charges and this address is the exact same place. I also asked her if she agreed to the second set of charges, because Melissa Proulx signed her name (for her...Mary Dolan )

(One week later, I found out from Mary Dolan where to send in my grievance to the second set of charges. The new address of where I was to send it to was in a **different building and zip code. It could have been the address of the arbitrator?**)

It also came with a note from Mary Dolan that all communication from now on will be through your lawyer. I happily complied, as she has some serious explaining to do to my lawyer for having different charges. I sent my SAME grievance in twice, the first time it was returned and the second time to the place where Mary Dolan said to send it. This place must have been the right place because now, instead of 14 days, it is 24 days to file a grievance and the form was changed as it now states you have to send it to:

**DISCIPLINARY PANEL ADMINISTRATION  
CORPORATE PLAZA EAST-SUITE 502  
240 WASHINGTON AVENUE EXTENSION  
ALBANY, NEW YORK 12203**

**Appendix 42-49** Mary Dolan is answering a question from my lawyer on why there are different dates on the sheriffs stamps when he received my second set of charges and the date he delivered the charges. He received them on and stamped them on Friday, however he delivered them on Monday and the letter inside was dated Monday. Withholding this until Monday gave Albany time to return my grievance saying: wrong place, wrong building.

**Appendix 50** Address I sent my first grievance: the Office of Employee Relations SUNY System Administration, T7 State University Plaza Albany, NY. 12246

**Appendix 51** Address that my grievance of the first charges was returned from

Office of Employee Relations State Univ. Plaza F216 Albany N.Y.12246

**Appendix 52 Diary** letter from Karen Elk at Albany headquarters who said it was the wrong address..(from the **TWO** above Appendixes) stating:

*Dear Mr. Tooly, We received your grievance, but it has been submitted on wrong form and was sent to the wrong office. Please submit on the correct form and it should be sent to the Disciplinary Panel to Grieve your Article 33.*

(My notes on the paper...(Karen did not give me correct address ---I finally got the right address from Mary Dolan...a different building and zip code.)

**Appendix 53,54 Diary** copy of my grievance form that I sent in-- the heading is:

**STATE/CSEA  
GRIEVANCE FORM**

(They did not give me a new correct form, and this above form was correct at the time)

**Appendix 55** their page 82 Number 4 states: “ If you file a grievance, no penalty can be implemented until the matter is settled or the arbitrator renders a determination.”

**Appendix 56 & 57 dated: AUGUST 8, 2011**

**Received a new second and longer set of charges** for the same supposedly wrong doings and with a different outcome.

*The charges of misconduct or incompetence is preferred against you for:*

*Charge 1: On May 11, 2011, at approximately 12 noon, you left your work site and the campus without permission in violation of departmental policy.*

*Charge 2: You are charged dereliction of duty on May 11,2011 at 12 noon when you left campus without permission and failed to complete your assigned tasks..*

*Charge 3: On June 6, 2011 you failed to follow the directive made by Mary Dolan on May 24, 2011 when you failed to report to Employee Health Services (EHS) for a medical exam.*

*Charge 4: You are insubordinate on June 6,2011 when you failed to follow the directive made by Mary Dolan on May 24, 2011 when you failed to report to Employee Health Services (EHS)for a medical exam.*

*Charge 5: On June 27, 2011 at 10:45 am you failed to follow the directive made by Melissa Prolix , Assistant Director of Human Resources, on June 9, 2011 when you failed to report to Employee Health Services(EHS) for a medical exam.*

**Charge 6:** You were insubordinate on June 27, 2011 when you failed to follow the directive made by Melissa Proulx on June 9, 2011 when you failed to report to Employee Health Services (EHS) for a medical exam.

**Charge 7:** on July 18, 2011 you violated the directive by Mary Dolan, Director of Human Resources, dated on July 15, 2011 to report to your interrogation by 10:00 am.

**Charge 8:** You were insubordinate July 18, 2011 when you violated the directive given by Mary Dolan, Director of Human Resources, dated on July 15, 2011 to report to your interrogation by 10:00 am.

In arriving at the proposed penalty for the above charges, your entire work record has been taken into consideration

Appendix 58,      Appendix 56,57      my second charge penalty  
Appendix 58      dated August 8, 2011

Dear Paul:

*The Notice of Discipline dated July 18, 2011 is withdrawn. Enclosed please find the new Notice of Discipline.*

*Sincerely,*

Signed Melissa Proulx for Mary Dolan

(Then there is typed words)

*Mary Dolan  
Director of Human Resources*

Appendix 57      the last sentences states: *The penalty sought is termination*

**I was terminated, then reinstated to be terminated again... at a later date  
....with different charges.**

Neither charges went to the arbitrator as the first one was false (job abandonment) and the second one contradicts what I wrote in my grievance (from the first set of charges, so then they would know that there were two different sets of charges)

Appendix 59      The termination and signed by John F. Schwaller was sent to:

Cc   Michael Lewis      Dan Wilson  
         Diane Billings      Tony DiTullio

**Motion 3 of 12** It is about the first charge in the second set of charges.

This charge would not be there if I had grieved the second set of charges, because Mary Dolan is not an attorney, and when she sent it in, it would've been returned, making another false charge.

**Appendix 60** (their page A53) Mary Dolan's signature

**Appendix 61** (their page A46) #13 states :

*I drafted that letter for Dr Schwaller and I did so following consultation with legal counsel. I am not an attorney and based upon my consultation with legal counsel in the office of labor relation at SUNY System Administration, it was my understanding that under these circumstances the plaintiff was not entitled, in advance of the EHS examination to an additional written statement beyond what was contained in Dr. Schwaller's May 17, 2011 letter to him of the reason he was being directed to go for an EHS examination.*

**Charge 1:** On May 11, 2011, at approximately 12 noon you left your work site and the campus without permission in violation of departmental policy.

**Charge 2:** You are charged dereliction of duty on May 11, 2011 at 12 noon when you left campus without permission and failed to complete your assigned tasks..

Charges 1 & 2 would've been returned to Mary Dolan if I had grieved my second charges, because you have to be away at least two days for "unauthorized absence."

**Appendix 31-40** shows agreement between the Executive Branch of the State of New York (the State and The Civil Service Employees Association, INC.) (CSEA)

**Appendix 36** shows the TIME AND ATTENDANCE SCHEDULE

Unauthorized absence including improper use of sick leave/unscheduled:

1<sup>st</sup> and 2nd Notice of Discipline

Minimum penalty - written reprimand    Maximum Penalty- fine of two days pay or equivalent

**One half-day absence can not be one of my CHARGES to DISCHARGE ME or TERMINATE ME**

**STATEMENT REQUIRED TO ACCOMPANY NOTICE DISCIPLINE PURSUANT TO  
ARTICLE 33/ARTICLE 8 OF THE COLLECTIVE AGREEMENTS BETWEEN THE  
STATE OF NEW YORK AND (APPROPRIATE BARGAINING UNIT)**

Appendix 55 their page A82 Number 4 states:

**“If you file a grievance, no penalty can be implemented until the matter is settled or the arbitrator renders a determination.”**

**Supreme Court Judges, please make this motion 3 of 12.**

John F. Schwaller was the cause of me not having my fourteenth Amendment and or Eighth Amendment rights via unfair punishment/ suspended without pay for 8 plus years

HOW MANY \_\_\_\_\_ YES \_\_\_\_\_ NO

With Melissa Proulx and Mary Dolan coming up with these two false charges and having them in U.S. Federal Second Circuit appeal records, this action falsifies, conceals, cover up, scheme or device a material fact.

**Supreme Court Judges, please make this motion 4 of 12**

John Schwaller using the made up charges and using the charges in his U.S. Federal Second Circuit Appeal. This action falsifies, conceals, cover up, scheme or device a material fact in his appeal. 18 U.S. Code 100.1 effects John F Schwaller

HOW MANY \_\_\_\_\_ YES \_\_\_\_\_ NO

**Motion 5 of 12.** The impractical place where I was to go for a medical, that is not part of EHS as stated.

**Appendix 17 - In accordance with the provision of section 72(3) of the civil service law, it is my judgments that your continued presence on the job severely infers with the operation of the central Printing and Receiving Department ... .**

infers - conclude [information] from evidence and reasoning rather from explicit statements  
Third paragraph down second sentence states :

*You are accordingly immediately directed to undergo a medical examination conducted by Employee Health Services....*

Please take note on charges 3-6 above: **Employee Health Services (EHS)** is NOT at the State University of New York, Potsdam (SUNY Potsdam)

**Appendix 20** letter from May 24, 2011 I was to have a medical exam at the following address: **Riverfront Medical**

**Appendix 24** letter from June 9, 2011 I was to have a medical exam at the following address: **Riverfront Medical**

**1020 7<sup>th</sup> North Street  
Suite 220  
Liverpool N.Y13088**

This private company has nothing to do with Civil Service. It is just a private company that Human Resources of Potsdam picked that which is located 141 miles away from Potsdam, N.Y

**SEE APPENDIX 62** about Riverfront Medical

**SEE APPENDIX 63** shows how far away it is from Potsdam, NY

**SEE APPENDIX 64** shows how many doctors are located just in POTSDAM -CANTON HOSPITAL. There are well over 1,000. This does not include 4 other hospitals.

**Riverfront Medical is NOT a part of NYS EHS**

Note on their webpage, they, the doctors of Riverview Medical, are **NOT a part of New York State Employee Health Services (EHS)**

**Appendix 65 & 66** (their page 54), (their page A45) is a letter stating Employee Health Services has to be a New York State Department of Civil Service Employee Health Service

**Appendix 65**

NYS Department of Civil Services  
Employee Health Service Suite 201  
55 Mohawk Street Suite 201  
Cohoes N.Y. 12047

To Whom it may concern  
Then the letter continues

**Appendix 66** (their court page A45)

**item 9** states --- letter dated May 13, 2011 from Melissa Proulx SUNY Potsdam asked the Employee Health Services (EHS) of the New York State of Civil Service to examine and evaluate the Plaintiff.(A copy of that letter is annexed hereto as Exhibit A)

**PAGE 16**

**Appendix 67 & 68** shows Riverfront Medical is a business listed in the categories: clinics and in independent medical examinations

**Saying in court Records**

Riverview Medical is part of NYS Department of Civil Services  
Employee Health Service EHS as stated

This action:

- (1) falsifies, conceals, or covers up by trick, scheme, or device a material fact:
- (2) makes any materially false, fictitious fraudulent statement or representation  
18 U.S. Code 100. Statements or entries generally.

**Supreme Court Judges, please make this motion 5 of 12.**

John F Schaller using **Riverfront Medical 1020 7<sup>th</sup> North Street Suite 220 Liverpool N.Y. 13088** as a New York State Department of Civil Service Employee Health Service was a lie/ knowingly used a lie and it was located over 140 miles away.

(1) falsifies, conceals, or covers up by trick, scheme, or device a material fact: (2) makes any materially false, fictitious fraudulent statement or representation: on his Federal Court papers in the U.S. District Court Northern District of N.Y. 10 Broad St. Utica N.Y. in Utica. AND in U.S. Court of Appeals for the Second Circuit 18 U.S. Code 100. Statements or entries generally

**effects John F Schwaller in both Federal Courts**

HOW MANY \_\_\_\_\_ YES \_\_\_\_\_ NO

**Motion 6 of 12**

**SUNY Potsdam Pay Roll Examiner II Of Human Resources letter**, to complete time sheets for 03/31/11 to 06/22/11 with three blank time sheets included.

**Appendix 69 (Diary)-** my copy of what I sent to my lawyer, James Hartt, with his name blanked out at the top Date: 07 July, 2011 12:46:22

*Dear Mr.*

*Today 07/07/2011 I received an express mail (with a note (letter date July 06, 2011)) at 10:40 AM from Mary Dolan stating the opposite of the phone call conversation we had yesterday. (highlighted) Yesterday, Mary stated she would postpone the deadline 07/08/2011 to a future date*

*Today's letter says the opposite.*

*Plus, yesterday I received three blank months of time sheets from Donna with no hours printed on them. I am not signing anything because If I'm not accurate, a person can get fired, especially (sick time) Plus, I would like to use this for court in the future of missing time sheets*

*Thank you, Paul Tooly*

**PAGE 17**

**Appendix 70 (Diary) With SUNY paper mark on it**

*Hi Paul,*

*Can you please complete your time sheets for the month of April (03/31/11 -4/27/11}*

*And also for the month of May(4/28/11-5/25/11 and June (5/26/11-6/22/11)*

*You will need to charge sick leave accruals beginning 5/18/11 per Human Resources. Enclosed are three blank time sheets. If you have question please call me.*

*Donna Burgoyne*

*Payroll Examiner II*

*Human Resources*

*Phone (315)267-2099*

*Fax (315)267-2170 etc.-----*

**Appendix 71** (their page A79) this page has a date of August 8, 2011 Persuant to your collective bargaining agreement you may elect to use accrued annual or personal leave credits etc-----

**Appendix 72** (their page A80) this page shows that I never signed for any vacation

(earn leave credits, excluding sick leave, during the period of my suspension)

With **no signature** at all from anybody at HR or anywhere else, signing any vacation time, I felt, was a statement that the workplace violence (with two or three University student's safety in jeopardy) never happened.

**Supreme Court Judges please make this motion 6 of 15**

John F.Schwaller's legal consultation, with Mary Dolan, knowingly schemed a plan to harass me by trying to get me fired if I failed to fill out their time sheets for those 3 months

HOW MANY \_\_\_\_\_ YES \_\_\_\_\_ NO

**PAGE 18**

**MOTION 7 of 12**

**John F. Schwaller broke federal workplace violence laws from The United States**

Department of Labor, OSHA, Laws of New York S 740 ,Laws of New York S75-b 2. (a)

The reason: The retaliation started when Mary Dolan was listening to my conversation with my supervisor, Dan Wilson, to see a lawyer. Read what was stated in the depositions. I also had my lawyer receipt for 5/17/11, letter from John Schwaller dated 5/17/11 which states: it is my judgment that your

**Appendix 73 their court page A116 Mary Dolan's deposition**

**Appendix 74 their court page 117** Mary Dolan overheard the conversation I had with Dan Wilson that I was going to see a lawyer

**Appendix 74 starts on line 2**

Line 2 Q Okay. And Did you -- Were You able to get in touch with Paul?

Line 4 A. Yes.

Line 5 Q. Okay. And was their a conversation with Mr. Tooly?

Line 7 A. Yes.

Line 8 Q. Can you describe what that conversation was? Or the sum and substance of what was said in it.

Line 10 A. Sure.

Line 11 Q. Yeah.

Line 12. A. Sure. Paul-- Dan did the-- did the speaking. And he confirmed that Paul had indeed walked off the job. And Paul said Yes. At that point, Dan authorized vacation leave for a few days, and I believe I also gave him information on employee assistance program.

Line 17 Q. Okay. So vacation was authorized by Wilson at that point.

Line 19. A For specific days.

Line 20 Q. okay Were--- was Mr Tooly aware that you were on the phone call ?

Line 22 A. I do not know

Line 23. Q. Was--- was it on speaker phone or was Mr. Wilson talking to Mr.Tooly directly?

Line 25 A. I don't recall, but I believe it was on.

**Appendix 15 - their court page A55** In accordance with the provision of section 72(3) of the civil service law, it is my judgments that your continued presence on the job severely infers with the operation of the central Printing and Receiving Department .....

I am advising you that pursuant to the subdivision 5 of section of section 72 of the Civil Service Law you are being placed on immediate inventory leave effective May 18,2011. While you are on this leave you may charge any of your accruals. When these are exhausted, you may be eligible for sick leave for half pay.-----

You are accordingly immediately directed to undergo a medical examination conducted by Employee Health Services

**Appendix 9-14** from the State University of New York at Potsdam

Workplace Violence Prevention and Procedures

**Appendix 12** second paragraph down states:

This policy shall be deemed supplemental to all state and federal laws all personnel rules and regulation, and all student codes of conduct Note pages 109A1 to 109A6 shows this is from State University of New York at Potsdam Workplace Violence Prevention Policy and Procedures

**Appendix 75& 76 United States Department of Labor OSHA**

**Appendix 76** states under: **WORKERS' RIGHTS** the fifth bullet down:

Exercise their rights under the law without retaliation, including reporting an injury or raising health and safety concerns with their employer or OSHA

**Appendix 77 Laws of New York S 740 2.**

Prohibitions. An employer shall not take any retaliatory personnel actions against an employee because such employee does any of the following:

(a)discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of the law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety, ---etc.

**Appendix 78**

Laws of New York S75-b 2. (a)

A public employer shall not dismiss or take other disciplinary or adverse personnel actions against a public employee ----etc

**Appendix 79** states The U.S. and New York State Constitution guarantee rights to all Citizens

**PAGE 20**

SUNY Potsdam never once made a statement that their University students never worked in Central Duplicating (printing) Department, including the day I reported workplace violence or any other day. One of my many jobs was to take time sheets to payroll. Every since I read and studied the article on John F Schwaller and other articles about workplace Violence, I felt secure because Mary Dolan called my father on the last day and at the last hour of my vacation and told him for me to call her. I called her from my lawyer's office after I just reported to him the work place violence that was going on against me and other employees. He was listening to the conversation and suggested what to say.

**Supreme Court Judges please make this motion 7 of 12**

John F. Schwaller broke federal workplace violence laws from The United States Department of Labor, OSHA, Laws of New York S 740 , Laws of New York S75-b 2. (a) And then **SUNY President John F. Schwaller's own State University of New York at Potsdam Workplace Violence Prevention and Procedures**

John F. Schwaller was the cause of me not having my fourteenth Amendment

HOW MANY \_\_\_\_\_ YES \_\_\_\_\_ NO

**MOTION 8 of 12**

**Appendix 16A** (their Court Page A52) **Mary Dolan** states:

*Item 43 The plaintiff's allegations that I interfered with his right to participate in a grievance process or otherwise contest the disciplinary charges, and denied him his right to counsel are baseless.*

**Appendix 80** -letter from me to Mary Dolan dated 7/14/2011--

*Dear Ms Mary Dolan,  
As per phone conversation with you. You already agreed to set this meeting after my lawyer appointment. My lawyer appointment is in the week of 07/18/2011 thru 07/22/2011.*

**Appendix 81** - letter from Mary Dolan to me dated **July 14, 2011** You have been directed to report to the Office of Human Recourses at 10:00 am Monday July 18, 2011 for  
**PAGE 21**

*questioning regarding acts for which formal disciplinary actions may be initiated against you.*

*In response to your letter dated July 14, 2011, please be advised that the interrogation will proceed on Monday July 18, 2011 at 10:00. We have rescheduled the interrogation twice, have been in contact with your attorney who has stated he will not be at the hearings and advised you of your right to CSEA representation*

(On this underlined statement above, see Mary Dolan deposition below)

**Appendix 83 & 84**      Mary Dolan deposition dated 1-20-2016

Line 8 Q. ---Did you ever speak to Mr. Hartt?

Line 9 A.-- I don't recall.

Line 18 Q. ---So were are clear, nothing was ever made in writing to Mr. Hartt explaining the nature of charges against Mr. Tooly whether it be letter, e-mail, text message, whatever?

**Line 22 A.-- No , I tried multiple times to get a hold of Mr. Hartt though.**

Line 24 Q. Did you ever send a letter to him?

**Line 25 A. No.**

**Appendix 84**

Line 2 Q. Did you ever send an e-mail to him? Mr. Hartt?

**Line 4 A. No they were all--I made several phone calls and never a response.**

From above Appendix 81 "have been in contact with your attorney who has stated he will not be at the hearings and advised you of your right to CSEA representation

Mary Dolan lied by stating she was in contact with my attorney on John F Schwaller's Federal Appeal form, (their page A52)

18 U.S. Code 100.1 effects Mary Dolan

**Motion 8 of 12** John F Schwaller using Mary's lie.

**Supreme Court Judges please make this motion 8 of 15**

John F Schwaller used the above lie on page (his Court Page A52) in his **Federal Court papers both the U.S District Court Northern District and U.S. Court of Appeals**

18 U.S. Code 100.1 effects Schwaller  
HOW MANY \_\_\_\_\_ YES \_\_\_\_\_ NO

**PAGE 22**

**For proof**

On Thursday, June 30, 2011 letter states *on Wednesday, July 6, 2011 for me to be questioned on committing acts for which formal disciplinary action may be initiated against you.*

My letter July 2, 2011 stating *I contacted my lawyer and I am waiting for his response*

July 6, 2011 is a letter from my lawyer, Mr. Hartt **VIA FAX & USPS**

*---If you would please forward to me the purpose of the proposed upcoming hearing/conference I will be meeting with my client late next week---*

July 6, 2011 via certified mail, a letter from Mary Dolan to *report Friday July 8, 2011 for questioning regarding acts for which formal disciplinary action may be initiated against you--On July 6, 2011 You notified Human Resources that your lawyer was unavailable Friday July 8, 2011 at 10:00 am. Please have your lawyer fax written and signed confirmation that he/she is unavailable July 8, 2011*

July 11, 2011 Is my letter that Mary Dolan wanted that my lawyer, James Hartt, could speak on my behalf

July 12, 2011 letter from Mary Dolan. *I have received report that you may have committed acts for which formal disciplinary actions may be initiated against you..you are hear by directed to report to the office of Human Resource at 10:00 am Monday, July 18 so you can be questioned on this matter*

*July 14, 2011 as per phone conversation with you. You already agreed to set the meeting after my lawyer appointment during the week of 7/18/2011 thru 07/22/2011 (this letter was sent by express mail )*

*July 14, 2011 you have been directed to report to the office of Human Resource at 10: 00 am Monday, July 18, 2011 for questioning for which formal disciplinary action may be initiated against you.-- in response to your letter July 14, 2011 please be advised that the interrogation will proceed on Monday, July 18, 2011 at 10:00 am. We have rescheduled this interrogation twice and have been in contact with your attorney who has advised you of your rights to CSEA representation.*

Do you think Mary Dolan was scared that I might harm someone as was stated in Appendix 17 with the above letters from Mary Dolan???

Or was SHE SCARED THAT I WOULD ASK HER THE REASON WHY I GOT SUSPENDED WITHOUT PAY on May 18, 2011. OR WHY THEY DIDN'T DO ANYTHING ABOUT THE WORKPLACE VIOLENCE THAT HAS BEEN GOING ON IN CENTRAL PRINTING FOR MANY YEARS WITH CAMPUS STUDENTS WORKING THERE. (which she had to know about because SUNY Potsdam had to bring back the retired supervisor of the Printing Department, Ron Reily) or just plain did not want me to have an outside lawyer?

**Appendix 82 IS A CALENDAR OF THE YEAR 2011**

**Appendix 85 court pg A60** letter sent to me from Mary Dolan dated June 30, 2011 *You are hereby directed to report to the Office of Human Resources at 10:00 am July 6, 2011*

**Appendix 86 court pg A61** letter from me to Mary Dolan the next day after I got the letter from Mary Dolan dated 7/2/2011 *I have contacted my lawyer for my reposition and I am waiting for his response. I will report to you ASAP according to his answer.*

**Appendix 87 court pg A63** letter from my lawyer, James Hart , to Mary Dolan dated **July 6, 2011** *I will be meeting with my client late next week. So there should be ample time to send me a general description of the issues you need resolved. Please forward any documents to my Rochester address below or via email to [james@hartlegal.com](mailto:james@hartlegal.com)*

**Appendix 88 court pg A62** letter from Mary Dolan to me dated **July 6, 2011** *You have been directed to the Office of Human Resources at 10:00 am, for questioning regarding acts for which formal disciplinary action may be initiated against you.*

The third paragraph down reads:

*If your lawyer fails to fax written and signed confirmation he/or she is unavailable and does not schedule an alternative date and time prior to July 8, 2011 the interrogation will be held Friday July 8, 2011 at 10:00am.*

**Appendix 89 court pg A64** letter from me to Ms Mary Dolan because she requested a letter that stated my lawyer can speak for me.----Dated 7/11/2011 Dear Ms Dolan, Mr James Hartt, Attorney at Law, is my attorney and he can speak on my behalf.

**Appendix 90 court pg A65** --letter from Mary Dolan to me dated **July 12, 2011** Dear Paul, I have received a report indicating that you may have committed acts for which formal disciplinary actions may be initiated against you. You are hear by directed to report to Human Resources @ 10:00 am Monday July 18 so you can be question concerning this matter.

**Appendix 80 court pg A66** --letter from me to Ms Mary Dolan dated **7/14/2011**--

Dear Ms Mary Dolan

As per phone conversation with you. You already agreed to set this meeting after my lawyer appointment. My lawyer appointment is in the week of 07/18/2011 thru 07/22/2011.

**APPENDIX 81 court pg A67** - letter from Mary Dolan to me dated **July 14, 2011** You have been directed to report to the Office of Human Recourses at 10:00 am Monday July 18, 2011 for questioning regarding acts for which formal disciplinary actions may be initiated against you.

In response to your letter dated July 14, 2011, please be advise that the interrogation will proceed on Monday July 18, 2011 at 10:00 We have rescheduled the interrogation twice, have been in contact with your attorney who has stated he will not be at the hearings and advised you of your right to CSEA representation

**APPENDIX 98,99,100,101 &102**      Schwaller steps down

C. On November 30, 2012 I received a letter from HR stating: You may have committed a crime. You are to report to Human Resources.

**Appendix 128**      court pg A86      letter from HR stating you may have committed a crime.(acts)

D. I wrote back to HR. I also sent a copy of it and wrote to my two immediate supervisors because I noticed she did not send them a copy. I wanted my old supervisors to know about this harassment. *This did not come in my diary package from my lawyer.*

**APPENDIX 104** copy of our DVD cover THE JUNGLE MOVIE . The picture on the cover is a fisher with the date 9-29-12 when it was taken. I went to the Phouty farm with my father in August 2012. My father asked Mrs. Phouty to put up a game camera while handing her a 8 X 11 paper with both of our names, address, and where we are located, which is across the road from New York State Department of Transportation, our phone number, email address, car make and color, as well as our license plate number. We asked her to trap on her property and to film wildlife and we do not hunt deer. We would go before deer season to check things out, but would not go more than 200 feet on the property during deer season , we will wear red hats, and not take more than 15 minutes. We stated we wanted to trap on the property 5 miles away from the house. My father gave Mr. & Mrs. Phouty my thank you note and a copy of our Jungle movie for allowing us on his property to trap and film wildlife. *This did not come in my diary package from my lawyer.* My lawyer now has since we first heard about Jeff Phouty's name in my deposition on 12/3/2015. We ask every summer for permission to trap and film up to this date.

**APPENDIX 104**      A copy of our cover of the JUNGLE MOVIE

**Appendix 105, 106, 107 & 108**      proof that trapping is the reason and the only reason, and court pg A50&A51      court pg for 107,108 is A324 & A325  
**PAGE 28**

the excuse/scheme that they used to get me to come to SUNY Potsdam to charge me again.

**106 A to 106 D** happened 16 months after I was officially terminated by John F. Schwaller, the President of SUNY Potsdam.

**Appendix 105** Line 35. On or about November 15, 2012, the SUNY Potsdam Office of Human Resources learned that another SUNY Potsdam employee reported to the SUNY Potsdam University Police that the Plaintiff **may have engaged in unusual and/or harassing behavior toward him.**

**Appendix 105** Line 36 On December 3, 2012 the plaintiff notified the SUNY Potsdam Office of Human Resources that the Plaintiff attorney was not available on December 10, 2012 etc---

**APPENDIX 108** From my deposition 12-3-2015 Page 164

Line 13. Q. Was there an occasion when you--- was there an occasion when you and your father went to someone's house in the area, asking if you could hunt on their land?

Line 17. **Mr. SPICER Objection** Line 18. BY Mr. Fruchter (Cont'd)

Line 19 Do you recall that?

Line 20. **Mr. SPICER Objection on relevance, but you can answer if --if you know.**

Line 22 A I do not hunt.

**(Trapping is the unusual thing Human Resources notified me about and it is not a harassing behavior** to ask permission to be on a farmer's land to trap. If someone was on their property trapping or hunting without their permission, they would call The New York State Department Environmental Conservation DEC and a Conservation Officer (game warden) would give that person a ticket for trespassing and that person would have to appear in court.)

My father asked Mrs. Prouty permission every summer to trap and put up a game cameras on their property. Not once were we ever declined. I also gave them a thank you note and a copy of the Jungle movie for letting us be on their property. My lawyer has a copy of that letter which he is going to forward it to me. **Appendix this did not come in the mail as of 8/3/2019**  
**Appendix 109 Mary Dolan's Deposition 1-20-2016 page 90**

Line 10 Q. And it's signed by Ms. Proulx, Correct?

Line 11 A. Yes.

**PAGE 29**

Line14 Q. Okay. Is--in November 2012 what was your title with SUNY Potsdam?

Line16 A. Assistant Vice President for human resources

Line 17 Q. Would this letter still need of you-- Still have needed your authorization in order to send to Mr. Tooly

Line 20 A. I would have known about it.

### **Appendix 111 110**

Line 11 Q. Was there ever an interrogation or hearing with respect to that letter and the --the charge?

Line 15 Q. November 30<sup>th</sup> 2012?

Line 16 A. It was scheduled. He didn't show up.

Line 17. Q. **Did Mr. Prouty show up?**

Line 18 A. **I would not have invited Mr. Prouty.**

### **Appendix 109,110 111 proves Mary Dolan was in charge**

The scheme of Nov 2012 to get me off the suspended list to the terminated list

With the charges and letters of November and December 2012 of my supposed wrong doings and using this scheme in John F Schwaller's Federal Appeal court papers

18 U.S. Code 100.1 Statements or entries generally

(1) falsifies, conceals, or covers up by trick, scheme, or device a material fact  
effect John F Schwaller

**APPENDIX 112** states : 18 U.S. Code 100.1 Statements or entries generally

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--

(1) falsifies, conceals, or covers up by trick, scheme, or device a material fact:

(2) makes any materially false, fictitious fraudulent statement or representation: or

(3) makes or uses any false writing or document knowing the same to contain any materially, false, factious statement or entry;

**shall be fined under this title, imprisoned not more than 5 years**

John F. Schwaller's scheme with Mary Dolan backfired because I wrote a letter to Human Resource in January 2012, stating it has been over 16 months, it will not hurt to wait a little longer until I get a lawyer, someone from the Inspector General's Office, and someone from the New York State Labor Department, and we will have our meeting.

With this letter, John F Schwaller could not say, "SUNY Potsdam wants me back as President of SUNY POTSDAM and also the President of SUNY Canton." so he quit and became a professor in Albany  
**APPENDIX 113&114** about this one president for two colleges.

SUNY Potsdam did not use their lawyers because they all knew about every wrong doing SUNY Potsdam did. So they had to hire the Attorney General's Office and they took John F. Schwaller and SUNY Potsdam's case, even after I wrote to them in August 2011 about the workplace violence in SUNY Potsdam. I gave them the report with the understanding if I wrote something wrong, I could be charged. As of today, 08/28/2019, I have not been charged for that report the Attorney General Office had prior knowledge of.

**Appendix 114A , 114B, & 51Dary & 114C**

**Appendix 114A court pg A69** is the address I sent my first grievance to  
Office of Employee Relations, SUNY System Administration, T-7 State University Plaza, Albany, 12245

**Appendix 114B court pg A75** is the address SUNY Potsdam wanted me to send the second grievance to

Office of Employee Relations, SUNY System Administration, T-7 State University Plaza, Albany, 12245

**for sent to wrong office see Appendix 52 DIARY**

**Appendix 51 Diary** is a copy of where my first grievance came back from stating "sent to wrong office"    **Office of Employee Relations , te Univ Plaza F216, Albany NY 12246**  
**PAGE 31**

**Appendix 114C court pg A92 Is the place I was supposed to send my 3<sup>rd</sup> grievance to which was 18 months later**

Office of Employee Relations, SUNY System Administration, F-216 State University Plaza, Albany, 12245

**Motion 11 of 12 Send My3<sup>rd</sup> grievance on January 3, 2013 to the**

**Office of Employee Relation, SUNY System Administration ,F-216,State University Plaza Albany, NY 12246**

which is the same place I had my first grievance returned from.

**Supreme Court Judges please make this motion 11 of 12**

John F Schwaller lied /used a lie in his defense when I had to grieve my grievance with the **Office of Employee Relation, SUNY System Administration, F-216, State University Plaza Albany NY 12246** on January 3, 2013

HOW MANY \_\_\_\_\_ YES \_\_\_\_\_ NO

John F Schwaller did not report to his Federal Court summons on time.

**Being 21 days over, someone from the Attorney General's office help him.**

**See Appendix 115, 116A 116B & 117, John F Schwaller should only have 21 days to report but he took over 48+days**

**APPENDIX 118 item 41**

Mary Dolan's statements in their appeal to Federal Second Court of Appeal

**APPENDIX 118 item 41**

The third line down and starts about in the middle

**I am aware that the plaintiff complained about a coworker named Lee Smith, including one alleging that Mr. Smith worker name Lee Smith, engaged in harassment of the plaintiff and "workplace violence" including one alleged incident in which the plaintiff alleges that Mr. Smith raised his voice with a couple of SUNY Potsdam students in the vicinity. Although the plaintiff**

**PAGE 32**

has used the words "harassment" and "workplace violence" with regard to Mr. Smith no evidence has been found to substantiate the plaintiff complaints

**APPENDIX 119 & 120      Paul Tooly's Deposition Dated 12-3-2015 Page 80,81**

Line 3 Q. And what--what was said during that conversation?

Line 5 A. Okay. Something--something along the lines she got her answer from--she made some phone calls, she got the answer. And--and one of the things she stated was Mary Dolan stated she would do a --in a-- in a tone voice that--in a tone voice that I felt that my job was jeopardized, Mary Dolan stated that she would do a deep investigation and you might not like what turns out because--that's what she said.

Line 13 Q. That's what who said?

Line 14 A. Sue Stebbins

Line 15 Q. Okay

Line 16 A. And she also said there was no witnesses there and there was no students. She--she doesn't have a name. There was no--there--and there was no witnesses there. And she called Dan Wilson and Dan Wilson only heard me hollering.

Line 21. Q. Who--now when you say she called Dan Wilson, was that-- was it your understanding that Sue Stebbins called Dan Wilson?

Line 24 A Yes, Sue-- yes, Sue Stebbins

Line 25 Q. Okay. And when you say that Sue Stebbins said to you that Mary Dolan would do a deep investigation and you might not like the way it turns out..

**Page 81 Paul Tooly's Deposition**

Line 5 A. Not like what it turns out.

Line 6 Q. Not like what turns--

Line 7 A. Out.

Line 8 Q ..out, is that-- was that--was it your understanding that that was the way Sue Stebbins was describing that? Was--was it your understanding that Sue Stebbins was expressing her view that you might not like what turns out, or was she saying that she was quoting something that Mary Dolan said to her?

Line 14 A. Yeah. Mary--.

Line 15. Q. Which--which?

**PAGE 33**

Line 16. A. What Mary Dolan said to her, yes.

Line 17 Q. Okay

Line 18 A And how she said it to me, I got the message.

Line 20 Q. Okay.

Line 21. A. And--and she also said it would be he said and she said, or --you know, he said and you said and stuff like that.

Line 24 Q. Now--

Line 25 A. Sue Stebbins said that.

**APPENDIX 113 Paul Tooly's Deposition 12-3-2015**

Line 8 Q Okay. And do you have any other reason why you never went to the human resources office for the questioning?

Line 11 A. Yes. There's -- there are some more reasons, Yes

Line 13 Q Okay. What are those?

Line 14 A. I didn't know there was a workplace violence program. One time I remember a conversation with Al Patterson-- Peterson. He said he reported workplace violence. And he was like three to six months to retirement and they made him go get a medical evaluation. He's on disability. I said what happened to you? And that's why he said he-- he didn't get his retirement or something like that.

**Mary Dolan Statements from above Appendix 118 52 Line 4 confirms**

I am aware that the plaintiff complained about a coworker named Lee Smith, including what Sue Stebbins told me.

from above appendix119 Line 5 A. Okay. Something--something along the lines she got her answer from--she made some phone calls, she got the answer. And--and one of the things she stated was Mary Dolan stated she would do a --in a-- in a tone voice that--in a tone voice that I felt that my job was jeopardized, Mary Dolan stated that she would do a deep investigation and you might not like what turns out because--that's what she said.

Mary Dolan stated that she would do a deep investigation and you might not like what turns out because--that's what she said.

*I never used any vacation time because that would indicate that I did not report workplace violence while 2 or 3 University students were working and their safety were in jeopardy.)*

**Paul Tooly**

A handwritten signature in black ink, appearing to read "Paul Tooly", is written over a horizontal line.

**Date 12/15/ 2019**

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