

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Dawn V. Martin,

v.

Howard University, *et. al.*

Case No. 1:99CV01175
Judge: TFH/JMF

PLAINTIFF’S STATEMENT OF MATERIAL UNDISPUTED FACTS

Facts Establishing The Contract Between Plaintiff’s and Howard University

- 1) In July of 1996, Plaintiff, Prof. Dawn V. Martin, along with Prof. E. Christi Cunningham and Prof. Betsy Levin began their employment as “visiting professors” at Howard. (*Ex. A, Martin at 5*)
- 2) Prof. Levin, hired as a full Visiting Professor, had been teaching many years and had been a Dean of a law school. (*Ex. B, Defendant’s July 11, 2001 Answers to Interrogatories; Ex. C, Gavil at 40*)
- 3) Plaintiff, hired as a Visiting Associate Professor, had been a tenure-track Assistant Professor for two years at Cleveland-Marshall College of Law, after thirteen years of practice as a civil rights attorney, primarily with the government (e.g. Special Assistant to Commissioner Tucker, United States Equal Employment Opportunity Commission “EEOC;” U.S. Department of Justice, Civil Rights Division (Honors Program); Office of the New York State Attorney General, Civil Rights Bureau, The Legal Aid Society of New York, The Office of the General Counsel; D.C. Metropolitan Police Department). (*Ex D, July 26, 1996 memo to Dean Ramsey from APT Committee recommending hire of Prof. Dawn V. Martin; Ex. E, Resume of Dawn V. Martin*)
- 4) Prof. Cunningham, hired as a Visiting Assistant Professor, had no teaching experience, but had four years of practice as an attorney, including a one-year federal clerkship for the Honorable Constance Baker Motley and nearly three years of generalized litigation practice as an associate with a New York law firm. (*Ex. F, Resume of E. Christi Cunningham*)

- 5) When Plaintiff was made an offer by Howard, in February of 1996, Dean Henry Ramsey was the Dean of the Law School and Associate Dean George Johnson was the Academic Dean. (*Ex. G, Taslitz at 74*)
- 6) Beginning in August or September of 1996, Alice Gresham-Bullock became the Interim Dean of the law school and the Academic Dean was Michael D. Newsom. (*Ex. H, Bullock at 7*)
- 7) Levin and Cunningham were given one-year visiting contracts, while Plaintiff negotiated a two-year contract. (*Ex. B, Defendant's July 11, 2001 Supplemental Answers to Interrogatories*)
- 8) In 1996, Prof. Andrew Taslitz was the Vice Chair of the Appointments, Tenure and Promotions (APT) Committee at Howard (*Ex. I, Resume of Prof. Andrew Taslitz*)
- 9) Had a tenure-track position been available in 1996, Prof. Taslitz would have offered it to Plaintiff; however, only visitorships were available. (*Ex. G, Taslitz at 76*)
- 10) Current Interim Dean Patricia Worthy was a visiting professor for at least three years prior to becoming a tenured/tenure-track member of the faculty. (*Ex. B. Defendant's Supplemental Answers to Interrogatories*) Other tenure/tenured professors currently or on Howard's faculty include: Prof.s J. Clay Smith (*Ex. K, Smith at 71-72*), Sherman Rogers (*Ex. M, Rogers at 14*), Laurence Nolan (*Ex. CC, Nolan at 39*)¹
- 11) Prof. J. Clay Smith, former Dean of Howard Law School, began at Howard as a visiting professor. (*Ex. K, Smith at 71-72*)

¹ There may be more faculty members in this category. Plaintiff requested the personnel records of current faculty members hired over the past ten years, but Defendant has refused to produce them, even under seal. Plaintiff's motion to compel their production was denied and the motion for reconsideration was never decided. In fact, despite three orders to produce it, and a Contempt finding against Howard, Howard has never produced *Plaintiff's personnel file*. Plaintiff pointed this out in her Assessment of Defendant's July 19, 2002 Discovery; however, Plaintiff's Assessment was rejected for filing, based on the Court's June 18, 2002 Order prohibiting the filing of pleadings without leave of the Court. Plaintiff filed for leave, but was denied; consequently, Plaintiff has had no opportunity or forum in which to contest the non-production of her own personnel file. Howard's filings have been accepted for filing, whether with or without the requisite motion to file a pleading; Plaintiff's pleadings, however, have been rejected, even with a motion to file the pleading. The June 18, 2002 Order, like the 15 page limit, has operated to exclude Plaintiff's pleadings, but not Howard's, since Defendant's motions to exceed the page limit have been denied. Plaintiff again respectfully requests that both of these requirements be suspended, now that the "backlog" of motions has been decided, so that both parties may file pleadings within the normal rules of this Court and the confusion and inconsistencies regarding both orders will be avoided.

12) Prof. William Sherman Rogers began at Howard as a Visiting Professor and is now a tenured professor at Howard. (*Ex. M, Rogers at 14*)

13) Prof. E. Christi Cunningham, now a tenured professor at Howard, began as a Visiting Assistant Professor. (*Ex. F, Resume of E. Christi Cunningham*)

14) The Howard Faculty Handbook, Section 2.4.2.9.1 (*Ex. CCC*), in order to be hired as a “Visiting Professor,” the visitor must have previously held rank at another university. Christi Cunningham did not hold rank at any other University before she was hired by Howard as a visitor.

15) Any representations that Taslitz made to Plaintiff were made “only after receiving authorization from HU officials.” (*Ex. B, Defendant’s July 11, 2001 Supplemental Answers to Interrogatories, ¶ 18*)

16) Prof. Taslitz had the authority, or at least apparent authority, to bind the University. Taslitz negotiated with candidates, wrote letters making offers and orally made offers. (*Ex. B, Defendant’s July 11, 2001 Supplemental Answers to Interrogatories, ¶ 18; Ex. A, Martin at 256-258; Ex. G, Taslitz at 68-69, 75, 87*)

17) Prof. Taslitz made representations to Plaintiff, at the time of her hire in early 1996, that: 1) Howard wanted to hire Plaintiff as a tenure track professor (*Ex. A, Martin at 256-258; Ex. G, Taslitz at 76, 285*); 2) if a tenure track position had been available at the time of the offer, Howard would have offered it to Plaintiff (*Ex. A, Martin at 256-258; Ex. G, Taslitz at 76, 285*); 3) Howard was offering her a visiting position only because no tenure-track positions were available (*Ex. A, Martin at 257; Ex. G, Taslitz at 76, 285*); 4) Howard has renewed visitors for years, including Prof. Patricia Worthy (*Ex. B, Defendant’s July 11, 2001 Supplemental Answers to Interrogatories, ¶ 57*) and others (*Ex. A, Martin at 257, Ex. G, Taslitz at 83, 84*); 5) Howard could offer her a multiple year contract, if that would make her more inclined to accept the offer (*Ex. A, Martin at 257; Ex. G, Taslitz at 75*); 6) if she accepted Howard’s offer of a visitorship, she could expect it to become a permanent position (*Ex. A, Martin at 41, 257*); 7) Howard would just keep renewing Plaintiff as a visitor until a tenure-track position opened up and then they would “slide” her into it (*Ex. A, Martin at 257*); 8) the visitorship being offered to her was a

“visitorship only in name,” and “for all practical purposes, a tenure-track position (*Ex. A, Martin at 257*). Plaintiff also told Taslitz that her daughter was starting high school that year and that she would not move her back to D.C. from Ohio, then “rip her out of high school” to move somewhere else. (*Ex. A, Martin at 256-257, Ex. G, Taslitz at 74, 80*)

18) Taslitz testified that he could not recall his “exact words,” but that he intended to convey the message that, if Plaintiff accepted the visitorship, she would be “well placed” for a permanent position when one opened up. (*Ex. G, Taslitz at 84*)

19) Taslitz offered Plaintiff a two-year visitorship, as part of her written offer. (*Ex. G, Taslitz at 69*)

20) Multiple year contracts were not offered to either of the other two visitors hired for the 1996-1997 academic year, Profs. Levin and Cunningham. (*Ex. G, Taslitz at 71; Ex. B, Defendant’s July 11, 2001 Supplemental Answers to Interrogatories, ¶ 57*).

21) Plaintiff and Prof. Taslitz, had specifically discussed that job stability was of utmost importance to her, particularly as a single mother, since she did not want to move back to D.C, then disrupt her daughter in school to move again. (*Ex. A, Martin at 256-257; Ex. G, Taslitz at 80*).

22) Plaintiff resigned from her tenure-track position at Cleveland-Marshall College of Law in the spring of 1996, put her house on the market for sale, and relocated back to the Washington, D.C. area to accept the teaching position at Howard. (*Ex. WWW, 1999 Martin Declaration ¶ 27*).

23) In its July 11, 2001 *Supplemental Answers to Interrogatories, ¶14, (Ex. B)* Defendant reiterated its earlier answer that “plaintiff was offered a two-year visitorship position at the law school, and that there were no negotiations at that time between the parties about any other position at HU that would be offered to plaintiff upon completion of her visitorship.”

24) A “looksee visitorship” is defined as a limited faculty appointment, for a specified amount of time, so that each party can have time to determine whether they want the employment to become permanent (*Ex. G, Taslitz at 311; Ex. K, Smith at 54, Ex. L, Boyer at 67; Ex. JJ, LaRue at 36*)

25) During the 1996-1997 academic year at Howard, Plaintiff was assigned EEO and Torts I and II (*Ex. A. Martin at 41*), courses that both Plaintiff and Cunningham sought to teach. (*Ex. D, July 26, 1996 hiring recommendation for Dawn V. Martin; Ex. N, hiring recommendation for Christi Cunningham*) During the 1997-1998 academic year, Plaintiff was assigned to Evidence for the fall semester, in addition to her EEO and Torts classes. (*Ex. A. Martin at 41*), Plaintiff was “filling in” for Prof. Adam Kurland, who normally taught Evidence, but had taken a decreased course load that semester. (*Ex. O, Kurland at 11-12*)

26) For Plaintiff’s first, and part of her second semester at Howard, she was assigned a computer that did not have research capability. (*Ex. W, November 5, 1997 memo from Martin to APT Committee; Ex. L, Boyer at 34-35; Ex. JJ, Larue at 53; Ex. C, Gavil at 100*)

27) Both visiting Professors Levi and Cunningham were renewed for the 1997-1998 academic year (*Ex. B, Defendant’s July 11, 2001 Supplemental Answers to Interrogatories*).

Facts Pertaining To Sexual Harassment/Hostile Work Environment

28) Beginning in November of 1997, Professor Martin was stalked in her workplace by a homeless stranger (*Ex. A, Martin at 74-138; Ex. B, Sirleaf at 22, 57; Ex. A, campus police report, Ex. B, MPD Report*) with a criminal record (*Ex. B, Sirleaf at 33-34*), a history of violence (*Ex. D, Affidavit of NYU School of Law Prof. Derrick Bell; Ex. B, Sirleaf at 33-34*); and a pattern of targeting African-American female professors and attorneys as his “wife.” (*Ex. D, Affidavit of NYU School of Law Prof. Derrick Bell, formerly of Harvard; Ex. E, letter from Harrison to Valerie Edwards, Esquire, Ex. T letter from Harrison to Martin*).

29) On November 20, 1997, Professor Martin entered her office to find two letters under her door, signed by Leonard Harrison. (*Ex. U; Ex. V; Ex. A, Martin at 74-75.*) One letter was addressed to “Professor Dawn Valore Martin.” (*Ex. V*) Plaintiff was surprised that the writer knew her unusual middle name, since she normally uses only her middle initial. (*Ex. A, Martin at 223; Ex. W, November 25, 1997 memorandum from Martin to Bullock*)

30) One letter asked to audit a class on “*Race as a Factor in American Law*” (Ex. U), a course that Plaintiff had taught at Cleveland State University, but not at Howard. (Ex. U; Ex. A, *Martin at 75-78*) The letter discussed books addressing “critical race theory” and mentioned Prof. Derrick Bell and his book, *And We are Not Saved*. (Ex. U) The discussion indicated that he was conducting research in the law school library. (Ex. A, *Martin at 94-95*, Ex. U) The other letter began:

I am here to see if you are my wife. This sounds irrational and unreasonable, I know, but I have been searching for my wife for the last 9 years, since I saw her at the U of Iowa on March 5, 1988. You may not be who I am looking for. If not, please don't hate me, because I desperately need her. I have no other help anywhere. I will return Thurs. at 1p.m.

(Ex. V; Ex. W, *November 25, 1997 letter from Martin to Bullock*) The letter continued by giving the address and phone number of the Randell Shelter in Southwest, Washington. D.C. and requested that Plaintiff call him there. (Ex. V; Ex. W, *November 25, 1997 letter from Martin to Bullock*)

31) As Plaintiff put the letters on her desk, she checked her voicemail messages and heard a male voice saying:

How're you doing?, Valerie. This is Leonard. I'm sorry I didn't recognize you. I have no excuse for not recognizing you. All I can do is ask you to please forgive me and give me a chance to make it up to you. I'm coming up to the school today. I hope I can catch you there so I can apologize to you in person. You're the most important person to me, so please forgive me.

(Ex. W, *November 25, 1997 memorandum from Martin to Bullock*; Ex. A, *Martin at 137-138*, Ex. X, *Bruner at 57-60*)

32) Plaintiff realized, by the voice, name and his request to audit a class, that this was the same caller who had left a message weeks earlier asking to audit her class on *Race as a Factor in American Law*. (Ex. A, *Martin at 77*)

33) While Plaintiff searched for the security officer on duty, she consulted Professors Andrew Taslitz and J. Clay Smith, both of whom recommended that she call the D.C. Metropolitan Police Department (MPD), in addition to campus security. (Ex. A, *at 83-84*; Ex. K, *Smith at 25*, Ex. G, *Taslitz at 94*)

34) Plaintiff sought the assistance of the administration to call MPD onto Howard's campus. (*Ex. A, Martin at 85-87; Ex. W, November 25, 1997 memo from Martin to Bullock*) Since Howard University School of Law School Dean, Alice Gresham-Bullock, was out of town, Plaintiff notified Assistant Dean Michael Newsom of the letters and voicemail messages. (*Ex. A, Martin at 85-87*)

35) Plaintiff requested that Dean Newsom assist her in calling the police onto campus. (*Ex. C, Martin at 86; Ex. W, November 25, 1997 memo from Martin to Bullock*) Assistant Dean Newsom did not call the police (*Ex. A, Martin at 86; Ex. P, Sirleaf 73-93*) and told her that it was her "call" (*Ex. A, Martin at 86*). Once she arrived home, Martin reached the security officer on duty, Officer Sirleaf, by telephone. (*Ex. A, Martin at 89; Ex. P, Sirleaf at 73-74; Ex. W, November 25, 1997 memo from Martin to Bullock*) Officer Sirleaf assisted her by calling MPD and making arrangements for officers to meet with him and Martin at the law school the next morning. (*Ex. A, Martin at 88, Ex. P, Sirleaf at 84-85*)

36) Plaintiff, in the presence of Officer Sirleaf, called the Randell Shelter, which was listed in Harrison's letter, as his place of residence. (*Ex. P, Sirleaf at P; Ex. W, November 25, 1997 memo from Martin to Bullock*) Mr. Smith, the Assistant Director of the shelter, told Plaintiff and Officer Sirleaf that Harrison was crazy and had been put out of the shelter for carrying a stick. (*Ex. P, Sirleaf at 18; Ex. W, November 25, 1997 memo from Martin to Bullock*) Smith told Plaintiff to "say a prayer" and to "say a special prayer" to protect herself from Harrison) (*Ex. W, November 25, 1997 memo from Martin to Bullock*)

37) On November 21, 1997, two MPD officers, Woodland and Harris met with Plaintiff and Officer Sirleaf. (*Ex. P, Sirleaf at 84; Ex. A, Martin at 89-93; Ex. Q, campus police report; R, MPD report*) The MPD officers characterized the harassment as "stalking" and took a report to begin the process of Harrison's arrest. (*Ex. W, November 25, 1997 memo from Martin to Bullock; Ex. P, Sirleaf at 90-91; Ex. A, Martin at 89; Ex. Q, campus police report; Ex. R, MPD report*)

38) Plaintiff called Associate Dean Newsom and convinced him to attend the meeting with MPD, although he said that he could not because he was waiting for a call from the Dean (Bullock). (*Ex. A, Martin at 90-93*) Plaintiff expressed her concern that if Harrison were arrested and released, he might

be angry and be more inclined to hurt her, or her daughter, if he learned where she lived. Harrison had read Plaintiff's bulletin board outside her office, which included an article written by her daughter, which revealed her name, high school and school activities, such as cheerleading. (First Amended Complaint ¶ 52) MPD advised Plaintiff to call her daughter's school and alert them to the threat of Harrison. (First Amended Complaint ¶ 53) Newsom attended only a few minutes of the meeting, during which time he yelled at Plaintiff while she was asking the police officers questions about what would happen if she agreed to prosecute. (*Ex. A, Martin at 90-93*) Newsom said that she had to prosecute for the same of other females and others at the University, then left before any decisions were made with respect to how the situation would be handled. (*Ex. A, Martin at 90-93*)

39) Officer Sirleaf and the MPD officers, Woodland and Harris, agreed that Harrison should be barred from campus, his "mug shot" should be obtained and posted at the law school, and that if Harrison arrived again on campus, he should be arrested for both trespassing and stalking. (*Ex. P, Sirleaf at 32-34, Ex. A, Martin at 122-123*) MPD conducted a criminal records, or "WALES" check and informed Officer Sirleaf that Harrison had a criminal record and provided identifying information about description of Harrison. (*Ex. P, Sirleaf at 32-34*). Officer Sirleaf later informed Martin of Harrison's criminal record. (*Ex. A, Martin at 95*) MPD Officers told Officer Sirleaf that Harrison's record included armed robbery and assault. (*Ex. P, Sirleaf at 33-34*)

40) Plaintiff called MPD for details on Harrison's criminal record and was told by Sgt. Pearfall of the Second District, that Harrison was "crazy" and that his record included assault. (*Ex. W, November 25, 1997 memo from Martin to Bullock*) Sgt. Pearfall told Plaintiff that she should be very concerned about Harrison. (*Ex. W, November 25, 1997 memo from Martin to Bullock*)

41) One of Plaintiff's students, Rolanda Jefferson, worked in the library and asked Plaintiff for a description of Harrison. (*Ex. A, Martin at 99-101, 217; Ex. Z, Jefferson Affidavit*). Plaintiff provided Ms. Jefferson with the description provided to her by the police department and the homeless shelter, since she had never seen Harrison. On November 25, 1997, Harrison entered the law school library. (*Ex. Z, Jefferson Affidavit; Ex. AA, Dowdy at 26*). Ms. Jefferson called campus security and

Officer Dowdy responded. (*Ex. Z, Jefferson Affidavit; Ex. AA, Dowdy at 18*). Officer Dowdy had not been told that Harrison was a stalker or that he should be held for MPD. He was only told that there was an “MO,” “mental observation” suspect in the library. (*Ex. AA, Dowdy at 18*). Since Harrison did not resist him, Officer Dowdy inspected his identification and escorted him off campus. (*Ex. AA, Dowdy at 56*).

42) Ms. Jefferson asked Officer Dowdy why Harrison had not been held for police, explaining that he had been stalking her professor. (*Ex. Z, Jefferson Affidavit*) Ms. Jefferson called Plaintiff, excitedly telling her of the events. (*Ex. Z, Jefferson Affidavit; Ex. A, Martin at 99-103*) Plaintiff asked Ms. Jefferson to ask Officer Dowdy to come to her office and Ms. Jefferson brought Officer Dowdy there personally. (*Ex. Z, Jefferson Affidavit*) Plaintiff explained the situation to Officer Dowdy and was upset that the proper information was not conveyed to him so that Harrison could be held for police. (*Ex. A, Martin at 99-103; Ex. AA, Dowdy at 21-22, 24-25*)

43) Plaintiff then wrote a 5 page, single spaced memo to Dean Bullock, with a copy to Dean Newsom, detailing all of the events related to Harrison since November 20, 1997 and ending with a plea for better security measures. Plaintiff ended her memorandum:

Clearly, the lines of communication with respect to security need improvement....The reports taken would only serve to solve my murder after the fact, since clearly, no effort has been made to protect me. Some better security procedures need to be put in place for the protection of faculty, students and guests; otherwise, there is no point in having campus police at all.

44) Martin detailed all of the events and information that she had related to Harrison, in case Dean Bullock had not been fully informed by Associate Dean Newsom and/or campus security, of all facts related to the stalking and the seriousness of the matter, including that she had been informed that Harrison had a criminal record and a history of violence. (*Ex. W, November 25, 1997 memorandum from Martin to Bullock; Ex. A, Martin at 73-101; Ex. H, Bullock at 29; Ex. Y, Newsom at 191-192*)

45) Martin hand-delivered her November 25, 1997 memo to Dean Bullock’s office and provided a copy to Associate Dean Newsom, in his hand. (*Ex. A, Martin at 73-101*) Newsom asked what he was being handed and Martin said, “It’s a memo to Alice (Dean Bullock) about the stalking.” (*First*

Amended Complaint ¶ 71) Newsom exclaimed, “Oh, I forgot to mention it to her!” *First Amended Complaint* ¶ 71; *Ex. WWW, 1999 Martin Declaration*)

46) Harrison left Plaintiff another voicemail message, on December 1, 1997. *Ex. A, Martin at 107-108; Ex. H, Bullock at 53*. This message sounded more ominous and menacing than the first:

Valerie, this is Leonard. I’m coming up to the school. I will be up there about 1:30, quarter of 2. I’m at the Library of Congress. I’ll be leaving out of here about 11:00. Do me a favor, call security off me, so when I come on campus, I’m not gonna have (inaudible word or two, sounding like “f—ing cops”) seeing a suspicious looking person and then have security in my face. I’ll see you in a little bit. Bye-bye.

(*Ex. BB, December 2, 1997 memo from Martin to Bullock; Ex. A, Martin at 108-109*)

47) Mrs. Bruner was passing Professor Martin’s office when she played the message. (*Martin at 107; Bruner at 69*). At Plaintiff’s request, Mrs. Bruner listened to the message. (*Ex. A, Martin at 108-109; Bruner at 69*.) Both agreed that Harrison sounded angry and the quality of his voice was frightening. (*Martin at 107-108, 126-127; Bruner at 65*)

48) Professor Martin immediately went to Dean Bullock’s office and reported the call to her. (*Ex. A, Martin at 109-113*) Plaintiff was shaking and told Dean Bullock she would no longer sit in her office or teach class without some protection from Harrison. (*Ex. A, Martin at 109-110, 220*)

49) Dean Bullock called an Assistant Dean, Barbara Smith, and instructed her to call main campus security and request that a guard be posted outside Plaintiff’s office at 1:00 p.m. (*Ex. A, Martin at 109-110*) Plaintiff noted that she had to teach a class at 12:00. (*Ex. A, Martin at 111*) Dean Bullock then told Dean Smith to have the officer report outside her classroom at 12:00. (*Ex. A, Martin at 111-113*)

50) Officer Dowdy reported outside Prof. Martin’s classroom at some point after 12:30 p.m. (*Ex. A, Martin at 117-118*) When class ended, he escorted her to her office and stayed with her. (*Ex. A, Martin at 112*) He told her that campus security should have sent “back up,” particularly someone in plain clothes. (*Ex. A, Martin at 112-113*) Officer Dowdy was the officer who had escorted Harrison off campus on November 25, 1997, so he knew that Harrison would recognize him and run. (*Ex. A, Martin at 112-113*) He expressed concern that he might have to use his gun. (*Ex. A, Martin at 221*)

51) Harrison arrived at his announced time and appeared at Professor Martin's door. (*Ex. A, Martin at 116-117*) He began to enter and glanced around the open door, where he saw Officer Dowdy. Plaintiff nodded to Dowdy, since his view of Harrison was obstructed by the door. (*Ex. A, Martin at 116-117; Ex. AA, Dowdy at 33-34*)

52) A student, James Andrews, was sitting across from Plaintiff at her desk. (*Ex. A, Martin at 113-114, 119; Ex. AA, Dowdy at 35*) Plaintiff had advised him to leave, explaining the circumstances, but Mr. Andrews refused to leave her and continued showing her his photographs from his trip to Africa. (*Ex. A, Martin at 114*)

53) Harrison arrived at approximately 1:30 p.m., as he had announced, and Plaintiff nodded to Officer Dowdy to indicate that Harrison was at the door. (*Ex. A, Martin at 117-118; Ex. AA, Dowdy at 30*) By this time, Harrison had had seen Dowdy and fled. (*Ex. A, Martin at 117-118; Ex. AA, Dowdy at 46*) Officer Dowdy ran out the door, down the hall and down the stairwell in pursuit. (*Ex. AA, Dowdy at 49*) Plaintiff hid in Prof. Nolan's office, explaining the circumstances. (*Ex. A, Martin at 120; Nolan at 81-83*) Dowdy chased Harris off campus, down Van Ness or into the woods. (*Ex. AA, Dowdy at 74-74*)

54) Plaintiff documented these events in a December 2, 1997 memorandum to Bullock (*Ex. BB*), but Bullock never responded. (*Ex H, Bullock at 31*)

55) On December 3, 1997, thirteen days after the stalking began, eight days after she had written her first memo about the stalking and two days after Officer Dowdy chased Harrison from her office, Martin received an acknowledgment from Dean Bullock of her November 25, 1997 memorandum about the stalking. (*Ex. A, Martin at 103; Ex. DD, December 1, 1997 memo from Bullock to Martin*); however, it was dated December 1, 1997, two days earlier, the day of the "chase," and purported to be written in response to Martin's November 25, 1997 memo. Bullock's memo stated simply:

This memorandum is written in response to your memorandum of November 25, 1997. I am discussing the matter of security generally with Lawrence Dawson, Director of Security.

It also included a handwritten note stating: "P.S. Please call the security office on main campus and the metropolitan police immediately when concerned in the future."

56) Campus security prefers that members of the Howard community not call MPD onto Howard's campus without giving campus security notice and opportunity to handle the matter and/or coordinate with MPD. (*Ex. AA, Dowdy at 13*)

57) Former Director of Security, Lawrence Dawson, does not recall any conversations with Dean Bullock about Plaintiff, Harrison, or the stalking. (*Ex. EE, Dawson at 15, 24*) Dean Bullock admits that she never discussed the matter with Dawson at all. (*Ex. H, Bullock at 49*).

58) Bullock claimed that she called Dawson once or twice, leaving a message, but that he never returned her call. (*Ex. H, Bullock at 49*) She made no further effort to call him or the Deputy Chief of Security to address these matters. (*Ex. H, Bullock at 49, 54*).

59) In its July 11, 2001 *Supplemental Answers to Interrogatories*, ¶4, Defendant claimed that Director Lawrence Dawson "either assisted, provided information to, or became involved in investigating the merits of plaintiff's allegations" regarding Harrison. (*Defendant's July 11, 2001 Supplemental Answers to Interrogatories*, ¶4) This statement was false.

60) On the morning of December 18, 1997, Newsom approached Plaintiff and asked he what she thought should be done about the stalker. (*Ex. A, Martin at 121; Ex. FF, December 18, 1997 memorandum from Martin to Newsom; Ex. GG, December 22, 1997 memo from Newsom to Dawson*) Plaintiff said that notices regarding Harrison should be posted and distributed, along with Harrison's "mug shot," which should be obtained from MPD, as recommended by Officer Sirleaf. (*Ex. FF, December 18, 1997 memo from Martin to Newsom; Ex. A, Martin at 129*) Newsom asked Plaintiff to write up the notices, saying that he did not have a description of Harrison. (*Ex. FF, December 18, 1997 memo from Martin to Newsom; Ex. A, Martin at 129*) Plaintiff reminded Newsom that she had provided a description of Harrison in of her November 25, 1997 memorandum, since MPD and campus Officer Dowdy had provided a description to her. (*Ex. FF, December 18, 1997 memo from Martin to Newsom; Ex. A, Martin at 120-129*) She had only seen him for a second when he appeared in her doorway on December 1, 1997 and was chased out of the building and off campus by Officer Dowdy. (*Ex. A, Martin*

at 117-120); nevertheless, Plaintiff immediately drafted the requested security notice and provided it to Newsom with a memo confirming their conversation. (Ex. FF).

61) In a memorandum dated December 22, 1997, Newsom attached the December 18, 1997 notice to a memo to Dawson entitled, “*Stalking of Professor Martin, Vagrants in the Student Lounge and Printer Missing from West Campus.*” (Ex. GG, December 22, 1997 memo from Newsom to Dawson; Ex. Y, Newsom at 171-175) Newsom provided “ccs” to Bullock and Plaintiff. (Ex. GG, December 22, 1997 memo from Newsom to Dawson) The notice was never posted anywhere in the law school or distributed among the faculty, students or staff. (Ex. Y, Newsom at 178-182; Ex. H, Bullock at 45, Ex. L, Boyer at 86; Ex. P, Sirleaf at 105)

62) By January 12, 1997, Plaintiff had learned, from an attorney in Toronto, Canada, Daina Groskaufmanis, that Harrison was fixated on a fictional character, Geneva Crenshaw, in a book, *And We are Not Saved*, written by Professor Derrick Bell, formerly of Harvard University, currently at New York University School of Law. (Ex. T, letter from Harrison to Valerie Edwards, Esquire; Ex. A, Martin at 127-128; Ex. WWW 1999 Declaration of Plaintiff ¶66). Harrison had written to the attorney in Toronto, explaining his search for his “natural wife,” taking him to Universities and places where African-American women lawyers are employed, since the mid-1980s. (Ex. T, letter from Harrison to Valerie Edwards, Esquire). Ms. Groskaufmanis had called Plaintiff to ask about her experience with Harrison, since Harrison had written to an Associate at the firm, Valerie Edwards, inquiring as to whether she was his “wife.” (Ex. A, Martin at 127-129; Ex. T) Ms. Groskaufmanis transmitted the letter to Plaintiff, *via facsimile*. (Ex. T) It was in this letter to Valerie Edwards that Harrison revealed that he was searching for Geneva Crenshaw, the character in Prof. Bell’s book, and that he believed that the physical embodiment of Geneva was his “natural wife.” (Ex. WWW 1999 Declaration of Plaintiff ¶66; Ex. T) He also wrote of mythological warfares with Poseidon and Neptune and other matters. (Ex. A, Martin at 205; Ex. T)

63) Plaintiff provided Deans Bullock and Newsom with copies of the Harrison letter to Edwards. (*Ex. WWW 1999 Declaration of Plaintiff ¶¶66; First Amended Complaint ¶ 119; Ex. Y, Newsom at 190; Ex. H, Bullock at 54-55*)

64) Dean Bullock was on her way out of the office when Plaintiff handed it to her, summarizing what she had learned about Harrison from the letter. (*First Amended Complaint ¶ 120*) Dean Bullock promised to call Plaintiff the next day, after reading the letter. (*First Amended Complaint ¶ 120*) Bullock never called. (*First Amended Complaint ¶120*)

65) Plaintiff's fear of Harrison was reasonable. (*Ex. H, Bullock at 322; Ex. Y, Newsom at 55; Ex. X, Bruner at 65-67, 104-107, 137, 150*); *Ex. P, Sirleaf at 119-120, 99-100; Ex. AA, Dowdy at 72; Ex. EE, Dawson at 53-57; Ex. HH, Parker at 26-30, 41-46, 53; Ex. K, Smith at 210; Ex. CC, Nolan at 72-74, 81-83, 85-86; Ex. JJ, Ex. L, Boyer at 89*) Even former Dean Bullock specifically conceded that anyone in Plaintiff's position would feel "mental anguish," being pursued by Harrison. (*Ex. H, Bullock at 321-322; Ex. MM, EEOC Draft Affidavit of Bullock*)

66) MPD officers and the Assistant Director of the homeless shelter told Plaintiff that she should be afraid of Harrison. Plaintiff later learned that Harrison's search around the country (*Ex. A, Martin at 245*) and beyond (*Ex. T, letter from Harrison to Valerie Edwards, Esquire, of Toronto, Canada*) for more than a decade, had included a visit to Prof. Derrick Bell, in 1990, when he was a law professor at Harvard University. (*Ex. S, Affidavit of Prof. Derrick Bell*) Harrison detailed to Bell his plans for a racial revolution. (*Ex. S, Affidavit of Prof. Derrick Bell*)

67) According to Prof. Bell, Harrison threatened to "first kill all the token Blacks in high places," promising Bell that he would return, after finding Geneva, and start a racial revolution. (*Ex. S, Affidavit of NYU School of Law Prof. Derrick Bell*) Harrison told Bell that, at that time, "I'm coming back to blow your head off." (*Ex. S, Affidavit of NYU Prof. Derrick Bell*) Harrison is also reputed to have targeted and/or approached other African-American female professors such as Prof. Lani Guinier, when she at the University of Pennsylvania, Prof. Adrienne Wing, at the University of Iowa, and a political science professor at Harvard. (*Ex. S, Affidavit of Prof. Derrick Bell*). In addition, Prof. Jim

McPherson, at the University of Iowa, Harrison's former writing professor, stated that Harrison threatened him after being displeased with McPherson's assessment of his writing. (*Ex. S, Affidavit of Derrick Bell*)

68) Dean Bullock tried to recruit Prof. Bell for a Visiting teaching position at Howard. (*Ex. Y, Newsom at 190*)

69) Rumors had circulated within the law school that Plaintiff had either been married to Harrison or was somehow acquainted with him and had attracted him to campus. (*Ex. CC, Bruner at 127-128; First Amended Complaint at ¶127*) Plaintiff had heard these rumors and was humiliated by them.

70) Plaintiff sometimes asked a guard on duty to walk her to her office to get books for class, or to walk with her from class. (*Ex. A, Martin at 123; Ex. X, Bruner at 135*)

71) From December 2, 1997, when Harrison was chased from Plaintiff's office, until June 1998, when her employment with Howard was terminated, Plaintiff carried mace on her key chain, carrying it everywhere that she went within the law school. (*Ex. A, Martin at 119; Ex. X, Bruner at 106*) Plaintiff held office hours in the cafeteria to avoid confronting Harrison alone or with students in her office. (*Ex. A, Martin at 124; Ex. Y, Newsom at 97-98, Newsom II at 58; Ex. X, Bruner at 105*)

72) Howard maintains its own campus security force for the specific purpose of protecting faculty, staff, students and visitors from physical harm. (*Ex. HH, Parker at 7, Ex. AA, Dowdy at 13, Ex. II, Armstrong at 15, 23-24*)

73) Although Dean Bullock indicated to Plaintiff, in her December 1, 1997 memorandum, that she would discuss the stalking issue with Director Dawson, she never did. (*Ex. H, Bullock at 49*)

74) The Howard Handbook specifically states that an employee should report incidents of sexual harassment to his /her immediate supervisor. (*Ex. NN, Handbook*) The Handbook specifically acknowledges that the University should address third party harassment, or harassment by non-employees on campus, as well as harassment committed by employees. (*Ex. NN, Handbook*)

75) Notices of "alert" are posted within the University to inform the Howard community that campus police should be called if the suspect is seen (*Ex. Y, Newsom at 170; Ex. II, Armstrong at 50-51*).

76) Stalking is actually common at Howard University, but the stalking exhibited by Harrison's letters, Sgt. Sirleaf's campus police report, Plaintiff's memoranda to Dean Bullock and Harrison's criminal record, were not at all the common type of stalking experienced on campus. (*Ex. EE, Dawson at 55-56*)

77) The stalking of Plaintiff by Harrison was "serious," since Harrison was obviously "disconnected from reality, and was something that Dawson would have remembered had he been aware of it. (*Ex. EE, Dawson at 55-56, 11-12, 19-20*)

78) Based on Howard University's own procedures, the University should have taken the following actions: 1) Harrison should have been barred from campus, using a bar notice, pursuant to Howard's policies and procedures, so that if he appeared on campus after the bar notice was administered, he would be arrested, at least, for trespassing (*Ex. EE, Dawson at 57-59; Parker at 25-26, 30-31*); 2) notices should have been posted throughout the "West Campus" (law school campus, including the library, faculty offices, classrooms and clinic) that Harrison was barred from campus, with instructions to call campus security and MPD if anyone saw him on campus (*Ex. EE, Dawson at 57-58, 11-12*); 3) campus security should have conducted an investigation, coordinating with MPD (*Ex. EE, Dawson at 57-58; Ex. HH, Parker at 16-17; Ex. II, Armstrong at 13, 15*); 4) when Harrison announced his arrival, security officers should have been placed at the entrances of the law school, at the time of his announced arrival, to apprehend him (*Ex. EE, Dawson at 45-47; Ex. HH, Parker at 33-34*) 5) when Harrison announced his arrival, MPD should have been notified. (*Ex. EE, Dawson at 45-46; Ex. HH, Parker at 33-34*)

79) There are only two entrances to the law school. (*Ex. II, Armstrong at 62*) The security office at the law school is immediately following the main entrance so that visitors must pass it as they enter the school building. (*Ex. II, Armstrong at 62*)

80) The security office is enclosed in glass so that the officer on duty can see people entering and leaving the building. (*Ex. II, Armstrong at 63*)

81) Dawson met with Newsom and Dean of Students Denise Purdie to discuss security matters at the law school at least twice per year, but neither Harrison nor the stalking of Plaintiff was ever mentioned in the visits. (*Ex. EE, Dawson at 37-42*) Dawson does not recall ever receiving any memo from Newsom regarding Plaintiff, Harrison or stalking, including the December 22, 1997 memorandum attaching a notice about a Harrison to be posted. (*Ex. EE, Dawson at 49, 177-178*) The document production from campus security did not include any memorandum from Newsom or Bullock on the subject of Harrison or the stalking of Plaintiff, despite an “exhaustive” search.

82) Bullock did not call security herself, nor did she convey to her assistant or anyone in security, the history of Harrison provided to her in Professor Martin’s November 25, 1997 memo. (*Ex. H, Bullock at 55-56; Ex. A, Martin at 219-221*)

83) Campus Security Deputy Chief Armstrong met with Bullock regarding security measures, alarm systems and structural changes to buildings. (*Ex. II, Armstrong at 29*) He does not recall ever discussing the stalking of Plaintiff with Bullock or Newsom. (*Ex. II, Armstrong at 30*)

84) As of December 1, 1997, campus security supervisors were unaware that Harrison had returned to the law school campus after November 20, 1997 and had not been provided the information in Plaintiff’s November 25, 1997 memorandum. (*Ex. II, Armstrong at 24-25; Ex. HH, Parker at 36*)

85) Assistant Dean Newsom testified that he wrote the memorandum to Dawson, on December 22, 1997 and attached the Security Notice written by Plaintiff, because it was “the right thing to do” (*Ex. Y, Newsom at 17*) and because he was worried about Plaintiff’s safety, as well as the safety of other women on campus (*Ex. Y, Newsom at 174*); however, the notice was never posted and Newsom did not follow up to ensure that it be posted. (*Ex. Y, Newsom at 169-173*) Either Newsom or Bullock could have had the notices posted in the law school and library themselves, as well as distributing them in faculty and student mailboxes, but they did not do so. (*Newsom at 181-182, 199-200; Bullock at 51*).

86) When Campus Security Deputy Chief Armstrong read Newsom’s memo, purportedly for the first time, in his deposition, he interpreted the memo to indicate that Newsom had already posted the notice at the law school. (*Ex. II, Armstrong at 49-50*)

87) Newsom's December 22, 1997 memo was not produced as a part of the campus security production and no evidence has been produced to indicate that the memo was ever received by anyone in campus security. (*Ex. HH, Parker at 40; Ex. II, Armstrong at 49-50*) Dawson, Armstrong and Parker do not recall ever seeing Newsom's December 22, 1997 memo. (*Ex. HH, Parker at 40; Ex. II, Armstrong at 26-27, Ex. EE, Dawson at 49*)

88) The only document produced by Howard University after a purportedly "exhaustive" search by Howard University through its campus security files, after three Court Orders and a Contempt finding against Howard for failure to produce discovery, was Officer Sirleaf's initial November 20, 1997 report and the desk blotter entry recording Officer Sirleaf's report. (*Ex. II, Armstrong at 33-34*)

89) Although Sgt. Dowdy testified that he was certain that he had completed and submitted to his superiors an incident report, on December 1, 1997, after he chased Harrison from Plaintiff's office off campus and into the woods (*Ex. AA, Dowdy at 2627, 105*), Howard claims that it could find no such report in its records. (*Ex. II, Armstrong at 33-34*)

90) All of the measures that Plaintiff asked be taken to protect her from Harrison in her workplace were "reasonable" (*Ex. Y, Newsom at 199*) – to bar Harrison from campus, to post notices that Harrison was barred, to notify faculty, staff and students that Harrison was barred and to call the police if he were seen on campus, and to post officers at the door if Harrison announced his arrival. None of these measures was ever taken. (*Ex. Y, Newsom at 200-201.*)

91) In her September 20, 2002 deposition, Bullock claimed, for the first time in this four-year litigation (including a year at the EEOC), that when she instructed her Assistant Dean, Barbara Smith, to call security to have an officer posted at Plaintiff's door, she intended to have one posted long-term, rather than just for the day (*Ex. H, Bullock at 45*); however, this is not what happened – nor is it what she said to Barbara Smith in the presence of Plaintiff (*Ex. A, Martin at 109-113; Ex. W, November 25, 1997*).

92) Officer Dowdy was only assigned to guard Plaintiff for that day, December 1, 1997. (*Ex. 29-30, Dowdy at 131*)

93) The assessment of campus security “manpower” would not have allowed for a full-time guard to be posted at Plaintiff’s office and/or classroom (*Ex. AA*, Dowdy at 130-131; *Ex. P*, Sirleaf at 37) This assessment was made without the benefit of the updated information in the November 25, 1997 memo, the December 2, 1997 memo, the January 12, 1998 letter from Harrison to Valerie Edwards, and without any consultation between Dean Bullock and security and without the knowledge that Harrison had a criminal record or a tendency toward violence (*Ex. II, Armstrong at 41, 52, 65, 92*) Campus security “did not anticipate the person being armed and dangerous.” (*Ex. II, Armstrong at 41*)

94) Plaintiff’s November 25, 1997 memo to Dean Bullock the information provided to her by Officer Sirleaf and MPD: that: 1) Harrison had a criminal record, including for assault and armed robbery; 2) that the homeless shelter had evicted him for violent behavior; 3) that both shelter personnel and MPD warned Plaintiff that Harrison was “crazy” and that she should be very concerned for her safety.” (*Ex. W, November 25, 1997 memo from Martin to Bullock*)

95) Harrison managed to be within several feet from Plaintiff, at the door of her office. (*Ex. A, Martin at 113-117, 121*), close enough so that Harrison could have shot Plaintiff or cut her with a knife. (*Ex. II, Armstrong at 98-99*)

96) Harrison was never barred from campus. (*Ex. II, Armstrong at 15-16*). No bar notice was ever issued for Harrison. (*Ex. II, Armstrong at 41, 52, 65, 92*)

97) Until these depositions, Howard had consistently claimed that Harrison had been barred from campus, even though it never produced any bar notice or any other documentation to substantiate its claim. (*Defendant’s July 11, 2001 Supplemental Answers to Interrogatories, ¶40*)

98) From November 20, 1997 until June of 1998, Plaintiff worked in constant fear that Harrison would appear at any moment. (*Ex. A, Martin at 121-124, 218-227*). From December 2, 1997, when Harrison was chased form her office, until June 1998, when Plaintiff’s employment with Howard ended, Plaintiff carried mace on her key chain, carrying it everywhere that she went within the law school. (*Ex. A, Martin at 121-122, 124, 218-227; Ex. X, Bruner at 106*) Plaintiff held office hours in the

cafeteria to avoid confronting Harrison alone or with students in her office. (*Ex. A, Martin at 124; Ex. Y, Newsom at 58; Ex. X, Bruner at 105*)

99) Harrison's harassment of Plaintiff severely altered her work environment and her working conditions. (*Ex. A, Martin at 93, 108; Ex. X, Bruner at 104, 107, 150; Ex. CC, Nolan at 72-73, 81-83, 86-87*) Plaintiff was afraid to stay in her own office, walk through the law school building, library or grounds alone, to attend faculty meetings in the evening without "disguising" herself in her teenage daughter's hooded parka. (*Ex. WWW 1999 Declaration of Plaintiff ¶ 64*) Mrs. Bruner watched the door of the ladies' room for her, both due to Plaintiff's fear and out of her own concern for Plaintiff's safety (*Ex. X, Bruner at 105*) Prof. J. Clay Smith "routinely" checked Plaintiff's office in the evenings because of the stalker. (*Ex. K, Smith at 84*) Prof. Smith only revealed this information in his deposition, having never previously shared it with Plaintiff. (*Ex. K, Smith at 85*)

100) Plaintiff's family was particularly concerned about her safety because her cousin/childhood playmate, Ramona Pena, had been brutally murdered by a deranged man only a few years earlier. (*Ex. A, Martin at 242-244*) Plaintiff's aunt died of a heart attack two months after the murder, due to the stress of losing her daughter in that way. (*Ex. A, Martin at 244*)

Facts Pertaining to Retaliatory Non-Selection/Non-Renewal

101) During the 1997-1998 academic year, Howard advertised three available faculty positions for the 1998-1998 academic year: 1) EEO Law/labor; 2) Constitutional Law/Civil Rights; and 3) Commercial law. (*Ex. OO, AALS Newsletter*)

102) On October 1, 1997, Plaintiff formally applied for a tenure-track position, or in the alternative, a renewed visitorship. (*Ex. PP, October 2, 1997 memo from Martin to APT Committee*) Prior to her application, Prof. Taslitz had specifically approached Plaintiff and reminded her to put in the formal application before the deadline of October 3, 1997. (*Ex. J, 2002 Declaration of Dawn V. Martin 20*)

103) Each year, the APT Committee receives applications for faculty positions, screens them, interviews select applicants at the Americans Association of Law Schools (AALS) Conference in early

November and thereafter invites candidates to interview and make presentations on campus. (*Ex. G, Taslitz at 36-38; Ex. JJ, LaRue at 48-49*) Offers are generally extended at any time between December and March 15th of the academic year, for the following year. (*Ex. JJ, LaRue at 47*)

104) AALS Guidelines state that laws schools should only recruit faculty from other law schools before March 15th of each year. (*Ex. JJ, LaRue at 47; Ex. H, Bullock at 205-206*)

105) On or about October 31, 1997, Dean Bullock met with Plaintiff, as she had with all other professors with expiring contracts, to formerly notify her that her contract would expire at the end of the academic year, and that she would be receiving a formal, written notice, as is required by the Faculty Handbook. (*Ex. H, Bullock at 71-72*) Bullock added that she understood that Plaintiff had applied for a tenure-track or renewed visitorship position, and that if the Committee recommended her for a position for the upcoming year, the notice would be moot. (*Ex. QQ, October 31, 1997 letter from Bullock to Martin*)

106) On or about November 27, 1997, only days after delivering her memo to Deans Bullock and Newsom, Dean Newsom ordered Plaintiff to reduce the number of journals to which she could submit her law (*Ex. Y, Newsom at 20-23*)

107) Plaintiff had selected the original number of 180 with the assistance of the Director of Faculty Services, Mrs. Bruner, based on the average number of journals selected by other professors at Howard Law. (*Ex. X, Bruner at 116-117*)

108) Dean Newsom accused Professor Martin of sending her article to many more journals than was normal and demanded that she reduce the number to thirty. (*Ex. Y, Newsom at 20-23*)

109) Plaintiff instructed Mrs. Bruner to reduce the number of submissions to thirty. (*Ex. X, Bruner at 57-58*)

110) Dean Newsom testified that Mrs. Bruner had complained to him that Plaintiff had requested that her article be sent to an excessive number of journals (*Ex. Y, Newsom at 23*); however, Mrs. Bruner testified that she never discussed Plaintiff's article or its distribution with Newsom. (*Ex. X, Bruner at 29, 32*)

111) Plaintiff had asked Mrs. Bruner for her assistance in determining the number of journals to which her article should be sent and they arrived at the number and names of the journals together. (*Ex. X, Bruner at 29, 32*)

112) On or about December 8, 1997, Dean Bullock called Professor Martin personally. (*Ex. A, Martin at 49-50; Ex. H, Bullock at 70*) Bullock left Plaintiff a message to immediately pick up a “very important letter” from Assistant Dean Barbara Smith. (*Ex. A, Martin at 50-52; Ex. H, Bullock at 70*) The letter was a form letter sent to all non-tenured professors reminding them of the termination of their contracts in May of 1998. (*Ex. H, Bullock at 71-72*) The letter had been sent certified mail, but returned to the University. (*Ex. H, Bullock at 70*)

113) In her message, Dean Bullock never mentioned the stalking, Harrison, concern for Plaintiff’s safety or anything other than the importance of a letter notifying Plaintiff that her contract was ending in May of 1998. (*Ex. H, Bullock at 71-72*) This procedure was unusual since a call of this nature would normally be made by one of the dean’s assistants. (*Ex. H, Bullock at 70-71*)

114) On December 10, 1997, Dean Newsom sent Professor Martin a memorandum entitled in bold “**THIRD REMINDER**” regarding office hours. *Ex.NNNN, December 10, 1997 memo from Newsom to Martin re: Office Hours; Ex. Y, Newsom II, at 54.*) In the memorandum, Newsom accused Professor Martin of not having submitted her office hours to Newsom’s office, despite two previous notices and further stated that posting and keeping office hours were “serious and important matters;” however, Professor Martin had provided Newsom’s secretary with her office hours months earlier, after a “first notice.” *Ex. J, Martin 2002 Declaration ¶ 23*) There was no second notice and none has been produced by the University. (*Ex. J, Martin 2002 Declaration ¶ 23*)

115) Newsom’s December 10, 1997 memo has never been produced by the University, despite three Court orders to produce such discovery and a June 25, 2002 Contempt finding for failure to produce discovery. (*Court Orders of April 11, 2001, May 30, 2001 and June 25, 2002*) Dean Bullock was provided copies of both memos, but testified that she did not produce copies either since none were in

files; she said that, when she receives copies of documents also filed in the Associate Dean's office, even from faculty, she often "throws them in the trash." (*Ex. H, Bullock at 77-78*)

116) Newsom's December 10, 1997 memo was produced by Plaintiff, along with her December 10, 1997 response memorandum, explaining that she did submit her office hours months earlier, that she maintains hours well beyond required office hours, that her office hours had been posted since the beginning of the school year, and that the "stalker" had apparently read her posted office hours and determined his visits to her office based on those posted hours. (*Ex. OOOO, Dec. 10, 1997 memo from Martin to Newsom*).

117) Newsom had been to Plaintiff's office on numerous occasions during the 1997 fall semester (*Ex. Y, Newsom at 55*) and should have seen her posted office hours. Plaintiff's office hours were posted and she had a "sign up" sheet for students. (*Ex. CC, Nolan at 98; Ex. JJ, LaRue at 55*) Plaintiff's November 25, 1997 memo to Dean Bullock, copied to Newsom, specifically stated that Harrison must have known what time to arrive based on her posted office hours. (*Ex. W, page 2, footnote 4*)

118) By December 10, 1997, classes had ended and winter break had begun. (*Ex. Y, Newsom at 56*) Professors do not hold office hours during winter break. (*Newsom at 55; Bullock at 75*). Plaintiff would have been required to submit new office hours for the spring semester when they returned from the break. (*Ex. Y, Newsom at 55; Ex. H, Bullock at 75*). Most importantly, Newsom was well aware that, out of fear of Harrison, Plaintiff had been holding office hours in the cafeteria, since Plaintiff had posted a sign to that effect on her office door. (*Ex. Y, Newsom at 137*)

119) On the afternoon of December 18, 1997, APT Committee Vice Chair, Professor Andrew Taslitz, went to Plaintiff's office and said simply, "Offers have been extended and there are no visitorships available." (*Ex. G, Taslitz at 154*) Plaintiff was not selected for the permanent, advertised EEO/Labor law position, nor was her contract as a Visiting Associate Professor renewed for the 1998-1999 academic year. (*Martin at 140-141; Ex. G, Taslitz at 154*)

120) At the time of her non-selection/non-renewal, Professor Martin had a 17 year outstanding legal career, including thirteen years of civil rights legal practice/policy-making (*Ex. E, Resume of Dawn V. Martin; Ex. RR, 1993 Outstanding Performance Evaluation of Dawn V. Martin by EEOC Commissioner Joyce E. Tucker*), four years of teaching equal employment law and torts (*Ex. E, Resume of Dawn V. Martin*) noteworthy publications in the area of equal employment law (*Ex. E, Resume of Dawn V. Martin*) recognition as a national expert in employment discrimination law (*Ex. SS, Introductory Comments by Prof. Merrick Rossein, author of Employment Discrimination Law and Litigation, regarding the three contributors to his treatise on Employment Discrimination Law, Ex. RR, 1993 EEOC Performance Evaluation*) and strong student support (*Ex. TT, Student petition #1 ; Ex. UU, Student petition # 2; Ex. VV, Collective Student letters; Ex. WW, Concerned Student Protest Letter to Faculty*)

121) Plaintiff received exceptional praise and support, as a teacher, from her students, (*Ex. VV, student letters; Ex. TT, petitions # 1; Ex. UU, petition # 2, Ex. VV, Collective Student letters; Ex. WW, Concerned Student Protest Letter to Faculty Ex. CC, Nolan at 243-244, Ex. L, Boyer at 7-8, Ex. K, Smith at 128, 131-132, 140-141, 148, 152, 212; Ex. LL, Jones at 14-15, Ex. KK, Leggett at 107-109, 116-117; Ex. M, Rogers at 26-27; Bullock's Answer to the First Amended Complaint, ¶ 284, 302*) Students protested her non-renewal with petitions and letters of support, describing her as an “excellent teacher” who “really cares about her students and the Howard community” and even a “phenomenal woman.” (*Ex. VV, student letters, Ex. TT, petitions # 1; Ex. UU, petition # 2*)

122) The EEO/Labor law position was awarded to a junior Visiting Assistant Professor, E. Christi Cunningham, who had never previously taught EEO or labor law. (*Ex. F, Resume of E. Christi Cunningham*) Prof. Cunningham had only been teaching for two years and had to relinquish two of the four courses that she had developed in those two years in order to be reassigned the EEO and Labor law courses. (*Ex. F, Resume of E. Christi Cunningham*) Although both Plaintiff and Cunningham were well perceived by students, student support was higher for Plaintiff than for Cunningham. (*Ex. KK, Leggett at 107-109, 116-117*)

123) Prior to the fall of 1997, Taslitz had advised Christi Cunningham, the junior Visiting Assistant Professor, to participate in the AALS Recruiting conference because he could not assure her that her visitorship could be renewed. (*Ex. G, Taslitz at 152*)

124) Taslitz never advised Plaintiff to participate in the AALS conference or to otherwise seek employment outside of Howard. (*Ex. G, Taslitz at 152*) In fact, he specifically went to her office, in late September of 1997, to ensure that she had received the Committee's memo requesting that any faculty member applying for an appointment or promotion submit a short memo to the APT Committee officially applying. (*Ex. J, 2002 Martin Declaration ¶ 20*) In fact, in late October of 1997, Taslitz even asked Plaintiff to let him review her completed memo submitting it to the APT Committee, so he could make suggestions for any revisions. (*Ex. J, 2002 Martin Declaration ¶ 20*) Plaintiff asked whether he had any suggestions. Taslitz advised her to explain the reasons for the delay in publishing 911.... He did not indicate, in any way, that he did not understand the reasons for the delay, but rather, that he wanted to make sure that the entire Committee was clear on the reasons. (*Ex. J, 2002 Martin Declaration ¶ 20*) Plaintiff did give Taslitz her November 5, 1997 memo to review prior to submitting it to the Committee and he told her that it looked good, so she did not make any changes. (*Ex. J, 2002 Martin Declaration ¶ 20*)

125) From approximately 1991 through 2001, the APT Committee at Howard Law School was "terminal Committee" that included only five members. (*Ex. L, Boyer at 11-12*) The five Committee members made the hiring recommendations to the Dean. (*Ex. H, Bullock's October 31, 1997 letter to Martin; Ex. H, Bullock at 121*) The Dean then made an independent recommendation, to be sent to the Provost, along with the Committee's recommendation. (*Ex. H, Bullock's October 31, 1997 letter to Martin; Ex. H, Bullock at 121; Ex. K, Smith at 59-60*).

126) The APT Committee and the Dean were intended to be independent bodies. Prof. Smith testified that:

The dean who comes around committee can get into an awful lot of trouble in the context, you know, criticism, you know, because you're not dealing with the Committee at large. So, you don't lobby, I don't think any dean – to my knowledge – who's lobbied

an individual because you have a full faculty who has been around and it's a very dangerous thing. So, it's not something that is routine, as far as I know, with the deans that we've had.

127) For a time period including 1996-1998, Prof. Taslitz held the title of Vice Chair of the APT Committee; however, he performed the duties of the Chair. He wrote the memoranda for the Committee, for Prof. Leggett's signature. (*Ex. G, Taslitz at 143*) He recruited candidates. (*Ex. G, Taslitz at 36-38*) He checked references. (*Ex. G, Taslitz at 57*) He extended offers to selectees. (*Ex. G, Taslitz at 68-69, 87*) He negotiated contracts with selectees and negotiated with the Dean/Associate dean for terms to offer the candidate. (*Ex. G, Taslitz at 57*) He read candidates writing samples and characterized them as "scholarly" or "non-scholarly." (*Ex. G, Taslitz at 64-65*) He sat in candidates' classes, including Plaintiff's, took notes and wrote up evaluations of those classes to present to the APT Committee. (*Ex. G, Taslitz at 166-167, 351-352*) Taslitz is a compulsive note-taker. (*Ex. L, Boyer at 43-44*)

128) Howard provided its July 11, 2001 *Answers to Interrogatories* only after two Court Orders to produce these answers and in the midst of contempt proceedings against it and its counsel. In its *Answers*, Defendant stated Plaintiff was not selected for a permanent faculty position or renewed as a visitorship because "**she did not have an article accepted for publication as of December 18, 1997 – not even the article that was the basis for her rank as Associate Professor.**" (*Ex. B*)

129) In its October 17, 2000 *Answers to Interrogatories*, ¶30 (*Ex. B*), filed after Plaintiff filed a *Motion to Compel Discovery*, after Defendant was more than four months late in responding to discovery requested on April 7, 2000, Defendant stated:

Plaintiff's contract was not renewed because the law school was in need of a faculty member with the expertise to teach courses in Taxation, Property, Wills, Trusts and Estates at that time. In addition, the APT Committee did not recommend that plaintiff continue to teach employment law classes... for the following reasons:

- 1) as of December 18, 1997 (the date on which the AP Committee made its decision concerning plaintiff's application, plaintiff had no scholarship articles accepted for publication, not even the article she claimed was in progress when she was offered the two-year Visiting Professorship at the School of Law.
- 2) During the fall 1995, plaintiff was offered employment as a visiting Professor with a two-year appointment beginning in Fall, 1996, at the level of Associate Professor, based on the factors that (a) plaintiff provided evidence of a law review article substantially in progress and near completion; (b) there was an expectation that the law review article would be completed before or immediately after plaintiff's two –

year contract began and that plaintiff would complete an additional published scholarship during this two-year contract period; (c) plaintiff's teaching performance would be an acceptable level of an Associate Professor; (d) there was an expectation of law school, university and/or professional service.

130) All of the APT Committee members were informed, at the time that they selected Cunningham over Plaintiff to fill the EEO/labor law position that Plaintiff's *911...* article had been accepted for publication. (*Ex. CC, Nolan at 66-67, Ex. G, Taslitz at 141, Ex. JJ, LaRue at 45, Ex. KK, Leggett at 118-119, 124-125*) Prof. Smith said that he could not recall whether he knew or not at the time, but did not deny that he might have known. (*Ex. K, Smith at 85-86*) Furthermore, the Committee was well aware that Plaintiff had submitted her *911...* article to Mrs. Bruner for distribution to law journals, prior to November 1, 1997, but that the document became corrupted, due to a computer error in Mrs. Bruner's office and had to be completely re-typed. (*Ex. YY, November 5, 1997 memo to APT*)

131) Plaintiff repeatedly challenged Howard's assertion that her article had not been accepted for publication by December 18, 1997, was false, specifying the APT Committee members who knew that it was false, even while she was still at Howard. (*Ex. A, Martin at 145-14, 151-153; First Amended Complaint ¶¶203, 205, 206, 240, 234; Ex. LLL, April 8, 1997 memo from Martin to Bullock; Ex. PPPP, April 10, 1998 memo from Martin to Bullock*)

132) Howard received "credit" for Plaintiff's *911...* article during its accreditation certification process by the American Bar Association (ABA) (*Ex. H, Bullock at 131*) Plaintiff's article received "a wonderful accreditation review." (*Ex. H, Bullock at 132*) Professor J. Clay Smith, former EEOC Chairman and General Counsel, had read some of Plaintiff's prior publications and determined that they were "good pieces." (*Ex. K, Smith at 140-141*)

133) Plaintiff's colleagues determined that Plaintiff's article, *911...*, was "excellent," "covered the universe of the topic," "was very lengthy and very detailed" (*Ex. M, Rogers at 22-24*) .It was "deemed to be quite substantial" (*Ex. KK, Leggett at 127*) and "well written." (*Ex. L, Boyer at 32*) Plaintiff had received a summer grant for 1997, when Dean Bullock approved her April 10, 1997 application (*Ex. MMMM*), including her updated version of *911...*(which was then approximately 127

pages manuscript length) and a 27 page draft of a second article, *Lights, Camera, Discrimination!*

“*Playing the Victim under Title VII*”; *Ex.CCCC, draft article*; *Ex. H, Bullock at 101-111*). Approval of a summer grant indicates at least satisfactory progress on scholarship. (*Ex. H, Bullock at 101-111*)

134) Christi Cunningham’s two “works in progress,” at the time of the December 18, 1997 decision, were, based on her own titles and descriptions, *both* extensions of her first article. “*The Rise of Identity Politics I: The Myth of the Protected Class in Title VII Disparate Treatment Cases.*” (*Ex. F, Resume of Christi Cunningham*) In fact, she listed them on her resume, under “Works in Progress” as “*The Myth of the Protected Class II*” and “*The Myth of the Protected Class III.*” (*Ex. F, Resume of Christi Cunningham*)

135) On July 11, 2001, after two Court Orders (April 11, 2001 and May 30, 2001) to produce discovery and answer interrogatories insufficiently answered, and in the midst of Contempt proceedings against Howard and its counsel, Defendant submitted *Supplemental Answers to Interrogatories* (*Ex. B*). In response to Interrogatory # 31, Howard stated that the following criteria were considered in the decision not to renew Plaintiff’s contract:

Collegiality; scholarship; teaching potential; comparison to internal and external candidates; credentials; academic needs; research contributions; growth potential; service to profession, community and university; publication.

136) In its July 11, 2001 *Supplemental Answers to Interrogatories* # 34 (*Ex. B*), Defendant claimed that:

HU officials concluded that plaintiff’s scholarship and potential for future research and scholarly endeavors were less substantive than the research and publication record of her colleagues and /or competitors. ... HU also concluded that plaintiff’s potential as a teacher was not as high as her colleagues and/or competitors for a tenure track teaching position covering EEO/labor law and other assigned courses.

137) In its July 11, 2001 *Supplemental Answers to Interrogatories* # 55 (*Ex. B*), Defendant claimed:

... while Plaintiff may have met the minimum qualifications for the position covering EEO/labor law position, she was not the best qualified applicant for a tenure-track position covering EEO/labor and other assigned courses. In determining whether to hire plaintiff after the termination of her two year term, HU’s hiring officials concluded that plaintiff’s scholarship was less substantive than the research and record of her

competition. Moreover, plaintiff's colleagues did not find plaintiff collegial as well. ... Moreover, plaintiff's performance in law school as well as her legal experience was not as stellar as her competition.

138) Finally, in its July 11, 2001 *Supplemental Answers to Interrogatories # 56 (Ex. B)*,

Defendant stated:

The APT Committee unanimously recommended e. christi cunningham for the EEO/Labor Law position for the 1998-1999 academic year for the following Reasons. Plaintiff's academic and scholarly production was viewed by the faculty and members of the APT Committee to be less substantive than professor cunningham, who graduated *Summa Cum Laude* from Southern Methodist University (1989). Prof. cunningham had published an article, and she clerked and did extensive legal research in the employment law area for U.S. District Court Judge Constance Baker Motley, well known civil rights attorney. Plaintiff law school record was not as stellar as cunningham's law school record. After law school, Professor cunningham was a litigation associate at an internationally reknown(ed) law firm, Debevoise & Plimpton in New York, New York.

Also, Prof. Cunningham published an article within one year of joining the faculty at HU School of law, she impressed the APT committee with the volume of work she was able to produce while actively involved in academic activities at the law school (law journal) and the community. Prof. Martin struggled to complete a publication while at HU School of Law after two years as a visiting professor. In fact, when Prof. Martin interviewed with the APT Committee in November 1997, she had not published an article while at the law school. Prof. Cunningham also began to work on a second article after completing her first article and presented a paper at Yale University in October, 1977, which was also scheduled for publication.

Finally, Prof. Cunningham was dynamic, and displayed he greatest potential as a law school professor as a teacher, scholar and for service to the law school community, and HU officials concluded that she was the best qualified for appointment. She received excellent teaching evaluation from students.

139) Plaintiff was the only professor teaching EEO law at Howard School of Law, for the two years prior to the Committee's December 18, 1997 decision. (*Course Schedule for 1996-1998*)

140) Plaintiff's resume describes Plaintiff's her qualifications as follows: Plaintiff had thirteen years of experience as an attorney practicing and/or developing policy in civil rights law, prior to her four years of teaching. (*Ex. E, Resume of Dawn V. Martin*) Plaintiff litigated for the U.S. Department of Justice, Civil Rights Division and the New York State Office of the Attorney General, Office of Civil Rights, and helped develop national policy in employment law at the EEOC. (*Ex. E, Resume of Dawn V. Martin*) Plaintiff attended New York University and graduated to join the U.S. Department of Justice's

prestigious and highly competitive Honors Program. (*Ex. E, Resume of Dawn V. Martin*) Prior to law school, Plaintiff graduated *cum laude* from the Ivy League Barnard College, Columbia University, in 1978. (*Ex. E, Resume of Dawn V. Martin*)

141) Plaintiff helped develop national policy in EEO law, while serving at the EEOC, as a Special Assistant to Commissioner Joyce E. Tucker and as a Senior Attorney-Advisor in the Office of Legal Counsel. (*Ex. E, Resume of Dawn V. Martin; Ex. RR, EEOC "Outstanding" Performance Evaluation of Dawn V. Martin, by Commissioner Joyce E. Tucker*). Plaintiff's contribution to Prof. Merrick Rossein's book, *Employment Discrimination Law and Litigation*, gave her national recognition as an expert in the use of testers in the employment discrimination area. (*Ex. SS, Prof. Rossein's acknowledgment of the three contributors to Employment Discrimination Law and Litigation; Ex. RR, EEOC Performance Evaluation*) Plaintiff had taught for two years, at Cleveland-Marshall College of Law teaching Equal Employment Law, Torts I and II and Race as a Factor in American Law, a course she created. (*Ex. E, Resume of Dawn V. Martin*) At Howard, Plaintiff taught Equal Employment Law, Torts I and II, and Evidence. (*Ex E, Resume of Dawn V. Martin*)

142) Plaintiff's service to the law school included: 1) giving exam review sessions, with her own practice exams and answers, to assist students in learning the skill of exam taking for law school and to increase the bar passage rate at Howard (*Ex. YY, November 5, 1997 application memo to APT from Martin; Ex. H, Bullock at 304-305*); 2) bringing in an Assistant Maryland Bar examiner each year, to give a class on how to take the Maryland Bar (*Ex. YY, November 5, 1997 application memo to APT from Martin; Ex. ZZ, Affidavit of Arthur Horne, Esquire, Assistant Maryland Bar examiner*), particularly since Howard students had gained a national reputation for its low Maryland Bar passage rate (*Ex. H, Bullock at 303-304*); 3) teaching exam-taking sessions at the Regional BALSAs conference held at Howard; 4) acting as a judge for the Trial Advocacy Clinic (*Ex. YY, November 5, 1997 application memo to APT from Martin*); and 4) participating in "Close Up," a mentoring program for teenagers (*Ex. AAA, thank you memo from Newsom to Martin*). Plaintiff also diligently served on all committees to which she was assigned. (*Ex. YY, November 5, 1997 application memo to APT from Martin*)

143) Plaintiff's community service included active membership in "Jack and Jill of American," focusing on the needs of African-American youth, the JEB Stuart High School Parent-Teachers' Association, mentoring teenagers and finding them internships, and assisting young people and the elderly in her community. (*Ex. YY, November 5, 1997 application memo to APT from Martin*) She was also supported her daughter's efforts to change the name of her high school, which was named for a confederate general. (*Ex. YY, November 5, 1997 application memo to APT from Martin*)

144) Plaintiff had also taken on one case, for purposes of filing an EEOC charge, for a local television news reporter who was alleging discrimination on the basis of a combination of race and sex. (*Ex. UUUU, November 24, 1997 Supplemental Application to APT from Martin*). This charge involved developing issues of inter-sectionality in EEO law. (*Ex. YY, November 5, 1997 application memo to APT from Martin*) Plaintiff submitted the supplement based on the Committee's interest in this work during her November 7, 1997 interview.

145) The December 18, 1997 APT Committee decision took place in the midst of the busy December season, with exams, grading, and the pressure to make APT meeting decisions and timely inform people of those decisions (*Ex. K, Smith at 101*)

146) On July 19, 2002, Defendant produced, for the first time, a memorandum to Dean Bullock from Isaiah Leggett,² dated December 9, 1997 (*Ex. BBB*), but admittedly written by Prof. Taslitz. (*Ex. G, Taslitz at 143*) Since the memorandum begins by stating that the APT Committee voted on its candidates "yesterday," and the decisions were actually made on December 18, 1997, it may be that the memo should read "December 19, 1997." (*Ex. G, Taslitz at 146*) No member of the APT Committee, could fully identify the document, explain why it was not signed, when they had seen it, or whether the date was correct (*Ex. K, Smith at 103, 112-113; Ex. KK, Leggett at 68-69, could not recall whether he wrote it, even though his name is on it as the author; Ex. G, Taslitz, cannot explain the date or whether it is a draft or final*) and some had not seen it before their depositions in August/September of 2002 (*Ex. JJ, LaRue at 65-66; Ex. CC, Nolan at 226-227*) No explanation was provided as to where this document had

been for the four years since it was purportedly written, despite three Court orders to produce such discovery April 11, 2001, May of 2001 and June 25, 2002, when Howard was found in contempt of Court for non-production of these documents. No contemporaneous notes or minutes of the December 18, 1997 APT Committee meeting have ever been produced, although both APT Committee member, Prof. Homer LaRue testified that minutes/notes were taken by Taslitz, typed and distributed to the Committee (*Ex. JJ, LaRue at 23-24*) and Director of Faculty Services, Mrs. Bruner, testified that she has typed APT Committee meeting minutes given to her by Taslitz. (*Ex. X, Bruner at 43-44*) Although the Committee members now claim that the vote was unanimous, Prof. Nolan's 1999 statement to the EEOC, as recorded in the draft affidavit prepared by investigators, indicates that it was a "majority," rather than unanimous vote. (*Ex. QQQQ*)

147) The December 9/19th, 1997 memorandum states that the Committee had the option of recommending one candidate, or more than one candidate, ranked in order of preference, for each of the three positions, EEO/Labor law, Constitutional Law/civil rights and Commercial Law. (*Ex. BBB*) The Committee did, in fact, nominate two persons, ranked in order of preference, for the Commercial Law position. (*Ex. BBB; Ex. G, Taslitz at 175*) For the EEO/Labor law and Constitutional Law positions, however, only one candidate was recommended for each position. (*Ex. BBB; Ex. G, Taslitz at 142*) After the Committee had voted to recommend Cunningham for the EEO/Labor position, Prof. Nolan recommended that Plaintiff also be recommended, and ranked as the number 2 candidate. (*Ex. CC, Nolan at 239*) She testified that her suggestion was not "picked up" by any other Committee member. (*Ex. CC, Nolan at 239-240*)

148) On page 2 of the December 9, 1997 memorandum from the APT Committee to Dean Bullock, under the heading, "Equal Employment Opportunity Labor Law," the memo reads:

Our sole recommendation is to hire Visiting Assistant Professor Christi Cunningham as a tenure-track Associate Professor. Although **one other candidate had practice experience in labor law**, which Christi does not, **Christi** has a strong interest in teaching and writing about labor law and **has practice experience in the area of equal employment opportunity**. Several factors **elevated Christi far above other**

² The left hand corner of page three actually indicates that it was written by Prof. Taslitz.

candidates. First, **she is the only candidate with a proven record of scholarship in the field**. In just one year, at Howard, she completed a substantial article on equal employment opportunity and most of the research for two follow-up articles. She also gave a talk at a major Critical Race Theory Conference at Yale, a talk that will be published as part of an anthology growing out of that conference.

... finally, **she has credentials that far exceed those of other candidates**. Besides being an editor on both the Yale Law Journal and the Yale Journal of Law and Feminism, she clerked for the Honorable Constance Baker Motley, where she authored a leading opinion on equal employment opportunity law. Furthermore, she worked for one of the leading law firms in the country, where she focused on equal employment opportunity law. (*Emphasis added*)

149) Cunningham’s resume does not indicate that she “focused” on equal opportunity law during her two years and nine months with the New York law firm. Cunningham’s law firm experience is described on her resume³ as follows:

Insurance class action and litigation settlement; litigated contract and fraud claims in small claims court; employment discrimination; unemployment compensation litigation, including appellate brief; negotiated and drafted settlement in employment dispute, drafted employment termination agreements; drafted deposition outlines and attended depositions; supervised large staff of attorneys and legal assistants in large document production; drafted appellate brief in Florida state court; represented victim of domestic violence in uncontested divorce.

150) Plaintiff’s 17 years of prior experience will not be reiterated herein, but Plaintiff’s position description immediately preceding teaching is as follows:

Office of Commissioner Joyce Tucker, Special Assistant

Analyzed and recommended approval, disapproval of proposed litigation, regulations, Commissions decisions, commissions charges, amicus briefs, and other documents requiring commissioners votes or reviews, drafted edited speeches, drafted memorandum on behalf of commissioner, briefed commissioner for commission meetings, media appearances and speeches, conducted seminars on behalf of Commission, hired, trained and supervised legal interns, office of the legal counsel, attorney -- senior attorney advisor, developed national policy on Title VII issues, wrote policy guidance EEOC decisions, memoranda. Wrote policy guidance, EEOC decisions, memoranda, and citizens’ response letters, special areas of research included the use of testers and employment discrimination cases, EEOC jurisdiction abroad and the use of arrest records in employment decisions.

151) EEOC Commissioner Joyce E. Tucker, in rating Plaintiff “outstanding” in her performance as her Special Assistant, wrote:

³ Cunningham’s resume is not included within the Protective Order covering personnel files. Plaintiff has had Cunningham’s resume since she was a faculty member at Howard, and the resume has been an exhibit

Ms. Martin's interactions with coworkers, other commissioned staff and the public are highly professional and highly effective. Her ability to communicate well with others has been instrumental in developing significant Commission policy, retroactively -- retroactivity of the civil rights act, and resolving litigation questions with the office of general counsel. Ms. Martin is published in her personal capacity in a major textbook on employment discrimination.

Ms. Martin's publication in Professor Merrick Rossein's, textbook 'Employment Discrimination Litigation' gives national recognition to her knowledge and expertise in the area of the use of testers on employment discrimination. Ms. Martin's coordination with staff of other Commissioners and Commission divisions consistently reflects careful consideration of cross cutting organizational responsibilities and her recommendation often result in improvement in agency policy.

152) Plaintiff's legal experience, particularly her background in EEO law, were far superior to the work experience of Cunningham, who was in the early stages of her career, according to five of the Howard professors deposed, including two APT Committee members. (*Ex. L, Boyer at 18-19; Ex. LL, Jones at 32-33, 35-37, 40; Ex. M, Rogers at 55-56, 62; Leggett at 152-155; Nolan at 172-181*) The remaining three members of the APT Committee member "could not recall" any APT Committee discussion comparing the work experience of Plaintiff and Cunningham and would not make the comparison in their depositions. (*Ex. K, Smith at 98-99, 140-141; Ex. G, Taslitz at 150; Ex. JJ, LaRue at 67-71*) No APT Committee member claimed that the legal experience of Cunningham was superior to, or more "stellar," than that of Plaintiff. Prof. Nolan confirmed that the Committee did not make the comparison regarding the work experiences of the candidates in its deliberations. (*Ex. CC, Nolan at 170, 347*)

153) Since the December 9, 1997 memo was unsigned, it was probably a draft that was never sent to the Dean. (*Ex.K, Smith at 100*) Such memos are generally written by the Chair of the APT Committee. (*Ex. K, Smith at 150*)

154) Plaintiff was not mentioned in the APT December 9, 1997 memo. (*Ex. BBB*) The reference to a candidate with labor law experience is a reference to an outside candidate. (*Ex. CC, Nolan at 34-35*)

in pleadings filed prior to the protective order.

155) In comparing the scholarship of the two candidates, J. Clay Smith acknowledged that it was Plaintiff, not Cunningham, who had the proven record of scholarship, stating:

on the basis of weight, obviously, you (Plaintiff)⁴ had more articles, but that was not my judgment. My judgment went to a variety of things, listening to the debate. It went to other things I can or cannot remember, but I know I left the meeting with the feeling that I had made the right decision, even though both of you, I thought, were in my own mind, as opposed to what others might have thought, I thought you were very close.

Smith thought Plaintiff was “terrific” and admired her “both as an individual and a professional.” (*Ex. K, Smith at 128, 132*) Leggett said that both Plaintiff and Cunningham were qualified for the position and viewed favorably by the faculty. (*Ex. KK, Leggett at 108-109*) Larue did not recall the reasons for the selection or the deliberations, but testified that everything he had heard about Plaintiff’s teaching was positive, that Plaintiff was collegial, and that *911...* was a good piece of scholarship. (*Ex. JJ, LaRue at 50*)

156) The members of the Committee who read any of Plaintiff’s scholarship described it as “good scholarship.” (*Ex. K, Smith at 81-82*) In addition, when asked about Cunningham’s thesis in her article, “*The Rise of Identity Politics I: The Myth of the Protected Class in Title VII Disparate Treatment Cases*,” Committee members with expertise and/or knowledge of Title VII law did not understand Cunningham’s theory of “wholism” or agree her with her proposition that Title VII can be interpreted to cover classes that are not specified in the statute. (*Ex. K, Smith at 198-199, 201; Ex. JJ, LaRue at 98-99*)

157) At the time of the December 18, 1997 decision, no one on the APT Committee had actually read Plaintiff’s article *911: How Will Police and Fire Departments Respond to Public Safety Needs and the Americans with Disabilities Act?* (*Ex. KK, Leggett at 343; Ex. K, Smith at 80-82; Ex. CC, Nolan at 49-51; Ex. JJ, LaRue’s Statement to the EEOC, not refuted in his deposition, Ex. JJ, that Plaintiff had not completed in article, indicating that he could not have read an article that he did not know existed; Ex. G, Taslitz at 107 – Taslitz only “skimmed” the expanded 911... article submitted to the APT Committee in November of 1997*) Cunningham’s resume reflected that her two “works in progress, as *The Rise of Identity Politics II* and *The Rise of Identity Politics III*. These articles were to be

continuations of her first article, in which she intended to “complete the idea” that she had started in her 60 page article. (*Ex. CC, Nolan at 212-215*) Plaintiff’s 141 page article was a complete idea.

158) At the time of the December 18, 1997 decision, at least three members of the five admitted that they had not actually read article, *The Rise of Identity Politics I: The Myth of the Protected Class*. (*Ex. KK, Leggett at 343; Ex. K, Smith at 199, 201; Ex. CC, Nolan at 220*) One cannot recall whether he had read it at that time. (*Ex. JJ, LaRue at 98*) Of the five APT Committee members, only Prof. Taslitz claimed that he had read the article prior to the December 18, 1997 decision. (*Ex. G, Taslitz at 134*) The only other article published by Cunningham, or accepted for publication by December 18, 1997, was a law student note, which is not weighed as heavily as post graduate articles, if at all. (*Ex. JJ, LaRue at 71-72*)

159) During the December 18, 1997 meeting, Taslitz took the lead in characterizing Plaintiff’s scholarship, teaching and other qualifications. (*Ex. G, Taslitz at 141-142*)

160) Taslitz testified that he was “disappointed” in Plaintiff’s performance (*Ex. G, Taslitz at 397*) and that he was “irritated” with her for not having *911...* published before she began at Howard. (*Ex. G, Taslitz at 244*) Taslitz further testified that he had decided, by January of 1997, that he would not support Plaintiff for a permanent position if she did not have *911...* published by the end of her first year and if he did not hear better comments regarding her collegiality. (*Ex. G, Taslitz at 244-245*) Taslitz even indicated that he thought that she should have published *911...* while she was still in Cleveland. (*Ex. G, Taslitz at 302*) Taslitz said that he was “very irritated” and “angry” with Plaintiff, but he never indicated this to her in any way. (*Ex. G, Taslitz at 244-245*)

161) At the time they voted, three of the five members of the Committee believed that Cunningham had actually published an article while at Howard (*Ex. K, Smith at 137; Ex. CC, Nolan at 140; Ex. KK, Leggett at 160*) and one does not recall what his understanding was at the time of the decision. (*Ex. JJ, LaRue at 71-72*).

162) Nolan said:

⁴ Plaintiff has been acting *pro se*, though not for trial, and was taking the deposition.

Christi, in fact, had come in, had been able to publish an article and – publish, not just draft and send it out, publish the article and was working on others and for my own self taking my personal feelings out of the selection and just seeing what would be the best fit with the University at this time, I think that the discussion was in favor of Christi.

(*Ex. CC, Nolan at 140*)

163) J. Clay Smith recalls that:

I kind of thought that perhaps a member of the Committee might have thought that you would have gotten some research done prior to this particular point. I think it was raised. I do not recall who raised the issue at all, but I think it was an issue. Did that affect me? That's different because that wasn't a glowing thing for me at all.

(*Ex. K, Smith at 150*)

164) Leggett testified that “someone” kept stressing, during the meeting, that Plaintiff had not yet published her *911...* article and that he had wanted to give Plaintiff “credit” for a second article. (*Ex. KK, Leggett at 117-125, 137, 192*)

165) APT Chair, Prof. Leggett, said he was “confused” about what scholarship Plaintiff had completed or was working on since at Howard, and that described the APT Committee discussion as presenting Cunningham as someone “who had published” and “was in the process of publishing again,” as compared to “someone who had not published at the scholarship journal level that we thought when the hire was first made” -- referring to Plaintiff (*Ex. KK, Leggett at 160*)

166) Plaintiff's *911...* article was 190 pages in manuscript form and 141 pages in published form. (*Ex. JJ, LaRue at 97; Ex. W, November 5, 1997 memo to APT Committee from Martin*)
Cunningham's article was 67 pages long, in computer printout form, and 60 pages in published print. (*Ex. JJ, LaRue at 98-99*) The average law review article ranges from 75 to 150 pages. (*Ex. JJ, LaRue at 97-98*) When confronted with the resumes, Leggett acknowledged that Plaintiff had more publications than Cunningham. (*Ex. KK, Leggett at 170*)

167) In fact, on December 18, 1997, Cunningham's 60 page article was accepted for publication, but not yet published, as was Plaintiff's *911...* article. (*Ex. F, Resume of E. Christi Cunningham*)

168) There was no date by which Plaintiff was told that she was expected to publish, or any number of articles that she was expected to publish, during while she was a visitor at Howard or during her first two years at Howard. (*Ex. G, Taslitz at 244-245; Ex. K, Smith at 85-86; Ex. CC, Nolan at 171*)

169) To qualify for tenure, a professor is expected to publish, or have accepted for publication, three articles within a five-year teaching period. (*Bullock's Answer to First Amended Complaint 283*)

170) The only publication requirement expressed to Plaintiff by Prof. Taslitz or anyone else at Howard, was that the professor was required to publish, or have accepted for publication, three articles by his/her fifth year of teaching. (*Ex. J, 2002 Martin Declaration 5*)

171) Plaintiff was in her first semester of her fourth year of teaching when the December 18, 1997 decision was made. (*Ex. E, Resume of Dawn V. Martin*) She had been employed at Howard for one year and four months. At that time, she had two articles published/accepted for publication, since she had begun teaching. (*Ex. E, Resume of Dawn V. Martin*) She had a 27 page draft of a third article, *Lights, Camera ...with all research complete*, as well as a title, thesis and some research done on a fourth article, *Still Racist After all these Years – and Covered by the Americans with Disabilities Act?* (*Ex. W, November 5, 1997 memo to APT Committee*)

172) Had she been selected for a tenure-track position in the 1997-1998 academic year, Plaintiff would have been considered for tenure during the 1998-1999 academic year, her fifth year of teaching. (*Ex. CCC Handbook; Ex. J, 2002 Martin Declaration, ¶ 5; Ex. E, Resume of Dawn V. Martin*)

173) The particular issues of 911... involved the developing law under the Americans with Disabilities Act, which was enacted in 1990 and went into effect in 1992. Plaintiff had completed it before leaving Cleveland-Marshall College of Law (*Ex. JJ, LaRue at 43-44; Ex. BBBB, Declaration of Margarita Santos, Esquire, former research assistant at Cleveland-Marshall College of Law*); however, during her first year at Howard, Plaintiff “changed it” and “deepened the analysis,” producing a “good piece of scholarship.” (*Ex. JJ, LaRue at 43-44*)

174) It can take a few months, 12 months, or 18 months, from the date an article is accepted for publication before it is actually published. (*Ex. C, Gavil at 104*)

175) As a “scholar,” it is a “judgment call” as to whether to submit an article with predictions and recommendations under a new statute or to hold it and further develop it as the case law begins to unfold, particularly since predictions may be moot by the time the journal actually gets it out in print. (*Ex. C, Gavil at 103-111*)

176) Professors are expected to work on more than one article at a time and, in this entire career, Gavil has never worked on only one article at a time. (*Ex. C, Gavil at 110-111*) Gavil never asked Plaintiff whether she was working on any other article in addition to 911.... (*Ex. C, Gavil at 111-112*)

177) Plaintiff was in a car accident in October of 1996 and was injured. (*Ex. A, Martin at 60-62*) Plaintiff had to undergo therapy, and still suffers back and neck injuries from the accident. (*Ex. A, Martin at 62*) Plaintiff wore a neck brace to work on numerous occasions. (*Ex. JJ, LaRue at 54-55; Ex. KK, Leggett at 135*) Plaintiff did not miss any classes, despite this injury and resulting therapy, however, since she had constant neck and back pain, with headaches, it was extremely difficult for her to sit at a computer for long periods of time during her first semester. (*Ex. W, November 5, 1997 memo to APT Committee from Martin*)

178) Plaintiff continued to perform her teaching duties in an exemplary manner (*Ex. TT, Student petition # 1; Ex. UU, Student petition # 2, Ex. VV, Collective Student letters; Ex. WW, Concerned Student Protest Letter to Faculty*) even in the face of a stalker pursuing her in her workplace. Students met with Dean Bullock, through their Student Bar Association President, Gerald Smalls, and in other meetings, requesting that plaintiff be retained at Howard. (*Ex. H, Bullock at 307-308*)

179) Dean Bullock admitted that Plaintiff was a good teacher who was very well liked by her students (*Bullock’s Answer to First Amended Complaint ¶302*).

180) The academic performance of Plaintiff (more than 17 years earlier) and Cunningham (ore than 5 years earlier) were not factors in the APT Committee decision, since they were both already teaching at the law school. (*Ex. KK, Leggett at 224-225*)

181) Taslitz took notes at APT Committee meetings and had them typed and distributed as “APT Committee Minutes.” (*Ex JJ, LaRue at 24-25; 106-107; Ex. X, Bruner at 44-45*) Defendant

University has not produced any contemporaneous notes, minutes or other records of the Committee's deliberations, although ordered to do so three times and held in Contempt of Court for non-production of discovery.

182) Prof. Nolan also took notes during APT Committee meetings. (*Ex. CC, Nolan at 168-169*). Nolan wrote down the Committee vote regarding the December 18, 1997 decision in her notes, but she destroyed them because she did not want them to be disclosed to faculty or students. (*Ex. CC, Nolan at 131*). Prof. Nolan testified that she "thinks" the vote was unanimous for Cunningham, but EEOC records indicate that, in 1999, she told EEOC investigators that she thought the vote was a majority vote in favor of Cunningham. (*Ex. QQQQ, Nolan's EEOC draft affidavit; Ex. CC Nolan at 258-293, correcting any inaccurate statements recorded by EEOC investigator*)

183) Howard never requested any law school or college transcripts from Plaintiff. (*Ex. J, 2002 Martin Declaration ¶ 6*)

184) Plaintiff graduated from New York University, a top ten law school (currently ranked # 5 in the country by U.S. News and World Report) and graduated to join the United States Department of Justice, Civil Rights Division, Honors Program. (*Ex. E, Resume of Dawn V. Martin*) Plaintiff previously graduated from an Ivy League University, Barnard College, Columbia University, *cum laude*, with departmental honors in her major, political science, and Dean's List academic recognition. (*Ex. E, Resume of Dawn V. Martin*)

185) The APT Committee never questioned Plaintiff's judgment or collegiality; nor did they discuss any alleged "bad judgment" by Plaintiff or questioned. (*Ex. CC, Nolan at 214-218, 119-120, 244; Ex. K, Smith at 70, 94-96, 152-154; Ex. JJ, LaRue at 32, 56, 85-86, 103-104, Ex. KK, Leggett at 116-117, 249, 298-299*) Plaintiff's colleagues found her to be collegial and pleasant and had not heard any negative faculty feedback about Plaintiff. (*Ex. CC, Nolan at 41, 46-49, 110, 116, 155, 69-70, 296, Ex. JJ, LaRue at 10, 103, 104, 85-86; Ex. KK, Leggett at 16, 249; Ex. M, Rogers at 22, 25-26, 38-39, 68, 72; Ex. LL, Jones at 16-17, 23-27*) See also *Ex. X, Bruner at 87-88, plaintiff appeared to be "well-liked" by most of the faculty*) Plaintiff frequently talked about how much she liked, teaching, liked her students and

liked being a law professor. (*Ex. G, Taslitz at 410; Ex. M, Rogers at 79; Ex. X, Bruner at 87-88*) After the December 18, 1997 decision, Nolan hugged Plaintiff and said, “I wish I had a job for you. I am praying for you.” (*Ex. CC, Nolan at 116*)

186) Taslitz liked Plaintiff personally and found her to be a “warm” person (*Ex. G., Taslitz at 51, 54, 244, 245, 396, 305, referring to himself as Plaintiff’s “friend”*); however, Taslitz claimed that “other “ members of the faculty complained to him that Plaintiff was not collegial and that they questioned her judgment. (*Ex. G., Taslitz at 132, 168, 198,248, 405, 407*)

187) In 1999, as recorded in the business records, Dean Bullock told EEOC investigators:

Martin did not seem satisfied with my response. I was left with the impression that she wanted me to wrestle the stalker down.

(*Ex. MM, EEOC draft Bullock affidavit, recording statements to EEOC investigator; Ex. H, Bullock at 309-320*)

188) Bullock took more than 20 minutes off the record and additional time off the record to review the draft affidavit prepared by the EEOC based on the investigators’ interview of Bullock. (*Ex. H, Bullock at 309-320*) Bullock “marked up” a copy and had every opportunity to disclaim any statement in accurately attributed to her. (*Ex. H, Bullock at 309-320*)

189) Prof. J. Clay Smith was provided a copy of his EEOC draft affidavit by counsel for Howard University prior to the deposition. (*Ex. K, Smith at 10*)

190) One day in the fall of 1997, Prof. Taslitz asked Bullock how she was doing. (*Ex. G, Taslitz at 103, 237*) Bullock replied, “Did you hear about Dawn’s stalking incident?” *Ex. G, Taslitz at 103, 237*. Taslitz replied, “Yes, she has told me about it.” (*Ex. G, Taslitz at 103, 237*). Bullock then stated that that was why she was having a bad day, that she had a lot to do “in response to that.” (*Ex. G, Taslitz at 103, 237*).

191) Dean Bullock repeatedly told Prof. Taslitz that Plaintiff had “bad judgment” (*Ex. G, Taslitz at 131; Ex. H, Bullock at 124-125*). Even though he asked, Bullock never gave him even one example of this purportedly “bad judgment.” (*Ex. G, Taslitz at 132*)

192) Taslitz “assumed” that Dean Bullock was referring to a faculty meeting in which Plaintiff advocated the requirement that professors place, on reserve in the library, sample exams and answers for students to study before they took exams. (*Ex. G, Taslitz at 170*) This faculty meeting took place on or about December 2, 1997. (*Ex. J, 2002 Martin Declaration ¶ 30; faculty meeting minutes have been requested, but Howard refuses to provide them; consequently, Plaintiff is entitled to an adverse inference on this issue*) Taslitz was very unclear about time frames and could not even recall when he took his own sabbatical to write his casebook on Evidence. (*Ex. G, Taslitz at 97-98, 217-218*)

193) Taslitz has held key positions on key committees at Howard School of Law. (*Ex. I, Resume of Taslitz; Ex. L, Boyer at 23-24*) Prof. Boyer complained to Dean Bullock regarding his concerns regarding the “click” of professors whom he believes intimidate others, and that the racial make-up of the Curriculum Committee was disproportionately White, to the exclusion of senior faculty. (*Ex. L, Boyer at 27*) According to Prof. Boyer, Bullock replied, “*The White boys do the work.*” (*Ex. L, Boyer at 27; see also Ex. H, Bullock at 84-85*)

194) The four White professors on Howard’s law school faculty, named by Prof. Boyer as part of this “click” include Prof. Andrew Taslitz, Prof. Andrew Gavil, Prof. Adam Kurland and Prof. Steven Jamar. (*Ex. L, Boyer at 23-24*)

195) Prof. Gavil was a member of the AP T Committee, along with Prof. Taslitz, during the 1995-1996 academic year. (*Ex. C, Gavil at 32*) Profs. Taslitz and Gavil are close personal friends. (*Ex. , Ex. C, Gavil at 24-25*)

196) Gavil claimed that he saw Plaintiff making copies of her article for distribution to law journals, in the fall of 1997, and that he had the “impression” that she was “rushing to get it out the door because you realized that it was important to use that you hadn’t completed the article in that first 14 months or so that you were at the law school.” (*Ex. C, Gavil at 49*); however, Plaintiff did not photocopy her article for distribution; rather, all of the photocopying and mailing for journal distribution for Plaintiff’s article was handled completely by Mrs. Bruner. (*Ex. X, Bruner at 118*) Plaintiff and Gavil rarely even saw each other. (*Ex. C, Gavil at 152-153*)

197) Plaintiff had submitted her article for distribution approximately one month before it was actually sent, and had no control over when it was re-typed and submitted after the computer error corrupted the document. (*Ex. A, Martin at 58-59; Ex. X, Bruner at 23-25*)

198) Prof. Steven Jamar's name appears on one of the four faculty survey forms produced by Defendant, for the first time, on July 11, 2001, as evidence that Plaintiff was not "collegial." (*Ex. EEE*) Plaintiff had negligible contact with Prof. Jamar and cannot imagine what reason or interest he would say that she was not collegial or otherwise convey any negative opinion of her. (*Ex. J, 2002 Martin Declaration ¶129*)

199) Prof. Jamar is not "collegial" and has never spoken to Prof. Jones in the more than 15 years that they have worked together. (*Ex. LL, Jones at 43*)

200) Without the knowledge or consent of the faculty at large, Prof. Jamar taught a class of students at Howard an alternate form of "blue book" citation instead of "blue book" form. (*Ex. L, Boyer at 29-30; Rogers at 87-88*) The students' lack of knowledge of blue book citation caused employers to view Howard students negatively. (*Ex. L, Boyer at 78-79*) The faculty voted to restore the blue book citation form. (*Ex. L, Boyer at 78-79*) Steven Jamar then resigned as the Director of the Writing Program. (*Ex. L, Boyer at 30-31*)

201) Steven Jamar told all of the writing instructors in the writing program that Prof. Boyer is a racist. (*Ex. L, Boyer at 10*). Prof. Boyer's wife is White and he has an interracial daughter. (*Ex. L, Boyer at 30-31*).

202) Taslitz testified that Kurland told him that Plaintiff had "bad judgment" and/or questioned her collegiality. (*Ex. G, Taslitz at 239-240*) Prof. Kurland testified that he did not even know Plaintiff well enough to assess whether she was collegial (*Ex. O, Kurland at 10*); yet, both Plaintiff and Prof. Rogers recall that Kurland made a comment, at the emergency faculty meeting on April 29, 1998, in support of Plaintiff being retained as a faculty member. (*Ex. J, 2002, Martin Declaration ¶10; Ex. Rogers at 34*) Plaintiff requested the minutes of this faculty meeting, but the University claims that it can find no such minutes in its possession.

203) Prof. Kurland spoke to Taslitz in the spring of 1998, asking whether there was any way that Plaintiff could stay at Howard, since she would experience great financial difficulty losing her job. (*Ex. G, Taslitz at 242*)

204) Plaintiff consulted with Kurland about how to teach Evidence and used the “Paul Rice” textbook recommended by him. (*Ex. J, 2002 Martin Declaration ¶8*) Plaintiff considered Adam Kurland a friend while at Howard, having had numerous discussions with him about Evidence, teaching, scholarship and personal matters, such as Kurland’s divorce in progress and Plaintiff’s dispute/litigation with her new landlord, which began in September of 1997. (*Ex. J, 2002 Martin Declaration ¶10*) After first testifying that he only spoke to Plaintiff “a few times, in the hallway, or maybe in somebody’s office for a minute or two” (*Ex. O, Kurland at 10*), Kurland admitted that Plaintiff had shown him photographs related to her landlord-tenant case while he was in her office. (*Ex. O, Kurland at 48-49*)

205) The remaining three faculty anonymous survey forms, other than the one purportedly written by Jamar, do not bear names (*Exs. FFF, GGG, HHH*); however, Associate Dean Newsom testified that one of them “must be” his because it is his handwriting, although he does not recall writing it. (*Ex. FFF; Ex. Y, Newsom at 40-41*)

206) The members of the APT Committee, other than Taslitz, either never previously saw, or could not recall seeing, the four faculty survey forms produced on July 11, 2001, purportedly submitted to Taslitz in the fall of 1997. (*Ex. CC, Nolan at 217-218, 220-221; Ex. K, Smith at 95; Ex. KK, Leggett at 255; Ex. JJ, LaRue at 58-59*). The Committee members did not share the views of Plaintiff indicated on any of the four forms and that these opinion, even if seen before the decision, did not influence their decision. (*Ex. CC, Nolan at 214-218, 22-223; Ex. K, Smith at 70, 94-96, 152-154; Ex. KK, Leggett at 116-117, 249, 298-299, Ex. JJ, LaRue at 10,58-59, 85-86, 103-104*).

207) In her interview with the EEOC in 1999, Dean Bullock never indicated that Plaintiff had “bad judgment” or that she otherwise did not like her personally. To the contrary, Dean Bullock told the EEOC investigator: “*there is no particular reason that I would not want Martin to teach at Howard*”

University School of Law.” (Ex. DDD, EEOC business record documenting interview statements as draft affidavit, as edited and corrected by Bullock at 309-320)

208) Taslitz testified that Dean Newsom told Taslitz that Plaintiff was making problems for his office; however, when asked what types of problems, Newsom replied, “I really don’t want to go through all the details, you don’t want to know.” (*Ex. G, Taslitz at 239, 243*) Newsom testified that he does “not recall” making such comments to Taslitz. (*Ex. Y, Newsom at 68-69*) Dean Newsom testified that Plaintiff was on a “short list” of people causing problems for the University and that Dean Bullock had shared with him that she had decided not to select Plaintiff for a permanent position. (*Ex. Y, Newsom at 205*)

209) Prof. J. Clay Smith is married to a cousin of Dean Bullock. They have been colleagues for many years and been to each other’s homes over the years; yet, Bullock never shared with Smith her purported opinion that Plaintiff had “bad judgment.” (*Ex. K, Smith at 152*)

210) Professors Boyer and Jones were Dean Bullock’s law professors when she attended Howard and have been colleagues with her ever since she joined the faculty many years ago; yet, Dean Bullock never shared with him her purported opinion that Plaintiff had “bad judgment.” (*Ex. L, Boyer at 37; Ex. LL, Jones at 55*)

211) Laurence Nolan is one of the few senior female members of the faculty, and they have been colleagues for many years; she never shared with Prof. Nolan her purported opinion that Plaintiff had “bad judgment.” (*Ex. CC, Nolan at 119-120, 244*)

212) Bullock testified that Plaintiff “talked a lot” during faculty meetings and did not listen to her senior colleagues (*Ex. H, Bullock at 125-126, 136*); yet, when Plaintiff requested copies of the faculty meeting minutes, Howard *refused* to produce them. (*Ex. III, e-mail correspondence with the University’s counsel*)

213) Faculty meetings are generally held once per month, during the school year, for total of 9 times per year, for a total of 18 sets of minutes, each being a few pages long and all of them filed in the

Dean's office "forever," according to the Dean's secretary. (*Ex. JJJ, Miller at 20-21*) These minutes are at the fingertips of the Dean.

214) Prof. Boyer, with whom Plaintiff debated, at least once, specifically testified that even when he and Plaintiff disagreed, it was always with respect. (*Ex. L, Boyer at 9-10, 92*) Prof. Boyer is not only one of Plaintiff's senior colleagues, he is the most senior faculty member at the law school.

215) Prof. Jones is the second most senior member of the faculty. He testified that Plaintiff was one of the most collegial members of the faculty, since there were others who demonstrated disrespect for their colleagues. (*Ex. LL, Jones at 37*) Prof. Boyer wrote a memo to the faculty, posted on his Howard University website, discussing the lack of collegiality at Howard School of Law. (*Ex. L, Boyer at 9*) Dean Bullock has discussed this matter publicly, as reported in a magazine article attached to Plaintiff's August 3, 2001 *Motion for a Default Judgment Due to Defendant's Production of Late, Incomplete, and Falsified/Tainted Evidence, as Ex. EE*).

216) Dean Bullock's secretary, who had been Dean Newsom's secretary in 1997-1998, does not recall ever hearing either Dean Bullock or Dean Newsom indicate that Plaintiff was causing problems for their office or any other derogatory statement about Plaintiff. (*Ex. JJJ, Miller at 64-66*)

217) Newsom testified that he and Plaintiff had as many as 100 conversations over her two-year tenure at Howard and beyond, and that most of their conversations were pleasant. (*Ex. Y, Newsom at 11, 34, 36*)

218) Prof. Boyer testified that he and the other most senior members of the faculty believe that plaintiff should be reinstated. (*Ex. L, Boye at 36, 41*) In fact, *Prof. Boyer testified that these most senior faculty members have read pleadings in this case and believe that Plaintiff will prevail in this lawsuit!* (*Ex. L, Boyer at 41*)

219) Taslitz described himself as Plaintiff's "friend." (*Ex. G, Taslitz at 323*)

220) After Taslitz received Plaintiff's March 31, 1998 letter (*Ex. FFFF*), asking for his help, telling him that she was aware that there were two to three faculty positions being left vacant by the Dean, Taslitz immediately turned this personal letter over to Dean Bullock, along with a cover letter asking for

legal representation from the University in case Plaintiff sued. (*Ex. G, Taslitz at 232*) Taslitz never asked Dean Bullock whether the positions were vacant. (*Ex. G, Taslitz at 320-3321*)

221) Prof. Nolan did ask Dean Bullock, in March or April of 1998, whether there were any vacant faculty positions, and whether Plaintiff could be hired by the law school or elsewhere in the University. (*Ex. CC, Nolan at 329*) Bullock told her that there were no positions available. (*Ex. CC, Nolan at 329-330*) Bullock added that she had referred Plaintiff for another position and was trying to help her get another job. (*Ex. CC, Nolan at 329-330*)

222) Gavil claimed that, when Plaintiff and Cunningham were hired, Cunningham was viewed as the better candidate and that Plaintiff was being hired to fulfill course needs in Torts, and that Plaintiff's credentials were not evaluated at the standard necessary to satisfy the requirements for a tenure-track position. (*Ex. C, Gavil at 71-73*).

223) Plaintiff was the first candidate selected by the Committee in 1996, as evidenced by Prof. Taslitz' comments to Plaintiff by the letters extending offers to Plaintiff and Cunningham (*compare Ex. RRRR with Ex. N;*), dated February 20, 1996 and March 27, 1996, respectively.

224) Gavil testified that Plaintiff had mishandled a situation with a first year student, though he claimed to recall none of the facts pertaining to the incident, or even the student's name, even after Plaintiff stated the student's name (off the record, for the protection of the former student). (*Ex. C, Gavil at 143*)

225) The student named, off the record: 1) took four courses with Plaintiff – every course that Plaintiff taught at Howard (*Ex. J, Martin 2002 Declaration at 12*); and 2) signed and helped circulate a petition protesting Plaintiff's non-retention. (*Ex. UU, student petition*) Gavil reported the student's complaint to Dean of Students Denise Purdie (now Spriggs), who made inquiries and dismissed the matter as a problem with the student. (*Ex. J, Martin 2002 Declaration at 12*) Plaintiff documented these events and provided copies of the memorandum to both Spriggs and Gavil. (*Ex. ZZZ, 1996 Memo to Gavil and Dean of Students Denise Purdie*). Dean Spriggs made inquiries into the matter and determined that it was the student, not Plaintiff, who has mishandled the situation and that this student had also had a

confrontation with her other female professor, Prof. Patricia Worthy. (*Ex. J, Martin 2002 Declaration at 12*)

226) In January of 1998, the American Association of Law Schools (AALS) held its annual conference. (*Ex. H, Bullock at 141*) Plaintiff attended the conference to seek other teaching positions, even though the hiring season had ended. (*Ex. A, Martin at 249-250*) When Bullock first saw her at the conference, she did not acknowledge Plaintiff in any way. Bullock “assumed” that Plaintiff was saying negative things about Howard at that conference. (*Ex. H, Bullock at 153-154*) At the Minority luncheon, when Plaintiff was sitting with the Dean of the University of Miami, Sam Thompson, Bullock came to the table and invited Plaintiff to breakfast the next day. (*Ex. H, Bullock at 150*)

227) At breakfast, Bullock told Plaintiff that she expected new positions to become vacant during the spring, and that if one did, she would seriously consider her and recommend her for it. (*Ex. A, Martin at 172, 203*)

228) Bullock assumed that, at the AALS conference in January of 1998, Plaintiff was telling other law professors and/or Deans at the conference “negative” things about Howard. (*Ex. H; Bullock at 153*)

229) Since Plaintiff was seeking employment with other law schools, professors discussing job possibilities with her asked her why she was not staying at Howard – particularly those professors who knew that she had left a tenure-track position in Cleveland and that she had discontinued interviewing with other schools when she received her initial offer from Howard in January of 1996. (*First Amended Complaint* ¶ 368; *Ex. WWW 1999 Martin Declaration* ¶¶ 26, 27) Plaintiff did explain to some people at the conference, to the extent that she had information, what had happened at Howard. (*First Amended Complaint* ¶ 247)

230) Howard hired an outside candidate, Lateef Mtima, to fill the commercial law position. (*Ex. BBB, May 9, 1998 APT memo*) It hired Christi Cunningham to fill the EEO/labor law position. It offered the Constitutional Law/Civil Rights position to an outside candidate, known as “the new Reggie Robinson” (Robinson II), to distinguish him from the Reggie Robinson already on the faculty. (*Ex. BBB*)

May 9, 1997 APT memo) Robison II declined the offer in January of 1998 (*Ex. KKK; Bullock's letter to Howard University's Office of General Counsel, apparently provided to the EEOC, since it was part of the EEOC file*); however, Bullock did not notify the Committee and did not authorize the Committee to recommend another candidate for the position until April 6, 1998, when she specifically recommended Prof. Vallario for the position. (*Ex. MMM, April 6, 1998 memo from Bullock to APT*)

231) Prof. Reginald Robinson ("Robinson I") also attended the AALS conference in 1998. (*Ex. A, Martin at 252-254*) At a party in his suite at that conference, to which he had invited Plaintiff, he approached Plaintiff and insulted her by purporting to know why she was not renewed, telling her that: 1) "you don't socialize with us;" 2) "you did not publish" and you should keep your door shut, lock your students out and write; 3) "you should keep your mouth shut at faculty meetings" and tell "Taz" (Taslitz) "what you want to say and let him say it;" 4) "you're never around." (*Ex. A, Martin at 252-254*) In addition, Robinson had earlier made an insulting innuendo with respect to her long-time friendship with a Dean of another law school, implying that she was socializing him in order to obtain a job, and that this friendship was sexual. (*Ex. A, Martin at 252-254*) Plaintiff told Robinson that she wanted an apology. (*Ex. A, Martin at 252-254*) Robinson then said loudly, "Just because I said you were "shmoozing" doesn't mean I said you would f---k somebody for a job!" (*Ex. A, Martin at 253*)

232) Plaintiff told both Prof. Nolan and Taslitz about Robinson's insults to her. (*Ex. J, 2002 Martin Declaration, 26; Ex. CC, Nolan at 332-335*) Both condemned Robinson's actions and apologized to Plaintiff for him, assuring her that his views did not reflect the Committee's views and that Robinson was not privy to the confidential deliberations of the APT Committee. (*Ex. J, 2002 Martin Declaration, 26*)

233) It is the same Prof. Reginald Robinson who, at least for the time period encompassing this same spring semester of 1998, who was circulating sexual "jokes," *via* Howard University e-mail, to all faculty and staff (Plaintiff did not receive them because her computer was not programmed for e-mail), although several faculty and staff members had e-mailed him requesting that he stop, with one recipient specifically pointing out that his conduct created a hostile work environment based on sexual harassment.

(*Ex. YYY, collective sample e-mails sent to faculty and staff by Prof. Robinson*) Robinson continued the e-mails, replying to those who complained that they could simply delete his messages. (*Ex. YYY*)

234) Prof. Taslitz testified that Prof. Robinson complained that Plaintiff was not living up to their expectations at the law school. (*Ex. G, Taslitz at 187-198*) During that same semester, Robinson was being considered by the same APT Committee for a full professorship – which he was awarded. (*Ex. CC, Nolan at 350-351; Ex. A, Martin at 254-255*)

235) Taslitz also alleged that Prof. Laurence Nolan told him that she had concerns about and heard complaints from other that Plaintiff was not collegial (*Ex. G, Taslitz at 187-198*), but Taslitz' claim was contradicted by Nolan.

236) In her *Answer to the First Amended Complaint*, Bullock admitted that, in the spring of 1998, there were several faculty positions available, for which Plaintiff was qualified, but for which she was not selected and that the positions remained vacant. (*Ex. H, Bullock Answer to First Amended Complaint*, ¶ 313, 326)

237) Plaintiff learned, from a friend at the Department of Justice, that “Robinson II” had declined Howard’s offer to fill the Con Law/Civil Rights position. (*Ex. XX*) She immediately applied for the position (*Ex. XX*) by memorandum to Dean Bullock, dated March 6, 1998, with copies to all members of the APT Committee, noting her 17 years of civil rights experience.

238) Bullock never authorized the Committee to make another recommendation for the position, but, by memorandum dated April 6, 1998, authorized the Committee to hire a visiting professor to teach tax and trusts and estates, with a specific recommendation that the Committee hire Angela Vallario, who had been teaching tax and related courses at Howard as an adjunct professor. (*Ex. MMM*)

239) Bullock testified that the need in tax arose in the spring because a tenured tax professor, Prof. Argrett, was extending her leave with Howard for another year, continuing her position with the Department of Justice. (*Ex. H, Bullock at 182*) When professors are on leave, visitors are often hired, from the funds reserved for the professor on leave, to teach the courses taught by the professor on leave (*Ex. H, Bullock at 262*).

240) In addition to the Constitutional Law/Civil Rights slot/Argrett slot, a property professor unexpectedly ceased teaching during the spring semester and retired. (*Ex. H, Bullock at 312-314*) This retirement left an additional faculty vacancy for the 1998-1999 academic year (*Ex. H, Bullock at 262-269*) Finally, former Dean Ramey was still technically on the faculty at Howard during the 1997-1998 academic year. (*Ex. H, Bullock at 275*); however, he was not a salaried member of the faculty for the 1998-1999 academic year, or thereafter, so that Dean Bullock was authorized to use the faculty slot that he had occupied to hire a new faculty member. (*Ex. A, Martin at 167-168; admission made by Bullock, admissible either as an admission of a party/opponent and/or a declaration against interest*)

241) Bullock admitted to Plaintiff, on March 27, 1998, that the slot reserved for Dean Ramsey was “available,” allowing her to fill the position, so that three faculty positions were vacant, after counting the EEO/labor law and Commercial law positions as “filled.” (*Ex. A, Martin at 179; Ex. LLL, April 8, 1998 memo from Martin to Bullock, page 1.*)

242) When confronted with the evidence of the vacancies, including her own words, Bullock never denied, in her reply memoranda to Plaintiff, that there were vacant positions. (Exs. LLL and PPP)

243) Plaintiff suggested that these remaining spring 1998 vacancies would allow Christi Cunningham and her to remain at Howard and continue to teach the courses that they had taught for the previous two years, while Lateef Mtima filled the gap in commercial law and the new need in property, particularly since he was published in the area of intellectual property. (*Ex. LLL, Martin’s April 8, 1997 memo to Bullock*), Plaintiff’s suggestion would have allowed Prof. Worthy to continue teaching ethics, since the reassignment of Cunningham to teach EEO and Labor law required Prof. Worthy (now Interim Dean) to relinquish her Ethics class to cover a course relinquished by Cunningham. Plaintiff also offered to teach any course needed by Howard, for which she was qualified. (*Ex. LLL, Martin’s April 8, 1997 memo to Bullock*)

244) Dean Bullock replied that “contracts” had been “executed” with the “new hires,” Cunningham and Mtima “months ago,” and that she had “no basis for rescinding those contracts.” (*Ex. PPP*) In fact, no contracts had been executed with Cunningham or Mtima. (*Ex. H, Bullock at 347*)

Bullock certified, as part of Howard's July 19, 2002 discovery request, produced after two Court Orders and a contempt finding against Howard for non-production of discovery, that there are no written contracts with faculty members. (*Ex. H, Bullock at 347; Sworn certification of Bullock, filed with Court on July 19, 2002, pursuant to Court's June 25, 2002 Order finding Howard in Contempt of Court*) Dean Bullock lied in her memoranda to Plaintiff. (*Compare Ex. PPP with July 19, 2002 certification*)

245) No professor is guaranteed to teach any particular course and that courses are reassigned in accordance with the needs of the school (*Ex. H, Bullock at 296*).

246) Bullock never asked Cunningham whether she would prefer to continue teaching the four courses that she had just spent her first two years of teaching developing, rather than relinquishing two of them to pick up EEO and Labor law, neither of which she had ever previously taught. (*Ex. H, Bullock at 287*)

247) Bullock never asked Mtima whether he would prefer to teach property and related courses (such as intellectual property, an area in which he was published) rather than Torts I and II, even though he had not indicated any preference for Torts and the Committee did not recommend him to teach Torts, but recommended him for Commercial law and property related courses. (*Ex. H, Bullock at 287; Ex. A, Martin at 288*)

248) Plaintiff's EEO class was a seminar with limited enrollment. (*Ex. J, Martin Declaration, ___*) The demand for that class exceeded enrollment each semester by least three times (*Ex. J, Declaration ___*)

249) Howard did not offer a survey class in EEO law during 1996-1998. Plaintiff offered to teach a survey course in order to better prepare students for the seminar (*Ex. SSSS, Martin memo to Newsom regarding courses for 1997-1998 academic year*) Plaintiff was also qualified to teach an array of courses, including various civil rights courses and employment law courses and any "core" courses, as needed by the University. (*Bullock's Answer to Complaint ¶ Ex. H, Bullock at 313; Ex. E, Resume of Dawn V. Martin*)

250) All law professors are expected to be able to teach any first year course. (*Ex. H, Bullock at 231*)

251) By March of 1998, only two of the available four or five vacant positions were filled – the advertised EEO/labor law position and the Commercial Law position. (*Ex. H, Bullock at 41*)

252) The Constitutional Law/civil rights position has never been filled. (*Ex. K, Smith at 167*)

253) Prof. J. Clay Smith has been recommending a permanent civil rights course added to the curriculum. (*Ex. K, Smith at 168-169*)

254) Plaintiff had been teaching Torts I, Torts II, Equal Employment Law and had “filled in” for another professor by teaching Evidence one semester. (*Ex. SSSS Martin memo A to Newsom regarding courses for 1997-1998 academic year*)

255) By memo dated May 6, 1998, the APT Committee represented to the Faculty that, since the selectee for the advertised Constitutional Law/Civil rights position declined the offer, the law school was able to use the resources for that position to fund the tax position to offer Prof. Vallario. (*Ex. QQQ*)

256) Prior to her offer for a visiting position, Prof. Vallario was already scheduled to teach tax, as an adjunct professor, for the following year, as she had previously done. (*Ex. QQQ*)

257) By letter dated April 20, 1997, Plaintiff was rejected for a tax position, with the statement that this was the only position available at the time. (*Ex. TTTT*) Plaintiff actually received this letter on April 16, 1997, since a copy was anonymously placed under her office door on April 16, 1997, and Plaintiff immediately went to speak to APT Chair, Prof. Leggett, to determine why the letter was written, but being held for four additional days. (*Ex. KK, Leggett at 329-330*)

258) Even with the hiring of Angela Vallario in April of 1998, there were two or three remaining vacant faculty positions, as of May, 1998, when Plaintiff’s contract terminated. (*Bullock’s Answer to First Amended Complaint, ¶ 326*)

259) Plaintiff had left a permanent, tenure-track teaching position in Cleveland to return to the Washington, D.C. area, based on representations that she could expect the visiting position to lead to a permanent, tenure-track position at Howard. (*Ex. A, Martin at 46-47*)

260) Howard's decision not to select or renew her for a faculty position, made after the academic "hiring season," left Plaintiff without a job, severely damaged her reputation and tremendously limited her career opportunities. (*Ex. A, Martin at 223-228*)

261) On May 15, 1998, Plaintiff filed charges of sexual harassment/hostile work environment and retaliation with the Equal Employment Opportunity Commission (EEOC). On May 26, 1998, Associate Dean Newsom called Plaintiff and ordered her to vacate her office, no later than May 29, 1998 – *three days' notice*. (*Ex. A, Martin at 197-200; Ex. Y, Newsom at 215-217, 267*) Plaintiff was still grading exams and they were not due until June 16, 1998. (*Ex. A, Martin at 199*) The other departing visiting professor, Betsy Levin, had not been asked to vacate her office. (*Ex. Y, Newsom at 214-220*)

262) Plaintiff refused to vacate her office until she had graded exams, but worked with the anxiety that, in her absence from the office, her belongings and teaching materials would be removed from her office without her consent or knowledge; however, her attention was devoted to grading exams, seeking employment and attending to her daughter who was very distraught about the prospect of moving away again and about her mother's loss of her job and income to support them. (*Ex. A, Martin at 223-228*)

263) When Plaintiff checked her campus mailbox, at some point after May 26, 1998, she found two memoranda from Dean Newsom, granting her request for an extension on turning in grades for one class and also requesting that she vacate her office. (*Ex. TTT and Ex. UUU*) The memos were dated May 21, 1998 and May 26, 1998, respectively, and asked her to vacate her office by May 26, 1998 and May 29, 1998, respectively.

264) New professors do not begin their contracts until on or about July 15th of each year (*Ex. Y, Newsom at 315-318*). Plaintiff's office was not needed to accommodate any new professor in May of 1998. Cunningham kept the office that she had maintained during her two years as a visitor and Mtima was assigned an office other than that of Plaintiff. (*Ex. 2002 Martin Declaration 33*) There were no other new faculty members hired for the 1998-1999 academic year. Betsy Levin was permitted to leave

her office in July, at her convenience, with no request that she leave by any particular date. (*Ex. Y, Newsom at 214-216*)

265) Dean Bullock instructed her faculty, “Don’t air our dirty laundry.” (*Ex. L, Boyer at 51; Ex. JJ, LaRue at 86*)

266) Plaintiff has been unable to find suitable employment since her non-renewal at Howard University and has had to take undesirable, unstable and difficult jobs, at a much lower rate of pay than she earned as a law professor. (*Ex. J, Martin 2002 Declaration ¶ 34*) She endured periods of unemployment that caused tremendous financial hardship for Plaintiff, who is a single mother. (*Ex. J, Martin 2002 Declaration ¶ 34*)

267) Ultimately, Plaintiff had to establish her own solo practice, which is struggling, partly due to the drain of this case on her small practice. (*Ex. J, Martin 2002 Declaration ¶ 35*)

268) Plaintiff was unavailable to fully care for her daughter’s needs during the last four years of her childhood, due to financial, time and stress-related health constraints directly resulting from her termination from Howard University. (*Ex. J, Martin 2002 Declaration ¶ 36*)

269) Plaintiff seeks reinstatement at Howard University School of Law, at the rank of full professor, with tenure. She also seeks back pay, compensatory and punitive damages and attorney’s fees.

Respectfully submitted,

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