

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Dawn V. Martin,

v.

Howard University, *et. al.*

No. 1:99CV01175
Judge: TFH/JMF

PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT

Plaintiff respectfully moves this Court for Summary Judgment on her claims of sexual harassment/hostile work environment and retaliation, in violation of Title VII and the District of Columbia Human Rights Act (DCHRA), and breach of contract. The Chief Judge set precedent in the District of Columbia when he denied Defendant’s *Motion to Dismiss* in *Martin v. Howard University*, 1999 U.S. Dist. LEXIS 19516, 81 FEP Cases (BNA) 964; 15 IER Cases 1587 (BNA) (D.C. D.C. 1999) ¹

MEMORANDUM IN SUPPORT OF MOTION

FACTS²

Plaintiff, Dawn V. Martin, began with Howard University as a Visiting Associate Professor at of law in July of 1996. Beginning in November of 1997, Professor Martin was stalked in her workplace by a

¹ This case has been cited/discussed in: 1) **Fair Employment Practice Reporter**, 81 FEP Cases (BNA) 964 (D.C. D.C. 1999); 2) **Individual Employee Rights Reporter**, 15 IER Cases 1587 (BNA) (D.C. D.C. 1999); 3) **EEOC Newsletter**, January 2000; 4) **BNA Daily Labor Report**, ISSN 0418-2693, January 11, 2000; 5) **Daily Labor Reporter**, ISSN 1043-5506, January 17, 2000; 6) 3-46 Larson on Employment Discrimination @46.05n.127; 7) 3-46 Larson on Employment Discrimination @46.034 n.62; 8) **The Twenty-Fourth Annual Law Review Symposium: Sexual Harassment in the Workplace: Fifteen Years after Meritor Savings Bank: Symposium Article: Have We Come Full Circle?** 27 Ohio N.U.L. Rev 439 (2001); 9) 5 No. 12 **Andrews Sex. Harassment Litig. Rep.** 5 (February 2000); 10) **WOL A.M. radio**, May of 2000; 11) **WPFW, F.M. radio**, June of 2000; 12) Holland and Knight, P.C. (law firm representing Howard University warned other universities not to act as Howard did) <http://www.hklaw.com/newsletters.asp?ID=95&Article=467>; 13) Lawroom, www.lawroom.com/download/CR005.pdf, 14) Venable Bates, P.C., <http://www.venable.com/newsletters/wlu/2003/newsltr1.pdf>, 15) http://www.ncbl.com/archive/02_-00labor.html, 16) Hand Arendall, P.C. <http://www.handarendall.com/0400NLRev.htm>, 17) <http://www.michbar.org/publications/labor2000.html>, 18) College Publications, www.collegepubs.com/ref/SfxNdx35.shtml; 19) Presentation before American Association of University Professors, <http://www.cg2consulting.com/AAUP-Presentation.html>; 20) *Law Offices of Dawn V. Martin*, www.firms.findlaw.com//dvmartinlaw.

² The detailed facts are set forth in the accompanying *Material Statement of Undisputed Facts* (hereinafter, “Facts),” with citations to the record, as required by the Local Rules of this Court.

homeless stranger with a criminal record, a history of violence and a pattern of targeting African-American female professors and attorneys, pursuing them as his “wife.”

Plaintiff immediately reported the stalking to the law school administration, Howard security and the D.C. Metropolitan Police Department. Plaintiff repeatedly asked the administration, particularly the Dean, Alice Gresham-Bullock, to bar the stalker from campus, but the University took no reasonable steps to keep the stalker out of the workplace, despite the availability of barring procedures already set in place by Howard University campus security. Plaintiff endured a hostile work environment, pervaded by sexual harassment by the stalker, from November 20, 1997 until the end of her employment with Howard University, in June of 1998.

Plaintiff continued to perform all of her teaching duties, taking certain precautions to protect her students, her teenage daughter and herself from the stalker. Despite thirteen years of outstanding civil rights legal practice/policy-making, four years of teaching equal employment law and torts, noteworthy scholarship in the area of equal employment law, excellent student evaluations and student petitions and letters in support of her renewal, Plaintiff was not selected for a permanent position or even a renewed visitorship. Plaintiff had left a permanent, tenure-track teaching position in Cleveland to return to the Washington, D.C. area, based on representations that the visiting position would be converted to a permanent, tenure-track position at Howard. This decision, made after the academic “hiring season,” left Plaintiff without a job, severely damaged her reputation and tremendously limited her career opportunities. Plaintiff seeks to be restored to the place that she would have been absent the retaliation. She seeks reinstatement, as a full professor at Howard University, with tenure, compensatory and punitive damages, as well as attorneys’ fees.

ARGUMENT

I. STANDARD OF REVIEW FOR MOTION FOR SUMMARY JUDGMENT

Rule 56 of the Fed. R. Civ. P. provides that summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a

matter of law." *Adickes v. S.H. Kress and Co.*, 398 U.S. 144 (1970). Summary judgment is also appropriate where "no reasonable juror" could determine the facts in favor of the opposing party, in light of the evidence presented. *Woodfield v. Providence Hospital*, 779A.2d 933, 936 (D.C. 2001).

II. **HOWARD SUBJECTED PLAINTIFF TO A HOSTILE WORK ENVIRONMENT BASED ON SEXUAL HARASSMENT**

On December 15, 1999, this Court set forth the legal analysis in this case, holding: "although Mr. Harrison was not a University employee, the University is liable for the harassment if it knew or should have known that Mr. Harrison's actions created a hostile work environment for the Plaintiff and failed to take corrective action." *Martin v. Howard University*, 1999 U.S. Dist. LEXIS 19516. It is well documented that Defendant knew that Harrison was harassing Plaintiff in her workplace. Howard's own officials and employees corroborated Plaintiff's claims that: 1) she was harassed by Leonard Harrison in her workplace; 2) the harassment by Harrison was sexual in nature and/or based on sex; 3) Plaintiff's fear of Harrison was reasonable; 4) Plaintiff's specific requests to the administration to take action to stop Harrison were reasonable; 5) Howard's administration never took the steps that it acknowledged were reasonable to stop the harassment; and 6) since Harrison was never apprehended or barred from campus, Plaintiff worked in reasonable fear of Harrison from November of 1997 through the spring of 1998.

A. **Harrison's Harassment of Plaintiff was Both Sexual and Based on Sex**

Again, in its December 15, 1999 opinion, this Court set the legal analysis for this case, holding:

A hostile work environment may be established if the harassment is "because of sex," even if not sexual in nature. [Spain v. Gallegos, 26 F.3d 439 \(3d Cir. 1999\)](#); [Hicks v. Gates Rubber Co., 928 F.2d 966, 971 \(10th Cir. 1991\)](#); [Hall v. Gus Const. Co., Inc., 842 F.2d 1010 \(8th Cir. 1988\)](#). In this case, it is clear that Plaintiff was only the object of Mr. Harrison's attention because she was a female; therefore, the alleged stalking activities do appear to have been "because of sex" even if they were not inherently sexual in nature.

1999 U.S. Dist. LEXIS 19516. Harrison's pursuit of Plaintiff as his "wife" was inherently sexual, since the relationship between a husband and a wife is expected to include sex. In addition, Harrison's description of Plaintiff expresses that sexual interest:

Verily, it appeared that this Valerie Edwards look-alike was actually a taller, more youthful, prettier and (forgive me for saying) more voluptuous woman than the Valerie Edwards whom I had met and known at Lakeside. . . .The truth is, I had never looked at

Valerie Edwards full in the face, on account of painful bashfulness -- while enamored by her person and both distracted and infatuated with her legs -- and so was not aware of her exact features.

Harrison's harassment of Plaintiff, therefore, was both sexual and based on sex.

B. Harrison's Harassment of Plaintiff was Severe and Pervasive

In its December 15, 1999 opinion, this Court applied the legal standard for determining a hostile or abusive work environment *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 23 (1993). 1999 U.S. Dist. LEXIS 19516.

A court must consider: (1) the frequency of the discriminatory conduct, (2) whether it was physically threatening or humiliating or a mere offensive utterance; and (3) whether it unreasonably interferes with an employee's work performance. The severity or seriousness of alleged conduct varies inversely with the pervasiveness or frequency of the conduct; in other words, "one act may be sufficient if it is particularly severe while less intense incidents may be sufficient if numerous." The Court must consider both the victim's subjective impressions and whether the alleged actions would constitute sexual harassment from the perspective of a reasonable victim. (*Id*)

1. **Harrison's Harassment of Plaintiff was Frequent and Unpredictable**

Harrison's known, specific acts of sexual harassment of Plaintiff are characterized as follows: 1) slipping two letters under the door of Plaintiff's office; 2) leaving a first voice mail message on Plaintiff's office telephone line, requesting to audit a class that she did not teach at Howard, but had taught in Cleveland; 2) leaving a second voice mail message, weeks later, professing his desire for Plaintiff, calling her a name that was not her own, but a mispronunciation of her unusual middle name; 3) indicating that he had been watching her, although she had been completely unaware of his presence; 4) leaving a third voice mail message, angry that he had been escorted out of the law school library, asking her to get the "f---ing cops" off his back so that he could come to see her at her office; 5) going to Plaintiff's office to confront her, at least once, when she was in her office and was chased off campus and into the woods; 6) going to Plaintiff's office when she was not there, looking for her, as evidenced by his letters under her door and his voicemail messages stating his intent to visit her; and 7) frequenting campus buildings, including an incident when he was escorted out of the library instead of being held for MPD.

Since Harrison was never barred from the campus and “notices of alert” were never posted anywhere or otherwise distributed on campus regarding Harrison, he freely entered the law school buildings. The most severe and pervasive aspect of Harrison’s harassment was that the threat that he would show up hung over her head, like the “sword of Damocles.” Plaintiff worked in fear of other visits from Harrison, at all times from November 20, 1997 through June of 1998, when her employment at Howard University ended.

C. **The Harassment was Physically Threatening and Humiliating**

Plaintiff’s fear of physical harm by Harrison was imminently reasonable. MPD officers and the Assistant Director of the homeless shelter told Plaintiff that she should be afraid of Harrison. (Facts, ¶ 36, 40) Dean Bullock, Associate Dean Newsom, Mrs. Bruner, professors and all of Defendant security personnel deposed in this issue have consistently testified that Plaintiff had good cause to be afraid of Harrison. (Facts, ¶ 60-61, 65-67, 85, 99) Even former Dean Bullock specifically conceded that anyone in Plaintiff’s position would feel “mental anguish,” being pursued by Harrison. (Facts, ¶ 65)

Plaintiff later learned that Harrison’s search around the country (Facts, ¶ 62, 66, 67) and beyond (Facts, ¶ 66) for more than a decade and included a visit to NYU Prof. Derrick Bell, in 1990, when he was a law professor at Harvard University. (Facts, ¶ 66, 67) Harrison detailed to Bell his plans for a racial revolution. (Facts, ¶ 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 starting a racial revolution. (Facts, ¶ 67) One message indicated that **Harrison frequents the Library of Congress, as well as universities, to conduct his “research” on “revolution.”**³

Harrison told Bell that, at that time, “I’m coming back to blow your head off.” (Facts, ¶ 67) 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. (Facts, ¶ 67) 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. (Facts, ¶ 67)

In addition to the physical threat, 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. (Facts, ¶ 69) Plaintiff had heard these rumors and was humiliated by them. 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. (Facts, ¶ 70) Plaintiff was further humiliated by having students see her escorted by campus police officers and by holding office hours in the cafeteria, rather than in her office. She was embarrassed asking Mrs. Bruner to watch the ladies' room door while she was inside. Any reasonable person in Plaintiff's position would feel threatened and humiliated by Harrison's behavior.

D. Harrison's Harassment of Plaintiff Unreasonably Interfered with her Work Performance

From December 2, 1997, when Harrison was chased from Plaintiff's office, 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. (Facts, ¶ 71) Plaintiff held office hours in the cafeteria to avoid confronting Harrison in her office. (Facts, ¶ 71) Plaintiff was afraid to stay in her own office, walk through the law school building, library, or even to the ladies room alone. (Facts, ¶ 99) Plaintiff disguised herself, in her teenage daughter's hooded parka, walking from the parking lot, to attend faculty meetings in the evening. (Facts, ¶ 99) Plaintiff "hid" in a colleague's office while a security guard chased Harrison from her office, through the premises, off campus, and into the woods. (Facts, ¶ 53) It cannot be disputed that Harrison's harassment of Plaintiff severely altered her work environment and her working conditions.

F. Howard University had a Duty to Take Measures Reasonably Calculated to End the Harassment

In its December 15, 1999 opinion, this Court set precedent in the District of Columbia by adopting the precedent set in other jurisdictions having considered the issue of employer liability for a third-party

³ This threat should be of concern to members of Congress and others, with respect to national security.

harasser, as well as the standard set forth in EEOC Guidelines. 1999 U.S. Dist. LEXIS 19516. EEOC Guidelines on Discrimination because of sex, 29 C.F.R. § 1604.11(e), provides that:

an employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases, the Commission will consider the extent of the employer's control and any other legal responsibility, which the employer may have with respect to the conduct of such non-employees.

The Tenth, First, and Eighth Circuits have specifically adopted EEOC Regulation 29 CFR 104.11(e) for evaluating employer liability for sexual harassment of employees by non-employees. In Lockard v. Pizza Hut, 162 F.3d 1062 (10th Cir.1998), a restaurant was held liable for failing to prevent the sexual harassment of a waitress by a customer. Lockard held that the standard of liability applies to both co-worker and non-employee harassment, such that “employers may be held liable in these circumstances if they “fail to remedy or prevent a hostile or offensive work environment of which management-level employees knew, or in the exercise of reasonable care, should have known.” 162 F.3d at 1073. “An employer who condones or tolerates the creation of such an environment should be held liable regardless of whether the environment was created by a co-employee or a non-employee, since the employer ultimately controls the conditions of the work environment.” *Id.*

In this case, the University had a separate duty, under the law of negligence, to take reasonable measures to protect Plaintiff and others on campus from the threat of physical harm by Harrison. The University employs a campus security force for the specific purpose of protecting faculty, staff, students and visitors from physical harm. (Facts, ¶ 78, 81) The University had a duty to use these resources to take reasonable measures to protect Plaintiff and others on campus from both physical harm and sexual harassment.

2. Campus Security Procedures and Protocol Required Dean Bullock to Take Specific Actions to Protect Plaintiff and Other Women on Campus from Harrison

The first step in addressing the stalking problem should have been to meet with the Director of Security, Lawrence Dawson, to obtain the expertise of Howard’s own law enforcement force trained to protect persons and property on the University’s property. Dawson met with Newsom and Dean of

Students Denise Purdie to discuss security matters at the law school at least twice per year, and the stalking was never mentioned in the visits. (Facts, ¶ 81) 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. (Facts, ¶ 81, 87)

Although Dean Bullock indicated to Plaintiff, in her December 1, 1997 memo, that she would address the stalking with Director Dawson, she never did. (Facts, ¶ 55, 58) Plaintiff relied on Bullock's acknowledgment that it was her responsibility to handle the matter. Dawson testified that behavior characterized as *stalking is actually common at Howard University*, but that, 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. (Facts, ¶ 76) Dawson characterized the stalking of Plaintiff by Harrison as "serious." (Facts, ¶ 77)

Based on Howard University's own campus security 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 (Facts, ¶ 78) 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 (Facts, ¶ 78); 3) campus security should have conducted an investigation, coordinating with MPD (Facts, ¶ 78); 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 (Facts, ¶ 78); and 5) when Harrison announced his arrival, MPD should have been notified. (Facts, ¶ 78)

G. Dean Bullock Refused to Take Measures Reasonably Calculated to End the Harassment

An employer is required to take measures "reasonably calculated to end the harassment." *Ellison v. Brady*, 924 F.2d at 881. In *Wilson v. Tulsa Junior College*, 164 F. 3d 534 (10th Cir. 1998), a custodial

employee of the University was harassed by her supervisor on the University's campus, while on duty. The plaintiff was awarded \$100,000 in compensatory damages because the University failed to take "prompt and appropriate corrective action" to eliminate the sexual harassment. 164 F.3d at 539. Once University management (in the form of campus police) became aware of the *first* reported incident of conduct constituting harassment, "the response of the campus police was grossly inadequate." 164 F.3d at 540. The supervisor of Campus Security "did nothing for eight hours, neither reporting the incident to Personnel nor taking action to prevent (the harasser) from repeating his threatening sexual behavior." *Id.*

The incident of sexual harassment in *Wilson* occurred on only one occasion -- Plaintiff's supervisor exposed himself to her and asked for oral sex. The University was held liable, even though it permitted a police undercover investigation on its premises, suspended the alleged sexual harasser while conducting an investigation, and reassigned the alleged harasser to a post where the plaintiff had no interaction with him. The University's actions were held not to be immediate and appropriate. 164 F.3d at 539. Howard's administration did absolutely nothing on November 20, 1997, when Plaintiff first asked for assistance in addressing Harrison's harassment of her in the workplace. Plaintiff had to enlist the assistance of Officer Sirleaf, on her own, and call MPD with his assistance. (Facts, ¶ 34, 35) Associate Dean Newsom did not call the police or campus security (Facts, ¶ 36, 37), but had to be convinced to attend even a portion of the meeting with MPD and security and then, was no assistance, but a hindrance, yelling at Plaintiff while she was asking the practical consequences of prosecuting someone for stalking on the facts assessed at that time. (Facts, ¶ 38)

On November 25, 1997, Harrison was escorted out of the library instead of being held for MPD. No bar notice had been issued to keep him off campus and the officer called to the scene was unaware that Harrison had been stalking Plaintiff Martin or that he was to be barred from campus and held for MPD. (Facts, ¶ 31, 42) Plaintiff specifically related the incidents to Dean Bullock in a memorandum delivered on the same day. (Facts, ¶ 43,-45) Plaintiff did not receive any acknowledgment of her November 25,

1997 memo until December 3, 1997.⁴ (Facts, ¶ 55) Dean Bullock ignored Plaintiff's November 25, 1997 memo -- *not for eight hours*, as in *Wilson* -- but for *eight days!* Even then, Dean Bullock's memorandum was not responsive to Plaintiff's concerns or predicament, but merely stated, "I am discussing the matter of security generally with Mr. Dawson, Director of Security." (Facts, ¶ 55) In fact, she did not speak to Dawson generally, or specifically, about Harrison's stalking of Plaintiff. (Facts, ¶ 57, 58)

On December 1, 1997, after receiving an ominous message from Harrison announcing that he would come to her office at 1:30 that afternoon, warning her to call the "f---king cops" "off of" him (Facts, ¶ 46), Plaintiff stood shaking in Dean Bullock's office and refused to return to her office or go to her classroom without protection. (Facts, ¶ 48) Dean Bullock instructed a subordinate to call campus security and arrange to have a guard placed in Plaintiff's Office for the day. (Facts, ¶ 49) Bullock did not call security herself, nor did she even convey to her assistant or anyone in security, the history of Harrison that she had at her fingertips, provided to her in Professor Martin's November 25, 1997 memo. (Facts, ¶ 49, 82, 94) Had she done so, the campus security force could have taken the actions appropriate to address delusional stalking by a violent criminal, pursuant to Howard's own campus security policies, in cooperation with MPD. (Facts, ¶ 78) Without that information, however, campus security was at a severe disadvantage for understanding the situation or how to address it and assumed that Harrison would not be armed or dangerous. (Facts, ¶ 92-94)

Bullock only made the gesture of directing her assistant to call security, with the limited instruction of having an officer assigned to her classroom at 12:00, to placate Plaintiff and get her out of her office. Bullock never took further action, although she was specifically informed, that, on that very day, Officer Dowdy chased Harrison out of the building, off campus and into the woods and Plaintiff notified her of these facts in writing. (Facts, ¶ 53) Harrison was delusional, obsessed with Plaintiff, had a criminal record, and a history of violence -- including armed robbery and assault. (Facts, ¶ 39-94) Harrison reached Plaintiff's office door, within approximately four feet of her. (Facts, ¶ 53, 95)

⁴ The memorandum was dated December 1, 1997, but was not placed in Plaintiff's campus mailbox until December 3, 1997.

Howard's own campus police Deputy Chief Armstrong acknowledged that Harrison was close enough to Professor Martin to shoot her with a gun or to cut her with a knife. (Facts, ¶ 95)

There are only two entrances to the law school building. (Facts, ¶ 79) A "mug shot" was easily accessible and campus police already had a description from MPD and the homeless shelter. (Facts, ¶ 39, 41) Officer Dowdy had seen Harrison up close and talked to him when he previously escorted Harrison off campus. Having been put on specific notice that Harrison was planning to go to Plaintiff's office, that day, at approximately 1:30 p.m., Harrison should have been stopped at the door. MPD was already looking for Harrison with respect to the stalking and should have been called to assist.

Howard's actions were not "reasonably likely to prevent the misconduct from recurring." *See Wilson*, 164 F.3d at 540 (defining "appropriate" employer action to eliminate sexual harassment). The present case is more egregious than the situation faced by the plaintiffs in *Wilson* and *Ellison*. In both *Wilson* and *Ellison*, the sexual harassers were known to the victims and the employers. Harrison would understandably be more frightening than an employee whose job depended upon his behavior and whom the employer has had the opportunity to observe and even investigate. As in *Wilson*, Howard's refusal to take reasonable measures to stop the sexual harassment "aggravated the threat" to Plaintiff. In *Wilson*, the Defendants informed the sexual harasser of Wilson's complaint. In the present case, Plaintiff had repeatedly expressed her concern that improper handling of Harrison would make him angry and thus, a greater threat to her and her daughter (if he discovered where she lived), and that precautions should be designed to apprehend him rather than simply anger him and leave him at large. (Facts, ¶ 37)

When Harrison was found in the library, the University escorted him off campus rather than hold him for MPD officers, and did not even bar him from campus. (Facts, ¶ 41, 96) Harrison was only chased from the premises on December 1, 1997 only because he had announced his arrival time and a security officer were waiting for him. (Facts, ¶ 50, 51) Even then, Harrison walked freely into the law school building and took the elevator or walked up five floors to Plaintiff's office, undetected and unfettered. (Facts, ¶ 50, 51) He was chased off campus by one guard, *with no posting of additional guards or even notice to the guard at the front desk*. (Facts, ¶ 50, 51) As in *Wilson*, Defendant "never

evinced an intention of protecting (Plaintiff)” or “preventing the reoccurrence of the (sexual harasser’s) conduct.” 164 F.3d at 540. No reasonable juror could conclude otherwise.

2. Dean Bullock Refused to Take even the Most Basic Steps to Eliminate the Hostile Work Environment

Assistant Dean Newsom testified that he wrote the memorandum to Dawson, on December 22, 1997 – more than a month after the stalking began and 21 days after Harrison was chased from Plaintiff’s office. (Facts, ¶ 85) The memo, however, addressed the stalking only as one of the three unrelated “security concerns” – including a missing printer and vagrants in the student lounge. (Facts, ¶ 85) Newsom attached the Security Notice written by Plaintiff, because it was “the right thing to do” (Facts, ¶ 85) and because he was worried about Plaintiff’s safety, as well as the safety of other women on campus (Facts, ¶ 85) Even then, however, he acknowledged that *the notice was never posted* and that he did not follow up to ensure that it be posted. (Facts, ¶ 85) Newsom and Bullock could have had the notices posted in the law school and library and distributed in faculty and student mailboxes, but they simply did not do so. (Facts, ¶ 86)

This option was so available, obvious and reasonable that, when 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.* (Facts, ¶ 85) Newsom’s December 22, 1997 memo was not produced as part of the campus security production (Facts, ¶ 87) and there is no evidence that the memo was ever received by anyone in campus security. The only document produced as part of Howard University campus security records, after a purportedly “exhaustive search” by Howard University through its campus security files, after three Court Orders and a Contempt finding against Howard for failing to produce discovery, was Officer Sirleaf’s initial November 20, 1997 report and the desk blotter entry recording Officer Sirleaf’s report. (Facts, ¶ 88) Although Dowdy testified that he was certain that he had completed and submitted to his superiors and Incident Report, on December 1, 1997, after he chased Harrison from Plaintiff’s office, off campus and into the woods, Howard claims that it could find no such report in its records. (Facts, ¶ 89)

Associate Dean Newsom specifically testified that all of the measures that Plaintiff asked be taken to protect her from Harrison in her workplace were “reasonable” (Facts, ¶ 90) – to bar Harrison from campus, to notify faculty, staff and students that Harrison was barred, to call the police if he were seen on campus, and to post officers at the door if Harrison announced his arrival. Newsom then admitted that *none of these measures was ever taken*. (Facts, ¶ 90) It is undisputed, that Howard failed to fulfill its legal obligations to take measures “reasonably calculated to end the harassment.”

III. Dean Bullock Retaliated against Plaintiff by Denying her a Permanent, or Renewed, Faculty Appointment

On December 15, 1999, this Court held that, since Plaintiff's complaints about Mr. Harrison and campus security were closely followed by the adverse actions, Plaintiff has demonstrated a sufficient causal connection to establish a *prima facie* case of retaliation. 1999 U.S. Dist. LEXIS 19516, [citing Ramirez v. Oklahoma Dep't of Mental Health, 41 F.3d 584, 596 \(10th Cir. 1994\)](#) (adverse action a month and a half after protected activity constituted circumstantial evidence of retaliation). In order to establish a *prima facie* case of retaliation, Plaintiff must show that: (1) she was engaged in protected activity under Title VII; (2) she was subjected to adverse employment action; (3) and a causal connection exists between the protected activity and the adverse action. *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 252-253 (1973).

A. Plaintiff has Established a Prima Facie Case of Retaliation Since Howard Took Adverse Actions against Plaintiff “on the Heels” of her Complaints of Conduct Constituting Sexual Harassment

As this Court held on December 15, 1999, Plaintiff's November 20, 1997 and November 25, 1997 complaints of conduct constituting sexual harassment is protected activity. The victim of sexual harassment need not specifically say the words “sexual harassment” to be protected. 1999 U.S. Dist. LEXIS 19516. *See also Powel v. Las Vegas Hilton Corp*, 841 F. Supp. 1024, 1025 (D. Nev. 1992) (where the harasser is a non-employee, protected opposition under Title VII includes the statement to the employee, "I don't have to take this," or a simple request to the employer to "do something"); *Howard University v. Green*, 652 A.2d 31, 46 (D.C. App., 1994) (there are no "magic words" which must be

chanted in order to invoke Title VII protection), citing [EEOC v. Crown Zellerbach Corp., 720 F.2d 1008, 1012-1013 \(9th Cir. 1983\)](#). Plaintiff reported to Deans Bullock and Newsom conduct that constituted a hostile work environment and asked them to take reasonable measures to eliminate the hostile work environment.

Almost immediately after Plaintiff wrote the November 25, 1997 memorandum to Dean Bullock requesting protection from Harrison, Deans Bullock and Newsom began a campaign of retaliation against her, including: 1) Dean Newsom's November 30, 1997 demand that Plaintiff reduce the number of journals to which she could send her articles from 180 to 30 – despite the norm of approximately 200 (Facts, ¶ 107-111); 2) Dean Bullock's December 2, 1997 *personal* call to Plaintiff to demand that she immediately pick up the “very important” letter (the form letter sent to all professors whose contracts were terminating at the end of the year, pending the APT Committee's decisions on new contracts) while failing to provide any personal response to Plaintiff's complaints about being stalked on campus (Facts, ¶ 112-113); and 3) Dean Newsom's December 10, 1997 memo demanding that she provide the office with office hours, reminding her of the “seriousness” of keeping office hours, when: a) the semester was over; b) Plaintiff had actually provided the hours months earlier; and c) before the semester ended, Plaintiff was holding office hours in the cafeteria to avoid the stalker. (Facts, ¶ 113-114)⁵ So, at the same time that Deans Bullock and Newsom were doing absolutely nothing to protect Plaintiff from the campus stalker, they sent her a memo implying that she was in “serious” violation of a requirement of her job by not sitting in her office during posted office hours, waiting, *like a “sitting duck” for Harrison!*

The burning question is why Deans Bullock and/or Newsom would not have taken the obvious and appropriate steps to protect one of their own professors, as well as the rest of the Howard Law School community, by utilizing the procedures already set in place by campus security. Both deans have

⁵ Howard never produced this letter or Plaintiff's response; however, after Newsom's first deposition, Plaintiff reviewed old teaching materials in response to new information obtained during the deposition and produced them. When former Dean Bullock was asked why she had not produced her copies of these letters, she replied that, when she receives a copy of a document that the Associate Dean should have filed, she looks at it and makes a determination as to whether to throw *it in the trash*. (Facts, ¶ 115)

admitted that they did not take the obvious actions, but neither dean is explaining why. One can only surmise, then, based on the facts. Prior to January 12, 1998, neither Plaintiff nor Howard's administrators knew that Harrison was a serial campus stalker. (Facts, ¶ 62) They only knew that Harrison professed a belief that Professor Martin was his "wife." Perhaps they never saw Harrison as a threat to anyone but Plaintiff and believed that if they eliminated Plaintiff from Howard's campus, they would eliminate the need to take any action to keep Harrison off campus. Perhaps they did not want to post notices, distribute flyers, or make an announcement during a faculty meeting, because did not want faculty, staff and students to "panic," or for students to be dissuaded from coming to Howard by news of a stalker of women on campus.

Deans Bullock and Newsom may well have intended to cause Professor Martin's constructive discharge. At least one student, friends and numerous people in Plaintiff's family, including her distraught fourteen-year old daughter, advised and/or begged Plaintiff not to return to Howard for fear of Harrison,⁶ however, Plaintiff is not a person who neglects her obligations. In addition, she was not financially able to simply "walk away" from her job – and in essence, her career as a law professor, since it would surely have been held against her at other Universities.

Despite the hostile work environment, Professor Martin continued to perform her teaching duties, continued her extra exam-taking sessions for her students and made herself available to them, even if in the cafeteria. (Facts, ¶ 71, 98, 142, 174) She exercised self-help, through prayer, carrying mace and staying in open areas as much as possible (Facts, ¶ 71, 98) while Deans Bullock and Newsom harassed her with contrived, petty accusations about the performance of her job duties.

As part of an overall plan to ensure that Professor Martin did not return to Howard's faculty for the academic year of 1998-1999, Deans Bullock and/or Newsom took five separate actions against Professor Martin because she complained about a hostile work environment and requested protection from Mr. Harrison. Dean Bullock retaliated against her by: (1) influencing the APT Committee, through

⁶ Martin's family was particularly concerned because her cousin/childhood playmate had been brutally murdered by a deranged man only a few years earlier. Martin's aunt to die of a heart attack two months thereafter, due to the

Taslitz, to deny Plaintiff's application for a permanent position on December 18, 1997 (Facts, ¶ 187, 188, 159, 160); (2) failing to authorize the APT Committee to fill vacant positions in the spring of 1998, because she believed the ATP Committee would recommend Plaintiff for one of these positions (Facts, ¶ 236, 253); (3) converting a Constitutional Law/Civil Rights position into a Tax/Trusts and Estates position in April 1998 so that the APT Committee could not consider her for the position (Facts, ¶ 237, 238, 257); (4) ordering Plaintiff on May 26, 1998, to vacate her office by Friday, May 29, 1998, immediately after receiving notice of Plaintiff's EEOC charge (Facts, ¶261-264). So, for her dedication and bravery, Plaintiff was "rewarded" with Dean Bullock's animosity, callousness and the demise of her previously outstanding 17-year legal career.

B. Dean Bullock's Hostility Toward Plaintiff for Requesting Protection from the Stalker

Dean Bullock's animosity toward Plaintiff for her requests for protection against the stalker are expressed in Dean Bullock's 8, 1999 Statement to EEOC investigators. The investigator recorded the statements in the business records of the EEOC.

Martin did not seem satisfied with my response. I was left with the impression that she wanted me to wrestle the stalker down.⁷

(Facts, ¶ 187) Of course, Plaintiff never asked the dean to "wrestle" with the stalker. Dean Bullock's sarcastic, callous and hostile response to the issue, even by the time the issue reached the EEOC, demonstrates the hostile attitude of Bullock toward Plaintiff for her complaints of being stalked in her workplace.

Taslitz asked Bullock how she was doing. (Facts, ¶ 190) Bullock replied, "Did you hear about Dawn's stalking incident?" (Facts, ¶ 190) Taslitz replied, "Yes, she has told me about it." (Facts, ¶ 190) Bullock then stated that she was having a bad day because she had a lot to do "in response to that."

stress of losing her daughter in this manner. (Facts, ¶ 100)

⁷ 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. Bullock "marked up" a copy and had every opportunity to disclaim any statement in accurately attributed to her. This particular quote has appeared repeatedly in Court pleadings/filings, and each member of the APT Committee was also asked to review their EEOC draft affidavits, so Bullock should have reviewed the document, with counsel, well before her deposition.

(Facts, ¶ 190) Bullock did not do “a lot” to protect Plaintiff from the stalker, but rather, she began to retaliate against Plaintiff, as described above; consequently, these words can only represent Bullock’s “feeling” that she was being “put upon” by Plaintiff to focus the administrations’ and faculty’s attention on her.

C. Relationship between Dean and APT Committee

From the early 1980s through 2001, the APT Committee at Howard Law School was “terminal Committee” that included only five members. (Facts, ¶ 125) Howard’s full faculty did not vote on AP Committee decisions. (Facts, ¶ 125) The five Committee members made the hiring recommendations to the Dean. (Facts, ¶ 125) The Dean then made an independent recommendation, to be sent to the Provost, along with the Committee’s recommendation. (Facts, ¶ 125)

Where the APT Committee and the Dean different judgment on a candidate, the Dean would likely “come to the Committee” with concerns, rather than oppose the Committee’s recommendation because of the “collegiality” aspect that is at stake there.” (Facts, ¶ 126) APT Committee member Prof. J. Clay Smith, a former Dean of Howard School of Law, and a former General Counsel and Acting Chairman of the EEOC, has been a professor at Howard Law for many years, indicated that he is not aware of any time that a dean has told the APT Committee that he/she disagreed with its judgment, and that the Committee views its recommendation as final. (Facts, ¶ 126)

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.

(Facts, ¶ 126) Despite this backdrop, Dean Bullock did reveal to her Associate Dean, that she had made an independent decision to recommend that Plaintiff not be hired for a permanent faculty position. (Facts, ¶ 208) She also repeatedly disparaged Plaintiff to the Vice Chair of the APT Committee, Prof. Taslitz. (Facts, ¶ 191) *Dean Bullock always had the veto power*; however, based on “the collegiality

aspect of it,” and not to offend the APT Committee’s sense of independence, Bullock did not share with the entire APT Committee her decision regarding Prof. Martin. To do so may well have incited the Committee to assert its independence and/or to examine the credibility of a colleague who misrepresented Plaintiff’s qualifications and/or those of Plaintiff’s “competition.” In a faculty already divided, a split decision sent to the Provost would not send a favorable message regarding the relationship of the dean to her faculty. Bullock therefore carefully selected only one APT Committee member – Taslitz – to influence, and dared not discuss her animosity toward Plaintiff with any other Committee members.

D. Bullock Retaliated against Plaintiff by “Poisoning” the APT Committee through Prof. Taslitz

1. Dean Bullock’s Derogatory Comments about Plaintiff to APT Vice chair Taslitz

Dean Bullock repeatedly told Prof. Taslitz that Plaintiff had “bad judgment” (Facts, ¶ 191) Taslitz said that, even though he asked, Bullock never gave him even one example of this purportedly “bad judgment.” (Facts, ¶ 191) Taslitz claimed that Bullock and Newsom made these disparaging remarks about Plaintiff beginning in her first year of teaching – before the stalking began; however, Taslitz was admittedly unclear on the timing of events (Facts, ¶ 191) and could not even recall when he took his own sabbatical to write his Evidence casebook. (Facts, ¶ 191) Taslitz said that he “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. (Facts, ¶ 192) This meeting took place on or about December 2, 1997. Taslitz’ reference to a faculty meeting that took place in December of 1997 reveals that the time that he recalls Dean Bullock disparaging Plaintiff’s “judgment” was in early December of 1997 – within days after the stalking was reported to her.

Taslitz’ own involvement in the occurrences related to the retaliation and breach of contract claims provide motivation for him to “recall” events and timing in ways that lessen the University’s liability. Bullock’s admissions regarding her disparaging comments about Plaintiff are quite a

revelation, since, for the past four and a half years, she claimed that she had no part in the APT Committee's decision, that she exerted no influence over anyone on the APT Committee with respect to Plaintiff's non-selection and non-renewal. 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.*" (Facts, ¶ 207) Bullock's constantly changing sworn (and unsworn) uncorroborated statements make her completely unworthy of belief. *See also* Plaintiff's August 3, 2001 *Motion for a Default Judgment Due to Howard University's Production of Late, Incomplete and Falsified/Tainted Evidence.*

In her *Answer to the First Amended Complaint*, Bullock admitted that Plaintiff was good professor who was very well liked by her students. (Facts, ¶ 179) Indeed, in the face of two student petitions (Facts, ¶ 178), a formal student protest (Facts, ¶ 178), the Dean's meeting(s) with Student Bar Association President Gerald Smalls (Facts, ¶ 178) and the many student letters protesting Professor Martin's non-renewal, Dean Bullock would have to make this admission. Indeed, in her Answer to the First Amended Complaint, she admitted that Plaintiff's student evaluations were above average. (Facts, ¶ 178) 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. (Facts, ¶ 179)

Taslitz also testified that Associate Dean Newsom told him that Plaintiff was making problems for his office; however, Newsom testified that he does not recall discussing Plaintiff with Taslitz at all (Facts, ¶ 208) All four of the remaining members of the APT Committee, as well as three additional senior faculty members deposed, testified that they had never heard such accusations about Plaintiff, and, to the contrary, found her to be quite collegial and pleasant. (Facts, ¶ 185, 209, 211)

Dean Newsom claimed that Plaintiff was on a "short list" of people causing problems for the University (Facts, ¶ 208)⁸ and that Dean Bullock had shared with him that she had decided not to select Plaintiff for a permanent position. (Facts, ¶ 208) The "troublemaker" and "complainer" description, provided by Dean Bullock and her closest assistant, is consistent with Plaintiff's claims of retaliation.

⁸ Three of the four other people on the list are tenured professors and one is a decision-maker in this case. Some of the reasons for being on Newsom's "list" include turning in grades late and experiencing problems

Dean Bullock considered Plaintiff a “troublemaker” for requesting protection against the homeless stranger, with a criminal record of violence, who was roaming the law school halls stalking her. Bullock’s deposition makes it abundantly clear that she harbors intense animosity for Plaintiff. Prior to this deposition nearly five years after the APT Committee’s December 18, 1997 decision, Bullock appears to only have shared these “views” about Plaintiff in some clandestine meetings with Taslitz.

C. **Dean Bullock Used Taslitz to Misrepresent Plaintiff to the APT Committee**

Profs. Nolan, Smith, Leggett and LaRue may well have believed that they were making a good faith decision, in the best interests of Howard, based on what they believed were the objective qualifications of the candidates; however, their testimony demonstrates that they were misinformed when they made their decision. Theses four of the five members of the APT Committee appear to be completely oblivious to the apparently clandestine conversations between Dean Bullock and Prof. Taslitz. The recent deposition testimony of Bullock and Taslitz reveal an entirely different thought process than expressed by Profs. Smith, Nolan, Leggett and LaRue.

Members of the APT Committee “present” candidates for discussion. How a candidate is presented, or the credentials summarized, influences the remaining APT Committee members, who reasonably rely on what they believe are the good faith representations of their colleagues. Although any member of the Committee could challenge another with respect to alleged facts or opinions, each Committee member cannot read each publication by each candidate, sit in on the classes of each candidate, or even recall, during the discussion of the candidate, all aspects of their resume/application.

From 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. (Facts, ¶ 127) He recruited candidates. (Facts, ¶ 127) He checked references. (Facts, ¶ 127) He extended offers to selectees. (Facts, ¶ 127) He negotiated contracts with selectees and negotiated with the Dean/Associate dean for terms to offer the candidate. (Facts, ¶ 127) He made judgments as to whose work was “scholarly” and whose was “non-scholarly.” (Facts, ¶ 127) He sat in candidates’

in the administration of one exam out of a career of many years.

classes, took notes and wrote up evaluations of those classes to present to the APT Committee. (Facts, ¶ 127) He is a compulsive note-taker. (Facts, ¶ 127) Taslitz was the key to the APT Committee.⁹

Taslitz was especially important to Plaintiff's candidacy. He had recruited Plaintiff, negotiated with her, extended the oral and written offers to her, and described himself as her "mentor" and "friend." (Facts, ¶ 17, 186) He had been a strong advocate of Plaintiff when she was hired in 1996. (Facts, ¶ 17 - 20) He had, at least, read her January 1996 version of *911...* (Facts, ¶ 157) He had sat in on her classes. (Facts, ¶ 127) Taslitz' support was the touchstone of success with the APT Committee.

After Taslitz received Plaintiff's March 31, 1997 letter, 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. (Facts, ¶ 220) Taslitz never asked Dean Bullock whether the positions were vacant. (Facts, ¶ 220) He knew that, no matter how many positions became available, Bullock would ensure that none of them went to Plaintiff.

Prof. Nolan did ask Dean Bullock, in the spring of 1998, whether there were any vacant faculty positions, and whether Plaintiff could be hired by the law school or elsewhere in the University. (Facts, ¶ 221) Bullock told her that there were no positions available. (Facts, ¶ 221) Bullock added that she had referred Plaintiff for another position and was trying to help her get another job. (Facts, ¶ 221) Bullock did not say that she did not want Plaintiff on the faculty because she had bad judgment, or that she would not refer her for a job because of this "bad judgment." Bullock's hostile gratuitously insulting deposition testimony reveals and marginalization of Plaintiff reveals Bullock's intense animosity toward Plaintiff, and demonstrates that she would not have recommended or "helped" Plaintiff in any way.

Taslitz went to Plaintiff's office, in late September of 1997, specifically to remind her that she needed to formally apply for a permanent position and/or renewed visitorship, advising her to just write

⁹ Taslitz has held key positions on key committees at Howard School of Law. (Facts, ¶ 193) Prof. Boyer testified that former Dean Bullock unduly depends upon Taslitz and the other White professors, giving them disproportionate influence on Committees, to the exclusion of senior faculty. (Facts, ¶ 193) According to Prof. Boyer, Bullock's

a sentence or two in a memo to Leggett to make it clear that she was formally applying for a position. (Facts, ¶ 124) The Committee had already circulated the memo to all faculty members advising them to formally apply, prior to October 2, 1997, for any positions or promotions for which they wanted to be considered for the 1998-1999 academic year, but Taslitz said that he just wanted to be sure that she knew and did not miss the deadline. (Facts, ¶ 124)

In late October of 1997, Taslitz even asked her to allow him to review her completed memorandum application to the Committee regarding her first year at Howard, to provide her with feedback prior to submission. (Facts, ¶ 124) He advised her to discuss fully the reasons for the delay in the *911...* article. (Facts, ¶ 124) Taslitz did not indicate, in any way, that he did not understand the reasons for the delay, but conveyed to Plaintiff that he wanted the entire Committee to understand the reasons. (Facts, ¶ 124) Plaintiff did give him the November 5, 1997 memo to review, prior to submission, and Taslitz advised her that it “looked great.” (Facts, ¶ 124) Plaintiff had every reason to believe that Taslitz was still acting as her mentor and advocate, even as of late October of 1997.

Prior to the fall of 1997, Taslitz had advised Cunningham to participate in the AALS recruiting conference because he could not assure her that her visitorship could be renewed. (Facts, ¶ 123) If Taslitz had misgivings about Plaintiff’s employment at Howard, he certainly could have given her the same advice and “warning” that he gave Cunningham, especially since he knew that Plaintiff was the primary support for her daughter and that job stability was of utmost importance to her when she accepted the position. (Facts, ¶ 21) Had Plaintiff been notified, at any point before August of 1997, she could have participated in the AALS Conference, as did Cunningham.

On December 18, 1997, Taslitz entered Plaintiff’s office and told her simply: “Offers have been extended and there are no visitorships available.” (Facts, ¶ 119) It took Plaintiff a minute to realize that she was unemployed.

response to this complaint was, “*The White boys do the work.*” (Facts, ¶ 193) Aside from the offensiveness of this statement to *everyone*, it indicates that Bullock relied on Taslitz and the other White professors.

In his September 6, 2002 deposition, totally contrary to the impressions that he had conveyed to Plaintiff prior to December 18, 1997, Taslitz opined that he was “disappointed” in and “aggravated” and even “angry” with Plaintiff by January of 1997 – after only one semester at Howard -- because she did not publish her *911...* article within her first semester at Howard. (Facts, ¶ 160) These harsh words and personalized emotions toward a colleague, purportedly for not publishing an article, are, simply put, not within the realm of normal. Taslitz “anger,” “disappointment” and “irritation” are even more peculiar since Plaintiff had, in fact, been working on the article and had discussed it with him. Even during that first semester, despite being noticeably injured in a car accident, and being the only law professor who was not provided a computer with internet or legal research capability, Plaintiff received excellent teaching evaluations, expended extra time and extra energy to provide exam taking classes for the students to increase the Howard bar passage rate, and had, in fact, expanded and “deepened” *911: How Will Police and Fire Departments Respond to Public Safety Needs and the Americans with Disabilities Act?* She had begun a second article since arriving at Howard. At one point, Taslitz went so far as to say that Plaintiff should have published her article while she was still in Cleveland; however, this would have deprived Howard of the “credit” for the article that it actually received in its ABA accreditation assessment.

Taslitz’ overdone expression of “disappointment” with Plaintiff, searching for a reason to be disappointed in her, prior to the stalking, is simply devoid of any credibility. Taslitz admitted that he never told her that he was “disappointed” or “angry” with her in her in any way, nor did he indicate to her that he would not be an advocate for her for a permanent position. (Facts, ¶ 160) Of course, if Bullock did not express to Taslitz her animosity toward Plaintiff until after November 20, 1997, when the stalking began, this would explain Taslitz’s apparent support for Plaintiff up until that date; thereafter, Dean Bullock “poisoned” the APT Committee with her retaliatory comments to Taslitz. The APT Committee decision was, then, “*the fruit of the poisoned tree,*” even though four of the five members of the Committee may have been completely unaware of it.

IV. **Defendant Has not Put Forth a Legitimate, Non-Retaliatory Reason for its Non-Selection/Non-Renewal of Plaintiff, and, to the Extent that it has, Such Reasons are Indisputably False and Pre-Textual**

A. **The Decision-Makers Disclaim Howard’s Purported “Legitimate, Non-Retaliatory Reasons” for Plaintiff’s Non-Selection/Non-Renewal**

Because the adverse action occurred “on the heels of” Plaintiff’s requests that the administration take reasonable measures to stop Harrison from harassing her in her workplace, Plaintiff has established a *prima facie* case of retaliation. The burden now shifts to Howard to articulate a legitimate, non-retaliatory reason for the adverse action. *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1973).

Defendant has, at various times over the past four years, stated various purported reasons for Plaintiff’s non-renewal; however, when the decision-makers were actually deposed, the APT Committee members seemed oblivious to the very reasons asserted by their employer. Howard has, therefore, not even carried its burden of asserting a legitimate, non-discriminatory reason for its non-selection/non-renewal of Plaintiff. Defendant’s Answer to the Interrogatories changed from October 17, 2000 to July 11, 2001, while Howard was in Contempt proceedings for its failure to adequately respond to discovery.

Howard’s own officials – the decision-makers in this case – have contradicted Howard’s defense! Their depositions read as if they had never seen the Answers to Interrogatories. Howard’s purported (and changing) “legitimate, non-discriminatory reasons” for Plaintiff’s non-selection/non-renewal have, by implication, been withdrawn, and Howard has not carried its burden of production to offer a legitimate non-retaliatory reason for its actions. To the extent that they are not withdrawn, they are pre-textual.

In its October 17, 2000 *Answers to Interrogatories*, ¶30 (Facts, ¶ 129) 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.

Defendant has repeatedly claimed that Plaintiff's article, *911...*, was not accepted for publication by December 18, 1997. Plaintiff repeatedly asserted that Howard's statement was false, in violation of Rules 26 and 37, specifying the APT Committee members who knew that it was false, even while she was still at Howard. Four of the five Committee members, including Nolan, Taslitz, LaRue and Leggett all testified that they knew, 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. (Facts, ¶ 130) This deposition testimony clearly establishing that Howard's purported reason for Plaintiff's non-selection/non-renewal was not only pre-textual, but simply, false, in violation of Federal Rules of Procedures 26 and 37, regarding the obligation to conduct a reasonable inquiry in responding to discovery and to respond truthfully. See Plaintiff's August 3, 2001 *Motion for a Default Judgment Due to Howard University's Production of Late, Incomplete and Falsified/Tainted Evidence*.

As Howard saw its pre-textual defense regarding Plaintiff's scholarship eroding, it invented a "kitchen sink" of "eleventh hour" defenses that contradicted evidence and admissions that it had already entered into the record. After changing its defense repeatedly over the past four years, Defendant now claims that, although Plaintiff's article was accepted for publication at the time of the decision, Plaintiff's article should have been published the previous year. (Facts, ¶ 180) If this were the case, arguably, Plaintiff non-selection/non-renewal was a "done deal" at the end of her first year and someone should have warned her so that she could seek other employment. No one did. In fact, Dean Bullock awarded Plaintiff a 1997 summer grant, indicating that she was on schedule with her scholarship and that her progress was, at least, satisfactory. (Facts, ¶ 132) As part of her application for a summer grant, Plaintiff submitted drafts of her works in progress, which included *911...* and *Lights Camera*,

Discrimination! "Playing" the Victim under Title VII, and discussed her preliminary research and thesis for a third article, *Still Racist After all these Years—and Covered by the Americans with Disabilities Act?* Obviously, then, Dean Bullock was well aware of the progress of Plaintiff's scholarship and determined that it was satisfactory.

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 (Facts, ¶ 135)*. 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.

In its July 11, 2001 *Supplemental Answers to Interrogatories # 34 (Facts, ¶ 135)*, 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.

In its July 11, 2001 *Supplemental Answers to Interrogatories # 55 (Facts, ¶ 137)*

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.

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

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's 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.

C. **Howard's Collegiality Defense Discredited by Decision-Makers**

Howard's new "non-collegiality" defense is completely irrelevant to any defense that Howard can make with respect to the decisions made by the APT Committee in 1997-1998. Four of the five Committee members were oblivious to any claim of "non-collegiality" or "bad judgment" by Plaintiff. They have expressed their own perceptions of Plaintiff as collegial and pleasant, testifying that they had never heard any other faculty member claim that Plaintiff was not collegial. The only APT Committee member who raised the collegiality issue is Taslitz and he never raised it during any APT meeting, instead, he concealed his true reason for elevating Cunningham as a candidate over Plaintiff – the knowledge that Dean Bullock did not want her – and shrouded it with misrepresentations about Plaintiff's and Cunningham's scholarship to mislead the remaining Committee members into believing that Plaintiff had not been productive and was not likely to produce the scholarship anticipated of Cunningham.

Defendant added the "collegiality" defense, never previously raised in the three years since Plaintiff filed her EEOC charge. Defendant only raised this defense as it saw its scholarship argument

being destroyed by the documents and statements being produced by Mrs. Bruner, who confirmed that Plaintiff had given her the *911*... article for distribution in October of 1996, but that a computer error that occurred in her office corrupted the document and delayed its distribution by approximately one month. (*Facts* ¶ 130) The collegiality argument is vague and subjective. Absent deposing the entire faculty, it would be difficult to prove or disprove this claim conclusively; however, the focus is on the APT Committee. This “defense” is nothing more than a desperate, eleventh hour “witch-hunt” for anyone willing to defame Plaintiff’s character in the name of “loyalty” to Howard, to protect an ally on the faculty, or for something in exchange for this attempt at character assassination.¹⁰

D. The Decision-Makers Never Considered Plaintiff’s Service to Law School, Community or Profession

Howard discussed Cunningham’s service to the law school, but not Plaintiff’s contributions to the law school, her community or the legal profession overall. 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 (*Facts*, ¶ 142); 2) bringing in an Assistant Maryland Bar examiner each year, to give a class on how to take the Maryland Bar (*Facts*, ¶ 142), particularly since Howard students had gained a national reputation for its low Maryland Bar passage rate (*Facts*, ¶ 142) ; 3) teaching exam-taking sessions at the Regional BALSAs conference held at Howard (*Facts*, ¶ 142); 4) acting as a judge for the Trial Advocacy Clinic (*Facts*, ¶ 142) and 4) participating in “Close Up,” a mentoring program for teenagers (*Facts*, ¶ 142). Plaintiff also diligently served on all committees to which she was assigned. (*Facts*, ¶ 142)

Plaintiff’s community service included active membership in “Jack and Jill of America,” focusing on the needs of African-American youth; the JEB Stuart High School Parent-Teachers’ Association,

¹⁰ The only faculty members who claim that Plaintiff is not collegial are a few members closely tied to Dean Bullock and/or Prof. Taslitz, including Associate Dean Newsom, Prof. Andrew Gavi, Prof. Steven Jamar and , according to Taslitz, although only hearsay in the record, possibly Prof. Reggie Robinson. (*Facts*, ¶ 195-206). Even then, the best they have been able to come up with is that Plaintiff once left a handout in front of her office for her students, purportedly in violation of some rule that no one is aware of, and that one student complained that Plaintiff did not call on her fast enough – and this student later apologized, took every class that Plaintiff ever taught and signed and helped circulate a student petition protesting Plaintiff’s non-renewal. (*Facts*, ¶ 255).

mentoring teenagers and finding them internships; and assisting young people and the elderly in her community. (Facts, ¶ 143). She was also supported her daughter's efforts to change the name of her high school, which was named for a confederate general. (Facts, ¶143). 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. (Facts, ¶ 144). This charge involved developing issues of inter-sectionality in EEO law. (Facts, ¶ 144). Plaintiff submitted this supplement based on the Committee's interest in this work during her November 7, 1997 interview. (Facts, ¶ 144).

Howard discussed Cunningham's clerkship and law firm associate experience, but there is no discussion or acknowledgment of Plaintiff's 17 years of dedicated service to civil rights work, including 6 years of policy development at the EEOC; five years at the United States Department of Justice, Civil Rights Division, litigating school desegregation cases; her work for the Legal Aid Society of New York; her employment, housing and credit discrimination cases at the New York Office of the Attorney General, Civil Rights Bureau; or her development of the policy on pregnancy at the D.C. Metropolitan Police Department. Plaintiff's 17 years of public service reflects her dedication to civil rights, assisting the poor, fostering equal opportunity and eliminating prohibited discrimination and using her credentials and training to help eradicate injustice. For a law school depicting itself as the vanguard of social engineers, and the bastion of civil rights, it would seem that Howard would hold such service in high regard, particularly when public service was a choice, since she had the credentials to choose more lucrative employment. Clearly, then, no comparison was made between the candidates with respect to law school service, community service or service to the profession.

E. **The Taslitz December 9/19, 1997 Memorandum**

The key to the December 18, 1997 decision is, again, Andrew Taslitz. On July 19, 2002, Defendant produced, for the first time, an unsigned memorandum to Dean Bullock from APT Chair, Prof. Isaiah Leggett, dated December 9, 1997, but admittedly written by Prof. Taslitz, as was the custom with most of the memoranda written by the APT Committee. (Facts, ¶ 146) Since it was

unsigned, it was probably a draft, prepared for discussion and approval, and that was never sent to the Dean. (Facts, ¶ 153) Since it was not produced for more than four years, although contemporaneous records, and/or any record of the APT Committee records were requested as part of Plaintiff's discovery requests in April of 2000, and ordered produced no less than three times (April 11, 2001, May 30, 2001, June 25, 2002), there is reason to believe that the memo was never submitted to the Dean's office or a part of the Dean's office records. No one can authenticate this document as to time, date or transmission (Facts, ¶ 146); therefore, it may well be only an "experimental" document that Taslitz drafted and kept to himself, or that he -- or someone else -- recently created solely for the purposes of this litigation.

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, the memo might reflect a typographical error and perhaps, should read "December 19, 1997" -- or the December 9, 1997 date might actually reflect when he wrote the draft, for discussion at the December 18, 1997 APT Committee meeting. (Facts, ¶ 146) No member of the APT Committee remembered seeing the memorandum in 1997 and some said they never saw it before their depositions in August/September of 2002. (Facts, ¶ 146) No APT member could explain where it had been for the past four years or why it was not produced prior to July 19, 2002.¹¹ 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. (Facts, ¶ 147) The Committee did nominate two persons, ranked in order of preference, for the Commercial Law position. (Facts, ¶ 147) For the EEO/Labor law and Constitutional Law positions, however, only one candidate was recommended for each position. (Facts, ¶ 148)

On page 2 of the December 9/19th, 1997 memorandum, under the heading, "Equal Employment Opportunity Labor Law" (Facts, ¶ 147), 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 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*)

1. The “Taslitz Memo” Claim that Cunningham’s Qualifications “Far Exceed” those of Plaintiff is Disputed by Howard’s own APT Committee

None of the APT Committee members -- except for Taslitz -- has expressed assessments of Cunningham’s and Plaintiff’s qualifications that are consistent with the “Taslitz memo” of December 9/19th, 1997. No one else has expressed the view that Cunningham’s credentials “far exceed” those of Plaintiff. To the contrary, Prof. J. Clay Smith testified that that Plaintiff and Cunningham were “very close,” in his mind and that he was trying to balance the credentials of the two candidates. (Facts, ¶ 155) He said that he thought that Plaintiff was “terrific” (Facts, ¶ 155) and he admired her both as an individual and a professional. (Facts, ¶ 155)

Prof. Nolan testified that, after the Committee had voted to recommend Cunningham for the EEO/Labor position, she recommended that Plaintiff also be recommended, and ranked as the number 2 candidate. (Facts, ¶ 147) This gesture contradicts the notion that Cunningham’s credentials were so far superior to Plaintiff’s that hers should be the only name submitted. APT Chair Isaiah Leggett testified that both Plaintiff and Cunningham were qualified for the position and viewed favorably by the faculty. (Facts, ¶ 155) He said that he did not make his decision between the candidates until after the discussion and that, during the discussion, he was “confused” as to what scholarship Plaintiff had produced, or was

¹¹There were several discovery documents finally produced, which were originated by Taslitz on July 19, 2002, that were requested in April of 2000, ordered produced twice in April and May of 2001, then again, on June 25,

working on, since at Howard. (Facts, ¶ 164) When confronted with the resumes, Leggett admitted that Plaintiff had more publications, overall, than Cunningham. (Facts, ¶ 165) Homer LaRue testified that he has no recollection of any of the deliberations of the Committee, but that everything he had heard about Plaintiff teaching was positive (Facts, ¶ 156), that *911...* was “a good piece of scholarship (Facts, ¶ 156) and that Plaintiff was collegial. (Facts, ¶ 156)

2. The “Taslitz Memo” Claim that Cunningham was the Only Candidate with a Proven Record of Scholarship is Blatantly False and Pre-textual

HU’s own 1996 hiring recommendation memorandum for Plaintiff and its own website and *credit Plaintiff with having published four articles before she began teaching – all of it in the area of EEO law.* Plaintiff published an additional law review article during her first year of teaching, at Cleveland-Marshall College of Law, bringing the count up to five. During her year and four months at Howard, Plaintiff had re-written *911...* to include the developing case law, extending it by approximately 75 pages – more than the entire length of Cunningham’s article. The final article, *911: How Will Police and Fire Departments Respond to Public Safety Needs and the Americans with Disabilities Act?* was 141 pages in print – more than twice as long as Cunningham’s 60 page article. (Facts, ¶ 160) The publication of *911...* brought the number of Plaintiff’s publications up to six.¹² During the same year, Professor Martin had completed all of her research for, and produced a 27-page draft of a seventh article, *Lights, Camera, Discrimination! “Playing” the Victim under Title VII*, as well as having conducted research on and developed a thesis and title for an eighth article, *Still Racist after all these Years – and Protected by the Americans with Disabilities Act?* (Facts, ¶ 176)

Bullock admitted that the American Bar Association, in certifying Howard for accreditation, credited Plaintiff’s *911...* article to Howard and that it received “a wonderful accreditation review.” (Facts,

2002, when Howard was found in contempt of Court for non-production of these documents.

¹² 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. Prof. Andrew Gavil, testified that, 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. (Facts, ¶ 175) Gavil also testified that, in his entire career, he has never worked on only one article at time (Facts, ¶ 176).

¶ 132) During her first year at Howard, Plaintiff “changed it” and “deepened the analysis,” resulting in “a good piece of scholarship.” (Facts, ¶ 133) Plaintiff’s colleagues assessed *911...* as “excellent,” “covered the universe of the topic,” and “was very lengthy and very detailed.” (Facts, ¶ 133) It was “deemed to be quite substantial.” (Facts, ¶ 133) She had a 27 page draft of a third article, with all research complete, as well as a title, thesis, and some research done on a fourth article. (Facts, ¶ 133)

To qualify for tenure, a professor is expected to publish, or have accepted for publication, three articles within a five-year teaching period. (Facts, ¶ 169) 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. (Facts, ¶ 170) Plaintiff was in her first semester of her fourth year of teaching when the December 18th, 1997 decision was made. (Facts, ¶ 171) 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. (Facts, ¶ 172) Had she been selected for a tenure-track position in the 1997-1998 academic year, Plaintiff would have been considered for tenure in the 1998-1999 academic year – her fifth year of teaching. (Facts, ¶ 172)

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) 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.

Prof. Smith further testified that he had read some of Plaintiff’s prior publications and thought that they were “good pieces.” (Facts, ¶ 132) Since Prof. Smith was a Chairman, as well as a General Counsel, of the EEOC, his opinion of her publications for a candidate for an EEO law teaching position, is particularly significant. Had Plaintiff remained at Howard, she would have been able to complete *Lights...* in the spring of 1998 and *Still Racist...* by the summer of 1998, which would have provided Howard with an even more “wonderful” evaluation. Instead, Bullock chose to exclude Plaintiff and her scholarship from Howard’s ABA review. Clearly, this exclusion did not benefit Howard or its students.

Despite the alleged emphasis on scholarship and the Committee’s determination that Cunningham was a more promising “scholar” than Plaintiff because *911...* was not published “sooner” – whatever that means – the Committee members admit that they did not read either article! (Facts, ¶ 157) At the time of the December 18, 1997, no one on the APT Committee actually read Plaintiff’s article, *911L How Will Police and Fire Departments Respond to Public Safety Needs and the Americans with Disabilities Act?* (Facts, ¶ 157) Even Taslitz admits that he only skimmed the expanded and re-written *911...* article submitted to the APT Committee in November of 1997. At the time of the December 18, 1997 decision, at least three members of the five admitted that they had not actually read the article, *The Rise of Identity Politics I: The Myth of the Protected Class under Title VII*. (Facts, ¶ 156) Of the five APT Committee members, only Taslitz claimed that he had read the article prior to the December 18, 1997 decision (Facts, ¶ 157) 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. (Facts, ¶ 156)

Howard’s claim that Cunningham was the only candidate with a “proven record of scholarship” is easily proven false and pre-textual by simply “stacking” Plaintiff’s scholarship against that of Cunningham. Cunningham’s record of scholarship since graduation from law school,¹³ included one article, **not yet published**, but accepted for publication, entitled “*The Rise of Identity Politics I: The Myth of the Protected Class in Title VII Disparate Treatment Cases*.” The article was 60 pages long, in published print. Her *two* credited “works in progress,” for which she did not indicate having drafts, were, based on her own titles and descriptions, *both* extensions of her first article. (Facts, ¶ 159) 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*.” (Facts, ¶ 159) Cunningham was, then, working on her second and third

¹³ As a law student, Cunningham had published a student note, which is not weighted as heavily as post graduation publications, if at all. (Facts, ¶ 159)

articles on the day that she began working on her first – but that would not indicate that she should be credited with nearly completing the research for three separate articles. To credit Cunningham’s continuation of her first article, while ignoring Plaintiff’s additional two articles in progress, particularly when each of Plaintiff’s articles involved completely different topics and research, is simply dishonest. Cunningham’s resume indicated that her second and third articles were intended to “to finish the idea” that she began in her first, 60 page article. (Facts, ¶ 159) Purportedly, she knew enough about what those thoughts were to project that it would take three articles – the minimum required for tenure. Plaintiff, however, wrote a 141 page article that completed all of her “ideas” and suggestions on the topic.

Plaintiff’s “proven record of scholarship,” before she began teaching, while she was teaching in Cleveland, and once she began at Howard, was active, “substantial,” and specifically, much more substantial than that of Cunningham.

3. Taslitz Misled APT Committee Members Regarding the Status of Plaintiff’s and Cunningham’s Articles

Four of the five members of the APT Committee mistakenly believed that Cunningham had actually published an article while at Howard. (Facts, ¶ 163-165) In fact, her article was in the same status as was Plaintiff’s – accepted for publication, but not yet published. (Facts, ¶ 163-165) Nolan said:

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.

J. Clay Smith recalls that:

I kind of thought that perhaps a member of the Committee might have thought that you (Plaintiff) 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.

(Facts, ¶ 163) The member who “raised” it was clearly not Smith or Nolan. It was not Leggett, who also testified that “someone” kept stressing, during the meeting, that Plaintiff had not yet published her 911... article, in response to his desire to give Plaintiff “credit” for a second article. (Facts, ¶ 164). Leggett, 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 (*Facts*, ¶ 165) Prof. LaRue recalls virtually nothing of the deliberations (*Facts*, ¶ 155) it does not appear that he had any strong opinions about the matter. Taslitz took the lead in representing the status of both Plaintiff’s and Cunningham’s articles. (*Facts*, ¶ 159)

Any APT member could have checked the information presented during the discussion by simply looking at the resumes and/or applications; however, the expectation is that a colleague would not deliberately misrepresent the credentials of a candidate. 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 (*Facts*, ¶ 148, 154), it is reasonable that Committee members relied on summaries of candidate’s qualifications without checking “the record” for errors and omissions throughout the discussion.

3. **The “Taslitz Memo” is Conspicuously Ignores Plaintiff’s Existence**

Taslitz’ December 9/19th, 1997 unsigned memo reads as if Plaintiff never existed, although all members of the Committee agreed that Plaintiff and Cunningham were the two finalists. Oddly, the memo makes a reference to the consideration of an outside candidate with specific experience in labor law, as distinguished, in the memo, from EEO law (*Facts*, ¶ 152) *The Taslitz memo does not give any indication that Plaintiff was even considered to keep the position that she had held for the previous two years – even though she had left a tenure track position in Cleveland to teach at Howard.*

Defendant’s claim that Plaintiff’s experience was not as “stellar” as that of Cunningham is disputed by the APT Committee members’ admissions that Plaintiff had many more years of legal experience than did Cunningham, and specifically, much more experience in EEO law than did Cunningham, with 17 years of legal experience, as compared to Cunningham’s five and three and a half years of teaching experience, as compared to Cunningham’s year and a half (*Facts*, ¶ ____)

Plaintiff worked for this nation’s top civil rights agencies, for thirteen years, prior to her four years of teaching (including EEO law each year). 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. Plaintiff attended New York University, a top-ten law school and graduated to join the U.S. Department of Justice's prestigious and highly competitive Honors Program, eleven years before Cunningham graduated law school. Prior to law school, Plaintiff graduated *cum laude* from the Ivy League Barnard College, Columbia University, in 1978. 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 citizen's 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.

EEOC Commissioner Joyce E. Tucker, in rating Plaintiff "outstanding" in her performance as her Special Assistant, wrote:

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. March 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 textbooks 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.

Plaintiff's legal experience, particularly her background in EEO law, were far superior to the work experience of Cunningham, who was in the early states of her career, according to five of the eight Howard professors deposed on the subject, including two APT Committee members. (*Facts*, ¶ 152, 149, 150) The remaining three members of the Committee "could not recall" any APT Committee discussion

comparing the work experience of Plaintiff and Cunningham and would not make the comparison in their depositions. (*Facts*, ¶ 152) No APT Committee member claimed that the legal experience of Cunningham was superior to, or more “stellar” than that of Plaintiff

In 1996, when Plaintiff and Cunningham were hired as visitors, Plaintiff was hired at a higher rank (Associate vs. Assistant Professor), higher salary and longer term contract (two years as opposed to one year), than was Cunningham.¹⁴ (See *Exhibit KKKK*, Chart of Qualifications of Plaintiff as compared to Cunningham in 1996 and *Exhibit LLLL*, Chart of Qualifications in 1998) In addition, Plaintiff was assigned EEO and Torts, courses that both candidates sought to teach. This decision cannot credibly be presented as a choice between two candidates, Martin and Cunningham; this was simply a deliberate exclusion of Plaintiff from the faculty. The only way that the APT Committee could justify hiring Cunningham over Plaintiff was to omit any discussion of her at all.

The only way that the APT Committee could justify hiring Cunningham over Plaintiff, was to omit any discussion of her credentials at all.

4. **The “Taslitz Memo” Grossly Exaggerates Cunningham’s Credentials**

The Taslitz memo presents Cunningham’s credentials in a way that is not honest, but grossly exaggerated. In addition to misrepresenting her scholarship, memo exaggerates Cunningham’s job experience. It is certainly an honor to be selected as a law clerk to the Honorable Constance Baker Motley; however, the accomplishments of Constance Baker Motley cannot be superimposed upon Cunningham simply because she clerked for her for a year. The description of Cunningham as having “authored” a judicial decision is also inappropriate. To imply that Constance Baker Motley allows new graduates from law school to “author” a judicial opinion that she signs devalues the Honorable Constance Baker Motley. Furthermore, Cunningham’s resume does not indicate that she “focused” on equal

¹⁴ Plaintiff respects Cunningham’s excellent credentials, but believes that they should be presented honestly and that her own credentials should be recognized as well.

opportunity law during her two years and nine months with the New York law firm. Cunningham's law firm experience is described on her resume¹⁵ 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.

The "overdone" endorsement of Christi Cunningham, the misrepresentations of her credentials and EEO experience, and the complete exclusion of any reference to Plaintiff – leaves the Taslitz "draft," unsigned memo devoid of any credibility. Its significance, however, is to demonstrate that Taslitz was willing to misrepresent candidate's qualifications to disadvantage Plaintiff. Taslitz, again, was the only APT Committee member privy to Dean Bullock's animosity toward Plaintiff.

B. Defendant's Claims that Plaintiff was not Collegial and had "Bad Judgment" are False and Pre-textual

1. The APT Committee had not heard or Discussed any Allegations that Plaintiff was not "Collegial" or Exercised "Bad Judgment"

Howard cannot argue that Plaintiff was not selected for a permanent position due to lack of "collegiality" or "bad judgment," since the Committee never discussed any alleged "bad judgment" by Plaintiff or questioned her collegiality. (Facts, ¶ 185) The collegiality allegation, put forth by Dean Bullock and Taslitz, is, however, the key to understanding the APT Committee's decision on December 18, 1997, and the Dean's withholding of vacant positions from the Committee's consideration through the spring of 1998. Nolan, Smith, Leggett and LaRue all testified that they found Plaintiff to be collegial and that they had never heard any member of the faculty question her collegiality or judgment. Nolan even acknowledged that she may have hugged Plaintiff after the decision and said, "I wish I had a job for you. I

¹⁵ Cunningham's resume is not included within the Protective Order covering personnel files. Plaintiff has had Cunningham's resume since 1997 and the resume was an exhibit prior to the protective order.

am praying for you.” (Facts, ¶ 185) ¹⁶ The allegations against Plaintiff of “non-collegiality” and “bad judgment” were apparently “a little secret” between Bullock and Taslitz for the past five years.

2. Dean Bullock’s Accusations against Plaintiff are Contradicted by all Credible Evidence

a. Defendant Refuses to Produce Faculty Minutes

Most revealing is, that when repeatedly asked about examples of Plaintiff’s “bad judgment,” Bullock testified that Plaintiff “talked a lot” during faculty meetings and did not listen to her senior colleagues (Facts, ¶ 212); yet, when Plaintiff requested copies of the faculty meeting minutes, Howard *refused* to produce them. (Facts, ¶ 121) 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. (Facts, ¶ 213) These minutes are at the fingertips of the Dean, but Howard is clearly afraid to produce them because they will reveal that Plaintiff did not speak at all during many meetings, and when she did speak, did so respectfully and in the spirit of contributing to the law school. Any comments recorded by Plaintiff should reveal that when Plaintiff did speak at faculty meetings, it was with respect for her colleagues.

b. The Testimony of Plaintiff’s Former Colleagues Contradicts Dean Bullock’s Accusations

In addition to the five members of the APT Committee, Profs. Boyer, Jones and Rogers were deposed regarding Plaintiff’s collegiality. All of them praised Plaintiff as a person who was respectful and considerate of her colleagues, and quite collegial. (Facts, ¶ 218) All testified that they had never heard Dean Bullock, dean Newsom or any other member of the faculty indicate that Plaintiff as not collegial or that she caused problems for the University. (Facts, ¶ 218) In fact, Prof. Boyer testified that

¹⁶ 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.” (Facts, ¶ 209) 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.” (Facts, ¶ 208) Laurence Nolan is one of the few senior female members of the faculty, and they have been colleagues for many years; she never

he and the other most senior members of the faculty believe that plaintiff should be reinstated. (Facts, ¶ 218) 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!* (Facts, ¶ 218)

Prof. Boyer is not only one of Plaintiff's senior colleagues, he is the most senior faculty member at the law school. (Facts, ¶ 213) Prof. Boyer, with whom Plaintiff debated, at least once, testified that even when he and Plaintiff disagreed, it was always with respect. (Facts, ¶ 213) Prof. Jones is the next senior member of the faculty, and he testified that Plaintiff was one of the most collegial members of the faculty, since there were others who demonstrated disrespect for their colleagues. (Facts, ¶ 213) Prof. Boyer wrote a memo to the faculty, posted on his Howard website, discussing the lack of collegiality at Howard. (Facts, ¶ 215) Bullock has discussed this matter 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*.

IV. DEAN BULLOCK LEFT FACULTY POSITIONS VACANT TO PREVENT THE APT COMMITTEE FROM SELECTING PLAINTIFF, BASED ON HER RETALIATORY MOTIVE

Even if a jury could be convinced that the APT Committee acted without the retaliatory poison of Dean Bullock's influence, chose Cunningham over Plaintiff on December 18, 1997, Bullock's withholding of vacant positions, in the spring of 1998, demonstrates irrefutably that Dean Bullock was the force forcing Plaintiff off of Howard's faculty. 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. (Facts, ¶ 236)

In January of 1998, the American Association of Law Schools (AALS) held its annual conference. (Facts, ¶ 226) Plaintiff attended the conference to seek other teaching positions, even though the hiring season had ended. (Facts, ¶ 226) Bullock believed that Plaintiff was saying "negative things" about Howard. (Facts, ¶ 226) In an apparent attempt to appease Plaintiff and deter Plaintiff from telling other law professors at the conference what had happened at Howard, Bullock told Plaintiff

shared with Prof. Nolan her purported opinion that Plaintiff had "bad judgment." (Facts, ¶ 210)

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. (Facts, ¶ 227)

Plaintiff learned, from a friend at the Department of Justice, that Robinson II had declined Howard's offer to fill the advertised Constitutional law/civil rights position. (Facts, ¶ 237) She immediately applied for the position by memorandum to Dean Bullock, dated March 6, 1998, with copies to all members of the APT Committee. (Facts, ¶ 237) 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. (Facts, ¶ 238) 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. (Facts, ¶ 239) 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 (Facts, ¶ 239); consequently, whether the funds to hire Vallario were taken from the unfilled ConLaw/Civil Rights position or the funds reserved for the salary of Argrett, at least one faculty position was vacant as a result of Robinson II's rejection of Howard's offer and Argrett's extended leave. (Facts, ¶ 241)

In addition to the ConLaw/Civil Rights slot/Argrett slot, a property professor unexpectedly retired during the spring semester. (Facts, ¶ 240) This retirement left an additional faculty vacancy for the 1998-1999 academic year (Facts, ¶ 240) Bullock did not authorize the Committee to fill this position. (Facts, ¶ 240) Finally, former Dean Ramey was still technically on the faculty at Howard during the 1997-1998 academic year. (Facts, ¶ 240) 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." (Facts, ¶ 241)

Whether there was one vacancy, two or three, Plaintiff only needed one. Plaintiff suggested that these new 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 (Facts, ¶ 243) while Lateef Mtima filled the gap in commercial law and the new need in property. 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.

In her April 8, 1998 reply memo to Plaintiff, Bullock replied that "contracts" and been "executed" with the "new hires," Cunningham and Mtima "months ago," and that she had "no basis for rescinding those contracts." (Facts, ¶ 244) In fact, no contracts had been executed with Cunningham or Mtima. (Facts, ¶ 244) 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. (Facts, ¶ 244) *Dean Bullock simply lied in her memoranda to Plaintiff.*

Bullock admitted that no professor is guaranteed to teach any particular course and that courses are reassigned in accordance with the school's needs (Facts, ¶ 245) yet, she never asked Cunningham whether she would prefer to continue teaching the four courses that she had been teaching, rather than pick up EEO and Labor law. (Facts, ¶ 246) Similarly, Bullock never asked Mtima whether he would prefer to teach property related courses rather than Torts I and II, even though he had not indicated any preference for Torts and had published on property issues. (Facts, ¶ 247) Plaintiff's EEO class was a seminar with limited enrollment. (Facts, ¶ 248) The demand for that class exceeded enrollment by at least three times; consequently, two seminars in EEO law could have been offered, one per semester, to better serve the students. (Facts, ¶ 249) In addition, there was no survey class in EEO law offered, so that students did not have a good background for the seminar to write research papers. (Facts, ¶ 249) Plaintiff had raised this issue previously with Dean Newsom and recommended that a survey course be offered and made a pre-requisite to the seminar. Plaintiff was also qualified to teach an array of courses,

including various civil rights courses and employment law courses and any “core” course.¹⁷ (Facts, ¶ 249, 250) Instead of meeting student needs and accommodating faculty by leaving/placing them in classes with which they were most familiar, Bullock manipulated courses and withheld vacancies to exclude Plaintiff from consideration for any position on the faculty.

V. BREACH OF CONTRACT

In its December 15, 1999 decision, this Court rejected Defendant’s argument that parole evidence could not be considered, due to the statute of frauds. The law in the District of Columbia permits parole evidence where the oral contract could have been performed within a year of the contract. In this case, a tenure-track position could have become available at any time, including during the first year of Plaintiff’s employment with Howard, as evidenced by the unexpected vacancies in the spring of 1998. The departure of any tenure-track member of the faculty would have allowed Plaintiff to apply for, and be selected for, a tenure-track position during her first year.

This Court denied Defendant’s *Motion to Dismiss or for Summary Judgment* in order to allow the jury to decide: 1) whether Professor Taslitz had the authority to bind the University; and 2) whether Taslitz actually led Plaintiff to believe that the Visiting Associate Professor position that she was being offered was expected to become a tenure-track position. Howard has admitted that Taslitz had the authority to bind the University. (Facts, ¶ 15-16) Taslitz negotiated with candidates, including Plaintiff, wrote letters making offers and orally made offers, with the approval of Howard officials. (Facts, ¶ 16-17)

Plaintiff alleges that Prof. Taslitz made representations to her, at the time of her hire in early 1996, that: 1) if a tenure track position had been available at the time of the offer, Howard would have offered it to Plaintiff (Facts, ¶ 17); 2) Howard was offering her a visiting position only because no tenure-track positions were available (Facts, ¶ 17); 3) Howard generally has visitorships available and has

¹⁷ Bullock testified that any professor can teach any first-year course (Facts, ¶ 250); however, she failed to consider Plaintiff to teach property, a first year course. Although any professor can teach a first year course, it would have been logical and natural for Plaintiff to keep Torts I and II, which she had taught for four years, and for Mtima to teach property, since it was an area of his expertise and this was his first teaching position.

renewed visitors for many years, including Prof. Patricia Worthy and others (Facts, ¶ 17); 4) Howard could offer her a multiple year contract, if that would make her more inclined to accept the offer (Facts, ¶ 17); 5) Howard would just keep renewing Plaintiff as a visitor until a tenure-track position opened up and then they would “slide” her into it (Facts, ¶ 6, 17); 6) the visitorship being offered to her was a “visitorship only in name,” and “for all practical purposes, a tenure-track position.” Plaintiff also alleged that she 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. (Facts, ¶ 17)

Taslitz has admitted making the representations numbered 1, 2, 3 and 4 (Facts, ¶ 17). Taslitz also admitted that Plaintiff told him that she did not want to start her daughter in school and then move her after only one year. (Facts, ¶ 17) 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. (Facts, ¶ 18) The differences between Plaintiff’s allegations and Taslitz’ admissions are ones of degree, rather than substance. Taslitz was clearly giving Plaintiff a “sales pitch” to convince her to teach at Howard. As part of its enticement and an indication that its representations regarding job stability were made in good faith, Taslitz offered Plaintiff a two-year visitorship, as part of her written offer. (Facts, ¶ 19) Multiple year contracts were not offered to either of the other two visitors hired that year. Cunningham or Levin, nevertheless, both Cunningham and Levin were renewed for a second year (Facts, ¶ 27), consistent with Taslitz’ representations about the renewal of visitorships. These renewals reassured Plaintiff that she did not need to participate in the AALS conference or otherwise seek employment outside of Howard.

The representations made by Taslitz do not indicate a limited term visitorship. In fact, they go beyond even a “looksee visitorship.” A “looksee visitorship is defined as a visitorship allowing time for each party to determine whether it wanted the other (Facts, ¶ 24) Taslitz represented that Howard wanted Plaintiff, not that it wanted time to “check her out” as a professor. Similarly, Plaintiff made it plain that she wanted a tenure track position at Howard, not that she two years “check out” Howard. (Facts, ¶ 17)

Plaintiff had already determined that she wanted to be a permanent member of the faculty. Taslitz knew that in order to accept Howard's offer, Plaintiff had to forfeit job opportunities elsewhere.

Objective evidence regarding visitorships corroborates Plaintiff's claims regarding Taslitz' representations. Howard uses its visitor slots fluidly, to suit its needs. For example, pursuant to the faculty handbook, a faculty member can only be a visitor if he/she holds rank at another University. (Facts, ¶ 14) Cunningham did not hold any rank at any other University before coming to Howard, since she had never previously taught; yet, she was brought on as a visitor because no tenure-track positions were available. She is now a tenured professor at Howard. Similarly, other tenured members of the faculty began at Howard as visitors, including Interim Dean Patricia Worthy (Facts, ¶ 10), J. Clay Smith (Facts, ¶ 10), Sherman Rogers (Facts, ¶ 10), Laurence Nolan (Facts, ¶ 10) .

The "meeting of the minds," irrespective of the precise words used or "recalled" was that Plaintiff was being hired in the only position available for the longest period of time possible, to allow time for a permanent position to become available for her to officially become a permanent member of the faculty. If Taslitz "cannot recall" the precise words that he said, no reasonable juror could conclude that he did not say those words. Plaintiff is entitled to an adverse inference that the words she recalls Taslitz using were said. This oral contract was breached when, during the 1997-1998 academic year, anywhere from three to six tenure-track positions became available and Plaintiff was not selected for any of them. The breach of contract was particularly egregious since Taslitz did not even give Professor Martin any warning that she might not be hired (while he did so warn Professor Cunningham), leaving her without a teaching job after the hiring season had ended.

VII. BULLOCK AND/OR NEWSOM RETALIATED AGAINST PLAINTIFF BY PREMATURELY ORDERING HER TO VACATE HER OFFICE

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, Dean Newsom called Plaintiff and ordered her to vacate her office, no later than May 29, 1998 – *three days' notice*. (Facts, ¶ 263) Plaintiff was still grading exams and they were not due until June 16, 1998.

(Facts, ¶ 261) The other departing visiting professor, Betsy Levin, had not been asked to vacate her office. (Facts, ¶ 264) 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; however, her attention was devoted to grading exams, seeking employment, avoiding a stalker 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.

When Plaintiff checked her campus mailbox, at some point after May 26, 1998, she found two memos from Newsom, granting her request for an extension on grades for one class, but also requesting that she vacate her office. (Facts, ¶ 263) The memos were dated May 21, 1998 and May 26, 1998, respectively, and asked her to vacate her office by May 25, 1998 and May 29, 1998, respectively. New professors do not begin their contracts until on or about July 15th of each year (Facts, ¶ 263).

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. (Facts, ¶ 264) 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. (Facts, ¶ 263) Defendant's purported justification, that Plaintiff's office was needed to be occupied by a new professor is false and pre-textual. Plaintiff is therefore, entitled to summary judgment on this issue.

VIII. PLAINTIFF RENEWS HER AUGUST 3, 2001 MOTION FOR A DEFAULT JUDGMENT, BASED ON HOWARD UNIVERSITY'S PRODUCTION OF LATE, INCOMPLETE AND FALSIFIED/TAINTED EVIDENCE

Indeed, the title of the collective deposition testimony of former Dean Bullock, Dean Newsom, Adam Kurland, and several other professors has been, "I don't recall." The "subtitle" for the University's and Dean Bullock's performances could well be, "Oops, can I change my answer again?" Defendant has deprived Plaintiff of a real opportunity to conduct discovery, through withholding information and documents, delaying litigation, feigning selective amnesia and changing their defenses and answers to discovery requests. Accordingly, Plaintiff renews her August 3, 2001 *Motion for a*

Default Judgment, Due to Howard University's Production of Late, Incomplete, and Falsified/Tainted Discovery and incorporates, by reference, all arguments made therein, and requests monetary sanctions and a default judgment for Defendant's continuous violations of Rules 26 and 37.

For four years, Defendant claimed that Harrison had been banned from campus; yet, HU's own records and witnesses demonstrated, indisputably, that he had never been banned or "barred." (*Facts*, ¶ 96) Defendant claimed that Dean Bullock conferred with Director Dawson and asked for protection for Plaintiff, but Bullock's own testimony demonstrates that this claim is false. Defendant has clearly violated Rules 26 and 37, as Plaintiff alleged in her August 3, 2001 *Motion for a Default Judgment Due to Howard University's Production of Late, Incomplete and Falsified/Tainted Evidence*.

None of the members of the APT Committee, the former Dean Bullock or the Associate Dean Newsom can pretend that they have been unaware, for the past four years, that they would be called upon to testify in this case. Defendant and its many in-house and outside counsel, have had unlimited opportunities to interview the witnesses, record their recollections and request that they record their own recollections. Howard has chosen specifically not to document those recollections, while, at the same time, withholding, thwarting and delaying discovery for years, hoping that memories will fade or that witnesses will at least *claim* faded memories.

With no contemporaneous notes produced by any member of the APT Committee, the members' failure to sign any of the EEOC affidavits at the time that the EEOC submitted them to Defendant, none of these attorneys/law professors has produced any notes documenting their recollection. This is so even though **both Mrs. Bruner and Prof. LaRue have testified that minutes were taken, by Taslitz, typed and distributed to APT Committee members.** (*Facts*, ¶ 147) Defendant has been actively involved in this contentious case for more than four years, since Plaintiff filed her EEOC charge on May 14, 1999, the day before her contract with Howard ended, and had indicated, throughout the spring semester, that she may have to take legal action to save her career and livelihood. The omission of contemporaneous notes/minutes of the APT Committee deliberations violates Rules 26 and 37, entitling Plaintiff to an

adverse inference, preclusion of Defendant's assertion of a legitimate, non-retaliatory reason for her non-selection/non-renewal, and for sanctions, up to including monetary sanctions and a default judgment.

Although some of the highly educated, intellectual and skilled law professors/administrators deposed in this case claimed that they could hardly recall any of the material facts of this case, the security officers, Sgt. Sirleaf, Sgt. Dowdy and Capt. Parker, as well as Mrs. Bruner, had recall which was quite good, despite their lesser involvement in and responsibility for this case. The depositions of some of some of these "scholars" and teachers, make one wonder that they are able to "recall" any law to teach their students. It is simply unacceptable to be a part of the demise of the outstanding career of a colleague and "not recall" why. The primary value of their testimony is that it establishes that there is a cover up in operation in this case. Former Dean Bullock's instruction, "Don't air our dirty laundry" (*Facts*, ¶ 265), is in full force and effect; but hidden laundry cannot be washed. It is time for a cleansing at Howard.

There are people who know the truth in this case, but they are refusing to tell it. They apparently believe, or have been advised, that "I don't recall" relieves them of the penalties of perjury, discipline by the bar and/or civil liability. This is not a lesson taught in class – nor should it be perpetuated by law professors and Deans of a nationally recognized University.

CONCLUSION

For the foregoing reasons, Plaintiff is entitled to summary judgment on this issue of sexual harassment/hostile work environment, retaliation and breach of contract. seeks reinstatement, as a full professor, with tenure, as well as back pay and attorneys' fees. She also seeks compensatory and punitive damages in amounts to be determined by a jury.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)
Dawn V. Martin,)
)
v.)
)
Howard University, <i>et. al.</i>)
_____)

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

ORDER

Upon consideration of and Plaintiff's *Motion for Summary Judgment*, and Defendant's *Opposition*, Plaintiff's Motion is hereby **GRANTED**.

The Honorable Thomas F. Hogan
Chief Judge
United States Federal District Court for the District of Columbia

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 9th day of October, 2002, a true copy of the Foregoing *Plaintiff's Motion for Summary Judgment* was mailed, first class, postage pre-paid, to:

Phillip Lattimore, Esquire ¹⁸
Senior Associate General Counsel
Office of General Counsel
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¹⁸ By agreement of the parties, service upon the Office of General Counsel for Defendant Howard University constitutes service upon all four counsel of record for Defendant.