

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Dawn V. Martin,	)	
	)	
v.	)	
	)	Case No. 1:99CV01175
Howard University, <i>et. al.</i>	)	Judge: TFH/JMF
	)	
	)	

**PLAINTIFF’S OPPOSITION TO DEFENDANT’S  
MOTION FOR SUMMARY JUDGMENT**

**I. INCORPORATION, BY REFERENCE, OF MOTION TO STRIKE DEFENDANT’S  
MOTION FOR SUMMARY JUDGMENT AND OF PLAINTIFF’S OWN  
MOTION FOR SUMMARY JUDGMENT**

Plaintiff incorporates into this *Opposition*, by reference, her November 11, 2002 *Motion to Strike from the Record Defendant’s Motion for Summary Judgment and to Preclude Defendant’s “Eleventh Hour” Defense, Alleging “Bad Judgment.”* If Plaintiff’s motion is granted, this *Opposition* will be moot.

Plaintiff also incorporates into this *Opposition*, by reference, her own October 9, 2002 *Motion for Summary Judgment “MSJ”*), including her *Statement of Undisputed Material Facts* and all appended exhibits.<sup>1</sup>

**II. THE MATERIAL FACTS, AS STATED BY DEFENDANT, ARE VEHEMENTLY DISPUTED,  
AND UNSUPPORTED/CONTR ADICTED BY THE RECORD**

Defendant’s *Statement of Material Facts*, and its recitation of alleged facts in its motion which are improperly omitted from its *Statement of Undisputed Facts*, contain blatantly false statements which are not supported by the references to the record cited by Defendant, and, in some instances, the reference states the opposite of the point Defendant attempts to make. Defendant has created a “fairy tale” of the nightmare that Plaintiff has experienced since, a law professor at Howard University, she was stalked in her workplace, beginning in November of 1997. Plaintiff lost her teaching career as a result of Howard’s failure to keep the delusional, violent, homeless, serial stalker out of the law. Howard’s administration, through then Dean Alice Gresham-Bullock, then retaliated against Plaintiff by excluding her from the faculty for the following year.

<sup>1</sup> The detailed facts are set forth in the *Statement of Undisputed Material Facts*, accompanying Plaintiff’s October 9, 2002 *Motion for Summary Judgment* (hereinafter, “Facts),” with citations to the record, as required by the Local Rules.

Defendant's "fairy tale," however, is completely inapposite to the documented facts and its allegations are wholly unsupported by/contrary to the record. Defendant has taken "bits and pieces" of testimony, out of context and out of time sequence, and omitting crucial facts, in an effort to create a factual scenario that would not necessitate a judgment against Defendant. The pain-staking exercise of responding to Defendant's false representations in its *Motion for Summary Judgment* has been a waste of Plaintiff's and the Court's time. . Defendant's motion is simply another example of why the record in this case is so voluminous and of Howard misrepresents and manipulates the record in an attempt to mislead the Court and to create more work for Plaintiff. Defendant apparently hopes that this Court will be more concerned by the length of the pleadings than their substance, and thereby, fail to focus on its misconduct and lack of a defense.

## VI. HARRISON'S CONDUCT CONSTITUTED SEXUAL HARASSMENT

### A. This Court has Already Rejected Defendant's Legal Argument

In violation of the principles of *res judicata*, Defendant repeats numerous failed arguments, made in its July 22, 1999 *Motion to Dismiss*. The Court concluded that Harrison's harassment of Plaintiff, as alleged, was both sexual and based on sex. Defendant could only prevail on a motion for summary judgment if no jury could find Plaintiff's material allegations to be true.<sup>2</sup>

### B. Facts Acquired Further Establish Sexual Harassment/Hostile Work Environment

Plaintiff has presented more than enough evidence for a reasonable juror to conclude that her allegations are true. Defendant has declined its opportunity to dispute them, as required by Local Rule 56.1. In fact, there are no material facts that need to be decided by a jury, since Defendant's own security personnel and administrators have agreed that: 1) Plaintiff was sexually harassed by Harrison; 2) her fear of Harrison was

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<sup>2</sup> On page 21 of its motion, Defendant states that, in its Answer, the "University denied liability on all counts;" however, Defendant never filed a valid Answer to Plaintiff's Complaint. It denied nearly every allegation, apparently without reading the complaint, even denying that Alice Gresham-Bullock was the Dean of the law school. In her January 12, 2001 Motion to Compel Discovery, Plaintiff asked the Court to compel Defendant to provide a valid Answer to the complaint that conformed to Rule 11 of the Federal Rules of Civil Procedure. Although Defendant never made any attempt to argue that its Answer was valid, it simply refused to Answer. In a May 30, 2001 Order, Howard was excused from filing a valid Answer, stating that Alice Gresham-Bullock's Answer, filed in her individual capacity, could be used against Howard; however, this did not address the allegations that Bullock left unanswered, due to lack of personal knowledge, but which Howard would have been required to Answer if it had filed a proper Answer.

reasonable; 3) her specific requests for protection from Howard were reasonable; and 4) that Howard did not grant any of her requests. (MJS at 5, 12-13; Facts ¶¶ 60-61, 65-67, 85, 90, 99) These facts preclude summary judgment for Defendant, and, in fact, compel summary judgment in favor for Plaintiff. (Id.)

Leonard Harrison is frightening person, as attested to by well-known and highly respected Prof. Derrick Bell, formerly of Harvard, now at NYU School of Law, who was also confronted by him. Prof. Bell revealed that Harrison threatened **a racial revolution and to “kill all the token Blacks in high places.”** (MSJ at 5 Facts ¶¶ 66-67) **Harrison told Prof. Derrick Bell, that he would be back to “blow [his] head off.”** (Id.) Needless to say that if this were the background of the accused snipers recently arrested in the D.C. area for 13 shootings during October of 2002, or the student who killed three professors at the University of Arizona on October 27, 2002, or the student who shot the Dean of the Appalachian Law School, a professor and a student, in Richmond, Virginia last year, the public at large would be “pointing the finger” at those who ignored the “warning signs.”

Both Howard’s former Director of Security, Lawrence Dawson, and its current Deputy Chief of Security, Harvey Armstrong, testified that campus security procedure requires handling of a person who appears mentally “unstable,” with a history of violence and possibly armed, differently than a person who appears to be balanced and cooperative. (MSJ at 10; Facts ¶¶ 76, 78, 92-94) Defendant attempts to argue that Howard took “swift and appropriate action” to protect Plaintiff from Harrison; yet, Howard did not even follow its own campus security procedures. (MSJ at 8, Facts ¶ 78) No bar notice was ever issued for Harrison, no “security alerts” were ever posted, and neither Dean Alice Gresham-Bullock or Associate Dean Newsom ever discussed the stalking of Plaintiff with Director of Security Lawrence Dawson or any other representative of campus security. (MSJ at 8-9, Facts ¶¶ 31, 42, 55, 58) All of Howard’s own deposed employees, including its security personnel, and even Associate Dean Newsom, testified that Plaintiff’s specific requests for protection were reasonable and that none of her requests were granted. (MSJ at 5; Facts ¶¶ 60-61, 65-67, 85, 99)

Defendant praises Dean Newsom for his December 22, 1998 memo requesting that a security notice be posted – included in a discussion with two other issues – a missing printer and vagrants in the lounge. (MSJ at 12; MSJ, Ex. Y, Facts ¶ 85) Apparently, Dean Newsom did not even believe that Harrison’s stalking of

Plaintiff merited its own memorandum. Neither Director Dawson nor Deputy Chief Armstrong recalls ever seeing or hearing of the memo prior to their depositions and the records produced from campus security did not include this memo. (MSJ at 12; Facts ¶ 88) It is questionable, then, whether the memo was ever sent or received, or whether it was filed under one of the other two topics in the memo. In any case, no one responded to the memo and no notice was ever posted. In fact, when Armstrong did read the notice during his deposition, he believed that the notice had been posted at the law school (Id.) – an action that would easily and reasonably have been taken by the law school administration, but was never done.

Although the term “sexual harassment” need not be used to invoke the protection of Title VII, the discovery in this case demonstrates indisputably that Plaintiff did refer to Harrison’s harassment of her as sexual harassment and that other persons did understand the harassment to be sexual harassment. Officer Sirleaf testified that he understood Plaintiff’s complaints to be harassment that was sexual in nature. (MSJ, Ex. B, pages 22, 36-37, 100-100) The Director of Faculty Services, Mrs. Bruner, testified that Plaintiff specifically referred to Harrison as “sexually harassing” her. (MSJ, Ex. X, page 137) Defendant admits, even in its *Motion for Summary Judgment*, that Associate Dean Michael Newsom viewed Harrison as a threat to the “other women on campus,” as well as Plaintiff.

**B. Defendant’s Description of the Stalker’s Actions Are Blatantly False**

On page 2 of its motion, Howard first “rewrote” the frightening background and behavior of the stalker, Leonard Harrison, by misrepresenting him as someone who “believ[ed] that she was his estranged wife who purportedly worked at the University of Iowa School of Law.” Defendant attempts to minimize the reason for fearing Harrison, claiming that this was simply a case of “mistaken identity.” This representation is yet another example of Defendant’s blatant false representations to this Court. The record is clear that Harrison was a delusional homeless man, with a criminal record and a history of violence. (MSJ at 4-6; Facts ¶¶ 28-67) Harrison did not mistake Plaintiff for a real “wife” that he had ever had, nor is there any reference in the record, by any witness, to an “estranged” wife of Harrison. Harrison wanted Plaintiff to be his wife because he believed that she might be the physical embodiment of a fictional character, Geneva Crenshaw, in a book, *And We Are Not Saved*. (MSJ at 5; Facts ¶¶ 62, 66-67) Harrison had pursued other African-American female

professors and/or attorneys at other Universities around the country and wrote of mythological warfares with Poseidon and Neptune. (Id)<sup>3</sup>

Defying all of the evidence in this case, Defendant alleges that Plaintiff did not subjectively perceive her work environment to be hostile. In another bizarre assertion, on page 29 of its motion, Defendant claims that Plaintiff “was not upset” by Harrison’s harassment of her. Defendant cites page 82, lines 15-17 of Plaintiff’s deposition for its assertion; however, nowhere in Plaintiff’s deposition, or anywhere else in any filing or document involved in this case pleading in this case, does Plaintiff state that she was not upset by Harrison’s harassment of her. To the contrary, Plaintiff immediately sought out the Dean/Associate Dean and campus security to report Harrison’s conduct on November 20, 1998 (MSJ at 6-7; Facts ¶¶ 33-34), *because she was upset* and repeatedly reported her concerns thereafter. Harrison’s sexual harassment so pervaded Plaintiff’s workplace that she held office hours in the cafeteria, avoided walking alone on campus, disguised herself in her daughter’s hooded parka walking from the parking lot to attend faculty meetings, carried mace on her key chain when in the law school, and asked the Director of Faculty Services, to watch the door when she used the ladies’ room, for fear that Harrison might enter and harm her. (MSJ at 6; Facts ¶¶ 53, 71, 99)<sup>4</sup>

Upon reporting the sexual harassment of Harrison to her supervisors, Associate Dean Newsom and Dean Bullock, they never advised her to file a report with the University’s EEO office, nor did Profs. Taslitz or Smith, when Plaintiff discussed the matter with them. No one suggested it because it would not have yielded an appropriate remedy. An investigation by the EEO office would not afford Plaintiff the immediate protection that she needed from Harrison. Since Harrison was not an employee, the administration could not could

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<sup>3</sup>Harrison addressed his letters to “Professor Dawn V. Martin” and called her voicemail stating her name.” He did not believe that she was a person other than Dawn Martin, or someone whom he had seen at the University of Iowa. He described the person in Iowa in physical terms that differed markedly from the physical description of Plaintiff, in terms of height (six feet tall), hair color (black), hair texture (straight) and nose structure (“like Pinnochio”). (See Ex. H of Complaint) Plaintiff is 5’4” tall, has curly brown hair, a small “round” nose and bears no resemblance to “Pinnochio.”

<sup>4</sup>Defendant also argued that Plaintiff did not subjectively feel that her workplace was hostile because she did not utilize the EEO procedure. First, there is no requirement that a Plaintiff utilize the internal EEO process of a private sector Defendant. Second, the Defendant’s EEO policy directs the complaining party to report a hostile work environment to either her supervisor or the designated EEO person, or both. There is no question that Plaintiff repeatedly reported Harrison’s workplace harassment of her to her supervisor, the Dean and Associate Dean of the law school, both in person and in writing.

discipline or otherwise counsel Harrison. The appropriate means for keeping Harrison off campus, and thus, from sexually harassing Plaintiff, was through security and MPD. No one ever suggested otherwise.

**B. Howard did not Take Measures Calculated to Eliminate the Hostile Work Environment**

**1. Howard Credits Itself with Plaintiff's Actions to Protect Herself**

Ironically, on page 28 of its motion, Defendant attempts to give credit to Associate Dean Newsom to the actions that Plaintiff took to protect herself, including calling campus security and the police. Defendant claims that Dean Newsom “swiftly moved into action not only to protect plaintiff but also the broader law school community.” *Dean Newsom did absolutely nothing.* Newsom refused to call the police, despite Plaintiff’s request that he do so, or even to join her in making the call. (MSJ at 9; Facts ¶¶ 36-37) Howard essentially told Plaintiff, “You’re on your own. You can call the police if you want to. You should prosecute – we won’t help you, but you can prosecute and bear the consequences alone, with your daughter, if the prosecutors do not prosecute and let this man out again.”<sup>5</sup> After leaving Plaintiff “hanging” on her own, Howard now attempts to credit itself for taking affirmative steps to protect Plaintiff. This is bizarre.

Howard’s law school administrators failed to follow its own campus security procedures to bar Harrison from campus, post security alert notices or to notify faculty, staff and students about Harrison. (MSJ at 8; Facts ¶ 78) Howard claims that it “facilitated the involvement of the Metropolitan Police Department,” but does not state how and cites no authority for this proposition. It also attempts to attribute to itself some affirmative steps in protecting Plaintiff by: “urg[ing] her (Plaintiff) to prosecute the stalker,”<sup>6</sup> “allowing MPD to search the

<sup>5</sup> Newsom told her “It’s your call,” as to whether to call the police. (Facts ¶¶ 34-35) Although offering her no assistance or protection whatsoever, Newsom recognized the danger by advising her not to take the elevator, but to walk five flights of stairs to her office from the law school entrance. (Compl. ¶ 40) Newsom saw Plaintiff later in the hallway and asked whether she had made the call. She responded that she had called a retired MPD officer to give her a name of a person at MPD so that she would not be dismissed as an “hysterical female.” Even then, he offered absolutely no assistance to assure credibility with MPD. (Compl. ¶¶ 42-43)

<sup>6</sup> On page 8 of its motion, Defendant organizes the “fact” in a sequence that implies that this “conversation” took place on November 20, 1997, when Plaintiff went to Newsom’s office and reported the harassment (which she referred to as “harassment,” not “stalking,” since it was the D.C. Metropolitan Police Department that first characterized Harrison’s conduct as “stalking,” pursuant to the D.C. Criminal Code, on November 21, 1997). On November 21, 1997, Newsom, who only briefly attended the meeting with MPD, at Plaintiff’s insistence, interrupted Plaintiff’s questions to the MPD officer about the practical consequences of prosecution, by *yelling* at her, insisting that she agree to prosecute. This occurred in the presence of MPD Officers and Officer Sirleaf, whom Plaintiff had contacted without the assistance of Newsom or any other HU official, since Newsom refused to assist her in any way and told her that it was “[her] call.” Newsom yelled at Plaintiff, in an office enclosed partially in glass, immediately outside of her Evidence classroom, where

campus for the stalker” and “direct[ing] plaintiff to call MPD and campus police when concerned about her safety – a “direction” made more than ten days after Plaintiff had already reported the stalking to the law school administration, campus security and MPD. Obviously, “directing” Plaintiff to take steps to protect herself – particularly steps that she had already taken ten days earlier, cannot possibly be construed as Howard taking “swift” action – or any action at all -- to eliminate the hostile work environment or to protect Plaintiff from being stalked in her workplace.

The only action that Howard did take was, on one occasion, December 1, 1997. Plaintiff stood shaking Dean Bullock’s office, refusing to return to her office or classroom after receiving an angry call from Harrison stating that he would be coming to see her in her office at 1:30 that afternoon. (MSJ at 10; Facts ¶¶ 46-49) Dean Bullock delegated the call to an assistant, solely to get Plaintiff out of her office. Bullock showed absolutely no concern for Plaintiff and refused to give the matter her personal attention. (MSJ at 10; Facts ¶ 82) Dean Bullock did not even relay any background information, set forth in Plaintiff’s November 25, 1997 memo, to her assistant making the call. (Id.) Although she indicated that she would, or had been talking to Director of Security Lawrence Dawson, she admittedly never discussed with Director Dawson or anyone else in campus security, the stalking of Plaintiff on campus. (MSJ at 7-8; Facts ¶¶ 58, 83) Even on that date, December 1, 1997, Harrison entered the law school building unfettered at his announced time, 1:30 p.m. (MSJ at 10-11; Facts ¶¶ 51, 53) Harrison freely walked up to Plaintiff’s and stepped inside, standing within approximately four feet of her. Officer Dowdy then chased him out of the building, off campus, down Van Ness and into the woods. (MSJ at 10-11; Facts ¶ 53)

Even after the December 1, 1997, Bullock never even responded to Plaintiff’s December 2, 1997 memo detailing to her Harrison’s appearance at her office and the “chase” by Officer Dowdy. Bullock took no actions to keep Harrison out of the building and Plaintiff remained more frightened than she had been previously. Harrison was likely to be angry at being chased from the building, as evidenced by his voicemail message to her expressing his anger that he had been escorted out of the library by Officer Dowdy the previous week. Still,

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students had gathered waiting for her. Plaintiff was extremely embarrassed by this event and was questioned by anxious students who had seen the police meeting with them and/or heard Newsom yell at Plaintiff.

Harrison was not barred from campus, no notices were posted, and the law school community was only informed as to any of these events by Plaintiff and/or the “rumor mill,” leaving much room for error and speculation, including that Plaintiff had brought Harrison and the danger he posed, to Howard’s campus and that she was somehow married to or associated with him. (MSJ at 6; Facts ¶ 69)

Defendant cites Newsom’s own December 22, 1997 memorandum to campus security to claim that Howard took “swift” action to protect Plaintiff against Harrison, although it was written more than a month after the stalking began. (MSJ at 12; Facts ¶ 85) At the same time, Defendant tries to claim that the hostile work environment lasted only a “brief two day period.” If Newsom believed that actions were necessary to prevent Harrison from stalking Plaintiff beyond December 22, 1997, obviously, no one believed that the hostile work environment, or concern that Harrison posed a danger to Plaintiff or other women on campus, ended only two days after it began on November 20, 1997. Furthermore, Plaintiff received, and provided copies to Deans Bullock and Newsom, of a January 12, 1998 letter from Harrison to another female attorney, Valerie Edwards, in Toronto, pursuing her as his wife and discussing Plaintiff in the letter. (Facts ¶ 62) Even Newsom testified that upon learning of the letter, he was “appalled” to learn that Harrison had “cast his net far and wide” in his unwelcome pursuit of women. (MSJ, Ex. Y, at 184-188)

Not only could a reasonable juror conclude that Defendant’s “actions” failed to fulfill Defendant’s obligation to take measures reasonably calculated to eliminate the hostile work environment, but no reasonable juror *could* conclude that Howard had met its obligations; thus, Plaintiff, not Defendant, is entitled to Summary Judgment on the issue of sexual harassment/hostile work environment.

## 2. **Defendant has Distorted the Time and Sequence of Actual Events**

Defendant distorts and simply falsely represents the facts, as well as attempting to confuse the Court by discussing events out of sequence and without a time frame. Defendant claims, without citing the record, that Plaintiff alleges that she endured a hostile work environment from November 20, 1998 until December 1, 1998.

Plaintiff has never alleged that the hostile work environment ended on December 1, 1998, but has consistently alleged that it did not end until she left Howard, in June of 1998.<sup>7</sup> (MSJ at 2; Facts ¶ 98; Compl. ¶¶ 36, 132)

Defendant has implied that, immediately after November 20, 1998, Officer Sirleaf provided an armed escort and guard service for Plaintiff. This is blatantly false. *Officer Sirleaf was not even on this Continent* for approximately two months immediately subsequent to taking the November 20, 1998 report from Plaintiff. (Compl. ¶¶ 57-58; MSJ, Ex. B, Sirleaf at 38) Sirleaf was not on campus on November 21, 1998, or thereafter, for approximately two months. During that two-month period, Harrison appeared on campus at least twice and entered the premises unobstructed. (MSJ at 9-12; Facts ¶¶ 41-53) Most of the documented events regarding Harrison took place in November, 1997 through January of 1998, none of which involved Officer Sirleaf because he was in Liberia. (MSJ, Ex. B, Sirleaf at 38) When he returned, during the spring semester, he did, *on his own*, with no instruction from his superiors or the administration, check on Plaintiff and walk with her when he saw her and when he was able to leave his post. (MSJ, Ex. B, Sirleaf at 147-149) Sirleaf could not stay with Plaintiff in her office or outside his classroom and no guard ever did so, except on December 1, 1998, when Plaintiff refused to leave Bullock's office without protection. Officer Sirleaf felt so strongly that Howard had not protected Plaintiff and had unjustly failed to retain her, that he called into a radio show when Plaintiff was a guest, discussing this case. (MSJ, Ex. B, at 16-17) Officer Sirleaf said:

I put a report. I was concerned with the sister, and so I told the department, I told the security department that the sister like is at risk, and you have to assign somebody to her house – I mean to her office. They paid deaf ears to her and that was not right.... and they terminated her from her job, and that was not right.

3. **Defendant Ludicrously Cites Harrison's Message -- that he was Going to her Office to See Her - as "Evidence" that Howard's Actions had Sent him the Message to "Stay Away" from Plaintiff**

Defendant claims, on page 30 of its motion, that:

The Dean also authorized the placement of an armed, special police officer outside of plaintiff's classroom after plaintiff received a voicemail message from Harrison on December 1, 1997. The University's and MPD's response to Harrison's behavior was so effective that, before coming to the law school on December 1, 1998, Harrison requested plaintiff to "call security off of [him].... Thus, Harrison's voicemail message to plaintiff, to

<sup>7</sup> In fact, Plaintiff's pending March 18, 2002 *Objection to Magistrate Facciola's March 7, 2002 Report and Recommendation* was filed primarily because MJ Facciola mistakenly held that Plaintiff made this allegation. Although Defendant is well aware that this is an error, Defendant has repeated it in its motion.

call off security, clearly demonstrates that Howard University's actions sent the appropriate message to the stalker – to stay away from plaintiff.

The above quote is multiplicity ludicrous and illogical. First, since the purpose of Harrison's voicemail was to announce his arrival at Plaintiff's office so that he could see her directly, clearly, Harrison had not been "sent" the "message" by Howard University and/or MPD to "stay away from plaintiff." He announced his intention to see her and did, in fact, appear at her office at the announced time. Second, the University admits that the armed special police officer was posted *after* Plaintiff received the December 1, 1998 voicemail message. Since the administration took absolutely no action between Plaintiff's initial complaint on November 20, 1998 and December 1, 1998, it is clearly not possible that the Harrison's voicemail message reflects his fear of the special police officer posted at her office *after Harrison made the phone call*. Plaintiff reiterates that this officer was only posted at her office for this one day and only after Plaintiff insisted that something be done, refusing to return to her office or classroom.

Third, Harrison's reference to security referenced Officer Dowdy, who had escorted Harrison out of the law school library the previous week, on November 25, 1997.<sup>8</sup> Officer Dowdy was provided misinformation by main campus and told only that a homeless person was in the library and that he was to investigate an "MO," or "mental observation" case. (MSJ at 9-10; Facts ¶¶ 31, 42) This entire incident reflected a major breakdown in communication and a mishandling of the situation, and was so recognized by campus security officers and officials. (MSJ at 11-12; Facts ¶¶ 50-51) Howard University attempts to count this event as an example of appropriate action, when it was clearly a major mistake. Had campus security held Harrison for MPD, many questions regarding his intent and his surveillance of Plaintiff could have been determined. Harrison could have been arrested, since the stalking report had already been taken and Plaintiff had committed to prosecuting Harrison for stalking if MPD apprehended him. At minimum, police officers would have taken Harrison for

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<sup>8</sup> No notices regarding Harrison were posted in the library or anywhere else on campus. Library personnel were completely uninformed about Harrison, except to Plaintiff's student, Rolanda Jefferson. Ms. Jefferson had asked Plaintiff for a description of Harrison. Plaintiff relayed to the student the description provided to her by MPD and the homeless shelter, since Plaintiff had never seen him at that point. The student recognized Harrison from the description and his appearance of instability. She called security and told them that the man who was stalking her professor was in the library. The instruction given by MPD was that Harrison should be barred from campus and held for MPD if seen on campus. Officer Dowdy was not given this information and instead escorted him off campus.

mental observation, and perhaps, given some help or kept from the public if doctors determined that he presented a danger to the public. Instead, he wandered freely away and returned, at will, to the law school to harass Plaintiff in her workplace. Had the administration of the law school followed up with main campus security and/or indicated to the Director of Security or anyone else in a position of authority in campus security, that this was an issue deserving of attention, main campus would have been more alert to the situation and Officer Dowdy would likely have been accurately informed of the situation.

4. **Inexplicably, Defendant Implies that Plaintiff Did not See Harrison at her Office Door**

On pages 11-12, Defendant appears to be implying that the man who showed up at Plaintiff's office, at the time designated by Harrison in his message, who fit the description of Harrison provided to Plaintiff by MPD, the homeless shelter and Officer Dowdy, was not actually Harrison. Defendant also implies that: 1) the footsteps that Dowdy chased running down the law school corridor and down the five flights of steps were not the footsteps of Harrison, but of some student, coincidentally in a big hurry; 2) that Harrison just happened to be standing outside the property line of the law school at the end of Dowdy's chase of the footsteps; and 3) that Harrison ran from Dowdy, full speed, down Van Ness and into the woods, after Dowdy asked to speak to him at the law school, perhaps, simply because he felt like jogging. It is not clear what point Howard is trying to make or why it wants to make it.

Plaintiff did not describe Harrison to Dowdy with a backpack because she did not describe him to Dowdy at all. Plaintiff simply nodded to Dowdy and whispered, "There he is," as Harrison was running away. (MSJ, Ex. AA, Dowdy at 30) Plaintiff had no reason to describe Harrison to Dowdy because Dowdy had seen and spoken to Harrison the previous week. Neither Plaintiff nor Dowdy doubted that it was Harrison at her door. It is of absolutely no consequence that she did not see a backpack. Plaintiff did not see both of Harrison's hands or his entire body, since he began to enter, had one hand on the doorknob and stepped on foot inside the door, then ran when he looked around the door and saw Dowdy. (MSJ, Ex. A, Martin at 117-118)

In addition, even if, somehow, the man at the door was a "Harrison look-alike," arriving at the precise time announced by Harrison, and motivated to run away at top speed at the sight of a security officer, Howard

had an obligation to act on this credible report and provided protection from Harrison – or the Harrison “imposter.” Plaintiff, Dowdy, and later, MPD all believed that it was Harrison at the door. There is no reason to believe otherwise. In any case, Defendant cannot claim that no reasonable juror could conclude that Plaintiff did not see Harrison at her door. All evidence indicates that no reasonable juror could conclude that Harrison was not at her door, particularly under the burden of proof in a civil case of “more probably than not.”

In addition, on page 30-31 of its motion, Defendant claims that “Plaintiff was not aware that Harrison had ever been in her presence on any other occasion” than December 1, 1997. This is not true. Harrison’s messages and letters made Plaintiff aware that he had been watching her at times when she did not know of his presence.

5. **Defendant, for the First time, Claims that the Hostile Work Environment Lasted for only “a Brief Two-Day Period ”**

For the first time in this litigation, on page 34 of its motion, Defendant now claims that Harrison’s conduct occurred “over a brief two day period.” Plaintiff cannot fathom how Defendant arrived at this new conclusion. Plaintiff received her first call from Harrison in early to mid-November, but since he only asked to audit a class that she did not teach at Howard, but taught in Cleveland (Facts ¶ 32), she was not alarmed at that time. On November 20, 1998, however, Plaintiff received Harrison’s letters and voicemail professing his hope that she is his “wife.” (MSJ at 4-5; Facts ¶ 29) When he was escorted off campus instead of being held for MPD on November 25, 1998, and was only detected at all because of a student who asked Plaintiff for a description of Harrison because she worked in the library. (MSJ at 9-10; Facts ¶ 41) This event, along with Harrison’s messages indicating that he had been watching her when she was unaware of his presence, certainly created a hostile work environment since she worked under the fear, hanging over her, like the sword of Damocles, that Harrison could appear at any moment and harm her.

When Harrison angrily announced his arrival on December 1, 1998, showed up as promised and was chased from her office, she feared, every remaining day at Howard, that Harrison would return, since there was absolutely nothing in place to stop him, deter him or detect him on campus – not even a bar notice, a security alert, or announcements to faculty, staff or students, despite Plaintiff’s repeated requests for these simple measures. Defendant seems to imply that the law school administration did not have Harrison’s description

until December 18, 1998, when Newsom asked Plaintiff to draft a security notice – which was never posted although Plaintiff immediately drafted the notice; however, Defendant obtained a description of Harrison, from MPD and the homeless shelter, through Officer Sirleaf, on November 20, 1998, when he met with MPD and Plaintiff. (Facts ¶ 41)

Plaintiff obtained the description from MPD and Sirleaf since she had not actually seen Harrison until December 1, 1998, and then, only for a second, while he stepped into her office, then ran when he saw Officer Dowdy. (Facts ¶¶ 41, 53) Howard never needed Plaintiff to provide a description to its administration. In her November 25, 1998 five page single spaced memorandum to Dean Bullock regarding Harrison, Plaintiff relayed to Dean Bullock all of the information that she had gathered about Harrison, whether from the notes and messages that he had left, MPD, Officer Sirleaf and/or the homeless shelter. (MSJ at 9-10; Facts ¶ 44-45) Howard had everything it needed from Plaintiff, at all times beginning on November 20, 1998, to post any notice or otherwise inform the law school community that Harrison should not be on campus.

Finally, in its attempt to escape inevitable liability on Plaintiff's sexual harassment/hostile work environment claim, Defendant argues that Plaintiff suffered no adverse action as a result of the stalking because she suffered no tangible economic injury. This amazing assertion apparently ignores the entire body of law on sexual harassment as a cause of action. Plaintiff again refers Defendant to this Court's December 15, 1998 decision, as well as the body of law on sexual harassment generally, cited therein.

## VIII. RETALIATION

### A. Plaintiff Engaged in Protected Activity

Again, in violation of the doctrine of *res judicata*, Defendant has resurrected its argument that Plaintiff did not engage in protected activity prior to her May 15, 1999 EEOC charge. This Court already held, on December 15, 1999, that protected activity is not restricted to the filing of an EEOC charge, but includes protesting conduct that constitutes sexual harassment. The Court also 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.

**B. The October 31, 1997 Form Letter Did not Constitute a Decision not to Renew Plaintiff**

On page 14 of its motion, Defendant misrepresents the October 31, 1997 conversation between Plaintiff and Dean Bullock by stating that Dean Bullock informed her that her contract would expire on May 15, 1998, and that her contract would not be renewed. This was Defendant's original position before the EEOC. *See Plaintiff's August 3, 2001 Motion for a Default Judgment Due to Defendant's Production of Late, Incomplete and Falsified Evidence*, long abandoned, since it was clearly established, including by the November 3, 1997 letter itself, which was also sent to Christi Cunningham, the selectee, and other professors whose contracts were expiring on May 15, 1998. **In its own Opposition to Plaintiff's MSJ, page 9, Defendant has taken the contradictory position to the one taken in its MSJ, admitting that the October 31, 1997 letter was a form letter written to all professors whose contracts were expiring a the end of the year and was no indication of whether they would be renewed or hired permanently for the following year.** (Defendant's MSJ, Exs. No.11 and 12) This is yet another example of how Howard changes, alternates and creates defenses that have no basis in fact or logic. Finally, Plaintiff has never "conceded" that Bullock told her that her contract would not be renewed, but to the contrary, has consistently maintained that Bullock told her that the letter was a required formality and that a decision by the APT Committee to hire her for the following year would override the form letter.

**VIII. BULLOCK'S RETALIATORY MOTIVE**

Dean Bullock, unbeknown to the other Committee members, repeatedly disparaged Plaintiff to APT Committee member Vice Chair Taslitz (MSJ at 18; Facts ¶¶ 191-192), making it clear that she did not want Plaintiff on the faculty. Bullock concealed her animosity toward Plaintiff from other faculty members, and even the EEOC, during its investigation. (MSJ at 19, 39-40; Facts ¶¶ 179, 207) Taslitz, in turn, made factual misrepresentations to his fellow APT Committee members that caused them to conclude that the selectee, Cunningham, had a better record of, and more promise for, scholarship. (MSJ at 20-24; Facts ¶¶ 17-20, 127, 157, 159-160, 185) These misrepresentations are clearly seen as such by simply reading the candidates' applications and/or resumes submitted to the APT Committee at the time of the time of their application. (MSJ at 32, 36; Facts ¶¶ 158-160, 163-165, 172, 176)

Even aside from “poisoning” the APT Committee through Taslitz, Bullock admitted that at least three other faculty positions were vacant at the time that Plaintiff was requesting to be considered for a faculty position. (*Bullock’s Answer to Complaint* ¶ 313, 326) Bullock refused to authorize the APT to fill the positions and told Prof. Nolan that no positions were available, but that she was “helping” Plaintiff by referring her for another job. (Facts ¶ 221) Plaintiff is completely unaware of any such referral, and in light of Bullock’s intense animosity toward Plaintiff, it is inconceivable that any such referral would have been made. Instead, Bullock manipulated and reassigned courses to exclude Plaintiff from the faculty. (MJS at 41-44; Facts ¶¶ 236-250)

IV. **DEFENDANT’S PURPORTED LEGITIMATE REASONS ARE PRETEXTUAL**

Defendant appears to be arguing that, despite Plaintiff’s *prima facie* case, no reasonable juror could find that Plaintiff’s non-selection was based on retaliation because no reasonable juror could disbelieve its stated “legitimate, non-discriminatory reasons” for the non-selection. Defendant’s stated reasons for Plaintiff’s non-selection have changed so often that no reasonable juror could find Defendant credible. (See *MSJ* at 2444 and *Plaintiff’s August 3, 2002 Motion for a Default Judgment Due to Defendant’s Production of Late, Incomplete and Falsified Evidence*.)

Defendant now alleges, for the first time, that Plaintiff was not renewed due to “poor scholarship.” Nowhere in the record is there any allegation that Plaintiff produced “poor scholarship.” To the contrary, Plaintiff’s colleagues, including APT Committee members and even Dean Bullock, praised the quality of her scholarship. (*MSJ* at 10, fn. 20; Facts ¶¶ 32-34) Defendant first alleged “bad judgment” in September of 2002, in a deposition by Prof. Andrew Gavil, whose biased, uncorroborated, “vague recollection” is demonstrated to lack credibility for numerous reasons. (*MSJ* at 10, fn. 20, 39-41; Facts ¶¶ 196-197; see also 212, 185, 188, 198-202, 205-212) Defendant was precluded, per this Court’s Order of September 24, 2002, from using or including this testimony in its *Motion for Summary Judgment*; however, Howard defiantly violated this Order, as discussed in Plaintiff’s November 11, 2002 *Motion to Strike Defendants’ Motion for Summary Judgment*.

A. **Defendant has Misrepresented Plaintiff’s Scholarship**

On pages 1-2 of its motion, Defendant claims that Plaintiff “failed to fulfill her scholarship duties and met the law school’s requirements for reappointment.” Defendant cites no reference to the record for this

proposition because there is none. To the contrary, Plaintiff was awarded a summer grant, in the spring of 1997, for the summer of 1997, because her progress on her scholarship was deemed to meet or exceed the scholarship requirements or expectations of the law school. (MSJ at 26; Facts ¶ 132)

For four years since Plaintiff filed her EEOC charge in this case, Defendant claimed that Plaintiff's article was not accepted for publication by December 18, 1997, when the Committee made the decision not to select her (MSJ at 25-26; Facts ¶ 130); however, when the APT Committee members were deposed, they readily admitted that they knew that Plaintiff's article was accepted for publication at the time that they made the December 18, 1997 decision. (Id.)

It was only after **Defendant was exposed for its lie of four years** that Defendant switched its defense again, moving the time back further and further as to when Plaintiff was expected to complete and submit her *911...* article. Defendant has gone so far back now that it claims that Plaintiff should have finished the article in Cleveland. If she had done so, however, Howard would not have received "credit" and the "wonderful review" for the article that it received. (MSJ at 33; Facts ¶ 132) Furthermore, the professor submitting an article only has control over when the article is submitted, but not when it is published. The law journal publishing an article may take as long as eighteen months before an accepted article is actually in print. (Facts ¶ 174)

There were no specific scholarship requirements for reappointment, but only for tenure. (MSJ at 33; Facts ¶ 169-170) Plaintiff was not yet eligible to be considered for tenure (MSJ at 33, Facts ¶171), so this was not an issue; however, the requirements for tenure were to have at least three publications within five years of teaching. (MSJ at 33; Facts ¶ 169-170) In addition, Plaintiff had four articles to her credit prior to teaching, and recognized by Howard in the memo recommending her hire and in its own website. (MJS at 32-34; Facts ¶ 171, MSJ, Exs. D and RRR) Since she had begun teaching, three years earlier, Plaintiff had published two articles and had a draft of her third article, which had been submitted to Dean Bullock as part of her application for a 1997 summer grant. (MJS at 33-34; Facts ¶ 133, 171) Plaintiff was, therefore, very close to meeting the minimum requirements for fifth year tenure consideration, even though she was only in her fourth year of teaching. She would certainly would have met the scholarship requirements for tenure the following year had she been retained.

Defendant claims, on page 2 of its motion, that: “For over eighteen months, plaintiff did not publish an article that should have been completed before she arrived at HU, and then published nothing else.”

Defendant’s new claim that her *911...* article should have been completed before she arrived at HU is unsupported by the record. Defendant never made this claim in its *Answers to Interrogatories*, to the EEOC during its investigation or in her April of 1998 memoranda to Plaintiff, when the two corresponded regarding Plaintiff’s renewed applications for the positions that remained vacant at Howard. (MSJ , Exs. NNN and PPP)

At the time of the APT Committee’s December 18, 1997 decision, Plaintiff had been at Howard for 17 months (July 15, 1997 –December 18, 1998). Two months earlier, Plaintiff had submitted to the Director of Faculty Services,<sup>9</sup> for distribution to law reviews, her 141 pages (published), 192 page (manuscript form) article, *911: How Will Police and Fire Departments Respond to Public Safety Needs and Comply with the Americans with Disabilities Act?* Facts ¶ 130) This meant that this unusually lengthy and substantive article was completed and submitted for publication within 15 months at Howard. In fact, as set forth in Plaintiff’s November 5, 1997 memo to the APT Committee as a required part of her application, the article had been finished numerous times, but since it was a developing area of the law, Plaintiff chose to update it as additional cases were decided and appealed, rather than submit it and have the article be outdated, or moot, by the time it came out in print. (MJS at 33; Facts ¶ 133, 175-176)

Defendant states that Plaintiff published nothing else after she was rejected for a permanent position on December 18, 1997. This is true. Plaintiff was being stalked in her workplace, had lost her job and livelihood, and her teenage daughter was extremely distraught and became physically and emotionally ill over the prospect of leaving her high school and community for her mother to find a job elsewhere. Plaintiff abandoned all scholarship endeavors at that time. The relevant inquiry is what was the status of Plaintiff’s scholarship at the time the decision not to renew her was made, not what was the status of her scholarship after her livelihood was ripped out from under her and she had to devote her attention to supporting her daughter and herself.

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<sup>9</sup> It is undisputed and well documented that there was a computer error in the Office of the Director of Faculty Services that required the entire document to be re-typed before it could be submitted to law reviews, since law reviews required a specific format for submitted articles. (Facts ¶ 130) It is undisputed that Plaintiff was in no way responsible for or in control of this computer error.

**C. APT Committee Members were Deliberately Misinformed, Based on Retaliation**

Four members of the APT Committee (the fifth being Taslitz), mistakenly believed that, at the time of the December 18, 1997 decision, Christi Cunningham had an article published, in print, and that Plaintiff's article was accepted for publication, but not yet published. (MJS at 36; Facts ¶¶ 164-165) In fact, both Plaintiff's and Cunningham's articles were accepted for publication, but not yet in print. (MJS at 36; Facts ¶ 167) It was Taslitz, who admittedly took the lead in presenting the credentials of the candidates to the Committee. (MJS at 36; Facts ¶ 159) These four members were also misled about Plaintiff's record of publication, as compared to that of Cunningham.<sup>10</sup>

When confronted with the resumes that were submitted as part of their applications in 1997, the Committee members had to admit that Plaintiff's publications far exceeded those of Cunningham. (MJS at 34; Facts ¶ 155) Oddly, Defendant claims that, at the time of the December 18, 1997 decision, Plaintiff's only publication was the *911...* article; however, Plaintiff had four publications prior to teaching at Cleveland State, had published one article at Cleveland State, and one at Howard, namely, *911...*, for total of six publications. (MJS at 32-34; Facts ¶ 171) She also had a draft of a seventh article, *Lights....*, which she submitted to the Dean in April of 1997. (Id.)

On page 37 of its motion, Defendant claims that immediately after Plaintiff's first semester at Howard (during which time she was wearing a neck brace due to a car accident on October 7, 1997), Taslitz was "surprised, disappointed and concerned" over Plaintiff's "lack of scholarship." The only evidence of this claim is Taslitz' "eleventh hour" word, raised for the first time, in his September 2002 deposition. Taslitz also claimed that he was "angry," over Plaintiff's failure to publish in her first semester, an emotion that seems outside of the realm of "normal" for a professor to feel over a colleague's progress on an article within a four-

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<sup>10</sup> While purporting to compare the candidates, Defendant only discussed Cunningham's credentials, but ignored those of Plaintiff – obviously for fear of an actual comparison. Plaintiff refers the Court to her *Motion for Summary Judgment* for that comparison. Furthermore, as stated by Prof. Spencer Boyer, the most senior member of Howard's law school faculty, no one needed to assess Plaintiff's "potential" as a teacher (*MSJ, Ex. L, Boyer at 16*). Plaintiff had a seventeen year career, including four years of teaching that established that she already was a "good teacher." (Id.) Cunningham, on the other hand, was new to the legal profession and had to be assessed based on her predicted "potential."

month period. (MJS at 23; Facts ¶ 160)<sup>11</sup> Taslitz admitted that he never expressed this anger, disappointment or concern to Plaintiff. (MJS at 23; Facts ¶ 60) To the contrary, Taslitz led Plaintiff to believe, through January of 1998, that he was her friend and mentor. (MJS at 22-23; Facts ¶ 124) He never indicated to her, in any way, that she was in danger of not being renewed or selected for a permanent position. (Id.)

Defendant attempts to twist the testimony of Nolan and Leggett to coincide with that of Taslitz; however, it misstates their testimony. Nolan's testimony was non-specific as to time, but in response to the question of what was said with respect to the APT Committee discussion regarding Plaintiff, Nolan simply revealed her thought process, which clearly reflected a misunderstanding of the status of Plaintiff's article as compared to that of the selectee, Cunningham.

I think going back -- I think I among some other people -- I guess that's one of the reasons we continued to come to your office to see how you were doing because we were concerned when -- that you produce your article so during this discussion one of the background was again looking at who could best advance the interests of the law school and from focusing on scholarship it seemed that Christi would be -- this is the part of the discussion that I'm recalling the best. That Christi in fact had come in, had been able to publish an article and -- publish, not just draft and send it out but 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 -- was in favor of Christi.

Nolan was misinformed, as were Smith, Leggett and LaRue. (MJS at 32; Facts ¶ 164-165) Taslitz did the representing and was also Bullock's "confidant" regarding her disdain for Plaintiff. (MJS at 36; Facts ¶ 159)

On page 15 of its motion, Defendant has selected passages of Plaintiff's application out of context. The statement regarding "embarrassment" at not publishing the article sooner, was taken out of context.

**Scholarship.** I am extremely proud of the quality and scope of my 190 pages article (possibly a book) entitled "911: How Will Police and Fire Departments Meet Public Safety Needs and Comply with the Americans with Disabilities Act? However, I am extremely embarrassed at how long it has taken to be ready to send out. It has been substantially "finished" many times; however, I have had incredible difficulties with "cite checking" methods used by various research assistants which I have had over the course of this article. Because this area is developing rapidly, cites have been changing rapidly as well -- from unofficial to official cites, from trial court cites to appellate court

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<sup>11</sup> Defendant claims, on page 39 of its motion, that "a significant factor in the APT decision not to recommend the plaintiff for a position on the Law School faculty was a strong sense of dissatisfaction and/or disappointment with the plaintiff on account of her misrepresentations (or her failure to live up to her representations) concerning an article that they had expected to be in final form and ready for publication upon her arrival at the Law School." Certainly, nothing anywhere in the record supports any claim of "misrepresentation" by Plaintiff regarding her scholarship.

cites (and the resulting change in how the case is used), and the number of cases which I must read, screen, assess, and include every time the article has sat dormant while cites are checked.

....

As much as I would have liked to have had “911...” published at least a year ago, I must say that it is a much better and more complete analysis than it would have been at that time. This is simply because when I began this article, I used predictions and recommendations, analogizing ADA problems to cases decided under related statutes; now, however, I have been vindicated” by many of the cases, and I can use others to demonstrate why deviating from my recommended analysis yields an undesirable and often dangerous result. “The Lord works in mysterious ways,” and I wonder if the delays fall under that category.

In addition to “911...,” I do have a draft of a much shorter, second article, entitled “Lights, Camera, Discrimination! ‘Playing’ the Victim under Title VII.” I see no reason why I should not finish this over the winter break. In the spring, I plan to begin an article entitled, “Still Racist after all these Years – and Covered by the Americans with Disabilities Act?”

Defendant’s motion deliberately omits Plaintiff’s expressions of pride in her article, the length, breadth and quality of her ambitious article and her explanation of the expansion and metamorphosis of the article during her first year at Howard. Plaintiff, setting high standards for herself and preferring not to have had so many frustrations with a major project like *911...*, candidly<sup>12</sup> stated that she would have liked to have been finished with this project a year earlier; however, nowhere in her memo does she state, or apologize for, any failure to meet a commitment to or expectation of Howard. That is because there never was any commitment or expectation with respect to the date that the article would be published. Plaintiff’s receipt of a 1997 summer grant, based on the progress of her scholarship as evidenced by drafts that she submitted to Dean Bullock, demonstrates that she had met Howard’s expectations and had nothing for which to apologize.

Clearly, an article of the magnitude and scope of *911...* in a developing area of the law, would take longer to write than the 60 page article completed by Christi Cunningham in her first year at Howard. (MJS at 32-35,

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<sup>12</sup> Plaintiff’s memo is extremely candid. She shared with her colleagues, in the spirit of collegiality, the things that she accomplished and learned during her first fifteen months at Howard. Pursuant to Taslitz’ suggestion that she include all reasons that *911...* took longer than she anticipated to complete, Plaintiff shared that she was involved in a landlord-tenant dispute that began in September of 1997, and of an IRS matter that she was in the process of resolving. Taslitz was already aware of this tax problem because when she was originally offered the position, she was led to believe that Howard would pay her moving expenses, and later learned that it would not pay moving expenses for visitors. Plaintiff explained, in writing, to Dean Ramsey, and discussed with Taslitz, that she was unable to borrow the money to cover moving expenses due to an IRS lien. Had Howard paid moving expenses, Plaintiff would never have even discussed this matter with any of her colleagues. Despite these obstacles, Plaintiff had, during her first year, had contributed substantially to the law school community, particularly with respect to teaching exam taking classes to improve law school law school performance and the bar passage rate. In addition, she had completed substantial scholarship, in addition to the five publications she had to her credit before joining Howard and received exceptional student support.

Facts ¶ 158-160, 175-176) Furthermore, Defendant completely ignores the draft of “*Lights*” that Plaintiff had already completed and submitted to Dean Bullock in April of 1997 and her preliminary research and theory of her article, “*Still Racist...*” (MJS at 32-33; Facts ¶ 170)

On page 15, footnote 12 of its motion, Defendant states that “Plaintiff acknowledged that the article was not published at Pepperdine University.” Plaintiff’s *911...* article was not published by Pepperdine because Plaintiff chose to have it published by the New York University Journal of Legislation and Policy,<sup>13</sup> which accepted it after Pepperdine. (MJS, Ex. MMMM) Defendant omits this fact in an effort to lead the Court to question whether Plaintiff’s article was accepted for publication at all, and specifically, whether it had been accepted by Pepperdine prior to the Committee’s decision. No one ever questioned it at the time that the APT Committee made its decision; therefore, Defendant’s innuendo is immaterial and irrelevant.

Plaintiff’s November 5, 1997 six page, single spaced application memorandum (not “letter”), discussing her teaching, contributions to the law school and greater community and scholarship was in no way, “hat in hand,” as Defendant sarcastically and maliciously claims, on page 39 of its motion. It was, instead, a statement of accomplishment, pride and feeling of being part of the Howard community, despite some obstacles.

Defendant has never produced Plaintiff’s application for a 1997 summer grant or the attachments, which included both the expanded *911...* article and the *Lights...* article, despite three Court Orders and a Contempt Order requiring Defendant to do so (April 11, 2001, May 30, 2001 and June 25, 2002) Plaintiff did, however, produce her 27 pages draft of the *Lights...* article (MSJ, Ex. CCCC); Plaintiff is therefore entitled to an adverse inference with respect to this document and its attachments.

On page 40 of its motion, Defendant states that Christi Cunningham “*started and completed* a full-length article that had been accepted for publication ...” Defendant does not define a “full length article.”

Cunningham’s article was 60 pages long, published. Plaintiff’s article was 141 pages long, published. (MSJ,

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<sup>13</sup> In addition to being cited in at least one law review article, *911..* is cited as an authority in *Diffy v. Riverside Sheriff’s Department*, 84 Cal. App. 4<sup>th</sup> 1031 (4<sup>th</sup> Cir. 2000). Plaintiff has also been consulted by the *United States Department of Justice*, Civil Rights Division, which was using her article for guidance on ADA cases involving police and fire departments. In addition to scholarly recognition, then, Plaintiff’s article is apparently having a practical influence on the law and the administration of law enforcement. Since Plaintiff dedicated the article to the memory of her deceased father, a former New York police officer and fire fighter, this influence is of special significance to her.

Ex. MMMM) Plaintiff added approximately 75 manuscript pages to her article during her first year at Howard, while Cunningham wrote a 67 page manuscript article during that same year. (MSJ at 32-33; Facts ¶ 160) Plaintiff's article cites hundreds more cases than does Cunningham's article and involved a developing area of the law.

Defendant falsely states, on page 41, footnote 21, that "The Plaintiff's sole publication was an article that she had represented was in final form *before* she began teaching." In fact, Plaintiff had published, and was credited by Howard for four articles prior to teaching, and that she taught at Cleveland State, before teaching at Howard, where she published another article. Her *911...* article was her *seventh* publication. (MSJ at 32-33; Facts ¶ 160, 176) Defendant's counsel may be confusing Plaintiff's scholarship with that of Cunningham, since Cunningham's article, "*The Rise of Identity Politics: The Myth of the Protected Class in Title VII Disparate Treatment Cases*," was, in fact, **Cunningham's first article since her graduation from law school.** (Id.)

**D. 1996 Summer Grant**

Taslitz' new allegation that Plaintiff had represented that she would have the article published before she arrived at Howard is completely false and proven false by Plaintiff's 1996 Summer Grant request. (MJS, Ex. VVVV) Defendant states, on page 6, footnote 3 of its motion, that Plaintiff was awarded a summer grant "to provide monetary support for legal research" to write "*Lights, Camera, Discrimination!*" Defendant omits from footnote 3, **but admits**, in footnote 4, that Plaintiff also requested the grant to continue her *911...* article. Plaintiff explained, in her application memo, that she was adding developing law to it and checking citations, which were changing due to appeals (MJS, Ex. VVVV, MJS at 33, fn. 12; Facts ¶ 175-176); consequently, Plaintiff stated precisely where she was with her scholarship and made it clear that *911...* was not completed and would not be published by the time she arrived at Howard. Plaintiff fulfilled her commitment by expanding and updating the *911..* article to produce an exceptional product. In addition, she began and produced a draft of the *Lights...* article within a year of the grant. (MJS at 33; Facts ¶ 176)

Incredulously, Defendant attempts to impugn Plaintiff's character by implying that she *misused* the \$3,000 summer grant by using it to relocate from Cleveland to Washington – which she needed to do to accept the job at Howard! Summer grants are awarded to compensate professors for their time dedicated to research.

There are no particular costs attached to conducting this research. The grant award does not require or even suggest the manner in which the professor receiving the grant should spend the money; nevertheless, when this award was granted, former Dean Ramsey was well aware that the money would be used for moving expenses because Plaintiff wrote to him directly and explained her need for moving expenses to accept Howard's offer. (MJS, Ex. VVVV) Defendant, has again, unscrupulously attempted character assassination of Plaintiff, though she did exactly what she was supposed to do, and said she would do.

**C. Defendant has Misrepresented the Faculty's Perception of Plaintiff**

On page 2 of its motion, Defendant claims that: "The faculty questioned plaintiff's judgment long before her claim of harassment." Plaintiff incorporates, by reference, her November 11, 2002 *Motion to Strike Defendant's Motion for Summary Judgment*, pages 3-5, 7-15 into this document. This Court specifically violated this Court's Order to exclude Gavil's "eleventh-hour," uncorroborated accusations of "bad judgment" from its Motion for Summary Judgment. Defendant defiantly violated that Order, poisoning the entire document with accusations that Plaintiff has been denied the right to explore in discovery, specifically because Defendant refused to produce a witness noticed for deposition by Plaintiff, who could corroborate at least some of Plaintiff's claims with respect to this issue.

If this Court considers the Gavil's precluded testimony, Plaintiff notes the following. For four years, Defendant never made any claim that any faculty member questioned Plaintiff's judgment. Defendant never raised in its Answers to Interrogatories, statements to the EEOC or in any pleading prior to the September 5, 2002 Gavil deposition. If "the faculty questioned plaintiff's judgment long before her claim of harassment" (in November of 1997), why are Plaintiff and the Court first hearing this accusation in September of 2002?

Ten members of the faculty were deposed in this case, including Profs. Smith, Nolan, Boyer, Rogers, Jones, LaRue, Leggett, Kurland, Gavil and Taslitz. The only faculty member who claimed that he questioned Plaintiff's judgment was Gavil. Taslitz testified that other faculty members raised concerns to him about Plaintiff, naming Gavil, but Taslitz did not claim that he had personally assessed any "bad judgment" by Plaintiff. In fact, he testified that he liked Plaintiff, considered her a "friend," and found her to be a warm person. The incident cited by Gavil as his "vaguely recalled" example of Plaintiff's alleged "bad judgment" is

not only disputed by Plaintiff, but the former student involved, now a practicing attorney, specifically submitted a Declaration praising Plaintiff as a professor and accepting responsibility for the incident. (**Ex. A**)<sup>14</sup>

Defendant claims that Dean Bullock invited Plaintiff to lunch to discuss “her lack of scholarship, among other things.” Even Bullock does not make this claim. Bullock said that she took all professors to lunch. (MSJ, Ex. H, Bullock at 18-19) They talked about teaching, their children, and primarily other pleasantries. (MSJ, Ex. H, Bullock at 22-23) Any reference to scholarship was general.<sup>15</sup> (MSJ, Ex. H, Bullock at 20-22) Bullock testified that there was nothing “unpleasant” about the lunch (MSJ, Ex. H, Bullock at 19) On September 18, 2002, when questioned about the lunch with Plaintiff, Bullock made no mention of Plaintiff “complaining” or discussing being assigned Evidence. When her deposition was continued, on September 20, 2002, she changed her testimony from describing a social, not “unpleasant” lunch to claiming that Plaintiff complained about being assigned Evidence, and that this demonstrated that Plaintiff had “bad judgment.” (MSJ, Ex. H, Bullock at 343-346) Aside from being questionable evidence of “bad judgment,” this simply did not happen. Plaintiff never discussed Evidence with Bullock at all. (MSJ, Ex. J, Martin at ¶¶ 7-10). Bullock cannot recall whether this lunch took place in the spring of Plaintiff’s first year of teaching at Howard, or the fall of her second year. If it took place in the spring of 1997, this was before she was teaching Evidence or knew that she would teach Evidence. (MSJ, Ex. SSSS) Dean Bullock’s word cannot be relied upon. The documented evidence, written by her own hand, proves that former **Dean Bullock is a liar**. (MJS at 43; Facts ¶ 244)

The claims of Defendant, on pages 38-39 of its motion, regarding “the faculty’s” alleged perception of Plaintiff as having “poor judgment,” are very much disputed and are based only on Taslitz’ biased “eleventh hour” testimony and the testimony of his best friend, Andy Gavil, whose testimony was ordered excluded from Defendant’s motion. The few faculty members who allege, or reportedly allege, vague “impressions” of non-collegiality and “bad judgment” by Plaintiff, are the same professors who are repeatedly associated with Taslitz: Gavil, Jamar, Robinson and Kurland. (See, e.g. **Exhibit B**, memo written by Prof. Robinson distributed to the

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<sup>14</sup> The name of the former student is redacted in **Exhibit A**, but the unedited version has been provided to Defendant and will be provided to the Court, under seal, upon request.

<sup>15</sup> Indeed, Bullock approved, without question, Plaintiff’s April 1997 summer grant application, indicating that her scholarship was at least satisfactory.

faculty, staff, student body and others, accusing Prof. Boyer of trying to undermine Bullock, Taslitz, Jamar and Kurland.) Defendant attempts to drag other professors into this testimony;<sup>16</sup> however, Defendant has falsely represented their testimony. For example, Defendant asserts that Prof. Nolan believed that Plaintiff deceived her by withholding information during the application process; however, in the very passage cited by Defendant, Nolan specifically stated that she never had any reason to believe that Plaintiff had deceived her or withheld information from her. (MSJ, Ex. CC, Nolan at 256)

IX. **NEWSOM'S ORDER TO PLAINTIFF TO VACATE HER OFFICE**

Plaintiff suffered emotional distress and humiliation as a result of being ordered to vacate her office while during the exam grading period and while the other departing visiting professor was permitted to stay months beyond her contract's end, never being asked to leave. (MJS at 46-47; Facts ¶¶ 261-264)

V. **BREACH OF CONTRACT**

Again, violating principles of *res judicata*, Defendant feigns obliviousness to this Court's December 15, 1999 Order holding that oral representations made by Taslitz in connection with the employment contract between Plaintiff and Howard may be considered by a jury. Taslitz' own testimony indicates that he led Plaintiff to believe that she could expect to become a permanent member of the Howard faculty if she left her tenure track teaching position in Cleveland and forfeited the other opportunities for tenure-track positions for which she was interviewing, to accept an offer from Howard. (MSJ at 44-46; Facts ¶¶ 16-18, 22)

**CONCLUSION**

For the foregoing reasons, Defendant's *Motion for Summary Judgment* must be denied in all respects.

Respectfully submitted,

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<sup>16</sup> Kurland, however, chose to testify that he did "not recall" anything related to this case, rather than either alienate his allies by supporting Plaintiff, or join them by participating in attempts at character assassination of her.



**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that on this 13th day of November, 2002, a true copy of the Foregoing *Plaintiff's Opposition to Defendant's Motion for Summary Judgment* was mailed, first class, postage pre-paid, to:

Phillip Lattimore, Esquire <sup>17</sup>  
Senior Associate General Counsel  
Office of General Counsel  
Howard University  
2400 Sixth Street, N.W., Suite 321  
Washington, D.C. 20059

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<sup>17</sup> 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.