

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/AK
)	
_____)	

**PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION FOR JUDGMENT, AFTER
VERDICT, ON SEXUAL HARASSMENT CLAIM**

Plaintiff hereby opposes Defendant’s motion for judgment, as a matter of law. Plaintiff incorporates, by reference, all arguments made in her own pending May 8, 2006 *Motions for Judgment*.

MEMORANDUM IN SUPPORT OF MOTION

I. Legal Standard

A. Rule 50(B)

When assessing a Rule 50(b) motion for judgment after a jury verdict, the issue is whether there was sufficient evidence upon which the jury could base its verdict. *Scott v. District of Columbia*, 101 F.3d 748, 752-753 (D.C. Cir. 1996). Although the court cannot substitute its view for that of the jury, and can assess neither the credibility nor weight of the evidence, the jury's verdict can only stand if the evidence in support of it is "significantly probative" and "more than merely colorable." *Scott* at 752-753, citing *Mackey v. United States*, 303 U.S. App. D.C. 422, 8 F.3d 826, 829 (D.C. Cir. 1993), (citing *McNeal v. Hi-Lo Powered Scaffolding, Inc.*, 826 F.2d 637, 640-41 (D.C. Cir. 1988); *Ferguson v. F.R. Winkler GMBH & Co.*, 79 F.3d 1221, 1224 (D.C. Cir.), *cert. denied*, 136 L. Ed. 2d 252, 117 S. Ct. 360 (1996); *see also Siegel v. Mazda Motor Corp.*, 878 F.2d 435, 437 (D.C. Cir. 1989). The D.C. Circuit’s analysis is consistent with that of the U.S. Supreme Court. *Gasperini v. Center for Humanities*, 518 U.S. 415 (1996); *Weisgram v. Marley Co.*, 528 U.S. 440 (2000).

The Court may grant judgment as a matter of law, after trial, where the facts are undisputed and/or no reasonable juror could find for the opposing party. This standard is the same standard used in

the context of motions for summary judgment. 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. *Adickes v. S.H. Kress and Co.*, 398 U.S. 144 (1970); *Woodfield v. Providence Hospital*, 779A.2d 933, 936 (D.C. 2001). As the U.S. Court of Appeals for the D.C. Circuit has recently reaffirmed, where there is no genuine dispute as to material facts, there are no facts for a jury to determine and this case can be decided as a matter of law. *Holcomb v. Powell*, 433 F.3d 889 (D.C. C. 2006).

A. Rule 59(a) and (e)

A party may also obtain relief from a judgment pursuant to Fed. R. Civ. P. 59(a) and (e). New trials granted under Rule 59 are based on errors of law, evidentiary errors, and/or error may have influenced the jury’s decision. *Ashcraft and Gerel v. Coady*, 244 F.3d 948 (D.C. Cir. 2001). The standard for whether a new trial should be granted, pursuant to Rule 59, is whether there was “a clear miscarriage of justice.” *Warren v. Thompson*, 224 F.R.D. 236, 238 (D.D.C. 2004), citing *Webb v. Hyman*, 861 F. Supp. 1094, 1109-110 (D.D.C. 1994); *Nyman v. FDIC*, 967 F. Supp 1562, 1569 (D.D.C. 1997), quoting *Federal Deposit Ins. Corp v. Meyer*, 781 F.2d 1260, 1268 (7th Cir. 1986).

B. Rule 60(b)(3)

A party may also obtain relief from a judgment pursuant to Fed. R. Civ. P. 60(b), based upon the adverse party’s commission of fraud, misrepresentation or other misconduct. Any such misrepresentation to the Court simultaneously constitutes a violation of Fed. Civ. R. P. 11 (b)(1), which prohibits a party from: 1) making representations to the court “for any improper purpose, such as to harass or to cause unnecessary delay, or needless increase in the cost of litigation;” 2) asserting “claims and defenses and other legal contentions” that are not “warranted by existing law” or are frivolous; 3) asserting “allegations and other factual contentions” that have no “evidentiary support;” and 4) denying “factual contentions” that are not “warranted on the evidence.”

II. Summary of Argument

Defendant’s motion for judgment is completely unsupported by the record. In addition, the jury’s verdict is contrary to all of the undisputed evidence of record, including: 1) Judge Hogan’s rulings of law

(oral and written), that Harrison's conduct constitutes harassment on the basis of sex; 2) admissions of Howard's binding witnesses, Deans Bullock and Newsom, that they fully recognized, from Plaintiff's initial complaint, that Harrison was harassing Prof. Martin on the basis of her sex and posed a danger to her and "other women;" and 3) statements by Prof. Taslitz, Officer Sirleaf and Mrs. Bruner, demonstrating that they also perceived Prof. Martin's complaints about Harrison to be complaints of harassment, based on her sex or gender. The jury also overlooked the specific and common meaning of the word "wife," defined in English language dictionaries as "a married woman." Not only must Defendant's motion be denied, but the verdict must be set aside and judgment granted for Plaintiff on the issue of sexual harassment/hostile work environment.

As set forth in Plaintiff's October 9, 2002 *Motion for Summary Judgment* (see also electronic version, filed November 1, 2005, Docket # 330), incorporated by reference herein, the undisputed facts of record demonstrate that no reasonable juror could conclude that Harrison's conduct did not rise to a level creating a hostile work environment or that Howard took reasonable steps to eliminate this hostile work environment. The jury did determine that Harrison's harassment rose to the level of a hostile work environment and that Howard failed to take reasonable measures to eliminate it.

There is now no question that Plaintiff endured severe and pervasive harassment in her workplace, stalked by a delusional, violent homeless stranger with a criminal record. It is an open question as to whether Howard removed her from the faculty, through non-renewal as a law professor, in retaliation for her requests for protection in her workplace; however, by concluding that Harrison's harassment was not based on Plaintiff's gender, or sexual in nature, the jury left Plaintiff with absolutely no remedy for wrong that it acknowledged Howard committed and the injury that the jury acknowledged she suffered. The verdict results in substantial injustice to Plaintiff, with no remedy for egregious harm.

III. Facts as Set Forth in Chief Judge Hogan's 1999 Decision

Chief Judge Hogan denied Howard's *Motion to Dismiss, or in the Alternative, for Summary Judgment, Martin v. Howard University*, 1999 U.S. Dist. LEXIS 19516; 81 Fair Empl. Prac. Cas. (BNA)

964; 15 I.E.R. Cas. (BNA) 1587 (D.D.C. 1999). Judge Hogan summarized the facts, as alleged in Plaintiff's Complaint, as follows.

Plaintiff Dawn Martin was a Visiting Associate Professor at Howard University School of Law from July 1996 through May 1998.

....

Plaintiff alleges that she has been the victim of hostile work environment sexual harassment as a result of the conduct of Mr. Leonard Harrison, a homeless person who resided in a shelter and was neither an employee nor a student of the University but who regularly used Howard University's Law School library. Specifically, Plaintiff claims that Defendants knowingly allowed Mr. Harrison, a man characterized by the D.C. Metropolitan Police Department as a "stalker" with a criminal record and history of violence, free access to the law school campus and buildings, thereby facilitating his sexual harassment of Plaintiff in her workplace. Due to this alleged inaction, Plaintiff claims that Defendants have violated both Title VII and the DCHRA as well as caused her intentional infliction of emotional distress. Plaintiff also claims that due to her complaints, Defendant Bullock took retaliatory measures, on five different occasions, to ensure that Plaintiff was not offered a permanent professorship or a renewed visitorship at the Law School. Furthermore, Plaintiff alleges that Defendants Howard University and Howard University School of Law breached their contract with Plaintiff in failing to renew her contract or selecting her for a tenure-track position in violation of Professor Taslitz's alleged oral promise to Plaintiff that she would be placed into a tenure track position as soon as one became available. And finally, Plaintiff claims that she was forcefully and prematurely evicted from her office in retaliation for her filing of a charge with the U.S. Equal Employment Opportunity Commission ("EEOC"). (Emphasis added)

1999 U.S. Dist. LEXIS 19516 at *2-4.

Judge Hogan elaborated on the facts setting forth Plaintiff's sexual harassment claim.

Here, Plaintiff alleges that Mr. Harrison sent her two letters, left three voice mail messages for her and attempted three personal visits to Plaintiff's office, all due to his conviction that she was his "wife." Plaintiff contends that these interactions with Mr. Harrison convinced her that this "mentally unstable homeless stranger" had conducted research on her since he knew her middle name and the name of a course which she taught in Cleveland. Moreover, Plaintiff refers to a letter written by Mr. Harrison to Attorney Valerie Edwards in Canada as evidence that Mr. Harrison's pursuit of Plaintiff was sexual in nature: "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." (Emphasis added)

1999 U.S. Dist. LEXIS 19516 at *9-10.

In this case, **Plaintiff alleges eight instances of sexual harassment: two letters, hand-delivered to Plaintiff's office; three phone calls to Plaintiff's direct line which were picked up by her voice mail; and three personal visits to Plaintiff's office, although**

Plaintiff was out of her office during the first two visits and the Security Officer chased Mr. Harrison from her office at the third visit.

1999 U.S. Dist. LEXIS 19516 at *12.

At trial, and even in the parties' cross-motions for summary judgment, the facts as alleged above were well-established by the testimony of Howard's own security officers, D.C. Metropolitan Police Department records and testimony, Plaintiff's testimony, letters written by Harrison, and even Howard's Law School Dean and Associate Dean. The facts, as stated above, were completely undisputed by any evidence presented by Howard. Not only must Howard's motion for judgment be denied, but the jury's verdict cannot stand. The verdict is not only unsupported by the undisputed evidence of record, but the evidence expressly and directly contradicts the verdict, as well as Judge Hogan's conclusions of law.

IV. The Jury Verdict and Juror Questions for Court Reflect Confusion on the Law

A. The Jury's Verdict Form

The jury verdict form included the following questions and the following jury answers:

1. Did the Plaintiff prove by a preponderance of the evidence that:
 - a) Mr. Harrison subjected her to conduct that was sufficiently severe and pervasive to alter the terms and conditions of her employment?
 YES NO
 - b) Mr. Harrison's conduct was unwelcome?
 YES NO
 - c) Mr. Harrison's conduct was sexual in nature or because of Plaintiff's gender?
 YES NO
 - d) Howard University knew or should have know of the alleged conduct?
 YES NO
 - e) Howard University failed to take proper remedial action that was reasonably calculated to end the harassment?
 YES NO

The jury's response to "1C" directly contradicts:

- 1) Judge Hogan's 1999 conclusions of law;
- 2) Judge Hogan's judicial notice during trial that the term "wife" has sexual implications;
- 3) the dictionary definition of the term "wife;" and

4) Howard's own admissions that when Prof. Martin reported Leonard Harrison's stalking of her on campus, Howard understood Harrison's conduct to pose the threat that Harrison would "stalk" or "harass" not only Prof. Martin, but also "other women" on Howard's campus.

B. The Jury's Request for Additional Instructions on Sexual Harassment Demonstrates the Jurors' Confusion over the Law

The jury's conclusion that Harrison's conduct was not based on sex was based on its misunderstanding of the law with respect to sexual harassment, as evidenced by the questions it sent to the Court requesting more detailed definitions and instructions on the law.

On April 27, 2006, at 12:00 p.m., the jurors sent a note to the Court stating:

Jurors want an explanation under hostile work environment, 1.a.

- (1) what is meant by "the terms and conditions of her employment"?
- (2) p. 23 # 4 what constitutes "damages." (sic)

The parties agreed on a definition of "damages" as "harm or injury, whether psychological, emotional, financial, or physical." This Court accepted this instruction and read it to the jury. The parties disagreed on the instructions for the terms and conditions of employment. The Court modified this instruction to "The terms and conditions of her employment means the performance of duties/work performance and her work environment," without an explanation of the meaning of "work environment."

On April 28, 2006, at 11:30 p.m., the jurors sent a note to the Court stating:

- "(1) Wives are typically female. Is # 1c an automatic 'yes' just because plaintiff is female. (sic)
(2) Please define sexual harassment."

The parties disagreed sharply on the instructions to be given the jury in response to both questions. Chief Judge Hogan was not present because he was presiding over a judicial conference out of the District of Columbia. Judge Kessler presided in Judge Hogan's absence. When the parties arrived in Court, Judge Kessler had already written her proposed responses to the jury questions as follows:

- (1) "No, it is not an automatic "yes." You must base your decision on the evidence presented to you;" and
- (2) "Refer back to Instruction # 23, defining sexual harassment."

Plaintiff opposed both of these instructions, pointing out that:

1) Judge Hogan held, as a matter of law, in his 1999 decision, that Harrison's pursuit of Plaintiff as his "wife," constituted pursuit on the basis of sex or gender;

2) the dictionary definition of "wife" is "a married woman" – thus, female by definition;

3) an appropriate answer might instruct the jurors that if they found that Harrison pursued both men and women as his "wife," then the answer to #1C would be "no," but if they found that Harrison pursued only women, or primarily women as his "wife," then the answer would be "yes;" and

4) Judge Hogan's 1999 decision included a more specific and clearer definition of sexual harassment than was provided to the jury as Instruction # 23 and the jury's question indicated that Instruction # 23 was not clear enough and needed to be supplemented.

Judge Kessler rejected Plaintiff's suggestions.

Less than two hours after the jury received Judge Kessler's instruction (referring them back to the instruction the jurors had already deemed inadequate for them to resolve their differences), the jury returned a verdict for defendant, holding that Harrison's conduct, though creating a hostile work environment for Prof. Martin, which Howard failed to take reasonable steps to eliminate, the harassment was not sexual in nature or based on Plaintiff's sex/gender. This conclusion was clearly based on a misunderstanding of the question and the law.

Judge Kessler may have misunderstood the jury's questions, without the benefit of the background in this case over its eight year saga, the lengthy cross-motions for summary judgment, trial and deposition testimony, the hundreds of exhibits produced at trial, or Judge Hogan's comments at trial amounting to judicial notice. The jury prefaced its question with a factual statement, "Wives are typically female," indicating that the jury found, as a matter of fact, that Harrison pursued Prof. Martin based on his desire for her to be his "wife." Having reached this factual determination, it appears that at least some jurors believed that their job was done because pursuit of a woman as a potential wife necessarily constitutes pursuit of her based on her gender.¹ Apparently, there was dissent in the jury on this point,

¹ Judge Hogan's statement, during Dr. Sirleaf's testimony at trial, that it is "obvious" that the word "wife" has sexual connotations, may well have been the reason that the jury asked whether it was an

leading the jurors to ask the Court for clarification.² After Judge Kessler's response that the answer to #1c was not "automatic," the jurors may well have perceived this instruction to invalidate Judge Hogan's comment from the bench and to imply the answer that pursuit of a woman as one's wife does not constitute pursuit on the basis of sex.

V. Dean Bullock, Dean Newsom and other Howard Agents, Expressly Recognized that Harrison's Harassment was Based on Sex and/or Sexual, and that Harrison Posed a Threat to Plaintiff and "Other Women" on Campus

In her July 1, 1998 memorandum to Norma Leftwich, General Counsel for Howard University, provided as an attachment to Howard's Position Statement to the EEOC in response to Plaintiff's EEOC charge of sexual harassment/hostile work environment and retaliation, Dean Bullock admitted that she was specifically aware, by no later than December 1, 1997, that Harrison posed a threat of **stalking and harassment** to Prof. Martin and "**other women**" on campus.

Associate Dean Newsom advised me that he thought that **MPD should be called in to provide more manpower in tracking down the individual not only to benefit Professor Martin, but also to prevent harm to other women whom this person might stalk or otherwise harass.** (Emphasis added)

Pl.'s Trial Ex. 8B and Ex. KKK-1 of Pl.'s October 9, 2002 *Motion for Summary Judgment* (MSJ), re-filed electronically on November 1, 2005, Docket # 330. Howard adopted Dean Bullock's statement in its December 8, 1998 Position Statement to the EEOC (Exhibit KKK-2 of Pl.'s *MSJ*³). On page 2 of the same July 1, 1997 memorandum, Dean Bullock acknowledged that she was aware, as of December 1, 1997, that Harrison had been characterized a "dangerous" and "crazy" and should only be approached by the police or University Security. Dean Newsom specifically admitted, both at trial and in his deposition,

"automatic" conclusion that the Harrison harassed Prof. Martin on the basis of her sex. The jury may well have perceived the words "obvious" and "automatic" as synonymous.

² When Judge Kessler read the instructions to the jury, several of the jurors looked openly perplexed. One juror, however, nodded not only her head, but her entire upper body and told the juror next to her, "I told you!" This is the same juror who made gestures and sounds several times through the trial expressing her support for Howard. This juror threw up her hands and let out a guttural sound during Plaintiff's closing argument when Plaintiff said, "No woman should have to choose between her safety and her job."

³ For reasons that are not clear, although the exhibit was clearly marked for trial as Exhibit 8A, and included in Plaintiff's exhibit book, it appears that it was not admitted during Mr. Otey's cross-examination of Dean Bullock, when Ex. 8B was admitted. Perhaps when the trial transcript is available, it will be clear why this document was not admitted into evidence.

that Harrison's pursuit of Prof. Martin caused him concern about not only Prof. Martin's safety, but also **the safety of other women** on campus. See Pl.'s *MSJ* at 12.

At trial, Howard fraudulently argued, in violation of Fed. R. Civ. P. 11, and without any evidentiary support, that neither Deans Bullock nor Newsom, nor any other of its agents, understood Prof. Martin's reports to indicate her belief that she was being "harassed" or that such harassment was sexual in nature or based on her gender.

Howard has repeatedly, and fraudulently described Harrison as "a gentleman" who was in search of his "estranged wife" and that his pursuit of Prof. Martin was a case of "mistaken identity;" yet, Howard's administrators were well aware that this was no "gentleman," that there was no "estranged wife," and that there could be no "mistaken identify" because *there was no real person*, but only a fictional character in a book, to "identify."

At trial, Howard wasted Court time attempting to elicit false testimony from witnesses to prove what it knew to be false. At trial, Dean Bullock even testified that she did not perceive Harrison's pursuit of Prof. Martin as sexual in nature or based on her gender.⁴ Deans Bullock and Newsom had already acknowledged, years earlier, in their EEOC statements and depositions, that Harrison's conduct constituted harassment on the basis of sex. Indeed, Howard has wasted Plaintiff's, the EEOC's and the Court's time, for the past eight years, while draining Plaintiff of her limited financial resources, depriving her of returning to her teaching career, and depriving her of the reputation and income that she enjoyed prior to her termination from Howard, which allowed her to properly provide for her daughter during the remaining years of her childhood and through college and graduate school.

The evidence is clear and undisputable, that Deans Bullock and Newsom, as well as Howard's additional agent, Howard University Campus Officer Sirleaf and Prof. Taslitz, *always* understood that

⁴ In light of Dean Bullock's July 1, 1998 admissions to Howard's General Counsel, attached to Howard's submissions to the EEOC as the primary basis for its *Position Statement* in response to Plaintiff's EEOC charges of sexual harassment/hostile work environment and retaliation, the inescapable conclusion is that former Dean Bullock perjured herself on the stand. Particularly as an attorney and an officer of the Court, such conduct violates the D.C. Code of Ethics and is sanctionable, up to and including, disbarment. The extents to which Howard and its representatives have resorted to avoid any payment to Plaintiff, or the restoration of her teaching career is extraordinary.

Prof. Martin's memoranda entitled "Security Problem on Campus" and her conversations with them about Harrison, constituted complaints of harassment, based on her sex.

Howard Campus Security Officer Sirleaf was an agent of Howard and the first Howard employee who recorded Plaintiff's complaint in a written report. His knowledge is therefore imputed to the University. Officer Sirleaf testified that he *did* interpret Harrison's conduct to be sexual in nature because he pursued her as his "wife." Plaintiff's undisputed testimony at trial was that Prof. Taslitz was the first professor that she showed Harrison's letters to, on November 20, 1997 and that Prof. Taslitz told her, "Howard's security is for sh-t. You'll be **raped** and killed right in front of that security booth." (Emphasis added) Prof. Taslitz then advised Prof. Martin to call the police. Clearly, by using the word "rape," Prof. Taslitz understood Harrison to pose a threat of *sexual* assault to Prof. Martin. Mrs. Bruner also testified that she understood Harrison's pursuit of Prof. Martin to be sexual in nature and based on her gender. Mrs. Bruner testified that, once the stalking began, Prof. Martin asked her to watch the Ladies' room when she used it.⁵ Even Howard's law students understood Harrison's stalking of Prof. Martin to be harassment based on her status as a woman.⁶

⁵ Prof. Martin testified that her own nightmares about Harrison included a vision that he followed her into the Ladies' room at work, raped her, slit her throat and threw her body out the window.

⁶ Plaintiff was also prevented from presenting the jury the testimony of a former student, Adam Howard, on this issue. Mr. Howard testified that he went to Prof. Martin's office and conveyed to her that he and other students would physically protect her from Harrison if he entered their classroom. Both Mr. Howard and Plaintiff attempted to testify regarding the entire conversation, but Howard inappropriately objected on the basis of hearsay. The Court mistakenly upheld the objection, during both Mr. Howard's testimony and Plaintiff's testimony; accordingly, Mr. Howard was not permitted to testify about the words that came out of his own mouth and Plaintiff could not testify about the words that she heard him say with his own ears. These statements do not fit the definition of hearsay. Fed. R. Ev. 801(C) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Since Mr. Howard was the declarant, and was on the stand subject to cross-examination, his statements were not hearsay. In addition, the statements were not hearsay even when Plaintiff sought to testify about them, since Plaintiff did not offer Mr. Howard's comments, or advise to her as being offered for the truth of any facts asserted in his comments; rather, pursuant to Fed. R. Ev. 803(3), Plaintiff offered Mr. Howard's comments to her as affecting her own state of mind, as part of her damages, being embarrassed that her male students wanted to protect her from the stalker while the administration did not, and her concern that her students might place themselves in danger trying to protect her. Plaintiff testified that it was inappropriate for a professor, who stands in a position of authority, to be perceived as a "helpless female" in need for protection from her students. Additionally, if the jury had heard the testimony, they would also have been aware that even the students perceived that Harrison was pursuing Prof. Martin *as a woman*. As Plaintiff

There was no reason for Prof. Martin to state the “obvious” conclusion that everyone was already stating – that Harrison posed a threat to her, as a woman, as well as to *other women* on campus. As Judge Hogan set forth in his 1999 decision, there are no “magic words” to invoke Title VII. It is enough that the victim convey to his or her employer the facts that constitute sexual harassment. 1999 U.S. Dist. LEXIS 19516 at 18. There was no need for Prof. Martin to use the legal term “sexual harassment” in her November 5, 1997 or December 1, 1997 memos to Dean Bullock, or make any legal arguments setting forth her potential sexual harassment claims against the University, any more than it would have been appropriate for her to set forth the legal arguments for her potential claims of negligence, premises liability or intentional infliction of emotional distress.⁷ Prof. Martin’s November 5, 1997 and December 1, 1997 memos were not intended to be “legal briefs” or to threaten a lawsuit against the University. Her memos stated the facts to provide the administration with the information necessary to stop Harrison’s stalking and the potential and/or physical and other harm to her, *other women* on campus, students near her, or any other member of the University who might be hurt as “collateral damage” if this delusional, homeless, violent stranger decided to attack her, in response to her refusal to be his “wife.”

Deans Bullock and Newsom responded to Prof. Martin’s memos by *acknowledging* the University’s obligation to take the necessary actions to keep Harrison out of the workplace. Dean Bullock wrote, by memo dated December 1, 1997, that she was discussing the matter with Director of Security Lawrence Dawson. Dean Newsom wrote, by memo dated December 22, 1997, that he was requesting that Security post an “Alert Notice” to enforce a bar notice that Prof. Martin had previously been told was issued. Prof. Martin had no knowledge, at that time, that Dean Bullock’s written statement

stated during a pre-trial conference, Mr. Howard actually advised Plaintiff not to return to the law school until the police arrested Harrison, explaining that, “I would not want my wife – if I had a wife – to go to work under these conditions and I don’t think you should either.” Mr. Howard’s testimony would have provided additional evidence that Plaintiff did not have to include, in her memos, the “obvious” statement of fact that Harrison was only pursuing her because she was a woman. Because of the improper hearsay rulings during both Mr. Howard’s and Plaintiff’s testimony, the jury was deprived of this evidence.

⁷ Plaintiff did file a claim of intentional infliction of emotional distress, in addition to her Title VII and D.C. Human Rights claim. Had Harrison physically attacked her, she would also have had a valid negligence claim; however, D.C. does not recognize the claim of negligent infliction of emotional distress so no negligence claim was appropriate in this case. If this case is appealed, Plaintiff intends to appeal the dismissal of the intentional infliction of emotional distress claim, as well as the other appealable issues.

was false, and that she had never discussed the stalking or Harrison with Mr. Dawson or any other member of Howard Security. Prof. Martin did not know that the requested Bar Notice for Harrison had never even been issued, despite Officer Sirleaf's recommendation, as well as the recommendation of the D.C. Metropolitan Police Department, that a Bar Notice be issued and enforced. Prof. Martin reasonably allowed the administration time to take the action that it promised to take and represented that it was taking before she filed a sexual harassment charge.

The administration responded to Prof. Martin's requests for protection, not only by concealing Harrison's stalking from the law school community and failing to follow its own security barring procedures, but also by retaliating against Prof. Martin for requesting the protection from Harrison on campus, actually removing her from the faculty, despite her excellent teaching evaluations, outstanding academic and professional credentials, scholarly publications and student protests of her non-renewal. At this point, it was abundantly clear that Dean Bullock had no intention of providing any protection for Prof. Martin against Harrison, but was addressing "the problem" by "getting rid" of Harrison's "target" on campus – Prof. Martin.

Dean Bullock's admission, repeating Dean Newsom's admission that both Deans perceived Harrison's stalking of Prof. Martin on campus as "harass[ment]" that was directed at Prof. Martin and "other women" as *women*, demonstrates, absolutely, that Howard's entire "defense" was made in bad faith, in violation of Fed. R. Civ. P. 11, constituting fraud, misrepresentation and/or misconduct justifying a new trial or amended judgment, pursuant to Fed. R. Civ. P. 60(B)(3). Not only is Howard precluded from judgment as a matter of law, but Plaintiff is entitled to judgment, as a matter of law. In addition, Rule 11 sanctions against Howard are merited, including up to a default judgment against the Defendant.

VI. Judge Hogan's Rulings of Law, that Plaintiff's Conduct was Based of Sex, Precludes the Jury's Verdict by *Res Judicata* and the Law of the Case

A. Judge Hogan Held that "it is Clear that Plaintiff was only the Object of Mr. Harrison's Attention because she was a Female"

The verdict requires re-examination of Judge Hogan's 1999 decision, the questions that it set for a jury trial and the conclusions of law that it reached prior to trial. Judge Hogan identified Howard's defenses,

distinguishing the factual issues to be decided by a jury from the issue that he was about to decide, as a matter of law, namely, that Harrison's conduct, as alleged, was based on Prof. Martin's gender.

In this case, Defendants admit that the sufficiency of the University's response is a factual question for the jury but they contend that Plaintiff's hostile work environment claim must be dismissed because Plaintiff cannot establish a prima facie case of hostile work environment under Title VII. Specifically, Defendants claim that Plaintiff cannot show that Mr. Harrison's conduct was based on sex and that Mr. Harrison's conduct was sufficiently severe or pervasive.

1999 U.S. Dist. LEXIS 19516 at *8.

Judge Hogan then proceeded to address Howard's claim that Plaintiff's allegations did not establish that Harrison's conduct was sexual in nature or on the basis of sex.

Title VII does not prohibit all verbal or physical harassment in the workplace; it is directed solely at discrimination because of sex. Oncale v. Sundowner Offshore Services, 523 U.S. 75, 118 S. Ct. 998, 1001, 140 L. Ed. 2d 201 (1998). Workplace harassment is not automatically discrimination because of sex merely because the words used have sexual content or connotations. Id. "The critical issue is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed." Id.

It is clear from Mr. Harrison's own description of his search for "Geneva Crenshaw" or "Valerie Edwards" that he targeted women other than Plaintiff: "the only method available to me as far as finding Valerie was the most primitive means of choosing the name 'Valerie' from within the vast array of academic category and pursuing it. Eventually, I had lost even the name 'Valerie' and pursued others." Plaintiff argues that Mr. Harrison's pursuit of her as his "wife" was inherently sexual in nature since it was clear that Plaintiff was being pursued as a woman and that she would not have been sought by Mr. Harrison as his wife if she were a man. Moreover, Plaintiff claims that she was being stalked by Mr. Harrison and that stalking is primarily a crime against women, with sexual connotations.

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.** (Emphasis added)

1999 U.S. Dist. LEXIS 19516 at *8-11.

B. The Jury Verdict Contradicts Judge Hogan's Judicial Notice During Trial

As Judge Hogan held in 1999, 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. This fact was so

“obvious” that the Court stopped Plaintiff’s counsel, Mr. Otey, from continuing a line of questioning of Officer Sirleaf, to whether he perceived Plaintiff’s complaint regarding Harrison as one that was “sexual in nature” or based on her sex. As Officer Sirleaf began to elaborate on his perception of a husband and wife relationship as inherently sexual, the Court interrupted the witness and Plaintiff’s counsel, saying, “It’s obvious, move on.”⁸

VII. Criminal Stalking may Constitute Sexual Harassment under Title VII⁹

Howard argued that “stalking” is a criminal matter and does not constitute sexual harassment; however, most criminal acts are also actionable in civil law, under comparable civil theories. If an employee is sexually assaulted in her workplace, certainly, it is a crime; however, the employer is not permitted to dismiss it as a criminal matter and allow the employee who committed the sexual assault to continue to work with the person whom he assaulted. The employer still has a duty, under Title VII and the D.C. Human Rights Act, to eliminate the sexual harassment in the workplace.

Courts have recognized that *stalking is considered one of the most severe forms of sexual harassment*, within the meaning of Title VII, where it is based on sex and the victim reasonably perceives the stalker to have created a “hostile or abusive environment” in her workplace. *Crowley v. L.L. Bean*, 303 F.3d 387, 396, 401-403 (Cir. 2002). Similarly, in *Frazier v. Delco Electronics Corporation*, 263 F.3d 663, 668 (7th Cir. 2001), the Seventh Circuit recognized that that “stalking” constituted sexual harassment and created a hostile work environment for the plaintiff. The Eight Circuit found that where sexual harassment was particularly severe, it could “almost” be called “stalking.” *Whitmore v. O’Connor Management, Inc.*, 156 F.3d 796, 798 (8th Cir. 1998). *See also Bales v. Wal-Mart Stores, Inc.*, 143 F.3d 1103, 1108 (8th Cir. 1998) (plaintiff felt that her co-worker “was harassing her, actually, stalking her”). The First Circuit held that the plaintiff endured a hostile work environment, based on sexual harassment that included “stalking.” *Angeles-Sanchez v. Alvarado*, 1993 U.S. App. LEXUS 10509 (1st Cir. 1993).

⁸ To the extent that Plaintiff was not permitted to continue this line of questioning, she was deprived of her opportunity to further convince the jury that both Plaintiff and Howard’s agents clearly understood that Harrison’s conduct was sexual in nature and/or based on Prof. Martin’s sex/gender.

⁹ Since the D.C. Civil Rights Act mirrors Title VII with respect to sexual harassment, the same standards and analysis referenced with respect to Title VII also apply to Plaintiff’s pendant D.C. claims.

Federal District courts have ruled consistently with the Circuit Courts. As in the present case, the plaintiff in *Ramirez v. New York Presbyterian Hospital*, 129 F. Supp. 2d 676, 678 (S.D.N.Y. 2001), appropriately used the term “stalking” to describe acts of sexual harassment/hostile work environment. In *Dolman v. Willamette University*, 2001 U.S. Dist. LEXIS 7772 (D. Or. 2001), in a University setting similar to the present case, the plaintiff employee of a University was stalked by a former student, constituting sexual harassment. In *Spina v. Forest Preserve District of Cook County*, 207 F. Supp. 764, 772 (D. Ill. 2002), the court held that stalking was one of the more severe and “disturbing” allegations of sexual harassment. *Chontos v. Rhea and Indiana University*, 29 F. Supp. 931, 937 (N. Dist. Ind. 1998).

The D.C. Metropolitan Police Department’s characterization of Harrison’s sexual harassment of Prof. Martin as criminal stalking highlights the severity of the sexual harassment – it certainly does not nullify it, as Howard argued. Sexual harassment that rises to the level of criminal activity has been recognized as the most extreme form of sexual harassment in the workplace. In *Little v. Windemere Relocation, Inc.*, 301 F.3d 958, 967 (9th Cir. 2001), the court found that where an employee was raped by a client after a business meeting, this one incident was severe enough to create a hostile work environment for the plaintiff in her workplace. See also *Turnbull v. Topeka State Hospital*, 255 F.3d 1238, 1243-1244 (10th Cir. 2001) (a single incident of sexual assault was “abusive, dangerous and humiliating,” creating a hostile work environment for the plaintiff, within the meaning of Title VII); *Brock v. United States*, 64 F.3d 1421, 1423 (9th Cir. 1995) (“Just as every murder is also a battery, every rape committed in the employment setting is also discrimination on the basis of the employee’s sex.”)¹⁰

The legal definition of criminal “stalking,” as codified in D.C. Code Ann. § 22-404 (b) is:

(b) Any person who on more than one occasion ... willfully, maliciously, and repeatedly follows or harasses another person, is guilty of the crime of stalking. (Emphasis added)

(e) For purposes of this section, the term “harassing” means engaging in a course of

¹⁰Even when conduct might affect both men and women, the conduct may constitute harassment on the basis of sex if the conduct disproportionately affects women. *Turnbull*, 255 F.3d at 1244; see also *Crist v. Focus Homes*, 122 F.3d 1107, 1111 (8th cir. 1997). Statistics compiled by the U.S. Department of Justice reflect that women are, in fact, disproportionately affected by workplace violence, such as sexual assault and stalking. See Bureau of Justice Statistics, *National Crime Victimization Survey, Violence in the Workplace*, 1993-1999 (December 2001), at www.ojp.usdoj.gov/bjs/pub/pdf/vw99.pdf.

conduct either in person, by telephone, or in writing, directed at a specific person, which seriously alarms, annoys, frightens, or torments the person, or engaging in a course of conduct either in person, by telephone, or in writing, which would cause a reasonable person to be seriously alarmed, annoyed, frightened or tormented.¹¹

If the jurors had realized that the D.C. stalking statute specifically incorporates “harassment” as part of its definition, the jury would have clearly understood that Plaintiff first alleged that she was being harassed by Harrison, as his prospective “wife,” no later than November 21, 1997, when she filed a “stalking” complaint against Harrison with the D.C. Metropolitan Police Department. This realization would also have bolstered Plaintiff’s credibility with the jury, with respect to all of her claims, since Plaintiff testified that she characterized Harrison’s behavior as “harassment” when she first reported it to Dean Newsom and Officer Sirleaf on November 20, 1997. At that time, she had not yet met with the D.C. police officers and they had not yet classified the harassment as stalking.

Without the definition of “stalking,” the jurors were without the legal reference to intelligently evaluate Howard’s repeated false “distinctions” between stalking and harassment, and Howard’s specific accusations that Plaintiff never raises issues of “harassment” prior to Howard’s December 18, 1997 decision not to offer her a permanent position or a renewed visitorship on its law school faculty.¹² In fact, in closing arguments, Howard’s outside counsel, Mr. Shwalb, accused Plaintiff of “**playing the sexual harassment card,**” after she was rejected for a permanent position on December 18, 1997, never having previously mentioned sexual harassment. Mr. Shwalb falsely stated that Prof. Martin never even used the word “harassment” until she filed her EEOC charge in May of 1998 and that the administration had no reason to believe that the stalking was based on sex, despite Dean Alice Gresham Bullock and her Associate Dean, Michael Newsom expressly recognized that Harrison’s “harassment” was based on sex.

¹¹ See *United States v. Smith*, 685 A.2d 380, 383-383 (D.C. App. 1996) (constitutionality of statute examined).

¹² Judge Hogan did instruct the jury that criminal stalking may also constitute workplace sexual harassment. Plaintiff also requested that the Court include in its jury instructions the definition of “stalking,” pursuant to the D.C. Criminal Code, and specific language from case law establishing that criminal behavior, such as stalking, may also constitute workplace sexual harassment. Plaintiff set forth these proposed instructions as #2 and #3 of her *Proposed Special Jury Instructions*, submitted as part of her pre-trial statement in November of 2005 and requested for the last time on the last day of trial, April 28, 2006. The Court rejected Plaintiff’s proposed instructions, stating that the statement that stalking could constitute sexual harassment was enough guidance for the jury. Apparently, it was not.

VIII. The Jury's Answers to Factual Questions Posed by Chief Judge Hogan's 1999 Decision Require Judgment for Plaintiff

In sharp contrast to Plaintiff's examination and dissection of the jury verdict, explaining the jury's misunderstanding with respect to sexual harassment, as a matter of law, Howard has simply renewed its pre-verdict motion for judgment, with absolutely no discussion of any error by the jury or the court that would justify, pursuant to Fed. R. Civ. P. 50(b), setting aside the jury's factual conclusions that Plaintiff did endure a hostile work environment at Howard and that Howard failed to take reasonable measures designed to eliminate the hostile work environment. Since Howard has not alleged any juror error on these conclusions, the jury's factual determinations on these issues should not be disturbed. Notwithstanding Howard's procedural failure to challenge the jury's factual determinations, below, Plaintiff sets forth the evidence compelling the jury's factual findings.

The jury answered the two questions posed by Judge Hogan's 1999 decision by finding that:

1) Harrison's harassment was severe and pervasive, causing a hostile work environment for Prof. Martin; and 2) Howard failed to take reasonable steps to end the hostile work environment. These are the precise questions framed by Judge Hogan when he permitted this case to proceed to trial for a jury to determine the determining facts in this case: 1) whether Harrison's conduct was severe and pervasive enough to create a hostile work environment for the Plaintiff; and 2) whether Howard University knew or should have known of Harrison's creation of a hostile work environment and failed to take proper remedial action. 1999 U.S. Dist. LEXIS 19516 at *7-8, 14.

A. The Jury Properly Found that Plaintiff Endured a Hostile Work Environment

Judge Hogan set out the criteria to determine whether Plaintiff endured a hostile work environment.

Plaintiff has alleged, and the Defendants do not appear to dispute, that she subjectively felt threatened by Mr. Harrison's behavior; however, to prevail on a sexual harassment claim, Plaintiff must also show that a reasonable female would have found these actions to be severely hostile or abusive. Whether or not Mr. Harrison intended his behavior to be abusive or threatening is irrelevant to this inquiry. See Powell, 841 F. Supp. at 1029 ("The reasonable victim standard classifies conduct as unlawful sexual harassment even when harassers do not realize that their conduct creates a hostile work environment. . . . Therefore, the alleged harasser's intent is unimportant and "compliments" are not a defense.")

The alleged incidents in this case may or may not be sufficiently severe or pervasive to amount to actionable sexual harassment. However, they certainly amount to more than the "mere utterance of an epithet." Meritor, 477 U.S. at 67 ("mere utterance of an . . . epithet which engenders offensive feelings in an employee would not affect the conditions of employment to a sufficient degree to violate Title VII). Whether or not a reasonable victim would find them sufficiently severe or pervasive to alter the conditions of Plaintiff's employment and create an abusive working environment is appropriately an issue of fact for the jury, not one which this Court can summarily adjudicate. See Powell, 841 F. Supp. at 1029 (holding that whether two incidents of verbal abuse -- "great tits" and "great legs" -- and three incidents of staring by non-employees constituted sexual harassment of plaintiff was a triable issue of fact).

1999 U.S. Dist. LEXIS 19516 at *7-8.

Therefore, since the Court finds that Mr. Harrison's conduct could be considered sexual harassment and that the question of whether this behavior was sufficiently severe or pervasive to be actionable is a jury question, and since Defendants admit that there is a material dispute regarding whether the University took appropriate actions in connection with Mr. Harrison, the Court must deny Defendants' Motion to Dismiss or Alternatively for Summary Judgment with regard to the Hostile Work Environment claim.

1999 U.S. Dist. LEXIS 19516 at *14.

Judge Hogan clarified the analysis for establishing a "hostile work environment" claim.

To be actionable, a plaintiff must establish that the sexual harassment is "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." Meritor, 477 U.S. at 67. In determining whether an environment is "hostile" or "abusive," the court should consider the totality of the circumstances. Harris v. Forklift Systems, Inc., 510 U.S. 17, 126 L. Ed. 2d 295, 114 S. Ct. 367 (1993). Specifically, a court should consider the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; whether it unreasonably interferes with an employee's work performance; and the effect on the employee's psychological well-being. Id.

1999 U.S. Dist. LEXIS 19516 at *7-8; see also *14.

The severity or seriousness of the 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." See Powell v. Las Vegas Hilton Corp., 841 F. Supp. 1024, 1029 (D. Nev. 1992). Moreover, the Court must consider both the victim's subjective impressions of this activity and whether the alleged actions would constitute unlawful sexual harassment from the perspective of a reasonable victim.

1999 U.S. Dist. LEXIS 19516 at *11-12.

The jury properly found that Prof. Martin endured a hostile work environment. As discussed in IV (A), federal courts have held that stalking is one of the most severe forms of sexual harassment. In

this case, the D.C. Metropolitan Police Department characterized Harrison's behavior as criminal stalking, making it clear that Harrison's conduct was not trivial, but merited serious attention and perhaps even arrest and prosecution. Both D.C. police and the campus police officer who received Prof. Martin's complaint, agreed that Howard's own policies and procedures required that Harrison be barred from campus and held for police if he showed up on campus again, so that he could be arrested for stalking.

Deans Bullock and Newsom stated that they took Prof. Martin's complaints seriously and feared for her, as well as for "other women" on campus. See Section IV (B), above. Dean Bullock even told the EEOC that "anyone" in Prof. Martin's circumstances, being pursued by Harrison would feel "mental anguish" in her workplace. Pl.'s October 9, 2002 *Motion for Summary Judgment* at 5 and accompanying *Statement of Undisputed Material Facts* ¶ 65 (Docket # 330). All of the witnesses and all of the documentary evidence demonstrated that everyone involved believed that Prof. Martin's fear of Harrison was well-founded. Howard did not present one witness or iota of other evidence to indicate that Prof. Martin overacted or otherwise acted unreasonably under the circumstances. The jury's factual conclusion that Prof. Martin did endure a hostile work environment while a law professor at Howard is therefore not only supported by the evidence, but is *compelled by the undisputed evidence of record*.

B. The Jury Properly Found that Howard Failed to Take Reasonable Measures to Eliminate the Hostile Work Environment

In her July 1, 1998 memorandum to Howard's General Counsel, Dean Bullock made several statements regarding her purported efforts to eliminate the hostile work environment for Prof. Martin – all of which were demonstrated to be false, during trial.

I learned that Dawn Martin believed she was being "stalked" on December 1, 1997, upon reading her memorandum dated November 25, 1997, I immediately contacted Dean Newsom to determine what he knew of the matter. He told me that he had advised Ms. Martin to contact the University Security Office and the Metropolitan Police Department regarding what she should do in connection with her personal safety.

Exhibit KKK-1 of Pl.'s *M SJ*, page 1, , adopted in Howard's EEOC Position Statement, page 3 (KKK-2 of Pl.'s *M SJ*) (See Docket # 330).

At trial, however, Dean Bullock never claimed that she called Dean Newsom or asked him anything about the matter. Instead, Dean Bullock testified only that she placed a call to Security Director Lawrence Dawson and left a voicemail message for him which was never returned. Dean Bullock admitted that she never called Dawson again about the matter.¹³ Mr. Dawson testified that he never received a message from Dean Bullock.

Bullock's July 1, 1998 memo continues:

Associate Dean Newsom advised me that he thought that MPD should be called in to provide more manpower in tracking down the individual not only to benefit Professor Martin, but also to prevent harm to other women whom this person might stalk or otherwise harass. In that regard **Associate Dean Newsom arranged a meeting in the West Campus security office with Professor Martin, representatives of Campus Security and of MPD, and himself. Campus Security and MPD stated that they would take the necessary action to end the harassment.** (Emphasis added)

Exhibit KKK-1 of Pl.'s *M SJ*, page 1.

At trial, former Officer Sirleaf, Plaintiff and Dean Newsom all testified that *Plaintiff and Officer Sirleaf*, not Dean Newsom, called the police.¹⁴ Plaintiff testified, unchallenged, that Dean Newsom refused to assist her in calling the police.¹⁵ Both Plaintiff and former Officer Sirleaf testified, unchallenged, that Officer Sirleaf was the only representatives of Campus Security present at the meeting with the police. Plaintiff and Officer Sirleaf testified, unchallenged, that Plaintiff called Dean Newsom while MPD was present on campus and convinced him to appear for a portion of the meeting.

Plaintiff testified, unchallenged, that Newsom refused to file any complaint on behalf of the University, but left Plaintiff to file the complaint alone, and that Newsom yelled at Plaintiff in the security office on November 21, 1997, with her students looking on through the glass encasing of the Security

¹³ Although Dean Bullock did not provide the statement to Howard's General Counsel under penalty of perjury, she was well aware that the General Counsel intended to use her statements in an official University response to the United States Equal Employment Opportunity Commission in response to a formal discrimination charge that might well lead to litigation. Dean Bullock, as an attorney and an officer of the Court, deliberately made false statements to a U.S. government agency with respect to possible litigation. Again, this raises serious ethical questions regarding Dean Bullock's conduct, whether she should continue as a law professor at Howard University and whether she should face discipline by the Bar, particularly in light of actual perjury that she committed at trial. See fn. 4.

¹⁴ See fn. 13.

¹⁵ See fn. 13.

Office. Both Officer Sirleaf and Plaintiff testified, unchallenged, that Dean Newsom stayed only approximately ten minutes. Dean Newsom testified that he had no contact with MPD or discussions with any Howard Security Officer about the matter after his brief appearance on November 21, 1997.

Both Plaintiff and Officer Sirleaf testified, unchallenged, that the result of the November 21, 1997 meeting was the agreement and expectation that Howard would issue a Bar Notice, banning Harrison from campus, and that if he returned to campus, he would be detained for police and arrested, pursuant to the stalking complaint taken by MPD officers. Officer Dowdy testified that no Bar Notice was issued for Harrison and that he escorted Harrison off campus, on November 25, 1997, because he did not know that that Harrison was stalking Prof. Martin or that a stalking complaint had been taken by MPD.

Bullock's July 1, 1998 memo continues:

On or about the following day, I transmitted a copy of Ms. Martin's report and my response to her to Mr. Dawson, Director of Security via a memorandum asking him to advise law school security officers of the need to be alert to Ms. Martin's concerns.

Exhibit KKK-1 of Pl.'s *M SJ*, page 2.

At trial, former **Dean Bullock admitted that she never made any attempt to contact Mr. Dawson beyond her purported December 1, 1997 voicemail message, which Dawson never returned.**¹⁶ **Howard never produced any memorandum from Dean Bullock to Mr. Dawson or to any other member of Howard's security force, referring, in any way, to Prof. Martin or to Leonard Harrison, let alone any specific request to "advise law school security officers to be alert to Ms. Martin's concerns."** Mr. Dawson testified that Dean Bullock never told him anything about Prof. Martin or Leonard Harrison and that he had no knowledge of the stalking at all while it was occurring in 1997-1998. Howard has offered absolutely no explanation for why this purported memo was never produced. Clearly, then, Dean Bullock never wrote such a memo.¹⁸

¹⁶ See fn. 13.

¹⁷ Not only was Plaintiff "Prof. Martin" at the time of the stalking, but she was a law professor and held that title prior to joining Howard's faculty. Howard's attorneys and some of its witnesses repeatedly showed disrespect by referring to her as "Ms. Martin," even when identifying memoranda written while she was a professor at Howard and where the memorandum was from or to "Prof. Martin."

¹⁸ See fn. 13.

In her July 1, 1997 memorandum, former Dean Bullock claimed that, in response to Prof. Martin's December 2, 1997 memorandum documenting Harrison's attempt to enter her office on December 1, 1997, and Officer Dowdy's "chase" of Harrison, from her office, down five flights of steps, out of the building, off campus and into the woods, she took the following action.

I asked the security officer on duty what were they doing regarding the "stalker." I am not certain, but I believe it was Officer Sirleaf that I spoke to. He told me that the day before (or there about) another officer ran after the man believed to have been "the stalker." The officer had chased after the man down to and across Connecticut Avenue, I believe Sirleaf told me. **He also advised me that the security office had advised Ms. Martin to let them know when she would be on campus and they would accompany her to class and guard her office while she was on campus.**

Exhibit KKK-1 of Pl.'s *M SJ*, page 2-3.

At trial, **Dean Bullock admitted that she never had this or any other conversation with Officer Sirleaf or any other security officer regarding Prof. Martin, Leonard Harrison, the "stalker" or any chase by Officer Dowdy.** At trial, **Dean Bullock never made any claim that she ever had any belief that security was to provide Prof. Martin with a guard in her office or while she was teaching or otherwise while she was on campus.**

Dean Bullock's July 1, 1998 memo continues:

Within a few days of speaking with the security officer I telephoned Mr. Dawson's office and left a message (he was not in) that I was calling about security issues at the law school.

KKK-1 of Pl.'s *M SJ*, page 3.

Again, at trial, Dean Bullock never even alleged that she made any attempt to contact Mr. Dawson beyond the one message that she claimed she left him on December 1, 1997 (which Mr. Dawson denied receiving). On the stand, Dean Bullock admitted that she never did anything in response to Prof. Martin's December 2, 1997 memorandum.¹⁹

Dean Bullock's July 1, 1998 memo continues:

My office – **I and Associate Dean Newsom – gave written and oral notice of Ms. Martin's stalking report to University Security and requested security assistance for her.** Apparently neither Campus Security nor MPD posted notices in the security office

¹⁹ See fn. 13.

or in the library describing the stalker, and Associate Dean Newsom requested the Campus Security Office to post notices. Since he did not have a description of the stalker and Professor Martin did, he asked her to prepare a description to be included in notices to be posted. **My efforts were directed at getting security assistance because no one else at the law school is equipped to protect an employee who may be in danger.**

KKK-1 of Pl.'s *M SJ*, page 3).

At trial, Dean Bullock or Newsom admitted that she *never* spoke to anyone in Howard Security about Prof. Martin or Leonard Harrison. Dean Newsom admitted that, other than his brief appearance in the Security Office on November 21, 1997, in response to Prof. Martin's request that he be present, he *never* spoke to anyone in Howard Security about Prof. Martin or Leonard Harrison or asked for "security assistance" for Prof. Martin. **Dean Bullock admitted that she never asked for "security assistance" for Prof. Martin,** other than her one time instruction to her assistant, Barbara Smith, on December 1, 1997, when Plaintiff refused to return to her office or her classroom without protection, due to the frightening voicemail message that she had just received from Harrison, announcing his plans to visit her in her office that afternoon. Dean Bullock's testimony again raises ethical questions. See fn. 13.

Officer Dowdy testified that he had seen and talked with Harrison -- and checked his homeless shelter identification -- on November 25, 1997, when he escorted him off campus, not knowing that there was a stalking complaint on him or that Officer Sirleaf had requested that a Bar Notice be issued against him. Prof. Martin had already provided Deans Bullock and Newsom with all of the information that she had gathered on Harrison, in her memoranda of November 25 and December 2, 1997. Since she had only seen Harrison for a second, before Officer Dowdy chased him from her office on December 1, 1997, Officer Dowdy was in a much better position to provide a description of Harrison than was Prof. Martin.

Contrary to Dean Bullock's assertion, Dean Newsom did not just ask Prof. Martin for a written description of Harrison, but asked her to draft the Alert Notice herself, to be posted, despite her statement that she did not know the format used by Howard's security for such notices and that it would be best drafted by Security. **Neither Dean Newsom nor Dean Bullock ever requested that Security draft an Alert Notice for Harrison.** Again, Bullock's testimony raises ethical questions. See fn. 13. In addition, Deans Newsom and Bullock did not have to "ascertain" that no notices were posted because they were the

persons who would post or and/or approve the posting any notice posting on the West Campus, otherwise known as the law school, which stands alone on Van Ness Street, off of Connecticut Avenue, far from the main campus on Georgia Avenue where Dean Newsom purportedly sent the request to post the notice.

The December 22, 1997 memorandum purportedly sent by Dean Newsom to Campus Security was entitled “*Stalking of Prof. Dawn Martin, Vagrants in the Lounge and Missing Printer in the West Campus.*” (Joint Trial Exhibit 80 and Exhibit GG in Pl.’s MSJ) In Dean Newsom’s estimation, then, the stalking of Prof. Martin was equated with *a missing printer* and was not even worth of its own memo. Deans Bullock and Newsom admitted that they never received any response from Security to the Notice, that they never called Security to follow up on the purportedly sent memo and that **the Notice was never posted**, although they could easily have posted the notice themselves on the law school premises rather than sending it across town to main campus to request that someone from main campus come across town to post the notice. Finally, Howard’s Security former Director, Mr. Dawson, and the Deputy Chief, Mr. Armstrong, testified that they never saw this memo before being deposed in this case. Howard never produced the memo as part of the Security Office files and Mr. Armstrong testified, in his deposition, that in his search of the Security files, he did not find any such memo from Dean Newsom.

Dean Bullock knowingly, callously and recklessly refused to provide the reasonable protection from Harrison that Howard’s own security policy mandated.²⁰ Bullock even lied by stating, in writing, that she was consulting with the Director of Security, Lawrence Dawson, when, in fact, she had never consulted with Dawson or any other Howard University Security Officer or D.C. Metropolitan Police Department officer regarding Prof. Martin or Harrison. As set forth in Pl. MSJ at 16, Dean Bullock made specific statements exhibiting extreme hostility toward Plaintiff in response to her requests that Howard take reasonable steps to bar a serial stalker, with a criminal record, from the law school. Dean Bullock told the EEOC:

²⁰ Howard argued that Plaintiff put on a premises liability case. It is true that Plaintiff’s former counsel, Melvin Otey, unnecessarily set out a premises liability case – against Plaintiff’s specific instruction. This element of the case did waste Plaintiff’s allotted time to prove her case in chief; however, it did not change the fact that Dean Bullock deliberately *refused* to take even the simplest measures available to her, concealed her refusal to take reasonable action, and even lied about it, in writing.

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

Dean Bullock not only callously and deliberately decided not to provide Prof. Martin with the very protection that Howard's security policies and procedures required, but she *mocked* Prof. Martin and trivialized the stalking, even more than a year later, to the EEOC, after Prof. Martin filed her charges of sexual harassment and retaliation. Dean Bullock demonstrated extreme animosity toward Prof. Martin after the stalking and made plain to the most influential and active member of the APT Committee, her desire to remove Prof. Martin from the faculty. Dean Bullock told APT Committee Vice Chair, Prof. Taslitz, that Prof. Martin had "bad judgment," but would not provide even one example of such alleged bad judgment, even though Prof. Taslitz asked for one, several times. MSJ at 18. Dean Bullock told Prof. Taslitz that she was having a "bad day" and had "a lot to do" with respect to Prof. Martin's complaints about being stalked by Harrison at the law school (Pl. MSJ at 16-17); yet, Bullock did not even take the most basic steps to keep Harrison from Martin in her workplace.

Under these circumstances, not only did the jury properly find that Howard failed to take reasonable measures to end the hostile work environment created by Harrison for Prof. Martin in her workplace, but the undisputed evidence of record *compelled* this factual conclusion.

CONCLUSION

For the foregoing reasons, Defendant's motion must be denied.

Respectfully submitted,

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