

current law professor, of a nationally recognized law school, has **perjured herself** in order to obtain a verdict for the law school! Howard now asks the Court to allow the verdict –*founded on this perjured testimony* – to stand, rewarding Bullock’s perjury and Howard’s attorneys’ Rule 11 violations!

As discussed in Plaintiff’s *Motion*, pages 2-3, 18, 30, and Plaintiff’s *Opposition* (# 472), pages 2, 12, a party may 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). Rule 60(b) prohibits a judgment based on a jury award derived from perjured testimony.³ The jury’s verdict must therefore be set aside.

B. Howard Falsely Claims that Bullock’s July 1, 1999 Memorandum to Howard’s General Counsel was not Admitted into the Record

Howard falsely claims that Plaintiff’s Trial Ex. 8B, Dean Alice Gresham Bullock’s July 1, 1998 memorandum to Norma Leftwich, General Counsel for Howard University, was not admitted into the record. Contrary to Howard’s assertion, the Court confirmed that Plaintiff’s Trial Ex. 8b was admitted into evidence at trial. Howard is feigning confusion with a related exhibit, “8a” which was apparently not offered into evidence.⁴

³ Bullock’s perjury is subject to criminal prosecution. This Court also has the authority to sanction Bullock, both as a witness and as an attorney, or “officer of the Court,” as well as sanctioning Howard’s attorneys, pursuant to Rule 11, both to punish them for perpetuating this fraud upon the Court and to compensate Plaintiff for the additional legal work she and/or other attorneys have had to perform to rebut this perjury. The extents to which Howard and its representatives have resorted to avoid any payment to Plaintiff, or the restoration of her teaching career are extraordinary and should be sanctioned. 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.

⁴ Howard adopted Dean Bullock’s statement in its December 8, 1998 Position Statement to the EEOC (Exhibit KKK-2 of Pl.’s *M SJ*). For reasons that are not clear, although Plaintiff had clearly prepared Exhibit 8(a) as Plaintiffs’ Trial Exhibit 8A, and included it in Plaintiff’s exhibit book, her then counsel, Mr. Otey, apparently failed to introduce it during his 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. Contrary to Howard’s additional assertion, Plaintiff included Howard’s EEOC Position Statement as KKK-2of her October 9, 2002 *Motion for Summary Judgment*, (re-filed electronically, on November 1, 2005, as Docket # 330).

The Court did take time to search the record for clarification on this exhibit before Plaintiff could present her “Chart of Howard’s Changing Defenses” to the jury during closing argument. Because the record did not reflect the admission of Exhibit 8(a), Plaintiff had to “cover up” references to Ex. 8a in her chart.⁵ Plaintiff was permitted, however, to leave in all references – and even write in references – to Ex. 8b, which the Court determined had been admitted in to the record. Plaintiff specifically used and referenced the charts, including references to Ex. 8b, in her closing argument.

C. Howard Ignored the Undisputed Testimony of Dean Newsom and Plaintiff

On page 16 of its *Opposition*, Howard argues that the Court “must not consider Plaintiff’s argument that Deans Bullock and Newsom recognized Harrison as a threat to Plaintiff and other women because this evidence was not presented at trial.” In addition to Plaintiff’s Trial Exhibit 8(b), Howard is completely ignoring the testimony of both Plaintiff *and Dean Newsom*, both in their depositions and at trial, that Newsom expressed his belief to her that Harrison posed a threat to her and “other women” on campus. Plaintiff’s *Motion* at 16-18, 20-22; See Pl.’s *MSJ* at 12. 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 Prof. Martin’s memoranda entitled “Security Problem on Campus” and her conversations with them about Harrison, constituted complaints of harassment, based on her sex.

D. Howard Ignores Taslitz’ Admissions and Misstates Sirleaf’s Testimony

Howard has not addressed the fact that Prof. Taslitz, whom Howard has designated a binding agent, advised Prof. Martin to call the police, telling her “Howard’s security is for sh-t. You’ll be **raped** and killed right in front of that security booth.” (Emphasis added) Clearly, by using the word “rape,” Prof. Taslitz understood Harrison to pose a threat of *sexual* assault to Prof. Martin.

⁵ Although the jury could not consider Ex. 8(a) at trial, the Court may consider it with respect to a motion for judgment, as a matter of law, particularly since it is evidence of fraud and perjury. In addition, Plaintiff’s April 25, 2006 *Motion for Judgment*, filed before the close of trial, and renewed in the present motion, filed by Plaintiff on May 8, 2006, expressly renews and incorporates Plaintiff’s October 9, 2002 *Motion for Summary Judgment*, which included both Trial Exhibits 8a and 8b, as Exhibits KKK-1 and KKK-2, respectively.

On page 4 of its *Opposition*, Howard falsely states that Officer Sirleaf testified that he believed that Harrison's conduct was a "'criminal matter' and not motivated by sex or Plaintiff's gender." Howard has blatantly misrepresented Officer Sirleaf's testimony. Officer Sirleaf testified, clearly, both in his deposition and at trial, that he understood Harrison's pursuit of Prof. Martin, as his desired "wife" to be both sexual in nature and based on her gender, or status as a woman. In fact, Howard contradicts itself, by acknowledging, on page 11, that Sirleaf found Harrison's pursuit of Prof. Martin as his "wife" to be inherently sexual in nature. Although Howard has not designated Officer Sirleaf as a "binding" agent of the University, with respect to all of his statements, he was an agent of Howard, in the context of *respondeat superior*. Officer Sirleaf was the first Howard employee who recorded Plaintiff's complaint in a written report.

As discussed in *Plaintiff's Motion*, pages 16-18, and her *Opposition to Defendant's Motion*, pages 3, 10-11, Mrs. Bruner and even Howard's law students understood Harrison's stalking of Prof. Martin to be harassment based on her status as a woman.

E. Howard Ignores Plaintiff's March 6, 1998 Memorandum

Harrison's own January 12, 1998 letter to the Valerie Edwards in Toronto states his pursuit of the embodiment of "Geneva Crenshaw" as a pursuit of various women – specifically African-American women – who meet the profile of this fictional character. In addition to Harrison's own description of his objects of desire, Prof. Martin made repeated references to Harrison's pursuit of her as a woman – as did Dean Newsom and Officer Sirleaf. Howard has again misrepresented the record, on page 15 of its *Opposition*, where it states:

Plaintiff "never notified the University, between November, 1997, and April, 1998, that she perceived or characterized Harrison's conduct as sexual harassment or violative of Title VII until after it became clear to Plaintiff, in April, 1998, that HUSL would not reappoint her to the law school faculty – and that's when Plaintiff filed her EEOC charge (May 1998).

In fact, Prof. Martin explicitly identified his pursuit of her not just as a woman, but as an African-American women, as is documented in her March 6, 1998 Memorandum, page 2, fn. 1. (**Ex. A**) March 6, 1998 was a full month and a half prior to Howard's April 20, 1998 rejection of Prof. Martin for a faculty

position. Her March 6, 1998 memorandum expressed what she had consistently been expressing verbally since the stalking began.

II. Howard Refuses to Acknowledge that Crimes may also Constitute Sexual Harassment

On pages 2-6 and 15 of its *Opposition*, Howard insists upon pretending that it does not grasp the well established conclusion of law that criminal acts may also constitute violations of civil law. As discussed in *Plaintiff's Motion*, pages 16-18, and her *Opposition to Defendant's Motion*, page 16, criminal acts, including stalking, may certainly constitute sexual harassment, in violation of Title VII and the D.C. Human Rights Act, when they take place in the workplace.

As discussed on page 15 of her *Motion* and 16 of her *Opposition*, the D.C. statute defining stalking specifically describes it as a severe form of harassment, using the terms and “harass” and “harassment.” Since Howard repeatedly told jurors that Prof. Martin did not even allege harassment because she did not use the word “harassment,” but used the word “stalking” instead, it was important for the jury to understand that term “stalking” actually necessarily included the acts of “harassment.” A stalking complaint *is* a harassment complaint – indeed, it is a complaint of harassment so severe that it rises to the level of being a crime.

III. Howard Falsely Represents that Prof. Martin “Admittedly” Failed to Notify Howard of Conduct Constituting Sexual Harassment

On page 5 of its *Opposition*, Howard repeats its false assertion that Prof. Martin “admittedly” failed to notify Howard’s administration on notice that she perceived Harrison as pursuing her on the basis of sex. Plaintiff has absolutely never made any such admission. To the contrary, she has repeatedly and consistently testified and alleged that she always perceived Harrison’s pursuit of her as sexual in nature and based on her sex. Plaintiff has also testified that, based on the responses of all of Howard’s employees – Deans, professors, security officers and the Director of Faculty Services, Mrs. Bruner, that everyone who heard the story of Harrison also perceived his pursuit of her as sexual in nature and/or based on her sex.

Howard further repeats its false claim that Prof. Martin did not comply with Howard’s EEO

policy. As Plaintiff has repeatedly pointed out, Howard's own policy states that an employee may make a sexual harassment complaint to the EEO officer or to his or her direct supervisor. There is no question that Prof. Martin reported Harrison's conduct to *both* of her supervisors – the Dean and Associate Deans of the law school. It would have been ludicrous for her to go to main campus, miles away, and report to the EEO officer that a non-employee was stalking her in her workplace. The EEO officer would have no one to charge unless and until it was clear that the Dean would not take appropriate action and/or that the Dean was retaliating against her. When this became clear to Prof. Martin, she appropriately filed her EEO charges. Prof. Martin filed *both* an EEOC charge *and* an internal grievance, including EEO charges, on May 14 and 15, 1998, respectively.

It was *only* once it became clear that Dean Bullock was not taking the action she claimed, in writing, she was taking, and that Howard's security was not following its own policies and procedures with respect to barring the harasser from campus, that Prof. Martin *could* file an internal EEO claim or an external EEOC charge. Prof. Martin could not file an EEO charge against *Harrison – a non-employee*. The EEO claim against the University only arose after it became clear that the University failed and refused to take the reasonable steps necessary to end the hostile work environment. In this case, the reasonable means to ending that hostile work environment was by keeping Harrison out of the workplace and holding him for police if he showed up on campus. These reasonable means would have been accomplished by Campus Security – not an EEO officer on main campus, miles away.

On page 6 of its *Opposition*, Howard strains to attribute thoughts to Teresa Guerrant, Esquire, that she never said or implied. Howard claimed that Ms. Guerrant “did not counsel or urge her friend to file a sexual harassment complaint with or against the University.” Howard omits any time frame or distinction between filing a charge “within” or “against” the agency. Howard's attorneys never asked Ms. Guerrant whether she counseled her friend, Prof. Martin to file these charges or whether Prof. Martin informed her that she intended to file these charges. The question was limited to the period of time that Prof. Martin was attempting to work with Howard's administration to provide the requested security to keep Harrison out of her workplace. Howard's attorneys clearly avoided asking Ms. Guerrant whether she counseled

her friend to file an EEOC charge *at any time* or whether Prof. Martin discussed her May 14 and 15, 1998 EEO and EEOC charges with Ms. Guarrant before she filed them. Clearly, Howard's attorneys realized that Prof. Martin very likely did discuss these charges with her closest friend, also an attorney with expertise in EEO law. Howard's attorneys therefore chose not to ask that question.

The administration's response was, instead, retaliation against Prof. Martin, in the form of efforts to further harass her and to remove her from the faculty. As this became clear, Prof. Martin first attempted to appeal to Dean Bullock, her colleagues and even University President Swygart, in March and April of 1998, before taking formal action against the University. When all else failed, Prof. Martin filed the timely charge and grievance, in May of 1998.

Plaintiff was under no obligation to file the charge or grievance any sooner and acted reasonably in first trying to work the matter out without litigation. Certainly, this is not a reason to fault her to strip her of the right to ultimately sue, as she did.

IV. Howard's Argument that Plaintiff's Fear Should have Ended on January 12, 1998 is Baseless⁶

On page 6 of its *Opposition*, Howard takes the ridiculous position that Prof. Martin should have taken Harrison at his "face-value" word, in his letter to Valerie Edwards, Esquire, in Toronto, that he would no longer pursue her. Howard ignores the fact that all information provided to Prof. Martin about Harrison – from himself, from police, and from the homeless shelter here he lived – indicated that Harrison is a delusional, unstable stalker with a criminal record and a history of violence. Such a person cannot reasonably be expected to keep his word or even to have honestly expressed his intent, let alone, not to "change his mind" about what African-American female law professor might be the physical embodiment of the fictional character, Geneva Crenshaw, after all. If Harrison ran out of additional candidates, there was no reason to believe that he would not return to a previous fixation.

This was not a case of "mistaken identity" as Howard insists upon pretending. *There was never a*

⁶ Even if the hostile work environment had ended on January 12, 2006, Plaintiff would be entitled to both compensatory and punitive damages for this two month period. Plaintiff endured a hostile work environment, in fear of a delusional, criminal, violent, homeless serial stalker, fixated on fictitious character in a book, whether it was from November 20, 1997 –January 12, 1998 or from November 20, 1997- June of 1998.

real person to identify. There was no physical description and Harrison pursued African-American women who bore no resemblance to each other. Harrison had a fixation on a woman created from imagination, and who embodied certain intellectual characteristics and political beliefs. This “amorphous” description – and his own belief that the “real” Geneva would not necessarily *know* that she was the *real* Geneva, could certainly cause a man like Harrison to return to convince a woman he deemed to be Geneva that she was, in fact, the model for the character and thus, his “natural wife.”

Harrison’s January 12, 2008 letter was frightening – not comforting, as Howard suggests. Not only did Prof. Martin find it frightening, but Dean Newsom responded to the Toronto letter by exclaiming, “Oh shit!” Newsom added that Harrison could come back not just for Prof. Martin, but also for Profs. Cunningham or Crooms, who also wrote and taught in areas touching on issues of critical race theory. Despite Newsom’s exclamation of concern, Howard did absolutely nothing to keep Harrison out of the workplace after January 12, 1998. Still, no Alert Notices were posted, no Bar Notice was issued, no memos were circulated among faculty, students or staff, and no announcements were made at faculty or other meetings regarding Harrison. Howard took absolutely no measures to keep Harrison from freely entering the law school premises at any time, without warning.

V. Howard Misrepresents the Court’s 1999 Decision and Issues Identified to be Decided by a Jury

On page 8 of its *Opposition*, Howard has flagrantly misrepresented the Court’s “preamble” as stating that: “whether Harrison’s conduct towards Plaintiff constituted sexual harassment was to be ‘decided by a jury.’” In fact, the preamble absolutely does not identify the issue of whether Harrison’s conduct constituted sexual harassment, or harassment on the basis of sex, as one of the issues left to be decided by a jury. The “preamble,” or introduction, actually states:

On all other counts, Defendants' Motion will be denied because those claims present material issues of fact which must be decided by a jury

Martin v. Howard University, 1999 U.S. Dist. LEXIS 19516 at *1-2 (D.D.C. 1999).

As discussed in Plaintiff’s *Motion*, pages 11-13, and her *Opposition*, pages 11-12, Chief Judge Hogan held:

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.

Howard ignores Judge Hogan's language, "it is clear ..." that Harrison only focused on Plaintiff because she was female – but this is the language that he used, whether Howard acknowledges it or not. Judge Hogan did not usurp the province of the jury by deciding this issue, as a matter of law. Howard never disputed that Plaintiff received the letters that she alleged that she received from Harrison or from the law firm in Toronto. Howard did not dispute that Harrison existed, that he was fixated on the Geneva Crenshaw character, or that he claimed, in his letters, that he was pursuing Prof. Martin in the hopes that she would be his "wife." It was never a disputed fact that Harrison was "enamored" with the legs of a former object of his pursuit, Valerie Edwards, or that he was making comparisons about between Prof. Martin and his original "Valerie Edwards," referring to Prof. Martin as "this Valerie Edwards look-alike" who was "prettier" and more "voluptuous" than he remembered the original Valerie Edwards.

Judge Hogan had every right, based on the undisputed facts, to make the determination of law that Harrison's pursuit of Prof. Martin and other women, as the physical embodiment of Geneva Crenshaw, whom he believed was his "natural wife," constituted pursuit that was sexual in nature and/or based on Prof. Martin's sex/gender or status as a woman.

As discussed in Plaintiff's *Motion*, pages 18-20, and her *Opposition*, pages 17-18, 11, the issues

of fact that Chief Judge Hogan did identify to be determined by a jury were: 1) whether Harrison's conduct constituted harassment so severe and pervasive that it created a hostile work environment for Prof. Martin; and 2) whether Howard took reasonable steps to eliminate the hostile work environment. These are, in fact, the issues that the jury decided – both in Plaintiff's favor. These factual determinations entitle Plaintiff to judgment, as a matter of law.

VI. Howard Purports to Know What Judge Hogan was Thinking During Trial

As discussed in Plaintiff's *Motion*, at 10, 12-13, 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. Since Officer Sirleaf was an agent of Howard, and the first Howard employee who recorded Plaintiff's complaint in a written report, his understanding of Plaintiff's complaint as sexual, or based on her sex, is 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." 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."

On page 11 of its *Opposition*, Howard purports to read Judge Hogan's mind and struggles to twist his words at trial, claiming that Judge Hogan actually meant something other than what he actually said.

Howard argues:

This Court admonished Plaintiff's counsel to move on with his questioning because counsel was belaboring a point that had already been made by the witness. In this case, the Court may have stated that the point that Officer Sirleaf as making as a witness was "obvious and to move on." ... Here, this statement by the Court, for Plaintiff's counsel to move on, was an effort by the Court to urge Plaintiff to efficiently prosecute her case, which took more than three weeks to present.⁷

First, Dr. Sirleaf was the fourth witness in this trial.⁸ Dr. Sirleaf testified on the first full day of

⁷ 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.

⁸ Dr. Sirleaf was actually scheduled to be the third witness; however, Ms. Jefferson, who had flown from California for the sole purpose of testifying in this case, was scheduled to fly home and had waited for

witness testimony. The first three witnesses had limited testimony and were finished quickly.⁹ Dr. Sirleaf's testimony was not "belabored" or unnecessarily extended. Dr. Sirleaf was a key witness who set the stage for the entire trial and established the commencement of the relationship between Prof. Martin, Howard campus security, the D.C. Police Department, Howard's administration, and the roles that each of them initially assumed and maintained with respect to Prof. Martin's complaint that Harrison was harassing her in her workplace.

Second, the question of whether Harrison's conduct was perceived by Howard personnel as "based on sex," and whether Prof. Martin reported it to Howard personnel in terms that conveyed to them that she understood Harrison's conduct to be based on sex, actually determined the outcome in this case; accordingly, even if Plaintiff's counsel had been "belaboring" it, it was apparently a point worth belaboring and he should have been permitted to pursue it.¹⁰

VII. **Juror Confusion on the Law, Regarding, "Wife," Gender and Sexual Harassment**

A. **Juror Confusion on the Definition of "Wife"**

On page 10 of its *Opposition* (see also page 14), Howard states:

According to Plaintiff, "wife" is defined as a married woman." This argument lacks merits (sic) and cannot be squared with the facts that were presented at trial.

Of course, it is not simply "according to Plaintiff," that "wife" is defined as a married woman." It is the definition provided by English language dictionaries, as Plaintiff stated in her motion. To erase any

three days, in the witness room, to testify. Ms. Jefferson therefore had to testify out of sequence in order to make her flight.

⁹ In fact, Howard's counsel, Mr. Schwalb, may have taken longer to cross-examine these witnesses than Mr. Otey took for their direct examination.

¹⁰ This is particularly true, since, during the third week of trial, when the jury was tired, the Court repeatedly urged the parties to complete the trial expeditiously, and there was a need to eliminate unnecessary evidence and "belaboring." Mr. Shwalb was permitted to "belabor" points in his cross examination of Plaintiff that were not only repetitive, but at times, outright ridiculous. For example, after asking Plaintiff whether Harrison ever touched her, to which Plaintiff responded, "No," Mr. Shwalb was permitted, over Plaintiff's objection, to continue to ask her variations of that question, over and over again – whether he pinched her, grabbed her, etc. Mr. Shwalb was also permitted to go through what Plaintiff's second counsel, Ms. Taylor, called, in her objection, a "history lesson" during his cross-examination of Plaintiff. Mr. Shwalb asked Plaintiff whether she took part in developing Howard's Constitutional Law curriculum, discussing deceased persons such as James Nabrit, Charles Hamilton Houston, and others associated with Howard's history.

doubt and to ensure that the record is complete on the plain English language definition of “wife,” Plaintiff has provided definitions of the word from the Cambridge University Press Dictionary, 2006, the Merriam-Webster On line Dictionary, 2006 and The American Heritage Dictionary of the English Language, Fourth Edition, copyright 2006 (collectively submitted as **Ex. B**) These dictionaries define “wife” as:

- 1) “the woman to whom a man is married” (Cambridge University Press);
- 2) “a woman joined to a man in marriage; a female spouse” (American Heritage)
- 3) “1 a *dialect*: WOMAN b: a woman acting in a specified capacity – used in combination <fishwife> 2: a female partner in marriage” (Merriam-Webster).

Although Howard argues that the definition of “wife” does not restrict the person to a woman, or female, Howard has provided no definition or authority for a definition that does not definite the term “wife” as a woman or female. On page 13 of is *Opposition*, fn. 4, **Howard states:**

The statement by the jurors, “wives are typically female,” clearly show that the jurors understood that **wives may not necessarily or conclusively be female**. (Emphasis added)

Howard’s footnote actually makes Plaintiff’s point: the jury *misunderstood* the meaning of the word “wife” and was confused about the legal analysis to be applied to issues involving gender, harassment based on sex and sexual harassment, as exhibited by its repeated request for additional instructions on these issues. In addition, the jury did not apply the term “wife” to the facts of this case or as used by Harrison himself. Even if another harasser had his own definition of “wife” – which clearly showed that he defined “wife” as male or as either male or female, the harasser in *this* case, *Leonard Harrison*, perceived his wife as *female and only female*. He pursued *only women* to fulfill this role and or fantasy for him.

Howard argues that since Harrison confronted Prof. Derrick Bell and threatened his life, the jury could have concluded that Harrison stalked both men and women African-American professors; however, as Plaintiff discussed in her *Motion*, page 7. fn. 3 and her May 8, 2006 *Motion for Judgment on her Breach of Contract Claim* (Docket # 463), page 29, Harrison did not create a hostile work environment

for Prof. Bell. Harrison's conduct did not permeate Bell's workplace. Harrison confronted Bell on one occasion. Harrison certainly did not pursue Bell personally as his "wife." Harrison did not refer to Prof. Bell's "legs" or other physical attributes. Harrison did not indicate, in any way, that Prof. Bell was "voluptuous" or otherwise sexually desirable to Harrison. There was nothing sexual in nature about his confrontation with Bell. Instead, Harrison attempted to enlist Prof. Bell in his quest for finding the *woman* that could be his Geneva Crenshaw or natural wife. Prof. Bell did not indicate feeling threatened sexually, or that he was targeted as a man, as contrasted with Prof. Martin, who did feel sexually threatened and who reasonably believed that she was targeted by Harrison as a woman – as all others who heard the story also believed.

As discussed in Plaintiff's *Motion*, page 7, and her *Motion for Summary Judgment*, pages __ - __, Prof. Bell's affidavit (**Ex. C**), proposed testimony and Martin's recounting of what Prof. Bell told her was relevant to this case in two ways: 1) Bell's description of his encounter with Harrison portrays him as a violent, radical, dangerous, delusional man, corroborating and adding to reports that she had received from the D.C. Metropolitan police department and the homeless shelter; and 2) Bell shed additional light on Harrison's fixation with the Geneva Crenshaw character and his extended quest to identify the *woman* he believed was the model for the character to make her his "wife."

B. Juror Confusion on the Law, Regarding Gender and Sexual Harassment

When the jury requested additional instructions regarding the legal definition of sexual harassment, Plaintiff respectfully asked Judge Kessler to provide the jury with the *verbatim* definition stated by Judge Hogan in this very case, in his 1999 published decision.

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.*

Martin v. Howard University, 1999 U.S. Dist. LEXIS 19516 at 6-7.

Judge Hogan's 1999 decision was more comprehensive than the final jury instructions, particularly because it would have specifically instructed the jury to consider "the effect on the

employee's psychological well-being.” Judge Hogan’s 1999 definition of sexual harassment would have been helpful to the jury because it would have negated Howard’s repeated and “belabored” cross examination questions and closing argument stressing that Harrison never physically assaulted Prof. Martin or otherwise physically *touched* her. Howard’s arguments may well have left the jury confused about a plaintiff in a sexual harassment case had to be physically assaulted in order to prevail on her claim.

On pages 6-7 of its *Opposition*, Howard argues, as it has done throughout this case and argued at trial, that since Harrison never actually *touched* Plaintiff, she was not sexually harassed and no harm was done. Howard has deliberately attempted to mislead this Court and the jury in to believing that *touching*, or a sexual assault, would be necessary to prove sexual harassment in the workplace. Of course, neither Title VII nor the D.C. Human Rights Act requires a sexual assault, or any touching of any kind, in order to establish a case of sexual harassment.¹¹ Howard may well have confused the jury with respect to the legal requirements of a negligence case versus a sexual harassment case.

On page 14 of its *Opposition*, Howard misrepresents that Judge Kessler:

concluded that the jury instructions on sexual harassment was (sic) very comprehensive, and that it was inappropriate to add to the instructions by using phrases from Chief Judge Hogan’s 1999 opinion after the parties had been given the opportunity, before

¹¹ In its *Opposition* and other filings, Howard repeatedly alleges that Plaintiff put on “a premises liability case” and then calls that purported claim “unsuccessful.” A premises liability case is a negligence action – which Plaintiff never included in her Complaint or argued at any point in this litigation. Negligence requires a legally recognized harm. If Plaintiff had filed a negligence action, arguably, she would have had to show that she was physically harmed. In contrast, however, Title VII and the D.C. Human Rights have no requirement of physical harm and address the emotional distress suffered by the plaintiff while working in a hostile work environment, subjected to sexual harassment. Plaintiff made no claim of negligence infliction of emotional distress in this case because, at the time the complaint was filed, in the District of Columbia, negligent infliction of emotional distress was not a recognized claim. The evidence presented at trial did include some of the same evidence that would have been included in a negligence action, since the same standards for negligence are *relevant* to whether Howard took “reasonable” measures to end the hostile work environment. The touchtone of negligence is the “reasonable person” standard. Despite Howard’s characterization of the presentation of such evidence as “unsuccessful,” the jury’s verdict actually demonstrates that Plaintiff did succeed in proving that Howard did not take the reasonable steps that it had available to it to keep Harrison out of Prof. Martin’s workplace or to end the hostile work environment. The only reason that Plaintiff did not “succeed” on the claim that she did file – sexual harassment -- is that the juror misunderstood the law and found that her hostile work environment was not based on her gender or status as a woman.

deliberations, to draft instructions.

Actually, Judge Kessler expressly stated that *Plaintiff was correct* in pointing out that Judge Hogan's definition of sexual harassment in his 1999 published decision was more comprehensive than was his instruction to the jury; however, Judge Kessler hesitated to add to Judge Hogan's instruction since he did not provide the full instruction in the first place. Plaintiff did draft proposed instructions on sexual harassment, and did include, in her proposed instructions, excerpts from Judge Hogan's 1999 decision. Judge Hogan elected not to use Plaintiff's proposed instructions.

Plaintiff objected to final instructions and particularly, the absence of instructions defining stalking and stating the law regarding conditions under which stalking also constitutes sexual harassment in the workplace, in violation of Title VII. Judge Hogan rejected these proposed instructions. Plaintiff could only object so many times on so many days to the instructions drafted by the Court – particularly if since they were not clearly in error, but could have been more incomplete.

On page 14 of its *Opposition*, Howard argues that that Judge Kessler was “very familiar” with the issues in this case and had “prepared herself” to substitute for Judge Hogan. Not only does Howard purport to read Judge Hogan's mind (see pages 10-11, above), but it purports to read Judge Kessler's mind as well. Howard purports to know how much preparation Judge Kessler had time to accomplish on this case – where Judge Kessler announced to the parties that Judge Hogan had only asked for her potential assistance *the previous night*. Moreover, Judge Kessler could not possibly have know the testimony heard over the previous four weeks, with no transcript, nor could she have known all of the arguments made by the parties over the eight years that this case has been litigated.

Judge Kessler could not possibly have had the history on the case that Judge Hogan had, having only a few hours, in that, to familiarize herself with the case. In addition, Judge Kessler was clearly hesitant to add anything to Judge Hogan's instructions, whereas Judge Hogan did not appear to have any problem adding to his own instructions when asked for additional guidance on the previous day. It does not appear that Judge Hogan was consulted by telephone, or in any way notified of the jury's specific questions for his input. The jurors needed more direction on the law than they were provided -- which is

why they requested additional instructions. They did not receive the additional guidance they requested. They were confused on the law and their verdict reflects that confusion.

Ironically, and the jury received its *determinative instruction* from a judge who had not presided over the four weeks of trial, had presumably not read the extensive *cross motions for summary judgment* and responses or the motions for judgment, as a matter of law, filed before the verdict. Judge Hogan's unavailability to answer these determinative questions, unduly prejudiced Plaintiff.

VIII. **Howard Misrepresents Plaintiff's Understanding of "Protected Activity"**

In its *Opposition*, page 10, fn. 2, Howard claims that "Plaintiff fails to understand the basic distinctions between the law of sexual harassment and retaliation.... Here, the jury could have easily found, without ruling in Plaintiff's favor on the sexual harassment claim, that there was a good faith basis to believe that Plaintiff had engaged in legitimate, protected activity, and that the University retaliated against Plaintiff for invoking her Title VII rights.

As Plaintiff discussed, citing supporting case law, in her May 8, 2006 *Motion for Judgment on her Retaliation Claims*, pages 8-9, filed simultaneously with the instant motion, Plaintiff is well aware that a good faith Title VII complaint constitutes protected activity under Title VII, as she so argued; however, in this case, the jury was not given any instruction on this issue and no such instruction was proposed by any attorney for any party, nor was it proposed by the Court.

In light of the undisputed evidence of record, as well as the Court's 1999 decision, it appears that no one involved in this case anticipated that the jury would actually determine that Harrison's harassment of Prof. Martin was not sexual in nature or based on her gender or that the "good faith" complaint basis of protected activity would ever be an issue. Based on the admissions of Dean Bullock and Dean Newsom, Prof. Taslitz, and all of the facts of record, the testimony of Officer Sirleaf, Plaintiff and all other witnesses, it is undisputed that all of Howard's representatives clearly understood that Harrison was pursuing Prof. Martin as a woman, and that he would not have been pursuing her as his "wife," or describing her as "pretty" or "voluptuous" if she were a man or if his interest in her were not sexual.

The facts relevant to this issue were so clearly undisputed that, in 1999, Judge Hogan decided, as a matter of law, that the undisputed facts, "it is clear" that Harrison only pursued Plaintiff because she

was female. Judge Hogan held that it “appeared” that Harrison’s pursuit of Plaintiff was “sexual in nature” – but then he went further. Judge Hogan unequivocally held that, even *if a jury could* conceivably conclude that Harrison’s pursuit was not sexual in nature, “**it is clear that Plaintiff was only the object of Mr. Harrison’s attention because she was a female.**” 1999 U.S. Dist. LEXIS 19516 at 11.

IX. Howard has not Disputed Plaintiff’s Argument Regarding Bifurcation

As discussed in Plaintiff’s *Motion*, pages 29-30, the Court’s decision not to bifurcate the trial by claim, as Plaintiff requested, resulted in an overburdened, confused jury. The jury was not able to focus on the legal questions involved in the first claim, overwhelmed by thousands of pages and hundreds of exhibits, primarily related to the second claim. The jury needed to focus, issue by issue, on the law and the facts to clearly understand them and to apply the relevant law to them. Howard has offered no rebuttal to this argument; accordingly, Howard should be deemed to have conceded that the jury was overwhelmed by deciding all of the issues together and that bifurcation would have substantially reduced the confusion.

X. Howard has not Disputed Plaintiff’s Argument Regarding Punitive Damages

As discussed in Plaintiff’s *Motion*, pages 26-29, if this case is retried, the jury should have the option of awarding punitive damages, in addition to compensatory damages. Howard has offered no rebuttal to this argument; accordingly, Howard should be deemed to have conceded that punitive damages may be appropriate in this case, pursuant to the case law developed under Title VII and D.C. Human Rights Act.

CONCLUSION

For the foregoing reasons, *Plaintiff’s Motion for Judgment*, as a matter of law, on her sexual harassment claim, should be granted.

Respectfully submitted,

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