

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Dawn V. Martin,)
)
)
 v.)
) Case No. 1:99CV01175
Howard University, *et. al.*) Judge: TFH
)
)

PLAINTIFF’S UNOPPOSED MOTION TO INTEGRATE THE APRIL 19, 2006 DIRECT TESTIMONY OF PLAINTIFF (DOCKET # 490) INTO CERTIFIED “OFFICIAL” TRIAL TRANSCRIPT, WHICH CURRENTLY OMITTS MOST OF PLAINTIFF’S DIRECT TESTIMONY

Plaintiff, Ms. Martin, respectfully requests that this Court Order its Court Reporter, Cathryn Jones,¹ to integrate the April 19, 2006 transcript of Plaintiff’s direct testimony – the crux of her case – into the certified “official transcript.” Defendant Howard University does not oppose the relief requested in this motion. (**Exhibit A**, April 2, 2007 e-mail correspondence between counsel).² The parties agree, and the record is self-evident, that the bulk of the direct testimony of the Plaintiff, Ms. Martin, given on the afternoon of April 19, 2006, Docket, # 490, is missing from the “official transcript” that Ms. Jones certified and submitted to this Court and the U.S. Court of Appeals, D.C. Circuit. (**Exhibit A**) The transcript that Ms. Jones certified as the “official transcript” of the trial, therefore, is not complete and should not have been so certified.

The complete and correct “official transcript” is necessary to:

- 1) conform to the Rules and Procedures set by the Judicial Conference;

¹ The Court’s website lists Ms. Jones as a member of Chief Judge Hogan’s staff. The Court’s website indicates that each judge is assigned a particular court reporter.

² Ms. Bullock’s counsel in her individual capacity, Frederick Cooke, Esquire, never responded to Plaintiff’s April 2, 2007 e-mail request for Ms. Bullock’s position on the motion.

- 2) properly and appropriately cite the trial transcript on appeal;
- 3) protect the public's right of access to a record of the trial in this case that is true, accurate and complete; and
- 4) maintain justice and the integrity of the Court.

MEMORANDUM IN SUPPORT OF MOTION

I. Duty of the District Court to Correct Errors in Trial Transcript

In its March 7, 2007 Order, the U.S. Court of Appeals informed Plaintiff that any requests for correction of the Court transcript must be directed to the District Court (**Exhibit B**), citing Fed. R. App. P. 10(e)(1) and *Lothschuetz v. Carpenter*, 898 F.2d 1200, 1208 (6th Cir. 1990).³ Pursuant to that Order, and the Court's March 26, 2007 Order denying Appellant's motion to compel the Court Reporter, Cathryn Jones, to produce the trial transcript from the afternoon session of April 19, 2007.⁴

II. The "Incomplete" Transcript can easily and readily be Made "Complete"

The missing transcript can easily be added to Volume 10, which is a transcript of the April 19, 2006 morning proceedings, during which Plaintiff began her direct testimony, or it can begin a new volume, making the afternoon session Volume 11 and renumbering the remaining Volumes 12-17, rather than 11-16. In any case, the page numbers for the transcripts in Volumes 11-16 must

³ The Court of Appeals' lack of jurisdiction regarding corrections to the transcript is distinguished from its authority to sanction the Court Reporter for late production of transcripts. The Clerk of the Court of Appeals has exclusive authority to waive the sanction. In its December 19, 2006 Order (**Exhibit C**), the Court of Appeals denied Ms. Jones' motion to waive the sanction and did penalize her by requiring her to reduce her fee for the transcripts by 20%, pursuant to *Administrative Office of the Courts, Guide to Judiciary Policies and Procedures*, Vol. 6, Section 20.12.2d, Late Delivery of Transcripts.

⁴ Ms. Martin filed this motion in the Court of Appeals because, in its December 19, 2006 Order (**Exhibit C**), the Court had previously ordered Ms. Jones to produce the entire trial transcript, by January 31, 2007. Ms. Martin interpreted Ms. Jones omission of the April 19, 2006 transcript as a violation of the Court's December 19, 2006 Order; however, it appears that the Court of Appeals may have regarded the request as a correction to the trial transcript and within the jurisdiction of the District Court.

be changed after the insertion of the missing April 19, 2006 afternoon transcript. This process can be accomplished in *moments*, by simply cutting and pasting Court Reporter Bryan Wayne’s the electronic version of the April 19, 2006 transcript (Docket # 490) into Ms. Jones’ transcripts, adding it between the transcript Volumes that are now numbered 10 and 11. Ms. Jones would then only need to print out Volumes 10 through 16 (or 17, if the Volumes increase) for the parties who have already paid for the full trial transcript.

If this simple procedure is not accomplished, to make the trial transcript “whole” or “complete,” citations to the trial proceedings will be awkward, inconsistent and disjointed. The entire trial transcript – except for the bulk of Plaintiff’s direct testimony – will be cited as Trial Transcript, with a page citation to the official trial transcript. In contrast, and totally separate and apart from the certified official trial transcript, the parties will have to cite portions of Plaintiff’s direct testimony as “Docket # 490, page _.” These page numbers will be duplicative of the page numbers in Volume 1 of the official transcript, since Docket # 490 begins at page 1 and continues through page 100. The official transcript also begins with page 1. Court proceedings should not go forward in such an unprofessional and impractical manner when the problem can so readily and easily be remedied.

III. The Certified “Official Transcript” Must be Complete

The Court Reporter assigned to transcribe trial proceedings must certify that the “official transcript” is correct and authentic.

The court reporter or transcriber is to authenticate the original transcript and each copy with a certification on the last page. The certification is to appear on the last page of each volume of transcript.

If more than one court reporter or transcriber is involved in the production of the transcript being certified, then the certifications of each court reporter or

transcriber involved shall be required at the end of each volume. (Emphasis added)

Administrative Office of the Courts, Guide to Judiciary Policies and Procedures (hereinafter, “*Judiciary Policies*”, Vol. 6, Section 18.17.

In this case, the Court Reporter, Cathryn Jones, produced a 2,577 page transcript, divided into 16 volumes. Ms. Jones only certified the last page of the Volume 16 – the last volume:

I, Cathryn J. Jones, an Official Court Reporter for the United States District Court in the District of Columbia, do hereby certify that I reported, by machine shorthand, the proceedings had and testimony adduced in the above case.

I further certify that the foregoing 2577 pages constitute the official transcript of said proceedings as transcribed from my machine shorthand notes. (Emphasis added)

In witness whereof, I have hereto subscribed my name, this the 20th day of February, 2007.

By certifying *only the last page of the last volume* of the entire trial transcript, totaling 2,577 pages, Ms. Jones’ certification indicated that she was the only Court Reporter for the entire trial and that the “official transcript” that she certified included all testimony provided at trial; however, this was not the case.⁵

Ms. Martin gave her direct testimony on April 19, 2006, during both the morning and afternoon sessions. The transcript produced by Ms. Jones for that date, Volume 10, includes only the morning session. The most substantive, and most “dramatic” (in the words of Howard’s counsel, Mr. Schwalb, in his closing statement)⁶ testimony occurred on the afternoon of April 19,

⁵ “In a protracted case (i.e., a transcript of one thousand pages or more) in addition to the individual index, there may be a master index set forth in its own separate volume, consisting of a compilation of all of the individual indexes.” “*Judiciary Policies*”, Vol. 6, Section 18.12.1. In this case, Ms. Jones opted not to provide a master index. Although she was not required to do so, had she elected this option, the reader would have been better able to identify the missing testimony, rather than having to read 11 volumes before realizing that it was missing.

⁶ During Ms. Martin’s testimony, former Howard University Law School Dean and co-Appellee, Alice Gresham-Bullock, screamed, pounded her fists on Defendant’s counsel table, where she sat, and threw a

2006, upon Ms. Martin's direct examination. This transcript is actually docketed at the District Court level, as entry # 490, entered on June 28, 2007; yet, it was not available in the Clerk's Office for months,⁷ when Ms. Martin and/or her paralegal went to the office of the clerk to view it. In addition, Ms. Jones refused to answer any questions about the transcript docketed as #490, Ms. Martin's "missing" direct testimony, or about the identity of Brian Wayne. (**Exhibit D**, March 8, 2007 e-mail correspondence between Ms. Martin and Court Reporter, Cathryn Jones)

Ms. Martin and her paralegal, Miguel Gallardo, spent most of the day, on Thursday, March 29, 2007, attempting to locate the April 19, 2007 afternoon transcript, both at the Court of Appeals and at the District Court. Finally, the transcript was available in the Clerk's Office and Ms. Martin was finally able to confirm its existence. Upon further investigation, Ms. Martin located Bryan Wayne, who is a Court Reporter assigned to another judge in the District Court.⁸ Mr. Wayne immediately printed out for Ms. Martin a copy of the transcript for the afternoon of

pen. Simply put, former Dean Bullock had a "temper tantrum" in the presence of the jury. There was also a part of the testimony wherein Ms. Martin cried, testifying about the experience of being stalked in her workplace and her fear for herself and for her thirteen year old daughter.

⁷ Previously, each time Plaintiff or her paralegal went to examine any of the docketed transcripts, she was told that they were being kept in Chief Judge Hogan's chambers. Although some of the transcripts were actually docketed as completed, and Ms. Martin had ordered the transcripts on September 12, 2006, and paid for them in advance, Ms. Jones ignored Ms. Martin's repeated request for any of the completed transcripts (**Exhibits E**) Ms. Jones did not produce even one page of any of the transcripts – even those docketed as completed months earlier – until February 6, 2007 – 5 days after Ms. Martin filed, in the Court of Appeals, her *Motion for an Order to Show Cause why the Court Reporter, Cathryn Jones, should not be Held in Contempt of Court for Violating this Court's December 19, 2006 Order to Produce all Transcripts by January 21, 2007*. January 31, 2007 had come and gone without one page of any transcript from Ms. Jones or any explanation or comment from her regarding her blatant disregard of the Order of the Court of Appeals. Ms. Martin also served Ms. Jones with all of the motions and Transcript Status Reports advising the Court of Appeals that Ms. Jones had not responded to any of her inquiries or requests and had not provided even one page of the transcript, as of February 1, 2007 (see pages 10-11 for a list of these filings). When Ms. Jones responded to Ms. Martin's Contempt motion, she only filed her response with the Court of Appeals, *ex-parte*, and flatly *refused* to serve Ms. Martin with her filings, even when specifically requested to do so. (**Exhibit F**, February 20-21, 2007 e-mail correspondence between Ms. Martin and Ms. Jones)

⁸ The phone number for Mr. Wayne, as documented in the Clerk's Office and on the transcript docketed as #490, is disconnected, without explanation. The stated room number in the Courthouse is a vacant, locked office.

April 19, 2006.⁹ (**Exhibit G**, Invoice of Bryan Wayne, for printout of 100 page transcript) In sharp contrast to Ms. Jones, Mr. Wayne was completely accommodating and stated that he was previously unaware that Ms. Martin was having any problems obtaining any portion of her trial transcript.

IV. The April 19, 2006 Afternoon Transcript Must be Integrated into the “Official Transcript” in Order to Conform to the Format Mandated by the Judicial Conference

A. The Certified “Official Transcript” now in the Record is Incomplete, thus, Necessarily Inaccurate and Misleading

In order to address substantive legal arguments, as well as any other errors, irregularities or inappropriate occurrences at trial, subject to appellate review or even just the public’s review, the “official transcript” must be complete. Currently, any member of the public requesting the official transcript in this case would be handed a transcript that actually omits the crux of Plaintiff’s case – her own direct testimony. Certainly, a transcript cannot be deemed “complete” or “official” if it omits the crux of the Plaintiff’s case. Any member of the public, potential *amici curiae*, members of the bench or the bar seeking factual details for precedent, or other interested persons, would be grossly misled by reading what is now certified as the “official transcript,” missing Plaintiff’s direct testimony.

Incomplete records of proceedings are unacceptable in a court of law....

Every effort must be made to produce a complete transcript.

“*Judiciary Policies*”, Vol. 6, Section 18.10.2.e.

⁹ Mr. Wayne explained to Ms. Martin that he had transcribed the testimony at the request of a law firm, *Nash and Associates*. Nash and Associates has no connection to the present case, but requested the testimony for preparation in an unrelated case, in which Ms. Martin prevailed.

B. The Certified “Official Transcript” Violates the Format Mandated by the Judicial Conference

1. The April 19, 2006 Afternoon Transcript has no Volume Number and is Completely Omitted from the Numbered Volumes

The current “official transcript” violates the Judicial Conference’s requirements that each transcript contain a Volume number, in the same sequence as the proceedings transcribed occurred.

The Judicial Conference requires that each transcript contain a title page indicating:

- a. Court name.
- b. District.
- c. Case name.
- d. Civil or criminal docket case number.
- e. Name and title of judge or other judicial officer presiding.
- f. Type of proceeding.
- g. Date and time of proceeding.
- h. **Volume number (if multi-volume).** (Emphasis added)
- i. Name and address of each attorney and name of party represented.
- j. Whether a jury was present.
- k. If steno based, court reporter's name, address, and telephone number.
- l. If electronic sound recording equipment based, audio operator's name, plus name, address, and telephone number of transcription company.
- m. Method by which the proceedings were recorded and the method by which the transcript was produced.

“*Judiciary Policies*,” Vol. 6, Section 18.11.1.

Multi-volume transcripts should be numbered in either of the following ways:

Each volume of transcript should be numbered consecutively. One volume of transcript should be at least equal to one day of court proceedings.

“*Judiciary Policies*,” Vol. 6, Section 18.13.2.

In this case, the April 19, 2006 afternoon testimony has no volume number, in violation of the Judicial Conference Policies and Procedures. Instead, the Volumes flow consecutively from the April 19, 2006 morning testimony, labeled Volume 10, to the morning of April 20, 2006, labeled Volume 11 – as if there had never been any testimony on the afternoon of April 19, 2006. The afternoon

session should be a continuation of Volume 10 or be the new Volume 11, with Volumes 11-16 becoming Volumes 12-17. The “official transcript” must be corrected to conform to the format mandated by the Judicial Conference, as well as to avoid misleading the public regarding the testimony at trial.

2. The April 19, 2006 Afternoon Transcript is Paginated with Duplicate Numbers to the Page Numbers in Volume 1 and is Completely out of Sequence with the Other Volumes

The current “official transcript” violates the Judicial Conference’s requirements that each transcript contain page numbers, in the same sequence as the proceedings transcribed occurred.

“*Judiciary Policies*,” Vol. 6, Section 18.13.1

The pages of the transcript are to be numbered in a single series of consecutive numbers for each proceeding, regardless of the number of days involved. The court reporter shall place the page number at the top right corner of the page flush with the right margin above the first line of transcription. The page number does not count as a line of transcript. **The pagination of the transcript of the further proceedings in the same matter shall follow consecutively the pagination of earlier proceedings, unless the presiding official directs otherwise.**

“*Judiciary Policies*,” Vol. 6, Section 18.13.2.

In this case, the April 19, 2006 afternoon testimony is a volume with no number, completely disconnected from the “official transcript” and is paginated from page 1-100, duplicating the pagination in Volume 1 of the “official transcript.” This pagination violates the Judicial Conference Policies and Procedures. Instead, the pagination flows consecutively from the April 19, 2006 morning testimony, labeled Volume 10, page 1677, to the morning of April 20, 2006, labeled Volume 11, beginning with page 1678 – as if there had never been any testimony on the afternoon of April 19, 2006. The afternoon session should continue with consecutive pagination from Volume 10, page 1678 and include the 100 pages transcribed on the afternoon of April 19, 2006, so that it would end with page 1777. Volume 11 should continue the pagination from the last page of the April 19, 2006

afternoon testimony, which would be page 1778. All pages from Volumes 11-16 (or 17) would then be changed to pagination 100 pages above the current number. The “official transcript” must be corrected to conform to the format mandated by the Judicial Conference, as well as to avoid misleading the public regarding the testimony actually provided at trial.

V. Ms. Martin Only Discovered that Testimony was Missing by Reading the Transcripts

On March 1, 2007, in her *Reply to Ms. Jones’ Response and Supplement to Appellant’s Motion for an Order to Show Cause why the Court Reporter, Cathryn Jones, should not be held in Contempt of Court*, filed in the Court of Appeals, Ms. Martin stated that Ms. Jones had finally provided all of transcripts due in this case.¹⁰ Ms. Martin’s statement was based on Ms. Jones’ representation that all transcripts had been produced. Based Ms. Martin’s initial, cursory inspection of the 2,577 pages, which included transcripts for all dates of the trial, Ms. Martin represented to this Court, in good faith, that Ms. Jones’ statements were true and that all of the transcripts had been produced. Since the voluminous transcripts were produced, Ms. Martin, a solo civil rights practitioner, has been reading them, in between her obligations in other cases.¹¹ It

¹⁰ Ms. Jones only began to offer any portion of the transcript five days after Ms. Martin moved this Court to institute contempt proceedings against her for violating this Court’s December 19, 2006 Order for Ms. Jones to produce all transcripts no later than January 31, 2007. On February 6, 2007, Ms. Jones produced only five volumes of the 16 volumes that she eventually produced. Ms. Martin did not receive the remaining volumes, through Volume 16, until February 21, 2007. In her *Reply*, Ms. Martin did state, however, that these transcripts should not be deemed “produced,” since they had to be reviewed for accuracy. There was strong evidence that these transcripts were not reliable and had been tampered with, in conjunction with Howard University, with whom Ms. Jones had been corresponding and asking for input, including asking Howard to provide her with an exhibit, to “complete the transcripts.” Ms. Martin incorporates into this *Report*, by reference, her March 1, 2007 *Reply to Ms. Jones Opposition to Appellant’s Motion for an Order for Court Reporter to Cease Ex-Parte Communications with the Court and to Serve all Parties with her Court Filings*.

¹¹ Ms. Martin has also had to file motions and responses in this Court in an effort to obtain some means of verifying the accuracy of the transcripts produced, in light of the apparent collusion between the Court reporter and Howard University, as evidenced by their e-mail correspondences exchanging at least one exhibit “to complete the transcript.” (**Exhibit H**, e-mail correspondence between Howard’s counsel, Kishka-Kamari Ford, with a cc to Ms. Martin, and ensuing e-mail correspondence with Ms. Martin) Ms.

was therefore the night of March 7, 2007 before Ms. Martin discovered that the bulk of her direct testimony is missing from the transcripts.

Upon discovering that the April 19, 2006 afternoon transcript was missing, Ms. Martin immediately wrote to Ms. Jones, requesting that she produce the missing transcript. Ms. Martin also asked how adding the missing April 19, 2006 afternoon transcript into the entire transcript would change the pagination of the remaining volumes of the transcript (Volumes 10-16).

(**Exhibit D**, page 2) Ms. Jones refused to answer any questions and insisted that no transcript was missing from the certified official transcript. (**Exhibit D**, page 2)

Ms. Martin again tried to reason with Ms. Jones, providing her very specific information about the missing testimony, including the fact that it was the bulk of her April 19, 2006 direct testimony and that it was docketed on June 28, 2007, by Court Reporter “Bryan Wayne,” as Docket # 490 (**Exhibit D**, page 1) Ms. Martin asked whether Bryan Wayne was one of the

Martin requested tape recordings of the proceedings, but the Court of Appeals, apparently after conducting its own inquiry, informed Ms. Martin that this trial was not taped (Ex. C, March 7, 2007 Order) Judge Hogan set precedent with this case in 1999, holding that an employer is liable for the sexual harassment of an employee by a non-employee in her workplace. *Martin v. Howard University*, 1999 U.S. Dist. LEXIS 19516, 1999 WL 1295339; 81 Fair Empl. Prac. Cas. (BNA) 964; 15 I.E.R. Cas. (BNA) 1587 (D.D.C. 1999), *reversed in part, on other grounds*, 2003 U.S. Dist. LEXIS 18501, *reversed in part*, 1999 U.S. Dist. LEXIS 19516, 1999 WL 1295339; 81 Fair Empl. Prac. Cas. (BNA) 964; 15 I.E.R. Cas. (BNA) 1587 (D.D.C. 1999), *reversed in part on other grounds*, 2003 U.S. Dist. LEXIS 18501, *reversed in part on other grounds*, 2006 WL 2850656 (D.D.C. 2006). This long-awaited three and a half (3 ½) week trial took place in D.C.’s newly-build federal district Courthouse, in the courtroom of the Chief Judge, containing “state of the art” technological equipment. In fact, Judge Hogan was reading the transcript in “real time” on his computer monitor, at the bench, during the trial. Over the previous seven years of litigation in this Court, this case has been hotly contested and bitterly fought. Howard was held in Contempt of Court in 2002 for withholding discovery, in defiance of three Court Orders to produce it. Howard’s contemptuous conduct delayed this litigation by years. Howard’s counsel, Mr. Schwalb, in his closing argument, commented that Howard had spent “a lot of money” litigating this case. Indeed, in addition to its in-house counsel, Howard has employed five (5) outside law firms, over the years, to litigate against Plaintiff, who has been *pro se* for most of this litigation and has personally drafted every substantive document in this case. Plaintiff became a solo practice civil rights practitioner after having her law teaching career de-railed by Howard University in 1998. In light of the precedent-setting and tumultuous history of this case, it is extremely surprising that this particular trial was not taped. Without a tape recording of the trial, Plaintiff is forced to rely on an unreliable transcript for her appeal, even though there is evidence of tampering and collusion with her adversary.

“scopists” that Ms. Jones stated she enlisted to assist her, since Ms. Martin did not recall any other Court Reporter in the courtroom during the trial. (**Exhibit D**, page 1) Ms. Jones flatly refused to answer this or any other questions regarding this docketed transcript. (**Exhibit D**, page 1).

Ms. Jones’ history with Ms. Martin made it clear that Ms. Jones would not provide any information or correct the transcript without a Court order – and even then, it was questionable. It was only after Ms. Martin filed her pending February 1, 2007 *Motion for Contempt*, that Ms. Jones responded, in any way, to Ms. Martin – and then, the response was hostile and unwarranted and unprofessional. Instead of making any attempt to apologize for withholding completed transcripts from Ms. Martin, and for violating the express Rules and Orders of this Court with respect to deadlines for completing the transcript, and instead of offering any explanation for her behavior, Ms. Jones left a voicemail message for Ms. Martin, on February 6, 2007, at 2:42. p.m., stating:

Ms. Martin, this is Cathryn Jones, of the United States District Court, calling to let you know that I have some of your transcripts available for you. You have written me several, uh, message – uh, letters, uh, about your transcript, all of which I have received. You have accused me of stealing your money, and I just want to let you know that I – just -- do not – think – that is professional. I’m a professional person -- and I try to – do – a good work product, but your transcript as it is available, is being printed as we speak. You have five days here, if you would like to get them, they will be available in judge – Chief Judge Hogan’s chambers. If you have any questions or you need to speak with me, the number is (202) 354-3246. Thank you.¹²

Ms. Martin has never used the word “stealing” to describe Ms. Jones’ withholding of funds overpaid; she has simply repeatedly asked that Ms. Jones provide her with a proper estimate of the cost of the transcript, taking into account this Court’s 20% penalty for Ms. Jones’ violation of

¹² Ms. Jones’ voicemail message is also transcribed in Ms. Martin’s February 18, 2007 *Transcript Status Report*, page 5, filed with the Court of Appeals, with an actual CD recording of Ms. Jones’ message included as Exhibit A to the February 18, 2007 *Report*.

FRAP 11(b), and return any overpayment. All of Ms. Martin's letters to Ms. Jones have been completely professional, appropriate, and necessary, as required by the FRAP and the October 4, 2006 and December 18, 2006 Orders of this Court to provide this Court with information regarding the status of the transcripts. The letters were included in the record as exhibits to Ms. Martin's November 24, 2006 *Transcript Status Report* and are attached, collectively, to this motion. **(Exhibit E)**

Ms. Jones has been inexplicably hostile toward Ms. Martin even since the first day of trial. Before trial commenced, Ms. Martin politely asked Ms. Jones the price of obtaining "daily" transcripts for portions of the trial. Ms. Jones "snapped" at Ms. Martin, telling her that she would not have time to transcribe any "dailys" and that the soonest Ms. Martin could get any portion of the trial transcript would be sixty (60) days after the trial. In sharp contrast to her denial of "dailys" to Ms. Martin, Ms. Jones stated, in her response to Ms. Martin's contempt motion in the Court of Appeals, that she could not timely produce transcripts in this case, per Ms. Martin's September 12, 2006 Order, in part, because she had to prepare "dailys" in two other trials. **(Exhibit I)** Ms. Jones has repeatedly denied Ms. Martin the basic services and courtesies routinely extended to other litigants.

Since Ms. Jones flatly refused to provide the April 19, 2006 afternoon transcript, any information as to the identify of Bryan Wayne, or why the transcript was not included in her certified "official transcript" produced to this Court, the Court of Appeals, Plaintiff and Howard University¹³ Ms. Martin filed a motion with the Court of Appeals to compel Ms. Jones to produce the missing transcript and to integrate the transcript into the "official transcript."

¹³ See **Exhibit A**, e-mail discussion between Ms. Martin and Howard counsel, Ms. Ford wherein Ms. Ford "confirmed" that the April 19, 2006 transcript was not included in the certified official transcript produced by Ms. Jones.

Ms. Martin believed that this was an appropriate motion for the Court of Appeals since, on December 19, 2006, the Court of Appeals had ordered Ms. Jones to produce all transcripts in the case no later than January 31, 2007. Ms. Martin viewed Ms. Jones' failure to produce the April 19, 2006 afternoon transcript as an act of contempt of the Court of Appeals' December 19, 2007 decision. On March 26, 2007, the Court of Appeals denied the motion, without discussion; however, referring back to the Court of Appeals' March 7, 2007 Order (**Exhibit B**), it appears that the Court of Appeals denied the motion because it viewed the request as a form of correcting a transcript. In its March 7, 2006 Order, the Court of Appeals clearly stated that any motions to correct the transcript must be made in the District Court. In accordance with the Court of Appeals' instruction to address transcript errors at the District Court, Plaintiff files this motion.

VI. Ms. Martin Diligently and Timely Complied with all of her Obligations to Order, Pay for and Obtain the Trial Transcript, Filing Motions for Assistance where Ms. Jones Refused to Acknowledge her Requests and Inquiries

Since she ordered the transcripts on September 12, 2006, paying the required deposit, and paying the balance in full, on November 21, 2006, Ms. Martin made repeated attempts to obtain the transcripts that had already been transcribed and even docketed. Ms. Martin had to enlist the assistance of the Court of Appeals to obtain any of the transcripts. Ms. Martin filed the following motions in the Court of Appeals in her attempts to obtain a complete trial transcript.

- 1) March 19, 2007 Status Report re Missing Direct Testimony from Transcript and Transcript Errors;
- 2) March 8, 2007, *Motion To Compel Court Reporter to Produce Transcript of Plaintiff's April 19, 2006 Direct Testimony*;
- 3) March 1, 2007 *Reply to Ms. Jones' Response and Supplement to Appellant's Motion for an Order to Show Cause why the Court Reporter, Cathryn Jones, should not be held in Contempt of Court*;
- 4) February 18, 2007 *Transcript Status Report*;
- 5) February 1, 2007 *Motion for an Order to Show Cause why Court Reporter Cathryn Jones should not be Held in Contempt of Court for her Violation of this Court's*

- December 19, 2006 Order to Provide Appellant with Trial Transcripts, no Later than January 31, 2007;*
- 6) *January 15, 2006 Unopposed Motion for an Order Requiring Court Reporter to Provide Appellant with Completed Trial Transcripts and to Return Excess Funds Paid for Transcripts;*
 - 7) *January 15, 2007 Unopposed Motion to Extend the Deadline to File Motions to Participate as Amicus Curiae* (due to the Court Reporter's failure to produce trial transcripts);
 - 8) *December 18, 2007 Status Report on the Lack of Progress of Court Transcripts and Lack of Communication from Court Reporter;* and
 - 9) *November 27, 2006, Opposition to Court Reporter's Motion for an Enlargement of Time to Prepare Transcript, until February 25, 2007;*

Ms. Jones had not even provided one page of the transcripts to Ms. Martin prior to February 6, 2007. Ms. Jones did not provide the remaining volumes of the transcripts, or any certification of accuracy, until late on the afternoon of February 20, 2007 (**Exhibit J**) – more than five months after Ms. Martin ordered them, more than 3 months past the 60 day deadline mandated by Federal Rules of Appellate Procedure (FRAP) 12(b), and three weeks after the January 31, 2007 deadline specifically set for her by the December 19, 2006 Order of the Court of Appeals, monetarily sanctioning Ms. Jones for failing to timely provide the transcripts, in accordance with FRAP 12(b).

As discussed above, Ms. Jones finally produced the transcripts – and she did so only in the face of contempt proceedings against her, since Ms. Martin had filed a February 1, 2007 *Motion for an Order to Show Cause why the Court Reporter, Cathryn Jones, should not be Held in Contempt of Court for her Violation of this Court's December 19, 2006 Order Requiring her to Produce the Transcripts by January 31, 2007*. January 31, 2007 had come and gone without Ms. Jones having produced to Ms. Martin even one page of the nearly 3,000 page transcript – even though some of these transcripts had been ordered by another person and docketed as completed for months. Once again, court intervention is necessary for Ms. Martin to obtain the basic

services extended to other litigants simply requesting a timely and complete transcript of trial proceedings for appeal.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court order its Court Reporter, Cathryn Jones, to integrate the April 19, 2006 transcript of Plaintiff's direct testimony, now docketed as Docket # 40, into the certified "official transcript."

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

_____)
)
Dawn V. Martin, Esquire,)
)
Appellant)
v.)
) Appeal No. 06-7157
Howard University,)
Howard University Law School)
and Alice Gresham Bullock, Esquire)
)
Appellees.)
_____)

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 9th day of March, 2007, a true copy of *Plaintiff's Consent Motion to Integrate the April 19, 2006 Direct Testimony of Plaintiff (Docket # 490) into Certified "Official" Trial Transcript, which Currently Omits Most of Plaintiff's Direct Testimony* was sent, *via* first class mail, to non-party:

Ms. Cathryn Jones
Court Reporter
Room 6427
U.S. District Court for the District of Columbia
333 Constitution Avenue, N.W.
Washington, DC 20001

Dawn V. Martin, Esquire
D.C. Federal Bar No. 412348
Law Offices of Dawn V. Martin
1725 I Street, Suite 300
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