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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA

-----X		
DAWN V. MARTIN	:	
	:	
Appellant,	:	
v.	:	No. 06-7157
	:	
HOWARD UNIVERSITY, et al.,	:	
	:	
Appellees.	:	
	:	
-----X		

(REVISED TRANSCRIPT)

Monday, March 17, 2008

Washington, D.C.

The above-entitled matter came on for oral argument,  
pursuant to notice.

BEFORE:

CIRCUIT JUDGE HENDERSON AND SENIOR CIRCUIT JUDGES  
EDWARDS AND WILLIAMS

APPEARANCES:

ON BEHALF OF APPELLANTS:

DAWN V. MARTIN, ESQ., Pro Se

ON BEHALF OF APPELLEE:

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1  
2 THE CLERK: Case number 06-7157, Dawn V. Martin,  
3 appellant versus Howard University, et al. Ms. Martin for the  
4 appellant, Mr. Schwalb for the appellee.

5 ORAL ARGUMENT OF DAWN V. MARTIN, ESQ.

6 ON BEHALF OF THE APPELLANT

7 MS. MARTIN: Good morning, Judges Edwards, Henderson  
8 and Williams. My name is Dawn Martin, I'm the plaintiff/  
9 appellant representing myself through my law firm. Also  
10 present in the courtroom is Roberta Wright, counsel for amicus  
11 curia, the National Association of Women Lawyers.

12 The most important issues in this case revolve  
13 around the interpretation of Title 7 of the civil rights act  
14 of 1964. The precedent set by this Court will determine how  
15 employers and educational institutions will respond to  
16 stalking and other types of workplace and campus violence,  
17 particularly when directed against women.

18 If a woman can be stalked at her workplace by a  
19 serial stalker, and fired for asking her employer to take the  
20 reasonable steps to keep him out of the workplace, then women  
21 will be forced to chose between their safety and their  
22 livelihood, a Hobson's choice.

23 The lynchpin at the Title 7 case is the jury's  
24 determination that when the stalker harassed me in my  
25 workplace, in the hope that I would become his wife, his

1 pursuit of me was not sexual in nature or based on my gender.  
2 This question should never have been before a jury. Judge  
3 Hogan decided it in 1999 as a matter of law based on the  
4 undisputed facts, holding that quote --

5 THE COURT: That was a decision of Judge Hogan, if I  
6 recall, rejecting a motion for summary judgment by Howard,  
7 right?

8 MS. MARTIN: Yes, Your Honor.

9 THE COURT: So presumably, as a holding, that's what  
10 it added up to.

11 MS. MARTIN: Well, he made certain determinations --

12 THE COURT: I know he said various things --

13 MS. MARTIN: Yes. Yes.

14 THE COURT: -- but in talking about determinations,  
15 the holding was that Howard was not entitled to summary  
16 judgment, right?

17 MS. MARTIN: Correct, Your Honor, and yet --

18 THE COURT: And you're extending law of the case  
19 doctrine which is notoriously the weakest of the preclusion  
20 doctrines, to statements that are not holdings?

21 MS. MARTIN: Well, he did make certain holdings. I  
22 would like to quote. He said, it is clear the plaintiff is  
23 only --

24 THE COURT: He said things. I don't see how the  
25 holding is anything more than that Howard is not entitled to

1 summary judgment on the point.

2 MS. MARTIN: Well, he identified the specific issues  
3 that presented general material disputed facts, would be  
4 decided by the jury. And he said that those with respect to  
5 the sexual harassment case would be, number one, whether the  
6 harassment was severe and pervasive, and number two, whether  
7 Howard took reasonable steps to end it.

8 And he said, based on the undisputed facts that,  
9 quote, it is clear the plaintiff was under the object of  
10 Harrison' attention because she was female.

11 Also, it is not just my interpretation of the 1999  
12 opinion, but in 2003, Magistrate Judge Facciola stated very  
13 clearly that, it is in the brief as an exact quote, and I  
14 tried to take the whole quote, but he said that these are  
15 issues that will not be revisited, but were decided by Judge  
16 Hogan, that are not triable issues of fact. He said, triable  
17 issues of fact in 1999 are still the triable issues of fact in  
18 2003.

19 And he admonished Howard for  
20 raising this issue again. He said very clearly that Judge  
21 Hogan decided certain issues, as a matter of fact, which will  
22 not go before a jury. And the very first one he stated would  
23 not be addressed by a jury was that Judge Hogan decided that  
24 Harrison' harassment was on the basis of sex.

25 Now, not only was that an important recommendation,  
but Judge Hogan adopted that in September 2005, as an opinion

1 of the Court. And that was in the face of an objection that I  
2 filed against the, adopting the report and recommendation,  
3 with a response by Howard, and a reply by me, and Howard even  
4 agreeing that Judge Facciola's report and recommendation was  
5 replete with factual errors, and not objecting to Judge Hogan  
6 doing a de novo review of the motion for summary judgment.  
7 And yet Judge Hogan adopted the opinion as his own.

8           So if there was any question, if Judge Hogan  
9 disagreed with Judge Facciola's interpretation of his  
10 decision, certainly that was the opportunity to say so.  
11 Instead, he adopted it.

12           So I went into the trial understanding the issues  
13 that would be litigated with respect to the sexual harassment  
14 claims in the order, number one, that the, whether the  
15 harassment rose to the level of being severe, pervasive,  
16 clearly a hostile work environment for me. And number two,  
17 whether Harrison took reasonable steps to end it. That was  
18 stated repeatedly over a six-year period in three different  
19 decisions.

20           So to go into Court, into trial saying, in 2006,  
21 these are the issues that I have to prove, and by the way, is  
22 of course, in the brief, when we attempted to approach the  
23 issue of whether Dean Bullock understood my complaint of  
24 Harrison's conduct to be based on sex, Judge Hogan actually  
25 stopped the cross-examination of Dean Bullock and said, that's

1 just not evidentiary in value here. It doesn't go to prove or  
2 disprove the fact at issue.

3           And the very fact that Judge Hogan prevented us from  
4 proving during trial, turned out to be the very fact that the  
5 whole case turned on.

6           Also, when we approached Officer Sirleaf who had  
7 testified in his deposition that he perceived my complaint to  
8 be one of harassment on the basis of sex, and that was in his  
9 deposition testimony, when we approached that when he was on  
10 the stand, Judge Hogan again stopped the examination of the  
11 witness and said, that's obvious. Move on, to my counsel.

12           So not only were we told three times over a period  
13 of six years that this was not the issue, but when we touched  
14 on it in the trial, Judge Hogan stopped us from proving it,  
15 and then after the trial was over, he changed all the rules  
16 and said, I'm giving this issue to the jury. And I argued  
17 during the argument on motions for judgment after all the  
18 evidence was in, that Howard should not be permitted to  
19 relitigate this issue because it had been decided in '99. And  
20 Judge Hogan said that he was going to let them argue it again.

21           So I was stuck with it on the verdict form. Then,  
22 of course, I hoped that instructions would be sufficient so  
23 that the jury would come to the same obvious conclusion that  
24 everyone else had throughout this case, but Howard's argument  
25 throughout the trial was that, to tell the jury that I was not

1 entitled to Title 7 protection because in my memoranda to Dean  
2 Bullock, I referred to Harrison, the stalker, as the stalker,  
3 instead of as a sexual harasser. And that was the reason that  
4 -- and I was obligated to refer to him as a sexual harasser or  
5 call the conduct sexual harassment in order to get Title 7  
6 protection.

7           Of course, it's not the state of the law. It's not  
8 what Judge Hogan said in '99. And when I specifically asked  
9 for an instruction from Judge Hogan to take language out of  
10 his own '99 opinion and instruct the jury that you don't have  
11 to say the words, sexual harassment, in order to obtain Title  
12 7 protection, he refused to do that. He also refused to  
13 instruct the jury with respect to the DC stalking statute  
14 which defines stalking as harassment.

15           So Howard's attorney created the confusion telling  
16 the jury that harassment and stalking were not the same thing;  
17 that I was not credible when I claimed that I complained of  
18 sexual harassment, because my memos said stalking. And  
19 apparently the jury got confused by that argument.

20           And their question to the Court reflects their  
21 confusion because they said, and I want to get the quote  
22 exactly, wives are typically female. Is the answer to 1C an  
23 automatic yes, simply because the plaintiff is female? And  
24 this question reflects their common sense understanding that  
25 wife is a gender specific term, but they had not gotten the

1 clarification that they had requested and were confused by the  
2 definition. It's not their job to determine what constitutes  
3 sexual harassment or protected activity, but only the facts  
4 that actually occurred. And I see that I am running out of  
5 time.

6 I do want to get to, once the Court vacates the  
7 jury's finding that Harrison's conduct was not based on sex,  
8 complaints about Harrison become protected activity under  
9 Title 7, and then the Court is faced with the question of  
10 whether Howard produced a legitimate nonretaliatory reason for  
11 my rejection for a permanent position on my nonrenewal.

12 The jury never reached this question. Howard's  
13 purportedly nonretaliatory reason has been a fraud upon the  
14 Courts from the beginning. In it's May 11th, 2001, official  
15 appointments committee statement, Howard stated that as of  
16 December 18th, 1997, Christie Cunningham had already published  
17 her article and that I had not even completed mine.

18 In fact, Professor Cunningham's article was not  
19 published until a full year later in the winter of 1998. And  
20 the appointment's committee members testified that, as of  
21 December 18th, 1997, they all actually knew that my article  
22 was not only completed, but also accepted for publication.

23 Now, because Howard never produced any evidence of  
24 its purported legitimate nonretaliatory reason, and because  
25 the undisputed documents and Howard's own witnesses proved

1 that to be blatantly false, I am entitled to judgment as a  
2 matter of law on the retaliation claim.

3 THE COURT: I'm looking at the Magistrate Judge's  
4 ruling. I don't think it says what you're suggesting. It  
5 just says, I will not permit Howard University in the second  
6 motion for summary judgment, to relitigate those issues that  
7 were resolved against it. And the Trial Judge merely said,  
8 I'm rejecting summary judgment. The matter goes to trial.  
9 That's all.

10 MS. MARTIN: Your Honor, if you continue with the --

11 THE COURT: Triable issues of fact in '99 remain  
12 triable issues of fact in 2003.

13 MS. MARTIN: Yes, and he says, more specifically,  
14 Judge Hogan concluded, number one, the alleged harassment by  
15 Harrison for plaintiff was based on her sex. And he  
16 continued. Number two, he identifies what the questions are.  
17 He said, two, Harrison's conduct was sufficient severe and  
18 pervasive to be actionable under the rule of a hostile  
19 environment claim was a jury question.

20 He goes on to say what the additional jury questions  
21 are. But the very first thing that he says under more  
22 specifically, the Chief Judge concluded the alleged harassment  
23 by Harrison of the plaintiff was based on her sex.

24 And with respect to the retaliation claim, I believe  
25 that I was entitled to summary judgment in 2002, judgment NOV

1 in 2006, and a default judgment in 2002 when Howard was held  
2 in contempt of Court for its extensive discovery violations.

3           Howard delayed trial in this case by at least five  
4 years, depriving me of my original trial date of May 1st,  
5 2001. And Howard's fraud should be put to an end here and  
6 now. I respectfully request this Court's de novo review of  
7 these dispositive motions and judgment as a matter of law with  
8 remand to the Trial Court on the issue of damages. Thank you.  
9 I would like to save some time for my rebuttal.

10           THE COURT: Mr. Schwalb.

11           ORAL ARGUMENT OF BRIAN L. SCHWALB, ESQ.

12           ON BEHALF OF THE APPELLEE

13           MR. SCHWALB: May it please the Court, my name is  
14 Brian Schwalb. I represent Howard University. Mr. Cook, who  
15 is the representative of former Dean Bullock, has authorized  
16 me to speak for both appellees in this appeal.

17           This case, like many contract and employment cases,  
18 was, by its nature, intensely factual and the Trial Court  
19 treated it as such. After seven years of litigation this case  
20 came on for nearly a month long trial in April of 2006. The  
21 jury deliberated after hearing multiple witnesses. After  
22 multiple documents, including the plaintiff's contemporaneous  
23 writings being admitted into evidence.

24           The Trial Court bent over backwards to ensure the  
25 appellant had a fair trial. And at the end of that process,

1 the jury decided, based on evidence before it, the facts at  
2 issue. It decided that the plaintiff had not proven a  
3 contract claim.

4 Her claim that there had been a meeting of the minds  
5 at the University when she was chosen to come for a two-year  
6 visitorship that somehow allowed her a guaranteed provision to  
7 continue on at the school at the end of her two years was  
8 rejected. There was no meeting of the minds. And there was  
9 plenty of evidence at trial as to why she didn't prove that  
10 case.

11 The jury also had evidence with respect to the  
12 retaliation claim. There was ample evidence during the course  
13 of this long trial about what the appointments, promotion and  
14 tenure committee considered in deciding who would be selected  
15 for the open employment opportunity and labor position.

16 And the Court also allowed evidence in front of the  
17 trial as to whether or not there had ever been a protected  
18 activity engaged in by the plaintiff when she complained about  
19 security issues on campus.

20 THE COURT: It seems to me there are two things  
21 going on in this case. One is about an employment claim, that  
22 is, I was discriminatorily foreclosed from further position,  
23 either as a visitor or a tenured track position, and that goes  
24 to some of the contract fight. Another is a claim on sexual  
25 harassment, more generally that is, while I was there, whether

1 or not I was entitled to stay, I was unlawfully harassed.

2           And the gist of what I was hearing her to argue, and  
3 what appears in the brief, is that she was allegedly  
4 foreclosed from litigating the critical question as to whether  
5 the harassment was based on sex because she thought the  
6 District Court had decided that question in her favor and then  
7 thereafter was precluded from proffering proof to deal with  
8 that question. So what is your response on that?

9           MR. SCHWALB: Well, we know that it is not the case.  
10 If we look at the discussion of the Trial Court when the  
11 verdict form and the jury instructions were being discussed at  
12 the end of trial, Judge Hogan went through the jury verdict  
13 form. And one question, question 1C dealt directly with the  
14 question of whether Mr. Harrison's conduct was because of sex  
15 or gender.

16           THE COURT: Her answer is going to be, that may well  
17 be, but in the preceding trial I didn't know that we were  
18 litigating that, so I just want to hear what your answer is.  
19 I understand that.

20           MR. SCHWALB: There was no objection at that time to  
21 Judge Hogan when these questions were the ones that were  
22 isolated. And Your Honor, this was extensively pre-tried --  
23 this case. There were three separate pre-trial conferences.  
24 And a trial set to begin in January that was the night before  
25 trial postponed.

1           The issues that were going to be tried were  
2 isolated, focused on by the parties, by the Magistrate Judge  
3 and then by Chief Judge Hogan before trial.

4           THE COURT: And this was one of them?

5           MR. SCHWALB: And this was one. m

6           THE COURT: And what document is it that it shows  
7 up?

8           MR. SCHWALB: I don't know that there is a document  
9 in the record that shows that. The evidence that was  
10 introduced during the course of trial repeatedly, during the  
11 plaintiff's case, went to the question of --

12          THE COURT: You seem flippant here.

13          MR. SCHWALB: -- whether, what was the nature of the  
14 contact between Mr. Harrison and the plaintiff. Her memos,  
15 her discussion of the voice mail messages that were there, the  
16 nature of the contact, as she described it, the witnesses she  
17 called all offered the same testimony as to whether or not  
18 Mr. Harrison's comment was because of sex or sexual in nature.  
19 The case was not tried any differently than it would have  
20 been.

21          And, in fact, all of the parties realize that the  
22 pretrial rulings of the Court, as Judge Williams focused on,  
23 Trial Courts are confronting regularly motions to dismiss and  
24 motions for summary judgment. The lion's share of case law in  
25 this Court on employment cases deal with whether summary

1 judgment is appropriate.

2           Here we have a case before this Court after a full  
3 record, after a full four-week trial. And the question of  
4 whether or not Mr. Harrison's conduct was because of sex or  
5 sexual in nature, was before the jury. The jury was clearly  
6 focusing on that question.

7           It asked the question during the deliberation  
8 process. And the instruction from the Trial Court that no,  
9 this is not a per se ruling, this is not a question of law,  
10 this is a factual issue you must consider and rule on, based  
11 on the evidence before you, was the proper instruction.

12           And at this stage, the question is was the evidence  
13 so one-sided that no reasonable juror could conclude that it  
14 was not because of sex or sexual in nature? And we submit the  
15 plaintiff, the appellant cannot meet that burden here.

16           There was ample evidence at trial to suggest that  
17 Mr. Harrison's conduct was based on a misidentification; that  
18 he was not acting in a sexual nature. There was nothing in  
19 his communications to the point that suggested anything of a  
20 sexual nature. The slender read on which this case became a  
21 sexual harassment case was that he made a misidentification  
22 and he thought she was his long lost wife. That's the only  
23 connection to this being a because of sex or gender case. And  
24 the jury saw --

25           THE COURT: Why isn't that enough?

1           MR. SCHWALB: Because that would, we submit, that  
2 would sweep into Title 7 analysis and discrimination analysis  
3 anytime --

4           THE COURT: I mean, if she had been a man, he  
5 wouldn't have misidentified her as he did.

6           MR. SCHWALB: Well, there was evidence at trial that  
7 Mr. Harrison had stalked a man, Professor Bell. So if  
8 hypothetically it was Professor Bell's discrimination claim  
9 that Mr. Harrison stalks male professors, Professor Bell would  
10 have that same position.

11           The law, we would submit, doesn't make every time a  
12 woman is the subject of a stalking or a domestic violence  
13 issue a Title 7 federal anti-discrimination case. There are  
14 common law protections available. As Judge Hogan commented  
15 throughout the course of trial, the case really ended up being  
16 tried on this theory, it's much more like common law  
17 negligence premises liability. Did the university protect its  
18 professors from a trespasser? All of its community, its  
19 students, its faculty, its administrators, because of a  
20 potential criminal issue.

21           Simply because of a misidentification, any time a  
22 woman was misidentified, one of her qualities would be her  
23 gender. But there may be a whole assortment of other factors,  
24 and here the factor was, as Mr. Harrison's subsequent letter  
25 indicated, a misidentification.

1           The jury also had before it the contemporaneous  
2 comments of the witnesses at the time. The plaintiff never  
3 characterized this issue with Mr. Harrison as being of sexual  
4 nature, or because of gender.

5           It didn't become a sexual harassment claim until she  
6 was challenging the APT committee's decision not to recommend  
7 her, where she was reaching for a hook for her retaliation  
8 claim. And that's where, all of the sudden, in the spring of  
9 1998, for the very first time, the issue arose that somehow  
10 Mr. Harrison's bizarre and fleeting conduct was of sexual  
11 harassment.

12           And the jury heard the timing of the plaintiff's  
13 claims when they were raised for the first time. They saw her  
14 memos where she never described Mr. Harrison's conduct in  
15 sexual terms as a sexual harassment claim.

16           Here was a woman who was making a complaint that she  
17 was a pre-eminent equal employment opportunity professor,  
18 having had experience at the EEOC. If anybody was sensitized  
19 to raising this as an issue of sexual harassment, it was this  
20 plaintiff.

21           Her best friend testified during the course of  
22 trial, Ms. Guerant, who was also at the EEOC. She was asked,  
23 did you ever, while all these proceedings and events were  
24 occurring, consider this to be a sexual harassment claim? Did  
25 you ever urge the plaintiff to make a sexual harassment claim?

1 She said, no.

2           Dean Bullock and Dean Newsome testified, they were  
3 asked, did you perceive this to be a sexual harassment claim?  
4 They said no. So all of this evidence was before the jury,  
5 and the jury could consider, and reasonably did consider, that  
6 the plaintiff did not prove her case on that element.

7           The retaliation claim is, again, an attempt by  
8 appellant to bootstrap in on the sexual harassment theory into  
9 a retaliation claim. And of significance in this case, the  
10 jury found that the plaintiff was not engaged in protected  
11 activity when she made the complaint about Mr. Harrison. And  
12 equally important, that the university did not perceive her  
13 to be making a Title 7 complaint, which the law says is the  
14 benchmark, the principal point in making a retaliation claim.

15           An employer needs to know or reasonably believe that  
16 their employee is engaged in protected activity, at which  
17 point the employer cannot retaliate for that conduct. Here,  
18 the jury found that the plaintiff was not engaged in protected  
19 activity when she complained about Mr. Harrison.

20           Contrary to the briefs, this is not a question of  
21 law. This is a question of fact. And the jury had the facts  
22 before it, and decided that she had not proven her case.

23           I need to very quickly say, because I did say to  
24 Mr. Cook I would speak for Ms. Bullock's points. One, the  
25 Trial Court was correct on a motion to dismiss in dismissing

1 the attentional enforcement claim. There was nothing in the  
2 complaint that would satisfy the common law standards of  
3 intentional infliction.

4           Second, much of the attention and argument in the  
5 briefs and oral argument about Dean Bullock's alleged perjury  
6 is hyperbole. Dean Bullock was there at trial. She  
7 testified. And what the plaintiff/appellant here tries to  
8 suggest is that Dean Bullock testified inconsistently at trial  
9 from a memo she had written before trial. She was subject to  
10 cross-examination. The jury heard the cross-examination. The  
11 jury resolved whatever inconsistency might be there.

12           Unless the Court has any questions for me, I will  
13 sit.

14           THE COURT: All right.

15           MR. SCHWALB: Thank you.

16           THE COURT: Does Ms. Martin have any time?

17           DEPUTY CLERK: She has nothing.

18           THE COURT: All right. Why don't you take two  
19 minutes, Ms. Martin.

20           REBUTTAL ARGUMENT OF DAWN V. MARTIN, ESQ.

21           ON BEHALF OF THE APPELLANT

22           THE COURT: Could you start by saying where in your  
23 opening brief you make an argument that you were fooled into  
24 not submitting evidence on the proposition that it was sexual  
25 harassment versus something else?

1 MS. MARTIN: Well, in my opening brief, starting on  
2 page eight, I believe, I, my first argument is the sexual  
3 harassment claim, and I quote Judge Hogan from '99, I quote,  
4 from 2003 --

5 THE COURT: But that's, 1A is the law of the case  
6 argument.

7 MS. MARTIN: Yes. Yes, Your Honor.

8 THE COURT: But I don't see from the headings your  
9 framing that as the argument that you were surprised at trial?

10 MS. MARTIN: Yes, well, that's the point, Your  
11 Honor, of the law of the case, that you should be able to rely  
12 on the previous rulings of Court and that the --

13 THE COURT: No, no, no.

14 THE COURT: No.

15 THE COURT: It's a very different proposition. And  
16 you're talking about you're in the realm of error. Lots of  
17 case law to suggest that. If, in fact, this was tried --

18 MS. MARTIN: Yes.

19 THE COURT: -- and it was presented, whatever your  
20 thoughts were about what the Trial Judges did become moot.

21 MS. MARTIN: Yes.

22 THE COURT: We all know that. So what Judge  
23 Williams is asking is something I would like to know too.  
24 Where is it that you are making the argument that almost a due  
25 process kind of argument --

1 MS. MARTIN: Yes.

2 THE COURT: -- you were foreclosed from trying the  
3 case on these terms, because I don't see the argument either.

4 MS. MARTIN: Actually, I do use the words due  
5 process in the brief, and I, in fact, use those exact words.  
6 And let's see, at the moment I tried to get that, but I don't  
7 know if I can come back it, and perhaps my paralegal can look  
8 that up. But I do, absolutely use the words due process.

9 THE COURT: No, no, I'm asking whether you made the  
10 argument that you were foreclosed from trying the issue which  
11 was clearly tried, with clearly lots of testimony on it.  
12 Where is it you say, don't be fooled. I was foreclosed from  
13 trying this and I was shocked at the end of trial that this  
14 was an issue. Where is that? Because if that was argument,  
15 you are an attorney, that would be one of the first things you  
16 would say --

17 MS. MARTIN: Yes, Your Honor.

18 THE COURT: -- and you'd have a heading, probably,  
19 to say it.

20 MS. MARTIN: I did make that argument. I did point  
21 out that Dean Bullock's testimony was cut off. And I would  
22 like to address that first, if I could follow up on Judge  
23 Williams' question.

24 With respect to Dean Bullock's perjury, her words,  
25 her July 1st, 1999, memo to her own general counsel in

1 response to my EEOC charge, in which by the way I never  
2 alleged when they were charged at the EEOC with sexual  
3 harassment. They never alleged that it wasn't a sexual  
4 harassment case. Instead, they tried to claim that they took  
5 reasonable measures to stop it.

6           And there were additional false statements made by  
7 Dean Bullock in that EEOC position statement, where she says  
8 that she was, she enlisted the assistance of Lawrence Dawson  
9 to help her address it, and he was working on it.

10           And they took the position, Howard responded with  
11 that answer in answers to interrogatories, and when I was  
12 finally permitted to depose Lawrence Dawson in 2002, he  
13 testified, which he did testify at trial, that the Dean had  
14 never discussed it with him, never told him anything about it.  
15 He was not involved in it at all. And Dean Bullock admitted  
16 that that was the case, that she had never talked to anyone  
17 else in campus security, while she had written to me a memo  
18 stating that she was discussing the matter with Lawrence  
19 Dawson to try to provide me with protection.

20           And that was one of the reasons that I didn't  
21 immediately file an EEO charge, because it's not an EEO case  
22 against the employer unless and until the employer does not  
23 take the reasonable steps. It is third party harassment. And  
24 reporting procedures are very different.

25           THE COURT: Let me stop you because you are over

1 your time.

2 MS. MARTIN: Yes, Your Honor.

3 THE COURT: You need to respond -- has your question  
4 been answered?

5 MS. MARTIN: Yes. I focused on it in the reply  
6 brief, in response to Howard's argument. And I, as I say, do  
7 specifically --

8 THE COURT: So you are saying it was not a principal  
9 claim in your opening brief.

10 MS. MARTIN: It was, Your Honor.

11 THE COURT: I mean, I'm looking at your opening  
12 brief, and there are a lot of headings, and this is not one of  
13 them.

14 MS. MARTIN: It was within the law of the case  
15 argument because the fact that there were these three  
16 decisions over a period of six years, and Judge Facciola's  
17 decision does make it very clear in identifying what issues  
18 will be tried. I relied on that going into trial. And  
19 Officer Sirleaf was cut off. Dean Bullock was cut off when my  
20 attorneys attempted to question them on this issue. And Judge  
21 Hogan even said during the trial, it's obvious, move on, on  
22 that point.

23 So having been told it's obvious and to move on and  
24 away from it, and being told again to move away from it when  
25 Dean Bullock was being questioned, there was no opportunity to

1 confront her with it. And many witnesses were impeached with  
2 their deposition testimony. And the real issue is with  
3 respect to time, because Howard was permitted to put its  
4 defense on during my case in chief, and my case in chief was  
5 completely usurped from me and controlled by Howard.

6           And so I did not have the time, I had to constantly  
7 rebut Howard's arguments in the middle of my case in chief.  
8 So we had to make some decisions at the end with respect to  
9 what issues we were going to come back to and really impeach  
10 the witnesses on.

11           And because we had been told that this was not going  
12 to be an issue that it had already been resolved back in '99  
13 and affirmed in 2003 and 2005, that's not an issue that we  
14 focused on for impeachment. We did impeach --

15           THE COURT: All right. Do you have any other  
16 questions? All right. Your time is up.

17           MS. MARTIN: Thank you, Your Honor.

18           (Recess.)

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DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC., hereby certifies that the foregoing is a correct transcription of the electronic sound recording of the proceedings before the U.S. Court of Appeals in the matter of:

CASE NO. 06-7157

DAWN V. MARTIN

V.

HOWARD UNIVERSITY, ET AL



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March 20, 2008

Teresa S. Hinds, Transcriber