

ORAL ARGUMENT TOOK PLACE ON MARCH 17, 2008

Record No. 06-7157

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

**DAWN V. MARTIN, ESQUIRE
Plaintiff-Appellant**

v.

**HOWARD UNIVERSITY, HOWARD UNIVERSITY SCHOOL OF LAW, AND
ALICE GRESHAM-BULLOCK, ESQUIRE
Defendant-Appellee**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
(The Hon. Thomas F. Hogan)**

**APPELLANT'S MOTION FOR SANCTIONS AGAINST BRIAN L.
SCHWALB, ESQUIRE, AND *VENABLE, LLC*, FOR WILLFULLY MAKING
FALSE STATEMENTS AND MISREPRESENTING THE RECORD DURING
ORAL ARGUMENT ON MARCH 17, 2008**

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March 30, 2008

Pursuant to the inherent powers of this Court, 28 USCA 1927 and App. Civ. R. 38, Ms. Martin respectfully requests that this Court sanction counsel for Appellee, Howard University, Brian L. Schwalb, LLC, and the law firm in which he is a partner, *Venable, LLC*, counsel of record for Howard University. Ms. Martin attempted to resolve the matter with Howard before filing this motion, to no avail. Howard opposes this motion. (**Ex. A**). Appellee Alice Gresham Bullock did not respond to Ms. Martin's request that she state her position on the motion. *Amicus Curiae*, the *National Association of Women Lawyers*, does not oppose this motion.

Mr. Schwalb, in his capacity as a partner of *Venable, LLP*, abused the judicial process, in bad faith, by making false statements. Howard has misrepresented the evidence of record and wasted Ms. Martin's and the court's time to correct Howard's misstatement facts material to this appeal. Ms. Martin therefore asks this Court to:

1) require Mr. Schwalb and *Venable, LLP*, to withdraw his false statements made during oral argument or have them stricken from the record;

2) compensate *The Law Offices of Dawn V. Martin, LLC* for the time that it has spent exposing Mr. Schwalb's false statements made in oral argument;

3) enjoin Mr. Schwalb and all other attorneys representing Howard University from repeating any of the false statements that it made in its oral argument, or any other misrepresentation of the record, in this Court, any other court or to any other person or entity outside of a judicial forum;

4) refer this matter of Mr. Schwalb's false statements to the D.C. Bar Counsel and other respective Bar Counsels, as appropriate;

5) refer this matter of Howard's false statements to the D.C. Bar Counsel and other respective Bar Counsels, as appropriate, for disciplinary proceedings against you; and

7) any other relief that this Court deems just and appropriate.

MEMORANDUM IN SUPPORT OF MOTION

I. Background

On December 4, 2007, Howard filed a Brief that consists primarily of false statements unsupported by the record, and in many instances, contradicted by Howard's own witnesses, discovery admissions and answers to the Complaint. Howard made many of these assertions at the trial court level, in violation of Fed. R. Civ. P. 11. On March 11, 2008, Ms. Martin filed a *Motion for Sanctions* against Howard for its false statements. Ms. Martin incorporates her March 11, 2008 *Motion* and March 26, 2008 *Reply*, into the present motion, by reference.

Even while the March 11, 2008 *Motion* was pending, at the March 17, 2008 oral argument, counsel for Howard, Brian Schwalb, Esquire, repeated many of the same false statements that he made in Howard's Brief *and* made *additional* false statements and misrepresentations of the record, as discussed below.

I. Mr. Schwalb Falsely Stated that the Court Identified, Pre-Trial, the Question of whether Harrison's Harassment was Based on Sex, as an Issue for the Jury

A. Pre-Trial, the Court Decided that Harrison's Harassment was Based on Sex and would not be a Triable Issue of Fact

In 1999, Howard conceded that there were no genuinely disputed facts regarding Harrison's conduct.¹ The question then, was whether these undisputed facts constituted harassment based on sex, as a matter of law. Judge Hogan decided

¹ Def's July 22, 1999 *Motion to Dismiss, or in the Alternative, for Summary Judgment* (Dkt #5-1) (JA294); *Def's Statement of Undisputed Material Facts* (Dkt #5-2), particularly ¶2 (JA297).

“it is clear that Plaintiff was only the object of Mr. Harrison’s attention because she was female.” *Martin v. Howard University*, 1999 LEXIS 19516 at 10 (#23 at 6, JA557). See also **Ex. A**, page 4, Sec. I, F. The district court reaffirmed this holding on October 20, 2003 and again on September 30, 2005. See **Ex. A**, page 4, Sec. I, G.

B. Mr. Schwalb Falsely Stated that the Court Changed its 1999, 2003 and 2005 Holding Pre-Trial, in Response to Pre-Trial Motions

On March 17, 2008, Judge Edwards, of this Court, instructed Mr. Schwalb to address the 1999 holding. In response, *Mr. Schwalb completely abandoned the argument in his Brief²* and falsely claimed, *for the first time*, that Judge Hogan actually identified this issue as a jury question in the course of the pre-trial conferences and motions.³ 3-17-08 Tr. at 13:22-14:5. When Judge Edwards asked Mr. Schwalb what document in the record proves that this was one of the issues litigated in the pre-trial motions or conferences, he replied, “I don't know that there is a document in the record that shows that.” 3-17-08 Tr. at 14:6-9. Indeed, there is no such document.

C. Mr. Schwalb’s Assertion Contradicts both Howard’s Brief and Judge Hogan’s Justification for the Jury Question in his October 4, 2006 Decision

Mr. Schwalb’s *most recent* eleventh-hour fabrication is not only inconsistent

² Neither Howard’s Brief or its post trial motions/oppositions regarding judgment JNOV argued that Judge Hogan identified the issue of whether Harrison’s harassment was based on sex as a jury question, *prior* to trial. Howard simply repeated Judge Hogan’s assertion in his October 4, 2006 decision that he never held, in 1999, that Harrison’s harassment was based on sex.

³ Mr. Schwalb’s new assertion appears to have been inspired by Judge Edwards’ statements to Ms. Martin that the law of the case was the weakest of the procedural arguments (**Ex. B**, 3-17-08 Tr. at 4:17-19).

with his own Brief, but *it contradicts Judge Hogan's own justification of his decision* to submit the question to the jury. Judge Hogan never asserted that he changed his 1999 decision before trial. Instead, despite the plain words that he used in his 1999 decision, and his adoption of MJ Facciola's October 20, 2003 interpretation of his 1999 decision as holding that he did determine that Harrison's harassment of Prof. Martin was based on sex, in his October 4, 2006 decision, *Judge Hogan said that he did not hold, in 1999, that Harrison's harassment was based on sex.*⁴ See **Ex. A**, page 4, Sec. I, F and G.⁵

D. None of Howard's Seven (7) Pre-Trial Motions in Limine Requested that the Court Revisit its Holding that Harrison's Harassment was Based on Sex, as a Matter of Law, and not a Triable Issue of Fact for the Jury

On December 16, 2005, Howard filed *seven (7) motions in limine*. (Ms. Martin filed only one.) See **Ex. A**, page 3, Sec. I, E. Several of Howard's motions asked the Court to re-define issues for the jury that had been established in 1999 and 2003 and adopted on September 16, 2005, but *none* of them asked the Court to modify its decision Harrison's harassment was based on sex.

Based on the Court's rulings on the motions *in limine*, as well as the 1999, 2003 and 2005 decisions identifying the issues for trial, Ms. Martin developed her

⁴ *Martin v. Howard University*, 2006 WL 2850656, #503 (October 4, 2006) at at *3 (503 at 6-7) (JA10,413-10,414).

⁵ A court may deviate from the law of the case when it is "consonant with equity" to do so (*Langevine v. District of Columbia*, 106 F.3d 1018, 1023 (D.C. Cir. 1997); Martin Reply Brief at 10-11); however, a purposeful deviation from the law of the case is completely different that a court simply pretending that it never held what it did, in fact, hold.

trial strategy, identified witnesses and exhibits, prepared witness examinations, determined the order of evidence and requested time allotments to present her evidence, per the Court's requirement. By violating the law of the case and reversing his decision *after trial*, Judge Hogan also violated Ms. Martin's *procedural due process rights*. See Martin Brief at 11-13, particularly 13, and Reply Brief at 10-11. See also Ex. A, pages 6-7, Sec. I, H and II.

Ms. Martin was taken completely by surprise, at the end of the trial, when Howard first argued that she had not proven that Harrison's conduct was based on sex. Ms. Martin vehemently argued that Howard should not be permitted to re-litigate this issue, since it had been decided in 1999.⁶ She again made this argument before Judge Kessler when the jury asked for additional instruction on this issue.⁷

II. Mr. Schwalb Falsely Asserted that the Trial would not have Proceeded "Any Differently" if Ms. Martin had had Notice that the Issue of whether Harrison's Harassment was Based on Sex would be a Jury Question

A. Mr. Schwalb Changed his Argument, Right before the Court

After conceding that there was nothing in the record to support his new factual assertion that Judge Hogan identified the question of whether Harrison's harassment was based on sex, pre-trial, as a jury question, Mr. Schwalb *again* changed his

⁶ Martin Brief at 13; Reply Brief at 11; Tr. 2134:9-2152:2 (JA13,029-13,047), particularly Tr. 2128:11-20 (JA13,023); 2155:7-15 (13,050); 2149:6-2152:2 (JA13,044); 2166:3-12 (JA13,061); 2145:8-15 (13,040); 2138:23-2139:6 (JA13,033-13,034); 2134:9-20 (JA13,029); 2136:14-2137:3 (JA13,031-13,032); 2140:2-21 (JA13,035); 2144:1-2145:15 (JA13039).

⁷ Martin Brief at 20-21; Tr. 2568:1-7 (JA13,463); 2562:7-25 (JA13457).

argument, even as he stood before the Court! Mr. Schwalb then told the Court that the issue was litigated and at trial and would not have been litigated “any differently” had Ms. Martin been provided notice prior to trial; however, during the trial, Judge Hogan again reaffirmed the court’s three-time holding that the question of whether the harassment was based on sex was not a “fact at issue.” Mr. Schwalb’s most recent impromptu argument was basically that the lack of notice to Ms. Martin was harmless error because she should have *figured out*, at some point during the trial, that the issue of whether Harrison’s harassment was based on sex *was being litigated* -- despite the 1999, 2003 and 2005 decisions to the contrary.

Ms. Martin focused on proving the facts that the court had ruled would be factual questions for the jury. It would confuse the jury and waste of time to re-litigate questions that were already resolved by the court. Ms. Martin therefore did not plan to re-litigate the court’s determination that Harrison’s harassment was based on sex – a long-established decision in her favor. If she had had pre-trial notice that the court was changing its decision on this issue, she could have proved that Howard’s own Dean Bullock, its security officer and its expressly *binding witness*, *Prof. Andrew Taslitz*, all *independently* perceived Harrison’s communications as sexual in nature or based on sex. See **Ex. A**, Secs. II and III.

B. At Trial, Judge Hogan Expressly Stopped Ms. Martin from Eliciting Evidence on this Issue, Stating that it had “No Evidentiary Value ... to Prove or Disprove any Fact at Issue”

Even when Ms. Martin’s attorneys approached the question of the perception of

Howard's agents, including Dean Bullock, regarding whether they understood Harrison's harassment of her to be based on sex, Judge Hogan actually *stopped* the examination. He specifically told counsel that the question had "no evidentiary value there. It doesn't go to prove or disprove the fact at issue." Tr. 1534:9-1535:4 (JA12,328-12,329) See also Reply Brief at 8. Judge Hogan's pronouncement again reaffirmed his former holdings that the question of whether Harrison's harassment was based on sex was not "a fact at issue."

Dean Bullock clearly recognized that Harrison's harassment of Prof. Martin was based on her sex or gender. In her July 1, 1999 memorandum to Howard's General Counsel, Dean Bullock stated that she and Dean Newsom believed that Harrison posed a threat to Prof. Martin and "*other women*" (not *men*) whom Harrison might "stalk" or otherwise "harass." Pl's Ex. 8B at 1 (Bullock) (JA14,407) See **Ex. A**, Sec.s I, H and II, generally, particularly, Sec. II, B, 3(a). Had Judge Hogan permitted Ms. Martin's counsel to conduct the cross-examination of Dean Bullock that she began, she would have confronted Dean Bullock with her admission in the July 1, 1999 memo. This admission necessarily means that Dean Bullock had notice of conduct that constitutes sexual harassment, as a matter of law. *Martin v. Howard University*, 1999 U.S. Dist. LEXIS 19516 at *8-9, #23 at 7 (JA558).

Judge Hogan similarly cut off Officer Sirleaf's testimony about his own understanding that Harrison's stalking was "sexual in nature. Tr. 310:16-311:6

(JA11,103-11,104). Judge Hogan stated that it was “obvious” that the pursuit of a woman to be a man’s “wife” is sexual in nature. *Id.* In his 2002 deposition, Officer Sirleaf testified that he perceived Harrison’s communications to Prof. Martin as sexual in nature, specifically stating that he perceived Harrison’s conduct toward Prof. Martin as posing the danger of him *raping* her – certainly, a sexual offense.⁸ Ms. Martin was therefore deprived of an opportunity to elicit this testimony before a jury and prove the very point that became the crucial question in this case *and* was misled into believing that it was a point that she did not have to prove.

C. With Notice, Ms. Martin would have Elicited Corroborating Testimony from Mrs. Bruner and Officer Sirleaf Corroborating her Testimony that she did Refer to Harrison’s Conduct as “Sexual Harassment” Prior to the Police Characterization of the Conduct as “Stalking”

In her 2002 deposition, Mrs. Bruner, Howard Law School’s Director of Faculty Services, testified that, when Prof. Martin first told her about Harrison, she specifically described said that Harrison was “sexually harassing” her.⁹ Similarly, Officer Sirleaf testified that the report that he originally took from Prof. Martin, on

⁸ #273 Ex. P (Sirleaf) at 137:5-140:19 (JA6,698-6,699), 21:22-22:5 (JA6,652), 99:22-102:3 (JA6,683-6,684); 112:3-6 (JA6,688) Howard’s former in-house counsel, Mr. Lattimore, asserted that Howard University Campus Security Officer Dowdy is an “agent” of Howard University. #273 Pl’s MSJ Ex. AA Dowdy depo at 86:4-87:12 (JA7,004-7,006) If Officer Dowdy was an agent of Howard, then so was Officer Sirleaf, when he processed Prof. Martin’s complaint about Harrison; accordingly, Howard is bound by the testimony of Officer Sirleaf that he understood Prof. Martin’s complaint about Harrison’s harassment to be one that was sexual in nature.”

⁹ #273, Ex. X Bruner depo at 137:4-13 (JA6,808).

October 20, 1997, before the police arrived, was a report of “*harassment*.”¹⁰

On November 20, 1997, immediately after Prof. Martin found the notes from Harrison under her office door and received the second voicemail message from him, she asked Prof. Taslitz for his advice. He advised her to call the police, saying, “Howard’s security is for sh-t. You’ll be *raped* and killed right in front of the security office.” Tr. #490 at 47:1-9 (JA12,518); Reply Brief at 13, fn. 23.

Mrs. Bruner testified on *Day 1* of the trial. Officer (now “Dr.”) Sirleaf testified on *Day 2*. Ms. Martin did not testify until *Day 10*. It was not until her cross-examination on *Day 11* that it was revealed that Howard’s trial strategy was to confuse the jury into believing that Prof. Martin’s references in her memos to Harrison as a “stalker,” rather than as a “sexual harasser” invalidated her sexual harassment claim and destroyed her credibility on all other issues as well.

At that point in the trial, there was no time to recall Mrs. Bruner or Officer Sirleaf to corroborate her testimony or rehabilitate Ms. Martin’s credibility. Because Judge Hogan permitted Howard to put on its defense *during* Ms. Martin’s case in chief, over her counsels’ repeated objections, her allotted time to present her case was usurped by forcing her to rebut Howard’s defenses before she could even put on her own case. Martin Brief at 35-38. She was therefore deprived of sufficient time to

¹⁰ (#273, Ex. P Sirleaf depo at 36:22-37:3, JA6,658), which he understood to be “*sexual*.” #273 Ex. P (Sirleaf) at 137:5-140:19 (JA6,698-6,699), 21:22-22:5 (JA6,652), 99:22-102:3 (JA6,683-6,684); 112:3-6 (JA6,688). *See also* Martin Reply Br. at 13-14.

present her case. She had to focus on the most important points, including the issues of establishing that Howard's stated reason for replacing her with a junior professor to teach equal employment law, was false and pre-textual.¹¹

Prof. Martin did indicate in several memos that she viewed Harrison's conduct as based on her sex and Howard's reaction to it to violate Title VII. In a March 6, 1998 memo to Dean Bullock that Harrison was targeting African-American *females* to be his "*wife*." JEX 87, fn. 1 (JA14,141). In her April 24, 1998 response to a memo from the selectee, Prof. Cunningham, Prof. Martin pointed out that Howard had committed a wrong against her by refusing to renew her contract and suggested that Prof. Cunningham analyze the facts against her own knowledge of *Title VII*. (Pl's excluded exhibit, JA14,775)

Similarly, Prof. Taslitz understood the March 31, 1998 letter that Prof. Martin wrote to him (JEX 88, JA14,143) to be threatening a lawsuit for Howard's failure to renew her contract, noting that Howard's treatment of her was particularly egregious

¹¹ Prof. Martin entitled her memos "Security Problem" to direct the administration's attention to the arm of Howard University that should be enlisted to solve the problem. The body of the memos were narratives explaining what Harrison had done, as the conduct became known to her. (JEX 71 (JA14,035), 72 (JA14,040), 73 (JA14,041), 79 (JA14,052); 80 (JA14,055). Prof. Martin used the police department's characterization of Harrison's conduct as "stalking" in her memos to Dean Bullock to emphasize the seriousness of the conduct, the potential danger and the immediate need for security. The term "sexual harassment" does not necessarily trigger an urgent response. In fact, the evidence of record indicates that sexual harassment complaints received little, if any response from Dean Bullock or other Howard administrators in other contexts. See, e.g., Sexual "jokes" circulated by Prof. Reggie Robinson, despite complaints by other faculty members that it may constitute "sexual harassment." Pl's excluded exhibit 23 (JA14,730).

in light of the fact that she had performed her duties to her students diligently, even in the face of being stalked on campus. (JEX 89, JA14,149).

Ms. Martin could also have elicited testimony from Teresa Guerrant, Esquire, to further corroborate her testimony that she perceived Harrison's harassment to be based on sex and sexual in nature. Mr. Schwalb misrepresented to this Court that Ms. Guerrant, an EEOC attorney, testified that she did not perceive Harrison's conduct to be sexual in nature (**Ex. B**, Tr. at 17:19-18:1); however, this is not the question that Mr. Schwalb asked Ms. Guerrant. Tr. 2101:1-17 (**JA12,996**); see also redirect Tr. 2095:2-9 (**JA12,990**), nor does it constitute evidence of the point he was trying to prove. See **Ex. A**, page 13, Sec. III.

C. Mr. Schwalb Re-characterized Evidence, Offered for Other Purposes, Now Claiming that it was Offered to Prove that Harrison's Harassment was not Based on Sex

At oral argument – contradicting its own Brief – Mr. Schwalb changed his arguments with respect to what evidence was offered to prove which point. For example, in its September 30, 2002 *Motion for Summary Judgment* (#268) at 2 (**JA5,415**) and in its Brief, page 8, fn. 2, Howard offered the completely fabricated story that Harrison *mistook* Prof. Martin for his a *real* person – his “estranged” or “long-lost” “wife” -- as if Harrison actually had a *real* wife. Howard offered this fabrication in the context of trying to prove that Harrison's harassment was not “severe and pervasive” -- a question that the court had specifically identified as a triable issue of fact. In its oral argument -- however, Howard argues that this story –

told in opening and closing statements, supported by *no evidence of any kind*, was “evidence” from which the jury could have concluded that Harrison did not target Prof. Martin based on her gender. *See Ex. A*, pages 9-10, Sec. II, B, 2 and March 11, 2008 *Motion for Sanctions*, at 8-9.

Howard also offered testimony by Deans Bullock and Newsom regarding their purported understanding of Harrison’s conduct. Ms. Martin understood this evidence to be offered to convince the jury that Prof. Martin’s memoranda and other communications to Howard’s administrators was not sufficient to put them on notice that she viewed Harrison’s conduct as sexual in nature or based on her gender and/or that they responded reasonably to the reports of the conduct. On appeal, however, Howard argues that this evidence was offered to prove that Harrison’s conduct was not actually based on sex -- not just to address the issue of notice. With the overlapping evidence and points to be proved at trial, there is no basis for arguing that Ms. Martin should have “realized” – at some undefined point in the trial -- that the parties were litigating the question of whether Harrison’s harassment was based on sex – despite all pre-trial Orders to the contrary.

III. Mr. Schwalb Falsely Stated, Repeatedly, that there was Nothing in the Communications that Ms. Martin or Others Could be Deemed “Sexual”

Mr. Schwalb repeatedly asserted that Ms. Martin did not describe Harrison’s conduct in terms of sexual harassment and that there was nothing in the

communications that could be deemed as sexual;¹² however, as discussed in II, above, Mr. Schwalb was fully aware, from the evidence of record – whether placed before the jury or withheld from the jury by as a result of Mr. Schwalb’s trial tactics – that Prof. Martin had specifically used the words “sexual harassment” to describe the conduct before the police characterized it as “stalking” and that Howard’s own binding witnesses expressly understood the conduct to be based on sex and/or sexual in nature.

IV. Mr. Schwalb Continues Howard’s Fraud upon the Courts by *Again* Claiming that Harrison “Misidentified” Prof. Martin as his “Estranged Wife”

Once again, at oral argument, Mr. Schwalb falsely represented to this Court that Harrison thought that he actually “knew” Prof. Martin, or that he mistook Martin for any *real* person, is a complete fabrication. **Ex. B**, 3-17-08 Tr. at 15:16-18, 20-24. There is absolutely no evidence that refers to an “estranged” wife or any woman that was ever married to Harrison. See **Ex. A**, page 18, Sec. VII; Ms. Martin’s pending March 11, 2008 *Motion for Sanctions*, at 8-9. Instead, Harrison’s letter to a Canadian attorney, Valerie Edwards “explains” his search for a fictional female character *to be his wife*. (JEX 126, **JA**14,277) Harrison describes various women, with dissimilar names, including Prof. Martin, who do not physically resemble each other; yet, he identified them *all* as his possible “natural wife,” i.e., the fictitious Geneva Crenshaw character created by the renowned Professor Derrick Bell, now at NYU Law School.¹³

¹² **Ex. B**, 3-17-08 Tr. at 14:9-20; 15:18-20; 17:2-4; 17:5-11; 17:12-15; 17:16-20; 18:2-6.

¹³ #490 at 32:15-40:1 (**JA**12,503-12,511), JEX 126 (**JA**14,277), Bell Aff. (**JA**14,776)

The attorneys who fabricated this story did so with impunity at the trial court level. Ms. Martin respectfully asks this Court to end Howard's perpetuation of fraud after fraud upon the courts once and for all.

V. Mr. Schwalb Falsely Represented that there was Evidence that Harrison "Stalked" a Man, Prof. Derrick Bell

Despite the pending March 11, 2008 Motion for Sanctions, addressing this issue, at oral argument, Mr. Schwalb repeated his false statement that Harrison "stalked" a male, Prof. Derrick Bell. **Ex. B**, 3-17-08 Tr. at 16:6-10. The only evidence before the jury was Prof. Martin's testimony regarding what Prof. Bell told her,¹⁴ months after she had left Howard, of his one confrontation with Harrison, at Harvard Law School, in 1990. Prof. Bell did not describe this one encounter as "stalking." One confrontation by a person does not constitute "stalking." Martin Brief at 6, fn. 3; *Amicus* Brief at 16-17. See also **Ex. A**, page 16, Sec. IV.

VI. Mr. Schwalb Falsely Represented that *the Jury* Resolved the Question of whether Former Dean Bullock Committed Perjury

Mr. Schwalb falsely represented that the jury determined that Dean Bullock did not commit perjury (**Ex. B**, Tr. 19:4-11) – although this was not a criminal trial of

¹⁴Judge Hogan excluded Prof. Bell as a witness (#377), but held that Ms. Martin could testify about what Prof. Bell told her, as evidence of the emotional distress that she continued to experience as a result of the stalking. When she began to testify about what Prof. Bell told her, Judge Hogan allowed her to testify that Harrison threatened to "blow his head off," then *abruptly* cut her off before she could explain that Harrison confronted Prof. Bell to locate the *woman* he sought to be his wife – in other words, his next *female* stalking victim. Tr. 1694:1-16 (**JA**12,589) Judge Hogan let in *just enough* testimony to give Howard a basis to convince the jury that Harrison was an "equal opportunity" harasser of men and women.

Dean Bullock for perjury and no such question was ever before the jury. See **Ex. A**, pages 16-17, Sec. V.

VII. Mr. Schwalb Falsely Represented the Law and Procedures at Trial

Mr. Schwalb falsely represented that the “protected activity” is a jury question (see **Ex. A**, page 21, Sec. IX). He misrepresented Judge Kessler’s instructions to the jury (see **Ex. A**, page 22, Sec. X), that Judge Hogan tried the case as a “trespasser” negligence, premises liability case (see **Ex. A**, pages 22-23, Sec. XI), and the tenor and duration of the trial (see **Ex. A**, pages 22-23, Sec. XII). Mr. Schwalb has demonstrated, as he did at trial, that he has no regard for the truth and no fear of lying to any judicial body – whether the lies are material or peripheral to the case.

CONCLUSION

Particularly since Mr. Schwalb has compounded his wrongdoing by repeating, at oral argument, false statements that he made in Howard’s Brief, and because he added new false statements to the list, he and his employer, *Venable, LLP*, should be subject to the most severe sanctions available to this Court.

Respectfully submitted,



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

| | | |
|-------------------------------------|---|---------------------------|
| Dawn V. Martin, |) | |
| Appellant, |) | |
| v. |) | Appeal No. 04-5417 |
| Howard University, |) | |
| Howard University Law School |) | |
| and Alice Gresham-Bullock |) | |
| Appellees. |) | |

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 30th day of March, 2008, a true copy of the *Appellant's Motion for Sanctions* was mailed, *via* first class mail and e-mail to:

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