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**Supreme Court will Reconsider Workplace Stalking Case**  
**During National Stalking Awareness Month**

Washington, D.C. January is **National Stalking Awareness Month** -- so it is particularly appropriate that, on January 9, 2009, the U.S. Supreme Court will consider a [Petition for Rehearing](#), asking the Court to review a workplace stalking case, *Martin v. Howard Univ. and Alice Gresham Bullock*, U.S. Sup. Ct. No. 08-204. The lower courts held that a female law professor had no legal recourse against Howard University for refusing to renew her contract after she asked the Law School administration to use the University's own Campus Security procedures to protect her and other women from a serial campus stalker.

As a law professor at Howard University, Dawn Martin was stalked by a delusional, homeless, serial stalker of African-American female professors. The stalker was searching for the physical embodiment of his "fantasy," or ideal "wife" --modeled after a fictional female character, Geneva Crenshaw, in a book, [And We are not Saved](#), written by the renowned [Professor Derrick Bell](#). Instead of following its own security procedures to ban the stalker from campus, Howard responded to Prof. Martin's requests for protection by refusing to renew her teaching contract. Prof. Martin sued Howard for sexual harassment/hostile work environment and retaliation for reporting sexual harassment, in violation of [Title VII of the Civil Rights Act of 1964](#), which prohibits discrimination on the basis of sex/gender, as well as race, color, ethnic origin and religion. *Martin* is the first to present the issue of "gender profiling" or "working while female" in the employment context.

The [National Organization for Women \(NOW\)](#) and the [National Association of Women Lawyers \(NAWL\)](#), joined by other women's advocacy and anti-violence groups, filed an [Amicus Curiae](#) (friend of the Court) Brief supporting Ms. Martin's original *Petition* for Supreme Court review of the case. The Court initially denied the request, but Ms. Martin asks the Court to reconsider, in light of *Crawford v. Metropolitan Government of Nashville and Davidson County*, another case similarly alleging sexual harassment and retaliation. The Court's decision in *Crawford* would control the outcome of *Martin*. Both Ms. Crawford and Prof. Martin lost their jobs shortly after reporting the harassment to their employers. Both women were also deprived of the opportunity to prove that that the actions were retaliatory, for reporting the harassment. In both *Crawford* and *Martin*, the lower courts held that the plaintiffs did not engage in "protected activity" because of *how* they reported the sexual harassment to their employers.

Prof. Martin argues that: 1) since 78% of stalking victims are women, stalking constitutes harassment on the basis of gender; 2) when the stalker uses "gender specific" language and criteria to select his victim, the stalking is harassment based on gender; and 3) where a stalker pursues a woman to make her his "wife," the harassment is stalking "sexual in nature." Prof. Martin wants the Court to apply Title VII to protect women from workplace stalking and from employer retaliation for reporting stalking. Prof. Martin argues that women who are doing nothing more than "working while female" should not have to choose between their jobs and their safety.

In 1999, the federal district court set precedent in *Martin* by adopting the **EEOC Regulation 29 CFR 1604.11(e)**, holding that an employer can be held liable for the sexual harassment of an employee, by a non-employee, if the employer knew or should have known of the harassment and failed to take reasonable steps to end it. Judge Hogan identified the jury questions as: 1) whether Harrison's harassment was severe and pervasive enough to constitute a hostile work environment; and 2) whether Howard took reasonable steps to end it. The jury agreed with Prof. Martin that Harrison's harassment *did* create a "hostile work environment" for her and that Howard did not take reasonable steps to end it; yet the verdict was *for Howard*. With insufficient legal instruction from the judge, the confused jurors found that the harassment was *not based on sex* – and therefore, that Prof. Martin's complaints were not "protected activity" under Title VII of the Civil Rights Act.

Howard repeatedly told the jury that Prof. Martin's claim must be defeated because, after the D.C. Metropolitan Police Department characterized Harrison as a "*stalker*," she entitled her memos to the Dean "*Security Problem on Campus*" rather than "*Sexual Harassment*." Prof. Martin asked the judge to instruct the jury, using the words from his own 1999 decision, that it is not necessary to use the precise words "*sexual harassment*" to invoke Title VII protection. Judge Hogan flatly refused to provide that instruction, even though several courts have recognized that stalking is one of the most egregious forms of sexual harassment. Judge Hogan also refused to provide the jury with the D.C. stalking statute, which defines "stalking" as repeated harassment. Without the proper legal framework for analyzing harassment based on sex, jurors were confused into accepting Howard University's argument that the stalker's harassment was not sexual in nature or based on sex and that her complaints did not constitute "protected activity." If *Martin* is considered as a companion case to *Crawford*, or supplements *Crawford*, the Supreme Court could provide a definition of "protected activity" that applies to whether the harasser is an employee or a *non-employee* in the workplace.

Prof. Martin filed her December 12, 2008 [Petition for Rehearing](#), coincidentally, shortly after celebrity [Paula Abdul](#) directed public attention to the issue of workplace stalking in an interview with [Barbara Walters](#). [Ms. Abdul](#) alleged that her employer, [American Idol](#), [allowed a non-employee stalker, a contestant on the show, for "entertainment value."](#) A [videotaped audition shows](#) another contestant singing a song he had written about *stalking* Paula Abdul. Workplace scenarios described by both Prof. Martin and Ms. Abdul highlight the fact that there is no federal statute that expressly protects stalking victims against employer retaliation for complaining about stalking -- or that obligates employers to take reasonable steps to keep known stalkers out of the workplace.

*Martin* has been cited and/or discussed in law review articles, treatises, labor law reporters, fair employment law reporters, radio shows, cases and is currently being discussed extensively on the internet. [Sky Radio](#) will be broadcasting an interview with Prof. Martin about her case on American Airlines, from December 16, 2008 through January 31, 2009, as one of the women highlighted in its series entitled "[Salute to Women in Leadership](#)," featured in **Time Magazine** – coincidentally, also during **National Stalking Awareness Month**. Prof. Martin is also featured as one of "[American's Premier Lawyers](#)," in "The Law Business Insider which includes another radio interview discussing her case. A producer has already begun work on a television documentary about the case.

For Briefs, exhibits and further details about the case,  
see <http://www.dvmartinlaw.com/MartinvHowardU.html>.