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July 12, 2009

Councilmember Phil Mendelson
Chairperson of the Committee on Public Safety and the Judiciary
D.C. Council
1350 Pennsylvania Avenue, N.W., Suite 402
Washington, D.C. 20004
Via e-mail and regular mail

Re: **Need for an Anti-Employment Discrimination Provision in the Proposed Anti-Stalking Legislation:**

Dear Councilman Mendelson:

You may recognize my name from the Local Channel 9 (CBS) news broadcast, on July 7, 2009, at 5:00 p.m. You and I were both interviewed by journalist Gary Nurenberg, along with a representative of the *Stalking Resource Center*, regarding the Council's proposed "*Omnibus Public Safety and Justice Amendment Act of 2009*" (Bill 18-151).¹ The proposed amendment will expand the definition of criminal "stalking" to conform to the new "high tech" means of stalking people, particularly using the internet.

I applaud the Council for addressing this issue and for re-defining criminal "stalking" to conform to the technological advances used by modern stalkers; however, I hope that the Council does not stop there. I urge the Council to *complement* its amended criminal statute with an amendment to D.C. Human Rights Law to include a provision similar to that of **New York City Human Rights Law, § 8-101, which expressly prohibits discrimination against employees on the basis of their status as stalking victims**, or victims of domestic violence, just as it prohibits discrimination on the basis of race, gender, national origin, religion, age, disability, sexual orientation and other named protected categories. I am attaching a copy of New York City Human Rights Law, § 8-101 for your convenience.

¹ <http://www.wusa9.com/news/local/story.aspx?storyid=88199&catid=187&provider=email>.

The proposed D.C. criminal statute recognizes that stalking can affect employment, but it does not specify how and does not address the employer's response to stalking in the workplace. As stated in the news broadcast, I was stalked by a serial campus stalker when I was a law professor at Howard University.² The stalker was a delusional, homeless, serial stalker of African-American female professors. He 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 my requests for protection by refusing to renew my teaching contract.

My employer's retaliated against me for being a stalking *victim*. *This employer discrimination against me as a stalking victim is what changed my life even more than the stalking itself!* I had an outstanding 17-year legal career, culminating with my position as a law professor, which I loved. My career as a civil rights lawyer, in public service, included the United States Department of Justice (Honors Program), the U.S. Equal Employment Opportunity Commission and the New York State Office of the Attorney General. It had culminated in four years as a law professor, with excellent student evaluations and student protests over my non-renewal;³ nevertheless, suddenly, my career, reputation, income and livelihood were destroyed. I had to start my life over and "hang up a shingle" at the age of 41, as a single mother trying to support a 14 year old daughter.

I 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 and D.C. Human Rights Law, which both prohibit discrimination on the basis of sex/gender. I prevailed against Howard's motion to dismiss my case and set precedent in U.S. District Court for the District of Columbia in 1999, in [Martin v. Howard University and Alice Gresham Bullock, 1999 U.S. Dist. LEXIS 19516, 81 FEP Cases 964 \(BNA\), 15 IER Cases 1587 \(D.D.C. 1999\)](#). The court adopted 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. Then Chief Judge, Thomas F. 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.

² See also my own website, at www.dvmartinlaw.com/MartinvHowardU and the Appendix for additional internet websites, documentaries, radio shows, news stories and comments about the stalking that I experienced at Howard and the eleven years of litigation that followed.

³ I taught at Cleveland-Marshall College of Law, Cleveland State University, from 1994-1996, as a tenure-track professor. I left Cleveland to return to the D.C. area because my daughter did not do well physically in the Cleveland weather. I was recruited by Howard University Law School and accepted the offer, beginning with Howard in the fall of 1996.

Despite this initial victory, the case lingered in federal district court until 2006, when it finally went to trial. The jury agreed with me that Harrison’s harassment did create a “hostile work environment” for me and that Howard did not take reasonable steps to end it; yet the verdict was for *Howard*. Howard repeatedly told the jury that my claim must be defeated because, after the D.C. Metropolitan Police Department characterized Harrison as a “stalker,” I entitled my memos to the Dean “Security Problem on Campus” rather than “Sexual Harassment.” I asked the judge to instruct the jury, using the words from his own 1999 decision and other well-established case precedent, 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 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 my complaints did not constitute “protected activity” under Title VII of the Civil Rights Act.⁴ If Title VII does not apply to these types of cases, **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.** I lost this case because the jury found there was simply no statute that Howard violated – even though the jury determined that *I was stalked*, that *it did create a hostile work environment for me* and that *Howard failed to take reasonable steps to end it*. Because the jury found the stalking did not constitute sexual harassment, and that Title VII therefore did not apply to the case, it never proceeded to determine the next question, which was whether Howard refused to renew my contract in retaliation for my reporting stalking. The Court of Appeals for the D.C. Circuit affirmed, in an unpublished decision which failed to address most of my arguments.

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 my Petition for Supreme Court review of the case. The Court denied the request; however, I filed a motion back in the U.S. District Court for the District of Columbia, which is unopposed and still pending, asking the Court to vacate the jury’s verdict, in light of *Crawford*.

⁴ My case should be reversed in light of *Crawford v. Metropolitan Government of Nashville and Davidson County*, 129 S. Ct. 846 (2009), since the definition of “protected activity” applies whether the harasser is an employee or a non-employee in the workplace. *Crawford* was another case similarly alleging sexual harassment and retaliation. Both Ms. Crawford and I lost our jobs shortly after reporting the harassment to our employers. Both of us were also deprived of the opportunity to prove that the employers' actions were retaliatory, for reporting the harassment. In both *Crawford* and *Martin*, the lower courts held that we did not engage in “protected activity” because of how we reported the sexual harassment to our employers.

I argued 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.” I asked the Court to apply Title VII to protect women from workplace stalking and from employer retaliation for reporting stalking. I argued that women who are doing nothing more than “working while female” should not have to choose between their jobs and their safety. My case would be the first to address the issue of “gender profiling” in the employment context, if the Court addresses my arguments.

Martin v. Howard University has been covered as a documentary, on radio shows, cited and/or discussed in law review articles, treatises, labor law reporters, fair employment law reporters, , cases and is currently being discussed extensively on the internet. See Appendix. The case is now widely covered and includes a documentary on U-Tube, at http://www.youtube.com/watch?v=MxyzwRGYIgA&feature=channel_page. The full 28 minute version can be viewed at http://insiderexclusive.com/tv_martin.htm. See also the website for one of the Supreme Court *Amicus Curiae* organizations, Survivors in Action, at <http://alexisamoore.blogspot.com/2009/05/stalking-laws-and-victim-resources.html>. Its founder, Alexis Moore, cover stalking extensively on this website. Many readers post their comments and stalking experiences.⁵

Congress needs to amend Title VII to address discrimination against stalking victims, as New York City has done. I *implore* the D.C. Council to join New York City in prohibiting employment discrimination and retaliation against stalking victims and victims of domestic violence.⁶ Please let nation’s capital set the stage for the necessary amendment to national law protection for stalking victims against employment discrimination.

I will make myself available to speak to any member of the Council and/or to speak before the Council regarding the issues of stalking and possible amendments to D.C. Human Rights Law. I have attached my resume to provide you with my own background in Civil Rights and my life-long history of working for justice and equality under the law. Please feel free to call me at (703) 642-0207. Thank you for your attention to issues of stalking and other issues of injustice and inequality.

Sincerely,

Dawn V. Martin, Esquire

⁵ For Briefs, exhibits, a transcript of the entire trial, additional details about the case, and links to other websites discussing the case, see <http://www.dvmartinlaw.com/MartinvHowardU.html>.

⁶ These issues are integrally related. Domestic violence does stop at the front door of a woman’s home, but often “spills” over into the workplace. The stalker could be anyone from an abusive husband, as in the case of Yvette Cade, to a total stranger, as in my case.

APPENDIX

Documentaries, Radio Shows, News Articles and Internet Cites discussing *Martin v. Howard University*

Documentary by “Insider Exclusive:”

- 1) 28 minute documentary, at http://insiderexclusive.com/tv_martin.htm,⁷
- 2) 10 minute, edited documentary and comments at http://www.youtube.com/watch?v=MxyzwRGYIgA&feature=channel_page,
- 3) 10 minute, edited documentary at <http://www.legalshowtime.com/video/34/Justice-for-Women-Stalked-in-the-Workplace-and-Retaliation-b> (no comments)

Radio Shows

1) Interview by [Sky Radio](#), as part of its "[Salute to Women in Leadership](#)," summary in [Time Magazine, Global Edition, December 15, 2008](#). Hear interview at <http://www.skyradionet.com/americanbiz.cfm>. The interview was aired on American Airlines from December 16, 2008 through January 31, 2009.

2) "[America's Premier Lawyers](#)" on News Radio's, "[The Law Business Insider](#)." Radio Interview at http://behindtheheadlines.tv/index.php?option=com_content&view=article&id=174:hlln-sorkin-dawn&catid=44:apl&Itemid=119

3) Burnie McCain Show, May 5, 1999. Howard's own security officer, Officer Amos Sirleaf, called in show to Prof. Martin, risking his job to do so.

4) Ambrose Lane Show, June 23, 1999, both on WPFW.

News Articles:

- 1) <http://www.womensenews.org/article.cfm/dyn/aid/3880>
- 2) <http://womeninbusiness.about.com/od/smallbusinesslegalissues/a/martinvhoward.htm>,

Academic Review of Cases before the U.S. Supreme Court

- 4) <http://alexisamoore.blogspot.com/2009/02/watch-tv-documentary-on-federal-case.html>
- 7) <http://alexisamoore.blogspot.com/2009/01/its-not-end-of-line-tomorrow-no-matter.html>
- 8) <http://peace4missing.ning.com/group/domesticviolence/forum/topic/show?id=2153128%3ATopic%3A34467&xgs=1>

⁷ Persons interviewed in this documentary, supporting my arguments before the Court, include:

- 1) Kim Gandy, President of the National Organization for Women (“NOW”);
- 2) the renowned civil rights Professor, Derrick Bell; and
- 3) Dr. Amos Sirleaf, the former Howard University Security Officer who advised Howard to take the reasonable steps necessary to stop the stalker, but whose advice was ignored.

- 9) <http://alexisamoore.blogspot.com/2008/12/dawn-v-martins-pursuit-of-justice-for.html>
(comments posted)
- 10) <http://lawprofessors.typepad.com/adjunctprofs/2008/11/cert-petition-p.html>
- 11) <http://alexisamoore.blogspot.com/2008/11/111408-us-supreme-court-will-decide.html>
- 12) comments uploaded on
- 13) <http://womeninbusiness.about.com/b/2008/05/03/law-establishes-women-can-be-fired-for-being-stalked-by-a-non-employee-at-work.htm#gB>;
- 14) http://www.illinoissexualharassmentattorneyblog.com/2009/01/sexual_harassment_issues_to_be.html
- 15) <http://74.125.95.132/search?q=cache:plhPAjbBS04J:kaauwpassions.blogspot.com/2008/10/supreme-court-hears-harassment-case.html+%22Martin+v.+Howard+University%22&hl=en&ct=clnk&cd=109&gl=us>
- 16) <http://74.125.45.132/search?q=cache:5wobBsuYSIJ:blog.lib.umn.edu/lawlib/lexlibris/+%22Martin+v.+Howard+University%22&hl=en&ct=clnk&cd=23&gl=us>
- 17) Womanist Musings at http://74.125.45.132/search?q=cache:4YdYu_tMx0IJ:www.womanist-musings.com/2008/11/can-woman-be-fired-from-her-job-for.html%3FwidgetType%3DBlogArchive%26widgetId%3DBlogArchive1%26action%3Dtoggle%26dir%3Dclose%26toggle%3DYEARLY-119916360000%26toggleopen%3DMONTHLY-122810760000+%22Martin+v.+Howard+University%22+and+%22H.M.%22&hl=en&ct=clnk&cd=4&gl=us
- 18) <http://alexisamoore.blogspot.com/2008/08/working-while-female-supreme-court.html>;
- 19) <http://alexisamoore.blogspot.com/2008/05/law-professor-will-ask-us-supreme-court.html>
- 20) <http://appetiteforequalrights.blogspot.com/2008/05/no-justice-for-stalking-victims.html>;
- 21) <http://www.feistyaphrodite.com/2008/06/law-professor-seeking-us-supreme-court-reversal-that-holds-woman-can-be-fired-for-being-stalked-at-workplace>
- 22) The National Association of Women Lawyers ("NAWL"), posting its Amicus Brief at <http://www.abanet.org/nawl/publicservice/home.html>,
- 23) The American Association of University Women (AAUW) Legal Advocacy Fund,
- 24) <http://caonlinelaf.blogspot.com/2008/05/gender-profiling.html>,
- 25) <http://twvblog.blogspot.com/2008/05/in-support-of-dawn-v-martin-and-her.html>,
- 26) http://taasa.org/taasa_blogs/?p=381#comments;
- 27) <http://remodel4life.blogspot.com>,
- 28) <http://alexisamoore.blogspot.com/2008/05/martin-v-howard-university-personal.html>.
- 29) http://www.justicewomen.com/archives/2008/25-May-2008_to_01-Jun-2008.php
[www.hklaw.com/id24660/PublicationId1663/ReturnId31/contentid47645 - 53k](http://www.hklaw.com/id24660/PublicationId1663/ReturnId31/contentid47645-53k) (this is a website of a major employer defense firm, which also represents Howard University on

other cases, though not in this case)

30) <http://www.venable.com/docs/pubs/761.pdf> (this major employer defense law firm is actually THE PRIMARY OUTSIDE LAW FIRM that has been defending Howard in this case since 2002 --though it was not defense counsel in this case when it posted this summary of the case in 1999)

31) <http://murphymilanojournal.blogspot.com/2008/11/can-woman-be-fired-from-her-job-for.html>

Martin v. Howard University is also cited in numerous treatises, law review articles and continues to be added to other websites.