

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

\_\_\_\_\_  
DESIREE GOODWIN  
Plaintiff

vs.

PRESIDENT AND FELLOWS  
OF HARVARD COLLEGE  
Defendant  
\_\_\_\_\_

C.A. No. 03cv11797 JLT

RECEIVED  
U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
SEP 11 2003

**PLAINTIFF'S PRETRIAL MEMORANDUM**

I.

SUMMARY OF EVIDENCE

1. Plaintiff is an African-American woman who was assured both orally and in writing when she first went to work in 1994 as a Reference Assistant at the Frances Loeb Library that there would be opportunities for professional advancement and promotion at Harvard. While working at the Loeb Library, she studied nights for her Master's in Library Science at Simmons College. Today almost 11 years later she is still at the same position and salary grade (53) she was hired at, despite outstanding evaluations and accomplishments as well as earning her Master's Degree in Library Science in 1999 and election to a Librarian's Honor Society.
2. Defendant has the largest private library system in the world consisting of 92 libraries throughout the University employing more professional and non-professional staff than any other academic library system. Defendant loudly professes a commitment to equal opportunity and affirmative action, a

commitment required in order to receive some \$700,000.00 in Federal contract monies.

3. In 2003 Defendant employed approximately 450 professional librarians, only eight of whom (or fewer than two percent) are black. Plaintiff has never seen a black librarian in any setting at Harvard. Several of Plaintiff's supervisors have also never seen a black librarian at Harvard.
4. Since obtaining her Master's degree Plaintiff has made many efforts to attain a position as a professional librarian. Professionals begin at grade 56. The initial minimum salary difference between grades 53 and 56 is \$9,644.00 per year and the disparity increases with seniority.
5. Of eight people still at Harvard who received MLS Degrees in 1999, six are now professionals. Plaintiff is one of the two who have not advanced. Plaintiff has applied for 16 positions all of which would have been promotions but was granted only one personal interview. At least seven less qualified, less experienced white male and/or female applicants have been interviewed and promoted or have attained positions that Plaintiff sought.
6. At the Loeb Library several of her fellow employees (Scott Kehoe, Alex Reiskind, Page Nelson, Peter Cohn) have progressed from intern or non-professional status to professional status while Plaintiff has remained in the same position. All had mentors, Plaintiff had no mentor. In 2001 Plaintiff's supervisor proposed to demote her even though two less experienced employees were more obvious candidates for the demotion. Even though Plaintiff has been contributing both technical skills and intellectual content to

the library's website since 1998, her supervisors have repeatedly obstructed Plaintiff's opportunities for advancement by denying her the opportunity to participate in committees on electronic resources. She has also been denied her chance to attend professional conferences.

7. On December 5, 2001 Plaintiff's supervisor Barbara Mitchell told her she would never be promoted at Harvard and that she had applied for too many positions and she was a joke at Defendant's main library, Widener Library, where she was seen merely as a pretty girl who wore sexy outfits, low cut blouses, and tight pants and that staff members heard things through the grapevine about her. Plaintiff has never dressed inappropriately. She does not dress differently from white women who work at the Loeb Library and has never been criticized at her part-time job at the Arlington Public Library to which she goes directly from work at Harvard. Ms. Mitchell stated further that Plaintiff should have no problem getting a job outside of Harvard because the first thing employers (excluding apparently Harvard) look for is a qualified black person.
8. Plaintiff suffered considerable emotional stress when she realized that her long years of effort were in vain because of the discriminatory attitudes of librarians at Harvard.
9. Defendant's culture has been evidenced by several indignities visited on Plaintiff over the years including being the only Master's degree recipient not to receive a reception when she got her degree, being the subject of numerous insensitive remarks on several occasions when she was being subject to sexual

harassment, being scheduled for demotion while two less qualified white males were proposed to remain in public services and being told that she should look elsewhere for employment.

10. Lawrence Summers became Defendant's President in March 2001. During 2001 and 2002, President Lawrence Summers engaged in a drawn out public humiliation of Cornel West, a highly ranked black professor who thereafter left Harvard. In 2003, President Summers reportedly declined a suggestion that Condoleeza Rice be invited to be Defendant's Commencement Speaker, saying, "I will not select my Commencement Speaker based on affirmative action." Plaintiff was taunted at work by being forced to read an article about President Summers' attitudes toward blacks at Harvard which included his use in the presence of the writer of the article of the word "nigger." In October, 2004, the head of Special Collections at the Loeb Library made a joke about "sexy, greedy women" at a widely attended staff meeting. Several attendees pointedly turned and stared at Plaintiff after this remark. In January 2005 President Summers gave a speech in which he suggested there might be innate differences in ability between genders, ethnic groups, and blacks and whites.
11. Plaintiff attempted to file a discrimination charge with the EEOC on January 23, 2002 but was prevented from doing so by an investigator who insisted that she pursue internal remedies at Harvard. Even after several months of fruitless effort by Plaintiff, the investigator insisted that Plaintiff wait until her application at Harvard's Hilles Library closed before she would assent to file a charge. The charge was filed in October with the Hilles position still

undecided and Defendant cancelled the position shortly after the charge was filed.

12. Plaintiff has suffered \$150,000.00 in lost wages as a result of the failure to promote her since 1999. She has also suffered considerable emotional distress with the frustration of her professional hopes and the indignities described supra. Now at age 40, she must compete with much younger people for a position.

II.

STIPULATED FACTS

A Joint Stipulation is set forth in Defendant's Memorandum.

III.

CONTESTED ISSUES OF FACT

Contested Issues of Fact are set forth in Defendant's Memorandum.

IV.

JURISDICTIONAL QUESTIONS

- A. None.

V.

PENDING MOTIONS OF PLAINTIFF

- A. Plaintiff's Motion in Limine to preclude testimony by William McNamara.
- B. Plaintiff's Motion in Limine to limit trial testimony.
- C. Plaintiff's Motion in Limine to exclude evidence regarding statute of limitations.

VI.

## ISSUES OF LAW

In addition to the issues identified in Defendant's Memorandum, some of which are argued in Plaintiff's Opposition to Defendant's Motions in Limine, other issues and Plaintiff's position thereon are:

1. Punitive damages may be awarded in cases in which there is intentional or reckless violation of Chapter 42 USC 2000e5 and G.L. Chapter 151B, Section 9. *Cormier vs. Pezrow of New England, Inc.*, 437 Mass. 302, 310(2002);, *Goodrow vs. Lane Bryant, Inc.*, 432 Mass. 165, 178, 179(2000); *Kolstad vs. American Dental Association*, 527 US, 526(1999), *Che vs. MBTA* 342F 3<sup>rd</sup> 31(1<sup>st</sup> Cir 2003).
2. Plaintiff may recover for a combination of race and sex discrimination. *Brown vs. Trustees of Boston University*, 891 F 2<sup>nd</sup>, 333, 352-353 1st Cir 1989); *Hicks vs. Gates Rubber Company*, 833 F 2<sup>nd</sup>, 1406, 1416-1417(10<sup>th</sup> Cir 1987).

## VII.

### AMENDMENTS TO PLEADINGS

- A. None.

## VIII.

### ADDITIONAL MATTERS

- A. None.

## IX.

### LENGTH OF TRIAL

- A. Five days for Plaintiff's evidence plus six days for Defendant's evidence if Plaintiff's Motion to Limit Evidence is allowed.

## X.

### WITNESSES

A joint list of witnesses with estimated time of examination is included in Defendant's Memorandum.

## XI.

## EXHIBITS

1. 4/18/94 Hiring Interview Memorandum
2. 5/20/94 Hiring Letter Kelly Donohue and HUTCW Agreement
3. 9/23/97 Wilburn Memo to Plaintiff
4. 12/18/97 Wilburn Email to Staff
5. 4/29/98 Mary Daniels Email to Plaintiff
  
6. 5/99 Plaintiff's Simmons College Transcript
7. 5/99 Rubber Chicken
  
8. 3/7/00 Fassett Email re: Diversity Initiative
  
9. 1/01 Library Notes on Boucher (1040-1)
10. 7/01 Library Notes on Macfarlane (955)
11. 11/1/01 "Pampered Nails" Harvard Community Resource
  
12. 12/5/01 Plaintiff Memo
13. 12/20/01 Baccus Call Slip re: Pat Johnson
  
14. 1/7/02 Plaintiff to Baccus Email String
15. 1/25/02 Wehrung Notes (also 2/5/02)
16. 2/1/02 Baccus Notes
17. 2/7/02 Baccus to Wehrung and Benson Jones Memo
  
- 18.. 5/7/02 Baccus to Plaintiff Email re: Hilles
- 19.. 5/29/02 Baccus to Plaintiff Email
- 20.. 6/28/02 Mitchell Reference Letter
  
21. 8/7-19/02 Plaintiff Email String with Fassett and Thomas
  
22. 10/15/02 Withheld
  
23. 11/15/02 Angela Thomas Email to Recipient List
24. 11/22/02 Finan to EEOC Letter (Excerpt pp. 1, 8, 10)
  
- 25.. 5/30/03 Plaintiff Email to Wilburn
26. 5/30/03 Wilburn Reply
27. 2003 "Quincy Market" Preface
28. 8/24/03 NY Times Article "Campus Agitator" and "Harvard Radical"
29. 9/23/03 Boston Herald Article re: Statistics
30. 8/13/04 Wilburn Email to GSD List
  
31. GR 53 Job Description (1541-2)

- 32. GR 56 Job Description (1596-1601)
- 33. Salary Ranges 1999-2004
- 34. President and Fellows of Harvard College IRS Form 990, 2000-2002
- 35. (Withheld)
- 36. 2003 Harvard Affirmative Action report (excerpts concerning number of librarians and black librarians) 1999-2004
- 37. Statistical abstract of the United States table (excerpts concerning number of black librarians) 1999-2004-5
- 38. Harvard University Library Map Guide '04-'05
- 39. Fine Arts Library Stacks Map
- 40. 1/14/05 Lawrence Summers Remarks at NBER conference

**EVALUATIONS OF PLAINTIFF**

- 41. 5/15/96
- 42. 7/14/00
- 43. 10/15/01
- 44. 11/13/02
- 45. 4/8/04
- 46. 4/28/95
- 47. Spring 1996
- 48. 8/31/99
- 48.5 6/30/00
- 49. 10/15/01
- 50. 11/13/02

**FOLDERS CONCERNING POSITIONS COMPETED FOR**

	<u>Publication Date</u>	<u>Req. #</u>	<u>Hired</u>
51.	9/2/99	2346	Boucher
52.	10/21/99	3017	Macfarlane
53.	5/18/00	5348	Wones
54.	9/28/00	7495	Tesler
55.	11/30/00	8285	Macfarlane
56.	5/10/01	9769	Sheehan
57.	9/20/01	11446	Mastroianni
58.	10/4/01	11663	Hement
59.	5/9/02	13405	Cancelled After Charge Filed

**EXHIBITS ON EQUITABLE TOLLING ISSUE**

- 60. 3/20/02 Plaintiff Email to Benson-Jones
- 61. 4/18/02 Jimenez Email to Plaintiff



62. 4/18/02 Withheld  
63. 6/14/02 Jimenez Email to Plaintiff  
64. 8/5/02 Plaintiff Email with Jimenez  
65. 9/3/02-9/12/02 Plaintiff Email String with Jimenez  
66. 10/1/02 Plaintiff Email String with Jimenez  
67. 11/15/02 Angela Thomas Email to Recipient List

#### **OTHER EXHIBITS**

68. 7-8/99 Library Notes pp. 1, 6, 8 (1180-85-88)  
69. 3/6/05 VRA Conf 2005 Brochure  
70. 5/6/04 Harvard Gazette "Opportunities" p. 29.  
71. No Date Chiang to Wilburn Email (2046)

#### XII.

#### OBJECTIONS TO EVIDENCE IDENTIFIED AT PRETRIAL DISCLOSURE

Plaintiff objects to admissibility of the following proposal exhibits:

Exh. 21 – Authenticity, Hearsay.

Exhs. 67, 68, 69 – Materiality, Relevance, Hearsay.

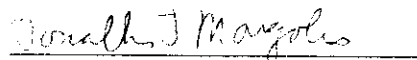
Plaintiff has not had the opportunity to review Exhibits beyond Exhibit 74 prior to this writing.

Plaintiff reserves the right to call any witnesses or introduce any document listed by Defendant and further reserves the right to supplement witnesses and evidence.

By her attorneys:



Richard D. Clarey  
BBO No; 084780  
101 Tremont Street  
Suite 801  
Boston, MA 02108  
(617) 728-0660



Jonathan J. Margolis  
BBO No. 319980

Rodgers, Powers & Schwartz LLP  
18 Tremont Street  
Boston, MA 02108  
(617) 742-7010

March 16, 2005

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the above document to be served upon Jonathan J. Margolis, Esquire, by hand, John P. Coakley, Esquire, by hand, and Judith Malone, Esquire, by mail and fax, on March 16, 2005.

  
Richard D. Clarey