

S. Rose

IN THE UNITED STATES DISTRICT COURT FOR

THE DISTRICT OF MARYLAND

*Final
Amended 3/7/77*

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. M-75-1509
)	
THE UNIVERSITY OF MARYLAND,)	
et al.,)	
)	
Defendants.)	
)	

PLAINTIFF UNITED STATES' PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTORY STATEMENT

The United States initiated this action on October 21, 1975, by filing a complaint alleging violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq. The complaint alleged that the defendants had denied Dr. Bettye Thomas on account of her race a promotional opportunity for which she originally contracted and that they had applied discriminatory terms and conditions of employment to Dr. Thomas because she caused a charge of employment discrimination to be filed against the defendants with the Equal Employment Opportunity Commission. Defendants' answer in this action was served on April 5, 1976. The findings of fact set out below are based on: the evidence adduced at the hearing on the government's application for preliminary injunction on June 24 and 25, 1976; the pleadings and other papers filed; the government's discovery efforts; and the evidence presented to the Court during the trial on the merits of this case on January 25, 26, 27, 31, and February 1, 2, 3, 4, 1977. The United States reserves the right to move the amendment of, or additions to, the findings and conclusions of the Court upon receipt of a complete transcript of the proceedings on the merits.

PROPOSED FINDINGS OF FACT

Part I: The Promotional Opportunity

1. In the spring of 1971 the coordinator of the history department of the University of Maryland Baltimore County, Dr. George Klein, brought the credentials of Bettye Thomas, who is black, to Dr. Charles Peake, who was then acting Chairman of the Social Sciences Division with the initial responsibility for faculty hiring.^{*/} On the recommendation of the history department, concurred in by the Social Sciences Division acting Chairman, the Vice Chancellor for Academic Affairs, and the Chancellor, Dr. Thomas was brought to the campus for interviews which were conducted by the department, the Acting Division Chairman, and the Vice Chancellor.^{**/} After the initial campus interviews the history faculty enthusiastically recommended Bettye Thomas for employment^{***/} and notified Dr. Peake through Dr. Klein that they wished to offer her a position.^{****/}

2. Negotiations with Bettye Thomas concerning the terms and conditions of her employment were conducted by Dr. Peake, Acting Chairman of the Division of Social Sciences. (Stipulation No. 3.) The terms of the offer to Bettye Thomas were determined by Dr. Peake after consultation with the coordinator of the

^{*/} Preliminary Injunction Transcript (hereinafter, PI Tr.), pp. 80-81, 84, 89; Plaintiff's Exhibit (hereinafter, PX) 72.

^{**/} Stipulation No. 1; PX 72; Thomas Testimony 1/25, 26, 27.

^{***/} The testimony by Dr. Becker that he expressed reservations about Bettye Thomas' qualifications to Dr. Klein prior to her employment is rejected in view of the testimony by Dr. Klein that no reservations were communicated to him and the uncontradicted testimony (e.g., by Dr. Austin and Dr. Levine) that the history department was very enthusiastic about hiring Bettye Thomas.

^{****/} Stipulation No. 2; PX 72; Austin Testimony 1/27; Klein Testimony 2/3; Levine Testimony 1/27, 31.

history department and the Vice Chancellor for Academic Affairs. */

(PX 72.) In recommending the terms of Bettye Thomas' employment Dr. Peake considered her educational background, years of experience in higher education, teaching effectiveness, scholarly credentials, and future scholarly potential. (PX 72.)

3. Dr. Peake considered, among other things, his interview with Bettye Thomas during which they discussed her directorship of the Howard University Honors Program, her salary at Howard, her part-time teaching as an assistant professor at the Washington Technical Institute, her negotiations for a full-time associate professor position at WTI, and her part-time or adjunct appointment to teach one course for the College of William and Mary at the associate level. **/

4. Based on Bettye Thomas' qualifications, which included among other things, two published articles, program participation at the annual meeting of a national historical association, a dissertation of publishable quality, and the recommendations of nationally known scholars, Dr. Peake considered Bettye Thomas' credentials to be unusually favorable. Dr. Peake believed Bettye Thomas was an exceptional "find" for the young UMBC campus on the basis of her qualifications and her interest in urban research and Baltimore history. (PI Tr. pp. 87-8; PX 72.)

*/ Whatever the UMBC standard procedures regarding hiring were at the time of Bettye Thomas' employment, that Dr. Peake as acting Chairman of the Social Sciences Division would have ignored those procedures is both contrary to his own testimony and highly unlikely. It is even more unlikely that no contemporaneous comment concerning such errant action would have been made. Dr. Klein testified that he suggested the use of lecturer rank to Dr. Schamp (see Defendants' Exhibit [hereinafter, DX] 5) and that he did not fail to forward any recommendations of the history department concerning Bettye Thomas' employment. Dr. Austin testified that Dr. Klein and she discussed lecturer rank in connection with Bettye Thomas' appointment. Dr. Peake's testimony that he, Dr. Klein, and Dr. Schamp consulted concerning the terms of the offer to be made to Bettye Thomas is accepted, whatever misunderstanding, failure to communicate, or exclusion from the ultimate decision may have been a part of those discussions.

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PI Tr. pp. 85-7; Stipulation Nos. 45, 46; PX 72.

5. The only written University of Maryland standards for appointment to particular faculty rank's in 1971 were in a statement of policy on appointments and promotions approved by the University of Maryland faculty senate on March 5, 1957, several years before UMBC was created. (Stipulation No. 4.) There is no evidence that the March 5, 1957 Statement was intended to apply to, or ever has been applied to, the UMBC campus.^{*/} There is a reference to the Statement in the 1975 Faculty Handbook but not in the 1971 Faculty Handbook (DX 197, 198). Although not introduced in evidence at the trial on the merits, the 1957 statement, as presented in the defendants' pleadings, provides very general, flexible minimum qualifications for the various academic ranks, including assistant and associate professor; the requirement of a particular academic degree for a particular rank is not absolute. The UMBC History Department in accordance with UMBC Senate procedures published its own criteria for faculty rank and tenure in 1971 which have been relied on by history department faculty members since that time.^{**/}

6. Dr. Peake discussed with Dr. Klein the faculty rank to be included in the offer to Bettye Thomas and they agreed that assistant professor would be inadequate, and that a more appropriate rank would be something equivalent to associate professor.^{***/} (PI Tr. pp. 88, 89; PX 72.) In framing the

^{*/} Austin Testimony 1/27; Levine Testimony 1/27, 31; Baratz Testimony 1/31, 2/1; PX 72; DX 190.

^{**/} Austin Testimony 1/27; Levine Testimony 1/27, 31; DX 14, 190.

^{***/} Dr. Klein testified that he learned the final terms of Bettye Thomas' employment when her appointment letter was sent in May 1972, and that he received a copy of the exact terms from Dr. Peake two or three weeks later. (See DX 11.) Dr. Klein further testified that he was startled by the terms, but that he took no action concerning the matter at that time. The foregoing testimony and the Court's earlier finding that Dr. Klein was consulted concerning the terms of Bettye Thomas' offer prior to her employment (see Finding of Fact No. 2 and footnote following) warrant the Court's acceptance of Dr. Peake's testimony concerning the substance of the pre-employment discussions with Dr. Klein regarding Bettye Thomas' faculty rank.

specific offer to Bettye Thomas Dr. Peake considered others then at L. L. C. who attained associate professor rank with similar credentials including faculty members Storch, Rothstein, Beare, Lasher, Titchener, and Sherwin. (PI Tr. p. 88; PX 72.) The qualifications of Bettye Thomas considered by Dr. Peake and the rank included in her employment offer are consistent with the UMBC criteria in effect at that time. (PX 72; DX 14, 190.)

7. Department coordinators did not at the time of Bettye Thomas' employment take part in determination of the salary to be offered new employees. (Stipulation No. 5.) Initial faculty salaries at UMBC are determined by subjective evaluation of an employee's experience, abilities, and the salaries paid for comparable persons by similar institutions at the time of the appointment. There is no standard pay scale.^{*/}

8. Dr. Peake discussed Bettye Thomas' credentials with the Vice Chancellor for Academic Affairs; including her primary employment at Howard University, her WTI employment and negotiations there for associate rank, but not the employment by William and Mary which was given no weight. (PI Tr. pp. 89, 92-3, 138; PX 72.)

9. The offer of employment made to Bettye Thomas was drafted by Dr. Peake and was reviewed and approved by the UMBC Vice Chancellor for Academic Affairs and the UMBC Chancellor. Dr. Peake considered the offer to Bettye Thomas as an offer of associate professor rank. (PI Tr. pp. 89-90, 136-37; PX 72.)

10. Dr. Peake drafted a letter of appointment stating that Bettye Thomas would receive \$15,000, hold the rank of Lecturer, and upon completion of the Ph.D. degree by August 31, 1972, be recommended for appointment as an Associate Professor. Upon reviewing the drafted letter, Dr. Homer W. Schamp, Vice Chancellor for Academic Affairs, included the words "on the recommendation of the History Faculty" to that portion of the

^{*/} Stipulation No. 12; Baratz Testimony 1/31, 2/1; Plaintiff's First Interrogatories (hereinafter, PFI) Nos. 14, 17.

letter referring to the Associate Professor rank, and approved the offer of employment. (Stipulation No. 6; Pl. 90; PX 72.) The title "lecturer" at UMBC applies to an appointment at any salary or experience level and normally carries no rank equivalence. (Stipulation No. 11.)

11. By letter of May 18, 1971, Bettye Thomas was offered an appointment as a "lecturer in History for the academic year beginning September 1, 1971, at a salary of \$15,000." That appointment carried the following proviso:

"It is understood that if you complete all requirements for the Ph.D. degree by August 31, 1972, you would, on the recommendation of the History faculty be offered a position as Associate Professor of History for the academic year beginning September 1, 1972. An appointment as an Associate Professor would be for an initial period of two years and you would be evaluated for permanent tenure during the first year of that appointment."

(Stipulation No. 7; PX 7.) By letter dated May 27, 1971, Bettye Thomas indicated that she accepted the offer stated in Dr. Peake's letter of May 18, 1971. (Stipulation No. 8.)

12. On June 10, 1971, Dr. Schamp formally recommended to the Chancellor of the Baltimore campuses, Dr. Albin O. Kuhn, that Bettye Thomas be appointed as "Lecturer in History in the University of Maryland Baltimore County at the salary of \$15,000 for the academic year beginning September 1, 1971." The recommendation further stated:

"It is understood that if Mrs. Thomas has completed all requirements for the Ph.D. by August 31, 1972, she will, on the recommendation of the History faculty and approval of the Board of Regents, be offered a position as Associate Professor of History for the academic year beginning September 1, 1972."

Chancellor Kuhn approved this recommendation. (Stipulation No. 9.) The recruitment of Bettye Thomas was conducted and the offer of employment to her was made following standard UMBC operating procedures then in effect. (PX 72.)

13. Although it was not customary for the terms of a faculty member's contract to be publicized, the terms of Bettye Thomas' contract became known to the faculty shortly after her arrival and an extraordinary hostility developed thereafter in the history department toward Bettye Thomas.^{*/} Following Bettye Thomas' arrival at UMBC at the beginning of the 1971-72 academic year written and oral protests were made by history faculty members to UMBC administrators and others concerning the terms and conditions of Bettye Thomas' employment.^{**/}

14. An example of the hostility is found in a document from Assistant Professor Becker to Department Chairman Papadakis which was dated November 8, 1971, and which was forwarded to the Division Chairman, Dr. Graham. The document refers to, among other things, "great resentment" in the department of Bettye Thomas for "demanding the outlandish terms" of her employment. (PX 150.) On the basis of protests received concerning both the salary and rank in Bettye Thomas' contract Dr. Graham concluded that she had exploited both her race and the market place in obtaining the terms of her employment. (Graham Testimony 2/1, 2.)

15. Further expressions of dissatisfaction and hostility by faculty members included statements concerning the unfairness of giving the terms and conditions of Bettye Thomas' employment

^{*/} Austin Testimony 1/27; Levine Testimony 1/27, 31; Thomas Testimony 1/25, 26, 27; PX 150. The testimony by Dr. Arnold and other defense witnesses that Bettye Thomas was well treated in the history department after her arrival is rejected. The record includes, inter alia, evidence of: Dr. Becker's protest memorandum of November 8, 1971, sharply critical of Bettye Thomas (see Finding of Fact No. 14); an extraordinary February 10, 1972 department meeting to consider the terms of Bettye Thomas' contract (see Finding of Fact No. 16); unusually critical peer teaching evaluations (see Finding of Fact Nos. 18, 19); and faculty comments concerning Bettye Thomas' race and her employment terms (see Finding of Fact No. 15). This record warrants acceptance of the testimony of Dr. Levine, Dr. Austin, and Dr. Thomas that an air of hostility did prevail in the department.

^{**/} Stipulation No. 10; Graham Testimony 2/1, 2; Levine Testimony 1/27, 31; PX 150.

to one of her race and sex based on alleged exploitation of the market place.^{*/}

16. In February 1972 an attempt was made through an extraordinary departmental meeting by members of the history faculty with concurrence of the department chairman, Aristeides Papadakis, and the Chairman of the Social Sciences Division, Hugh Graham, to consider Bettye Thomas' contract provision for appointment to associate rank in the same way a new candidate for employment would be considered. Although the effort to treat Bettye Thomas as a new employee failed, no other member of the history faculty has ever been the object of such an effort.^{**/}

17. Bettye Thomas was excluded purposely from certain normal history department professional and social activities by members of the history department faculty.^{***/}

18. A departmental Teaching Evaluation Committee was convened in the Spring of 1972 to evaluate Bettye Thomas. The Committee, consisting of Drs. Mohr, Arnold, and Becker, and Bettye Thomas, agreed upon evaluation procedures on March 7, 1972, which were submitted to the department chairman. (Stipulation No. 25.) At least two of the three members of the 1972 peer

^{*/} Levine Testimony 1/27, 31; Becker Testimony 2/3, 4. Dr. Becker's testimony corroborated in part Dr. Levine's testimony about statements by faculty members in the fall of 1972 regarding the exploitation by Bettye Thomas of her race and the market place. Dr. Becker's testimony that his specific remark, "no one without the Ph.D. should have such a contract," might have been construed as "no woman and no black should have such a contract," made as a denial of the latter remark is so unlikely as to warrant rejection by the Court.

^{**/} Graham Testimony 2/1, 2; Levine Testimony 1/27, 31; Thomas Testimony 1/25, 26, 27; PX 16, 151.

^{***/} Levine Testimony 1/27, 31; Thomas Testimony 1/25, 26, 27. Although there is conflicting evidence concerning the professional and social exclusion of Dr. Thomas the Court accepts the testimony of Dr. Thomas and Dr. Levine as the more credible in view of the finding of hostility toward Dr. Thomas already entered (see Finding of Fact No. 13.) and the finding that Dr. Thomas was denied the opportunity for meaningful department service (see Finding of Fact No. 64).

evaluation committee which reviewed Bettye Thomas' teaching had earlier expressed dissatisfaction with, or hostility toward, Bettye Thomas and the terms and conditions of her employment. ^{*/}

Dr. Low, the black faculty member on the original 1972 peer evaluation committee (DX 315) was replaced by Dr. Becker before the committee considered Bettye Thomas' teaching. (Becker Testimony 2/3, 4; Mohr Testimony 2/4.)

19. Drs. Becker, Mohr, and Arnold submitted teaching evaluations to Bettye Thomas dated May 18 or 19, 1972, which were highly critical and which sharply contrasted with favorable student reports and earlier professional recommendations concerning her teaching. ^{**/} Bettye Thomas was informed by Dr. Levine of his belief that based on earlier expressions of hostility toward her by members of the peer evaluation committee she would not get a fair and impartial evaluation by the committee. (Levine Testimony 1/27, 31; Thomas Testimony 1/25, 26, 27.) Following receipt of these teaching evaluations, Bettye Thomas refused to meet with the teaching evaluation committee on May 24, 1972, and sought a conference at a higher administrative level. (Stipulation No. 27; PX 30.)

20. In May 1972 Bettye Thomas went to the local AAUP representatives for assistance with the peer evaluation problem and with her failure to receive a new contract by that time for ^{*/}

^{**/} Levine Testimony 1/27, 31; Graham Testimony 2/1, 2; PX 150.

PX 27, 28, 29. Dr. Levine testified that the evaluations of Bettye Thomas were the most critical he'd ever seen. The criticisms sharply contrast with the student evaluation "blue sheets" of Bettye Thomas and with her earlier contract review reports. (PX 18, 19, 22, 140.) Dr. Becker's peer evaluation criticizes Bettye Thomas for her "hagiographic" treatment of Martin Luther King, Jr., and calls one lecture "unsuitable." Dr. Becker's attempts to label his evaluation as ordinary and to obviate the impact of criticism of saint-like treatment of Martin Luther King, Jr. by saying he meant "one dimensional" treatment is rejected by the Court. The Court also notes that although Dr. Arnold testified there could have been no consultation by committee members because he typed his report immediately after the visitation, the class visits were on May 2 and 4, 1972, (DX 25) while the reports are dated May 18 and 19, 1972.

the 1972-73 academic year. She also checked the areas of criticism covered in the peer evaluations by adding questions to the student evaluations submitted at the end of her courses. (Thomas Testimony 1/25, 26, 27.)

21. When Bettye Thomas failed to complete her degree requirements by August 31, 1972, Dr. Hugh D. Graham, Dean of the Division of Social Sciences, inquired about the University's obligations under the original contract. Advice was sought from Dr. Morton S. Baratz, UMBC Vice Chancellor for Academic Affairs, who in turn referred the matter to the office of University of Maryland Vice President Hornbake by letter of October 12, 1972, stating, among other things, that Bettye Thomas had "not distinguished herself as a teacher," that "the History Department is not anxious to retain her," and that any attempt to deny her promotion "will probably provoke a racial confrontation."^{*/}

22. Dr. Hornbake orally requested from Maryland Assistant Attorney General Fishbein an opinion regarding the obligations of the University to extend or renew the appointment of Bettye Thomas on the terms of the original offer. (PI Tr. p. 97.) The Attorney General's Office advised that since Bettye Thomas had failed to complete the Ph.D. degree requirements by August 31, 1972, and there had been no department recommendation she need not be considered for appointment to the rank of Associate Professor upon subsequent completion of the Ph.D. degree. Although not charged with making academic decisions, the office of the Attorney General also stated that the original offer had been made without regard for the conditions that the University had postulated for the rank of Associate Professor.^{**/}

23. Chancellor Lee believed the Attorney General's opinion to be that the University had no obligation because of

^{*/} Stipulation No. 30; PX 35. Dr. Baratz testified he could not recall the source or basis for those comments and Dr. Graham testified that he was not the source and that he disagreed with the first two points quoted above.

^{**/} Stipulation No. 32; PI Tr. pp. 98, 102, 109; PX 41.

the failed Ph.D. date and that the contract should be changed. (Lee Testimony 2/3; PI Tr. p. . . . Chancellor Lee's subsequent decision to alter the rank in the original offer to Bettye Thomas was not based on a comparison of her credentials with others or with the March 5, 1957 criteria but on his desire to prevent a promotion without, in his opinion, "going up the ranks." (Lee Testimony 2/3.)

24. Dr. Baratz believed Attorney General's Opinion to be that the University had no obligation because of the failure of the Ph.D. date and that the contract should be changed because the March 5, 1957 criteria for appointments were not met.^{*} Dr. Baratz was not consulted by the Maryland Attorney General's office about the qualifications of Bettye Thomas before the opinion concerning her contract was issued. (Baratz Testimony 1/31, 2/1.) The basis of the subsequent judgment by Vice Chancellor Baratz that Bettye Thomas was not qualified for associate professor rank was not a comparison of credentials with others who had received associate rank but his view that it was inappropriate to award associate rank to one immediately upon receipt of the Ph.D. (Baratz Testimony 1/31, 2/1; PI Tr. p. 181.)

25. At UMBC it has been the customary practice to hire faculty members who had not yet received a Ph.D. on the condition that they receive the degree by a future specified date. (Stipulation No. 16.) At UMBC it has been the customary practice to grant, to faculty members hired without the Ph.D., extensions of time within which to complete requirements for the degree, and when the degree was awarded to grant those faculty members the employment status promised, usually the rank of assistant, in the original contract. (PI Tr. pp. 104-05; PFI Nos. 37, 38.)

^{*} Dr. Baratz's ready reference to the March 5, 1957 Statement was not explained when no one else at the time apparently referred to it and when there is no reference to it in the 1971 UMBC Faculty Handbook. PX 198.

26. Although Chancellor Lee and Vice Chancellor Baratz stated that Bettye Thomas was not qualified for associate professor rank because it was, in their view, inappropriate for one just receiving the Ph.D. to thereupon have associate rank, they have approved associate professor rank for persons who did not hold the Ph.D. (Stipulation No. 18.) At least two faculty members at UMBC held associate professor rank without having the Ph.D. at the time of Bettye Thomas' employment. (Stipulation No. 13.) Since January 1, 1970, UMBC has employed at least nineteen persons with the rank of professor or associate professor who did not hold the Ph.D.^{*/} UMBC today employs at least seven faculty members who hold associate professor rank and two who hold professor rank without the Ph.D., including two associate professors of English. (Stipulation No. 14; see PX 149, 185.)

27. Bettye Thomas' qualifications at the time of her initial employment included the following: several years teaching in higher education; director of honors program at Howard; offer of Directorship of University without Walls at Howard; offer of associate professorship at Washington Technical Institute; two scholarly publications; participation in national program of Association for the Study of Negro Life and History; Ford Foundation grant; recommendations of eminent historians; and specialization in urban history and Baltimore history. (Thomas Testimony 1/25, 26, 27.)

28. Except for not having completed her Ph.D., Bettye Thomas' objective qualifications at the time of her initial appointment were comparable to or superior to those of others at UMBC promoted to associate rank on or about 1971. (PX 177.) Except for not having completed her Ph.D., Bettye Thomas' objective qualifications at the time of her initial appointment are comparable to those of at least one other history faculty

^{*/} Plaintiff's Second Interrogatories (hereinafter PSI) Nos. 1, 2.

member promoted to associate rank in 1975. (PX 177.) Bettye Thomas would not have received associate rank under her original appointment without a Ph.D.

29. At the time of Betty Thomas' initial appointment black and female historians were in demand and, therefore, were the beneficiaries of above average terms and conditions of employment.^{*/} Bettye Thomas' terms of employment were unusual, but they were consistent with her qualifications and the market forces favoring black and female historians at the time of her employment, factors which affect all UMBC employment offers. Other UMBC faculty members have received terms of employment which are unusual but which also are consistent with special qualifications and the conditions of the market place. The current history department chairman was recruited at a salary, based on prior experience as editor of a major journal, higher than other full professors in the department (excluding the salary increment attributable to the Chairmanship) and higher than the salary paid to the Dean of the Social Sciences Division. (Webb Testimony 2/4; PFI 31; DX 378.)

30. UMBC Chancellor Dr. Calvin B. T. Lee, in the Fall of 1972 approved for Bettye Thomas an extension of time within which to complete the requirements for the Ph.D. degree coupled with the offer of promotion to the assistant professor rank upon the completion of the degree. (Stipulation No. 33.) Bettye Thomas was advised by the letter drafted by Dr. Graham dated November 29, 1972, that the portion of Dr. Peake's letter of appointment concerning academic rank was no longer applicable; that her status as lecturer and her salary would remain the same; that a recommendation was being made for the deadline for completion of all Ph.D. requirements to be extended to September 1, 1973, and that if she completed all requirements prior to that date, she would be recommended for appointment as of that date to the rank

^{*/} Levine Testimony 1/27, 31; Klein Testimony 2/3; Arnold Testimony 2/3; Mohr Testimony 2/4.

of assistant professor. (Stipulation No. 34; PX 43, 44, 45.) Dr. Graham's recommendation of assistant rank was based on his general knowledge of the qualifications of others in the division of social sciences and not on a comparison of qualifications reflected in personnel files. (Graham Testimony 2/1, 2.) No vote of the history department faculty concerning a recommendation for associate rank for Bettye Thomas was ever taken.^{*/}

31. By memorandum dated March 19, 1973, Bettye Thomas was advised of an extension for the completion date of all degree requirements until February 1, 1974. Bettye Thomas also was advised that if she completed the Ph.D. degree by that date, she would be appointed an assistant professor with the salary of \$16,400, otherwise her rank and salary would remain the same. (Stipulation No. 35; DX 58, 59.) Defendants, nevertheless, held out the prospect to Bettye Thomas that the rank dispute could be resolved upon completion of her Ph.D., even after notice that the associate rank term of her contract no longer applied.^{**/}

32. In January 1974 Bettye Thomas contacted Mike Fisher, a university official in the UMBC Chancellor's Office cognizant of minority affairs, concerning her dispute with UMBC over the terms of her contract and other employment problems. Although Mr. Fisher stated after a discussion of those matters that he would contact Bettye Thomas, he never did. (Thomas Testimony 1/25, 26, 27.)

33. Bettye Thomas completed her Ph.D. requirements in December 1973 and was awarded the rank of assistant professor in February 1974, an award she accepted stating her action was without prejudice to her claim to associate professor rank.^{***/}

^{*/} Stipulation No. 20; PFI No. 43; Baratz Testimony 1/31, 2/1; Graham Testimony 2/1, 2.

^{**/} Baratz Testimony 1/31, 2/1; Thomas Testimony 1/25, 26, 27; PX 55.

^{***/} Stipulation No. 36; PX 57, 76. Confusion surrounding the effective dates of the assistant professor contract resulted from Dr. Baratz's handwritten alteration of the typewritten terms without notifying anyone. This reticence was not explained. Baratz Testimony 1/31, 2/1; PX 76; DX 96, 102, 140.

34. Chancellor Lee's approval of the 1974 assistant rank for ~~P. T. Thomas~~ Thomas was not based on an evaluation of comparative credentials at that time but rather, on consummation of the fall 1972 decision regarding the rank believed appropriate for Bettye Thomas. (Lee Testimony 2/3.)

35. Bettye Thomas' objective qualifications in February 1974 compare favorably with the qualifications of persons promoted to associate professor rank before, at, and after her initial appointment. (PX 177.)^{*}

36. There has been no published statement of a change in UMBC standards for faculty rank or tenure since 1971. (Baratz Testimony 1/31, 2/1.)

37. With respect to treatment concerning original contract terms, those persons similarly situated to Bettye Thomas are those UMBC faculty employees who had contracts including a rank to be received on receipt of the Ph.D. and who got extensions of the date for receipt of the Ph.D. stated in the original appointment. No UMBC faculty members, other than Bettye Thomas, who failed to obtain the Ph.D. by the date specified in the original contract had the rank offered in the original employment agreement reduced. (Stipulation No. 19; PFI No. 40.)

38. UMBC has an affirmative action plan dated May 1973. Since academic year 1971-72 the number of full-time black faculty employees and their percentage of the faculty have been as follows:

^{*}/ Defendants attempted through testimony by the current Chairman of the UMBC History Department, Dr. Webb, to compare the "quality" of Bettye Thomas' scholarship in February 1974 with the "quality" of the scholarship of other history department associate professors at the time of their appointments. Dr. Webb's testimony is subject to so many limitations as to render it of no value to the Court. Dr. Webb, a modern European Historian, came to UMBC in the fall of 1975 to be Chairman of the history department; he is clearly not a disinterested expert witness. In addition, Dr. Webb admitted that he considered only publications in his comparisons, that he did not know if papers had been considered as scholarly work before he came to UMBC, that he had not read all of Bettye Thomas' dissertation, that he had not read all the publications of all the persons compared, and that he had not compared the scholarship of any of the persons who held associate rank in the UMBC Social Sciences Division at or near the time of Bettye Thomas' employment. (Webb Testimony 2/4.)

1971-72	17/185	(9.2%)
1972-73	19/222	(8.6%)
1973-74	21/263	(8.0%)
1974-75	21/285	(7.4%)
1975-76	16/252	(6.4%)

(PX 117; PX 126; PFI No. 35.) Since the opening of UMBC in 1966 the Social Science Division has employed a total of four black faculty members. In 1971-72 there were four black faculty members in the Division: the number of black faculty members in the UMBC Social Sciences Division is now one out of ninety-one. (PFI No. 32; Graham Testimony 2/1, 2.) The university-wide and division declines are unexplained by the defendants.

39. Bettye Thomas, a black female, is the only person at UMBC who was offered a lower rank upon extension of her Ph.D. date than the one contained in the original appointment. The change in rank was not based on a determination that Bettye Thomas was not qualified for the original rank after a comparison of credentials. There is evidence of racial animus on the part of the History Department faculty and the Social Sciences Division Dean who acted to initiate and approve the reduction in the rank offer. It is impossible to dissociate race from the actions taken to reduce the terms of Dr. Thomas' employment when the actors themselves claimed those terms were obtained by Dr. Thomas' exploitation of her race and the market place. Defendants have demonstrated no sufficient justification for the treatment of Bettye Thomas. The employment terms first offered to Bettye Thomas were unusual, but not out of keeping with her qualifications and the conditions of the market place at the time, factors which also affected other UMBC employment offers. The rank offered Bettye Thomas was not itself extraordinary in view of her qualifications for the rank. UMBC has employed many persons at associate rank or higher without the Ph.D. simply on the basis of unusual qualifications. Evidence of history department opposition to employment of Dr. Colvin, a woman, on grounds her

salary was too high (e.g., DX 178, 179, 185) scarcely proves nondiscriminatory in... in the case of opposition to Bettye Thomas, especially in view of the lack of department opposition to the terms and conditions of employment of a white male (Dr. Mendels) who received employment terms not negotiated by the department.^{*/} The extraordinary and unreasonable nature of the unjustified denial of the faculty rank for which Bettye Thomas contracted raises the inference that the denial was for racially discriminatory reasons. The historical, statistical breakdown of UMBC faculty employees by race supports the inference of discrimination.

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Becker Testimony 2/3, 4. Indeed, a reasonable inference is that sex discrimination was involved in the Colvin decision. The testimony of Dr. Austin, a female member of the history faculty, was that she did not oppose Dr. Colvin on salary or any other grounds. Austin Testimony 1/27.

Part II: Retaliation

40. In accordance with the requirement for probationary year review the History department Faculty Evaluation Committee indicated on February 15, 1972, that Bettye Thomas' performance during her probationary period was satisfactory and recommended that her appointment be continued for the 1972-73 academic year. Members of that committee were Dr. Low, Dr. Papadakis and Dr. Storch. (Stipulation No. 23; PX 18) A similar recommendation in connection with the successful completion of the probationary period and the continuation of the appointment for the 1972-73 academic year was made by the divisional promotion and tenure committee for history on March 2, 1972. Members of that Committee from the history department were Dr. Low, Dr. Papadakis, and Dr. Storch. (Stipulation No. 24; PX 19)

41. At UMBC the standard appointment to assistant professor is a three year initial appointment. In the probationary first year a formal review is made. In the second year review is made to determine whether a renewal of the contract will be offered. A standard renewal is for three additional years with a review in the fifth year for the tenure decision. (Stipulation No. 21) In March 1974 Bettye Thomas underwent probationary year review as an assistant professor. The members of the history faculty signing that review report were Dr. Arnold, Dr. Becker, and Dr. Low. (Stipulation No. 39; PX 69) The 1974 review was highly favorable in all respects, including evaluation of teaching, scholarship and service; and it contained no hint of marginal or unsatisfactory performance. The report did not mention the 1972 peer evaluation.

*/ Stipulation No. 40; PFI No. 44; PX 69.

42. Dr. Arnold contacted Bettye Thomas following the Spring contract review to discuss the committee report and told her the only opportunity for acceptance in the department was to be satisfied with assistant rank and not to pursue her claim for associate rank any further. Dr. Thomas understood Dr. Arnold's comments as a suggestion not to pursue her claim with the EEOC.^{*/}

43. The Court finds that no suggestion was made to Bettye Thomas to complete the peer evaluation or to initiate a new peer evaluation following the 1974 division report.^{**/}

44. On April 17, 1974, Dr. Becker wrote a "confidential" memorandum to Dr. Graham stating that the history department "has known about and appreciated your consistent opposition to the injustice of promoting" Dr. Thomas. (PX 157)

45. The NAACP filed a charge of employment discrimination against UMBC with the EEOC on behalf of Bettye Thomas on April 11, 1974. (Stipulation No. 41) Notice of the EEOC complaint was served on the defendants by May 8, 1974. An investigation was conducted and attempted conciliation failed

^{*/} Arnold Testimony 2/3; Thomas Testimony 1/25, 26, 27. At a minimum, Dr. Arnold's testimony that he told Bettye Thomas that the appropriate action against the university would be a contract action, which she should pursue if she had a case, supports the reasonableness of Dr. Thomas' understanding that she should not pursue her Title VII rights.

^{**/} There is conflicting testimony concerning whether there also was a suggestion made at this meeting that Bettye Thomas undergo a peer evaluation. Dr. Becker testified that Dr. Arnold was dispatched to tell Dr. Thomas to form a new committee to do a peer evaluation. Dr. Arnold testified he told Dr. Thomas she should "complete" the peer evaluation. Dr. Thomas, however, stated she did not remember any comment by Dr. Arnold regarding the peer evaluation. The Court finds it unlikely that such a request would not be included in the 1974 division report. Dr. Becker's testimony that it was not included because of a fear of Dr. Thomas' reaction is not persuasive. And in addition, the first 1975 departmental and division reports discuss the 1974 report and its context, but say nothing of a communication to Dr. Thomas regarding the peer evaluation. (PX 85, 86).

in the fall of 1974. (PFI No. 45; Baratz Testimony 1/31, 2/1)

46. The contract signed by Bettye Thomas provided that "The appointee shall be notified at least one year in advance of the expiration of any three-year term if it is the intention of the University not to renew the appointment." (Stipulation No. 42) In accordance with the requirement that Bettye Thomas be reviewed on the question of contract renewal and notified before June 30, 1975, the end of the second year of her appointment, she was reviewed by the History Department Promotion and Tenure Committee in March, 1975. (Stipulation No. 43) The 1975 history department committee held a total of four meetings during which there was little or no discussion of Bettye Thomas' qualifications, and during which committee members such as Dr. Storch, Dr. Arnold and Dr. Becker made remarks about Bettye Thomas unrelated to her comparative qualifications for contract renewal. (Levine Testimony 1/27, 31)

47. In a report dated March 4, 1975, the history departmental promotion and tenure committee recommended by a vote of 3 in favor and 3 opposed that Bettye Thomas' contract not be renewed. The committee also rejected offering Bettye Thomas a one-year extension by a vote of 4 to 2, and a two-year extension by a vote of 5 to 1. The Report noted her refusal to participate in the peer evaluation required by the History department Plan of Organization and Rules of Procedure. It also cited her lack of service to the History department. The report noted that the 1974 committees had been made aware of Dr. Thomas' charge of discrimination against members of the history department. Persons who signed the March 1975 history department report were Dr. Arnold, Dr. Becker, Dr. Papadakis, Dr. Storch, Dr. Levine and Dr. Mohr. (Stipulation Nos. 55, 56; PX 85) Dr. Low, the only other black in the department, did not participate in the

review or sign the 1975 departmental report, although he had signed the 1972 and 1974 promotion and tenure reports concerning Bettye Thomas. (Stipulation No. 57)

48. The vote of the departmental committee was as follows: Arnold and Papadakis for one year renewal, Levine for two year renewal; and Mohr, Becker and Storch for termination. (Arnold Testimony 2/3) Dr. Storch was not a member of the history department at the time he signed the 1975 departmental report, casting the "swing" vote insuring a recommendation of termination. No basis for Dr. Storch's voting participation on the departmental committee has been shown.
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49. A minority report appended to the 1975 history department report disputed the points in the majority report and noted the failure to give Bettye Thomas prior notice of the alleged inadequacies. The minority report was drafted by Dr. Levine in an attempt to conciliate the dispute over Bettye Thomas' continued employment at UMBC (Levine Testimony 1/27, 31).

50. The Chairman of the Social Sciences Division, Dr. Graham, appointed the members of the 1975 division committee from the history department, who were Dr. Becker, Dr. Mohr, and Dr. Papadakis. (Stipulation No. 59; PFI No. 11) Dr. Graham also appointed Dr. Becker as chairman of that committee. (Becker

*/ Dr. Storch transferred to the Humanities Division after promotion to associate rank in the Social Sciences Division and was a member of the Humanities Division while participating on Bettye Thomas' committee. (PI Tr. p. 89, Baratz Testimony 1/31, 2/1). Defendants failed to establish authority for Dr. Storch's voting participation contrary to the department's constitution. (DX 189). In addition, the resolution defendants cited for "authority" for Storch's participation specifically includes the limiting phrase, "unless explicitly prohibited by departmental rules." (DX 305A) Dr. Levine's testimony that Dr. Storch was used to "pack" votes in the department and that he no longer votes on department matters remains uncontradicted.

Testimony 2/3. 4) All three of the history department members of the 1975 division committee were known to have protested the terms and conditions of Bettye Thomas' employment and/or to have expressed hostility toward her. (Levine Testimony 1/27, 31).

Dr. Graham's choices effectively guaranteed a negative decision
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for Bettye Thomas.

51. The initial report of the spring 1975 Social Science Division review followed the department report by six days and also recommended no renewal of Bettye Thomas' contract. (Stipulation No. 58). In a memorandum dated March 10, 1975, supported by the Dean of the Division of Social Sciences, the Divisional Promotion and Tenure Committee for History recommended that Bettye Thomas' contract not be renewed by a vote of 5 in favor, 1 opposed, and 1 abstention. The committee rejected a one-year extension of her contract by a vote of 5 to 1, with 1 abstention, and two or three year extensions by a vote of 6 to 0, with 1 abstention. It also cited her refusal to participate in the required peer evaluation and her failure to meet the requirement of departmental service. (Stipulation No. 60; PX 86)

52. The negative comments in the March 1975 division report contrasted sharply with favorable comments in the 1974 division report in the three areas of teaching, scholarship and service. The negative March 1975 division report also contrasted sharply with the favorable 1972 department and division review reports. The March 1975 division report makes no mention of the favorable student evaluations of teaching noted in the 1974 and 1972 reports. (PX 18, 19, 69, 85, 86) Negative reports

*/ Dr. Graham testified that he had no concern about the fairness of the committee, although Dr. Becker and Dr. Mohr had served on the aborted peer evaluation committee and Dr. Papadakis had written Dr. Graham complaining about Dr. Thomas' attempt to appeal the evaluation, although Dr. Becker had written memos to Dr. Graham dated November 8, 1971, and April 17, 1974, which were highly critical of Dr. Thomas, and although Dr. Papadakis had forwarded the November 8, 1971 Becker memo to Dr. Graham and had called the extraordinary February 10, 1972 meeting to reconsider Dr. Thomas' contract.

by promotion and tenure committees are as a matter of practice not overruled by the UMBC administration. (Stipulation No. 61)

53. Bettye Thomas responded to the History departmental Promotion and Tenure Committee reports in a memorandum dated March 14, 1975, contesting the negative findings of the division committee in the areas of teaching and service. (Stipulation 62; PX 88)

54. On March 18, 1975, Vice Chancellor Baratz recommended to Chancellor Lee a three year renewal of Bettye Thomas' contract as an assistant professor, noting: that her scholarship "more than meets customary requirements for retention at the assistant-professorial level;" that "with one possible exception . . . her teaching performance has been of high quality;" that her committee conceded "she has given amply of her time to Divisional and campus-wide committees." (Stipulation No. 66; PX 163)

55. On March 20, 1975, Dr. Graham, after discussing with Dr. Baratz the possibility of an administrative overturning of the March 1975 Division report and the Dean's recommendation, requested in writing that the Vice Chancellor return the report for revision in view of Bettye Thomas' response, the teaching evaluation data, and evidence of alleged fraudulent misrepresentation of credentials. (PX 164). This extraordinary memo's reference to undesirable inferences concerning "libel and slander" and "threats and litigation" resulting from administrative overruling of the division committee could only have been intended to refer to the exercise by Dr. Thomas of her Title VII rights. It is a reasonable inference that Dr. Graham intended to interfere with her exercise of these rights. On March 20, 1975, Vice Chancellor Baratz sent the March 1975 division report back to the division committee for further substantiation. (Stipulation

*/ Dr. Graham testified that he had never sent another document like the one in question (Graham Testimony 2/1, 2).

No. 63) recommendations of both the division committee and Dr. Graham "raise more questions than answers," Dr. Baratz posed the following questions concerning the March 1975 division report:

- (a) what substantive evidence the division committee relied on in determining Bettye Thomas' teaching to be substandard while reporting that the student course evaluation questionnaire results and student blue sheets are favorable to her;
- (b) what evidence supports the assertion that Dr. Thomas' scholarly work meets accepted university standards, specifically what are the opinions of Dr. Thomas' "mentors or fellow historians" about her scholarship potential; and
- (c) in what specific respects has Dr. Thomas failed to serve adequately the department of history, and to what degree have divisional or university service activities offset alleged deficiencies in departmental service. (PX 89)

56. Bettye Thomas made a formal request for outside review of her scholarship in connection with the second 1975 division committee review, offering a list of 20 scholars who could judge her work; and although Vice Chancellor Baratz indicated approval of her request, no outside review occurred. (Stipulation No. 67; PX 92, 93, 95) It has been the policy of the Social Sciences Division to seek external letters of assessment of candidates for promotion and tenure review in cases when promotion or termination seemed likely, but not in most probationary or contract renewal cases. (PX 153; Levine Testimony 1/27, 31) Dr. Graham offered no satisfactory explanation for the failure to include Dr. Thomas within that policy. He was aware at the time of

his request that termination was an issue; he was aware of hostility in the department toward Dr. Thomas; he agreed that the twenty scholars offered were not Dr. Thomas' personal or professional acquaintances; and he was aware that promotion and tenure committee deadlines are flexible.^{*/}

57. The division committee requested in connection with the second 1975 review a copy of Bettye Thomas' publications and other evidence of scholarship, including published work, unpublished papers, dissertation, and the manuscript accepted by the University of Illinois Press. Bettye Thomas submitted three articles and a chapter from her dissertation to the Committee. (Stipulation Nos. 64, 65; PX 91, 92)

58. A second 1975 division report from the original committee, dated May 16, 1975, was made to substantiate the criticisms in the first report, and it repeated the same recommendation for no renewal. In answer to the questions raised in Dr. Baratz's memorandum of March 20, 1975, the Divisional Promotion and Tenure Committee for History submitted its memorandum dated May 16, 1975, in which the Committee reiterated its inability to endorse Bettye Thomas in the area of teaching, and in particular her refusal to participate in a peer evaluation. Based on the materials that Bettye Thomas had made available to the Committee, it found her work was "descriptive and narrative,

*/ Graham Testimony 2/1, 2. The Court rejects the testimony of Dr. Becker that no outside review of scholarship was necessary because the first review had been favorable. Additional scholarship materials were requested for review and the second report on scholarship was highly critical. (PX 98) The suggestion in Dr. Becker's memo of April 4, 1975 (PX 165A) that Dr. Thomas' request was in fact one for review by her "professional acquaintances" was disputed by Dr. Graham and is not acceptable to the Court, especially in view of the fact that at least one of the twenty persons suggested by Dr. Thomas appeared as an expert witness for the defense in this case. (Stephan Thernstrom)

"... is theoretical or interpretive." The Committee also noted Bettye Thomas' lack of required service to the department, as well as her unprofessional behavior on the College Park campus characterized as negative service to the department. (Stipulation 68; PX 98)

59. Dr. Thomas' teaching was criticized in the May 16, 1975 report on the substantive basis of the 1972 peer evaluations, which had not been mentioned at the 1974 division review, and which had been discussed as a procedural failing in the first 1975 report. Student evaluation sheets were not mentioned, although their purpose is to assist promotion and tenure deliberations (PFI 33). When questioned by the Court Dr. Becker explicitly stated that the criticism of Dr. Thomas' teaching was both substantive and procedural, although he later strongly asserted that only the failure to complete the peer evaluation was essential. The Court has weighed this inconsistency, the available student course evaluation questionnaires which rate Bettye Thomas as an excellent teacher^{*/} (PX 140), the fact that the preliminary peer evaluations are not normally used for promotion and tenure purposes (Becker Testimony 2/3, 4), and the fact that Dr. Arnold told Dr. Thomas in the spring of 1974 that both he and Jim Mohr knew she was a good teacher (Arnold Testimony 2/3). The Court finds that the substantive criticism of Bettye Thomas' teaching was unfounded, and was known to the members of the 1975 division committee to be unfounded, raising the inference that reliance on substance of the 1972 peer evaluation in 1975 was pretextual.

*/ The unrebutted testimony of students Sanchez, Chapman and Koslovsky also praised Dr. Thomas' teaching.

**/ Moreover, the heavy reliance on peer evaluation for promotion and tenure decisions claimed by the defense witnesses is inconsistent with the fact that not one of those witnesses has ever undergone a UMBC peer evaluation, though each has been promoted since the effective date of the evaluation procedure. (Arnold Testimony 2/3; Becker Testimony 2/3, 4; Mohr Testimony 2/4; Graham Testimony 2/1, 2)

60. In two years Dr. Mohr was Chairman of the Department of History while Dr. Thomas was at UMBC he never personally urged her to undergo a peer evaluation. (Mohr Testimony 2/4) Dr. Thomas' testimony is that she was never urged in writing to complete a peer evaluation and she does not remember being personally urged to do so by anyone.

61. Although Dr. Becker testified that the 1975 committee limited its review of scholarship on the second review because it already had found it satisfactory, Dr. Thomas' scholarly work was criticized in the May 1975 report not on the basis of what her "mentors and fellow historians" thought of her scholarship potential but by characterization of her work as "descriptive and narrative, rather than theoretical and interpretive," a negative description of scholarship which contrasted with not only the favorable 1974 division report, but also with the first 1975 division report. Both sides presented expert evidence on the question of the quality of Dr. Thomas' scholarship.^{*/} Based on an evaluation of that evidence the Court finds that Dr. Thomas' scholarship compares very favorably with other historians at the same point in their careers, that her dissertation was well received, is highly regarded and is under contract for publication by the University of Illinois Press, and that the publication of articles in the Journal of Negro History and presentation of papers at national historical

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Plaintiff presented four experts in the fields of urban and black history including the editor of the Journal of Negro History, a member of the editorial board of the Journal, an editor of a book series at the University of Chicago Press, and an editor of a book series at the Oxford University Press. Defendants presented two scholars in Dr. Thomas' fields and two outside of those fields (Galambos [economic history] and Webb [European history]). The latter two must be disregarded. Plaintiffs' experts, of course, praised Dr. Thomas' work while defendants' experts described her work as insufficiently analytical and below average. As one defense expert (Thernstrom) candidly admitted, criticisms of another's scholarship can stem simply from one's own methodological views.

conferences represent significant scholarly achievements by Dr.
*/
Thomas.

62. Dr. Thomas' service to the history department was criticized in the May 1975 division report without specific reference to her divisional and university service activities which were described in the 1974 promotion and tenure committee report and which were commented on favorably in the first 1975 division report. A new charge of "negative" service is in the May 1975 report. Dr. Thomas was accused of making "scurrilous descriptions of the history faculty at UMBC as racists" while being interviewed by the history department at the College Park campus of the University of Maryland. (PX 69, 86, 98). Dr. Becker testified that Dr. Thomas' service to the University and to the division was satisfactory but that her service to the department was low. (Becker Testimony 2/3, 4). That testimony and the second 1975 report both failed to answer Dr. Baratz' question on return of the first report concerning the extent to which university or division service "offset alleged deficiencies in departmental service." (PX 89). Dr. Baratz was not convinced that insufficient service was a basis for negative action against Dr. Thomas, saying in his final recommendation on June 17, 1975, to Chancellor Lee that her service "has been generally comparable to that of other faculty members with her current status." (PX 166).

63. Although Dr. Mohr claimed he checked the remarks attributed to Dr. Thomas at College Park by Dr. Rundel, the latter's testimony neither supports Dr. Mohr's characterization of those remarks nor refutes the testimony of Dr. Harlan, who was present at College Park, that it was the College Park faculty members who directed the discussion to Dr. Thomas' claim of discrimination

*/ The Court notes the favorable comments on Dr. Thomas' scholarship by Dr. Graham (PX 58,60) and Dr. Baratz (PX 51).

and that it was Dr. Rundell who sought unsuccessfully to get Dr. Thomas to characterize the UMBC faculty or faculty members as racist. (Harlan Testimony 2/3; Rundell Testimony 2/3)

64. There is substantial evidence that Bettye Thomas was denied the opportunity for the departmental service for lack of which she was faulted and that she did not engage in the alleged negative service which was recklessly charged. According to the department constitution the Chairman appoints "area assistants" and the recruiting committee. The chairman plays a leading role in other, elective service. (DX 189) The testimony of Dr. Austin and Dr. Levine that meaningful department service could not be obtained by volunteering is supported by Defendants' Exhibit 382 which purports to list principal administrative and committee assignments. Of the ten categories on the list five are appointed by the chairman, one is made up of the chairman and his appointees, and two are elected by lot. The testimony of Dr. Levine and Dr. Thomas that the latter was systematically excluded from service is buttressed by the department's failure in five years ever to assign Dr. Thomas to one of the appointive positions. The testimony of Dr. Webb and Dr. Mohr, who held the chairmanship of the department for three of Dr. Thomas' five years at UMBC, was that Dr. Thomas asked them for department service, but that they assigned none. (Mohr Testimony 2/4; Webb Testimony 2/4) The failure to convince Dr. Baratz that Dr. Thomas' service was insufficient, the failure to provide Dr. Thomas with the opportunity for "principal" department service, and the extensive though completely erroneous allegation of "negative" service by Dr. Thomas while interviewing at the College Park campus together raise the inescapable inference that the alleged insufficiency of Dr. Thomas service was arrived at arbitrarily and unfairly and was a pretextual reason for non-renewal of Dr. Thomas' contract.

65. By memorandum dated May 19, 1975, Dean Hugh D. Graham of the Division of Social Sciences endorsed the report of the Divisional Promotion and Tenure Committee for History

and raised the issue of Bettye Thomas' misrepresentation of her credentials at the time he was appointed. (Stipulation No. 69; PX 99) Although Bettye Thomas was given an opportunity to reply to the May 1975 division report, Vice Chancellor Baratz stated on May 21 (two days after the second division report was forwarded to him) that he had made up his mind on the matter with or without Bettye Thomas' response and that he recommended no renewal of Dr. Thomas' contract. (Stipulation No. 70; PX 101) Chancellor Lee ordered Dr. Baratz to follow standard procedures and wait for Dr. Thomas' response. (Lee Testimony 2/3) Bettye Thomas responded to the amplified Division Report in a memorandum dated June 11, 1975. (Stipulation No 71; PX 108).

66. On June 17, 1975, Vice Chancellor Baratz recommended that Bettye Thomas' contract be terminated, stating: she has "performed adequately as a teacher;" her service to the University "has been generally comparable to that of other faculty members with her present academic status;" and that her "scholarship falls considerably short of the standards set by her colleagues." (PX 166) The inescapable conclusion from that document is that Dr. Baratz' recommendation was based on an evaluation of Dr. Thomas' scholarship. Dr. Baratz testified that he personally determined Dr. Thomas was not qualified for contract renewal by a comparison of credentials. (Baratz Testimony 1/31, 2/1.) The conflict between Dr. Baratz' reason for recommending non-renewal (unacceptable scholarship) and committee chairman Becker's reason (service and teaching, but not scholarship) raises the inference that arbitrarily different substantive standards of performance were applied to Dr. Thomas depending on the particular negative recommendation to be justified by the defendants.

67. Although responsible for the UMBC affirmative action program Dr. Baratz believed he had no responsibility to investigate a claim by Dr. Thomas that a promotion and tenure action

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was based on other than merit. Dr. Baratz testified that the contrast between ... 1974 and 1975 promotion and tenure committee reports raised no questions in his mind, that his initial, very unusual recommendation of a three year contract renewal in the face of a committee recommendation of no renewal raised no concern with him about the integrity of the proceedings below him, that the March 20, 1975 document from Dr. Graham to him discussing "libel and slander" and "threats and litigation" and the coupling of a charge of "fraudulent misrepresentation" with the contract renewal decision gave him no concern about Dr. Graham's ability to handle the matter of Dr. Thomas' employment fairly.

68. Bettye Thomas' objective qualifications in the spring of 1975 were superior to those of at least six others in the history department at the time they had their initial three year appointments as assistant professors renewed for three years. Among other objective bases for comparison, these six had no scholarly publications to their credit. (PX 177).

69. Pursuant to agreement between the parties to permit further negotiations, no final decision was made on Dr. Thomas' contract renewal until September 30, 1975. (Stipulation No. 73) By letter dated September 30, 1975, the UMBC Chancellor endorsed the recommendation for no renewal of Bettye Thomas' appointment, but made an offer of one year employment conditioned on acceptance of conditions. Bettye Thomas' employment would have terminated on June 30, 1976, unless the September 30, 1975 offer was accepted. (Stipulation Nos. 74, 75; PX 109; 110) The Chancellor's action did not overrule the recommendations of the

*/ According to Dr. Baratz Dr. Thomas should have pursued any claim though "other avenues" outlined only in UMBC Senate minutes. Dr. Baratz did not, however, give Dr. Thomas personal or written notice of any appeals procedures. (Baratz Testimony 1/31, 2/1.)

division committee (Stipulation No. 76) but affirmed the basis for adverse action by the university and failed to address the issue of misrepresentation. (PX 109, 110)

70. In making his decision concerning Bettye Thomas' employment Chancellor Lee relied on the documents before him and on his subordinates. He made no independent investigation of the second 1975 division report or of the allegation of misrepresentation. Although he made no personal review of Dr. Thomas' qualifications compared with others who received standard contract renewals the stated basis for his action was an evaluation of Dr. Thomas' service, teaching, and scholarship, not alleged misrepresentations. (Lee Testimony 2/3) Chancellor Lee testified he made no comparison of the 1974 and 1975 committee reports, that he was not aware of the March 20, 1975 document from Graham to Baratz seeking a return of the first 1975 report, and that the change by Dr. Baratz from his initial recommendation of a standard three year contract renewal to his final recommendation of no renewal gave him no cause to question the integrity of the proceedings. Chancellor Lee required no check by himself or others of the proceedings. (Lee Testimony 2/3).

71. The September 30, 1975 offer to Bettye Thomas was not the standard contract renewal for an assistant professor. Since at least January 1, 1971, Bettye Thomas had been the only UMBC Social Sciences Division faculty member to have been offered a one year appointment as assistant professor in renewal of the original three year assistant professor appointment. (Stipulation 77, 79; PSI No. 9) On October 2, 1975, Bettye Thomas rejected this offer. (Stipulation No. 78)

72. Although qualified for a standard three year contract renewal Bettye Thomas did not receive one. There is evidence that the failure to grant a standard renewal was related to

Dr. Thomas' refusal to cease pursuing her claim to associate rank. The complete contrast between the 1974 and 1975 reports, and the shifting reasons for negative action (e.g. from the substantive aspects of peer evaluations to false evidence of "negative" service to insufficient scholarship) during the course of the 1975 review indicate a set of arbitrary substantive standards applicable only to Dr. Thomas. The procedural irregularities indicate a conscious effort to achieve a negative recommendation for Dr. Thomas. The use of Dr. Storch in the department proceedings, the denial of outside scholarship review without reason, the appointment by Dr. Graham of a committee known to be hostile to Dr. Thomas, Dr. Graham's allegation of fraudulent misrepresentation, the failure to investigate the proceedings concerning Dr. Thomas' review and tenure decision in the face of ample evidence that the process might be based on other than merit, and letting the negative recommendation stand while offering a one year contract as a sop to Dr. Thomas are all actions without substantial justification by the Defendants. The defendants did not afford Bettye Thomas a promotion and tenure review and decision on the basis of the merit for the purpose of renewal of her contract as an assistant professor. The arbitrary and capricious nature of the denial to Bettye Thomas of a promotion and tenure review and decision based on merit raises the inference that the denial was in retaliation for the filing of an EEOC complaint on Bettye Thomas' behalf.

Part III: Alleged Misrepresentation

73. An allegation of misrepresentation of credentials by Dr. Thomas to gain employment at UMBC was raised by Dr. Graham during the 1975 contract review of Dr. Thomas. (PX 99, 164) Although defendants' witnesses have stated that the allegation was not a basis for action taken affecting Bettye Thomas,^{*/} the charge was known and circulated during the decision making regarding Bettye Thomas' contract renewal. Dr. Becker and Dr. Mohr, members of the 1975 departmental and divisional committees knew of the allegation before the departmental committee met, and Dr. Baratz was informed by Dr. Graham by March 20,
^{**/} 1975. Dr. Graham included the charge in his endorsement of the Second 1975 division committee report. (PX 99.) The Court finds that the defendants knew or had reason to know that the alleged misrepresentation was simply a mistake.

74. Bettye Thomas was notified on February 12, 1975, to ensure that her dossier was up to date. She, therefore, submitted a revised curriculum vitae which listed her rank at Washington Technical Institute as Assistant Professor and the rank held at William and Mary College as Associate Professor. (Stipulation Nos. 44, 48; PX 83.) It is evident from the face of the 1971 Bettye Thomas resume that she had been employed simultaneously by Howard University, Washington Technical Institute, and the College of William and Mary. It is also evident that her employment by the College of William and Mary was on a part-time basis. (Stipulation No. 47; PX 4.) While the Washington Technical Institute rank is listed "associate" in the 1971 resume submitted by Dr. Thomas, the same position is listed as "assistant" in her faculty information sheet dated August 12, 1971, and in a curriculum vitae submitted for her UMBC personnel file in 1972. (PX 12, 14.)

^{*/} Lee Testimony 2/3. Such a statement is at least an implicit admission that the misrepresentation charge was groundless.
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Graham Testimony 2/1, 2; Becker Testimony 2/3, 4; Mohr Testimony 2/4; PX 164; DX 127.

75. Dr. Graham, by letters dated February 27, 1975 and March 12, 1975, requested that Dr. Thomas explain the discrepancies between her WTI rank as set forth in her 1971 curriculum vitae and her updated curriculum vitae submitted February 17, 1975. (Stipulation No. 50.) Although Dr. Graham had inquired about Dr. Thomas' appointment at Washington Technical Institute in the fall of 1974, he did not bring it to the attention of Dr. Thomas until the spring of 1975 and never approached her personally about the matter. (Stipulation No. 49; Baratz Testimony 1/31, 2/1.)

76. Although he claimed that the misrepresentation issue was to be left out of the contract renewal decision process, Dr. Graham, raised the rank discrepancy issue immediately after Vice Chancellor Baratz raised questions about the sufficiency of the division's first negative 1975 recommendation. (PX 164; DX 127; Graham Testimony 2/1, 2.) After Dr. Baratz returned the first 1975 division review for more evidence Dr. Graham charged in his endorsement to the second division report that Bettye Thomas had consciously misrepresented her academic credentials to gain employment at UMBC. Dr. Graham stated that in the spring of 1975 Bettye Thomas had changed her resume by stating that her rank at Washington Technical Institute was assistant rather than associate professor. (PX 99.) Dr. Graham was not employed at UMBC at the time the decision to employ Bettye Thomas was made. (Graham Testimony 2/1, 2.) The Vice Chancellor, Dr. Baratz, originally considered the discrepancy "conscious misrepresentation" based on the documentary evidence presented by Dr. Graham. (PX 101.)

77. On June 10, 1975, in a letter to Dr. Baratz, Bettye Thomas provided her explanation of the discrepancies which existed on her curriculum vitae and described the representations made concerning her employment. (Stipulation No. 52; PX 107.) The listing of associate rank at Washington Technical Institute

This is an error not repeated in other documents in Dr. Thomas' personnel file, such as the August 1, 1971 faculty information sheet and the curriculum vitae submitted in 1972. (PX 12, 14.) It is evident from the face of the 1971 Bettye Thomas resume that her employment by the College of William and Mary was on a part-time (or adjunct) basis. (Stipulation No. 47.) Dr. Graham testified that he told an EEOC investigator that the William and Mary rank was meaningless from UMBC's point of view because it was part-time. (Graham Testimony 2/1, 2.) Dr. Thomas' continued listing of her rank at William and Mary as adjunct associate to that time was based on the statements of the representative of that school with whom she had personal contact. (PX 107; Wishon Testimony 2/2.)

78. After the rank discrepancy issue was raised no effort was made by UMBC administrators to check with Dr. Peake concerning representations made to him by Bettye Thomas in the spring of 1971 and his reliance thereon, to check Dr. Thomas' explanation of the discrepancy or even to check Dr. Thomas' personnel file for documents such as the 1971 faculty information sheet correctly listing the Washington Technical Institute rank. (PI Tr. p. 91; Wishon Testimony 2/2; Stipulation No. 54.)

79. On June 17, 1975, Vice Chancellor Baratz stated in writing that Bettye Thomas had "offered convincing rebuttal of the allegation that she consciously misrepresented aspects of her employment prior to joining our faculty." (Stipulation No. 53; PX 166.)

80. There is evidence that resume discrepancies are not uncommon. (Levine Testimony 1/27, 31.) Dr. Graham admitted that in his own resume (DX 240) the faculty rank (assistant or associate) held at San Jose State College is not clear and is possibly misleading. (Graham Testimony 2/1, 2.) Whether or not the allegations of misrepresentation directly affected the decisions made concerning the renewal of Dr. Thomas' contract,

the issue clearly permeated the proceedings. The careless investigation, failure to check with Dr. Thomas personally or to check her personnel file, and readiness to assume the worst constitute an amazing parallel to the treatment by defendants of the allegations of unprofessional conduct by Dr. Thomas on the College Park Campus. Both cases are examples of the extraordinarily unfavorable treatment afforded Bettye Thomas in connection with the contract renewal decision unrelated to her qualifications for that renewal. This extraordinary treatment raises the inference of intentional discriminatory retaliation against Dr. Thomas for having exercised her Title VII rights.

Part IV: Economic Loss

81. There is not a standard salary scale for UMBC faculty and there are great variations in salaries paid. Dr. Baratz testified that it is not surprising that a chairman of the history department makes more than the dean of the social sciences division. (Baratz Testimony 1/31, 2/1; PFI No. 17.) Ad hoc general guidelines for UMBC faculty raises, however, have been issued on an irregular basis since 1971. (Stipulation No. 81; PFI No. 17.) But there are, and have been, no written, objective standards for the award of specific salary increments to individuals at UMBC. (PFI 14, 17; Baratz Testimony 1/31, 2/1.) Salary increases are based on a recommendation by the department chairman upon approval by the administrative chain of supervisors. (Baratz Testimony 1/31, 2/1; PFI No. 14.)

82. Defendants failed to grant Bettye Thomas the normal salary increment for award of the Ph.D. and the promised concomitant promotion to associate professor rank on February 1, 1974.^{*/} A typical raise for promotion from instructor to assistant would have been \$1,000, and for promotion from assistant to associate would have been \$1,500, exclusive of any merit or cost of living raise. (Baratz Testimony 1/31, 2/1; PFI No. 31; DX 378.)

83. Defendants granted substantially smaller than normal salary increments to Bettye Thomas for salary years 1973-74, 1974-75, and 1975-76. The yearly guidelines for salary raises, yearly average raise in the history department, and yearly average raise for Dr. Thomas were:

^{*/} Dr. Baratz testified that the assistant rank awarded Bettye Thomas in 1974 was not a promotion although the \$600 raise for 1974 was tied by Dr. Graham to completion of the Ph.D. (DX 61.) Had she not completed the Ph.D. in 1974 Bettye Thomas was not to have received any salary increment for 1973-74 -- although no one else in the department could be named by Dr. Baratz who had received no increment. The \$600 raise for 1973-74 was paid apparently erroneously from September 1973. (DX 140.)

	<u>Guidelines</u>	<u>Department</u>	<u>Thomas</u>
1975-76	7%		4.1%
1974-75	7%	7.8%	3.7%
1973-74	Not more than 10%	6.0%	3.8%
1972-73	None	7.0%	5.3%

(DX 378; PFI Nos. 17, 31.)

84. The failure to grant Dr. Thomas the normal salary increment for promotion to associate professor in February 1974, the failure to grant normal salary increments to Dr. Thomas for salary years 1972-73, 1973-74, 1974-75, 1975-76, and the failure to employ Dr. Thomas for academic year 1976-77 resulted in the following economic loss to Dr. Thomas in the following estimated amounts of lost wages:

1973-74	950
1974-75	2050
1975-76	2500
1976-77	<u>20200</u>
	\$25700

85. The job market for historians is bleak. (PI Tr. pp. 44-5, 62, 73.) There is unrebutted evidence in the record that Dr. Thomas has made continuing, reasonably diligent good faith efforts to find employment in her profession comparable to her employment at UMBC, without success to this date. (Thomas Testimony 1/25, 26, 27.)

Part V: General Findings of Fact

The ultimate issue at which must necessarily be decided by the court is whether two related series of events, one resulting in Dr. Thomas not being promoted and the other culminating in her dismissal from UMBC, occurred because of her race and because of her filing a complaint. With little direct evidence of racial motivation, courts must weigh the relevant circumstantial evidence to determine why an event or series of events happened. In his recent opinion in Arlington Heights v. Metropolitan Housing Corp., No. 75-616 (U.S. January 11, 1977)^{*/} Mr. Justice Powell sets forth guidelines for the factual analysis necessary to arrive at such a decision. The first level of inquiry is an assessment of the impact of the events in question. Here there is no doubt that the impact was severe, and that it affected a member of a racial minority. Dr. Thomas, a black female, was offered lower faculty rank upon the extension of her Ph.D. completion date. And, she did not receive a standard contract renewal, although she was at least as well qualified as the other history department assistant professors were on their receipt of the standard three year renewal.

In addition to impact, Mr. Justice Powell lists four other alternative areas of proper inquiry to prove discriminatory intent: a clear pattern of state action unexplainable on grounds other than race;^{**/} the historical background of the official decision; departures from normal procedural or substantive

^{*/} Although it is not necessary to prove intent to discriminate to establish a violation of Title VII, intentional discrimination and retaliation are violations of Title VII, and Fourteenth Amendment cases such as Arlington Heights contain guidance for Title VII cases. G.E. v. Gilbert, No. 74-1589 (U.S. December 7, 1976).

^{**/} The government does not contend that this is a case involving a "clear pattern of state action."

standards; and the administrative history of the decision. The historical surround of the employment decisions reflected in the decrease in the percentage of black faculty at UMBC and the decrease in the number of black faculty in the Social Sciences Division is inferential evidence of discriminatory intent. The principal areas of inquiry in this case, however, are in departures from substantive or procedural standards and the administrative history of the decision affecting Bettye Thomas.

The substantive basis for denying Dr. Thomas the promotional opportunity for which she contracted shifted from lack of qualifications for associate rank to failure to "go up the ladder." Similarly the substantive basis for not renewing Dr. Thomas' contract shifted from teaching to service to scholarship. The procedural irregularities in both employment decisions are legion:

- (1) the February 10, 1972 history department meeting to consider Dr. Thomas' contract was the only meeting of its kind ever held;
- (2) the participation of Dr. Storch in the 1975 department review of Dr. Thomas on contract renewal while he was not a member of the department;
- (3) the absence of Dr. Low, the only black faculty member other than Dr. Thomas, from the 1975 review process;
- (4) the denial of outside review of scholarship without giving a reason;
- (5) the appointment by Dr. Graham of a committee known to be hostile to Dr. Thomas;
- (6) the injection of a false misrepresentation issue into the 1975 promotion and tenure review; and
- (7) the failure to investigate the proceedings affecting Dr. Thomas when there was ample

evidence a decision might be based on other than merit.

Examples from the administrative history of the employment decisions in question in this case are particularly telling. From her arrival on campus Dr. Thomas was the subject of comments by history faculty members regarding her alleged exploitation of her race and the market place - comments with which the division dean agreed. Dr. Becker's memo of November 1971 criticizing Dr. Thomas personally and outlining the steps to change the terms of her employment is an important part of this history because of Dr. Becker's primary role in effecting the employment decisions affecting Dr. Thomas.

Dr. Graham's appointment of Dr. Becker to chair the division promotion and tenure committee in spite of his known hostility toward Dr. Thomas is strong evidence of the intent of actions reflected in the administrative history. Dr. Becker has admitted making ~~comments~~ about the so-called exploitation of her race and the market place by Bettye Thomas. It was he who denounced her lecture on Martin Luther King, Jr. as "hagiographic" ("saintlike") in the 1972 peer teaching evaluation, but who, in a self-conscious attempt to justify this criticism at trial, made an unconvincing attempt to explain what he had really meant by giving the word he had used a definition it does not have ("one-dimensional"). Lastly, Dr. Becker's trial testimony revealed his continuing effort to create a negative impression of Bettye Thomas: he testified on direct examination that Dr. Arnold told him that Bettye Thomas had said he (Becker) was a "white devil." However, on cross-examination he admitted that the derogatory term he had the day before attributed to Bettye Thomas had actually been Dr. Arnold's phrase describing what Arnold thought Thomas' opinion of Becker to be.

Dr. Graham's March 20, 1975 memo connecting "libel and slander, libelous intention," and the ultimately rejected charge of fraudulent misrepresentation to Dr. Thomas' contract review is another example of strong evidence of the discriminatory and retaliatory intent infecting the personnel actions affecting Bettye Thomas.

The combined evidence from the just discussed areas compels a finding that the entire course of events effecting Bettye Thomas' employment decisions was a result of her race and of her pursuit of her employment discrimination complaint.

PROPOSED CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter of this suit and the parties involved under 42 U.S.C. 2000e-5(f) and 28 U.S.C. 1345.

2. Defendants, the University of Maryland, Baltimore County, et al., are employers within the meaning of 42 U.S.C. 2000e-(b) as amended.

3. Title VII of the Civil Rights Act prohibits all forms of racial discrimination in all aspects of employment. Local 189 United Papermakers and Paperworkers v. United States, 416 F.2d 980, 982 (C.A. 5, 1969), cert. denied 397 U.S. 919 (1970). The degree of discrimination practiced by an employer is unimportant under Title VII. Discriminations come in all sizes and all such discriminations are prohibited by the Act. Hodgson v. American Bank of Commerce, 447 F.2d 416, 420 (C.A. 5, 1970).

4. Racial discrimination has been described as, "one of the most deplorable forms of discrimination known to our society, for it deals not with just an individual's sharing in the 'outer benefits' of being an American citizen, but rather the ability to provide decently for one's family in a job or profession for which he qualifies or chooses." Culpepper v. Reynolds Metals Co., 421 F.2d 888, 891 (C.A. 5, 1970).

5. It is now well settled that no form of discrimination in employment opportunities based upon race, color, religion, sex or natural origin can be tolerated. Rowe v. GM Corp., 457 F.2d 348 (C.A. 5, 1972). It is discrimination which is prohibited, and it is irrelevant whether an employer actually had a discriminatory intent or not; it is the consequences of an employer's actions which are judged. Griggs v. Duke Power Co., 401 U.S. 424 (1971); Robinson v. Lorillard, 444 F.2d 791 (C.A. 4, 1971). Though proof of intentional discrimination is not necessary to establish a Title VII violation, intentional discrimination is clearly a violation of Title VII.

6. Title VII, Section 703(a)(1) U.S.C. §2000e-2(a)(1), provides that it shall be an unlawful employment practice for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin." This language evinces a Congressional intention to define discrimination in the broadest possible terms. Rogers v. E.E.O.C., 454 F.2d 234 (C.A. 5, 1971). For example, the Court in Rogers has held that an employee's psychological as well as economic conditions can be statutorily protected from an employer's abuse.

7. In the private individual's Title VII suit, the plaintiff must carry the initial burden of establishing a prima facie case of discrimination. The burden then shifts to the employer to articulate some "legitimate, nondiscriminatory reason for the employee's rejection." Then the plaintiff must be afforded an opportunity to show that the defendant's stated reason for the rejection was in fact a pretext. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-5 (1973).

8. Circumstantial evidence is often relied upon to establish discriminatory practices. This is especially true in cases dealing with discrimination by a university. Johnson v. University of Pittsburgh, 359 F. Supp. 1002 (W.D. Pa., 1973). In Johnson, District Judge D. J. Knox commented:

It is obvious that in a case of sex discrimination, as in a case of race discrimination, we very seldom find a resolution of a board of directors or a faculty committee agreeing to engage in sex discrimination any more than we would expect to find the same in a conspiracy to violate the anti-trust laws. The existence of such discrimination must therefore be found from circumstantial evidence and inferences from the circumstances. At 1007.

9. In a Title VII case it is often necessary to consider a series of factors and events, all of which together raise a question of discrimination but none of which standing alone clearly

demonstrates discrimination. Lowry v. Whitaker Cable Corporation, 349 F. Supp. 202 (W.D. Mo., 1972), aff'd 472 F.2d 1210 (C.A. 8, 1973). The theory of Lowry is that a series of unusual events rarely happens by chance, particularly if the events are contrary to the employer's normal practices. If the employer cannot provide a plausible explanation for the events, and the subject of the events is a minority group member or a woman, an inference can be drawn that discrimination was the cause of the series of events, though no single event in the series supports a conclusive determination of discrimination.

10. Mr. Justice Powell, writing the majority opinion in the recent case of Village of Arlington Heights v. Metropolitan Housing Corp., No. 75-616 (January 11, 1977), stated that "Determining whether invidious discrimination was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." Slip Op. at 13. While Arlington Heights is a case brought under the Equal Protection Clause of the Fourteenth Amendment alleging a zoning law's disparate impact on minorities, nevertheless Fourteenth Amendment cases contain guidance for Title VII cases. G.E. v. Gilbert, No. 74-1589 (December 7, 1976). Justice Powell's analysis of what can constitute circumstantial and direct evidence of racially discriminatory intent is relevant to the inquiry in this case.

11. The disjunctive listing provided by Justice Powell, which provides alternative evidentiary sources, includes: an assessment of the impact of the events in question, a clear pattern of state action unexplainable on grounds other than race, the historical background of an official decision; the specific sequence of events leading up to a challenged decision; departure from the normal procedural and substantive standards; and legislative or administrative history. Slip Op. at 14-15. This listing "identifies, without purporting to be exhaustive, subjects

of proper inquiry in determining whether racially discriminatory intent existed," Slip Op. at 15, and provides a starting point for finding racially discriminatory intent in the present case.

I. Denial of Opportunity for Promotion to Rank of Associate Professor.

12. Mr. Justice Powell's first level of inquiry in Arlington Heights, supra., is an assessment of the impact of the events in question. Dr. Thomas is the only faculty member to fail to receive the terms of her original contract offer upon completion of her Ph.D. Other white, similarly situated U.M.B.C. faculty members did not have the rank offered in their original employment agreements reduced on failure to meet degree completion dates. Here there is no doubt that the impact of the events at U.M.B.C. was severe and affected a member of a racial minority.

13. Mr. Justice Powell in Arlington Heights, supra, states that "(D)epartures from the normal procedural sequence also might afford evidence that improper purposes are playing a rôle in an official action." Slip Op. at 14. Racially discriminatory intent in the case of Dr. Thomas is evidenced by the procedures used to deny her the rank of Associate Professor upon completion of the Ph.D. The Department meeting of February 10, 1972, held for the express purpose of evaluating the terms of Dr. Thomas' contract--a subject traditionally treated at U.M.B.C. as confidential--is the only meeting of its kind ever held by the U.M.B.C. history department. No vote of the history department faculty considering a recommendation for Associate rank for Dr. Thomas was ever taken. Instead, Dr. Thomas' dossier was to be reviewed by each faculty member and she was to be treated as a new applicant for employment. Such treatment, clearly outside regular department procedures, raises the inference of racially discriminatory intent.

14. "Substantive departures too may be relevant, particularly if the factors usually considered important by the decision-maker strongly favor a decision contrary to the one reached." Arlington Heights, supra., Slip Op. at 14. Promotion

and tenure decisions must be made in good faith and based upon reasonable standards . . . ly applied to all candidates. Labat v. Board of Higher Education, City of New York, 401 F. Supp. 753 (S.D.N.Y. 1975). The departure from normal substantive standards raises the inference of disparate treatment based on race. Cypress v. Newport News Hospital, 375 F.2d 648 (C.A. 4, 1967); U. S. v. N. L. Industries, 479 F.2d 354 (C.A. 8, 1973). The record shows that there was a shift in the substantive bases for deciding matters concerning Dr. Thomas--a shift from alleging that she was "not qualified" to criticism that she had "not gone up the ladder"-- and the record further shows that Dr. Thomas' credentials were equal to or superior to those held by white faculty members who have received the rank of Associate Professor at U.M.B.C. The inference of discrimination, therefore, is strong.

15. Proof that male professors have been uniformly given higher salary increases than female professors has been held to support a charge of intentional discrimination based on sex.

Johnson v. University of Pittsburgh, 359 F. Supp. 1002 (W.D. Pa. 1973). Similarly, proof that Dr. Thomas was not given the annual salary increments given to other members of the history department demonstrates the application of different substantive standards and supports the present charge of intentional discrimination based on race.

16. Promotion procedures and standards which depend largely upon subjective evaluations of an employee provide a ready mechanism for discrimination. Rowe v. General Motors Corp., 457 F.2d 348 (C.A. 5, 1972); Long v. Ford Motor Co., 496 F.2d 500 (C.A. 6, 1974); Brown v. Gaston County Dyeing Machine Co., 457 F.2d 1377 (C.A. 4, 1972); Cypress v. Newport News Hospital, 375 F.2d 648 (C.A. 4, 1967). Decisions based on subjective rather than objective criteria carry little weight in rebutting charges of discrimination. U. S. v. N. L. Industries Inc., 479 F.2d 354,

372 (C.A. 8, 1973). The lack of objective promotion and tenure standards or even identifiable subjective standards made totally subjective the decisions concerning Dr. Thomas left in the hands of white faculty members, including persons who had raised objections to her contract from the outset and whose objections had been articulated in racial and gender terms. There was thus provided a ready mechanism for the discrimination which, it is reasonable to believe, was practiced against Dr. Thomas.

17. The "historical background" described by Mr. Justice Powell in Arlington Heights, supra, is relevant in the present case to support an inference of intentional discrimination. It is well established that "where statistics speak, the Courts listen," State of Alabama v. United States, 304 F. 2d 583, 586 (C.A. 5, 1962) aff'd per curiam 371 U.S. 37 (1972), for general hiring practices often indicate whether an employer is discriminating against a particular individual. United States v. National Lead Industries, Inc., 479 F. 2d 354, 371 (C.A. 8, 1973); Parham v. Southwestern Bell Telephone Co., 433 F. 2d 421 (C.A. 8, 1970). Statistics can be a basis for inferring that a University is engaging in prohibited discrimination. Johnson v. University of Pittsburgh, 359 F. Supp. 1002 (W.D. Pa., 1973). In Johnson, the Court noted that where there is a total absence or extremely minimal representation of women or a minority group in the employer's work force, actual numbers of employees may imply discrimination. See also, Peters v. Middlebury College, 409 F. Supp. 857 (D. Vt., 1976). Though a finding of disparate treatment may be based primarily on non-statistical evidence, nevertheless statistics can be "the key factor which ties together and gives evidence to the conclusion of discrimination." Robinson v. Warner, 8 EPD Para. 9452 (D. D.C. 1974). See also Marquez v. Omaha Ford, 440 F. 2d 1157 (C.A. 8, 1971). Statistical evidence has been offered

indicating discrimination against blacks at the University of Maryland, Baltimore County. The evidence shows that the representation of blacks on the UMBC faculty has steadily declined since 1971-72, that only 1 out of 91 faculty members presently employed in UMBC's Social Sciences Division is black, and that in the entire history of UMBC only 4 black persons have ever been employed in the Division. These facts support the United States' claim that race was behind the failure to promote Dr. Thomas to Associate Professor. The fact of minority underrepresentation at UMBC and on the Social Sciences Division faculty in particular remains otherwise unexplained by defendants.

18. Racial discrimination and retaliation are not to be viewed in terms of the degree to which they might or might not have been a factor in challenged actions and must instead be viewed by the Court in terms of whether they played any part at all in such actions. If any elements of racial discrimination or retaliation or reprisal played any part in a challenged action, no matter how remote or slight or tangential, that action is a violation of the law. United States v. Hayes Int'l. Corp., 6 FEP Cases 1328, 1330 (N.D. Ala. 1973); Smith v. Sol Adler Realty Co., 436 F. 2d 344 (C.A. 7, 1970). See also Bradington v. I.B.M. Corp., 360 F. Supp. 845 (D. Md. 1973). A fortiori, in those rare cases, such as this, where there is direct evidence of racial motivation, the inference that prohibited racial discrimination is the cause of a series of otherwise unexplainable events is substantially strengthened.

II. Retaliation for the Filing of a Charge of Discrimination with the Equal Employment Opportunity Commission.

19. Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer to take retaliatory action against any individual who opposes employment practices prohibited by that law. To protect persons who seek to enforce their rights

or those of others under Title VII, retaliation against persons who have filed charges, testified, assisted or participated in any way in any proceeding, investigation or hearing under the provisions of Title VII is expressly prohibited. Section 704(a) 42 U.S.C. 2000e-3(a); See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 796 (1973).

20. Section 704(a) is broadly construed to protect the rights of employees under Title VII. Pettway v. American Cast Iron Pipe Co., 411 F. 2d 998, 1005-07 (C.A. 5, 1969). The Act contemplates that employees who may feel aggrieved because of alleged discriminatory conduct will initiate and participate in the process to vindicate their rights without fear of reprisal. Since the enforcement of Title VII rights is necessarily dependent on individual complaints, freedom of action by employees presenting grievances to agencies must be protected against the threat of retaliatory conduct by employers who may resent that they are charged with discrimination. Pettway at 1005. See also Jenkins v. United Gas Corp., 400 F. 2d 28, 33 (C.A. 5, 1968). Rigid enforcement against retaliatory action is required to assure the effectiveness of the Act. EEOC v. Kallir, Philips, Ross, Inc., 401 F. Supp. 66, 72 (S.D. N.Y. 1975).

21. An employee need not establish the validity of his original claim to establish a charge of employer retaliation for having made the original charge or otherwise engaging in conduct protected by Section 704(a). Pettway, supra; Hyland v. Keoner Products Co., 11 EPD Para. 10,926 (S.D. Ohio 1976). Bradington v. I.B.M. Corp., 360 F.Supp.845 (D.Md. 1973). Thus, it is not necessary for plaintiff to prevail on the issue of discrimination based on race in order to obtain redress for injury sustained by Dr. Thomas by Defendants' reprisal for the filing of an EEOC charge.

22. The specific sequence of events leading up to a challenged promotion may be significant in determining whether a discriminatory intent to retaliate exists. Arlington Heights, supra., at 14, citing Reitman v. Mulkey, 387 U.S. 369, 373-376 (1967); Grosjean v. American Press, 297 U.S. 233, 250 (1936). The timing of unfavorable actions is often significant in determining whether retaliatory measures have been taken for the filing of an EEOC charge. Hyland v. Kenner Products, 11 EPD Para. 10,926 (S.D. Ohio, 1976); Taylor v. Safeway Stores, Inc., 365 F. Supp. 468 (D. Colo., 1973). The conducting of a review of Dr. Thomas, extraordinary in both its substantive and procedural aspects, following the filing of the EEOC charge made known to the Defendants, which contrasted sharply with the favorable pre-charge review, coupled with the fact that until this time there was no indication that Dr. Thomas was doing unsatisfactory work or that her performance had changed drastically, suggests that the reason for her critical evaluation was the filing and pursuit of the Title VII charge.

23. Personnel procedures and standards which depend largely upon subjective evaluations of an employee are a ready mechanism for discrimination. Rowe v. General Motors, 457 F. 2d 348 (C.A. 5, 1972); Brown v. Gaston County Dyeing Machine Co., 457 F. 2d 1377 (C.A. 4, 1972); Cypress v. Newport News Hospital, 375 F. 2d 648 (C.A. 4, 1967). UMBC's lack of consistent promotion and tenure standards made totally subjective the decisions concerning the retention of Dr. Thomas left in the hands of white faculty members known to be antagonistic towards her, caused her to be reviewed by one faculty member who was not even a member of the Social Sciences Division and who had been used in the past to "pack" votes, and caused the unexplained denial of outside review. All these events support the inference that this means for retaliation was used against her.

24. Departures from substantive standards and the affording of disparate treatment raise the inference of discriminatory retaliation. Arlington Heights, supra, p. 14, Long v. Ford Motor Co., 496 F. 2d 500, 506 (C.A. 6, 1974); Bradington v. I.B.M. Corp., 360 F. Supp. 845, 853 (D. Md., 1973). Evidence in the record shows that other white faculty members similarly situated, were given the standard three year contract which was denied Dr. Thomas despite the fact that they possessed qualifications less than or equal to those held by Dr. Thomas. The objective facts require rejection of Defendant's contention that she was deficient in the areas of teaching, scholarship and service, especially in view of the fact that Defendants themselves placed varying weights on each of these criteria, thus subjecting Dr. Thomas to a shifting standard. The inference is raised that such disparate treatment was based on discriminatory retaliation.

25. The attitudes of fellow faculty members towards a person complaining of discrimination are significant where there is evidence to show that such members of the department dominated the review proceedings of that person. Peters v. Middlebury College, 409 F. Supp. 857 (D. Vt., 1976). Here, the confining of the review of Dr. Thomas to the department and division promotion and tenure committees, composed entirely of white faculty members, including persons known to have been opposed to the terms of Dr. Thomas' original contract at least in part because of her race and sex and including a person on the division committee not even a member of the Social Sciences Division; the writing of a memo by the Social Sciences Division chairman to the Vice Chancellor discussing "threats" of litigation by Dr. Thomas; and evidence that Dr. Thomas was advised that if she dropped the suit, everything at UMBC would be "O.K.," raise the inference that Dr. Thomas was

not accorded a fair and impartial review because a charge of discrimination had been filed in his behalf.

26. It is well established that a principal is liable for the discriminatory acts of its agents, both on the basis of the doctrine of respondeat superior and because the duty to comply with the law is nondelegable. See, e.g., United States v. Bob Lawrence Realty Company, 474 F. 2d 115 (C.A. 5, 1973); United States v. Northside Realty Associates, 474 F. 2d 1164 (C.A. 5, 1973); United States v. Youritan Construction Co., 370 F. Supp. 643 (N.D. Cal. 1973), aff'd No. 73-2445 (C.A. 9, 1975). (Cases involving the Fair Housing Act.) In analogous situations the federal courts have repeatedly held unions liable to suit under Title VII for passively acquiescing in employer discrimination, rather than using their bargaining power to end such practices. See e.g., Robinson v. Lorillard Corporation, 444 F. 2d 791, 799 (C.A. 4, 1971). Here, the failure of the UMBC administration to exercise control over the arbitrary decision making processes which were imposed on Dr. Thomas and the failure to investigate the integrity of that process when ample evidence had been raised that a decision might not be based on merit demonstrate a reckless disregard for the foreseeable discriminatory consequences of those processes, and make that administration liable for the unlawful acts of its agents.

27. The concept of "constructive discharge" developed in unfair labor practice cases and is applicable here. The fact of discharge does not depend upon the use of formal words of firing. The test is whether sufficient words or actions by the employer "would logically lead a prudent person to believe his tenure had been terminated." NLRB v. Trumbull Asphalt Company, 327 F. 2d 841 (C.A. 8, 1964); Putnam v. Lower, 236 F. 2d 561 (C.A. 9, 1956). A mere signed statement that terms

of a contract are not acceptable and are declined, does not relieve an employer of the consequences of an act amounting to constructive discharge. Colorado Civil Rights Commission v. State of Colo., 3 EPD ¶8207 (Colorado Ct. of Appeals 1971); NLRB v. East Texas Motor Freight Lines, 140 F. 2d 404 (C.A. 5, 1944). The fact that Dr. Thomas voluntarily refused the terms of this less than standard contract does not alter the fact that the contract and the events preceding it constitute unlawful retaliation for the filing of a charge on her behalf. Ameliorated retaliation is retaliation nonetheless.

28. Defendants have failed to rebut the evidence of discrimination. The record reflects that no one else was denied the rank for which they contracted when they received an extension of the completion date for their Ph.D., that white faculty members were awarded the rank of Associate Professor with lesser qualifications than Dr. Thomas, and that white faculty members with lesser qualifications than Dr. Thomas were given the standard three year contract renewal which was denied her. The actions of Defendant were not accidental, but rather were intentional acts constituting unlawful discrimination under Section 703(a)(1), 42 U.S.C. §2000-e §2000e-2(a)(1), and unlawful reprisal under Section 704(a), 42 U.S.C. 2000e-3(a). Local 189 United Paperworkers v. United States, 416 F. 2d 980 (C.A. 5, 1969).

29. Dr. Thomas is entitled to relief which not only terminates present discrimination and prevents future discrimination, but also corrects, to the extent feasible, the effect of past discrimination. Consequently, Dr. Thomas is entitled to reinstatement at the University of Maryland, Baltimore County; is entitled to the rank of Associate Professor of History; and is entitled to back pay, reduced by mitigating earnings, for the academic year 1976-77. Moody v.

Albermarle Paper, 422 U.S. 405 (1975). Robinson v. P.
Lorillard Corp., 444 F. 2d 791 (C.A. 4, 1971).

30. The Court will retain jurisdiction of this matter to insure that equal employment opportunities are provided for Dr. Thomas and all prospective UMBC employees without regard to race or color.

This day of , 1977.

UNITED STATES DISTRICT JUDGE

Respectfully submitted,

JERVIS S. FINNEY
United States Attorney

DREW S. DAYS, III
Acting Assistant Attorney General
Civil Rights Division

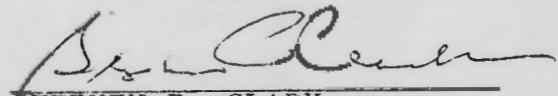
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Plaintiff United States' Proposed Findings of Fact and Conclusions of Law upon the following counsel of record by depositing a copy, postage prepaid, in the United States mail, addressed as follows:

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DONE this 7th day of March, 1977.



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