

IN THE SUPERIOR COURT OF THE STATE OF MAJOR  
IN AND FOR THE COUNTY OF JAMNER

RUFUS JONES,  Plaintiff,  v.  BRAHMIN PREPARATORY SCHOOL,  Defendant.	Cause No. 20XX - 2-99324  COMPLAINT FOR DAMAGES
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COMES NOW the plaintiff and hereby asserts the following:

**I. PARTIES, JURISDICTION AND VENUE**

1.1 At all times material herein, plaintiff Rufus Jones, an African American, was a resident of Jamner County, Washington.

1.2 Defendant Brahmin Preparatory School is a Major corporation and does business in Jamner County, Major.

1.3 Jurisdiction is proper for the claims alleged.

1.4 Venue for this action is proper in Jamner County Superior Court.

**II. FACTS REGARDING DEFENDANT AND ITS AGENTS**

2.1 Defendant is an employer as that term is defined under Major's Law Against Discrimination.

2.2 At all times material herein, Francis Winslow was the principal of Brahmin Preparatory School, and is defendant's agent.

2.3 Francis Winslow is Caucasian.

**III. FACTS REGARDING PLAINTIFF RUFUS JONES**

3.1 Plaintiff was hired by defendant Brahmin Preparatory School in April, 20XX-3 as a teacher in the History Department.

3.2 Plaintiff and defendant entered into a one-year employment contract in or around April 28, 20XX-3, which has been renewed for a subsequent one-year term.

3.3 During the time of plaintiff's employment with defendant school, faculty administrators and staff of defendant have had meetings to discuss the issue of defendant's failure to address diversity issues.

3.4 Specifically, many of these discussions focused on the retention of faculty and the need to focus school resources on diversity related issues.

3.5 On April 15, 20XX-3, another teacher at defendant school, Robin Peterson sent an e-mail to faculty and staff regarding her concern about the alarming rate that faculty of color were leaving Brahmin Preparatory School, calling for a community meeting.

3.6 Head Master Francis Winslow responded to Ms. Peterson's e-mail, persuading her to call off this meeting.

3.7 Robin Peterson was not disciplined for the e-mail of April 15, 20XX-2.

3.8 At a faculty meeting on September 30, 20XX-2, plaintiff raised his objection to the defendant's invitation to Walther von Stroheim to campus to give an endowed lecture. Plaintiff reported his concerns about the invitation, stating that it was a serious setback to the defendant's diversity efforts. Plaintiff told the audience about von Stroheim's offensive views.

3.9 A white male colleague then stood up, pointed at plaintiff and spoke in an aggressive tone.

3.10 On October 10, 20XX-2, at Francis Winslow's direction, Vice-Head Master Lynn Polonius confronted plaintiff in his office and "suggested" that he apologize for his comments.

3.11 Prior to that time, defendant rescinded the invitation to von Stroheim.

3.12 On October 21, 20XX-2, defendant took adverse action against plaintiff placing him on probation for his refusal to apologize for his conduct during the meeting of September 30, 20XX-2.

#### **IV. FIRST CAUSE OF ACTION BY PLAINTIFF – RACIAL HOSTILE WORK ENVIRONMENT**

4.1 Plaintiffs re-allege paragraphs 1.1 through 3.12 above.

4.2 Defendant, by and through its employees and agents, created a racially hostile work environment in violation of Major law.

4.3 The behavior to which plaintiff was subjected was unwelcome and offensive, was because of his race, was severe and/or pervasive, affected the terms and conditions of his employment in that it created a hostile work environment, and is imputed to the defendant.

4.4 As a direct and proximate result of defendant's conduct, plaintiff suffered damages to be proven at trial.

**V. SECOND CAUSE OF ACTION BY PLAINTIFF – RACE DISCRIMINATION**

5.1 Plaintiffs re-allege paragraphs 1.1 through 3.12 above.

5.2 Plaintiff asserts that he was subjected to racial discrimination based upon disparate treatment. Plaintiff was treated less favorably in the terms or conditions as an employee than similarly situated white employees.

5.3 As a direct and proximate result of defendant's conduct, plaintiff suffered damages to be proven at trial.

**VI. THIRD CAUSE OF ACTION -- RETALIATION**

6.1 Plaintiff re-alleges paragraphs 1.1 through 3.12 above.

6.2 Plaintiff engaged in protected activity through his complaints regarding racial discrimination.

6.3 Defendant engaged in an adverse employment action against plaintiff in that he was put on probation and suffered damages.

6.4 Retaliation is the substantial factor for the adverse employment action.

6.5 As a direct and proximate result of defendant's conduct, plaintiff suffered damages to be proven at trial.

**VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court order the following relief and remedies:

7.1 Compensatory monetary damages for plaintiffs' economic and non-economic damages.

7.2 Attorneys' fees, costs, and any other relief available pursuant to case law and applicable statutes.

7.3 A supplemental judgment, post trial, for monetary compensation for adverse tax consequences, if any, resulting from a verdict in favor of plaintiff.

7.4 Prejudgment interest on liquidated damages.

7.5 Punitive damages pursuant to 42 U.S.C. § 1981.

7.6 Such other and further relief as the court deems just, equitable and proper.

DATED this \_\_23rd\_\_ day of \_December\_\_\_\_\_, 20XX-2.

FURY BAILEY, PS

**William S. Bailey**

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WILLIAM S. BAILEY  
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF MAJOR  
IN AND FOR THE COUNTY OF JAMNER

RUFUS JONES,  Plaintiff,  v.  BRAHMIN PREPARATORY SCHOOL,  Defendant.	Cause No. 20XX - 2-99324  ANSWER
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Defendant Brahmin Preparatory School (“Brahmin”), by and through their attorneys, answer plaintiff’s Complaint for Damages (“the Complaint”) and assert defenses and affirmative defenses as follows:

**I. PARTIES, JURISDICTION AND VENUE**

1.1 Brahmin admits that according to school records, plaintiff’s home address is in Jamner County and that he is an African American. Except as so admitted Brahmin is without sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 1 of the Complaint, and Brahmin accordingly denies those allegations.

1.2 Brahmin is a 501(c)(3) nonprofit corporation located in Jamner County, Major. Except as specifically admitted, the remaining allegations of Paragraph 2 are denied.

1.3 Paragraph 3 of the Complaint states a legal conclusion for which no answer is required, and Brahmin accordingly denies the allegations of this paragraph.

1.4 Paragraph 4 of the Complaint states a legal conclusion for which no answer is required, and Brahmin accordingly denies the allegations of this paragraph.

## **II. FACTS REGARDING BRAHMIN SCHOOL AND ITS AGENTS**

2.1 Brahmin is an employer. Except as specifically admitted, Paragraph 2.1 of the Complaint states a legal conclusion for which no answer is required.

2.2 Francis Winslow is currently the principal of Brahmin. Except as specifically admitted, the remaining allegations of Paragraph 2.2 are denied.

2.3 Brahmin admits the allegation of Paragraph 2.3.

## **III. FACTS REGARDING PLAINTIFF**

3.1 Brahmin admits the allegations of Paragraph 3.1.

3.2 Brahmin admits that plaintiff and Brahmin entered into an employment contract. Except as specifically admitted, the remaining allegations of Paragraph 3.2 are denied.

3.3 Brahmin admits that meetings were held during this time period, including discussion of diversity related issues. Except as specifically admitted, the remaining allegations of Paragraph 3.3 are denied.

3.4 Brahmin denies the allegations of Paragraph 3.4.

3.5 Brahmin admits that Robin Peterson is a teacher at the school who sent an e-mail on April 15, 20XX-3. Except as specifically admitted, the remaining allegations of Paragraph 3.5 are denied.

3.6 Brahmin admits the allegations in Paragraph 3.6.

3.7 Brahmin admits the allegations in Paragraph 3.7.

3.8 Brahmin admits that during the September 30, 20XX-2 meeting plaintiff raised his objection to Brahmin's invitation to Walther von Stroheim to campus for an endowed lecture. Brahmin admits that plaintiff told the audience that von Stroheim had offensive views. Except as specifically admitted, the remaining allegations of Paragraph 3.8 are denied.

3.9 Brahmin admits that a white male colleague was upset with plaintiff. Except as specifically admitted, the remaining allegations of Paragraph 3.9 are denied.

3.10 Brahmin admits that Vice-Principal Lynn Polonius suggested that plaintiff apologize for his comments at the meeting. Except as specifically admitted, the remaining allegations of Paragraph 3.10 are denied.

3.11 Brahmin admits that it rescinded the invitation to von Stroheim. Except as specifically admitted, the remaining allegations of Paragraph 3.11 are denied.

3.12 Brahmin is without sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph 3.12, and accordingly denies those allegations.

#### **IV. FIRST CAUSE OF ACTION BY PLAINTIFF – RACIAL HOSTILE WORK ENVIRONMENT**

4.1 Brahmin restates and incorporates by reference paragraphs 1.1 through 3.12 above.

4.2 Brahmin denies the allegations set forth in Paragraph 4.2 of the Complaint.

4.3 Brahmin denies the allegations set forth in Paragraph 4.3 of the Complaint.

4.4 Brahmin denies the allegations set forth in Paragraph 4.4 of the Complaint.

**V. SECOND CAUSE OF ACTION – RACE DISCRIMINATION**

5.1 Brahmin restates and incorporates by reference paragraphs 1.1 through 3.12 above.

5.2 Brahmin denies the allegations set forth in Paragraph 5.2 of the Complaint.

5.3 Brahmin denies the allegations set forth in Paragraph 5.3 of the Complaint.

**VI. THIRD CAUSE OF ACTION BY PLAINTIFF -- RETALIATION**

6.1 Brahmin restates and incorporates by reference 1.1 through 3.12 above.

6.2 Brahmin denies the allegations set forth in Paragraph 6.2 of the Complaint.

6.3 Brahmin denies the allegations set forth in Paragraph 6.3 of the Complaint.

6.4 Brahmin denies the allegations set forth in Paragraph 6.4 of the Complaint.

6.5 Brahmin denies the allegations set forth in Paragraph 6.5 of the Complaint.

**VII. DEFENSES AND AFFIRMATIVE DEFENSES**

WHEREFORE, having fully answered plaintiff's Complaint, Brahmin states the following defenses and affirmative defenses:

7.1 Certain of Plaintiff's claims are barred for failure to state a claim upon which relief may be granted.

Entry 2: Answer

7.2 Certain of the Plaintiff's claims may be barred in whole or in part by the relevant statute of limitations and equitable doctrines of laches, waiver, estoppel, and unclean hands.

7.3 Plaintiff's claims may be barred, in whole or in part, by workers' compensation.

7.4 Plaintiff's damages, if any, were caused by persons not under the control of the defendant.

7.5 Plaintiff's damages, if any, were caused by his own conduct, and not any conduct of Brahmin or anyone under Brahmin's control.

7.6 Plaintiff has failed to mitigate his alleged damages.

7.7 Brahmin has not engaged in unlawful intentional discrimination or retaliation with respect to Plaintiff, and Brahmin cannot be liable for compensatory damages.

7.8 The entitlement to any relief which otherwise may be due in this case to Plaintiff's may be limited by the after-acquired evidence doctrine.

7.9 Brahmin exercised reasonable care to prevent and correct any unlawful harassment in the workplace, and Plaintiff unreasonably failed to take advantage of any preventative or corrective opportunities provided by or to otherwise avoid harm.

7.10 Brahmin's actions regarding Plaintiff's employment were based on legitimate, nondiscriminatory factors.

7.11 No act or omission of Brahmin was the proximate cause of the harm of which Plaintiff complains.

7.12 Brahmin designates all denials to the Complaint set forth above as defenses if necessary for their full defense of this matter.

Brahmin reserves the right to add those affirmative defenses that it deems necessary to its defense during or upon the conclusion of investigation and discovery.

**VIII. PRAYER FOR RELIEF**

Brahmin request that judgment be entered as follows:

- a. Dismissing plaintiff's Complaint with prejudice;
- b. Awarding Brahmin its attorney fees and costs incurred in this action; and
- c. Awarding Brahmin any further relief that the Court finds appropriate, equitable or just.

DATED this 28th day of January, 20XX-1.

STANDISH PLIMPTON, LLP

**Lucinda Beauregard**

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Lucinda Beauregard  
Attorney for Brahmin

### DEPOSITION SUMMARY OF RUFUS T. JONES

I am a 36-year-old African American man currently employed as a faculty member at Brahmin Preparatory School. I have my master's degree in history from the University of Oregon. I have received excellent reviews by both the community college I worked at before, as well as in my current position at Brahmin Prep.

On September 28, 20XX-2, I learned that Walther von Stroheim had been invited to speak in the yearly public issues forum at Brahmin Preparatory School. As an educator in the area of racial justice, I was well familiar with the writings of von Stroheim. He considered them highly offensive to many people, including persons of color within the Brahmin Preparatory community. I decided to raise my objections to the invitation at the monthly faculty meeting on September 30th, 20XX-2.

When recognized to speak by Head Master Winslow, I rose and expressed in forceful terms that the invitation of von Stroheim to the school as an endowed speaker went far beyond academic freedom, putting the question to the assembled group: "Why is our school bringing a racist ideologue to campus? Who is responsible for this outrage?" I readily admit that I raised my voice and was angry. But,

Though I suspected that both Francis Winslow and Lynn Polonious were involved in this decision, neither acknowledged their role after I raised the question. When silence followed his questions, I responded, "Whoever was responsible for this atrocity is lacking the courage of their own convictions. They are ignorant."

Following my challenge, another teacher, Pat Meeks, rose up and physically moved forward toward me, shouting angrily at me. Other faculty members were frightened by the behavior of Meeks, thinking that he was going to physically attack me.

After the meeting Vice-Head Master called me into her office a couple days later and at this private meeting, Polonious ordered me to make an apology to all faculty, telling me it was "the gentlemanly thing to do." I refused and told her that this was a deeply held matter of conscience for which no apology was necessary. I reiterated that von Stroheim's views were particularly offensive to faculty of color.

Eventually the invitation to von Stroheim was rescinded.

On October 21, 20XX-2, I was called into the Vice-Head Master's office and told that I was on formal probation. I told her, "I am just being made a scapegoat for calling attention to the racism that exists at this school." But I neither raised my voice at any time during this meeting nor did I challenge the authority of the Vice-Head to take this disciplinary action.

The following day, I defended himself in an e-mail sent to both the Head and the Vice-Head and indicated a willingness to remain open to further dialog on the issue

I took the stated goals of Brahmin Prep as a truthful indication of the culture of this school. However, both the invitation of Walther von Stroheim and the discipline of me by the administration for objecting to this have shaken my faith in the school.

I have been selectively targeted as a troublemaker here because of my race. Other teachers, such as Robin Peterson, feel exactly as I do. However, the difference between Robin Peterson and me is that she is White and I am Black. That is why I have been disciplined and she was not.

## DEPOSITION SUMMARY OF ROBIN PETERSON

I am 32-years-old and have taught English for the past five years. I have a master's degree in English literature.

One area of emphasis in my literature classes is to read books that pose difficult questions about race relations in our country. A stated goal of this school is to educate our students on diversity and other social issues. My reading list reflects this. My concept of English is that it should go beyond just the classic literary works of Shakespeare or Dickens.

I have been concerned about subtle and not so subtle institutional racism at Brahmin Prep. While we talk a good game, the fact of the matter is that faculty of color don't end up sticking around very long. This is not just a random occurrence. The attitudes of this school reflect the racism of our whole society. We just can't bring ourselves to admit it. We think we are better, but we aren't.

After an announcement in 20XX-3 that several teachers of color that I greatly respect were leaving this school, I sent around an e-mail to all faculty and staff, bringing attention to this. I was intent on convening a school-wide meeting to discuss this problem.

After the receipt of my e-mail, the administration was not very happy with me. I had multiple conversations with Francis Winslow and Lynn Polonious about the subject. Ultimately, I decided that the message I was trying to get across would be drowned out by the opposition from the administration, so I withdrew the notice of the meeting. I do not believe that either Winslow or Polonious are racists. They are intelligent people who genuinely care about education. However, it is my belief that the administrative perspective has caused them to ignore the realities of institutional racism here at the school.

DEPOSITION SUMMARY OF DR. C. Z. FINCH

My name is C. Z. Finch. I have a Ph.D. in Political Science and am a tenured professor at Major University. My expertise is in the institutional behavior, with an emphasis on the role of racial factors in administrative decision-making. I have testified in a number of legal cases involving claims of discrimination. At least 90% of the time, this is on behalf of the plaintiffs. My salary at the University is \$100,000 per year. My consulting rate for legal cases is \$350 per hour. While my income fluctuates depending on the year, in the past, I have made anywhere from \$50,000 - \$150,000 in consulting on legal cases.

My opinions in this matter are as follows:

1. Rufus Jones was a model teacher, acknowledged by the defendant as such. His personnel file shows that he was recruited to the school to provide an independent voice in this community. His subsequent actions are entirely consistent with this. The defendant's reasons for disciplining him are classic pre-textual behavior.
2. The environment at Brahmin Preparatory School was hostile to persons of color. Over the last ten years, out of 15 members of color hired, all of them have left in a period of 3-5 years. This is a much higher rate than one would expect at a school with a higher than average pay scale.
3. The behavior of Mr. Jones at the faculty meeting concerning the Walther von Stroheim speaking invitation was entirely appropriate. Academic freedom does not mean that everyone must speak in quiet, librarian type voices. An important part of the educational process is passion for ideas.
4. There is no rational basis to distinguish between the lack of discipline for Robin Peterson, who directly raised the issue of racism at Brahmin Prep, and Rufus Jones, who did the same. The bottom line here is the pure racial disparity. Peterson is White, Jones is Black. He got disciplined, she did not.
5. Placing Rufus Jones on probation was an adverse employment action, constituting disparate treatment.

## Entry 5: Finch Deposition

6. The Employer's anti-discrimination and anti-retaliation policies were not enforced as evidenced by the disparate treatment given the African American employee and the Caucasian employees in the Meeting.
7. The Employer's claim that it has a zero tolerance for discrimination and retaliation is refuted by the evidence of the disparate treatment given the African American employee and the Caucasian employees in the Meeting.
8. Evidence that the Employer did not enforce its anti-discrimination and anti-retaliation policies is found in the supervisors refusal to take the African American employee's complaints seriously.
9. Further evidence is the white authority figures (the supervisors) publicly zealously defending the Caucasian employees in this Meeting while marginalizing the complaints of the African American employees.
10. The Employer's anti-discrimination and anti-retaliation policies were not enforced because the white supervisors philosophically tolerated disparate treatment.
11. Any serious effort to eradicate discrimination and ensure no retaliation occurs as a result of discrimination complaints must have the support and commitment of the Administration and supervisors. The Administration and supervisors must create an awareness not only by their words but by their actions that these issues are serious and will not be tolerated. In the one example of this one Meeting, the Administration did not send the message by words or actions (and quite to the contrary) that racial issues were serious and discrimination would not be tolerated.
12. Racism or discrimination is evidenced by negative attitudes, condoning discriminatory behavior, refusing to acknowledge, overlooking, trivializing the issues or specific instances of such behavior, and/or not responding seriously to those who raise complaints, will exacerbate these problems as happened with this Employer as evidenced by the facts in the case, and particularly the Meeting at issue.
13. The Employer claims that in disciplining the plaintiff, it was enforcing its respect policy; however, there is evidence that the policy was not enforced prior to this meeting when African Americans tried to invoke the policy for their benefit.
14. The Employer claims that it gave plaintiff a mild form of discipline; however, based upon the Employer's own stated policy, probation is not the mildest form of discipline, and is one of the forms of discipline that is documented in an employee's personnel file (as opposed to a verbal reprimand)

## Entry 5: Finch Deposition

15. The Employer did not discipline any Caucasian community member even though complaints were raised about their behavior and lack of respect in this Meeting further evidencing disparate treatment and retaliation.
16. The Employer claims it provides training to its employees but not all employees were provided anti-discrimination and retaliation training.
17. The Employer failed to document "verbal complaints" of discrimination and/or retaliation by community members and thus, ensured no paper trail of ongoing complaints existed.
18. The verbal complaints of discrimination and retaliation establish the ineffectiveness of the Employer's policy and further, ratified such behavior.

## DEPOSITION SUMMARY OF LYNN POLONIOUS

I am the Vice-Head Master of Brahmin Preparatory School and have held this position for the last 10 years. I have my master's degree in Education. As Vice-Head Master, I am responsible for the enforcement of our code of conduct for both faculty and students.

Rufus Jones, while talented and gifted as a teacher, has much to learn in matters of tact and diplomacy. He has a tendency to take an accusatory tone toward colleagues which is both unnecessary and inappropriate. I have counseled with him before, warning him that he should refrain from this in the future.

At a monthly faculty meeting on September 30th, 20XX-2, Mr. Jones used a harsh and unprofessional tone and insulting language he used at an all school meeting concerning the speaking invitation to Walther von Stroheim. The Head Master and I both participated in the decision to invite von Stroheim. I gave specific assurances regarding von Stroheim, having read his book, "The Silver Lining: A Re-Appraisal Of The Effects Of Slavery."

It is my observation that the von Stroheim incident at the faculty meeting caused by Jones had a very negative impact on faculty, students and parents at this school. Rufus Jones handled this in an inappropriate, angry manner.

At Head Master Winslow's request, I met with Mr. Jones in private and directed him to make an apology to all faculty for his behavior. He declined to apologize. I considered this to be insubordinate, contrary to the goal of maintaining the civility so necessary in a proper academic environment.

On October 21, 20XX-2, Head Winslow ordered me to put Jones on formal probation. I did so and Mr. Jones took offense at the request for an apology and said, "I am just being made a scapegoat for calling attention to the racism that exists at this school." But he did not raise his voice at any time during this meeting, nor did he challenge the authority of the vice-principal to take this disciplinary action.

In April of 20XX-3 Robin Peterson sent out an all faculty and staff e-mail criticizing the administration for failure to retain faculty of color and accusing the school of harboring both subtle and overt racism. Many of the faculty members and I were hurt by the tone and the content of her e-mail and we did not want a meeting called for by Peterson to occur. The Head Master, I and the other administrators of the school decided to approach Ms. Peterson outside the formal disciplinary system at the school. I met with her and requested that she call off the meeting. Ms. Peterson reluctantly agreed. Head Master Winslow sent out an all faculty and staff e-mail cancelling the meeting. Ms. Peterson was not put on probation or otherwise punished for sending the e-mail. Ms. Peterson's case was much different than Mr. Jones's. Mr. Jones was angry, entrenched and intractable.

Our school remains deeply and firmly devoted to diversity and inclusion, implemented by our continuing training program in this area. All administrators and faculty at this school will continue to maintain a positive atmosphere, enabling our students to learn and thrive, focusing on the academic excellence on which we pride ourselves. Our fundamental task is to educate young adults to become good citizens.

## DEPOSITION SUMMARY OF FRANCIS J. WINSLOW

I am the 61-year-old Head Master of Brahmin Preparatory School.

At a monthly faculty meeting on September 30th, 20XX-2, Mr. Rufus Jones in an angry, inflammatory and insulting way demanded that the school recind an invitation to a speaker who was scheduled to speak at Brahmin Prep's annual public issues forum. He called it an "atrocitiy" to invite the speaker and called his colleagues "ignorant." Mr. Jones commentary was so provocative that another teacher, Mr. Meeks, began shouting at Mr. Jones and physically moved towards him.

I am responsible for the discipline of any faculty or staff member. I participated in the decision to put Rufus Jones on probation and by e-mail on October 20<sup>th</sup>, I ordered Vice-Head Polonious to place Jones on probation. He was not singled out for this because of any views he stated in the faculty meeting, but rather because of his manner of speech and tone in addressing his colleagues. He was both insensitive and rude, particularly in calling his colleagues "ignorant".

I have great respect for Mr. Jones's passion and energy. However, there are limits to this. It is my job to enforce discipline in such a way that our school respects the views of all members of this community. This is the fundamental premise of education, to have an open environment.

While the views of Walther von Stroheim are personally repugnant to me, there is a certain percentage of the population that subscribes to them. Both Vice-Head Master Polonious and I gave the invitation a great deal of thought and decided that it is better that our students know such things and think about them, rather than to have them remain in the background. That is the real ignorance.

The method of delivery by Rufus Jones at the faculty meeting was completely unacceptable, undermining the collegiality that is so important to our stated educational goals as a school.

While Mr. Jones makes the argument that he was treated differently than fellow teacher Robin Peterson because of the differences in their race, nothing could be further from the truth. It is true that in April of 20XX-3, Robin Peterson had sent out an all faculty and staff e-mail criticizing the administration for failure to retain faculty of color and accusing the school of harboring both subtle and overt racism. I and most of the faculty members were stung by the tone and the content of her e-mail and we did not want a meeting called for by Peterson to occur. Both I and the other administrators of the school decided to approach the matter outside the formal disciplinary system at the school. I had Vice-Head Master Lynn Polonious meet with Peterson and request that Ms. Peterson call off the meeting. When Ms. Peterson agreed, albeit reluctantly, I sent out an all faculty staff and e-mail calling off the meeting. Robin Peterson was not put on probation or otherwise punished in any way for sending the e-mail.

Again, the situation was far different in Ms. Peterson's case. We were able to establish a dialog with her. I expressed genuine respect for her sincerely held belief,

### Entry 7: Winslow Deposition

even though I did not agree with it. She did not use inflammatory words or an angry tone. Rufus Jones did. That is why he was placed on probation and she was not.

DEPOSITION SUMMARY OF DALE F. DOUGLASS, PH.D.

I am a 58-year-old Ph.D. in the field of Sociology, a tenured professor at State University. From time-to-time, I have been asked by attorneys to appear as expert witnesses in various employment law cases. Not infrequently, this involves allegations of racial discrimination.

Though I am perfectly willing to work for whichever side hires me, it just so happens that a overwhelming majority of cases in which I have been retained as an expert involve giving testimony for an employer being sued.

In this case, I am aware that the invitation to Walther von Stroheim by Brahmin Prep. While I do not agree with many of von Stroheim's conclusions, he is a respected, if controversial, figure in the academic world. His invitation to speak at the school was entirely proper, consistent with the spirit of open inquiry in an academic community.

My conclusions on the issues in this case are as follows:

1. Mr. Jones cannot identify a similarly situated employee who received more favorable treatment than he. The other faculty member he attempts to compare himself to, Robin Peterson, presents an entirely different situation. Jones was being disciplined, not for the content of his ideas, but the way in which he expressed them. There was no such issue with regard to Robin Peterson.
2. There is no evidence that Brahmin Prep had anything other than legitimate non-discriminatory reasons for placing Rufus Jones on probation. It is a valid exercise of administrative power to maintain a climate of respect between all members of an educational community. Placing Mr. Jones on probation for his inappropriate behavior does not constitute an adverse action motivated by racial grounds. This was a valid exercise of administrative authority by Brahmin Preparatory School.
3. There is no evidence that either retaliation or race based factors played any role in Mr. Jones probation.
4. The Employer was committed to diversity and zero tolerance against discrimination and retaliation as evidenced by its stated policies and procedures.

Entry 8: Douglass Deposition

5. The Employer evidenced zero tolerance of discrimination and retaliation by requiring its employees to affirmatively acknowledge receipt of, and understanding of, its anti-discrimination and retaliation policies.
6. The Employer evidenced zero tolerance of discrimination and retaliation by the training it provided to its employees in these areas
7. The effectiveness of the Employer's anti-discrimination and retaliation policies is evidenced by the lack of complaints received by the Employer
8. The Employer had a written policy in which its employees were required to show respect and collegiality when dealing with all members of the community, including colleagues and supervisors. The policy included examples of the levels of discipline that could be imposed if the policy was violated.
9. The plaintiff's behavior in the subject meeting evidenced behavior that violated the respect policy.
10. The Employer reasonably believed that plaintiff's behavior violated the respect policy
11. Based upon the Employer's reasonable belief that plaintiff violated the respect policy, the Employer disciplined plaintiff according to the guidelines in the policy.
12. There is no evidence that race was a substantial factor for the Employer's discipline of plaintiff for violating the respect policy.
13. There is no comparator for plaintiff to use because he was the first person to violate the respect policy in public and about which his supervisors had actual knowledge.
14. Probation was one of the mildest forms of discipline in the policy.
15. In an academic environment, adhering to the respect policy is critically important and the Employer must ensure the policy is followed.
16. Plaintiff's behavior effectiveness of the Employer's anti-discrimination and retaliation policies is evidenced by the lack of complaints received by the Employer

## RUFUS JONES PERSONNEL FILE

The personnel file of Rufus Jones at Brahmin Preparatory School contains the following information:

Rufus Jones is 36-years-old, with a master's degree from the University of Oregon. He has been married for six years and is the father of a three-year-old son. He previously taught at Destiny Community College for two years, with excellent reviews. Brahmin Preparatory School recruited and hired Jones in April 20XX-3. After reviewing Brahmin's commitment to diversity and providing its students with a broad exposure to different cultures and experiences, he accepted an offer of employment. The year before he spoke against the invitation to von Stroheim, he was given an outstanding rating by his department chair:

You are a dynamic new voice who has acted with integrity, honesty and passion to make sure that our school lives up to the high ideals that have been a part of our stated educational goals. There is a saying, "Those who do not understand the mistakes of the past are doomed to repeat them." One of the things you have done so well here is to give us a fresh perspective, allowing us to re-examine what it is we teach, and how we teach it.

In a very short period of time, you have taken us to a new level. You are a proven agent of change not only within our faculty, but also with regard to your students. Those who have taken your classes consider you brilliant and challenging, yet encouraging. We hope that you will be an important voice in our community for many years to come.

Entry 10: Peterson E-mail

TO: All Faculty and Staff – Brahmin Preparatory School

FROM: Robin Peterson

RE: Faculty Retention

DATE: April 15, 20XX-3

I am disturbed, as I'm confident you are too, by the fact that our community lost talented teachers of color at an alarming rate this Spring. Though there are many private conversations on the subject, nobody seems to be addressing the core issues head on. As a white faculty member, I would like to better understand the subtle racism that we as white folks continue to subscribe to at our school. I strongly encourage anyone concerned about this issue to attend the meeting I am organizing next week, on April 22, 20XX-3. I would like faculty and staff of any color to give their honest reflections on this subject. I hope that we can begin a dialogue that will shed some light on what is wrong at our school and produce a climate where we can begin to address the problems. I hope that I am not the only one in the room at this meeting, but am willing to take the risk, in order to stand up for what needs to be said.

Entry 11: Jones E-mail

TO: Head Master Winslow and Vice-Head Master Polonious

FROM: Rufus Jones

RE: Probation

DATE: October 22, 20XX-2

As faculty at an elite school, training the future leaders of our society, we have the solemn obligation to speak the truth. Though it was exceedingly difficult for me to do so, I stepped up to draw attention to a very bad decision made by the administration of our school – inviting an apologist for the evil institution of slavery to come as an endowed speaker, carrying the tacit approval of our community. There are certain things that cannot be justified in the name of academic freedom. This is one of them. While it is within your power to place me on probation, I do not acknowledge or agree with your reasoning for doing so. However, I remain open to further dialog on this issue.

12: Winslow E-mail

TO: Lynn Polonious FROM: Francis J. Winslow

RE: Faculty Retention

DATE: October 20, 20XX-2

This has been a very complex year at the school in terms of our diversity efforts. It is my strong sense that our faculty of color did not feel the school was ready for more diversity, having had their basic qualifications questioned by some students and parents. The implication was that they were hired simply because of their race. These comments by Rufus Jones in the faculty meeting had a very destructive effect on the morale of our school. His failure to apologize is insubordinate. While Jones would cast himself in a heroic light, his angry words were nothing more than a cheap shot at the great work we are doing here. We need to draw some boundaries here. As principal of this school, it is my job to maintain a climate of civility. Rufus Jones has stepped over the line. I order you to place him on probation.

EXCERPTS FROM  
*THE SILVER LINING – A RE-APPRAISAL OF THE EFFECTS OF SLAVERY*

By Walther von Stroheim, Ph.D.

Page 101: Though human beings are given to seeing things in terms of absolutes, the outcomes of history and human behavior always present a mixed picture. While the institution of slavery is inconsistent with the basic principles of democracy, this mere fact alone should not prevent a candid appraisal of all its impacts, both positive and negative. While my basic thesis is bound to ignite controversy in these politically correct times, basic academic integrity and honesty requires me to do so.

Page 235: Strong emotions on the subject of slavery have caused most past writers to compromise their objectivity, taking a slanted view of the situation. Indeed, the history books of the 19<sup>th</sup> Century on the effects of slavery largely were written by authors representing the victorious North's point of view after the American Civil War. To some extent, this trend has continued ever since.

Page 240: There is no question that slavery damaged the family structure and basic right of self-determination of the millions of African Americans who were brought involuntarily to this country. However, there is a silver lining to this, as their descendents now enjoy an unparalleled degree of economic prosperity, achievement and material wealth, particularly when compared to the citizens of any other country in Africa. Indeed, no African American would choose to go back and be repatriated to the land of their origins.

## **General Statement of the Law-Employment Cases**

### **Discrimination (Disparate Treatment)**

To prove a case of disparate treatment, a plaintiff must generally show that she was a member of a protected class. In this case example, the protected class would be a person's race, such as African American. A plaintiff must also then prove that she was treated differently because of her race and that similarly situated individuals outside of her protected class, such as Caucasians, were treated more favorably. A plaintiff also has to establish that she suffered damages as a result of the disparate treatment.

### **Retaliation**

To prove a case of retaliation, a plaintiff needs to establish that she engaged in protected activity. Protected activity generally means lodging a complaint of discrimination, harassment or retaliation or participating in the investigation of such a complaint.

After establishing that she engaged in protected activity, the plaintiff needs to establish that she suffered an adverse employment action. An adverse employment action is defined broadly but generally includes conduct by the employer that a reasonable person believes would negatively affect their willingness to bring forward complaints. This includes verbal warnings from the employer, probation, demotion, and termination as a few examples.

The last element the plaintiff must establish is causation – a causal link between the protected activity and the adverse employment action. Generally, this is established by the temporal proximity between the protected activity and the adverse employment action - whether a day or months or longer. Certainly the longer the duration between the protected activity and the adverse employment action, the more difficult the causation argument. The **converse** then is true - the shorter the duration between the protected activity and the adverse employment action, the easier it is to prove causation.

Entry 14: General Statement of the Law – Employment Cases