

MUST WE DEPLOY DRONES IN THE TWENTY-FIRST CENTURY TO TARGET UNDER THE RADAR DISCRIMINATION AGAINST MINORITY WOMEN AT LAW SCHOOLS AT HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCUs)?

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INTRODUCTION

This Article is a result of the authors' participation in the Association of American Law School's Crosscutting Program ("The More Things Change . . . : Exploring Solutions to Persisting Discrimination in Legal Academia") at the Annual Meeting in Washington, D.C., in January 2015.

Th[e] Program dr[ew] from empirical data, legal research, litigation strategy, and personal experience to both further conversations about the persistence of discrimination in the legal academy and activate strategies for addressing ongoing structural and individual barriers. Intersectional bias compounds many of these challenges, which range from the discriminatory actions of colleagues and students, to the marginalization of particular subject areas in the curriculum, to structural hierarchies in the profession [at HBCUs generally, and more specifically at HBCU law schools].¹

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1 ASS'N AM. LAW SCHOOLS, 2015 ANNUAL MEETING: LEGAL EDUCATION AT THE CROSSROADS—FINAL PROGRAM 63–64 (Jan. 2–5, 2015), https://www.aals.org/wp-content/uploads/2014/12/Program_Final.pdf [<https://perma.cc/BLJ3-988Y>] (The Program follows an innovative format. After short presentations by three speakers, the program transition[ed] to an “open microphone” session of speakers selected in advance from a “call for remarks”).

“Surely one of the most striking features [also observed by the authors] of human dynamics is the alacrity with which those who have been oppressed will oppress whomever they can once the opportunity presents itself.”² This Article examines several major issues that persist for Black female faculty generally, but more specifically at HBCUs. Nevertheless, examples have been extracted from a cross-section of female faculty members who have encountered similar instances of discrimination or discriminatory practices against female colleagues.

After the Introduction, Part I offers an overview of the history/evolutions of HBCUs. Part II analyzes analogous systems, which operate similarly to and influence historically black colleges and universities. Part III develops the concept of women pretexting authority (“WPA”). Part IV discusses legitimate processes and mechanisms to address infractions at HBCUs after female faculty complain. Part V proposes recommendations to address the persisting problem, until a conclusion is finally reached in Part VI based on the arguments set forth in the analysis.

I. History and Evolution of Historically Black Colleges and Universities (HBCUs) Law Schools

Founded in the 1800s, the nation’s Historically Black Colleges and Universities—HBCUs—have the mission of providing access to higher education for society’s underprivileged and disenfranchised.³ In an effort to assist with the education of newly freed slaves in the post-Civil War era, the federal government created HBCUs.⁴ The purpose was to help newly freed slaves gain employment through an industrial education rather than provide knowledge, which was the primary purpose of predominately white institutions (“PWIs”).⁵

2 Randall Kennedy, *My Race Problem—and Ours*, ATLANTIC MONTHLY, May 1997, <http://www.theatlantic.com/magazine/archive/1997/05/my-race-problem/376849/> [<http://perma.cc/J7JX-A22A>].

3 Kelly M. Mack, Claudia M. Rankins & Cynthia E. Winston, *Black Women Faculty at Historically Black Colleges and Universities: Perspectives For a National Imperative*, 11 DIVERSITY IN HIGHER EDUC. 149 (2011).

4 *Id.*

5 Marybeth Gasman et al., *Historically Black Colleges and Universities: Recent Trends*, 93 ACADEME 69, 72 (2007), <http://www.aaup.org/report/historically-black-colleges-and-universities-recent-trends> [<http://perma.cc/95JR-WU5Z>].

A. Private and Public

There are 105 Historically Black Colleges and Universities in America, and all have contributed to the nation's growth.⁶ Forty HBCUs are four-year public institutions and forty-nine are private; there are eleven two-year public institutions and five two-year private institutions.⁷

B. The Six Law Schools at Historically Black Colleges and Universities

The authors hail from Thurgood Marshall School of Law at Texas Southern University, one of six HBCU law schools. David A. Clark School of Law, University of the District of Columbia, Florida A&M University School of Law, Howard University School of Law, North Carolina Central University, and Southern University Law Center complete the list.⁸

The emergence of these institutions afforded Blacks the chance to attend law schools and become successful practitioners.⁹ Although Black women entered the legal profession as a result of the Black law school movement, the women pioneer graduates of these law schools, unlike their male colleagues, did not gain notoriety.¹⁰ Thurgood Marshall was one of the Black legal practitioners who received notoriety.¹¹ As a result of his many

6 *White House Initiative on Historically Black Colleges and Universities*, U.S. DEP'T OF EDUC., <http://www.ed.gov/edblogs/whhbcu> [<https://perma.cc/SFS3-CR9J?type=source>] (last visited July 29, 2015); Exec. Order No. 13,256, 67 Fed. Reg. 6 (2002) (highlighting the partnership between HBCUs and the federal government, which is intended to foster continued growth).

7 *White House Initiative on Historically Black Colleges and Universities*, *supra* note 6.

8 *See generally* THURGOOD MARSHALL FUND, UNDERSTANDING GENDER AT PUBLIC HISTORICALLY BLACK COLLEGES AND UNIVERSITIES: A SPECIAL REPORT BY THE THURGOOD MARSHALL SCHOLARSHIP FUND (2006), http://www.thurgoodmarshallfund.net/images/pdf/2006_gender_study.pdf [<http://perma.cc/TW33-F45L>] (providing perspectives on gender at forty-five public HBCUs—providing a framework as well as background for discussing the consequences and opportunities that are affected by the gender composition of the students and faculty at said institutions).

9 Brian McClure, *Taking our Talents to Black Schools of Law*, STATE OF HBCUS (Sept. 13, 2011), <https://stateofhbcus.wordpress.com/2011/09/13/taking-our-talents-to-black-schools-of-law/> [<https://perma.cc/5F9Q-TMUA>].

10 *Id.*

11 *See generally* LARRY S. GIBSON, *YOUNG THURGOOD: THE MAKING OF A SUPREME COURT JUSTICE* (2012) (chronicling Thurgood Marshall's life from birth, July 2, 1908, through his early years, his family's influence, as well as other influences that helped him develop into the lawyer that would assist in shattering the "separate but equal" policies).

contributions to the Civil Rights movement and to the plight of Blacks and other minorities, Texas Southern University asked if Marshall would endorse its law school and allow it to bear his name. In 1976, years after *Brown v. Board of Education*¹² and *Sweatt v. Painter*,¹³ the name was changed to Thurgood Marshall School of Law¹⁴ (“TMSL”). TMSL is often referred to as “the house that Sweatt built.”¹⁵ Nevertheless, let us not forget the sweat of many women contributed to that success.

C. Women Generally

Women’s history in the United States continues to evolve. Historically, American women had three choices: they could “be a nun, be a prostitute, or marry a man and bear children.”¹⁶ In defiance, or perhaps in spite of these specific choices, Black and White women came together to create more opportunities and force men to accept their evolving roles.

As recently as 1970, women were testifying before Congress concerning the need to extend sex discrimination legislation to the higher education academy.¹⁷ Recognizing

12 *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954) (holding that segregating students in public schools was a violation of the Equal Protection clause of the United States Constitution—separate schools are inherently unequal).

13 *Sweatt v. Painter*, 339 U.S. 629, 632, 635 (1950) (resulting in the establishment of the Texas State University for Negroes Law School, which was charged with educating Black lawyers in Texas because the University of Texas did not want to integrate; the law school was established in spite of the U.S. Supreme Court’s mandate that Heman Sweatt, a Black man, could not be denied admission to law school at the University of Texas).

14 Marguerite L. Butler, *The History of Texas Southern University, Thurgood Marshall School of Law: “The House That Sweat Built,”* 23 T. MARSHALL L. REV. 45, 53 (1997) (discussing Justice Marshall’s initial refusal of the offer because he saw the school as a continuation of the separate but equal position; nevertheless, after assurances that the Law School had actually accomplished his goal of integration—Thurgood accepted and attended the dedication ceremony); *Texas Southern University Thurgood Marshall School of Law, About Historically Black Colleges And Universities (HBCUs)*, THURGOOD MARSHALL COLLEGE FUND, <http://www.thurgoodmarshallfund.net/about-tmcf/about-hbcus> [<http://perma.cc/BR6G-DCJ5>] (last visited July 29, 2015).

15 Butler, *supra* note 14, at 45.

16 Phillip Longman, *The Return of Patriarchy*, FOREIGN POL’Y, Mar.–Apr. 2006, at 63 (analyzing the history of patriarchy, and the return to “father knows best” time in history”).

17 “*The Higher, the Fewer*”: *Discrimination Against Women in Academia*, HISTORY MATTERS, <http://historymatters.gmu.edu/d/6462/> [<http://perma.cc/W288-JLQG>] (last visited June 21, 2015) (providing

the inequities and injustices suffered by women on campuses across America, pleas were made to address the discriminatory practices and prejudicial attitudes against women.¹⁸ The speakers foreshadowed that women would continue to encounter discrimination in “academic institutions which claim to preach the tenants of democracy and fair play.”¹⁹ Women started to speak up and speak out about the issue.

A White female colleague analyzed the situation in the legal academy, where women were facing discrimination at law schools where the faculty was traditionally comprised of White males.²⁰ She stated that she wanted to speak in her voice as a White woman from a working-class background who did not meet the traditional law school faculty criteria.²¹

She addressed the standards of tenure and promotion, which reflect a gender bias.²² She noted that some of the issues could also affect minorities, particularly Black women.²³

D. Deploying Drones²⁴ to Make a Record: Expanding the Law to Include Injuries to Black Females—the Truncated Class at HBCUs

The authors, like one of their White female colleagues,²⁵ are writing in their voices, as

testimony from women to the Congressional Committee on Education and Labor about Discrimination Against Women, during the 91st Congress, Second Session).

18 *Id.*

19 *Id.*

20 Susan Apel, *Gender and Invisible Work: Musings of a Women Law Professor*, 31 U.S.F. L. REV. 993, 996 (1997).

21 *Id.*

22 *Id.* at 1006.

23 *Id.* at 997.

24 “Drones are an enormously powerful, disruptive technology that rewrites rules wherever it goes. Now the Drones are coming home to roost.” Lev Grossman, *Drone Home*, TIME, Feb. 11, 2013, at 28. Jackson and Wu posit that time has come to use this “disruptive technology” in the legal arena to develop “legal analytical drones” to disrupt covert, status quo discrimination. Drones refers to unmanned aerial vehicles that are appearing in every aspect of life. Police departments are using them to study crime scenes. Farmers are using them to watch fields. Builders are using them to survey construction sites. Hollywood is using them to make movies, and hobbyists are using them to have fun. *Id.*

25 Apel, *supra* note 20, at 997 (discussing the overlap that may also touch and concern women and people of color who are generally excluded from positions that are traditionally held by White males at law schools).

Black female law professors at an HBCU who have experienced the same concerns, but are oftentimes compounded because they are Black females in peculiar settings that can be quite hostile.²⁶ Generally, “like [W]hite women, [B]lack women experience occupational segregation, a gender wage gap and the challenge of balancing family and work. We are discriminated against because we are [B]lack. We are discriminated against because we are women. We are discriminated against because we are both.”²⁷ Even though race and gender help us understand the historical context, “legal rules treat the Black woman’s life as a ‘mixture’ of physical and experiential elements, including but not limited to, race, gender, and sexuality[,] . . . the law . . . deal[s] with one element at a time to the exclusion of other elements.”²⁸ Legal rules treat Black women’s issues from two constructs—“The essence of gender is the white woman model; the essence of Blacks is a Black male model.”²⁹

If you are a White woman, you are generally a minority based on gender. If you are a Black male, you are generally a minority based on race. Both groups may argue that discriminatory practices are worse based on belonging to either minority group—gender or race. However, what if you are a member of both groups? The authors argue that this bifurcated “double jeopardy”³⁰ membership actually creates an invisible, unintended, and unrecognized third group if you are a Black female working at an HBCU, “the truncated subclass.”³¹ In this situation, you are not a White female, and you certainly are not a Black male. Therefore, having partial membership in both groups actually exposes the Black female to a plethora of discriminatory practices, without an adequate remedy. In other words, you are not recognized as a female minority because you are at an HBCU, and society has difficulty fathoming that an HBCU would engage in discriminatory activity³²;

26 See generally Fredrick C. Harris & Robert C. Lieberman, *Racial Inequality After Racism—How Institutions Hold Back African Americans*, 94.2 FOREIGN AFF., Mar./Apr. 2015, at 16–17.

27 Cecilia Conrad, *Black Women: The Unfinished Agenda*, AM. PROSPECT (Sept. 20, 2008), <http://prospect.org/article/black-women-unfinished-agenda> [<http://perma.cc/W8SJ-GMMP>].

28 Alfred Dennis Mathewson, *Black Women, Gender Equity and the Function at the Junction*, 6 MARQ. SPORTS L. REV. 239, 243 (1996).

29 *Id.* at 243.

30 Florence B. Bonner, *Addressing Gender Issues in the Historically Black College and University Community: A Challenge and Call to Action*, 70 J. NEGRO EDUC. 176, 178 (2001).

31 Faith Jackson and Edieth Wu’s recognition of a third group—the “truncated subclass.”

32 See *Brown v. Sessoms*, 774 F.3d 1016, 1023, 1025 (D.C. Cir. 2014) (reversing the dismissal of Brown’s DCHRA and section 1981 claims and remanding claims for further proceeding consistent with said opinion); Eric Freedman, *Judge: No Foul Play in UDC Tenure Decision*, DIVERSE: ISSUES HIGHER EDUC. (Feb. 26, 2013),

thus, you are not protected because your situation does not fall squarely within the two constructs. This construct remains a powerful framing device in social and political interactions and in policy debates, often in ways that remain concealed behind the rhetoric of colorblindness [fairness/equality].³³ “In order to get beyond racism, we must first take account of race [Black females]. There is no other way. And in order to treat some persons equally, we must treat them differently.”³⁴ This is the situation with the Black women in the truncated class.

The hidden hand³⁵ is society’s misunderstanding of how race and gender works “at the level of institutions.”³⁶ “How do institutions [especially HBCUs] that are, on their face, scrupulously race neutral nevertheless produce racially imbalanced outcomes?”³⁷ The real question becomes, how could Black male leadership possibly discriminate against Black female faculty members at HBCUs?

As the social sciences increasingly embraced an understanding of human behavior that focused intensively on individuals and their beliefs and habits, no serious exploration of this institutional racism hypothesis [Black females being discriminated against Blacks at HBCUs] ever got off the ground. As a result, policymakers have been left with a poor understanding of the institutional mechanics that perpetuates racially disparate conditions.

Therefore, at HBCUs this type of hidden hand,³⁸ perpetual discrimination goes under the radar. Thus, the deployment of a drone’s precision is required to attack the systemic problem. The issue is “a deeply ingrained ‘systematic problem,’ not amenable to one-dimensional diagnoses or treatments.”³⁹ The bifurcated “double jeopardy”⁴⁰ policy actually

<http://diverseeducation.com/article/51558> [<http://perma.cc/XY8A-C8KL>].

33 Harris & Lieberman, *supra* note 26, at 13.

34 Harris & Lieberman, *supra* note 26 at 16 (quoting Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 407 (1978) (Blackmun, J.)).

35 Harris & Lieberman, *supra* note 26, at 16.

36 Harris & Lieberman, *supra* note 26, at 16.

37 Harris & Lieberman, *supra* note 26, at 16–17.

38 Harris & Lieberman, *supra* note 26, at 16–17.

39 Harris & Lieberman, *supra* note 26, at 15.

40 Bonner, *supra* note 30, at 178.

masks practices that continue to contribute to racial inequality for Black females.⁴¹ The bifurcated system is so “entrenched, and existing approaches have proved incapable of loosening their hold.”⁴² The truncated subclass⁴³ approach “would allow regulators [ABA, AALS, states and others] to place a wide array of institutions under scrutiny,”⁴⁴ especially HBCUs, and finally “[d]isrupting the forces that reproduce”⁴⁵ the status quo—the discrimination against Black female faculty. “The forces that reproduce . . . inequality”⁴⁶ came to HBCUs as a “place of refuge and advancement for those weary from the battle of institutional racism and stereotypes that often plague the educational field for people of color.”⁴⁷ “The forces”⁴⁸ are the Black males who found refuge. Unfortunately those who found “refuge” at HBCUs are now replicating and instigating institutional discrimination against Black females.

How do we end this replication of institutional discrimination at HBCUs against the truncated subclass?⁴⁹ We do so by first acknowledging that this truncated subclass exists. Several concerns have been voiced about the academy’s failure to recognize complex challenges faced by Black women at HBCUs.⁵⁰ However, when Black women talk about their experiences⁵¹ and voice their concerns about facing

41 Harris & Lieberman, *supra* note 26, at 19.

42 Harris & Lieberman, *supra* note 26, at 19.

43 See *supra* note 31 and accompanying text.

44 Harris & Lieberman, *supra* note 26, at 15.

45 Harris & Lieberman, *supra* note 26, at 20.

46 Harris & Lieberman, *supra* note 26, at 20.

47 Kamille Wolff, *From Pipeline to Pipe Dream: The HBCU Effect on Law School Deans of Color*, 14 J. GENDER RACE & JUST. 765, 777 (2011) (citing Laura W. Perna et al., *The Status of Equity for Black Undergraduates in Public Higher Education in the South: Still Separate and Unequal*, 47 RES. HIGHER EDUC. 197, 222–24 (2006)).

48 *Id.*

49 See *supra* note 31 and accompanying text.

50 Bonner, *supra* note 30, at 190.

51 Bim Adegunmi, *Kimberlé Crenshaw on Intersectionality: “I wanted to come up with an everyday metaphor that anyone could use,”* NEW STATESMAN (Apr. 2, 2014), <http://www.newstatesman.com/lifestyle/2014/04/kimberl-crenshaw-intersectionality-i-wanted-come-everyday-metaphor-anyone-could> [<http://perma.cc/6NUC-WLS5>].

barriers,⁵² they are faced with hostility and retaliation.⁵³ Professor Anita Hill's brave decision to testify about sexual harassment during the United States Congressional Committee's confirmation hearings for Supreme Court nominee Clarence Thomas⁵⁴ epitomizes the backlash⁵⁵ that occurs when Black females speak out. Moments like these for Black females are "life defining"⁵⁶ because they change the entire trajectory of their careers. Many voices are silenced due to fear of retaliation, creating historical gaps concerning gender discrimination against Black females. To fill these gaps, Black females and their supporters must come forward to document it, so that the record will reflect the ongoing struggles that continue to plague Black females.

Also salary bias should be openly discussed to provide an opportunity to remedy the discrimination faced by Black females at HBCUs⁵⁷—the truncated subclass.⁵⁸ Federal laws exist that ban discrimination in the workplace based on sex⁵⁹; nevertheless, in the United States women are paid less than men to do the same job.⁶⁰ For women of color, the situation is worse.⁶¹ As recently as 2012, "[B]lack women made 69 cents for every dollar

52 Laura M. Padilla, *A Gendered Update on Women Law Deans: Who, Where, Why, and Why Not?*, 15 AM. U. J. GENDER, SOC. POL'Y. & L. 443, 463 (2007) ("Women of color traditionally have faced more barriers to positions of power than men of color or white women; in a study, women leaders 'noted significant racial and ethnic differences in reporting roadblocks in one's own career . . .').

53 Bonner, *supra* note 30, at 179.

54 SHARON HARLEY, *THE TIMETABLES OF AFRICAN-AMERICAN HISTORY, A CHRONOLOGY OF THE MOST IMPORTANT PEOPLE AND EVENTS IN AFRICAN-AMERICAN HISTORY* 358 (1995).

55 Adekunmi, *supra* note 51 (according to Attorney Crenshaw, "When we were defending Anita Hill . . . [t]here was overwhelming criticism . . . from Clarence Thomas's camp, the Republican camp, from the White House, from the senate judiciary committee [sic]. And the Democrats were not defending her." "It was like one of these moments where you literally feel that you have been kicked out of your community, all because you are trying to introduce and talk about the way African American women have experienced sexual harassment. . .").

56 Adekunmi, *supra* note 51.

57 Cf. Melanie Eversley, *Medical Leaders Cite Discrimination, Calls For Advocacy*, USA TODAY (Feb. 19, 2015), <http://www.usatoday.com/story/news/2015/02/19/bias-medical-community/23658909> [<http://perma.cc/MYX2-R7SB>].

58 See *supra* note 31 and accompanying text.

59 AMERICAN CIVIL LIBERTIES UNION, *FIGHTING SEX DISCRIMINATION ON THE JOB* (on file with authors).

60 Michele Coleman-Mayes, *Fix The System, Not the Women*, 23.3 PERSPECTIVES 2 (Winter 2015) (discussing gender pay equity and transparency in compensation).

61 Bryce Covert, *Unequal Pay is Even More Unequal For Women of Color*, THINKPROGRESS (Nov. 15, 2013),

made by a white man.”⁶² Statistics support that Black women at HBCUs make less than Black men even though they perform the same job or hold the same position.⁶³ A recently released report by the International Monetary Fund⁶⁴ (“IMF”) buttresses President Obama’s position, “When women succeed, American succeeds.”⁶⁵ The IMF report suggested that the international economy would benefit if the gender equality gap was closed and the employment playing field was leveled.⁶⁶ At HBCUs, when Black female faculty is allowed to succeed, that success benefits the whole as well—students, faculty, and the community.

This call for transparency should be swift and without delay. The “legal analytical drone”⁶⁷ approach is critical to assist in moving toward transparency because the Fiefdoms at HBCUs have been wholeheartedly influenced by other opaque and powerful systems. Therefore, the Fiefdoms at HBCUs have a relentless commitment to using learned tactics taken from these systems to maintain their positions of power.

II. Analogous Systems which Operate Similarly to, and Influence, HBCUs’ Approach to Addressing Issues That Plague Black Female Faculty at HBCUs

Many HBCUs were headed by Whites in the early years⁶⁸; therefore, the Majority White

<http://thinkprogress.org/economy/2013/11/15/2950501/racial-wage-gap/> [<http://perma.cc/9BMQ-JN8M>] (discussing the wage gaps and gender discrimination that women of color face in the workplace—the gap between White and Black households).

62 *Id.*

63 *Cf.* Cecilia Conrad, *Black Women: The Unfinished Agenda*, AM. PROSPECT (Sept. 20, 2008), <http://prospect.org/article/black-women-unfinished-agenda> [<http://perma.cc/W8SJ-GMMP>].

64 *See generally* INTERNATIONAL MONETARY FUND, <http://www.imf.org/external/about.htm> [<http://perma.cc/64CV-GT4J>] (last visited June 21, 2015).

65 Alex Seitz-Wald, *[President] Barack Obama: ‘When Women Succeed, America Succeeds,’* MSNBC (Sept. 19, 2014), <http://www.msnbc.com/msnbc/barack-obama-when-women-succeed-america-succeeds> [<http://perma.cc/94B5-Y6TS>].

66 Christian Gonzales, Sonali Jain-Chandra, Kalpana Kochhar & Monique Newiak, *IMF Staff Discussion Note—Fair Play: More Equal Laws Boost Female Labor Force Participation*, IMF (Feb. 23, 2015), <http://www.imf.org/external/pubs/ft/sdn/2015/sdn1502.pdf> [<http://perma.cc/L79F-9HU2>].

67 Jackson and Wu posit that time has come to use this “disruptive technology” in the legal arena to develop “legal analytical drones” to disrupt covert, status quo discrimination. *See* Grossman, *supra* note 24, at 28.

68 MaryBeth Gasman, *Swept Under the Rug? A Historiography of Gender and Black Colleges*, 44 AM. EDUC. RES. J. 2, 4 (2007); Harley, *supra* note 54, at 204 (discussing John Hope’s tenure as the first Black President of Morehouse College, an HBCU).

Institutions' ("MWI") structure was introduced as the model at HBCUs. The Military's system, Black Churches, and the Athletics models have overwhelmingly influenced the leadership at HBCUs. Similar to the two constructs mentioned earlier, in which legal rules treat Black women's issues from 1) the White women's perspective as to gender,⁶⁹ and 2) the Black male model⁷⁰ as to race, the essence of leadership at HBCUs is embodied by fragments from the military, Black Churches, and Athletics.

A. The Military System

The United States military focuses on people and institutions of war-making. In democratic or political systems, militaries are run in the public interest, because they are a public force.⁷¹ Like HBCUs, the relationship between the military and the society it serves is complicated and ever-evolving. One of the military's main purposes is to "create a sense of military tradition which is used to create cohesive military forces."⁷² The behaviors, customs, norms, rules, values, and beliefs shared between members in a group—the military—establish a multi-faceted concept of a group culture.⁷³ This "group culture" and "the masculine identity is a seminal part of the military socialization process, it can lead to an erasure or obstruction of the female identity."⁷⁴ Like in the male-dominated military, women are not as prevalent in HBCU law schools, especially in leadership. Therefore, "their presence is not normalized."⁷⁵

This "group culture" and "socialization process" found in the military⁷⁶ have been

69 Mathewson, *supra* note 28.

70 Mathewson, *supra* note 28.

71 See generally *Civil-Military Relations, International Encyclopedia of the Social Sciences*, ENCYCLOPEDIA.COM, http://www.encyclopedia.com/topic/Civil-Military_Relation.aspx [<http://perma.cc/63VG-RJ6V>] (last visited Apr. 29, 2015).

72 *Military*, WIKIPEDIA.ORG, <http://en.wikipedia.org/wiki/Military> [<http://perma.cc/JF5F-T883>] (last visited Feb. 17, 2015).

73 Devanshi Patel, *Education or Prosecution: Institutional Efforts to Combat Sexual Violence in the United States Military* 40 (May 2014) (unpublished A.B. thesis, Stanford University) (on file with the Center on Democracy, Development, and the Rule of Law, Stanford University), http://iis-db.stanford.edu/docs/870/Patel_CDDRLHonors_FinalThesis_ver2.pdf [<http://perma.cc/5SSU-2TWW>].

74 *Id.* at 41.

75 *Id.* at 4.

76 *Id.* at 41.

transposed to HBCUs because the male dominant leadership has the same approach to defining male versus female roles; males take the superior roles while females are relegated to inferior roles.⁷⁷ “As early as 1865, the Freedman’s Bureau began establishing [B]lack colleges, drawing many of its white staff and teachers from the ranks of the military.”⁷⁸ HBCU law schools are part of the general society of higher education; however, they have their own rules and culture, very similar to the military’s strictly regimented hierarchy where women have traditionally been treated as second-class citizens.

A 1995 report by the Government Accountability Office (“GAO”) disclosed that long-term sexual harassment and assault problems were pervasive at military academies,⁷⁹ yet this pervasive problem was not addressed. Many students reported that the military academy failed to investigate assaults, took an active role in discouraging reports, and engaged in retaliation against the complainants.⁸⁰ The leadership at HBCUs uses the same strategy and refuses to address the issue. HBCUs also fail to address discrimination against Black female faculty. Like their counterparts in the military, HBCU Black female faculty are subjected to the “culture of victim blaming.”⁸¹

[A man] may feel his manly self image threatened—especially at a time he needs it to be reaffirmed—when he finds himself in competition with a woman who could win something he needs for himself, or could gain dominance of the immediate environment.

Such an observation could begin to explain the sense of threat that many men perceive when they were faced with competing with—or working alongside—women who challenge their stereotypical views of femininity.⁸²

77 Anu Bhagwati, *Why The Military Needs to Recruit and Promote More Women*, WASH. POST (May 24, 2013), http://www.washingtonpost.com/opinions/why-the-military-needs-to-recruit-and-promote-more-women/2013/05/24/27b867a4-c259-11e2-914f-a7aba60512a7_story.html [<http://perma.cc/L23V-6LKC>].

78 Gasman, *supra* note 68, at 4.

79 LINDSAY ROSENTHAL & LAWRENCE KORB, AM. PROGRESS, TWICE BETRAYED—BRINGING JUSTICE TO THE U.S. MILITARY’S SEXUAL ASSAULT PROGRAM 16 (2013), <https://www.americanprogress.org/wp-content/uploads/2013/11/MilitarySexualAssaultsReport.pdf> [<https://perma.cc/B876-2TYC>].

80 *Id.*

81 Patel, *supra* note 73, at 42–43.

82 Patel, *supra* note 73, at 25.

The military and HBCUs are discrete subcultures that exist, like the Black Church, as part of a larger civil society.⁸³ These institutions share similarities in the function of their individual infrastructures, promoting political agendas, controlling internal populations,⁸⁴ and wielding decades-long, unchecked power. Black males fled plantations during the Civil War to join Union forces in an effort to escape discrimination and persecution.⁸⁵ Nevertheless, even in the twenty-first century, serious civil rights violations continue to occur under their leadership, in spite of their history of overt discrimination endured by their forefathers and their continued exclusion from many of the nation's resources.⁸⁶

B. The Black Churches' Influence

The hierarchal system at HBCUs can also be likened to Black Churches: like majority churches they also serve the same higher power.⁸⁷ During the Antebellum period and after the Civil War, Black Churches offered refuge from oppression and a place to address political issues.⁸⁸ However, nowhere is there a more glaring demonstration of segregation than Sunday mornings in places of worship.⁸⁹ Nevertheless, the male-dominated hierarchy is prevalent⁹⁰ in both. Within the organization of the Black churches, there is a hierarchy

83 Cf. *Civil-Military Relations*, *supra* note 71.

84 *Civil-Military Relations*, *supra* note 71.

85 Harley, *supra* note 54, at 147 (responding to the public's interests in the unique and complex issues confronting the historical and contemporary lives of African Americans in the United States).

86 Harley, *supra* note 54, at 164 (describing the Fifteenth Amendment that granted male suffrage regardless of race, color or previous conditions of servitude; this right "spark[ed] a debate within [both] the white and black communities over woman's suffrage" and the Civil Rights Act of 1875 that extended Blacks the right to equal treatment in inns, public places, and prohibited exclusion from juries. It was later ruled unconstitutional in 1883).

87 William E. Montgomery, *African-American Churches*, TEX. ST. HIST. SOC'Y: THE HANDBOOK OF TEX. ONLINE (June 9, 2010), <https://tshaonline.org/handbook/online/articles/pkatz> [<http://perma.cc/ZD54-5NKL>] ("Many voices have asserted that eleven o'clock Sunday morning remains the most segregated time of the week.").

88 Kimberly Sambol-Tosco, *The Slave Experience; Religion*, PBS.ORG, <http://www.pbs.org/wnet/slavery/experience/religion/history2.html> [<http://perma.cc/P3HS-LX4E>] (last visited Feb. 6, 2015).

89 Grace Ji-Sun Kim, *Women of Color in Ministry: Ending Discrimination*, HUFF POST: RELIGION (Aug. 26, 2014), http://www.huffingtonpost.com/grace-jisun-kim/women-of-color-in-ministr_b_5711461.html [<http://perma.cc/WEX8-UVLT>] (hosting event to address the changing roles of women as well as the issue of minor/slow changes in the Church and religious communities); Montgomery, *supra* note 87.

90 Alaenor, expert in African American Religion, *How is the Role of Women Changing in the Black*

that is predominately held by males.⁹¹

In Black churches, the wives of the pastors are prestigiously recognized as “First Lady” of the church, because of their affiliation with their husbands.⁹² However, the number of Black churches headed by females pales in comparison to the number of Black churches pastored by males.⁹³ When the pastor is a female, her husband is not recognized as the “First Gentleman.”⁹⁴ If a woman is at the helm, it is more common to find she shares the helm with her husband as a “co-pastor”⁹⁵ because she is his wife, not because she was hired or elected to the position.

HBCUs emulate the same philosophy and system of the Black Church. The upper-echelon administrations at HBCUs, like Black pastors in Black churches, are expected to be, and are, political. Both styles of leadership minimize merit-based contributions of Black women.⁹⁶ The Presidents and Deans of HBCUs like Pastors and Associate Pastors in the Black Churches are treated like heads of states.⁹⁷ Therefore, this practice is insidiously perpetuated at HBCUs because many of the leaders from both groups were also part of

Church?, YOEXPERT, <http://african-american-history.yoexpert.com/african-american-religion-6830/how-is-the-role-of-women-changing-in-the-black-chu-42733.html> [<http://perma.cc/9HLJ-RM9B>] (last visited Feb. 6, 2015).

91 *Id.* (discussing the make-up of the Black Church: the Reverend was male; the deacons were male—the trustees were male. The women were the silent ushers who showed guests to seats).

92 “*First Lady*” *Should be Banished from The Church*, TIM’S BLOG (May 7, 2014), <https://timfall.wordpress.com/2014/05/07/first-lady-title-bad-for-church> [<https://perma.cc/9UJB-5SRP>] (discussing how “male senior pastors are not the first gentlemen of their congregations and the women married to them are not the first ladies. Vice versa for congregations with women senior pastors.”) [hereinafter “*First Lady*”].

93 Garlinda Burton, *Women Pastors Growing in Numbers*, THE PEOPLE OF THE UNITED METHODIST CHURCH (Mar. 20, 2014), <http://www.umc.org/news-and-media/women-pastors-growing-in-numbers> [<http://perma.cc/29M3-2WLU>] (discussing how the number of women more likely to leave the clergy based on “lack of support from the hierarchal system” has increased among racial-ethnic women from 27% twenty years ago to 44%).

94 “*First Lady*,” *supra* note 92.

95 Thabiti Anyabwile, *Husband-Wife Co-Pastors?*, FRONT PORCH (Sept. 9, 2014), <http://thefrontporch.org/2014/09/husband-wife-co-pastors> [<http://perma.cc/9VNP-F358>] (discussing the slow growing trend that led to “first ladies” evolving into co-pastors).

96 Brian Bethel, *Becoming The First Lady*, ABILENE REP. NEWS (July 13, 2007), <http://www.reporternews.com/lifestyle/faith-and-values/becoming-the-first-lady> [<http://perma.cc/T5D6-JRUE>].

97 *Id.*

off-shoot churches, biracial congregations where the rights of Blacks were limited.⁹⁸ Rather than discard these limitations, some Black males continued to vehemently adopt these practices and apply them to women. These community influences shaped and molded the new black male leaders' perspective, especially in their approaches and attitudes toward the changing role of Black women.⁹⁹ This pattern of discrimination in the military and Black Churches can also be found in athletics as it pertains to black women. However, unlike Black Churches, HBCUs are under the same Title VII¹⁰⁰ mandates that bar discriminatory practices.

C. Athletics

Athletics is another barometer that not only highlight the types of discrimination and adverse treatment of Black women in sports, but also mirror the continued discrimination Black female faculty face at HBCUs. Black students were barely able to participate in intercollegiate sports prior to the mid-twentieth century.¹⁰¹ However, integration in educational institutions brought about by the Civil Rights movement of the 1960s would later afford the Black male athlete access to MWIs.¹⁰²

Black female athletes benefitted along with the Black male,¹⁰³ however, legal rules and

98 Sambol-Tosco, *supra* note 88.

99 Cf. Ronda Racha Penrice, *Facing Racism and Sexism: Black Women in America*, DUMMIES.COM (on file with the authors) (highlighting how “[h]istorically black women have chosen race over gender concerns, a choice that was especially poignant during Reconstruction” when Black women supported giving Black men the right to vote, which was in direct opposition to their white colleague suffragists).

100 Title VII, Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (1964).

101 Joseph N. Cooper, J. Kenyatta Cavil & Jeremy Cheeks, *The State of Intercollegiate Athletics at Historically Black College and Universities (HBCUs): Past, Present, and Persistence*, 7 J. ISSUES INTERCOLLEGIATE ATHLETICS 307, 308 (2014), http://csri-jjia.org/documents/publications/research_articles/2014/JIA_2014_7_15_307_332_The_Case_of_HBSU.pdf [<http://perma.cc/9JJ4-9THJ>] (discussing a historical overview of intercollegiate athletic programs at Historically Black Colleges and Universities and highlighting current challenges at face programs at HBCUs and offering a plan for self-sustainability and collective progress at said schools).

102 Mathewson, *supra* note 28, at 249. See also Harley, *supra* note 54, at 278, 290 (discussing President Eisenhower's signing of the Civil Rights Act of 1960—acknowledging the federal government's responsibility in matters involving civil rights and reversing its customary “hands off” policy; also discussing Congress' passing of the Civil Rights Act of 1964, which authorized additional powers to government agencies to protect citizens' against discrimination and segregation).

103 Mathewson, *supra* note 28, at 249.

tools to combat racial discrimination were not useful in combating the gender discrimination that Black women confronted in sports, both generally and in specific cases.¹⁰⁴ Title IX antidiscrimination provisions did not immediately benefit the Black female. Elite Black male athletes were vigorously recruited by MWIs and HBCUs, which significantly increased Black males' opportunities to compete. Black women were not vigorously recruited by MWIs, nor did they receive the same treatment and resources that Black male athletes received at HBCUs,¹⁰⁵ even though they were legally entitled to the same treatment as Black men at HBCUs.¹⁰⁶ This process allowed MWIs to comply with Title IX mandates by recruiting more White women and Black males.¹⁰⁷ The race issue was palpable, but the gender issue was latent because White women were being recruited at MWIs; therefore, the MWIs were in compliance with the gender component of the rule. This underscores that "[t]he sub-class of [B]lack women is a distinct group, subject to discrimination based on a dual status as [B]lacks and women that neither white women nor [B]lack men receive."¹⁰⁸ The authors also recognize this "sub-class"¹⁰⁹ of black women as part of what has been referred to as the traditional bifurcated class. Nevertheless, a third group exists, which is the invisible and unrecognizable¹¹⁰ voice of the "the truncated subclass."¹¹¹ This "truncated subclass"¹¹² questions whether the law will ever recognize Black females as a distinct

104 Mathewson, *supra* note 28, at 249.

105 Mathewson, *supra* note 28, at 250.

106 Mathewson, *supra* note 28, at 250.

107 Mathewson, *supra* note 28, at 250.

108 Mathewson, *supra* note 28, at 253 n.63 (quoting *Sims v. Montgomery Cnty. Comm'n*, 766 F. Supp. 1052, 1568 (M.D. Ala. 1990) (Thomas, J.)).

109 Mathewson, *supra* note 28, at 253.

110 COMM'N ON WOMEN IN THE PROFESSION, AM. BAR ASS'N, FROM VISIBLE INVISIBILITY TO VISIBLY SUCCESSFUL—SUCCESS STRATEGIES FOR LAW FIRMS AND WOMEN OF COLOR IN LAW FIRMS 6 (2007–2008), <http://www.americanbar.org/content/dam/aba/migrated/women/woc/VisiblySuccessful.authcheckdam.pdf> [<http://perma.cc/LK7A-UV2U>] (“[In] national groundbreaking study by the ABA Commission on Women in the Profession, the intersection of race and gender and its impact of women of color . . . is discussed.”) *See also* Apel, *supra* note 20, at 996 (discussing the ongoing issue of invisibility in the legal academy).

111 *See supra* note 31 and accompanying text.

112 *Id.* *See also* Conrad, *supra* note 27 (discussing the policy agendas that Black women share with Black men and with White women, and the specific disparate impact of this overlap on Black women, which cannot be ignored).

protected sub-group,¹¹³ which is the only way to provide a remedy for discrimination against the Black female.¹¹⁴ Black females at HBCUs are definitely in the penumbra of this fight for equality.

Embedded deep in the fabric of America are issues of race, gender, and inequality that impact the lives of Black women.¹¹⁵ As illustrated by similarities in the military system, the influence of the Black churches, and analogous vignettes in sports/athletics, “African American women face unique expectations as citizens of the United States.”¹¹⁶ These expectations are not just interwoven into the fabric of America,¹¹⁷ but are heightened for Black females at HBCUs because they are expected to conform.

III. Women Pretexting Authority (WPA)¹¹⁸

With a passion for history, the authors give deference to President Franklin D. Roosevelt’s 1933 Executive Order creating the Works Progress Administration—WPA.¹¹⁹ Under the auspices of the Emergency Relief Appropriations Act, the WPA put unemployed Americans to work in return for temporary financial assistance.¹²⁰ “FDR believed in the elementary principles of justice and fairness, he also expressed disdain for doling out welfare to otherwise able workers.”¹²¹ Therefore, we developed the Women Pretexting Authority (“WPA”) to describe women who are used by male-dominated leadership at HBCUs when they employ a certain tactic to advance the status quo.

113 Mathewson, *supra* note 28, at 254.

114 Mathewson, *supra* note 28, at 254.

115 MELISSA V. HARRIS-PERRY, *SISTER CITIZEN: SHAME STEREOTYPES, AND BLACK WOMEN IN AMERICA* 16 (2011).

116 *Id.* at 21.

117 *Id.*

118 Faith Jackson and Edieth Wu created “Women Pretexting Authority—the ‘WPA’ acronym—to describe women at HBCUs who serve in certain authoritative roles as a result of the male Fiefdom’s (leadership’s) decision to ‘conscript’ their services. The ‘WPA’ readily receives her new appointment and wears her ‘WPA’ title as an insignia of great accomplishment.”

119 *FDR Creates The WPA*, HISTORY.COM, <http://www.history.com/this-day-in-history/fdr-creates-the-wpa> [<http://perma.cc/RA3T-UWKT>] (last visited Feb. 5, 2015) (describing creation of the WPA in May 1933).

120 *Id.*

121 *Id.*

The “strong Black women image”¹²² has created a heavier burden for Black women than was first imposed by the nation and the Black community,¹²³ which is exacerbated when Black women are employed at HBCUs. At most HBCUs “there is evidence . . . of intraracial tension around gender.”¹²⁴ The gender norms of the White middle class have generally asserted that women belong in the domestic sphere,¹²⁵ which has been accepted by Black male leadership at HBCUs. In spite of their knowledge that most Black females do not have this luxury, Black male leadership at HBCUs has built up Fiefdoms. Fiefdoms at HBCUs are generally led by Black males, although they may include males of other ethnicities, but they do not necessary include all males. These Fiefdoms are territories that Black males dominate; thus, when the Black female comes aboard, the Black male’s perception is that his masculinity is in question.¹²⁶ The Black woman is now under the cloak and pressure of the Fiefdom’s edict to remain silent: the Black male believes the Black female has a responsibility to silence her own concerns¹²⁷ so that Black males can continue the status quo, which allows them to continue to advance. The men still go to one side when lines are drawn, the male side. As longstanding victims of racism, Black males still believe that they must fight for recognition and acceptance in the academe.¹²⁸

Surprisingly, Black men believe that Black women should definitely “let them have this” without interference, especially at HBCUs.¹²⁹ They may recognize that women should have some opportunities, but just like at majority institutions, such opportunities should be offered to female faculty at the discretion of the male faculty, notwithstanding the female professor’s quantifiable contribution.¹³⁰ The Black female is only allowed to advance if

122 HARRIS-PERRY, *supra* note 115, at 21.

123 HARRIS-PERRY, *supra* note 115, at 21.

124 HARRIS-PERRY, *supra* note 115, at 196.

125 HARRIS-PERRY, *supra* note 115, at 289.

126 HARRIS-PERRY, *supra* note 115, at 290.

127 HARRIS-PERRY, *supra* note 115, at 290.

128 Bonner, *supra* note 30; *Remarks of U.S. Secretary of Education to the National HBCU Week Conference: The Enduring and Evolving Role of HBCUs*, U.S. DEP’T OF EDUC. (Sept. 26, 2013), <http://www.ed.gov/edblogs/whhbcu/2013/09/30/remarks-of-u-s-secretary-of-education-to-the-national-hbcu-week-conference-the-enduring-and-evolving-role-of-hbcus> [<http://perma.cc/7EP6-LEYP>].

129 *Cf.* JOAN C. WILLIAMS & RACHEL DEMPSEY, *WHAT WORKS FOR WOMEN AT WORK* 233 (2014) (discussing how men expect Black women to yield to them).

130 Gasman, *supra* note 68, at 15.

she submits to authority of the male leadership at her HBCU.¹³¹ The Black woman “has an irrepressible spirit that is unbroken by a legacy of oppression, poverty, and rejection”¹³² even when the oppression comes directly from a HBCU whose very existence signifies past oppression, *de facto* and *de jure*.

Generally, HBCU law schools are not freestanding institutions.¹³³ At its parent institution, an HBCU law school is recognized as a coveted school, receiving a profusion of power from the main campus, and the authority from its accrediting source to execute the power.¹³⁴ At the authors’ law school, like many other HBCU law schools, “intersectionality”¹³⁵ is an authoritative layering of fiefdoms from department to department. The fiefdom machine at Texas Southern University,¹³⁶ the parent school of Thurgood Marshall School of Law¹³⁷ is layered with males. Often, when a female faculty member has a gender-based discrimination issue, she faces a male-dominated administrative internal review process, beginning with the law school’s office of the dean and ending with the university’s office of the president, or Board of Regents.

In the 1980s, Dr. Crenshaw captured the theory of “intersectionality.”¹³⁸ Intersectionality is the study of how different power structures interact in the lives of minorities, especially

131 Cf. HARRIS-PERRY, *supra* note 115, at 290.

132 Cf. HARRIS-PERRY, *supra* note 115, at 21.

133 *Understanding Gender*, *supra* note 8, at 57–58.

134 See THURGOOD MARSHALL SCHOOL OF LAW FACULTY & STAFF INFORMATION MANUAL & DIRECTORY, 2014–15, at 16 (on file with the authors) [hereinafter TMSL FACULTY & STAFF MANUAL & DIRECTORY] (“[This governance document provides] a system of government for Texas Southern University’s Thurgood Marshall School of Law. Its goal is to define the responsibility for governance of the law school.”); AM. BAR ASS’N, CH. 4, REVISED STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 27 (2014–2015), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201406_revised_standards_clean_copy.authcheckdam.pdf [<http://perma.cc/K62R-N4LD>] [hereinafter ABA, 2014 REVISED STANDARDS AND RULES] (articulating faculty’s right to “participate effectively in the governance of the law school”).

135 Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, U. CHI. LEGAL F. 139, 140–41 (1989).

136 *White House Initiative*, *supra* note 6.

137 *Understanding Gender*, *supra* note 8, at 8.

138 Crenshaw, *supra* note 135, at 140–41.

women.¹³⁹ We, two African American females in the legal academe, as a result of Dr. Crenshaw's early tutelage, have decided to push this cross-cutting women's movement¹⁴⁰ forward and include African American females at HBCUs. Our environment, an HBCU law school, breeds Fiefdoms. And, even though we are at a law school, we are bringing in all African American women faculty and administration in higher education at HBCUs.

At HBCU law schools, the placement of women in leadership positions is often disingenuous. Women who are chosen to lead are often WPAs. Like political figureheads¹⁴¹ and trophy wives,¹⁴² WPAs at HBCUs may have the intellectual prowess to perform. Nevertheless, this ability is not why they are conscripted by the male leadership. Once conscripted, these women willingly cooperate to serve as a smokescreen to protect the Fiefdom. These women are rewarded for lending their presence to represent the inclusion of women at an HBCU law school and to assist the men in contravening the law by opting to ignore the existence of female gender-based discrimination issues.

Sometimes, only one member of the female faculty is a WPA; however, there may be more than one. Often, a WPA does not see similarities between herself and another WPA colleague. Some WPAs are well qualified, some are not. Nevertheless, WPAs share a perspective that they would never admit to other WPAs or perhaps anyone else, including themselves.

The following vignette is included by the authors as an example of a WPA's perspective and reasoning:

It is not necessary that my promotion or my career have anything to do with my education, my aptitude, my work ethic, my teaching, my scholarship, my service or any other assessable requirement at my HBCU law school. I do not compare myself to a male member of the faculty, who

139 Crenshaw, *supra* note 135, at 140–41.

140 *The 1960s–70s American Feminist Movement: Breaking Down Barriers For Women*, TAVAANA, <https://tavaana.org/en/content/1960s-70s-american-feminist-movement-breaking-down-barriers-women> [<https://perma.cc/8K53-WN6S>] (last visited Feb. 25, 2015).

141 *See Figurehead in Management: Definition, Lesson & Quiz*, EDUC. PORTAL, <http://education-portal.com/academy/lesson/figurehead-in-management-definition-lesson-quiz.html> [<http://perma.cc/FF9E-DMYC>] (last visited Feb. 25, 2015).

142 *See Trophy Wife*, WIKIPEDIA.ORG, http://en.wikipedia.org/wiki/Trophy_wife [<http://perma.cc/3TEB-4JZZ>] (last visited Feb. 25, 2015).

very well may be doing even less than me, because I know that whatever he does would be enough to receive a “gold star” in recognition of his “potential.”¹⁴³ I have gingerly observed and learned from my female colleagues that female faculty is measured by—“productivity.”¹⁴⁴ This is a subjective process; more precisely, at the arbitrary whims of my male colleagues. Some may even call it politics.

The authors caution the reader not to confuse WPAs with “Queen Bees.”¹⁴⁵ Unlike the Queen Bees at MWIs, WPAs at HBCUs do not make significant contributions to their rise to power, simply because it is not necessary. It is not her fierceness, or shrewdness, or intellect, or cleverness, or social skills that place an HBCU-WPA in this ‘coveted’ position. WPAs are often not in the position based on qualifications, but rather based on the Fiefdom’s need to orchestrate its strategy to maintain the status quo. Her position is the “pretext,”¹⁴⁶ which is also analogous to “tokenism.”¹⁴⁷ As generally recognized, “tokenism is . . . symbolic equality.”¹⁴⁸ WPAs are used to thwart legitimate Title VII claims by discouraging complaints, and their presence at HBCUs is very effective in generating a façade. Unless the internal mechanisms, the EEOC, and the courts are willing to go beyond the surface and examine the complaint in the aggregate, this “truncated subclass”¹⁴⁹ will continue to experience a distinct form of discrimination. This distinct “truncated subclass”¹⁵⁰ must be recognized in the twenty-first century “as an everyday metaphor that anyone could use.”¹⁵¹

In exchange for her role, an HBCU-WPA is expected to support and validate the

143 Cf. Joanna Barsh & Lareina Yee, *Unlocking the Full Potential of Women in the US Economy*, MCKINSEY & Co. (Apr. 2011), http://www.mckinsey.com/client_service/organization/latest_thinking/unlocking_the_full_potential [<http://perma.cc/G94R-3WML>].

144 *Id.*

145 WILLIAMS & DEMPSEY, *supra* note 129, at 179 (discussing how to spot Tug of War Patterns while women try to navigate their paths between deciding to assimilate into male traditions or resisting male traditions).

146 *See supra* note 118 and accompanying text.

147 *See* Linda S. Greene, *Tokens, Role Models, and Pedagogical Politics: Lamentations of an African American Female Law Professor*, 6 BERKELEY J. GENDER L. & JUST. 82 (2013).

148 *Id.*

149 *See supra* note 31 and accompanying text.

150 *See supra* note 31 and accompanying text.

151 Adekunmi, *supra* note 51.

gender-bias actions of the male Fiefdom. As stated earlier, there may be more than one WPA at an HBCU law school to accomplish the Fiefdom's mission. However, interestingly enough, these HBCU-WPA sisters are not necessarily allies. Even between WPAs solidarity may not exist because one may perceive that the other WPA has been unjustly rewarded. However, under the edicts of the Fiefdom, similar to "The Godfather,"¹⁵² a cool indifferent tolerance toward her sister HBCU-WPA is developed over time.

Fortunately, HBCU-WPAs are in the minority. Historically, the vast majority of female faculty at HBCU law schools have worked and fought, and continue to work and fight, for their positions. These women make great contributions, notwithstanding the constant obstacles created by Fiefdoms. These women continue to teach, write, and serve at an unyielding pace and oftentimes receive nominal recognition at best for the same type of work done by their male peers.¹⁵³ Black female faculties realize, "Obstacles are not in the path, obstacles are the path."¹⁵⁴ The majority of Black female faculty members who work and have worked at HBCU law schools have earned everything through hard work and competency,¹⁵⁵ and quite often they do not receive that which they rightfully and properly

152 See MARIO PUZO, *THE GODFATHER* (1969).

153 Anna Kaatz & Molly Carnes, *Stuck in The Out-Group: Jennifer Can't Grow Up, Jane's Invisible, and Janet's Over The Hill*, 23 J. WOMEN'S HEALTH 1 (2014) ("Identical work is consistently rated lower when evaluators—both male and female [especially WPAs at HBCUs]—believe it has been performed by a woman, and raters require more proof of women's than men's skill (e.g., more publications or awards) to be convinced of their professional competence in agentic domains."); see also Bonner, *supra* note 30, at 178.

154 Senator Amy Klobuchar, Attorney General Confirmation Hearing, Day 1, Part 1, U.S. Attorney General Nominee's Loretta Lynch's Confirmation Hearing, C-SPAN, <http://www.c-span.org/video/?323993-1/su-attorney-general-nominee-confirmation-hearing> [<http://perma.cc/RM45-TZ7E>] (recognizing obstacles faced by Loretta Lynch as a Black female throughout stages of her career and life).

155 Padilla, *supra* note 52, at 471, 475 (highlighting Black females who have served as Deans at HBCU law schools: Janice Mills at North Carolina Central; Alice Bullock at Howard University; and Mary Wright at North Carolina Central). The listing of female deans "illustrates how few women of color have served among the total woman law dean population [and how few women of color have served in relationship to African American males at HBCUs]. With some effort, one can see the suppressed representation of women of color." Padilla, *supra* note 52, at 462. The authors include Professor Constance Fain, Earl Carl Professor of Law at Thurgood Marshall School of Law, as a special recognition because she blazed the trail prior to the authors joining the faculty. She also continues to excel in her contributions in the areas of teaching, service, and scholarship. Her prolific scholarship includes books, ALRs, treatise chapters, and several publications for the Michie Company. She set the standard, and is recognized as the professor that set the bar that we aspire to reach; thus, we say "Thank you Professor Fain." See generally *Faculty Profiles: Constance Fain*, TSU LAW, http://www.tsulaw.edu/faculty/profiles/Fain_Constance/other_data.html [<http://perma.cc/D93B-HQ76>] (last visited Apr. 8, 2015).

earned.¹⁵⁶ Why is this so? This is so because they were not “conscripted”¹⁵⁷ by the male Fiefdom. Why were they not “conscripted”¹⁵⁸ by the male Fiefdom? They were not conscripted because they dared to speak up. Why did they speak up? They spoke up because they recognized the inequalities, and like their predecessors¹⁵⁹ who paved the way for Black females to have the opportunity to work in the academy, they decided to take a stand. Why did they decide to take a stand? They took a stand because they are warriors! It is impossible for Black females to navigate the HBCU environment in “glass slippers”;¹⁶⁰ “for that [they] . . . need combat boots.”¹⁶¹

In spite of the storms they endured, they would bend, but not break under the pressure. The strength to provide resistance and the ability to respond and not react make the Fiefdom at HBCU law schools uncomfortable. Unlike WPAs,¹⁶² there are female faculty members who will speak up and fight for what is correct and support others who do what is right.¹⁶³

156 Bonner, *supra* note 30, at 179 (discussing results from a survey administered to Black faculty women and administrators at an HBCU seeking information about mentoring, research, curricula, climate, and institutional resources—one respondent responded: “[M]en are selected over women even when women are better qualified [and] women are denied advancement opportunities.” The surveyor’s data showed that this response was “echoed” by many of the other responders).

157 See *supra* note 118 and accompanying text.

158 *Id.*

159 Cf. HARLEY, *supra* note 54, at 190, 358; Crenshaw, *supra* note 135.

160 See CHIN-NING CHU, *THE ART OF WAR FOR WOMEN* 74 (2008).

161 *Id.*

162 See *supra* note 118 and accompanying text.

163 Cf. Scott Gold, *5 Of FSU’s Women Law Professors Resign*, SUN SENTINEL (May 8, 1990), http://articles.sun-sentinel.com/1999-05-08/news/9905070793_1_female-professors-law-school-faculty [<http://perma.cc/LMK2-2HYF>]. Gold writes that after citing a poisonous

“cloud” of gender and racial bias, five female professors at the Florida State University law school in Tallahassee more than half the women on the faculty—resigned. . . . Like most of the women, Associate Professor Ann McGinley says she met hostility after she protested racism in her department. . . . There persists a pervasive negative atmosphere of distrust, differential treatment of women and persons of color, harassment based on race and gender

Id.

If they perish while doing so, they will perish.¹⁶⁴ They know that they are identified as a female faculty member, irrespective of the title or role.

IV. Failure of Legitimate Processes and Mechanisms to Address Infractions at HBCUs After Female Faculty Complain

This Part addresses how processes often fail Black females at HBCUs. Even though law schools and their parent institutions adopt manuals and assert that they adhere to best practices, in many instances the processes are marred by failure to follow process or overreaching by administration. Recent lawsuits and EEOC filings from other HBCU law schools easily raises the question: are the outlined processes designed to address the real issues, or are they only subterfuges?

A. The American Bar Association and the Association of American Law Schools

The American Bar Association¹⁶⁵ (“ABA”) is the accreditation agency for law schools in the United States.¹⁶⁶ The ABA is responsible for setting academic standards for law schools.¹⁶⁷ The Association of American Law Schools¹⁶⁸ (“AALS”) is a membership organization for law schools that satisfy the Association’s core values.¹⁶⁹ Both organizations have specific mandates that address faculty governance¹⁷⁰ and discrimination.¹⁷¹

164 *Cf. Esther* 4:16.

165 AMERICAN BAR ASSOCIATION, www.americanbar.org [<http://perma.cc/GW94-NQRL>] (last visited Feb. 25, 2015) (the ABA is a voluntary bar association, founded in 1878 and is open to lawyers and law students).

166 *Id.*

167 *See* ABA, 2014 REVISED STANDARDS AND RULES, *supra* note 134.

168 *Bylaws*, AALS, <http://www.aals.org/about/handbook/bylaws> [<http://perma.cc/SVL8-4D29>] (last visited Feb. 25, 2015) (the Association’s purpose “is the improvement of the legal profession through legal education”).

169 *Id.* at Art. 6 (Membership Requirements).

170 ABA, REVISED STANDARDS AND RULES, *supra* note 134, at 5, Standard 404(3) (listing *Responsibilities of Full-Time Faculty*, including the faculties’ duties and rights to participate in the governance of law schools); *Bylaws*, AALS, *supra* note 168, at Art. 6 (Membership Requirements), § 6-5 (Law School Governance).

171 AM. BAR ASS’N, ABA POLICY ON ISSUES CONCERNING WOMEN/GENDER EQUALITY, http://www.americanbar.org/content/dam/aba/marketing/women/aba_policy_on_issues_concerning_women.authcheckdam.pdf [<http://perma.cc/4CFZ-YGN9>] (last visited Feb. 25, 2015); *Bylaws*, AALS, *supra* note 168, at § 6-3 (Diversity: Nondiscrimination and Affirmative Action).

B. Texas Southern University and Thurgood Marshall School of Law

Texas Southern University's Faculty Manual¹⁷² and TMSL Faculty Manual¹⁷³ are in place and operational. The University's Manual was recently updated and approved by the TSU Board of Regents,¹⁷⁴ which superseded several provisions in the various colleges' manuals. Both manuals outline faculty governance, promotion processes, and policies and procedures; however, the University's Manual supplants all departmental and college manuals.

The University has adopted the guidelines of the American Association of University Professors¹⁷⁵ ("AAUP") regarding faculty governance. As stated in the University Manual,

172 TSU, TEXAS SOUTHERN UNIVERSITY FACULTY MANUAL (Feb. 2014), <http://www.tsu.edu/about/administration/division-of-academic-affairs-and-research/pdf/2014-faculty-manual.pdf> [<http://perma.cc/2WAE-XSY2>] [hereinafter TSU FACULTY MANUAL] (the University's Faculty Manual was finally approved after more than six years of negotiations with the Faculty Senate, various committees, and the administration—after the Board's approval, the Manual became effective immediately).

173 TMSL FACULTY & STAFF MANUAL & DIRECTORY, *supra* note 134.

174 TSU FACULTY MANUAL, *supra* note 172.

175 *See Statement on Government of Colleges and Universities*, AM. ASS'N UNIV. PROFESSORS, <http://www.aaup.org/report/statement-government-colleges-and-universities> [<http://perma.cc/DG2L-N9QK>] (last visited Feb. 25, 2015):

The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleague; in such competence it is implicit that responsibility exists for both adverse and favorable judgments. Likewise, there is the more general competence of experienced faculty personnel committee having a broader charge. Determinations in these matters should first be by faculty action through established procedures, reviewed by the chief academic officers with the concurrence of the board. The governing board and president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

Id.

the interests of the administration, the faculty, and Board are best served when the University recognizes the “inescapable interdependence” of this venture.¹⁷⁶

C. Gender Based Law Suits Against Universities and HBCU Law Schools

After innumerable conversations with colleagues at the other HBCU law schools, we realized the same narrative was being iterated and reiterated. Our observations at our home school were not peculiarities isolated to our school. In spite of University rules, ABA rules,¹⁷⁷ and AALS rules¹⁷⁸ that bar gender based discrimination, there has been a surge of gender-based EEOC¹⁷⁹ claims and law suits filed by women against universities across the nation in various disciplines. Of the six HBCU law schools, several are facing gender-based lawsuits.¹⁸⁰

These claims of gender discrimination brought by Black women faculty at HBCUs may sound similar to the bias recently found amongst physicians against Black women.¹⁸¹ However, unlike the Black women in the medical scenario who fall squarely within the double jeopardy class and will have a recognizable cause of action—the Black female faculty members who are being discriminated against by the Black male Fiefdoms at an HBCU do not fall squarely in a recognized class. Again, for this reason, acceptance

176 TSU FACULTY MANUAL, *supra* note 172, at 19.

177 *See supra* note 175.

178 *See supra* note 175.

179 U.S. EQUAL EMP’T OPPORTUNITY COMM’N, <http://www.eeoc.gov> [<http://perma.cc/3Z2D-34J3>] (last visited Feb. 25, 2015).

180 *See* Natalie Kitroeff, *Denied Tenure, Professors Sue Over Discrimination*, BLOOMBERG BUS. (Dec. 24, 2014), <http://www.bloomberg.com/news/articles/2014-12-23/denied-tenure-professors-sue-over-discrimination> [<http://perma.cc/TP9E-5UVY>] (Professor Stephanie Brown, a Black female, sued the University of the District of Columbia Law School for denying her tenure based on her race and gender); James L. Rosica, *FAMU Law School Hit With Discrimination, Unequal Pay Lawsuit by Female Professor*, TAMPA BAY ONLINE (Aug. 5, 2014), <http://tbo.com/news/blogs/fresh-squeezed-politics/famus-law-school-hit-with-discrimination-unequal-pay-lawsuit-by-female-professor-20140805> [<http://perma.cc/FS47-HDAQ>] (Professor Jennifer Smith, a Black female, sued the Florida A&M University’s Law School alleging a variety of wrongs: discrimination, retaliation and salary inequalities based on gender); Sean Rossman, *Second FAMU Law Professor Sues For Gender Discrimination*, TALLAHASSEE DEMOCRAT (Aug. 12, 2014), <http://www.tallahassee.com/story/news/2014/08/12/another-professor-sues-famu-sex-discrimination/13960079> [<http://perma.cc/ZE3D-JJHH>].

181 *See* Eversley, *supra* note 57.

by the courts of the “truncated subclass”¹⁸² at HBCUs is the first step toward a remedy, so that legitimately aggrieved complainants can avoid summarily being dismissed and have their day in court to right the discriminatory wrongs brought on by decades-long gender bias pattern and practice. These actions are illegal—they contravene the antidiscrimination laws.

Notwithstanding the nondiscrimination laws, the unbridled male dominated leadership at HBCUs continues to stealthily disregard the law by creating a Fiefdom system that extends beyond the law schools to the leadership at the main campus. This allows them to further manipulate the system because the Fiefdom is politically connected at all levels to the University’s chain of command. The lawsuits emanating from law schools are particularly troubling because the females are trained lawyers; many have been successful practitioners and are now training the next generation of attorneys. Yet they find themselves in such a hostile work environment that Black female faculty either abandon the profession or are forced to sue in order to respond to this insidious, egregious, *illegal* behavior perpetrated against them.

In a recent lawsuit filed against an HBCU law school, reference was made to an earlier ABA¹⁸³ report that recommended the demotion of an administrator due to “[t]he hostile work environment [the leadership] created, specifically with respect to women.”¹⁸⁴ The ABA¹⁸⁵ also found that an inhospitable environment for women existed at the law school.¹⁸⁶ Similar findings of allegations of discrimination against the administration concerning female employees at Thurgood Marshall School of Law¹⁸⁷ were also noted by the ABA¹⁸⁸ in one of its prior reports.¹⁸⁹ Despite the recommendation, and warnings to the law schools by their accrediting agency—the ABA¹⁹⁰—the Fiefdoms

182 See *supra* note 31 and accompanying text.

183 See *supra* note 134.

184 Rossman, *supra* note 180.

185 See *supra* note 134.

186 Rosica, *supra* note 180.

187 Butler, *supra* note 14, at 53.

188 See *supra* note 134.

189 See ABA REPORT TO TEXAS SOUTHERN UNIVERSITY AND THURGOOD MARSHALL SCHOOL OF LAW, NOV. 25, 2008, at 75.

190 See *supra* note 134.

continue to contravene the ABA's mandates,¹⁹¹ the Universities' rules,¹⁹² and Title VII provisions.¹⁹³

This behavior comes from the very ones who came to HBCUs seeking a safe haven and an opportunity to escape the institutional racism that they were continually subjected to at PWIs, especially the stereotypes that Black males are often plagued by in the field of education.¹⁹⁴ These seekers of safe havens that the Black females are battling were once exposed to the same insidious discrimination that they now illegally inflict on Black women at HBCUs. Thus, the court must intervene because discrimination is discrimination, regardless of who is the perpetrator. Generally, in discrimination cases the perpetrator's and the complainant's race and gender are relevant.¹⁹⁵ However, at HBCUs the relevancy of the gender of a Black female complainant is basically disregarded because of the difficulty people have in accepting the existence of black-on-black discrimination. Unlike the well-recognized and accepted occurrence of "black-on-black crime,"¹⁹⁶ the legal system has cautiously evolved in accepting the area of "black-on-black civil rights actions," particularly Title VII¹⁹⁷ discrimination claims. These cases will always involve actors and complainants of the same races. The truncated subclass¹⁹⁸ is necessary because race overshadows the analysis. Otherwise, the injured Black female's complaint would never survive because "race" would automatically annihilate her gender discrimination claim.

V. Recommendations

The authors propose the following recommendations to ensure that Black females at

191 See *supra* note 134.

192 TSU FACULTY MANUAL, *supra* note 172; *Faculty Handbook*, FLA. AGRIC. & MECH. UNIV. (1987–88), [http://www.famu.edu/facultysenate/Faculty%20Handbook%20-%20-%20Spring%202008%20\(updated%20Sept.%2025,%202008\).pdf](http://www.famu.edu/facultysenate/Faculty%20Handbook%20-%20-%20Spring%202008%20(updated%20Sept.%2025,%202008).pdf) [<http://perma.cc/5YWB-63P2>].

193 Title VII, Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (2012).

194 See Wolff, *supra* note 47.

195 42 U.S.C. § 2000e *et seq.*

196 See JAMES Q. WILSON & RICHARD J. HERRNSTEIN, *CRIME AND HUMAN NATURE* 463 (1985); Heather Mac Donald, *New Data: It's Still about Black-on-Black Crime*, NAT'L REV. (Dec. 11, 2014), <http://www.nationalreview.com/node/409898/print> [<http://perma.cc/AS3Z-726W>].

197 42 U.S.C. § 2000e *et seq.*

198 See *supra* note 31 and accompanying text.

HBCUs are treated fairly and are not subjected to the gender-based discriminatory practices that continue to exist throughout the system:

1. Remove the law schools' jurisdiction¹⁹⁹ over infractions related to credible gender complaints. ABA Site Teams would have the authority to shift oversight to the University's administration. The law school would be placed on a probationary reporting cycle to address the gender issue. This Site Team's authority would send a resounding message to the law school and the University that there is "zero tolerance" for gender-related discrimination. Likewise, the AALS' representative on the ABA Site Team would immediately inform the AALS that the law school's authority as it relates to the gender infraction has been shifted to the University. The AALS would support the shift by providing its corrective measures. This dual response would provide additional checks and balances.
2. Adopt a "robust legal standard, and vigorous enforcement of that standard, . . . to ensure that Title VII remains an effective tool for . . . women . . . of color,"²⁰⁰ especially Black females at HBCUs. This recommendation is the recognition and adoption of the "truncated subclass"²⁰¹ proffered by the authors.
3. Collect, review, and compare institutional data of male and female faculty at the HBCU law schools.²⁰² The publication of an annual report by the HBCU law school would be mandatory and made available on the law school's website for in-house faculty and prospective faculty, similar to the consumer information for prospective students as required by the ABA.²⁰³ This record keeping standard will send a message that the university is not only dedicated to barring discriminatory practices but is also committed to Black female faculty members.

199 Cf. Rosenthal & Korb, *supra* note 79.

200 Fatima Goss Graves & Amy K. Matsui, *Title VII's Disparate Impact Doctrine: The Difference It's Made For Women*, AM. CONST. SOC'Y BLOG (May 7, 2013), <http://www.acslaw.org/acsblog/title-vii%E2%80%99s-disparate-impact-doctrine-the-difference-it%E2%80%99s-made-for-women> [<http://perma.cc/XK2M-CPVG>].

201 See *supra* note 31 and accompanying text.

202 *Understanding Gender*, *supra* note 8.

203 ABA, 2014 REVISED STANDARDS AND RULES, *supra* note 134, at 34–35, Standard 509 (*Required Disclosures*).

4. Mandate full disclosure of salary data at HBCU law schools to ensure transparency so that current faculty and prospective faculty will have an opportunity to receive the full benefit of their bargain, similar to the University's duty to publish safety information.²⁰⁴
5. Create a Joint Center for the study of gender issues in the African American community where scholars from across the HBCUs will work together²⁰⁵ to create a "SupraCenter."²⁰⁶ This Joint Center would belong to all HBCUs,²⁰⁷ and would have the responsibility of providing mandatory training for all faculty members at HBCUs.

CONCLUSION

Ultimately, "Within any power system . . . there is always a moment . . . of resistance."²⁰⁸ This is true in all historical evolutions, including the evolution of HBCUs. Influenced by the systems of the military and the Black Church, HBCUs have also been resistant to change, even when change would eliminate unequal treatment against Black females.

A minority within a minority, Black women are almost nonexistent in history.²⁰⁹ At HBCUs, especially law schools, the amount of praise does not match the amount of effort.²¹⁰ Male-dominated efforts often overshadow the works and contributions made by Black women at HBCUs.²¹¹ Black female faculty works and contributions are critical to HBCUs. Their commitment definitely helped in the past, and their commitment

204 *Cf. Understanding Gender, supra* note 8.

205 *Cf. Understanding Gender, supra* note 8.

206 Faith Jackson and Edieth Wu propose the "SupraCenter," which would operate as a mini internet-like research repository for all HBCUs focusing on gender and related issues pertaining to the African American community.

207 *Understanding Gender, supra* note 8.

208 Adekunmi, *supra* note 51.

209 Reubin Turner, *Women Leaders of the Civil Rights Movement*, COLLEGIAN (Feb. 27, 2012), <http://hbucollegian.com/?p=8885> [<http://perma.cc/4Z6N-WRGK>].

210 *Cf. id.*

211 *Cf. id.*

continues to make an impact on the success of institutions of higher education,²¹² especially at HBCUs.

Women challenging those in authoritative positions at HBCUs are basically unprecedented even in the twenty-first century.²¹³ Even faculty members at law schools are reluctant to bring these challenges, notwithstanding their professional training. As lawyers, they have advocated for clients when their rights have been violated, but fail to advocate for themselves or their colleagues. This reluctance is often brought on by fear of repercussions.

In spite of the foreseeable and inevitable repercussions, Anita Hill set aside her fears and testified.²¹⁴ After Clarence Thomas invoked the word “lynching”²¹⁵ as a defense to Hill’s testimony, many Black women forgot they were women—race trumped. It was no longer about Hill’s sexual harassment allegations against Thomas, it was now about a Black female “lynching a Black male.” Thomas had the uncanny ability to convince many Blacks to accept that a Black woman was capable of discriminating against a Black man even though both parties were Black. Notwithstanding Thomas’ ability to prove Black-on-Black discrimination between a male and a female, the same is not true at an HBCU when the accuser is a Black female and the accused is a Black male. It is practically impossible for a Black female to convince administration at an HBCU that a Black man can discriminate against a Black female, even when the complaint is gender based. Why? Because the two parties are of the same race, and again, race trumps gender.²¹⁶

Thus, the authors strongly urge the court to expand Title VII to recognize the same-race on same-race component,²¹⁷ which creates the “truncated subclass.”²¹⁸ This is the only way

212 *Cf. id.*

213 *Cf. id.*

214 HARLEY, *supra* note 54, at 358.

215 Adekunmi, *supra* note 51 (“Lynching is representative of the quintessential moment of racism—and that in turn centres African American male experiences.”) By using the word lynching in his defense, Clarence Thomas injected race into the situation.

216 *See Garrison v. Tex. S. Univ.*, No. H-11-2368, 2011 WL 4457374, *1 (S.D. Tex. Sept. 21, 2011) (when a white female assistant dean at TSU—Thurgood Marshall School of Law—sued her Black male boss, she couched it in race even though the issue was gender based, again race trumps gender).

217 The same-race on same-race component would be extended when necessary, i.e., at a Hispanic Serving Institution where the leadership and the faculty may be Latino-on-Latino.

218 *See supra* note 31 and accompanying text.

that Black females at HBCUs can take advantage of the spirit of the law. This is analogous to an employer MWI hiring a double minority faculty member and receiving diversity credit for both race and gender. Currently, a Black female faculty member working at an HBCU is not recognized in the diversity sense as a double minority because the employer receives no credit for her being a Black employee because she is part of the majority. Her race, Black at an HBCU, hampers her ability to convince her employer and the courts that she is being discriminated against based on gender because she is Black and the actor is Black—again, race overshadows and ultimately trumps gender at an HBCU because a Black female is part of the majority. The Black female at HBCUs are confronted with the same type of hurdle that White males were confronted with before they were finally able to convince the court that “reverse discrimination”²¹⁹ was taking place. In other words, the “disparate impact” on a Black female is the inability to sue when discriminated against based on gender because of the perception that Black-on-Black discrimination cannot happen; thus, she is continually precluded from pursuing a remedy, which is not the intent of the law, but is the unintended consequence of denying her day in court.

According to the White House Initiative on HBCUs, the universities have been and continue to be a “source of accomplishment and great pride for the black community as well as the entire nation.”²²⁰ HBCUs “are a national resource to be treasured, nurtured and developed.”²²¹ Let us continue to treasure, nurture, and develop HBCUs and their law schools by affording fair treatment to all faculty regardless of gender, race, or political affiliation. HBCUs and their law schools can honor their century-long tradition of preparing students to succeed²²² by incorporating the aforementioned recommendations.

219 See generally James L. Moeller, Note, *Civil Rights—Reverse Discrimination—Title VII, Section 1981*, 42 Mo. L. REV. 100 (1977).

220 *White House Initiative*, *supra* note 6.

221 *White House Initiative*, *supra* note 6.

222 *White House Initiative*, *supra* note 6.