#BLACKLAWYERSMATTER: THE IMPORTANCE OF PRO BONO INITIATIVES AND EXPERIENTIAL OPPORTUNITIES AT HISTORICALLY BLACK COLLEGE AND UNIVERSITY LAW SCHOOLS IN PREPARING A NEW GENERATION OF SOCIAL ENGINEERS

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“The black college is an example of an institution that has experimented with different ways of involving students in relevant community experience.”

“For unto whomsoever much is given, of him shall be much required; and to whom men have committed much, of him they will ask the more.”

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I. INTRODUCTION

In 2015, the British newspaper, The Guardian, published an uncompromising critique of the state of justice in the United States. The article began ominously enough, citing a statement by La June Montgomery Tabron, CEO of WK Kellogg Foundation, who—following the death of Michael Brown at the hands of police in Ferguson, Missouri—remarked: “[L]aw enforcement and justice systems in our nation are broken.” However, the article’s author noted that as the numbers of minorities killed by the police continues to rise, focus has erroneously remained on the glaring lack of minorities in law enforcement, rather than on the lack of minorities in the legal profession itself. As one author noted, “[T]he legal profession is even whiter, and the job much more subjective.” This failure to consider the “big picture” is problematic for any number of reasons—the most obvious being the seeming lack of confidence that minorities have in the justice system and the legal profession. As Dennis Archer, the first African-American president of the American Bar Association (“ABA”) noted: “When you recognize that in the United States, it is the ability to petition our courts for fairness that keeps people from seeking justice in the streets, then you understand that diversity in the legal profession is critical for democracy to survive.”

While in other professions, minorities appear to do better, but in the legal profession, minorities significantly lag. The facts are simply

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4 Id.
5 Id.
6 Id.
7 Id.
9 Deborah L. Rhode, Law is the least diverse profession in the nation. And lawyers aren’t doing enough to change that, WASH. POST (May 27, 2015), https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/. For instance, minorities comprise 19% of all engineers, 22% of accountants, and 28% of physicians and surgeons. Id.
staggering. Minorities comprise almost 40% of the U.S. population, yet they make up roughly 13% of practicing attorneys in the United States. A further breakdown of these numbers demonstrates even more distressing statistics. While African-Americans comprise approximately 13.3% of the U.S. population, only 5% are employed in the legal profession. Conversely, non-Hispanic whites, while only 77.1% of the population, comprise almost 90% of attorneys in the United States.

In major U.S. law firms, roughly 3% of associates and less than 2% of partners are African-American. Although there have been substantial gains in the number of African-American judges on the federal bench—approximately 11.7% of circuit judges and 12.8% of district court judges—the number of African-American judges in state courts is dismal—a paltry 7% in trial courts, 8% in appellate courts, and 9% in “courts of last resort” or supreme courts.

In the area of criminal justice, the lack of minority prosecutors is equally damning. Of the 2,437 elected prosecutorial positions in the United States, approximately 5% are minority. Sixty percent of U.S.

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12 See id.
13 The term “Black” and “African-American” are used interchangeably throughout this Article.
15 Id.; see also Lawyer Demographics: Year 2016, supra note 11.
16 Lawyer Demographics: Year 2016, supra note 11.
17 Debra Cassens Weiss, Only 3 percent of lawyers in BigLaw are black, and numbers are falling, ABA J. (May 30, 2014), http://www.abajournal.com/news/article/only_3_percent_of_lawyers_in_biglaw_are_black_which_firms_were_most_diverse.
states, including Illinois, have no elected Black prosecutors. In at least 25% of U.S. states, all elected prosecutors are white, "including Washington with 39 elected prosecutors and Tennessee with 31." In the state of Missouri, where Michael Garner was killed, only one of the state’s 113 prosecutors is black. More than 50% of African-American prosecutors are concentrated in two states—Virginia and Mississippi. In addition, while Hispanics comprised 17% of the population, less than 2% of elected prosecutors are Latino.

These numbers matter because “[prosecutors] exercise more influence over the legal system.” For instance, prosecutors, with little objective criteria, decide whether to prosecute and decide the charges to bring against defendants. Prosecutors can decide “whether to offer a plea bargain or proceed to trial.” As one civil rights activist contends, prosecution is a vital “lever of power.”

Remarkably, it is a well-established premise of law enforcement that if “[p]rosecutors want an indictment, they can get an indictment.” However, that particular principle does not appear to apply when police officers kill or injure unarmed civilians. The trend often in those

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22 KEY FINDINGS: JUSTICE FOR ALL*?, supra note 20.
23 Id.
24 Id.
25 Id.
27 Young, supra note 3.
28 Id.
31 Id.
situations is that “district attorneys do not pursue charges . . . or grand juries do not indict.” In order to effectuate change, an increase in African-American prosecutors is crucial.

Whether or not there is any bias—particularly if the civilian is black—the public perception “is real and must be addressed.” One of the best ways of addressing that issue and ensuring fair outcomes is to increase the number of African-American lawyers “represented in all roles in the criminal justice system, including as prosecutors.”

Diversifying the legal profession begins with the law schools. As the ABA noted in its 2011 report, entitled Diversity in the Legal Profession: The Next Steps,

Law schools play a particularly important role in advancing the value of diversity in the legal profession. Law schools identify the faculty talent that educates and produces new scholarship and the student talent that continually renews the profession. Law schools also choose the knowledge, skills, and values that form the legal canon and create an identity for lawyers and other legal professionals by transmitting a set of normative behaviors, ethics, and narratives. In short, law schools occupy a central role in forming and transforming the intellectual capital, the group identity, and culture of the profession. For this reason, law schools are crucial to the project of making the profession more diverse.

Unfortunately, although minority applicants have GPAs and LSAT scores on par with nonminority applicants, the percentage of
minority students admitted to law schools has declined significantly since the 1990s. Further, in the last fifteen years, law school enrollment by African-American students remains stagnant. Thus, the bulk of U.S. schools remain overwhelmingly white.

However, in debating the issue of diversity, very little attention has been directed toward the "diversity-rich law schools of . . . Historically Black Colleges and Universities (HBCUs)." HBCUs serve a vital role in the education of Americans—in particular, African-Americans and other minorities. Though comprising roughly 3% of colleges and universities in the United States, HBCUs have produced more than 21% of African-American college graduates and approximately "25% of all first-profession degrees (e.g., medicine, law, dentistry, etc.)." These institutions have continually championed the cause of minorities and the underrepresented and serve as the central repository for the study of African-American culture and history.

The majority of HBCUs are located in cities with high rates of poverty, unemployment, and crime. While some consider the setting

39 Id.
41 See Latino Students Choosing HBCUs, 19 RECRUITMENT & RETENTION IN HIGHER EDUC. 1, 1 (2005). In the last three decades, there has been a steady increase in the number of Latino students attending HBCUs. Id. In 1980, Latinos comprised 1.8% of the total number of students attending HBCUs. Id. Two decades later, the number has increased to 2.3%. Id.
42 JANET T. AWOKOYA & TAMMY L. MANN, STUDENTS SPEAK!: UNDERSTANDING THE VALUE OF HBCUS FROM STUDENT PERSPECTIVES 8 (2011), http://9b83e3ef165f4724a2ca-84b95a0dfce3f3b360640544b049bc7.r27.cf5.rackcdn.com/production/PDFs/UNCF_StudentsSpeak2011.pdf.
44 U.S. DEP'T OF HOUSING & URB. DEV., HISTORICALLY BLACK COLLEGES &
of HBCUs in distressed neighborhoods as a dilemma, many see opportunity. More than being regarded as educational centers, several are considered as community anchors providing cultural, recreational, and learning opportunities for local residents. Indeed, HBCUs have assisted in social justice undertakings such as community development initiatives, providing “technical assistance for community-based businesses and nonprofit undertakings, and joint ventures between the universities and local community-development entities.” HBCUs have a greater role to play in “rebuild[ing] broken inner-city neighborhoods and the shattered lives of those who live there.”

Despite the “grouping” moniker shared by this small group of institutions, HBCUs do not constitute an academic monolith because each differs in the services and educational pursuits provided to their individual student bodies. However, there are some unique similarities among the more than one hundred HBCUs in the United States. First and foremost, HBCUs are often regarded as models of diversity, among the student body and particularly the faculty. As of 1978, the average HBCU faculty is 40% female, with 25% to 50% of the faculty reported as “white.” Secondly, the pedagogical approach utilized by HBCUs differs considerably from nonminority institutions as the emphasis leans toward “classroom activities, personal counseling,
and sponsoring student organizations. Finally, HBCUs—strongly influenced by the African-American community—have in turn played a prominent role in the struggle of minorities for “survival, advancement, and equality in American society.”

Within the 103 HBCUs, there are approximately six ABA accredited Historically Black Law Schools (“HBLS”). Although these institutions were created for the purpose of providing legal training to African-Americans historically excluded from white institutions, today HBLS still serve an important function by promoting diversity in the legal profession while providing educational opportunities to educationally disadvantaged and economically underprivileged individuals in society. Moreover, the mission of each of the HBLS remains committed to the ideals of social justice, resolving the urban ills of the African-American community by educating and training agents for change. To meet its lofty obligations, an HBLS must provide “a high-quality legal education . . . [that] prepare[s] law students to be effective social engineers.”

This Article will provide an overview of the role of HBCUs in the education of minority students, particularly minority lawyers—affording a perspective on the history of these distinct institutions and their collective missions to create leaders and social engineers. Additionally, this Article will discuss the dual obligations of providing

52 Id.
56 Kemit A. Mawakana, Historically Black College and University Law Schools: Generating Multitudes of Effective Social Engineers, 14 J. GENDER RACE & JUST. 679, 681, 691-94 (2011) (discussing the missions of the HBLS as providing each with a “special duty to produce multitudes of effective social engineers for the betterment of the Africa-American community. Indeed, this duty can be said to be essential to their reason for being.”).
57 Id. at 693.
students with workable skill sets for the immediate practice of law within their respective communities and assuring access to justice for the underrepresented in society. Further, this Article will focus on the uniqueness of experiential programs, particularly clinics and pro bono initiatives at HBLSs. Finally, the Article will conclude with a discussion on the continued importance of enhanced and increased skills training at these institutions in training social engineers and pursuing “social justice” on behalf of their respective communities.

II. HISTORY OF HBCUs

HBCUs are private and public institutions created for the purpose of providing postsecondary education to persons of African descent, conferring two-year, four-year, graduate, and professional degrees in the arts and sciences. With the exception of community colleges, HBCUs are among the “youngest institutions” of postsecondary education in the United States. There are approximately 103 HBCUs in the United States, more than 70% of which were established in the mid- to late 1800s with the majority located in the Southern United States. The history of HBCUs are rich and varied, encompassing the pre-Civil War activities of benevolent

58 The Higher Education Act of 1965 defines an HBCU as:

any historically Black college or university that was established
prior to 1964, whose principal mission was, and is, the education of
Black Americans, and that is accredited by a nationally recognized
accrediting agency or association determined by the Secretary [of
Education] to be a reliable authority as to the quality of training
offered or is, according to such an agency or association, making
reasonable progress toward accreditation.

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59 CYNTHIA L. JACKSON & ELEANOR F. NUNN, HISTORICALLY BLACK COLLEGES &

60 DWIGHT OLIVER WENDELL HOLMES, THE EVOLUTION OF THE NEGRO COLLEGE 11
(1934).

61 JACKSON & NUNN, supra note 59, at 3. There are approximately forty public four-year, eleven public two-year, forty-nine private four-year, and five private two-year institutions. See MARY GASMAN & CHRISTOPHER L. TUDICO, INTRODUCTION, IN
HISTORICALLY BLACK COLLEGES AND UNIVERSITIES: TRIUMPHS, TROUBLES, AND
TABOOS 4 (Mary Gasman, Christopher L. Tudico eds., 2008).
societies such as the American Missionary Association; post-Civil War initiatives, undertaken by the Freedman's Bureau; and the creation of land-grant institutions by various states, particularly Southern states.  

In reality, HBCUs are the result of de jure and de facto segregation throughout the United States. HBCUs afforded opportunities of formal education to freed slaves and their descendants. The primary focus of HBCUs was to "educate and produce teachers, ministers . . . and other community, political, and civil leaders in the African-American community." While the Great Depression resulted in smaller enrollments at all U.S. colleges, it clearly had little impact at HBCUs, which witnessed an increase of 66% in enrollment. By the 1960s, roughly 70% of African-Americans attending college were enrolled at HBCUs.

Post-Brown v. Board of Education, HBCUs continue to offer more than educational opportunities to African-American students. HBCUs afford an environment that promotes self-development, awareness, and commitment to community. The guiding principle for HBCUs has been and continues to be providing educational enhancement to "socioeconomically and academically disadvantaged youth" and ultimately "transform[ing] them into success stories."

III. DEMOGRAPHICS AND THE UNIQUE ROLE OF HBCUs

Students attending HBCUs have backgrounds far different from those attending nonminority institutions of higher education or predominately white institutions ("PWI"). African-American students at PWIs tend to come from families with higher incomes, than those at

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62 ROEBUCK & MURTY, supra note 53, at 22-30.
66 Id.
67 GRIMES-ROBINSON, supra note 63, at 2.
HBCUs.\textsuperscript{68} Nationally, African-American students tend to score far lower than their white counterparts on admissions tests; however, students at HBCUs score far lower than African-American students at nonminority institutions.\textsuperscript{69} Yet the aspirational goals of African-American students at PWIs and HBCUs are similar, with GPAs similarly on par.\textsuperscript{70} There are considerably more funds expended at PWIs than HBCUs because there is a “higher proportion of instruction-related expenditure per full-time-equivalent student than [at] HBCUs.”\textsuperscript{71} Nonetheless, African-American students at HBCUs tend to adjust better socially than their counterparts at PWIs.\textsuperscript{72}

A. HBCUs and the Student Experience

HBCUs provide educational opportunities to “socioeconomically and racially diverse students.”\textsuperscript{73} Although HBCUs comprise less than 5% of the total number of colleges and universities in the United States, they enroll approximately 9% of the African-American students in higher education.\textsuperscript{74} While African-American students comprise the majority of enrollees at HBCUs, White students comprise approximately 13%, Hispanics 3%, and Asians 1%.\textsuperscript{75}

HBCUs have significantly smaller student enrollments than PWIs.\textsuperscript{76} However, that tends to translate into lower student-faculty ratios and increased student-faculty interaction that provides students


\textsuperscript{69} Id. at 401.

\textsuperscript{70} Id. at 414.

\textsuperscript{71} Id.


\textsuperscript{73} JOHN MICHAEL LEE, JR. & SAMAAD WES KEYS, REPOSITIONING HBCUS FOR THE FUTURE: ACCESS, SUCCESS, RESEARCH AND INNOVATION 11 (2013).

\textsuperscript{74} Id.

\textsuperscript{75} Id.

with more conducive learning environments. In fact, students at HBCUs tend to adjust better socially than their counterparts at PWIs because they are provided an environment that is both empowering and nurturing. In addition to increased levels of student-faculty interaction, HBCUs employ more dynamic and collaborative learning techniques. As some studies demonstrate, students respond more positively to active teaching and reflective learning, with greater emphasis on personal and social responsibility. HBCUs traditionally advocate and advance the concept of education that teaches African-Americans to solve the problems facing African-American communities. Indeed, HBCUs emphasize public service as an integral component of their education goals.

A significant number of prominent civil rights leaders and dignitaries are graduates of HBCUs. For example, Rosa Parks, Dr. Martin Luther King, Jr., Supreme Court Justice Thurgood Marshall, former Congresswoman Barbara Jordan, and Congressman Mickey Leland are a few of the notable alumni of HBCUs. Prominent and influential African-Americans such as Oprah Winfrey, James Clyburn, P. Jacobs, There’s an unprecedented crisis facing America’s historically black colleges, BUS. INSIDER (Mar. 30, 2015), http://www.businessinsider.com/hbcus-may-be-more-in-danger-of-closing-than-other-schools-2015-3.


R. Duncan, Black Education, supra note 1, at 11.


Marian Wright Edelman, and Ralph Ellison are graduates of HBCUs.\textsuperscript{85} Approximately 40\% of congressional representatives, 12.5\% of CEOs, 50\% of all African-American professors at PWIs, 50\% of lawyers, and 80\% of judges received their degrees from HBCUs.\textsuperscript{86} Indeed, HBCUs across the country can boast a major number of alumni in state and federal government, all of whom have opportunities to craft laws and implement policies that impact and affect communities of color.\textsuperscript{87}

HBCUs are committed to “educating historically disadvantaged students who remain grossly underrepresented among postsecondary enrollees and graduates.”\textsuperscript{88} HBCUs, while stanchly devoted to the education of African-Americans, have been learning institutions for students of all races and backgrounds, particularly those from low-income and educationally disadvantaged communities.\textsuperscript{89} Nationally, one in four students enrolled at an HBCU is not African-American.\textsuperscript{90} But the presence of nonminority and other minorities at these institutions satisfies the hard fought goals of HBCUs: “to help those who have few other college options.”\textsuperscript{91}

Regardless of “wild demographic swings” among college entrants, these particular institutions occupy a fundamental place in African-American communities.\textsuperscript{92} HBCUs are a source of pride for their alumni, a beacon of hope to minority families who desire

\textsuperscript{85} Tryan L. McMickens, \textit{Running the Race When Race is a Factor}, 93 PHI DELTA KAPPAN 39, 40 (May 2012).
\textsuperscript{87} A.L. Evans, V. Evans, \\& A.M. Evans, \textit{Historically Black Colleges and Universities (HBCUS)}, 123 EDUC. 3, 11 (2000).
\textsuperscript{88} WADE M. COLE, \textit{UNCOMMON SCHOOLS: THE GLOBAL RISE OF POSTSECONDARY INSTITUTIONS FOR INDIGENOUS PEOPLES} 156 (2011).
\textsuperscript{90} Id.
\textsuperscript{91} Id.
\textsuperscript{92} ROY L. BROOKS, \textit{RACIAL JUSTICE IN THE AGE OF OBAMA} 75 (2009); see also Butrymowicz, \textit{supra} note 89.
postsecondary education opportunities for their children.\textsuperscript{93} HBCUs are leaders in “developing educational” programs for minorities at “all levels of instruction,” while remaining committed to “enhancing the general quality of the lives of Black Americans.”\textsuperscript{94} Moreover, HBCUs uphold a long standing commitment to racial and social justice.\textsuperscript{95} In fact, graduates are expected to “be racial and social justice advocates for the betterment of American society.”\textsuperscript{96}

B. Faculty at HBCUs; Programs for Urban Renewal

The last few years have seen a concerted effort by PWIs to diversify their faculty.\textsuperscript{97} For instance, last year Yale University committed to diversifying its faculty over the next five years.\textsuperscript{98} Brown University anticipates doubling the number of minority faculty over a ten-year period.\textsuperscript{99} Public universities, pressured to hire more minority professors, have also moved to increase minority representation.\textsuperscript{100}

It goes without saying that “the majority of the nation’s tenured black faculty” are at HBCUs.\textsuperscript{101} While many earned doctoral or other terminal degrees at PWIs, few were “recruited or advanced into the ranks of tenured faculty” at these institutions.\textsuperscript{102} Thus, while HBCUs comprise a minuscule number of U.S. colleges and university, 96% of tenured African-American faculty are at those institutions.\textsuperscript{103}

As discussed above, HBCU faculty members are more likely to employ active classroom practices, stress personal and social

\textsuperscript{93} Brooks, supra note 92, at 76.
\textsuperscript{94} Id.
\textsuperscript{95} McMickens, supra note 85.
\textsuperscript{96} Id. at 41.
\textsuperscript{97} Katherine Mangan, With Faculty Diversity on Everyone’s Radar, HBCUs Worry About Losing Scholars, CHRONICLE HIGHER EDUC. 3 (2015).
\textsuperscript{98} Id.
\textsuperscript{99} Id.
\textsuperscript{100} Id.
\textsuperscript{102} Id.
\textsuperscript{103} Id.
responsibility, and utilize reflective learning in classroom instruction and assignments.\textsuperscript{104} Additionally, faculty members at HBCUs are also likely to nurture and encourage their students, often viewing their institutions as more supportive.\textsuperscript{105} This approach impacts learning and student success.\textsuperscript{106} Indeed, there are studies demonstrating while African-American students at PWIs generally report feeling socially isolated, marginalized, or unsupported by faculty or the administration, students at HBCUs experience higher rates of support at HBCUs and generally adjust better than their counterparts at PWIs.\textsuperscript{107}

In the last few decades, the majority of HBCUs have begun providing a dizzying array of programs geared towards the urban environment, with undergraduate and graduate degrees in

\textsuperscript{104} Marybeth Gasman, \textit{Teaching and Faculty-Student Relationships at Historically Black Colleges and Universities (HBCUs)}, HUFFINGTON POST (July 8, 2012), http://www.huffingtonpost.com/marybeth-gasman/teaching-and-facultystudent_b_1490223.html.

\textsuperscript{105} Id.; see generally, Walter R. Allen, \textit{The Color of Success: African-American College Student Outcomes at Predominately White and Historically Black Colleges and Universities}, 62 HARV. EDUC. REV. 26 (1992) (discussing a quantitative study on the differences in college experiences between Black undergraduates attending HBCUs and those attending predominantly White colleges and universities; results suggested that academic achievement among Black college students were highest for those students with high educational aspirations and positive relationships with faculty. Results of the study found that Black students attending predominantly White colleges reported lower academic achievement than those Black students attending historically Black colleges.).

\textsuperscript{106} Steven M Hubbard & Frances K. Stage, \textit{Attitudes, Perceptions, and Preferences of Faculty at Hispanic Serving and Predominantly Black Institutions}, 80 J. HIGHER EDUC. 271, 273 (2009).

transportation, allied health, and environmental sciences.\textsuperscript{108} Indeed, a number of HBCUs have been designated and recognized by their respective states as including, within their mission, a focus on the needs of the urban community.\textsuperscript{109} Thus, the role of the HBCU as an urban resource center is clearly enshrined in the mandates of individual institutions or implicitly recognized by and through its outreach to nearby communities.

IV. THE ROLE OF HISTORICAL BLACK LAW SCHOOLS: DIVERSIFYING THE BAR

The first African-American admitted to a state bar was Macon B. Allen in Maine in 1844.\textsuperscript{110} Almost seventy years later, the number of African-American attorneys in the United States had grown to 798.\textsuperscript{111} By the 1940s, the number of African-American attorneys had reached a little less than two thousand and remarkably remained so for another twenty years.\textsuperscript{112} Prior to the 1950s, legal education for minorities was severely limited.\textsuperscript{113} HBCUs met the challenge of producing African-American attorneys and advocates of social change. Before the 1960s, twenty-four HBLs educated the bulk of African-American lawyers.\textsuperscript{114}

By the 1960s, despite African-Americans comprising more than 12\% of the population, less than 1\% of lawyers were African-American.\textsuperscript{115} It would take desegregation and federal affirmative action initiatives, forcing nonminority law schools to admit minorities, to increase the number of African-American attorneys.\textsuperscript{116}

"Legal agitation" has been the primary means by which African-Americans have sought protection and recognition of rights and

\footnotesize{\textsuperscript{108} A.L. Evans, V. Evans, & A.M. Evans, \textit{supra} note 87, at 10.  
\textsuperscript{109} U.S. DEP’T HOUS. & URB. DEV., \textit{supra} note 44.  
\textsuperscript{110} Dan Hurley, \textit{Are Black Law Schools Obsolete}, \textit{STUDENT LAWYER} 12, 14 (1984).  
\textsuperscript{111} Id.  
\textsuperscript{112} Id.  
\textsuperscript{114} Id.  
\textsuperscript{115} Id.  
\textsuperscript{116} Id. at 14.}
freedoms. Indeed, minority advocates have often viewed the law as a tool for social engineering. Thus, individuals trained in the law often strive to be leaders and decision makers. Contrary to emerging precepts, a plurality of opinion within the political sphere necessitates diversity—ethnic, cultural, and racial diversity. Diversity within the legal profession—in all practices—is a worthy goal that ultimately imbues the profession with a broader perspective on societal concerns and issues.

The legal profession is considered one of the more powerful and influential professions in the United States. Undeniably, "lawyers are . . . key players in designing and activating the institutional mechanisms through which property is transferred, economic exchange is planned and enforced, injuries are compensated, crime is punished, marriages are dissolved, and disputes are resolved." There is a direct correlation between legal problems and the need for assistance and ascriptive criteria such as age, income, race, and gender. Thus, demographic shifts and changes in the United States will likely see an increase in the need for lawyers.

However, the full and active participation of minorities—in various segments of the legal profession—remains problematic. This bodes ill for communities of color, particularly those in the South. Minorities make up the majority of the population for approximately one out of every ten counties in the United States, and that trend continues unabated. Clearly, there is a distinct need for practitioners that are representative of the population, practitioners who are "culturally sensitive . . . and proficient in client's languages," as

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118 Genna Rae MacNeil, Charles Hamilton Houston: Social Engineer for Civil Rights, in Black Leaders of the Twentieth Century 221 (Urbana, Ill.: Univ. of Ill. Press, 1982).
119 Id.
120 Id.
122 Id. at 359.
123 Wallace-Haymore, supra note 117.
124 Id. at 378.
diversity clearly translates to "better legal services." Indeed, it is recognized that "minority law consumers frequently are able to relate better to a member of their own race and are sometimes unwilling to confide in a member of another race and, therefore, do not utilize [the] legal system." 

The lack of diversity impacts not only the legal profession but critical governing bodies. The legal profession has commonly served as a gateway to politics. Lawyers account for approximately 56% of the U.S. Senate, 37% of the U.S. House of Representatives, 50% of all governors, and 50% of all U.S. presidents. A decrease in minority lawyers results in a decrease in the number of minority legislators, which ultimately impacts the "political interests of those minority groups."

Out of the two hundred or so ABA accredited law schools, approximately six are HBLS. However, over 20% of African-American students are enrolled at HBLS. HBLS have been nationally recognized and ranked as some of the most diverse law schools in America. For instance, African-Americans comprised more than 50% of the student body at Thurgood Marshall School of Law, while they comprise approximately 41% of the student body at

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125 Rebecca Porter, *Diversity Challenges the Legal Profession, Conference Finds*, 25 TRIAL 82 (Aug. 1999); see also Paul Andrew Burnett, *Fairness, Ethical, and Historical Reasons for Diversifying the Legal Profession with Longhairs, the Creatively Facial Haired, the Tattooed, the Well Pierced, and other Rock and Roll Refugees*, 71 UMKC L. REV. 127, 131 (2002).


128 Id.

129 Id.


131 Pernell, *supra* note 54.

132 Id.

Florida A&M University's School of Law. In response to the recent economic downturn, HBLS have hewed more closely to their historical missions of imparting social justice; attracting more minorities to the legal profession, and preparing students for the practice of law upon graduation.

V. OPPORTUNITY FOR ALL: THE HBLS

The first wave of Black law schools was in response to the exclusion of African-Americans from white law schools. The admission of blacks to Southern law schools was forbidden, whereas admission to Northern law schools was negligible. De jure discrimination, coupled with the dire need for Black lawyers to assist freed slaves in protecting their newly established rights after the Civil War, led to the establishment of Howard University School of Law in 1869. In fact, five Black law schools were established between 1869 and 1888, all of which were eventually shuttered by 1917.

The mission of HBLSs has been and remains to admit culturally disadvantaged students as a means of diversifying the legal profession. Indeed, HBLSs are uniquely situated to provide underprivileged and minority students a "real opportunity to study law" and to bring "legal education and services to where the opportunity and

134 Id.
135 Lekan Oguntoyinbo, supra note 55.
136 See generally Ernest Gellhorn, The Law Schools and The Negro, 1968 DUKE L.J. 1069 (1968) (explaining why Black law schools were originally founded).
137 See id. at 1069-70 (explaining how Southern law schools did not admit African-Americans and that the number admitted to Northern law schools was a small number).
139 Id. at 389-95. Lincoln University Law Department was established in 1869 but closed in 1873; Walden Law Department was opened in 1879 and closed in 1917; Straight University Law School was opened in 1879 but closed in 1887; Allen University Law Department was opened in 1880 and closed in 1900; and Shaw University opened in 1888 but closed in 1914. Id.
140 See generally Hurley, supra note 110, at 12 (explaining how HBLS admit a diverse population).
need are greatest.” 141 Without question, the six HBLS—Florida A&M University School of Law, Howard University School of Law, North Carolina Central University School of Law, Southern University Law Center, Thurgood Marshall School of Law at Texas Southern University, and the University of the District of Columbia—serve as conduits for Black lawyers who ultimately return to their respective communities. 142 Each has a rich and varied history, with a strong commitment to social justice.

A. Howard University School of Law

Howard University School of Law, the oldest remaining HBLS, was originally founded in 1869 as the law department of the university. 143 In 1908, it was designated the School of Law. 144 Sixty years later, it was accredited by the ABA and granted membership in the Association of American Law Schools. 145

The first dean of the Law School, John Mercer Langston, was denied admission to two white law schools because he was African-American. He presided over the organization of a law school charged with educating well-trained lawyers expected to emancipate “their people from laws, customs, attitudes, and apathy” that precluded them from fully participating in the “economic, political, and social fabric” of a democratic state. 146 Still, it would be more than forty years before the Law School would see its most influential dean, Charles H. Houston. 147

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141 Earl Carl, The Shortage of Negro Lawyers: A Pluralistic Legal Education and Legal Services for the Poor, 20 J. LEGAL EDUC. 21, 24 (1967).
144 Id.
145 Id.
146 J. Clay Smith, Jr., Howard University School of Law: One Hundred and Twenty-Five Years, 38 HOW. L.J. 1, 1 (1994). As argued by General Otis Charles Howard, the only commissioner of the Freedman’s Bureau and the first president of Howard University, “[C]olored lawyers were needed to defend the newly acquired rights of the Negroes.” See Washington, supra note 142, at 389.
A graduate of Amherst University and Harvard University School of Law, Houston devoted his considerable skills to educating Black lawyers. Indeed, while he was at Harvard, Houston maintained that every community should have “Negro lawyers” and that the majority of these lawyers “must come from Negro schools.” Thus, he argued that it was “in the best interests of the United States . . . to provide the best teachers possible at law schools where Negroes might be trained.”

Upon graduation from Harvard, Houston sought a teaching position at Howard University’s School of Law, which had a reputation for training a majority of the Black lawyers in the United States since its inception. He remained for a number of years, eventually attaining the position of vice-dean, which he held for a period of five years. Houston believed that “a lawyer’s either a social engineer or . . . a parasite on society.” Indeed, he defined a “social engineer” as a lawyer highly skilled and perceptive, an individual who understands “the Constitution of the United States and [knows] how to explore its uses in the solving of problems of local communities and in bettering conditions of the underprivileged citizens.” With that principle as a mission for educating future social engineers, it is little wonder that one of Houston’s students, Thurgood Marshall, would emerge as a principal architect of numerous desegregation cases, most notably Brown v. Board of Education.

tonessayF.html (last visited June 11, 2017) (explaining how Charles H. Houston was influential as dean of Howard University).

See generally id. (explaining how Houston used his skills as a lawyer to educate other Black lawyers).

Id.

Id. (internal citations omitted).

Id.

Id. at 5-6.

Id. at 7.


B. Texas Southern University—Thurgood Marshall School of Law

In 1947, the Texas Legislature established Texas Southern University. The new institution was expected to provide training in pharmacy, dentistry, journalism, education, arts and sciences, literature, law, and medicine. Originally known as “Texas State University for Negroes,” the name was subsequently changed in 1951 to Texas Southern University.

The inception of the university, and ultimately the Thurgood Marshall School of Law, was the result of a lawsuit brought by Hemann M. Sweatt in 1946. Mr. Sweatt was denied admission to the University of Texas School of Law because he was black. However, as a result of the “separate but equal doctrine,” the legislature was forced to either provide an interim and separate law school for Negroes or to admit Mr. Sweatt to the University of Texas. The Law School was initially housed in Austin before it was moved to Houston, Texas. The Law School was formally named the Thurgood Marshall School of Law on February 14, 1976, in honor of the distinguished former U.S. Supreme Court Justice and the individual who successfully argued Sweatt’s case before the U.S. Supreme Court.

The Law School has consistently been ranked as one of the most diverse in the United States and has the distinct privilege of educating more than 80% of Texas’s African-American lawyers.

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157 Id.
158 Id.
160 Id.
161 Id.
162 Id.
164 Hurley, supra note 110, at 12.
C. North Carolina Central University—College of Law

North Carolina Central University was originally founded in 1909 as the National Religious Training School and Chautaugua.\textsuperscript{165} In 1915, the school was sold and reorganized as the National Training School.\textsuperscript{166} Eight years later, the State of North Carolina purchased the school and renamed it the Durham State Norman School.\textsuperscript{167} The State revised the school’s mission two years later, changing it to a four-year liberal arts college and renaming it the “North Carolina College for Negroes.”\textsuperscript{168} It was recognized as the first state-supported African-American liberal arts college in the United States.\textsuperscript{169} The Southern Association of Colleges and Schools accredited the college in 1937, and two years later, graduate and professional programs were established.\textsuperscript{170} The School of Law was founded in 1939—becoming the second law school for blacks. It was opened to provide African-Americans an opportunity for legal education but closed shortly after—due in large part to a lack of student enrollment.\textsuperscript{171} The Law School reopened in 1940, with faculty from the University of North Carolina.\textsuperscript{172} At the outset, North Carolina Central University was the only institution to provide a legal education to blacks in North Carolina and surrounding states.\textsuperscript{173}

Prior to the Law School’s inauguration, the dean solicited advice on the school’s curriculum from practicing attorneys and others.\textsuperscript{174} In response, one Black attorney wrote,

There is one suggestion that I should like to make relative to the colored Law School . . . . In view of

\textsuperscript{165} Washington, supra note 142, at 399.
\textsuperscript{166} Id.
\textsuperscript{167} Id.
\textsuperscript{168} Id.
\textsuperscript{169} Id.
\textsuperscript{171} Id.
\textsuperscript{172} Id.
\textsuperscript{173} 60th Anniversary: Sixty years of helping people learn to help others, SO FAR, (N.C.C.U. Newsletter) 1999, at 7.
\textsuperscript{174} Id. at 11.
the fact that there are so few law offices into which the graduates may enter and gain practical experience after graduation and admission to the Bar, it is very necessary that these students be given as much practical training in the Law School as possible. It is one thing to know the principles of law involved and what ought to be done; but, an entirely different thing to know how to do it. I, therefore, suggest that the students be given practical training in drawing all kinds of papers so that they will be somewhat self reliant when they enter the field.  

D. Southern University Law Center

The Southern University system is the only historically Black university system in the United States, encompassing five institutions that offer four-year graduate, professional, and doctoral degrees. In 1880, the Louisiana State Legislature chartered Southern University as an institution for the education of Black students. In 1890, the Morrill-Nelson Act designated the university a land-grant institution. The State established a School of Law in 1947.

The Law School has been ranked nationally for its affordability and training programs. For instance, in 2015 it placed nationally among other U.S. law schools as one of the “Best Law Schools for

175 Id. at 13.


179 Id.

Public Service.” In 2015, the Law School also ranked fifth among all law schools for being the “Most Affordable.”

E. Florida A&M University, School of Law

In 1887, the Florida Normal School for Negroes commenced classes, later becoming a land grant university after it received funds under the Second Morrill Act and the Smith-Hughes Act for vocational education. However, it was not an official institution of higher learning until 1905. In 1909, the name of the college was changed to Florida Agricultural and Mechanical College for Negroes, and in 1953, the name was finally changed to Florida Agricultural and Mechanical College.

On December 21, 1949, a division of law was established at the college in anticipation of the U.S. Supreme Court decision in Sweatt v. Painter, and “the first class was admitted in 1951.” “In 1966, the Florida Board of Control ... withdrew its permission for the institution to admit law students,” and in 1968 the law school closed its doors. In 2000, the “Florida Legislature unanimously passed legislation establishing a law school at Florida A&M University.” The College of Law’s first class was admitted in 2002 and graduated in 2005.

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184 Id.
185 Id.
188 Id.
189 Id.
F. David A. Clarke Law School, University of District of Columbia

The David A. Clarke Law School is the product of two former law schools: Antioch School of Law and the District of Columbia School of Law. In 1972, Edgar and Jean Camper Cahn—advocates "who championed the rights of low-income people and minorities"—created the Antioch School of Law. The primary mission of the school was to train and educate public interest lawyers. After Antioch closed in 1986, the Council of the District of Columbia passed legislation establishing the District of Columbia School of Law ("DCSL"). However, the new law school was expected to retain the mission, curriculum, and personnel of Antioch. Notably, one critical mission of the law school was the immersion of law students in a "comprehensive program of clinical legal education based on the medical school model," whereby students engaged in experiential learning through supervised practice in legal clinics.

In 1991, the ABA awarded the law school provisional accreditation. Five years later, the School of Law merged with the University of the District of Columbia, and the school was ultimately renamed in 1998. In 2005, the school was awarded full accreditation by the ABA. In 2008, DCSL revised its description to state that the institution is: "the nation’s only publicly funded urban land-grant university, and Historically Black College or University committed to public service and clinical legal education."

In 2012, the David Clarke School of Law was recognized as one

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193 Broderick, supra note 192, at 305.
194 Id.
195 Id.
196 Id.
197 School of Law History, supra note 191.
198 Broderick, supra note 192, at 306.
199 Id.
200 Id. at 306-07.
of the most diverse law schools—for both students and faculty.\textsuperscript{201} In 2016, the law school was ranked tenth in the nation for clinical training by U.S. News and World Report.\textsuperscript{202}

VI. EXPERIENTIAL EDUCATION AND HBLS

The process of "education is not a neutral" one; it "maintains or transforms a system of thinking and conduct."\textsuperscript{203} Undeniably, education is "the means by which a society prepares, in its [members], the essential conditions of its own existence."\textsuperscript{204} However, regardless of opinions to the contrary, "education is culturally specific."\textsuperscript{205} It is grounded in and mirrors "the conditions, worldview and purposes of . . . society."\textsuperscript{206} In that respect, HBCUs—and in particular HBLSs—are significant in improving Black communities and preparing the next generation of African-American and minority leaders.\textsuperscript{207} These institutions, as their respective missions demonstrate, have a specific mandate "to engage the world, improve the circumstances of Black people and challenge the nation to realize its highest ideals."\textsuperscript{208}

Without question, students—particularly minority students—must be provided opportunities to transform "lived experiences into knowledge" and acquire the knowledge required to succeed.\textsuperscript{209} HBLSs have a responsibility to ensure access to education for underrepresented groups—the impoverished, first-generation college graduates, and

\begin{footnotes}
\footnote{201} Michelle Weyenberg, Most Diverse Law Schools, NAT’L JURIST 22, 22-23 (2012).
\footnote{204} EMILE DURKHEIM, SELECTED WRITINGS BY EMILE DURKHEIM 203 (1972).
\footnote{206} Id.
\footnote{207} Id.
\footnote{208} Id.
\footnote{209} Brown, supra note 203.
\end{footnotes}
minorities. "Access to education" does more than empower minority students; it provides impacted communities "with services, leadership, and the wherewithal to influence the power dynamics that deny underrepresented communities a voice and position of self-determination and well-being."

As "social justice and the legal representation" of the disenfranchised and disempowered are so closely linked with the individual missions of each of the HBLSs, it is important that skills training curricula include not only an understanding of substantive and procedural law but opportunities to investigate, highlight, and discuss system flaws, as well as changes that guarantee true equality for the disadvantaged socioeconomically.

In August 2014, the ABA’s Section on Legal Education and Admission to the Bar revised existing standards for law school accreditation. One of the most significant amendments to the accreditation standards was a new graduation requirement that all law students complete a minimum of six credits of experiential coursework. To ensure that there is no confusion as to what qualifies as "experiential," the standard specifically identifies "simulation course[s], [] law clinic[s], or field placement" as the only courses that meet the ABA’s requirement. Further, to satisfy the ABA’s standard, the course must be "primarily experiential" and must: "integrate doctrine, theory, skills, and legal ethics; engage students in performance of one or more professional skills identified in Standard 302; develop the concepts underlying the professional skills being taught; provide multiple opportunities for performance; and provide opportunities for self-evaluation."

It is the authors’ contention that this standard represents the

210 Id. at 200.
211 Id.
212 Id. at 206.
213 REVISED STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCH. 2014, ABA Section Legal Educ. & Admissions to the Bar, Std. 303(b).
214 Id. STD. 303(a)(3).
215 Id.
216 Id. STD. 303(a)(3)(i)-(iv).
“floor,” rather than “ceiling,” for HBLSs. It is incumbent upon these institutions to do more than offer the minimum. Every effort should be made to increase the number of experiential courses required for student graduation. Every effort must be made to integrate skills training throughout the three years of legal education. There should be a commitment to ensuring increased “student participation in pro bono legal services, including law-related public service activities.” Under the interpretation of the revised standards, “law schools are encouraged to promote opportunities for law students to provide over their law school career at least 50 hours of pro bono service.” HBLSs must commit to ensuring that students meet or exceed these number of hours.

This Section will consider the opportunities for enhanced skills training at HBLS. The Section will also briefly discuss one particular clinical program—an antecedent to other clinical programs at HBLS. Finally, this Section will outline the necessary components for robust experiential teaching initiatives which will shape and prepare the social engineers of the future.

A. Charles Hamilton Houston: Practical Training for Social Engineers

The earliest documented form of clinical training, at an HBCU law school, dates back to the 1930s when Houston incorporated practical training into Howard University School of Law’s curriculum. Houston knew these opportunities would imbue Howard law graduates with skills essential to serving as social engineers, ultimately securing their economic survival. Moreover, Houston saw the law school as a “rigorous training ground” for future leaders.

Houston’s goal was to create a program that would train and prepare superior African-American attorneys, a goal in line with

217 Id. STD. 303(b).
218 Id. STD. 303-3.
220 Id. at 627.
Howard University’s Board of Trustees. The Law School ultimately obtained membership in the American Association of Law Schools and accreditation by the ABA. Significant changes were undertaken at the law school, a process often derided as the “Harvardization” of Howard. Following his appointment as vice-dean of the Law School, Houston began improving the type and quality of instruction provided at Howard. Houston knew the quality of education received by Black lawyers governed the success of eradicating segregation. Indeed, Houston recognized that unlike the Harvards or the Yales, Howard would not be training law clerks to begin their careers in Wall Street law firms. Howard would prepare lawyers to go into court and “fight and die” for the African-American community. To that end, Houston created an intense combination of theoretical and practical instruction for his students.

Houston’s decision was likely influenced by the Carnegie Foundation’s 1921 Report on Legal Education. The author, Alfred Reed, considered the lack of practical training in the curricula of American law schools an “educational anomaly.” In his exhaustive report on legal education in the United Kingdom, Canada, and the

223 Id.
224 Id. at 481-83.
225 Id. at 482; see also Symposium, *Charles Hamilton Houston*, 27 NEW ENG. L. REV. 595, 597 (1993). Within two years of implementing improvements to the program, the Law School was fully accredited by the ABA and awarded membership in the American Association of Law Schools. Id. at 598.
227 THURGOOD MARSHALL, THURGOOD MARSHALL: HIS SPEECHES, WRITINGS, ARGUMENTS, OPINIONS, AND REMINISCENCES 273 (Mark V. Tushnet 2001).
228 Id.
United States, Reed posited that the central components of an ideally complete legal education must include: practical training, theoretical knowledge of the law, [and] general education. It is not inconceivable to surmise that a no-nonsense man such as Houston recognized that the education of social change lawyers had to encompass more than the standard law school curriculum. He was not merely preparing “competent professionals,” he was training a new breed of lawyer that would “engage in the most significant legal and social revolution of the twentieth century.”

The practical training courses implemented by Houston included the Criminal Law Laboratory and a lecture series that introduced Howard law students to the foremost legal minds of the decade. Additionally, Houston offered a course entitled Common Law Pleading as a further supplement to each student’s practical training.

Moreover, in a rudimentary form of externship, Houston used his students as legal assistants in the handling of discrimination cases referred to him by the NAACP. For Houston, this supplemental training would bring to fruition that Howard would be “the school that would produce lawyers who would be excellent in their profession and fearless in their struggle against racial discrimination.”

These particular skills—in an era of Langdellian education—

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232 Id. at 276.
233 A Difference in Emphasis, supra note 222, at 481.
234 Id. at 485.
235 Justice Thurgood Marshall, supra note 227, at 628. The Criminal Law Laboratory provided students with an opportunity to view a real criminal case from “the complaint . . . and everything up to the electric chair.” Id. Justice Marshall described the laboratory as a one to two hour a week exercise where students reviewed every aspect of the case, including the autopsy of the body. Id. He also discussed going to a state penitentiary, where each of the students had an opportunity to sit in the electric chair, “There’s no electricity in there—you know that. And you take turns just sitting there . . . and, you know, you [can not] sit there more than a minute . . . It’s the fear.” Id. Remarkably, after monitoring the course, the American Association of Law Schools vetoed it, arguing that it “taught lawyers how to manufacture evidence.” Id.
236 Id. at 629.
237 McNeil, supra note 230, at 82.
239 McNeil, supra note 230, at 65.
were crucial to the education of Howard’s law students. However, as it pertained to HBCU law schools, these particular skills were an integral part of the education of Black lawyers who, historically, faced a very different landscape of opportunity and who were likely to follow a limited and difficult career path. In the 1940s, Black lawyers were typically shunned by White bar associations, judges and juries, private White law firms, corporate legal departments, state and federal agencies, and White society, in general. Houston accordingly, employment opportunities for Black lawyers in major law firms, business, government, and the judiciary were virtually nonexistent.

Houston was well aware of the challenges faced by African-American lawyers, economically, as well as within the judiciary. In redesigning Howard Law School’s curriculum, Howard saw an opportunity to “develop competent Black lawyers to ‘wage the fight that no white man could be expected to sustain’.” Houston sought to create the complete lawyer, one whose nascent lawyering skills would address legal matters at the trial and appellate levels with competence, finesse, and integrity. Houston sought to educate and train lawyers to engage in problem solving through experimentation with the law, application of legal analysis, and reasoning in constitutional interpretation; legal research securing favorable court decisions and rulings; factual investigation establishing test cases used to overturn segregation; and legal counseling furthering the social engineer’s

244 Id.
mandate to competently advise clients.246

B. Experiential Education: Training Social Engineers for Today’s Challenges

In creating experiential programs, law schools should consider a variety of factors, most notably the following: available resources, type and quality of effective skills instruction, characteristics of the students admitted, and their likely future employment. In the context of special mission law schools such as HBLSSs, it must also include instruction and training that “cultivates professional capacity and sensitivity to influencing the quality of justice available to others in underrepresented communities.”247

Students admitted to HBLSSs tend to have weaker analytical or writing skills.248 Accordingly, these institutions are forced to dedicate greater resources to honing analytical and writing skills along with providing training that ultimately makes a student practice ready. Moreover, graduates of HBLSSs are likely to return to the communities where they lived or where immediate and extended families reside. It is this need to develop particular lawyering skills, coupled with a unique mission, which must guide HBLSSs and their approach to clinical education.

1. The Importance of Skills Training for Positive Social Engineers

In 1971, Chief Justice Warren Burger stated that “[a] strong independent, competent legal profession is imperative to any free people.”249 He further noted that the role of a lawyer should be “a balance wheel, a harmonizer, a reconciler.”250 To guarantee a profession of “balance wheel, [] harmonizer, [] reconciler” lawyers, it is incumbent upon the institutions that provide training to emphasize the “public interest professional obligation” of lawyers while acquainting

246 Justice Thurgood Marshall, supra note 227, at 627.
247 Brown, supra note 203, at 198.
250 Id.
the "law student with the practical aspects of the law."\textsuperscript{251}

Almost certainly, lawyers have continually served as "social engineers."\textsuperscript{252} Lawyers assist in the creation of laws when acting in the capacity of legislators; lawyers administer laws in the capacity as executives.\textsuperscript{253} Lawyers interpret laws when acting in the capacity as judges, and they have changed or transformed laws while acting as advocates.\textsuperscript{254} Still, it should be recognized that lawyers can be either positive or negative social engineers.\textsuperscript{255}

Positive social engineers are lawyers at the forefront of social change—as proponents of social change and reform—while conversely negative social engineers oppose social change and advocate for the status quo.\textsuperscript{256}

Positive social engineering is only achievable if members of the legal profession and those who train lawyers embrace the goal of equal justice and opportunity as guaranteed by the Constitution and the Bill of Rights and that those guarantees "are only as meaningful as their application to real conditions and real people."\textsuperscript{257}

Positive social engineering is feasible when there are real and sustained discussions on beneficial reforms of the law that extend protection to marginalized and disenfranchised communities, guaranteeing full participation in society. Positive social engineering is achievable when there is an effort to ensure delivery of legal services to all, regardless of socioeconomic status. This is the role that experiential programs within law schools occupy. However, with the unique social justice missions of HBLS, it is incumbent that this emphasis on positive social engineering remain at the forefront of any and all of their experiential and skills training programs.

\textsuperscript{252} Id. at 429.
\textsuperscript{253} Id. at 430.
\textsuperscript{254} Id.
\textsuperscript{255} Id.
\textsuperscript{256} Id.
\textsuperscript{257} Id. at 431-32.
2. Experiential Programs at HBCUs: Goals and Opportunities

The primary mission of any law school is to prepare law students for the practice of law. While elite law schools, offering courses tangentially related to the practice of law, prepare students for careers in academia or placement with top notch firms, such a model of education “will not serve well the vast majority of students” who attend lower-tiered law schools or HBLSs.258

The emphasis of lower-tiered schools should be on teaching, with the goal of preparing students for the practice of law, success on the bar examination, and securing employment.259 Indeed, these law school graduates should have—upon completion of their legal studies—“marketable skills and knowledge” while demonstrating practice competency.260

HBLSs and lower-tiered schools are similar in the respect that both target and provide individuals with lower test scores and GPAs an opportunity to train to become lawyers. While graduates of lower tiered, non HBLSs are likely to return to their communities to “serve middle- and lower-income persons who lack access to affordable legal services,” the educational mission of HBLSs is to support or promote educational opportunities for minority lawyers, with African-American or minority communities as ultimate beneficiaries.261

For instance, the mission of Texas Southern University’s Thurgood Marshall School of Law remains the training and educating

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260 Wilson, *supra* note 258, at 583.

of "large numbers of African-American and Hispanic lawyers." Conversely, HBLSs have traditionally afforded access to legal education to those who will provide services to the disadvantaged—regardless of ascriptive criteria. The mission of Florida A&M University's School of Law is to "provid[e] access to excellent educational training and opportunities to generations of students seeking to serve the needs of traditionally underserved people and communities locally, nationally and internationally." The mission of UDC-DCL is to "recruit . . . students from groups underrepresented at the bar, provide a well-rounded theoretical and practical legal education that will enable students to be effective and ethical advocates[.]

As one author noted, "[t]he very mission . . . of HBCU law schools give rise to a special duty to produce multitudes of effective social engineers for the betterment of the African-American community." To ensure that HBLSs meet this mandate, it is incumbent that each recognize their unique role as training institutions and the importance of emphasizing the role of graduates as individuals "skilled at creating social change for the benefit of African-Americans, and thus, by extension, America, Africa, the African-Diaspora, and the entire world." This process cannot begin in the second or third year; it must begin on the first day and continue throughout the full three years of education. It must be dedicated, steadfast, and reinforced.

265 School of Law History, supra note 191.
266 Mawakana, supra note 56, at 693.
267 Id. at 681.
268 See id.
a. Skills training and professional identity development throughout three years of legal education

i. **Teaching skills and professional identity and ethics**

The first year of legal education is typically devoted to doctrinal courses such as Torts, Property, Contracts, Criminal Law, and Constitutional Law. These particular classes are not skills based courses nor do they emphasize or discuss ethics or professional identity. They are taught using a “combination of Socratic questioning and lecture . . . the case method of instruction . . . consisting primarily of cases, many of which are the same cases” students read thirty or forty years ago.²⁶⁹ Some newer texts may include “interactive component[s]” and a few “negotiating and drafting problems” but by and large, modern doctrinal courses are taught using timeworn, traditional pedagogy developed in the 1870s by the former dean of Harvard, Christopher Columbus Langdell.²⁷⁰ Langdell pioneered the “case [book] method”—employing a scientific approach to law, with “exclusive focus on appellate court decisions.”²⁷¹ Through this process, students are trained to identify and categorize particular facts and discuss the holdings of the case, with some attention focused on the court’s reasoning.²⁷²

Though developed almost one hundred and fifty years ago, the Langdellian casebook method remains the dominant pedagogy for the study of law.²⁷³ Unfortunately, this process of teaching is devoid of nearly all skills training, with the exception of “legal analysis, research and writing.”²⁷⁴ Few law schools have deviated from this method of instruction, and by the time law students reach their second and third years, their mode of analysis has been indubitably shaped by a process that does not consider insights into the actual practice of law or debates on the manner in which lawyers handle client problems in a real world

²⁷⁰ *Id.* at 208-09.
²⁷¹ *Id* at 209.
²⁷³ *Id.*
²⁷⁴ *Id.*
context. The typical questions posed to law students today have “little or no direct practice context.” The queries are so abstract in nature that “lost are the skills and ethics dimensions with which the cases are actually laden.” Rather than asking, “What is the holding?” it is far more practical and relevant to ask: “How does this impact your client?” or “What are the moral or social implications of the court’s ruling?” The triumph of the analytical framework imparted to law students in the first year “dehumanizes the practitioners and the participants . . . remov[ing] ethical, social, and moral roots of law . . . [and] stripping the lawyer and client of professional and personal identity.” This valueless “system of objective, black-letter rules” provides little instruction in skills—other than critical thinking—and does nothing to prepare students for the practice of law. Unfortunately, this approach is unsustainable, given the current economic realities—fewer employment opportunities and debt-laden degrees.

Almost certainly, there are abundant opportunities to integrate skills and ethics into first year doctrinal courses and throughout all years of legal education. This task is not impossible. In the last two decades, there have been a number of influential reports encouraging the integration of skills into substantive courses.

For instance, in 1992, the American Bar Association’s Task Force on Law Schools and the Profession released a report entitled Legal Education and Professional Development. The task force took three years, surveying both ABA approved law schools, as well as conducting a series of public hearings, before issuing its findings.

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276 Miller, supra note 275, at 22.
277 Id.
278 Id.
279 Id.
280 Johnson, supra note 272.
282 Id. at xi-xiv.
The report encouraged law schools to modify their "curricula to teach skills and values more extensively or differently."283 The report identified potential modifications to include:

revisions of conventional courses and teaching methods to . . . integrate the study of skills and values with the study of substantive law and theory; revisions of existing skills courses or programs, or the creation of new ones, to better achieve pedagogical goals; [and/or] development of courses or programs concerned with professional values.284

More importantly, the report identified ten fundamental skills essential to lawyering, to wit: problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and advance dispute resolution, organization and management, and recognizing and resolving ethical dilemmas.285 The report also identified four fundamental values, such as: provision of competent representation; promoting justice, fairness, and morality; striving to improve the profession; and professional self-development.286 Without question, the MacCrate Report identified skills and values that "continue to define the skills" law schools impart to their students.287

In 2007, the Carnegie Foundation for the Advancement of Teaching published a report entitled Educating Lawyers: Preparation for the Profession of Law.288 The authors surveyed approximately sixteen law schools in the United States and Canada, examining the methods employed by law schools to train students in legal understanding and assist in the development of professional identity.289

283 Id. at 128.
284 Id.
285 Id. at 138-40.
286 Id. at 140-41.
287 Miller, supra note 275, at 20.
289 Id. at 3.
The report, while not overly critical of existing law curricula, recommended an integrated approach to legal education and training.\textsuperscript{290} The report identified “the three apprenticeships” of legal education—knowledge, ethics, and practical skills—and pushed the apprenticeships to be integrated into courses throughout law school.\textsuperscript{291} Indeed, the authors stressed collaborative endeavors between doctrinal and collaborative faculty, encouraging a “sustained dialogue among faculty with different strengths and interests united around common educational purpose.”\textsuperscript{292}

Similarly, the Steering Committee for the Best Practices Project of the Clinical Legal Education Association issued its report, \textit{Best Practices for Legal Education}, concluding—as did Carnegie and MacCrate—that law schools were not sufficiently preparing students for the practice of law.\textsuperscript{293} The report strongly encouraged law schools to organize their curricula to develop knowledge, skills, and values progressively; integrate the teaching of theory, doctrine, and practice; and teach professionalism pervasively throughout all three years of law school.\textsuperscript{294}

Without question, HBLSs must encourage collaborative endeavors between faculty and practitioners, particularly full time faculty providing instruction in doctrinal courses. Revised curricula might include guest lectures by practitioners on issues related to ethics or professional identity. One author suggested that faculty incorporate critical analysis dialogue on prevailing societal issues within the context of their courses.\textsuperscript{295} These events provide evocative yet “teachable moments within the curriculum to provide real, practical solutions to

\textsuperscript{290} \textit{Id.} at 4.
\textsuperscript{291} Johnson, \textit{supra} note 272, at 51.
\textsuperscript{292} SULLIVAN, ET. AL, \textit{supra} note 288, at 9.
\textsuperscript{293} ROY STUCKEY, \textit{BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP} 11-13 (2007), http://www.law.smu.edu/\textit{Media/Faculty/Faculty\%20Teaching\%20Resources/Teaching\%20Your\%20Course/CLEA-Best-Practices.pdf.
\textsuperscript{294} \textit{Id.} at 68-76.
facilitate . . . change." Undeniably, "funnel[ing] qualified, culturally dexterous professionals into the profession is invaluable to the community at large . . . and is pivotal in diversifying the legal profession."

Some HBLSs have embraced the concept of "teachable moments" by requiring courses in race-related theory. For instance, Florida A&M University School of Law requires that students complete one of two mission related courses—Critical Race Theory and Public International Law. The former course—Critical Race Theory—considers "the central tenets of critical race theory; the foundational and emerging scholarship of critical race scholars; and critical race perspectives in a variety of doctrinal contexts." One of the identified course objectives is to "demonstrate the application of critical race theory as a viable lawyering, jurisprudential, and lawmaking technique." The course ultimately improves skills by honing "critical thinking, legal analysis and writing."

The latter course—Public International Law—provides instruction in "principles of international and national relations, including such topics as state formation and dissolution; government recognition . . . international human rights and humanitarian law . . . women's rights; and international cultural property."

These particular courses provide students opportunities to explore social justice issues, within the context of lawyering courses—developing professional identities, while strengthening core skills in writing, research, and analysis.

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296 Id.
297 Id.
298 Student Handbook 2015-2016, supra note 264, at 88-89 (effective as of the 2012-2013 academic year, Critical Race Theory is no longer one of the two designated mission related courses).
299 Id. at 88.
300 Id.
301 Id.
302 Id.
Increase the availability and requirement of skills courses

In order to adapt to an ever-changing and modern form of lawyering, HBLSs must significantly revise their curricula to include required courses in experiential learning opportunities that develop and hone lawyering skills. Curricula should include simulated practice skills courses focusing on the following: contracts and business documents drafting, interviewing, counseling, negotiation, and alternative dispute resolution techniques. A survey of the six HBLSs demonstrates that all offer, in some form or fashion, skills courses. There is a wide range of available classes in areas such as negotiation, law office management, and motions practice.303

For instance, Florida A&M University School of Law offers the following skills-based courses: Contract Drafting; Domestic Violence Workshop; Interviewing, Counseling And Negotiation; Law Office Management; Mediation Theory And Practice; Pretrial Practice Workshop; and Trial Practice.304 However, successful completion of two of these courses suffices to meet the law school’s minimum requirement of six credit hours of experiential education.305 Unfortunately, these individual courses are not taken in conjunction with or as a prerequisite to a clinic, they are taken in lieu of completing an externship or clinic.306

UDC-DCL offers Pathways to Practice courses for students interested in focusing on a particular practice area.307 Students who seek to build a body of knowledge, skills, and experiences, can take any of the following courses: Civil Rights and Equality, Criminal Law, Family and Juvenile Law, General Transactional Law Practice, Housing and Community Development Law, Immigration Law and Human Rights, Public Service/Public Policy, and Solo and Law Firm

303 See infra Part VI.B.2.a.ii.
305 Id.
306 Id.
Similarly, North Carolina Central University’s School of Law does not require skills courses, but offers instruction in the following areas: drafting of legal letters and correspondence (Legal Letters—Law 8013), law office management (Law Office Practice—Law 9280), advocacy and negotiation skills during advance dispute resolution (Mediation Advocacy—Law 8016), negotiation (Negotiation—Law 4600), plea bargaining (Plea Bargaining—Law 9016), Spanish for Lawyers (Law 9902), and Trial Practice (Law 8170 and Law 8172).\textsuperscript{309}

Clearly, each of the HBLSs offers skills courses in law office management, advance dispute resolution, and trial simulation. However, it is the authors’ contention that these particular courses should be required courses for graduation, in addition to clinic or externship opportunities or prerequisites to clinic or externship opportunities.

b. Clinics and externships

As discussed previously, the revised ABA accreditation standards require that all law students complete a minimum of six credits of experiential coursework prior to graduation.\textsuperscript{310} However, experiential coursework is not limited to clinics; it includes externships and skills courses. Unfortunately, fewer experiential opportunities and requirements presupposes that students will have continued training opportunities postgraduation. That is not always the case with graduates of HBLSs. A significant percentage of HBLS graduates will likely create start-up solo endeavors or join small two-to-three person firms.

A concerted effort should be undertaken to increase or substantially require more than six credit hours in experiential learning. At a minimum, all students should be required to devote the entire third year of study to “practice courses”—in particular, live-client clinics or

\textsuperscript{308} Id.


\textsuperscript{310} See supra Part VI.
externships that provide training in transactional, as well as trial work. These particular opportunities should be preceded by skills courses, which offer students instruction in drafting, interviewing, negotiation, and counseling skills in a simulated setting.

To date, only one of the six HBLSs require more than six credit hours of experiential learning. At UDC-DCL, students are required to earn a minimum of fourteen clinic credit hours, "by participating in two of the School of Law’s legal clinics. At least one of those clinics must be a direct client service clinic." Each of the clinics is seven credits, with students required to devote a minimum of "350 hours of work in class, preparation, and client service."

An increase in the amount and variety of clinical courses—whether real life lawyering or externships—should be of paramount importance to HBLSs.

i. HBLS wide-ranging clinical programs and benefits

The principal difference in clinical programs at HBLSs and PWIs is the heterogeneity of the student clinicians. They are immigrant. They are African-American. They are Latino and Asian. They invariably are the first generation of college graduates and many come from impoverished families or communities.

A considerable percentage of students at PWIs tend to come from "privileged backgrounds and are often shocked at dealing with individuals who struggle." Students at HBLSs are less surprised and more accustomed to the issues that "bedevil" their clients. In either instance, skills can be taught and students trained to be effective advocates for their clients, but empathy—the ability to truly understand

312 Id. at 1, 3.
313 Id. at 3.
314 Telephone Interview with Kate Mahern, former Director of Elder Law Clinic, Thurgood Marshall School of Law (Sept. 8, 2011).
315 Id.
one's client—is a harder skill to impart.

The heterogeneity of the student body at HBLSs ultimately serves as an additional tool for the clinical experience. It provides students with another learning module—an opportunity to “express ideas that come out of [their unique] experience[s],” promoting further creativity within the program.316

 Minority student enrollees, like minority attorneys, are more likely to “engender trust and facilitate communication” with their minority clients, because they share a group identity which makes it likelier to gain their client’s trust.317 Minorities, particularly African-Americans, live in a society where racism exists and is very much a part of “their everyday reality.”318 Through “struggle[s] against enslavement” and “cultural alienation,” African-Americans have acquired a cohesive identity.319 Thus, African-Americans have “a complex reality” with a “particular socio-political-legal and historical context” defining how African-Americans often view the world.320 Group identity fosters a “particular sensitivity to issues of racism and oppression.”321 African-American clients generally consider African-American lawyers less likely to judge and more likely to understand unique aspects of Black culture.322 Thus, African-American lawyers—in understanding “the context in which African[...]American cultural manifestations exist”—are less likely to judge traits considered “uniquely black” and more likely to gain the trust “necessary for an effective attorney-client relationship.”323

 Additionally, because African-Americans regard the judicial system, particularly the criminal justice system, as inherently racist, “the legitimacy of organizations that serve African-Americans” is of

316 Id.
318 Id. at 12.
319 Id. at 12-13.
320 Id. at 13.
321 Id. at 16.
322 Id.
323 Id. at 18.
utmost importance. If the organizations that serve a particular population reflects—in either racial or ethnic makeup—the populations served, then clients—whether minority or specifically African-American—are "likely to consider [that] organization[] credible and legitimate." 

Although all of the HBLs have social justice missions which include legal services and assistance to the disadvantaged, each has continued to "balance the classroom experience by introducing a variety of clinics that are relevant to the changing needs of a changing population, such as foreclosures, veteran’s issues, immigration and international adoptions." For instance, Southern University has a myriad of live client clinics, providing training to students in the following practice areas: Bankruptcy, Civil and Administrative, Criminal, Divorce and Domestic Violence, Elder and Successions Law, Low-Income Taxpayer, and Workers’ Compensation. North Carolina Central University School of Law offers clinical training opportunities, inter alia, in Patent Law, Small Business, Consumer Financial Transaction, and Veterans Law. Thurgood Marshall School of Law’s clinical offerings include traditional practices such as Family Law, Probate & Guardianship, and Criminal Defense. However, the program also offers experiential training opportunities in Immigration Law and post-conviction remedies training through its Innocence Project.

All of these programs, whether focused on the more traditional practice areas of law—Family, Landlord/Tenant, Criminal Defense—or those less diverse—Patent Law, Tax Law, Post-Conviction Remedies—provide invaluable and unique training opportunities to HBLs

324 Id. at 38.
325 Id.
326 Oguntoyinbo, supra note 55.
graduates. More importantly, these programs prepare future social engineers for the modern legal challenges impacting communities of color.

c. Striving to train the future: Pro bono and mentorship opportunities

In an effort to impart the ethical obligation of attorneys to provide pro bono services, law schools are required—as a part of their accreditation—to provide substantial opportunities in “pro bono legal services, including law-related public service activities.” Pro bono programs are valuable to students and their respective law school communities because the services provided benefit the disadvantaged and indigent. However, students develop and hone practice skills in interviewing, counseling, and negotiation. Additionally, they “[g]ain exposure to various areas of substantive law and public service career opportunities.” They develop and build networks within the legal community and particularly with practicing attorneys. Students enjoy “[g]reater involvement in [the] community” in addition to achieving a certain amount of “personal fulfillment.” Finally, pro bono opportunities often remind students of the reasons for attending law school, inspiring many to commit to helping others in meaningful ways.

With the exception of UDC-DCL, pro bono opportunities at the remaining five HBLSs are entirely voluntary or in lieu of other coursework. For instance, Florida A&M University School of Law

331 Revised Standards & Rules of Procedure for Approval of Law Sch. 2016-2017, ABA Section Legal Educ. & Admissions to the bar, Std. 303(b)(2).
333 Id.
334 Id.
335 Id. at 4.
336 Id.
337 Id.
338 Still it should be noted that each of the surveyed programs provide a rich vein of “training” opportunities for law students enrolled in their Pro Bono Programs.
allows, as an alternative to clinical coursework, students to complete twenty hours of qualifying pro bono work.\footnote{339} 

Conversely, UDC-DCL requires all students complete a minimum of forty hours of pro bono legal community service in the District of Columbia during their first year.\footnote{340} One student described her pro bono experience volunteer at Quality Trust for Individuals with Disabilities as helping her “not only to develop better legal skills, but also . . . an opportunity to give back to the community.”\footnote{341} She further stated that “words cannot describe how rewarding it feels to allow voices, which are oftentimes muted by the society, to be heard loud and clear.”\footnote{342} Another student, who volunteered at an intervention center for domestic violence victims, noted:

The most important lesson, and the very first one I learned, was that the legal system is not perfect. I had the greatest respect for the judges I observed, but they were only human. This was the most humbling part of my job. Seeing those individuals was inspiring: they get up every single day to hear these heartbreaking stories and somehow are able to perform under that pressure. However, even these experienced, honorable professionals made mistakes. These mistakes could often result in grave results for both the petitioners and respondents involved. I realized that what I was doing there was important for this reason.\footnote{343}

As noted, these particular endeavors can only enhance students’ skill training. However, experiences such as those described previously, show the evolution of nascent professional identity, particularly as it is linked to a commitment to public service.

\footnote{339} Required Courses, supra note 304.  
\footnote{341} Id. (Comments by 1L student Polina Ivko).  
\footnote{342} Id.  
\footnote{343} Id. (Comments by 1L student Aysha Iqbal).
As inelegant as this may sound, race matters. Charles Hamilton Houston, the acknowledged father of social engineering legal education, often argued that “black lawyers should serve black communities” not only because these communities were underrepresented, but also because he believed that nonminority lawyers would not wage an uncompromising fight for the rights of Black litigants.344 That was the primary purpose behind Houston’s decision to build a robust legal program—to ensure that Black lawyers were more than “capable lawyers handling ordinary tasks.”345 Indeed, he insisted that “black law students be trained rigorously . . . because black lawyers had a moral obligation to understand the intricacies of race and justice.”346 Houston strongly argued the need for Black lawyers as “interpreter[s] and proponent[s]” of the rights and aspirations of African-Americans.347 During and after his death, Houston’s social engineers “attacked legal discrimination in assorted ways.”348 Today, the extraordinary challenges facing minorities, particularly African-Americans, demand innovative social engineers—in all strata of law—educated and trained in the rigors of law, as during Houston’s tenure as dean of Howard University’s School of Law.

The news is inundated with stories of unarmed Black men and boys killed or maimed by police officers rarely brought to justice. For instance, in Ferguson, Missouri, where Michael Brown was shot and killed by a white police officer, there are no Black attorneys.349 An extensive report by the U.S. Department of Justice “linked a lack of legal representation with police conduct.”350 For instance, Ferguson

345 Id. at 645.
346 Id.
347 Id.
348 Lovelace, supra note 344 at 645.
349 Yolanda Young, Marilyn Mosby is the latest example of why Black Lawyers Matter, RAW STORY (May 14, 2015, 12:45 ET), http://www.rawstory.com/2015/05/ marilyn-mosby-is-the-latest-example-of-why-black-lawyers-matter/.
350 Id.
court personnel and law officers engaged in and employed racist and discriminatory practices in traffic stops, levying of fines, and threats of jail to "extort money from Black residents." African-Americans were disproportionately targeted, their constitutional rights violated, and they often found themselves in situations not unlike Michael Brown—facing officers, where "a jaywalking stop . . . could escalate" into homicide.

Even more jarring, however, is that in most instances of "high profile police killings of unarmed black [men]," white prosecutors are "reluctant to . . . pursue indictments." One glaring exception, however, was Marilyn Mosby, the African-American prosecutor in Baltimore who opted to indict and prosecute officers responsible for the in-custody death of Freddie Gray. As one author noted, Mosby chose to "embrace the righteous anger of the community protestors and accuse[] the police of making an illegal arrest and charge[] them with false imprisonment, manslaughter, and second-degree murder."

Even where nonminority lawyers have the best interests of their clients at heart, implicit bias often results in unjust outcomes. For example, in the study *Race, Attorney Influence, and Bankruptcy Chapter Choice*, even when controlling for socioeconomic variables, researchers found that White attorneys invariably steered their Black clients into chapter 13 bankruptcy proceedings twice as much as White clients.

HBLS must continue the work of Charles Hamilton Houston—by training and producing new social engineers. Skills training initiatives, particularly experiential programs, must be built on a solid foundation of promoting social justice that address economic, political, and social needs of the underrepresented or disenfranchised in society. However, the struggle for justice will begin and continue in communities of color, where equity and fairness is in short supply. Today, regardless of practice, many lawyers of color decided to attend

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351 *Id.*
352 *Id.*
353 *Id.*
354 *Id.*
school because of a belief in "the need for social justice."\textsuperscript{356} HBLs must ensure that it meets its individual missions and mandates and that it provides communities of color with modern warriors for justice.

\footnotesize{\textsuperscript{356} Lovelace, \textit{supra} note 344 at 651.}