

The University of New Hampshire Law Review

Volume 22
Number 2 *Volume 22, Number 2 (2024)*

Article 7

6-1-2024

Boycotts, Race, Rankings, and Howard Law School's Peculiar Position

Michael Conklin

Follow this and additional works at: https://scholars.unh.edu/unh_lr



Part of the [Legal Education Commons](#), and the [Legal Profession Commons](#)

Repository Citation

22 U.N.H. L. Rev. 279 (2024).

This Article is brought to you for free and open access by the University of New Hampshire – Franklin Pierce School of Law at University of New Hampshire Scholars' Repository. It has been accepted for inclusion in The University of New Hampshire Law Review by an authorized editor of University of New Hampshire Scholars' Repository. For more information, please contact sue.zago@law.unh.edu.



Michael Conklin

Boycotts, Race, Rankings, and Howard Law School's Peculiar Position

22 U.N.H. L. Rev. 279 (2024)

ABSTRACT. This Article seeks to explain the drastic, seventy-six spot ranking disparity that exists between Howard Law School's overall ranking (based primarily on objective factors) and the purely subjective peer ranking. Potential explanations considered include location, law review quality, political ideological preference, use of promotional materials, notable alumni, professor quality, unwillingness to game the system, and random statistical noise. When all of these potential explanations come up short, Howard's unique standing as the top HBCU law school is found to be the most likely explanation. This explanation is also consistent with the corresponding increase in racial salience and the increase in Howard's disparity. The topic also elicits discussion of the role of law school rankings, the recent rankings boycott, and race in higher education.

AUTHOR. Powell Endowed Professor of Business Law, Angelo State University; Lecturer, Texas A&M School of Law.

INTRODUCTION.....281

I. LAW SCHOOL RANKINGS.....282

II. HOWARD UNIVERSITY SCHOOL OF LAW AND LAW SCHOOL RANKINGS .287

III. POTENTIAL EXPLANATIONS FOR HOWARD’S RANKINGS DISPARITY.....288

 A. *Law School Location*.....289

 B. *Exceptional Law Review*290

 C. *Political Ideology Preference*292

 D. *Promotional Materials*293

 E. *Notable Alumni*.....293

 F. *Professor Quality*.....295

 G. *Unwillingness to Game the System*.....296

 H. *Statistical Noise*297

 I. *Reputation as a Historically Black College*298

IV. LAW SCHOOL RANKINGS BOYCOTT.....304

CONCLUSION308

INTRODUCTION

In 2020, novel research measured the disparities between the *U.S. News & World Report's* overall rankings and the peer rankings of law schools.¹ The research uncovered a stark outlier—Howard University School of Law—whose peer rank was consistently forty-six spots higher than its overall rank.² In 2023 another article using updated rankings data from 2022 and 2023 was published.³ This update found that the disparity has been growing in severity in recent years. The present Article updates the research with the most recent 2024 data released in May 2023. With Howard's overall ranking of 125 and peer ranking of forty-nine, the trend of increasingly disparate overall–peer rankings continues.⁴

Because the overall rankings are largely based on objective factors, such as Law School Admission Test (LSAT) scores, bar passage rates, and after-graduation employment, and the peer ranking is purely subjective, the overall peer deviation provides valuable insight into potential bias in how law schools are viewed. Howard's increasingly pronounced disparity between how it is viewed by its peers and its objective performance measures likely strengthens the original explanation in the 2020 paper: As racial salience increases in society, so does the unique standing of Howard—the most prestigious historically Black college or university (HBCU) law school. This Article investigates potential non-racial explanations that could result in peer rankings that are seventy-six spots above the overall rankings. These include an exceptional law review, use of promotional materials, location, political ideology, notable alumni, professor quality, unwillingness to “game the system,” and statistical noise. All of these non-racial explanations come up short.

This research provides a valuable framework for examining a confluence of events at this critical juncture in time. The 2023 Supreme Court decision striking down affirmative action in college admissions dramatically altered the role of race in admissions.⁵ The American Bar Association's (ABA) removal of the LSAT requirement sparked debate about race and standardized testing.⁶ The recent

¹ Michael Conklin, *The Curious Case of Howard Law School's Peer Ranking*, 23 RUTGERS RACE & L. REV. 299 (2022) [hereinafter Conklin, *Curious*]; Peer rankings are the result of surveys sent out to law school deans and faculty. *Id.*

² *Id.* at 301–02.

³ See generally Michael Conklin, *Howard Law School, Race, and Peer Rankings: The Increasing Correlation Between Racial Salience and Preferential Rankings*, 59 WILLAMETTE L. REV. 189 (2023) [hereinafter Conklin, *Increasing*].

⁴ Paul Caron, *2024 U.S. News Law School Peer Reputation Rankings (And Overall Rankings)*, TAXPROF (May 11, 2023), https://taxprof.typepad.com/taxprof_blog/2023/05/2024-us-news-law-school-peer-reputation-rankings-and-overall-rankings.html [https://perma.cc/6XUS-2RB8].

⁵ *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 600 U.S. 181 (2023).

⁶ Karen Sloan, *ABA Votes to End Law Schools' LSAT Requirement, but Not Until 2025*, REUTERS (Nov. 18, 2022, 3:28 PM), <https://www.reuters.com/legal/legalindustry/aba-votes-end-law-schools-lsat-requirement-not-until-2025-2022-11-18/> [https://perma.cc/C953-ELBE].

explosion of artificial intelligence technologies calls into question the future of legal education and the legal profession.⁷ The expected law school enrollment cliff of 2028-29 will profoundly affect law schools.⁸ The Varsity Blues admissions scandal calls into question the ability of the well-connected to game the system.⁹ The new rankings methodology drastically decreased the significance of grade point average (GPA) and LSAT scores as well as the significance of the peer score as a contributor to the overall score.¹⁰ The decision of top law schools to boycott the rankings immediately after Supreme Court oral arguments in the affirmative action cases illuminated how race was likely a driver behind the decision.¹¹ Additionally, there is an overall increase in racial salience in society and a movement toward replacing more objective measures with more diversity-focused measures, such as environmental, social, and corporate governance (ESG) investing.¹² Consequently, this Article is also highly informative regarding larger questions, such as what role law school rankings should play, how law schools alter their behavior based on the rankings, and the role of race in legal education and the practice of law.

I. LAW SCHOOL RANKINGS

The two major rankings produced by the *U.S. News & World Report* are the overall ranking and the peer ranking. The overall ranking is based primarily on objective data, such as bar passage rate, employment rate, acceptance rate, student-faculty ratio, bar passage rate, undergraduate GPA, and LSAT score.¹³ This

⁷ See, e.g., Steve Lohr, *A.I. Is Coming for Lawyers, Again*, N.Y. TIMES (Apr. 10, 2023), <https://www.nytimes.com/2023/04/10/technology/ai-is-coming-for-lawyers-again.html> [https://perma.cc/4YFZ-FAF8].

⁸ Jill Backer, *The Enrollment Cliff of 2025—What Will It Do to Law Schools?*, LAW.COM (Nov. 9, 2022, 9:18 AM), <https://www.law.com/dailybusinessreview/2022/11/09/the-enrollment-cliff-of-2025-what-will-it-do-to-law-schools/?srlreturn=20230503151505> [https://perma.cc/NED7-RVCJ].

⁹ Mark J. Drozdowski, *The College Admissions Scandal that Shook Higher Education*, BEST COLL. (Mar. 21, 2023), <https://www.bestcolleges.com/blog/operation-varsity-blues-college-admissions-scandal/> [https://perma.cc/AFJ6-5NT6].

¹⁰ Eric Brooks et al., *Methodology: 2023-2024 Best Law Schools Rankings*, U.S. NEWS & WORLD REP. (May 10, 2023, 9:00 PM), <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology> [https://perma.cc/728Y-E5HW].

¹¹ See *infra* Part IV.

¹² See, e.g., Michael Conklin & Jason Malone, *Putting Cryptocurrency in Its Place: The Case for Why ESG Funds Should Exclude Cryptocurrency-Exposed Companies*, 20 BERKELEY BUS. L.J. (Jan. 1, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4323993 [https://perma.cc/7F9F-EVSG].

¹³ Brooks et al., *supra* note 10. The overall rankings formula is as follows: Outcomes ten months after graduation thirty-three percent; bar passage rate for first-time test-takers eighteen percent; ultimate bar passage rate seven percent; peer assessment score twelve and one-half percent; lawyers' and judges' assessment score twelve and one-half percent; median LSAT and GRE scores

BOYCOTTS, RACE, RANKINGS, AND HOWARD LAW SCHOOL'S PECULIAR POSITION

overall rank is the standard for potential matriculating students to compare American law schools.¹⁴ Legal scholars also use the overall rank to determine which law schools to apply to for jobs¹⁵ and in which law schools' journals to publish their papers.¹⁶ There is even anecdotal evidence to suggest that the overall ranking of a law professor's school of affiliation affects his or her ability to get their scholarship published in the best journals.¹⁷ The overall rankings also play a significant role in the ability of recent graduates to obtain employment, as many law firms use the overall rankings as a proxy for applicant quality when determining whom to hire.¹⁸ Consequently, this reality also likely increases the significance of the rankings for potential matriculating students. Law schools have responded to the overwhelming importance of the rankings with a variety of policy changes designed to improve their rankings.¹⁹ The incentive law schools face to improve their rankings is so

five percent; median undergraduate GPA four percent; acceptance rate one percent; student–faculty ratio five percent; library resources two percent. *Id.*

¹⁴ Jeffrey Harmatz, *US News & World Report Law School Rankings: A Double-Edged Sword?*, L. CROSSING, <https://www.lawcrossing.com/article/900012518/US-News-World-Report-Law-School-Rankings-A-Double-Edged-Sword/> [<https://perma.cc/NY33-GBG6>] (last visited Dec. 12, 2022) (“Regardless of its flaws, US News & World Report’s Top Law School rankings are the most popular and preferred law school rankings in the nation, and have become a legal industry institution.”).

¹⁵ Paul J. Heald & Ted Sichelman, *Ranking the Academic Impact of 100 American Law Schools*, 60 JURIMETRICS 1, 2 (2019).

¹⁶ Robert C. Bird, *Advice for the New Legal Studies Professor*, 29 J. LEGAL STUD. EDUC. 239, 251 (2012) (“The quality of a law review is roughly determined by the prestige of the law school in which the journal is housed.”); Stephen Thomson, *Letterhead Bias and the Demographics of Elite Journal Publications*, 33 HARV. J.L. & TECH. 203, 207 (2019) (“[T]he ‘consensus’ is that legal academics rank journals according to *U.S. News*”); Brian Galle, *The Law Review Submission Process: A Guide for (and by) the Perplexed*, MEDIUM (Aug. 12, 2016), <https://medium.com/whatever-source-derived/the-law-review-submission-process-a-guide-for-and-by-the-perplexed-9970a54f89aa> [<https://perma.cc/QF7Y-GNHG>] (explaining that the *U.S. News & World Report* peer ranking is the standard for determining which law journal offer to accept).

¹⁷ Michael Conklin, *Letterhead Bias and Blind Review: An Analysis of Prevalence and Mitigation Efforts*, 2022 U. ILL. L. REV. ONLINE 1, 6–7 (Jan. 31, 2022), <https://illinoislawrev.web.illinois.edu/wp-content/uploads/2022/01/Conklin.pdf> [<https://perma.cc/MFH4-J5X6>].

¹⁸ Heald & Sichelman, *supra* note 155, at 2.

¹⁹ Jeffrey Evans Stake, *The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Misperceive*, 81 IND. L.J. 229, 232, 240–41 (2006). Because of the role undergraduate GPA plays in the overall rankings, schools favor applicants from mediocre colleges with high GPAs over applicants from elite colleges with mediocre GPAs. *Id.* at 232. Likely in an effort to affect peer rankings, law schools spend “substantial sums” of money on promotional materials to send to other legal academics. *Id.* at 240. Law schools can increase their standing through accounting tricks, such as paying the greater university directly for their electricity expenditures from tuition dollars instead of having it deducted from the tuition. *Id.* at 241. While this produces no net difference, it increases the financial outlay on resources, which is a factor in the overall rankings. *Id.*

strong that some are even willing to falsely report data²⁰ and coerce underachieving graduates to delay sitting for the bar exam.²¹ Anecdotal evidence suggests that deans have been fired simply for being in charge at a time when their law schools fell in the rankings.²² The other major ranking provided by the *U.S. News & World Report* is the peer ranking. This ranking is the result of a subjective survey completed by law school deans and select law school faculty regarding their perceptions of law.²³ The existence of these two rankings—a mostly objective overall ranking and a purely subjective peer ranking—provides a unique opportunity to measure how perceptions of law schools deviate from their objective performances.

Both the overall and peer rankings have received widespread criticism, especially in recent years. The methodology for the overall ranking involves a somewhat self-perpetuating circularity whereby law journals are used as a proxy for law school quality and law school quality is used as a proxy for law journal quality.²⁴ The measure of how well law school graduates perform on the bar exam—which increased in significance more than three-fold in the new 2024 methodology²⁵—may be explained largely due to “quality in, quality out” rather than the quality of instruction received at law school.²⁶ Undergraduate GPA is not weighted by major,

²⁰ Mark Hansen, *U of Illinois Law School Admits to Six Years of False LSAT/GPA Data*, A.B.A. J. (Nov. 8, 2011, 12:21 AM), https://www.abajournal.com/news/article/illinois_law_admits_to_six_years_of_false_lsats_gpa_data [<https://perma.cc/7DZT-3W3D>]; Katherine Mangan, *Villanova U. Reveals Its Law School Gave False Reports of GPA's and Test Scores*, CHRON. HIGHER ED. (Feb. 6, 2011), <https://www.chronicle.com/article/Villanova-U-Reveals-Its-Law/126286> [<https://perma.cc/7NLW-7J2X>].

²¹ BENJAMIN H. BARTON, *FIXING LAW SCHOOLS: FROM COLLAPSE TO THE TRUMP BUMP AND BEYOND* 151 (2019) (explaining that InfiLaw—the owner of for-profit Arizona Summit Law school, Florida Coastal School of Law, and recently closed Charlotte School of Law—pays underperforming students not to take the July bar exam after graduating).

²² Elie Mystal, *Some Students Want Their Deans Fired After Poor Showing in the U.S. News Rankings (and One Head That's Already Rolled)*, ABOVE THE L. (Mar. 14, 2013, 11:20 AM), <https://abovethelaw.com/2013/03/some-students-want-their-deans-fired-after-poor-showing-in-the-u-s-news-rankings-and-one-head-thats-already-rolled/> [<https://perma.cc/GY4J-KXL8>] (“Ever year, deans and assistant deans find themselves ‘pushed out’ of a job thanks to the U.S. News rankings.”).

²³ Brooks et al., *supra* note 10; *see also supra* text accompanying note 13.

²⁴ Alfred L. Brophy, *The Relationship Between Law Review Citations and Law School Rankings*, 39 CONN. L. REV. 43, 55 (2006) (“The findings suggest that law reviews are schools’ ambassadors to the rest of the legal academy. Much of what people at other schools know about a school’s academic orientation may come from the articles and notes published in the school’s law journals.”).

²⁵ Brooks et al., *supra* note 10 (noting that bar passage rates used to account for only seventeen percent of the overall ranking and now account for fifty-eight percent).

²⁶ Meaning, perhaps the reason graduates of elite law schools have high employment and bar

BOYCOTTS, RACE, RANKINGS, AND HOWARD LAW SCHOOL'S PECULIAR POSITION

therefore resulting in a potential entering student with a 3.9 undergraduate GPA in a less rigorous major being favored over someone with a 3.8 undergraduate GPA in a more rigorous major.²⁷ Instead of using average class size, student-faculty ratio is used.²⁸ Similarly, the rankings incentivize law schools to accept a student with a 3.9 GPA from a less rigorous undergraduate college than a student with a 3.8 GPA from a highly rigorous undergraduate college. As Harvard and Yale explained in their decision to leave the *U.S. News & World Report* rankings, focusing on GPA and LSAT scores of entering students could be detrimental to student diversity.²⁹ Furthermore, the use of bar passage rates and LSAT scores favors those students who can afford to take off work and enroll in expensive test-prep services. Some state bars are easier than others to pass, thus punishing law schools located in states with difficult bar exams.³⁰ After-graduation employment rates are skewed due to students who receive fellowships and students who participate in joint J.D./Ph.D. programs.³¹ Despite advocates pushing for their inclusion in the rankings calculus, professor quality³² and class diversity are not directly measured in the rankings.³³ Finally, the rankings place more weight on the opinions of law school deans rather

passage rates is not because the legal education they received is superior but because they were selected into Harvard Law School in the first place due to their demonstrated abilities, which would have led to passing the bar and gaining employment regardless of where they attended law school.

²⁷ Brooks et al., *supra* note 10.

²⁸ A law school that only requires faculty to teach one class per semester could have the same student-faculty ratio as a law school that requires faculty to teach three classes, but the average class size in the former will be far greater.

²⁹ Annie Massa, *Harvard, Berkeley and Yale Have All Had Enough of the U.S. News & World Report's College Rankings*, FORTUNE (Nov. 18, 2022, 4:24 AM), <https://fortune.com/2022/11/18/harvard-berkeley-and-yale-have-all-had-enough-of-the-u-s-news-world-reports-college-rankings/> [<https://perma.cc/XF5H-2XHZ>].

³⁰ Joshua Craven, *Bar Exam Pass Rate by State*, LAWSCHOOLI (Dec. 17, 2020), <https://lawschooli.com/bar-exam-pass-rate-by-state/> [<https://perma.cc/KC24-M78A>] (showing the bar passage rates range from eighty-one percent in Oklahoma to forty-four percent in California).

³¹ Anemona Hartocollis, *Elite Law Schools Boycotted the U.S. News Rankings. Now, They May Be Paying a Price*, N.Y. TIMES (Apr. 21, 2023), <https://www.nytimes.com/2023/04/21/us/21nat-us-news-rankings-law-medical-school.html> [<https://perma.cc/5TXW-93RU>].

³² *U.S. News & World Report* planned on implementing the Scholarly Impact Project in 2020. This would rank law schools based on the citation scores of their faculties. However, due to COVID-19, this new endeavor was delayed and ultimately abandoned. *US News & World Reports Scholarly Impact Project*, HEINONLINE, <https://help.heinonline.org/kb/us-news-world-reports-scholarly-impact-project/> [<https://perma.cc/X8G5-VYX6>] (last visited Dec. 12, 2022).

³³ Tony Varona, *Diversity and Disgrace — How the U.S. News Law School Rankings Hurt Everyone*, 38 N.Y.U. REV. L. & SOC. CHANGE: HARBINGER, <https://socialchangenyu.com/harbinger/diversity-and-disgrace-how-the-u-s-news-law-school-rankings-hurt-everyone/> [<https://perma.cc/5N2R-JBK9>].

than other factors that potential law students are likely more concerned with, such as obtaining employment and passing the bar.

The peer ranking also receives criticism. Low response rates mean that the survey suffers from non-response bias.³⁴ The scale utilized is ambiguous and inexact, allowing survey takers to only rank each law school on a one-to-five Likert scale described as ranging from “marginal” to “outstanding.”³⁵ The results call into question the ability of survey takers to honestly respond. For example, in the 2024 peer rankings, Chicago, Columbia, and New York University (NYU) all received a peer ranking of 4.5.³⁶ This means that, at best, half of the survey respondents ranked these schools at five out of five and the other half four out of five—ignoring the effects of rounding. The notion that half of the survey participants believe that, out of over 190 law schools,³⁷ Chicago, Columbia, and NYU are not in the top quintile is a highly peculiar result. And this is the best-case scenario, as any other possible combination resulting in a 4.5 average would require some of these schools to be ranked a three, two, or even a one out of five. This is perhaps the result of participants responding to the survey in a highly self-serving manner. For example, because of the low response rate,³⁸ if the dean and a few of the faculty at a top-fourteen law school gave themselves a five and every other top school a one, this could result in that school artificially moving up in the rankings. Such an incentive structure creates a potential adverse selection problem whereby law schools with the most unethical deans and faculty who would engage in such a practice would be rewarded with higher rankings.

Other criticisms of the peer rankings include how no metric is provided for what constitutes “marginal” or “outstanding,” nor is any guidance given as to what aspects of the law school are being evaluated—Class offerings? Faculty diversity? Facilities décor? Nightlife? Studies have found a strong political ideology bias in the rankings.³⁹ Survey respondents do not have the time to conduct the in-depth

³⁴ Andrew P. Morriss, *Legal Education Through the Blurry Lens of US News Law School Rankings*, 20 GREEN BAG 2d 253, 255 (2017) (“Somewhat surprisingly, just sixty-seven percent of eligible US News academic voters sent in the surveys this past year.”).

³⁵ *Id.* Survey respondents are only allowed to between one, which is “marginal,” and five, which is “outstanding.” *Id.* But these subjective terms are not defined. *Id.* “Outstanding” regarding what aspect of the law school? Trial advocacy programs? Citation counts of professors? Job placement services? Ideological diversity?

³⁶ Caron, *supra* note 4.

³⁷ *Id.*

³⁸ Morriss, *supra* note 34.

³⁹ Michael Conklin, *Political Ideology and Law School Rankings Measuring the Conservative Penalty and Liberal Bonus*, 2020 U. ILL. L. REV. ONLINE 178, 183 (2020) [hereinafter Conklin, *Ideology*]; Michael Conklin, *Law School Rankings and Political Ideology: Measuring the Conservative Penalty and Liberal Bonus with Updated 2023 Data*, NOTRE DAME J.L. ETHICS & PUB. POL’Y (forthcoming), draft copy available at

BOYCOTTS, RACE, RANKINGS, AND HOWARD LAW SCHOOL'S PECULIAR POSITION

research necessary to accurately rank 196 law schools.⁴⁰ Consequently, it appears that many respondents simply rely on the previous year's overall rankings in producing their peer rankings.⁴¹ As previously mentioned, respondents are allowed to vote on their own institution, which incentivizes biased responses. Finally, the criticism of the peer ranking also doubles as additional criticism of the overall rank because the peer rank is a contributing factor in calculating the overall rank, and a law school's peer rank is the best predictor of its overall rank.⁴² However, under the new 2024 rankings methodology, the peer rank is weighted fifty percent less in the overall rank than it was previously.⁴³

II. HOWARD UNIVERSITY SCHOOL OF LAW AND LAW SCHOOL RANKINGS

A law school's peer rank is generally very close to its overall rank. In the 2024 rankings, eighty-three percent of law schools had peer ranks that were within thirty spots of their overall ranks.⁴⁴ One stark outlier is Howard University School of Law, which in the 2024 rankings had a difference of seventy-six places.⁴⁵ Not only has Howard maintained a disparity every year for the thirteen years of this study (2012–2024), but the disparity has rapidly increased in recent years.⁴⁶

This disparity is even more extreme than it initially appears. This is because the peer rank is also included as a factor in the overall rankings.⁴⁷ This methodology functions to mitigate disparities between the objective factors in the overall ranking and the subjective peer rank. Mathematically removing the peer rank from the overall rankings reveals an even more extreme deviation, as Howard's disparity increases to a massive eighty-seven spots.⁴⁸ In other words, if the overall–peer

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4085712 [<https://perma.cc/4VQK-RKZ2>] [hereinafter Conklin, *Measuring*]. The strong ideological bias accounted for a twenty-four-spot difference in the peer rankings, which are included in the overall ranking's calculus.

⁴⁰ Caron, *supra* note 4.

⁴¹ Robert L. Jones, *A Longitudinal Analysis of the U.S. News Law School Academic Reputation Scores Between 1998 and 2013*, 40 FLA. ST. U. L. REV. 721, 786–87 (2013).

⁴² Ronen Perry, *Correlation Versus Causality: Further Thoughts on the Law Review/Law School Liaison*, 39 CONN. L. REV. 77, 89 (2006) (finding that the correlation coefficient between the two variables among top 100 law schools is very high at 0.974).

⁴³ Brooks et al., *supra* note 10.

⁴⁴ Caron, *supra* note 4.

⁴⁵ *Id.*

⁴⁶ The disparities from 2012 to 2024 are as follows: 27, 35, 25, 36, 25, 19, 40, 48, 41, 46, 43, 46, and 76, respectively.

⁴⁷ Brooks et al., *supra* note 130; *see also supra* text accompanying note 13.

⁴⁸ Since the weight of the peer assessment score in the overall rankings is twelve and one-half

disparity was not mitigated by including the peer ranking as a factor in the overall ranking, the disparity would be eighty-seven spots. Because there are only 196 ranked law schools,⁴⁹ and because even slight changes in the rankings are highly significant to a law school, a difference of eighty-seven spots is truly astounding.

U.S. News & World Report also provides rankings for twelve specialty categories, such as tax law, clinical training, and legal writing.⁵⁰ Although these do not directly affect the overall or peer rankings, it is interesting to note that another peculiar result with Howard exists in these twelve categories. Howard is ranked better than its 125th overall ranking in eleven of these twelve categories and equal to 125th in the category of Environmental Law.⁵¹ This is not the case for any of the other four law schools that share the same overall rank as Howard.⁵²

A similar phenomenon appears to be present in Howard's undergraduate ranking. There, Howard is ranked eighty-ninth overall.⁵³ But in the objective categories of outcomes, faculty resources, and student excellence—which make up sixty-seven percent of the overall ranking—it is ranked 146th, 198th, and 160th, respectively.⁵⁴ Howard's undergraduate ranking is bolstered by an abnormally high “expert opinion” score.⁵⁵

III. POTENTIAL EXPLANATIONS FOR HOWARD'S RANKINGS DISPARITY

The existence of Howard Law School's persistent, extreme, and accelerating

percent, the effects of backing out the peer rank from the overall ranking's formula can be obtained by simply multiplying the difference between the overall ranking and the peer ranking by a factor of 1.1425.

⁴⁹ Caron, *supra* note 4.

⁵⁰ “Law school specialty rankings, such as clinical training, tax law and health care law, are based solely on peer assessment surveys administered to law school faculty who teach in that specialty area.” Brooks et al., *supra* note 10; *see also supra* text accompanying note 13.

⁵¹ *Howard University Law School Overview*, U.S. NEWS & WORLD REP., <https://www.usnews.com/best-graduate-schools/top-law-schools/howard-university-03033> [<https://perma.cc/G65M-ABRM>] (last visited June 6, 2023). The twelve categories are business/corporate law, clinical training, constitutional law, contracts/commercial law, criminal law, environmental law, health care law, intellectual property law, international law, legal writing, tax law, and trial advocacy. *Id.*

⁵² The four other law schools ranked 125th overall are New York Law School, University of Memphis Law School, Regent University Law School, and Campbell University Norman Adrian Wiggins School of Law. *Id.*

⁵³ *Howard University*, U.S. NEWS & WORLD REP., <https://premium.usnews.com/best-colleges/howard-university-1448> [<https://perma.cc/C3S8-7B5P>] (last visited Dec. 12, 2022).

⁵⁴ *Howard University Rankings*, U.S. NEWS & WORLD REP., <https://premium.usnews.com/best-colleges/howard-university-1448/overall-rankings> [<https://perma.cc/ALZ7-TYLC>] (last visited June 6, 2023).

⁵⁵ *Id.*

BOYCOTTS, RACE, RANKINGS, AND HOWARD LAW SCHOOL'S PECULIAR POSITION

rankings disparity calls for an explanation. This section analyzes the numerous potential explanations available. However, when the evidence to support each of the potential explanations is evaluated, only one option remains feasible, that of Howard's unique position as the only HBCU among the top 150 law schools.

A. Law School Location

Howard University School of Law is located in Washington, D.C. There are likely numerous benefits to the students that stem from being in the nation's capital. These likely include a logistical advantage for internships, well-connected professors, and noteworthy guest speakers. Professors considering which law school to seek employment at likewise may find Howard's location desirable, given its proximity to entertainment, cultural events, Congress, and the Supreme Court.⁵⁶ If these predictions regarding professors are accurate, this would improve the pool of applicants for faculty positions at Howard and consequently improve the quality of the faculty. This could be a potential explanation for the overall-peer gap because faculty quality is not directly measured in the overall rankings but would likely lead to improvements in the peer score, as others in the law school community would likely be aware of faculty quality.

Howard's location may offer it a competitive advantage over other law schools for the reasons previously mentioned, but it is unclear how this could result in the eighty-seven-spot disparity under investigation in this Article. And an argument could be made that Howard's location would function to mitigate, not exacerbate, the peer-overall disparity. This is because many of the benefits that stem from being in Washington, D.C., would indirectly improve the objective factors measured in the overall rank without a corresponding increase to the peer rank. For example, the valuable internships and well-connected professors that Howard benefits from would logically result in increased demand from potential students. This would allow Howard to be more selective, increasing its average LSAT and GPA scores. And the improved career opportunities upon graduation would naturally increase the employment rate of graduates. Consequently, because LSAT scores, GPA averages, and graduate employment rate all contribute to the overall rank, this should improve Howard's overall rank. Therefore, this is not a viable explanation for why Howard's overall rank is so much lower than its peer rank.

Other evidence regarding D.C.-area law schools supports the conclusion that being located in Washington, D.C., does not contribute to a peer rank being higher than an overall rank. To the contrary, the other D.C.-area law schools have disproportionately *low* peer ranks compared to their overall ranks. There are six other ABA-accredited law schools in the Washington, D.C., area.⁵⁷ The average

⁵⁶ Heald & Sichelman, *supra* note 15, at 33.

⁵⁷ The six ABA-accredited law schools in the Washington, D.C., area are American University Washington College of Law, Catholic University of America Columbus School of Law, George

overall rank of these law schools is eight spots higher than its peer rank.⁵⁸ Therefore, Howard's location in Washington, D.C., enhances the peculiarity of its peer ranking surpassing its overall ranking. Additionally, Howard has been in Washington, D.C., throughout the thirteen years measured in this study, yet the disparity has been rapidly accelerating in recent years.⁵⁹ With the recent trend of remote work and how videoconferencing technologies have become commonplace, the importance of location should be decreasing, not increasing.

B. *Exceptional Law Review*

Studies show that there is likely a causal relationship between a law school's flagship journal and that school's overall ranking.⁶⁰ This is because law school deans and faculty whose votes make up the peer rankings are unlikely to have knowledge regarding the nuanced aspects of all 196 law schools. Consequently, the prestige of a law school's flagship law journal can function as an efficient proxy for that law school's quality.⁶¹ Consistent with this explanation, there is a strong correlation between the *Washington & Lee Law Journal Rankings* of a law school's flagship

Mason University Antonin Scalia Law School, George Washington University Law School, Georgetown University Law School, and University of the District of Columbia David A. Clarke School of Law.

⁵⁸ See *2023-2024 Best Law Schools*, U.S. NEWS https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings?_sort=my_rankings-asc [<https://perma.cc/6SV7-VPMT>]; *American University (Washington)*, U.S. NEWS <https://www.usnews.com/best-graduate-schools/top-law-schools/american-university-03029> [<https://perma.cc/P8S3-VE8H>] (Peer ranked 2.8); *Catholic University of America Columbus School of Law*, U.S. NEWS <https://www.usnews.com/best-graduate-schools/top-law-schools/the-catholic-university-of-america-03030#:~:text=The%20Catholic%20University%20of%20America%202023%2D2024%20Rankings,%20in%20Part%2Dtime%20Law> [<https://perma.cc/RX4Q-W3Q3>] (peer ranked 2.2); *George Mason University Antonin Scalia Law School*, U.S. NEWS <https://www.usnews.com/best-graduate-schools/top-law-schools/george-mason-university-03159> [<https://perma.cc/Y5M2-B9D7>] (peer ranked 2.7); *George Washington University Law School*, U.S. NEWS [https://www.usnews.com/best-graduate-schools/top-law-schools/george-washington-university-03031#:~:text=George%20Washington%20University%202023%2D2024%20Rankings&text=35%20\(tie\)%20in%20Best%20Law,widely%20accepted%20indicators%20of%20excellence](https://www.usnews.com/best-graduate-schools/top-law-schools/george-washington-university-03031#:~:text=George%20Washington%20University%202023%2D2024%20Rankings&text=35%20(tie)%20in%20Best%20Law,widely%20accepted%20indicators%20of%20excellence) [<https://perma.cc/9Z2B-PE8S>] (peer ranked 3.4); *Georgetown University*, U.S. NEWS <https://www.usnews.com/best-graduate-schools/top-law-schools/georgetown-university-03032> [<https://perma.cc/VL5W-H6RY>] (peer ranked 4.1); *University of the District of Columbia (Clarke)*, U.S. NEWS <https://www.usnews.com/best-graduate-schools/top-law-schools/university-of-the-district-of-columbia-03178> [<https://perma.cc/U66J-D3L2>] (peer ranked 1.7).

⁵⁹ Conklin, *Curious*, *supra* note 1 at 302.

⁶⁰ Brophy, *supra* note 24 ("The findings suggest that law reviews are schools' ambassadors to the rest of the legal academy. Much of what people at other schools know about a school's academic orientation may come from the articles and notes published in the school's law journals.").

⁶¹ *Id.*

BOYCOTTS, RACE, RANKINGS, AND HOWARD LAW SCHOOL'S PECULIAR POSITION

journal and the law school's peer rank.⁶² Some researchers even posit that the current ranking of a law school's flagship journal can be used to accurately predict future changes in that law school's overall ranking.⁶³

Law journal quality is not one of the objective factors that contribute to a law school's overall ranking,⁶⁴ but it would likely influence deans and faculty voting in the peer rankings. Therefore, the existence of an exceptional law journal could help explain why a law school's peer rank is disproportionately higher than its overall rank. However, in the instance of Howard University School of Law, the evidence indicates that this is not the case. The *Howard Law Review* is the flagship journal at Howard, but it does not appear to be superior to the flagship law journals at other law schools with similar overall ranks. With a peer rank of forty-nine, Howard is tied with law schools at American University, Brigham Young University, Cardozo, Connecticut, Florida State, Pepperdine, San Diego, Temple, and Texas A&M.⁶⁵ The average *Washington & Lee Law Journal Rankings* score for the flagship journals at these law schools is 16.7, and the average impact factor is 0.61.⁶⁶ The *Howard Law Review* is significantly below these averages, with a score of 7.59 and an impact factor of 0.37.⁶⁷ Furthermore, the scores of the *Howard Law Review* are more closely aligned with the flagship law journals at law schools with the same 125 overall ranking, which averages a score of 6.07 and an impact factor of 0.27.⁶⁸ This further illustrates the curious nature of Howard's peer ranking. Therefore, this potential explanation for the rankings deviation at Howard only serves to further highlight the disparity since its flagship law journal is ranked far below, rather than above, the flagship journals at law schools with the same peer ranking.⁶⁹

⁶² *Id.* at 48.

⁶³ Alfred L. Brophy, *The Emerging Importance of Law Review Rankings for Law School Rankings, 2003-2007*, 78 U. COLO. L. REV. 35, 35 (2007) ("Thus, [this article suggests that] if one wants to know where a law school is heading . . . one should spend some time studying the scholarship its primary law review publishes.").

⁶⁴ Brooks et al., *supra* note 10.

⁶⁵ Caron, *supra* note 4.

⁶⁶ *W&L Law Journal Rankings*, WASH. & LEE U. SCH. L., <https://managementtools4.wlu.edu/LawJournals/Default.aspx> [<https://perma.cc/PV7S-QYEL>]. (last visited Dec. 12, 2022).

⁶⁷ *Id.*

⁶⁸ The four schools that share the #125 overall ranking are New York Law School, University of Memphis Law School, Regent University School of Law, and the Campbell University Norman Adrian Wiggins School of Law. *Id.* Note that the flagship law journals at New York Law School and Regent University School of Law were both unranked on the *Washington & Lee Law Journal Rankings*. *Id.* Therefore, this average consists only of the University of Memphis Law School and Campbell University Norman Adrian Wiggins School of Law flagship journal rankings. *Id.*

⁶⁹ See *Combined-Score Ranking*, WASH. & LEE U. SCH. L., <https://managementtools4.wlu.edu/LawJournals/Default4.aspx> [<https://perma.cc/D89J-MZEA>] (last visited Dec. 12, 2022). It is also worth noting that the methodology for calculating the

Similar to how law schools can engage in tactics to artificially increase their *U.S. News & World Report* rankings,⁷⁰ law reviews can engage in various tactics beyond just publishing better articles to increase their impact factors, thus increasing their Washington & Lee Law Journal Rankings. Such tactics include publishing longer articles⁷¹ and publishing symposia issues.⁷² It is possible that the *Howard Law Review* simply refuses to engage in these tactics out of principle, while the flagship law journals at American University, Brigham Young University, Cardozo, Connecticut, Florida State, Pepperdine, San Diego, Temple, and Texas A&M do. If true, this would counter the evidence in this section that questions the exceptional nature of the *Howard Law Review* for a school of Howard's standing. It leaves the exceptional law review as a plausible explanation for Howard's rankings disparity. While this Article does not include a statistical analysis regarding average article length and the use of symposia issues, there does not appear to be any significant difference between the *Howard Law Review* and the journals at the nine comparable law schools. For example, the *Howard Law Journal* published a symposium issue in 2020.⁷³

C. Political Ideology Preference

Past research suggests that political ideology plays a significant role in the peer rankings. A 2020 study found a strong correlation between a law school's political ideology and its peer-overall ranking's deviation.⁷⁴ This study found an average 27.8 ranking difference between the peer-overall rankings disparity between the ten most liberal law schools and the ten most conservative law schools.⁷⁵ A newer study using updated 2023 rankings data found that this ideological disparity is increasing.⁷⁶ This new study reported an average rankings disparity of 32.0.⁷⁷ While Howard is not listed among the top ten most liberal law schools used in these two prior studies, law school deans and faculty voting in the peer rankings may,

Washington and Lee Law Journal Rankings consists only of the two objective measures of impact factor and total citations. Therefore, *Howard Law Review's* result of being ranked below what one would expect based on Howard Law School's *U.S. News & World Report* ranking is consistent with how Howard performs better on the subjective peer rank than it does on the objective overall rank. *Id.*

⁷⁰ Conklin, *Ideology*, *supra* note 39 at 178.

⁷¹ Michael Conklin, *The Longer They Are, the More Citations They Receive: How Impact Factor Punishes Concise Scholarship*, U. N. TEX. DALL. L. REV.: ON CUSP (2023), <https://onthecusp.untDallas.edu/docs/2023/impact.factor.pdf> [<https://perma.cc/9HVY-JPHJ>].

⁷² Perry, *supra* note 42 at 96.

⁷³ The Volume 63, Issue 3, Spring 2020 edition of the *Howard Law Journal* was a symposium issue on reparations.

⁷⁴ Conklin, *Ideology*, *supra* note 39, at 182.

⁷⁵ *Id.* at 183.

⁷⁶ Conklin, *Measuring*, *supra* note 39.

⁷⁷ *Id.* at 7.

BOYCOTTS, RACE, RANKINGS, AND HOWARD LAW SCHOOL'S PECULIAR POSITION

subconsciously or otherwise, interpret the reputation of Howard as an HBCU as a proxy for liberal ideology.⁷⁸ Even if this were the case, the bump in peer rank attributable to liberal ideology found in the 2020 and 2023 studies only amounted to +9.05 and +9.62 spots, respectively.⁷⁹ Therefore, while perceived political ideology may contribute to Howard's disproportionately high peer rank, it is unlikely to explain the eighty-seven-spot difference.

D. Promotional Materials

Some law schools distribute promotional materials to other law schools to improve their peer rankings.⁸⁰ If this is an effective practice, and if Howard was somehow more adept at this practice than other law schools, this could be a contributing factor as to why Howard's peer rank is disproportionately higher than its overall rank. This Article does not attempt to measure disparities among various law schools regarding their use of promotional materials. Regardless, it is unlikely that this practice would explain Howard's overall-peer rankings disparity. With the extreme significance of law school rankings—and assuming that these promotional materials are effective—all law schools would face the same incentive to engage in the practice. It would be highly unlikely that one law school could somehow become so vastly superior to all others in its ability to send out promotional materials as to have a disproportionate effect on its rankings. And even if this were the case, the disparity produced by these promotional materials would likely only account for a small portion of Howard's eighty-seven-spot disparity. This is consistent with the evidence that suggests what common sense predicts; these promotional materials have little effect on rankings.⁸¹

E. Notable Alumni

A law school's notable alumni are not directly measured in the objective criteria that make up the overall rankings.⁸² But this is something that could potentially have a positive effect on the peer rankings. It is not hard to imagine that if a law school has produced alumni who are highly admired by those voting on the peer rankings, the positive feelings possessed toward the law school's notable alumni could equate to positive feelings about the law school. Consequently, if Howard had

⁷⁸ Sarah Wood, *23 Racially and Ethnically Diverse Law Schools*, U.S. NEWS & WORLD REP. (July 13, 2023, 11:47 AM), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/slideshows/law-schools-with-the-highest-percentage-of-racial-or-ethnic-minorities?slide=47> [<https://perma.cc/EG5F-NZET>].

⁷⁹ Conklin, *Ideology*, *supra* note 39, at 182; Conklin, *Measuring*, *supra* note 39.

⁸⁰ Evans Stake, *supra* note 19, at 240. In an effort to affect peer rankings, law schools spend "substantial sums" of money on promotional materials to send to legal academics at other institutions. *Id.*

⁸¹ Morriss, *supra* note 34, at 257.

⁸² Brooks et al., *supra* note 10.

notable alumni, this could help explain its disproportionately high peer rank.

Supreme Court Justice Thurgood Marshall is a Howard University School of Law graduate.⁸³ Other notable alumni include former Mayor of Washington, D.C., Adrian Fenty; former Governor of Virginia Douglas Wilder; and former U.S. Senator from Illinois Roland Burris.⁸⁴ The effects of notable alumni on law school peer rankings would be very difficult to quantify given their subjective nature, but it does appear that Howard may have an advantage over comparable law schools in this area.

Comparing notable alumni from Howard to another D.C.-area law school with a similar peer ranking strengthens the case that Howard's impressive alumni may contribute to its perceived prestige. George Mason University's Antonin Scalia Law School's most notable alumni are former U.S. Securities and Exchange Commissioner Kathleen L. Casey and Senior Official Performing the Duties of the Deputy Secretary of Homeland Security Ken Cuccinelli.⁸⁵ While subjective, most would likely acknowledge that Thurgood Marshall is a far more notable legal figure than Kathleen L. Casey and Ken Cuccinelli.

The extent to which notable alumni could explain the eighty-seven-spot rankings disparity at Howard is largely unmeasurable given the subjective nature of weighing notable alumni and the anonymous nature of the voting. It is worth mentioning that the reputation of Howard's most famous alumnus, Thurgood Marshall, is inextricably linked to race. He attended Howard after being rejected from the University of Maryland Law School for being Black.⁸⁶ In one of his first cases after graduating from law school, he successfully sued the University of Maryland for violating the Fourteenth Amendment's Equal Protection Clause by denying Black people admission to the law school.⁸⁷ Marshall served as the chief of the National Association for the Advancement of Colored People Legal Defense and Education Fund.⁸⁸ He won twenty-nine of the thirty-two cases he argued before the Supreme Court, including the landmark case of *Brown v. Board of Education*.⁸⁹ And he was the first Black Supreme Court Justice.⁹⁰ This is relevant because Howard's unique position as the only HBCU in the top 150 law schools is perhaps the most

⁸³ *Famous Howard University School of Law Alumni*, RANKER, <https://www.ranker.com/list/famous-howard-university-school-of-law-alumni-and-students/reference> [https://perma.cc/G5VN-M7FG] (last visited June 6, 2023).

⁸⁴ *Id.*

⁸⁵ *Famous George Mason University School of Law Alumni*, RANKER, <https://www.ranker.com/list/famous-george-mason-university-school-of-law-alumni-and-students/reference> [https://perma.cc/33Y8-L2KY] (last visited Feb. 5, 2024).

⁸⁶ Brian P. Smentkowski, *Thurgood Marshall*, BRITANICA, <https://www.britannica.com/biography/Thurgood-Marshall> [https://perma.cc/U6HN-3M94] (last visited June 6, 2023).

⁸⁷ *Pearson v. Murray*, 182 A. 590 (Md. 1936).

⁸⁸ Smentkowski, *supra* note 86.

⁸⁹ *Id.*

⁹⁰ *Id.*

significant factor contributing to its peer–overall rankings disparity.⁹¹

F. Professor Quality

In 2019, there was an effort to include professor quality as an objective factor in the overall rankings calculus, to be measured by scholarly output.⁹² Likely due in part to the COVID-19 pandemic, this policy was never implemented. Regardless, law schools that employ faculty with a high reputation for scholarly excellence likely experience an improvement in their peer rankings, as the others who vote on the peer rankings would recognize the reputation of these exceptional faculty and associate it with the school accordingly. However, under the current overall rankings' methodology, there would not necessarily be a corresponding increase in a law school's overall ranking since professors with more impressive publication records do not necessarily equate to better educators. The ability of a professor to publish narrow, esoteric articles in prestigious law journals does not necessarily equate to his or her students being more likely to pass the bar or gain employment upon graduation.⁹³ If anything, a case could be made that by spending limited resources on hiring higher-quality professors, a law school might even be harming its standing in the overall rankings because this is money that could otherwise have been spent on scholarships for incoming students with higher LSAT and GPA scores and job placement services, factors that are directly measured in the overall rankings.

Therefore, if Howard focused resources away from scholarships and job placement and toward hiring high-quality faculty, this could help explain its peer–overall rankings gap. As previously discussed, Howard's location in a large metro area in the nation's capital likely affords it an advantage in acquiring exceptional faculty.⁹⁴

The practice of measuring professor scholarship is problematic. The standard quantitative measurement involves ranking professors by how many citations his or her research receives.⁹⁵ This is problematic because a poorly written publication

⁹¹ See *infra* notes 107–155 and accompanying text.

⁹² Scott Jaschik, *Do Law Schools Need a Second Ranking from 'U.S. News'?*, INSIDE HIGHER EDUC. (Feb. 18, 2019), <https://www.insidehighered.com/admissions/article/2019/02/18/us-news-plans-new-ranking-law-schools> [<https://perma.cc/GDJ2-PJ5V>].

⁹³ However, one could argue that renowned professors would be better able to write letters of recommendation for their students and that these letters would carry more weight, thus resulting in better internships and jobs upon graduation, the latter of which is measured by the overall rankings.

⁹⁴ See Heald & Sichelman, *supra* note 15, at 33.

⁹⁵ See, e.g., Eric Brooks & Robert Morse, *How U.S. News Calculated the 2024 Best Colleges Rankings*, U. S. NEWS & WORLD REP. (Sept. 17, 2023, 9:00 PM), <https://www.usnews.com/education/best-colleges/articles/how-us-news-calculated-the-rankings> [<https://perma.cc/U4XW-23FZ>] (explaining the new faculty research metric for ranking undergraduate colleges which focuses exclusively on citation counts).

may receive a high citation rate from all future papers pointing out its errors. Setting aside this issue, citation count does not offer much guidance in the present case because these rankings are limited to the top law professors, which are largely concentrated at elite law schools.⁹⁶ For example, a 2022 ranking of the top ninety-five law school faculty does not contain anyone who teaches at Howard.⁹⁷ But most of the other law schools ranked forty-ninth in the peer rankings do not have a professor on this list either.⁹⁸ And the *Princeton Review's* 2023 ranking of the top ten law schools with the best professors—based on student surveys—does not include Howard.⁹⁹ This does not mean that the faculty at Howard are below average for its ranking. It just means that there is no evidence that Howard's faculty is exceptional compared to other similarly situated law schools. And, therefore, there is no evidence to suggest that faculty quality contributes to Howard's peer-overall rankings disparity.

G. *Unwillingness to Game the System*

This Article is not necessarily arguing that Howard's peer rank is artificially high. It is possible that Howard's peer rank is accurate and that its overall rank is just artificially low. The factors used to measure the overall rank are largely objective.¹⁰⁰ Because of this, one may be tempted to posit that the overall rank can be neither artificially high nor low, as it simply reports the weighted averages of its mostly objective measurements. However, law schools sometimes engage in tactics that artificially enhance the objective factors used in the overall rank calculation. For example, law schools may favor applicants with exceptional undergraduate GPAs from mediocre colleges over applicants with mediocre undergraduate GPAs from exceptional colleges, or favor applicants with a high GPA in a less rigorous major over applicants with slightly lower GPAs in a more rigorous major in order to boost their average undergraduate GPA, which is a factor in the overall rank.¹⁰¹ While this practice may result in advancement up the rankings, it may actually result in diminished student quality.

Law schools sometimes also engage in questionable accounting tricks. Examples include paying the greater university directly for the law school's utility

⁹⁶ Brian Leiter, *Top 95 Law Faculty Ranked by D-Index*, BRIAN LEITER'S L. SCH. REPS. (Sept. 21, 2022), <https://leiterlawschool.typepad.com/leiter/2022/09/top-95-law-faculty-ranked-by-d-index.html> [<https://perma.cc/GQB6-8KVU>].

⁹⁷ *Id.*

⁹⁸ *Id.* Of the ten law schools that share the forty-ninth peer rank, Temple University Beasley School of Law has one professor on the list, and Texas A&M University School of Law has two. *Id.*

⁹⁹ *Best Professors*, PRINCETON REV., <https://www.princetonreview.com/law-school-rankings?rankings=best-professors> [<https://perma.cc/26YK-HXWS>] (last visited May 18, 2023). The *Princeton Review* only lists the top ten law schools in this category. *Id.*

¹⁰⁰ Brooks et al., *supra* note 10; see also *supra* text accompanying note 13.

¹⁰¹ Evans Stake, *supra* note 19, at 232.

BOYCOTTS, RACE, RANKINGS, AND HOWARD LAW SCHOOL'S PECULIAR POSITION

expenditures from tuition dollars instead of having it deducted from the tuition.¹⁰² This results in increasing the reported financial outlay of the law school—a factor in the overall rankings calculus.¹⁰³ This practice would therefore improve a law school's standing in the rankings but produce no benefit to the students. Some law schools have been willing to go even further to improve their standings in the rankings. Villanova University School of Law admitted to knowingly reporting false undergraduate GPAs and LSAT scores.¹⁰⁴ Other law schools have paid underperforming graduates not to sit for the July bar exam to improve their bar passage rates.¹⁰⁵ So, while the overall rank is primarily made up of objective factors, law schools that employ these questionable tactics could nevertheless be said to have artificially high overall scores.

An investigation into how far Howard is willing to go to alter its standings in the rankings is beyond the scope of this Article. But this is a potential explanation for how Howard's overall rank could be so much lower than its peers' rankings. This is because a principled unwillingness to "game" the rankings might help explain both why its overall rank is low (because other similarly situated law schools who are willing to "game the system" will surpass Howard in the overall rankings) and why its peer rank is high (because maintaining such high ethical standards is likely viewed by others in the law school community as laudable). However, the fact that Howard has never been caught engaging in the questionable tactics that a few other law schools have been is not strong evidence that its ethical standards are significantly higher than the average law schools. And even if this were the case, it would be unlikely that this would account for a significant portion of the eighty-seven-spot rankings disparity.

H. Statistical Noise

As with all findings of statistical disparities, there exists a potential explanation that the result is the product of random, statistical noise and nothing more. And while this is technically true as to explaining Howard's rankings disparity, the extreme, consistent, and accelerating nature of the disparity combine to make this an exceedingly improbable explanation. For example, the probability that, through purely random chance, a given law school would end up with a peer rank that is higher than its overall rank for thirteen consecutive years is less than one in 8,000.¹⁰⁶ And this is only the probability of a peer rank exceeding the overall rank. The

¹⁰² *Id.* at 241.

¹⁰³ *Id.*

¹⁰⁴ Mangan, *supra* note 20.

¹⁰⁵ BARTON, *supra* note 211, at 151. The law schools that engaged in this practice were Arizona Summit Law School, Florida Coastal School of Law, and the recently closed Charlotte School of Law. *Id.*

¹⁰⁶ The odds of this occurring through random chance would be one in two to the thirteenth power or one in 8,192.

likelihood of the consistent and extreme disparities experienced by Howard would be much less.

I. Reputation as a Historically Black College

It is well known that the student population at Howard is largely Black; excluding the fifteen and a half percent of its student population who identify as two or more races, it is seventy-eight percent Black.¹⁰⁷ Howard is also the “least white law school.”¹⁰⁸ After all the previously considered explanations for Howard’s overall-peer rank disparity are found to be wanting, this status must be considered. It is difficult to determine if—and on what grounds—a law school with such a large Black population would be the leading cause of it receiving a peer ranking so much higher than its overall ranking.

Unfortunately, up until the 2024 rankings, Howard was the only HBCU that received both a peer rank and an overall rank.¹⁰⁹ This results in Howard being the only HBCU for which long-term comparisons in rankings disparity are possible. There is one other HBCU law school that received both a peer and overall rank in the 2024 rankings, North Carolina Central School of Law, which has a peer rank of 157 and an overall rank of 175.¹¹⁰ Even after performing the calculation to back out how the peer rank is contained in the overall rank, this only produces a rankings disparity of twenty-one. This is high, but far from Howard’s eighty-seven-spot disparity. Furthermore, because this is the first year a non-Howard HBCU was awarded a specific overall ranking, there is only one data point to consider;¹¹¹ therefore, it is of minimal value.

However, *U.S. News & World Report* does provide specific peer rankings for all 196 ABA-accredited law schools, even if they are not given a specific overall ranking.¹¹² Therefore, while not dispositive, an estimate of the other four HBCU law schools’ peer-overall disparity can be obtained. The average overall ranking for the seventeen bottom law schools without a peer ranking—excluding the four HBCUs in this category—is 181.2.¹¹³ The four HBCUs, however, average 159.2. Because the law schools in this category that did not receive a specific ranking are the lowest seventeen law schools, it is known that their overall rankings would be from 179 to 196. Therefore, it is known that on average these four HBCUs have peer rankings

¹⁰⁷ Wood, *supra* note 78.

¹⁰⁸ This excludes the non-ABA-accredited law schools in Puerto Rico. Vernellia Randall, *2021 The Whitest Law School Rankings*, RACE, RACISM & THE L. (Mar. 8, 2021), <https://racism.org/2021-law-school-rankings?showall=1> [<https://perma.cc/85HC-DZAT>].

¹⁰⁹ Caron, *supra* note 4.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ This number was arrived at by averaging the seventeen bottom law schools without a peer ranking, excluding the four HBCUs in this category.

BOYCOTTS, RACE, RANKINGS, AND HOWARD LAW SCHOOL'S PECULIAR POSITION

that are twenty-eight spots higher than the average overall ranking in their category.¹¹⁴ We can also ascertain that all four of these HBCUs without a specific overall ranking have a peer ranking above what would be its overall ranking because the lowest peer ranking is 175 and the highest possible overall ranking for this group would be 179. Therefore, all six HBCUs have peer rankings above their overall rankings. The odds of this happening by chance are less than 1.6%.¹¹⁵ Perhaps a sense of camaraderie among HBCU law schools is a contributing factor.

Not only is it well known that Howard is the top HBCU law school, but law school deans and professors whose votes establish the peer rankings are likely exposed to media accounts that tout the significant benefits of HBCUs.¹¹⁶ Additionally, widespread conversations about affirmative action,¹¹⁷ Black graduation rates,¹¹⁸ and educational inequalities¹¹⁹ make salient the importance of educational opportunities for Black students—of which HBCUs play a significant role. But even if some of those voting on the peer ranking of law schools artificially rank Howard higher in an effort to support HBCUs, this effect would be counterbalanced by any

¹¹⁴ The average overall ranking for the seventeen schools that rank from 179 to 196 would be 187.5. *Id.* $187.5 - 159.2 = 28.3$. The four HBCU law schools in this category are Florida A&M University College of Law, Southern University Law Center, Thurgood Marshall School of Law (Texas Southern), and University of District of Columbia David A. Clarke School of Law. *Id.*

¹¹⁵ This probability is simply one-half (the random probability of a given school having a peer ranking above its overall ranking) to the sixth power.

¹¹⁶ See, e.g., Naomi Harada Thyden et al., *Estimating the Long-Term Causal Effects of Attending Historically Black Colleges or Universities on Depressive Symptoms*, 192 AM. J. EPID. 356, 361 (2023) (finding that for some populations, attending an HBCU is beneficial to mental health); Jemayne Lavar King, *The Soul of a Nation: The Past, Present, and Continuing Importance of the Historically Black College and University*, BEST SCH. (Jan. 29, 2021), <https://thebestschools.org/magazine/past-present-future-importance-of-hbcus/> [<https://perma.cc/Y7DP-ZFHV>]; Matthew Lynch, *5 Reasons HBCUs Are Still Relevant*, THE EDVOCATE (Dec. 18, 2015), <https://www.theedadvocate.org/5-reasons-hbcus-are-still-relevant/> [<https://perma.cc/FM62-KYZV>]; William C. Rhoden, *This Moment Is a Reminder About the Importance of HBCUs*, BLACK HIST. ALWAYS (May 25, 2020), <https://theundefeated.com/features/this-moment-is-a-reminder-about-the-importance-of-hbcus/> [<https://perma.cc/5S9W-92C8>]; Kiara Taylor, *The Value of an Education at an HBCU: Benefits, Costs, and Impact*, INVESTOPEDIA (Feb. 28, 2023), <https://www.investopedia.com/the-value-of-an-education-at-an-hbcu-5187920> [<https://perma.cc/AQR4-Y2QA>].

¹¹⁷ See, e.g., Bianca Quilantan, *An Anti-Affirmative Action Group Is Trying to Erase Race from College Admissions*, POLITICO (Dec. 1, 2020, 4:30 AM), <https://www.politico.com/news/2020/12/01/affirmative-action-race-college-admissions-441475> [<https://perma.cc/T8Z2-9T4J>].

¹¹⁸ See, e.g., Mariah Bohanon, *New Study Finds African American Students Have Lowest Graduation Rate of All Ethnic Groups*, INSIGHT INTO DISCOVERY (Mar. 7, 2017), <https://www.insightintodiversity.com/new-study-finds-african-american-students-have-lowest-graduation-rate-of-all-ethnic-groups/>.

¹¹⁹ See, e.g., Lindsey Cook, *U.S. Education: Still Separate and Unequal*, U.S. NEWS & WORLD REP. (Jan. 28, 2015, 12:01 AM), <https://www.usnews.com/news/blogs/data-mine/2015/01/28/us-education-still-separate-and-unequal> [<https://perma.cc/U2SN-SFV8>].

who vote Howard down because it is an HBCU. This latter bias could be the product of a variety of reasons, ranging from a belief that semi-segregated higher education inadvertently promotes harmful stereotypes of racial differences¹²⁰ to that of a latent white supremacist belief that a school with such a high Black population must somehow be inferior. Assuming that there are even a small number of voters who would artificially vote down Howard because it is an HBCU, the fact that the end result is still that Howard's peer rank is eighty-seven spots higher than its objective rank just further illustrates the peculiar nature of this result. Meaning, the subjective votes that view Howard favorably are so numerous that even after they are potentially mitigated by some anti-Howard voting, they still produce such an extreme disparity. There are also advocates in academia that argue HBCUs are undervalued.¹²¹ If these arguments are persuasive, it is not hard to believe that those who vote on the peer rankings may attempt to counterbalance this perceived undervaluation of HBCUs.

The effect of race on the ability to acquire employment upon graduating from law school—a factor in the overall rankings that increased in significance for the 2024 rankings¹²²—cannot be ignored when considering how race may affect Howard's peer-overall rankings disparity. Despite widespread diversity and inclusion efforts from law firms,¹²³ Black law school graduates were employed in bar-passage-required jobs seventeen percentage points lower than their white counterparts.¹²⁴ Holding all other variables constant, a law school whose students face diminished employment opportunities would naturally result in a decreased overall rank without necessarily a corresponding decrease to their peer rank. Therefore, if the employment disparity is the result of discrimination against Black lawyers, Howard's seventy-eight percent Black student demographic could partially explain its peer-overall rankings disparity.

Another race-related potential explanation for Howard's deviation in the rankings is that every year Howard is trying to fill seventy-eight percent of the

¹²⁰ See, e.g., C.W. Von Bergen, Martin S. Bressler & David W. Whitlock, *Separate but Equal on College Campuses: A Case of "Déjà Vu All Over Again,"* 38 RSCH. IN HIGHER EDUC. J. 1, 8 (2020).

¹²¹ Annie Ma, *3 Top Law Schools Quit US News Rankings Over Equity Concerns*, ASSOC. PRESS NEWS (Nov. 17, 2022) <https://apnews.com/article/business-education-california-law-schools-university-of-e07f6b38a8f60a564026c1acd95446b0> [<https://perma.cc/D5WJ-EMKE>] (noting that Walter Kimbrough, the interim executive director of the Black Men's Research Institute at Morehouse College argues that "HBCUs [address racial inequality] every day and don't get the same kind of rewards, both in terms of kudos and in terms of financial resources to do that work").

¹²² Brooks et al., *supra* note 10.

¹²³ See, e.g., Tommy Santora, *Diversity, Equity, Inclusion Efforts Increasing at Law Firms*, NEW ORLEANS CITY BUS. (Aug. 5, 2022), <https://neworleanscitybusiness.com/blog/2022/08/05/diversity-equity-inclusion-efforts-increasing-at-law-firms/> [<https://perma.cc/4DQK-JTWL>].

¹²⁴ Staci Zaretsky, *Law School Grads See Best Job Outcomes in 12 Years—But Not Black Grads*, ABOVE THE L. (Oct. 21, 2020, 1:43 PM), <https://abovethelaw.com/2020/10/law-school-grads-see-best-job-outcomes-in-12-years-but-not-black-grads/> [<https://perma.cc/3384-MKBM>].

BOYCOTTS, RACE, RANKINGS, AND HOWARD LAW SCHOOL'S PECULIAR POSITION

entering student body with less than eight percent of the available population. The reason for this is because seventy-eight percent of the Howard student body is Black, and less than eight percent of all law students are Black.¹²⁵ Setting aside the issue of race, if any law school attempted to acquire the vast majority of its student body from such a small percent of the population, this would naturally lead to a diminution in the quality of entering student credentials and a corresponding decrease in its overall ranking, as student credentials like undergraduate GPA and LSAT scores are a significant driver of a law school's overall ranking.¹²⁶ However, Howard's reputation as the top HBCU law school may function to mitigate such negative consequences. This is because Howard's reputation likely results in interest from highly credentialed Black applicants from a much broader geographic area. If this is true, then this could help counteract the otherwise problematic issue of acquiring such a large percentage of the student body from such a small overall population.

Howard's status as the most prestigious HBCU law school is further supported as an explanation as the primary driver in its peer-overall rankings disparity when one considers the current racial climate. From 2012 to 2021, Howard averaged an unadjusted peer rank that was 34.2 spots higher than its overall rank.¹²⁷ From 2022 to 2023, this disparity averaged 47.0 spots higher than its overall rank.¹²⁸ And with the latest 2024 rankings data, the disparity peaked at 76.0 spots higher.¹²⁹ This steady increase coincides with increased race salience in both legal academia and in the greater society.

The Black Lives Matter (BLM) movement has gained widespread support among corporations in recent years.¹³⁰ U.S. embassies around the world flew the BLM flag.¹³¹ Every major sports league in the United States has shown support for the BLM movement (National Basketball Association (NBA), National Football League (NFL), Major League Baseball (MLB), National Hockey League (NHL), Women's National Basketball Association (WNBA), National Association for Stock

¹²⁵ Gabriel Kuris, *What Underrepresented Law School Applicants Should Know*, U.S. NEWS & WORLD REP. (June 8, 2020, 9:48 AM), <https://www.usnews.com/education/blogs/law-admissions-lowdown/articles/what-underrepresented-law-school-applicants-should-know> [https://perma.cc/SB9Y-62XZ]. In 2019, 7.8% of law students were African American. *Id.*

¹²⁶ Heald & Sichelman, *supra* note 15, at 33.

¹²⁷ Conklin, *supra*, *Curious*, note 1.

¹²⁸ Conklin, *supra*, *Increasing*, note 3.

¹²⁹ Caron, *supra* note 36.

¹³⁰ Tiffany Hsu, *Corporate Voices Get Behind 'Black Lives Matter' Cause*, N.Y. TIMES (May 31, 2020, 4:25 PM), <https://www.nytimes.com/2020/05/31/business/media/companies-marketing-black-lives-matter-george-floyd.html> [https://perma.cc/XE37-SLN2].

¹³¹ Jenna Romaine, *US Embassies Around the World Fly BLM Flags on Anniversary of George Floyd's Death*, HILL (May 26, 2021), <https://thehill.com/changing-america/respect/equality/555525-us-embassies-around-the-world-fly-blm-flags-on-anniversary/> [https://perma.cc/R3DV-XELU].

Car Racing (NASCAR), Major League Soccer (MLS), United States Women's National Soccer Team (USWNT), and the Professional Golfers' Association (PGA)).¹³² Juneteenth became a federal holiday in 2021.¹³³ Starting with movies released in 2023, the Oscars will refuse to consider submissions for Best Picture if the racial makeup of the actors, production staff, or studio staff is deemed to be insufficiently diverse.¹³⁴ The debate over critical race theory has accelerated in recent years.¹³⁵ In recent years, opinion polls have demonstrated a downward trend in how Americans perceive race relations.¹³⁶ Even governmental agencies that would appear to have very minimal connections to issues of race have diverted resources

¹³² For NBA, NFL, and MBA, see Erik Larsen, *Pro Sports Stand with Black Lives Matter*, THE SAGE (Oct. 20, 2020), <https://thesagenews.com/15642/sports/pro-sports-stand-with-black-lives-matter/> [<https://perma.cc/ENU5-YPS6>]. For NHL, see Morgan Campbell, *Hockey, Rocked by Racist Acts, Embraces Black Lives Matter Campaigns*, N.Y. TIMES (Aug. 10, 2020, 3:00 AM), <https://www.nytimes.com/2020/08/10/sports/hockey/nhl-racism-protests-george-floyd.html> [<https://perma.cc/RP2W-RCEZ>]. For WNBA, see Christina Cauterucci, *The WNBA's Black Lives Matter Protest Has Set a New Standard for Sports Activism*, SLATE (July 25, 2016, 6:28 PM), <https://slate.com/human-interest/2016/07/the-wnbas-black-lives-matter-protest-has-set-new-standard-for-sports-activism.html> [<https://perma.cc/6WTH-JDGU>]. For NASCAR, see Daniel McFadin, *NASCAR and #BlackLivesMatter, 1 Year Later*, FRONT STRETCH (June 7, 2021), <https://www.frontstretch.com/2021/06/07/nascar-and-blacklivesmatter-1-year-later-part-1/> [<https://perma.cc/4S52-6MTY>]. For MLS, see Wyatt Fossett, *MLS Is Selling Black Lives Matter Merch to Support Social Justice Orgs*, DAILY HIVE OFFSIDE (Aug. 5, 2020, 4:14 PM), <https://dailyhive.com/302ortland/mls-black-lives-matter-merch> [<https://perma.cc/HS2Q-M2D4>]. For USWNT, see Leah Asmelash, *The USWNT Wore 'Black Lives Matter' on Uniforms in a Statement to 'Affirm Human Decency'*, CNN (Nov. 27, 2020, 2:03 PM), <https://www.cnn.com/2020/11/27/us/uswnt-black-lives-matter-jerseys-spt-trnd/index.html> [<https://perma.cc/LF2Z-H3AB>]. For PGA, see Adam Schupak, *Cameron Champ Speaks Out, PGA Tour Issues Statement Supporting Black Lives Matter Protests*, USA TODAY (Aug. 27, 2020, 10:03 AM), <https://golfweek.usatoday.com/2020/08/27/cameron-champ-pga-tour-statement-black-lives-matter/> [<https://perma.cc/GDT2-9E7Z>].

¹³³ Harmeet Kaur & Alyssa Kraus, *Juneteenth Is Now an Official Federal Holiday. Here Are Key Things to Know About the Day and Its History*, CNN (June 17, 2021, 10:56 PM), <https://www.cnn.com/politics/live-news/biden-signs-juneteenth-bill/index.html> [<https://perma.cc/TMG5-3MMY>].

¹³⁴ Alissa Wilkinson, *The Oscars' New Rules for Best Picture Nominees, Explained*, Vox (Sept. 9, 2020, 6:50 PM), <https://www.vox.com/culture/2020/9/9/21429083/oscars-best-picture-rules-diversity-inclusion> [<https://perma.cc/4WA5-DLEU>].

¹³⁵ *How Critical Race Theory Went from Harvard Law to Fox News*, NPR (July 6, 2021, 5:03 PM), <https://www.npr.org/2021/07/02/1012696188/how-critical-race-theory-went-from-harvard-law-to-fox-news> [<https://perma.cc/4FZR-9A4H>].

¹³⁶ *Race Relations*, GALLUP, <https://news.gallup.com/poll/1687/race-relations.aspx> [<https://perma.cc/SZC9-T5S9>] (last visited Dec. 12, 2022). The percent of Americans who say relations between white and Black people are very good or somewhat good peaked at seventy percent for Black respondents and seventy-five percent for white respondents in 2001 and 2007, respectively. *Id.* The latest survey puts these numbers at only forty-three percent for white respondents and thirty-three percent for Black respondents. *Id.*

BOYCOTTS, RACE, RANKINGS, AND HOWARD LAW SCHOOL'S PECULIAR POSITION

to the matter. These include the Department of Transportation,¹³⁷ the Federal Reserve,¹³⁸ the Environmental Protection Agency,¹³⁹ the National Aeronautics and Space Administration,¹⁴⁰ and the Department of Energy.¹⁴¹

This focus on race in recent years is also present in legal academia. In 2021, national news outlets covered the issue of a Rutgers Law School student quoting a 1990s legal case that contained a racial slur during virtual office hours attended by two other students.¹⁴² This one incident reportedly “jolted the state institution.”¹⁴³ Some of the most prominent faculty members of Rutgers Law School advocated for an outright ban on repeating the parts of court cases that could be interpreted as a racial slur.¹⁴⁴ Further illustrating the recent increased focus on race, national media accounts of the incident noted that society is “at a time of heightened sensitivity” to the use of racial slurs.¹⁴⁵ And student organizations at Rutgers Law School noted how this incident occurred “at the height of a ‘racial reckoning.’”¹⁴⁶

An Emory University law school professor was barred from teaching first-year law school classes and then indefinitely suspended and recommended for termination for using a racial slur in relation to a legal case.¹⁴⁷ A University of

¹³⁷ Jennifer Epstein & Josh Wingrove, *Buttigieg Says U.S. Will Use Infrastructure Bill to Address Racist Highway Design*, BLOOMBERG (Nov. 8, 2021, 1:17 PM), <https://www.bloomberg.com/news/articles/2021-11-08/buttigieg-targets-racist-road-design-with-public-works-bill> [https://perma.cc/59DU-NX4Z].

¹³⁸ Zachary Warmbrodt, *‘We Need to Step Forward’: Fed Leaders Call for New Focus on Race in the Economy*, POLITICO (Oct. 7, 2020, 7:04 PM), <https://www.politico.com/news/2020/10/07/federal-reserve-race-inequality-economy-427556> [https://perma.cc/53K6-SP5M].

¹³⁹ Cora Davenport, *E.P.A. Will Make Racial Equality a Bigger Factor in Environmental Rules*, N.Y. TIMES (Sep. 24, 2022, 1:00 PM), <https://www.nytimes.com/2022/09/24/climate/environmental-justice-epa.html> [https://perma.cc/Q58Q-JNW6].

¹⁴⁰ NAT’L AERO. & SPACE ADMIN., MISSION EQUITY: NASA EQUITY ACTION PLAN (2022), https://www.nasa.gov/sites/default/files/atoms/files/nasa_-_equity_report_-_v8.pdf.

¹⁴¹ Office of Economic Impact and Diversity, *The Roadmap to Equity and Justice at the Department of Energy*, DEP’T OF ENERGY, <https://www.energy.gov/diversity/roadmap-equity-and-justice-department-energy> [https://perma.cc/RB3J-AVCK] (last visited Dec. 12, 2022).

¹⁴² Tracey Tully, *Debate Erupts at N.J. Law School After White Student Quotes Racial Slur*, N.Y. TIMES (May 3, 2021, 5:00 AM), <https://www.nytimes.com/2021/05/03/nyregion/Rutgers-law-school-n-word.html> [https://perma.cc/9BFF-GML2].

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Emory University School of Law: Law Professor Suspended, Faces Termination for Use of Racial Epithet In Class and Conversation with Student*, FOUND. FOR INDIVIDUAL RTS. & EXPRESSION, <https://www.thefire.org/cases/emory-university-school-law-law-professor-suspended-faces->

California, Irvine, Law School professor was publicly condemned by the dean and barred from teaching first-year classes for including in her class readings of a *Vanity Fair* article that referenced but did not quote, a racial slur in the context of Facebook's hate speech censorship policy.¹⁴⁸ A Georgetown law professor was fired after a private Skype chat between two law professors was accidentally recorded.¹⁴⁹ The discussion contained no racial epithets; the professor was only communicating to her colleague her concern regarding how Black students in her class consistently underperform on exams—which are anonymously graded.¹⁵⁰ This professor continued to express concern and hoped that this was not in some way the result of unconscious biases on her part.¹⁵¹ A University of Illinois Chicago Law School professor was suspended after administering an exam that contained a quote of the redacted version of a racial slur.¹⁵² Upon seeing the redacted racial slur on the exam, one of his students reported experiencing heart palpitations.¹⁵³ This event further illustrates the increased racial salience in recent years because this exact question was used for years without incident.¹⁵⁴ Finally, one of the leading causes for the November 2022 announcement that Harvard and Yale were pulling out of the *U.S. News & World Report* rankings is based on racial diversity.¹⁵⁵

IV. LAW SCHOOL RANKINGS BOYCOTT

Further evidence that Howard's unique position is the result of its unique racial

termination-use-racial-epithet [<https://perma.cc/Y4NP-FJTJ>] (last visited Dec. 12, 2022). After receiving letters from the Foundation for Individual Rights and Expression and the American Association of University Professors, Emory reinstated the professor and settled a lawsuit he filed against the university. *Id.*

¹⁴⁸ Paul Caron, *Volokh: The Controversy Over Quoting Racial Epithets, Now at UC-Irvine Law School*, TAXPROF BLOG (Aug. 30, 2020), https://taxprof.typepad.com/taxprof_blog/2020/08/volokh-the-controversy-over-quoting-racial-epithets-now-at-uc-irvine-law.html [<https://perma.cc/BQZ2-ZJ6N>].

¹⁴⁹ Robert Shibley, *One Georgetown Law Professor Fired, One Resigns After Conversation About Black Students' Academic Performance Accidentally Recorded*, FOUND. FOR INDIVIDUAL RTS. & EXPRESSION (Mar. 18, 2021), <https://www.thefire.org/news/one-georgetown-law-professor-fired-one-resigns-after-conversation-about-black-students> [<https://perma.cc/ZPA8-WDWA>].

¹⁵⁰ *Id.*

¹⁵¹ *See id.*

¹⁵² Alex Morey, *FIRE Warns University of Illinois Chicago over Investigation into Law Professor's Exam Question*, FOUND. FOR INDIVIDUAL RTS. & EXPRESSION (Jan. 22, 2021), <https://www.thefire.org/news/fire-warns-university-illinois-chicago-over-investigation-law-professors-exam-question> [<https://perma.cc/8BAV-BAG>].

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ Ja'han Jones, *The College Rankings Racket Is Falling Apart. That's Good for Students*, MSNBC: THE REIDOUT BLOG (Nov. 18, 2022, 6:04 PM), <https://www.msnbc.com/the-reidout/reidout-blog/college-rankings-harvard-yale-berkeley-rcna57846> [<https://perma.cc/FPL9-EZWN>].

BOYCOTTS, RACE, RANKINGS, AND HOWARD LAW SCHOOL'S PECULIAR POSITION

makeup and increased racial salience in society is found in the circumstances regarding the decision of sixty-two law schools to boycott the 2024 rankings.¹⁵⁶ Both the timing—soon after Supreme Court oral arguments on affirmative action—and the explanations provided for the boycott support this explanation.

The U.S. Supreme Court heard oral arguments in *Students for Fair Admissions, Inc. v. University of North Carolina and Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, two cases regarding affirmative action in college admissions, on October 31, 2022.¹⁵⁷ By November 16, numerous top law schools announced their intent to withdraw from the rankings.¹⁵⁸ Also in November 2022, the ABA Legal Education Council voted fifteen to one to make the LSAT optional, citing concerns over diversity.¹⁵⁹ This is consistent with how some have openly discussed how a Supreme Court ruling ending affirmative action would necessitate alternative tactics from law schools.¹⁶⁰ And during this same time, advocates were promoting notions that the LSAT harms racial diversity in law schools and the legal profession,¹⁶¹ leading to the ABA voting to end the LSAT requirement just weeks after the Supreme Court's oral arguments.¹⁶²

¹⁵⁶ Paul Caron, *62 Law Schools Boycotted the U.S. News Law School Rankings*, TAXPROF BLOG (May 11, 2023), https://taxprof.typepad.com/taxprof_blog/2023/05/62-law-schools-boycotted-the-us-news-law-school-rankings.html [<https://perma.cc/XGY4-Q29G>]. It may at first appear odd that Howard Law School did not join the other sixty-two law schools in boycotting the rankings, given that racial diversity appears to be the primary driver for the boycott. *Id.* I believe there are two potential reasons for this. First, depending on how diversity is calculated, Howard's largely Black student body may contribute to it receiving poor scores on racial diversity. *See id.* The second, and more likely, explanation is that participating in the boycott would have resulted in the discarding of the peer surveys performed by Howard's dean and faculty. *See id.*

¹⁵⁷ *Students for Fair Admissions. v. President and Fellows of Harv. Coll.*, 143 S. Ct. 2141, 2141 (2023).

¹⁵⁸ Jeremiah Poff, *Ivy League Boycott: Top Law Schools Revolt Against US News Law School Rankings*, WASH. EXAMINER (Nov. 16, 2022, 10:39 PM) <https://www.washingtonexaminer.com/news/2200384/ivy-league-boycott-top-law-schools-revolt-against-us-news-law-school-rankings/> [<https://perma.cc/Q7NJ-34TW>].

¹⁵⁹ Paul Caron, *ABA Legal Ed Council Votes 15-1 to Make LSAT Optional Beginning with Fall 2026 1L Class*, TAXPROF BLOG (Nov. 19, 2022), https://taxprof.typepad.com/taxprof_blog/2022/11/aba-legal-ed-council-votes-15-1-to-make-lsat-optional-beginning-with-fall-2026-1l-class.html [<https://perma.cc/SU2M-KTVF>].

¹⁶⁰ Yvette Borja, *If the Supreme Court Kills Affirmative Action, What Will Law Schools Do Next?*, BALLS & STRIKES (Dec. 6, 2022), <https://ballsandstrikes.org/law-politics/supreme-court-affirmative-action-law-schools-us-news-rankings/> [<https://perma.cc/5HJX-G4ZW>] (“If law schools aren't allowed to formally consider race in the admissions process, then they may have to change their acceptance criteria to maintain diverse student bodies.”).

¹⁶¹ Jay Rosner, *Op-Ed: The Legal Profession Lacks Diversity, and the LSAT Makes Matters Worse*, L.A. TIMES (Dec. 13, 2022, 3:04 AM), <https://www.latimes.com/opinion/story/2022-12-13/lSAT-law-school-diversity-aba> [<https://perma.cc/4HSW-DQYH>].

¹⁶² Sloan, *supra* note 6.

The explanations provided by law schools for the boycott were somewhat vague, mentioning things such as how “the rankings process is undermining the core commitments of the legal profession,”¹⁶³ how “[i]t’s a deeply flawed system,”¹⁶⁴ how “it has become impossible to reconcile our principles and commitments with the methodology and incentives the *U.S. News* rankings reflect,”¹⁶⁵ how “the rankings process is undermining the core commitments of the legal profession,”¹⁶⁶ and how they “can create perverse incentives that influence schools’ decisions in ways that undercut student choice and harm the interests of potential students.”¹⁶⁷

Erwin Chemerinsky, Dean of the University of California, Berkeley, School of Law, explained its boycott of the rankings by emphasizing how “[t]here are aspects of the [*U.S. News*] rankings that are profoundly inconsistent with our values and public mission.”¹⁶⁸ This may be in reference to how the significance of LSAT scores was reduced by more than half in the latest 2024 methodology.¹⁶⁹ Chemerinsky would likely not approve of this change, as just four days after writing the letter announcing Berkeley’s boycott, he wrote in support of the LSAT on the grounds that it helps minority students.¹⁷⁰ And there is further evidence in support of this. The LSAT, unlike knowledge-based tests, such as the SAT, ACT, Graduate Record Examinations, and Medical College Admission Test, is a logical-reasoning-based exam.¹⁷¹ Therefore, past educational quality—where racial disparities exist—is minimized.¹⁷²

¹⁶³ Poff, *supra* note 158.

¹⁶⁴ Anemona Hartocollis, *Elite Law Schools Boycotted the U.S. News Rankings. Now, They May Be Paying a Price*, N.Y. TIMES (Apr. 21, 2023, 5:38 PM), <https://www.nytimes.com/2023/04/21/us/21nat-us-news-rankings-law-medical-school.html> [<https://perma.cc/C5NQ-7KEB>].

¹⁶⁵ John Manning, *Decision to Withdraw from the U.S. News & World Report Process*, HARV. L. TODAY (Nov. 16, 2022), <https://hls.harvard.edu/today/decision-to-withdraw-from-the-u-s-news-world-report-process/> [<https://perma.cc/L4LA-TWTV>].

¹⁶⁶ Ma, *supra* note 121.

¹⁶⁷ Manning, *supra* note 16565.

¹⁶⁸ Erwin Chemerinsky, *Dean’s Message: Berkeley Law will not Participate in the US News Rankings*, BERKELEY L. (Nov. 17, 2022), <https://www.law.berkeley.edu/article/deans-message-berkeley-law-will-not-participate-in-the-us-news-rankings/> [<https://perma.cc/CQE3-MUKE>].

¹⁶⁹ Brooks et al., *supra* note 10.

¹⁷⁰ Erwin Chemerinsky & Daniel Tokaji, *Ending Standardized Law School Tests Could Diminish Diversity*, BLOOMBERG L. (Nov. 22, 2022, 9:00 AM), <https://news.bloomberglaw.com/us-law-week/ending-standardized-law-school-tests-could-diminish-diversity> [<https://perma.cc/WUT9-HBWR>].

¹⁷¹ Bobby Miller, *Law School Admissions Perfect Storm*, NAT’L REV. (Nov. 23, 2022, 7:49 AM), <https://www.nationalreview.com/corner/law-school-admissions-perfect-storm/> [<https://perma.cc/R4N4-CAGF>] (referring to a potential Supreme Court decision that bars affirmative action admissions policies as a “perfect storm” and the “biggest disruption in decades” to law schools).

¹⁷² *Id.*

BOYCOTTS, RACE, RANKINGS, AND HOWARD LAW SCHOOL'S PECULIAR POSITION

Reading the boycott letters, it quickly becomes apparent that one of the driving factors to leave the rankings is the belief that the current methodology harms racial diversity. For example, the Harvard letter mentions how the ranking's methodology "work[s] against law schools' commitments to enhancing the socioeconomic diversity of our classes."¹⁷³ However, the Supreme Court affirmative action cases whose oral arguments immediately preceded these boycott letters only apply to race.¹⁷⁴ Law schools will maintain the same freedom to give preferential admissions considerations to candidates from lower socioeconomic backgrounds.¹⁷⁵ This strongly implies that references to socioeconomic diversity are largely being used as a proxy for racial diversity.

Others have been less cryptic in how the controversy over rankings is largely about race. For example, the interim executive director of the Black Men's Research Institute at Morehouse College explains, "[t]he way you move up in the rankings is that you become more selective, which means you're keeping more people out, particularly a diversity of people."¹⁷⁶

The letters explaining the reasons behind boycotting the rankings do mention some factors other than diversity.¹⁷⁷ However, properly understood, these reasons only point back to diversity. For example, the Harvard,¹⁷⁸ Berkeley,¹⁷⁹ and Yale¹⁸⁰ letters emphasize how they are displeased with how debt is calculated in the rankings—mainly for diversity reasons.¹⁸¹ But these were never significant factors in the ranking's calculus.¹⁸² The average debt incurred obtaining a J.D. at graduation was three percent of the overall rankings, and the percentage of law school graduates incurring J.D. law school debt was only two percent of the overall rankings.¹⁸³ More importantly, these two factors were completely removed from

¹⁷³ Manning, *supra* note 165.

¹⁷⁴ Amy Howe, *Supreme Court Strikes Down Affirmative Action Programs in College Admissions*, SCOTUSBLOG (June 29, 2023, 12:31 PM), <https://www.scotusblog.com/2023/06/supreme-court-strikes-down-affirmative-action-programs-in-college-admissions/> [<https://perma.cc/77YC-2DNT>].

¹⁷⁵ *Id.*

¹⁷⁶ Ma, *supra* note 121.

¹⁷⁷ See Chemerinsky, *supra* note 168; Heather K. Gerken, *Dean Gerken: Why Yale Law School is Leaving the U.S. News & World Report Rankings*, YALE L. SCH. (Nov. 16, 2022), <https://law.yale.edu/yls-today/news/dean-gerken-why-yale-law-school-leaving-us-news-world-report-rankings> [<https://perma.cc/D29Q-XKGM>]; Manning, *supra* note 165.

¹⁷⁸ Manning, *supra* note 165.

¹⁷⁹ Chemerinsky, *supra* note 168.

¹⁸⁰ Gerken, *supra* note 177.

¹⁸¹ See Chemerinsky, *supra* note 168; Gerken, *supra* note 177; Manning, *supra* note 165.

¹⁸² Brooks et al., *supra* note 10.

¹⁸³ Robert Morse et al., *Methodology: 2022 Best Law Schools Rankings*, U.S. NEWS & WORLD REPORT, https://www.usnews.com/media/ai/2022_Law.pdf (last visited June 6, 2023).

the current 2024 rankings, rendering this objection moot.¹⁸⁴ Another common complaint mentioned for why these schools boycotted the rankings is how employment was calculated, specifically, how students who worked under a public interest fellowship from the university were not counted as fully employed.¹⁸⁵ But again, this complaint is rendered moot, as the current 2024 rankings explicitly counted school-funded fellowships.¹⁸⁶

Once these moot objections are removed from consideration, the only significant factor remaining for the boycott is diversity. And the decision to boycott the rankings immediately following oral arguments in two affirmative action cases before the Supreme Court cannot be ignored. As Yale's boycott letter expressly referenced, the United States is "[a]t a moment when concerns about economic equity stand at the center of our national dialogue."¹⁸⁷ This further illustrates how salient race is to legal education, which, combined with how Howard's corresponding rapid increase in rankings disparity, further supports the race-based conclusion for the rankings' disparity.

CONCLUSION

The original 2020 study measuring Howard's rankings disparity did not reach an ultimate conclusion regarding whether racial makeup was the leading factor.¹⁸⁸ With the additional data analyzed in this Article, the racial salience conclusion is undeniable. Howard's rankings disparity has not only continued but is rapidly increasing during a time of corresponding increases in societal racial salience. An eighty-seven-spot disparity in rankings that contain less than 200 law schools is an astounding disparity. The peer-overall rankings disparity for all five of the other HBCU law schools further confirms this result. Finally, the timing and underlying reason for why law schools boycotted the rankings support the racial salience explanation. Alternative explanations such as notable alumni, location, and promotional materials may also contribute slightly to the disparity but simply cannot explain a significant amount of the eighty-seven-spot rankings disparity.

The original 2020 study sparked widespread debate in legal academia regarding legal education, race, and the purpose of law school rankings.¹⁸⁹ The present Article, with its updated findings, will hopefully serve as a powerful catalyst to spark further

¹⁸⁴ "Indicators measuring graduate indebtedness, financial resources and employment at graduation that were previously part of the rankings were discontinued" Brooks et al., *supra* note 10.

¹⁸⁵ Manning, *supra* note 165; Chemerinsky, *supra* note 168; Gerken, *supra* note 177.

¹⁸⁶ Brooks et al., *supra* note 10.

¹⁸⁷ Gerken, *supra* note 177.

¹⁸⁸ Conklin, *Curious*, *supra* note 1, at 3.

¹⁸⁹ The piece was one of the most shared articles on the *Taxprof Blog*, receiving over 8000 shares, and was published as the lead article with a solicited response in the *Rutgers Race & Law Review*.

BOYCOTTS, RACE, RANKINGS, AND HOWARD LAW SCHOOL'S PECULIAR POSITION

debate regarding these areas. Such discussion has never been timelier, due to a confluence of numerous, interconnected factors. The 2023 Supreme Court decision on affirmative action in college admissions will likely only further increase the focus on race in higher education. There is an impending law school enrollment cliff expected in 2028–29.¹⁹⁰ The Varsity Blues admissions scandal calls into question the ability of the well-connected to game the system.¹⁹¹ The ABA removed the LSAT requirement for law schools.¹⁹² The new law school overall rankings place significantly less importance on GPAs and LSAT scores.¹⁹³ Even the general notion of performing evaluations based less on objective merit seems to be gaining popularity, as seen in the rise of ESG investing.¹⁹⁴

Future analysis on this issue will provide further insight into the correlation between peer rankings and societal racial salience. There are also other, tangentially related issues that this research elicits discussion on. For example, *Howard Law Review's* relatively low ranking compared to flagship journals from law schools ranked alongside Howard implies that while legal scholars may be willing to vote favorably for Howard in an anonymous survey, they are not willing to extend the same favorable treatment when it comes to citing to or accepting offers to publish in Howard's flagship journal.

The pragmatism behind artificially boosting Howard's ranking due to its HBCU status is also something that should be discussed in future research. Despite the good intentions of those who do so, the practice may elicit numerous unintended consequences that harm potential students, law firms, legal education, and even Howard Law School itself. Potential law students and law firms rely heavily on the rankings to convey information regarding the quality of education delivered. If subjective, personal opinions about race in higher education—negative or positive—create distortions in the rankings, inefficiencies will ensue. For example, potential students may be mismatched to a law school where they will not live up to their full potential.¹⁹⁵ These students' abilities to network with future legal thought leaders may be diminished. These distortions may also result in law firms making suboptimal hiring decisions. Additionally, the practice of artificially inflating Howard and the other HBCUs in the rankings could be viewed as an example of the soft bigotry of low expectations.¹⁹⁶ In extreme cases, this could even be used as an

¹⁹⁰ Backer, *supra* note 8.

¹⁹¹ Drozdowski, *supra* note 9.

¹⁹² Sloan, *supra* note 6.

¹⁹³ Brooks et al., *supra* note 10.

¹⁹⁴ Conklin & Malone, *supra* note 12.

¹⁹⁵ See, e.g., Robert VerBruggen, *Does Affirmative Action Lead to "Mismatch"?: A Review of the Evidence*, 2022 MANHATTAN INST. 1, 9.

¹⁹⁶ See, e.g., the Pygmalion effect described in Libby Nelson, *Racism in the Classroom: The "Soft Bigotry of Low Expectations" Is Just Regular Bigotry*, Vox (Aug. 19, 2015, 2:30 PM),

effective recruiting tool for white supremacist groups.¹⁹⁷

<https://www.vox.com/policy-and-politics/2015/8/19/9178573/teacher-students-race-study> [<https://perma.cc/GN2H-C88E>]. This is highly relevant, as studies demonstrate low expectations risk becoming a self-fulfilling prophecy. *See id.*

¹⁹⁷ Olga Khazan, *How White Supremacists Use Victimhood to Recruit*, THE ATLANTIC (Aug. 15, 2017), <https://www.theatlantic.com/science/archive/2017/08/the-worlds-worst-support-group/536850/> [<https://perma.cc/VMS3-Y6FB>].