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## The Travesty of The US News Rankings: How Legal Education Should Be Measured

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## THE TRAVESTY OF THE US NEWS RANKINGS: HOW LEGAL EDUCATION SHOULD BE MEASURED

*Reuben Guttman\**

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In 1929, Charles Hamilton Houston assumed the Deanship of Howard University School of Law<sup>1</sup> (HUSL), a position he held until 1935 when he left Howard to serve as special counsel to the NAACP, then based in New York.<sup>2</sup> Houston was the first person to hold this position for the NAACP.

A Phi Beta Kappa graduate of Amherst College, where he was the only Black student in his graduating class, and Harvard Law School, where he was the first Black student elected to the law review, Houston bridged scholarship and practice. Houston served in a segregated Army unit during WWI, entering at the rank of First Lieutenant, an experience that was formative for him. Of his time there, Houston later wrote, “The hate and scorn showered on us Negro officers by our fellow Americans convinced me that there was no sense in my dying for a world ruled by them. I made up my mind that if I got through the war, I would study law and use my time fighting for men who could not strike back.”<sup>3</sup>

Houston assumed leadership of HUSL with a clear-cut vision; that vision was, in part, to train lawyers to bring civil rights cases. Coming of age during a time when “legal realism” was in ascendance, Houston wrote – shortly after coming to HUSL – that the “Negro lawyer must be trained as a *social engineer and group interpreter*. Due to the Negro’s social and political condition” ... “the

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<sup>1</sup> Steven D. Jamar, *Charles Hamilton Houston 1895 - 1950*, HOWARD UNI. SCHOOL OF LAW (2004), <http://law.howard.edu/brownat50/BrownBios/BioCharlesHHouston.html>. (In 1929, Howard became a full-time law school in 1929. Technically, Houston’s title was Vice Dean, but he had the responsibilities of Dean).

<sup>2</sup> Robert L. Carter, *The NAACP’s Legal Strategy Against Segregated Education*, 86 MICH. L. REV. 1083 (1988).

<sup>3</sup> JAMES RAWN, *ROOT AND BRANCH: CHARLES HAMILTON HOUSTON, THURGOOD MARSHALL, AND THE STRUGGLE TO END SEGREGATION*, (2010).

Negro lawyer must be prepared to anticipate, guide and interpret his group advancement.”<sup>4</sup> Lest there was any doubt about where Houston stood on the role of the lawyer in society, Houston commented that: “*A lawyer’s either a social engineer or a parasite on society*” ... “a social engineer was a highly skilled, perceptive, sensitive lawyer who understood the Constitution of the United States and knew how to explore its uses in the solving of problems of” ... “communities and bettering the conditions of local citizens.”<sup>5</sup>

Houston’s most famous student was the famed civil rights lawyer and later Supreme Court Justice, Thurgood Marshall. Marshall, who graduated HUSL in 1933 at the top of his class, and later made the transition from star student to Houston’s litigation partner after the NAACP sets its sights on dismantling racial segregation in public education. After Houston resigned as special counsel to the NAACP in 1938 to return to private practice in Washington, D.C., Marshall became his handpicked successor, and would remain the organization’s legal director until 1961, when President John F. Kennedy appointed him to the Second Circuit Court of Appeals.<sup>6</sup>

Houston’s other notable students are legion. Oliver Hill,<sup>7</sup> who graduated second behind Marshall, went on to a notable career as a civil rights lawyer, often working with fellow HUSL graduate, Spottswood Robinson,<sup>8</sup> whom President Lyndon B. Johnson made the first Black judge appointed to the United States District Court for the District of Columbia. Hill and Robinson argued *Davis v. Prince Edward Board of Education*,<sup>9</sup> one of the five cases decided together as *Brown v. Board of Education*.<sup>10</sup> Robinson also taught at HUSL. Among his students was Pauli Murray,<sup>11</sup> who went on to a pathbreaking career in law and theology, and is remembered for coining the term, “Jane Crow,” to call attention to the dual barrier that Black women faced in entering the legal field.

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<sup>4</sup> GENNA RAE MCNEIL, GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS, at 71 (1983) (emphasis added).

<sup>5</sup> *Id.* at 84. (emphasis added).

<sup>6</sup> Carter, *supra* note 4, at 105-137.

<sup>7</sup> *Oliver White Hill 1907 - 2000*, HOWARD UNI. SCHOOL OF LAW (last visited Nov. 29, 2022), <http://law.howard.edu/brownat50/BrownBios/BioOliverHill.html>

<sup>8</sup> *Spottswood William Robinson III 1916-1998*, HOWARD UNIVERSITY SCHOOL OF LAW (last visited Nov. 29, 2022), <http://law.howard.edu/brownat50/BrownBios/BioJudgeSpottswoodRobinson.html>.

<sup>9</sup> *Davis v. Cty. Sch. Bd.*, 103 F. Supp. 337 (E.D. Va. 1952).

<sup>10</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

<sup>11</sup> *Pauli Murray Center for History and Social Justice*, PAULI MURRAY CENTER FOR HISTORY AND SOCIAL JUSTICE, (last visited Dec. 7, 2022), <https://www.paulimurraycenter.com/who-is-pauli>.

James Nabrit<sup>12</sup> was recruited to HUSL in 1936 and developed the first civil rights course taught in any of the nation's law schools. Nabrit also argued *Bolling v. Sharpe*,<sup>13</sup> which was decided the same day as *Brown* and involved a Fifth Amendment challenge to public schools in the District of Columbia. Houston, who filed the case against the D.C. schools, would have argued that case had he not died in 1950. Robert L. Carter, later appointed by President Richard Nixon to the United States District Court for the Southern District of New York, graduated from HUSL in 1940. After service in WWII, Carter joined the NAACP Legal Defense and Education Fund, where he worked for over twenty-five years. Carter, along with another Thurgood Marshall mentee, Jack Greenberg,<sup>14</sup> argued the actual *Brown v. Board of Education* case. Marshall and Spottswood Robinson argued *Briggs v. Elliott*,<sup>15</sup> considered the more consequential and difficult of the school segregation cases. Including Louis Redding,<sup>16</sup> a 1925 Harvard Law graduate who grew up and practiced law in Delaware and would argue *Belton v. Gephardt*<sup>17</sup> and *Bullah v. Gephardt*<sup>18</sup>, the final two cases grouped together with *Brown*, every lawyer who argued the landmark school segregation cases either graduated or taught at HUSL or had been mentored into civil rights litigation by Charles Hamilton Houston.<sup>19</sup>

In sum, HUSL's prestige was easily measured by the accomplishments of its faculty and graduates. Those accomplishments were civil rights cases that broke down racial barriers. HUSL graduates, whether working for the NAACP Legal Defense Fund or through their own firms, single-handedly tempered the modern field of public interest law, based on the model established by Houston and refined by Marshall.<sup>20</sup>

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<sup>12</sup> *James Madison Nabrit 1900-1997*, HOWARD UNIVERSITY SCHOOL OF LAW, (last visited Dec. 7, 2022), <http://law.howard.edu/brownat50/BrownBios/BioJamesNabritJr.html>

<sup>13</sup> *Bolling v. Sharpe*, 347 U.S. 497 (1954).

<sup>14</sup> *Jack Greenberg 1961 – 1964*, LEGAL DEFENSE FUND, (last visited Dec. 7, 2022), <https://www.naacpldf.org/about-us/history/jack-greenberg/>

<sup>15</sup> *Briggs v. Elliott*, 342 U.S. 350 (1952).

<sup>16</sup> *About Louis L. Redding*, THE DELAWARE BARRISTERS ASSOCIATION, (last visited Dec. 7, 2022), <https://www.debarristersassociation.org/about-louis-redding>.

<sup>17</sup> *Gebhart v. Belton*, 91 A.2d 137 (Del. 1952), *aff'd*, 91 A.2d 137 (Del. 1952).

<sup>18</sup> *Id.*

<sup>19</sup> JACK GREENBERG, *CRUSADERS IN THE COURTS: HOW A DEDICATED BAND OF LAWYERS FOUGHT FOR THE CIVIL RIGHTS REVOLUTION* (Apr. 28, 1994).

<sup>20</sup> See Brief for Petitioner, *Muller v. Oregon*, 208 U.S. 412 (1908) (Including hundred pages of data and only two pages of legal argument. The collected social science studies underscore the physical harm posed to women by working long hours in physically arduous jobs. This was the first such brief submitted to the Supreme Court to incorporate social science data as the foundation of a legal argument, encapsulating the “sociological jurisprudence” approach advocated by Roscoe Pound, one of the founders of the “legal realism” movement); See PAUL L. ROSEN, *THE SUPREME COURT AND SOCIAL SCIENCE*, (1972) at 78. (The field of public interest law

Houston and Marshall – and other NAACP lawyers – developed and implemented a carefully orchestrated strategy, filing cases that held oppressors to the “equal” part of the “separate but equal” standard. Beginning with law schools and graduate programs, the NAACP repeatedly demonstrated that Jim Crow states offered no separate professional schools for Black students, much less ones that were equal. In pre-*Brown* cases such as *Missouri ex rel. Gaines v. Canada*,<sup>21</sup> *Sipuel v. Oklahoma*,<sup>22</sup> *McLaurin v. Oklahoma State Regents*,<sup>23</sup> and *Sweatt v. Painter*,<sup>24</sup> the Supreme Court ordered Black students admitted into all-white schools because of the absence of Black opportunities in an education system run by the all-white legislatures of those states. They made the “separate but equal” rule of *Plessy v. Ferguson*<sup>25</sup> a costly endeavor; states once committed to Jim Crow in public education faced the choice of issuing bonds and implementing new taxes to pay for Black schools, a financial burden borne overwhelmingly by their white populations or dismantling their dual systems of education. So committed were the Jim Crow states to white supremacy and resisting integration that it led the NAACP to shift from its equalization strategy to a direct attack on segregation as a *per se* violation of the Fourteenth Amendment after 1950 – and thus the line to *Brown*. The only way to dismantle Jim Crow was to force the Supreme Court to decide whether state-mandated racial segregation violated the Fourteenth Amendment.

What we learned from the Howard graduates – and other Houston mentees<sup>26</sup> – is that a few lawyers with practical training – perhaps motivated by the fear of failure and a passion for the cause – could go to court, alter the rule of law, and begin to level the playing field for countless victims of discrimination.<sup>27</sup> The

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dates back to at least Louis Brandeis and, among other things, his use of contingency fee agreements to represent those without the resources to fund a case).

<sup>21</sup> *Mo. ex rel. Gaines v. Canada*, 305 U.S. 337, 59 S. Ct. 232 (1938) (In this case, the Court remanded the case to determine whether an equal education could be made available).

<sup>22</sup> *Sipuel v. Bd. of Regents*, 332 U.S. 631, (1948).

<sup>23</sup> *McLaurin v. Okla. State Regents for Higher Educ.*, 339 U.S. 637 (1950).

<sup>24</sup> *Sweatt v. Painter*, 339 U.S. 629 (1950).

<sup>25</sup> *Plessy v. Ferguson*, 163 U.S. 537 (1896).

<sup>26</sup> *Aloyisus Leon, Jr. Higginbotham*, F. JUDICIAL CENTER, (last visited Dec. 12, 2022) <https://www.fjc.gov/history/judges/higginbotham-aloyisus-leon-jr>. (His mentees included prominent federal judges William Hastie, whose appointment to the Third Circuit Court of Appeals in 1949 by President Harry S. Truman made him the first African American to serve at the federal appellate level, and Leon Higginbotham, who served on both the United States District Court for the Eastern District of Pennsylvania and the Third Circuit Court of Appeals).

<sup>27</sup> *Brown v. Board*, *supra* note 12. (The original complaint was a mere eight pages. It was drafted by Constance Baker Motley, the first full-time female staff attorney for the NAACP. An accomplished courtroom litigator, Motley argued ten cases before the Supreme Court and won nine of them. The tenth was eventually overturned in her favor. Motley went on to a distinguished career after she left the NAACP in 1965. In 1966, President Lyndon Johnson appointed her to the United States District Court for the Southern District of New

overall impact on the legal profession was profound; soon, young lawyers were challenging the status quo. In 1967 Bernard Cohen, age 33, and Phillip Hirschkop, age 31, argued before the Supreme Court on behalf of the Appellants in *Loving v. Virginia*<sup>28</sup> where the court held unconstitutional the state's anti-miscegenation statute. In 1973, Jane Picker, new to appellate arguments, stood before the Court in *Cleveland Board of Education v. Laflour*,<sup>29</sup> convincing the Justices to make pregnancy discrimination a viable theory under the Due Process Clause of the Fourteenth Amendment. In *Frontiero v. Richardson*<sup>30</sup>, a young Ruth Bader Ginsberg<sup>31</sup> – in her first argument on behalf of the ACLU Women's Rights Project appearing as an amicus curia – stood before nine male justices of the United States Supreme Court and said, "I ask no favor for my sex. All I ask of our brethren is that they take their feet off our necks," quoting American abolitionist, Sarah Grimké.<sup>32</sup>

Indeed many – like myself<sup>33</sup> – who went to law school in the 80s – were looking for an education that could teach us how to be like these lawyers and bring these cases.

But that was yesterday. Today, law schools and their deans measure success not by the practical accomplishments of their alumni or their faculty; they measure success by numerical rankings accorded by a for-profit publication called *U.S. News* which – ironically – is no longer in the news business.<sup>34</sup> And it is not just the institutions; too many law school faculty measure their value not by the cases they have brought – or the legal theories they have developed to bring cases that perhaps change of the lives of those who need representation – but by the number of law review articles they publish and the number of times those articles have been cited by other academics.<sup>35</sup> There is actually "scholarly

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York, making her the first Black woman to serve on the federal bench); See TOMIKO BROWN-NAGIN, CIVIL RIGHTS QUEEN: CONSTANCE BAKER MOTLEY AND THE STRUGGLE FOR EQUALITY, (Jan. 25, 2022).

<sup>28</sup> *Loving v. Virginia*, 388 U.S. 1 (1967).

<sup>29</sup> *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985).

<sup>30</sup> *Frontiero v. Richardson*, 411 U.S. 677 (1973).

<sup>31</sup> *Ruth Bader Ginsburg: A Reading List*, THE LIBRARY AT WASHINGTON, AND LEE UNI. SCHOOL OF LAW, (last visited Dec. 12, 2022) <https://libguides.wlu.edu/law/RBG/arguments> (Ginsberg argued six cases before the Supreme Court between 1973 and 1979. She won all of them).

<sup>32</sup> *Frontiero v. Laird*, 409 U.S. 1123 (1973).

<sup>33</sup> Referring to this article's co-author, Reuben Guttman.

<sup>34</sup> Reuben Guttman, *On the Rule of Law: Now is the Time to Rethink the Role of Law Schools*, MEDIUM, (Mar. 22, 2021), <https://medium.com/@rguttman/on-the-rule-of-law-now-is-the-time-to-rethink-the-role-of-law-schools-1f9e707ee4a1>.

<sup>35</sup> Rob Wiley & Melanie Knapp, *How to Increase Citations to Legal Scholarship*, 18.1 Ohio St. Tech. L. J., 157, 158, no.1 (2021); Fred Shapiro, *The Most-Cited Legal Scholars Visited*, 88 The University of Chicago Law Review, 1595, no. 1 (2021); Press Release, Professor Neil Richards Named Most-Cited Younger Scholar And Hosts Book Launch, Wash. University in St. Louis School of Law, (last visited Dec. 8, 2022),

work” addressing the citation game and whether article quality is always the basis for citation.<sup>36</sup>

If these numerical measurements were only for the purpose of cocktail hour banter, no one would care. Unfortunately, these benchmarks are having a profound – indeed adverse – impact on the training of lawyers and rule of law.<sup>37</sup> In their quest for higher rankings, Law School Deans seem to have forgotten the purpose of a law school.

In 1992, Judge Harry T. Edwards wrote a well-known piece in the *Michigan Law Review* entitled “The Growing Disjunction Between Legal Education and the Legal Profession.” Edwards noted:

I fear that our law schools and law firms are moving in opposite directions. The schools should be training ethical practitioners and producing scholarship that judges, legislators, and practitioners can use. The firms should be ensuring that associates and partners practice law in an ethical manner. But many law schools - especially the so-called “elite” ones - have abandoned their proper place, by emphasizing abstract theory at the expense of practical scholarship and pedagogy.<sup>38</sup>

Today, the US News Rankings are indeed a distraction, if not an “attractive nuisance.”<sup>39</sup> And, for too many law school deans, the quest for higher rankings is akin to an addiction which drives questionable if not unethical or even illegal conduct.

In 2012, two Emory Law School professors published an article in the *Missouri Law Review*,<sup>40</sup> entitled *Law Deans in Prison*. The two professors noted that, “for more than a decade, reports published in the news media, legal journals, and blogs have detailed the tactics law schools have employed to improve their positions in the annual US News rankings, sometimes by manipulating or even falsifying data that the magazine has solicited from

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<https://law.wustl.edu/professor-neil-richards-named-most-cited-younger-scholar-and-book-launch/>; Law Recent News, USD School of Law Warren Distinguished Professor of Law Orly Lobel is a Top-Cited Young Scholar, (Jan. 12, 2022), [https://www.sandiego.edu/news/law/detail.php?\\_focus=83825](https://www.sandiego.edu/news/law/detail.php?_focus=83825).

<sup>36</sup> Wiley & Knapp, *supra* note 37, at 224. (Noting that “factors beyond the quality of an article may impact citations”).

<sup>37</sup> Reuben Guttman, *On the Troubled State of Law Schools*, MEDIUM, (Feb. 5, 2019), <https://medium.com/@rguttman/on-the-troubled-state-of-law-schools-ba4da8bd0f8f>.

<sup>38</sup> Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992). (Edwards’ criticism was, in part, that theory is sometimes taught in disregard for the practical application of the law).

<sup>39</sup> *See, e.g. Keffe v. Milwaukee & S. P. Ry. Co.*, 21 Minn. 207 (1875)

<sup>40</sup> Morgan Cloud & George Shepherd, *Law Deans in Jail*, 77 MISSOURI L. REV. 932 (2012).

them.”<sup>41</sup> The authors noted the criminal exposure of deans and their institutions for violations of federal mail fraud, wire fraud and racketeering laws.

While the Emory authors understood that rankings were driving false reporting and thus, potential criminal exposure, what the authors did not explore was something potentially much worse; that law school deans were diverting resources, engaging in questionable schemes to raise money to meet the criteria imposed by the rankings, and otherwise engaging in discriminatory conduct all in the name of achieving a higher ranking by U.S. News.

Finally, in late 2022, deans of some of the nation’s well known law schools announced a pullout from the rankings, going on record as to the severity of their impact on legal education.<sup>42</sup> Yale Law Dean Heather Gerken explained:<sup>43</sup>

- One of the most troubling aspects of the *U.S. News* rankings is that it discourages law schools from providing critical support for students seeking public interest careers and devalues graduates pursuing advanced degrees
- The *U.S. News* rankings also discourage law schools from admitting and providing aid to students with enormous promise who may come from modest means
- It also pushes schools to use financial aid to recruit high-scoring students. As a result, millions of dollars of scholarship money now go to students with the highest scores, not the greatest need
- The people most harmed by this ill-conceived system are applicants who aspire to public service work and those from low-income backgrounds.

In announcing its pullout, University of California, Davis (UC Davis) Law Dean, Kevin Johnson noted:

The significant weight given to Law School Admission Test scores of students in the rankings serves to chill individual review of applications, affords undue weight to test scores in the rankings, and effectively discourages the Admission of African American, Latina/o,

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<sup>41</sup> *Id.* at 933.

<sup>42</sup> Of course, this does not mean that US News will cease ranking places like Yale, Harvard, Berkeley, Columbia, Duke, UCLA, and UC Irvine; it just means that these institutions will not cooperate in the process by submitting data.

<sup>43</sup> *Dean Gerken: Why Yale Law School Is Leaving the U.S. News & World Report Rankings*, YALE LAW SCHOOL, (Nov. 16, 2022), <https://law.yale.edu/yls-today/news/dean-gerken-why-yale-law-school-leaving-us-news-world-report-rankings>.



Native American and Asian Applicants in a country where fewer than 20 percent of all lawyers are people of color.<sup>44</sup>

Imagine the irony. Almost a century ago Charles Hamilton Houston gave us a model for legal education; a model that was designed to develop practitioners who could re-shape the rule of law through a dynamic and instrumental approach to constitutional litigation. This was a far cry from the Black Codes that became a fixture of 19th century law that was created and then calcified by slave owners (who embedded slavery in our constitution)<sup>45</sup> and later jurists who saw the Fifth Amendment as vehicle to protect the property rights of slave owners,<sup>46</sup> the court system as a forum to enforce restrictive housing covenants,<sup>47</sup> the legitimacy of state laws precluding private institutions from integrating on their own,<sup>48</sup> and the place where women could be prosecuted if they participated in the electoral process.<sup>49</sup>

These days, while law schools may indeed have classes on civil rights, it is the law schools themselves – motivated by the rankings chase – that are perpetrators of discriminatory or otherwise wrongful conduct.<sup>50</sup>

Consider a law school applicant, a chemical engineering major, who achieved a BS from a large state university. The applicant took only math and science courses, recording a 3.1 grade point average (GPA). The applicant is the first in his family to graduate college and the applicant had to work two jobs while attending school. He could not afford to take an LSAT review course, and he could only afford to take the LSAT once. Still, he scored at 162.

Compare this applicant to an applicant from a wealthy family who did not have to take a job to support his education. This wealthy applicant structured his undergraduate curriculum to avoid math and sciences courses or any offering that would place his GPA in jeopardy. This strategy worked and the applicant starts the admissions process with a 3.9 average. The applicant has the money for an LSAT review course and can afford to take and retake the LSAT. His best score is 162.

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<sup>44</sup> Kevin R. Johnson, *UC Davis Law Withdraws From U.S. News & World Report Rankings*, THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, DAVIS, (Nov. 28, 2022), <https://www.ucdavis.edu/news/uc-davis-law-withdraws-us-news-world-report-rankings>.

<sup>45</sup> U.S. CONST. art. I, § 2 & 9, cl. 3; U.S. CONST. art. IV, § 2.

<sup>46</sup> *Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).

<sup>47</sup> *Corrigan v. Buckley*, 271 U.S. 323 (1926).

<sup>48</sup> *Berea College v. Commonwealth of Kentucky*, 211 U.S. 45 (1908).

<sup>49</sup> *See, e.g. United States v. Anthony*, 942 F.3d 955 (10th Cir. 2019).

<sup>50</sup> The rankings are, in essence, are seemingly facially neutral benchmarks that are having a disparate impact on – at least – minorities.

Because of the U.S. News Rankings weight given to grades and GPAs, the wealthy applicant will not only be more competitive at law schools, but the wealthy applicant will also be in line for a scholarship even though he or she does not need the money. When a law school admits and matriculates this student, that school will be – in essence – buying his or her presence in the 1L class.

Chasing the rankings is a rich person's sport. While many schools play the game, few have the loose cash to lavishly spend on wealthy students. So where does the money come from? Schools spend less or no money on need-based scholarships. They stock their teaching ranks with far less expensive adjunct faculty members, lecturers, and replace retiring tenured full professors with entry level professors, some of whom will never be eligible for tenure. Even the most prestigious schools look to hire law school faculty that are not lawyers.

But these steps do not free up enough cash. To raise money, law schools have developed new products, degrees that will not allow for the practice of law, but which will bring in students who can finance their education with government backed loans or who are wealthy enough to pay full freight. And where do schools find consumers for these new products? Abroad! These days, law schools have marketers who travel the globe and recruit students. Their efforts are supported by marketing firms that spin a message on the internet often touting the school as a top US institution.<sup>51</sup> But who is teaching the programs that do not even lead to the practice of law? Is it tenured faculty or contract teachers adorned with the title, "Distinguished Lecturer in Residence," Adjunct Professor?" Are students getting the branded product or the factory outlet product?

If law schools were publicly traded corporations, or even closely held corporations with diligent investors, they would have questions to answer. Indeed, a court might even force them to answer questions.<sup>52</sup> But that is not the case and unfortunately the incentives created by U.S. News have now driven conduct – indeed improprieties including discrimination – that that have become the status quo.

Lawyers are supposed to be trained to question the status quo and not assume that it equates to legality. Why it took so long for even a few legal educators to speak out on the record in such a vocal way is disturbing. Perhaps it is because

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<sup>51</sup> *4 Of the Most Innovative Law Schools in the US*, STUDY INTERNATIONAL, (Dec. 8, 2022) <https://www.studyinternational.com/news/4-of-the-most-innovative-law-schools-in-the-us/>.

<sup>52</sup> *AmerisourceBergen Corp. v. Leb. Cty. Employees' Ret. Fund*, 243 A.3d 417 (Del. 2020).

—as Judge Edwards might hint — too many of today’s law professors dwell in theory without regard for the practical application of the law.

But why does all this matter?

We live at a time when current events remind us that our Democracy and our sacred rule of law is not to be taken for granted. Our former President has called for the termination of the Constitution.<sup>53</sup> Our Supreme Court has abandoned precedent absent the justification of scientific or social advancement.<sup>54</sup> Private tribunals (known as arbitrations) with no transparent record and no binding precedent are supplanting the court system which has been the harvesting ground for common law precedent. Our prison system is packed with a disproportionate number of minorities while prisons and prison healthcare are turned over to private entities whose motive is cost cutting and profit. An array of decisions — and legislative pronouncements — have made access to the courts more burdensome or have otherwise directly discouraged redress.<sup>55</sup> Under contemporary pleading standards, it is likely that the original eight-page complaint filed by Oliver Brown on behalf of his daughter, Linda, might not even survive a motion to dismiss. Meanwhile, social media has posed new challenges for our belief in free expression and the First Amendment.

“In the last analysis,” wrote Felix Frankfurter, “the law is what the lawyers are. And the law and the lawyers are what the law schools make them.”<sup>56</sup> And therefore, law school Deans need to forget rankings and just focus on turning out lawyers who can meet the enormous challenges of the day. And if these Deans worry that they will have no benchmark to measure their efforts, they need only look at the accomplishments of their alumni. That should be enough; surely it was for Charles Hamilton Houston.

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<sup>53</sup> Kristen Holmes, *Trump Calls for the Termination of the Constitution in Truth Social Post*, CNN, (Dec. 4, 2022), <https://www.cnn.com/2022/12/03/politics/trump-constitution-truth-social/index.html>.

<sup>54</sup> *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

<sup>55</sup> *See, e.g.*, *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); Prison Litigation Reform Act (1995); 42 USC §1997(e).

<sup>56</sup> Letter from Felix Frankfurter, Professor, Harvard Law School, to Mr. Rosenwald 3 (May 13, 1927) (Felix Frankfurter papers, Harvard Law School library).