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## Scholarly Impact of Law School Faculties in 2012: Applying Leiter Scores to Rank the Top Third

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## REPORT ON SCHOLARLY IMPACT

# SCHOLARLY IMPACT OF LAW SCHOOL FACULTIES IN 2012: APPLYING LEITER SCORES TO RANK THE TOP THIRD

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### SUMMARY

This study explores the scholarly impact of law faculties, ranking the top third of ABA-accredited law schools. Refined by Professor Brian Leiter, the “Scholarly Impact Score” for a law faculty is calculated from the mean and the median of total law journal citations to the work of tenured members of that law faculty over the past five years. In addition to a school-by-school ranking, we report the mean, median, and weighted score for each law faculty, along with a listing of the tenured law faculty members at each ranked law school with the highest individual citation counts.

Representing one-third of accredited American law schools, the law faculties ranked in this study have concretely demonstrated a collective commitment to legal scholarship. The law faculties at Yale, Harvard, Chicago, Stanford, and New York University continue to stand out nationally in scholarly prominence. Vanderbilt at #8 and Cornell at #9 have both risen a couple of places since 2010 into the Scholarly Impact top ten, with Columbia at #6, the new law school at California–Irvine at #7, and California–Berkeley at #10.

Rounding out the top twenty are other law schools traditionally ranked among the nation’s elite institutions—Pennsylvania, Duke, Northwestern, Michigan, UCLA, Virginia, George Washington, Georgetown, Minnesota, and Texas. Inside the top twenty-five for Scholarly Impact ranking are Boston University, George Mason, California–Davis, USC, and Cardozo. Just outside the top twenty-five are Emory, Washington University, Illinois, and Colorado. Three law faculties are tied for the #30 position: Ohio State, the University of St. Thomas (Minnesota), and Washington & Lee.

Brooklyn, Cardozo, Case Western, Chapman, Colorado, Florida State, George Mason, Hawaii, Hofstra, Houston, Missouri–Columbia, Nevada–Las Vegas, New York Law School, Penn State, Pittsburgh, Rutgers–Camden, Seattle, and the University of St. Thomas (Minnesota) achieve Scholarly Impact Scores well above the rankings assigned by *U.S. News*. Three newer law schools accredited within the past two decades—the University of St. Thomas, Nevada–Las Vegas, and Chapman—have already made a scholarly impact that dramatically outpaces their present academic reputations.

TABLE 1: SUMMARY OF SCHOLARLY IMPACT RANKING OF LAW FACULTIES, 2012

<b>Rank</b>	<b>Law School</b>	<b>Weighted Score</b>
1	Yale	1629
2	Harvard	1326
3	Chicago	1215
4	Stanford	1176
5	New York U.	1141
6	Columbia	962
7	California–Irvine	922
8	Vanderbilt	891
9	Cornell	793
10	California–Berkeley	788
11	Pennsylvania	752
11	Duke	744
13	Northwestern	705
14	UCLA	679
15	Michigan	673
16	Virginia	607
16	George Washington	599
18	Georgetown	565
19	Minnesota	556
19	Texas	550
21	Boston University	501
21	George Mason	499
23	California–Davis	469
24	USC	455
24	Cardozo	454
26	Emory	443
26	Washington University	436
28	Illinois	429
28	Colorado	418
30	Ohio State	414
30	U. St. Thomas (Minn.)	411
30	Washington & Lee	403
33	Hofstra	399
33	Arizona	397
33	Indiana–Bloomington	394
33	North Carolina	392

33	Florida State	385
38	Hastings	376
38	Notre Dame	375
38	Case Western	370
41	Brooklyn	352
41	William & Mary	351
43	Fordham	348
43	Maryland	337
45	Houston	327
45	Nevada–Las Vegas	325
47	Utah	310
47	American	309
47	Alabama	307
47	Pittsburgh	305
47	Iowa	303
52	Hawaii	299
52	U. San Diego	298
52	Chicago–Kent	295
52	Arizona State	293
52	Boston College	287
57	New York Law School	281
57	Brigham Young U.	280
57	Georgia	277
57	Tulane	277
57	Florida	274
57	Missouri–Columbia	274
57	Temple	273
64	Seattle	268
64	Wake Forest	268
64	Seton Hall	265
64	Pennsylvania State	263
64	Rutgers–Camden	262
64	Chapman	260
64	Wisconsin	259
64	Cincinnati	253

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**I. MEASURING THE SCHOLARLY IMPACT OF LAW FACULTIES**

Scholarship is a public and public-regarding exercise in the search for truth, research, critical thinking, effective written communication, and dissemination of the results. As legal scholars, we write for an audience. It is right and appropriate, then, to ask whether anyone is reading what we have written.

Legal scholarship should not devolve into a personal hobby, by which the scholar indulges his or her own intellectual fancies with little or no regard for whether and how that work is received by other scholars, jurists, professionals, or informed generalists. Scholarship that is worthy of the name should provoke intellectual engagement. Scholars become prominent because they regularly make meaningful contributions through their scholarship that capture the attention, adoption, and critical response of others in an ongoing discourse.

In recent years, renewed attention has been drawn to the substantial resources that law schools devote to support scholarly writing by tenured and tenure-track law faculty, not only through direct salaries paid to law professors, but also by reduced teaching loads, sabbatical leaves, and other arrangements that afford time for scholarly productivity. As part of the dis-

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cussion on the appropriate balance between teaching obligations and scholarly pursuits in any particular institution, the success of that faculty in making a scholarly impact ought to play a central role.

And, if possible, we should answer the question of scholarly impact by something more reliable than anecdotes, unexamined intuitions, past accolades, or casual assurances by those in our close circle that they have read this or that article. In terms of scholarly impact, the telling point is not whether a law professor notices our published work in passing as an article crosses a professor's desk or appears on a computer screen during its passage from mailbox to recycle bin (real or virtual). Rather, we should ask whether other legal scholars actually employ our contributions in their own scholarly work.

In their pioneering work evaluating law faculties through per capita citations to their scholarly writings, Professors Theodore Eisenberg and Martin Wells asserted that scholarly impact ranking "assesses not what scholars say about schools' academic reputations but what they in fact do with schools' output."<sup>1</sup> As Professor Brian Leiter puts it, reputational surveys for law schools, such as that incorporated in the *U.S. News* ranking, tend to reflect "yesterday's news."<sup>2</sup> Scholarly impact studies focus on the present-day reception of a law faculty's work by the community of legal scholars.

In recent years, University of Chicago Professor Brian Leiter's "Scholarly Impact Scores" have risen to the forefront as a way to objectively measure how a law faculty collectively is succeeding in provoking exploration of ideas within the community of legal scholars.<sup>3</sup> In a commentary published online after our 2012 study results were released, Professor Vikram Amar described the "Leiter-style rankings of faculty impact (with the implication that impact tracks quality) [as] second among law school rankings in prominence, beneath only the *U.S. News* ratings."<sup>4</sup> As refined by Professor Leiter, the Scholarly Impact Scores measure the influence of the tenured law faculty of each law school by citations in the legal literature over the preceding five years.

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1. Theodore Eisenberg & Martin T. Wells, *Ranking and Explaining the Scholarly Impact of Law Schools*, 27 J. LEGAL STUD. 373, 374 (1998).

2. Jack Crittenden, *Top Scholarly Faculties*, THE NAT'L JURIST, Nov. 2010, at 5 (referencing Brian Leiter's quote) ("[Scholarly] Impact tells you things that reputation doesn't. Reputation tends to be yesterday's news—what happened 25 years ago.").

3. See Brian Leiter, *Top 25 Law Faculties in Scholarly Impact, 2005–2009, (And Highest Impact Faculty in 13 Areas of Specialization)*, BRIAN LEITER'S LAW SCHOOL RANKINGS, [http://www.leiterrankings.com/faculty/2010\\_scholarlyimpact.shtml](http://www.leiterrankings.com/faculty/2010_scholarlyimpact.shtml) (last visited Apr. 11, 2013) [hereinafter Leiter, 2010 Top 25].

4. Vikram David Amar, *What a Recently Released Study Ranking Law School Faculties by Scholarly Impact Reveals, and Why Both Would-Be Students and Current/Prospective Professors Should Care*, JUSTIA (Aug. 3, 2012), <http://verdict.justia.com/2012/08/03/what-a-recently-released-study-ranking-law-school-faculties-by-scholarly-impact-reveals-and-why-both-would-be-students-and-currentprospective-professors-should-care>.

Among possible metrics for ranking scholarly prominence by a law school's faculty, Scholarly Impact Scores are remarkably egalitarian and democratic:

- \* A citation to an article authored by a faculty member at a law school ranked by some metrics in a lower tier and that is published in a secondary journal at another law school of similar lower comparable rank carries the same weight as a citation to an article by a Yale law professor that was published in the *Harvard Law Review*. That is not to deny that appearance in a leading law journal enhances the likelihood that an article will be cited. Still, in an era when computer search tools and databases for relevant legal scholarship are ever more available, inexpensive, and user-friendly, an article that is of value to other scholars is more likely today to be discovered regardless of publication venue.<sup>5</sup>
- \* A citation appearing in the lowest ranked law review in the country is recorded with the same numerical value as one in the highest ranked law review. Thus, scholars working in particular fields who find it more difficult to place articles in what are conventionally regarded as the leading law reviews—but who provoke a vigorous exchange in specialized, secondary, or lower-ranked law reviews—receive full credit for those citations to their work.
- \* A citation to an article on wills and trusts contributes to this objective measurement of scholarly impact to the same degree as a citation to an article on constitutional law. Presuppositions about which subject matters are most prestigious in scholarly circles may be muted to some extent with this measurement of actual rather than presumed scholarly interest.<sup>6</sup> Although “[a]ny study counting citations . . . runs the risk of registering the impact of [a scholarly] fad in disproportion to its scholarly merit or long-term value or interest,”<sup>7</sup> ephemeral trends may be washed out in a longitudinal study encompassing a large set of faculty and law journals. A burst of citations

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5. Professor Alfred Brophy describes the trend of “the democratization of legal knowledge through dissemination” on the various electronic databases, resulting in wider and easier distribution of legal scholarship and easy access to pertinent text by computer search terms. Alfred L. Brophy, *Law [Review]’s Empire: The Assessment of Law Reviews and Trends in Legal Scholarship*, 39 CONN. L. REV. 101, 106 (2006).

6. To be sure, subject matter and scholarly impact are presumably correlated, as those subjects on which greater numbers of faculty teach and write will naturally draw more citations. See Eisenberg & Wells, *supra* note 1, at 375 (“Writing about constitutional law offers the opportunity for the greatest impact on other scholars, probably because the most people teach and write in this area and because student law reviews may be especially amenable to articles about constitutional law.”).

7. Brian Leiter, *Measuring the Academic Distinction of Law Faculties*, 29 J. LEGAL STUD. 451, 469 (2000).



to articles on a fashionable topic may not have staying power over the longer five-year period adopted for this study.

- \* A citation to an author from or in a journal published at a law school located in a small city in the heartland receives the same treatment as a citation arising in the urban centers on the coasts. The Scholarly Impact Scores are less affected by geography, a factor that may play a greater role in other preference rankings of law schools and universities.<sup>8</sup>

As with any measure of faculty quality or scholarly prominence, Scholarly Impact Scores are valuable only for what they depict and should not be mistaken as describing the whole of the academic cathedral. These Scholarly Impact Scores measure the collective attention given in the legal journals to the published work of the tenured members of a law faculty. We recognize that some scholarly works of great value are targeted to a smaller audience, although the multiple year range of this study and the nature of the measurement in evaluating the collective impact of an entire faculty should mitigate such concerns. Every faculty has members who write well and significantly in salient areas that draw less attention elsewhere in the academy. (To be sure, if a particular faculty member truly does fail consistently and over an extended time period to reach beyond a tiny group of other law professors, that person's scholarly impact within the legal academy *has* been limited.) Such factors should be equalized across faculties. The most reliable value of Scholarly Impact Scores is as a comparative measure among law faculties considered as a whole, with continuing but diminishing reliability when applied to individual faculty members within a single law faculty.

Although valuable scholarship speaks to many audiences, these Scholarly Impact Scores look specifically to a faculty's impact on other American legal scholars.<sup>9</sup> Thus, for example, effective pedagogical works and writings aimed at students are less likely to draw citations from other scholars, but instead may be recognized by other measures such as the number of downloads on the Social Science Research Network.<sup>10</sup> Scholarly works directed at practicing lawyers and judges may also draw attention by scholars, but these Scholarly Impact Scores assess the influence of such works only indirectly and incompletely. A future study might profitably explore the

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8. See *id.* at 455 (noting that reputational surveys of universities "suffer from other well-known biases in favor of schools on the two coasts at the expense of those in the heartland"). But see Theodore P. Seto, *Understanding the U.S. News Law School Rankings*, 60 SMU L. REV. 493, 516-18 (2007) (arguing, based on LSAT medians, that east and west coast schools actually suffer from a bias and that law schools in the central region are over-ranked).

9. See Theodore Eisenberg & Martin T. Wells, *Ranking Law Journals and the Limits of Journal Citation Reports* 33 Cornell Legal Studies Research, Working Paper No. 12-30, available at <http://ssrn.com/abstract=2084169> ("Legal scholarship can also have a wider than usual array of target audiences. The target audience can vary from the practitioners of law, to judges, to academia, to policymakers.").

10. SOCIAL SCIENCE RESEARCH NETWORK, <http://ssrn.com/>.

scholarly impact of law faculties on the courts by measuring when, to what extent, and how judges use scholarship in their decisions.<sup>11</sup> Interdisciplinary works may attract a larger audience in another discipline, although the most influential interdisciplinary scholars in the legal academy tend to have significant followings inside the legal academy as well. American law professors writing for an international audience may be less likely to be cited in the English-language legal publications that are the data source of this study.<sup>12</sup>

For these and other reasons, Professor Leiter acknowledges that “one would expect scholarly impact to be an imperfect measure of academic reputation and/or quality.”<sup>13</sup> “But,” as Leiter continues, “an imperfect measure may still be an adequate measure, and that might appear to be true of citation rates as a proxy for impact as a proxy for reputation or quality.”<sup>14</sup> Professors Eisenberg and Wells similarly suggest that, “[f]or the purpose of ranking schools, it is only necessary that citation frequently correlates with objective quality, not that it perfectly reflects quality.”<sup>15</sup>

Moreover, we have entered an era in which law reviews are setting word limits for articles, rejecting prolix manuscripts, and encouraging succinct writing. As a consequence, promiscuous citation practices run hard against stricter length restrictions. In today’s publication world, law journal space is at a greater premium for any particular article, and law review editors are becoming more restrained in asking for additional sources to support every proposition. Accordingly, those citations that do survive to the final printed version of an article are more likely to be to works of scholarship that the author genuinely found valuable.

In any event, as Professor Leiter adds, he is “confident”—and we agree—“that one will learn more about faculty quality at leading American law schools from the scholarly impact study . . . than from *U.S. News*.”<sup>16</sup>

11. See David L. Schwartz & Lee Petherbridge, *The Use of Legal Scholarship by the Federal Courts of Appeals: An Empirical Study*, 96 CORNELL L. REV. 1345, 1359, 1370–73 (2011) (finding that, contrary to the conventional wisdom, “there has been a marked increase in the frequency of citation to legal scholarship in the reported opinions of the circuit courts of appeals” and suggesting directions for future empirical study of the use of legal scholarship by the courts).

12. See Eisenberg & Wells, *supra* note 9, at 4 (noting that Westlaw’s Journal & Law Reviews database includes nearly 1000 journals, which, while “impressive in some respects,” appears to be limited to English language publications).

13. Leiter, *supra* note 7, at 470.

14. *Id.* at 470–71; but see Stephen Bainbridge, *Ranking Faculty Quality*, PROFESSORBAINBRIDGE.COM (May 24, 2010), <http://www.professorbainbridge.com/professorbainbridge.com/2010/05/ranking-faculty-quality.html> (arguing that the metric of citation counts to measure faculty quality is problematic in rewarding longevity and profligacy, failing to account for the immediacy and quality of the citation, etc.).

15. Eisenberg & Wells, *supra* note 1, at 377.

16. Brian Leiter, *Top 35 Law Faculties Based on Scholarly Impact, 2007*, BRIAN LEITER’S LAW SCHOOL RANKINGS (Sept. 1, 2007), [http://www.leiterrankings.com/faculty/2007faculty\\_impact.shtml](http://www.leiterrankings.com/faculty/2007faculty_impact.shtml).

Beyond the limitations inherent in any metric for measuring a faculty's scholarly impact, scholarship is but one of three traditional roles for the law professor, who is also expected to teach students seeking to enter the legal profession and to provide public service to the profession or community. Some faculty have greater teaching, administrative, or service responsibilities or burdens that necessarily limit scholarly productivity. (Indeed, for that reason, we have focused this study on traditional "classroom" faculty who have assumed higher scholarly expectations.)

Scholarly prominence is central to the reputation of the finest law schools, but the other elements of a truly excellent law school are not directly measured by the Scholarly Impact Scores. Still, because promising students may be drawn to a law school with a strong academic reputation, the scholarly presence of a law school's faculty should correlate strongly with other measures of a law school's excellence and reputation.<sup>17</sup>

Most importantly, we share Professor Leiter's view that "an assessment of academic institutions ought to weigh heavily the intellectual and scholarly caliber of the faculty, not to the exclusion of other factors, but as a way of putting *education* at the center of any evaluation of institutions in the business of educating."<sup>18</sup>

## II. THE NATURE AND METHODOLOGY OF THIS SCHOLARLY IMPACT STUDY

### A. *Selecting Law Schools for Study*

To rank law faculties by scholarly impact, we examined the tenured faculties of ninety-six law schools. Based on the results of the prior studies of scholarly impact in 2010, which included all law schools accredited by the American Bar Association (ABA),<sup>19</sup> we included all law schools that previously had ranked in or near the top seventy for scholarly impact. Through the law school associate deans' listserv, as well as announcements on various legal education blogs, we listed the law faculties that we planned to study, while inviting other law schools to prepare their own Scholarly Impact study and share that data with us. Four other law schools did share data with us, which resulted in our addition of one law school to the study.

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17. *But see* Richard A. Posner, *Law School Rankings*, 81 IND. L.J. 13, 22 (2006) ("Ranking by quality-adjusted faculty output is undoubtedly helpful information for deans, faculty, and would-be faculty . . . but probably for only a few law school applicants.")

18. Brian Leiter, *Commentary, How to Rank Law Schools*, 81 IND. L.J. 47, 50 (2006).

19. *See generally* AMERICAN BAR ASSOCIATION, *ABA-Approved Law Schools* (2012), <http://www.abanet.org/legaled/approvedlawschools/alpha.html> (listing ABA-approved law schools) (last visited Apr. 11, 2013).

### B. *Developing Faculty Rosters for Each Law School*

For the Scholarly Impact Score measure, the focus of the study is on the traditional law school professor with traditional scholarly expectations. Because the Scholarly Impact Score is derived from citations in legal journals, the proper subject is the tenured law school faculty member who is expected to contribute to that genre of legal literature. To be sure, even among traditional or “podium” law professors, some are actively and prominently engaged in scholarship that reaches audiences outside of the academy or that unfolds in venues other than law reviews. Those differences in approach and target audience exist in every law faculty that is actively and prominently engaged in scholarship, so comparisons across law school faculties collectively should be minimally affected by those variations.

Given the focus of the Scholarly Impact study, three categories of law faculty generally are not fairly included: untenured faculty, faculty with a primary appointment in clinical teaching, and faculty with a primary appointment in teaching legal research and writing.

Untenured faculty and faculty not on tenure-track are not included. Faculty who are not on tenure-track (or its equivalent) almost invariably have no or very limited scholarly expectations. As Professor Leiter explains, “untenured faculty [are excluded] from the count, since their citation counts are, for obvious reasons, always lower.”<sup>20</sup> To state the obvious, then, tenure-track faculty typically produce fewer articles during the pre-tenure stage and have not yet had an opportunity to build a portfolio of work that in turn draws significant numbers of citations. Accordingly, including such faculty in the study would tend to dilute the Scholarly Impact Score for those law faculties that happen to have a higher proportion of tenure-track compared to tenured faculty at a particular point in that law school’s history.

If a tenured faculty member had a primary appointment in clinical education or teaching legal research and writing, the individual generally was not included in the mean and median calculations of citation counts for that school. In our view, this approach more equitably reflects the diversity among law schools in treatment of clinic and legal writing faculty for tenure purposes and more realistically acknowledges the differences in scholarly expectations for faculty with different responsibilities.<sup>21</sup>

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20. Leiter, *2010 Top 25*, *supra* note 3.

21. Note that we did not exclude a faculty member from our Scholarly Impact study simply because he or she teaches a clinical or legal writing course. Many members of the faculty who have traditional scholarly expectations teach clinic courses among others, including the lead author of this study (who recently has developed an appellate clinic). And at some law schools legal writing instruction is provided by a broader segment of the faculty. In addition, both clinic and legal writing faculty often teach additional classroom courses. Instead, we looked to whether a faculty member had a primary appointment to teach in the clinic or legal writing, typically indicated by title or course assignments, and thus had correspondingly different scholarly expectations.

With respect to clinical faculty, law schools vary significantly in the proportion of their tenured faculty that have a primary appointment in the clinic and further diverge on whether such faculty are tenured (or its equivalent) or instead are under long-term contracts. In addition, among those law schools with tenured clinical faculty, scholarly expectations typically are different, both in number of publications anticipated (given the higher student contact hours involved in clinical teaching) and the type of scholarship produced (such as by including briefs or litigation documents as appropriate professional engagement). Thus, including clinical faculty as a category in the Scholarly Impact measure ordinarily would be inequitable in application toward those law schools that offer full tenure to significant numbers of clinical faculty and would unfairly fail to account for the different scholarly expectations.

At several law schools, faculty who teach in the classroom and in the clinic are not differentiated and have unified scholarly expectations, thus precluding use of these categories. When a law school informed us of integrated treatment, we accepted that law school's description and included all those faculty on the roster.

Likewise, at the smaller number of law schools with tenured legal writing faculty, scholarly expectations typically differ both quantitatively and qualitatively. Recognizing again that legal writing instruction generally places higher demands on faculty time in working closely with students and in painstaking evaluation of student writing, the tenure track for legal writing faculty ordinarily provides for fewer or smaller articles to achieve tenure. And legal writing scholarship often has a pedagogical focus, which does not lend well to the Scholarly Impact measure. Rather than drawing large number of citations in legal journals, pedagogical writing is more likely to find success by drawing attention from other teachers (and students), which may alternatively be measured by downloads of such articles, by invitations to speak at conferences, or by adoption by other teachers of the pedagogical methods or proposals.

Again, we believe the Scholarly Impact Scores measure something important about law faculties. But they do not measure everything important about law faculties—not even everything about scholarly activity.

A faculty member was credited to the school where he or she has been or will be teaching. Because the study attempts to measure the scholarly impact of a law school's current congregation of scholars, the faculty on which a law professor now sits receives the full benefit of all citations, past and present. By inquiring of each law school in the study, learning from individual faculty members making a move, and searching online lists of faculty moves, faculty moving from one school to another with tenure were credited to their new school home. To finalize the ranking, we adopted June 15, 2012 as the cut-off date, so this ranking does not account for tenured lateral moves occurring or discovered after that date. Absent an announce-

ment of a permanent move, faculty visiting at another law school were assigned to the faculty of their home schools.

For the few cases in which a tenured law professor regularly divides teaching time between two law schools (typically a semester in each), both law schools were credited with that person's citations. Similarly, tenured faculty with a joint appointment in both the law school and another unit of a university were included. While we are aware of the growing phenomenon of tenured law professors simultaneously being active partners in law firms, which may raise questions of whether each such person truly remains a full-time law professor,<sup>22</sup> in this 2012 study, we have accepted at face value the attribution of regular tenure status to these persons by their respective law schools.

After preparing preliminary faculty rosters for the law schools in our study, we shared those rosters with the deans' offices at each school, asking for confirmation that the list contained all tenured faculty with standard scholarly obligations. We received helpful responses, allowing us to correct errors and confirm proper rosters, from nearly all of the schools in our study, a response rate of about 90% (eighty-six of ninety-six law schools).

### C. *Conducting the Citation Counts for Scholarly Impact*

Defining "Scholarly Impact" as the acknowledgment of a law professor or the use of a law professor's scholarship in a subsequent work of published legal scholarship, the study measures that "Scholarly Impact" through counts of total citations in law reviews over the past five years. For each tenured faculty member on each law faculty, we searched the Journals and Law Reviews (JLR) database in Westlaw. To focus on the preceding five years, we used the search "firstname /2 lastname and date(aft 2006) and date(bef 2012)." When a law school alerted us that a faculty member had used more than one name in professional life, we altered the search term to account for those alternatives, which typically made no significant individual difference other than for faculty who had published under more than one last name during their careers.

When a faculty member's name included a name or word that may be common in contemporary usage or draw prominent historical references or when the first set of twenty results in the Westlaw search uncovered false "hits," we did not rely solely on the raw search result count. Instead, we examined the first fifty results (or all results if there were fewer than fifty), compared them to a list of publications by that faculty member, identified which of the first fifty results were to the person under study, and then

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22. See Brian Leiter, *Law Professors with Tenure Who Are Also Law Firm Partners*, BRIAN LEITER'S LAW SCHOOL REPORTS (July 2, 2012) <http://leiterlawschool.typepad.com/leiter/2012/07/law-professors-with-tenure-who-are-also-law-firm-partners.html>.

applied the percentage of correct hits in that first fifty to the full search results.

Citation counts for each tenured faculty member at each law school were conducted independently by two law student research assistants pursuant to a set of instructions and after a training session that included work on a practice faculty roster. Those independent citation count results were then reconciled, double-checked, and replicated when in conflict by Professor Sisk and by Librarians Aggerbeck, Hackerson, and Wells.

Even though our search in the Westlaw law journal database was restricted to publications dated before 2012, Westlaw continues to add further publications with a formal publication date prior to a particular calendar date for some period of time afterward. Thus, even with a date restriction to articles published in 2011 and earlier, a citation count of a law professor that is conducted in, say, June of 2012 may be slightly higher than the citation count for that same person in January of 2012. Accordingly, we waited until May 2012, for the addition of new pre-2012 articles to stabilize. We then conducted all citation counts within a three-week period to further minimize any variation based on new additions of pre-2012 articles.

#### *D. Calculating the Scholarly Impact Scores and Ranking*

Following Professor Leiter's past approach, "[s]chools are rank-ordered by their weighted score, which is the mean X 2 plus the median (since mean is more probative of overall impact than median, it gets more weight in the final score)."<sup>23</sup> In the detailed ranking table below, the ordinal ranking of law schools is accompanied by a reporting of the mean and the median, as well as the weighted score.<sup>24</sup>

Because it has not yet finished hiring its tenured faculty, because the number of tenured faculty remains well below that of other law schools that rank in the top ten by Scholarly Impact Score, and because Dean Erwin Chemerinsky's high number of citations makes him an outlier, we made an adjustment to the raw mean score for the University of California at Irvine. In 2010, Professor Leiter explained:

The new law faculty at the University of California at Irvine presents a special case, since they have only filled about a third of their planned faculty slots. Given Dean Chemerinsky's very high citation count (he is now the most cited full-time law professor in

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23. Leiter, *2010 Top 25*, *supra* note 3.

24. Because the results otherwise could be distorted by comparative ranking of a law school with a small tenured faculty that included but a single highly cited scholar, which could then produce a misleading mean figure for the faculty as a whole, we determined in advance that a law school would be eligible for ranking for the Scholarly Impact Scores only if at least four tenured faculty members at that school achieved a citation count of 100. The primary focus of our study was on law faculties, and a law faculty's collective scholarly impact cannot be measured based upon a single member. In the end, no law school was excluded from the top third ranking on that basis.

the country, with Sunstein's departure for government service), to simply add his cite count to the currently relatively small number of faculty would produce highly misleading results. At the same time, as a new law school, some indication of its scholarly impact performance seems especially relevant, so I have adopted the following device: I have assumed that the next hires will have the same scholarly impact as the third of the faculty already hired (not including Chemerinsky), and thus have estimated Irvine's per capita impact score on that basis (so basically Chemerinsky's citations plus (the total citations of all other faculty times 3) divided by the (current faculty size x 3) plus Chemerinsky).<sup>25</sup>

Following that same approach, but adjusting the calculation to assume that California–Irvine has grown to approximately half of its eventual tenured strength, California–Irvine still ranks very high in Scholarly Impact Scores.<sup>26</sup>

Because the scores of law schools below the top third bunch together, even more than the considerable clustering that appears at several points in the ranking, we did not attempt to rank further.<sup>27</sup> Based on our experience in 2010 and again this year, to extend the ranking further would impose ranking level differences on law schools despite diminishing variation in citation counts and would result in ties at ordinal rank levels that would include perhaps dozens of law schools. Accordingly, we chose to rank approximately the top one-third of law school faculties by scholarly impact.

Even among those schools included in this Scholarly Impact top third ranking, the differences between cohorts of schools ranked close together may be small. As Professors Eisenberg and Wells warn, “the move from continuous measures to ordinal ranks based on the continuous measures can both exaggerate and understate differences in the underlying information content of the continuous measures.”<sup>28</sup> Accordingly, in Table 2, we have not only provided a ranking but the Scholarly Impact Score, the mean number of citations, and the median number of citations for each law faculty in order.

With this in mind, readers should note that, while there certainly is a meaningful difference between a rank of forty-one and a rank of twenty-five or a rank of fifty-five, there may be little meaningful difference be-

25. Leiter, *2010 Top 25*, *supra* note 3.

26. The scholarly strength of the California–Irvine faculty and the validity of the projection of continued strong hiring (amply evidenced since 2010) is confirmed by the fact that, even if Dean Chemerinsky's citations were to be removed altogether, the faculty would achieve a Scholarly Impact Score that would rank the school at #11.

27. The clustering together of schools with scores only slightly apart increased beyond where we ended the ranking at #64 (with a total of seventy-one law faculties). For example, the law faculties at DePaul University, Drexel University, Florida International University, Northeastern University, the University of Miami, the University of Richmond, and Rutgers University at Newark fall just outside of the ranking.

28. Eisenberg & Wells, *supra* note 9, at 16.



tween a rank of thirty and a rank of thirty-eight. We did employ scaling from the top score for the purpose of grouping together schools with similar scores.<sup>29</sup> Even so, close ranking should not be given undue weight. For example, three schools tied for #30, five schools tied at #33, and three schools tied at #38. As a consequence, law schools with Scholarly Impact Scores that were not much more than thirty points apart still ranged across nine ranking levels. Again, the continuous Scholarly Impact Scores, along with the mean and median numbers, are provided as well.

In addition to the ranking of law faculties collectively by Scholarly Impact Scores, the study identifies the individual tenured law faculty members at each ranked law school with the highest citation counts. For the top twenty-five ranked faculties, we identified the ten most cited faculty members at each law school. For schools below the top twenty-five, we have reported the ten most cited scholars who were also above the median Scholarly Impact Score for that faculty. Note that the most cited scholars at each school are listed in alphabetical order by last name, not by ordinal rank within that faculty.

In some cases, older tenured professors account for a larger share of a faculty's high citation count, which may foreshadow significant changes in scholarly impact for that school in future years. We have followed Professor Leiter's lead in marking with an asterisk those who turn seventy or older in 2012.

As with any study of this size, involving as it did the painstaking recording of hundreds of thousands of individual citations for thousands of tenured faculty members at nearly 100 law schools, we undoubtedly have made errors, despite best efforts and multiple cross-checks. Because we provided opportunities to each law school to correct errors at preliminary stages, any errors brought to our attention after we announced the final ranking will be noted for adjustment in future years, but will not result in updates to or changes of the final 2012 ranking.

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29. Because law schools with only slightly different weighted scores may not be meaningfully different in scholarly impact, we scaled scores from the top of the overall ranking. As Professor Leiter had done previously, we assigned a scaled score of 100% to the law faculty with the first-place position in the ranking, which is Yale University with a weighted score of 1629. Every other law school faculty's score was then calculated as a percentage of the 1629 score. Law school faculties that shared the same percentage—with standard rounding rules to the nearest whole number (based on calculations to two numerals to the right of the decimal point of the percentage)—were listed together as tied for a particular rank.

## III. SCHOLARLY IMPACT RANKINGS FOR TOP THIRD OF LAW FACULTIES

TABLE 2: DETAILED SCHOLARLY IMPACT RANKING OF LAW FACULTIES, 2012

Ranking	Law School	Weighted Score	Mean	Median	Most Cited Scholars (* indicates 70 or older in 2012)
1	Yale	1629	597	435	B. Ackerman, A. Amar, I. Ayres, J. Balkin, W. Eskridge, D. Kahan, J. Macey, R. Post, J. Resnik, R. Siegel
2	Harvard	1326	481	364	L. Bechuk, R. Fallon, J. Goldsmith, L. Kaplow, L. Lessig, M. Minow, S. Shavell, *L. Tribe, M. Tushnet, A. Vermeule
3	Chicago	1215	440	335	D. Baird, T. Ginsburg, B. Leiter, S. Levmore, R. McAdams, M. Nussbaum, E. Posner, G. Stone, D. Strauss, D. Weisbach
4	Stanford	1176	439	298	*L. Friedman, R. Gilson, P. Goldstein, *R. Gordon, P. Karlan, L. Kramer, M. Lemley, M. McConnell, D. Rhode, K. Sullivan
5	New York U.	1141	402	337	R. Dreyfuss, *R. Dworkin, R. Epstein, B. Friedman, S. Issacharoff, *A. Miller, G. Miller, R. Pildes, *R. Stewart, J. Waldron
6	Columbia	962	345	272	J. Coffee, *G. Fletcher, R. Gilson, J. Ginsburg, *K. Greenawalt, T. Merrill, *H. Monaghan, *J. Raz, R. Scott, W. Simon, T. Wu
7	California–Irvine	922	352	218	D. Burk, E. Chemerinsky, C. Fisk, B. Garth, R. Hasen, C. Leslie, E. Loftus, C. Menkel-Meadow, R. Reese, C. Tomlins
8	Vanderbilt	891	307	277	M. Blair, L. Bressman, C. Guthrie, N. King, E. Rubin, J.B. Ruhl, S. Sherry, C. Slobogin, R. Thomas, W. Viscusi
9	Cornell	793	283	227	G. Alexander, K. Clermont, M. Dorf, T. Eisenberg, V. Hans, M. Heise, R. Hillman, J. Rachlinski, S. Schwab, L. Stout
10	California–Berkeley	788	299	190	*J. Choper, R. Cooter, *M. Eisenberg, D. Farber, A. Guzman, P. Menell, R. Merges, P. Samuelson, J. Yoo, *F. Zimring
11	Pennsylvania	752	273	206	S. Bibas, W. Bratton, S. Burbank, J. Fisch, G. Parchomovsky, D. Roberts, P. Robinson, E. Rock, D. Skeel, C. Yoo
11	Duke	744	263	218	J. Boyle, C. Bradley, *P. Carrington, J. Cox, M. Gulati, L. Helfer, A. Rai, J. Salzman, S. Schwarcz, E. Young
13	Northwestern	705	259	187	R. Allen, B. Black, S. Calabresi, *A. D'Amato, D. Dana, S. Diamond, A. Koppelman, J. McGinnis, J. Pfander, M. Redish

14	UCLA	679	251	177	S. Bainbridge, D. Carbado, K. Crenshaw, J. Kang, R. Korobkin, L. Lopucki, H. Motomura, N. Netanel, K. Raustiala, E. Volokh
15	Michigan	673	240	193	S. Bagenstos, S. Croley, R. Eisenberg, S. Gross, *J. Krier, J. Litman, C. MacKinnon, A. Pritchard, *M. Radin, *J. White
16	Virginia	607	226	155	J. Duffy, B. Garrett, J. Jeffries, *E. Kitch, D. Laycock, C. Nelson, S. Prakash, J. Ryan, F. Schauer, *G.E. White
16	George Washington	599	216	167	N. Cahn, L. Cunningham, O. Kerr, W. Kovacic, S. Murphy, R. Pierce, J. Rosen, M. Selmi, D. Shelton, D. Solove
18	Georgetown	565	216	133	T. Aleinikoff, R. Barnett, J. Cohen, D. Cole, L. Gostin, N. Katyal, D. Langevoort, D. Luban, L. Solum, R. Thompson
19	Minnesota	556	190	176	T. Cotter, R. Duff, K. Hickman, C. Hill, B. Karkkainen, H. Kritzer, B. McDonnell, F. Parisi, M. Tonry, D. Weissbrodt
19	Texas	550	198	154	M. Berman, R. Bone, R. Chesney, F. Cross, D. Jinks, *S. Levinson, T. McGarity, *L. Sager, W. Wagner, J. Westbrook
21	Boston University	501	173	155	G. Annas, J. Beermann, S. Dogan, *T. Frankel, W. Gordon, K. Hylton, G. Lawson, T. Maclin, L. McClain, M. Meurer
21	George Mason	499	177	145	D. Bernstein, H. Butler, E. Claey's, M. Greve, B. Kobayashi, N. Lund, A. Mossoff, T. Muris, I. Somin, T. Zywicki
23	California–Davis	469	172	125	V. Amar, A. Brownstein, A. Chander, J. Chin, A. Harris, E. Imwinkelried, K. Johnson, A. Lin, M. Sunder, D. Ventry
24	USC	455	167	121	L. Epstein, S. Estrich, E. Garrett, G. Hadfield, E. Kamar, E. McCaffery, M. Mccubbins, R. Rasmussen, N. Staudt, *C. Stone
24	Cardozo	454	161	132	B. Frischmann, M. Gilles, M. Hamilton, J. Hughes, M. Rosenfeld, B. Scheck, A. Sebok, A. Stein, S. Sterk, E. Zelinsky
26	Emory	443	159	125	R. Ahdieh, W. Buzbee, *W. Carney, M. Dudziak, M. Fineman, J. Nash, M. Perry, R. Schapiro, J. Witte, B. Woodhouse
26	Washington U.	436	148	140	S. Appleton, K. Brickey, P. Joy, P. Kim, *D. Mandelker, N. Richards, L. Sadat, H. Sale, K. Syverud, B. Tamanaha

28	Illinois	429	146	137	M. Finkin, E. Freyfogle, P. Heald, D. Hyman, J. Kesan, R. Lawless, M. Moore, C. Tabb, S. Thomas, C. Williams
28	Colorado	418	142	134	V. Fleischer, M. Hart, P. Huang, S. Moss, C. Mueller, P. Ohm, P. Schlag, A. Schmitz, P. Weiser, *C. Wilkinson
30	Ohio State	414	150	114	D. Berman, G. Caldeira, M. Chamallas, R. Colker, S. Davidoff, J. Dressler, C. Fairman, D. Merritt, P. Shane, P. Swire
30	U. St. Thomas (Minn.)	411	151	109	T. Berg, T. Collett, R. Delahunty, N. Hamilton, L. Johnson, M. Paulsen, G. Sisk, S. Stabile, R. Vischer
30	Washington & Lee	403	140	123	N. Demleitner, M. Drumbl, J. Fairfield, S. Franck, L. Johnson, T. Jost, E. Luna, D. Millon, A. Spencer, R. Wilson
33	Hofstra	399	142	115	A. Burke, R. Bush, J. Dolgin, E. Freedman, *M. Freedman, J. Grossman, J. Ku, R. Neumann, A. Resnick, A. Schepard
33	Arizona	397	154	89	J. Anaya, J. Braucher, K. Engel, *D. Gantz, R. Glennon, T. Massaro, M. Miller, *C. Rose, W. Sjostrom, R. Williams
33	Indiana–Bloomington	394	129	136	C. Bradley, F. Cate, K. Dau-Schmidt, D. Fidler, C. Geyh, M. Grossberg, W. Henderson, M. Janis, D. Johnsen, L. Lederman
33	North Carolina	392	144	104	A. Brophy, J. Conley, V. Flatt, M. Gerhardt, T. Hazen, M. Jacoby, W. Marshall, R. Mosteller, G. Nichol, G. Polsky, J. Wegner
33	Florida State	385	136	113	F. Abbot, R. Atkinson, *J. Dodge, A. Hirsch, S. Hsu, M. Kapp, W. Logan, D. Markel, D. Markell, M. Seidenfeld
38	Hastings	376	143	90	W. Dodge, S. Dodson, D. Faigman, *G. Hazard, J. Leshy, R. Marcus, U. Mattei, N. Roht-Arriaza, D. Weisberg, J. Williams
38	Notre Dame	375	133	109	R. Alford, M. Brinig, *J. Finnis, N. Garnett, R. Garnett, M. McKenna, J. Nagle, N. Newton, M. O'Connell, J. Tidmarsh
38	Case Western	370	132	106	J. Adler, G. Dent, J. Entin, P. Giannelli, S. Hoffman, R. Ku, K. McMunigal, L. Mitchell, C. Nard, M. Scharf
41	Brooklyn	352	122	108	A. Bernstein, J. Fanto, M. Garrison, E. Janger, *R. Karmel, E. Schneider, C. Serkin, L. Solan, N. Tebbe, *A. Twerski
41	William & Mary	351	120	111	J. Barnard, N. Devins, A. Gershowitz, M. Green, L. Heymann, C. Koch, P. Marcus, M. Stein, *W. Van Alstyne, T. Zick
43	Fordham	348	128	92	J. Brudney, D. Capra, M. Flaherty, S. Foster, J. Gordon, B. Green, S. Griffith, S. Katyal, E. Leib, J. Reidenberg, B. Zipursky

43	Maryland	337	125	87	T. Banks, D. Citron, M. Ertman, D. Gifford, M. Graber, R. Percival, W. Reynolds, J. Singer, M. Stearns, R. Steinzor
45	Houston	327	114	99	D. Crump, L. Hoffman, *P. Janicke, C. Joyce, J. Lipton, G. Moohr, R. Nimmer, M. Olivas, J. Paust, J. Sanders
45	Nevada–Las Vegas	325	117	91	L. Berger, L. Edwards, R. Garcia, S. Lazos, T. Main, A. McGinley, N. Rapoport, J. Stempel, J. Sternlight, D. Tanenhaus
47	Utah	310	110	90	R. Adler, A. Anghie, P. Cassell, R. Craig, L. Francis, A. Guiora, R. Keiter, L. Kessler, C. Peterson, *A. Reitze
47	American	309	113	83	K. Anderson, J. Baker, A. Davis, D. Hunter, P. Jaszi, J. May, D. Orentlicher, N. Polikoff, A. Taslitz, S. Vladeck
47	Alabama	307	107	93	A. Durham, S. Hamill, P. Horwitz, R. Krotoszynski, J. Leonard, A. Morriss, M. Pardo, P. Pierson, K. Randall, S. Randall
47	Pittsburgh	305	111	83	D. Brake, R. Brand, D. Branson, M. Crossley, L. Frolik, D. Harris, *A. Hellman, J. Lobel, M. Madison, R. Wasserman
47	Iowa	303	115	73	R. Bezanson, C. Bohannon, S. Burton, A. Estin, H. Hovenkamp, S. Kurtz, A. Onwuachi-Willig, M. Osiel, T. Pettys, A. Wing
52	Hawaii	299	126	47	D. Antolini, H. Beh, D. Callies, L. Krieger, C. Lawrence, J. Levinson, M. Matsuda, J. Ramsfield, A. Soifer, E. Yamamoto
52	U. San Diego	298	119	60	L. Alexander, A. Bell, R. Brooks, D. Dripps, O. Lobel, D. McGowan, F. Partnoy, M. Ramsey, M. Rappaport, S. Smith
52	Chicago–Kent	295	105	85	L. Andrews, E. Brody, H. Krent, E. Lee, M. Malin, N. Marder, H. Perritt, M. Rosen, *A. Tarlock, R. Wright
52	Arizona State	293	111	71	K. Abbott, D. Bodansky, R. Clinton, I. Ellman, A. Fellmeth, C. Hessick, J. Hodge, *J. Murphy, M. Saks, R. Tsosie
52	Boston College	287	100	87	M. Brodin, *G. Brown, R. Cassidy, D. Coquillette, H. Greenfield, R. Jones, D. Kanstroom, J. Liu, Z. Plater, A. Yen
57	New York Law School	281	99	83	E. Chambliss, S. Ellmann, D. Hunter, R. Jonakait, B. Noveck, M. Perlin, *E. Purcell, *D. Schoenbrod, N. Strossen, R. Teitel
57	Brigham Young U.	280	103	74	W. Durham, J. Fee, *J. Fleming, F. Gedicks, D. Moore, J. Rasband, B. Scharffs, D. Smith, L. Wardle

57	Georgia	277	101	75	D. Amann, E. Burch, D. Coenen, *W. Hellerstein, E. Leonard, J. Miller, P. Rutledge, J. Smith, *A. Watson, M. Wells
57	Tulane	277	104	69	A. Feibelman, *R. Force, J. Gordley, S. Griffin, *O. Houck, M. Kornhauser, G. Lunney, D. Meyer, *V. Palmer, *E. Sherman
57	Florida	274	101	72	N. Dowd, M. Fenster, J. Harrison, B. Hernandez-Truyol, L. Lidsky, M. McMahon, L. Noah, W. Page, L. Riskin, M. Wolf
57	Missouri–Columbia	274	100	74	D. Abrams, F. Bowman, D. Crouch, C. Esbeck, R. Gely, J. Lande, P. Peters, R. Reuben, R. Uphoff, C. Wells
57	Temple	273	102	69	J. Baron, S. Burris, J. Dunoff, D. Hoffman, D. Kairys, J. Lipson, G. Mandel, D. Post, A. Sinden, P. Spiro
64	Seattle	268	102	64	S. Bender, R. Chang, M. Chon, R. Delgado, *D. Engdahl, J. Mitchell, M. Niles, A. Siegel, D. Skover, J. Stefancic
64	Wake Forest	268	105	58	J. Collins, *M. Curtis, M. Green, M. Hall, J. Knox, A. Palmiter, W. Parker, S. Shapiro, M. Taylor, R. Wright
64	Seton Hall	265	91	83	M. Denbeaux, E. Hartnett, S. Lubben, S. Maldonado, F. Pasquale, M. Poirier, D. Risinger, A. Ristroph, A. Steinman, C. Sullivan
64	Pennsylvania State	263	93	77	T. Carbonneau, L. Cata Backer, E. Dannin, D. Kaye, J. Lopatka, C. Rogers, V. Romero, S. Ross, L. Terry, N. Welsh
64	Rutgers–Camden	262	101	60	L. Bosniak, M. Carrier, J. Feinman, K. Ferzan, E. Goodman, F. Lastowka, E. Maltz, D. Patterson, B. Stephens, R. Williams
64	Chapman	260	103	54	M. Bazylar, T. Bell, J. Eastman, K. Eggert, D. Kochan, H. Noyes, R. Redding, L. Rosenthal, R. Rotunda, *V. Smith
64	Wisconsin	259	90	79	A. Althouse, *P. Carstensen, R. Charo, H. Erlanger, S. Ghosh, H. Klug, E. Mertz, M. Raymond, J. Rogers, D. Schwartz
64	Cincinnati	253	94	65	T. Armstrong, L. Billionis, B. Black, A. Bryant, P. Caron, J. Cogan, M. Godsey, E. Houh, B. Mank, M. Solimine, J. Tomain

#### IV. SCHOLARLY IMPACT FINDINGS, COMPARATIVE RANKINGS, AND COMMENTARY

##### A. *Summary of Scholarly Impact Ranking and Significant Findings*

Representing about one-third of accredited law schools, the seventy-one law faculties ranked in this study have concretely demonstrated a strong

collective commitment to legal scholarship and have entered robustly into the national scholarly discourse.

As was true when Scholarly Impact was last ranked in 2010, the law faculties at Yale University, Harvard University, the University of Chicago, Stanford University, and New York University stand out nationally in scholarly prominence. In their scholarly impact study conducted more than a decade ago, Professors Eisenberg and Wells also found that “Yale, Chicago, Harvard, and Stanford rank alone at the top.”<sup>30</sup> In terms of Scholarly Impact Scores, NYU is joining those traditionally top schools.

Rising two ranking places into the Scholarly Impact top ten since 2010, Vanderbilt University now ranks at #8 and Cornell University at #9. Columbia University is at #6, and the University of California–Berkeley at #10. The University of California–Irvine, which has expanded its faculty since 2010, moves up to #7 in 2012, from #9 in 2010, even after an adjustment made to its mean Scholarly Impact Score to reflect that it has not yet reached full tenured faculty strength.<sup>31</sup>

Rounding out the top twenty in Scholarly Impact are other law schools traditionally ranked among the nation’s elite institutions—the University of Pennsylvania, Duke University, Northwestern University, the University of Michigan, the University of California–Los Angeles, the University of Virginia, George Washington University, Georgetown University, the University of Minnesota, and the University of Texas.

Inside the top twenty-five for Scholarly Impact ranking are Boston University, George Mason University, the University of California at Davis, the University of Southern California, and the Cardozo School of Law at Yeshiva University, with Emory University, Washington University, the University of Illinois, and the University of Colorado landing just outside the top twenty-five.

Three law faculties are tied for the #30 position: Ohio State University, the University of St. Thomas (Minnesota), and Washington & Lee University. In close proximity, eight law faculties are tightly ranked together at levels #33 and #38: Hofstra University, the University of Arizona, the University of Indiana at Bloomington, the University of North Carolina, Florida State University, Hastings College of Law, the University of Notre Dame, and Case Western Reserve University. Given the small differences among these scores, these eleven law faculties should be regarded as largely equivalent in scholarly impact, even though the Scholarly Impact ranking stretches across nine levels.

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30. Eisenberg & Wells, *supra* note 1, at 373.

31. *See supra* note 26 and accompanying text.

### B. Scholarly Impact Ranking Compared to U.S. News Rankings

Based on Scholarly Impact Scores, several law faculties appear to be significantly undervalued in popular rankings of law schools. The faculties at eighteen law schools achieve much higher Scholarly Impact rankings than those assigned by *U.S. News & World Report*:

\* Brooklyn Law School stands at #65 in the 2013 *U.S. News* ranking, which is twenty-four ordinal ranking levels below its Scholarly Impact ranking at #41.

\* In its 2013 ranking, *U.S. News* places Cardozo near the top of the second quartile of law schools at #56.<sup>32</sup> In Scholarly Impact ranking, Cardozo is inside the top twenty-five (at #24).

\* Case Western Reserve University is ranked by *U.S. News* at #67, but is nearly thirty ordinal ranking levels higher at #38 for Scholarly Impact.

\* Chapman University hovers outside the top 100 in *U.S. News* (presently at #110), but its Scholarly Impact ranking is forty-six ordinal ranking levels higher at #64.

\* Colorado stands at #44 in *U.S. News*, but at #28 in Scholarly Impact.

\* In the last couple of years, Florida State has been just inside or just outside the top fifty in *U.S. News* (at #51 for 2013), showing an upward climb, but it ranks still higher at #33 in Scholarly Impact.

\* While the 2013 *U.S. News* ranking inserts George Mason into the first quartile at #39, the school's Scholarly Impact ranking is much higher at #21.

\* The University of Hawaii is just outside the top fifty in Scholarly Impact ranking (at #52), but drops down fifty-four ordinal ranking levels to #106 in *U.S. News* ranking.

\* Although now solidly situated inside the *U.S. News* top one-hundred (at #89), Hofstra remains remarkably underappreciated for its scholarly contributions, which earns it a Scholarly Impact ranking of #33—a difference of fifty-six ordinal levels.

\* The University of Houston ranks at #57 for *U.S. News*, but climbs to #45 in Scholarly Impact ranking.

\* The University of Missouri at Columbia has been rising again in *U.S. News* ranking, now coming in at #76. But it secures a rank of #57 in Scholarly Impact.

\* The University of Nevada at Las Vegas continues to rank in the second quartile for *U.S. News* at #76, but rises more than thirty ordinal ranking levels to #45 for Scholarly Impact.

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32. Although *U.S. News* now disapproves of references to the top fifty ranking as the First Tier and the next fifty as the Second Tier, such shorthand descriptions remain customary in the legal academy. To avoid the reference to “tiers” and be more descriptive, we speak in terms of “quartiles.” With approximately 200 ABA-accredited law schools, fifty law schools fall into each ranking quartile.



\* New York Law School is down at #135 in *U.S. News*, but comes up seventy-eight ordinal levels to #57 in Scholarly Impact ranking.

\* Pennsylvania State University ranks #64 in Scholarly Impact scoring, while it ranks at #76 for *U.S. News*.

\* The University of Pittsburgh stands at #47 in scholarly impact, but is at #69 in the *U.S. News* ranking.

\* Rutgers University at Camden is thirty-five ordinal levels higher in Scholarly Impact ranking (#64) than in *U.S. News* ranking (#99).

\* Seattle University ranks at #64 for Scholarly Impact, but at #82 for *U.S. News*.

\* Presumably due in large part to its recent entry on the scene,<sup>33</sup> the University of St. Thomas (Minnesota) is the most dramatically undervalued law school when evaluated by Scholarly Impact. The University of St. Thomas rises into the top thirty in the Scholarly Impact Ranking, while being regularly ranked by *U.S. News* outside the top one-hundred.<sup>34</sup>

While the forgoing commentary on *U.S. News* rankings may be interesting to many readers, the “Peer Assessment” (commonly described in the legal academy as the “Academic Reputation”) survey of *U.S. News*<sup>35</sup> is a better point of comparison:

First, the general *U.S. News* ranking is based on a questionable multi-variable methodology, involving normalizing and then weighting each variable, with a scaling of the combined scores.<sup>36</sup> The Academic Reputation survey, sent to certain members of each law school’s administration and faculty, is more likely to reflect the legal academy’s collective assessment of the scholarly prominence of the faculty at a particular law school.<sup>37</sup> With specific reference to “Brian Leiter’s careful study,” Judge Richard Posner

33. See *infra* notes 42–43 and accompanying text (showing how law schools’ current reputations track past reputations to a high degree and changes in reputation are slow to appear).

34. For 2013, the University of St. Thomas was originally ranked in the third quartile at #119, but then was “unranked” after it voluntarily reported to *U.S. News* an error in employment data that it had correctly provided on another page of the *U.S. News* form. See Letter from Thomas Mengler, Dean and Ryan Chair in Law at the University of St. Thomas School of Law, to Bob Morse, *U.S. News & World Report* Author (Mar. 26, 2012) available at <http://www.stthomas.edu/law/news/an-open-letter-to-bob-morse-from-dean-mengler.html>.

35. See Robert Morse & Sam Flanigan, *Methodology: Law School Rankings*, *U.S. NEWS EDUCATION* (Mar. 12, 2012), <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2012/03/12/methodology-law-school-rankings> (explaining the Peer Assessment Score, which is weighted at 25%, was determined when “[L]aw school deans, deans of academic affairs, chairs of faculty appointments, and the most recently tenured faculty members were asked to rate programs on a scale from marginal (1) to outstanding (5).”).

36. See generally Seto, *supra* note 8, at 496–507 (describing the measurement and weighting of such variables as peer assessment, assessment by judges and lawyers, LSAT scores for entering law students, undergraduate grade point averages for entering law students, acceptance rates in admissions, employment rates of graduates, bar passage rates, and law school expenditures per student).

37. See Morse & Flanigan, *supra* note 35.

writes that “[f]aculty naturally think that the best index to a law school’s quality is the academic prowess of the faculty.”<sup>38</sup>

Second, several of the variables in the *U.S. News* ranking are notoriously subject to manipulation by law schools, including some information that is not subject to independent verification and analysis.<sup>39</sup> Whatever its other flaws and limitations, the Academic Reputation survey is outside the control of individual law schools.

The following table lists law faculties in order by Scholarly Impact Ranking for comparison with the schools’ 2013 rating in the *U.S. News* Academic Reputation survey (the latter of which was arranged and ranked in order by Professor Paul Caron on the TaxProf blog).<sup>40</sup>

TABLE 3: COMPARISON OF FACULTY SCHOLARLY IMPACT RANKING (2012) WITH *U.S. NEWS* ACADEMIC PEER REPUTATION RANKING (2013)

Law School	Scholarly Impact Ranking	<i>U.S. News</i> Academic Reputation Ranking
Yale	1	1
Harvard	2	2
Chicago	3	4
Stanford	4	2
NYU	5	6
Columbia	6	4
California–Irvine	7	Not yet ranked
Vanderbilt	8	17
Cornell	9	12
California–Berkeley	10	7
Pennsylvania	11	10
Duke	11	10
Northwestern	13	14
UCLA	14	16
Michigan	15	7
Virginia	16	9
George Washington	16	20
Georgetown	18	12
Minnesota	19	20

38. Posner, *supra* note 17, at 22.

39. See Brian Leiter, *The U.S. News Law School Rankings: A Guide for the Perplexed*, BRIAN LEITER’S LAW SCHOOL RANKINGS (May 2003), <http://www.leiterrankings.com/usnews/guide.shtml> (noting, for example, that schools self-report expenditure data, which makes it highly manipulable by accounting devices); see also Seto, *supra* note 8, at 498 (explaining *U.S. News* did not disclose the table it used to convert median LSAT scores to percentile equivalents).

40. Paul L. Caron, *2013 U.S. News Peer Reputation Rankings (v. Overall Rankings)*, TAX-PROF BLOG (Apr. 15, 2010), [http://taxprof.typepad.com/taxprof\\_blog/2010/04/2011-us-news.html](http://taxprof.typepad.com/taxprof_blog/2010/04/2011-us-news.html).

Texas	19	14
Boston University	21	24
George Mason	21	51
California–Davis	23	24
USC	24	18
Cardozo	24	48
Emory	26	23
Washington University	26	18
Illinois	28	39
Colorado	28	39
Ohio State	30	29
U. St. Thomas (Minn.)	30	138
Washington & Lee	30	29
Hofstra	33	84
Arizona	33	35
Indiana–Bloomington	33	29
North Carolina	33	20
Florida State	33	48
Hastings	38	29
Notre Dame	38	29
Case Western	38	58
Brooklyn	41	58
William & Mary	41	29
Fordham	43	35
Maryland	43	46
Houston	45	65
Nevada–Las Vegas	45	96
Utah	47	51
American	47	46
Alabama	47	39
Pittsburgh	47	51
Iowa	47	24
Hawaii	52	84
U. San Diego	52	51
Chicago–Kent	52	65
Arizona State	52	39
Boston College	52	24
New York Law School	57	114
Brigham Young U.	57	51
Georgia	57	39
Tulane	57	39
Florida	57	35
Missouri–Columbia	57	58
Temple	57	58

Seattle	64	71
Wake Forest	64	39
Seton Hall	64	71
Pennsylvania State	64	84
Rutgers–Camden	64	71
Chapman	64	138
Wisconsin	64	24
Cincinnati	64	71

For 41% of the schools we ranked, the faculty’s Scholarly Impact Ranking and the school’s Academic Reputation Ranking are identical or within five ordinal positions. Another 21% vary between six and ten ordinal positions. This confirms a strong correlation between a faculty’s scholarly prominence and assessment of its academic quality by other legal academics. Indeed, Professor Alfred Brophy has calculated that our 2012 weighted Scholarly Impact Scores achieve a .85 correlation rate with the *U.S. News* peer assessment scoring.<sup>41</sup>

However, for several law schools, the deviation between the two measures is more pronounced, stretching to more than seventy ranking positions for two law schools, both of which were founded within the past two decades (the University of St. Thomas in Minnesota and Chapman University).

Comparing the top twenty-five law faculties in Scholarly Impact ranking with the academic reputation scores for those schools, the most remarkable departures are for Vanderbilt, Cardozo, and George Mason, in reverse order of size of disparity. Vanderbilt is strong in academic reputation at #17, but rises up into the top ten (at #8) for Scholarly Impact. Cardozo is inside the top quartile on both ranking metrics, but still scores twenty-four ordinal levels higher on Scholarly Impact (at #24) than on academic reputation (at #48). George Mason pivots on the top quartile line in academic reputation (at #51), but jumps thirty ordinal rank levels higher at #21 on Scholarly Impact. The new law school at the University of California–Irvine, which is not yet ranked by *U.S. News* or included in its academic reputation survey, continues to make a powerful showing in Scholarly Impact Ranking, rising from #9 in 2010 to #7 in 2012.

Looking at the other schools in the Scholarly Impact top forty, wide variations between academic reputation and scholarly impact as measured by citations suggest that such schools as Illinois, Colorado, the University of St. Thomas (Minnesota), Hofstra, Florida State, and Case Western are

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41. Alfred Brophy, *Sisk Study of Scholarly Impact, 2012*, THE FACULTY LOUNGE (Aug. 9, 2012), <http://www.thefacultylounge.org/2012/08/sisk-study-of-scholarly-impact-.html>. Brophy also found that the 2012 Scholarly Impact scores correlated “.74 with the U.S. News lawyer/judge assessment, .84 with the LSAT 75th percentile, and .74 with the number of citations to the school’s main law [journal].”

considerably underappreciated for the scholarly prominence of their faculties. Among these schools, Hofstra and the University of St. Thomas (Minnesota) rank among the leading thirty-three in the country in Scholarly Impact Scores, but have been relegated down to or not far above the third quartile in the *U.S. News* survey of academic reputation.

As Professor Leiter has noted, the *U.S. News* survey method produces “an echo chamber, with the reputation of a school essentially tracking the overall rankings from prior years by U.S. News.”<sup>42</sup> More than a decade ago, Professor Richard Schmalbeck conducted a searching empirical study of law school reputations and found that reputational surveys reached consistently the same results across a quarter-of-a-century.<sup>43</sup> As he observed, “no other category of professional school [showed] anything approaching the law schools’ level of reputation stability.”<sup>44</sup>

For these reasons, even a law school that has made great strides in faculty productivity and scholarly impact may see its reputation lag in surveys. The faculties at law schools like Cardozo, Florida State, and George Mason appear to be firing on all cylinders in scholarly pursuits, and each has made incremental progress in academic reputations as surveyed by *U.S. News*. Nonetheless, their ranking by popular survey has not kept pace with their rise in scholarly impact. And other law schools with documented scholarly successes, such as the University of St. Thomas (Minnesota), Hofstra, and Nevada–Las Vegas, enjoy less than half the academic reputation that Scholarly Impact Scores would suggest that they deserve.

New law schools, which naturally begin with lower reputational scores, are especially likely to experience frustrating delays in attaining a reputation assessment commensurate with objective indicia of quality. And, indeed, several law schools accredited within the past two decades have attracted productive scholars who are making a measurable scholarly impact, but with little yet to show for it in terms of national academic reputation and overall ranking for the law school.

Our own institution, the University of St. Thomas (Minnesota), accredited in 2003, suffers from a 108 ordinal level difference between its strong Scholarly Impact Ranking of #30 and its *U.S. News* Academic Reputation Ranking of #138. The next largest differential—seventy-four ordinal levels—belongs to another newer law school, Chapman University, which was accredited in 1998. The University of Nevada at Las Vegas, accredited in 2000, has managed to stay in the top one-hundred in academic reputation in *U.S. News*, but still well below its Scholarly Impact ranking.

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42. Brian Leiter, *An Open Letter to Bob Morse of U.S. News*, BRIAN LEITER’S LAW SCHOOL REPORTS (Mar. 10, 2010), <http://leiterlawschool.typepad.com/leiter/2010/03/an-open-lette-1.html>.

43. Richard Schmalbeck, *The Durability of Law School Reputation*, 48 J. LEGAL EDUC. 568, 568 (1998).

44. *Id.* at 571.

One of the key signals of any metric's validity is its ability to measure change. The *U.S. News* ranking, including its Academic Reputation survey, has not been completely frozen in time, as demonstrated by the slow rise of schools like George Mason, the University of San Diego, and Florida State. Still, two of these three remain significantly under-ranked by *U.S. News* compared to their faculties' national level of scholarly engagement.

Having obtained provisional ABA accreditation in 2011 and well on its way to full accreditation, the new law school at California–Irvine should soon enter the *U.S. News* ranking and academic reputation survey. Given the powerful scholarly impact of its faculty right out of the box, California–Irvine's initial position in the *U.S. News* ranking and reputational survey may serve as another test of whether *U.S. News* provides a dynamic, timely, and reliable ranking of law schools or instead has become more of a memorial to historical law school reputations.

### C. *Scholarly Impact Ranking Compared to Scholarly Productivity Ranking*

Finally, as a partial cross-check on our findings, our ranking of a faculty's scholarly impact may be profitably compared with a study of the faculty's scholarly productivity.<sup>45</sup> A study of scholarly productivity expands beyond tenured faculty to include newer members of the faculty (who have not yet had the opportunity to achieve substantial impact). Evaluation of productivity also “permit[s] schools with faculty who work in underdiscussed (hence undercited) areas to nonetheless shine, at least if those faculty are producing articles and books.”<sup>46</sup> Focusing on the contribution of our study, which extends the Scholarly Impact Scores beyond the top twenty-five, one possible comparison might be the annual study by the Roger Williams University Law School of scholarly activity by law schools outside the *U.S. News* top fifty.<sup>47</sup>

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45. See Paul L. Caron & Rafael Gely, *What Law Schools Can Learn From Billy Beane and the Oakland Athletics*, 82 TEX. L. REV. 1483, 1539–43 (2004) (reviewing MICHAEL LEWIS, *MONEYBALL: THE ART OF WINNING AN UNFAIR GAME*, (2003)) (finding in analysis of groups of law professors that scholarly productivity was closely related to scholarly impact).

46. Leiter, *supra* note 7, at 467.

47. See generally Lucinda Harrison-Cox, Raquel M. Ortiz & Michael J. Yelnosky, *Per Capita Productivity of Articles in Top Journals, 1993–2011, Law Schools Outside U.S. News Top 50*, ROGER WILLIAMS UNIVERSITY SCHOOL OF LAW, <http://law.rwu.edu/subpages/faculty/faculty-productivity-study/top-40-law-schools> (ranking law schools outside the *U.S. News* top fifty ranking based on per capita productivity of tenure-track faculty by publication in top fifty ranked law journals) (last visited Apr. 11, 2013).

TABLE 4: COMPARISON OF FACULTY SCHOLARLY IMPACT RANKING WITH ROGER WILLIAMS STUDY OF FACULTY PRODUCTIVITY IN LEADING LAW JOURNALS, TOP 10 RANKING IN 2012

Law School	Scholarly Impact Ranking (2012)	Roger Williams Faculty Productivity Study (2012) <sup>48</sup>
California–Irvine	7	1 (19.3) <sup>49</sup>
U. San Diego	52	1 (13.00)
U. St. Thomas (MN)	30	2 (11.89)
Case Western	38	3 (11.24)
Missouri–Columbia	57	4 (10.87)
Richmond	[not ranked]	4 (10.86)
Brooklyn	41	6 (9.56)
Chicago–Kent	52	7 (9.39)
Cincinnati	64	8 (9.09)
Hofstra	33	9 (7.62)
Temple	57	10 (7.37)

As shown in the table above, scholarly productivity in leading law journals and scholarly impact by citations also appear to be correlated, although a full comparison is not possible given the exclusion from the Roger Williams' study of law schools that rank in the top fifty in *U.S. News*. A strong showing by a law school on both rankings should signal that the institution is on the rise in scholarly activity.

All but one of the eleven law schools that would rank in the top ten under the Roger Williams methodology for measuring productivity in leading journals also fall into the Scholarly Impact ranking as measured by citations in law journals. Moreover, informed observers of the legal academy would recognize schools like the University of California at Irvine and the University of San Diego as up-and-coming law schools, by any ranking methodology. Accordingly, the encouraging correspondence of scholarly

48. For this Roger Williams study, the number inside the parentheses for each ranked school is the per capita score for the faculty of publications in top journals based on the following scoring system: zero points for articles under six pages; one point for articles 6–20 pages in length; two points for articles 21–50 pages in length; and three points for articles exceeding fifty pages, with only half-credit given for an article appearing in a faculty member's home institution journal. Lucinda Harrison-Cox, Raquel M. Ortiz & Michael J. Yelnosky, *Faculty Productivity Study*, ROGER WILLIAMS UNIVERSITY SCHOOL OF LAW (Apr. 18, 2012), <http://law.rwu.edu/faculty/faculty-productivity-study>.

49. Because the Roger Williams study does not include law schools not yet admitted to membership in the Association of American Law Schools, the ranking for California–Irvine has been separately calculated by the authors using the Roger Williams study methodology. Moreover, rather than changing the ordinal ranking in the Roger Williams study for other schools, California–Irvine was inserted into the first position, while maintaining the existing ranking for other schools.

productivity and Scholarly Impact Scores for several other schools ranked in both of these studies should bode well for those institutions in future evaluations of scholarly quality.