

*Review of Colin Diver's*

## BREAKING RANKS: HOW THE RANKINGS INDUSTRY RULES HIGHER EDUCATION AND WHAT TO DO ABOUT IT

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As former Dean of the University of Pennsylvania's law school and former President of Reed College, Colin Diver provides an insightful critique of higher education rankings in his book *Breaking Ranks: How the Rankings Industry Rules Higher Education and What to Do About It* (2022). Diver has first-hand experience with both higher education rankings and the consequences of boycotting them: as a dean, he observed that law schools have been particularly plagued by *U.S. News & World Report* (U.S. News) rankings, while under his predecessor, Reed College famously refused to participate in the U.S. News survey. As his audience is not primarily statisticians, but rather applicants (and their parents, teachers, and counselors) and higher education faculty and administrators, he takes apart higher education rankings in a readily understandable style. He analyzes criteria used by the rankings industry (which he dubs the "rankocracy"), as well as potential criteria (such as student learning and postgraduate life) that the industry ignores. Along the way, he is candid about his personal views (sometimes cynical, sometimes encouraging), while emphasizing his ultimate desire that the rankocracy disappear—or at least be ignored. At the same time, he gives his readers tools to take rankings into account in an informed, not slavish manner.

Although *Breaking Ranks* is not geared specifically to college and university counsel, higher education lawyers may find it instructive and useful. To the extent that higher education rankings motivate institutional decisions and even, as Diver argues, create perverse incentives, the book will help college and university counsel better understand U.S. News and other ranking systems and the context for some of their clients' decisions. By being better informed, college and university counsel can advise more effectively, particularly where rankings criteria overlap with regulatory reporting or compliance obligations. While *Breaking Ranks* does not generally focus on legal issues, it does address U.S. Department of Education (ED) resources and metrics used by the rankings industry, efforts to "game" the system, the implications of higher education rankings for diversity, and the particular problems of ranking law schools.

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## TABLE OF CONTENTS

I.	THE RANKOCRACY .....	187
II.	REGULATORY METRICS .....	188
III.	MISREPORTED DATA.....	190
IV.	DIVERSITY.....	191
V.	LAW SCHOOL RANKINGS .....	193
VI.	CONCLUSION.....	194

## I. The Rankocracy

Diver begins by summarizing his complaint about college rankings as “their unfortunate tendency to homogenize a sector historically characterized by immense institutional variety, one that seeks to satisfy the equally huge variations in students’ needs and preferences.”<sup>1</sup> He elaborates, “Trying to squeeze all that variety into the procrustean bed of a single ordinal scale threatens to occlude those differences, to the manifest disadvantage of both prospective applicants and educational administrators... . [I]n setting institutional priorities, educators are tempted to distort their practices and policies, even at the expense of altering their culture and character, in a mad scramble to accommodate some stranger’s monolithic definition of quality.”<sup>2</sup>

Diver outlines the problems with higher education rankings in a manner readily comprehensible by non-statisticians. He points out issues with selection of variables, assigning weights to variables, overlap among variables, the “salience” of numbers, and the ranking organizations’ periodic tinkering with their formulas.<sup>3</sup> But his fundamental critique is that “[o]ne size doesn’t fit all” and it is an “illusion” to identify the “best college.”<sup>4</sup>

Diver dug up some little-known historical tidbits about higher education rankings. The federal government was one of the first ranking organizations, and rankings have been controversial from the start:

- The U.S. Bureau of Education (now ED) “once classified women’s colleges into two categories, marked as ‘A’ (including the highly selective Seven Sisters) and ‘B’ (200 others).”<sup>5</sup>
- In 1910 the Association of American Universities (AAU) asked the Bureau “to rank a broader spectrum of colleges, in order to provide the AAU’s members with an ‘objective’ measure of undergraduates’ preparation for graduate study.” The Bureau developed a list of 344 institutions, sorted into five levels of quality, and inadvertently released it to the public. A “huge outcry from the higher-education industry” led to an executive order by President Taft barring distribution of the list.<sup>6</sup>

Accreditors also got into the act: The North Central Association of Schools and Colleges (today, the Higher Learning Commission) published a review of institutions in 1924.<sup>7</sup>

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1 COLIN DIVER, *BREAKING RANKS: HOW THE RANKINGS INDUSTRY RULES HIGHER EDUCATION AND WHAT TO DO ABOUT IT* 17 (2022) .

2 *Id.* at 20.

3 *Id.* at 35–41.

4 *Id.* at 41.

5 *Id.* at 24.

6 *Id.* The executive order predates publication of such orders in the *Federal Register*, but other sources confirm Diver’s account.

7 *Id.* at 24–25. The reviewer was unable to locate this list from publicly available sources, but

Diver marks the beginning of the current rankings industry in 1983, with the publication by U.S. News of its first “best colleges” lists.<sup>8</sup> Today U.S. News and other ranking organizations rely extensively on data that colleges and universities provide to ED through the Integrated Postsecondary Education Data System (IPEDS).<sup>9</sup> And ED itself analyzes and publishes that data through its College Navigator, College Scorecard, and College Affordability and Transparency List.<sup>10</sup>

Diver argues that the rankocracy thrives because “post-secondary education has become a competition for prestige. And, in our popular culture, rankings have become the primary signifiers of prestige.”<sup>11</sup> According to an Art & Science Group student poll in 2016, 72% of respondents considered rankings in their application and enrollment decisions.<sup>12</sup> The top five sources were U.S. News, Forbes, Princeton Review, Niche, and Money, with 58% ranking U.S. News as the most influential.<sup>13</sup>

Diver acknowledges that after improvement in their U.S. News rankings, colleges have experienced measurable increases in their applications, rate of acceptance (or “yield”), and the average SAT and ACT scores of their incoming students.<sup>14</sup> But he bemoans educators’ responses to these trends, particularly because “most academic administrators are well aware of the methodological flaws, if not to say utter vapidness of the popular rankings.”<sup>15</sup> He counters that most changes in rankings are minor and transient, and that it is difficult and expensive to move significantly upward.<sup>16</sup> He complains that in response to rankings, “[a]cademic leaders have reshaped staff incentive and reward structures, altered admissions procedures and criteria, reordered expenditure priorities, and even rewritten strategic plans.”<sup>17</sup>

## II. Regulatory Metrics

A number of the metrics used by college ranking organizations—cost of attendance, graduation rates, student loan debt, and postgraduate earnings—are related to regulatory reporting and compliance requirements. In general, Diver criticizes the college rankings industry for “giv[ing] much more weight to measures that reward student selectivity, high levels of spending, and the accumulation of wealth than

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other secondary sources mention this review.

8 *Id.* at 25.

9 *Id.* at 15, 70–71.

10 *Id.* at 15–16. The College Navigator can be found at <https://nces.ed.gov/collegenavigator/>; the College Scorecard at <https://collegescorecard.ed.gov/>; and the College Affordability and Transparency Center at <https://collegecost.ed.gov/>.

11 Diver, *BREAKING RANKS*, *supra* note 1, at 73.

12 *Id.* at 45.

13 *Id.* at 46.

14 *Id.* at 47.

15 *Id.* at 49–50.

16 *Id.* at 50.

17 *Id.* at 55.

they accord to factors that reward schools for serving low-income students.”<sup>18</sup> Apart from these policy concerns, in light of the misreporting problems that Diver highlights, college and university counsel may want to discuss with their institutional research staff and other relevant offices their processes for collecting and reporting relevant data to these various recipients.

**Cost of attendance:** Cost of attendance is the starting point for calculating students’ need for purposes of federal student financial aid.<sup>19</sup> Diver observes that the maximum Pell Grant for low-income students today covers only about 28% of the charges for in-state students at public four-year institutions and only 12% at private, nonprofit institutions.<sup>20</sup> He favors the so-called “Pell share”—the proportion of an institution’s students who are eligible for or receive Federal Pell Grants—as “a very serviceable way of highlighting an institution’s commitment to socioeconomic progress.”<sup>21</sup>

Diver comments that U.S. News included no metric on social mobility until 2018, when it added a measure based on Pell shares and the graduation rates of Pell recipients. Although that data accounted for only 5% of a school’s overall ranking, he credits U.S. News for “try[ing] to highlight social mobility by publishing a separate listing based on this criterion, using its Pell-related calculations.”<sup>22</sup>

**Graduation rates:** Diver observes that completion measures weight heavily in U.S. News rankings.<sup>23</sup> State and federal governments utilize such metrics for their own purposes. For example, Diver reports that more than half of states “have adopted performance-based funding initiatives in which the size of appropriations made to their public universities depends, at least in part, on improving their graduation rates.”<sup>24</sup>

The methodology of these various metrics is similar but not necessarily identical. One variable is the pool of students whose progress is tracked—most commonly, first-time, full-time students (not part-time or transfer students) who enroll in the fall semester (not other enrollment periods).<sup>25</sup> A second variable is the time period for completion—most commonly for the baccalaureate degree, six years and eight years (the latter used by ED’s College Scorecard).<sup>26</sup> College

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18 *Id.* at 261. With respect to ED’s financial responsibility ratio known as the “composite score,” Diver observes that “the prevalence of 3.0 scores [the highest score on ED’s scale] makes it impractical to use this index to rank selective schools.” *Id.* at 104; see 34 C.F.R. Subpart L (1997).

19 Diver, *BREAKING RANKS*, *supra* note 1, at 245–48.

20 *Id.* at 250.

21 *Id.* at 251; see *id.* at 248.

22 *Id.* at 253.

23 *Id.* at 218–19.

24 *Id.* at 214.

25 *Id.* at 217. Although National Student Clearinghouse “is now able to track students who transfer from one institution to another..., those who publish comprehensive best-college listings still customarily use graduation rates that omit transfer data.” *Id.* at 221.

26 *Id.* at 218.

and university counsel may want to confirm that their institution attends to such variations in methodology in reporting to the various ranking organizations and government agencies.<sup>27</sup>

**Student loan debt:** Diver notes that in 2021, U.S. News also added a metric for student loan debt to its formula.<sup>28</sup> He observes that “[t]he indicator of student debt most commonly used...is the average total amount of federally guaranteed loans incurred by a school’s students between their matriculation and the time of their graduation or withdrawal. One can readily obtain such figures from College Scorecard and the IPEDS database.”<sup>29</sup> In addition, he notes that in 2020 ED began to publish information about parental debt obtained through the federal “Parent PLUS” loan program, but data about private education loans remains difficult to find.<sup>30</sup>

**Postgraduate earnings data:** In the spirit of “pick your poison,” Diver seems to favor postgraduate earnings data as a metric for college rankings. He notes that the two principal sources of postgraduate earnings data are College Scorecard and PayScale.com; for each undergraduate institution, College Scorecard reports median early-career earnings data, based on information from federal tax records concerning salaries received by alumni ten years after they first enrolled at the institution.<sup>31</sup>

Diver comments, “Earnings, of course, are only one indicator of career success. But in our materialistic culture, they are the dominant measure and, for the purposes of constructing ordinal rankings, probably the best one available.”<sup>32</sup> Nevertheless, “[t]he statistical correlations that purport to link the college that students attend with their midcareer earnings conceal a vast variation in the human qualities—to say nothing of the random events—that contribute to those outcomes.”<sup>33</sup>

### III. Misreported Data

Misreporting of data is one way higher education rankings may become legal issues involving college and university counsel. Diver notes that over the years, the U.S. News rankings have been “plagued by reports of institutions submitting incorrect data.”<sup>34</sup> For example, in 1995 the *Wall Street Journal* reported “almost 50

27 On a related note, Diver observes, “Although popular best-college rankings have gradually de-emphasized [acceptance and yield rates], they still loom large in the evaluation of institutions by bond-rating agencies, accrediting agencies, and college guides.” *Id.* at 163.

28 *Id.* at 255.

29 *Id.* at 253–54.

30 *Id.* at 254. These aggregate measures of student debt are related to, but differ from ED’s calculation of default rates on federal student loans. See 34 C.F.R. Subparts M (2000) and N (2009).

31 Diver, *BREAKING RANKS*, *supra* note 1, at 229.

32 *Id.* at 240.

33 *Id.* at 240–41. These aggregate statistics concerning students’ postgraduate earnings are related to, but differ from ED’s past and prospective “gainful employment” regulations, which attempt to calculate whether students will earn enough after graduation to service their student loan debt. See U.S. Dep’t of Educ., *Negotiated Rulemaking for Higher Education 2020–21*, <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html?src=rn>.

34 Diver, *BREAKING RANKS*, *supra* note 1, at 64.

instances in which a school reported a higher number for its graduation rate or median SAT score to U.S. News than the corresponding figure it sent to its bond-rating agency.”<sup>35</sup>

Diver faults the rankings industry for insufficient diligence. He notes that U.S. News checks for misrepresentation by “flagging year-over-year discrepancies, comparing data against federal government sources when available, and asking a school official to sign off on the school’s data.”<sup>36</sup> But he argues that like bond-rating agencies and ED, ranking organizations should require audited data.<sup>37</sup>

Diver also criticizes the rankings industry for inadequate sanctions. He notes that U.S. News generally identifies schools that it has found to have provided erroneous data, usually does not rank the offender for a year, and occasionally asks the highest officer of the institution to certify future submissions.<sup>38</sup> But he argues that ranking agencies could impose harsher penalties such as relegating to the lowest tier institutions that submit false data or refusing to rank such institutions for a period of years.<sup>39</sup>

Apart from greater discipline by ranking organizations, Diver notes other consequences of misreporting, including loss of jobs by higher education officials found to have falsified data, as well as legal and regulatory problems for the institution.<sup>40</sup> Diver observes that many rankings now rely on information published by ED or independent third parties.<sup>41</sup> That approach reduces the risk of reporting inconsistent data to different organizations.

But Diver identifies the remaining incentives for gaming the system. For example, college and university counsel are all too familiar with the “Varsity Blues” scandal, in which an admissions consultant and wealthy parents conspired to falsify applicant information and test scores in order to secure admission of children to selective colleges and universities.<sup>42</sup>

#### IV. Diversity

Diver also objects to higher education rankings because of their adverse effects on student body diversity. As he summarizes his concerns, rankings

- “cause institutions to focus more on attracting students with impressive SAT scores than on educating them once they arrive on campus”;

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35 *Id.*

36 *Id.* at 67.

37 *Id.* at 68.

38 *Id.* at 65, 69.

39 *Id.* at 68.

40 *Id.* at 69–70.

41 *Id.* at 70–72.

42 *Id.* at 101–02.

- “prompt schools...into recruiting scads of surplus applications, so they can lower their acceptance rates and overburden their admissions staff, who are tasked with ‘holistically’ reviewing every applicant”;
- “encourage shifting financial-aid dollars from talented needy students to sometimes less-talented wealthy ones”;
- “put an artificial constraint on the willingness of admissions officers to take chances on applicants with compelling personal stories but low test scores”;
- “reward early-decision admissions policies that disadvantage low-income applicants”; and
- “encourage selectively scrapping standardized tests in favor of equally suspect admissions criteria.”<sup>43</sup>

Dissenting from widespread opinion in academic circles, Diver expresses a favorable view of admissions policies based on class rank, such as the Texas “Top 10% plan” that figured in the U.S. Supreme Court’s decisions in the *Fisher* case.<sup>44</sup> He comments that use of high school class rank data to rank colleges “provides an incentive to broaden the range of high schools from which they recruit potential students and thereby provide greater opportunity for applicants who might otherwise be overlooked.”<sup>45</sup>

In another countercultural line of argument, Diver defends standardized tests, such as the SAT, while criticizing their overweight in college rankings. He holds to the traditional view of standardized tests as “a useful measure of academic preparation,”<sup>46</sup> at the same time acknowledging “the undeniable correlation of SAT performance with the test takers’ family incomes, parental education levels, and racial/ethnic groups.”<sup>47</sup> Because higher standardized test scores “close[ly] correlat[e]” with higher college rankings, institutions have long attempted to improve their standing by raising their average SAT scores. But Diver argues that “their effort to feed the SAT-score ‘elephant in the room’ have often produced serious distortions and unanticipated consequences”<sup>48</sup> such as giving excessive weight to standardized test scores in admissions and awarding merit aid at the expense of financially needy students.<sup>49</sup>

Despite these concerns, Diver also bucks the trend toward test-optional and test-blind admissions policies. While “heartily endors[ing] the test-optional defenders’ professed goal of increasing the racial and socio-economic diversity of our

43 *Id.* at 62–63.

44 *See Fisher v. Univ. of Texas at Austin*, 579 U.S. 365 (2016); *Fisher v. Univ. of Texas at Austin*, 570 U.S. 297 (2013).

45 Diver, *BREAKING RANKS*, *supra* note 1, at 129.

46 *Id.* at 155.

47 *Id.* at 134.

48 *Id.* at 141.

49 *Id.* at 142–49.

college-going population,”<sup>50</sup> he expresses the somewhat cynical conclusion that “the growth in test-optional policies could be attributed in large part to rankings pressures. By implicitly encouraging applicants with low SAT scores not to submit them, institutions would be able to report only the higher figures for those who did.”<sup>51</sup> He notes that test-blind admissions policies damage schools’ rankings because U.S. News gave such schools “the lowest test score by a ranked school in their category.”<sup>52</sup> He takes heart that discontinuation of the use of standardized tests would “blissfully” end the era of ranking colleges by their students’ SAT scores.<sup>53</sup>

Diver echoes concerns expressed by many others concerning inequities related to the growth of merit aid, early admissions, and admissions preferences for athletes, “legacies,” and the like. He ties such policies, at least in part, to college rankings because the policies tend to favor upper-income, White applicants who, compared to other demographic groups, on the whole have higher standardized test scores and other metrics that ranking organizations value.<sup>54</sup>

In light of the upcoming consideration by the U.S. Supreme Court of the race-conscious admissions policies of Harvard University and the University of North Carolina,<sup>55</sup> Diver devotes a chapter to “affirmative action.”<sup>56</sup> He observes that “the rankocrats have been notably hesitant to incorporate diversity metrics into their formulas.”<sup>57</sup> He infers that “the real reason for the rankocracy’s hesitancy to feature race and ethnicity in their formulas is that, in our society, prestige is still largely synonymous with Whiteness, and the leading rankings are all about prestige.”<sup>58</sup>

## V. Law School Rankings

Diver laments that various problems with higher education rankings are exacerbated in law schools. He contends that the U.S. News “rating system ha[s] dramatically distorted legal education, most especially impacting admissions and career services practices, but also affecting the allocation of resources, programmatic priorities, and even the job satisfaction and longevity of deans and associate deans.”<sup>59</sup>

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50 *Id.* at 151.

51 *Id.* at 149.

52 *Id.* at 152, 154.

53 *Id.* at 155.

54 *See id.* at 145–48, 165–69.

55 *See Students for Fair Admission v. Harvard Univ.*, 261 F. Supp. 3d 99 (D. Mass. 2017), *aff’d*, 980 F.3d 157 (1st Cir. 2020), *cert. granted*, 142 S. Ct. 895 (2022); *Students for Fair Admission v. University of North Carolina*, Case No. 1:14CV954 (M.D.N.C. 2021), *cert. granted*, 142 S. Ct. 895 (2022).

56 Diver, *BREAKING RANKS*, *supra* note 1, at 172–85.

57 *Id.* at 182. He gives U.S. News some credit for “present[ing] a separate list of schools ranked according to a ‘diversity index,’” but he notes that it “addresses only *interactive*...diversity” (*i.e.*, “the amount and intensity of social interactions among students across racial and ethnic lines”). *Id.* at 178, 182–83 (emphasis in original).

58 *Id.* at 183–84.

59 *Id.* at 55.

Diver points out that unlike collegiate rankings, where various competitors have arisen, U.S. News has a monopoly on law school rankings. And “because legal education is so homogenous, rankings loom especially large in applicants’ choices.”<sup>60</sup>

Diver contends that the incentive to increase an institution’s test score averages is especially strong in law school admissions because the LSAT is such a large factor in the U.S. News formula for such schools.<sup>61</sup> That pressure, he argues, leads to the “troubling...phenomenon of using financial-aid grants to ‘buy’ top-scoring applicants, through the mechanism of merit aid.”<sup>62</sup>

Diver also blames U.S. News in part for the controversies around placement of law school graduates. He notes that in addition to LSAT scores, employment rates weigh heavily in law school rankings.<sup>63</sup> He observes that after the 2008 financial crisis “[g]roups of angry unemployed graduates, burdened by hefty student loans, brought class-action lawsuits against 15 law schools, alleging misrepresentation of their employment numbers.”<sup>64</sup> In 2011 the American Bar Association (ABA) issued a new accreditation standard that required more detailed reporting of employment data. Diver comments favorably that the employment information “is now publicly available on the ABA’s website, and U.S. News has incorporated it into its formula.”<sup>65</sup>

## VI. Conclusion

In his conclusion Diver offers several possible reasons that higher education has experienced increasing competition, fueling the rankings industry:

- “Some economists point to the declining costs of obtaining information about colleges and universities and the diminishing price of transportation to attend more-distant schools. As a result, they argue, colleges that used to compete for students with only a handful of regional institutions must now contend with hundreds of rivals all across the nation, and even the world.”
- “Others assert that the shift in the American economy, from manufacturing-based to knowledge-based industries, has heightened the demand for college degrees—especially from the most selective institutions.”
- “Still others point to a change in public attitudes” from viewing higher education as a “public good” to a “private good”.

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60 *Id.* at 55–56.

61 *Id.* at 143.

62 *Id.* at 144.

63 *Id.* at 227.

64 *Id.* at 228.

65 *Id.* The ABA data is available at [https://www.americanbar.org/groups/legal\\_education/resources/statistics/](https://www.americanbar.org/groups/legal_education/resources/statistics/).

- But Diver argues that another root cause is that “even in supposedly post-aristocratic America, many people retain an unquenchable thirst for pedigree.”<sup>66</sup>

Diver acknowledges some “genuine progress” in the rankings industry, as well as continuing concerns.<sup>67</sup> An increase in the number of rankings publications has largely eliminated U.S. News’s monopoly, but “as the one-time monopolist and first mover, U.S. News continues to exert a disproportionate influence on the world of higher education.”<sup>68</sup> The movement of information from hard copy onto the world wide web has increased available data and allowed readers to customize rankings. But the College Scorecard on ED’s website has “effectively created an ‘official’ college guide, one whose choice of metrics and format reflects a similar homogenizing mentality.”<sup>69</sup> And U.S. News and other ranking organizations not only “continue to rely on the preposterous ‘best-colleges’ claim,” but “now purport[] to assign an exact numerical order” not to just twenty-five or fifty, but to hundreds of institutions.<sup>70</sup>

Diver concludes with similar advice to educators and students: either ignore higher education rankings or dig into them to understand them and the limitations of their value. For educators, Diver elaborates, “If you conclude, as we did at Reed, that most of the listings do not deserve your professional and institutional respect, then consider entering into what I call the four stages of rankings withdrawal”:<sup>71</sup>

1. “Don’t Fill Out Peer Reputation Surveys”
2. “Don’t Publicize Rankings You Consider Illegitimate”
3. “Celebrate Rankings That Truly Reflect Your Values”
4. “Give Everyone Equal Access to Your Data”<sup>72</sup>

He explains that the last stage means “not fill[ing] out the annual U.S. News statistical questionnaire.”<sup>73</sup> Although U.S. News may rate the school anyway or try to sanction it, Diver advises that “[i]nstead of fearing such treatment, you should see that ‘punishment’ as a badge of honor—and publicly celebrate it.”<sup>74</sup> He hails that a growing number of institutions—lately, 15 percent of those surveyed—have declined to respond to “U.S. News’s annual beauty contest... .”<sup>75</sup>

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66 Diver, *BREAKING RANKS*, *supra* note 1, at 271–72.

67 *Id.* at 274.

68 *Id.* at 274–75.

69 *Id.* at 276–77.

70 *Id.* at 277.

71 *Id.* at 281.

72 *Id.* at 281–85.

73 *Id.* at 284.

74 *Id.* at 285.

75 *Id.*

In the end Diver “celebrat[es] the rich diversity of needs and expectations of those who seek a postsecondary education, and the wide range of institutions that have evolved to satisfy those desires. My dream is that this profusion can and will survive the relentless homogenizing pressures exerted by the rankocracy.”<sup>76</sup> Students “would approach the choice of where to apply as an exercise in personal discovery and fulfillment” and “find a wealth of information, curated by respected commentators with no obvious ax to grind.”<sup>77</sup>

This idyllic world may help to explain the reason for the rankings industry. Millions of college-bound teenagers who are still learning about themselves see a forest of potentially thousands of colleges and universities in the United States alone. Especially with pressure to apply early, students seek a short-cut to a short list of schools to which to apply. And colleges and universities want to be on that short list. The most encouraging development in the rankings industry that Diver reports may be the emergence of customized rankings, which may help each college-bound student efficiently develop a short list of schools that would be a good fit for that student’s interests and abilities.

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76 *Id.* at 285–86.

77 *Id.* at 286–87.