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The \$8.78 Million Maneuver

By ALEX WELLEN

Pop quiz: What do the water bills at Stanford have in common with library expenditures at the University of Illinois?

Answer: Everything, if you are a law school looking to increase your U.S. News & World Report ranking.

As part of its methodology, U.S. News factors in how much a law school spends per student. But just how those costs are calculated has become a matter of considerable discussion, both in legal education circles and at the American Bar Association.

Consider library costs at the University of Illinois College of Law in Urbana-Champaign. Like all law schools, Illinois pays a flat rate for unlimited access to LexisNexis and Westlaw's comprehensive online legal databases. Law students troll them for hours, downloading and printing reams of case law. To build user loyalty, the two suppliers charge institutions a total of \$75,000 to \$100,000 a year, far below per-use rates.

But in what it calls a longstanding practice, Illinois has calculated a fair market value for these online legal resources and submitted that number to U.S. News. For this year's rankings, the school put that figure at \$8.78 million, more than 80 times what LexisNexis and Westlaw actually charge. This inflated expense accounted for 28 percent of the law school's total expenditures on students, according to confidential data filed with U.S. News and the bar association and provided to The New York Times by legal educators who are critical of rankings and concerned about the accurate reporting of data.

These student expenditures affect only 1.5 percent of a school's U.S. News ranking, but this is a competition where fractions of a point matter. In this year's survey, the magazine ranked Illinois No. 26 of 179 accredited law schools.

In addition to student expenditures, there are ways that law schools can affect the 11 other "measures of quality" that U.S. News uses in assembling its rankings. When they hire their own new graduates as temps, that pumps up their employment figures; when they admit weaker applicants through backdoor mechanisms, that makes their admissions standards look stronger.

"Insofar as these polls affect student choices, the notion that I'm losing students because of this is insane," says Larry Kramer, dean of Stanford Law. He is considering whether he might include water, garbage removal, electricity, plumbing and property taxes as part of the university's spending per student. Stanford (U.S. News No. 3) is feeling the heat from Yale (No. 1), Harvard (No. 2) and Columbia (No. 4) - schools that report 120, 64 and 83 percent, respectively, more than Stanford in indirect expenditures and overhead for each full-time student, according to the confidential American Bar Association data.

Mr. Kramer chalks up the difference to accounting practices: unlike many schools, Stanford Law does not write the check for its utilities. Instead, the central university receives the law school's tuition, deducts an amount for utilities and hands a portion of the remainder to the school. "Now I have to think about going to the university and saying that I need you to disaggregate the law school from this administrative process to get that money counted for U.S. News," Mr. Kramer says.

Playing with the numbers is part of academia: with a higher ranking, a college stands to gain more prestige, competitive students, gifted faculty and alumni donations. But the problem is magnified in legal education, partly because U.S. News faces no significant competition. Unlike M.B.A. applicants, who can choose from a range of commercial ranking systems with varying emphases and methodologies, U.S. News has maintained a virtual monopoly in the law school realm since it started its annual ranking 16 years ago. In the prelaw community, U.S. News rankings are gospel, so law school deans find themselves under tremendous pressure to adopt policies to improve their standing.

The U.S. News & World Report survey truly dominates our lives in ways you couldn't imagine," Paul L. Caron, a law professor at the University of Cincinnati, said in opening remarks at the "Next Generation of Law School Rankings" symposium this spring in Bloomington, Ind. Attended by 60 professors, deans and students from around the country, the conference was largely devoted to how the survey affects legal education. That is what brought Prof. Cynthia E. Nance from the University of Arkansas School of Law; the charge from her dean, not so unlike that given other attendees: Find out how we get our rankings up. Arkansas dropped slightly this year.

Among the various rankings criteria, undergraduate grade point averages (10 percent) and scores from the Law School Admission Test (12.5 percent) play a crucial role. That compromises student diversity, says Jeffrey E. Stake, a co-organizer of the symposium and a law professor at Indiana University, Bloomington. "Service to the country in Iraq or in the Peace Corps goes out the window," he says. "Starting your own business goes out the window in favor of LSAT's and grades. The question 'Is this person going to be a good lawyer?' is being displaced by 'Is this person going to help our numbers?' "

Critics say law schools are engaged in an LSAT and G.P.A. arms race in which they exploit technicalities in U.S. News's methodology. Admissions people know, for example, that the rankings are calculated using grades and scores of only full-time students.

At the rankings symposium, Prof. Andrew P. Morriss of Case Western Reserve University School of Law in Cleveland and William Henderson, an associate law professor at Indiana and a co-organizer of the symposium, presented a report showing how schools can move up in the rankings by putting first-year students with weaker LSAT's into part-time programs.

Rutgers School of Law, Camden, for example, has been shrinking its full-time program and increasing its part-time division for the last seven years. About 60 first-year students - many with less competitive LSAT's or grades - take one course in the summer to ease their load in the fall. By taking a three-quarters schedule, the students are considered part time. The school has moved up from No. 78 in 2003 to 65 this year.

"There's an educational benefit, a financial benefit and a residual U.S. News benefit," says Rayman Solomon, dean of Rutgers-Camden.

Baylor University School of Law in Waco, Tex., places about 100 students whose LSAT and G.P.A. scores are generally lower into summer and spring programs. In the questionnaire in which U.S. News

asks for year-round admissions, Baylor has submitted only its fall figures. This is because, says the associate dean, Leah Jackson, the magazine's published methodology had told readers that the reported data was for the fall entering class. (U.S. News has since fixed the mistake.) "In an attached addendum, we give them the spring, summer and the aggregate numbers," Ms. Jackson says. "What they do with those numbers is up to them." This year, U.S. News changed Baylor's data to reflect the year-round figures.

Robert J. Morse, director of data research for U.S. News, says: "In my view, Baylor was coming up with a lawyerly version of why they want to give us what we don't want and hope that we don't catch them." Baylor fell two places in the rankings.

Schools without part-time programs have other ways to accept weaker students without sacrificing status. U.S. News collects scores from first-year students only. In its 2006 issue of America's Best Graduate Schools, U.S. News writes: "Taking the less credentialed applicants into the second-year class is also seen by many administrators as a way to avoid putting a school's rank at risk."

At New York University, Columbia and the University of California, Berkeley, for example, the law schools accept a large number of second-year transfer students, some with LSAT scores and undergraduate G.P.A.'s below those accepted in their first year. "Transfer is almost solely on first-year performance," says Edward Tom, director of law admissions at Berkeley.

Professor Stake of Indiana observes: "It works to schools' U.S. News advantage to do this - to close their doors to first-year students, in turn raising the school's LSAT's and grades, and then open their doors to the second-year program to raise revenue."

Professors Morriss and Henderson have urged U.S. News to look beyond first-year full-time programs in compiling its rankings. Mr. Morse of U.S. News says he is considering that change to improve the survey's integrity. U.S. News says it is aware of many of the games schools play. For years, the magazine used median LSAT's to rank law schools, but this year, it began averaging the 25th and 75th percentile scores. "We wanted to go with verifiable data," Mr. Morse says, "and we heard that some schools weren't computing their median accurately."

Why would U.S. News conclude that the 25th and 75th percentiles were more reliable than LSAT medians? Because the American Bar Association publishes percentile data (but not medians), and law schools may be less inclined to manipulate information also being reported to their accrediting agency and being made public.

Each fall, accredited law schools are required by the Department of Education to turn into the bar association an extensive questionnaire detailing school operations. This information is the basis for the association's confidential reports. Shortly thereafter, law schools turn in their U.S. News survey separately, about 90 percent of which mirrors the data requested by the association. Because the information is reported by law schools and a vast majority is not publicly available for crosschecking, U.S. News is unable to verify most of the data before publication.

For at least the last two years, the University of Illinois College of Law included its Westlaw and LexisNexis valuation in both the annual bar association questionnaire and the U.S. News survey.

The practice had been carried over from the previous law school administration, and the bar association approved it then, says Heidi M. Hurd, the law school's dean. Because the association

declines to discuss individual schools, its approval of the Illinois practice could not be confirmed. "It was a formula that effectively attempted to get at the relative discount value as it were, which was deemed to be of genuine value to students," Dean Hurd says. "I don't know that when they adopted the practice it was driven by their desire to exploit ambiguities for purposes of rankings."

But earlier this year, she says, the bar association told Illinois that the \$8.78 million was not legitimate and needed to be removed, causing Illinois's expenditures per student to drop by more than \$12,000. Illinois removed the figure from bar association data but did not tell U.S. News. "We're under an obligation to report to U.S. News precisely what we report to the A.B.A. in the end of November, early December, what happens after that is what happens after that," says Dean Hurd, who will remove the valuation in the next U.S. News submission.

Before carrying out a policy that potentially improves a school's ranking, administrators need to consider whether the change will help students, says Professor Stake of Indiana. While critical of how rankings distort policies, he acknowledges that his own institution plays along. In hiring new graduates for short-term legal research positions, Bloomington has improved its U.S. News employment figures. "The general attempt by the law schools to make sure that their students get jobs is a good thing," he says.

Northwestern University has also hired graduates for short internships. "I don't think it's unethical if you're giving some value to your students," says David Van Zandt, its law dean.

It's not so much gaming the rankings as pressure to play the game, say many deans. "You distort your policies to preserve your ranking, that's the problem," says Mr. Kramer of Stanford. "These rankings are corrosive to the actual education mean because this poll takes the following 12 criteria and now you have to fetishize them."

Prof. Gregory A. Mark, who attended the symposium from Rutgers School of Law, Newark, calls the process a hypocrisy that is "lost on most law schools."

"We are all very well trained at redefining the very letter of the law," he says. "The rules of professional responsibility don't apply to the law school admission process. Maybe they should."

Alex Wellen is author of "Barman," a memoir about attending law school.