Evaluating IP Programs

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Each March, U.S. News & World Report (US News) publishes general and specialty rankings for law schools. Prominent legal educators, including those at top-tier schools, and associations of legal educators have been highly critical of the general rankings because, for example, they tend to disadvantage small schools, those in rural areas, and those that have above-average numbers of foreign and minority students.

Specialty rankings have received less analysis. Field, however, was motivated to pay close attention in 1996, after Franklin Pierce Law Center's (Pierce's) IP rank dropped from second to fifth. Soon thereafter, he published *IP Specialty Rankings in U.S. News & World Report,* at http://www.piercelaw.edu/tfield/usnwr.htm. There, he stressed how one or two, often uninformed, votes unjustifiably affect rankings.

IP specialty rankings are based on a poll of professors listed in the current Association of American Law Schools, Directory of Law Teachers (Directory) as having taught an IP course or seminar. From a list of most law schools, each polled professor is now asked to select (not rank) no more than fifteen with good IP programs.

The final year for which raw data was made available, 1996, continues to warrant close attention. Of 87 IP professors listed in the Directory, 46 identified as having taught IP for more than ten years were then asked to select ten schools.

How many ballots were returned is unknown, but George Washington was ranked first with 28 votes. With at least that many ballots returned, New York University received only 16 votes. Surely the latter number would have been higher had those returning ballots been aware of NYU's excellent IP coverage.

Such ignorance is not a sin; it should be expected. Teachers have no particular reason to be familiar with other schools' programs. Ranks for eleven schools (two tied) were published in 1996. Had more voters been aware of those and unranked schools

(such as George Mason), one would have expected all of the 280 minimum possible votes to have been cast, but only 178 were.

Lawyers inclined to heed US News rankings, however, have more serious cause for concern. As Field showed in 1996, Houston was ranked fourth with 21 and Pierce fifth with 20 votes; Berkeley was ranked sixth with 17 and NYU seventh with 16 votes. One vote by some professor with sketchy information about most other schools' programs is surely meaningless. Indeed, Field wondered at the time whether differences of even three or more votes would furnish a statistically significant basis for assigning different ranks.

Following his criticism, one might have expected improvement in the bases for assigning specialty rankings. Although changes have since been made, those rankings inspire, if anything, less confidence.

As recently explained by Samuel Flanigan, US News, in an Oct. 19, 2006, email to Cavicchi, professors not indicated in the Directory as teaching IP in a given year no longer receive ballots — an arguable improvement. Yet, regardless of seniority, every alternate person on the list is polled; Flanigan, *supra.* Faculty teaching IP for fewer than five years are, therefore, as apt to receive a ballot as those with ten or more years' experience. That the former outnumber the latter 2:1, *2006-07 Directory* at 1314-16, 1317 (about 38 and 19 column inches respectively)**,** exacerbates the ignorance factor noted above.

Indeed, Field's 1996 article may have motivated US News to be less transparent. As related in an update following Pierce's elevation to first rank, US News thereafter refused to release raw data. That prompted Field to conclude that rankings continued to be based on trivial differences in vote tallies.

Because raw data is still unavailable, nothing warrants a change in views. By email, *supra,* Flanigan kindly gave Cavicchi Pierce-specific vote tallies for each of three years but not the number of votes that separate ranks. Should the latter demonstrate marked differences among schools of differing rank, we cannot discern any reason to withhold such information. We therefore infer that differences in rankings continue to turn

on too few votes to be meaningful.

Even were it otherwise, the bar should not rely on often self-serving votes cast by faculty with sketchy data. The IP bar generally, or the patent bar specifically, should seek better information. One way to obtain it would be to expand the scope of biennial surveys already conducted by AIPLA. Organizations such as INTA or Intellectual Property Owners could also conduct surveys more closely tailored to members' needs.

Meanwhile, those interested in programs can determine for themselves what courses are being taught in various programs and by whom. *See, e.g.,* Kenneth L. Port, *Intellectual Property Curricula in the United States,* 46 IDEA 165 (2005) (comparing US News ranks with those obtained by counting courses listed at law school websites).

Casual inspection may, however, not be up to the task. Some Pierce webpage may have suggested that only 14 IP courses were available; *see* Port, *supra* at 169. *But see* http://www.piercelaw.edu/registrar/CoursDesc.htm (listing for 2006-07 over twice as many courses fairly seen as IP — several offered more than once).

Still, the utility of such information is limited. Lawyers who must choose, for example, between candidates X and Y should weigh individual qualifications more than reputations of professors neither candidate may have seen or the number and availability of courses neither may have taken.