December 12, 2011

VIA E-MAIL AND REGULAR MAIL
Robert Morse
Director of Data Research
U.S. News & World Report
1050 Thomas Jefferson Street, NW
Washington, DC 20007-3871

Dear Mr. Morse:

Attached please find the response of Rutgers School of Law-Newark to the 2011 U.S. News Ranking survey. I write separately in order to raise grave concerns about the reliability of your rankings and the deleterious effect they are having on legal education. For the reasons set forth at greater length below, unless the U.S. News rankings are reformed to become more reliable and less regressive, and to begin to measure essential educational values they currently neglect, I will advocate tirelessly against the future participation of Rutgers School of Law – Newark and other schools.

Your 2011 request for data comes at a critical juncture in legal education. Over the past year or so, law schools have been accused of cheating in reporting such basic information as LSAT and grade point average scores, inflating employment data, and misstating scholarship eligibility information. The number of women and minority lawyers being afforded opportunities at our law schools is reported to be dropping steadily. The practical education we provide to young lawyers is criticized as deficient. Legal scholarship is said to be irrelevant. To put it bluntly, many have joined The New York Times in questioning the value of the entire enterprise of legal education.

I disagree with many, but not all, of these criticisms. What is striking, however, is that virtually everything that is wrong with legal education – and almost nothing that is right -- is traceable in some measure to the role the U.S. News rankings have come to play in the decisions law schools have to make. In my view, the U.S. News rankings have undermined both the integrity of legal education and the diversity of our profession. I offer the following critique in the hope that you will reconsider both the methodology of the U.S. News approach and the values that inform it.

First, the rankings encourage schools to look primarily, if not solely, at LSAT scores and grade point averages in admitting students; as a consequence, they foster a narrow-minded approach to admissions that degrades the diversity of the legal profession and fosters an unwarranted elitism.
Assume that a law school is asked to consider two applications. The first applicant, the product of a impoverished and otherwise disadvantaged background, has worked her way through a “lesser” college, and has an LSAT score and grade point average that are remarkable, given her circumstances, but slightly below the law school’s average; the second, who attended prep schools and graduated from a better-known college, offers an LSAT and transcript slightly above your median, although her undergraduate school is notorious for inflated grades. Which one do you admit?

If the decision is based on an assessment of who is likely to be the better attorney, the school may well select the first candidate, because that person has shown an ability to adapt to difficult circumstances and a determination to succeed that will serve her well, and because, quite frankly, LSAT scores and grade point averages simply do not correlate to success as a lawyer.

Without hesitation, however, many law schools will admit the second candidate. Why? There is only one dispositive consideration: the first candidate will hurt the school’s ranking; the second candidate will improve it. It should surprise no one that the rise in prominence of the U.S. News rankings has coincided with a decline in the diversity of the legal profession.

“Diversity” is drawn increasingly from people whose educational background reflects no relative disadvantage. Why? Such candidates allow schools to satisfy diversity concerns without hurting the rankings. Our profession is poorer for this logic, and our society is poorer for the diminished opportunity it produces.

Second, to the extent that the U.S. News rankings imply that some schools produce better lawyers, they leave an unfair and false impression. There is simply no correlation, other than the self-fulfilling one of the same “elite” schools’ graduates filling the same “elite” jobs, then hiring (guess who?) students from the same “elite” schools. Some of the best (and worst) lawyers I have known over twenty-five years of practice have graduated from the highest-ranked schools, while other great lawyers have graduated from lesser-known or lower-ranked schools. There is no pattern of lawyerly quality consistent with a numerical hierarchy.

But the problem runs deeper than favoring people with educationally privileged backgrounds, discouraging diversity, and leaving the outside world with a misleading impression. Third, the U.S. News rankings also have a corrupting effect on law school culture.
Because so little separates schools, relatively minor “adjustments” in data can catapult a school in the rankings. Realizing this, some schools have sought to manipulate the data by engaging in various practices designed to “game” the reporting to U.S. News. Some have admitted “weaker” students early in the summer so their scores and grades won’t “count” against the overall average; some have encouraged at-risk graduates to defer taking the bar exam so that bar passage rates will not be affected; some have withdrawn offers of acceptance upon learning that a student has chosen another school, so that their enrollment percentage remains high; some have manipulated faculty-student ratios; some have gone so far as to inflate the average LSAT score, or to admit students who have not even taken the LSAT, so that the LSAT average does not suffer. As an ABA report noted, moreover, the ranking race causes some schools to raise tuition not in order to improve the quality of legal education but in order to engage in gimmicks designed to influence the rankings.

How are we to inculcate in our students a passion for justice and integrity when we condone such shenanigans?

This brings me to my fourth concern: your rankings are simply not reliable. The widely publicized instances of outright false reporting, and the widely known instances of “gaming” the rankings, are certainly ethical challenges for the law schools, but they should also concern U.S. News as you presume to rank the schools. U.S. News has been on notice, it seems to me, that its rankings have been based in part on materially false or misleading information, yet the organization has no plans to audit or to otherwise validate the data it receives. In addition, the return rate of the reputational survey your organization distributes was reported last year at the AALS conference as so low as to be statistically impossible to validate.

I recognize that U.S. News expressly disclaims any scientific basis for the rankings, and that it advises that they not be relied upon exclusively. But the rankings have acquired a stature in the real world that, in my view, requires more of U.S. News than a cynical disclaimer. There are now law firms and judges that will not consider students whose schools are ranked below some arbitrary number. They should know better, given the patent flaws in the survey’s integrity and methodology, but U.S. News should too, and that should lead the organization to require a greater degree of reliability.

Finally, the rankings are compromised by what they fail to measure. Diversity among either students or faculty, or curricular innovation, or the emphasis upon the development of practical skills through clinics or internships, are either not considered at all, or evaluated separately from the law school generally. Yet such programs are not just organic to schools like
Rutgers; they represent the future of legal education. By excluding them, the rankings discourage the very innovations that many feel are necessary.

There is also an element of sheer arbitrariness at work in the selection of what to measure. Schools in the northeast were hurt by the decision to drop consideration of the income earned by our graduates; schools in other regions complained, with some justification, that incomes were generally higher in the northeast. Fair enough. But schools in regions in which there are very few major law schools are disproportionately advantaged in the reputational survey of the bench and bar, because they dominate legal practice in their regions, as compared with the northeast, where evaluations are spread among dozens of excellent schools.

I hope that you will consider seriously the views expressed in this letter. I have not chosen this course of action lightly; responsibility for this choice rests entirely with me. I came to academia recently from a career in private practice and public service, with a deep gratitude for the opportunities that legal education affords, and a deep belief in the intrinsic value of legal education to its students and to society.

After two and a half years, that belief persists. There are many great law schools. Each has its own culture; each has left a unique mark on our society. But this race to the rankings bottom must stop; it has the potential to undermine the entire enterprise.

I recognize that, as a public law school, our data are public knowledge, and we will be ranked regardless of whether we cooperate. But because the U.S. News rankings mismeasure qualities they deem important while failing utterly to consider qualities that, as educators and lawyers, we should all value, our law school cannot – and the law school community should not - continue to participate unless major reforms are implemented. I would be happy to meet at your convenience to discuss alternative approaches.

Very truly yours,

John J. Farmer, Jr.
Dean and Professor of Law