

September 20, 2010

President Harris Pastides  
Provost Michael Amirides  
University of South Carolina  
Osborne Administration Building  
Columbia, SC 29208

Dear President Pastides and Provost Amirides:

We write as the members of the Blue Ribbon Panel you commissioned to review the University of South Carolina School of Law. You charged us to advise you about the strengths, weaknesses, and appropriate strategy for the law school. In particular, you asked us to visit the school, to formulate views as to the opportunities for the school to improve, and to suggest what the school should do in order to seize those opportunities.

We visited the school on September 1-3, 2010. We reviewed a wide array of materials about the school, including the extensive documentation prepared in connection with the school's 2010 reaccreditation by the American Bar Association and membership review by the Association of American Law Schools. We met with dozens of people who care deeply about the school, including both of you, members of the Board of Trustees, university administrators, law school administrators, current and former deans of the law school, faculty members, students, alumni, and donors. We were treated with unstinting courtesy and kindness, especially by you and by Dean Walter Pratt and your staffs. The USC law school community spoke with passion, candor, and insight about their school, and by their example taught us that we have an important assignment to be candid, careful, respectful, and helpful in this report. We have taken that responsibility very seriously because, as we have learned, you have a law school that plays a vital role in this state and university. We believe it has the potential to make even greater progress and contributions in the future, given the right leadership and support.

President John Palms commissioned the previous presidential review of the law school in 1997. That committee assessment found a "good law school with close ties to its home state legal and judicial communities" that had made "significant progress during the past decade despite limited resources." The committee made specific recommendations with respect to students, faculty, funding, and facilities. Those recommendations included improving the average LSAT and UGPA of the student body; decreasing the size of the student population; strengthening the size and quality of faculty and the support they receive for research; seizing opportunities to collaborate on programs with the new National Advocacy Center; improving funding for all aspects of the school's mission to remain competitive with peers; and facing the reality that the University should either completely renovate the existing building or construct a major addition or new facility as soon as possible.

Thirteen years later, many of the needs and challenges of the school remain the same, while other developments create considerable issues for the school's leadership. We heard many people who love the university and school speak of the continuing need for more assistance to students and faculty, more collaborative programs with other parts of the university and community, more resources for every aspect of the school's operations, and a new or renovated building. Since 1997, the existing building has continued to age, with some basic utilities and infrastructure in need of replacement. New competitors have emerged for the law school in Charleston (as well as in nearby Charlotte, N.C.), threatening the school's historic identity as the only law school serving the state and the only place to attend law school in the nearby region. The legal profession, like the country, is enduring a severe recession and dramatic changes in the demand for lawyers and the ways in which legal services are delivered. That same recession has seriously impacted the state budget and state support for higher education, including the law school. The school's ranking in U.S. News and World Report has fallen, dropping recently into the third tier of American law schools. And the school has had four deans or interim deans since 2003, with a search for a fifth now underway. The school has not hired faculty in more than two years, and many faculty have retired or moved elsewhere, with the result that the current faculty is disproportionately divided between either long-serving faculty members or relative newcomers, with few members of medium seniority to bridge the substantial generational differences between the two groups. These would be daunting challenges for any dean.

Nevertheless, we found great strengths in this law school, and we believe those strengths warrant careful and strategic investment in this vital asset to the university. Three strengths stood out during this visit.

First and most important, the student body of this law school is extraordinarily strong in quality, in character, and in the community they create amongst themselves even in the face of thin resources. Under your new dean of law school admissions and student affairs, you have managed to hold onto a student body with strong LSAT and UGPA numbers. We met with a wide array of student leaders, and were very strongly impressed with their professionalism, dedication to the good of the institution, intelligence, and optimism. They reported a strong camaraderie with each other throughout the class, and manifested extraordinary acumen and insight in their communications with this committee. If they are the future of legal leadership in South Carolina, there is great hope for the state and the school. They compare very well to student leaders in the top schools in this country.

Second, we believe that the quality of in-class teaching in the school, and the overall quality of the education the students receive at the school, remains quite high. The school's recent ABA/AALS reaccreditation reports noted a range of quality in the teaching in the classes that were observed by the visiting team; we heard uniformly strong praise for classroom teaching by students and alumni that extended to long-time faculty and especially to the younger faculty hired in the past decade. Despite a relative shortage of clinical and skills opportunities compared to the past and to peer institutions – an issue on which some students expressed concern -- your students seem pleased with their class experience. This is far from a universal experience at American law schools in the last decade, especially as resources have grown tight.

Third, your law school commands an enviable position as part of a major research university in a state capital, with the advantage of unique opportunities based on its historic dominance in populating the state bar, the state judiciary, and the legal leadership across the state. In the current era, many other law schools are dealing with their own daunting challenges by attempting to merge into a state university (e.g., in California, New Hampshire, and Massachusetts), or to develop ties to other schools and programs within universities (such as your own school's relationship with some programs at USC and with the Vermont Law School), or to establish a dominant position in a city or state. Your law school already has these significant advantages.

We note that these three strengths, like many others, have been secured in large part by longstanding and selfless contributions to the institution by your faculty, staff, and alumni. We admire them greatly. We worry that to now turn to a more detailed analysis of weaknesses will suggest your law school is dominated by the negative, when in fact the positive shines through in every student and alumnus we met. But to improve requires a clear-eyed, non-avoidance of problems.

During our visit, we noted four significant weaknesses in the school that should be addressed if it is to improve in the future. We address these in order in importance, with the most serious coming first: (1) Systemic Impediments to Effective Governance; (2) Leadership; (3) Building; (4) Resources. We emphasize that the challenge of finding adequate resources to advance the school, while important, is not the most serious weakness of the school, nor is it unmanageable or qualitatively different than similar challenges faced by many peers of the University of South Carolina. The most serious weaknesses lie in the school governance, leadership, and perceived paralysis on the issue of what to do about the building.

#### Impediments to Effective Governance.

We listened carefully to individuals from every constituency in the school, and we observed a structure of governance and norms of communication at the school that make effective leadership difficult. This has many aspects. Most serious to us were the allocation of authority between the dean and the faculty; the perceived disregard of responsible chain of command in communications between the faculty, dean, provost, president, and board of trustees; and the lack of routine and transparent communication between the law school and vital constituencies -- including students, alumni, the state legal community, and potential supporters. Not everyone will agree with our observations on these issues, and we respectfully acknowledge our limited expertise on the underlying facts and circumstances involved. Yet even if we are mistaken in some or many of the particulars, we believe the perceptions we report below are widely-enough held by various key constituencies that they must be addressed if the school is to succeed in recruiting and retaining the best talent in the future.

On the issue of allocation of authority between the faculty and dean, we note that your school's bylaws establish the weakest powers of any dean we have seen, and the strongest powers of any faculty. Compared to the dean of every law school that has improved significantly over the past decade (whether measured by ranking, impact, or contributions), your dean under law school bylaws has severely limited powers with respect to committees, meetings, charges, and significant strategic decisions of the school. Your admissions dean does not make admissions or financial aid decisions

here, instead deferring to a faculty committee over which your dean has limited authority. Your faculty votes upon issues such as the size of the entering class. Your dean is restricted by term limits in appointing committee members and chairs. These and other provisions in your bylaws create a weak dean who must compromise on difficult decisions in order to achieve progress, and this in turn encourages deference to unwritten norms and faculty prerogatives in order to secure faculty support. Change at the school is thereby more difficult than at peer institutions with which you compete.

Let us be clear here that we believe in and support shared faculty governance, particularly in key academic areas such as faculty hiring and promotion and curriculum oversight. But these are dynamic times in higher education. We believe that the governance structure enshrined in your law school bylaws, and the norms and practices that have evolved under those bylaws, make it difficult for your school to respond in a timely matter to competitive challenges and opportunities. More nimble schools – even those lacking the great strengths we identified above – can and arguably are beating you in areas where you should be winning. Your key supporters and outside constituencies are saying this, and you should take their views seriously.

On the issue of the chain of command and communications in the university, we have already discussed this with you and will not say more here.

On the issue of the lack of routine and transparent communications with key constituencies and supporters of the school, we were told that there is a serious lack of engagement with the school. The current dean has spent extraordinary effort visiting with alumni across the state. Nevertheless, many students, alumni, donors, and others do not know what the vision and strategy of the school is, and therefore are not supportively engaged in furthering that vision and strategy. Key relationships that are needed to nurture the competitive advantages of the school – with, for example, the leadership of student organizations, of the National Advocacy Center, the state bar, and others – appear to have drifted for some time. The narrative most common outside the school is that the school's strategy is to build a new building. But that strategy has been talked about so long, and with so little tangible success to show for it, that supporters have become disengaged from participating in the advancement of other aspects of the school.

We believe these impediments to effective governance at the school can be corrected. They require a common resolve among the faculty, the law school administration, and the university administration to strengthen the authority of a new dean, to insist that complaints about the dean be channeled through an appropriate chain of command, and to hold the dean accountable for communicating often with key constituencies in an inspiring and engaging way.

### Leadership.

Your law school needs a clear and compelling mission, vision, and strategy. It does not have one. The school needs to differentiate itself from competitors in ways that attract and retain key students and faculty, and that inspire confidence and support from key constituencies. We were told by almost everyone we spoke with that the school needs a leader who will make this happen. And we were told by some that the

school has not had such a leader for a long time. If this perception is correct, the lack of sustained leadership is a serious weakness of the school.

We saw an extraordinary hunger for leadership in large and small things at the school. It was expressed by student leaders, by alumni, by donors, and by newer faculty. We also heard some members of the law school community express serious doubt about whether strategic opportunities were feasible due to lack of resources or other constraints. Faculty members were largely convinced, for example, that virtually no shared programming with the National Center for Advocacy is feasible – even though the center brings virtually every federal prosecutor in the nation to Columbia for education and training. We heard from members of the law school community who have greater faith in rumors and in conspiracies than in the public statements of the school's and university's administration.

Clearly, your law school needs a leader who can command trust, respect, and deference as he or she engages all the essential supporters in advancing an inspiring strategy for making the school improve. Those essential supporters are internal to the school, including the staff, as well as external to the school in other parts of the university and the state bar and government. We believe such a leader will manifest and embrace a vision that includes:

- A school that has both national influence and South Carolina impact
- A faculty each of whose members are expected to excel in teaching and scholarship and service at every stage of their careers, and who cannot opt out of any of these three responsibilities without serious consequences
- A community that understands that students are the key responsibility, and that every student must succeed in becoming a skilled professional who obtains meaningful employment.

We believe you are more likely to find such a leader, and he or she is more likely to succeed, if you address the weaknesses in governance we have identified above.

We also believe it will be essential to the school's success under a new dean that every constituency – faculty, students, staff, and alumni – accept some responsibility for bringing about change. We were struck in some of our conversations by a tone of resignation or a belief that improvement was the job of a charismatic new dean, a more generous group of alumni, or a central university willing to devote more resources to the law school. It will be a particular need – one that may perhaps have to be articulated by the President or the Trustees - for everyone who cares about the school to put aside disagreements about past opportunities forgone and seize new opportunities as they arise.

### Building

We toured the current law school facilities and heard a great deal about both the existing building and plans for a new law school building. The current law school

building is far from ideal. The plans for a new building are visionary and, if completed, would certainly be very significant enhancements to the school. But the school has been talking about a new building for more than decade, and no ground has yet been broken. In the meantime, the existing building has deteriorated. We saw some improvements, including in student spaces, a bookstore, classroom technology, and other aspects. But a building that looked tired 15 years ago now looks dramatically behind peers with which you compete. As one of many possible examples, both a trustee and a student leader commented on a garbage can full of leaked water from the ceiling sitting in the middle of a main hallway for weeks on end – and indeed there it sat on our building tour, waiting for someone from facilities with asbestos certification to move it.

We believe that the challenge of what to do about the building has come to dominate, and to some degree to prevent, meaningful progress on other strategic challenges of the school. Several key constituents of the school reported that your law school is in limbo because it cannot decide what to do about the building. Because of the possibility of a new building, there is little incentive to invest major resources to fix the old one. But because the possibility of a new building has been so long delayed, generations of students are left in a deteriorating old building, and fundraising is primarily focused on a future building rather than the immediate needs of current students for financial aid and other programming. This in turn has led to cynicism among current students and graduates about supporting the school. Few students, even those most engaged in leadership roles, expressed a willingness to give back to the school after graduation.

We believe the time has come to either paint or get off the ladder. Your school needs to either abandon the new building and fix the current one now; or break ground in a public and tangible way very soon on the new building; or embrace a creative third alternative such as moving to a new space. Further lengthy drift while the school tries to decide what to do or how to raise additional money has serious costs for the experience of the students and the credibility of the university with key supporters. We don't know which alternative is best, but we urge you to pick one and pick one soon, because the uncertainty is seriously distracting you from key challenges and harming your students.

### Resources

We turn finally to the issue of resources. All constituencies of the school ascribe part of the current situation of the school to money issues. It is undeniably the case that the University of South Carolina School of Law spends less per student than almost all American law schools; charges a higher in-state tuition than almost all state law schools in the South; and raises less money in philanthropy from its alumni than many of its peers.

We heard remarkably different narratives from different people we spoke to about these issues. One central university administrator described USC legal education as more expensive than education in other USC schools and departments, and emphasized that the law school already receives a share of state appropriations that far exceeds its share of student enrollment at USC. Some senior law faculty emphasized repeatedly that the University needed to dramatically increase financial support to the

law school, thereby permitting a substantial decrease in student body size, a substantial increase in the number of tenured and tenure track faculty, and an increase in scholarship aid to attract and retain the best South Carolina students. Donors and alumni of the school have not responded to fill these needs, perhaps in part because of the conflicting messages and a perceived lack of progress on the building and programs.

Resources clearly are a constraint at USC School of Law. We believe that, until such time as the School of Law can make greater expenditures on student financial aid, faculty resources, and high-quality academic programs, it will be hard for USC to compete successfully with other flagship law schools in the Southeastern states. If the university and the school fail to come up with these resources, you can expect to lose strong faculty and students – including faculty and students who would prefer to remain in South Carolina – to other institutions.

We believe that an essential step to addressing the resource issue is for all parties to step back from entrenched narratives and embrace the need for a new approach. Many peer institutions in the United States face similar resource challenges. They have not solved them by (1) expecting the law school to thrive on less resources than all competitors on the theory that some other schools in the university require even less money; or (2) expecting the university in straightened times to generate huge new revenues to support fewer students, more faculty, and more financial aid. They have responded to them by inspiring targeted university investment in entrepreneurial law school efforts that have the prospect of generating increased revenue – revenue that can be invested in students, faculty, and programs. It is our belief that this targeted investment, and the success that follows from it, can inspire donors, build ties to other programs in the university, and create forward momentum for a school on many issues.

What are examples of such efforts that other law schools have used? They include: high tuition masters of laws degree programs that build on strengths of other university departments or other nearby institutions, such as the National Advocacy Center; admitting large classes of transfer students, for example from nearby private schools where the tuition is higher; part-time programs, which exist in almost all state capitals today but are lacking in South Carolina; creating undergraduate programs in law (such as at Arizona State University); and targeted academic programs in fields where a school can lead the nation (such as, for example, health law, elder law, or advocacy). A well-designed strategic planning process could identify other ideas.

This approach would require some additional investment of university resources, as the law school today is hard-strapped even to staff its current programs. It may require addressing issues of space, since the current building may be hard-pressed to host additional students or programs. And it will require holding the law school accountable for producing success and new revenue in the programs it undertakes. Finally, it may require honest assessment of barriers to success in South Carolina that are not present at your peers (such as limits on how much of tuition from one program can be devoted to financial aid to keep your student body competitive). Our point is simply that other universities and law schools have managed these challenges, and have managed to generate new resources and positive progress by doing so. South Carolina should be able to learn from their experience and do so as well.

## **Conclusion:**

You asked us to assess strengths, weaknesses, and opportunities at the School of Law. We have focused more on structural issues than on particular programs because of the issues that emerged during our visit. We emphasize that we saw great strengths and great people during our visit. We believe that if you empower the right leadership and invest strategically in the school, that marginal investment will produce a great return.

We believe that the specific questions you raised in your letter to us have been touched on in this report. It is our considered judgment that the answer to questions 1-4 is "Yes;" and the answers to questions 5 and 6 are found in the body of the report. If you need clarification about any of these questions or about the matters covered in this report, please let us know.

Respectfully submitted,

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