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What Do You Do When Nothing Seems to Work: An Evaluation and Suggested Approach to Addressing the Diversity Issue in Legal Profession

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What Do You Do When Nothing Seems to Work:

An Evaluation and Suggested Approach to Addressing the Diversity Issue in the Legal Profession

By Dean Michael Hunter Schwartz* & JB Smiley Jr.

According to a frequently-told story,¹ many years ago, a general was attending a conference on military strategy at a large hotel. The hotel was also hosting a very different conference. Delayed over lunch, the general arrived late to the first afternoon session. He rushed in and sat down. After a few moments, the general realized he had walked into the wrong conference room. He quickly determined it would be rude to leave. He decided to listen to the discussion and leave when it ended. The discussion concerned radiation as a treatment for cancer. The doctors were expressing frustration because, although radiation was proving very effective at killing cancer cells, it was equally effective in killing the healthy cells through which the radiation needed to pass to get to the cancerous cells. After a few moments, the general sheepishly raised his hand. He explained that he was in the wrong room and that he was supposed to be in the military strategy conference across the hall. He also stated that, many years ago, the military had struggled with a similar problem. He explained that most fortresses are surrounded by mines. If an army were to attack such a fortress in full force from one direction, the army would trigger the mines and many lives would be lost. Armies therefore had to develop a different approach; they began to attack fortresses from all sides and in small groups, which would allow the forces to avoid the mines. The general suggested that a similar approach might work for an attack on cancerous cells. According to the legend, this insight led the oncologists to decide to beam lighter doses of radiation at cancer cells from many different directions at once, an approach that to this day has enabled oncologists to minimize the harm to healthy cells.

The new approach—which ultimately led to the solution—constituted a paradigm shift. Similar to the oncologists' radiation issue, the legal profession's diversity issue has plagued the profession for many years. There have been several programs that have attempted to remedy the legal profession's diversity issue; however, the number of minorities within the legal profession is significantly disproportionate in comparison to the nation's minority population.² To remedy this long-lasting problem, legal education needs a *paradigm shift*.

The United States minority population is on the rise.³ However, the legal profession is not following suit.⁴ Addressing this issue requires a skeptical look into the nation's law schools and at the programs developed to bolster diversity within the profession. The programs we have in place tend to skip over the individuals who truly need help.⁵ Unsurprisingly, this hurdle is not the only one that must be overcome. Minority students—accepted into law school—underperform in comparison to their white peers.⁶

Despite the overall inadequate results, there have been successes that if continued on a larger scale will help effectuate the goal—helping students from underrepresented populations succeed in law school and diversifying the legal profession. Those other efforts, both at the law

school and the undergraduate levels, show great promise. The rest of the article details two such efforts and suggests the best of both become the new model for recruiting and retaining minority law students.

I. The Council on Legal Education Opportunity

The Council on Legal Education Opportunity (CLEO) "is committed to diversifying the legal profession by expanding legal education opportunities to minority, low-income and disadvantaged groups."⁷ This commitment includes preparing students for the process—applying to law school, taking the LSAT, completing law school, passing the bar exam, and subsequently finding or creating jobs within the legal profession. Thousands of students who have participated in CLEO's programs have been successful at each stage of the process and are now members of the legal profession.⁸

How does CLEO achieve success?

CLEO's core program, its Summer Institutes, consists of several different components, including peer mentors, law school success skills, visits to courts, legal institutions, and law firms, first-year courses, and a software/program designed to improve writing skills called "Core Grammar for Lawyers."⁹ In addition, before the students arrive on site, CLEO's Academic Curriculum Consultant, Professor Rory Bahadur, offers teaching methods training to the faculty at the host law schools.¹⁰

The students participating in the CLEO program are assigned to groups that consist of four to six students and a trained, upper-division student mentor.¹¹ The student mentors go through an extensive training process where they learn active learning and teaching methodologies



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with an emphasis on cooperative learning.¹² The students also attend workshops taught by CLEO faculty. The workshops not only give students an opportunity to experience law school Socratic-style instruction first hand, but also teach them to be expert self-regulated learners.¹³ Additionally, the workshops focus on teaching students how to most effectively read cases, take notes, perform legal analysis, and outline their courses.¹⁴ The student mentors help facilitate learning in the small group setting.

At the conclusion of each Summer Institute, each student disperses to whichever law school that admitted her or him.¹⁵ The groups end with the conclusion of the Summer Institutes.

CLEO reports that its alumni “are represented in every area of society, including: private law firms and corporations, law schools, federal and state judiciaries, and legislatures across the country.”¹⁶ The results are significant; however, evidence is lacking that will support a conclusion that CLEO alumni succeed at a greater rate than like peers who do not participate in the CLEO program or that CLEO alumni use the techniques they learned during the CLEO program once they get to law school.

Some relevant data does exist for a similar program known as the Posse Foundation, Inc. (POSSE) program, which was designed for undergraduate students with diverse backgrounds.

II. POSSE

Since its inception in 1989, POSSE has been motivated by three goals, which are:

1. To expand the pool from which top colleges and universities can recruit outstanding young leaders from diverse backgrounds.
2. To help these institutions build more interactive campus environments so that they can be more welcoming for people from all backgrounds.
3. To ensure that Posse Scholars persist in their academic studies and graduate so they can take on leadership positions in the workforce.¹⁷

In a concerted effort to achieve its goals, POSSE has sent 4,848 students with diverse backgrounds to college, and the students did not go empty handed.¹⁸ POSSE has received \$577 million in scholarship assistance from partner universities, and has awarded the scholarships to the POSSE scholars.¹⁹

The students gained more than just money; they also gained skills to succeed. POSSE’s program consists of four components: (1) recruitment and selection, (2) pre-college training, (3) full scholarships, (4) campus and career support.²⁰ The selection process

is focused on identifying groups of 10 students with positive attitudes who are motivated, have leadership potential, and a drive to learn.²¹ Once the students are selected, POSSE devotes its efforts to their success. POSSE scholars meet with POSSE personnel for two hours each week during the students’ senior year to receive training in four areas: (1) “Team building and group support,” (2) “cross-cultural communication,” (3) leadership and becoming an agent of change, and (4) academic success.²²

POSSE scholars are given a four-year scholarship, which covers their entire tuition.²³ Once a POSSE arrives on a university’s campus, the university provides a faculty mentor for the POSSE.²⁴ The faculty mentor meets with the POSSE once a week and with each POSSE scholar individually every two weeks during the first two years.²⁵ POSSE personnel visit the campus four times throughout the year and, interestingly, facilitate an annual retreat among the POSSE, other members of the student body, and members of the university faculty and administration; the group meets to discuss and address a campus issue raised by the POSSE.²⁶ Also, the POSSE program makes summer internships available to the POSSE scholars; for the most part the internships include opportunities to develop their career-relevant skills.²⁷

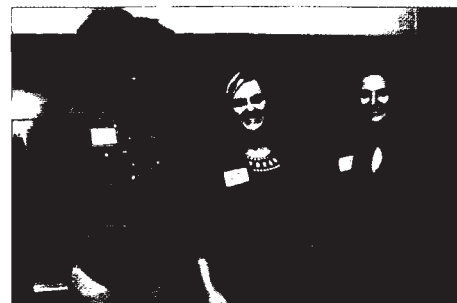
POSSE has an impressive graduation rate of 90%,²⁸ which exceeds the national undergraduate graduation rate for all students of approximately 60%.²⁹ Considering the remarkable success of the POSSE program, implementing a law school-focused version is a promising idea.

III. The Vision

A hybrid fusing of the best aspects of the CLEO and POSSE programs could be the blueprint for the future. In a more in-depth article forthcoming in the *Valparaiso Law Review*, Dean Schwartz details this vision.³⁰ The vision combines the model Dean Schwartz created for CLEO with the following key elements from the POSSE Program: small groups that stay together, careful monitoring, scholarships, summer jobs, collaboration skills training, institutional input, and selection process.³¹

This new model, of course, can only be deemed a success if it has a transformative effect on the students it serves. Law schools, however, may need to take a few preliminary steps to prepare their communities for the program and convince minority students to participate.

First, at many law schools, minority stu-



Reception to Welcome Dean Schwartz
l to r: Furonda Brasfield, Aarika Kilgore,
April Rhéaume



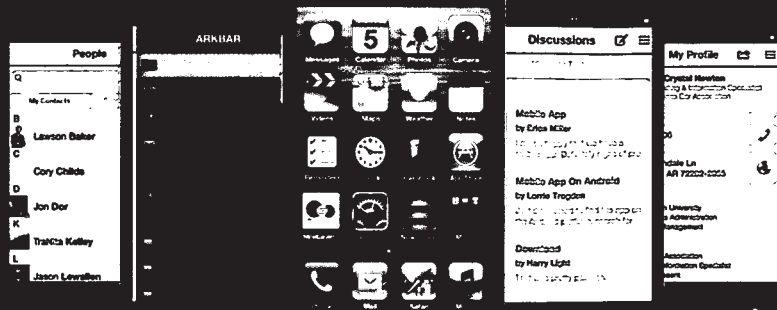
2013 Welcome Week

dents report that they are treated differently, sometimes even with suspicion, and may even be asked, on occasion, to speak as if they were representatives of everyone who has a similar racial background.³² Law schools may well need to develop and implement a program of cross-cultural training for faculty, staff, and existing students to avoid these problems.

Second, law schools will need to bolster interest in the legal profession among students with diverse backgrounds and make these students aware of programs like the proposed model, which removes the financial burdens of law school. The national decline in minority law school enrollment³³ is a significant hurdle. Law schools may need to create partnerships with school districts by which the law schools offer mock trial or moot court experiences that would help get underrepresented populations excited about the possibility of law school.

The hybrid model will help students from underrepresented populations succeed in law school and successfully diversify the legal profession. However, every new idea, even the ones that are grounded in educational research and sound hypotheses like this one, require a pilot program. Therefore, two or three law schools should pilot the idea. An ad-hoc committee at the UALR Bowen School of Law (“Bowen”), consisting of faculty, students, the law school’s student services dean, and the law school’s admissions dean, are considering whether Bowen should pilot

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this idea. If Bowen implements the idea, the law school will collect data from the pilot program and use it as evidence of the effectiveness of the new model. Once law schools demonstrate that the model works, expansion efforts can begin.

Endnotes:

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1. It may well be that the story is untrue. Instead, the story appears to be a variation on a tool used to assess analogical thinking. See <http://www.csi.ucd.ie/staff/fcummins/CogModels/duncker.html>. While the story may not be true, the authors have chosen to include it because, by analogy, it speaks powerfully to the need to look outside legal education for solutions to the challenges currently confronting legal education, including diversifying the profession.
2. See Terry Votel, *Diversity in the Legal Profession: The Challenge Remains!*, BENCH & B. MINN. 7 (Jan. 2011).
3. *Id.*
4. *Id.*
5. Eli Wald, *A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who Is Responsible for Pursuing Diversity and Why*, 24 GEO. J. LEGAL ETHICS 1079, 1081 (2011).

6. See Jesse Rothstein & Albert H. Yoon, *Affirmative Action: What Do Racial Preferences Do?*, 75 U. CHICAGO L. REV. 649, 688–90 (2008) (comparing first-year class rank with percentile score and graduation rate with percentile score of black and white students). See also Dorothy A. Brown, *Taking Grutter Seriously: Getting Beyond the Numbers*, 43 HOUSTON L. REV. 1, 19 n.141 (2006) (citing Expert Report of Patricia Gurin for University of Michigan app. B, *Gratz v. Bollinger*, 539 U.S. 244 (2003) (No. 02-516) & *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241, available at <http://www.umich.edu/~urel/admissions/legal/expert/gurinapb.html>).
7. CLEO, <http://www.cleoscholars.com/index.cfm?fuseaction=Page.viewPage&pageId=482> (last visited Sept. 25, 2013).
8. *Id.*
9. August 17, 2013, Interview with Professor Rory Bahadur, CLEO Academic Curriculum Consultant. Notes on file with author Michael Hunter Schwartz.
10. *Id.*
11. *Id.*
12. *Id.*
13. Michael Hunter Schwartz, *Teaching Law Students to be Self-Regulated Learners*, 2003 MICH. ST. DCL L. REV. 447, 474 (2003).
14. August 17, 2013 Interview with Professor Rory Bahadur, CLEO Academic Curriculum Consultant. Notes on file with author Michael Hunter Schwartz. See generally, Michael Hunter Schwartz, *Expert Learning for Law Students* (Carolina Academic Press

2008).

15. August 17, 2013 Interview with Professor Rory Bahadur, CLEO Academic Curriculum Consultant. Notes on file with author Michael Hunter Schwartz.
16. See *supra* note 10.
17. Mission + History + Goals, <http://www.possefoundation.org/about-posse/our-history-mission> (last visited Sept. 29, 2013).
18. Mission + History + Goals, *supra* note 20.
19. Mission + History + Goals, *supra* note 20.
20. *Program Components*, THE POSSE FOUNDATION, INC. <http://www.possefoundation.org/about-posse/program-components> (last visited November 7, 2013).
21. *Recruitment*, THE POSSE FOUNDATION, INC. <http://www.possefoundation.org/about-posse/program-components/recruitment> (last visited November 7, 2013).
22. *Pre-collegiate Training*, THE POSSE FOUNDATION, INC. <http://www.possefoundation.org/about-posse/program-components/pre-collegiate-training> (last visited November 7, 2013). The academic success training appears to be analogous, if not identical, to the self-regulated learning instruction provided by CLEO.
23. *Nomination Process*, THE POSSE FOUNDATION, INC. <http://www.possefoundation.org/about-posse/program-components/recruitment/nomination-process> (last visited Sept. 29, 2013).
24. *Campus Program*, THE POSSE FOUNDATION, INC. <http://www.possefoundation.org/about-posse/program-components/campus-program> (last visited November 7, 2013).
25. See *supra* note 27.
26. See *supra* note 27.
27. *Career Program*, THE POSSE FOUNDATION, INC. <http://www.possefoundation.org/about-posse/program-components/career-program> (last visited November 7, 2013).
28. Mission + History + Goals, *supra* note 12.
29. Jonathan D. Glater, *In Search of Standouts Who May Not Stand Out Enough*, N.Y. TIMES (May 24, 2006), http://www.nytimes.com/2006/05/24/education/24posse.html?pagewanted=all&_r=1&_t=1&_i=1&_n=1.
30. Michael Hunter Schwartz, *50 More Years of CLEO Scholars: The Past, the Present and a Vision for the Future*, ___ VALPARAISO L. REV. ___ (2013).
31. *Id.* at ___.
32. See Meera E. Deo et al., *Struggles & Support: Diversity in U.S. Law Schools*, 23 NAT'L BLACK L.J. 71, 73 (2010).
33. Jodie G. Roure, *Achieving Educational Equity and Access for Underrepresented Students in the Legal Profession*, 19 TEMP. POL. & CIV. RTS. L. REV. 31 (2009). ■



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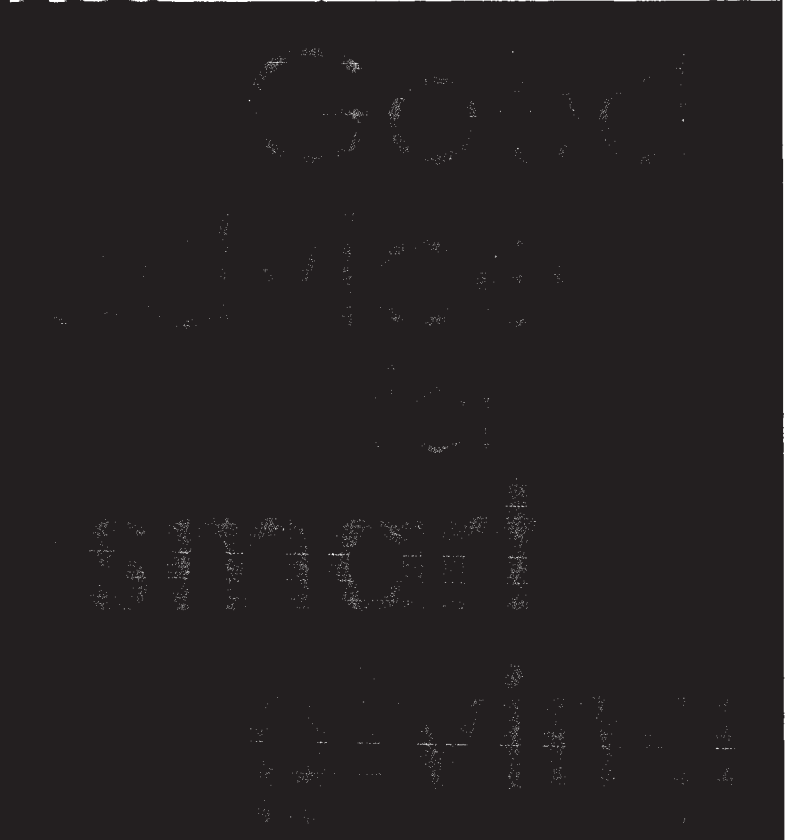
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