

## 2021 Black Lawyers Matter Conference<sup>SM</sup> Session 3: Re-Envisioning the Hiring Process for New Lawyers

### FULL TRANSCRIPT

**Voiceover:** 2021 Black Lawyers Matter Conference<sup>SM</sup> presented by LSAC, University of Houston Law Center, and SMU Dedman School of Law, in collaboration with the conference planning committee. Recorded October 15, 2021. Session 3: Re-Envisioning the Hiring Process for New Lawyers.

[Upbeat music plays and fades out]

**Jennifer Collins:** Good afternoon. My name is Jennifer Collins and I'm the dean of SMU Dedman School of Law and I am honored to moderate our panel today on Re-Envisioning the Hiring Process for New Lawyers. This session we'll envision what a fair hiring process might look like and chart some specific recommendations for action. I'm going to give extremely brief single sentence introductions of our panelists today. So we leave as much time as possible for discussion. Each of our panelists is going to begin with some remarks, and then we will leave time at the end for discussion and your questions. We have an extremely distinguished panel to address the question of the hiring process this afternoon. In alphabetical order, Alison Ashe-Card is the associate director for diversity and inclusion at Wake Forest School of Law. Jaret Davis is the co-managing shareholder in the Miami office of Greenberg Traurig. Danielle Holley-Walker is the dean of Howard University School of Law. Jim Leipold is the executive director of the National Association for Law Placement and finally, Anthony Upshaw is a partner and the Global Head of Diversity and Inclusion at McDermott Will & Emory. We are going to start with Jim and the perspective of the National Association of Law Placement.

**Jim Leipold:** Great, thank you, Jennifer. Sorry about that, thank you, Jennifer. I think my job here today is to set the stage for our conversation. So I really want to talk to you about inequality in law school, graduate employment outcomes as they exist right now, and as they have existed over time. So as I think everybody probably knows, NALP is in the business of measuring law school employment outcomes and part of that research going back almost 45 years is measuring disparities and employment outcomes for various groups. It's really important to understand that many of those historic gaps have closed over time, notably the gaps between men and women. However, the employment gaps between Black law school graduates and White law school graduates have persisted over time in ways that some of the others haven't. So for instance, for the most recent class that we have complete data for, for the class of 2020 White law school graduates had the highest overall employment rate of all, at over 90%, and Black law school graduates had the lowest overall employment rate at just 83.8%, a gap of more than six percentage points. Similarly, when we look at bar passage required work, so jobs that require a law license, White law school graduates had the highest level of employment in bar passage required jobs at 78%. That rate was nearly 16 percentage points lower for Black law school graduates at just 62.5%. We also know that Black law school graduates enter private practice as a first job at a lower rate than any other group of law school graduates. It's really important to know that there are other gaps and those other gaps are important to talk about. We don't have time today to dive into all of them, but there are gaps for LGBTQ students and students who are military veterans and students with disabilities. One gap that

I want to point out is that, Native American law school graduates and Native Hawaiian and Pacific Islander graduates have also had large gaps between their employment rates and the rates of the rest of the class. But because those two groups are so small in number, those gaps fluctuate quite a bit. So they don't have the same persistent pattern that the gaps between Black and White law school graduates have.

Overall over the last six years, the average overall employment gap between Black and White school graduates has been just over seven percentage points and the average gap in bar passage required employment between Black law school graduates and White law school graduates has been over 18 percentage points. So, I spent a lot of time agonizing over this data and it's impossible for me not to conclude that law schools have long had systems in place that preference and prioritize the employment outcomes of White graduates over Black graduates and I think that conclusion requires that all of us examine our systems to identify and eliminate the places where implicit bias and unseen structural racism hold our Black law school graduates back. I would go so far as to argue that there's a moral imperative for each law school to develop a concrete and measurable plan to close the employment gaps for their own graduates. That means that each law school needs to identify what these gaps are for their graduating classes and it can vary a great deal, from one school to another. It's really not enough in 2021 to admit a diverse class to the law school. Law schools have an obligation to put in place systems that will ensure the success of all graduates across race and ethnicity and gender and those gaps should be demonstrably closing at each institution year over year. There's another layer that we're able to add for the first time this year. So for the first time NALP has collected employment data in a way that allows us to measure the differences and outcomes for first-generation college students and those students who had a parent who went to college and those students who had at least one parent who went to law school. Later this month, we'll be releasing those initial findings, but you won't be surprised to learn that graduates who do not have at least one parent with a bachelor's degree, do less well in the job market when they graduate. Also not surprisingly, a higher percentage of graduates of color are reported as first-generation college students from the law schools than where the White law school graduates. And in fact, nearly 36% of all Black law school graduates were first-generation college compared to just 22% for the class overall.

So at a minimum to me, this suggests that developing programs that provide support for first-generation students will inevitably provide some additional support for Black law school students. I think another piece of this problem that's deeply tied to the employment rate problem and the employment outcomes gaps is the merit-based financial aid system that we have in place and the problem of student debt, new research from AccessLex has confirmed what others have shown for years and that is that Black law school graduates bear more student debt than their peers and considerably more than their White law school classmates. I would argue that our merit-based financial aid system, as it has evolved over the last two decades is a significant lever in prioritizing White outcomes, over Black outcomes. Law schools, like many institutions in higher education, continue to use the bulk of their institutional discretionary financial aid dollars for merit aid rather than need-based aid, essentially buying LSAT scores in pursuit of the holy grail of U.S. News rankings. Gerry Oregon, among other scholars, has long argued that the current system forces those students with the least means, often students of color, to subsidize the legal education of the students with the greatest means. So not only do Black law school graduates have less robust employment outcomes, but they're also saddled with more debt. I don't think it's too much to say that this has left a moral stain on American legal education and a stain that will be hard to cleanse, but the time for changing the system surely has to be now. Jennifer's asked us to make some concrete suggestions for creating a fairer process for new lawyers.

So in wrapping up remarks, I'll make two small recommendations. The first would be to restore more of a lottery system to our recruiting processes on campus. I think each of us knows intuitively that when lawyers meet our students and see them in action, they are inevitably impressed, but many students of color don't have the opportunity to even get that first interview. At the most selective schools, lottery systems have long been an important tool on campus to try to make that interviewing process more equitable. Unfortunately, with the pressures on the employment market that followed the great recession, we've seen a real erosion in lottery systems and increasingly even many of the most selective schools allow employers to pre-select which students they'll see in the OCI process by reviewing the résumés before they meet the students. This has been an unfortunate development, I think one we would do well to reverse. The last suggestion I make is to consider seriously some super creative ways for stepping away from campus-based recruiting as we've known it. So I'll just give one example, one tool's a case competition. So prior to the pandemic, the University of Cincinnati partnered with area law firms to build a student diversity case competition, based on the business school model. This program was designed to simulate a real-world associate experience complete with evaluation and feedback processes. Students competed for cash prizes by showcasing their analytical problem solving and communication skills in front of potential employers. I think the greater use of tournaments, case competitions and other experimental alternatives to OCI to get law students in front of potential employers would help equalize our employment outcomes. I think the Cincinnati program is just one experiment among many as we come out from under the worst of the pandemic confines that we could employ to improve the current situation. Thanks, Jennifer.

**Dean Collins:** Thank you for those really thoughtful comments. We're going to start with a law school perspective and we'll start with Danielle and then go to Alison. So thank you so much, Dean Holley-Walker.

**Danielle Holley-Walker:** Thank you, Dean Collins, I am thrilled to be with you this afternoon and really enjoyed the first panel that I was on and this has just been a wonderful conference and I'm enjoying hearing all of the various lessons and turning now to the question of employment, which I think is such an important one. So I first want to kind of center the context of my comments around my experience as Dean of Howard's law school. So I came to Howard as Dean in 2014, and I think one of the things that surprised me most was how well Howard was doing, considering that I knew many of the statistics that Jim just gave us. I was very worried about career services at the law school and I think one of the things that I discovered pretty early on was that Howard was doing very well in career services and particularly in the area of placing students in big law firms, that there had been a tradition over about 50 years of about 25 to 28% of students at Howard graduating, going into big law. I think one of the things that I discovered pretty early on was that we needed to push way past that point that we had approximately 150 employers, private employers coming on campus to interview and we had over 100 government and non-profits coming to interview on campus and we only graduate about 150 students a year.

So we had lots of employers on campus. But I think one of the things that I saw right away is that every employer believed that the only Howard graduates who are qualified to work for them were our top 10 or 15%, right? And I think that's probably the first lesson that I want to draw out is the need for us to talk very specifically with employers about why they are employing certain hiring practices and the underlying values and beliefs that drive the employment practices for a lot of employers. So for me, I like to have open honest discussions with employers and so in that first two years that I was in the job as dean, I really did a lot of work with employers just to ask them, like, I see that you've advertised for a job at Howard Law. It says that you will take resumes as Jim was just talking about the problem of kind of, pre-selection only from the top 15% and I told them, and then they would say yes, and we've been unable to identify a candidate from Howard for the last five years and I'd be

very honest with them and say, you realize that there's a tremendous amount of competition for our students and so when you say you'll only take the top 15%, you're essentially saying that you will not hire a student from Howard because those students are taken by the most kind of prestigious law firms in New York and D.C. So if you're from a regional market, you're recruiting at Howard, it's unlikely that you will be able to recruit a student in the top 15% and for some of the employers, they were very surprised that they would not be seen as competitive among our student body for those spots and so what I said to a lot of employers is take a chance on our students, right? Start moving that needle from you only recruit from the top 15% to now you recruit from the top 30 or top 40% and I said, try one student or two students, if you're unhappy, we can come back to the table and talk about it and I think what we found is that more employers began to really change their standards when it came to who they would see and who they would interview at Howard and over the last seven years, we've seen a 10 percentage point move now to almost 40% of our graduates going into big law and an increase in the number of our students who are employed overall at the 10 month mark, getting closer to that 90% mark, that Jim was talking about for White graduates, we're moving almost, they're worried about 87 or 88% and over 90% of the students who attend Howard's Law School are students of African descent. So that is a very, I thought important lesson that I took away from those first couple of years on my deanship, is to really talk very openly and honestly with employers about the barriers that they see, and many of the people who are coming to talk with me are advocates in their own firms, right?

So they are people who were deeply committed to hiring from Howard, but they needed some talking points and some information to go back to their recruitment committees and talk honestly about why are we now recruiting the top 25% or top 30% from Howard when we used to only take the top 10 or 15%. So open and honest communication with employers, I think is very important and going specifically to the issue of race, right? Because it's very hard to confront these problems and again, I want to agree with Jim strongly. It is very hard to confront this problem unless you are willing to talk about it out in the open and so inside of our law schools, I think, the real hesitance — and at my previous law school — to talk about that difference in terms of how we are getting our students employed and if there is a racial gap and why that racial gap exists, but we can't solve anything that we won't talk about and we won't confront and so that's the first lesson I wanted to have as a takeaway. The second is we have to prepare our students and I won't say too much about this because I know that Alison is going to talk a lot about preparation, but I think one of the things that I've found is that many of our students are first-generation law students and they need a lot of preparation in terms of even understanding the various practice areas and the possibilities for where they could go and work successfully. So we started a program called Pathways to the Profession, so in terms of takeaways, a lesson learned, I know that Dean Collins want us to focus on that.

So number one is confront the hard things. Number two lesson for me is to have a very intense preparation program for all students, but especially students who are first-generation or students who are from underrepresented groups in the profession, because I think what that does in our pathways program, we're able to introduce students to areas of the profession that they may have not heard of. So for example, we're going to do a big project with Paul Weiss, where we're introducing their new ESG practice to our students. So I think that's very important to get employers on campus, before their hiring in education mode, about various types of practice to educate students. And finally I want to say a word about retention. While the first job out of law school is very important, what we've found is that there are also significant gaps in terms of Black lawyers being retained especially in private sector employment. And I think the need to talk about very openly, once you recruit Black lawyers and other lawyers of color into your practice, what are the systems you have in place to support them? How do you help them develop clients? How do you make sure they get meaningful feedback? How will they feel fully invested and part of the culture of the employer, right? And how can you make sure that they have opportunities for meaningful success

inside the law firm or inside a government agency or inside your nonprofit? And one of the things I think that surprised us is that the retention problems are not just in private employers, in big law. We have a lot of retention issues in the nonprofit sector and in government and I think we need to start talking about, as we're talking about issues and hiring, talking about issues of recruitment and really steering our students in many ways to asking those questions about what is your retention program, what are the structures that you have in place to support lawyers who are from underrepresented backgrounds? Because without those retention structures, it is really futile for us to place students in those jobs because there'll be in and out within two or three years and looking for other ways to really sustain themselves in terms of their legal career. So I really strongly encourage us to think together in partnership, employers and law schools, about ways that employers can retain Black lawyers and other lawyers from underrepresented groups. Thank you so much and I look forward to our conversation.

**Dean Collins:** Alison?

**Alison Ashe-Card:** Great, thank you so much and first I wanted to just start by saying thank you to Kellye Testy and the Law School Admission Council to Dean Baynes and to Dean Collins for having this phenomenal conference, I attended last year and it was absolutely an honor to be asked to participate this year. And as a follow-up to Dean Holley-Walker, I think that one of the things that's been really great about the conference this year is it really sort of follows my thinking in terms of what we need to do to prepare Black lawyers. Because I think the process starts long before the interview season starts in the spring and it really starts about us being thoughtful about who we are admitting to our law schools, right? It's more than just what's on paper and we have to really have this holistic approach and I think if you, you hear what they talk about at LSAC, the LSAT® is just one piece, but unfortunately we put so much emphasis on it and I think we are missing out on a lot of really great talent particularly an underrepresented communities and communities of color. So it's important to prepare those students, having summer programs, having pipeline programs are absolutely key because a lot of students come to law school and they have no idea what it is they wanted to do. They may not even really understand what the practice of law is and so we have to prepare them and so I'm really proud that that at Wake Forest, we have, I think a program that may be similar to what Dean Holley-Walker was talking about at Howard, but at Wake Forest, we have a professional development course that is required for all of our first-year law students and we talked to them about what it means to be a lawyer.

We have a series of 20 career panels in the spring to expose them to various practice areas, alumni and other lawyers who are practicing so they can understand the breadth and the depth of the legal practice. That there's more than one way to practice criminal law. There's a lot of different opportunities for a lot of practice areas and I think our students are really surprised even those who may have come thinking they wanted to practice in a particular area. The other thing is we do a lot of assessments. We want our students to think strategically from the time they walk into our doors about what that practice looks like when they leave and understanding that hopefully if students are being strategic about their career path, that helps with that retention. Because I think all too often, sometimes students, when they graduate, will just take the first thing that comes along. We are working with them from the time they walk in the door to be strategic about what it is they want to do and understanding that that might change during the three years they're in law school, but it's really important for them to be thinking strategically about it. So by having this required course, it gives them that time that they probably otherwise wouldn't have taken. And the other thing is really explaining what that job search process is.

So I think Dean Holley-Walker used the word place, and I'd say those of us who work in career services hate that word because we don't place students, right? We help them with their professional



development because I can't walk in the door with them for their interview. I'm not the one sitting in the law firm deciding who to interview, but what I can do is prepare them. And what we have heard from the employers who recruit at our school is this time that we are taking to prepare our students has helped them to be able to articulate better what it is that they want to do. That they're more strategic about the places that they are applying to and I'll push back a little bit on what Jim said. I think that there may be some wall schools where that lottery system might be great. I think those of us that work at law schools understand that we don't have as much control over, who the employers are picking, but what we can do is help better prepare our students for that process. We also talk to our students about the fact that on-campus interviews is just one piece of their job search and they shouldn't put all of their eggs into one basket. So I advise my students, even if you're not right at that, whatever that grade cutoff is, throw yourself in the basket, right? You'd never know because some of our students are coming with other experiences, different backgrounds and so we also participate in a variety of programs where employers are specifically looking for students of color — other underrepresented students. So the Southeastern minority job fair — we have a program through the North Carolina Bar Association — a summer associates in the profession program. There's a program in Charlotte. And so recognizing that students can't just participate in one thing.

The other thing is, I think we need to recognize that one size does not fit all and I think sometimes those of us who work in career services think that we have to provide the same services to all of our students and I think what we need to recognize is if we take a look at this through an equity lens that we might need to do more often for our students of color, because they're first-generation because they don't have other people to ask and unfortunately these are students who often don't find their way into our door and so we have to be more proactive about reaching out to them and finding out what it is that they are doing. And the other thing is — that isn't as much as our purview, but more so in the faculty — it's also making sure that we are creating this culture of belonging in our law schools. Because what I have seen is for students of color, when they don't feel like they belong, it becomes a self-fulfilling prophecy in terms of how they perform on their exams. So just because someone isn't necessarily at the top 10% of the class doesn't mean that they have the capacity and so all of these things that we've been talking about today, this anti-racist curriculum and recognizing and giving all of our students this context, this is only going to help our students. And so I think that it's really about taking this holistic approach, reaching out to our Black students and our other students of color, making sure that they are prepared. Because what I am finding is that I have many students, particularly Black students and under-represented students who are going into these large law firms who are nowhere near their grade cutoffs because of the preparation that they have, the way that they are able to present themselves on paper and in the interview really goes a long way in preparing them. And then hopefully also working with employers to understand that there are these students out there and I think that we who work in career services, we need to get out there, know our students and advocate them and many of the same ways and has gone on for a long time for other students. Thank you.

**Dean Collins:** Thank you so much. We're going to hear from the employer perspective now. We're going to start with Jaret and then finish up with Tony.

**Jaret L. Davis:** Thank you, Dean Collins. It's an honor to be here. Thank you for sponsoring this important workshop. Dean Collins asked us to focus on concrete solutions and I think my dear friend, Tony Upshaw, and I we're playing that role in terms of talking about some best practices that at least in the large law firm side, we're starting to see. So I myself have the honor of being the managing partner of the Miami office of Greenberg Traurig. And so I'll discuss this a few things or a few perspectives we have on our recruitment process. I'm proud to say we've never simply focused on, the Ivy League or the top schools, top 10 to 20 schools. I think a lot of law firms follow this paradigm. It is that we focus on the local schools, as well as some of the top schools. And the local

schools, I can stay from my own office — the Miami office of Greenberg Traurig — the local are disproportionately represented relative to the Ivy league and other top schools out there and we see them as an important feeder pattern to our processes. Of course, we also participate in the usual job fairs — SEMJF, BLSA, Florida Association for Women Lawyers, Lavender Law for the LGBTQ community, and similar job fairs — and we think those are important because, this is a theme I think is important to recognize with employers the key is not to look at this process from a transactional point of view, you're developing a relationship. I cannot tell you how many success stories we've had, where we've planted seeds, maybe at the OCI level or beyond, but then those germinate later on two years, three years down the road, and we hired that student. It may not turn into a job immediately, but down the road he can.

But you have to come in there with a really intentional sense and a sense that you're going for the long game. As I mentioned, that you're developing a relationship and that to me is when you get to really know the candidate beyond the GPA now I will tell you that's not easy. One of the largest challenges for all large employers, employers that hire significant incoming classes, is simply scale in size. It's a real process. Every year I talk to my recruitment professionals and they tell me how daunting OCI is. The sheer volume of résumés we have to process and sift through can be something else. So if you don't — and this has to come from the top — if you don't come to this with a real sense of intentionality, it's going to be very easy for things to slip through. And once again, if you go into it thinking transactionally, as opposed to building relationships, I think you're going to fail every single time. And so for one example, one of our top feeder schools, as you can imagine, the Miami office of Greenberg Traurig, is University of Miami. I've given this speech time and time again, of our three founders — two of them were University of Miami alumni, the third one pretty much was a major member of the board of trustees — and so we feel a very strong tie, intrinsically, to the University of Miami and so we do a lot there.

And so for over a decade, we've hosted one of their recruitment events. And this is now the law school recruiting from the undergrad campuses for public interest-oriented candidates and other scholarship candidates out there. That's been invaluable to us because it gives us an opportunity to somewhat informally or informally from my perspective, I guess, cause they're nervous. It may not feel informative to them, although it's structured that way — to really get to know the students. Get to get beyond the résumé, get beyond how they've done in undergrad and really get to know what their passions are, how they think about life, how they critically think and obviously they haven't gone through law school at that point, but you can still get a sense for what their core is. And that program has been valuable for giving us some insight as to the students in a much deeper level than normally would be a 30-minute OCI interview. Well, there's also a startup practicum at the University of Miami, which has become extremely popular at this point the practicum and the class that associates with it. I believe — I may be wrong on the stat — about almost 30 to 40% of the class is now enrolled in it. And our firm played a role in founding that and so, as you can imagine, that practicum attracts a great diversity of students because especially nowadays, given everything that's going on in the United States, in terms of startup activity, venture capital, et cetera. A lot of Gen-Z and millennials are very excited to take part in that. And so we played a role in founding that practicum and it gives us an opportunity to really get to know the student and again, forming those relationships, as opposed to, from a transactional point of view. I will tell you, you're not supposed to rank associates it's like having kids, but the associate I work with probably the most came out of that practicum. He was not the traditional top 5%, top 10%, et cetera. I couldn't exist without him. Same with the other job fairs, SEMJF Southeast Minority Job Fair, BLSA, et cetera. It's that sense of developing a relationship. And I will say, speaking of local schools, there's another local law school, Florida International University School of Law.

Our firm played a strong role in founding that law school. And so just as we felt very protective of the University of Miami, we feel very protective of FIU Law as well. And so we play a significant role there getting to know those students, getting to know the faculty. And again, if you look at it as a one-off basis that simply in August there is one day where you sent a couple of your partners or a couple of your associates to interview people and it's very transactional, you will fail every single time if the goal was to get a more robust and diverse class of students. But at FIU Law, University of Miami Law, UF Law, all of our feeder schools, we're there constantly because we realize it needs to be a spectrum of involvement and not just as one spot. So we do that there at FIU as well. Secondly now to get even more creative, we have established a series of tracks, and I know we're not the only firm to do this, but we're very happy with how it's gone. Let me explain this. The primary track for getting entry-level students of various backgrounds is our residency program. Let me explain.

The best way to explain our residency program, it's a little bit analogous to our brethren in the medical profession. We all know with the medical profession, you go to med school for four years, then everyone's expected to do a residency. We don't expect everyone for us yet because our profession has gone there. As an aside. I've spoken with deans from Harvard to Georgetown, of course, Miami and U.F. saying, I think our profession should go to this route. If I had my way, we would have a match day just like the medical profession has where everyone is simply matched to a residency program and we would make it work. But the way our residency program works is it's a reduced comp level. It's not quite the high-comp level that a first-year associate would have, which as you know can be astronomical, but it's still extremely competitive. We bring them in. The thought process is for a year or two, they'll be working on the exact same work that the first-year associate works, we will assess and then once we do that assessment, we will see if we can accelerate them to full associate status. The beauty of this program, we designed it in response to our clients and as one of the top complaints of general councils, understandably is, well, am I paying for training? I'm paying these rates that you charge for first-year associates. What component of that is really me paying to train your first-year associates? And so we said, look, we're going to have the traditional first-year program because while we think our profession should go to a full residency model, it's not there yet, but to be responsive, we will come up with this residency program because it allows us to expand the universe, of junior associates we have. And so it allows us to train more, it allows us to bring in people more and so it's been remarkably successful. And I will tell you the current co-chair of our entire associate's committee at GT Miami came out of that residency program. So we have a number of other success stories that have really come in so, and then we have other alternative tracks practice, group attorneys, senior counsel, et cetera. It just allows law firms to be more nimble. Because the biggest issue that law firms face, to give you our perspective, is an economic one. Every first-year associate we bring in — particularly given the current comp status in our country — it's a fairly significant shift in our P&L and so there's a lot of thought that goes into it. Do we have the work to be able to sustain one extra associate, et cetera. And there are times where somebody may be on the cusp that they may be top 30% as opposed to top 15%, et cetera. And there's that temptation to say, well, do we want to take that flyer? How does that look? What does that look like with programs like the residency program? But let's be clear, I'm not saying it is not a dumping ground for, top 30, top 40, you automatically go residency.

We have many folks who would be, if you want to call them, just non-traditional students who go the regular route as first-year associates. It's really for a needs basis — as a department has needs, if it makes sense, we might go residency. But it gives us an extra tool kit so that when we go to our partners and they're worried about looking at their individual P&L's — because at most law firms, you do it at department level, not just at the firm level — we can say, look, if you're really worried about whether it's sustainable from an economic point of view, have them be a resident it's going to be a much lower comp kit. You can get to know them, get to know their skillset, again, develop that



relationship and stop thinking transactionally, and then we'll see where it goes. And then so many of them have all accelerated up to full associate status within a year or two. So we've been very happy with that. And then the only other two points I'd make is one of the obvious your attorneys are in the community. So they're the ultimate eyes and ears and so we encourage and empower our people to say, if you see someone talented out there, regardless of the résumé that doesn't have the usual marks that we look for, bring them in, we will talk to them and we'll get to know them. And in that sense, it's a lot of it's culture and it comes from the top. Do you have a culture of openness? Do you have a culture that makes sure attorneys feel empowered to see people at community, look at what their skills are, the intangibles and say, what let's them in. But you only accomplish that when you have deep penetration into the community. And then beyond that, I would say we actually are of late doing an enhanced focus on work experience, which is a great differentiation. So let's say someone who is top 30%, top 40%, 50%, if they've had great work experience — prior career, military service, even a minor period of work, a gap period between undergrad and law school — we've been looking at that fairly strongly. But those are just a couple of examples of best practices. I thank you for your time and look forward to a dialogue with that I will hand it to my good friend and colleague Tony Upshaw.

**Anthony Upshaw:** Thanks Jaret, I appreciate that. I'm going to apologize, excuse me. I'm coming off a nice cold, not COVID. So I actually do have some voice today, which I was happy, to find out this morning when knowing this was coming up. I think an interesting fact for everybody who is attending this conference is that Jaret and I, our firms, are in the same building here in Miami. I'm actually in the Miami office as well. So you want to know one of the powerhouse buildings in downtown Miami for firms that are on the cutting edge of DEI, then you'd come to our building especially. Jaret covered a lot of great things that Greenberg is doing, and I'll go over ours at McDermott in a second. But I want to step back a second because I just recently read a Harvard Business Review article that we talked about, firms wasting millions recruiting on only a few campuses and basically there's a predominant perspective. As many of you know, is that prestige is equated with the bill. Many high-achievers, especially those from diverse backgrounds, disadvantaged backgrounds, attend less prestigious universities for reasons that have nothing to do with ability. One reason I have found recently is that University of Florida actually is now a top 10 university in the school. And a big reason it became a top 10 school was that students, very high-level students in high school here in Florida, decided that they didn't want to pay to go up North to go to some of the bigger prestigious schools and so those very apt students, who gained admission into very top universities decided to stay home and go to University of Florida and that's what helped me University of Florida become a top 10 school. If law firms are only interviewing at top 10 schools, they thoroughly miss out on the many good diverse attorneys that make up most of the students in most of the other schools around the country and that's one thing that McDermott has decided to look beyond those prestigious schools for most of our incoming attorney as with Greenberg and especially at the Miami office and I was the hiring partner in the Miami office for five years, a few years ago actually. Most of the attorneys that we hire here in the Miami office are from non-prestigious schools. We have our sprinkling of those who are, but most of them are actually from Florida schools, University of Miami, my alma mater, University of Florida and others. And so we've taken the approach of the local schools have the talent that we need and especially here at University of Miami, when you're looking at this local school University of Miami, it is a fairly diverse student body as well. So we've, get that kind of baked-in to our recruiting process here for the Miami office. And the same holds true with our offices throughout the country. One thing at McDermott is that we have very small incoming classes for summer associates. And I tell all of the students who I've interviewed in the OCI process, that if you make it through the OCI process, and that is through the initial round, through the second round of callbacks, through the third round of callbacks that we have, and you're asked him to join one of our incoming classes, you have pretty much nailed yourself a job as an associate at McDermott. And they're very happy with that because our process

has been very arduous, in fact, some ways our process has put us behind on some students and behind some firms, which do the quick offer deal that they see with folks and we've actually missed out on some very good students, some very good diverse students because of our arduous process.

That being said, that lends us to having better retention down the road. Jaret was absolutely correct. You have to learn the student you're bringing in in more ways than just interviewing them through the OCI process and we do that through again, being on campuses, being involved in different campus activities, the local schools and with the local offices, but also as well, going to many of the same job fairs that Greenberg Traurig attends as well. Another differentiating factor, I think for McDermott is that we ensure that the DEI and DEI in general was deeply embedded in the firm's culture and I can go through that in detail, but that's not the purpose of this. When DEI is embedded, then everybody involved in our recruiting process understands that diversity is a key priority. When we're looking at students and looking to fill a class of summer associates. One way we do that is that we're data-driven. Every OCI recruiting team that goes to a particular school has to report back who they saw, what they believe their ethnicity it was, and who out of that group, they actually invited for a callback. I think that's important because we actually look at that and some people are actually questioned as to why if you saw 20 students, you only called back two who were from disadvantaged backgrounds. And so when folks know that the data doesn't lie, then they pay more attention to what they're doing during that OCI process and I think that helps overall when we look at those students, who've come through the process and we find that we have very diverse, incoming summer associate classes. How else do we do that? We do that through also, re-envisioning the way we hire and the schools that we hire from. So just like Greenberg, we also look to schools that are not traditionally on the list of schools that big law firms would go to. We diversify where we recruit from and more importantly, we diversify the recruiters who are going to these different campuses and I think that's a very important point because as we know, your OCI recruiters are going to recruit more likely than not people who look like them and if we can diversify as we do at McDermott who's going to campus, then that helps us get to the point of having a very diverse incoming class.

Now, I liked the idea of having a lottery. I don't think the OCI process is one very efficient, two very fair, and so I think the lottery process and I've seen it work at some schools is very good. One process we also do is, and we have allowed this recently is that we've allowed certain students to actually reach out to us. Now one's encouraging that and I'm not encouraging that as well because our recruiting folks and our recruiting group have so much work to do just through the regular process, that if you added on students coming out of the blue from everywhere and trying to answer those letters, it'd be an impossible task and they would be doing recruiting throughout the year, which obviously they can't do. But we have in fact, looked into student bodies and we do that using some of the NALP data on diversity in certain campuses and we'll choose to go to that particular school because that school, that law school has made the effort to be diverse and have a diverse student body when they move forward. So what else can I tell you today? And I wanted to address some points that brought up. So I'm looking at my notes here really quickly. One of the things that I wanted to tell the students that are on this conference, a big thing when we're in the OCI process and we're selecting students who are going to come to McDermott, and we're out at these job fairs, or we're on campus, is to have some knowledge about the different areas of practice. Somebody asked a question. Certain students have families who have been involved — alright, I'll put it out there plainly — White students have had certain advantages, right? Their family has been involved in the law. They're second-generation, third-generation lawyers. They know that there's, other practice areas other than just litigation, and so they have an edge, right? One of the things you can do to be better suited to get a big law job is to understand the different areas of practice.

If every diverse attorney who walks in at an OCI or who we've come in contact with, wants to be in litigation and we only have a certain number of litigation positions to fill, you've just narrowed your

options. But if you think about it, you say, well, maybe I want to get into private equity. Maybe I want to get into trust and estates. Maybe I like corporate law, find out something about that and then you're able to talk about that area, converse about that area and now you've opened up where and how you can get into big law. Lastly, let me cover very quickly, one of the other topics that was brought up with regard to retention. At McDermott I think we spend as much time on putting together retention structures as we do for recruitment structures. We have a number of different — and I will say proprietary — structures in place that ensure that our disadvantaged associates have as much, if not more opportunities than every other associate at the firm. McDermott is data-driven. So we watch pretty much everything that's done by every disadvantaged attorney that comes in — Black attorneys, brown attorneys, yellow attorney, it doesn't matter — we take the data on all of them and if someone is falling just slightly behind, someone's not getting all of the assignments that we think they should be getting then is brought to the forefront. It's brought up to the attention of the partner in charge. The practice group leader has access to this. The management committee watches it. Even the executive committee, which I'm on at McDermott, also gets a report on what's going on with our disadvantaged students. It's baked into our culture and at firms where diversity is baked into the culture, they're the ones leading the charge to make sure that our diverse disadvantage and specifically Black law students get into positions where they can succeed. Thank you again so much, thanks for seeing all these great faces so far on the panel and I look forward to your questions.

**Dean Collins:** Thank you to all of you for those incredibly thought-provoking presentations. I want to throw out a relatively provocative question to get us started, which is how do we continue to break down the legal professions obsession with a elitism, and a very narrow conception of what constitutes elite credentials. We've heard a couple of great suggestions. Dean Holley-Walker's you really need to have the individual difficult conversations to make employers think about why they have the cutoffs they do. We've heard about focusing on local schools. In addition to the top 10 schools, I wanted to see if there were any other ideas or suggestions from the panelists about how we tackle this focus on a very narrow set of elite credentials and I will throw it open to any panelist who wants to take that on if you want to go ahead and unmute yourself.

**Dean Holley-Walker:** I think some of it is just this idea that people go to the most, "elite law school" that they are admitted to, right? And I think that that's something that, I've heard over and over again, which is of course, the students at Harvard, Yale, Columbia, those top 10 schools that Tony was talking about, they have to be better because those students were the most selective, right? And I think a lot of our students, they do choose to go to a University of Florida, right? Because that's they're home school. They don't have to incur a lot of debt. Many students choose Howard for example, because of its history and legacy related to racial justice and social justice and the opportunity to be in a space that really has this mission related to African American students. And so I think that kind of perception, that elitism breeds a elitism and I'm saying, this is someone who went to two Ivy League schools. So I am always willing to challenge that idea really, a lot of this is just replication of wealth and educational status and previous opportunity and we have to really be careful about saying that explicitly. Not running away from it, but saying, why are people at these top 10 schools? Many of them are there because they are replicating the opportunity that they had before and so when you only hire from those schools, you continue to replicate those inequalities.

**James:** Jennifer, it's hard. It's baked into every single part of our profession, including law school faculty hiring, right? I mean, we are constantly replicating privilege and prestige and lawyers don't produce a product. We don't make widgets, we don't sell Tupperware, right? We only have our professional services and the intellectual collective reputation of the people at the firm and in our country, we've put disproportionate weight on pedigree and school and grades and test results is sort of a false test for worth in the market and it's the only way you'll break that down is to do it deliberately, to reject that and to do something different and then demonstrate in the marketplace

that that creates some value for the client, a better price point, a better set of legal services, focusing on the research that shows diverse teams make better decisions than homogenous teams. But if law schools are going to ask that question, they have to turn inwardly as well and look at the whole faculty hiring process.

**Jaret:** Speaking on the law firm side, I think, obviously we have a role to play and we do have these robust discussions about this, but I think you also have to take it to the clients. Again, speaking from the law firm perspective, the general counsels, I mean, I'm active doing pitches all the time as I'm sure Tony is and I'll tell you many, many, many times the GC is making a decision, takes one look at the credentials of the lawyers we staff in the deal, including at the associate level and they will comment, they'll say, oh, I see you have three associates from Arbor. I see you have three associates who are, summa cum laude from UM and they comment, although I have one, one GC who used to jokingly say, I'll take magna but not summa, summa's scary. That's literally, he had an ongoing joke about that. But again, I think if we really want that transformative change, you have to understand the game and you have to understand the landscape that we're at.

So it's one thing to pick on the law schools, the law schools, are simply being responsive to their clients who are the employers and then it's easy to pick on the employees. But then practically speaking, you have to think about who's driving the employers, which is these all-mighty people called the clients. If we're talking the private sector, if we're talking the public sector — a whole other world — but then there's a whole other world of politics there. Because if they're going to go to the U.S. Attorney's office, they have somebody, they have Justice Department, the U.S. Attorney, et cetera, that they have to report to. If we're talking judges, the federal judiciary really buys into those credentials. We know this, I mean, I'm friends with a number of the federal judges. I don't mean this pejoratively, but they very much, if you're going to apply for a prestigious federal clerkship, the first thing they're going to glom onto is what school you go to or what your grades were. So it's one thing to make these statements, which I completely back and I want to be there and we have been there, but I think you have to understand the full landscape that we're dealing with. So I think part of it is to talk to the federal judges, to talk to the general counsels, to talk to the end of the process. It seems like we're starting at the beginning of the process, which is the law schools — and God bless you for doing so I know it's the nature of this panel and the attendees here — but you really got to go to the other side of the spectrum to really start that process going.

**Dean Collins:** Thank you, Jaret, while we have you, we've had some incredibly thoughtful questions about your residency program and I'll just raise two. One is how do you decide which young attorney you're going to put into the residency track as compared to the standard first-year associate track? And do we run the risk at all with those kinds of different tracks of potentially satisfying a client concern about diversity and inclusion, while not affording the same opportunities to all the new attorneys you're bringing into the firm?

**Jaret:** Great questions first off, let's clarify. It's not a DE&I initiative, the residency program. It can have benefits in that regard, but it's not DE&I. It actually came about more so because of timing, because what we found was we would have the traditional OCI program and then throughout the year, there'd be an opportunity come up. But most of our intake, and this is true of most firms would come out of our summer associate class. So each OCI comes up, you have a pool of your summer associates and you know that's, what's going to feed into your first-year class coming up and then every, now and then, on an opportunistic basis, we'd meet a candidate or somebody and we would think, well, how do we do this? Again, a lot of it's budgetary we've already budgeted for this number, but we really want to bring this person in. There's something about them, something intangible, we create the residency program to respond to that. Now, what I mentioned about the medical school analog is that I would love to see the entire profession go to that and have a match day, et cetera,

but we're not there yet. This is a sort of a hybrid approach, but it's not a DE&I initiative we have a number. Most of our diverse candidates come out of the traditional OCI program, it's really more of a timing mechanism than anything. And so what you have to do is look at it as a value-add. The binary is we either wouldn't hire that person at all or we hired them at a reduced comp for only one year, assess, and then we ratchet them up.

**Anthony:** Yeah, can I add on that?

**Dean Collins:** Yes please.

**Anthony:** Because I think that's great. We had those discussions about different programs at McDermott as well because we thought that there may be the opportunity that other partners actually, not just associates, may look differently on those who are in a different class and I'm sure that that Jaret and Greenberg has have resolved that issue, but I'm just giving you the issues that we thought of and said, you know what, we didn't want to put anybody in that position, whether it's their, their DEI related or not. One thing we have done with those same folks, those people who come up out of cycle, right? You get those people who were either coming off of the clerkship or they just weren't in cycle and now they're available for your firm. Those are the folks that a lot of firms such as — and we do it as well — you have to take the leap of faith, and sometimes we just have to add them and they are out of budget and they throw everything off. But sometimes you just have to make a leap of faith. Aside from that, and I'll give you my personal view because I will tell you straight up front, that when I got to McDermott, I thought McDermott was school snobbish on. I'll tell you that, I thought that, they didn't look at anybody unless they were, a top 10 law school and didn't really want to, engage in any schools that were not the top at the, any local office and that's changed and I'm happy for that change and I actually won't even take credit for that change. But I think it's been a change, over the time that I've been at McDermott, that we've gotten away from that. And my push has always been — and of course this is something that I don't think that would disrupt the system entirely — is to get rid of the OCI program. I would get rid of it totally. In fact, if it was up to me, I would hire people when we need them, not through an OCI process. So if we needed some first-year associates at the time they were graduating, we would look at who was there. If I needed second-year associates or third-year associates, we would just look for them. I don't care where they go. I actually do that now. So if I need to fill in a gap that we have at either a third or fourth-year, I'm not looking to hire a summer associate who's was going to then move through the ranks. I'm looking out in the market and that's where the lateral market, I think is another discussion that we can have, but at a different time for a different conference, but the lateral market, we see the same issues about prestige and ability that we have to deal with as well.

**Dean Collins:** It is hard to believe that we are out of time because we could go on with this conversation for another two hours. I want to thank all the panelists for such incredibly insightful comments and I'm really looking forward to continuing the discussion about employment with the next panel and so with that, I will hand it off to Dean Carla Pratt, who is going to moderate our next panel.

[bright upbeat music]

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