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## Breaking down barriers: Recruiting and promoting Black antitrust lawyers

By **Curtis Eichelberger**

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US regulators and private law firms have struggled to attract African American talent to their ranks, which has led to poor representation at the most senior levels of antitrust enforcement.

Some say the fault lies with African Americans, who tend to self-select civil rights and labor specialties, rather than economics-heavy antitrust law, which seeks to protect consumers from mergers that stymie innovation and lead to higher prices and from unscrupulous businessmen who try to rig global markets.

Others say the fault lies with hiring managers in the private bar and the president of the United States, who nominates senior officials at the agencies.

There hasn't been a Black chairman of the Federal Trade Commission in the country's history, and there's been just one assistant attorney general overseeing the Justice Department's antitrust division.

Even among the rank and file, African Americans accounted for just 2.85 percent of the lawyers working in the division as of October 2020, and 4.1 percent of the lawyers in the FTC's Bureau of Competition as of October 2019.

Charles James, the only African American to run the antitrust division, now teaches law at Arizona State University in Tempe. He says the story begins at colleges and universities and perhaps even earlier.

"If you examine the undergraduate data, I think you'll find that economics is not a popular major for young African Americans," James told *FTCWatch*. "And to the extent that they do get involved in economics, they get involved in labor economics that deals more with social policy than microeconomic policy."

"I've taught antitrust at ASU for six or seven years now, and I think I've had three or four Black students in my class in total, even though I am one of the relatively small number of Black professors."

James was a trailblazer for African Americans, serving as acting assistant attorney general under Republican President George H.W. Bush in 1992 and as AAG under President George W. Bush from 2001-2002.

There have also been two African American deputy assistant attorneys general (DAAGs). They were James from 1991-1992 under H.W. Bush and Leslie Overton, who served under Barack Obama, from 2011-2015.

At the FTC, no African American has ever been appointed to the chairmanship. And there have been only three Black commissioners: A. Leon Higginbotham (1962-1964, John F. Kennedy); Mozelle W. Thompson (1997-2004, Bill Clinton); and Pamela Jones Harbour (2003-2010, George W. Bush).

The first step in increasing the number of Blacks in the field, antitrust partners and former government lawyers say, is to identify talented young attorneys early, urge them to consider antitrust and give them opportunities and support.

Jessica Watters and Michael Clegg, two associates at Skadden, Arps, Slate, Meagher & Flom in Washington, DC, are examples of what's possible when the barriers to entry are removed from the start.

Watters, 29, a Georgetown Law School graduate, and Clegg, who earned a law degree from Stanford University and a master's degree from Harvard University, joined Skadden in 2018.

They've been given significant responsibility and trial experience. Watters, a New York City native, was part of the T-Mobile-Sprint trial team, helping prepare Sprint executives for depositions, participating in weekly joint defense team meetings and assisting in cross-examination preparation for third-party witnesses.

Clegg, a Trenton, New Jersey, native, worked on the Sabre-Farelogix, Visa-Plaid and T-Mobile-Sprint mergers, helping to write briefs and motions and also preparing executives for depositions.

Though it's difficult to distinguish them now in their expensive suits with their high-end law degrees, their paths to this white shoe firm weren't

paved with privilege. If anything, their success came from higher expectations — which the students rose to meet — and institutional supports put in place to provide guidance.

Watters' parents didn't graduate from high school, but they knew the value of an education. Their daughter, a good student who was active in sports, choir and theater, was offered an opportunity with "Prep for Prep," a leadership development and gifted education program that says it "offers promising students of color access to a private school education."

Watters attended Manhattan Country School in New York for the seventh and eighth grades and then The Dalton School, a college preparatory school on the Upper East Side. Sociologically, it was quite a shock. She hadn't experienced much of life outside her local neighborhood. And though it might have seemed like she'd been given a once-in-a-lifetime opportunity through Prep for Prep, it threw Watters into a world entirely foreign.

Watters says she wondered at times, "What am I doing here?"

Good mentors in high school and college helped her navigate these uncertain spaces as she advanced through degrees and internships.

Watters no longer wonders "what am I doing here," describing antitrust as "the coolest practice area ever. I love, love, love the ability to sink my teeth into lots of different markets and industries ... I've done work in semiconductors, telecommunications and the beer industry, among others, and that's all in a day's work for an antitrust lawyer."

The George Washington University graduate spent her youth adapting to unfamiliar experiences, so perhaps it's not surprising when Watters says being one of the few African Americans in antitrust "doesn't feel uninviting."

"There are moments when I recognize that I am the only person of color in the room, but [antitrust lawyers] are a geeky group, and it doesn't impact the way I interact with colleagues or professionals or anything like that," she said.

As firms become more aware of the need for racial diversity, junior lawyers are getting better at speaking up about what they need in terms of support and asking others how can we make that happen, Watters said.

"I don't want to say the playing field is entirely level, the challenge is getting your foot in the door, but more firms are taking a critical look at this to see what can be done," she said.

Like Watters, Clegg, 30, the son of a taxi driver and a nursing assistant, also received encouragement in his formative years, opening his eyes to new possibilities.

Clegg was accepted into the Princeton University Preparatory Program (PUPP), which is offered to students attending six high schools in the Princeton, New Jersey, area. PUPP scholars complete three intensive six-and-a-half-week summer institutes at the university. They also participate in school-year programming, including weekly afterschool academic enrichment sessions and a series of cultural excursions.

Program advisors work directly with students and parents during their senior year of high school to provide assistance during the college admissions and financial aid process.

"People invested in me and showed me the opportunities about what I could accomplish in life ... maybe even when I didn't believe in myself as much. And that changed my mindset," Clegg said.

Like those who came before them, Clegg noticed the lack of faces like his own at the top of the antitrust power structure. But if his own life experience has taught Clegg anything, it's this: If talent and smarts are provided with an equal number of resources, encouragement and opportunities, Blacks can succeed beyond the expectations of others, and even themselves.

"I can't speak for all Black folks," he said. "But my experience has been that I wanted to go to a place where I could be successful and supported, and I imagine most young lawyers would like to be in a similar situation.

"Sometimes that's a big law firm, other times a nonprofit. But what gets them there is similar. They want to be part of a team, and they want to feel that they are going to be supported," Clegg said. "If you provide resources, opportunities, and investment for young Black lawyers, they will rise to the occasion. Not every problem that's faced can be changed, but no problem can be changed until it's faced."

President Joe Biden will nominate, and the Senate must confirm, new leadership at the antitrust agencies in the coming weeks. Awaiting his decisions will be a new generation of Black lawyers eager to see a change at the top of the hierarchy.

*Editor's Note: Given the renewed spotlight on diversity and inclusion efforts in the workplace, FTCWatch profiled Black antitrust lawyers inside and outside of government. Part I of the series introduced Doha Mekki of the Department of Justice, while Part II featured Jessica Watters and Michael Clegg of Skadden, Arps, Slate, Meagher & Flom.*