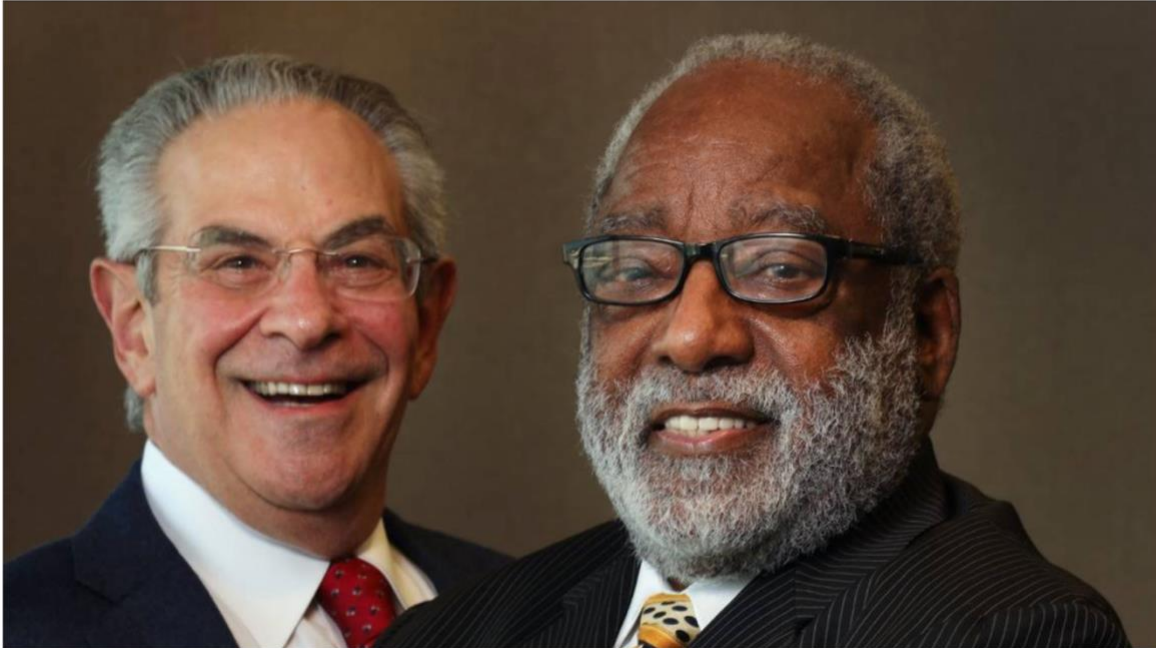


BUSINESS

## In Miami's legal community, many Black attorneys still feel like 'fish out of water'

BY ROB WILE



On Wednesday March 24, 2021 attorneys Alan Kluger, left, and H.T. Smith, right have joined in an initiative to bring diversity into the legal profession CARL JUSTE [CJUSTE@MIAMIHERALD.COM](mailto:CJUSTE@MIAMIHERALD.COM)

“We’re not doing enough.”

When it comes to the legal profession’s progress on racial inequities, Alan Kluger doesn’t mince words.

“It’s not intentional,” Kluger, the co-namesake of well-regarded law firm Kluger Kaplan, continued, “but I don’t think we’ve been focused on it.”

One would have to be in an “igloo” somewhere to have missed out on nationwide calls demanding racial justice, he said. But it’s one thing to hear the calls, and another to do something about it. So Kluger and his firm have announced the launch of the H.T. Smith Legal Studies Scholarship; its recipient will get \$10,000 in financial assistance to attend an eligible law school in Florida and will be considered for a clerkship and an attorney position at the Kluger Kaplan law firm.

Nearly one year after the death of George Floyd led to protests across the country — and as the officer accused of killing Floyd stands trial — Miami’s own racial reckoning is still playing out. Many civic institutions have stepped up: In December, the Miami Foundation created a Racial Equity Fund [with a \\$1 million grant from Facebook](#) to convene key stakeholders and identify ways to close the county’s equity gaps. The Greater Miami Chamber of Commerce’s [GMCC Unites minority business promotion initiative](#) to promote diversity among the region’s business leadership. The Miami Music Project has hosted equity seminars aimed at sparking tough discussions that can bridge the divide. And a new partnership between entrepreneurship group Endeavor Miami and Facebook supports minority tech founders by offering targeted mentorship.

But in Miami’s large legal community, the debate continues to evolve. Historically, lawyers have often been at the forefront of addressing inequities. Smith’s willingness to lend his name to Kluger Kaplan’s scholarship represents something of a coup: It was Smith who famously led [the Black tourism boycott of the early 1990s](#) after local officials turned down a visit from Nelson Mandela over his perceived sympathies for Fidel Castro.

Yet for all the progress Miami, writ large, has made when it comes to addressing its racial tensions; the legal profession still poses enormous barriers to African Americans. Many Black jurists agree that there remains a “fish out of water” feeling to being a lawyer of color in Miami. Even those Black lawyers lucky enough to land at the firm of their choice can still sometimes feel like they don’t belong, Smith said.

“Then other Black lawyers see that and say, Hey, maybe I don’t belong too,” Smith said.

## LEAST DIVERSE

It’s one reason why Erick Gavin has turned away from the profession entirely since graduating from the University of Miami School of Law in 2018.

Gavin, who now works as the senior program manager at the Center for Black Innovation, said the hurdles facing Black lawyers start before they even step foot into a classroom. The LSAT entrance exam — like many other standardized tests — is tilted against lower-income individuals who may not have the means or resources to receive the necessary test prep.

This often channels aspiring lawyers of color into lower-tier law schools, where they must be at or near the top of their class to be offered a job at a name-brand law firm. To be at the top of the class, of course, means getting good grades. But grades themselves, it Gavin noted, are only found at lower-ranked law schools. At Harvard, Stanford, Columbia and others, traditional metrics have been done away with entirely, replaced by pass-fail credits.

“If law firms started to be more open to the idea that grades do not fundamentally say whether a law student is

good enough to be an attorney, then that opens the idea that more people can reach a top firm [besides saying], ‘I got A’s,’” Gavin said.

As a result, simply attending Harvard is enough to get a foot in the door — whereas going to a lower-tier law school means having to finish at the top of the class. Thus, law remains one of least diverse professions in the country. In its most recent profile of the industry, the American Bar Association found 86% of lawyers were white, 5% were Black, 5% were Hispanic, 2% were Asian, and 2% were multiracial.

Explicit exclusionary policies aren’t the issue, said Aaron Taylor, executive director of the Center for Legal Education Excellence at the AccessLex Institute, a nonprofit focused on reforming legal education. Instead, the profession continues to engage in practices and uphold entry standards that disproportionately impact minority populations. Like the LSAT, the bar exam slants the industry against diverse groups. And there is little evidence the bar actually tests skills that entry-level lawyers need or protects the public from bad lawyers.

“It’s never really been measured,” Taylor said. “So we have a legal profession that’s in service to all people, but it doesn’t look like and reflect the general population in any real or tangible way.”

Sometimes the “look like” part plays out literally. Catalina Lopez, an attorney at AMS Financial Group, said some lawyers still make remarks about Black lawyers’ hair or names and summarily decide they lack professionalism

“We have a big set of ethics rules we have to follow, but as with any profession, people disregard them,” Lopez said. “At the same time, there is a sense of entitlement — especially among very successful lawyers, who decide they’re not going to care [about adhering to professional standards].”

## SOCIAL CAPITAL

A [report](#) on the diversity of Florida’s judges co-authored by Taylor found 82% of Black respondents said lawyers from diverse racial or ethnic groups did not have the same chance as other candidates to be chosen for appointment to the commissions that nominate lawyers for judgeships.

As much as any other industry, Taylor said, advancing in the legal world remains heavily dependent on informal relationships and what he called “social capital” — a currency that he said is not evenly disbursed across the profession.

“If you were part of a certain world, then you had the inside track into those nominations and the process of being selected, but if not, you were on the outside,” Taylor said. “And those tracks are not diverse at all.”

Al Dotson Jr., managing partner at Bilzin Sumberg, likes to describe Miami as still a “small town,” in contrast with cities New York or Los Angeles.

“You can be very visible without having to wait your turn,” Dotson said.

Yet that very same small-town dynamic can leave Black lawyers feeling marginalized.

“The social infrastructure that might exist in Atlanta or (Washington) D.C. or New York or L.A. is not the same social infrastructure that exists here in Miami,” Dotson said. “It takes a complete understanding of the diversity of our communities for a person to figure out where they best fit.”

Being a female minority lawyer, even in a city with as much rich diversity as South Florida, poses its own unique challenges. Nikki Lewis Simon, shareholder at Greenberg Traurig and the firm’s chief diversity, equity and inclusion officer, said even in the year 2021, unconscious biases can still lead a white and/or male attorney to express surprise that a Black woman even attended law school, let alone served on the law review and graduated with honors.

“The hurdles are just a little higher,” Lewis Simon said. “You’re still faced with that presumption of doubt.”

While burnout is a problem throughout the legal profession, the additional burden — lack of acceptance — can send even the most resilient Black lawyers to other fields.

“Has there been significant progress? Or more work to be done? Yes to both questions,” Dotson said. “We can’t acknowledge that there is more work to be done without recognizing the progress we have made, and can’t celebrate the progress we have made without recognizing that there is more work to be done.”

For Black lawyers willing to stay in the field, becoming a solo practitioner ends up becoming the norm, said Tayson Gaines, principal at The Gaines Firm in North Palm Beach. Even today, he said, the legal profession can maintain elements of a “country club-like” atmosphere that makes it difficult for racial and ethnic minorities and women to advance.

“For every one (minority) attorney who rises to make partner, there are often five or 10 others who are just as qualified who should be at those levels, but those opportunities are not necessarily there,” he said. “Even at a lot of great firms, it’s one Black person, and that’s it.”

Informal relationships also kick in when lawyers run afoul of ethics rules. Gaines said Black attorneys have twice the number of bar complaints as white lawyers. But through social and professional interactions, white

lawyers are more often able to negotiate their way past sanctions. But for Black lawyers, “the minute anything goes south,” he said, a bar reprimand may be right around the corner.

“Does it mean Black lawyers are twice as bad? No it means we operate in a subculture where Black people’s talents are not valued, not respected,” he said.

## MINDSET

Bridging these ongoing gaps could take another generation. For now, progress is likely to remain incremental. Many Black lawyers say the gaps originate outside the legal field and in society at large, with the profession merely accentuating inequities.

“We need intentionality and cultural competency and a complete recognition of how having a diverse group of decision makers is going to significantly enhance a business,” Dotson said. Anything that smacks of a quota or program will be viewed as an imposition and will likely be ineffective, he said.

For Lewis Simon, success means giving lawyers the opportunity to show what they can do. Conversations are a necessary but not sufficient outcome.

“Success looks like having the conversation first and foremost,” she said. “That raises awareness and creates a sensitivity to to the topic. And that equips you to drive change.”

The most powerful remedy for young attorneys of any background may simply be finding the right mentor. For younger attorneys, finding a fellow lawyer who “looks or talks or walks like them” can save their careers, especially in a field as competitive and mentally taxing as law.

“You’re searching for a safe harbor, somebody you can trust,” Gaines said.

For Smith, Kluger Kaplan’s scholarship is not simply about defraying costs — although that is a big part of it, he said, given the psychological barrier graduating with student debt can have on students choosing the best situation for themselves.

“People don’t understand how important hope is,” he said. Many Black law students face the prospect of graduating with debt — yet to this day, many believe they are locked out of high-profile Miami law firms.

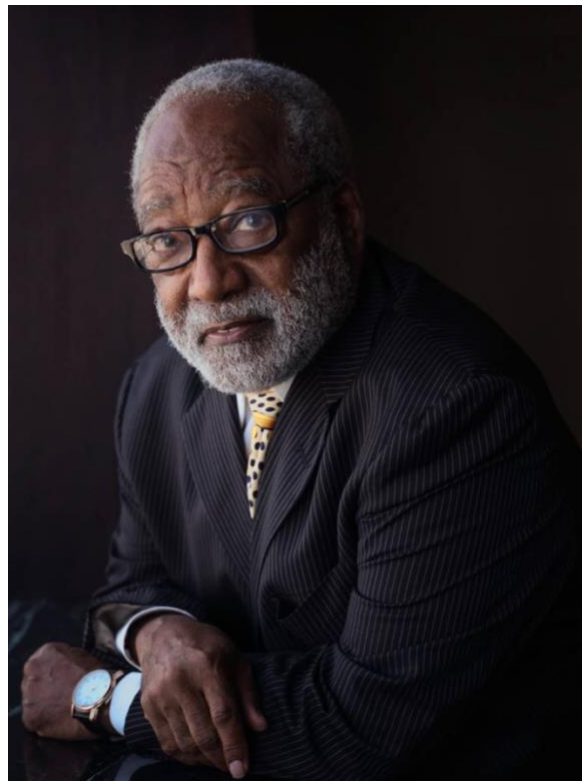
The scholarship, he said, is the first step in stemming a brain-drain problem Smith says he continues to see up

close.

“Some of our best and brightest law students are being snatched away by law firms in places like New York and Houston,” he said. “I know that because I’m a law professor.”

Smith said he is confident that other firms will follow suit as a result of Kluger Kaplan’s leadership. Otherwise, he said, diversity is merely a “group picture.”

“The three things new Black law students need are money, mentoring, and the mindset that they belong,” he said.



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