

# THE “CRUEL” RECRUITING TIMELINE

By Nikia L. Gray

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Jim Leipold, NALP's former Executive Director, penned an article published in the August 2013 edition of the NALP *Bulletin* titled "August is the Cruellest Month." In it, Jim described, in his characteristic elegant writing style, the crushing effect of a compressed on-campus interview (OCI) timeline followed by an equally compressed call-back and offer season, and the oft repeated lament of "can't NALP do something about August?" As Jim shared then, the answer was no.

When it comes to the timing of recruiting today, I must tell you that the honest answer is still no.

The fact is the timing of the current recruiting cycle is as much a product of the market today as it was in 2013. To understand that we need to understand the history of OCI, a little about antitrust regulation, and a bit about the changes to the old NALP Timing Guidelines.

Long ago, large law firm (and some large governmental agency) "fall recruiting" occurred in either September or October of a student's 2L year. Over time, however, programs gradually migrated to the summer. It started with the New York law schools, who, in the 70's, moved their OCI programs into August to avoid

conflicts with classes. The change, however, also gave their students an advantage as they were seen by employers first and, as time went on, that advantage grew, prompting other schools to move their OCI programs to the summer too to ensure their students could continue to compete with the New York students. By the early 2000s most law schools settled in August for OCI. It was by no means all law schools; some opted for late July, while a few held steadfast to a fall OCI until the Great Recession forced their hands. But, by and large, early-to-mid August became the norm, bringing with it a new set of challenges.

Throughout this time, OCI was also the main vehicle for firms to recruit students for their summer programs. Firms had to go through the law schools if they wanted access to enough students to fill their slots. This was an expensive, time-consuming process, with firms flying lawyers nationwide to interview students face-to-face. We might call this the Analog Era of recruiting – and it lasted for decades.

### COVID-19 CHANGED EVERYTHING

We all remember the fear, confusion, and uncertainty of the early pandemic months. By

summer of 2020, the world had shut down and we were just beginning to come to terms with the fact that it was going to take *much, much* longer than two weeks to flatten the curve. Friends and family were dying, there were no vaccines yet, travel and in-person gatherings were banned, and workplaces and schools moved online. When it came to law student recruiting, the crisis was too significant, and law schools cancelled their OCI programs. Most

would eventually host some type of virtual interview program in January 2021, but in the beginning, it was unclear how or when that might happen.

As we all were trying to adapt and figure out how to move forward in the face of the pandemic, students started to reach out to firms en masse to inquire about summer associate positions. This marked the first time



in decades that students and firms were to engage directly, without schools as intermediaries, about summer positions on a widespread basis.

2021 brought more of the pandemic but also a level of facility with the virtual world we continued to operate in. Despite the horrors, COVID spurred a period of unprecedented innovation, including the rapid development of technology and processes that facilitated our new virtual lives.

## ENTER THE DIGITAL ERA OF RECRUITING

That year, OCI returned to the summer in a fully virtual format, but students and firms continued to engage directly, and *it was easy*. Gone were the days of flying interviewers or candidates around the country. The pandemic had accelerated the adoption of personal video technology like Zoom, making it simple to connect face-to-face with anyone, anywhere, anytime. Processes and procedures had also been adapted in ways that were inconceivable prior to the pandemic.

When it came to recruiting, firms were now successfully interviewing and hiring lawyers that no one in the firm had ever met in person — a practice that was previously unheard of. And the data reflected this shift: in 2021, NALP reported that 56% of students said they reached out to employers directly,

outside of their school's OCI program — a significant increase over what had been seen pre-pandemic. Over 70% of these students further reported that they successfully secured a screening interview as a result. Practically overnight, what had been a very analog recruiting process managed by the law schools was suddenly digital and being driven by multiple parties, each with different interests in the process.

As the world emerged from the pandemic in 2022, not every firm wanted recruiting to return to its pre-pandemic form. The changes over the prior two years, as challenging as they had been, had also resulted in some benefits for firms. Firms had often criticized lottery-based OCI programs, which they could now bypass. They had also gained control over the timing of the process and could schedule interviews at times convenient for their lawyers — also opening the possibility of interviewing candidates before their competitors.

So, as the industry began making plans for the 2022 recruiting cycle, some of these firms made clear their intentions to continue directly engaging students and to participate in OCI only as a secondary recruiting approach, if at all. For those firms who didn't immediately follow suit, the disadvantages were quickly made clear when top candidates accepted earlier offers and cancelled interviews, thus beginning the race to get to students first that

we see today. By 2023, NALP reported that only a slight majority (53%) of summer associate offers were still made through OCI and nearly half of offers (45%) were extended in July or earlier. While NALP is still analyzing the data for the 2024 recruiting cycle at the time of this writing, I anticipate both figures will shift even further.

With this upheaval, there has come a host of very real issues and a collective sense that there ought to be a better way to do things. The most common question I hear now is “can't NALP stop this?”

As I mentioned at the beginning, the honest answer is no.

The reason for that is U.S. antitrust law. The premise behind antitrust law is the belief that the market benefits from robust competition. Enacted at a time in the late 19<sup>th</sup> century when powerful monopolies like Standard Oil and U.S. Steel controlled whole industries, the term “trust” was used to refer to a group of businesses acting together to manipulate the market. Thus, fundamentally, antitrust law was enacted to prevent trusts; to prevent competitors from joining forces to limit their actions in the market in order to avoid competing with each other.

The short of it is that what we are seeing now with regard to the timing of recruiting is the product of the market. It is the result of

competing businesses jockeying for positions in a tight marketplace. That does not mean that we will forever be stuck in a race to get to students first. The market could move in a different direction, and I believe it will in time, but practically and legally NALP cannot lead it to a different place by limiting competitive behavior.

Another question I am asked often as part of this discussion is the role of the so-called NALP Timing Guidelines. There is a general lament that NALP could stop what is happening if only we brought back the old guidelines. I wish it were that simple!

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Many members will recall that in December 2018, NALP released a new version of its guidelines. Among other revisions, this update no longer included specific timelines for offering career counseling, engaging ILs, or how long offers should remain open, replacing each with guidelines centered on a standard of reasonableness. That change was driven by the same antitrust considerations. Over time, the Department of Justice's and Federal Trade Commission's interpretation and enforcement of antitrust regulations had changed, leading the agencies to remove or update much of their published guidance that businesses had relied upon to tell them what conduct was permissible. With it, many associations found it necessary to revisit their codes of conduct, ethics policies, and guidelines and NALP was no exception.

Given how drastically recruiting has changed over the past few years, the question of

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what role the changes to the NALP Timing Guidelines played in all this is a reasonable one. Ultimately, however, there was nothing in the old guidelines that put OCI in August, and there is nothing in the new guidelines that took it out of August. There was also nothing that required firms to participate in OCI, and there is nothing now compelling firms not to do so. Recruiting changed because, for a moment in time, the world stopped, and we could no longer do things the way they had been done.

Jim said it best in his original article:

“NALP supports innovation and experimentation that seeks new efficiencies and better ways to do the job of matching the right law school graduates with the right jobs, but NALP cannot make the market move in a certain

direction. Despite the limitations on NALP in terms of its influence on the market and antitrust concerns, NALP can be and has historically been an incubator for inventive, cutting-edge advances in recruiting, professional development, and diversity for its member institutions and the profession.”

Although we cannot alter the market, NALP remains committed to supporting our members through these changes. By sharing insights, ideas, and best practices, we can collectively address challenges, create opportunities, and drive new advances in recruiting. I encourage members to engage with me, the NALP Board of Directors, and each other through NALPconnect and member Sections and to utilize the many NALP resources available.

NALP's *Perspectives on Law Student Recruiting*, published each January, contains a wealth of information on recruitment activity throughout the industry to help members develop their recruiting and career counseling strategies.

Sessions at both the NALP Legal Recruiting Summit and the Annual Education Conference will focus on helping members understand and navigate the changing landscape of law student recruiting. For members looking for guidance on leading through change, NALP President Rebecca Calman formed a Change Management Task Force this year to create resources on change management theories, which can be found on the [Change Management](#) landing page of the NALP website. I also encourage you to share with me and other NALP leaders any ideas you have for resources that would be helpful. Together we will drive new advances in recruiting.

So, I will close with the same sentiments that Jim did back in 2013. For now, the timing of recruiting will remain a difficult challenge. But it won't always be so. I promise. +



**Nikia L. Gray** ([ngray@nalp.org](mailto:ngray@nalp.org)) is Executive Director of NALP, the National Association for Law Placement, Inc.

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