

# Bulletin

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# Racial diversity in the courtroom

By Kimberly Bell, Tina Lam  
and Brandy Robertson

*“We study the past to understand the present; we understand the present to guide the future.” – William Lund*

In the current social environment, racial diversity has become a hot topic issue. The legal profession is no exception and, with regard to racial diversity, our history explains the present. Before the mid-1960s, all students of color were forced to leave the state of Alabama to attend law school because the University of Alabama only admitted white students.<sup>1</sup> The practice of racial segregation was commonplace in the American South at that time and the law school was no exception. As a result, according to the Alabama State Bar, prior to 1964 there were only 19 African-Americans licensed to practice law in Alabama.<sup>2</sup> That was only 57 years ago.

According to the Alabama State Bar, as of July 6, 2020, there are approximately 5,534 attorneys in Jefferson County, Alabama.<sup>3</sup> Females account for 1,881 (34%) attorneys with a breakdown of 310 (16.5%) African-American females; 1,537 (81.7%) Caucasian females; and 34 (1.8%) Other<sup>4</sup> females. Males account for 3,653 (66%) attorneys with a breakdown of 220 (6%) African-American males; 3,394 (93%) Caucasian males; and 39 (1%) Other<sup>5</sup> males. According to the U.S. Census Bureau in 2019 in Jefferson County,



**From left:** Kimberly Bell, Tina Lam and Brandy Robertson.

Alabama, 43.5% of the population in the county was African-American, 49.5% was White, and the remaining 7% accounted for all other races.<sup>6</sup>

On a national level, the American Bar Association (ABA) in the ABA Profile of the Legal Profession 2020 publication notes that “[w]hite men and women are still overrepresented in the legal profession compared with their presence in the overall U.S. population. In 2020, 86% of all lawyers were non-Hispanic whites, a decline from 89% a decade ago. By comparison, 60% of all U.S. residents were non-Hispanic whites in 2019.”<sup>7</sup> The ABA publication goes on to state that “[n]early all people of color are underrepresented in the legal profession compared with their presence in the U.S. population. For example, 5% of all lawyers are African-American – the same percentage as 10 years earlier – but the U.S. population is 13.4% African American.”<sup>8</sup> In a similar manner, “5% of all

lawyers are Hispanic – up from 4% a decade earlier – although the U.S. population is 18.5% Hispanic. And 2% of all lawyers are Asian – up slightly from 1.6% 10 years earlier – while the U.S. population is 5.9% Asian.”<sup>9</sup>

The National Association for Law Placement, Inc. (NALP) 2020 Report on Diversity in U.S. Law Firms showed that U.S. law firms are still not very racially diverse, though small increases have occurred.<sup>10</sup> NALP stated that “[d]espite enormous efforts by law firms to make progress, bias in the profession has maintained inequities long past when many other professions, most notably medicine, have become much more diverse.”<sup>11</sup>

Moreover, the Report noted that:

“In 2020, women, people of color, and women of color all made small improvements in representation at the partner level, and Black partners overall finally surpassed 2% for the first time since NALP began

<sup>1</sup>See University of Alabama, Wikipedia, available at [https://en.wikipedia.org/wiki/University\\_of\\_Alabama#cite\\_ref-15](https://en.wikipedia.org/wiki/University_of_Alabama#cite_ref-15), last visited July 16, 2021 (citing MOKRZYCKI, P. (2012). After the Stand Comes the Fall: Racial Integration and White Student Reactions at the University of Alabama, 1963–1976. *Alabama Review*, 65(4), 290–313).

<sup>2</sup>See Before the Civil Rights Movement Alabama Blacks Faced Discrimination on Their Way to Getting Law Degrees and Licenses to Practice (May 17, 2013), Kent Faulk, available at [www.al.com/spotnews/2013/05/before\\_the\\_civil\\_rights\\_moveme.html](http://www.al.com/spotnews/2013/05/before_the_civil_rights_moveme.html), last visited July

16, 2021.

<sup>3</sup>Jefferson County is the primary county related to the data collected in this Article, but the complete sampling pool comprised of all the counties included in the United States District Court for the Northern District of Alabama.

<sup>4</sup>“Other” encompasses all attorneys who do not identify as Caucasian or African-American.

<sup>5</sup>Overall, Alabama has 18,753 lawyers - 16,757 (89.4%) are Caucasian; 1,480 (7.9%) are African-American; and 213 (1.1%) are classified as Other. We contacted the Alabama State Bar to

obtain the data on the gender and race of Alabama lawyers. To read Part 1 of this Tracking Project Article focused on men versus women in the courtroom, please see Fall 2020 - Birmingham Bar Association, New Judicial Study: Birmingham Women Attorneys Trail Behind Men in Courtroom Appearances, p. 28-29, which can be accessed at [https://issuu.com/280living/docs/issuu\\_bulletin\\_fall\\_2020](https://issuu.com/280living/docs/issuu_bulletin_fall_2020).

<sup>6</sup>See United States Census Bureau, Quick Facts – Jefferson County, Alabama, available at <https://www.census.gov/quickfacts/jeffersoncountyalabama>, last visited 10/19/2021.

<sup>7</sup>American Bar Association, ABA Profile of the Legal Profession 2020, p. 33, available at <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf>, last visited July 15, 2021.

<sup>8</sup>See id.

<sup>9</sup>See id.

<sup>10</sup>National Association for Law Placement, Inc. (NALP), 2020 Report on Diversity in U.S. Law Firms (February 2021), p. 4, available at [https://www.nalp.org/uploads/2020\\_NALP\\_Diversity\\_Report.pdf](https://www.nalp.org/uploads/2020_NALP_Diversity_Report.pdf), last visited July 20, 2021.

<sup>11</sup>See id.

collecting this data. Despite these increases, however, less than four percent of all partners are women of color — a figure that remains abysmally low due to the significant underrepresentation of both women and people of color at the partnership level and a pattern that holds true across all firm sizes and most jurisdictions. Worse, Black women and Latina women each continued to represent less than 1% of all partners in U.S. law firms.

Similarly, in 2020, the percentage of Black associates surpassed 5% for the first time since NALP began collecting these data and the share of Black women associates (3.04%) finally exceeded the 2009

figure of 2.93%. Despite these increases, the representation of Black women at the associate level has increased by just one-tenth of a percentage point over 11 years.”<sup>12</sup>

What is clear is that diversity of the legal profession is still an important goal that we must continue to seek to achieve.

In the Fall 2020 issue of the Birmingham Bar Bulletin,<sup>13</sup> the Women Lawyers Section shared the results of their Observational Tracking Project (“Birmingham Tracking Project”), which involved tracking female and minority attorney contributions in the courtroom. Judges in both the Jefferson County Circuit Court and in the United States District Court for the Northern

District of Alabama collected the data from August through November 2018. Twelve judges<sup>14</sup> participated in the project, recording the gender and race of the attorneys who were lead counsel or co-counsel as the second chair in all matters in their courtrooms for this four-month period. The data was analyzed, and the results of the gender aspect of the tracking project was published in the article *New Judicial Study: Birmingham Women Attorneys Trail Behind Men in Courtroom Appearances*.<sup>15</sup> That article revealed that, overall, women attorneys in Birmingham made court appearances as lead counsel on average 21% of the time versus men, who appeared 72% of the time.<sup>16</sup>

<sup>12</sup>See id.

<sup>13</sup>Bulletin Fall 2020 - Birmingham Bar Association, *New Judicial Study: Birmingham Women Attorneys Trail Behind Men in Courtroom Appearances*, p. 28-29, available at [https://issuu.com/280living/docs/issuu\\_bulletin\\_fall\\_2020](https://issuu.com/280living/docs/issuu_bulletin_fall_2020), last visited October 7, 2021.

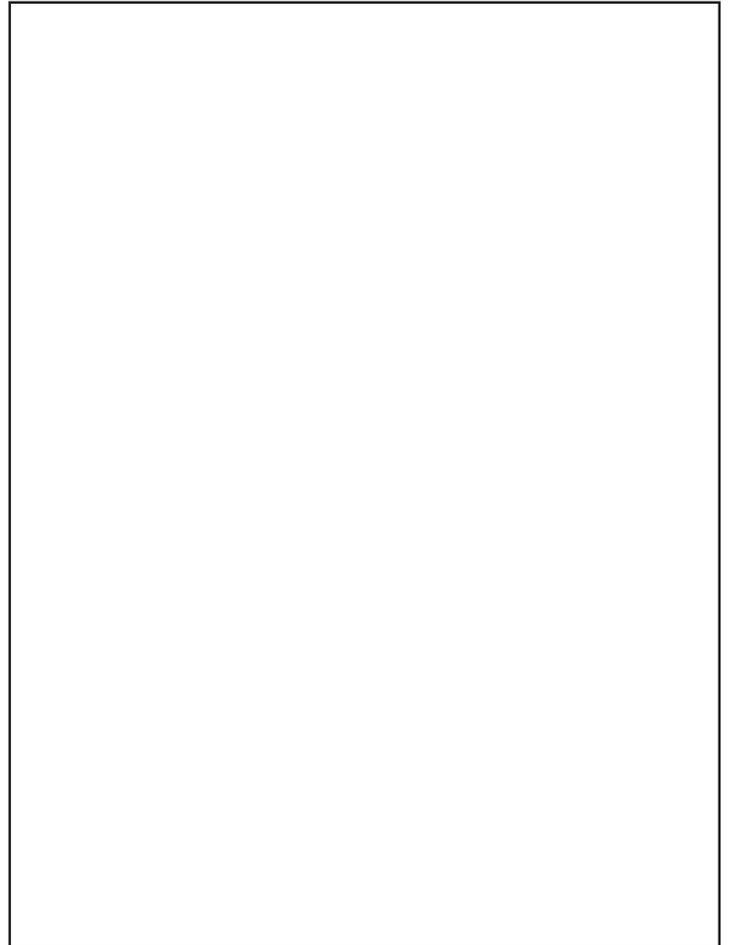
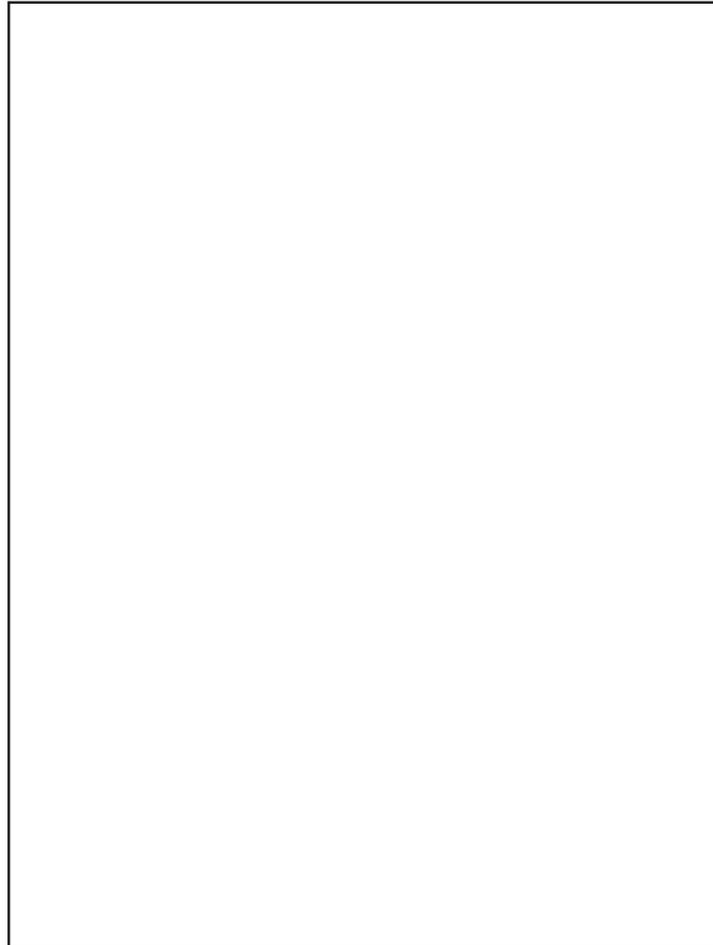
<sup>14</sup>This study would not have been

successful without the help of the following judges: The Honorable Pat Ballard, The Honorable Karon Bowdre, The Honorable Staci Cornelius, The Honorable John England III, The Honorable Elisabeth French, The Honorable Madeline Haikala, The Honorable Jim Hughey III, The Honorable Herman Johnson, Jr., The Honorable Abdul Kallon, The

Honorable John Ott, The Honorable Javan Patton, and The Honorable C. Lynwood Smith, Jr. The participation of the judges and court staff was remarkable, especially considering the various court caseloads and duties. These judges and their staff went above and beyond to provide this data. We are truly thankful for the support we received.

<sup>15</sup>Bulletin Fall 2020 - Birmingham Bar Association, *New Judicial Study: Birmingham Women Attorneys Trail Behind Men in Courtroom Appearances*, p. 28-29, available at [https://issuu.com/280living/docs/issuu\\_bulletin\\_fall\\_2020](https://issuu.com/280living/docs/issuu_bulletin_fall_2020), last visited October 7, 2021.

<sup>16</sup>Id.



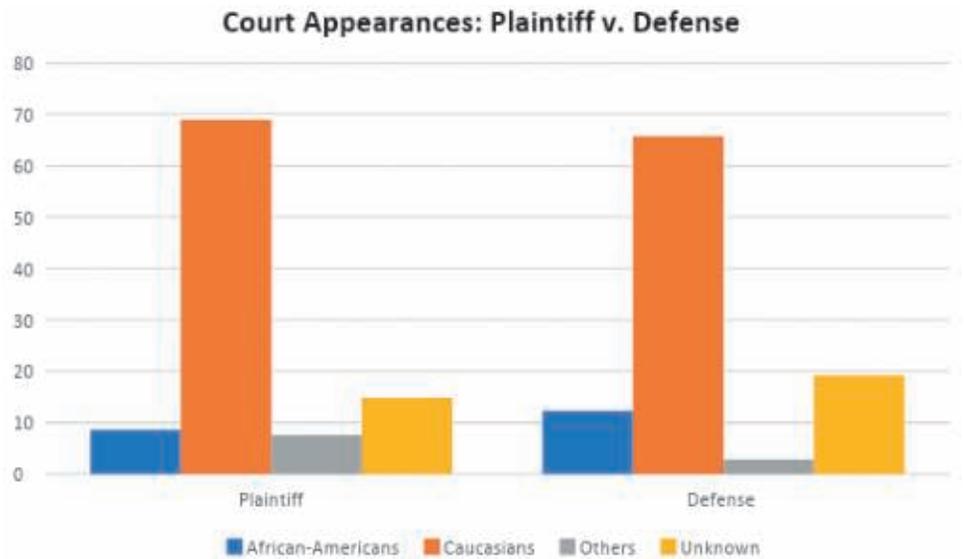
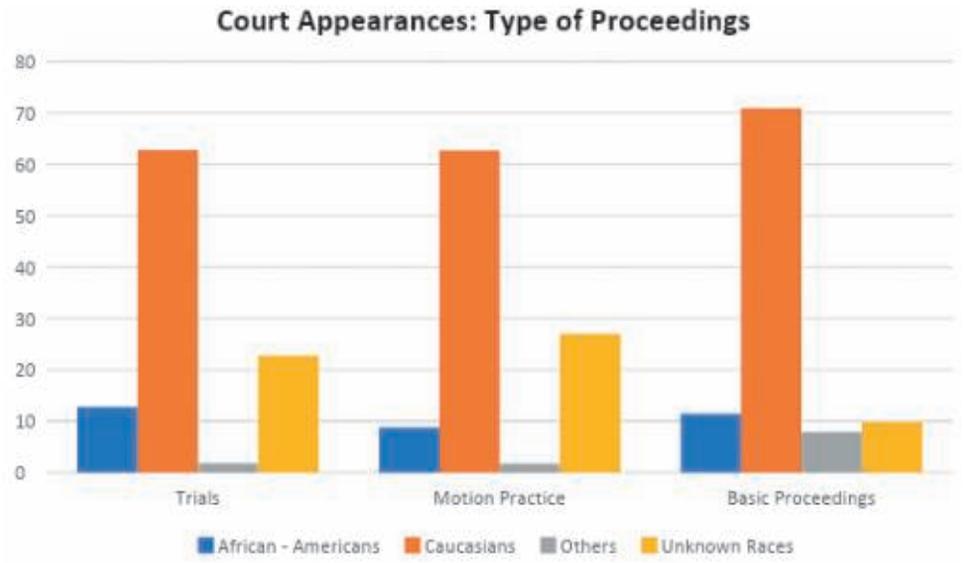
The focus of this article is based on the data collected in the Birmingham Tracking Project and examines the racial diversity of attorneys who practiced in court in Jefferson County and the counties the United States District Court for the Northern District of Alabama serves.<sup>17</sup>

In the geographic area that the United States District Court for the Northern District of Alabama serves, African-American attorneys account for 7.57%, while Caucasian attorneys account for 91.2%, and Other attorneys account for 1.22% of the legal profession.<sup>18</sup> The data from the Birmingham Tracking Project shows that, overall, African-American attorneys were in court 10.45% compared to Caucasian attorneys, who were in court 67.33% compared to Other attorneys, who were in court 5.23%.<sup>19</sup>

Interestingly, African-American attorneys are more likely to appear in court for basic proceedings, like initial appearances or status conferences, at a rate of 11.41%, but only at a rate of 8.75% for motion practice or oral arguments. However, African-American attorneys appear at trial at a rate of 12.73%, which is higher than the appearance rate for basic proceedings. Caucasian attorneys are most likely to appear at basic proceedings at a rate of 70.90%. The rate decreases to 62.61% for motion practice and then increases slightly to 62.73% for trial. For attorneys categorized as Other, they appear in 7.89% of basic proceedings, 1.70% of oral arguments, and 1.82% in trial.<sup>20</sup>

When the data is broken down by plaintiffs versus defense, African-American attorneys are more likely to appear for the defense at a rate of 12.28% versus 8.62% for the plaintiff. In contrast, Caucasian attorneys appear for the defense at a rate of 65.68% versus 68.99% for the plaintiff. Other attorneys are more likely to appear for the plaintiff at a rate of 7.58% compared to 2.87% for the defense.<sup>21</sup>

The data was also analyzed to examine the differences between attorney



representation in the public versus private sector. African-American attorneys are more likely to represent the public sector at a rate of 12.65% versus 7.71% representation in the private sector. Other attorneys have a similar trend with representing the public sector at a rate of 9.74%, while representing the

private sector at a rate of 1.93%. Unlike African-American and Other attorneys, Caucasian attorneys are more likely to represent the private sector at a rate of 86.63% and the public sector at a rate of 58.63%.<sup>22</sup>

The low number of racially diverse lawyers in the courtroom shows the lack of

<sup>17</sup>The results discussed in this Article focus on the race of the lead counsel in all proceedings, unless otherwise specifically noted.

<sup>18</sup>We received this data from the Alabama State Bar.

<sup>19</sup>Unknown races accounted for 16.99% of attorney appearances. Notably, the data collected for this Article reveals that, while minority attorneys have a higher percentage of courtroom appearances in comparison to their racial representation in the

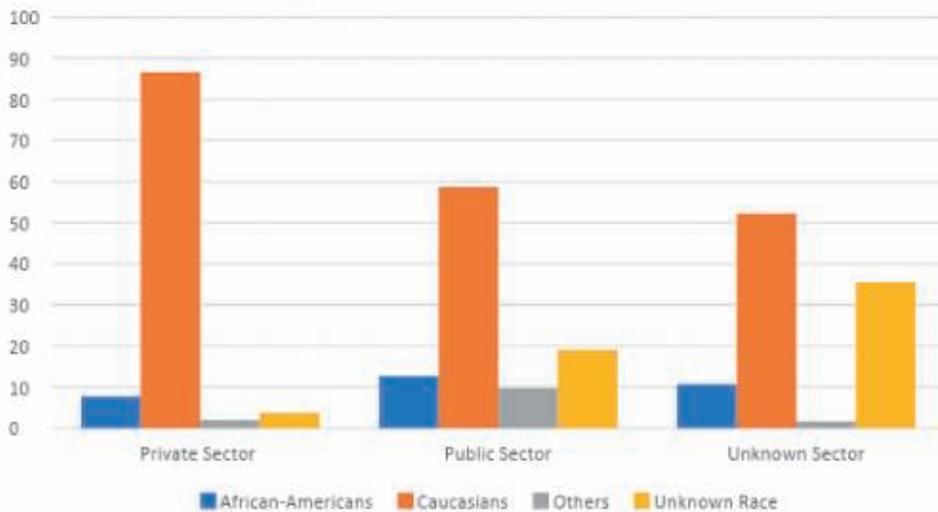
legal profession, the numbers are still extremely low compared to Caucasian attorneys.

<sup>20</sup>Unknown races accounted for the remaining percentages of courtroom appearances.

<sup>21</sup>Unknown races accounted for the remaining representation for plaintiffs and defendants.

<sup>22</sup>The remaining difference in the statistics represents the unknown races of attorneys.

## Court Appearances: Public vs. Private Sector



“We hope the results and the two articles published based on the Birmingham Tracking Project will provide a mechanism for the legal profession, especially in Alabama, to have a conversation on the importance of ensuring racial and gender diversity in the legal profession.”

diversity in the legal profession in general and possibly the lack of law firms utilizing lawyers of color in court.

The ABS notes in its Diversity & Inclusion Committee Newsletter that:

“[t]he legal profession is generally perceived as lagging behind other professions and industries in the area of diversity and inclusion. Although there are many notable exceptions, women and minorities are often under-represented at law firms and in-house law departments, particularly in leadership positions. They also often receive lower compensation than non-diverse attorneys and are excluded from, or overlooked for, other important law firm and law department roles, opportunities, and benefits.”<sup>23</sup>

The ABA report *Visible Invisibility: Women of Color in Law Firms*, published in 2006, documented that “women of color tend to fare worse than white men and women as well as men of color in law firms.”<sup>24</sup> In this study, women of color felt they were missing out on desirable assignments, were being denied formal and informal networking opportunities, missing client development and client relationship

opportunities, and being denied promotion opportunities.

Further, the study revealed that women of color felt they were treated as “tokens” and only introduced to clients when it would help the firm look good. Women of Color in U.S. Law Firms, a 2009 study by Catalyst, noted that women of color reported being left out of relationship building inside the firm, indicating that they had less access to senior attorneys compared to white women and men. Only 21 percent of those surveyed across all races and genders believed that supervising attorneys were being held accountable for developing and advancing women and diverse attorneys.<sup>25</sup>

A 2018 study prepared by the ABA’s Commission on Women in the Profession and the Minority Corporate Counsel Association revealed that women, women of color and men of color have been mistaken for secretaries, paralegals, court personnel, or janitorial staff.<sup>26</sup> Both women and women of color do more administrative tasks, such as note taking, than their male colleagues.<sup>27</sup> In addition, both women and women of color reported that their

commitment and competence were questioned, and they were passed over for promotions and not given quality assignments or projects after they had children.<sup>28</sup>

As the NALP Executive Director James Leipold explained:

“[t]he problems of racism and bias in American society are longstanding and run deep, dating back to our history of slavery, and the legal profession sits squarely in that history, but we are not bound by past practices and beliefs. Let this time embolden all of us to renew our efforts to address more directly and more forcefully systemic bias and prejudice in the legal profession[.]”<sup>29</sup>

Studies such as this Birmingham Tracking Project are ways to directly confront that bias. The more we can directly identify the problems, the better able we are to take intentional steps to address them and solve them. We hope the results and the two articles published based on the Birmingham Tracking Project will provide a mechanism for the legal profession, especially in Alabama, to have a conversation on the importance of ensuring racial and gender diversity in the legal profession.

<sup>23</sup>Winter 2020 – Diversity & Inclusion Committee Newsletter, Increasing Law Firm Diversity, available at [https://www.americanbar.org/groups/tort\\_trial\\_insurance\\_practice/publications/committee-newsletters/increasing\\_law\\_firm\\_diversity](https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/committee-newsletters/increasing_law_firm_diversity), last visited October 7, 2021.

<sup>24</sup>Visible Invisibility: Women of Color in Law Firms (2006) and Visible Invisibility: Women of Color in Fortune 500 Companies (2012).

<sup>25</sup>Women of Color in U.S. Law Firms (2009), available at <https://www.catalyst.org/wp-content/uploads/2019/01/>

Women\_of\_Color\_in\_U.S.\_Law\_Firms.pdf.

<sup>26</sup>You Can’t Change What You Can’t See, available at <https://www.americanbar.org/content/dam/aba/administrative/women/you-cant-change-what-you-cant-see-print.pdf>

<sup>27</sup>Id.

<sup>28</sup>Id.

<sup>29</sup>NALP, 2020 Report on Diversity in U.S. Law Firms, p. 4, available at [https://www.nalp.org/uploads/2020\\_NALP\\_Diversity\\_Report.pdf](https://www.nalp.org/uploads/2020_NALP_Diversity_Report.pdf), last visited October 7, 2021.