

Public Defense Attorneys' Perception of Race and Bias

National Survey Findings

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About This Series

This brief focuses on the results of a national survey conducted by Center for Justice Innovations' researchers as part of a series of publications about public defense attorneys' perceptions of race and bias in their field. Additional briefs will focus on findings from RTI International's in-depth interviews with public defense attorneys and the National Association of Criminal Defense Lawyers' recommendations for how to apply study findings to improve the landscape of public defense practice.

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Introduction

In the wake of several high-profile systemic failures of justice for Black people in the last decade, there have been widespread demands for change against pervasive racial inequities throughout the criminal legal system. These failures include the killings by law enforcement¹ of Tamir Rice, Michael Brown, George Floyd, and Breonna Taylor; the excessive use of confinement and untimely deaths of Sandra Bland and Kalief Browder; and the determination of the wrongful convictions of the Central Park 5. While much of the public discourse has focused on how law enforcement, prosecutors, judges, and correctional officers perpetuate racial biases, far less attention has been on how public defense attorneys do, as well.²

Recently, scholars have started examining how race affects legal representation in public defense.³ The Sixth Amendment to the United States Constitution guarantees the right to counsel in criminal cases and the Supreme Court has held that the government will provide a lawyer if a person cannot afford it. Each decision point of a public defense lawyer's assistance is vulnerable to racial bias and the potential for long-lasting harm to clients. Despite calls from the *American Bar Association's*

*Standards for the Defense Function*⁴ for defense counsel to be proactive in detecting, investigating, and eliminating improper biases, with particular attention towards historically persistent biases like race, achieving this standard has proven difficult. Often operating with limited time, resources, and information, public defense attorneys must make critical decisions relating to bail requests, case investigations, social service needs, plea negotiations, and trial strategies, among others.

Recognizing the pivotal role that public defense attorneys play in addressing racial disparities that their clients face, our exploratory study seeks to create a basis of understanding for how attorneys consider race when working with clients, conceptualize their role in addressing racial inequity, and experience the impact of their own racial/ethnic identities in the workplace. By shedding light on these issues, we hope to encourage public defense attorneys to reflect on and discuss how racial bias within their field perpetuates systemic harm, ultimately paving the way for improvement in racial equity across the field.

Survey Design and Data Collection

This research study seeks to understand public defense attorneys' perceptions across the country about racial equity within their field, the impact of race on defense practices, and potential explanations for attorneys' beliefs. In this section, we describe our approach to the research, including survey instrument design, data collection, and analysis.⁵

Team members from the Center, RTI, NACDL, and NLADA designed the survey collaboratively. The purpose of the survey was to gain a broad understanding of the public defense community's perspectives on racial equity within the profession and the potential impact of race/ethnicity on legal representation. We designed the first section of the survey to elicit general demographic information about attorneys (e.g., race, ethnicity, gender) and their professional experience (e.g., practice area, where and for how long they practiced law). The remaining sections focused on public defense attorneys' perspectives and attitudes about their:

- Practice area (criminal law, child welfare, immigration systems),
- Defense practices,
- Strategies for case preparation and litigation, and
- System culture and work environment.

Ideally, the survey would have been sent to a representative sample of all public defense attorneys practicing in the United States. However, given the variability in local public defense systems, such an approach would require intensive resources. Instead, we utilized convenience and referral sampling techniques. We disseminated the survey to public defense attorneys through strategic email outreach to NACDL and NLADA members. Between January and March 2022, we collected a total of 690 survey responses.

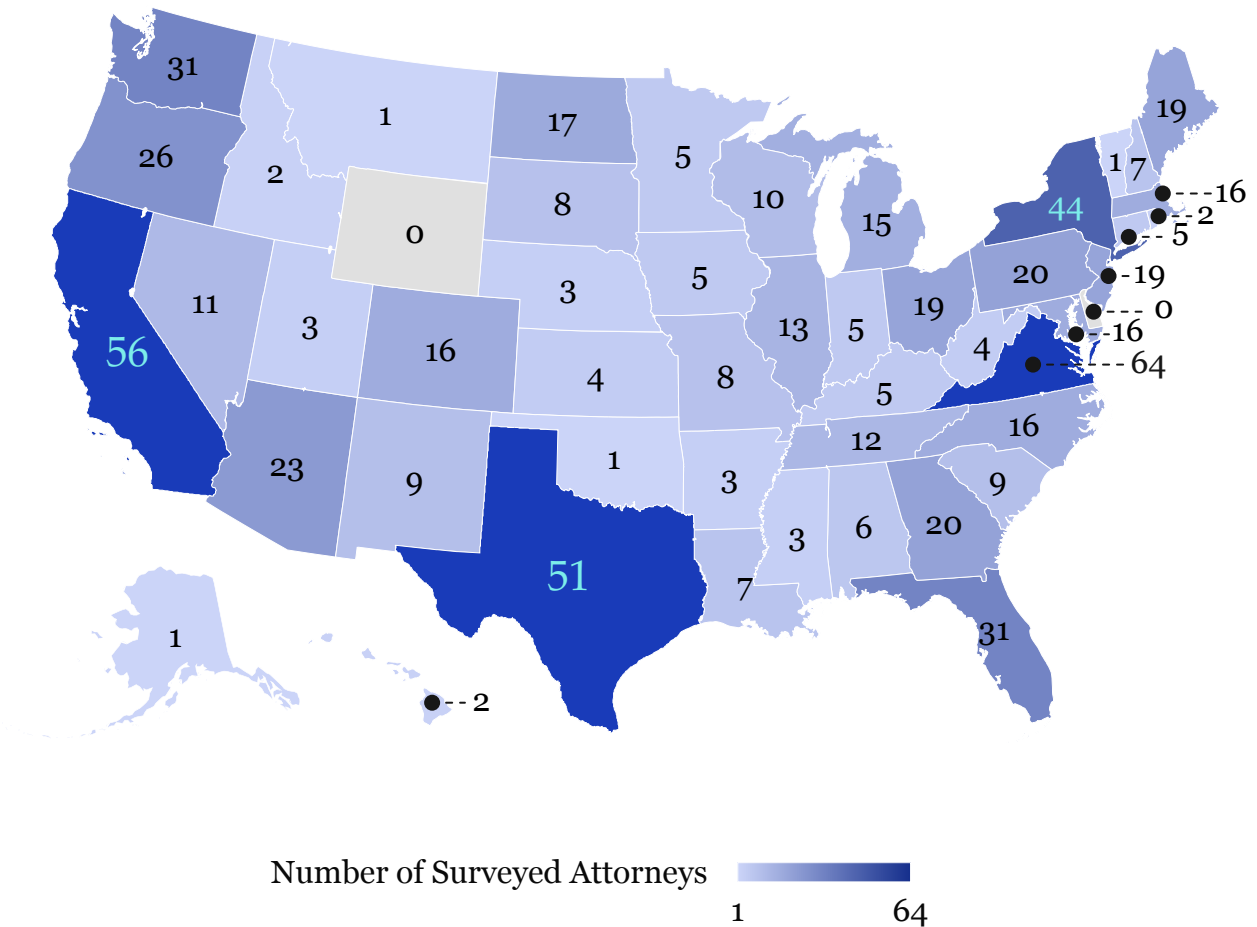
When analyzing the data, we first examined overall trends in survey respondent characteristics (e.g., race, gender) and survey responses. Next, we examined differences between respondent subgroups. The results below highlight significant differences between respondent subgroups. Nonsignificant results are not presented.⁶

Survey Sample

Of the 690 surveyed public defense attorneys, more than half were men (52%), with the remaining comprised of women (47%) and non-binary (<1%) individuals. Attorneys' ages ranged from 19 to 87; 44% fell between 40 and 59 years old, and just over half were either younger (≤ 39 years, 25%) or older (≥ 60 years, 29%). Looking at the type of indigent defense agency in which attorneys practiced, over half the sample worked in a public

defender office (52%), and the remainder worked as a solo (23%) or other private (21%) practitioners, or with a non-profit provider (3%). The majority of attorneys (95%) described their practice area as criminal law, 18% handled child welfare cases, 3% handled immigration matters, and 10% handled other case types.⁷ As displayed in Figure 1, surveyed attorneys represented almost every state in the country, with the largest representation

Figure 1. Surveyed public defense attorneys represented almost every state



PUBLIC DEFENSE ATTORNEYS' PERCEPTION OF RACE AND BIAS

from Virginia, California, and Texas. By jurisdiction type, most respondents practiced in urban areas (71%), followed by suburban (36%), rural (31%), and tribal (4%) areas.⁸

More than three-quarters of respondents self-identified as white, as displayed in Table 1. Given the lack of accurate data on the racial/ethnic composition of public defense lawyers nationally, we cannot determine whether the composition of our sample reflects national trends among public defenders. However, when

comparing respondents to the racial/ethnic makeup of attorneys nationally⁹, Black/African American, multiracial/multiethnic, Latinx, and Native American individuals are either overrepresented or equally represented in our sample. According to the American Bar Association's national data, only 5% of lawyers nationwide are Black/African American and Black, Indigenous, and People of Color (BIPOC) attorneys account for less than 20% of attorneys nationally.¹⁰

Table 1. Black/African American, Multiracial/Multiethnic, and Native American respondents were overrepresented in the survey sample compared to attorneys nationally.

	Survey Respondents	Attorneys Nationally ¹¹	United States Population ¹²
Number of People	690	1,327,010	333,271,411
Percentage by Race/Ethnicity			
White (including Arab and Jewish) ¹³	77%	81%	59%
Black/African American	8%	5%	14%
Multiracial/Multiethnic	7%	3%	3%
Latinx	6%	6%	19%
Asian	1%	5%	6%
Native/Indigenous American	<1%	0%	1%

Survey Findings

The findings fall into four categories: perceptions of racial bias, client-attorney interactions, case strategy, and office culture. Additional detail is provided in the subsequent paragraphs. Key takeaways include:

1. **Perceptions of Racial Bias:** Public defense attorneys generally agreed that there are racial disparities within the criminal legal system and that the system is biased against their BIPOC clients.
2. **Client-Attorney Interactions:** Attorneys reported that clients have few opportunities to identify themselves racially or to choose to be represented by BIPOC attorneys. White public defense attorneys reported more often than BIPOC attorneys that race is a barrier when building relationships, trust, and communication with BIPOC clients.
3. **Case Strategy:** Over a third of attorneys reported changing their case strategy based on their clients' race. BIPOC attorneys were more likely to report that they collect and present evidence in court differently and give different legal advice to BIPOC clients.
4. **Office Culture:** BIPOC attorneys were more likely than white attorneys to report witnessing racism in their offices.

Perceptions of Racial Bias

System Fairness

Researchers first sought to assess whether there was agreement about the presence of racial inequity. The vast majority of respondents (90%) agreed that BIPOC are overrepresented in the criminal legal system compared to the general population. When asked about disparities in the jurisdiction in which they practice, a smaller majority (78%) agreed that BIPOC are overrepresented compared to the local population.

Drivers Of Disparities

The acknowledgement of racial disparities does not necessarily mean there is an agreement about the causes of said disparities. However, respondents generally agreed about the source of the disparities, as well. At both the national level (82%) and in their local jurisdictions (80%), most public defense attorneys agreed with the statement that “the criminal legal system in our country favors white people more than BIPOC.” There was a notable percentage of attorneys (around 20%), however, who disagreed or remained neutral in naming racial bias as a driver of racial disparities in the criminal legal system.

Client-Attorney Interactions

System Fairness

When asked whether race creates a barrier in the client-attorney relationship, public defense attorneys consistently reported that race was a relationship barrier with clients of a different race/ethnicity than themselves. Specifically, attorneys reported that race was a barrier in establishing trust (61%), building relationships (54%), and communicating (46%) with clients of a different race/ethnicity. As displayed in Figure 2, white attorneys were significantly more likely to describe experiencing barriers to building trust and relationships with their BIPOC clients relative to the experiences of BIPOC

attorneys. An attorney's race impacted communication less.

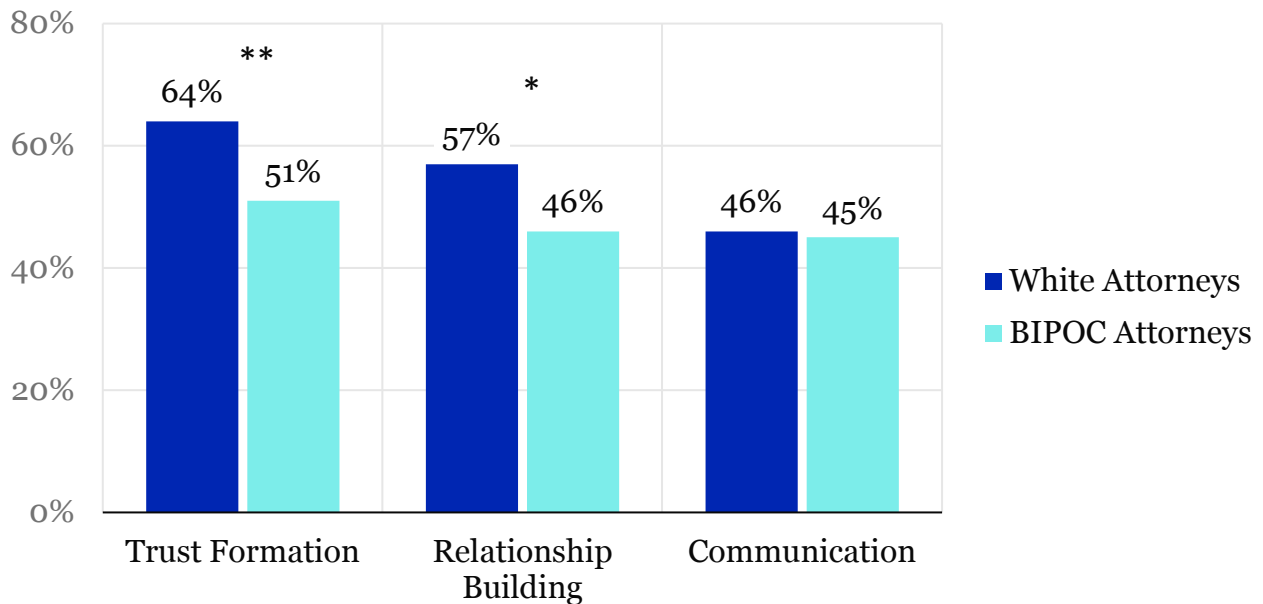
Self-Identification

Public defense attorneys were asked how they typically learn of clients' race/ethnicity. Attorneys could select multiple options and the majority indicated they use their own judgment (67%), with fewer reporting that they ask their client to self-identify (60%) or they rely on official records from the courts or law enforcement (50%).

Attorney Selection

When asked about racial disparities between clients and attorneys, most public defense attorneys (68%) said that the public defense attorneys where they

Figure 2. White attorneys were significantly more likely to experience barriers to trust formation and relationship building with clients who did not share their race.



* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

practice are not racially/ethnically representative of the populations they serve. When asked whether clients can request an attorney with a shared racial/ethnic identity as themselves, most attorneys reported that this is not an option (69%). Another quarter were unsure (24%) and a small minority (7%) indicated that clients can make such a request. Only 15% of attorneys believed that BIPOC clients would have better case outcomes if represented by an attorney who shared their racial or ethnic identity. BIPOC attorneys were more likely to agree with this position (29%) than white attorneys (10%).

Case Strategy

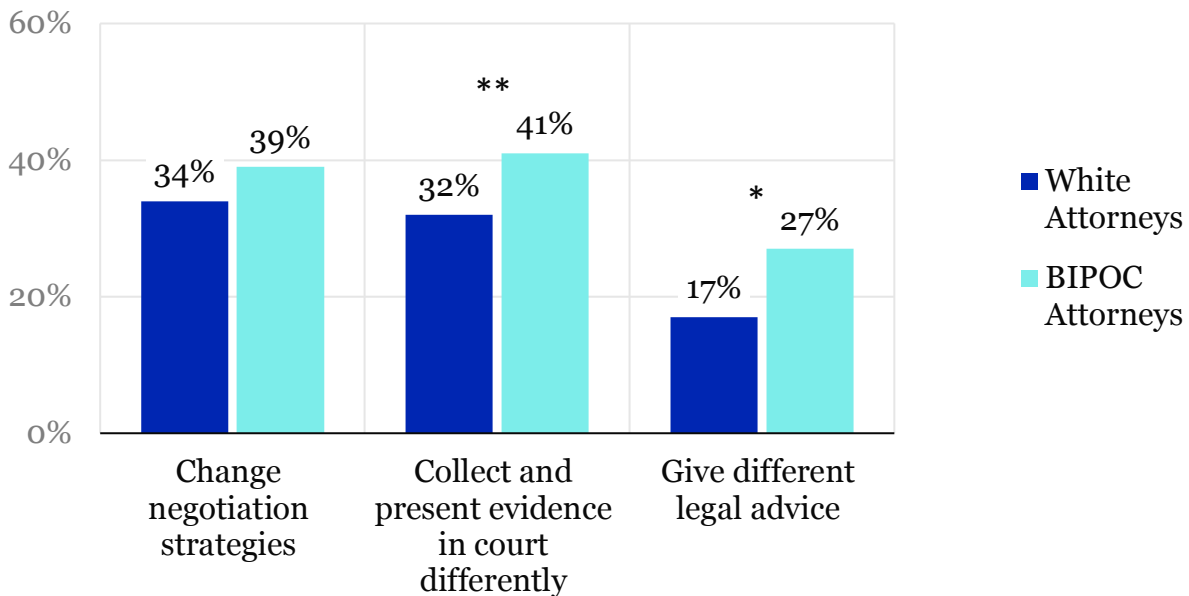
Although most public defense attorneys reported that they do not change their

case strategy based on clients' race/ethnicity, a notable minority indicated that they *do* change their negotiation strategies (33%), the way they collect and present evidence in court (31%), and the legal advice they give (18%) based on clients' race/ethnicity. As displayed in Figure 3, BIPOC attorneys were significantly more likely than white attorneys to report that they collect and present evidence in court differently and give different legal advice to BIPOC clients. An attorney's race had less of an impact on changing negotiation strategies depending on their client's race.

Office Culture

Understanding the local office and agency culture can provide insights into how racial bias may impact public defense

Figure 3. BIPOC attorneys were significantly more likely to collect and present evidence in court differently and give different legal advice depending on the race of their client.



*p<0.05, **p<0.01, ***p<0.001

attorneys' experiences within their local offices.

Diversity In Leadership

Nearly 3 out of 4 public defense attorneys (72%) reported that management positions were held mainly by white attorneys in their office.

Racism In The Workplace

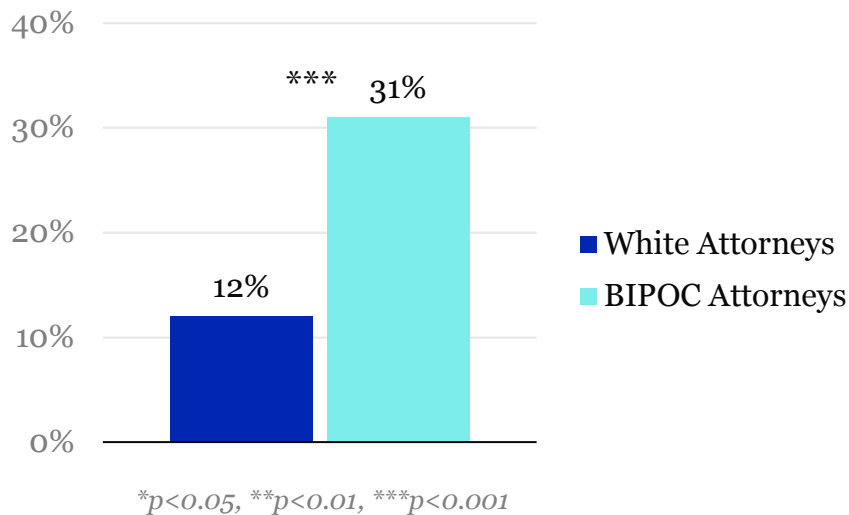
Public defense attorneys were then asked whether they had directly heard or seen other attorneys in the office embarrass, patronize, or otherwise treat someone negatively because of their race/ethnicity in the past year. Overall, only a small percentage of attorneys (17%) had witnessed this type of racism in the office. However, when examining the differences in responses by attorneys' race, BIPOC attorneys were *almost three times more likely*

to report witnessing racism in the office (see Figure 4).

Training and Office Culture

Racial bias training and open dialogue about the nature of racism within the workplace can serve as opportunities for staff to learn to identify racism in the workplace.¹⁴ Most public defense attorneys (78%) believed that training on systemic racism and racial bias is necessary. Fewer attorneys felt that racial bias training is unnecessary (11%) or were unsure about the need for training (11%). Two-thirds of attorneys (66%) reported that they experience an office culture where staff has regular conversations about racial bias—for instance, how BIPOC and white clients are affected differently by criminal legal systems.

Figure 4. BIPOC attorneys were significantly more likely to witness racism in the office



Limitations and Conclusion

Limitations

Several study limitations are noteworthy. First, survey research inherently possesses limitations. Surveys allow the gathering of a broad range of information from a large population, yet they lack depth in providing an explanation. For instance, while respondents highlight racial inequity, survey data may not reveal the underlying causes. We suggest complementing these findings with insights from RTI's interviews with public defense attorneys for a more nuanced perspective. Second, despite having 690 survey respondents, our data collection relied on convenience sampling, potentially limiting the representation of the broader field of public defense attorneys. Third, selection bias might exist due to a varying willingness among contacted attorneys to participate, especially a potential lack of participation from those who prefer not to discuss race. Lastly, although scholars and practitioners referenced in this report suggest strategies to address racial bias, the survey does not assess these strategies.

Conclusion

Our survey reveals that race significantly influences public defense practice and culture. Public defense attorneys recognize racial disparities in the legal system and adapt their strategies accordingly. However, there are differences between how white and BIPOC attorneys interact with clients and approach cases. White attorneys find race can hinder building relationships with BIPOC clients, while Black attorneys adjust strategies more for BIPOC clients compared to white clients. Clients have limited opportunities to indicate their race or request representation by a same-race attorney. Systemic disparities, such as a lack of diversity among public defense attorneys, limited opportunities for dialogue, and instances of racism in the office, particularly affect BIPOC attorneys. Overall, public defense attorneys acknowledge the impact of bias and racism, but may experience the criminal legal system differently depending on the race of the attorney. Further research is needed to identify and evaluate actionable solutions to address systemic racial harms within the public defense system.

Endnotes

¹ Washington Post. 2023. [Police Shootings Database: 2015-2023](#). Washington, DC: Washington Post.

² Here and throughout, “public defense attorneys” refers to any attorney providing indigent defense (e.g., assigned counsel, contracted attorneys, or those practicing in an institutional public defender office).

³ Edkins, V. A. 2011. “[Defense Attorney Plea Recommendations and Client Race: Does Zealous Representation Apply Equally to All?](#)” *Law and Human Behavior* 35(5): 413–425. Robert J. Smith, Robert J. and Justin D. Levinson. 2012. “[The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion](#).” *35 SEATTLE U. L. REV.* 795. Blair, Irene V, Charles M. Judd, and Kristine M. Chapleau. 2004. “[The Influence of Afrocentric Facial Features in Criminal Sentencing](#).” *Psychological Science*, 15(10), 674–679. Libgober, Brian. 2019. “[Getting a Lawyer While Black: A Field Experiment](#).” *Lewis and Clark Law Review*, 24.1.

⁴ The standards include Standard 4-1.6 Improper Bias Prohibit, which guides public defenders to: not manifest or exercise, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, gender identity, or socioeconomic status. American Bar Association. 2017. [Criminal Justice Standards for the Defense Function](#). Fourth Edition. American Bar Association.

⁵ The recruitment for both survey and interview data collections used convenience sampling (and purposive sampling for the interviews). Though there is widespread representation from 690 survey respondents, convenience sampling limits the generalizability of results which may not reflect the larger public defense field. Future research should seek to gain greater representation from BIPOC attorneys. The sample may have experienced some selection bias if attorneys who do not believe racism exists within the criminal legal system were less inclined to participate in the data collection.

⁶ In interpreting research results, it is helpful to note whether a finding is statistically significant (reflecting

the likelihood that the difference does not occur from random chance) and the nature of the difference observed (whether there was increase or a decrease, and how large the difference is between groups). In applied research, many factors can influence statistical significance, such as sample size and the composition of the data. For the purposes of this brief, the level of significance is determined by $\alpha = 0.05$ and a descriptive approach is taken to illustrate *how* the race of a public defense attorney may influence specific responses.

⁷ Totals do not add to 100% because respondents were given the option to select multiple responses.

⁸ Totals do not add to 100% because respondents were given the option to select multiple responses.

⁹ American Bar Association. 2022. [National Lawyer Population Demographics](#). American Bar Association.

¹⁰ American Bar Association. 2022. [National Lawyer Population Demographics](#). American Bar Association.

¹¹ American Bar Association. 2022. [National Lawyer Population Demographics](#). American Bar Association.

¹² U.S. Census Bureau. 2023. [Quick Facts: Population Estimates, July 1, 2023 \(V2023\)](#). U.S. Census Bureau.

¹³ In survey responses, as part of the “other” category, many respondents specified their race/ethnicity as Arab and/or Jewish. For the purpose of drawing comparisons of survey respondents to attorneys in the United States and the general United States population, these survey responses were re-categorized into the “white” racial/ethnic category. In the U.S. Census Bureau, people of Arab and Jewish heritage are included amongst the “white” racial/ethnic category.

¹⁴ Gino, Francesca and Katherine Coffman. 2021. “[Unconscious Bias Training That Works](#).” *Harvard Business Review*.