

JURY DIVERSITY IN WASHINGTON:

Hollow promise or hopeful future?

GOALS

1

- **Importance**
of fair cross-section promise

Courts have
**power to improve
racial and ethnic
representation
in jury pool**

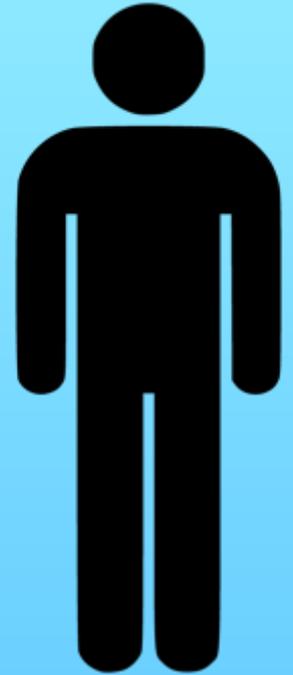
1

• **Importance**
of fair cross-
section promise

History

Perception

Reality



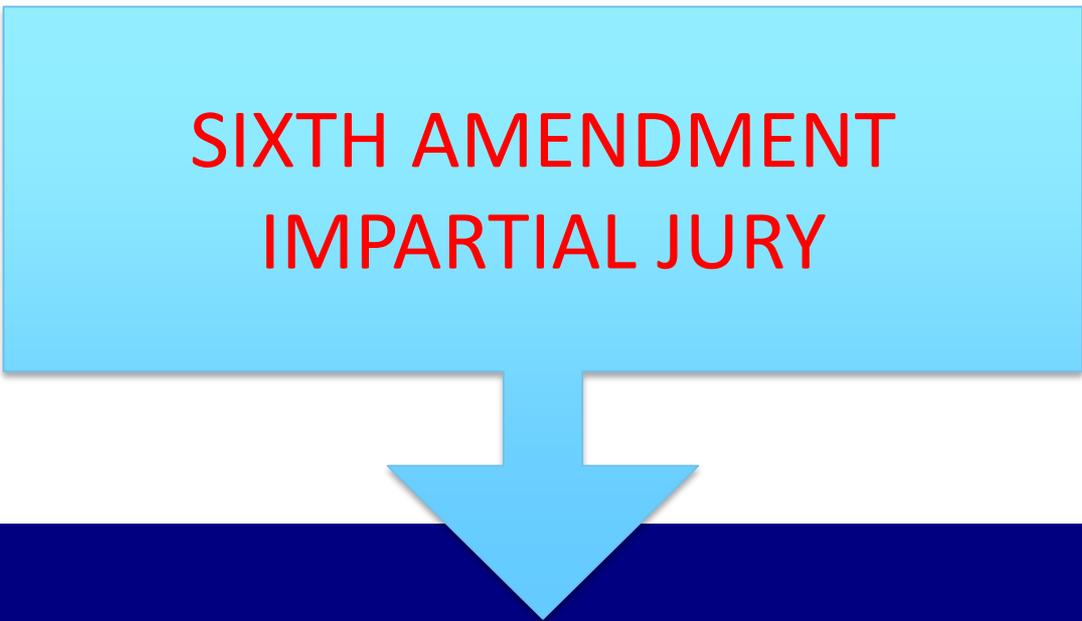


Community's
judgment

Community's
judgment

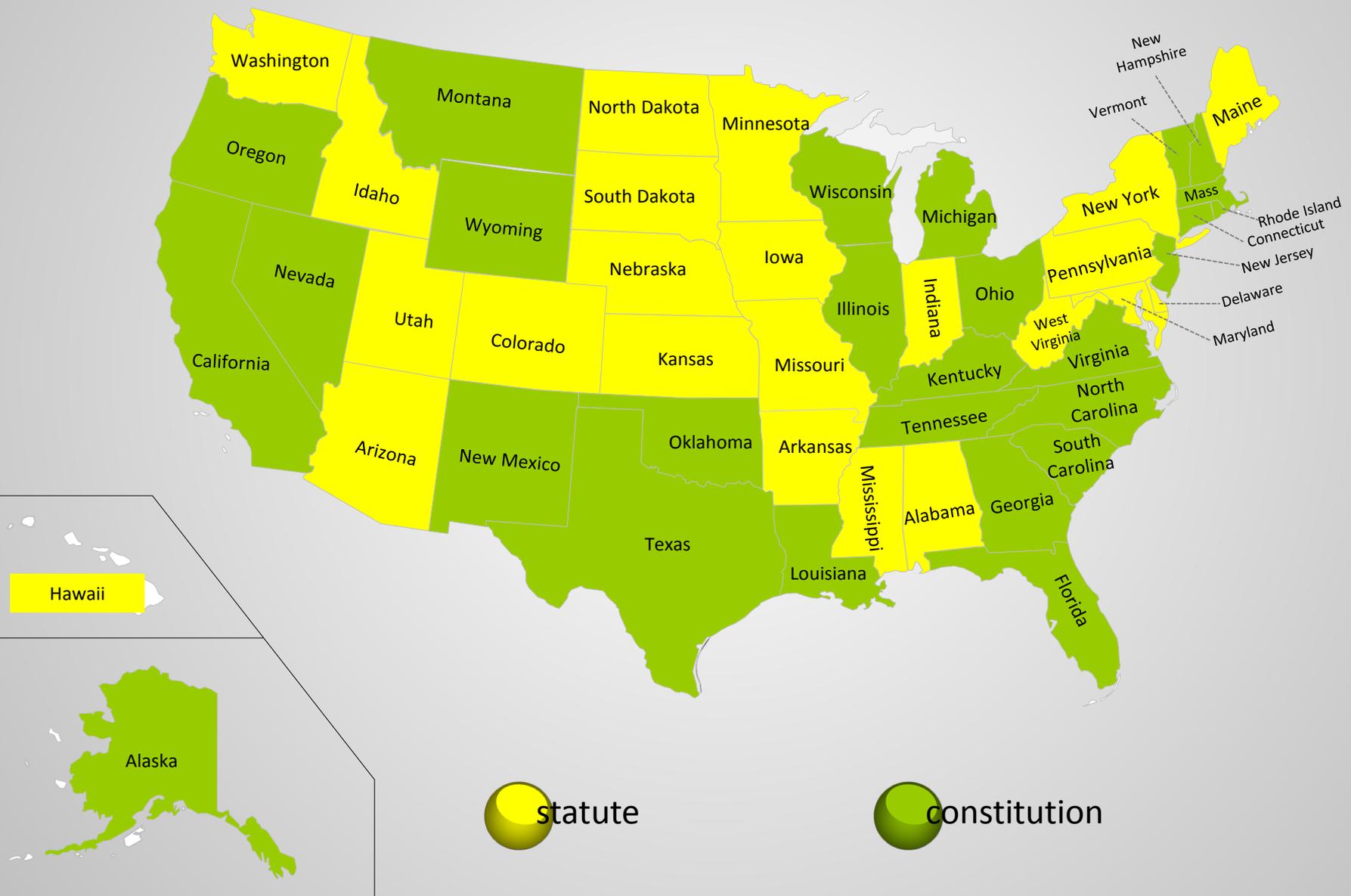
Community's
judgment

SIXTH AMENDMENT
IMPARTIAL JURY



**FAIR CROSS-SECTION
OF THE COMMUNITY**

Fair cross-section protected by statute or state constitution



1

- **Importance**
of fair cross-
section promise

History

Perception

CRITICAL

REPRESENTATIVE

78%

Jury system =
fairest way to
determine guilt
or innocence

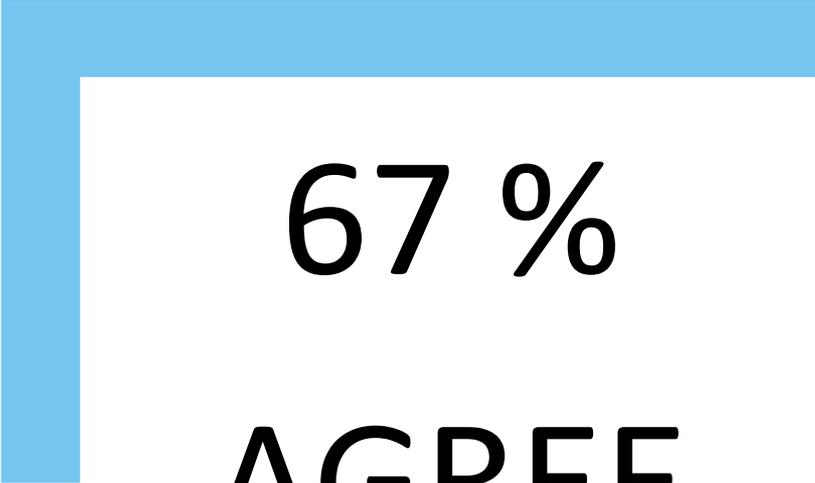
78%

Jury system =
fairest way to
determine guilt
or innocence

69%

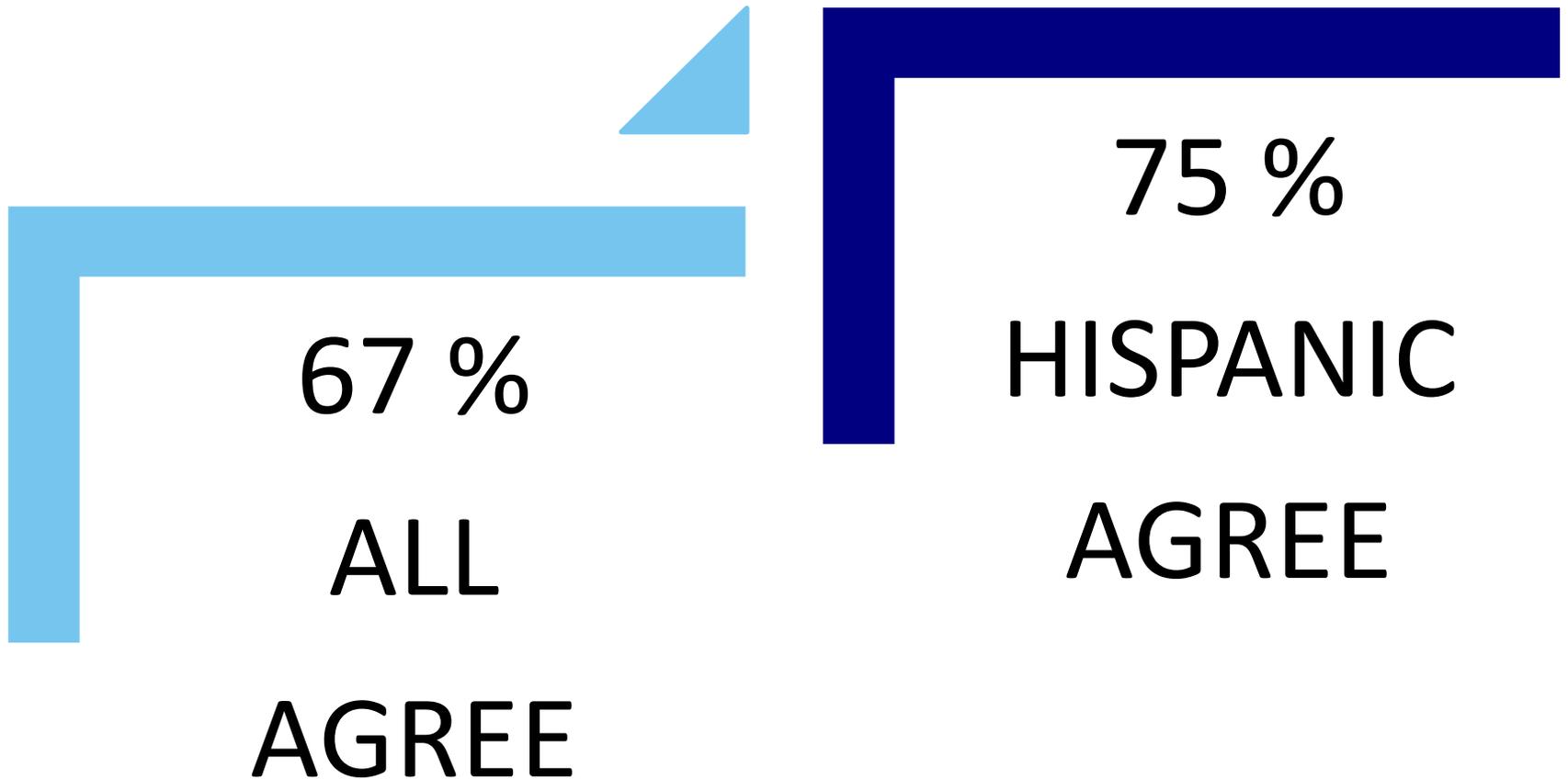
Juries =
most important
part of our justice
system

“decisions reached by racially diverse juries
are more fair
than decisions reached by single race juries”

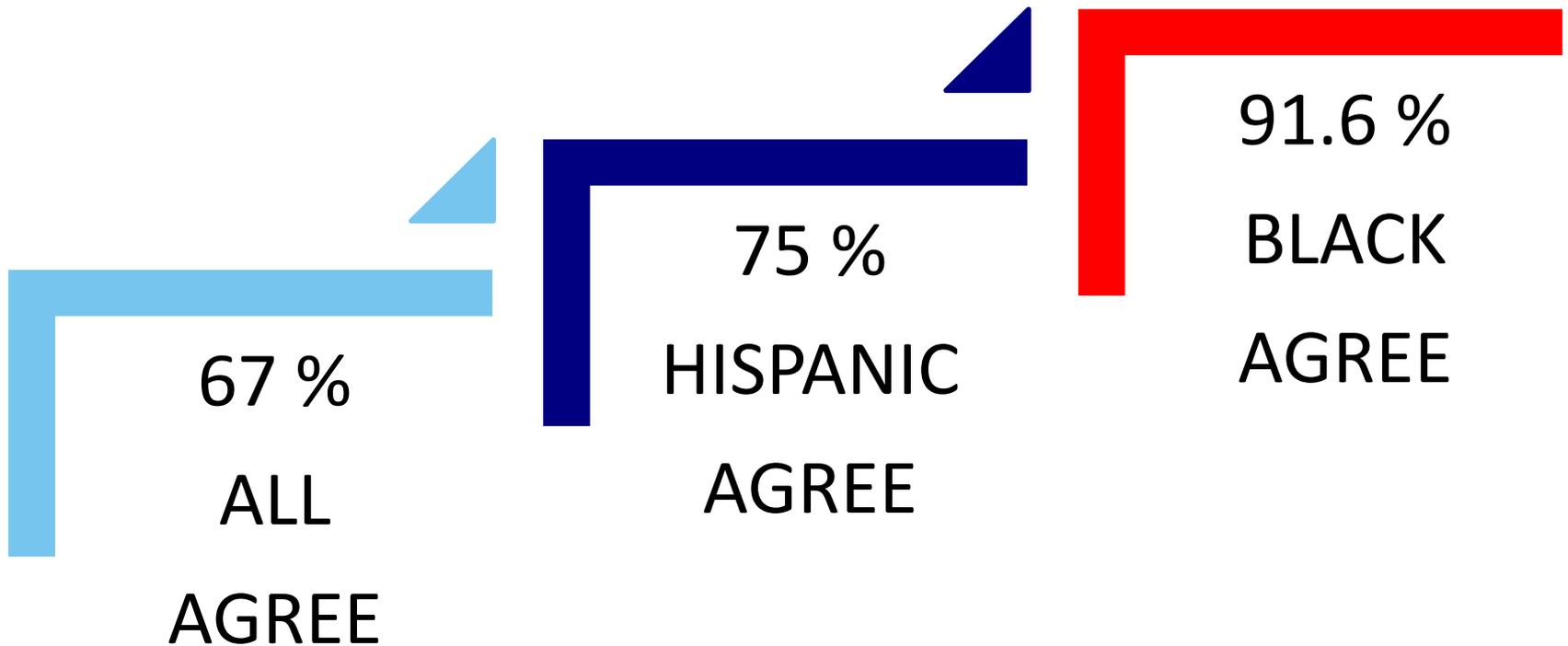


67 %
AGREE

“decisions reached by racially diverse juries
are more fair
than decisions reached by single race juries”



“decisions reached by racially diverse juries
are more fair
than decisions reached by single race juries”

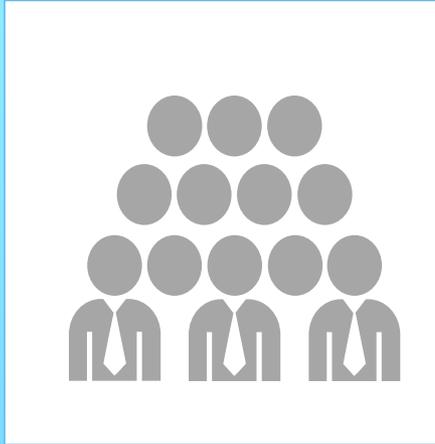


ACQUITTED

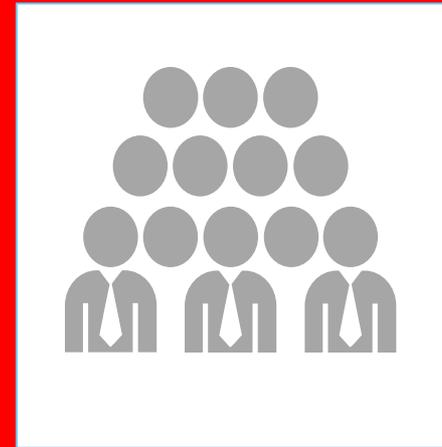
CONVICTED

Leslie Ellis & Shari Seidman Diamond, *Race, Diversity, and Jury Composition: Battering and Bolstering Legitimacy*,
78 Chi.-Kent L. Rev. 1044-49 (2003)

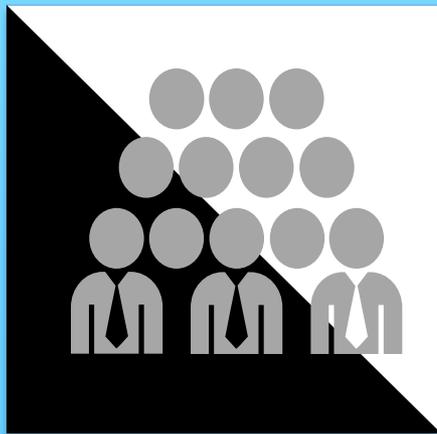
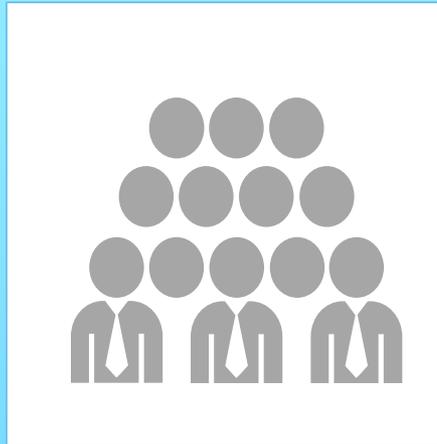
ACQUITTED



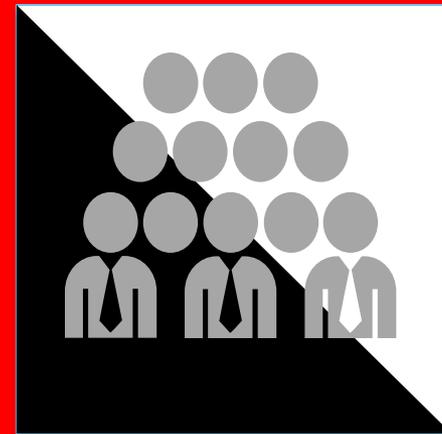
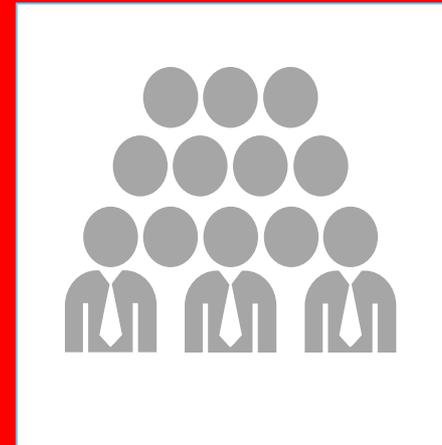
CONVICTED



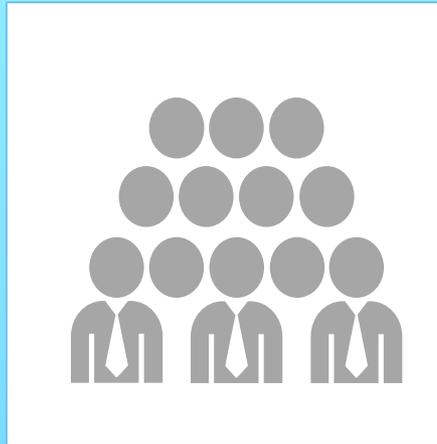
ACQUITTED



CONVICTED



ACQUITTED



CONVICTED



“[T]he perception
of being treated fairly

is more important
than a favorable outcome
in predicting whether a person
views authority as legitimate.”

The
perception of
fairness can
be critical

and it can be
difficult to achieve
that without racial
or ethnic diversity
among the jurors
who are deciding a
case

Therefore it is
hard to overstate
the significance
of the lack of
diversity on jury
panels

1

• **Importance**
of fair cross-
section promise

History

Perception

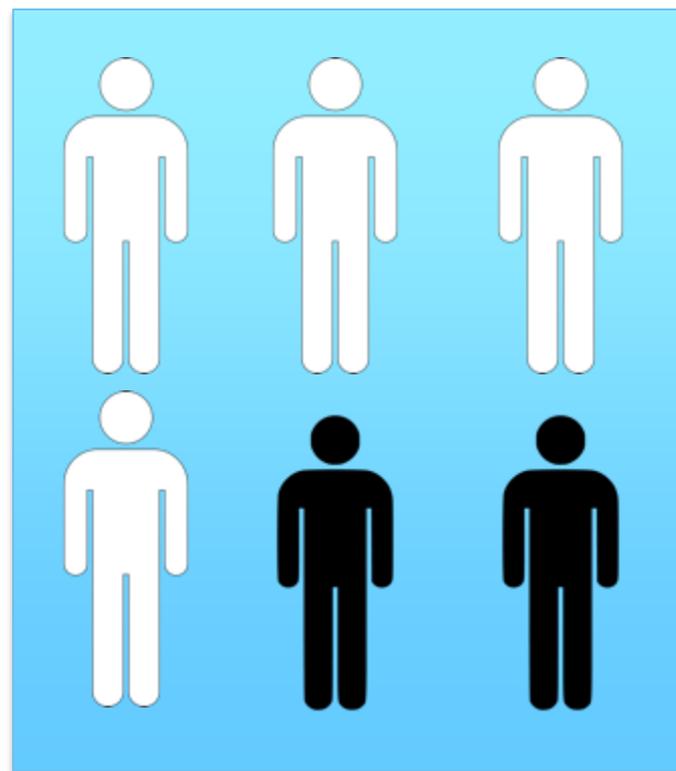
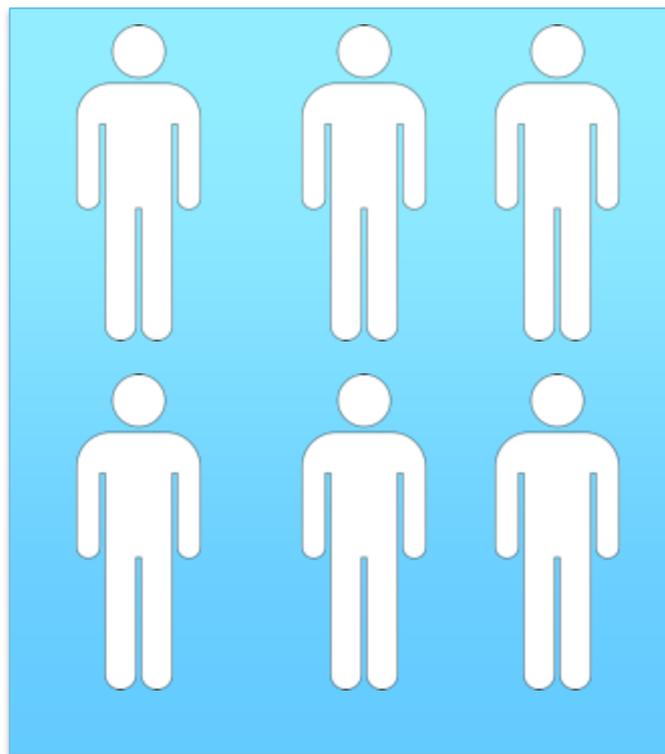
Reality

1

MULTIPLE
PERSPECTIVES
ON HUMAN
EVENTS

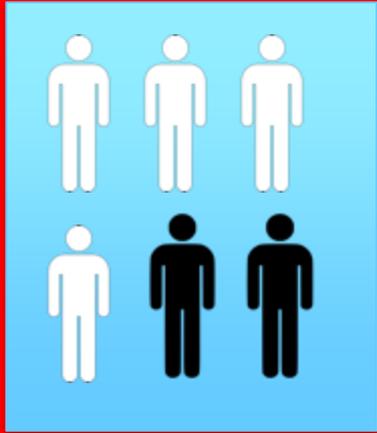
2

HIGHER
QUALITY
DELIBERATIONS

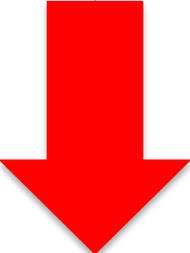
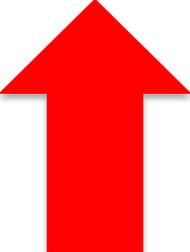


Samuel R. Sommers & Phoebe C. Ellsworth, *How Much Do We Really Know About Race and Juries? A Review of Social Science Theory and Research*, 78 Chi.-Kent L. Rev. 997 (2003); Samuel R. Sommers, *Determinants and Consequences of Jury Racial Diversity: Empirical Findings, Implications, and Directions for Future Research*, *Social Issues and Policy Rev.*, V. 2., No. 1, pp. 65-102; Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, *J. Personality & Soc. Psych.*, V. 90, No. 4, pp. 597-612 (2006) .

RACIALLY MIXED JURIES



- Deliberate longer
- Discuss more case facts
- Fewer factual errors
- Fewer uncorrected factual errors
- More statements about race

	White Participant All-White Jury	White Participant Diverse Jury	
Number of novel case facts raised	4.32	5.27	
Number of factual inaccuracies	1.21	0.73	
Number of race-related issues raised	0.35	0.55	

“Jury representativeness can be more than a moral or Constitutional ideal;

it is sometimes an ingredient for superior performance.”

3

LESS
BIASED
OUTCOMES

785 felony trials

Shamena Anwar, Patrick Bayer, Randi Hjalmarsson, *The Impact of Race in Criminal Trials*, *The Quarterly Journal of Economics*, 1-39 (2012)



Jury drawn from
all-white jury
venire

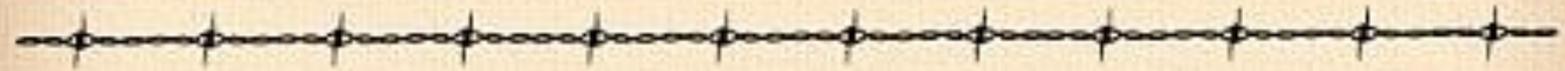
785 felony trials

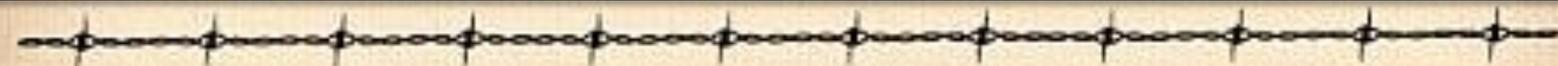


Jury drawn
from venire
with at least
one black
person



In cases with no black people in the jury pool (typically consisting of around 27 people) blacks were convicted 81 percent of the time, and whites were convicted 66 percent of the time.





When the jury pool included at least one black person, the conviction rates were nearly identical.



71%
CONVICTION

73%
CONVICTION

IS JUSTICE COLOR BLIND?

A Duke University-led study on the impact of race on conviction rates raises questions about the criminal justice system.

"Simply put, the luck of the draw on the racial composition of the jury pool has a lot to do with whether someone is convicted..." -- senior author Pat Bayer, chairman of Duke University's Economics Department

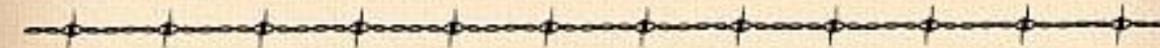
RESEARCHERS
EXAMINED MORE THAN
700 FELONY
TRIALS

IN SARASOTA AND LAKE COUNTIES
IN FLORIDA FROM 2000-2010.

Key findings:



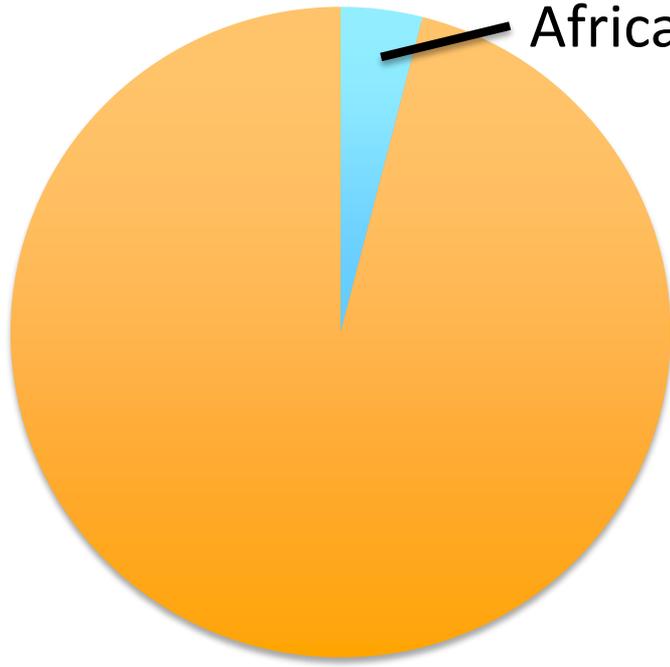
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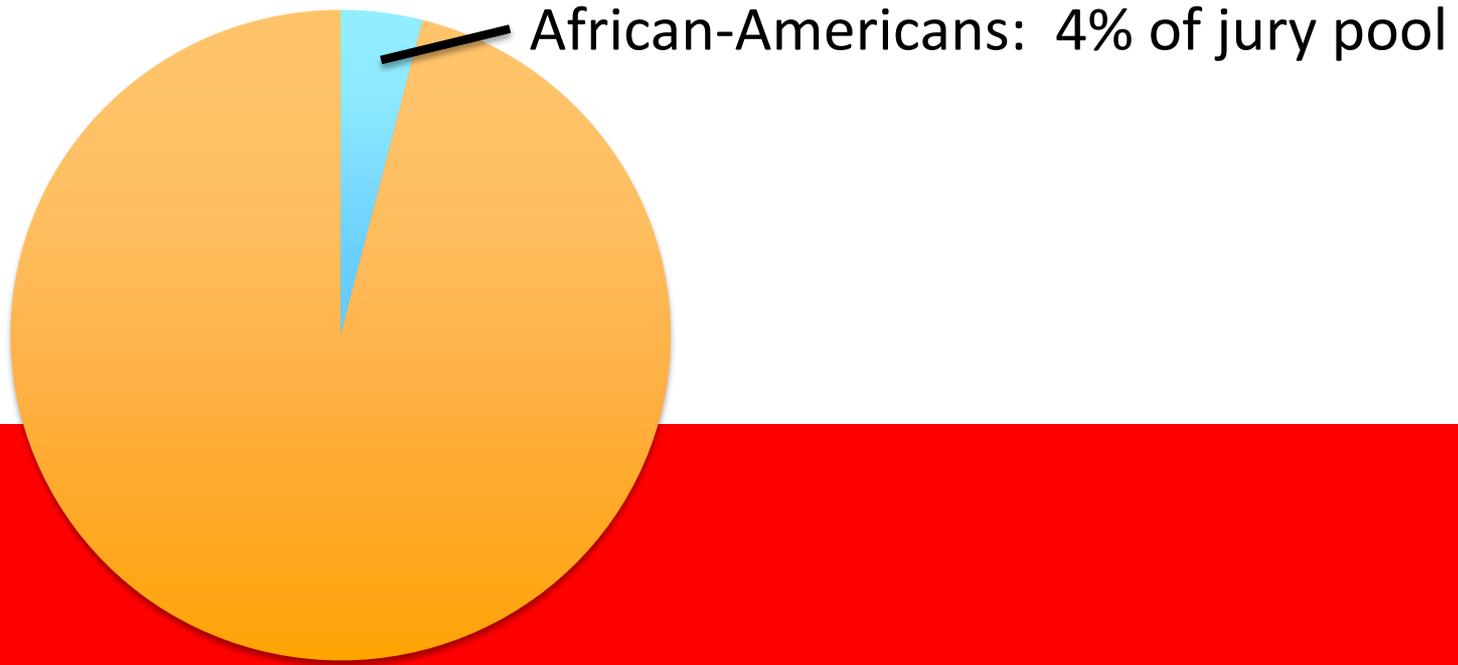
When the jury pool included at least one black person, the conviction rates were nearly identical.



“The black-white conviction gap declines by an average of 16 percentage points in all trials in which there is at least one black member of the jury pool.”



African-Americans: 4% of jury pool



“[E]ven small changes
in the composition of the jury pool
have a large impact”

THE JURY AND DEMOCRACY



HOW JURY DELIBERATION



PROMOTES CIVIC ENGAGEMENT



AND POLITICAL PARTICIPATION

JOHN GASTIL

E. PIERRE DEESS

PHILIP J. WEISER

CINDY SIMMONS

OLYMPIA
PROJECT



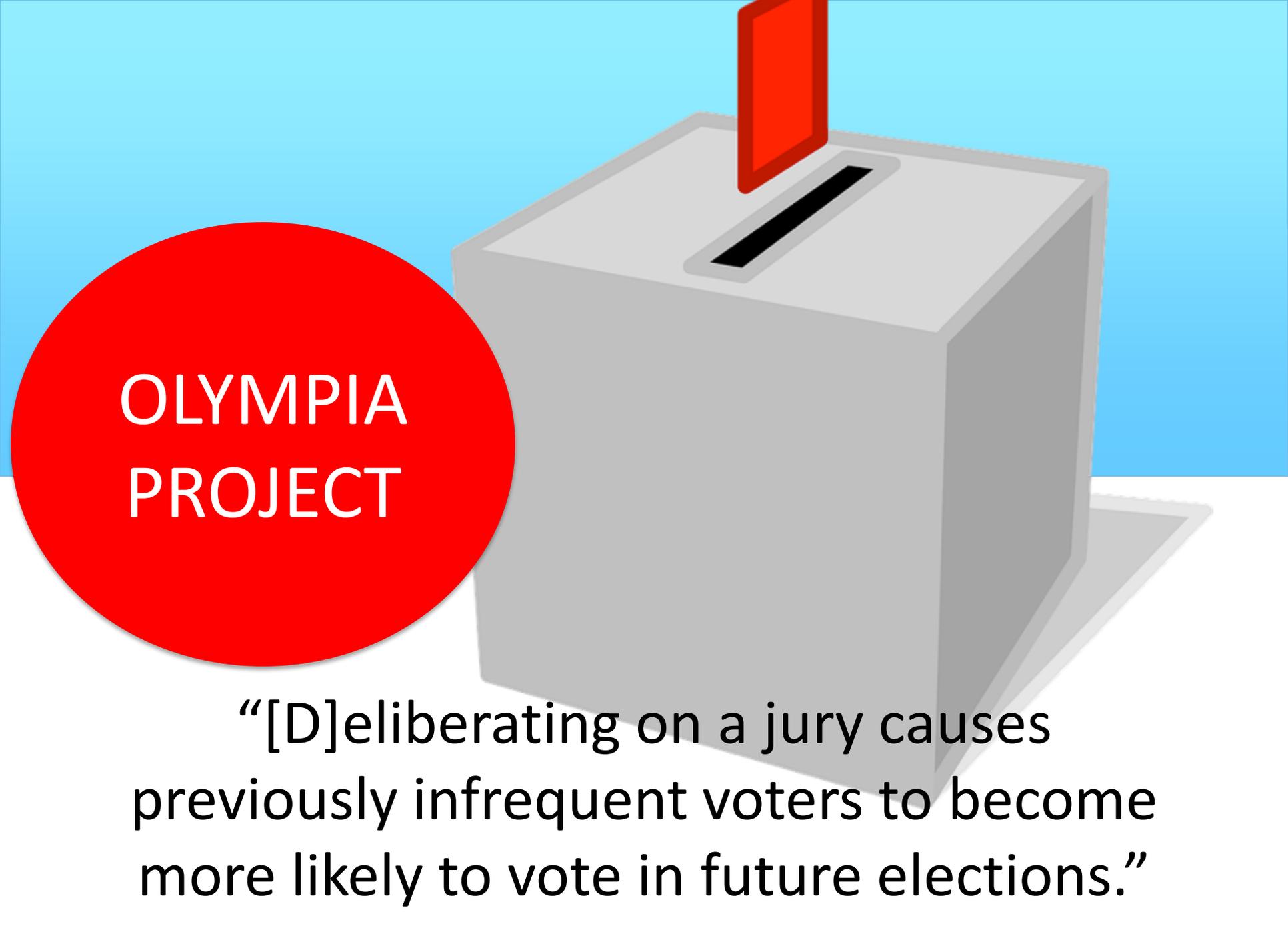
OLYMPIA
PROJECT

“[S]ervice at the courthouse has a relatively **large positive impact** on jurors’ confidence in the quality of the jury system itself.”

96 percent of jurors
talked about jury service

OLYMPIA
PROJECT





OLYMPIA PROJECT

“[D]eliberating on a jury causes previously infrequent voters to become more likely to vote in future elections.”

1

• **Importance**
of fair cross-
section promise

History

Perception

Reality



1

- **Importance**
of fair cross-section promise



2

- **Hollowness**
of promise & consequences

DISCRIMINATION





2

- **Hollowness**
of promise &
consequences



Court-appointed
committees
“throughout the country
have found minority
underrepresentation in
jury composition”

Best Practices for Jury Selection and Service in Pennsylvania, The **Pennsylvania** Interbranch Commission for Gender, Racial and Ethnic Fairness, 8 (Sept. 2016) (Source list “often leads to a panel of prospective jurors that is over-representative of . . . non-minority members of the community.”); *Final Report of the Pennsylvania Supreme Court Comm. on Racial & Gender Bias in the Justice System*, 54 (2003) (“[Jury selection policies] fail at each step of the process to include a representative number of minorities.”)

Final Report and Recommendations, N.D. Comm’n to Study Racial & Ethnic Bias in the Courts, 18 (2012) (“Minority under-representation on **North Dakota** juries is a continuing concern for state courts.”)

Final Report and Recommendations, S.D. Equal Justice Comm’n, EQU 8 (2006) (“Juries in **South Dakota** rarely represent the racial composition of a community.”)

Third Judicial Circuit of Michigan Jury System Assessment, Paula L. Hannaford-Agor & G. Thomas Munsterman, Ctr. For Jury Studies, Nat’l Ctr, for State Courts, i (2006) (“[T]he proportion of African-Americans in the... jury pool was approximately half of what was expected given their representation in the community.”)

Report and Recommendations of the Supreme Court of Ohio Task Force on Jury Service 41-42 (Feb. 2004) (“The study concluded that the racial and ethnic composition of registered voters and licensed drivers did not totally reflect the diversity of the population of Lucas County.”)

*Report of the **Alaska** Sup. Ct. Advisory Comm'n On Fairness & Access, 83 (1997)* (“Ethnic minority respondents were under-represented in some communities when compared to the proportion of ethnic minorities counted in census data.”)

*Let Justice Be Done: Equally, Fairly, and Impartially, **Georgia** Sup. Ct. Comm'n on Racial & Ethnic Bias in the Court Sys. (1996)* (“[T]he proportion of [non-black] ethnic minorities serving in these communities are generally less than the proportion [reported in the census].”)

*Report of the **Oregon** Sup. Ct. Task Force on Racial/Ethnic Issues in the Judicial Sys., 3 (1994)* (“Too few minorities are called for jury duty, and even fewer minorities actually serve on Oregon juries.”)

*Final Report, **Minnesota** Sup. Ct. Task Force on Racial Bias in the Judicial Sys., S-13 (1993)* (“[J]ury pools rarely, if ever, are representative of the racial composition of our communities.”)

*Report of the **New York** State Judicial Commission on Minorities, N.Y. State Judicial Comm'n on Minorities (1992)* (“Minorities are significantly underrepresented on many juries in the court system.”).

*Reforming Practices Which Impede the Dispensation of Justice to Minorities in **Florida**, Fla. Sup. Ct. Racial & Ethnic Bias Comm'n, 13 (1991)* (“The present system of selecting jurors... does not result in juries which are racial and ethnic composites of the community.”)



WASHINGTON

National

Most juries
are not
representative
of the
community

56% AGREE

Strongly or somewhat

National

Most juries
are not
representative
of the
community

57% AGREE

Strongly or somewhat

Washington

Most juries
are not
representative
of the
community

WHITE

BLACK

HISPANIC

ASIAN

Washington

Most juries
are not
representative
of the
community

AGREE

Strongly or somewhat

WHITE

BLACK

HISPANIC

ASIAN

49%

57%

68%

68%

Washington

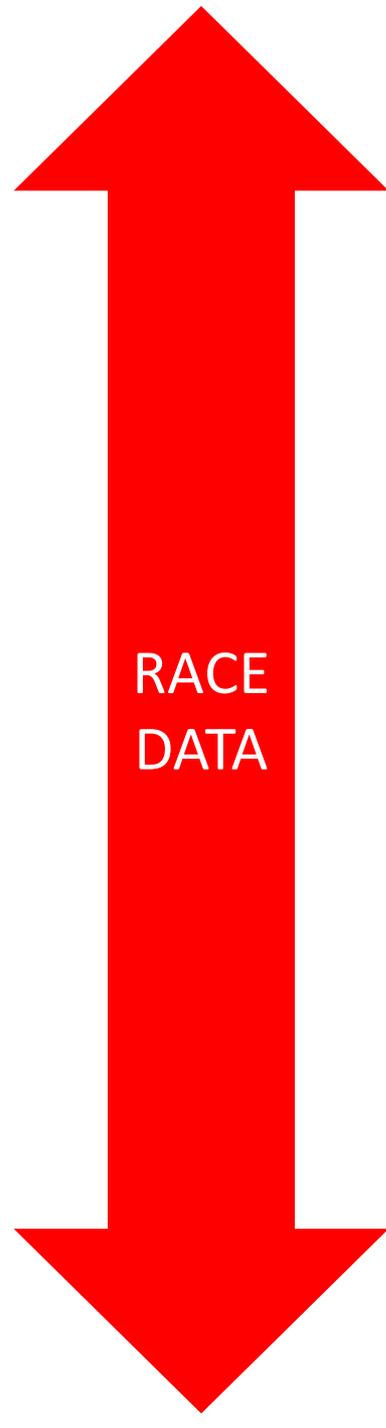
Most juries
are not
representative
of the
community

AGREE

Strongly or somewhat

DISCRIMINATION



A large, solid red vertical arrow with a double-headed design, pointing both upwards and downwards. The arrow is centered on the left side of the image. Inside the central shaft of the arrow, the words "RACE" and "DATA" are stacked vertically in a white, bold, sans-serif font.

RACE
DATA

```
graph TD; A([THE COMMUNITY]) --> B([MASTER LIST]); B --> C([QUALIFIED WHEEL]); C --> D([VENIRES]);
```

THE COMMUNITY

MASTER LIST

QUALIFIED WHEEL

VENIRES

**RACE
DATA**

Why jury systems are not representative

1

Source lists not representative

2

Incorrect addresses on master jury list

3

Economic hardship of jury service

4

Problems with summons process

5

Automation errors

Why jury systems are not representative

1

**Source
lists
not
representative**



THE COMMUNITY

The diagram consists of a large blue oval at the top labeled 'THE COMMUNITY'. Inside this oval are two overlapping circles with dashed black borders. The left circle is dark blue and labeled 'Registered Voters'. The right circle is light blue and labeled 'Licensed Drivers'. A thick black arrow points downwards from the center of the overlapping area of these two circles to a light blue oval at the bottom labeled 'MASTER JURY LIST'.

Registered
Voters

Licensed
Drivers

MASTER JURY LIST

Why jury systems are not representative

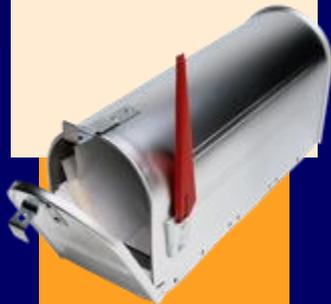
1

**Source
lists
not
representative**



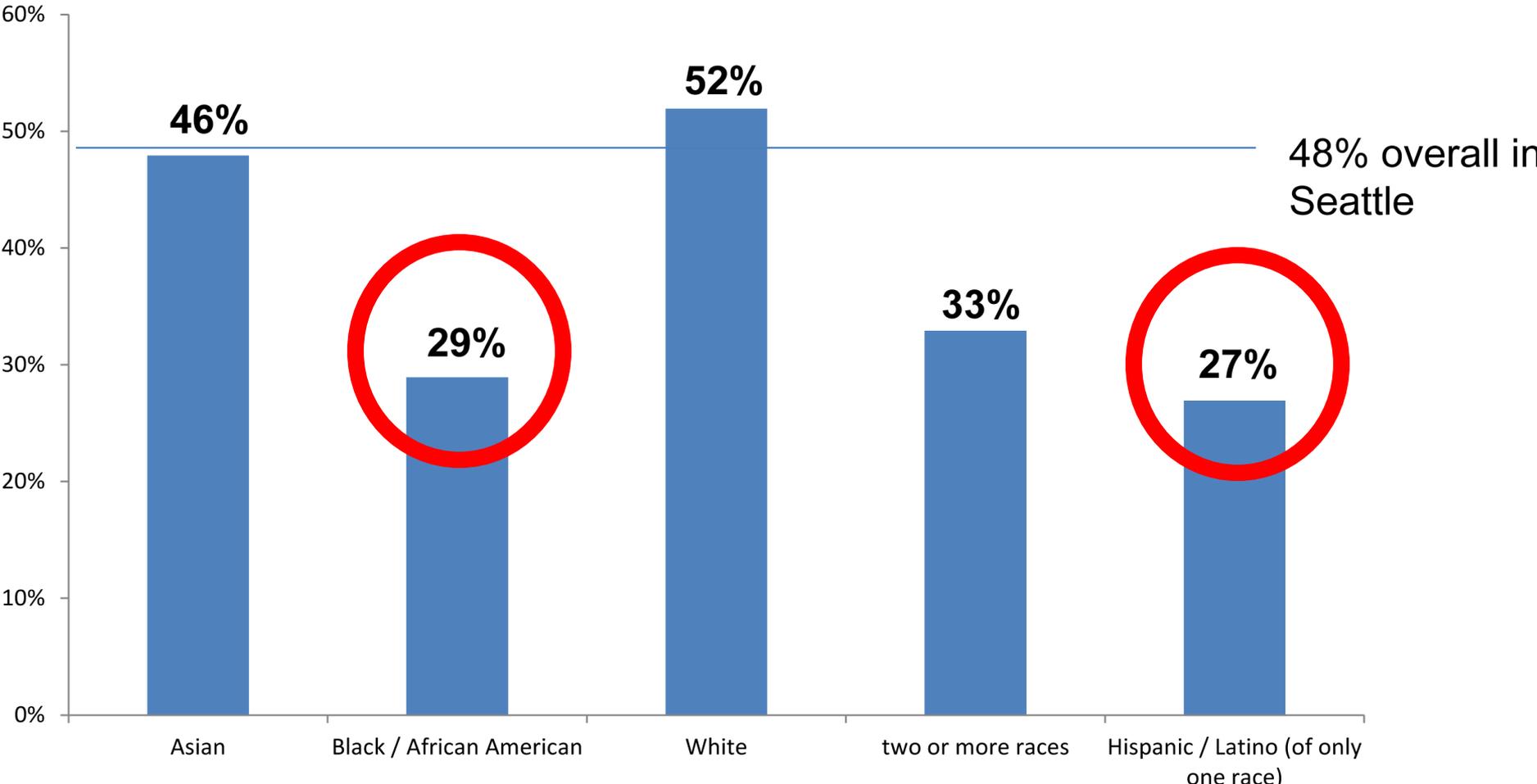
2

**Incorrect
addresses
on master
jury list**



Homeownership Rates by Major Racial Category and Hispanic/Latino Ethnicity

Homeownership rates for Black/African American, Hispanic/Latino and mixed race households are significantly lower than for Asian and White households.



Source: US Census. 2010 decennial Census.
<http://murray.seattle.gov/wp-content/uploads/2014/11/Homeowner-Rates-by-Race-Ethnicity.png>



Higher
geographic
mobility



Why jury systems are not representative

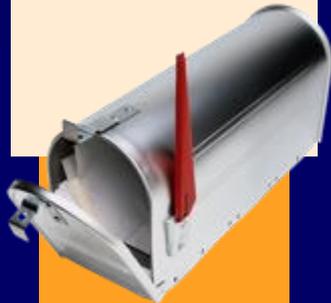
1

Source lists not representative



2

Incorrect addresses on master jury list



3

Economic hardship of jury service



Why jury systems are not representative

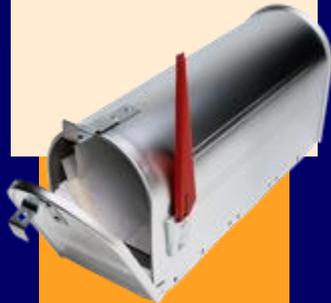
1

Source lists not representative



2

Incorrect addresses on master jury list



3

Economic hardship of jury service



4

Problems with summons process





Using phones to summon jurors: Cascade County, MT

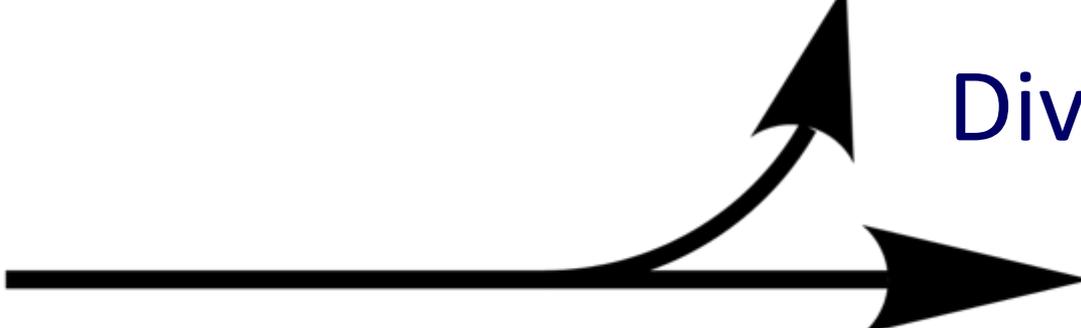
5%
of white
households
without
phone
service

29%
of Native
American
households
without phone
service



Using phones to summon jurors: Cascade County, MT

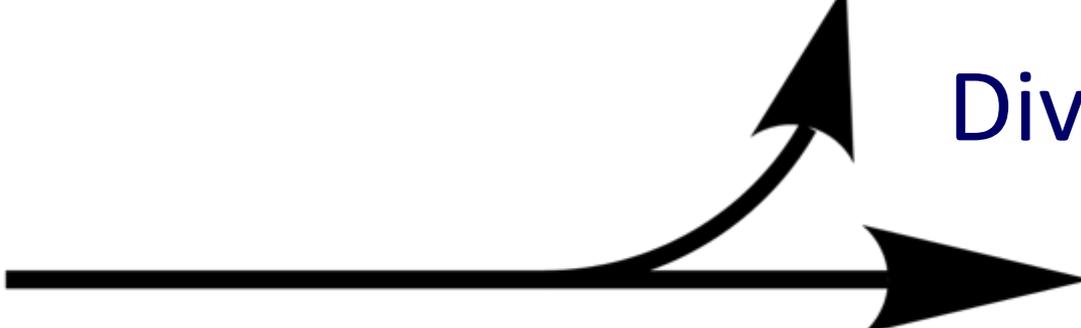
Excluded one-third of
prospective jurors



Dividing the district: Cook County, IL

Split district
into North &
South for
admin
purposes

25.4%
of registered
black voters
in North
vs.
75.4%
in South



Dividing the district:
Cook County, IL

Jury drawn from North:
Half as many black jurors

Why jury systems are not representative

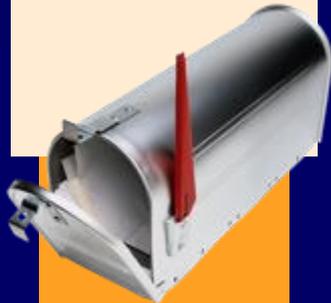
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Source lists not representative



2

Incorrect addresses on master jury list



3

Economic hardship of jury service



4

Problems with summons process

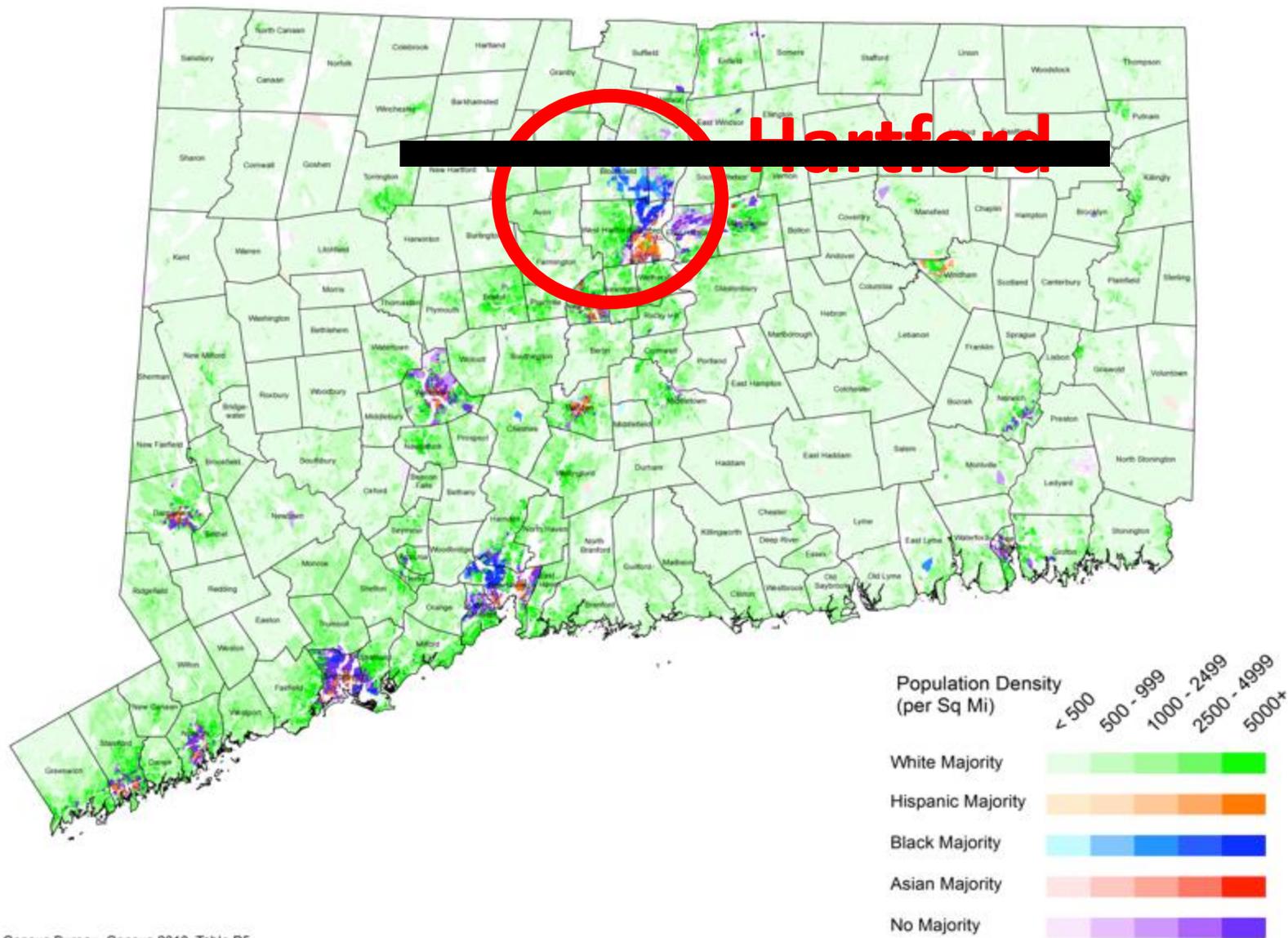


5

Automation errors



Race and Ethnicity in Connecticut, by Population Density: 2010



Data Source: US Census Bureau, Census 2010, Table P5

Hartford + New Britain

63%

of the voting-age
black population

68%

of the voting-age
Hispanic population

Why jury systems are not representative

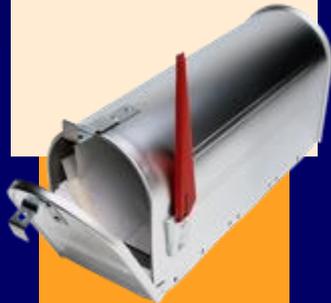
1

Source lists not representative



2

Incorrect addresses on master jury list



3

Economic hardship of jury service



4

Problems with summons process



5

Automation errors



3

- **Evidence**
of a hopeful
future

1

- **Importance**
of fair cross-section promise

National
Experts

**American Bar
Association
Commission
on the Jury:
Principles for
Juries & Jury
Trials**

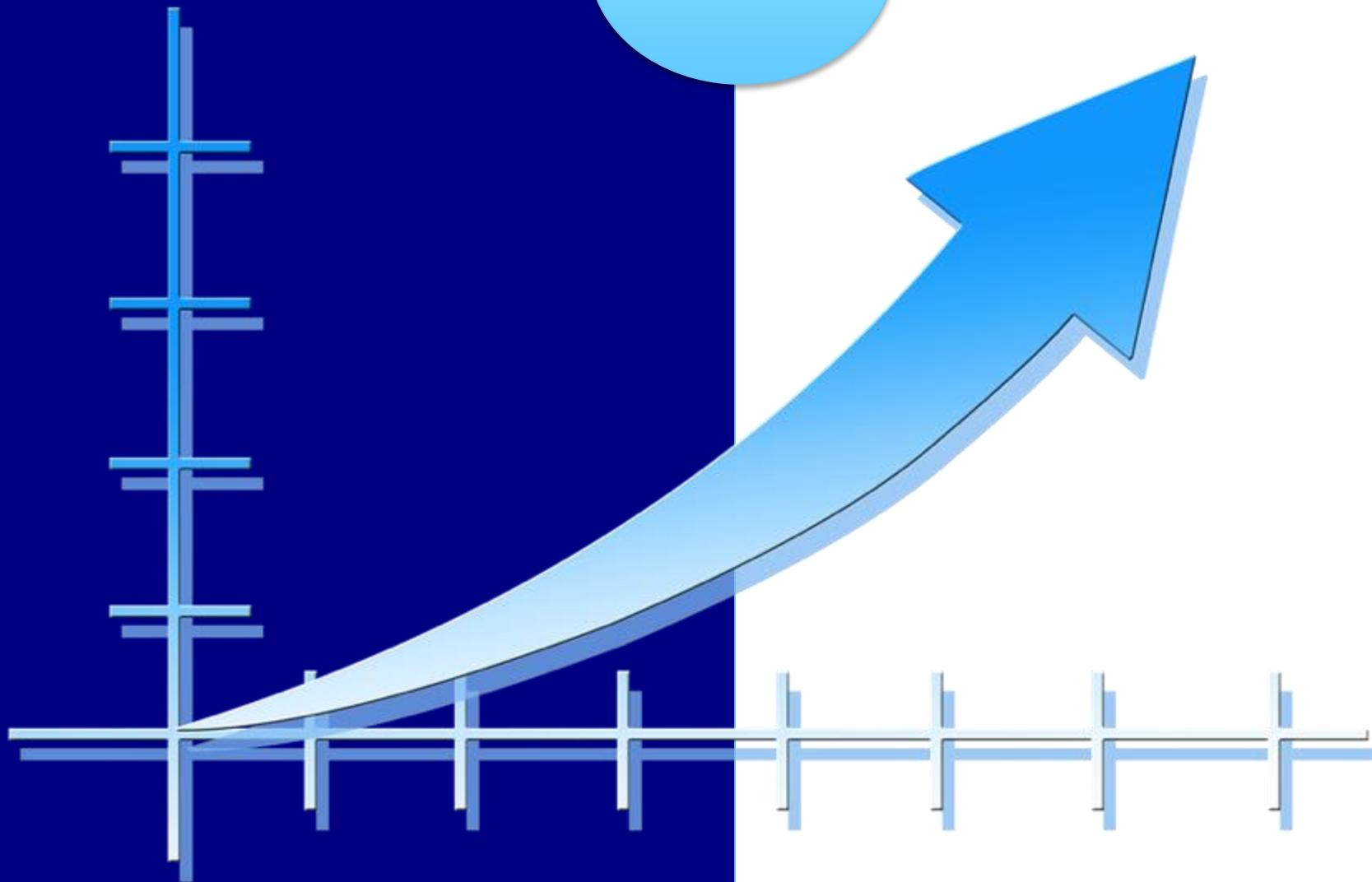
**National
Center for
State
Courts:
Center for
Jury Studies**

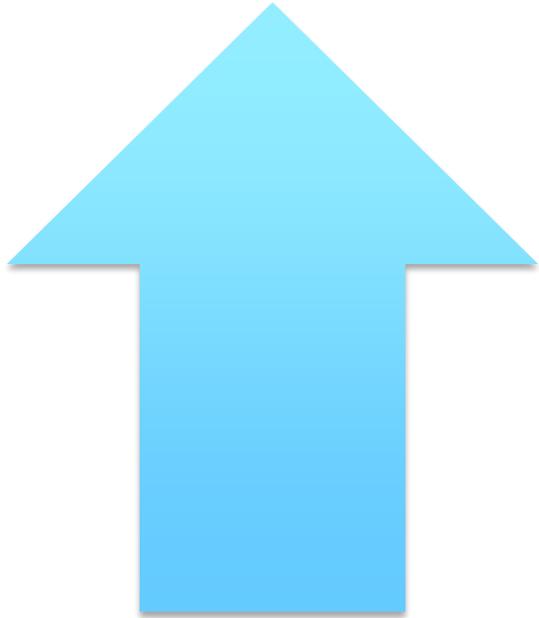
State
Reports

38 states
appointed
state
commissions
or task forces
between
1996-2006

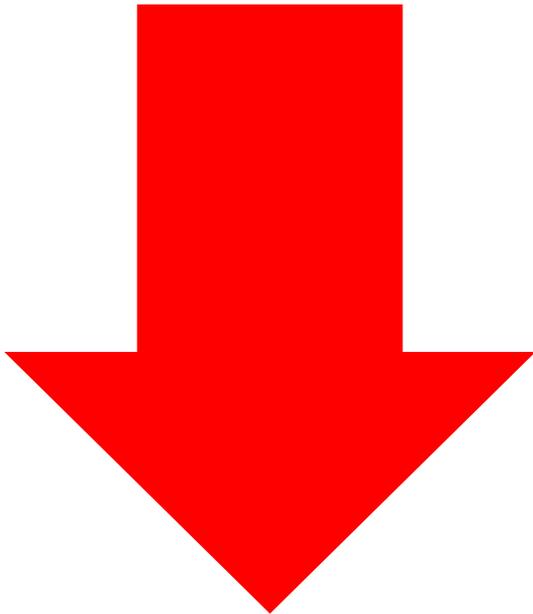
**2000
Washington
State Jury
Commission:
Report to
Board for
Judicial
Administration**

Studies





Shared
interest in
improvements



Negative
consequences

Shared Interest in Representative Jury Pool



DEFENDANT



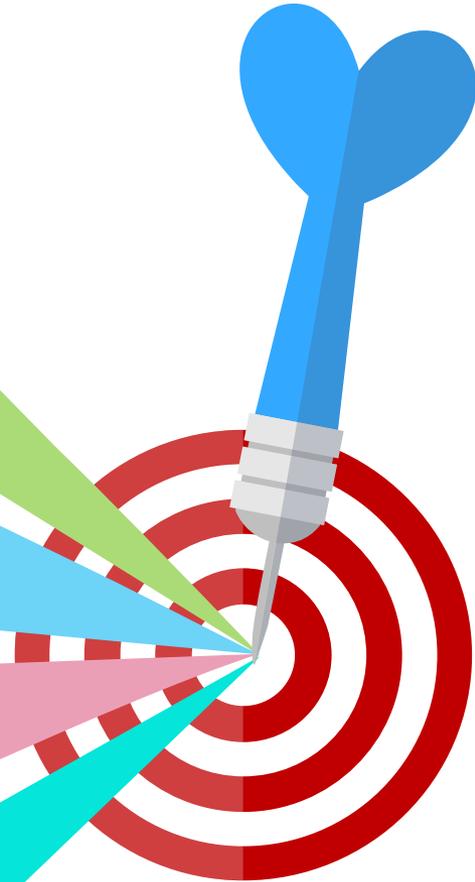
GOVERNMENT



COURTS



JURY OFFICE
PERSONNEL



JURY
YIELD

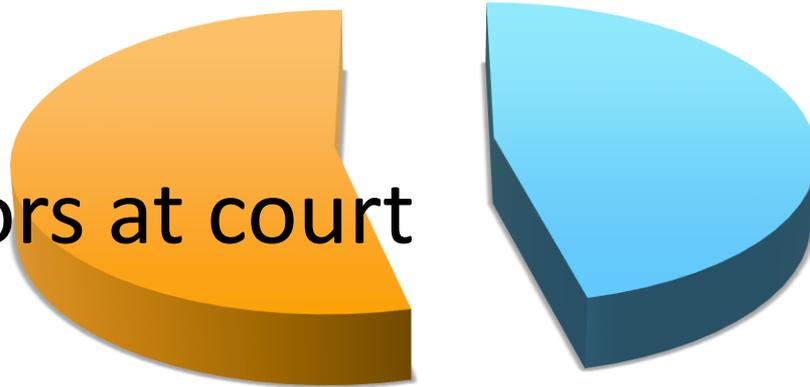


Jury summons
mailed

JURY YIELD



Jurors at court



HIGHER
JURY
YIELD

Jurors at court



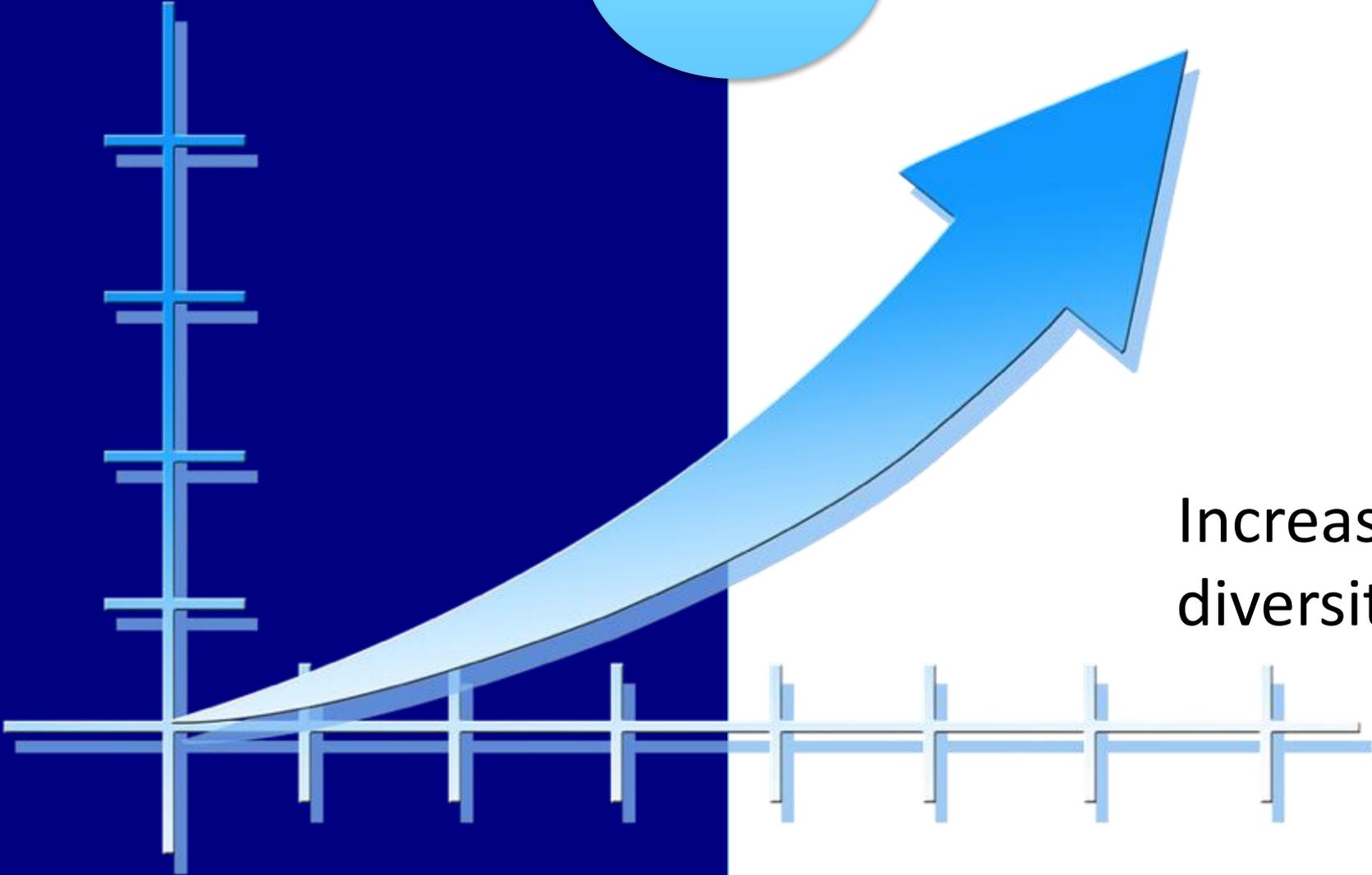
Saves money

Reduces burden

Increases diversity

Increase
yield

Studies



Increase
diversity

Shared Interest in Representative Jury Pool



DEFENDANT



GOVERNMENT



COURTS



JURY OFFICE
PERSONNEL



National
Experts

State Reports

Studies

1

Follow up on
non-responders.

2

Reduce
undeliverables

3

Increase juror
pay

4

Shorten jury
service

5

No categorical
exemptions

6

One-step
summoning

7

Add names to
source lists

8

Make deferrals
easier

9

Improve & check
automation

10

Public outreach &
education

1

Follow up on
non-responders.

2

Reduce
undeliverables

3

Increase juror
pay

4

Shorten jury
service

8

Make deferrals
easier

10

Public outreach &
education

1

**FOLLOW UP
ON NON-
RESPONDERS**



Thurston County Superior Court

2000 Lakeridge Drive SW, Bldg. 2
Olympia, WA 98502

Juror Call-In Phone #:
(360) 786-5566

Official Jury Summons Thurston County

I.D. #
BAR CODE

You have been summoned for jury duty for the week of:

Monday, Jan. 1 thru Friday, Jan 5, 2015

Group #

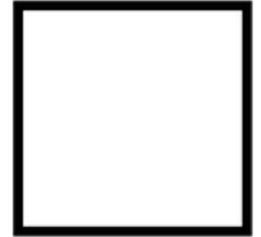
John Doe
111 1st Avenue
City, State Zip

Courts that send a second summons or notice

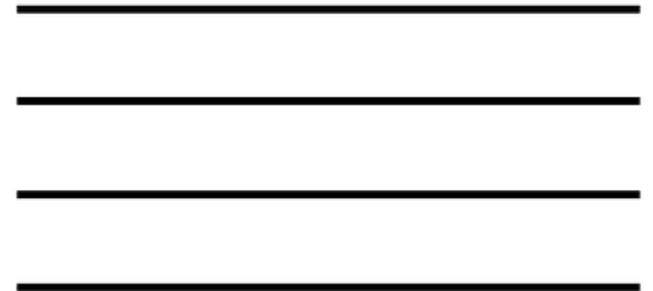
report non-response and failure-to-appear rates

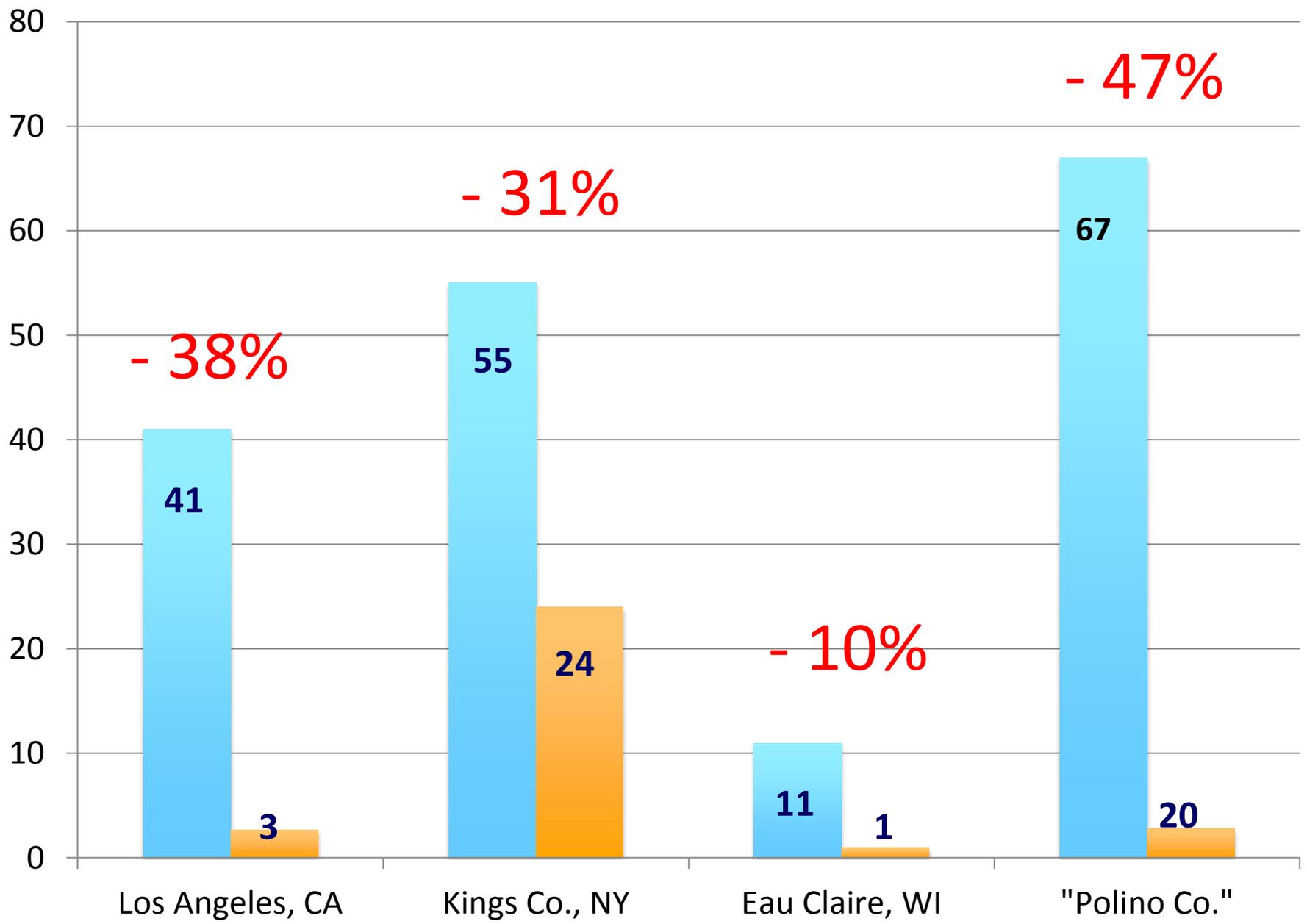
34% - 46% LESS

than courts that don't follow up



National Ctr. for State Courts









National
Experts

**American Bar
Association
Commission
on the Jury:
Principles for
Juries & Jury
Trials**

**Principle
10(D)(2):**

*Courts should adopt
specific uniform guidelines
for enforcing a summons
for jury service and for
monitoring failures to
respond to a summons.*

National
Experts

FOLLOW UP

“increases overall jury yield and improves the representativeness of the jury pool”

**National
Center for
State
Courts:
Center for
Jury Studies**

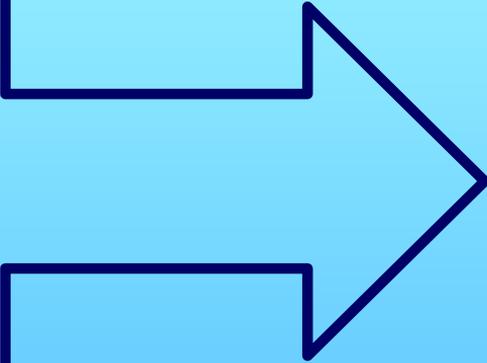
2

**REDUCE
UNDELIVERABLE
SUMMONS**

“Undeliverable rates are
the single largest drain on jury yield,
averaging 13%
of all jury-related mailings nationally.”



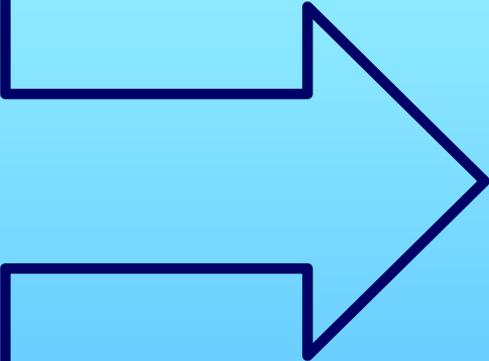
U.S. Postal Service
**National-Change-
of-Address**
(NCOA) database



Average:
10%-15%
of jury list
addresses
corrected

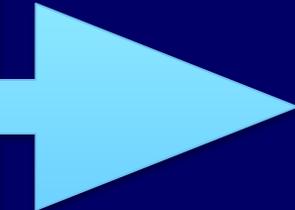
“In almost every instance, the savings in printing and postage costs greatly exceed the cost of the NCOA update.”

U.S. Postal Service
**National-Change-
of-Address**
(NCOA) database

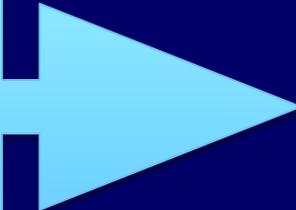


Average:
10%-15%
of jury list
addresses
corrected

Update
jury lists more
frequently



Select best
address when
merging lists



Washington, D.C.

Undeliverables
43%

Undeliverables
30.5%

3

4

**INCREASE
JUROR PAY &
SHORTEN
JURY SERVICE**

ECONOMIC HARDSHIP



El Paso, TX

\$6

22%

\$40

46%

El Paso, TX

\$6

22%

\$40

60%

One-day/One Trial

**Longer than
One-day/One Trial**

**Excusal
rate**

6.0%

8.9%

**Juror fee
EXCEEDS
national
average**

6.8%

**Excusal
rate**

**Juror fee
LESS THAN
national
average**

8.9%

Excusal
rate

One-day/One Trial

Longer than
One-day/One Trial

Juror fee
EXCEEDS
national
average



8.3%

Juror fee
LESS THAN
national
average

8.1%



The State-of-the States Survey of Jury Improvement Efforts: A Compendium Report, 23, by Hon. Gregory E. Mize (ret.), Paula Hannaford-Agor, J.D. & Nicole L. Waters, Ph.D., National Center for State Courts (April 2007)

National
Experts

**American Bar
Association
Commission
on the Jury:
Principles for
Juries & Jury
Trials**

**Principle 2(F)
Principle 2(C)**

“reduces
representativeness
of the jury pool”

National
Experts

“relationship
between the
amount of juror
fees . . . and
minority
representation in
the jury pool”

**National
Center for
State
Courts:
Center for
Jury Studies**

“The [Washington State Jury]
Commission views a fee increase as its
highest priority.”

5

**ELIMINATE
CATEGORICAL
EXCLUSIONS**

National
Experts

**American Bar
Association
Commission
on the Jury:
Principles for
Juries & Jury
Trials**

Principle 2(A)(5):

All persons should be eligible for jury service except those who:

- ... Have been convicted of a felony and are **in actual confinement or on probation, parole or other court supervision.**

State
Reports

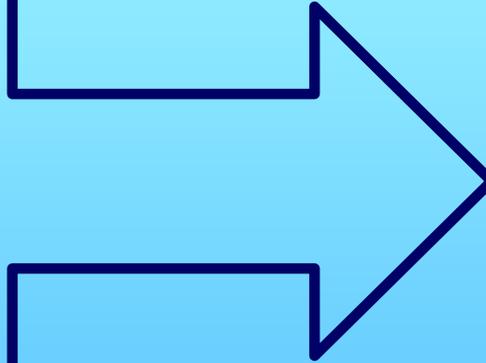
19 states do
not bar all
felons from
jury service

Pennsylvania (2016)

Florida (2001)

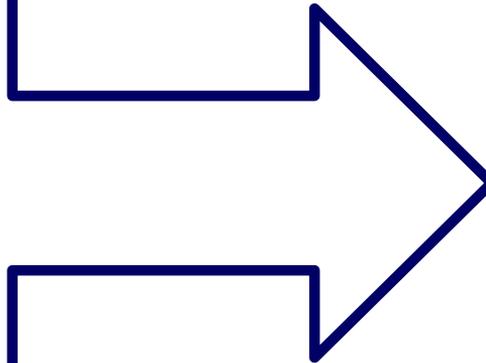
Washington, D.C. (2006)

Felony conviction
+
not under authority of
department of
corrections



**RIGHT TO
VOTE
RESTORED**

Felony conviction
+
not under authority of
department of
corrections



**RIGHT TO
JURY
RESTORED?**

EXCLUDES

0.87%

of all people

in Washington

from

JURY SERVICE

EXCLUDES

3.71%

of African-

Americans

in Washington

from

JURY SERVICE

IS JUSTICE COLOR BLIND?

A Duke University-led study on the impact of race on conviction rates raises questions about the criminal justice system.

"Simply put, the luck of the draw on the racial composition of the jury pool has a lot to do with whether someone is convicted..." — senior author Pat Bayer, chairman of Duke University's Economics Department

RESEARCHERS
EXAMINED MORE THAN
700 FELONY
TRIALS
IN SARASOTA AND LAKE COUNTIES
IN FLORIDA FROM 2000-2010.

Key findings:



In cases with no black people in the jury pool (typically consisting of around 27 people) blacks were convicted 81 percent of the time, and whites were convicted 66 percent of the time.



When the jury pool included at least one black person, the conviction rates were nearly identical.



Duke OFFICE OF NEWS & COMMUNICATIONS

<http://today.duke.edu/2012/04/jurystudy>

Design by Kimberly Ferguson

“[E]ven small changes
in the composition of the jury pool
have a large impact”

6

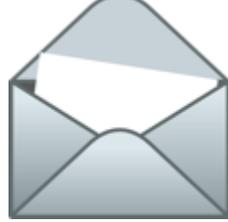
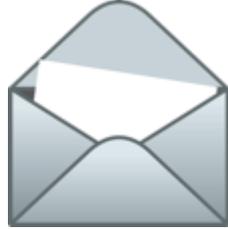
**ONE-STEP
SUMMONS
PROCESS**

**TWO
STEP**

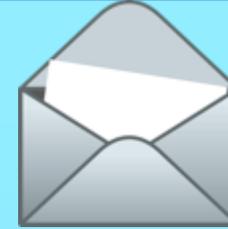


**ONE
STEP**





**JURY
YIELD**



**JURY
YIELD**

**Erie Co.,
NY**

23%

+ 9%

**Eastern
Dist., MI**

34%

+ 13%

Washington, D.C.

1. Registered voters
2. Licensed drivers
3. Non-driver's ID
4. Personal income tax
5. Public benefits list
6. New naturalized citizens

7

Add names to
source lists

Commission
Recommendation:

“seek other source lists”

Jackson Co., MS

Sends FTA notice that gives
juror
choice
of two additional dates
on which to report

8

Make deferrals
easier

FAILURE TO APPEAR RATE

13.6%

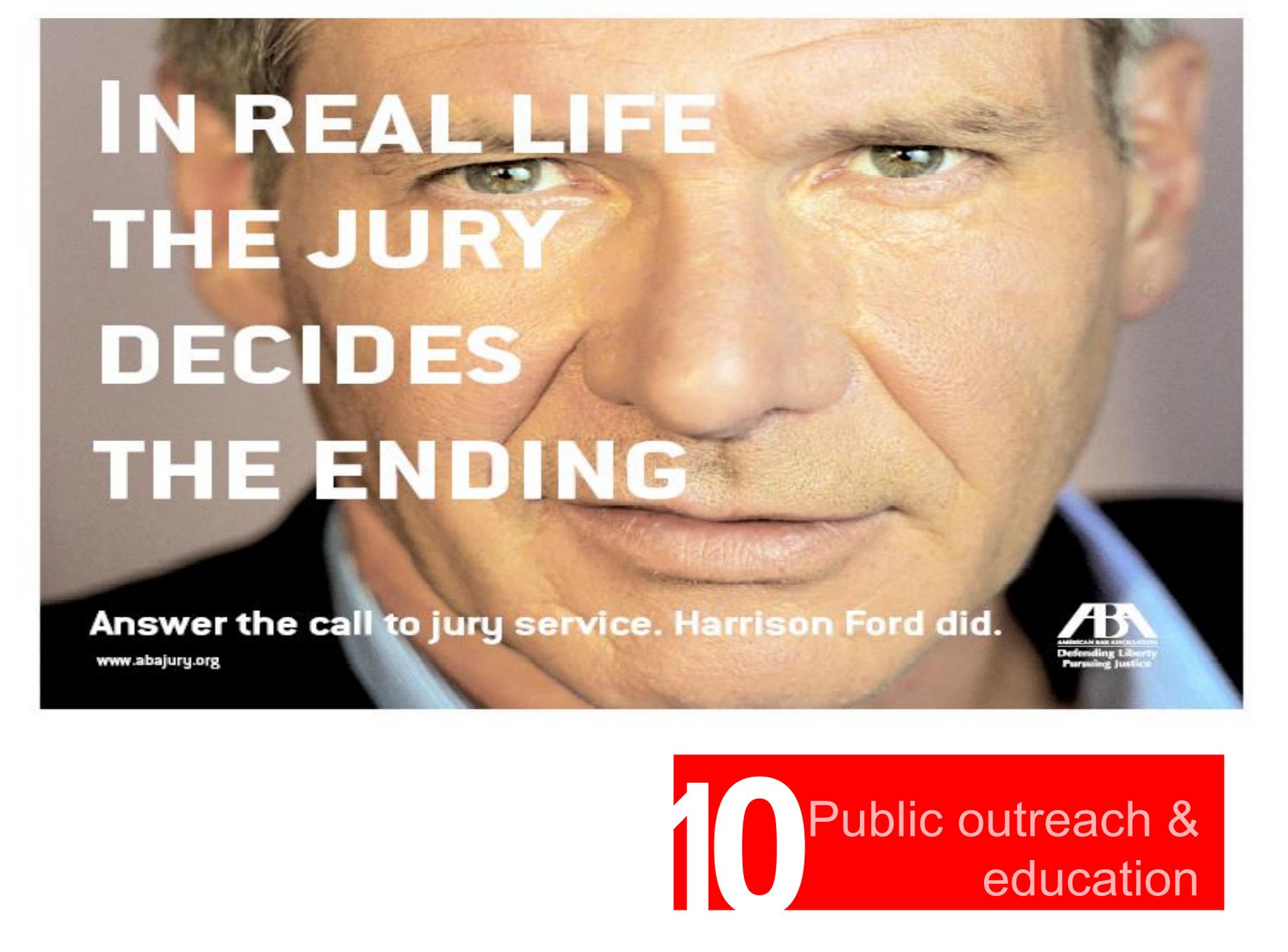
7.2%

Washington, D.C.

~~Misdemeanor convictions~~



9 Improve & check automation

A close-up portrait of Harrison Ford, looking directly at the camera with a slight smile. The image is the background for the top half of the slide.

**IN REAL LIFE
THE JURY
DECIDES
THE ENDING**

Answer the call to jury service. Harrison Ford did.

www.abajury.org



10 Public outreach &
education

Los Angeles, CA

- Improved source lists
- Follow-up effort
- Reduced term of service
- Juror-friendly automation

JURY
YIELD

10 % increase

Washington, DC

- Improved source lists
- Follow-up effort

JURY
YIELD

7 % increase

New York, NY

- Improved source list
- Follow-up effort
- Repealed exemptions
- Expanded source lists
- Increased pay
- Easy deferrals

JURY
YIELD

25 % increase

3

- **Evidence**
of a hopeful
future

Shared Interest in Representative Jury Pool



DEFENDANT



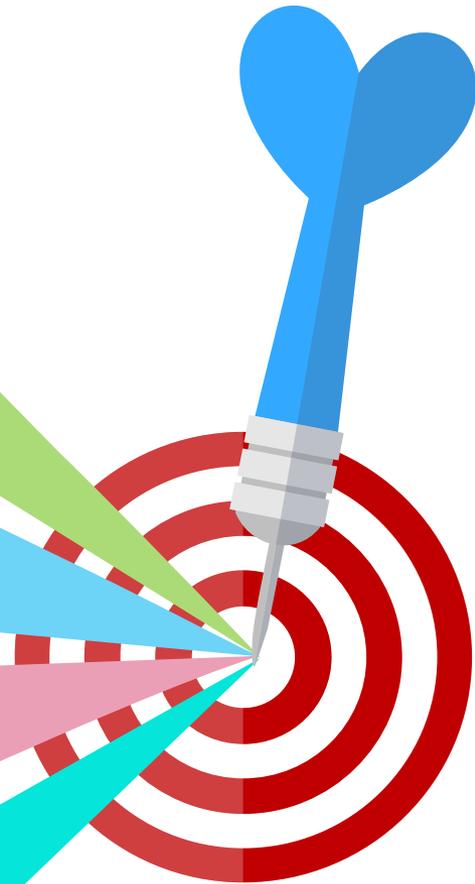
GOVERNMENT



COURTS
LEGISLATURE
TAXPAYERS



JURY OFFICE
PERSONNEL



National
Experts

State Reports

Studies

1

Follow up on
non-responders.

2

Reduce
undeliverables

3

Increase juror
pay

4

Shorten jury
service

5

No categorical
exemptions

6

One-step
summoning

7

Add names to
source lists

8

Make deferrals
easier

9

Improve & check
automation

10

Public outreach &
education

Courts have
**power to improve
racial and ethnic
representation
in jury pool**