



# JURY DIVERSITY

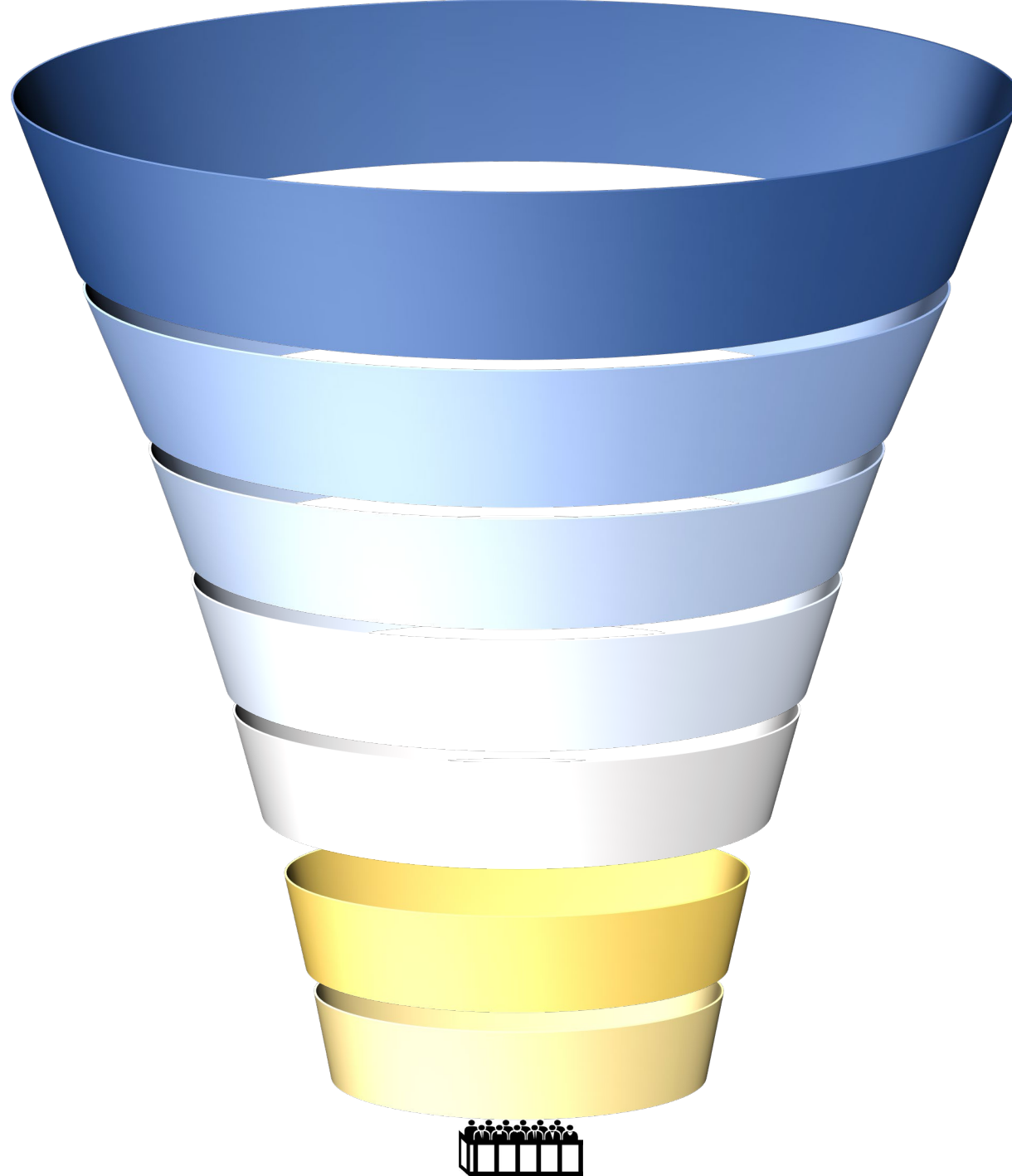
New Jersey  
Judicial Conference  
on Jury Selection

Nina Chernoff \* CUNY School of Law

~~peremptory strikes~~

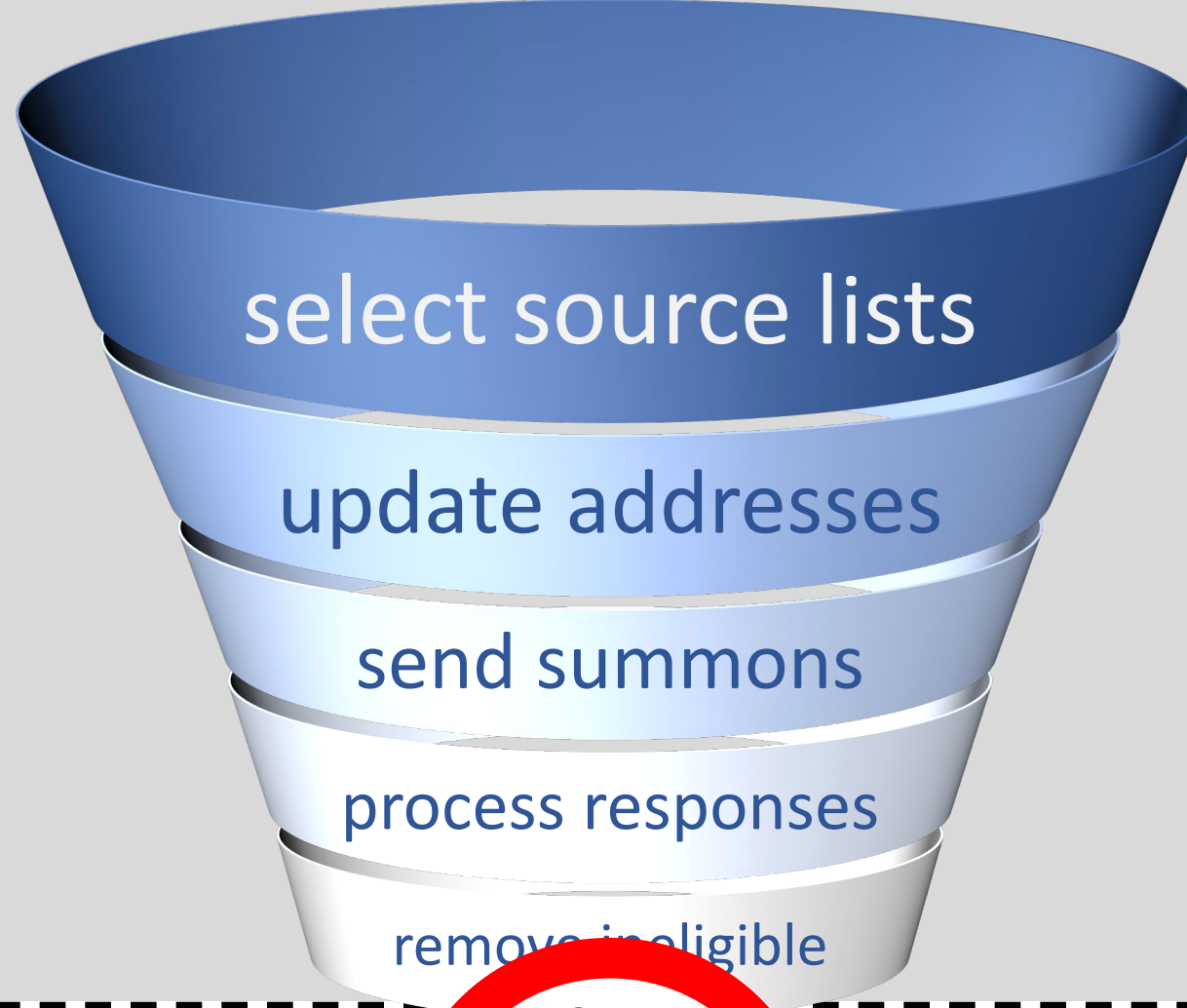
~~implicit bias~~

~~explicit racism~~



**STAGES OF  
THE JURY  
SELECTION  
PROCESS**

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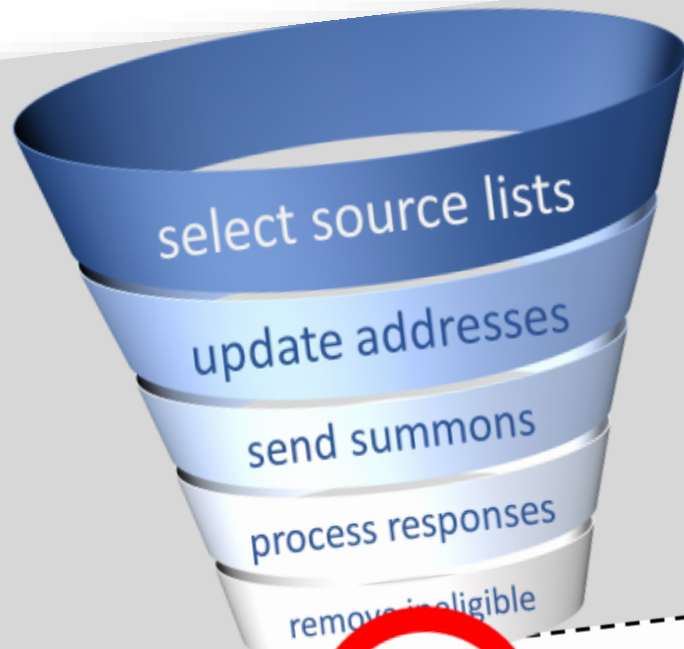
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“The data support the conclusion that people who appear for jury service do not fully represent their communities.”

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“the findings indicate that the processes that determine who appears at the courthouse constitute a systemic source of minority-group attrition because concerning levels[of] underrepresentation appeared in nearly all areas studied”

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“substantial  
underrepresentation  
of African Americans  
is commonplace”

## Fair cross- section

### 6th Amendment

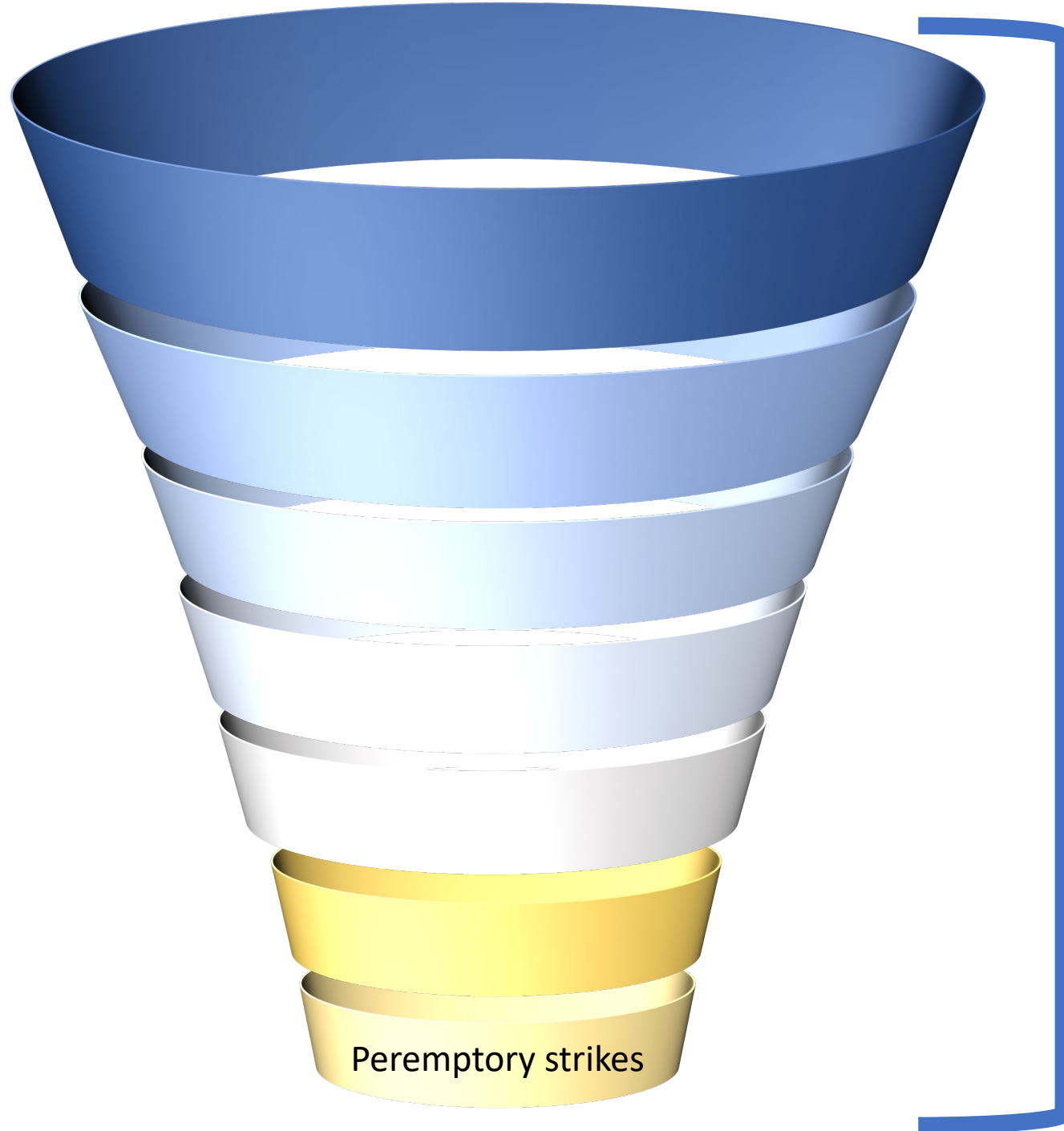
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; . . .

## Equal protection

### 14th Amendment

. . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

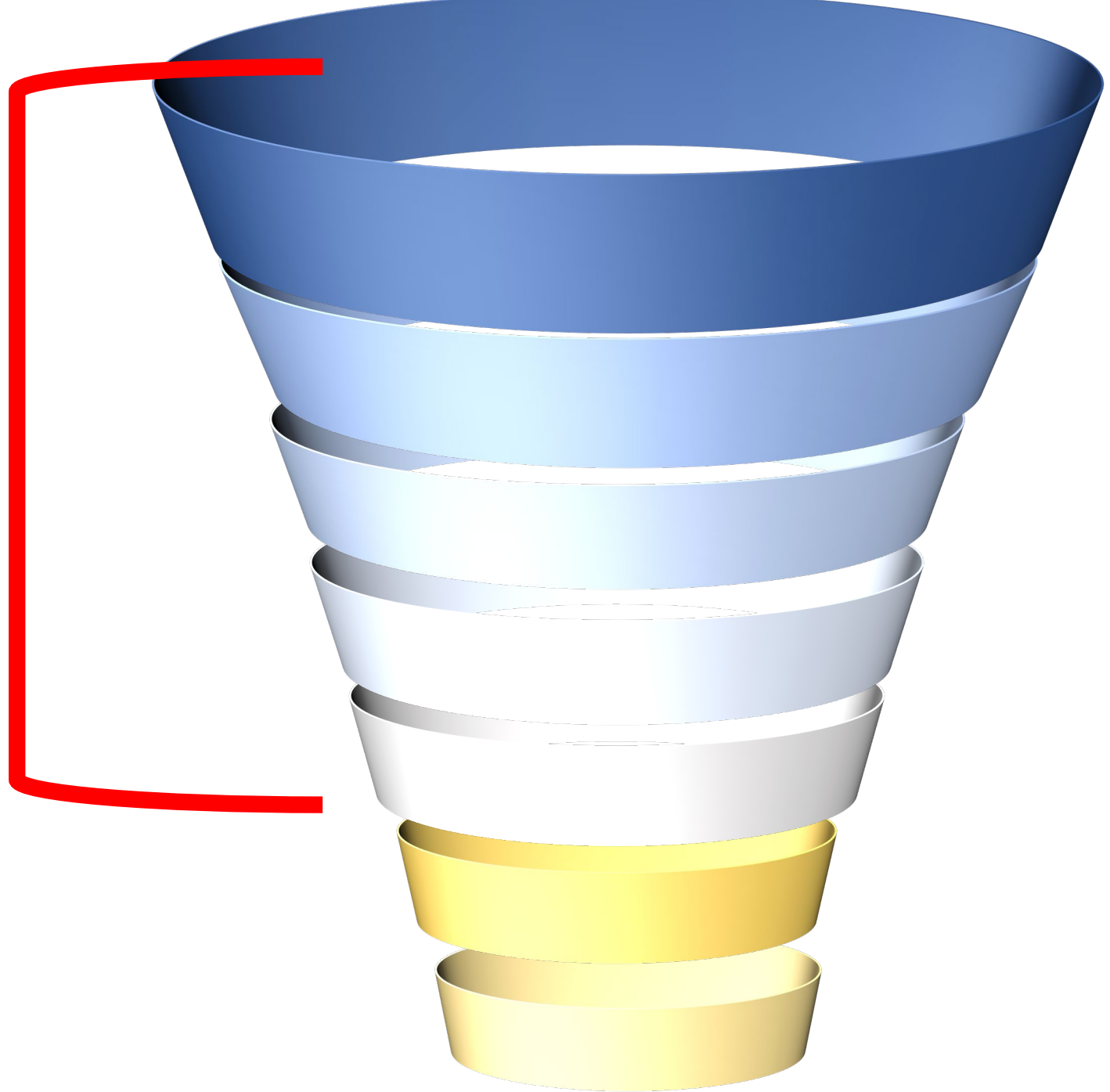




## Equal protection



# Fair cross-section



## Fair cross-section



Requires evidence of discrimination

## Equal protection



Requires evidence of discrimination





select source lists

update addresses

send summons

process responses

remove ineligible





select source lists

update addresses

send summons

process responses

remove ineligible

	<b>BEST PRACTICES NEW JERSEY HAS ALREADY ADOPTED</b>	<b>AREAS FOR IMPROVEMENT</b>
<b>Stage 1</b>		
<b>Stage 2</b>		
<b>Stage 3</b>		
<b>Stage 4</b>		
<b>Stage 5</b>		

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select source lists

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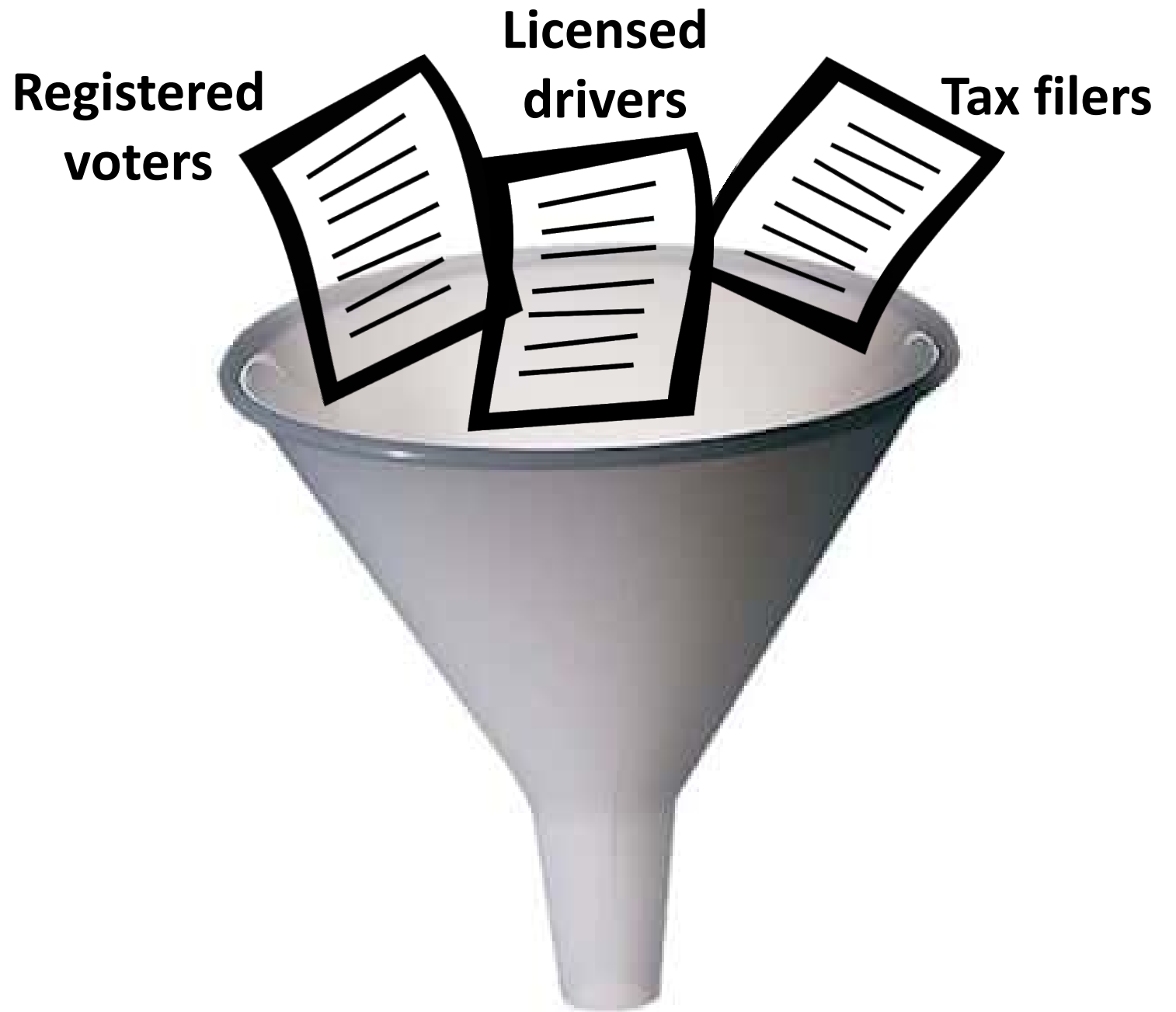
**The jury system  
will never be  
more diverse  
than the source  
lists selected**



	<b>BEST PRACTICES NEW JERSEY HAS ALREADY ADOPTED</b>	<b>AREAS FOR IMPROVEMENT</b>
<b>Stage 1</b>	<b>Use multiple source lists</b>	

## **SOURCE LISTS**

Lists from agencies that become the source of potential juror names





“The Assignment Judge may provide for the merger of **additional lists** of persons eligible for jury service that may contribute to the breadth of the juror source list.”

- N.J.S.A. 2B:20-2(a)



“The juror source list may be **expanded** by the Supreme Court as it deems appropriate.”

- N.J.S.A. 2B:20-2(c)



## LISTS OF PEOPLE WHO HAVE:

- ✓ Applied for or received unemployment benefits
- ✓ Received public benefits
- ✓ Utility accounts

	<b>BEST PRACTICES NEW JERSEY HAS ALREADY ADOPTED</b>	<b>AREAS FOR IMPROVEMENT</b>
Stage 1	Use multiple source lists	Assess how well existing lists cover diversity of full population & add lists if useful

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EXIE

430 4E 1

78 07/29/08

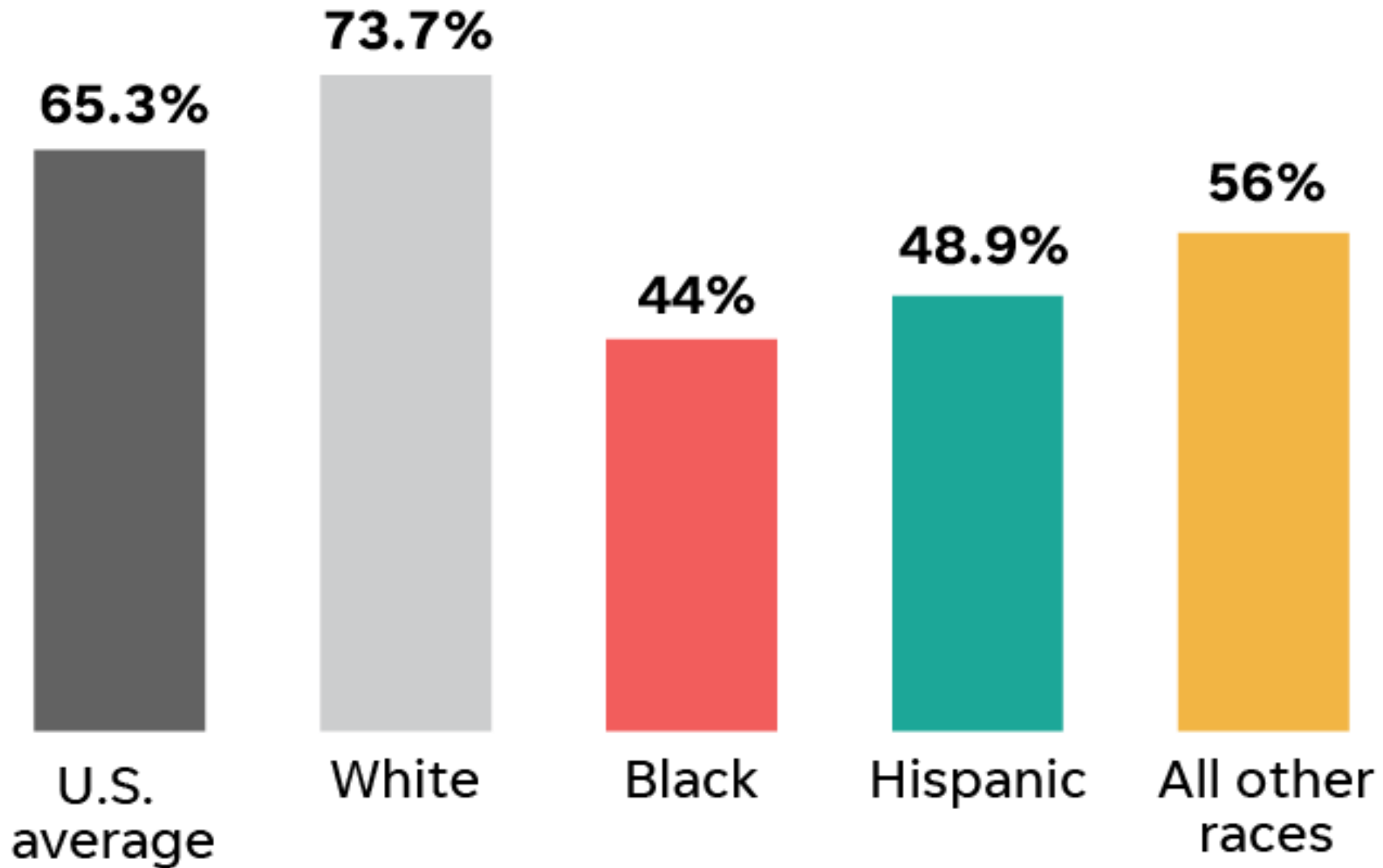
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## HOME OWNERSHIP BY RACE & ETHNICITY IN U.S. 2020



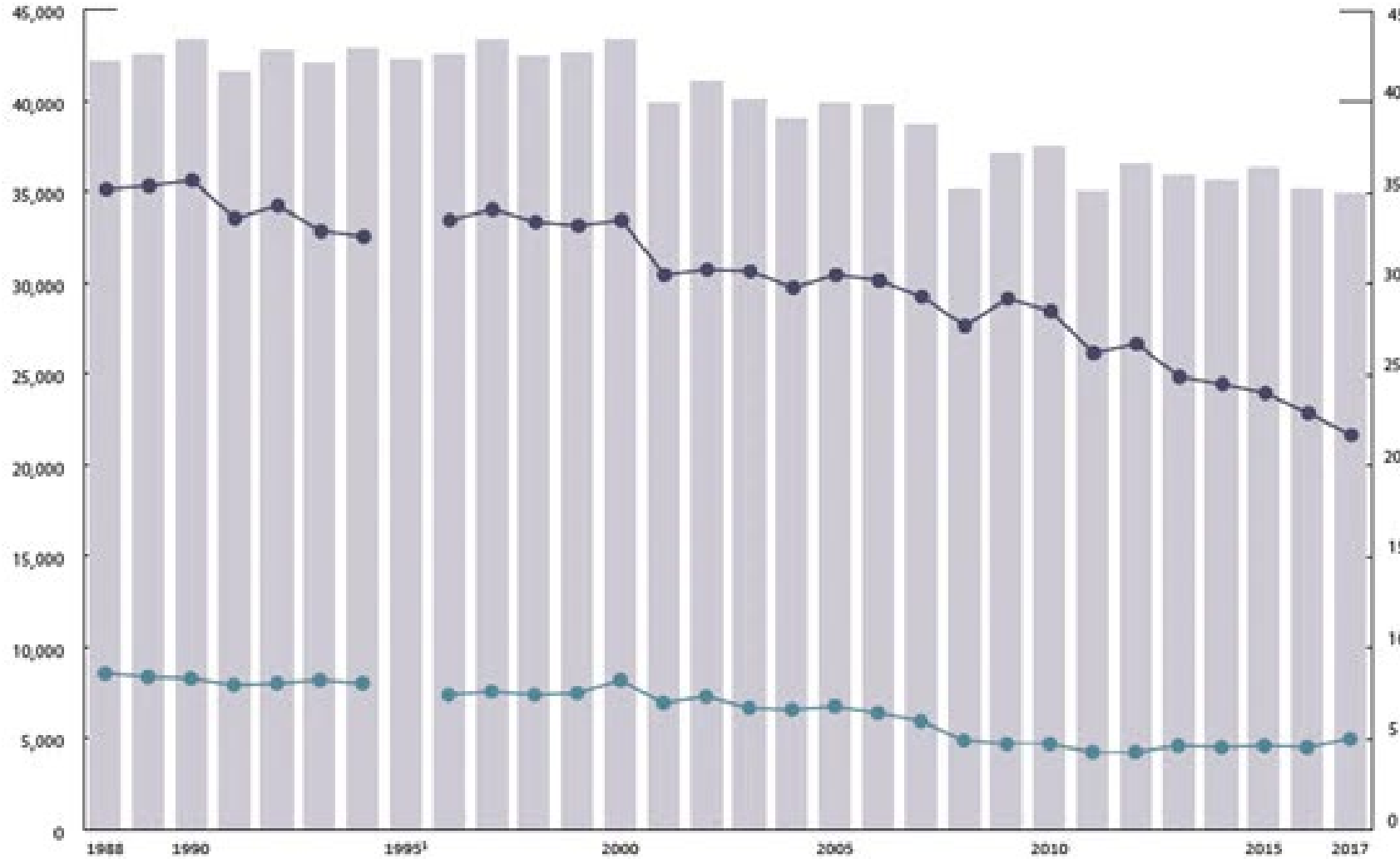


Total number of movers  
(in thousands)

Percent

● Percent of renters  
that moved

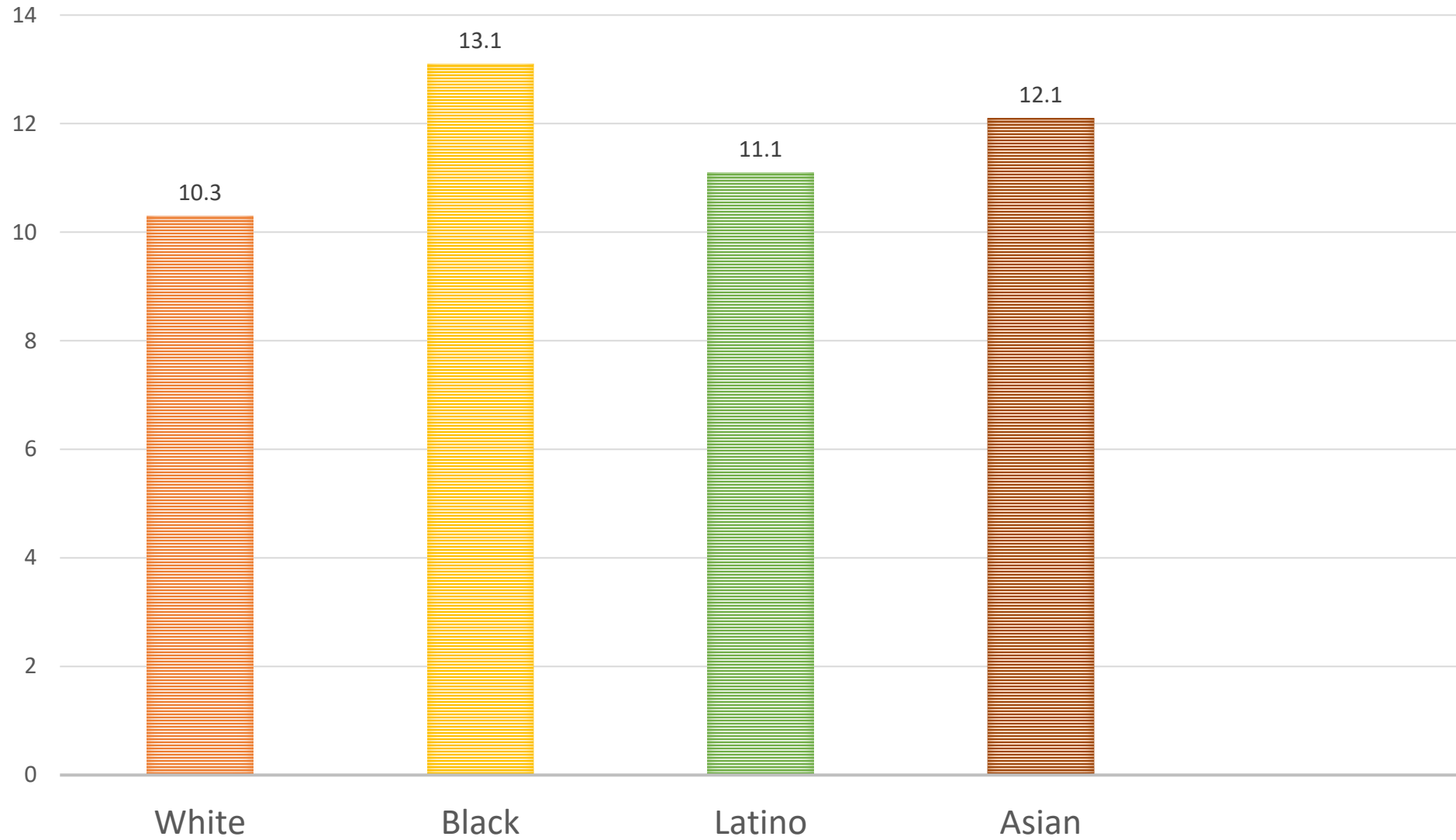
● Percent of owners  
that moved



— Moving rate for  
RENTERS

— Moving rate for  
OWNERS

# NATIONAL MOVER RATES BY RACE & ETHNICITY



Update list  
every two  
years

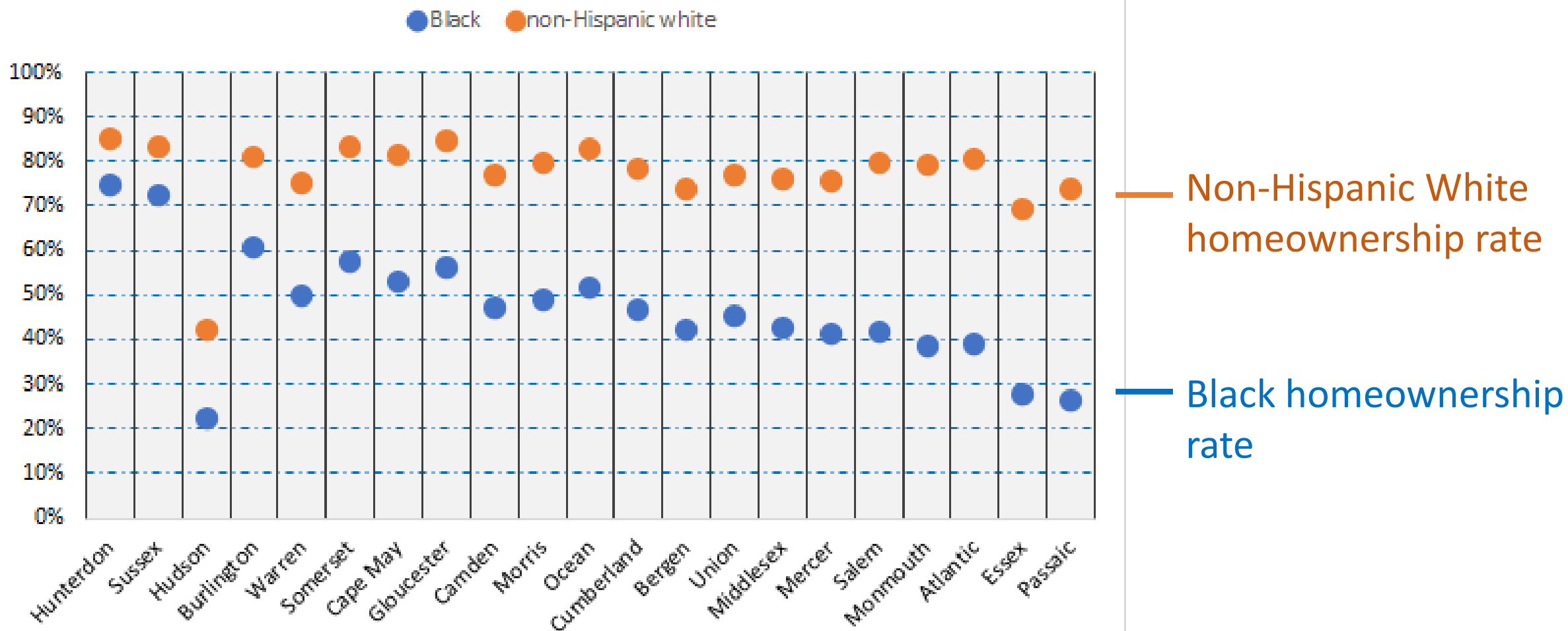


Update list  
every six  
months



# HOME OWNERSHIP BY RACE IN NEW JERSEY

Figure 1. Homeownership Rates for Black and Non-Hispanic White Households, by County (sorted by size of difference in rates)



76.9%



White Non-Hispanic households  
in New Jersey

41%



Black households  
in New Jersey



In New Jersey,  
“African Americans  
were more likely to  
be movers than  
whites, Asians or  
Hispanics.”

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

Principle 10(A)(1):  
source lists should  
be updated  
**at least**  
annually

	<b>BEST PRACTICES NEW JERSEY HAS ALREADY ADOPTED</b>	<b>AREAS FOR IMPROVEMENT</b>
Stage 2	Update addresses annually	



“Courts that are located in states or metropolitan areas with higher than average migration rates should consider creating or updating their master jury lists even more frequently (e.g., semi-annually or quarterly) if feasible.”

# National Center for State Courts

## Jury Managers' Toolbox

### *Best Practices to Decrease Undeliverable Rates*

#### Overview

Nationally, an average of 12% of qualification questionnaires and jury summonses are returned by the U.S. Postal Service marked “undeliverable as addressed.”<sup>1</sup> Undeliverable rates are the single largest factor contributing to decreased jury yields. In most instances, the qualification questionnaire or summons was returned because the person moved to a new address since the master jury list was last created or updated. In other instances, the juror’s address may be incorrect from the source list or the U.S. Postal Service may have returned the qualification questionnaire or jury summons in error. While it may not be possible

Based on these figures, a court that began the year with a perfectly accurate master jury list annually could expect an undeliverable rate of up to 17% by the end of the year just due to local migration rates. The process of creating the master jury list typically takes one to three months, so some records will be out-of-date even before the court begins summoning and qualifying from a new list. For this reason, the NCSC recommends that courts create a new master jury list, or update their existing list, at least annually. Courts that are located in states or metropolitan areas with higher than average migration rates should consider creating or updating their master jury lists more frequently.

	<b>BEST PRACTICES NEW JERSEY HAS ALREADY ADOPTED</b>	<b>AREAS FOR IMPROVEMENT</b>
Stage 2	Update addresses annually	Update addresses more frequently



## National Change Of Address (NCOA)

Submit names and addresses to receive change of address information for any moves before you mail.

48 Months (Default)

18 Months

Select High Match Rate Option:

N = Normal Mail File (Default; if you're

A = ANKLink Processed File (Full Serv

R = Return Mail File

Select Match Logic

S = Business, Individual, and Family (C

I = Individual Only

B = Business Only

IB = Individual with Business

R = Individual and Family

Specify Processing Option(s) (you must se

...ing First Class Mail (Default)

	<b>BEST PRACTICES NEW JERSEY HAS ALREADY ADOPTED</b>	<b>AREAS FOR IMPROVEMENT</b>
Stage 2	Update addresses annually  Submit addresses through National Change Of Address database	Update addresses more frequently



Address from Motor  
Vehicle Commission

Address from Division of Taxation

	<b>BEST PRACTICES NEW JERSEY HAS ALREADY ADOPTED</b>	<b>AREAS FOR IMPROVEMENT</b>
Stage 2	<p>Update addresses annually</p> <p>Submit addresses through National Change Of Address database</p> <p>Select address from most frequently updated list</p>	<p>Update addresses more frequently</p>

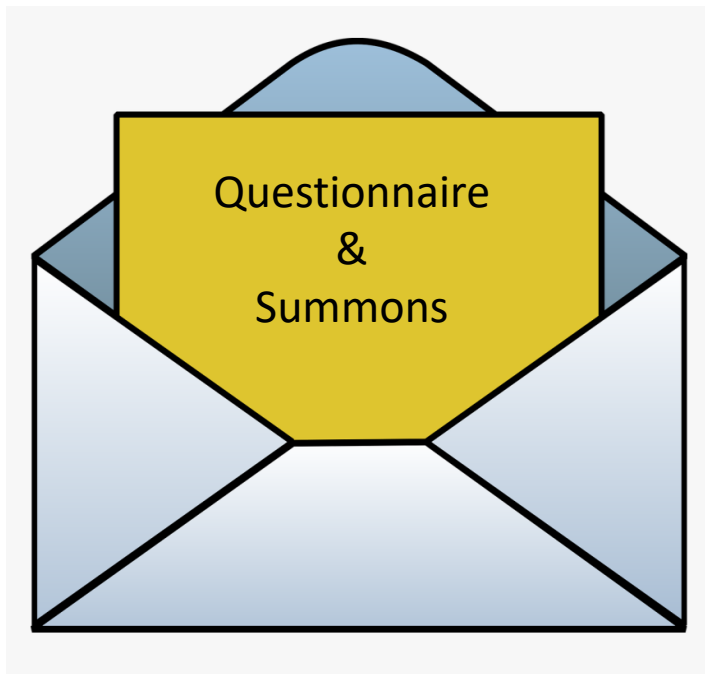
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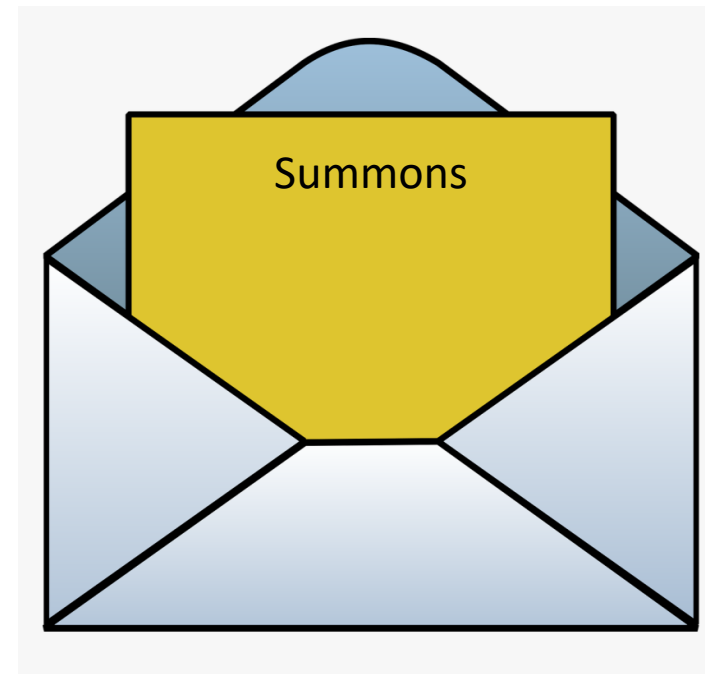
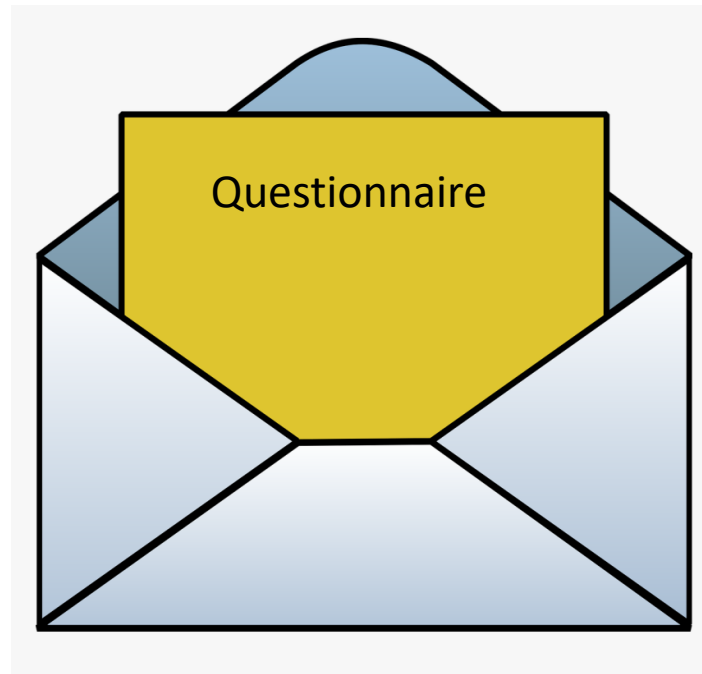
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# ONE-STEP



# TWO-STEP





	<b>BEST PRACTICES NEW JERSEY HAS ALREADY ADOPTED</b>	<b>AREAS FOR IMPROVEMENT</b>
Stage 3	Use one-step summonsing process	



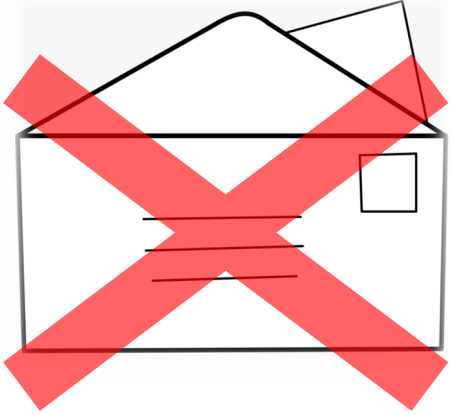
select source lists

update addresses

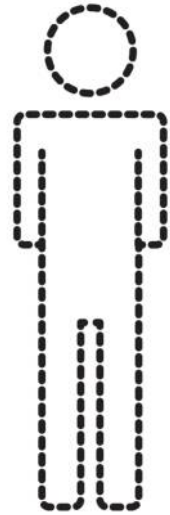
send summons

process responses

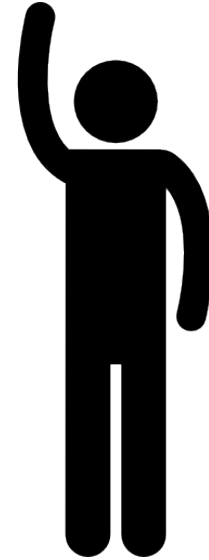
# RESPONSE TO SUMMONS



Undeliverable

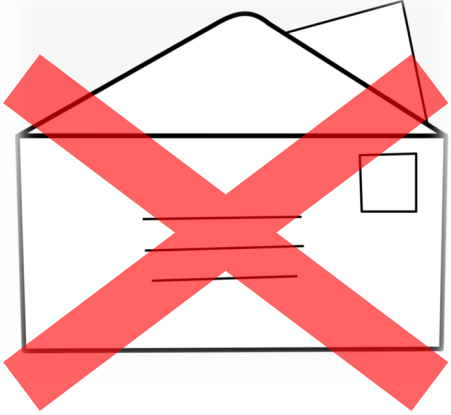


No response



Request to be excused

# RESPONSE TO SUMMONS



Undeliverable

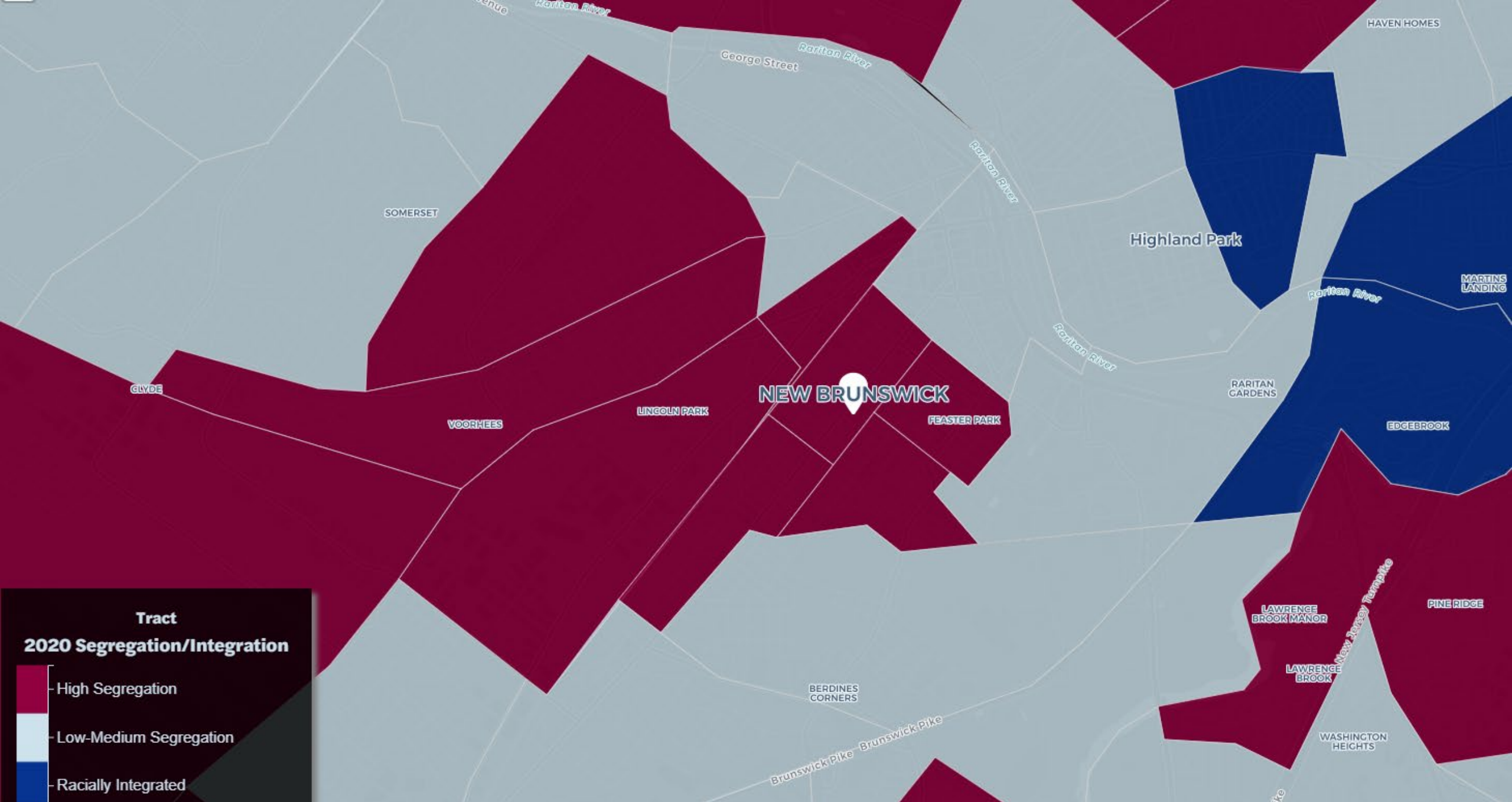




BADGE #: 46783  
GROUP #: 39476

**Jury Summons**

Same  
zip code



The Roots of Structural Racism Project: Twenty-First Century Racial Residential Segregation in the United States (June 21, 2021), BY STEPHEN MENENDIAN, SAMIR GAMBHIR & ARTHUR GAILES available at <https://belonging.berkeley.edu/roots-structural-racism>

●  
In those instances when a mailed juror qualification form is returned to the Clerk's Office by the United States Postal Service as **undeliverable**,

●  
After a reasonable period of time, if the Clerk's Office **does not receive a response** to a mailed juror qualification form

the Clerk may randomly draw a replacement name from the master jury wheel from the same zip code to which the . . . juror qualification form had originally been sent.  
The Clerk will then mail a juror qualification form to the person whose name is drawn.



“By resending questionnaires to individuals located in the same zip code, as opposed to the same county, the court hopes to maintain geographic proportionality and representation.”

- Hon. Juan R. Sanchez, Chief Judge





	<b>BEST PRACTICES NEW JERSEY HAS ALREADY ADOPTED</b>	<b>AREAS FOR IMPROVEMENT</b>
<b>Stage 4</b>		<b>Send replacement summons when undeliverable</b>

# NO RESPONSE



NO EVIDENCE

THAT RESPONSE RATES

DIFFER BY RACE OR  
ETHNICITY

WHEN WE CONTROL FOR  
INCOME

- Judge William Caprath (ret.) et al., *Assessing and Achieving Jury Pool Representativeness*, at 19, *The Judges' Journal*, Am. Bar Ass'n, V. 55, No. 2 (Spring 2016) (“In 1998, the American Judicature Society found that when socioeconomic factors were considered, race and ethnicity were not significant predictors of juror nonresponse and FTA. However, due to the strong correlation between socioeconomic and minority status, minority representation in the jury pool is impacted by the reduced appearance of lower-socioeconomic-status individuals.”).
- Paula Hannaford-Agor, *Systematic Negligence in Jury Operations: Why the Definition of Systematic Exclusion in Fair Cross Section Claims Must Be Expanded*, 59 *Drake L. Rev.* 761, 774 (2011) (“Failure-to-appear rates are likewise highly correlated with socioeconomic status. . . . Because race, ethnicity, and socioeconomic status are so highly correlated, the effect on the jury pool is that disproportionately fewer minorities serve as jurors.”).
- Ronald Randall, James A. Woods, & Robert G. Martin, *Racial Representativeness of Juries: An Analysis of Source List and Administrative Effects on the Jury Pool*, 29 *Just. Sys. J.* 71, 81 (2008) (Toledo, Ohio study found that “the distribution among whites, blacks, and Hispanics who ignore summonses is similar to their distribution in the general population”).



Higher  
non-response rate



Less diverse juries

# National Center for State Courts

“the components of jury yield that offer  
the most potential  
for effective control  
are  
undeliverable rates,  
non-response  
and failure-to-appear rates,  
excusal rates,  
and the choice of 1-step versus 2-step  
jury operations.”

# Send a follow-up notice to non-responsive juror



Importance of jury service

How to request hardship exemption

Penalties

	<b>BEST PRACTICES NEW JERSEY HAS ALREADY ADOPTED</b>	<b>AREAS FOR IMPROVEMENT</b>
Stage 4	Send a follow-up mailing when person fails to respond to summons	Send replacement summons when undeliverable



	<b>BEST PRACTICES NEW JERSEY HAS ALREADY ADOPTED</b>	<b>AREAS FOR IMPROVEMENT</b>
Stage 4	Send a follow-up mailing when person fails to respond to summons	Send replacement summons when undeliverable Add language to reminder notice

## YOU HAVE BEEN SUMMONED FOR TRIAL JURY SERVICE

### WHAT YOU NEED TO DO

- **Tell your employer** you are summoned to serve as a juror.
- **Read section C of this summons** for reporting instructions.
- **If you need a first-time postponement** Go to [www.nyjuror.gov](http://www.nyjuror.gov) or call 1-800-449-2819 before the date in Section C of this summons. Select a new date 2 to 6 months from now. For additional requests email [nycountyjurorquestions@nycourts.gov](mailto:nycountyjurorquestions@nycourts.gov) or call 646-386-5969. You may also write to the Commissioner of Jurors.
- **For a disability requiring accommodation** Call 646-386-5969.
- **For a hearing or speech disability** Call 1-800-662-1220 for relay calls.
- **Bring this summons to court** Answer all of the questions in the red box below. F

### WHAT YOU NEED TO KNOW

- **Jurors are paid \$40 per day** Travel and parking costs are not reimbursed. Employers of more than ten must pay the \$40 for the first three days of service. Others who are not paid by their employer are paid \$40 by the court. If you are paid by your employer and you earn less than \$40, the court pays the difference between your wage and \$40.
- **Everyone who is eligible must serve** If you cannot serve even if granted a postponement, you may ask to be excused. Contact the Commissioner of Jurors before the date in Section C of this summons. Email [nycountyjurorquestions@nycourts.gov](mailto:nycountyjurorquestions@nycourts.gov) or call 646-386-5969. You will be asked to supply proof.
- **You have a right to serve as a juror** Employers may not penalize employees for serving. Judiciary Law 519 – Right of Juror to be Absent from Employment
- **You have a legal obligation to serve** Failure to respond to this summons is punishable by a fine of up to \$1,000 or imprisonment of up to 30 days or both.

For other questions email [nycountyjurorquestions@nycourts.gov](mailto:nycountyjurorquestions@nycourts.gov) or call 646-386-5969. G  
For more information visit [www.nyjuror.gov](http://www.nyjuror.gov) or call 800-NYJUROR

1. Are your name and address on the front of this summons correct? If NO, please make corrections on the front.
  2. Back phone number to reach you \_\_\_\_\_ E-mail \_\_\_\_\_
  3. Social Security Number (last 4 digits only) \_\_\_\_\_ 4. Date of Birth (mm/dd/yy) \_\_\_\_\_ / \_\_\_\_\_ /1990
  5. Are you employed FULL-TIME • PART-TIME • PER-DIEM/FULL COMMISSION • NOT EMPLOYED If not employed skip 6-12.
  6. Employer \_\_\_\_\_ 7. Employer's phone \_\_\_\_\_
  8. Does your employer pay you while on jury service? YES • NO If yes, for how many days? \_\_\_\_\_
  9. Does your employer have more than 10 employees? YES • NO
  10. What are your scheduled work days this week? MON • TUE • WED • THU • FRI • SAT • SUN
  11. What are your scheduled work hours this week? FROM \_\_\_\_\_ AM • PM TO \_\_\_\_\_ AM • PM
  12. If you earn less than \$40 per day, how much do you earn each day that you work? \$ \_\_\_\_\_
- I certify that, under penalty of perjury, this information is true and accurate.

Signature of Juror \_\_\_\_\_

Date \_\_\_\_\_

### MEDICAL ISSUES

An application for postponement or excusal may be granted if you are incapable of performing jury service. Please provide a letter from your healthcare provider stating your condition and why it prevents you from serving as a juror.

### CAREGIVERS

An application for postponement or excusal may be granted to a caregiver whose personal care and attention of another is required during the time of jury service.

A caregiver to a child must provide a copy of child's birth certificate.

A caregiver of another person must provide a letter from a healthcare provider stating the person's age, relationship to you, and the medical condition requiring you to serve as a caregiver.

How do I request an excusal?

Am I qualified?

Can I defer to another date?

“summons nonrespondents often do not know how to go about rescheduling jury service”

non-responders “are less likely than are respondents to believe that jurors can defer their service”



Robert G. Boatright, *Why Citizens Don't Respond to Jury Summonses, and What the Courts Can Do About It*, *Judicature* 156, 156-57 (1999).



A Guide to the New Jersey Judicial Conference  
on Jury Selection (2021), at E-3

“In follow-up with non-responsive jurors, some individuals report that they did not respond because they believed that they are not eligible to serve as a juror.”

	<b>BEST PRACTICES NEW JERSEY HAS ALREADY ADOPTED</b>	<b>AREAS FOR IMPROVEMENT</b>
Stage 4	Send a follow-up mailing when person fails to respond to summons	Send replacement summons when undeliverable Add language to reminder notice Modify summons to clarify eligibility requirements & rules for deferring service



BADGE #: 46783  
GROUP #: 39476

**Jury Summons**

Same  
zip code



	<b>BEST PRACTICES NEW JERSEY HAS ALREADY ADOPTED</b>	<b>AREAS FOR IMPROVEMENT</b>
Stage 4	Send a follow-up mailing when person fails to respond to summons	Send replacement summons when undeliverable <b>or no response</b>  Add language to reminder notice  Modify summons to clarify eligibility requirements & rules for deferring service

A close-up photograph of a person's hands holding an open, empty black wallet. The wallet is held open, revealing its interior compartments, which are completely devoid of any money or cards. The lighting is warm and focused on the wallet, with a blurred wooden background. The overall mood is one of financial emptiness and struggle.

**ECONOMIC HARDSHIP**





An excuse from jury service shall be granted . . . if:

“the prospective juror will suffer a severe financial hardship which will compromise the juror's ability to support himself, herself, or dependents”

**New  
Jersey:  
Median  
net worth**

\$352,000



White  
families

\$7,300



Hispanic  
families

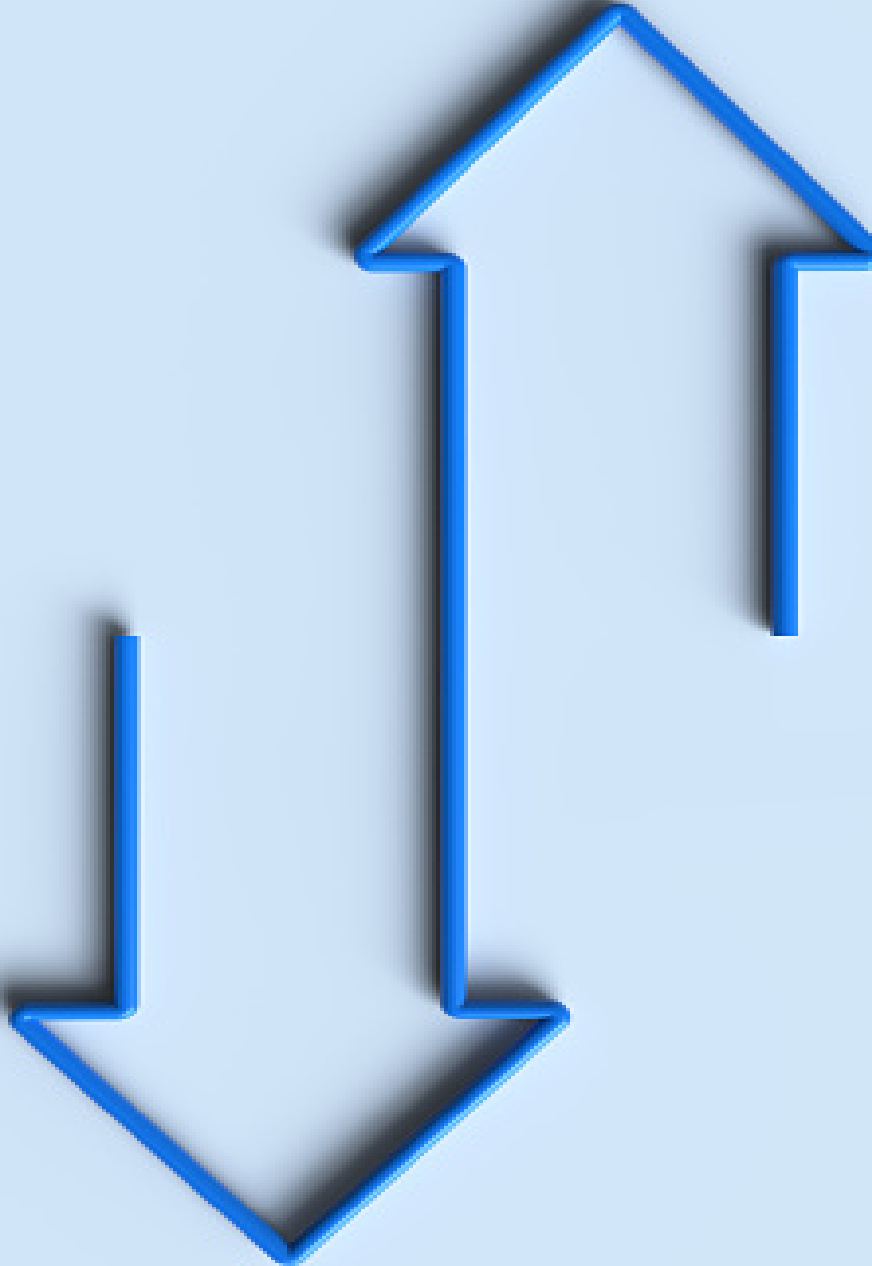
\$6,100

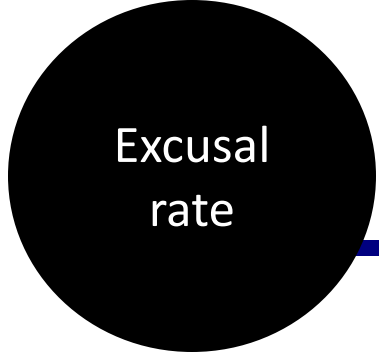


Black families

Increase  
juror pay

Decrease length  
of service





Excusal  
rate

	One-day/One Trial	Longer than One-day/One Trial
Juror fee EXCEEDS national average	4.1%	8.3%
Juror fee LESS THAN national average	8.1%	9.3%

	<b>BEST PRACTICES NEW JERSEY HAS ALREADY ADOPTED</b>	<b>AREAS FOR IMPROVEMENT</b>
Stage 4	Send a follow-up mailing when person fails to respond to summons	Send replacement summons when undeliverable or no response  Add language to reminder notice  Modify summons to clarify eligibility requirements & rules for deferring service  Increase juror pay and shorten term of service

INVISIBLE



VISIBLE



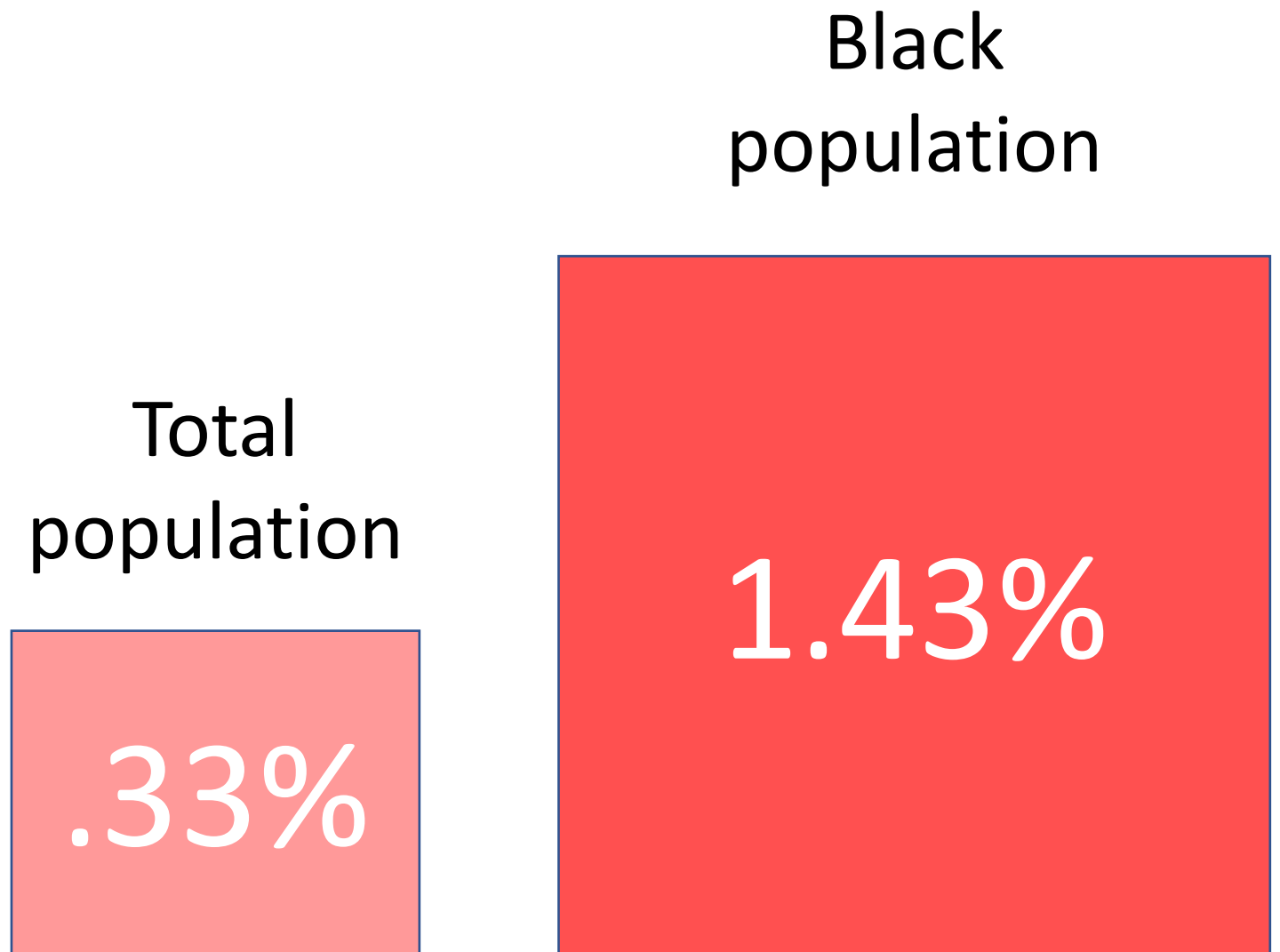


# NOT ELIGIBLE FOR JURY SERVICE



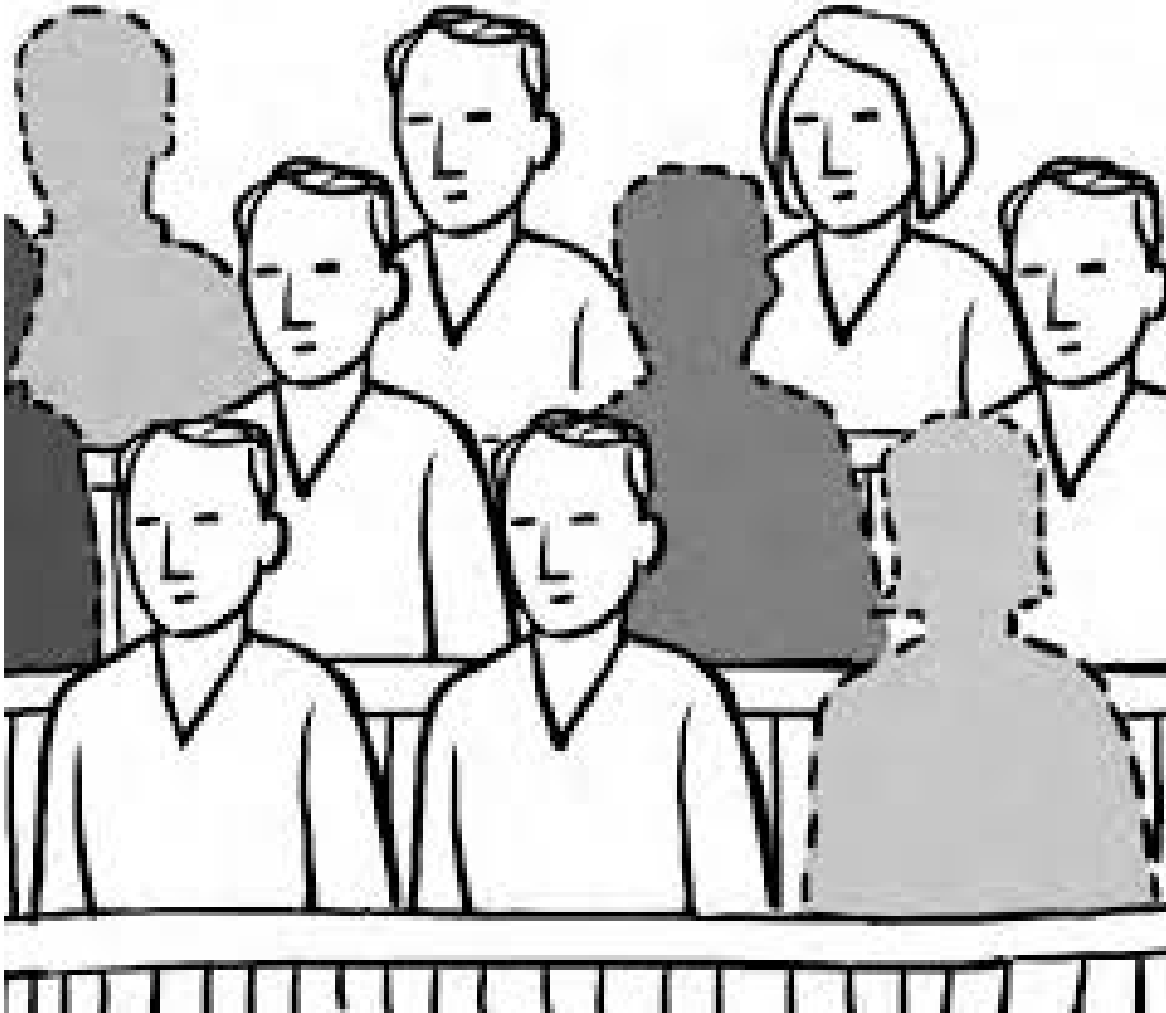
Felony Conviction

# Felony conviction rate in New Jersey





# Rationale for excluding people with felony convictions from jury duty

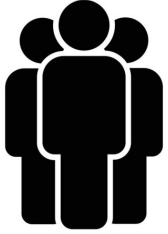


Biased against prosecution

Other jurors less comfortable

Undermine integrity of jury process

# ~~Biased against prosecution~~



Not all have pro-defense bias



Same level of pre-trial pro-defense bias as law students



Matched by pre-trial pro-prosecution bias of law enforcement

## ~~Other jurors less comfortable~~



"results indicate that the inclusion of felon-jurors has either no effect on or, in some instances, actually increases juror satisfaction.

Specifically, the inclusion of felon-jurors makes it more likely that members of a mixed jury view fellow jurors as equals, deliberations as helpful for the group, and their own opinions as highly valued."

~~Undermine integrity of jury  
process~~



More likely that public will view that  
jury's decisions as legitimate

**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.**

	<b>BEST PRACTICES NEW JERSEY HAS ALREADY ADOPTED</b>	<b>AREAS FOR IMPROVEMENT</b>
<b>Stage 5</b>		<b>Eliminate the ban on jury service by people with felony convictions</b>

	<b>BEST PRACTICES NEW JERSEY HAS ALREADY ADOPTED</b>	<b>AREAS FOR IMPROVEMENT</b>
<b>Stage 1</b>	Use multiple source lists	Assess how well existing lists cover diversity of full population & add lists if useful
<b>Stage 2</b>	Update addresses annually Submit addresses through National Change Of Address database Select address from most frequently updated list	Update addresses more frequently
<b>Stage 3</b>	Use one-step summonsing process	
<b>Stage 4</b>	Send a follow-up mailing when person fails to respond to summons	Send replacement summons when summons undeliverable or no response Add language to reminder notice Modify the summons to clarify eligibility requirements & rules for deferring service Increase juror pay and shorten term of service
<b>Stage 5</b>		Eliminate the ban on jury service by people with felony convictions





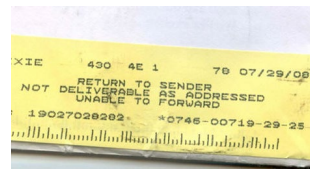
# THANK YOU

Nina Chernoff \* CUNY School of Law

[Nina.Chernoff@law.cuny.edu](mailto:Nina.Chernoff@law.cuny.edu)



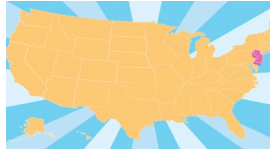
Image:  
Nktwentythree/Dreamstime



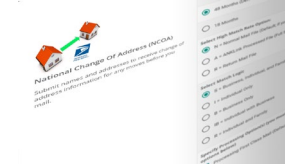
<https://www.smartystreets.com/docs/returned-mail>



Illustration by Miguel Gallardo, The New Yorker, <https://www.newyorker.com/magazine/2016/10/10/the-widening-racial-wealth-divide>



<https://kids.nationalgeographic.com/geography/states/article/new-jersey>



<https://www.updateyourlist.com/services/ncoalink-change-of-address-ncoa.aspx>



[https://cdn-res.keymedia.com/cms/images/us/025/0308\\_637680963131382932.jpg](https://cdn-res.keymedia.com/cms/images/us/025/0308_637680963131382932.jpg)



Equal Justice Initiative, "Race and the Jury: Illegal Racial Discrimination in Jury Selection" (2021)



<https://www.aspenideas.org/podcasts/building-public-confidence-in-covid-19-vaccines>



Empirejustice.org



<https://www.wikihow.com/Get-Out-of-Jury-Duty>



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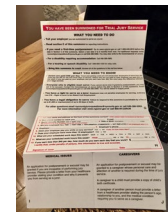
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