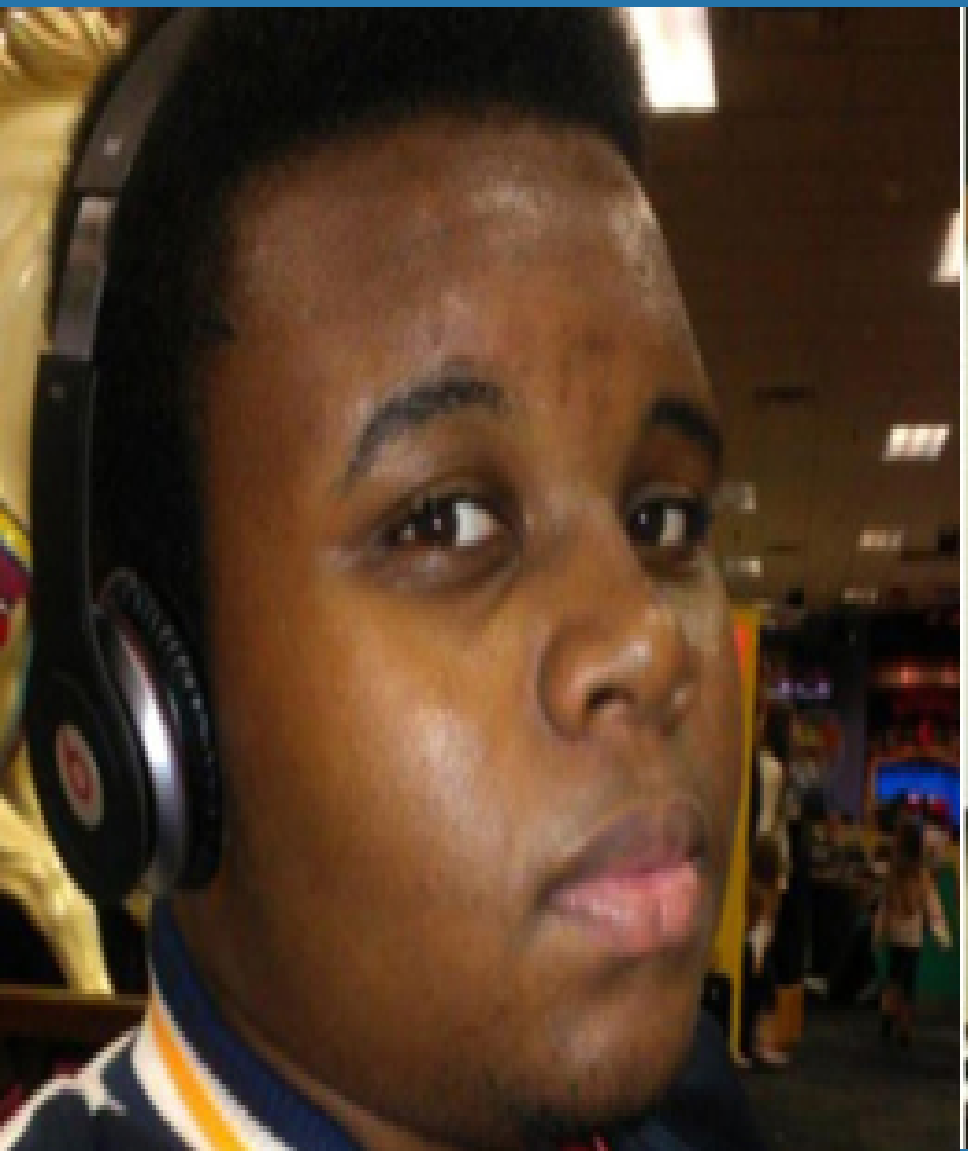


Lessons Learned from Ferguson:

Race, Trust & Fairness in the Justice System

Judge Mark Kappelhoff
Hennepin County District Court

The Michael Brown Shooting
August 9, 2014





Key Question…

How Did We Get Here?

History of Trust & Fairness Issues with the Justice System

Legacy of Slavery

Our Nation's Shameful Legacy of Slavery

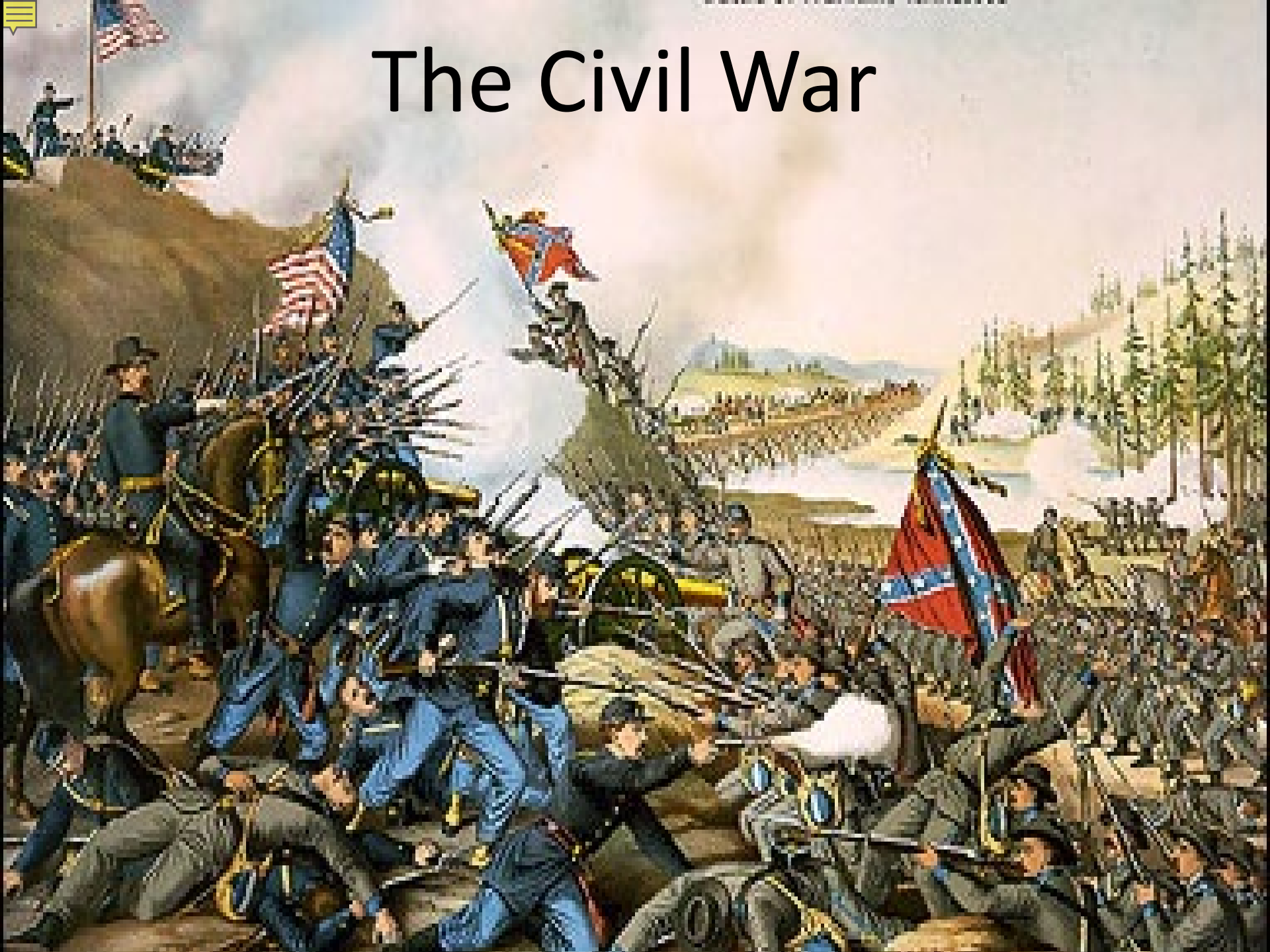




Slavery in the U.S.

- **1619 First African slaves arrive in Virginia**
- **1641 Massachusetts first colony to legalize slavery**
- **U.S. Const., Art 1, § 2, cl. 3**
  - Slaves = 3/5 person
- **U.S. Const., Art 4, § 2, cl. 3**
  - No person held to Service or Labor in one State, under the Laws thereof, escaping into another, shall . . . be discharged from such Service or Labor, but shall be delivered

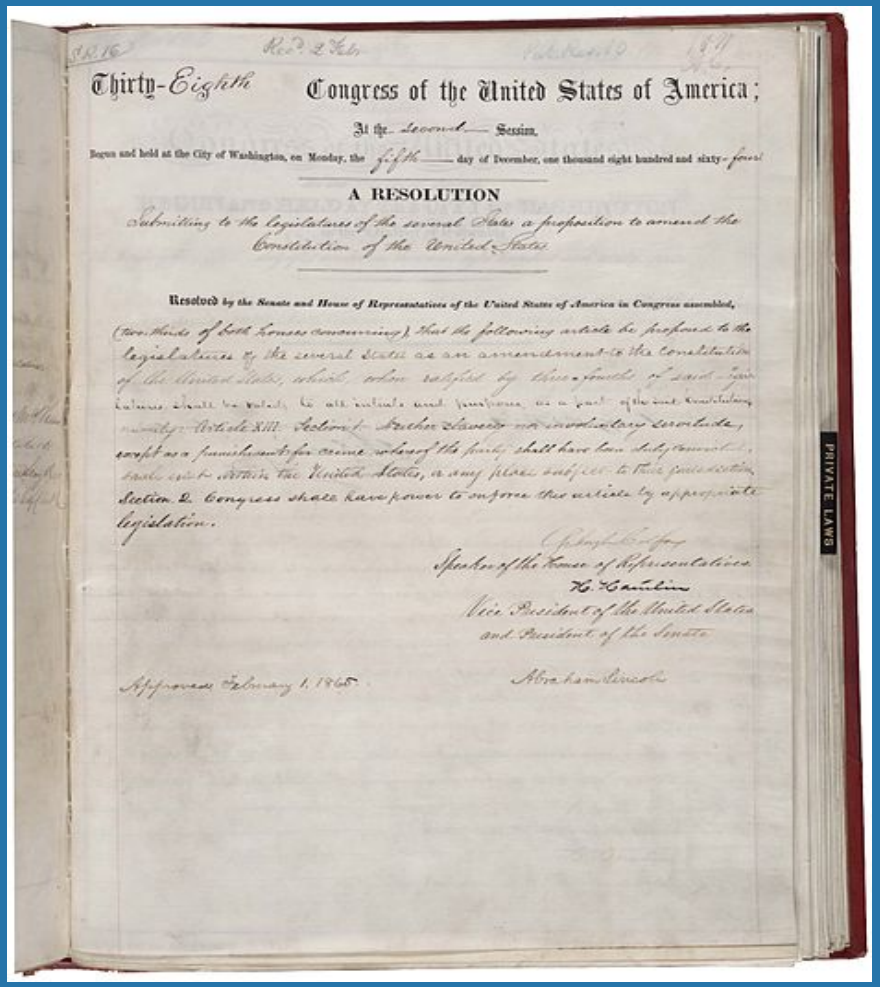
The Civil War



The Reconstruction Era . . .

The U.S Constitution Amended

- Abolish Slavery
  - 13th Amendment
  - (Ratified 1865)
- Equal Protection of the Law
  - 14th Amendment
  - (Ratified 1868)
- Right to Vote
  - 15th Amendment
  - (Ratified 1870)



Thirty-Eighth Congress of the United States of America;

At the second Session,

Begun and held at the City of Washington, on Monday, the fifth day of December, one thousand eight hundred and sixty-four

A RESOLUTION

Submitting to the Legislatures of the several States a proposition to amend the Constitution of the United States

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

(two thirds of both Houses concurring) That the following article be proposed to the legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said legislatures, shall be valid, to all intents and purposes, as a part of the said Constitution, namely: Article XIII. Section 1. Neither Slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Section 2. Congress shall have power to enforce this article by appropriate legislation.

Speaker of the House of Representatives

H. Hamlin

Vice President of the United States and President of the Senate

Approved February 1, 1865

Abraham Lincoln

PRIVATE LAWS

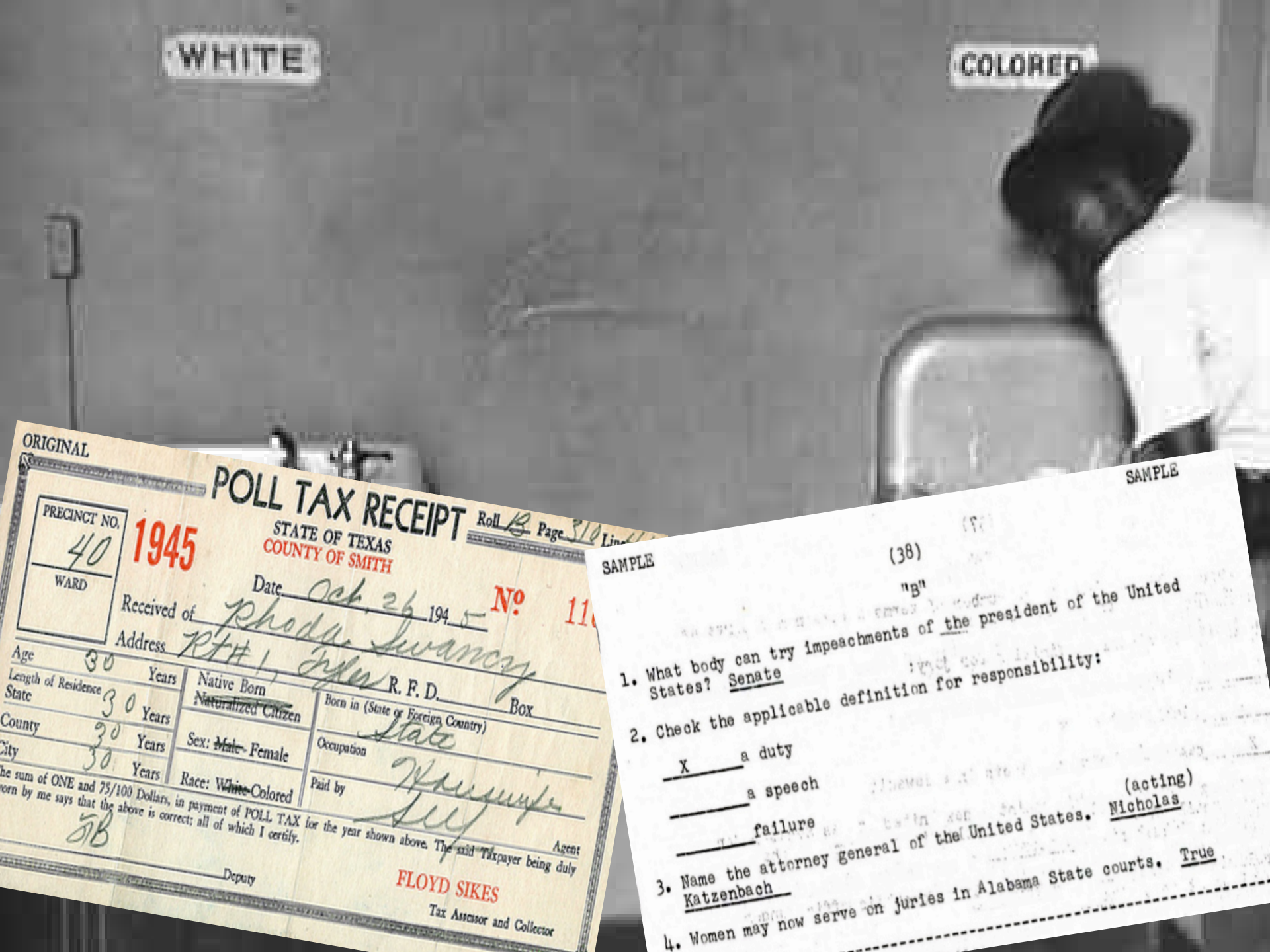
The Reconstruction Era. . .



Jim Crow Laws
&
the Role of Law Enforcement

Jim Crow Era. . .

- **“Black Codes” Enacted**
  - Prohibiting African Americans from:
    - carrying weapons, marrying white people, selling liquor, being unemployed, etc.
- **Jim Crow Laws Enacted**
  - Prohibiting African Americans from:
    - Voting
    - Participating in Juries
    - Serving in Militia
    - Testifying Against White Person



ORIGINAL

POLL TAX RECEIPT

STATE OF TEXAS
COUNTY OF SMITH

PRECINCT NO. 40 WARD

1945

Roll 13 Page 310 Line

Date Oct. 26 1945 No. 11

Received of Rhoda Swancy

Address RFH 1, Tyler R. F. D. Box

Age 30 Years	Native Born	Born in (State or Foreign Country)	
Length of Residence	~~Naturalized~~ Citizen		
State 30 Years		Occupation	
County 30 Years	Sex: ~~Male~~ Female		
City 30 Years	Race: ~~White~~ Colored	Paid by	

The sum of ONE and 75/100 Dollars, in payment of POLL TAX for the year shown above. The said Taxpayer being duly sworn by me says that the above is correct; all of which I certify.

SB

Deputy

FLOYD SIKES
Tax Assessor and Collector

Agent

SAMPLE

SAMPLE (38)

"B"

1. What body can try impeachments of the president of the United States? Senate

2. Check the applicable definition for responsibility:

X a duty

_____ a speech

_____ failure

3. Name the attorney general of the United States. (acting) Nicholas Katzenbach

4. Women may now serve on juries in Alabama State courts. True

The State of Louisiana

Literacy Test (This test is to be given to anyone who cannot prove a fifth grade education.)

Do what you are told to do in each statement, nothing more, nothing less. Be careful as one wrong answer denotes failure of the test. You have 10 minutes to complete the test.

1. Draw a line around the number or letter of this sentence.
2. Draw a line under the last word in this line.
3. Cross out the longest word in this line.
4. Draw a line around the shortest word in this line.
5. Circle the first, first letter of the alphabet in this line.
6. In the space below draw three circles, one inside (engulfed by) the other.

7. Above the letter X make a small cross.
8. Draw a line through the letter below that comes earliest in the alphabet.

Z V S B D M K I T P H C

9. Draw a line through the two letters below that come last in the alphabet.


MISSING
CALL FBI
THE FBI IS SEEKING INFORMATION CONCERNING THE DISAPPEARANCE AT PHILADELPHIA, MISSISSIPPI, OF THESE THREE INDIVIDUALS ON JUNE 21, 1964. EXTENSIVE INVESTIGATION IS BEING CONDUCTED TO LOCATE GOODMAN, CHANEY, AND SCHWERNER, WHO ARE DESCRIBED AS FOLLOWS:
ANDREW GOODMAN
JAMES EARL CHANEY
MICHAEL HENRY SCHWERNER
40 years ago a mob of Klansmen murdered three civil rights workers.
Why are they still walking the streets?
NESHOBA

School Segregation Banned, the *Topeka State Journal*. Courtesy Kansas State Historical Society

FOLKS AND THINGS

By 2054 This Bill Should Be Terrific

STATE JOURNAL

THE TOPEKA

By Stauffer Publications, Inc.

Topeka, Kansas, Monday, May 17, 1954—Twenty-four Pages

Official City Paper

Home Edition

FIVE CENTS

SCHOOL SEGREGATION BANNED



Turnpike B…

…ourt Refutes

…eparate

…ucation

…ecify When Practice

…e Dropped by States

Court Ruling Hailed

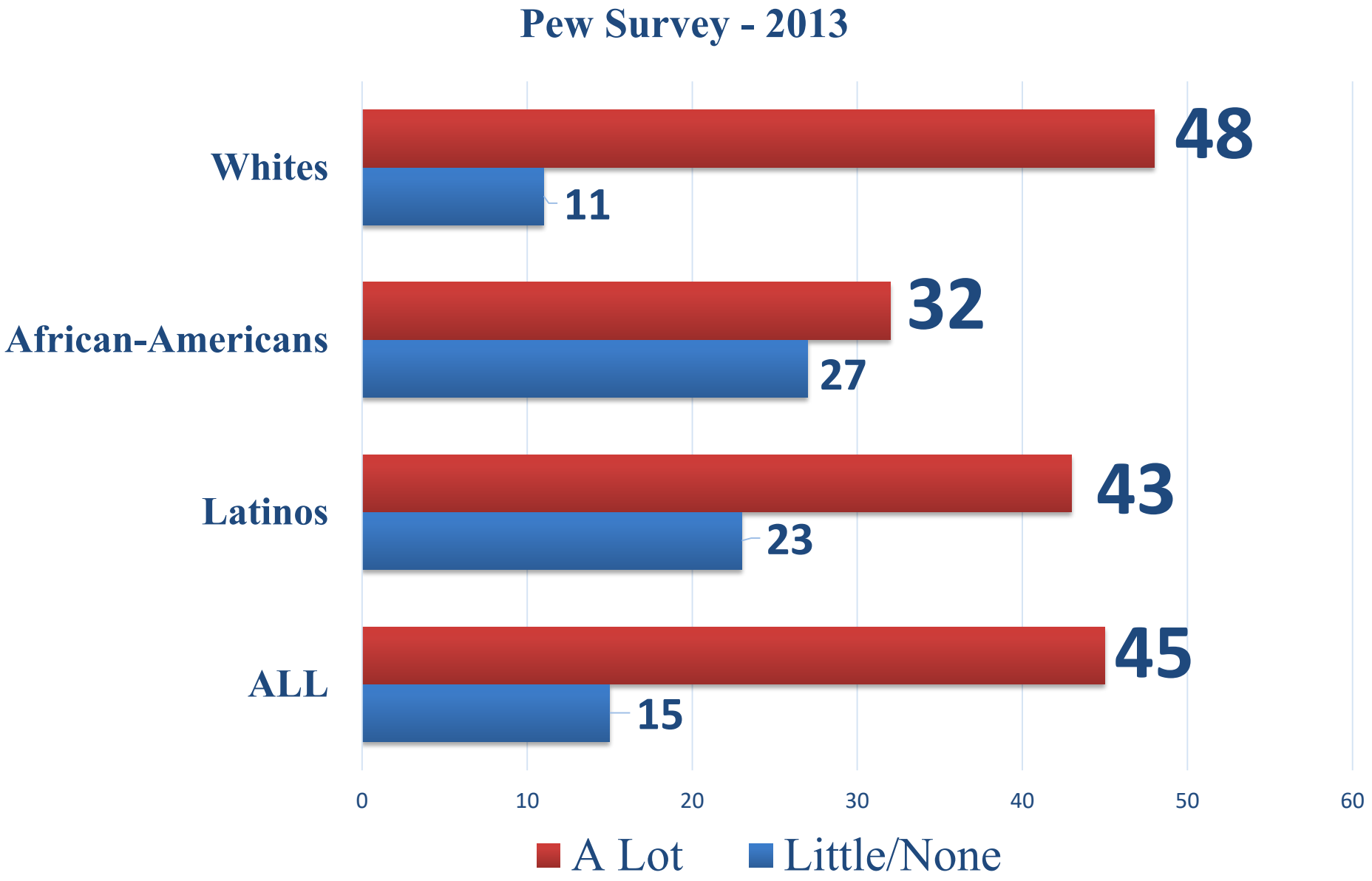
…regation Already Ending

School Officials

"Today, education i… perhaps the… important function of s… ernment. Compulsory sc… the great expenditures for ed… recognition of the importance of ed… WE CONCLUDE THAT IN THE FIELD O… THE DOCTRINE OF 'SEPARATE BUT EQUAL' HAS NO PLACE. SEPARATE EDUCATIONAL FACILITIES ARE INHERENTLY UNEQUAL."

Oliver L. Brown, et al. vs Board of Education of Topeka, Kansas, United States Supreme Court, May 17, 1954.

Progress Toward Racial Equality



Most black adults have negative views about the country's racial progress

% saying ...



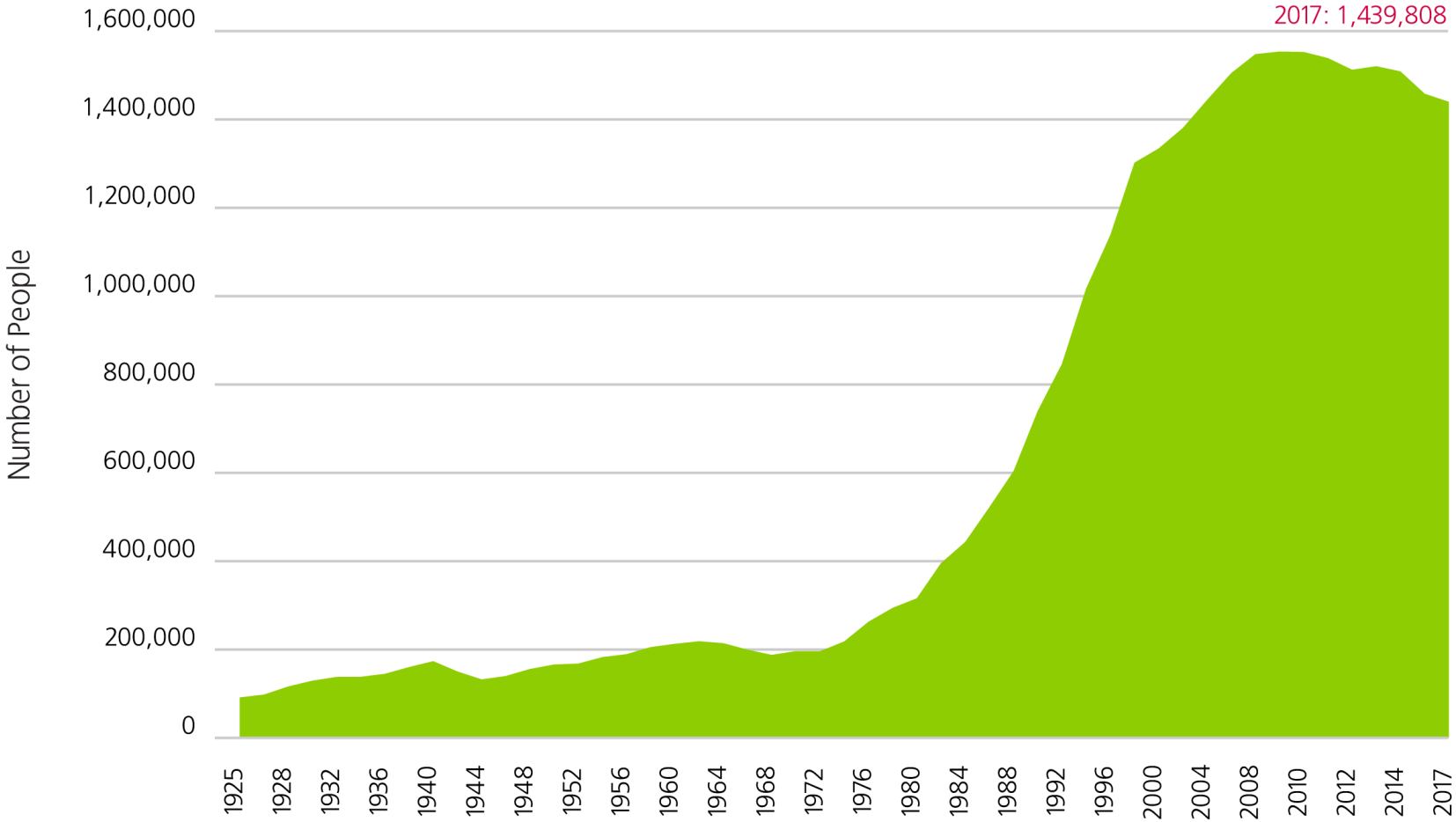
Note: Whites and blacks include those who report being only one race and are non-Hispanic.
Source: Survey of U.S. adults conducted Jan. 22-Feb. 5, 2019.
"Race in America 2019"

PEW RESEARCH CENTER

Racial Disparities in the Criminal Justice System

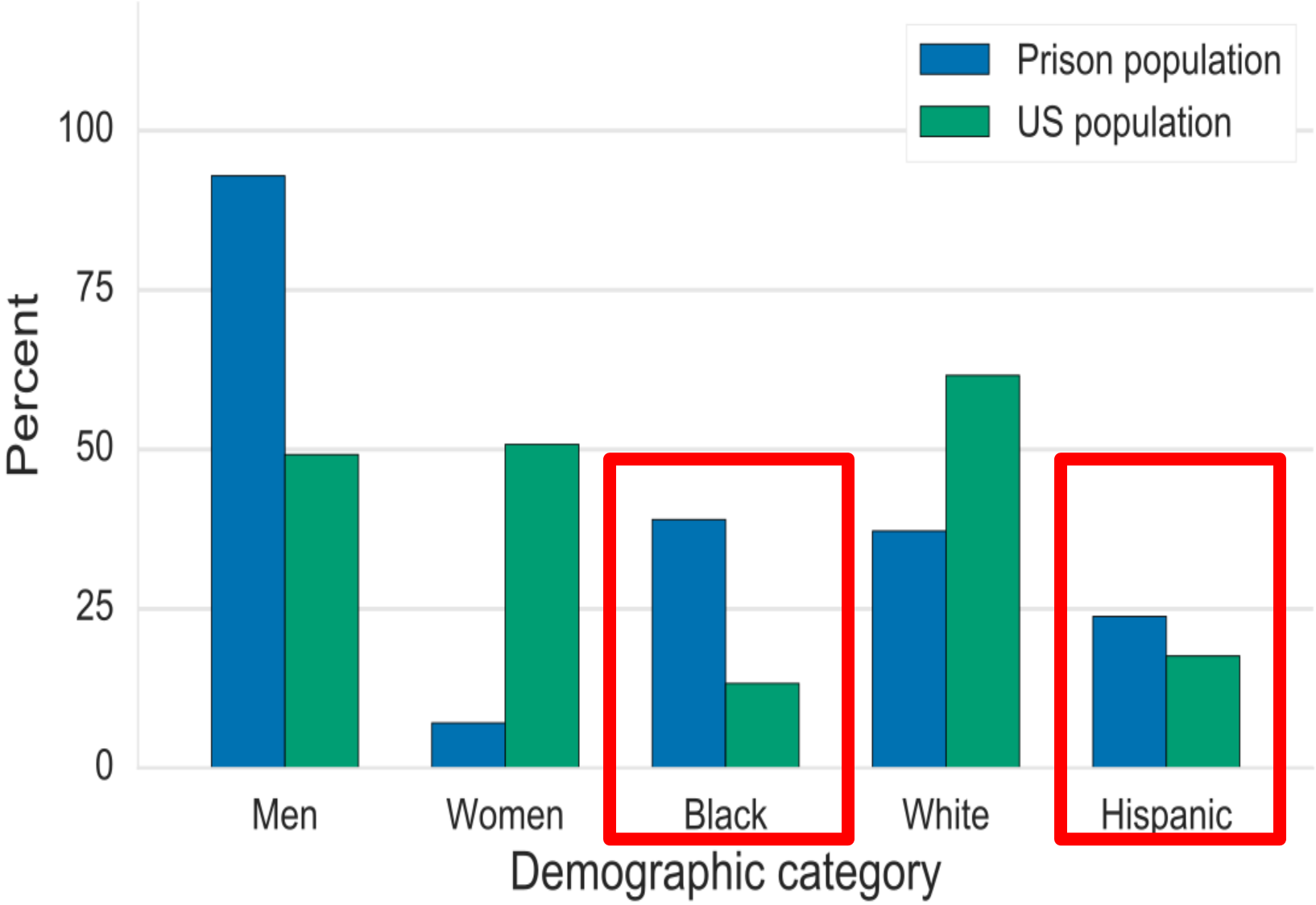
THE SENTENCING PROJECT

U.S. State and Federal Prison Population, 1925-2017



Demographics of the US Prison Population

People in state or federal custody in 2015. The "white" category excludes Hispanics.



Data source: https://www.bjs.gov/content/pub/pdf/p15.pdf (US Department of Justice)

ChartYourWorld.org

Lifetime Likelihood of Imprisonment of U.S. Residents Born in 2001

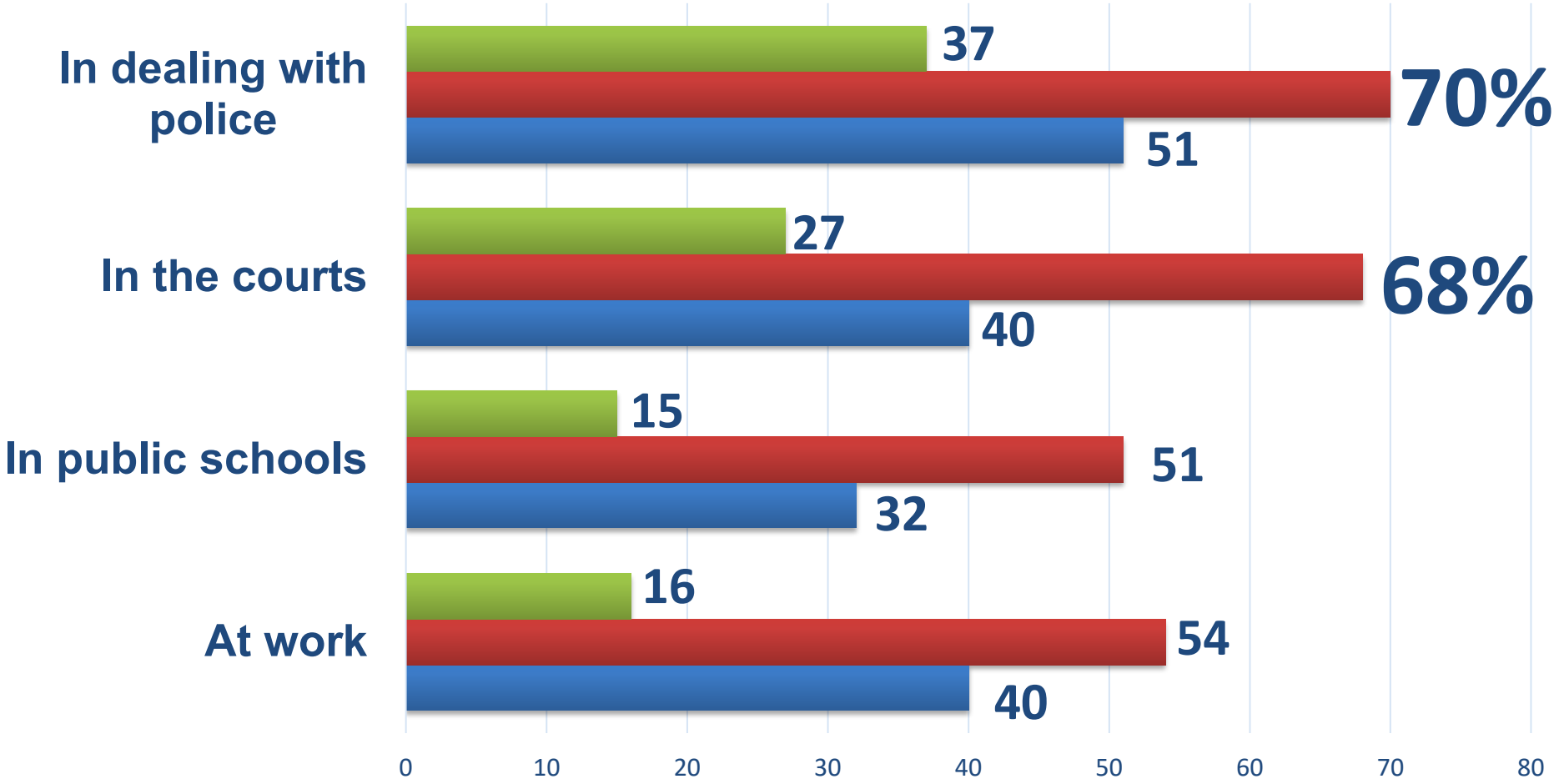


High Profile Incidents of

Misconduct
&
Unfair Treatment

Racial Divide: Fair Treatment of African Americans

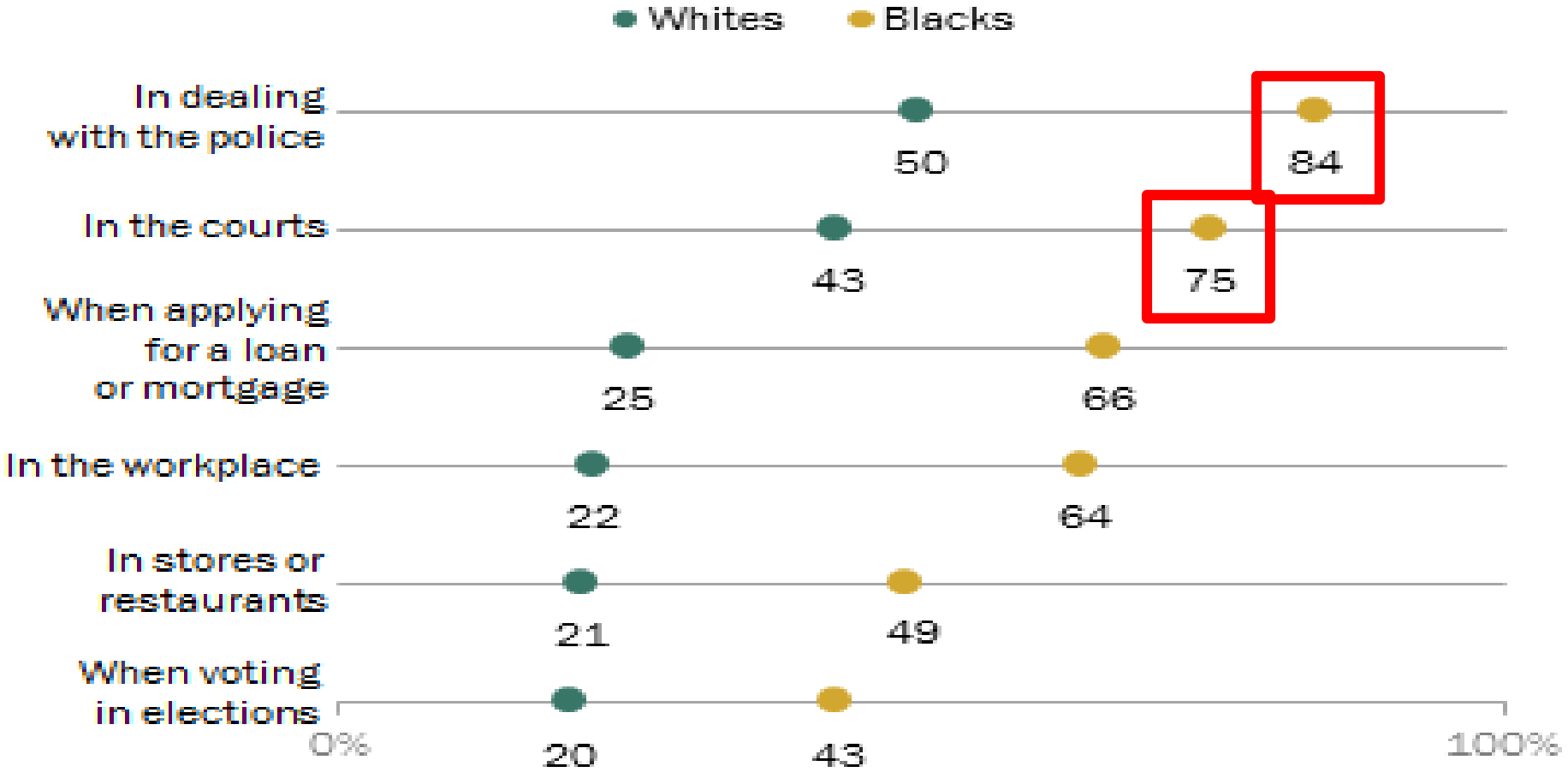
% Saying African Americans are treated less fairly



Pew Survey, 2013

Perceptions of how blacks are treated in the U.S. vary widely by race

% saying blacks are treated less fairly than whites in the country

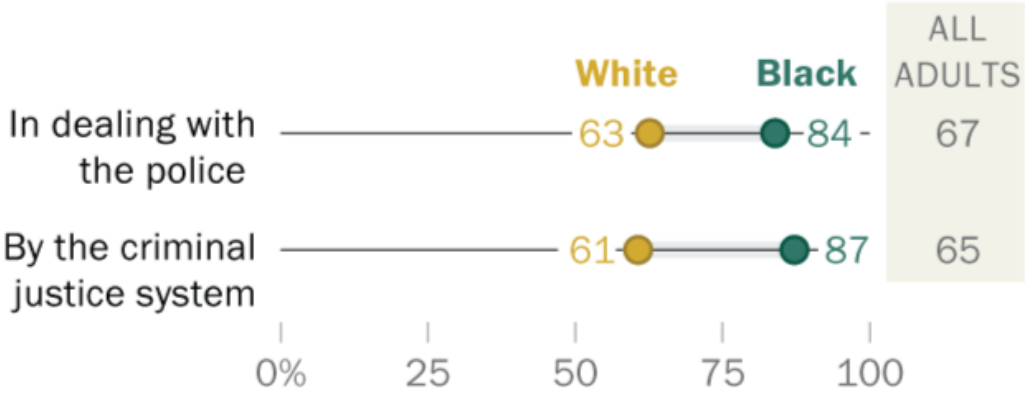


Note: Whites and blacks include only non-Hispanics.
Source: Survey of U.S. adults conducted Feb. 29-May 8, 2016. Q19F2a-f.
"On Views of Race and Inequality, Blacks and Whites are Worlds Apart"

PEW RESEARCH CENTER

More than eight-in-ten black adults say blacks are treated less fairly than whites by police, criminal justice system

% who say, in general in our country these days, blacks are treated less fairly than whites ...

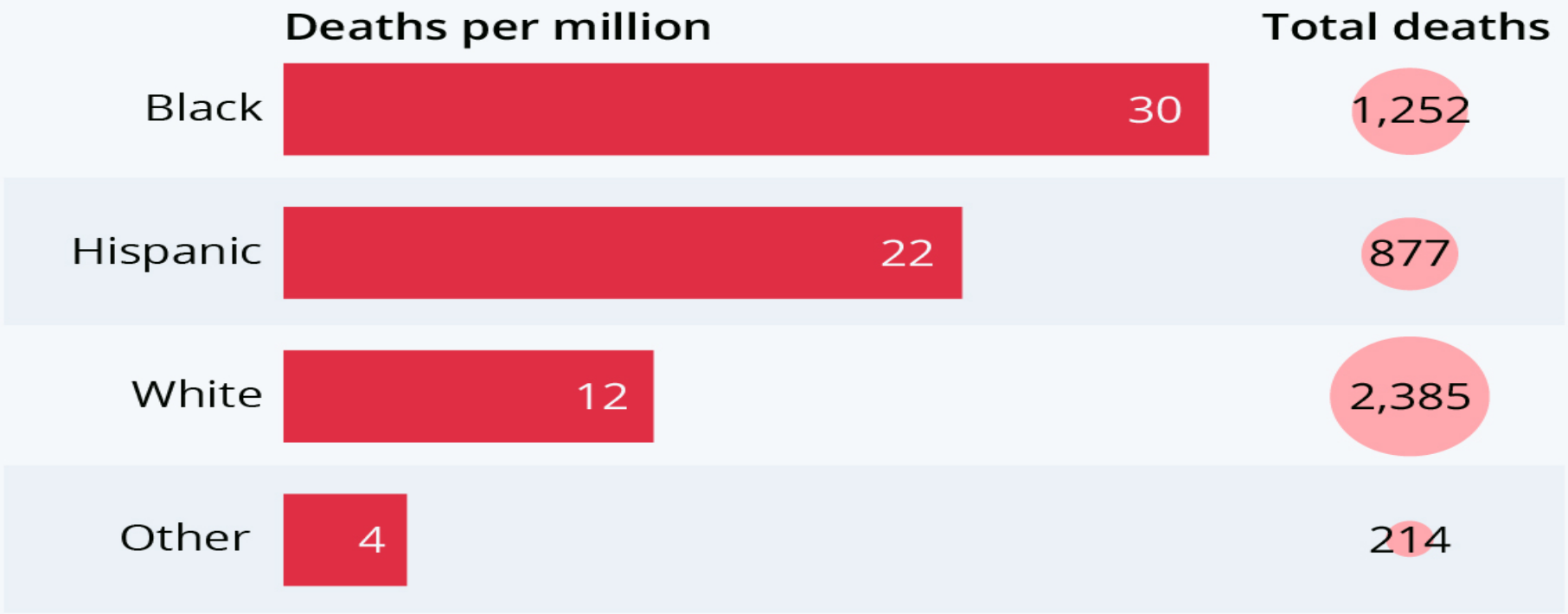


Note: White and black adults include those who report being only one race and are non-Hispanic.
Source: Survey of U.S. adults conducted Jan. 22-Feb. 5, 2019.

PEW RESEARCH CENTER

U.S. Police Shootings: Blacks Disproportionately Affected

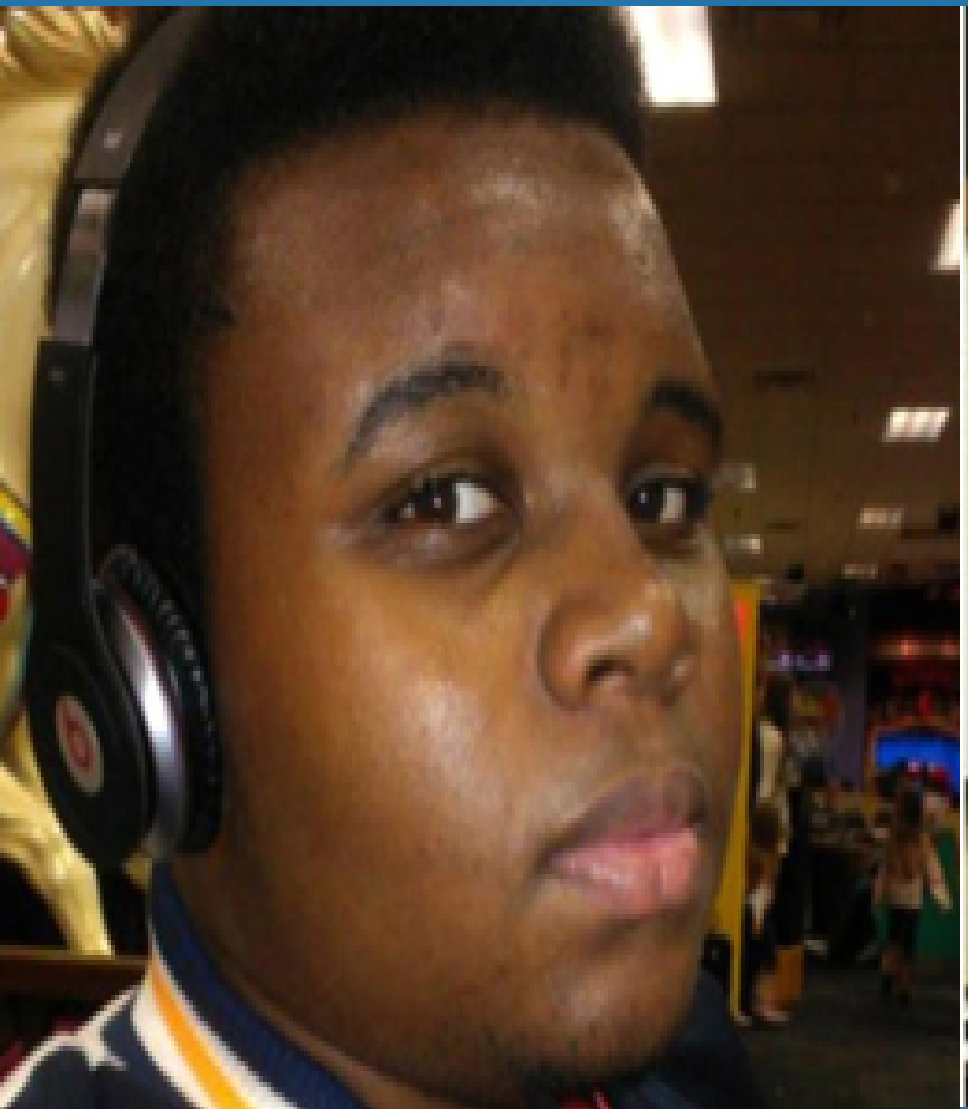
Number of people killed in police shootings in the U.S. since January 01, 2015



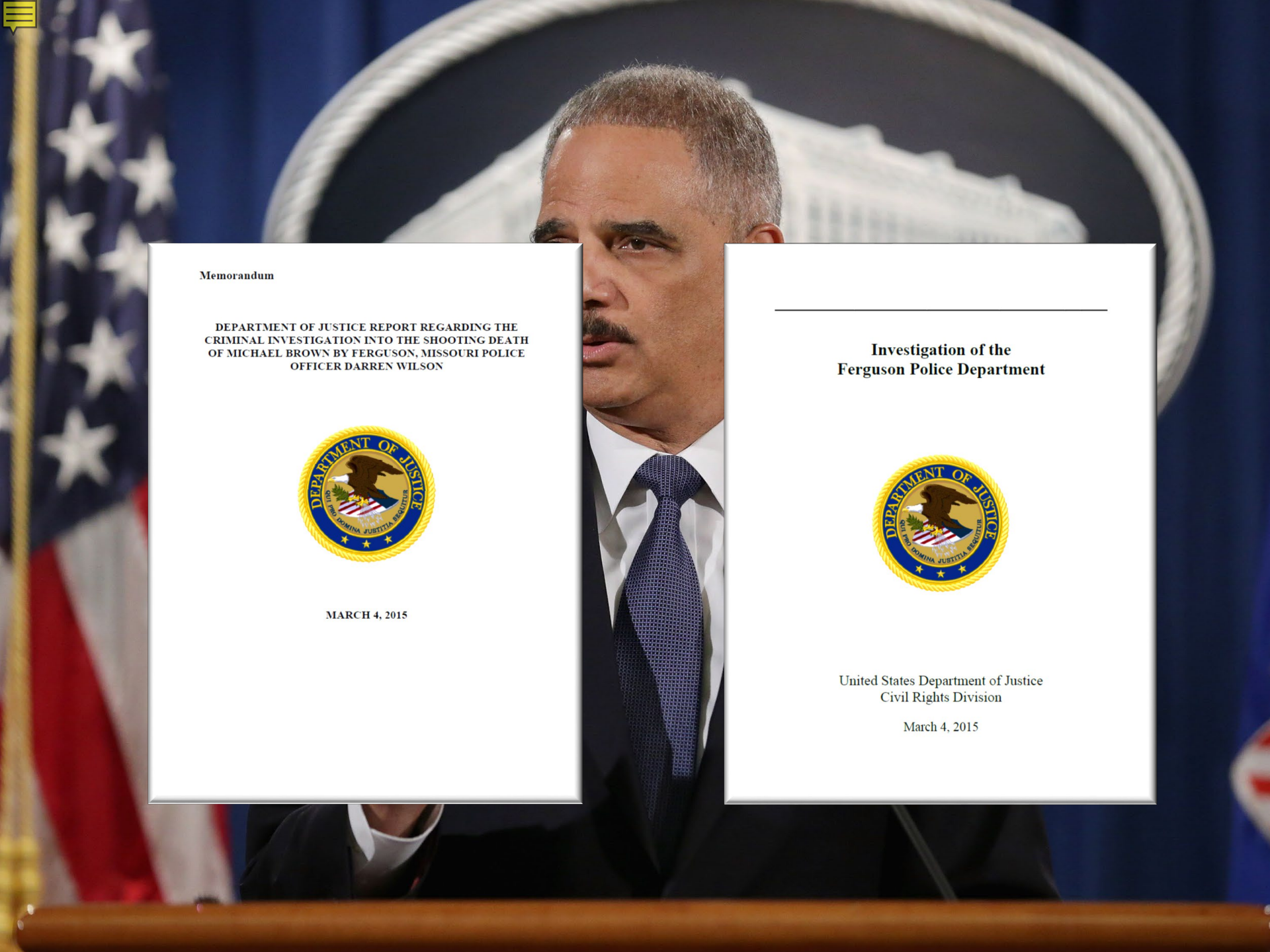
As of May 28, 2020
Source: The Washington Post

statista

The Michael Brown Shooting
August 9, 2014







Memorandum

DEPARTMENT OF JUSTICE REPORT REGARDING THE CRIMINAL INVESTIGATION INTO THE SHOOTING DEATH OF MICHAEL BROWN BY FERGUSON, MISSOURI POLICE OFFICER DARREN WILSON

MARCH 4, 2015

Investigation of the
Ferguson Police Department

United States Department of Justice
Civil Rights Division

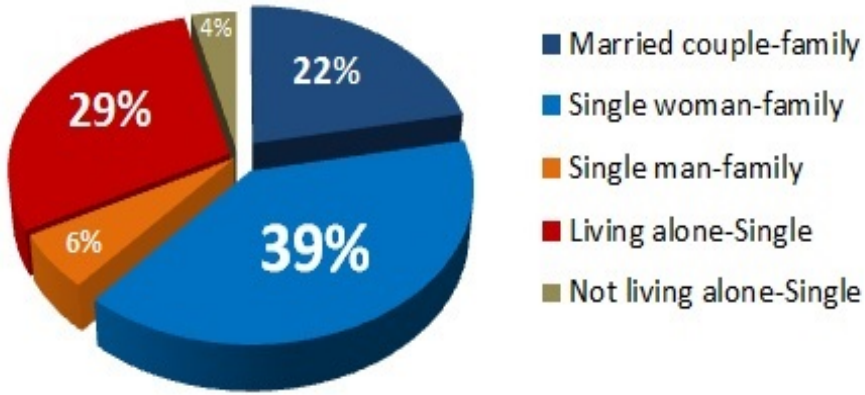
March 4, 2015

Racial Anatomy of Ferguson, MO

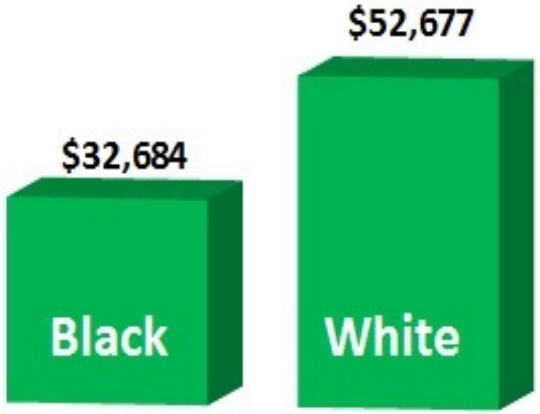
Black Population (percent)

1990	2000	2010
25%	52%	67%

Black Household Make-up



Median Household Income



City Statistics

Government	BLACK	WHITE
City Council members	1	5
Police Officers	3	50

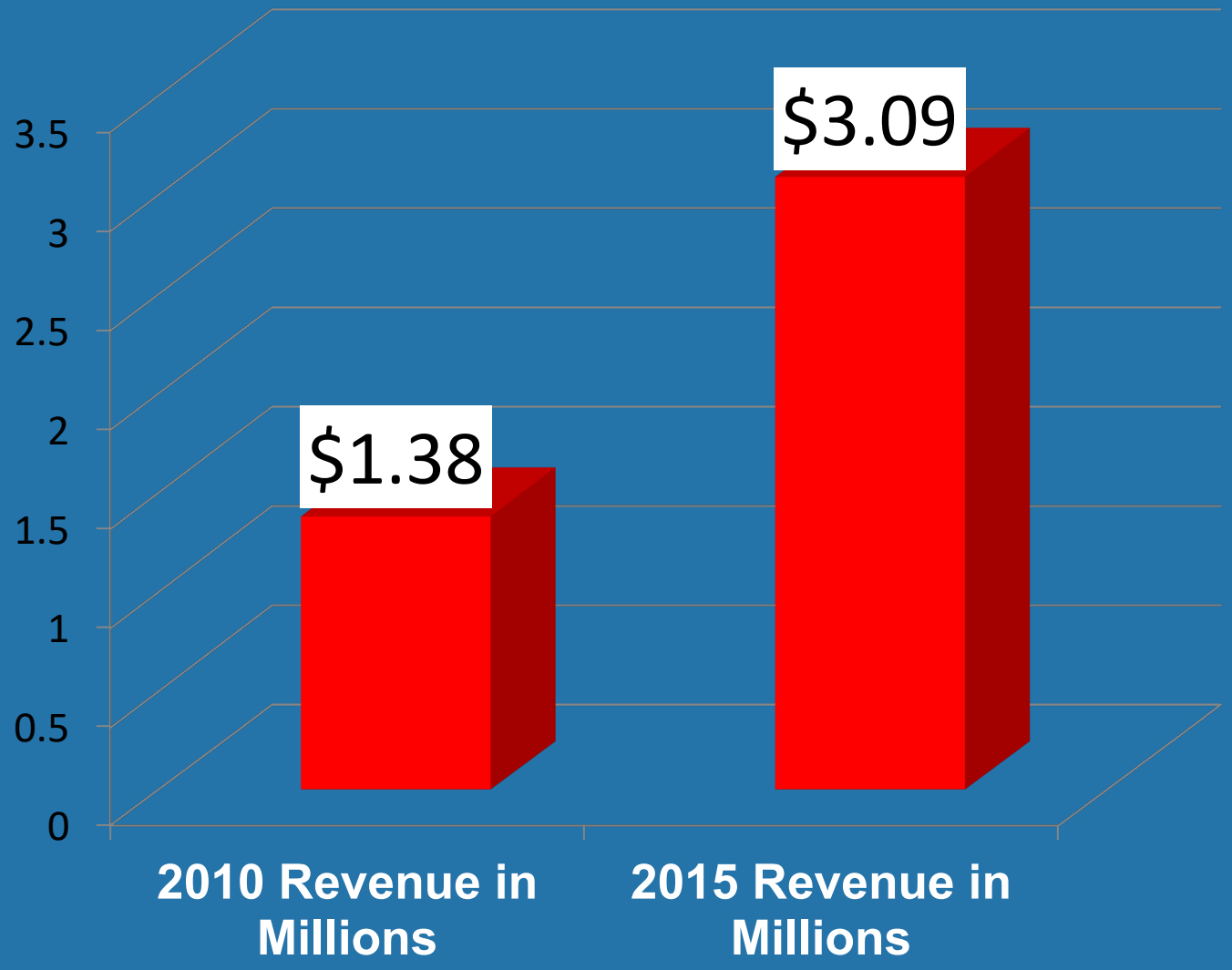
City Demographics		
Percent Female	60%	51%
Homeowner	49%	82%
Rent	51%	18%
Families in Poverty	21%	7%
Never married	51%	27%
Bachelor's Degree or Higher	13%	30%

Employment 16 to 64 years		
Unemployed	12%	5%
Not in labor force	29%	26%
White collar job	46%	66%
Blue collar job	26%	13%
Service job	28%	21%


City of Ferguson
POLICE DEPARTMENT
MUNICIPAL COURT

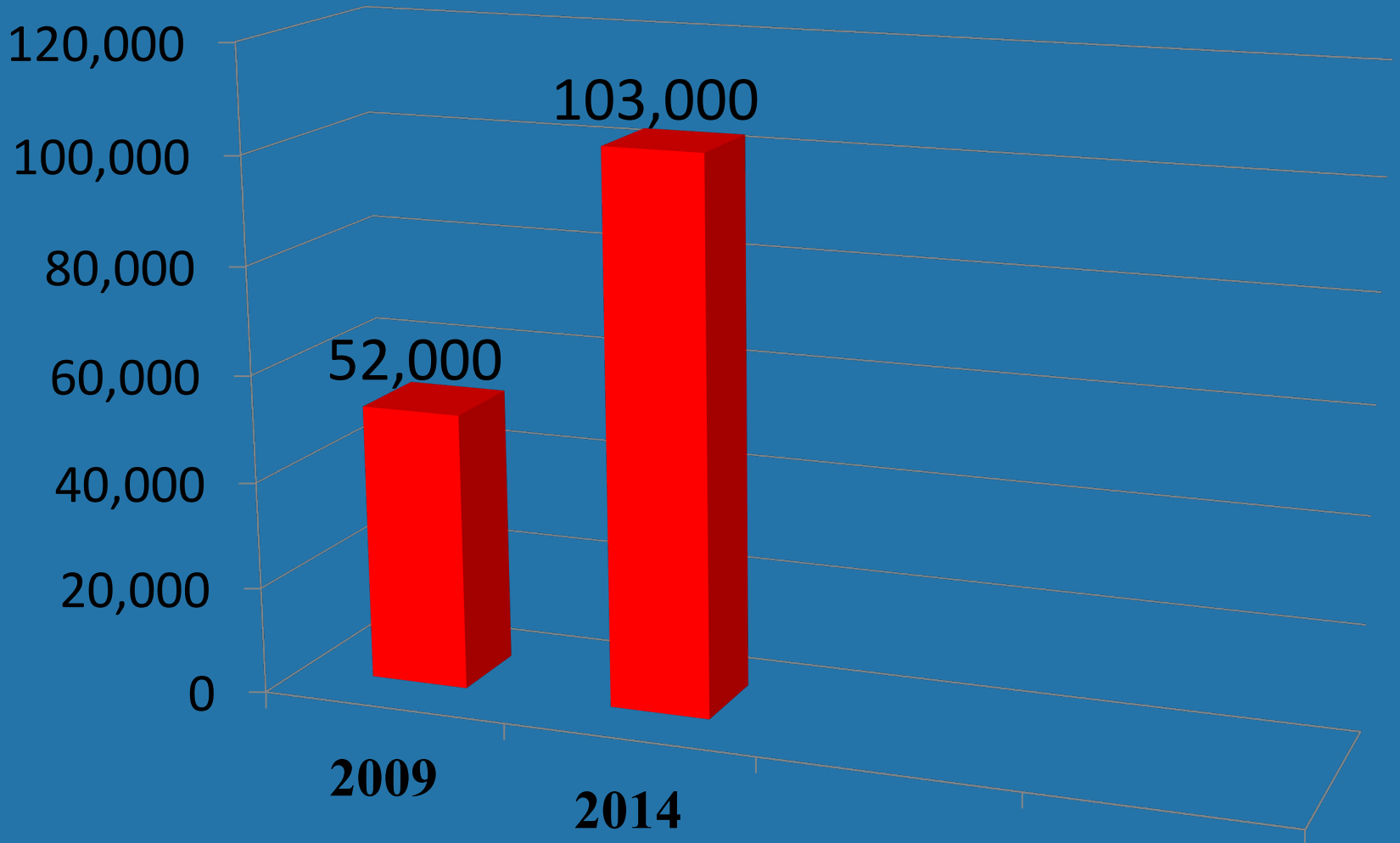
Fines & Fees Exploded

- Tripled between 2010-15
- 24% of City Budget



Municipal Court Cases **DOUBLED**

Traffic & Low-Level Criminal Offenses



Revenue-Driven Policing Practices

E-mail: Finance Director to City Manager:

"Court fees are anticipated to rise about 7.5%. I [asked] the Chief if he thought the PD could deliver a 10% increase. He indicated they could try."

E-mail: Finance Director; City Manager; and Police Chief. . .

"[T]here is nothing to keep us from running this initiative . . . 7 days a week . . . [and] consider starting two shifts per week . . . as soon as possible. ***This would begin to fill the revenue pipeline****"*

Enforcing the Policy. . .

E-mail: FPD Captain to Lieutenants, & Chief:

"For those officers who are not keeping up an acceptable level of productivity . . . ***Failure to perform <u>can</u> result in disciplinary action not just a bad evaluation.***"

"Ferguson's Friends & Family Plan"

Friend: *Would you "fix a parking ticket" for me?*

Clerk: *"It's gone baby."*

Friend: *Was there was anything "she could do to help?"*

Clerk: *"Your ticket of $200 has magically disappeared"*

Just two months later. . .

Friend: *"Can you work your magic again?"*

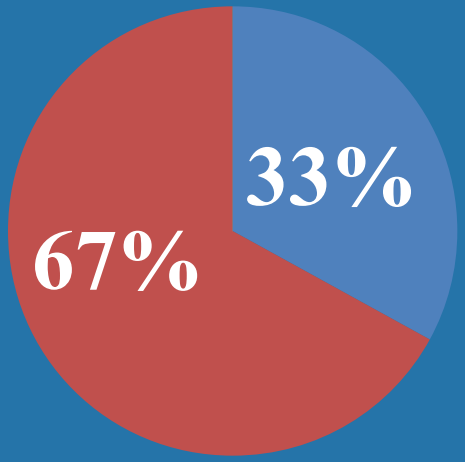
Clerk: *"Yes"*

"Ferguson's Friends & Family Plan" for Judges. . .

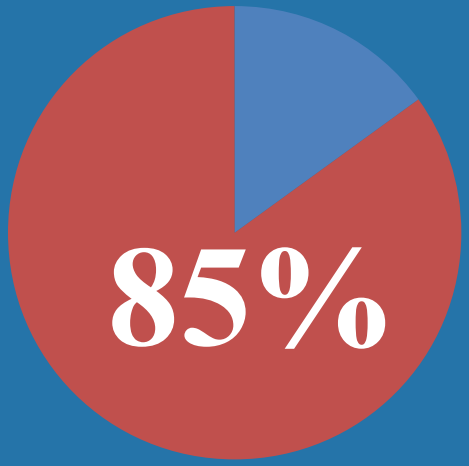
Judge Brockmeyer: *"Pursuant to our conversation, attached please find the red light camera ticket received by the undersigned. I would appreciate it if you would please see to it that this ticket is dismissed."*

Prosecutor: "*It will be taken care of.*"

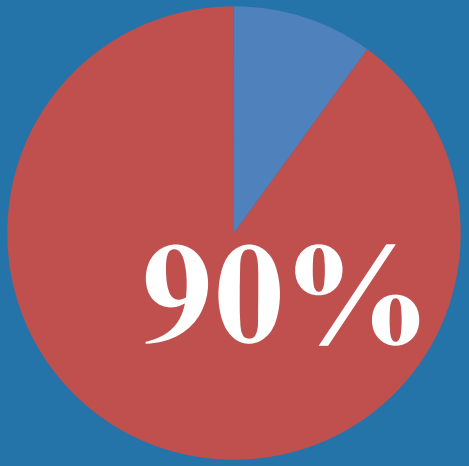
African American Population



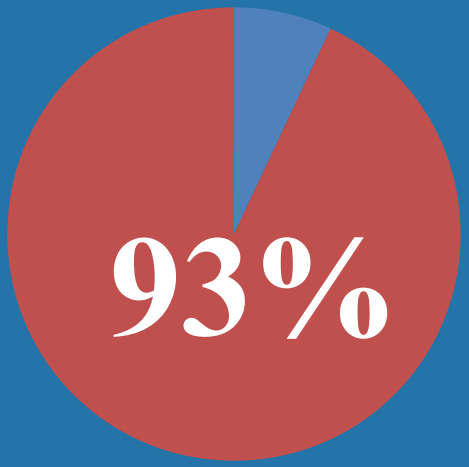
BUT. . .



Vehicle Stops

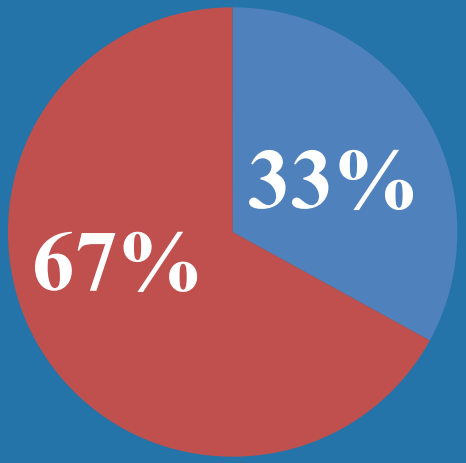


Citations

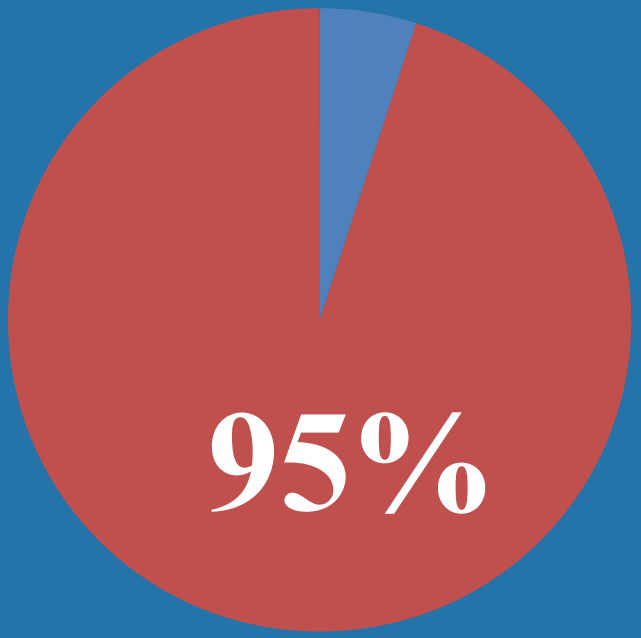


Arrests

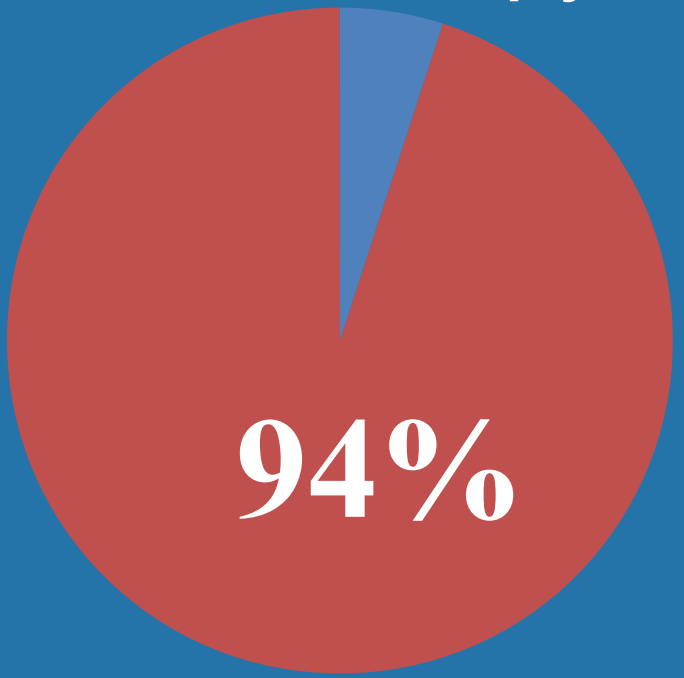
African American Population



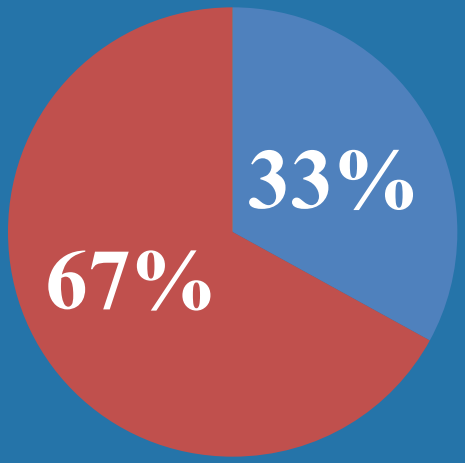
Manner of Walking



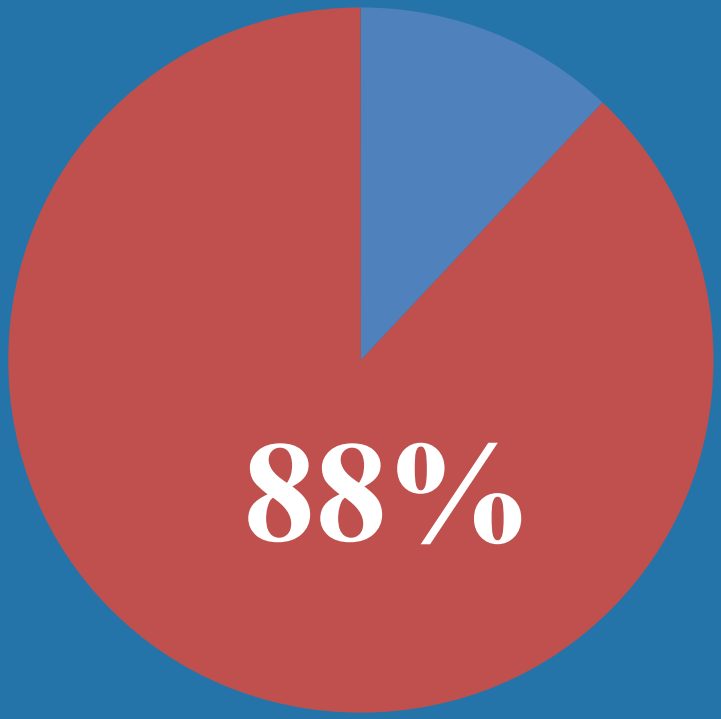
Failure to Comply



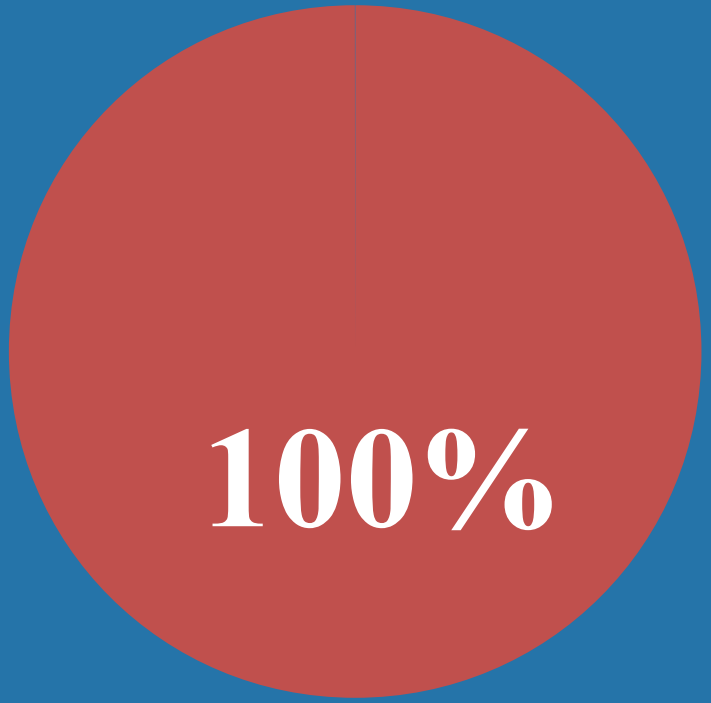
African American Population



Use of Force



Canine Bites




[redacted]
ONE LAW FOR THE RICH,
ONE LAW FOR THE POOR
Community f Choice
FERGUSON
EST. 1894
JONNY HAWKINS


LESSONS
LEARNED

Community Impact

- Undermines Trust with Law Enforcement
- Undermines Trust in Justice System
- Undermines Community Cooperation
- Undermines Public Safety

RECOMMENDATIONS

- **Use of Force Standards Based on Sanctity of Life**
  - Use of Force: Reasonable, Necessary, and Proportionate
  - De-Escalation Training
- **Crises Intervention Teams**
  - Co-Response Teams w/Mental Health Professionals
- **Procedural Fairness/Implicit Bias Training**
- **Officer Wellness Programs**
- **Thorough Screening & Hiring Practices**

RECOMMENDATIONS

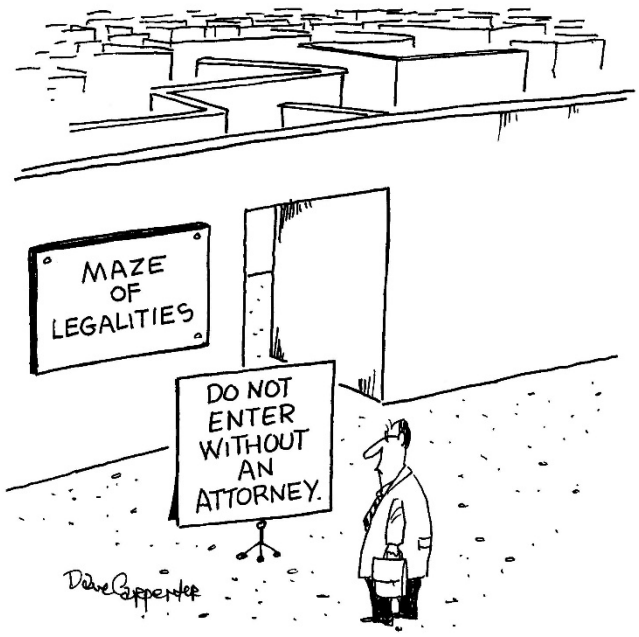
- **Independent, Thorough, and Fair Investigations & Prosecutions**
- **Meaningful & Consistent Disciplinary Systems**
- **Early Intervention Programs**
- **Uniform Body-Camera Policies**
- **National Database on Disciplined/Dismissed Law Enforcement Officers**

Procedural Fairness in the Court System

What people want is an America as good as its promise.

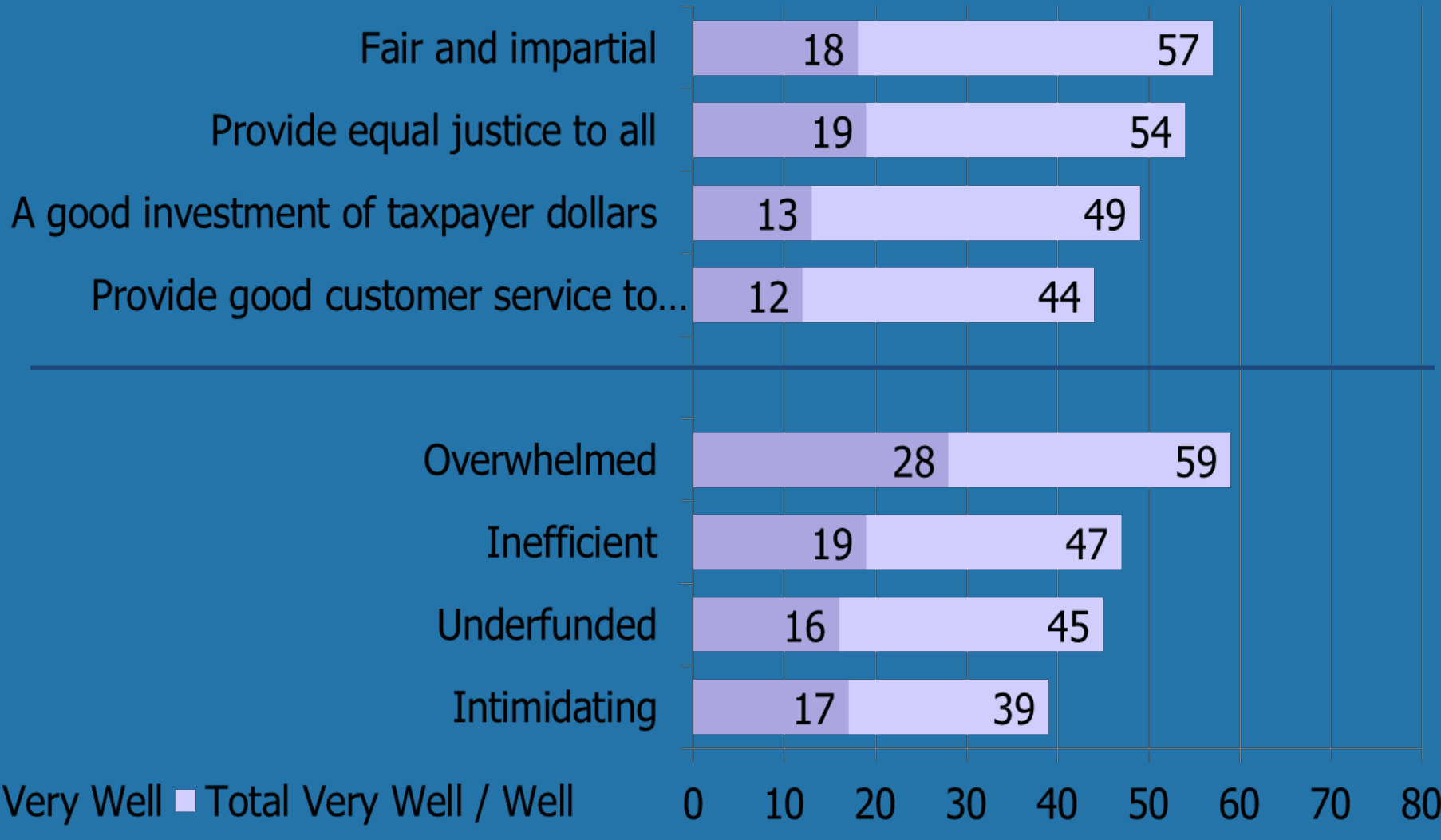
- Barbara Jordan

A court as good as its promise looks at fairness and respect as well as efficiency.

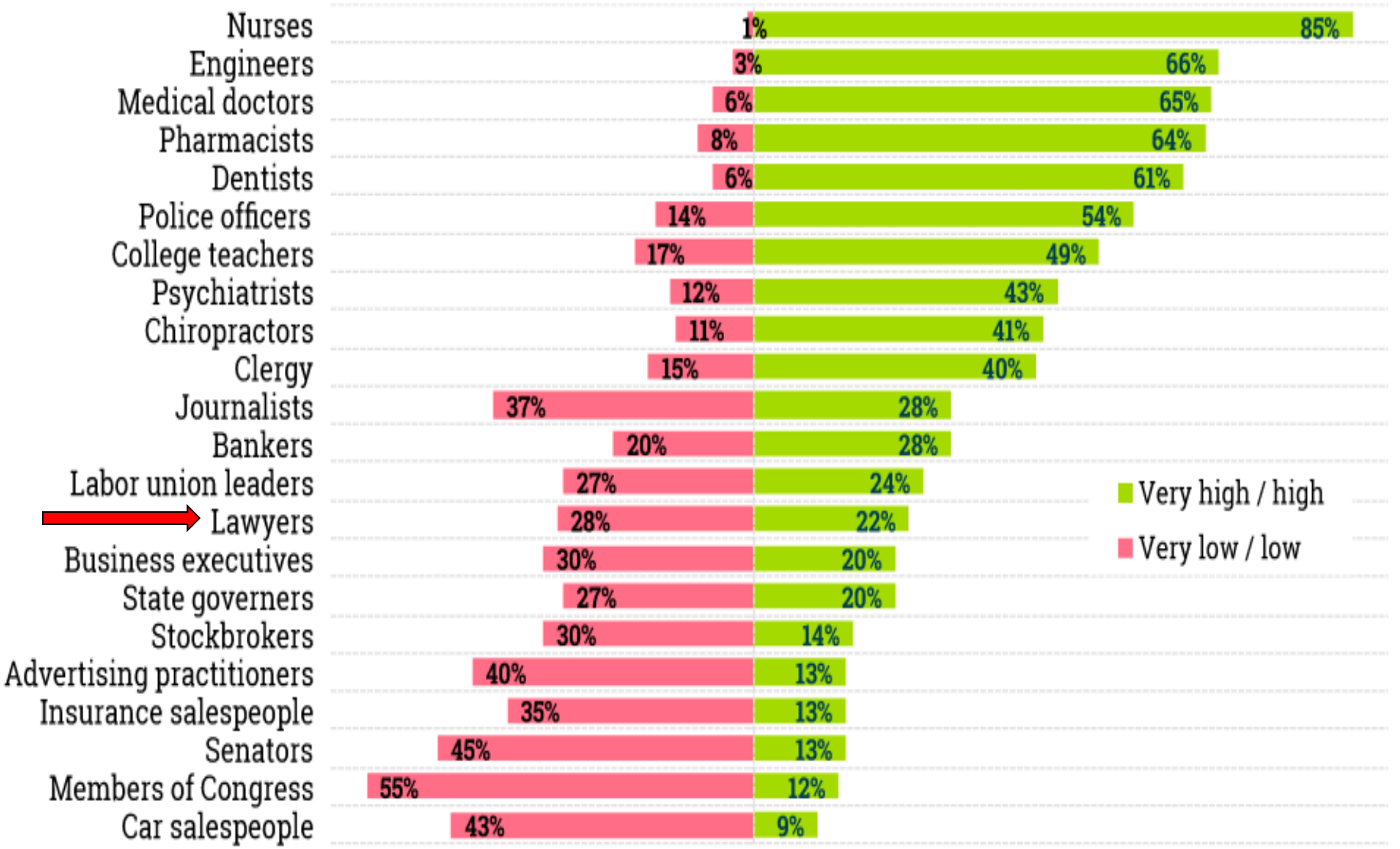

MAZE OF LEGALITIES
DO NOT ENTER WITHOUT AN ATTORNEY.

Key Principles of Court System

Thinking about the (State) court system, please tell me whether each of the following words or phrases describes the state's courts very well, well, not very well, or not well at all.



Views of Honesty & Ethical Standards in Professions

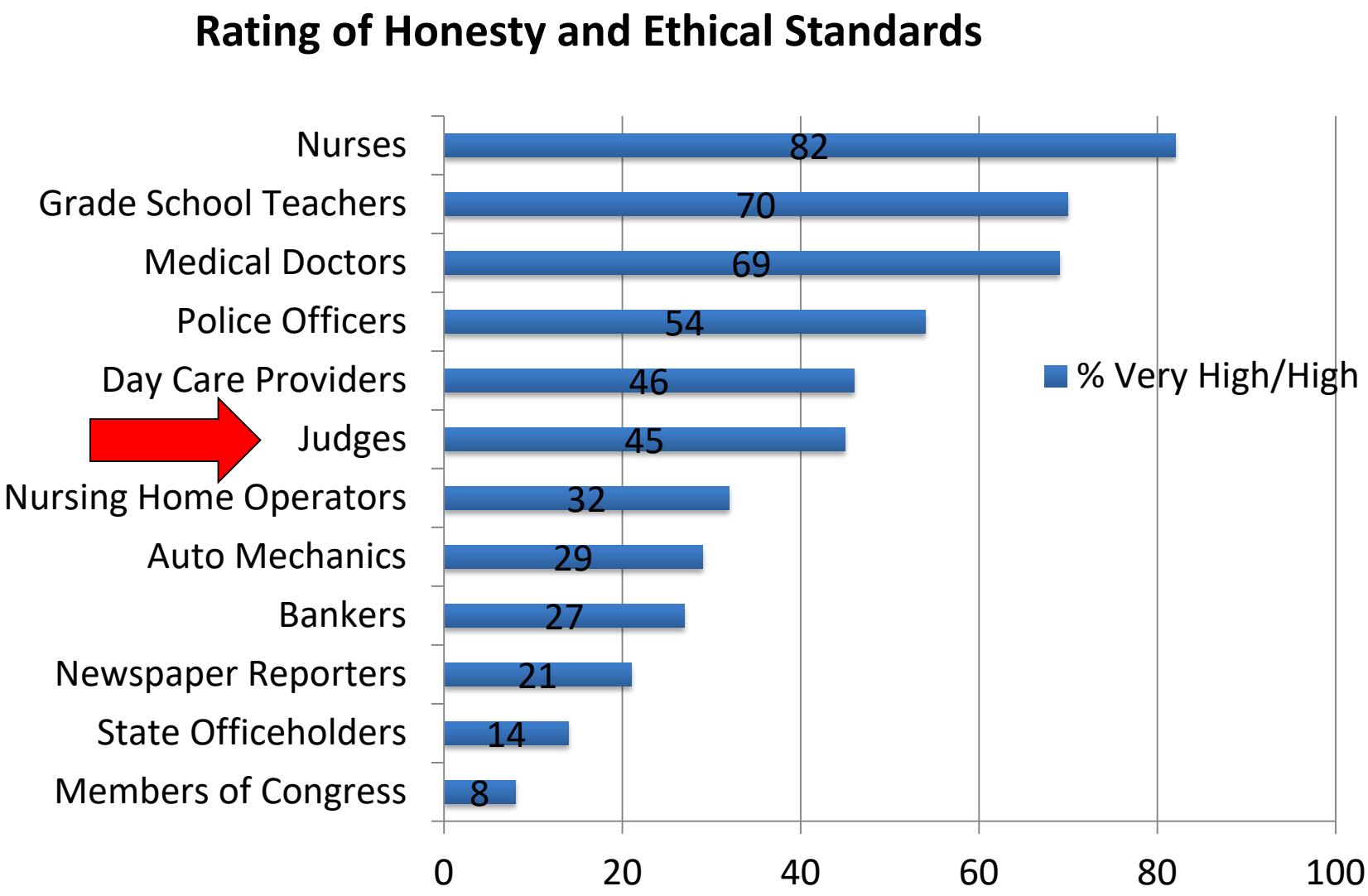


Published on MarketingCharts.com in January 2020 | Data Source: Gallup

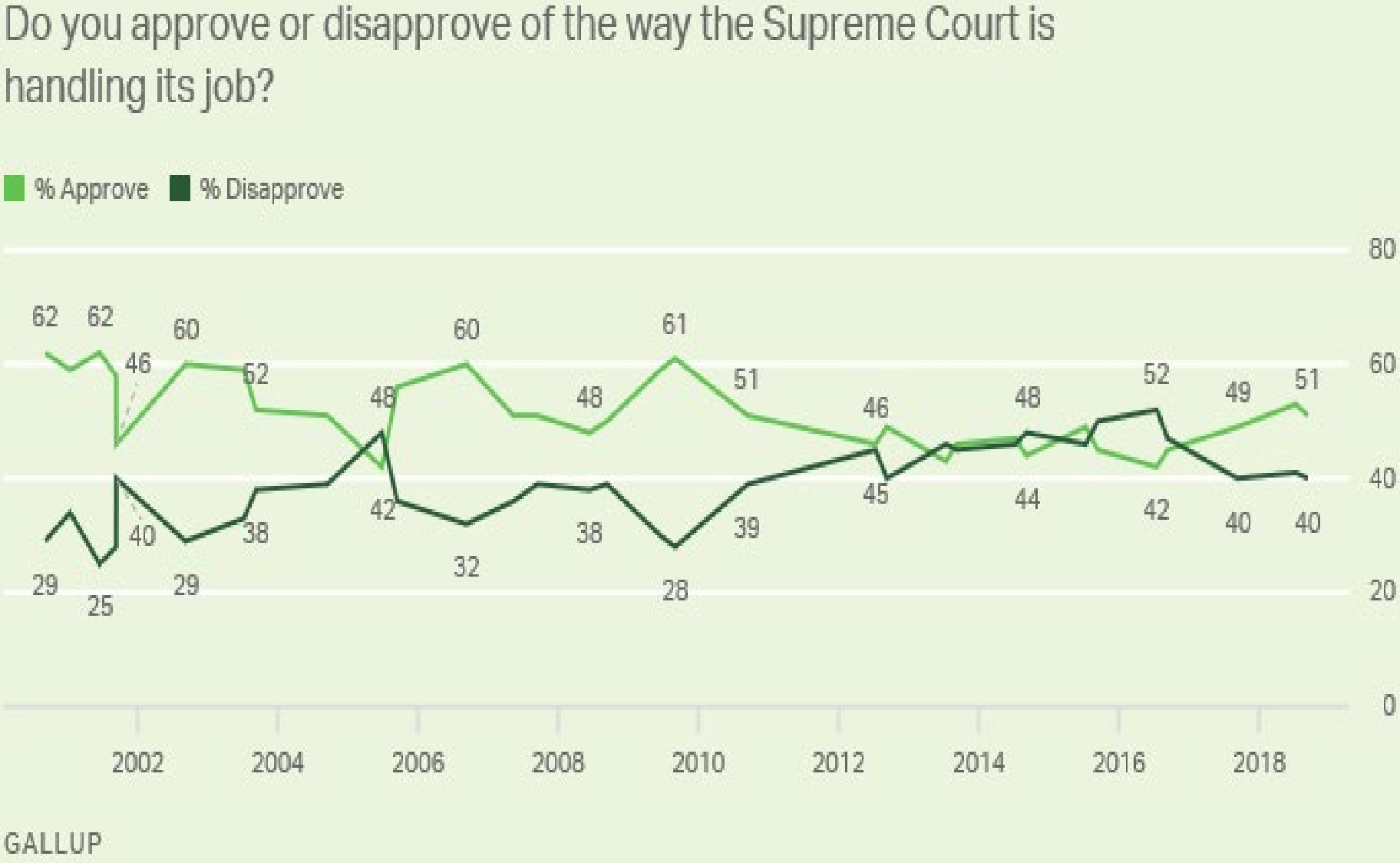
Based on telephone surveys conducted among 1,025 US adults (18+) | Remaining respondents answered "Average" or "No opinion"

Q: "Please tell me how you would rate the honesty and ethical standards of people in these different fields - very high, high, average, low, or very low?"

Please tell me how you would rate the honesty and ethical standards of people in these different fields?



Gallup, Dec. 2013



U.S. Supreme Court Approval

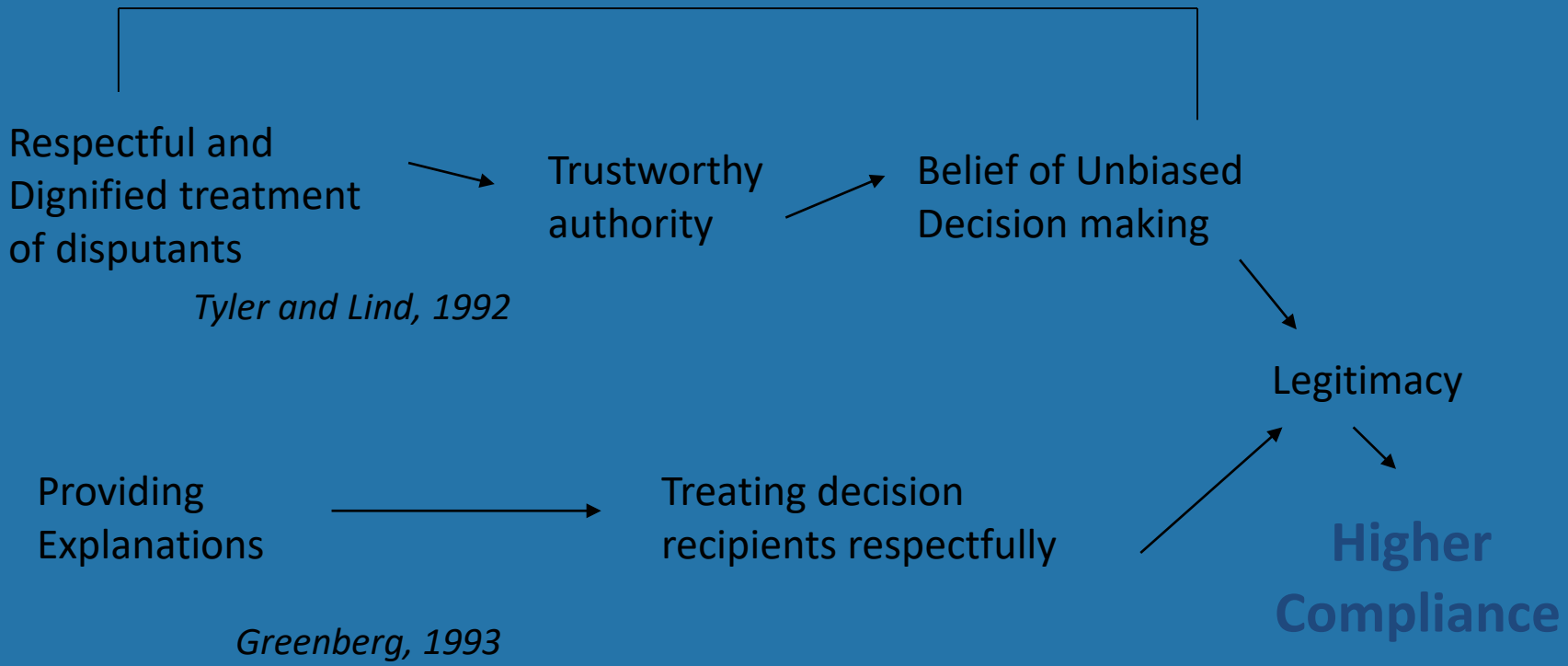
How people are treated is important – even more important than the outcome of their case.

Perceptions of Fairness in the Justice System

- Outcome favorability – Did I win?
- Outcome fairness – Did I get what I deserve?
- **Procedural fairness – Was my case handled through fair procedures?**

Procedural Fairness

Aspects of Procedural Fairness



Key Components of Procedural Fairness

- Voice
- Neutrality
- Respect
- Trust



Procedural Fairness & Equity Principles in the Court System

- Engage Professionally & Respectfully with Court Customers/Parties
- Promote Procedural Fairness & Equity Principles in your Office & with Colleagues
- Address Instances of Bias & Injustice
- Raise Awareness Regarding Procedural Fairness & Equity
- Use Plain Language in Documents & Interactions
- Demystify the Court System for Court Users
- Practice Patience & Understanding

"The Arc of the Moral Universe Is Long, but It Bends Toward Justice"

— Dr. Martin Luther King, Jr.



Lessons Learned from Ferguson:

Race, Trust & Fairness in the Justice System



Judge Mark Kappelhoff
Hennepin County District Court