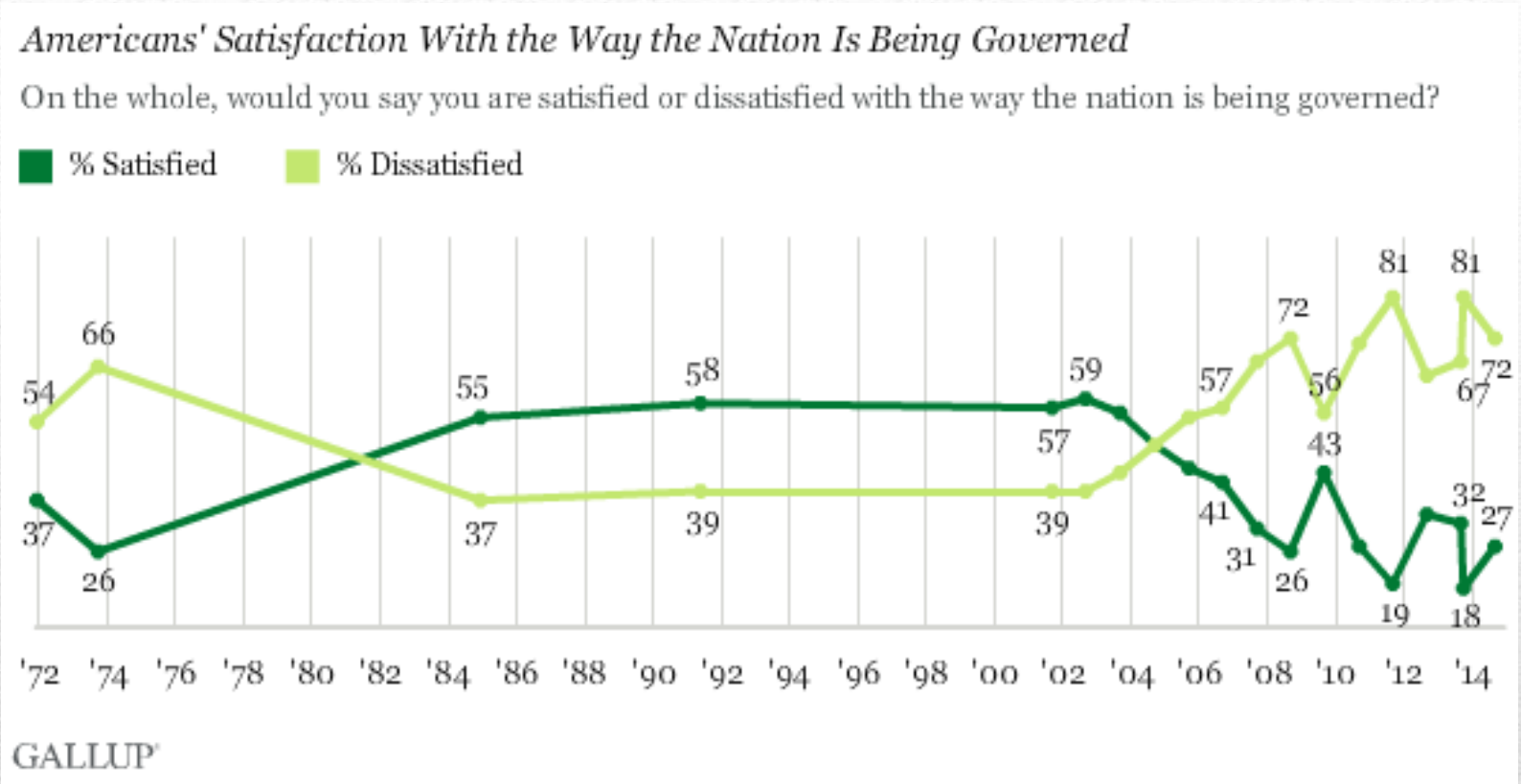
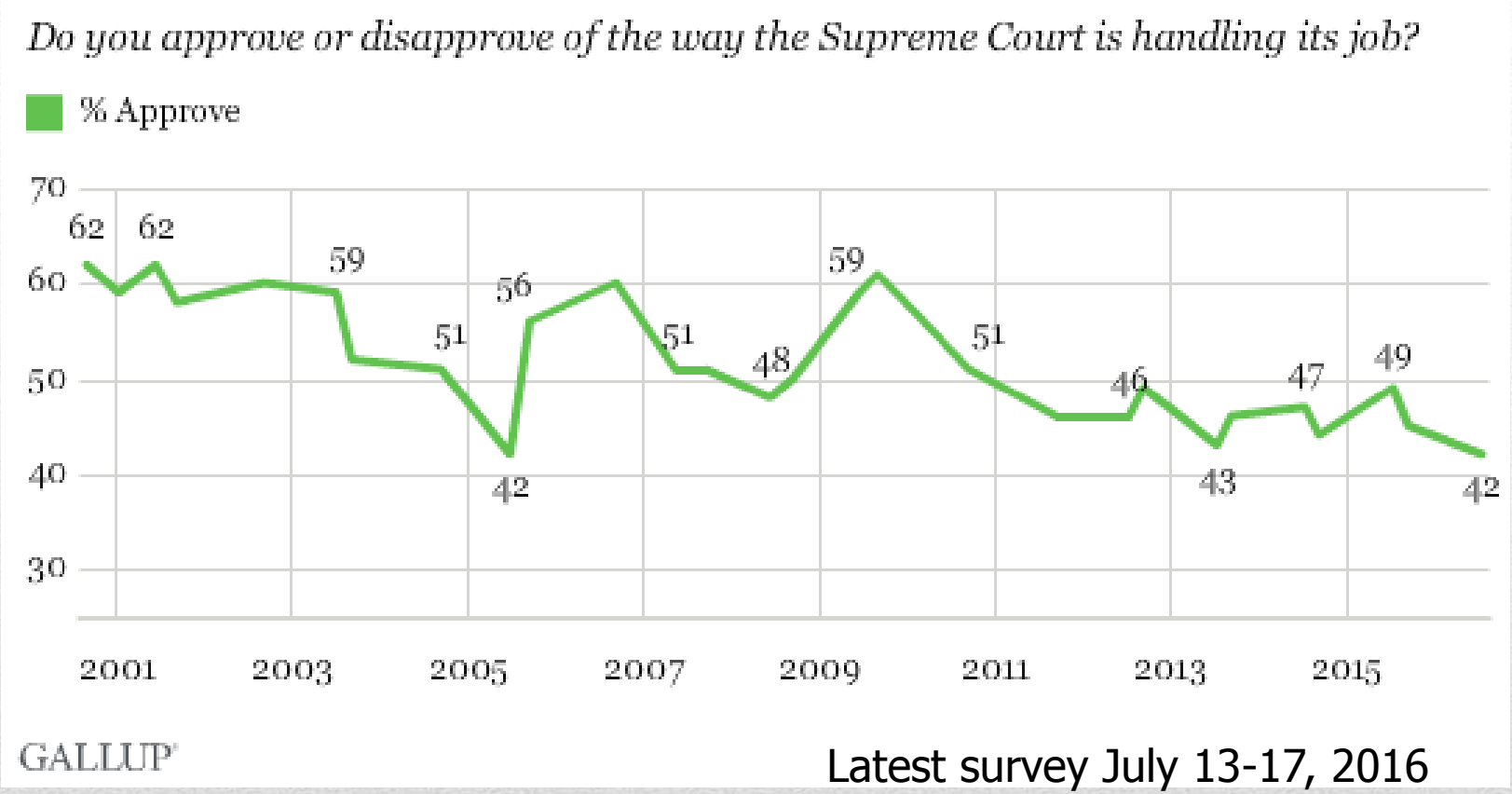
Procedural Fairness (Procedural Justice) in Court

Steve Leben ● Oct. 18, 2016



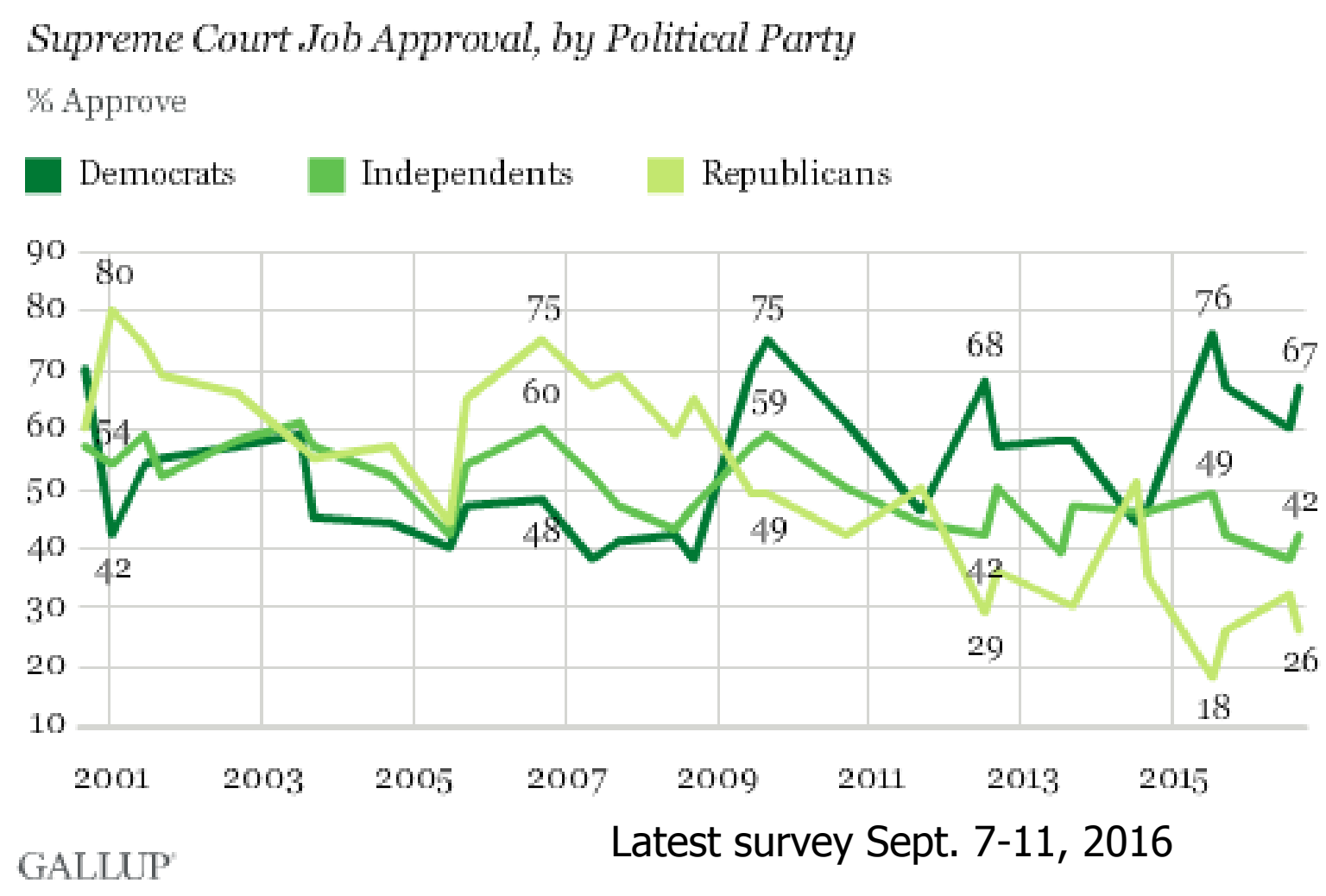
Current Climate: Distrust

Oct. 2013 no. was lowest approval ever on this question (since 1971).



Latest survey July 13-17, 2016

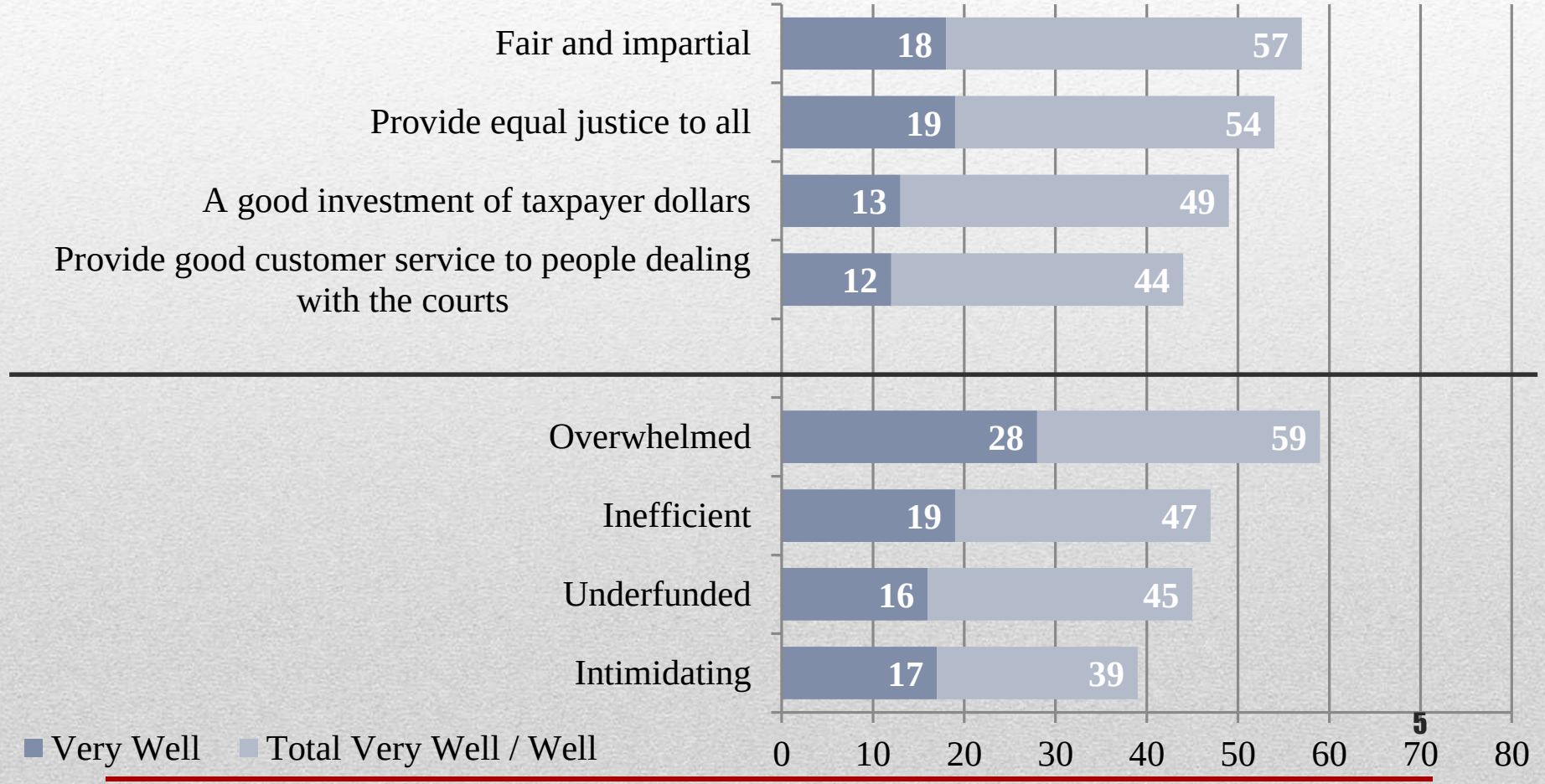
U.S. Supreme Court Approval



A partisan divide since *Bush v. Gore*

Weak Numbers on Key Principles of the Court System

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



Source: NCSC/Justice at Stake survey, June 2012 (MOE ± 3%).

In your opinion, to what extent do you think a judge's ruling is influenced by his or her personal political views?

Great extent	30%
Moderate extent	45%

Source: Princeton Survey Research Associates International Poll for the Annenberg Public Policy Center, 2007 Survey. MOE ± 3.0%.

www.annenbergpublicpolicycenter.org (http://goo.gl/dyjEjn)

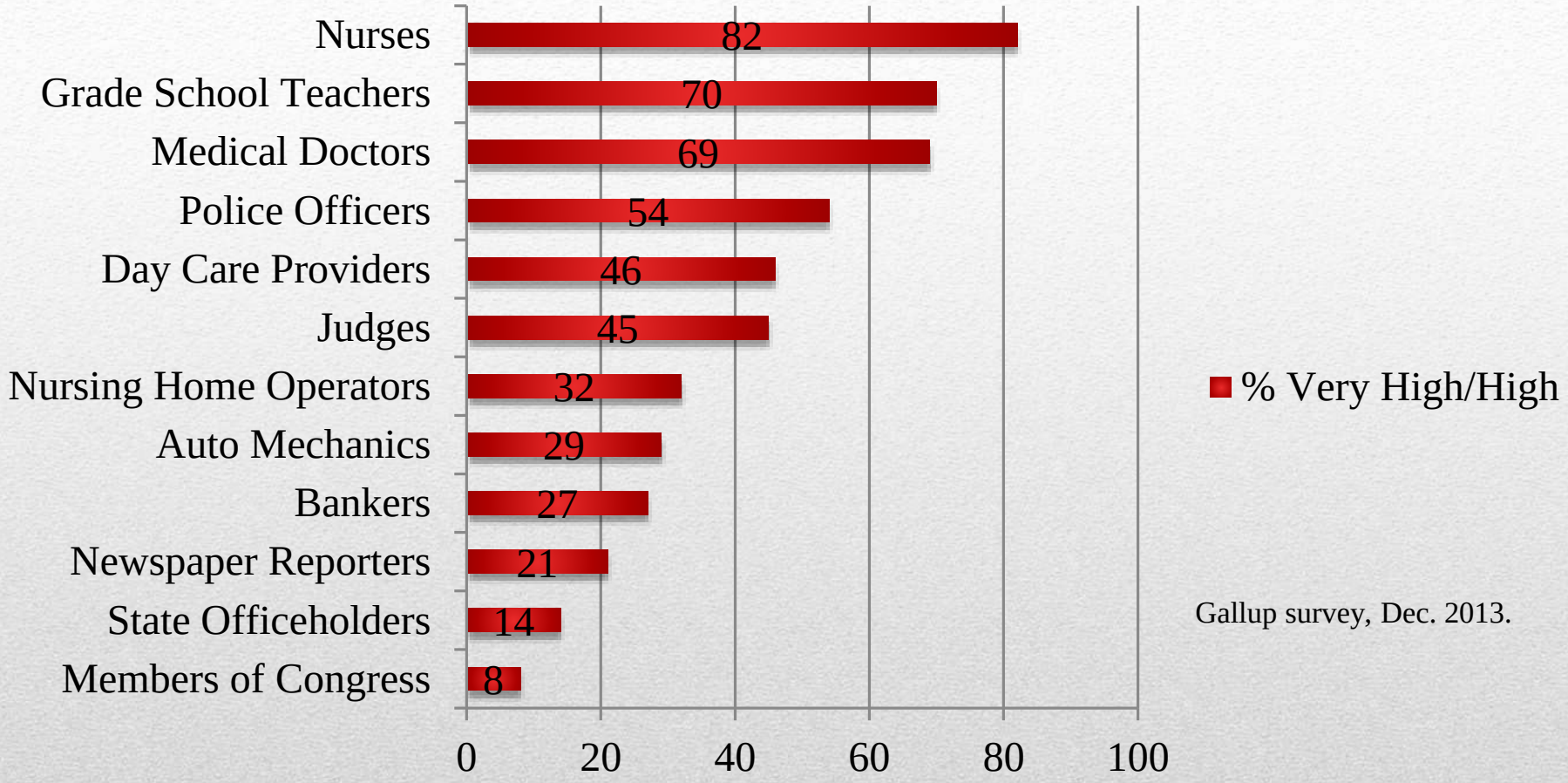
In general, to what extent do you think a desire to be promoted to the next higher court would affect a judge's ability to be fair and impartial when deciding a case?

Great extent	35%
Moderate extent	40%

Source: Princeton Survey Research Associates International Poll for the Annenberg Public Policy Center, 2006 Survey. MOE ± 3.0%.

www.annenbergpublicpolicycenter.org (http://goo.gl/SK49bl)

Rating of Honesty and Ethical Standards



Gallup survey, Dec. 2013.

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?

There is a lack of trust in our public institutions that, although not focused specifically on courts, is troublesome.

Our legitimacy is not assumed by many who come before us.
Trust must be earned in each encounter.

PROCEDURAL FAIRNESS

Factors that could matter to perceptions of fairness

- 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

Respectful and Dignified treatment of disputants

Tyler and Lind, 1992

Trustworthy authority

Belief of Unbiased Decision making

Legitimacy

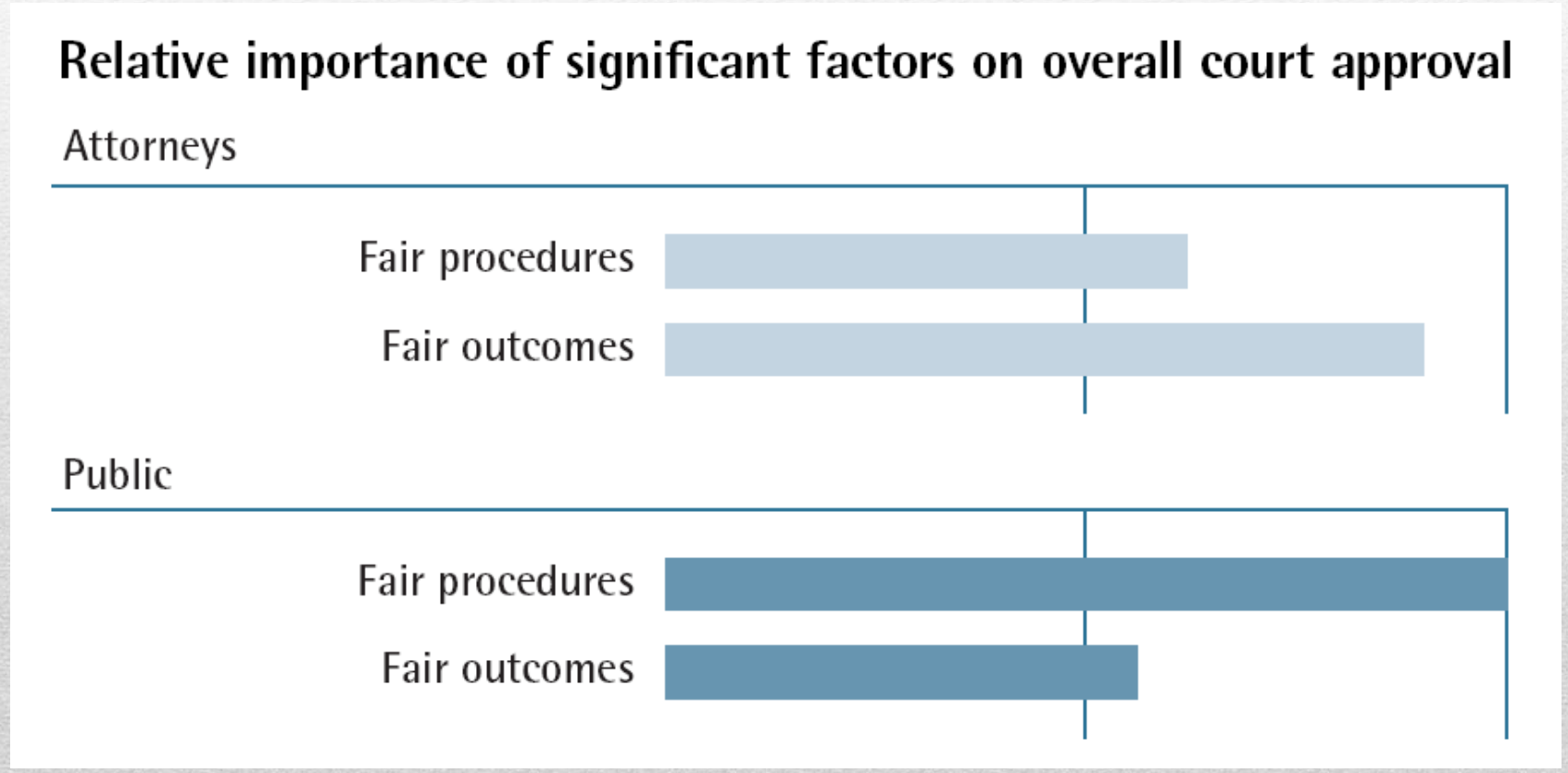
Providing Explanations

Greenberg, 1993

Treating decision recipients respectfully

Higher Compliance

Lawyers vs. the Public: Predictors of Confidence

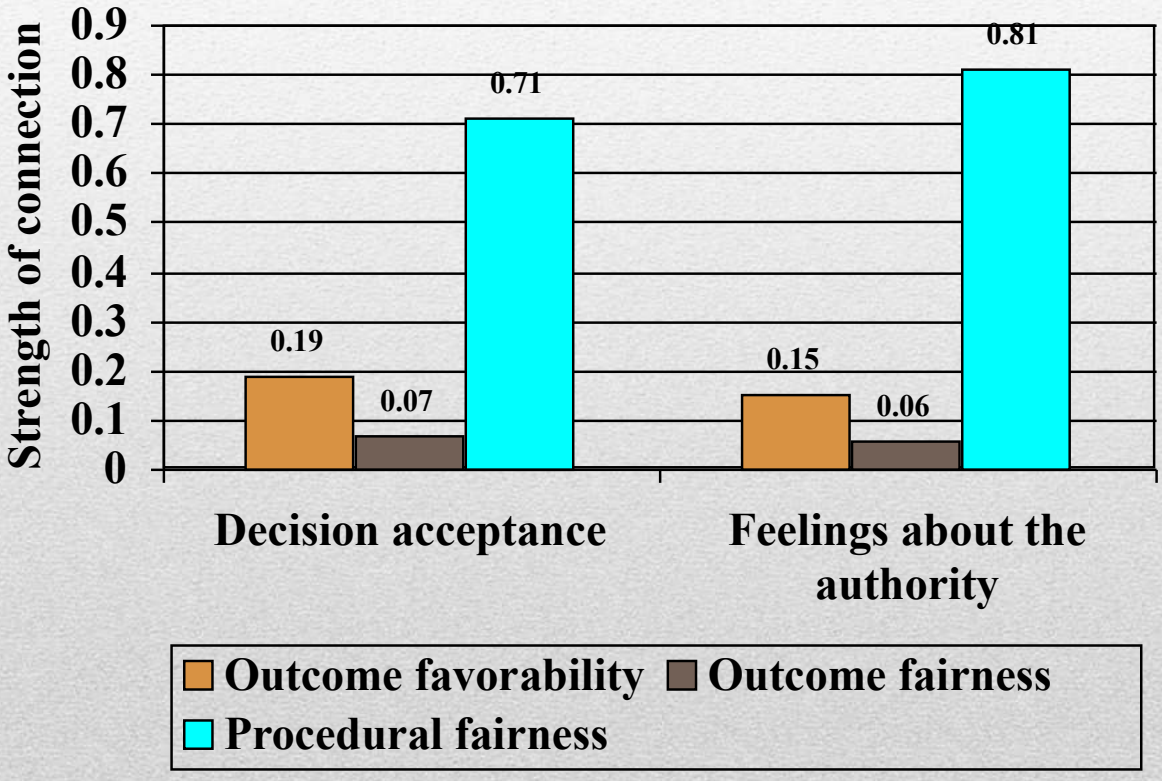


Source: 2005 California survey.

- Voice
- Neutrality
- Respect
- Trust (trustworthy authorities)

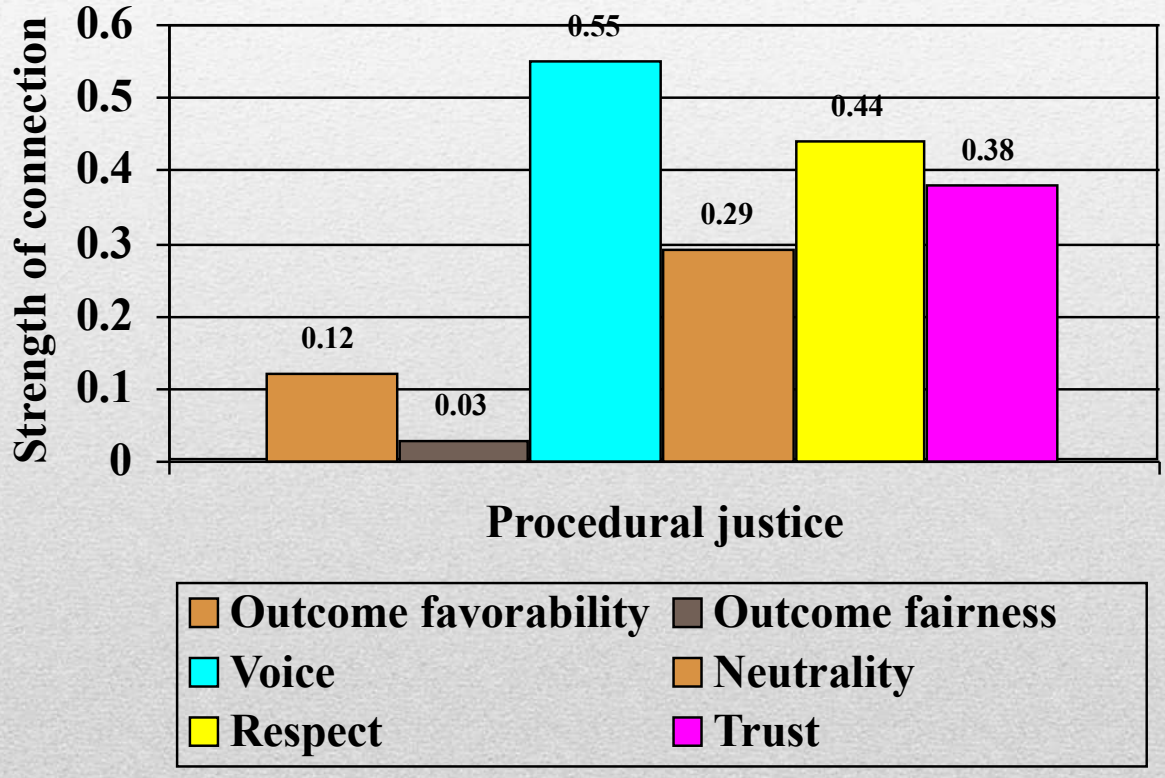
Four key components of procedural fairness

Why do people accept court decisions?



The Meaning of Procedural Fairness

California study: respondents with personal experience with courts, strength of connection to court approval.



Procedural Fairness in a Nutshell

- Was the person listened to?
- Were litigants treated with respect?
- Do they understand:
  - What the decision was?
  - Why the decision was made?
    - Neutral principles

Observable positive behaviors

- The court started on time.
- The judge apologized for any delay in the starting of court.
- The judge or other court staff clearly explained court etiquette and rules at the beginning of the court session.
- The judge provided some overview of what might happen during various court appearances and how decisions would be made.
- The judge assured the defendants that all of the evidence would be considered before making any decision.
- The judge made eye contact with the audience upon entering the court.
- The judge introduced himself/herself by name.
- The judge thanked audience members for their on-time appearance.
- The judge acknowledged the experience of defendants while waiting for their cases to be called (*e.g.*, having to sit quietly, waiting for a potentially long period, etc.).
  - Source: CCI, *Improving Courtroom Communication: A Procedural Justice Experiment in Milwaukee* (Jan. 2014).


ALASKA COURT SYSTEM
STATE OF ALASKA
PLEDGE OF FAIRNESS
The fundamental mission of the Alaska Court System is to provide a fair and impartial forum for the resolution of disputes, according to the rule of law. Fairness includes the opportunity to be heard, the chance to have the court process explained, and the right to be treated with respect. The judges and staff of the Alaska Court System therefore make the following pledge to each litigant, defendant, victim, witness, juror, and person involved in a court proceeding:
We will LISTEN to you
We will respond to your QUESTIONS about court procedure
We will treat you with RESPECT

Proceduralfairness.org

Proceduralfairnessblog.org

For More on Procedural Fairness . . .