



QUATTRONE CENTER

for the Fair Administration of Justice

**CONVICTION
INTEGRITY UNITS**
WHAT, WHY, HOW



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**A NATIONAL RESEARCH AND POLICY HUB USING DATA TO
CATALYZE LONG-TERM STRUCTURAL IMPROVEMENTS TO
THE CRIMINAL JUSTICE SYSTEM.**

THE PROBLEM: PREVENTING ERRORS* IN CRIMINAL JUSTICE

ERROR: ANY OUTCOME NOT INTENDED / NOT DESIRED BY THE SYSTEM.



**COLD
CASES**



**WRONGFUL
CONVICTIONS**



**OFFICER-INVOLVED
SHOOTINGS**



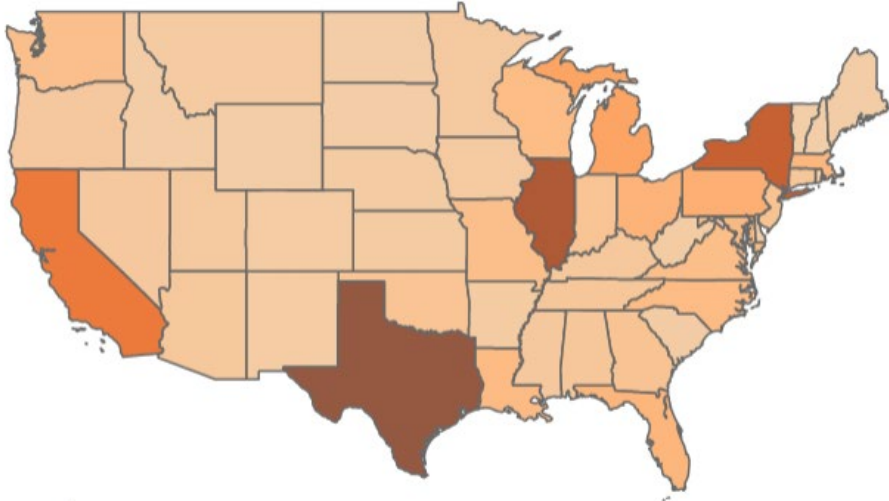
**DEATHS
IN CUSTODY**

SENTINEL EVENT REVIEWS IN CRIMINAL JUSTICE

A CONFIDENTIAL, NON-DISCIPLINARY PROCESS TO IDENTIFY AND ADDRESS
THE CONTRIBUTING CAUSES OF CRIMINAL JUSTICE ERRORS.



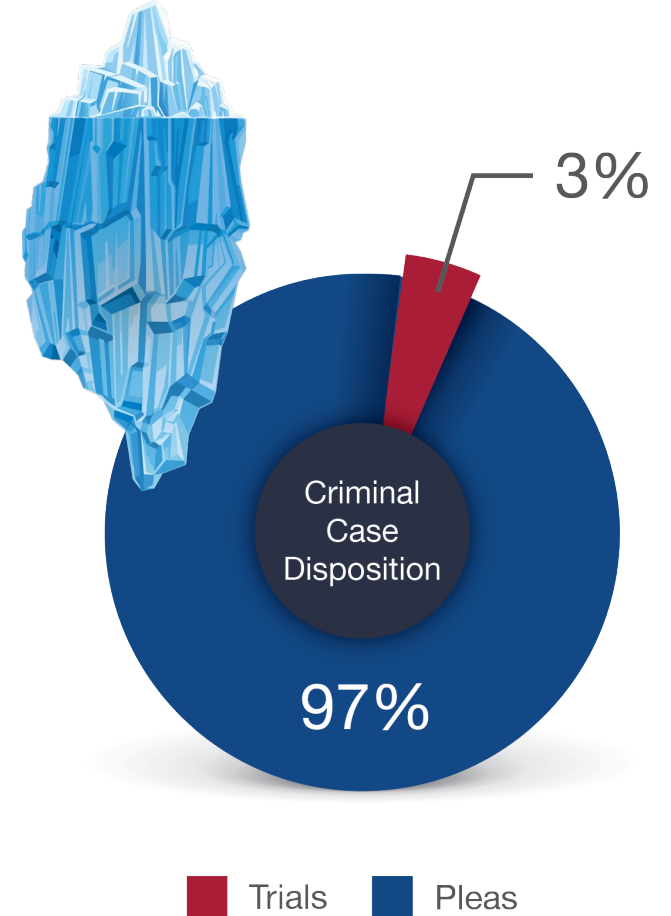
WRONGFUL CONVICTIONS: MORE FREQUENT THAN DESIRED



USA
2,678
Exonerations
24,150
Years of
Incarceration

OHIO

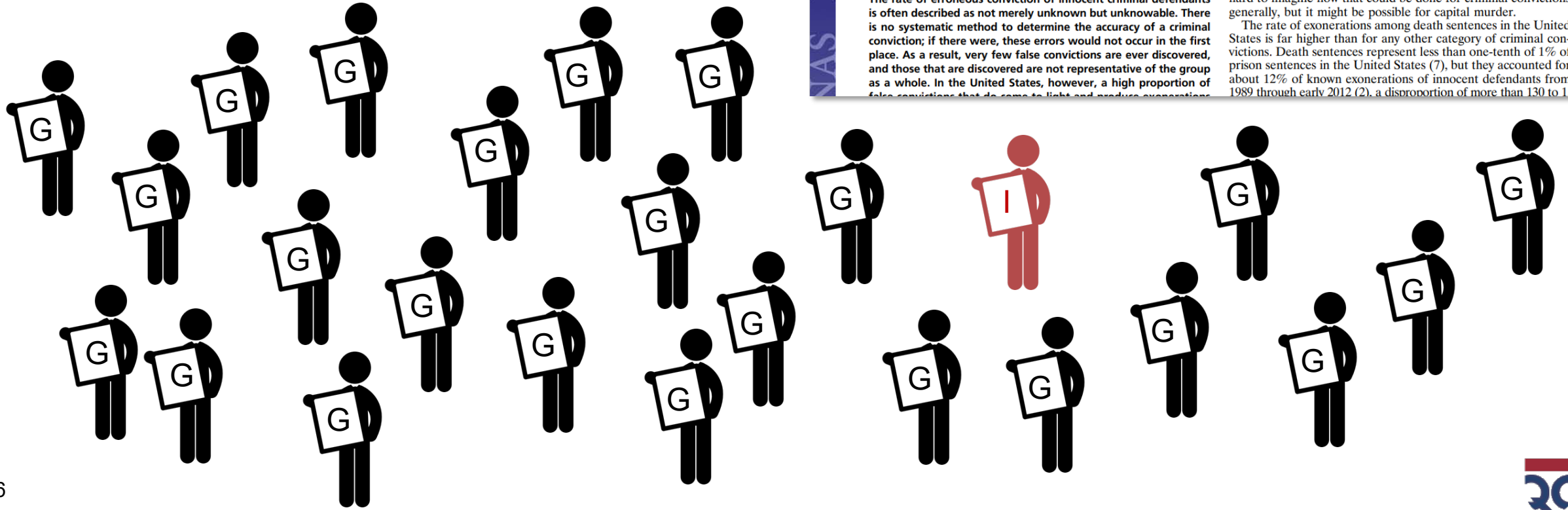
84
Exonerations
988
Years of
Incarceration



WRONGFUL CONVICTIONS IN DEATH PENALTY CASES

4%

of all capital cases are likely wrongful convictions
BUT WHICH 4%?
(107 Americans, 5 Ohioans)



Rate of false conviction of criminal defendants who are sentenced to death

Samuel R. Gross^{a,1}, Barbara O'Brien^b, Chen Hu^c, and Edward H. Kennedy^d

^aUniversity of Michigan Law School, Ann Arbor, MI 49109; ^bMichigan State University College of Law, East Lansing, MI 48824; ^cAmerican College of Radiology Clinical Research Center, Philadelphia, PA 19103; and ^dDepartment of Biostatistics and Epidemiology, University of Pennsylvania School of Medicine, Philadelphia, PA 19104

Edited* by Lee D. Ross, Stanford University, Stanford, CA, and approved March 25, 2014 (received for review April 5, 2013)

The rate of erroneous conviction of innocent criminal defendants is often described as not merely unknown but unknowable. There is no systematic method to determine the accuracy of a criminal conviction; if there were, these errors would not occur in the first place. As a result, very few false convictions are ever discovered, and those that are discovered are not representative of the group as a whole. In the United States, however, a high proportion of false convictions that do come to light and produce exonerations

hard to imagine how that could be done for criminal convictions generally, but it might be possible for capital murder.

The rate of exonerations among death sentences in the United States is far higher than for any other category of criminal convictions. Death sentences represent less than one-tenth of 1% of prison sentences in the United States (7), but they accounted for about 12% of known exonerations of innocent defendants from 1989 through early 2012 (2), a disproportion of more than 130 to 1.



PNAS



THE KEY QUESTION

IF NO ONE WANTS WRONGFUL CONVICTIONS TO HAPPEN . . .

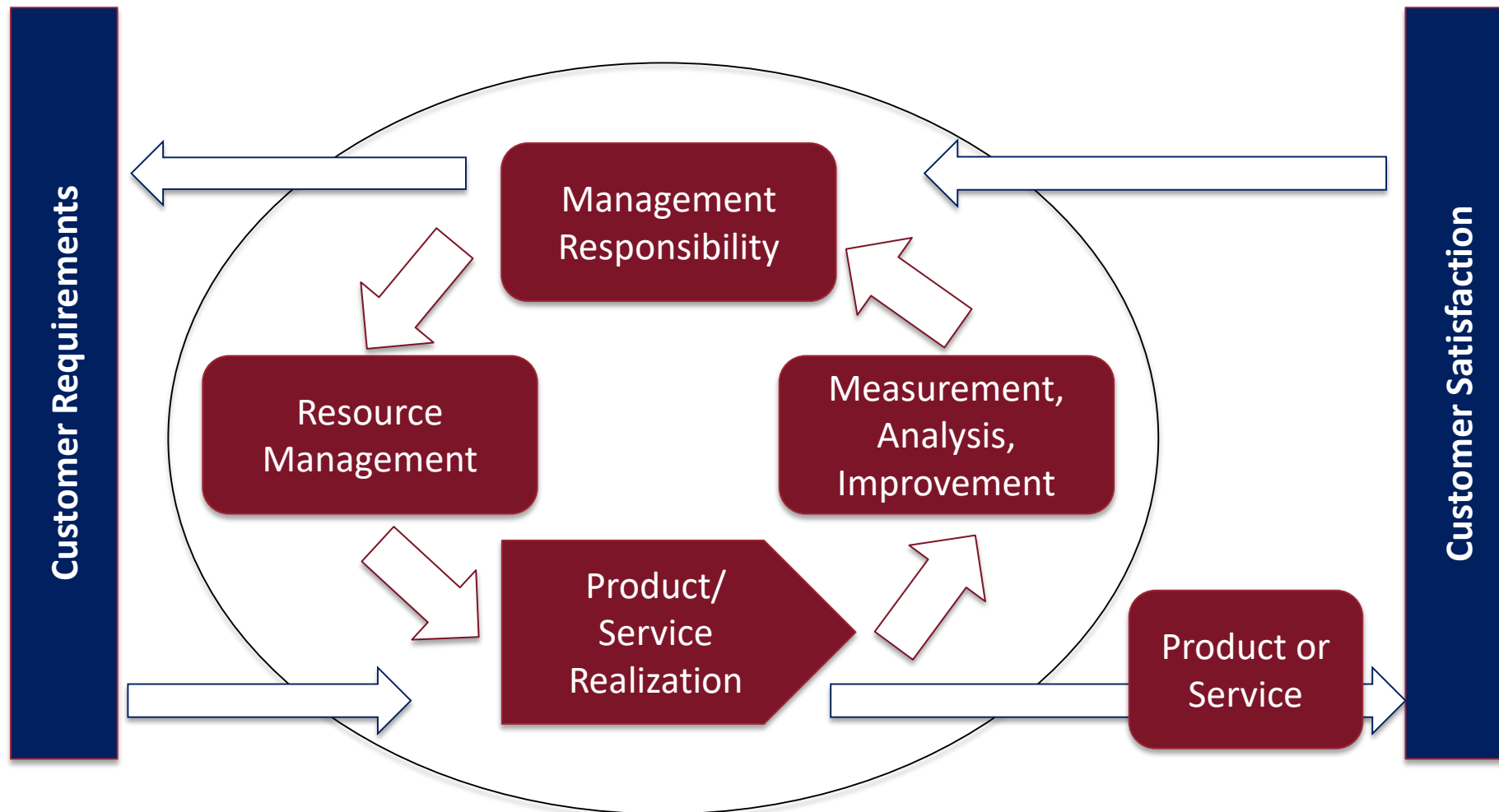
Then why do they keep happening?



HOW DO OTHER COMPLEX SYSTEMS PREVENT ERRORS?

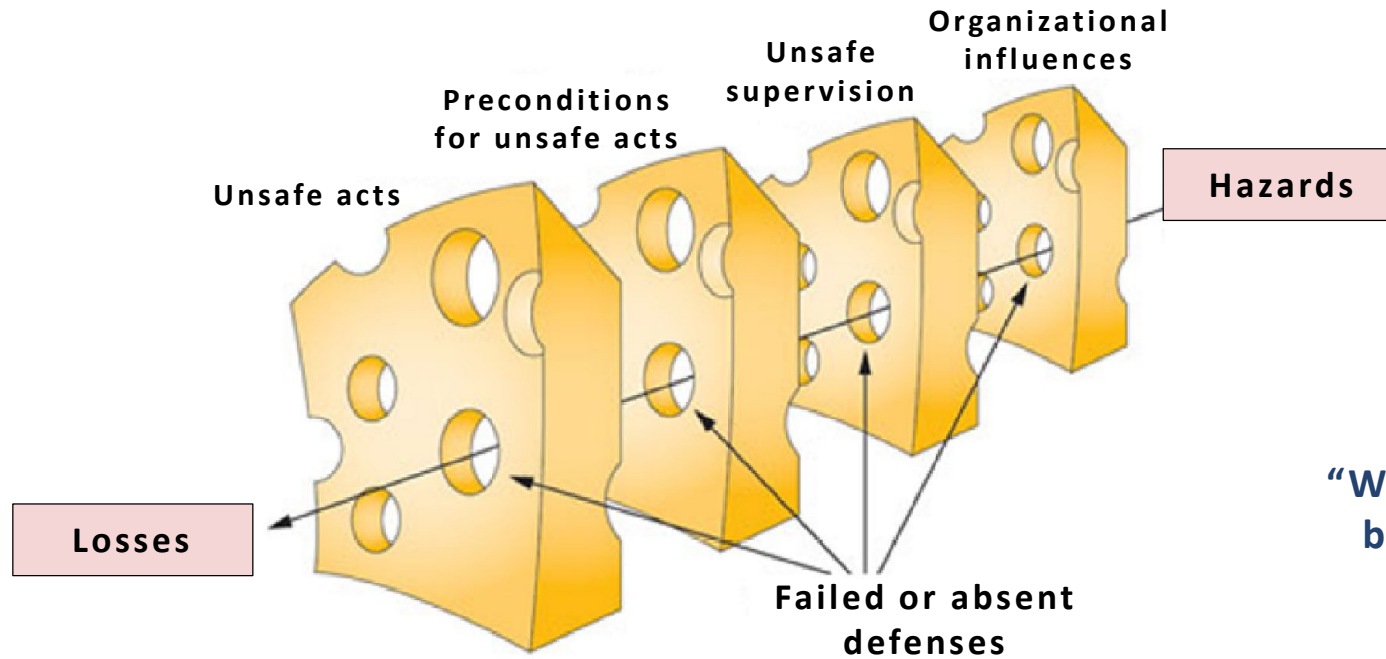
EFFECTIVE SYSTEMS USE FEEDBACK LOOPS TO ASSESS & REVIEW ERROR.

ISO 9000 INDUSTRIAL STANDARD: QUALITY MANAGEMENT



SYSTEMIC CAUSES OF WRONGFUL CONVICTIONS

WRONGFUL CONVICTIONS HAVE MULTIPLE CONTRIBUTING FACTORS.

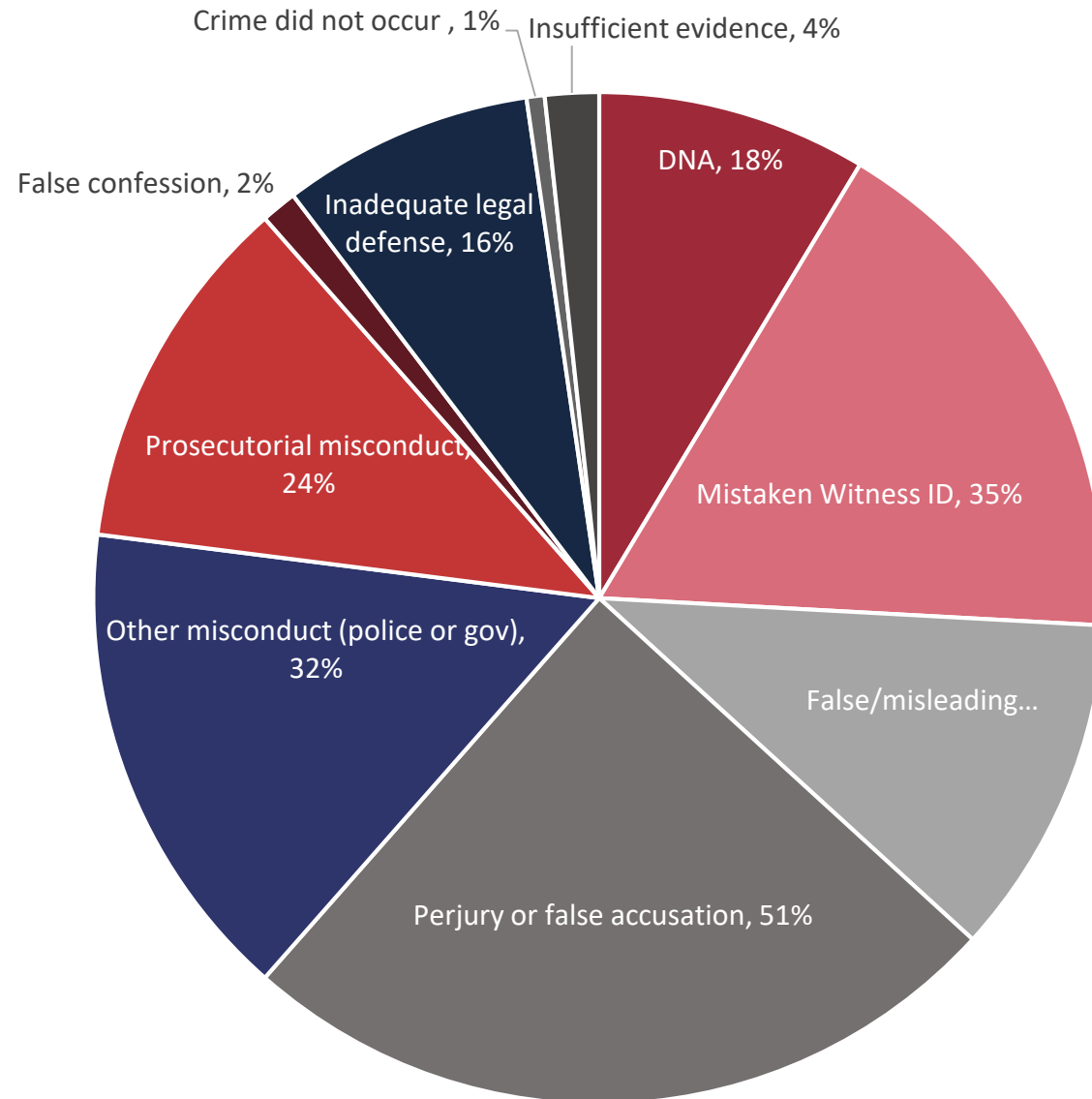


**“We can’t change the human condition,
but we can change the conditions in
which humans operate.”**

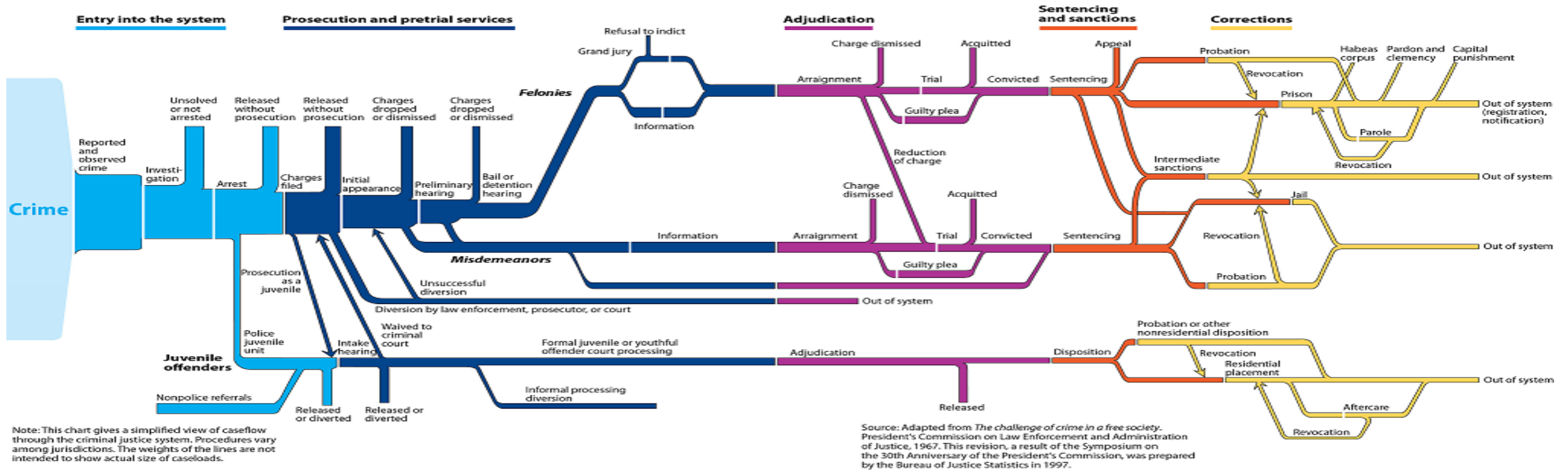
– James Reason

PROXIMATE CAUSES OF OHIO WRONGFUL CONVICTIONS

CRUs involved in
4
Ohio wrongful convictions



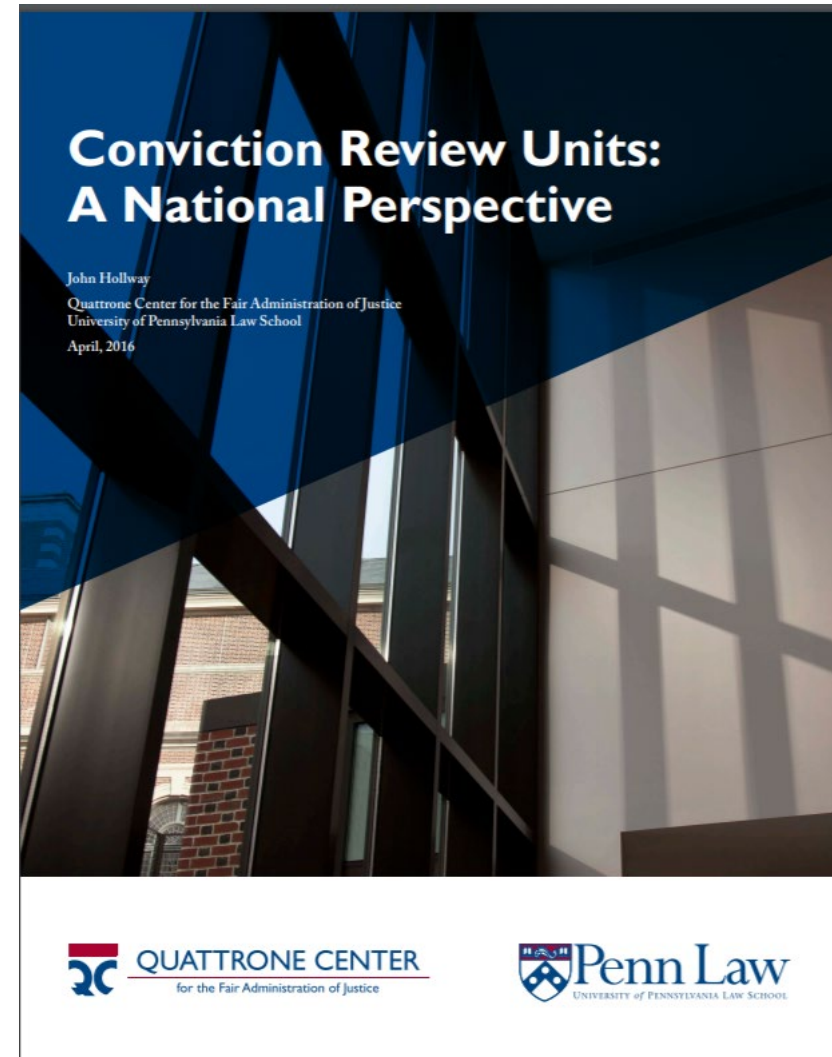
WHERE DO CONVICTION REVIEW UNITS FIT IN?



WHAT IS A CONVICTION INTEGRITY/REVIEW UNIT

ORGANIZATION WITHIN A PROSECUTOR'S OFFICE CONDUCTING:

- Extrajudicial
- Fact-based review
- Of secured convictions
- Following plausible allegations of actual innocence



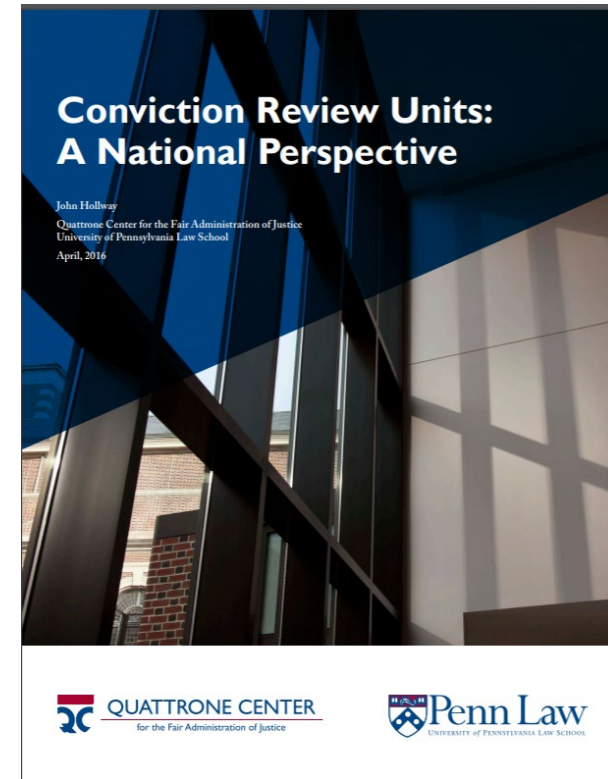
OUR EXPERIENCE WITH CONVICTION REVIEW UNITS

Conviction Review Units: A National Perspective (2016)

- First national review of CRUs
- Interviewed 21 of first 25 units
- “Best practices” checklist

BJA Upholding the Rule of Law & Preventing Wrongful Convictions Program

- Actively working with 20+ CRUs nationwide on emerging issues



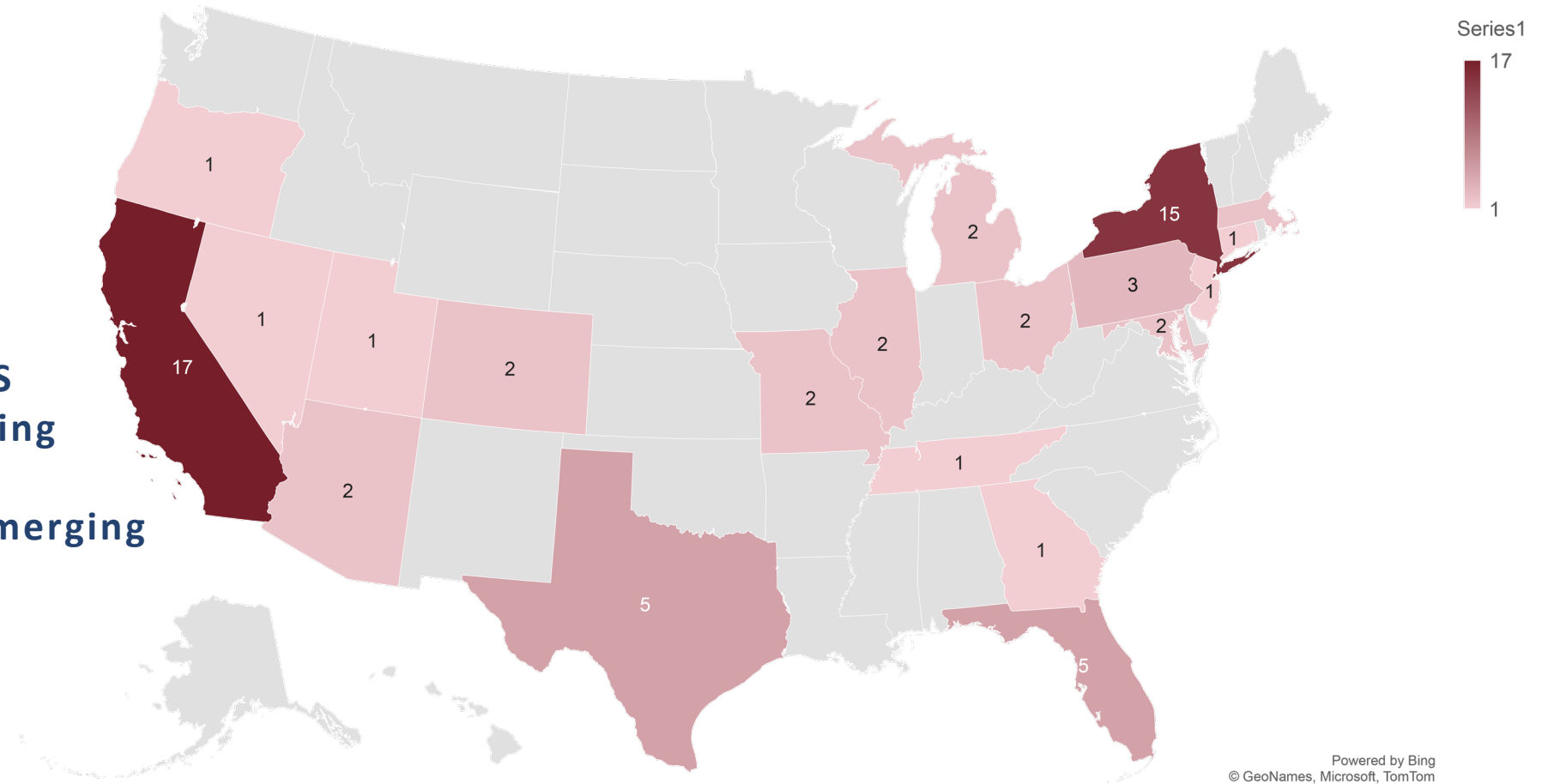
CONVICTION REVIEW UNITS NATIONWIDE

RAPID EXPANSION

- 1st Unit 2004-2005
- 25 Units 2015
- 42 Units 2019
- 68 Units today

TYPICALLY IN URBAN AREAS

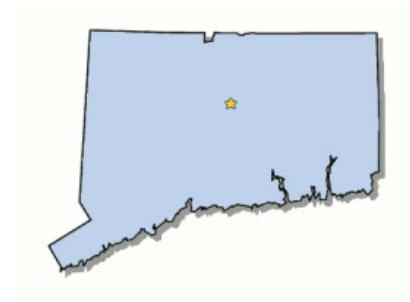
- Smaller counties increasing
- Statewide units starting
- “County share” model emerging





EMERGING TREND: STATEWIDE UNITS AND JURISDICTION

**CONCURRENT
JURISDICTION**



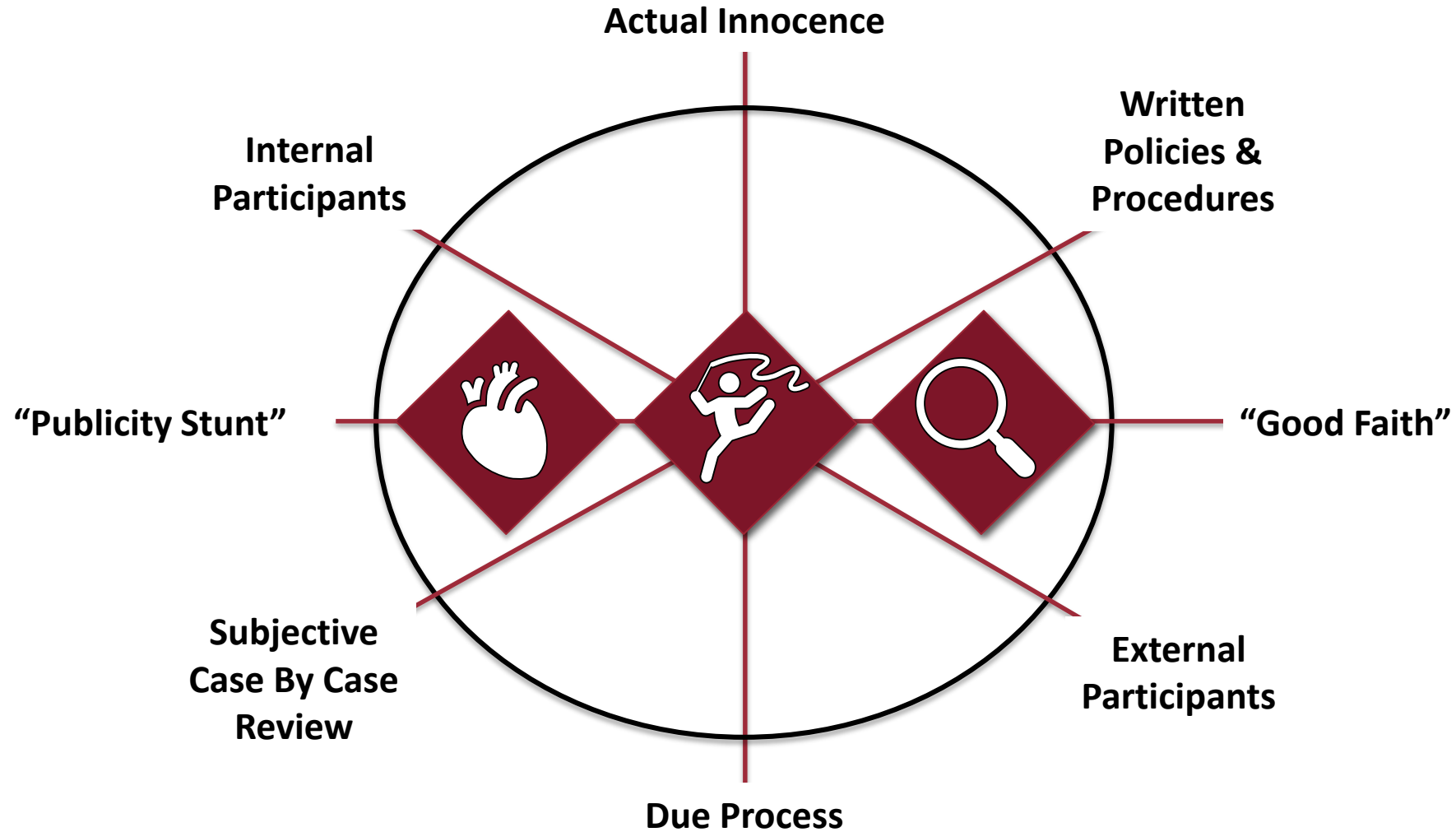
**STATEWIDE
PROSECUTION
OFFICE**

**JURISDICTION
BY LOCAL
PERMISSION**

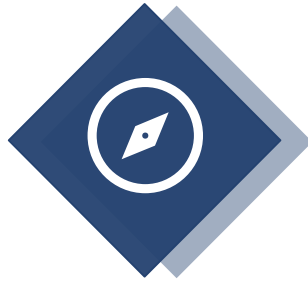


**CONCURRENT
JURISDICTION**

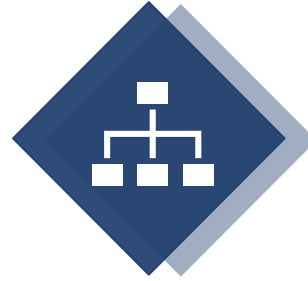
CRUS NEED INDEPENDENCE, FLEXIBILITY, TRANSPARENCY



STRUCTURAL INDEPENDENCE



LEADERSHIP

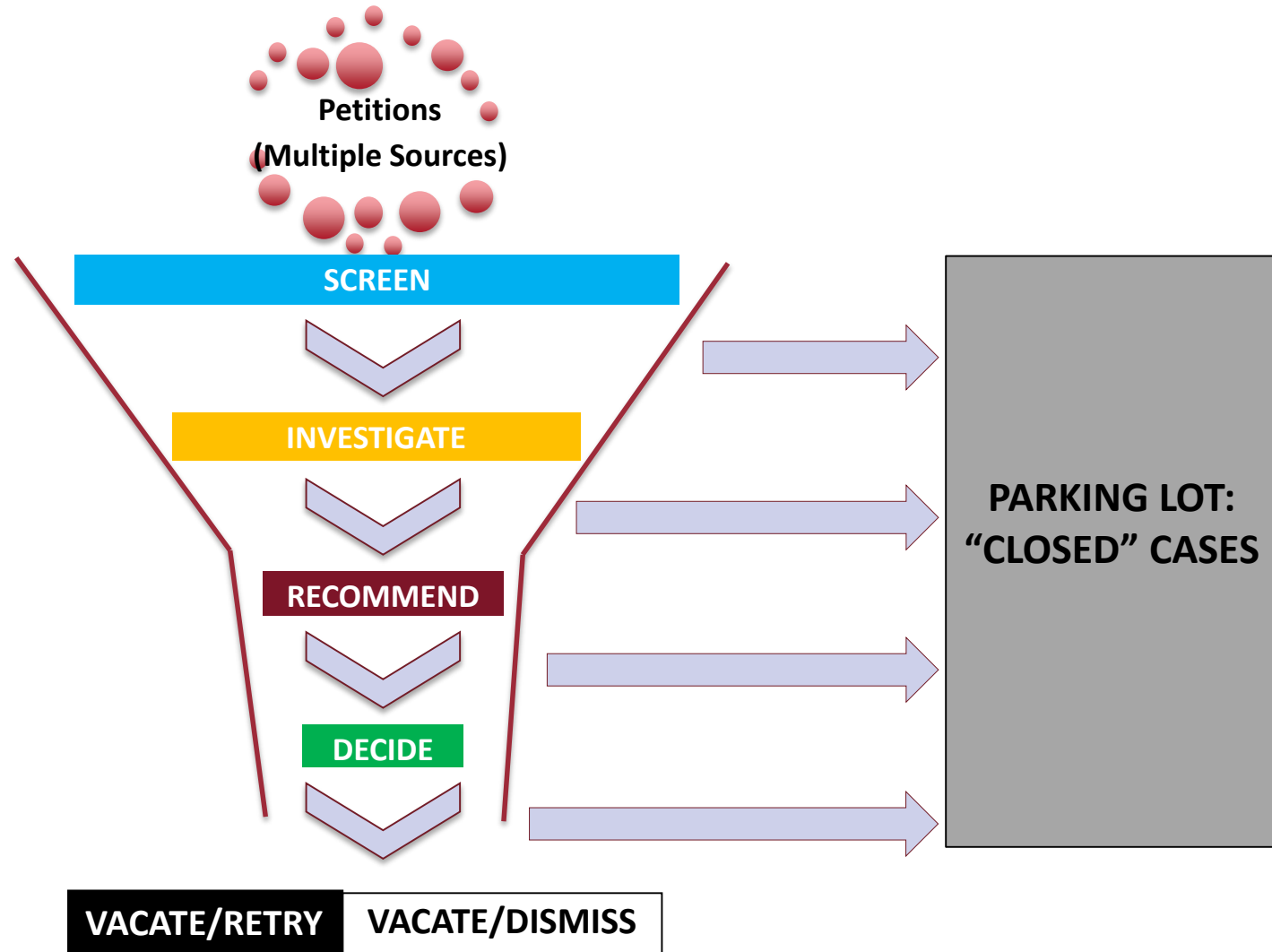


SUPERVISION



**EXTERNAL
STAKEHOLDERS**

PROCEDURAL FLEXIBILITY



POLICIES FOR CASE ELIGIBILITY

Universal: Actual innocence

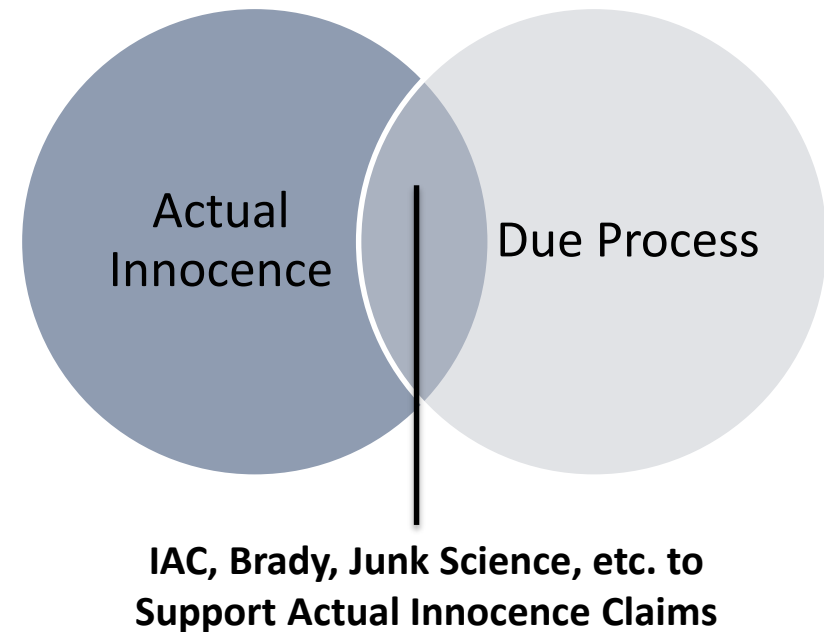
Majority: Totality of the circumstances

Majority: Broad on “newly discovered” evidence

Minority: Procedural or due process rejections

Emerging: Sentencing fairness

SUBSTANCE OF CLAIMS



PROCEDURAL TRANSPARENCY

- Evidence disclosed during investigation
- Explain CRU decisions, rationales
- Provide public with policies & procedures
- Share activity and metrics

ALLEGATIONS OF OFFICIAL MISCONDUCT

BRADY ALLEGATIONS PERMEATE CRU CASES.

Procedures are needed to address credible allegations.

Separate the CRU from timely, independent and transparent disciplinary review.

POLICIES THAT MAY FACILITATE CONVICTION REVIEW

TOLL CURRENT PROCEEDINGS

ENGAGING PETITIONER/COUNSEL

ATTORNEY-CLIENT PRIVILEGE

COLLABORATION AGREEMENTS

SUPPORTING CONVICTION INTEGRITY

WHAT TO DO WITH INCONCLUSIVE EVIDENCE OF GUILT/INNOCENCE?



CRU “BEST PRACTICES” CHECKLIST

DOES THE CRU:

- Report to the DA/Head of Office?
- Exist within an Appellate unit?
- Dedicate attorneys full-time to the CRUY?
 - Is the CRU head respected in the office?
 - Does the CRU head have defense experience?
- Include external participants
 - In policy creation?
 - In case selection?
 - In case investigation?
 - In recommendations?
- Have its own budget?
- Have money to review & investigate all credible petitions?
- Receive CRU-specific training?
- Provide learnings on cases reviewed?
- Have written policies/procedures?
- Permit original attorneys to participate in CRU reviews of their own cases?
- Provide newly discovered evidence to petitioner?

CRU “BEST PRACTICES” CHECKLIST

DOES THE CRU:

- Have a Brady policy?
- Have a misconduct reporting policy?
- Reject petitions based on:
 - Guilty pleas
 - Exhausted appeals
 - Sentence status
 - Due process claims
- Make physical evidence available to petitioner?
- Toll appellate proceedings?
- Permit resubmission whenever credible evidence is found?
- Communicate with petitioner during review?
- Allow petitioner’s counsel to participate in investigations?
- Evaluate totality of circumstances as now understood?
 - Or assess reasonableness of actions at time of underlying case?
- Communicate rationale for decisions to petitioner in writing?
- Provide annual reporting on activities and impact?

EMERGING ISSUES



**HANDLING INTERNAL
CONFLICTS**



**WORKING WITH CIVIL
LITIGATION UNITS**



**COMMUNICATING WITH
PRO SE APPLICANTS**



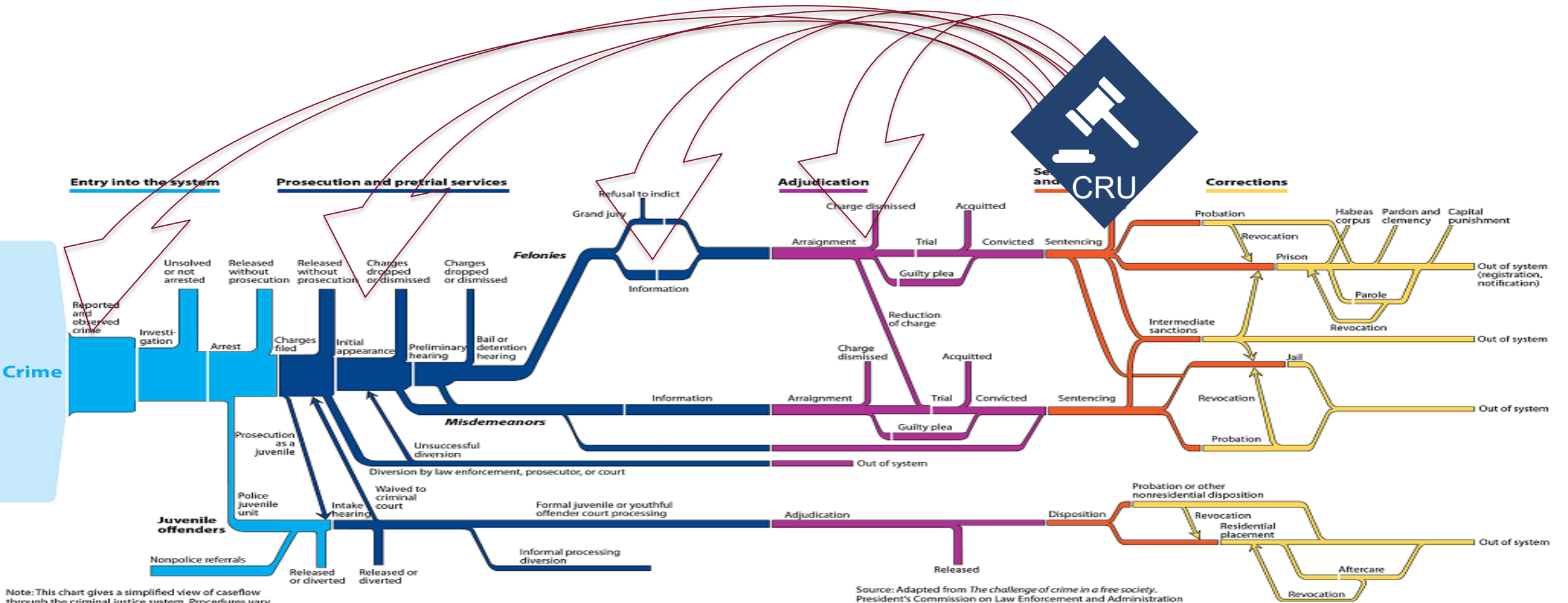
**WORKING ACROSS
JURISDICTIONS**



**MAXIMIZING RESOURCES:
WORKING WITH CLINICS OR
VOLUNTEERS**

THE GREATER OPPORTUNITY: ERROR PREVENTION

CRUS CAN COORDINATE POLICY CHANGE TO PREVENT FUTURE ERRORS



Note: This chart gives a simplified view of caseload through the criminal justice system. Procedures vary among jurisdictions. The weights of the lines are not intended to show actual size of caseloads.

Source: Adapted from *The challenge of crime in a free society*. President's Commission on Law Enforcement and Administration of Justice, 1967. This revision, a result of the Symposium on the 30th Anniversary of the President's Commission, was prepared by the Bureau of Justice Statistics in 1997.



QUESTIONS / NEXT STEPS



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