



THE RULE OF LAW:

Breakdown, Record and Exposure

Module 18: Due Process and Procedural Drift

Child Protective Services, Administrative Emergency Power, and the Collapse of Constitutional Process

SLIDE 2: HOUSE RULES

Veritas Potissimum (Truth Above All)

- Follow evidence without presuming legality or illegality.
- Distinguish between demonstrated, asserted, and unestablished facts.

RULE: A missing document does not prove non-occurrence, but an institution cannot rely upon an event it has not demonstrated.

Mutua Observantia (Mutual Respect)

- Separate the actor from the act.
- Separate evidence from emotion.

RULE: Constitutional review requires examining acts, authority, and procedure without attacking motive or character.

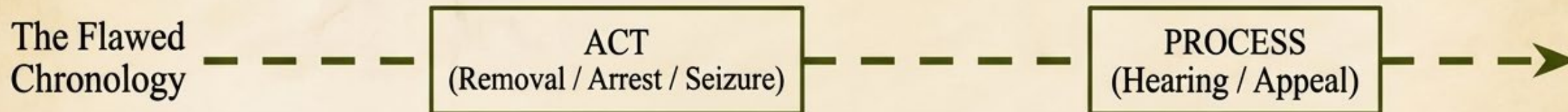
Conlationem Gratuiti (Selfless Contribution)

- Writ practice is not for accusation or punishment.

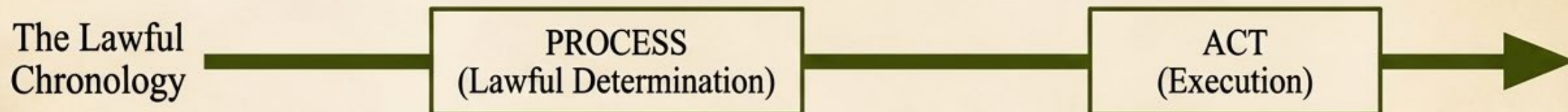
RULE: It is the disciplined, verified presentation of facts, duties, jurisdictional questions, and requested relief to a competent court.

SLIDE 3: THE OPENING QUESTION

Comparative Chronology



Insight: If government removes first and hears later, the hearing did not authorize the original removal.



Emergency Authority Exceptions

1. Source of authority

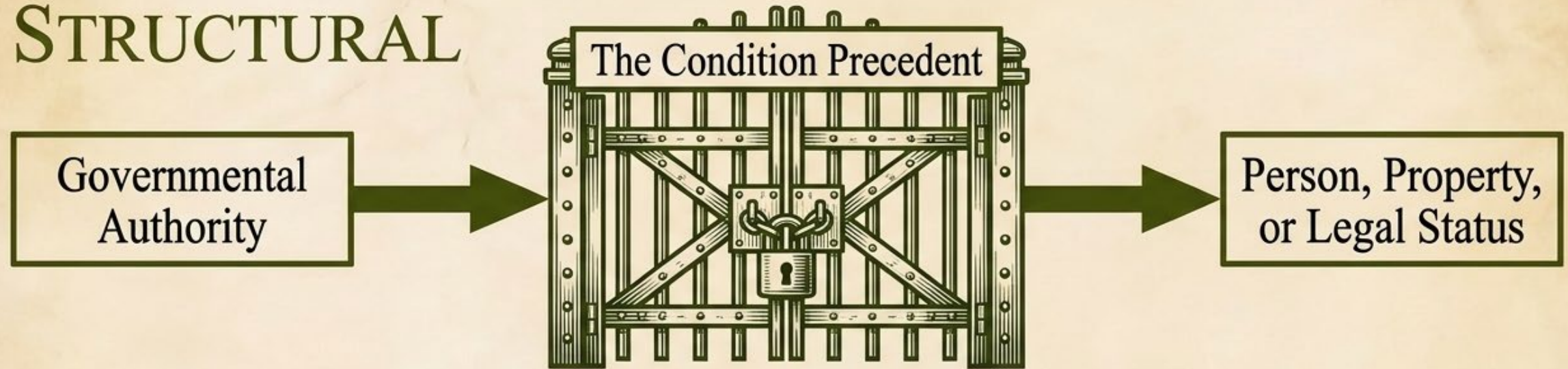
2. Facts establishing necessity

3. Limits of the action

4. Prompt review afterward

The Core Metric: Later review cannot change original chronology. Was process preserved before power was exercised?

SLIDE 4: PRINCIPLE 7, DUE PROCESS IS STRUCTURAL



*Conditio præcedens adimpleri debet
priusquam sequatur effectus.*

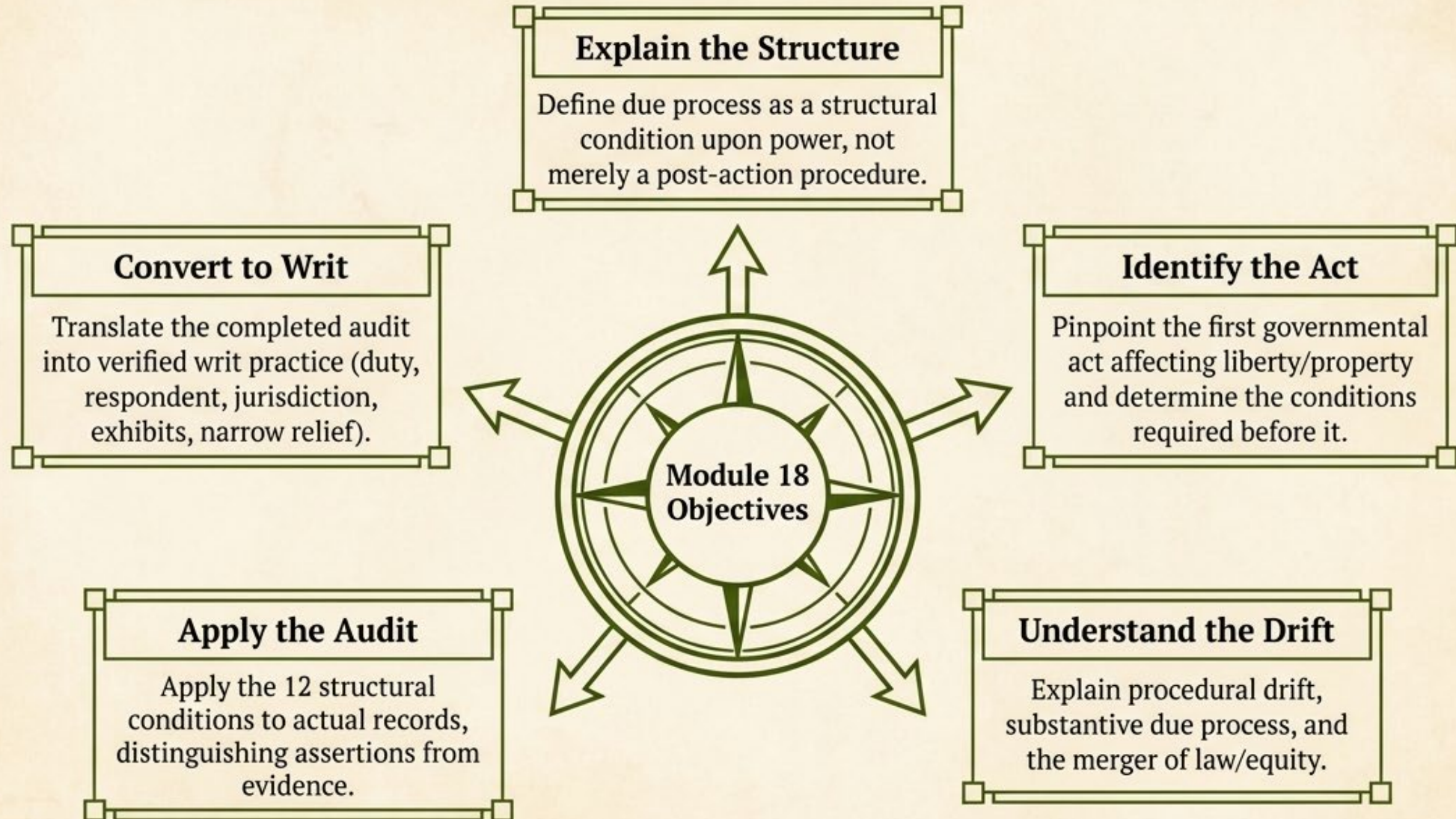
(A condition precedent must be fulfilled before the dependent effect may lawfully follow).

Due process is the lawful structure connecting authority to a person or property. Later process cannot act as a time machine to authorize past actions.

The Audit Method

1. Identify the first exercise of power.
2. Determine required preceding conditions.
3. Test if the record demonstrates chronological sequence.

SLIDE 5: LEARNING OBJECTIVES

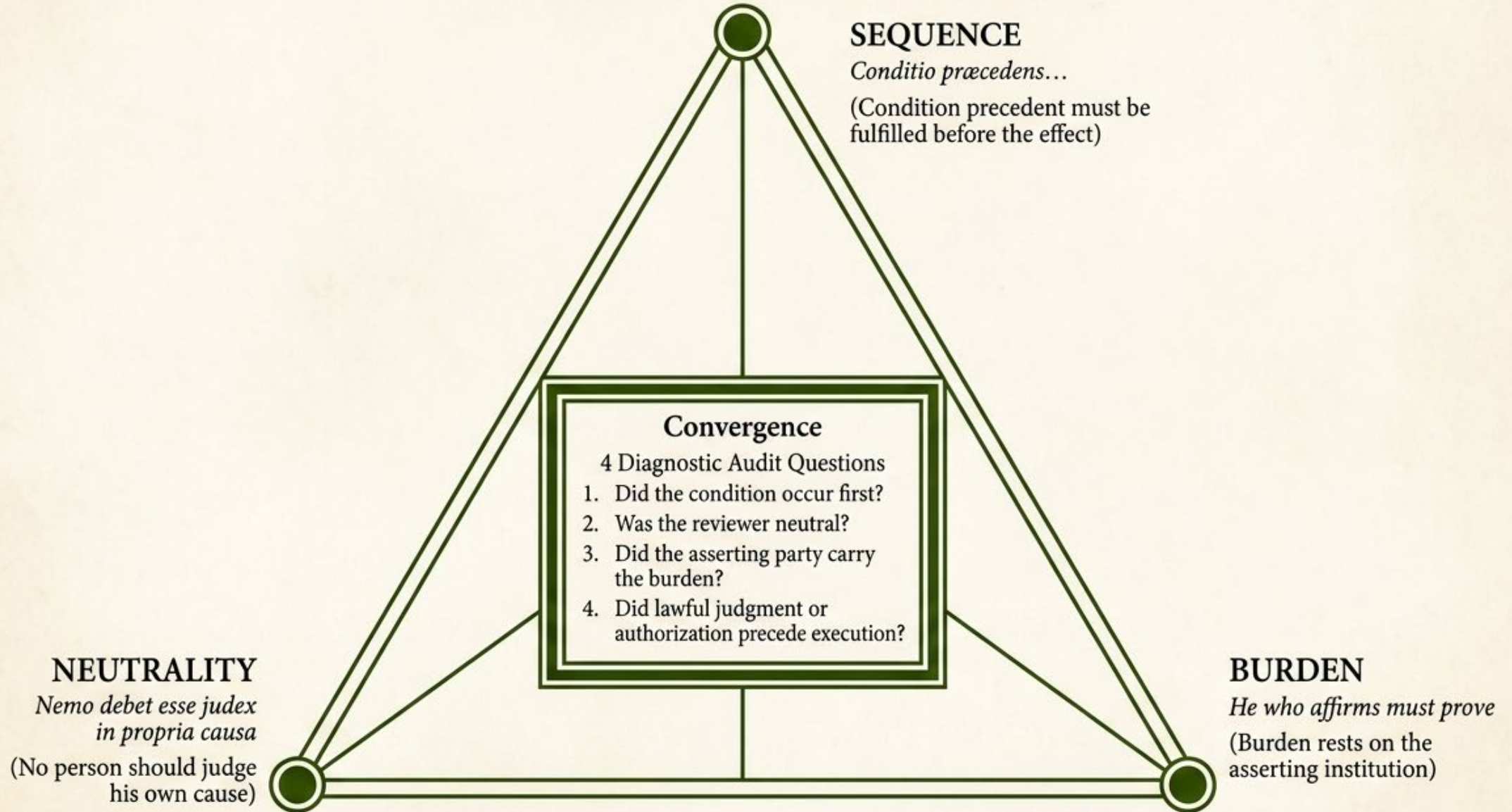


SLIDE 6: THE LAW OF THE LAND

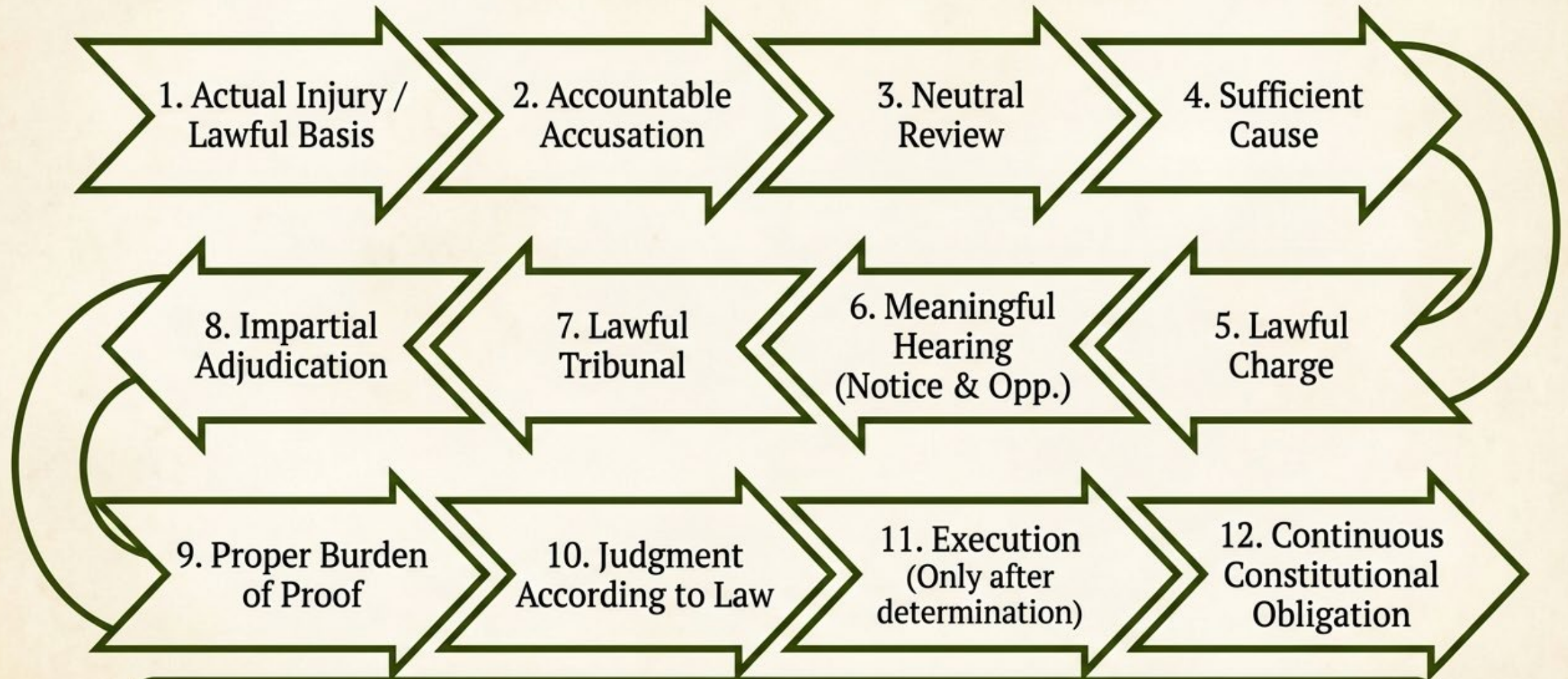
The Law of the Land	Official Will
• Authority must exist before the controversy. • Deprivation must proceed through preexisting law, proper accusation, neutral judgment, and lawful burden.	• Actors cannot create justification for an act at the exact moment the act occurs. • Deprivation cannot occur through official will alone.

THE ULTIMATE TEST: The question is not whether the institution followed its own procedures. The question is: Did those procedures preserve the settled protections standing between accusation and governmental force?

SLIDE 7: THE GOVERNING MAXIMS



SLIDE 8: THE TWELVE STRUCTURAL CONDITIONS OF DUE PROCESS



THE AUDITOR'S TASK: Identify evidence, actor, and date for each condition. Compare to the dependent act. Every governmental act must rest upon this unbroken sequence.

SLIDE 9: THE ORIGINAL CONSTITUTIONAL TEST

The Original Method (*Murray's Lessee*, 1856):

- **The Measure:** Existed before the controversy and outside the institution exercising power.
- **The Check:** Prevented government from defining the accusation, judging its sufficiency, imposing consequences, and then calling its own procedure 'lawful'.
- **The Rule:** Process must connect to antecedent law, neutral review, proper burden, and lawful authorization.

Institutional Regularity

A procedure is common, efficient, and consistently applied by an agency.
(Does not guarantee lawfulness).

Constitutional Conformity

A procedure successfully passes through the historical, antecedent law-of-the-land sequence.

SLIDE 10: FROM SETTLED PROCESS TO SUBSTANTIVE DUE PROCESS

1873-1905 (Slaughter-House / Lochner):
Expansion into
economic liberties.

1937-1965 (West Coast Hotel
to Griswold): Expansion into
personal autonomy. Clause
becomes an open-ended
source of judicial authority.

1857 (Dred Scott): First breach.
Court controls legislative
substance, not just method.

The Substantive Drift

Settled Procedural Process

Pre-1857 (Murray's Lessee):
Due process restrains HOW
government acts (fixed
process, lawful sequence).

THE FIREWALL QUESTION FOR DRIFT:

Is the court enforcing a settled condition of lawful process, or using the Due Process Clause to create a substantive rule the text does not expressly contain?

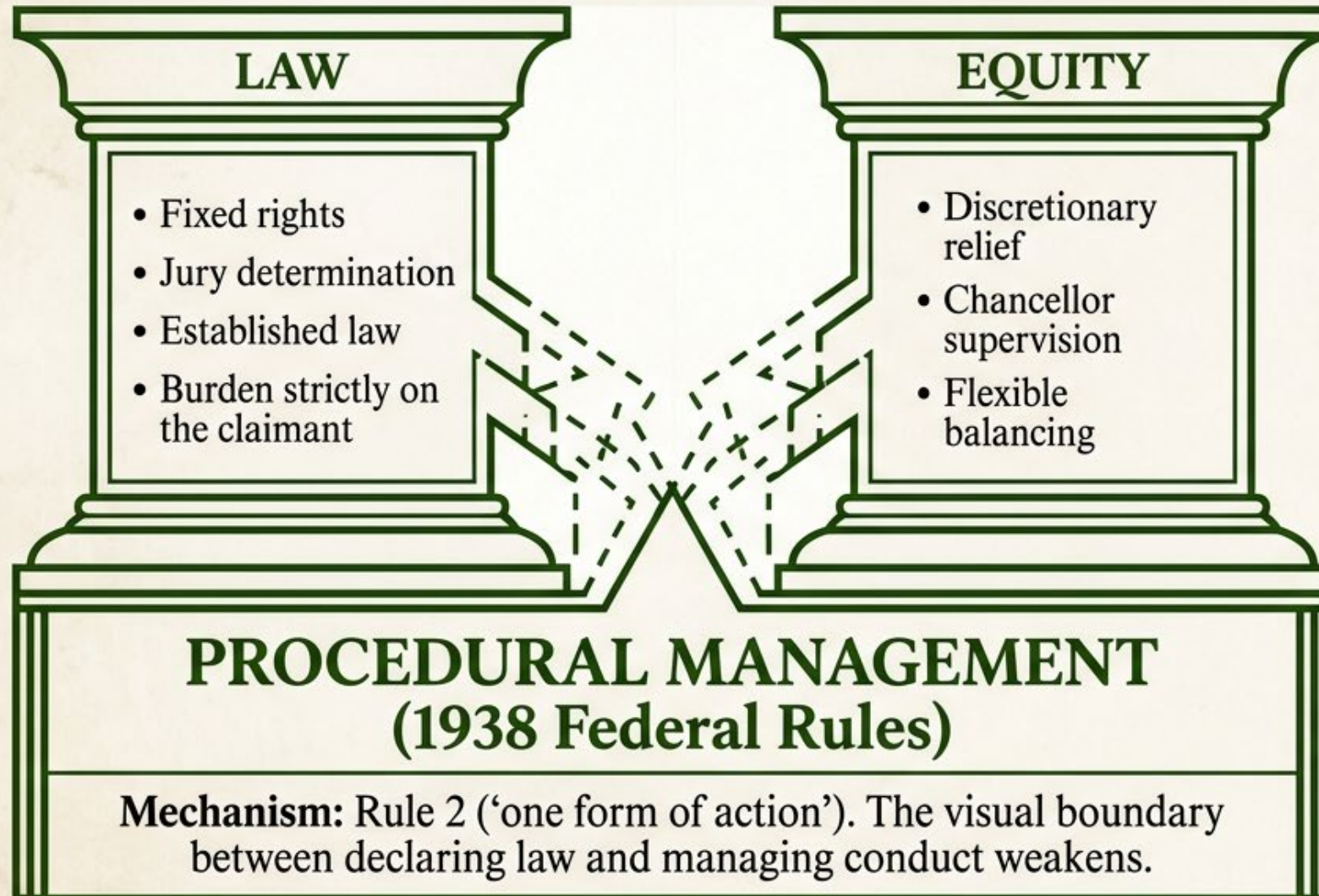
SLIDE 11: THE EDUCATIONAL ORIGIN OF THE DRIFT

Pre-1870 Tradition	Post-1870 Case Method
Source: Treatises, Commentaries, & Maxims. Focus: Antecedent law. Sequence: Law → Case Application. Analytical Goal: Did the court faithfully declare existing law?	Source: Appellate Opinions. Focus: Inductive reasoning. Sequence: Case → Extracted Principle. Analytical Goal: What rule can be drawn from the opinion?

The center of gravity moved from antecedent law toward judicial exposition. Precedent became the practical lens through which the Constitution was understood.

THE FIREWALL QUESTION: Is precedent being used as evidence of law faithfully declared, or as the institutional source of a new rule?

SLIDE 12: THE MERGER OF LAW AND EQUITY



CONSTITUTIONAL THREAT

Discretionary administration replaces fixed adjudication. The jury is bypassed through procedural filtering—summary judgment, sanctions, and pretrial termination—merging the declaration of law with the management of conduct.

SLIDE 13: PROCEDURE BECOMES ADMINISTRATION

Settled Due Process

Accusation

Evidence

Neutral Judgment
(Jury)

Execution

Function: Procedure preserves the path to lawful judgment.

Burden Shift Indicator



Government
Burden



Citizen
Burden

BURDEN SHIFT: The burden moves from the government (proving authority/cause) to the citizen (navigating technical institutional thresholds before the government has fully established its case).

Procedural Administration

Pleading (Twombly/Iqbal)
Summary Judgment (Celotex)

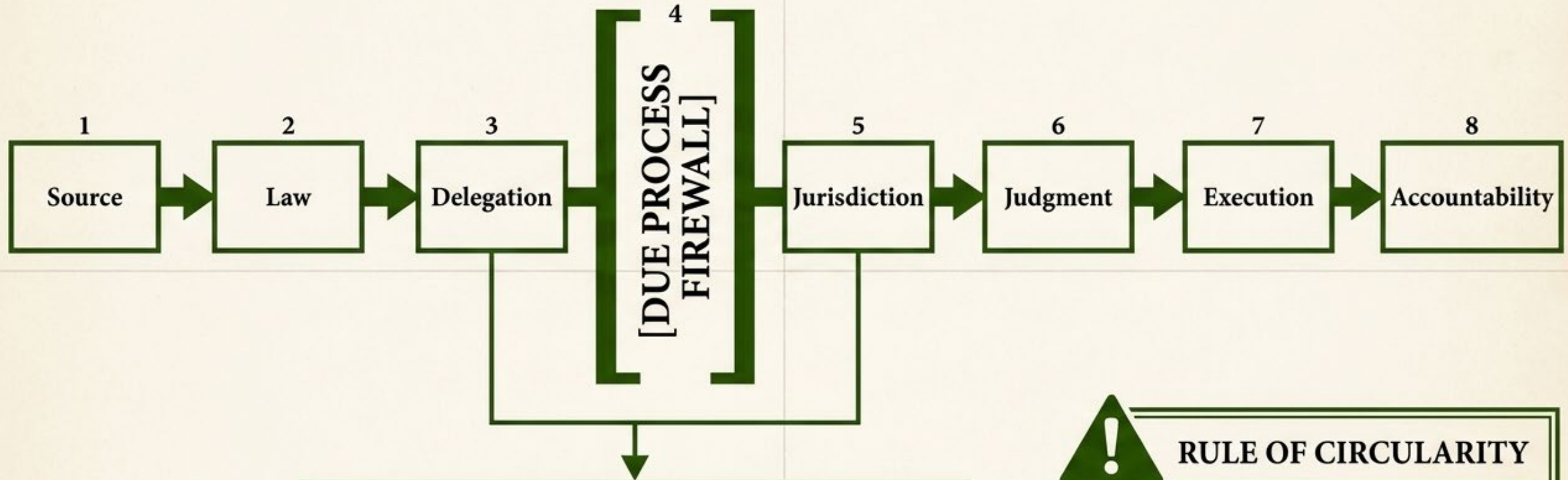


Procedural Barrier
Pretrial Termination (No Jury)

Function: Procedure determines whether the controversy will be heard.

THE FIREWALL QUESTION: Did the procedure preserve the constitutional path to lawful judgment, or did the institution use procedure to control, narrow, delay, or prevent adjudication?

SLIDE 14: THE DUE PROCESS FIREWALL



Mechanics

- **Authority ≠ Jurisdiction.** A department's general authority does not grant jurisdiction over a specific person or event.
- **The Barrier:** The firewall prevents government from moving directly from delegated power to coercive action without establishing conditions.



RULE OF CIRCULARITY

Later procedure cannot retroactively cure an earlier failure. If jurisdiction was asserted before required process occurred, the chain is broken. The record must be examined at the exact moment power was first exercised.

SLIDE 15: APPLYING THE TWELVE CONDITIONS

The Audit Sequence

1. Identify the first act of power.
2. Move backward (test injury, accusation, cause).
3. Move forward (test notice, hearing, impartial decision, judgment).

THE CLASSIFICATION GRID

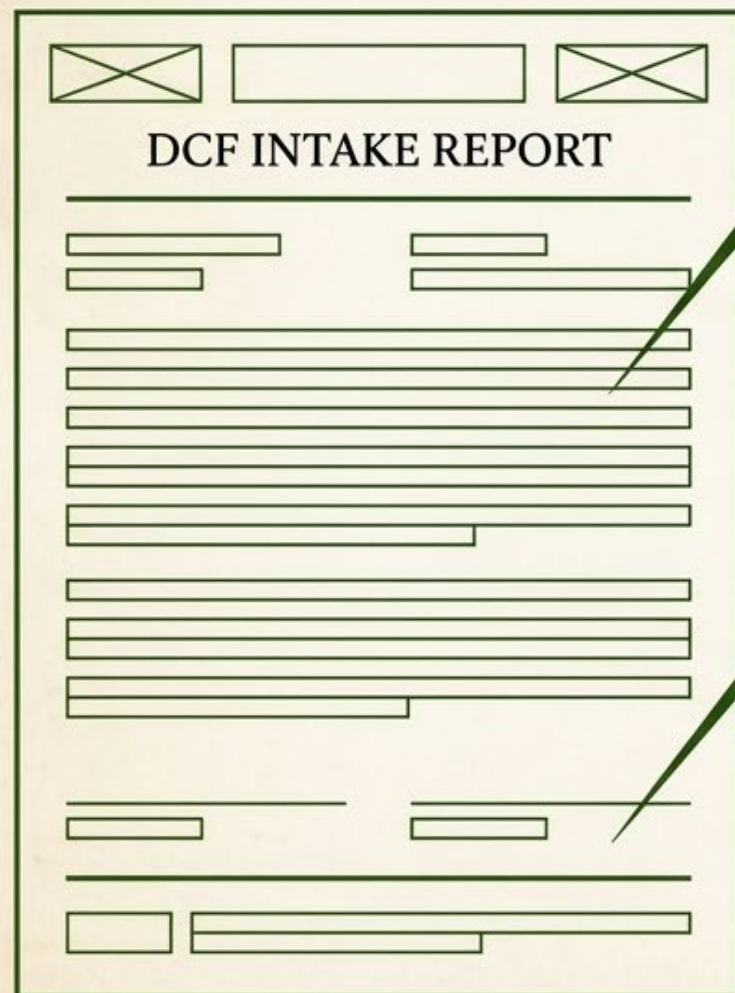
DEMONSTRATED	Authenticated evidence showing the condition occurred in the required form and sequence.
ASSERTED	Recited in a document, but lacking underlying evidentiary proof in the record.
UNESTABLISHED	The available record entirely lacks evidence that the condition occurred.
NOT APPLICABLE	The specific nature of the proceeding does not legally require this condition.

APPLICATION RULE

Find the earliest material point where the sequence became incomplete—every downstream act depends on that missing link.

SLIDE 16: EXEMPLAR ONE, INJURY AND ACCOUNTABLE ACCUSATION

Context: Testing the beginning of the sequence (Feb 6 & Mar 7 intake reports).



DCF INTAKE REPORT

The form contains several sections with redacted information (represented by boxes with an 'X'). Two callout lines originate from the form: one points to a section in the upper middle, and the other points to a section in the lower middle.

DIAGNOSTIC PIN 1: ACTUAL INJURY

Differentiating between observable facts (e.g., missed well-child visits, vaccination disagreements) and the legal conclusion of “neglect.”
Question: What harm actually occurred vs. future harm claimed?

DIAGNOSTIC PIN 2: ACCOUNTABLE ACCUSATION

Checking for traceability.
Is the reporter identified?
Is the accusation sworn/verified, or is it merely an unsworn institutional summary?

EVIDENTIARY LAYERS STACK



SLIDE 17: EXEMPLAR TWO, ESCALATION AND THE CUSTODY FOUNDATION

Condition Precedent
The criminal charge depends entirely on a prior legal determination of who possessed lawful custody.

The Escalation Gap:
How did a non-emergency response transform into five felony charges?

CUSTODY ORDER

The Audit Focus

- ✓ Was the order temporary, emergency, or final?
- ✓ What findings and authority supported it?
- ✓ **CRUCIAL STEP:** Was it served on the parents before their conduct was treated as criminal? (Notice is central to the chronology).

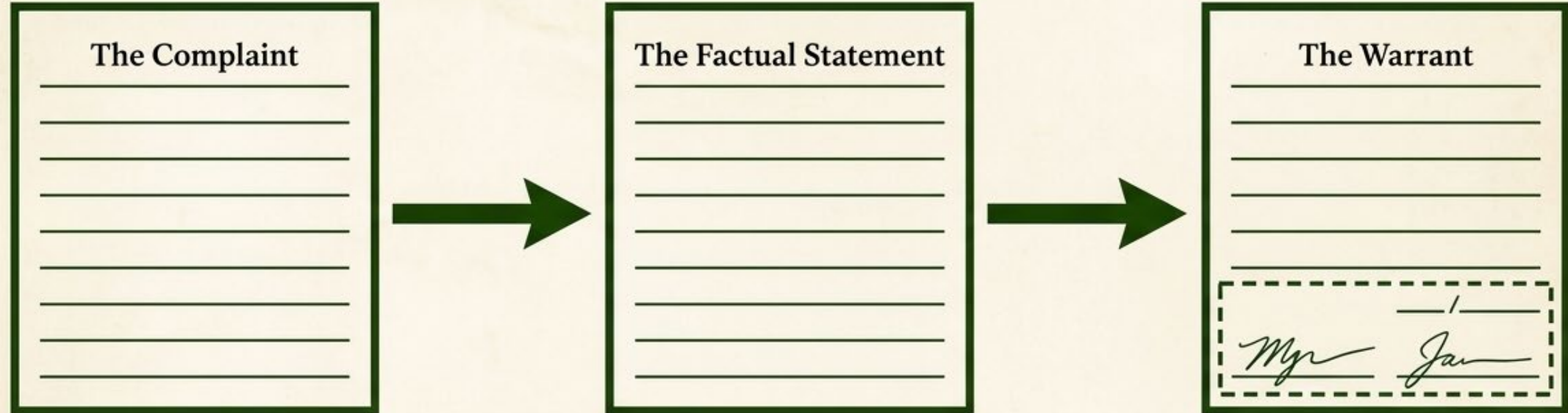
AUDIT RULE

A later complaint cannot supply the legal foundation (custody status, notice, authority) upon which its own elements depend.

Administrative Concern
(Feb 6 non-emergency)

Felony Accusation
(Criminal Kidnapping)

SLIDE 18: EXEMPLAR THREE, PROBABLE CAUSE, COMPLAINT, AND WARRANT



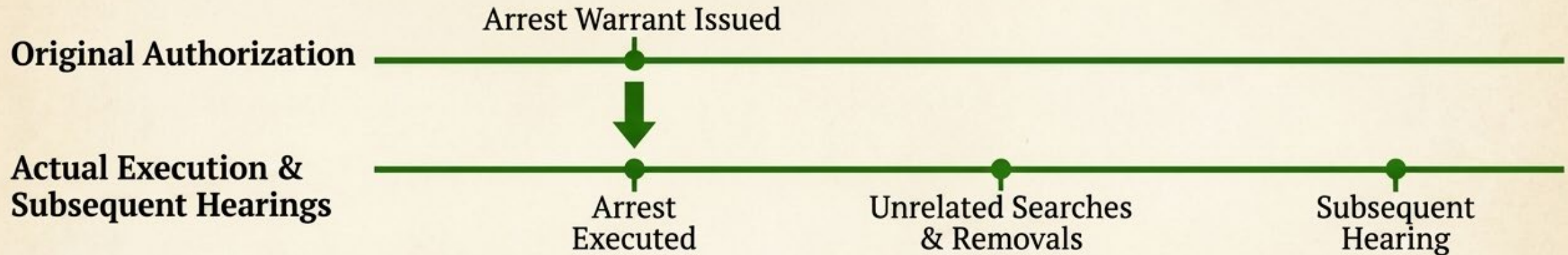
Probable cause must extend to each essential element of the offense (e.g., knowledge of custody, lack of authority), not merely the physical location of the children.

Testing source reliability. Distinguishing between firsthand police observation vs. repeated, unverified DCF conclusions. Was the information reasonably trustworthy?

Neutral Review Check
Are the magistrate fields signed, authenticated, and dated before the warrant issued? Blank fields leave the method of review unestablished.

THE FIREWALL QUESTION: Did a neutral magistrate make a determination based on trustworthy facts, or were essential conditions merely assumed and carried forward?

SLIDE 19: EXEMPLAR FOUR, EXECUTION AND LATER PROCESS



Execution vs. Authority

An arrest warrant commands arrest. It does not automatically establish authority for unrelated searches, child removals, or administrative restrictions. Each act must trace to its own lawful source.

Nature of Restraints

Temporary or preventive restraints (detention, no-contact) still require a lawful source, factual basis, necessity, and a means of challenge.

THE CURE FALLACY

- ✓ A later hearing may authorize continued action from that point forward.
- ✓ It CANNOT change the date the original power was exercised.
- ✓ It CANNOT retroactively validate an unestablished earlier condition.

SLIDE 20: READING THE DUE PROCESS RECORD

The Auditor's Methodology

1. Classification

Assign every single document to the specific due process condition it supposedly satisfies. Do not read the file as one continuous story.

2. Comparison

Check what a later document states against what the earlier record actually established. (e.g., Does the complaint's claim of 'lawful custody' match a validated prior order?)

3. Chronology

Map creation, signature, filing, service, review, and execution dates on a strict timeline. Sequence reveals legality.

4. Authentication

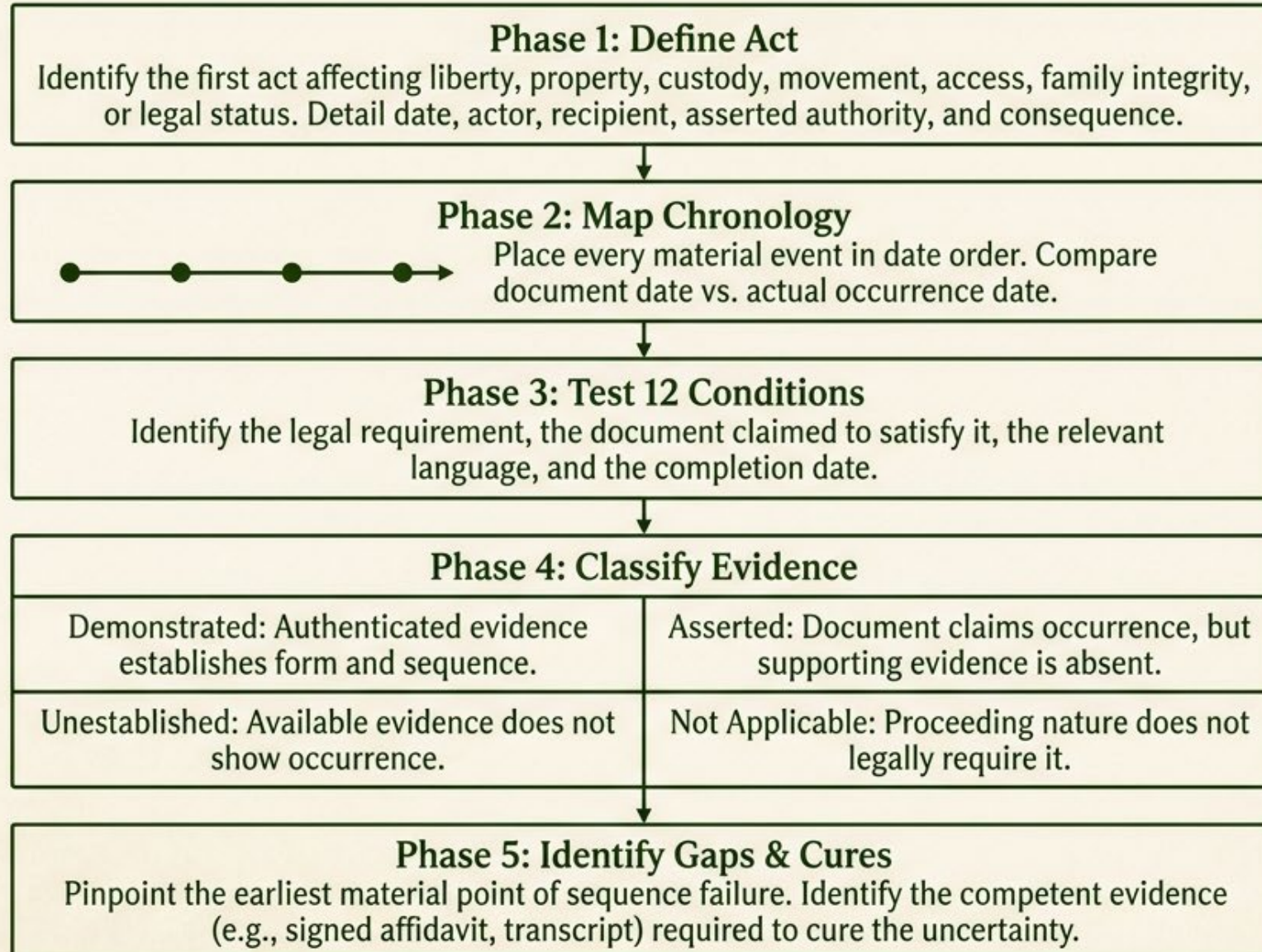
Hunt for signatures, oaths, stamps, and service returns. Identify institutional repetition (carrying conclusions forward without independent evidence).



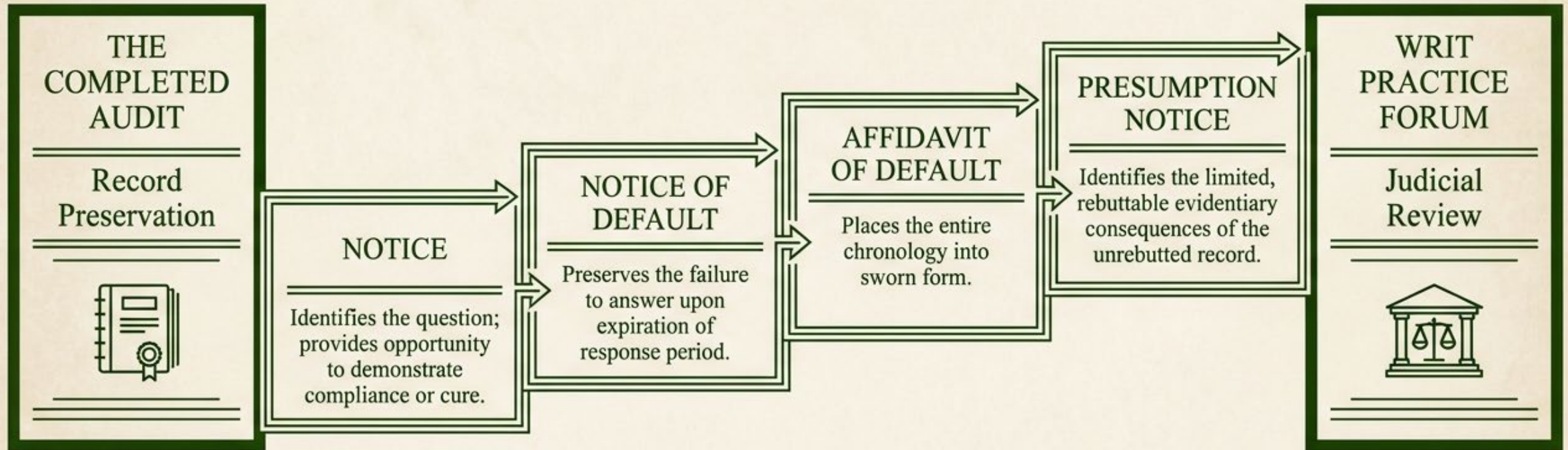
**[FINAL MAXIM: Official appearance cannot replace evidentiary function.
Read document by document, condition by condition, and date by date.**



SLIDE 21: THE DUE PROCESS SEQUENCE AUDIT



SLIDE 22: FROM PRESERVED DEFECT TO WRIT PRACTICE



A writ cannot create a duty that does not exist. It only operationalizes the preserved record to determine whether a clear legal duty or lawful authority exists.

SLIDE 23: ANATOMY OF THE VERIFIED WRIT COMPLAINT

NATURE OF ACTION

Defines the controversy and the determination sought. (Explicitly rejects accusation and punishment).

PARTIES

Identifies the plaintiff's capacity and connects each defendant to the specific duty, custody, or control at issue.

JURISDICTION/VENUE

Validates the reviewing court's authority over the relief requested and the chosen forum.

FACTUAL RECORD

A verifiable timeline of events directly tied to exhibits. (No disguised arguments).

CLAIM FOR RELIEF

Identifies the exact source of the legal duty, the obligated actor, the failure, and the inadequacy of ordinary remedies.

REQUESTED RELIEF

A prospective, proportionate remedy tied directly to the established duty.



VERIFICATION & SERVICE

Signs under penalty of perjury (accountability) and documents delivery to defendants (fairness/notice).

SLIDE 24: PRACTICAL EXERCISE, CONSTRUCTING THE WRIT RECORD

Phase 1: The Audit Foundation

Identify the first governmental act. ✓

Pinpoint the earliest disputed/unestablished condition precedent.

Determine the necessary competent evidence. ✓

Phase 2: The Drafting Sequence

1. Draft **Facts**
FIRST: One material event per paragraph, connected to a supporting exhibit.



2. Identify **Respondents:**
Precision is required; no broad institutional naming.



3. Define the **Duty:** Distinguish clear ministerial obligation from discretionary judgment.



4. Prove **Inadequacy:**
Detail why appeals or administrative reviews fall short.



5. Draft **Relief**
LAST: Connect every order strictly to a duty and preserved fact.

Phase 3: The Assembly



Verification: Accepting legal responsibility for the chronology — Truth Above All.



Indexed Exhibits: Notice, Default, Affidavits, Orders accurately numbered.

SLIDE 25: DRAFTING THE REQUEST FOR RELIEF

Declaratory Relief	Injunctive Relief	Mandamus-Type Relief
Purpose: Resolve concrete disputes concerning rights and duties. Target: Identify lawful authority limits and responsible officers.	Purpose: Restrain continuing or threatened conduct. Target: Preserve lawful process while the court determines the controversy. Requires proof of ongoing injury.	Purpose: Compel performance of a specific act. Target: Requires a clear ministerial duty, a preserved failure/refusal, and no ordinary remedy. (Cannot direct lawful discretion).

NO PUNITIVE LANGUAGE. The request for relief must be the narrowest section of the complaint, not the broadest. Do not seek punishment or personal condemnation.

SLIDE 26: FINDINGS AND HOMEWORK

THE PHILOSOPHICAL FINDING (THE SHIFT)



Law-of-the-Land Method:
Restraining power before
action (fixed conditions,
settled maxims).

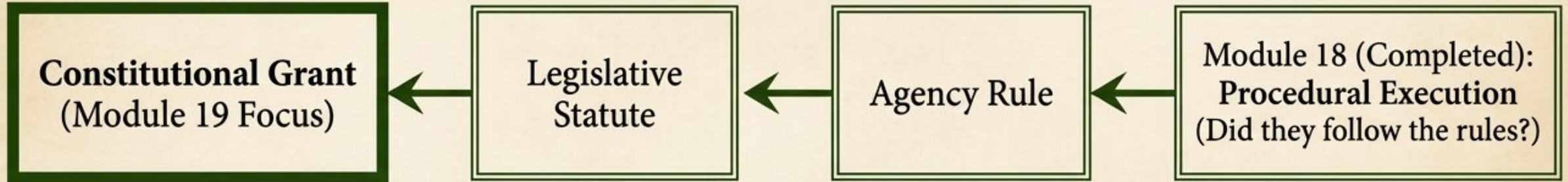
Historical Drift: Administering
objections after action
(managerial procedure,
living constitutionalism).

Core Principle: Due process is the complete constitutional sequence that must exist before governmental power affects liberty.

THE PRACTICAL ASSIGNMENT

- ☐ Complete a Sequence Audit on the exemplar record.
- ☐ Build a complete chronology supported by exhibits.
- ☐ Draft a verified complaint (Declaratory, Injunctive, or Mandamus-type).
- ☐ Review from the perspective of a neutral court—ensure the requested remedy does not exceed lawful authority.

SLIDE 27: PREVIEW OF MODULE 19, DELEGATION AND ENUMERATED POWER



Key Insight: Even a complete procedure cannot supply authority that government never possessed.

THE FIREWALL QUESTION:
Was the power lawfully delegated, or merely
assumed through institutional expansion?

Institutional repetition, agency funding, and procedural continuity do **NOT independently establish** that a constitutional power was delegated.
