

Evidentiary Inversion: The Manufacture of Misconduct



How Internal Investigations Construct Narratives,
and Why Judicial Deference Ratifies Them.

Based on the framework by Eric Sanders.

The Structural Trap: Coherence Mistaken for Truth

Internal investigations are increasingly operating as narrative construction systems. An inverted investigation does not search for truth; it produces it. Internal consistency replaces evidentiary integrity.

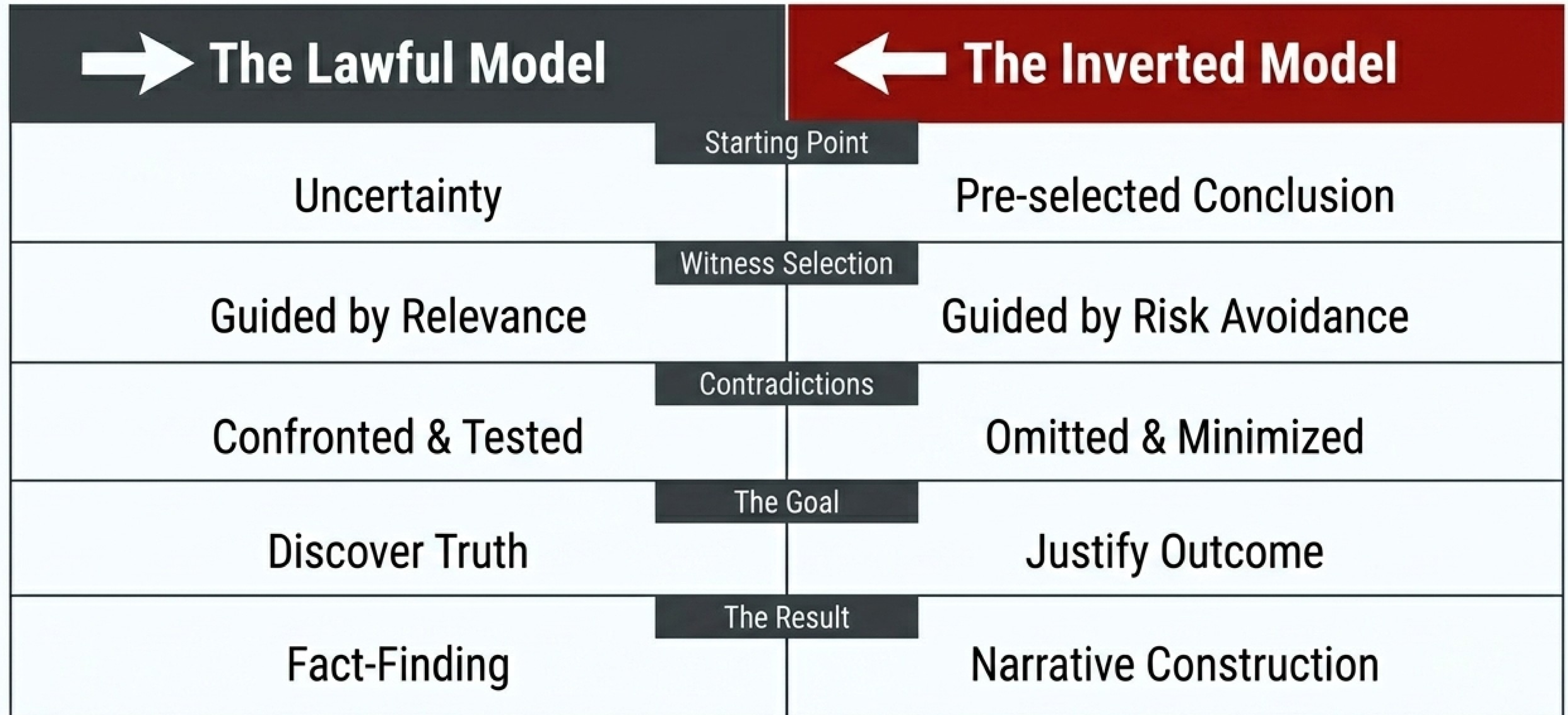
The Illusion



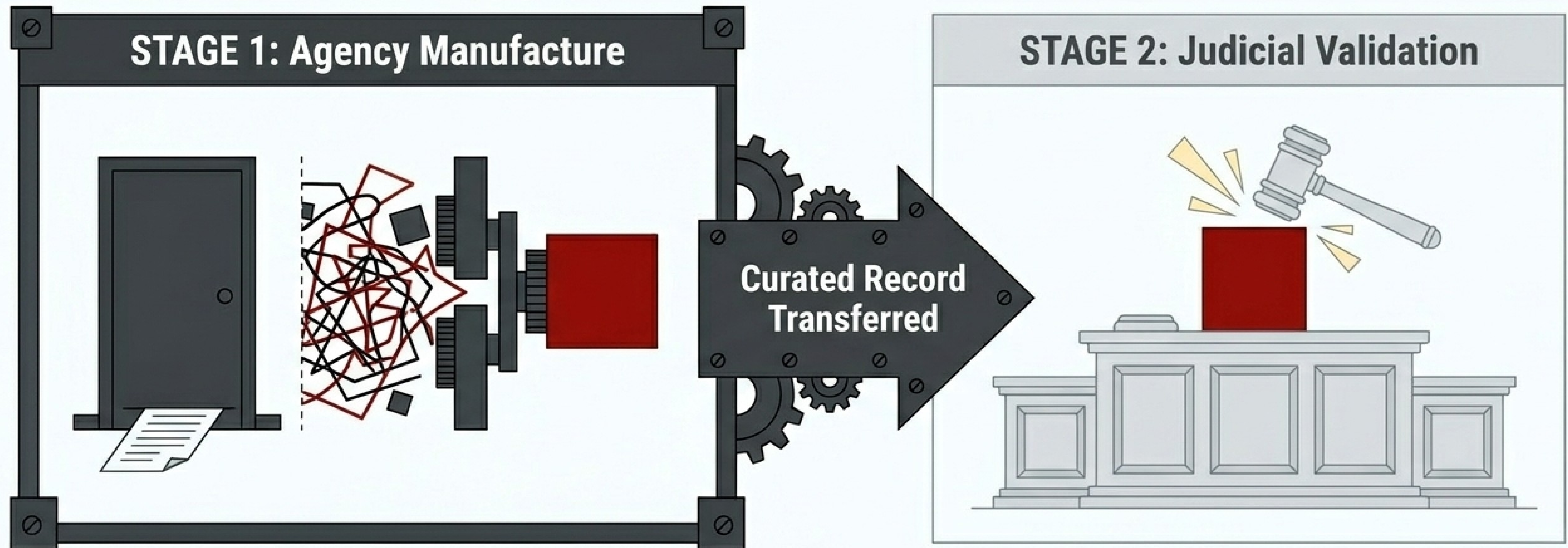
The Reality



Diagnosing the Method: Forward vs. Backward Investigation

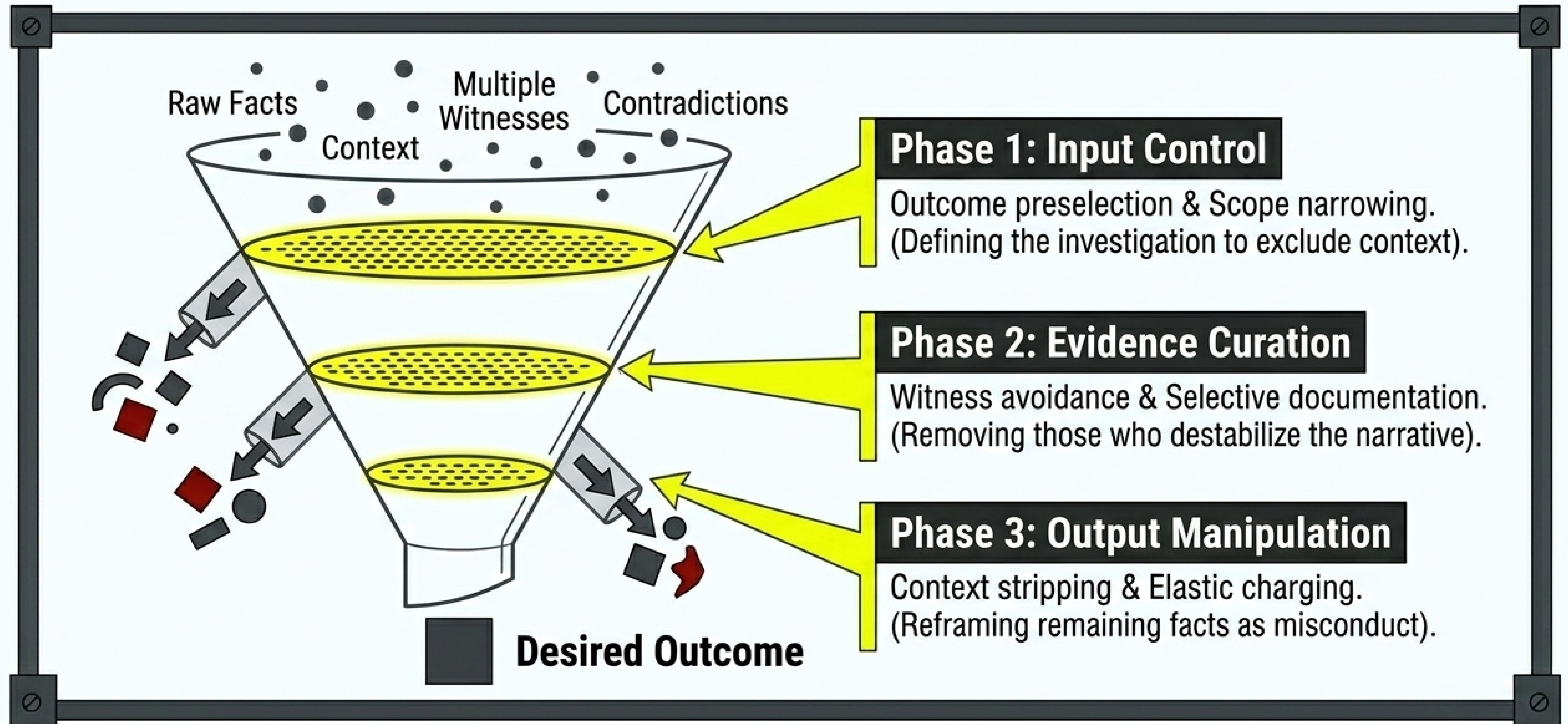


The Two-Stage Distortion Model



“First, the agency constructs the record backward... Then the court reads the record forward as if it were neutral. The result is validation, not review.”

Stage 1 Mechanics: The Architecture of Control

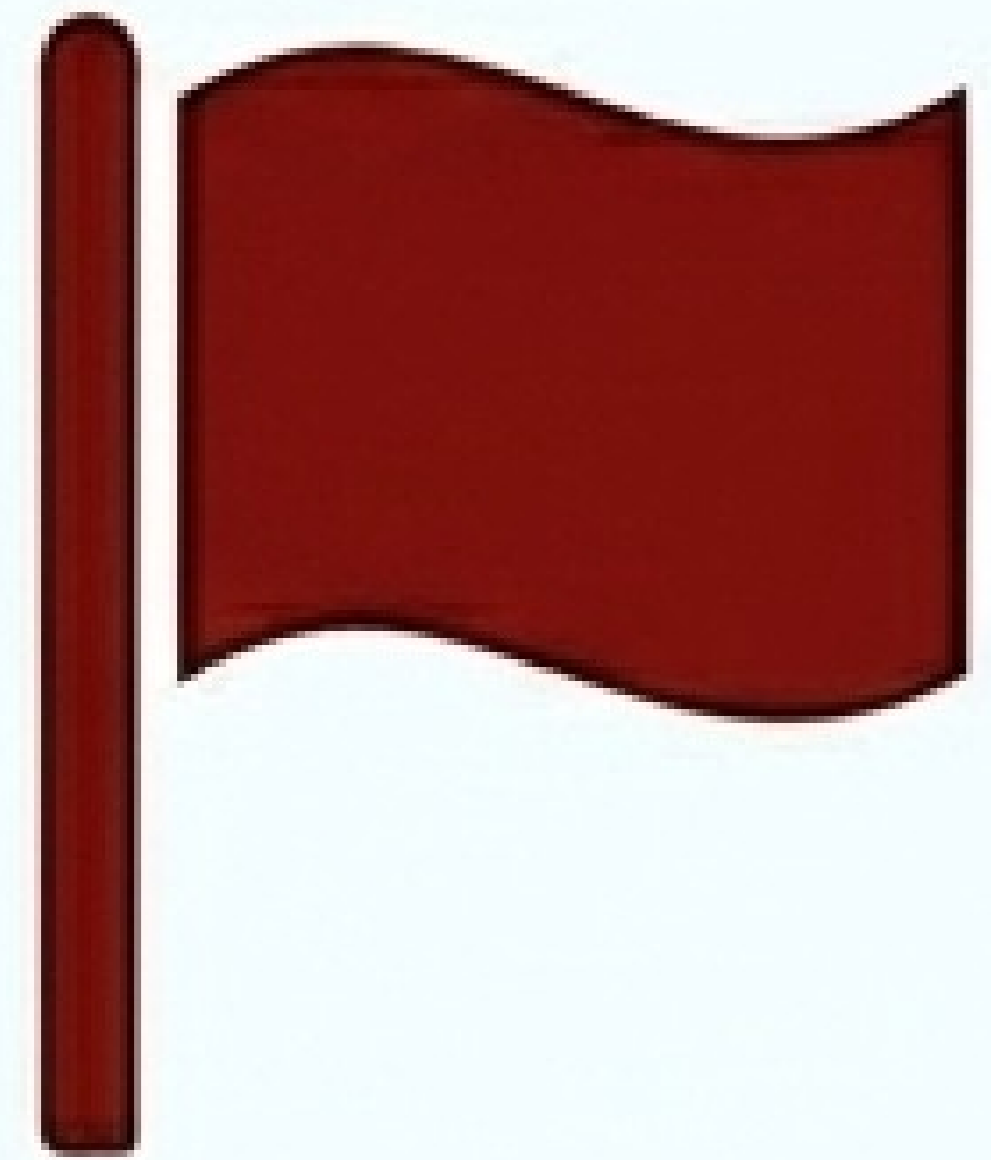


The Translation: Stripping Context & Elastic Charging



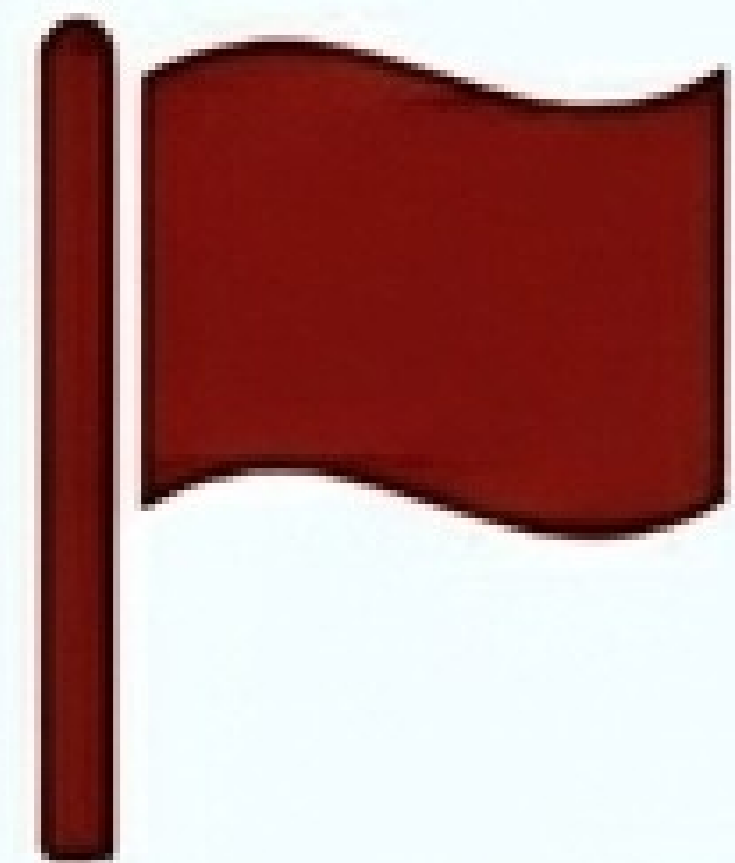
Key Insight: Vague standards act as narrative containers. A safety concern becomes a breach. A discrimination complaint becomes disruption. Without context, the remaining fact is easily framed as misconduct.”

Stage 1 Hallmarks: Anatomy of a Manufactured Record



The Missing Central Witness

The most critical sign of inversion. The agency avoids the person most capable of confirming or denying the essential fact.



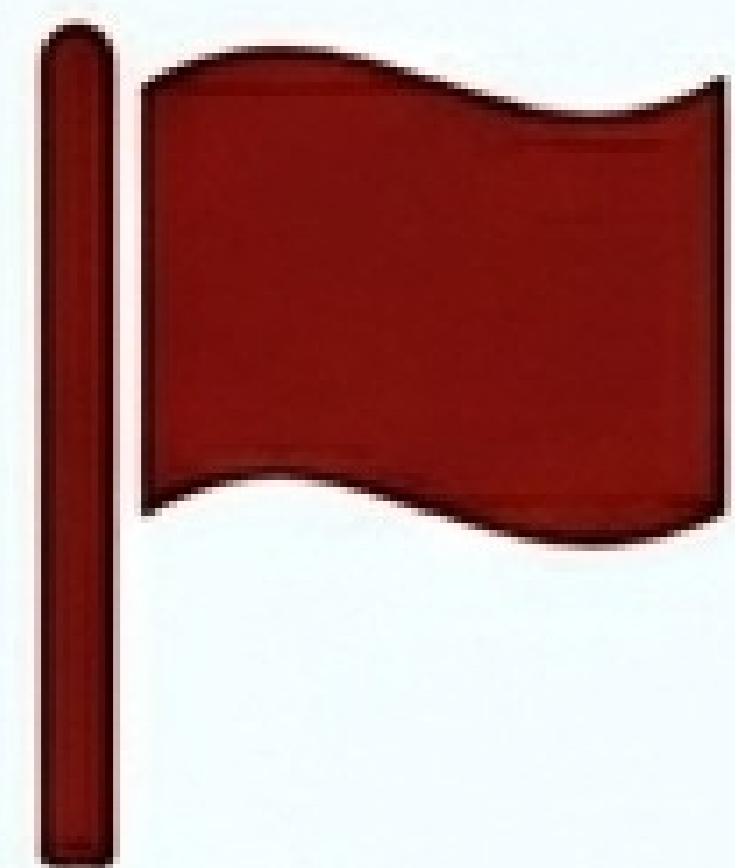
Institutional Language

Witness testimony polished into neat, command-friendly conclusions.



Circular Charging Logic

The charge acts as proof of itself (e.g., conduct is improper because the department says it is improper).



Shifting Theories

Moving targets as evidence weakens (e.g., a disclosure case morphs into a judgment case).

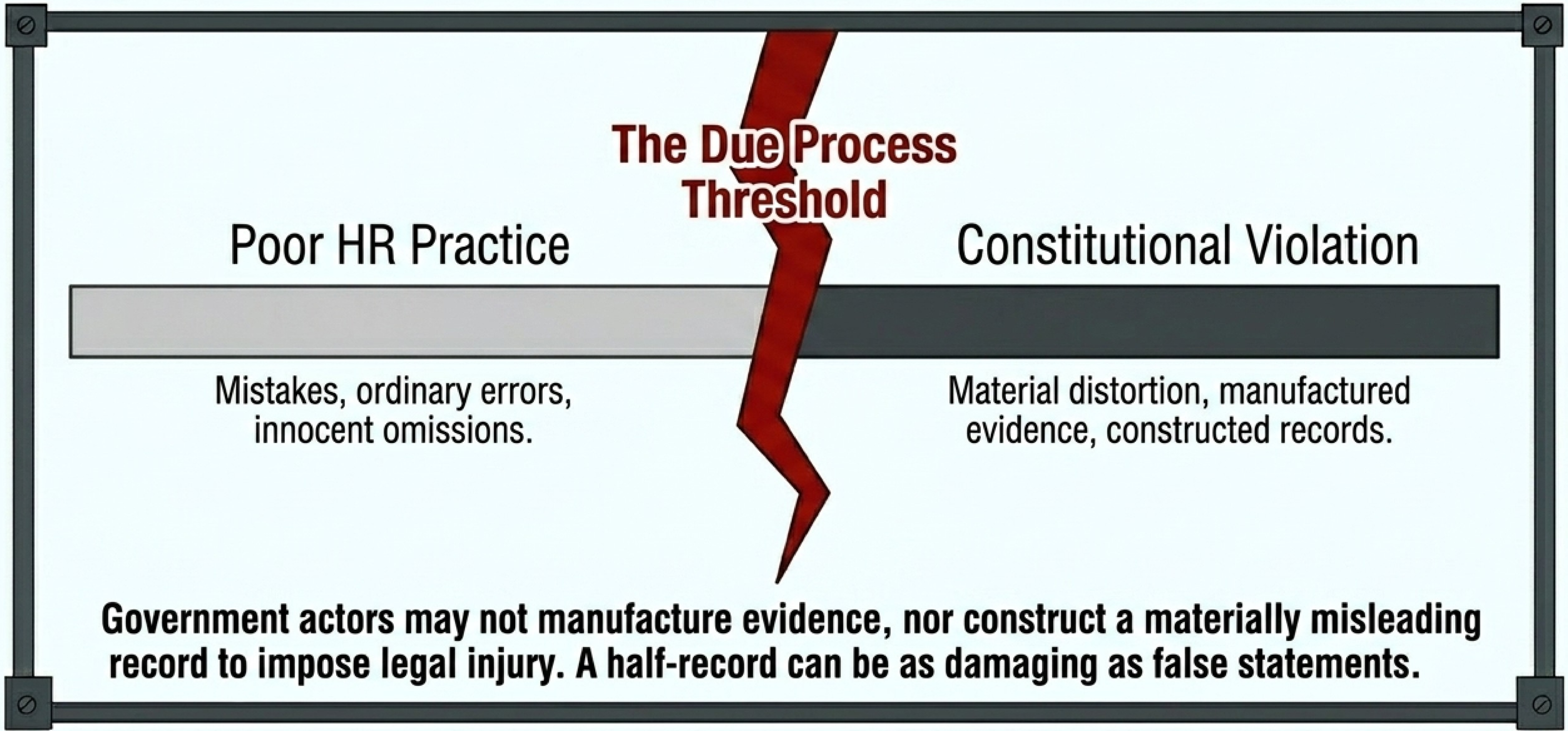


Absence of Comparators

Refusal to analyze how similarly situated employees were treated.

The Hinge: The Due Process Fault Line

Ricciuti v. Transit Authority
Zahrey v. Coffey



Stage 2: The Administrative Law Failure

Arbitrary and Capricious Review (Matter of Pell)

Omitted Witness
Testimony

Ignored
Contradictions

Stripped
Context

Retaliatory
Motive



**Official Findings.
Employee exhibited
poor judgment.
Discipline supported
by record.**

Courts review the record as presented, not as constructed. Agencies manufacture rationality by simply excluding the irrational parts. Completeness of paperwork is mistaken for completeness of proof.

Stage 2: The Deference Trap

Completeness is mistaken for reliability.

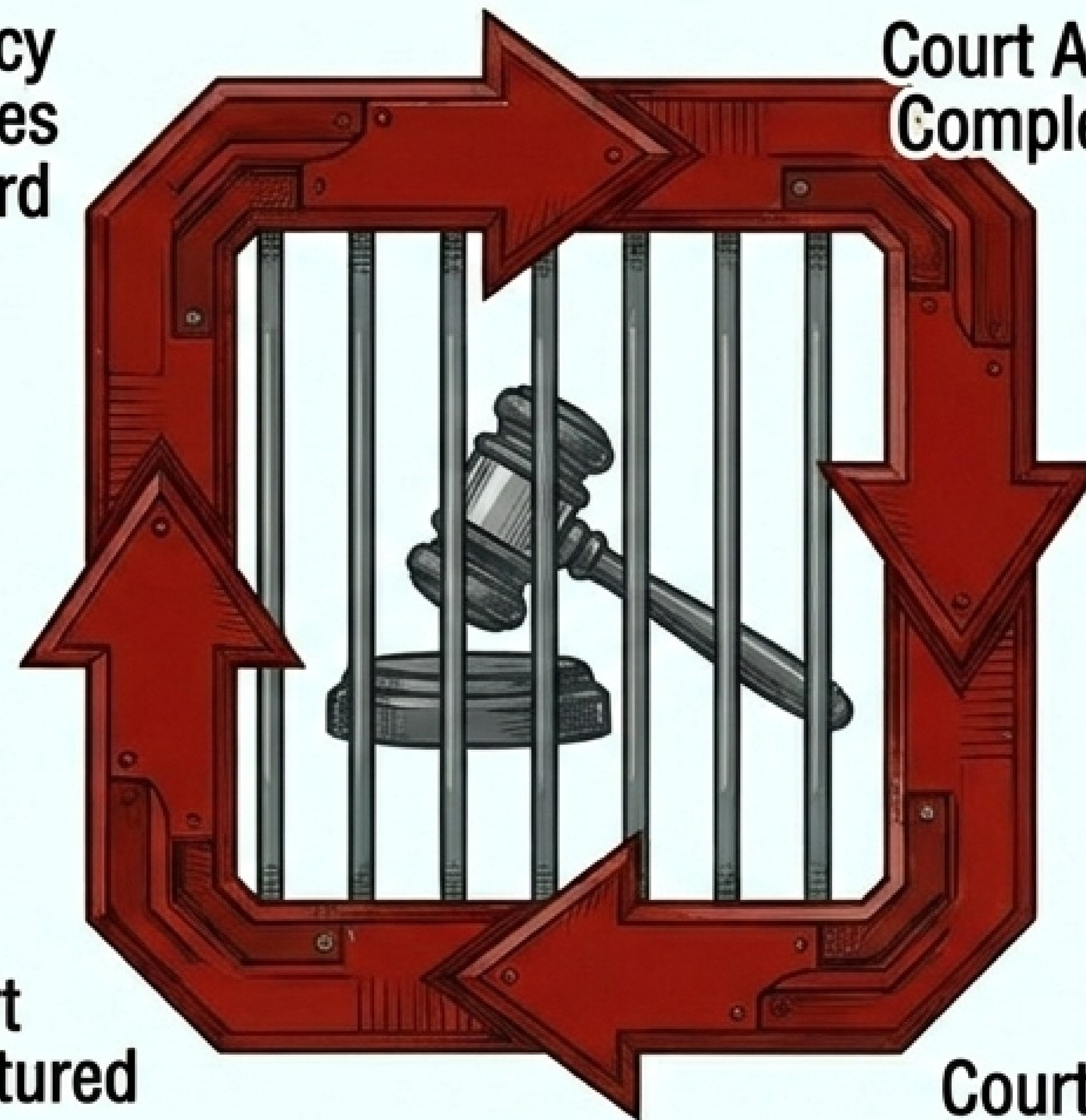
Consistency is mistaken for truth (because contradiction was deliberately removed).

Takeaway: Mechanical deference to an inverted record does not preserve institutional roles; it ratifies distortion.

Manufactured Narrative Becomes Fact

Agency Curates Record

Court Assumes Completeness



Court Manufactured to Agency

Court Defers to Agency

Breaking the Cycle: The Litigation Playbook



Find the Origin

Pinpoint exactly when the conclusion was formed before evidence gathering was complete (referrals, emails).



Demand the Drafts

Expose how the narrative evolved, who changed it, and what facts were laundered out.



Highlight the Missing

Treat the deliberately un-interviewed central witness as affirmative proof of pretext, not just a gap.

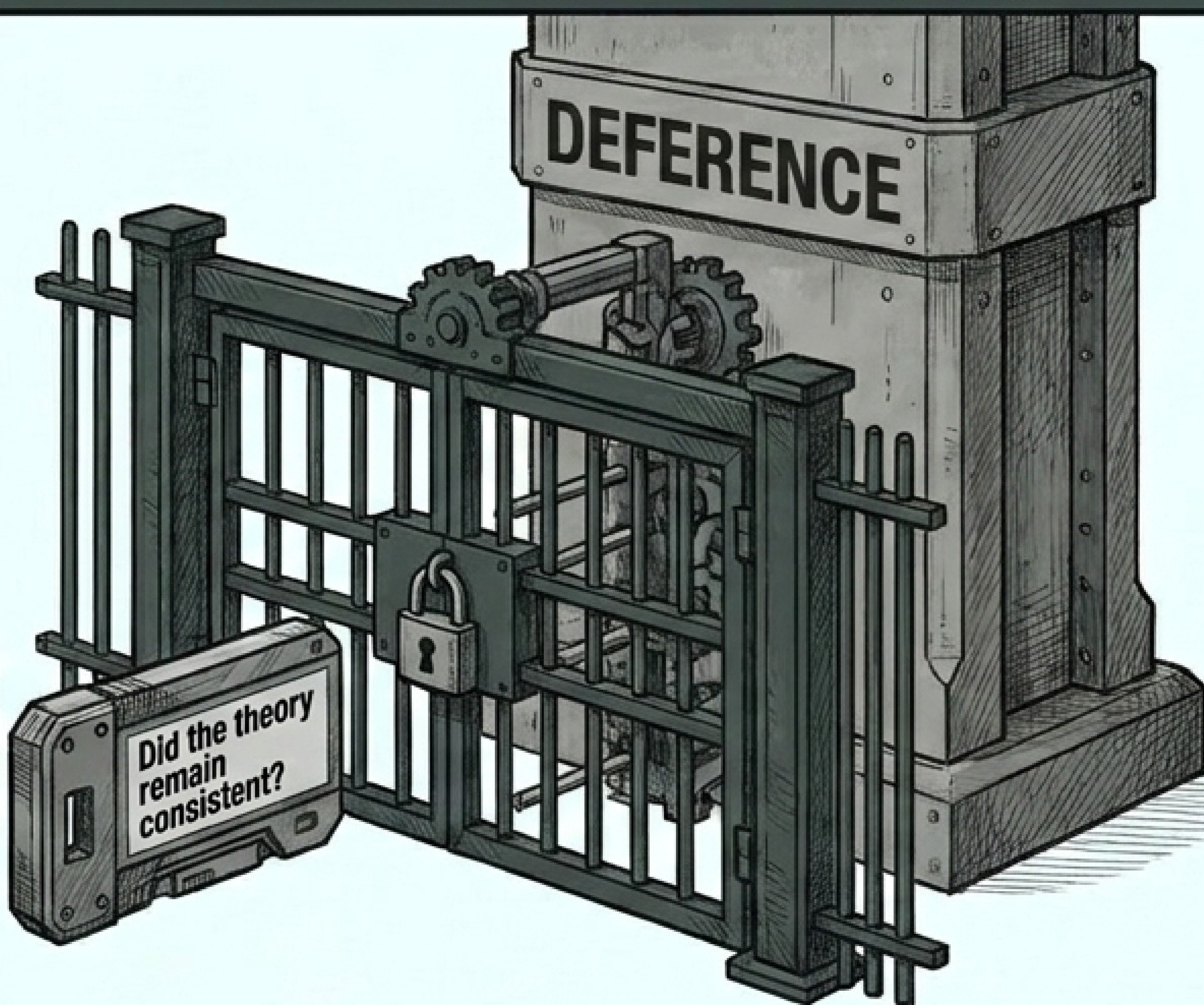
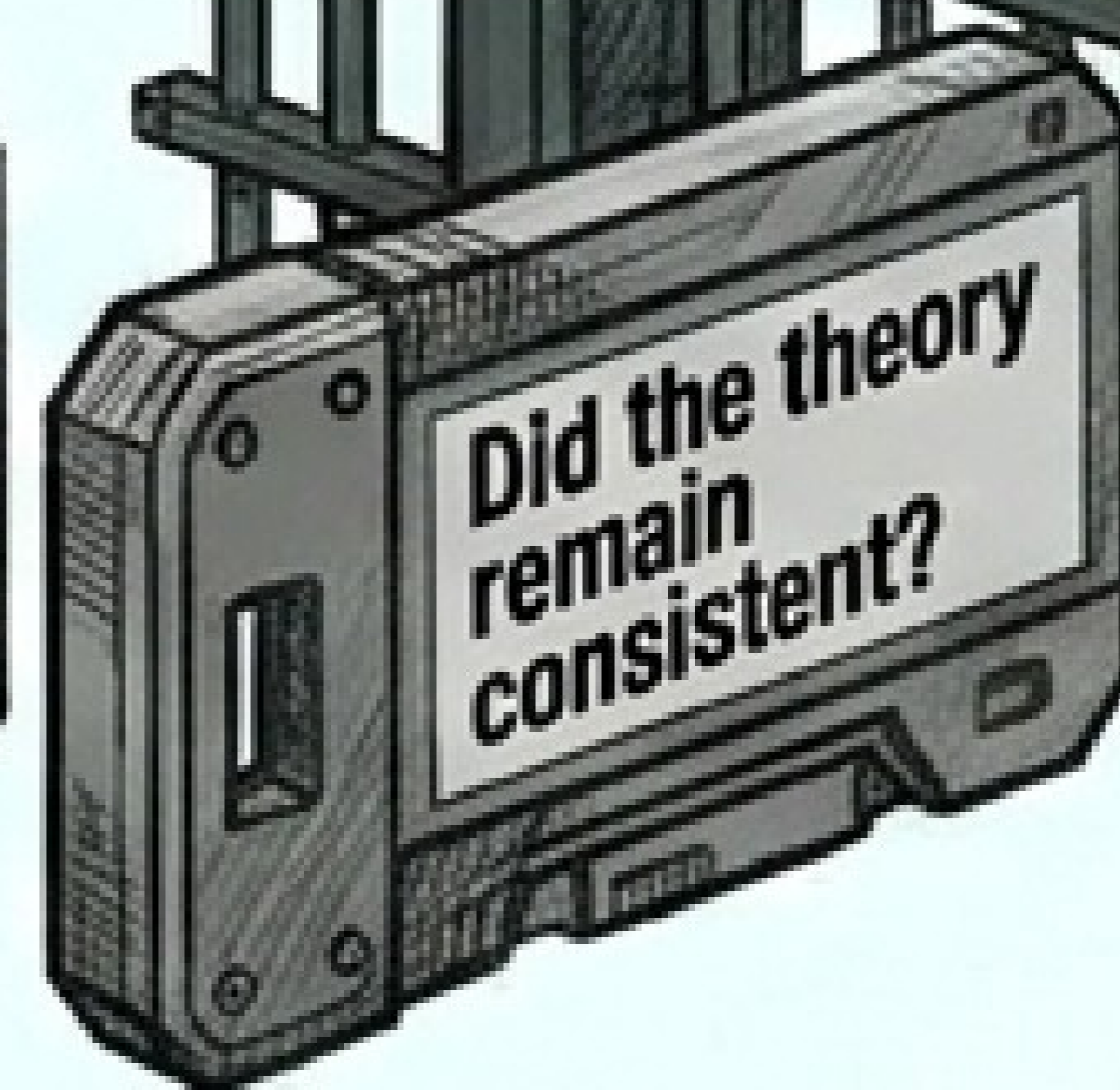


Force the Specifics

Refuse elastic labels (Poor Judgment). Demand the exact rule, concrete harm, and comparator data.

Judicial Responsibility: Deference is Earned

Courts must refuse to defer to records built through omission. Before applying deference, ask:

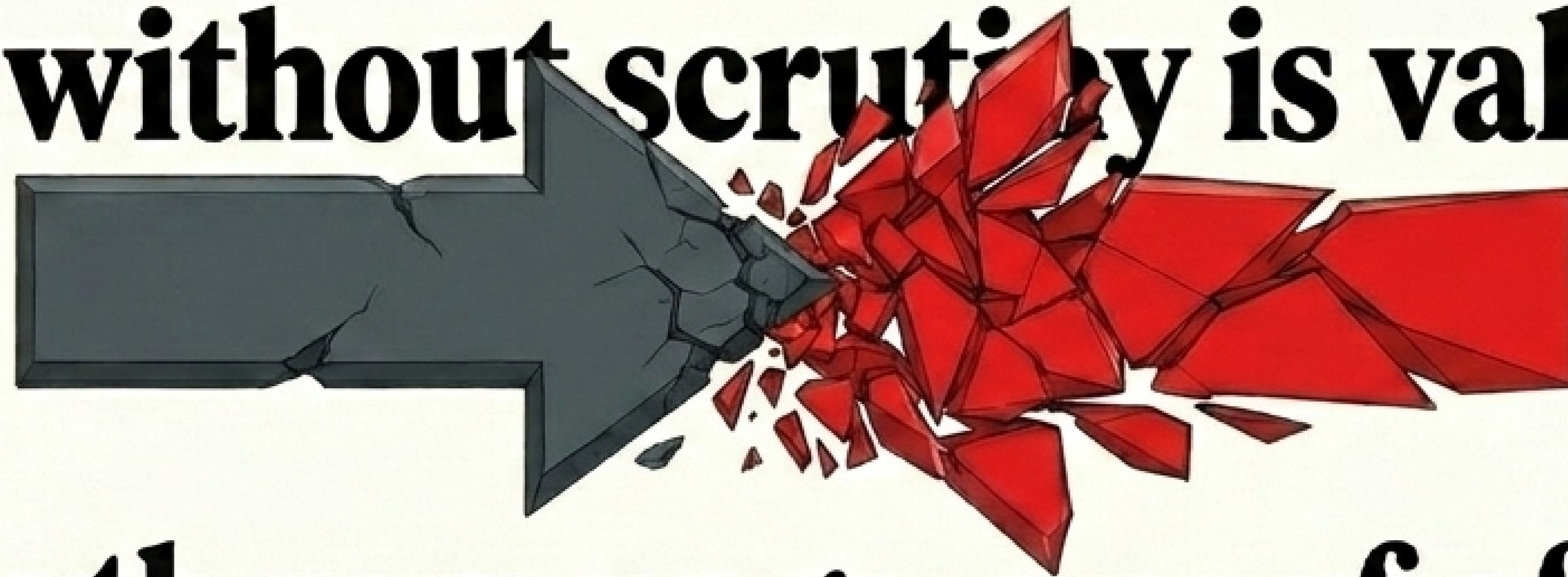


Action: If the answer is no, the record lacks integrity. Do not defer. Annul or remit.

The Final Synthesis

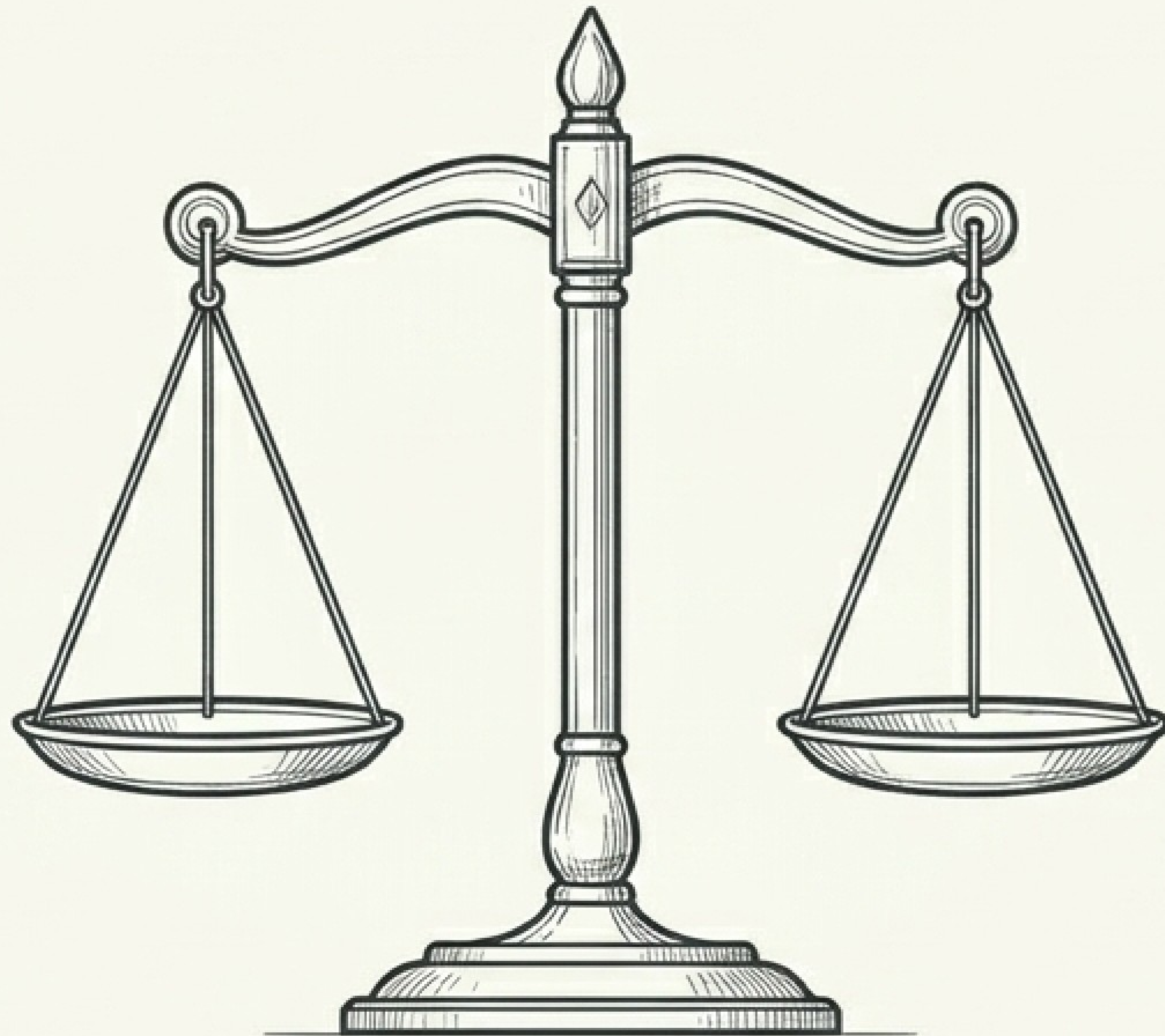
**Investigation without neutrality
is construction.**

Review without scrutiny is validation.



**When both converge, proof of
proof is displaced by institutional
storytelling with legal consequences.**

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Over 20 years counseling thousands of clients in complex matters involving police use of force, systemic discrimination, and institutional accountability failures.