

**HANDOUT 8**

# Innocence In Practice

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June 21, 2017

## Life of a criminal case

(3) United States Supreme Court (Discretionary)	(6) United States Supreme Court (Discretionary)	(9) United States Supreme Court (Discretionary)
(2) Ark. Sup. Ct. ----- Court of Appeals	(5) Ark. Sup. Ct. ----- Court of Appeals	(8) 8 <sup>th</sup> Circuit
(1) Trial Court	(4) Trial Court	(7) Federal District Court

### Direct Appeal

Issues presented at trial and preserved by trial counsel

### State Postconviction/ State Habeas

New issue could not have been presented previously

### Federal Habeas

Federal issues preserved through both Direct Appeal and Postconviction

# Motion for New Trial

## Ark. Stat. Ann. §16-91-105(b)

MIDWEST  
**INNOCENCE**  
PROJECT

- Must be filed within **30 days** of conviction
- Must show:
  - **New evidence** would have changed the outcome of case, AND
  - **Used due diligence** in trying to uncover the evidence **BEFORE** trial.
- Denial only overturned on abuse of discretion

## R. 37 - Postconviction

- Can only be a **COLLATERAL** attack, not a direct attack
- So evidence must be raised as a Constitutional Issue
  - Ineffective Assistance of Counsel
  - Prosecutorial Misconduct (*Napue*)
- Must be filed within **90 days** of judgment or **60 days** of judgment on appeal



# Habeas Corpus-New scientific Evidence

## Ark. Stat. Ann. § 16-112-201.

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PROJECT

- File within **36 months** of conviction unless manifest injustice or new form of testing
- (1) Scientific evidence **not available at trial** establishes the petitioner's actual innocence; or
- (2) The scientific predicate for the claim **could not have been previously discovered through the exercise of due diligence** and the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by **clear and convincing evidence** that no reasonable fact-finder would find the petitioner guilty of the underlying offense.

# Writ of Error Coram Nobis

- Designed to “fill gaps in legal system”
- Previously available to address errors in only four categories:
  - insanity at the time of trial,
  - a coerced guilty plea,
  - material evidence withheld by the prosecutor (*Brady*),
  - or a third-party confession to the crime made between conviction and direct appeal.

# Writ of Error Coram Nobis

- BUT *Pitts v. State* – Arkansas Supreme Court has reinvested jurisdiction in the trial court to hear testimony about hair evidence for possible writ
  - Still unclear whether will be granted relief and what the parameters of review will be

# Federal Habeas

- 1 year to get into court following direct appeal
- 8<sup>th</sup> Circuit limits definition of “New evidence” to evidence that could NOT have been discovered at the time of trial



# Innocence as a Gateway

*Schlup v. Delo*, 513 U.S. 298 (1995)

- **Actual Innocence**, i.e. *new evidence establishes reasonable probability that no reasonable juror would find the defendant guilty* acts as a gateway
  - BUT what is new evidence?

*Kidd v. Norman*,  
651 F.3d 947 (8<sup>th</sup> Cir. 2011)

MIDWEST  
**INNOCENCE**  
PROJECT

“We conclude the district court correctly interpreted *Amrine* as requiring Kidd to come forward not only with new reliable evidence which was not presented at trial, but to come forward with new reliable evidence which was not available at trial through the exercise of due diligence.”

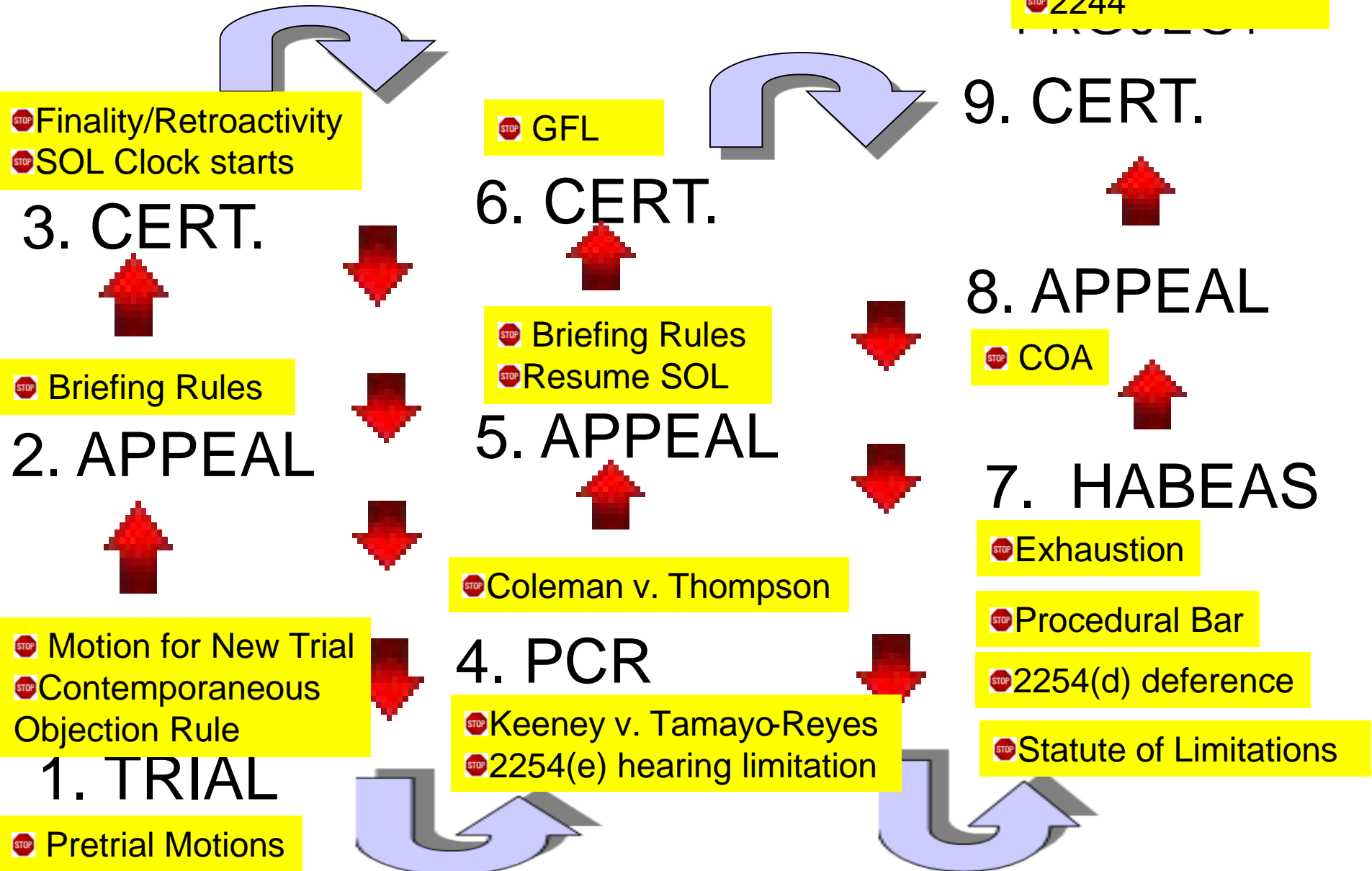


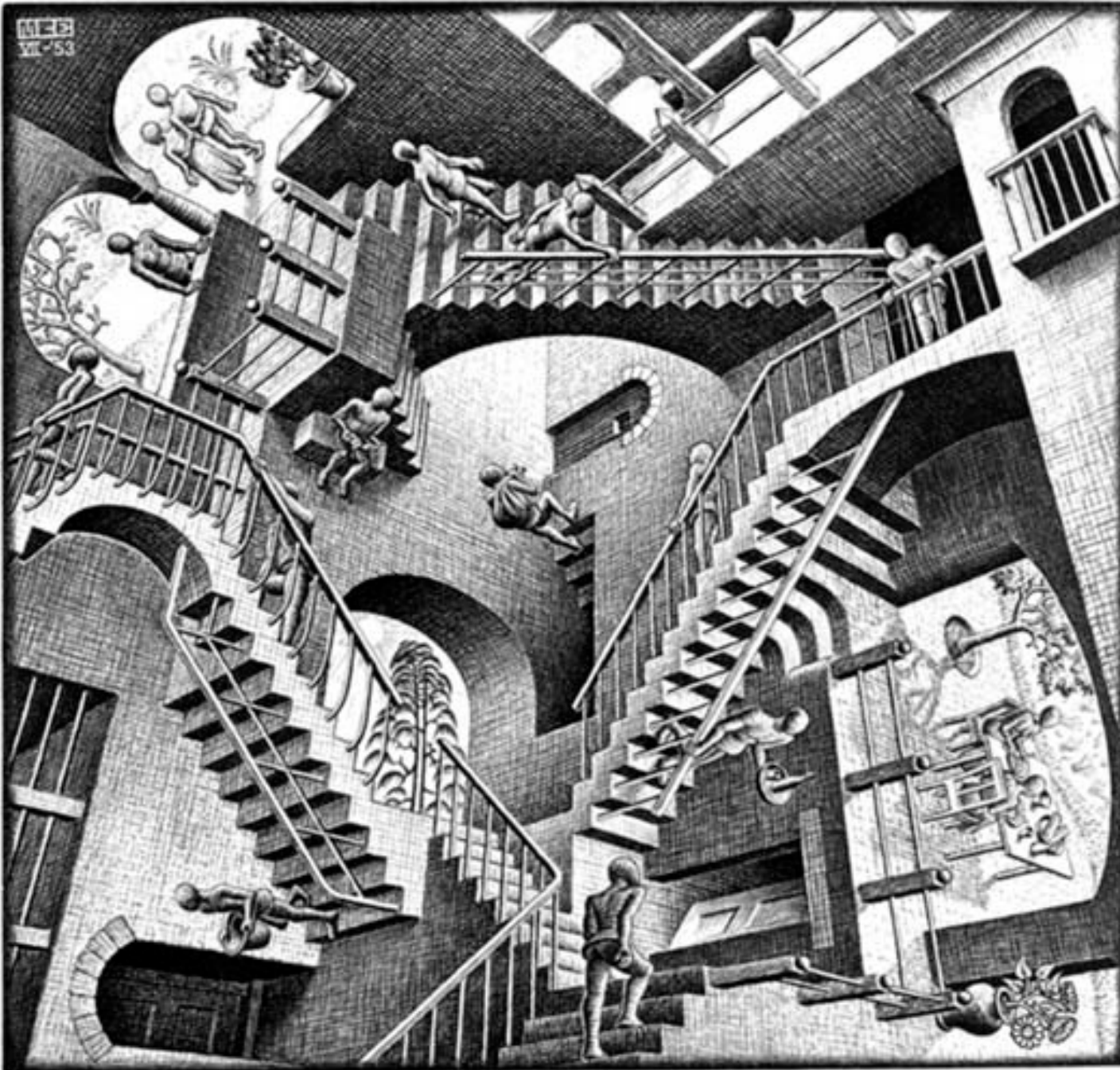
# Procedural Barriers

MIDWEST

Abuse of the Writ  
2244

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# Questions?

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