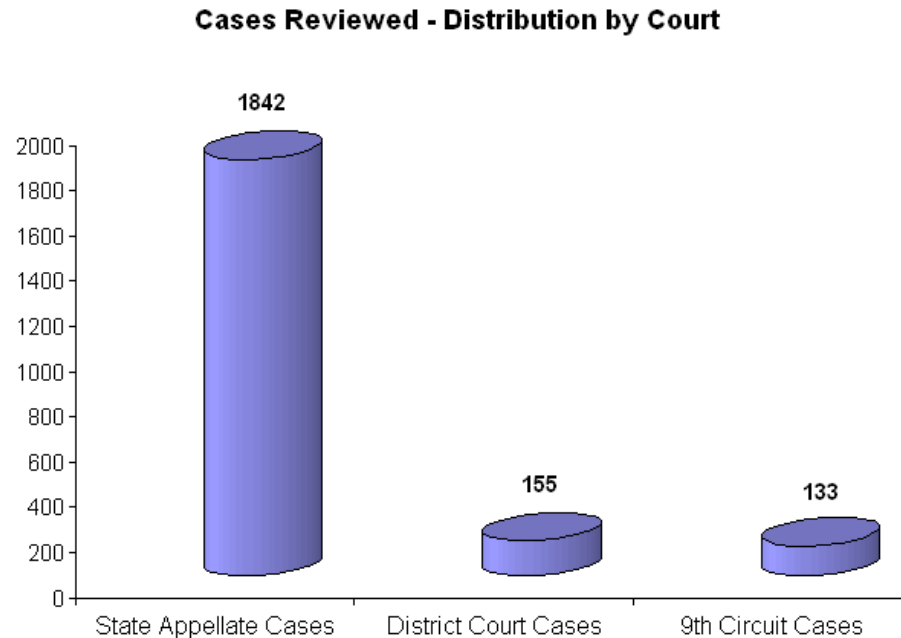


Methodology

- Reviewed all CA appellate opinions from 1997-2006 (state and federal opinions) containing the term “prosecutorial misconduct”



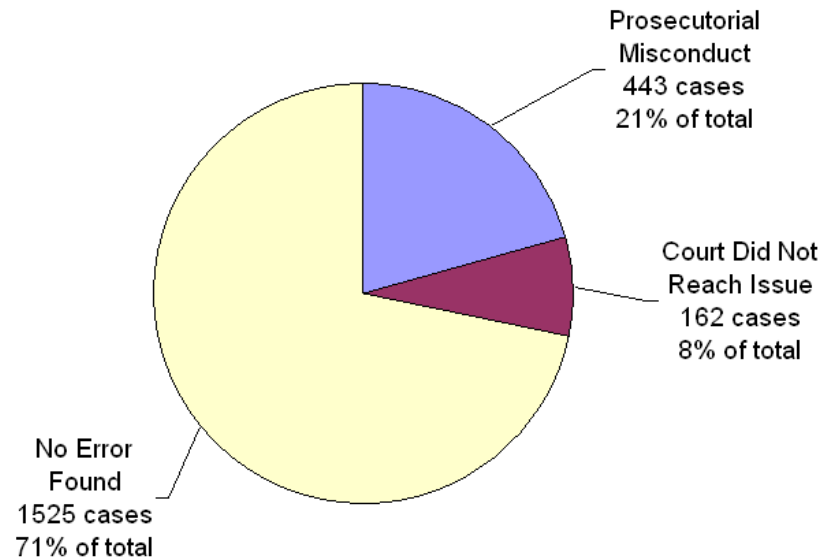
Highlights of Findings

- Allegations of prosecutorial misconduct were addressed in **fewer than 5%** of CA state appellate court opinions
 - 48,149: Number of criminal appeals disposed of by written opinion between 1997-2005
 - 1,582: Number of opinions containing the term “prosecutorial misconduct” between 1997-2005

Highlights of Findings

2,130 total opinions where prosecutorial misconduct was discussed

- No misconduct found in 1,525 cases (71%)
- Misconduct found in 443 cases (21%)
- Court did not reach a finding, or finding is unknown, in 162 cases (8%)

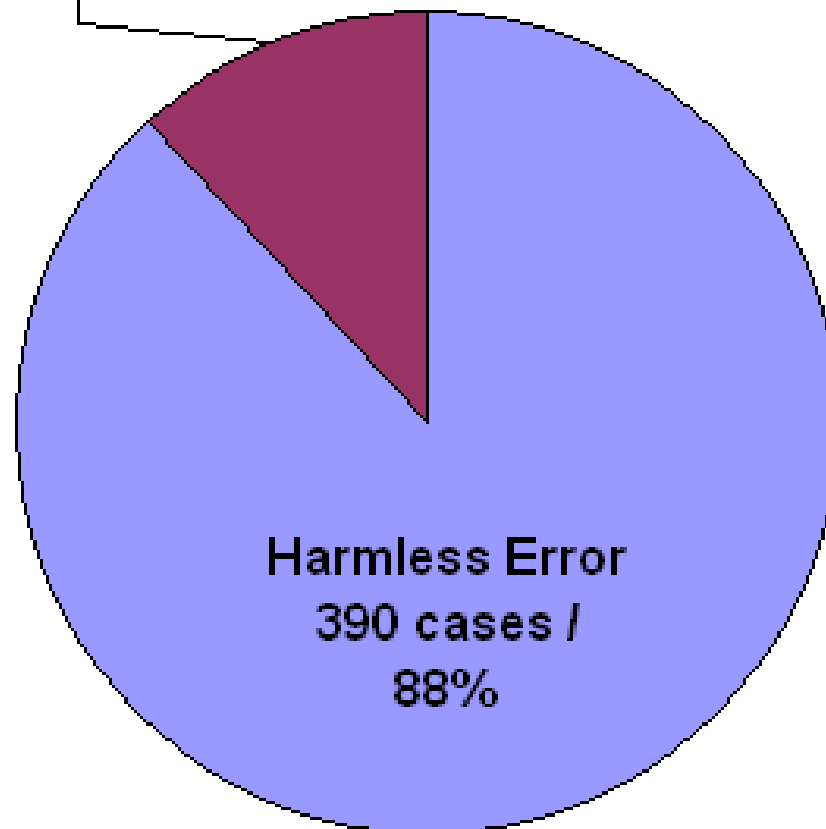


“Did Not Reach” Findings

- Top reasons why courts do not make findings about prosecutorial misconduct
 - Waiver (46.3%)
 - No explanation (20.4%)
 - Case reversed on other grounds, “no prejudice,” or moot claim (15.4%)
 - Unknown, because portions of opinions not available for review (16%)

Harmful vs. Harmless Error

Harmful Error
53 cases / 12%



Harmless Error
390 cases /
88%

Brady and Batson

- Brady violations = 129 cases
- Batson/Wheeler error = 20 cases
- These additional 149 cases brought the total number of cases where error was found to **592**

CA Business & Professions Code

§ 6086.7 Court Notification to State Bar for Misconduct, Misrepresentation, Incompetent Representation and Impositions of Sanctions:

(a) A court **shall notify** the State Bar...

(2) Whenever a **modification or reversal** of a judgment in a judicial proceeding is based in whole or in part on the misconduct, incompetent representation, or willful misrepresentation of an attorney.

Harmful

Harmless

Alvarado, 141 Cal.App.4th 1577
Prosecutor argued that D was the perpetrator because he was the one charged

Woods, 2001 WL 1649216
Prosecutor stated that District Attorneys "do not prosecute anybody whom we personally do not believe to be guilty beyond a reasonable doubt."

Combs, 379 F.3d 564
On cross-examination, compelling defendant to call a testifying government agent a liar

Dancy, 2002 WL 343389
Prosecutor asked questions that forced defendant to assert that police officers were liars

Perlaza, 439 F.3d 1149
"That presumption [of innocence], when you go back in the room right behind you, is going to vanish when you start deliberating. And that's when the presumption of guilt is going to take over you..."

Alvarado, 2006 WL 366953
"Walk into the jury deliberation room. When you walk in, that presumption of innocence is over. This trial is done. You are no longer presumed innocent."

Roquemore, 2006 WL 636805
Prosecutor misstated standard of proof, equating "beyond a reasonable doubt" with "what makes sense"

Lee, 2006 WL 2329431
Prosecutor misstated standard of proof, equating reasonable doubt standard with "gut feelings" about defendant's guilt

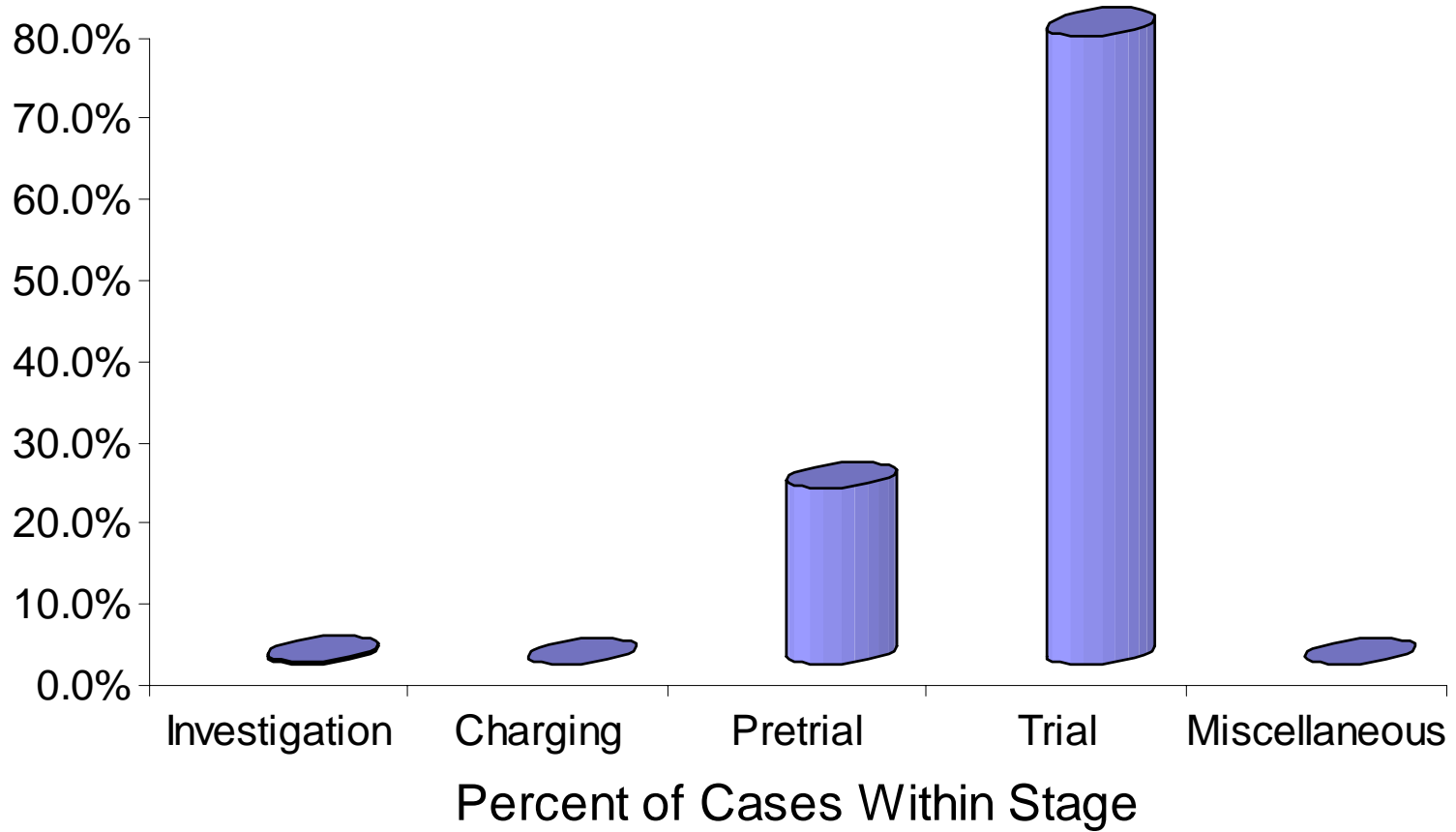
Hill, 72 Cal.Rptr.2d 656
Misstated or mischaracterized evidence; referred to facts not in evidence; misstated the law before the jury; engaged in derisive action or made derogatory comments directed at defense counsel; intimidated defense witness; asked jury to consider biblical teachings when deliberating on penalty

Hinton, 37 Cal.4th 839
In opening statement, improperly referred to inadmissible statements, misstated what evidence would show, and was unduly argumentative. During cross-examination, asked objectionable questions, misstated evidence, and attempted to introduce inadmissible evidence. Also commented on defendant invoking Miranda rights. Trial court sustained 34 defense objections, admonished prosecutor 10 times, struck witness response 5 times, and held 9 sidebars.

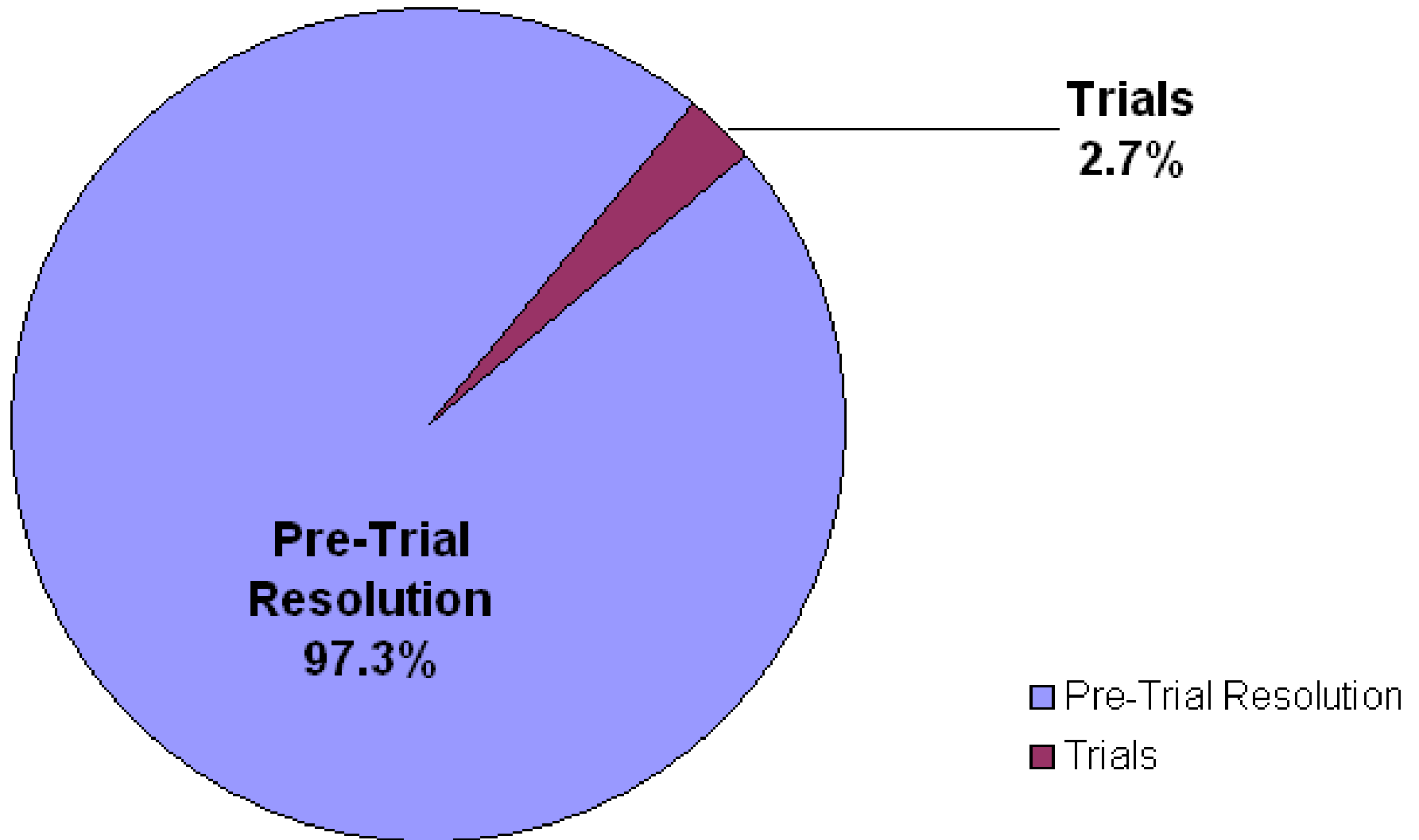
Types & Stages of Misconduct

Investigation	Charging	Pretrial	Trial
Examining suspects improperly	Charging without sufficient evidence	Failing to disclose exculpatory evidence	Use of false evidence/improper examination of witnesses
Authorizing improper contact with represented persons	Overcharging for bargaining purposes	Interfering with defendants' access to witnesses	Improper argument
Making misrepresentations to witnesses or defendants			Vouching
Conflicts with the prosecutors own interests			

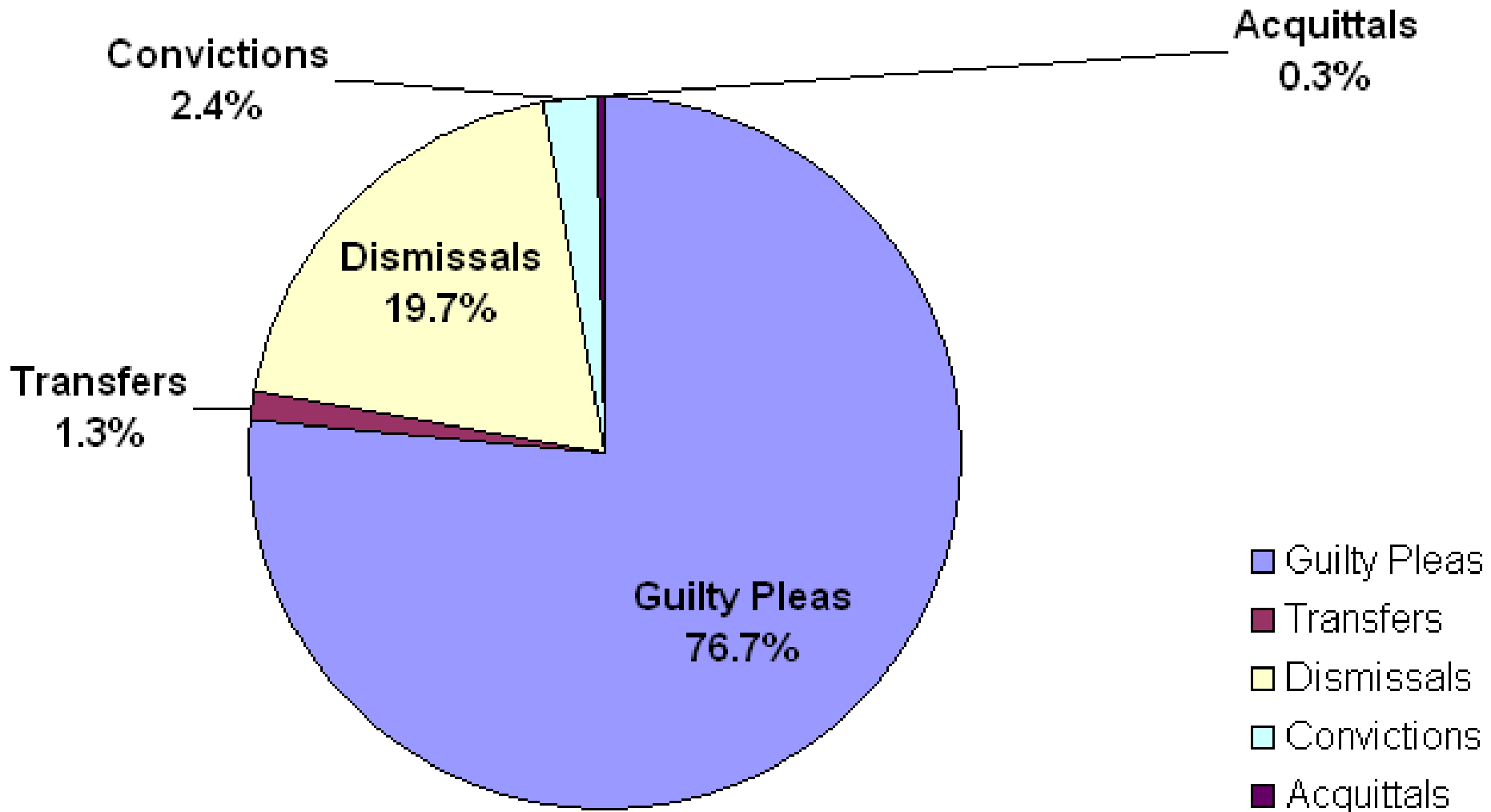
Chart 5. Stages of Occurrence of Misconduct



Percentage of Pre-Trial vs. Trial Dispositions



Statewide Felony Dispositions by Percentage - FY 2004-2005



Record of Discipline

- Identified 347 prosecutors by name
- Number disciplined = 11
 - 7 failure to pay bar dues
 - 1 misuse of office
 - 1 MCLE non-compliance
 - 2 *Brady* violations

Recidivists

- Identified 30 total prosecutors
 - 28 prosecutors had 2 cases each
 - 2 prosecutors had 3 cases each
- $2/3^{\text{rd}}$ of the recidivists were found to have repeated the **same** misconduct

Number disciplined = **none**