



TEXAS JUDICIAL COUNCIL

205 WEST 14TH STREET, SUITE 600 - TOM C. CLARK BUILDING – (512) 463-1625 – FAX (512) 936-2423
P. O. BOX 12066 – AUSTIN, TEXAS 78711-2066

CHAIR:
HON. NATHAN L. HECHT
Chief Justice, Supreme Court

EXECUTIVE DIRECTOR:
DAVID SLAYTON

VICE CHAIR:
HON. SHARON KELLER
Presiding Judge, Court of Criminal Appeals

TIMOTHY COLE EXONERATION REVIEW COMMISSION AGENDA

March 22, 2016 - 1:30-3:30 P.M.
Supreme Court of Texas Courtroom
201 West 14th Street, Austin, Texas 78701

Action and Discussion Items:

- I. **Commencement of Meeting** – *Representative John Smithee, Presiding Officer*
- II. **Attendance of Members** – *Wesley Shackelford*
- III. **Approval of Minutes from December 10, 2015**
- IV. **Opening Remarks**
- V. **Report on Electronic Recording of Interrogations**
 - a. Introduction of Christopher Ochoa – *Anthony Houghton*
 - b. Presentation of exoneration story – *Christopher Ochoa*
 - c. Report on Survey Results – *Alejandra Peña and Terri Peirce*
 - i. Judges
 - ii. Prosecutor and Defense attorneys
 - iii. Law enforcement
- VI. **Consider recommendations on electronic recording of interrogations**
- VII. **Review Timeline for Commission Activities**
- VIII. **Next Topics for Review**
 - a. Eye Witness Identification
 - b. False Accusation and Informant Regulation
- IX. **Review Advisory Board Actual Innocence Exoneration Nomination**
 - a. Introduction of Christopher Scott – *Mike Ware*
 - b. Presentation of exoneration story – *Christopher Scott*
- X. **Public Comment**
- XI. **Other Business**
- XII. **Next Meeting**
- XIII. **Adjournment**



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TIMOTHY COLE EXONERATION REVIEW COMMISSION

MINUTES OF MEETING

December 10, 2015
1:30 P.M.

SUPREME COURT OF TEXAS
Supreme Court
Building
201 W. 14th
Street
Austin, Texas 78701

COMMENCEMENT OF MEETING

On December 10, 2015, Representative John T Smithee called the meeting¹ of the [Timothy Cole Exoneration Review Commission](#) (TCERC) to order at approximately 1:30 p.m. in the courtroom of the [Supreme Court of Texas](#) (SCOT) in Austin, Texas

The following Commission members were present:

Representative John T Smithee, District 86, Amarillo
The Honorable Sharon Keller, Chair, Texas Indigent Defense Commission
Senator John Whitmire, District 15, Houston
Senator Joan Huffman, District 17, Houston
Representative Abel Herrero, District 34, Corpus Christi
Mr. Sam Bassett, President, Texas Criminal Defense Lawyers Association

¹ The meeting may be viewed on the State Bar of Texas website <http://www.texasbarcle.com/CLE/TSCSearchResults2.asp>

Mr. John Beauchamp, General Counsel, Texas Commission on Law Enforcement
Dr. Vincent Di Maio, Presiding Officer, Texas Forensic Science Commission
Mr. Rene M Péna, Chairman, Texas District and County Attorneys Association
Mr. Carol Vance, Retired, Houston

Attending by phone: *Mr. Charles Eskridge, Quinn Emanuel Urquhart & Sullivan, LLP, Houston,*
and Mr. Staley Heatley, President, Texas District and County Attorneys Association

Advisory Members in Attendance:

Mr. Anthony S. Haughton, Executive Director, Innocence Project at the Thurgood Marshall School of Law at Texas Southern University
Ms. Cassandra Jeu, Director, Texas Innocence Network, University of Houston Law Center
Mr. Mike Ware, Executive Director, the Innocence Project of Texas

Additional attendees:

David Slayton, Executive Director, Texas Judicial Council

Not in attendance: Advisory member Tiffany J. Dowling, Director, Texas Center for Actual Innocence, University of Texas School of Law

MINUTES

Without objection, the [October 29, 2015](#) meeting minutes were approved as submitted.

Opening Remarks

Presiding Officer, Representative John Smithee welcomed members who were not able to attend the October meeting and announced a change in advisory members. Mr. Mike Ware is replacing Mr. Scott Henson as Executive Director of the Innocence Project of Texas.

Overview of Exonerations in Texas since 2010

Staff presented an overview of exoneration cases in Texas since 2010.

Ms. Lynn Garcia with the Forensic Science Commission provided information about their agency's current efforts to notify individuals whose convictions occurred partially due to an irregularity in analyzing evidence gathered by Texas crime laboratories around interpretation of DNA mixtures in their cases.

Report on electronic recording of custodial interrogations in other states and federal agencies

Staff provided information on the practice of recording custodial interrogations in other states as well as Federal Agencies. The Commission requested staff to provide examples of laws other states have passed.

Review and consider survey of Texas law enforcement agencies on recording custodial

interrogation practices

The Commission decided not to review this topic until the scope and purpose of the charge has been decided upon.

Nomination from Advisory Board of actual innocence exoneration by Texas innocence project

Mr. Mike Ware, Executive Director, Innocence Project of Texas presented the 1997 case of Claude Simmons and Christopher Scott for an in-depth research by the Commission. Both men were convicted of capital murder and received life sentences. They were released from prison in October 2007, and declared innocent by the Texas Court of Criminal Appeals on March 3, 2010. A question was raised on the legality of researching a case that has been expunged. Staff will review and provide a legal opinion prior to next meeting.

Discuss Commission's scope of work

A poll of possible research topics will be created and sent to members to assist in deciding the topics for the Commission to research.

Public Comment

Mr. Ricky Forrest appeared before the Commission to voice his past experiences and concerns on the issues surrounding wrongful convictions.

Mr. Nick Vilbas of the Forensic Science Commission spoke to the Commission encouraging them to utilize the resources available through the innocence networks and informed members of the Innocence Network Annual Conference in San Antonio this coming April.

Next Meeting

The next meeting will be held in March 2016, staff will send out a poll with possible meeting dates.

Adjournment

The meeting was adjourned at approximately 3:30 PM.



Christopher Ochoa

Convicted: **May 5, 1989**

Conviction: Murder

Sentence: Life

Cause: False Confession or Admissions

Time served: 13 years

Exonerated: **February 6, 2002**

Nancy DePriest was raped and murdered in her work place in Austin, Texas in 1988. Chris Ochoa pled guilty to the murder of DePriest and his friend, Richard Danziger, was convicted of rape. Ochoa had confessed to the crime and had implicated Danziger. It would be discovered, however, that his confession was coerced and that neither man had anything to do with the slaying or raping of DePriest.

The victim worked at a Pizza Hut in Austin, where she had been tied up with her bra, raped, and shot in the head in the wake of an early morning robbery. She was still alive when the police arrived but died later that night. The police began investigating local Pizza Hut employees on the theory that a master key was used to gain entry.

Christopher Ochoa and Richard Danziger were roommates who also worked at an Austin area Pizza Hut. They were observed by a Pizza Hut waitress eating and drinking beer in what she surmised to be a toast to the victim. Police questioned Ochoa and Danziger in November 1988, and the two subsequently became the main suspects.

In their interviews, the police noted that Danziger seemed to know much about the crime that was not public knowledge.

Ochoa was questioned separately and the police reported that he had confessed his involvement in the crime, pointing to Danziger as the assailant who shot DePriest after they robbed the restaurant. The state offered to give him a life sentence if he agreed to plead guilty and testify against Danziger at trial. Under threat of receiving the death penalty and by the advice of his attorney, Ochoa agreed to their terms. At trial, Ochoa changed his story and claimed that he, not Danziger, had shot DePriest. Consequently, prosecutors charged Danziger with rape instead of the murder.

Ochoa testified that the two had planned to rob the Pizza Hut, had tied up and raped DePriest, and that he had shot her because she recognized him. Danziger presented an alibi defense, claiming to have been with his girlfriend that night. He could give no reason for why Ochoa would testify against him. The only forensic evidence that linked Danziger to the crime was a pubic hair found near the blood in the restaurant that, when microscopically examined, was consistent with Danziger's pubic hair. There was semen evidence collected but the crime laboratory reported that the amount was very small. Though no experts testified that the semen could link Danziger, one expert claimed that the semen on a vaginal swab was compatible with Ochoa. Both men received life sentences.

Years later, letters were sent to the police, then Governor Bush's office, and the District Attorney's Office. The letters revealed detailed knowledge of the crime. The author of the letters, Achim Marino, was in prison on other convictions with three life sentences. He had apparently undergone a religious conversion while attending an Alcoholics/Narcotics Anonymous program whereby he was obligated to confess his responsibility for the DePriest murder. He also wrote that he did not know either Ochoa or Danziger and did not know why they would confess to a crime that he had committed. Marino also stated that he had sent confessions to other offices, including a newspaper and the ACLU, but that his letter had not been answered.

After police received another letter from Marino that contained a detailed description of the scene, they began investigating the case again. Marino's letter told them how to locate items that were stolen from the Pizza Hut, which the police obtained. Investigators approached both Danziger and Ochoa again. Danziger had sustained injuries to his head while in prison and was housed in a mental institution. Ochoa gave them the same story he had told at trial.

Ochoa went on to contact the Wisconsin Innocence Project, headed by Keith Findley and John Pray. Students there began investigating his claim of innocence. The prosecution had some of the evidence that excluded Ochoa and possibly Danziger as well, and inculcated Marino. This evidence was purportedly contaminated in testing.

Forensic Science Associates, a private forensic laboratory in California, had retained a sample from testing performed at the time of the trial in 1989. Using newer testing methods, FSA was able to exclude both Ochoa and Danziger as sources of the spermatozoa. Chris Ochoa and Richard Danziger were exonerated in 2002.

Ochoa was greeted by the Wisconsin Innocence Project staff and students who helped him prove his innocence. Ochoa now states that his confession and implication of Danziger were the results of police pressure and fear of the death penalty, citing periods of time when they harassed him and threatened him with the consequences of not confessing.

Christopher Ochoa's Biography

Christopher Ochoa is an exonoree that was convicted of a murder he did not commit in 1989. He was sentenced to a life sentence in a Texas Prison. He was subsequently found innocent through new DNA tests and the confession of the real perpetrator of the crime. Through the new evidence he was exonerated with the efforts of the Wisconsin and New York Innocence Project in 2001.

Mr. Ochoa went on to law school at the University of Wisconsin in 2003 and was licensed to practice law in 2006.

Mr. Ochoa's area of practice was criminal defense and home foreclosure defense. He then took time off from the practice of law and has since resumed the practice of law with a focus on labor and employment law as well as real estate law.

Mr. Ochoa, currently, serves on the Wisconsin Innocence Advisory Board and also serves as an advisor to Proclaim Justice a non-profit organization that helps wrongfully incarcerated individuals across the United States.

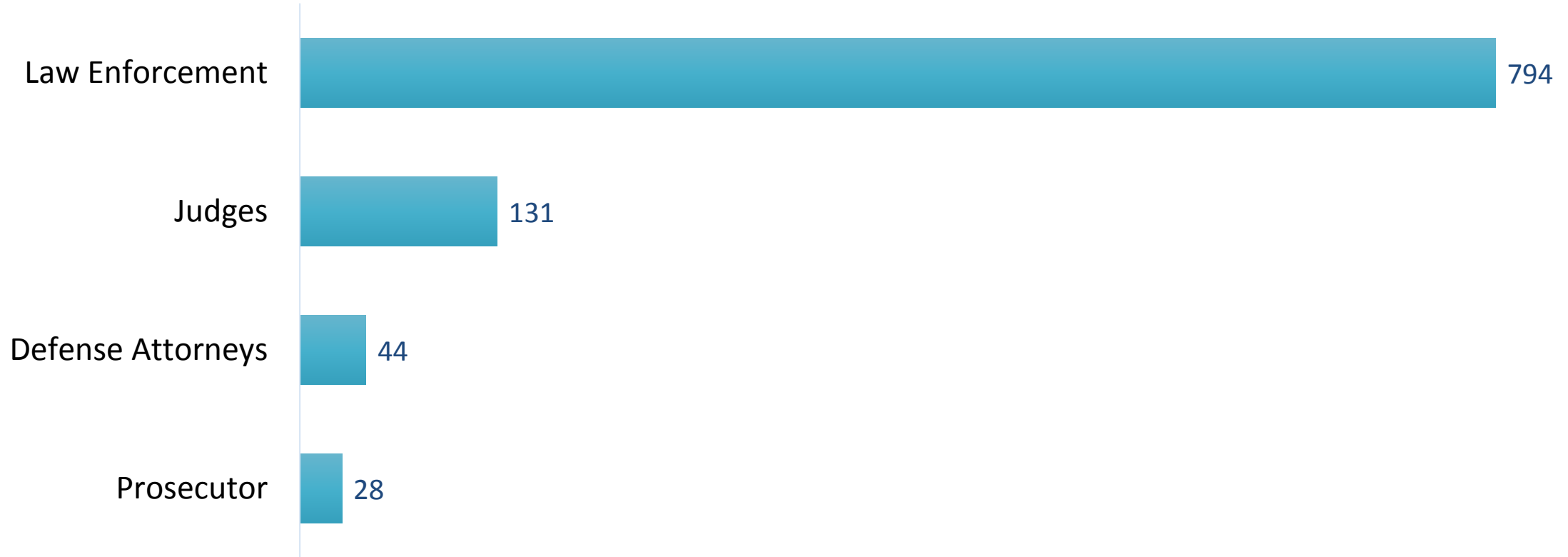
Mr. Ochoa currently resides in Madison, Wisconsin.

Recording Interrogations

Timothy Cole Exoneration Review Commission



Survey Responses

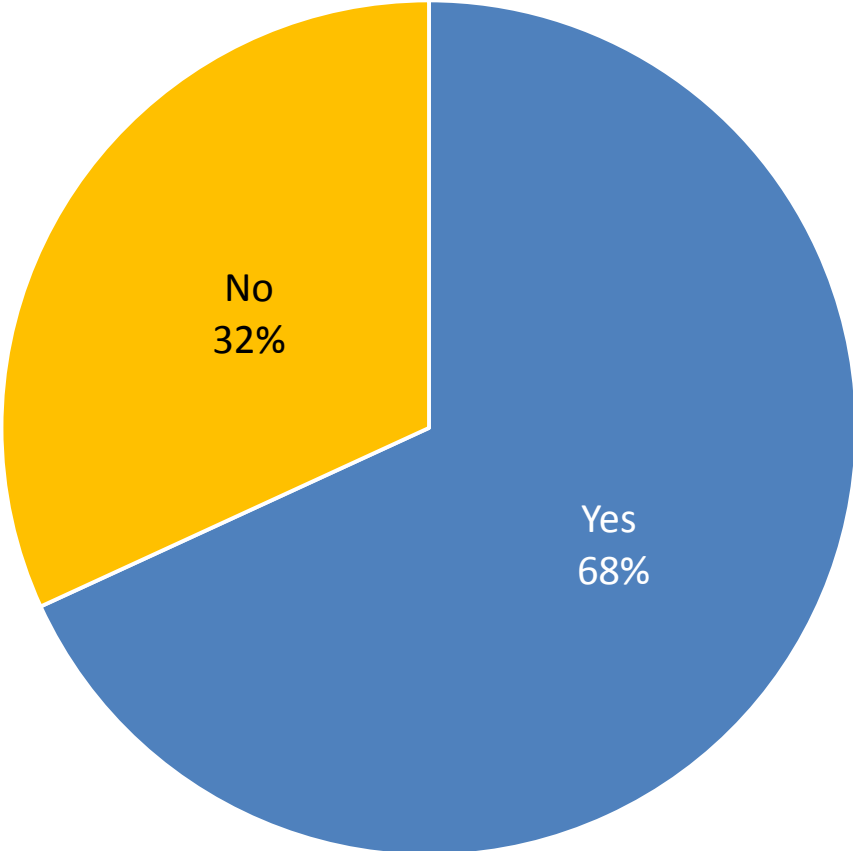


Current Law Enforcement Recording Practices

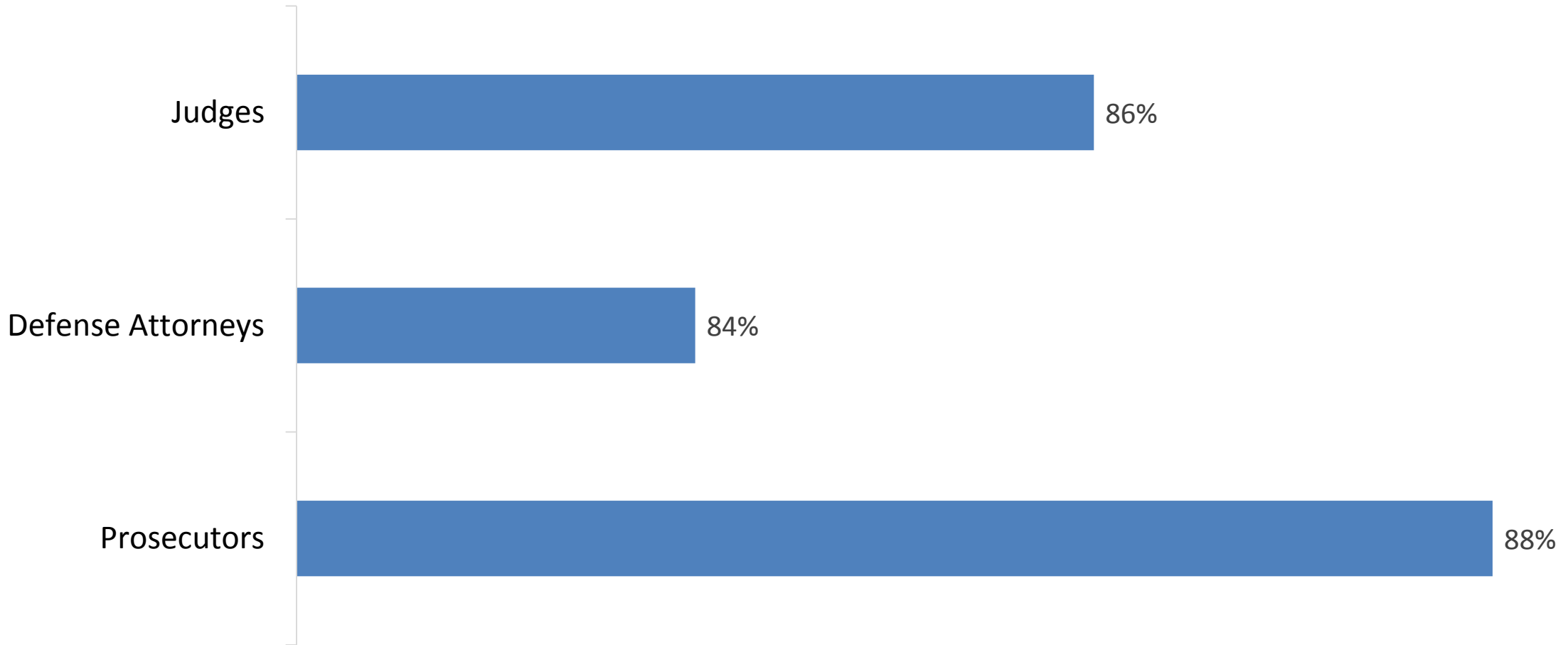
- **92%** use audio and video
- **78%** display recording equipment in interrogation room
- **61%** record both the interviewer and the suspect simultaneously
- **84%** informal questioning inside an interrogation room
- **61%** informal questioning outside an interrogation room
- **63%** do not have written procedures



More than 2/3 law enforcement departments record



Vast majority have experience with electronic recordings entered as evidence



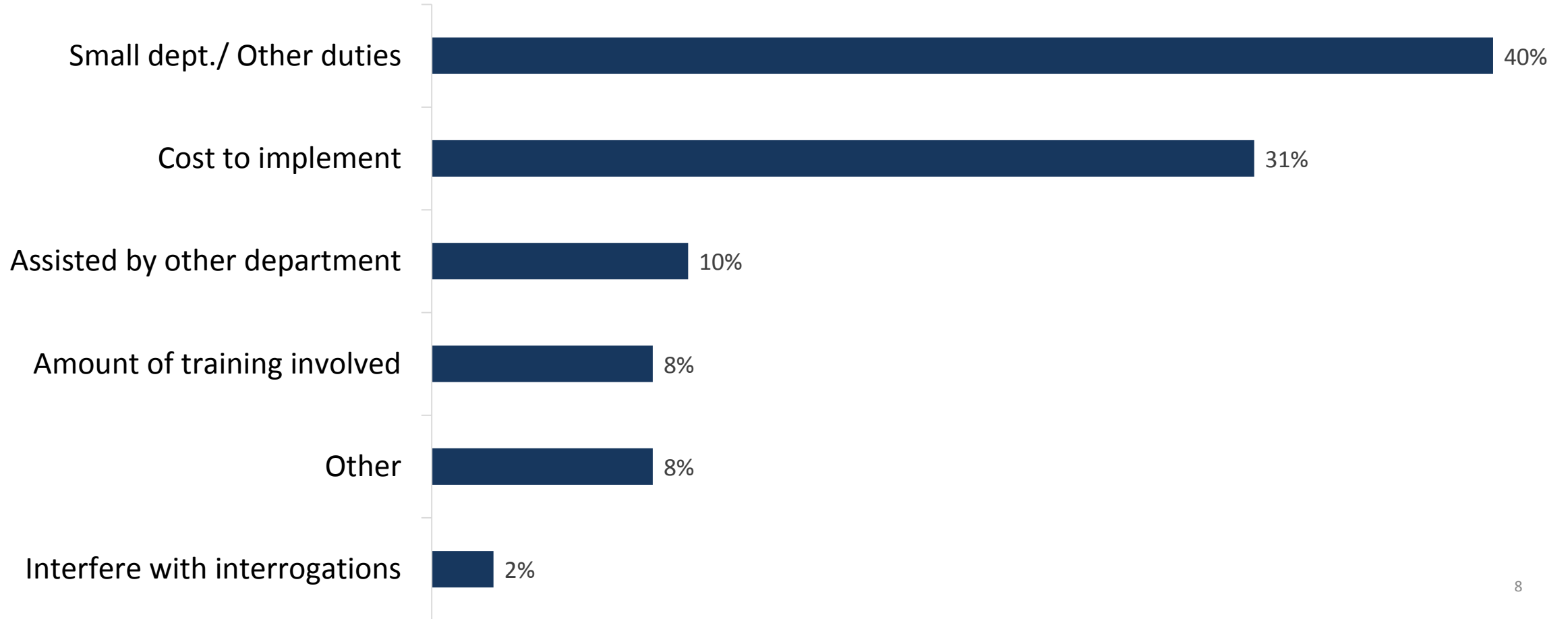
Of those that record, the vast majority electronically record interviews of suspects and witnesses



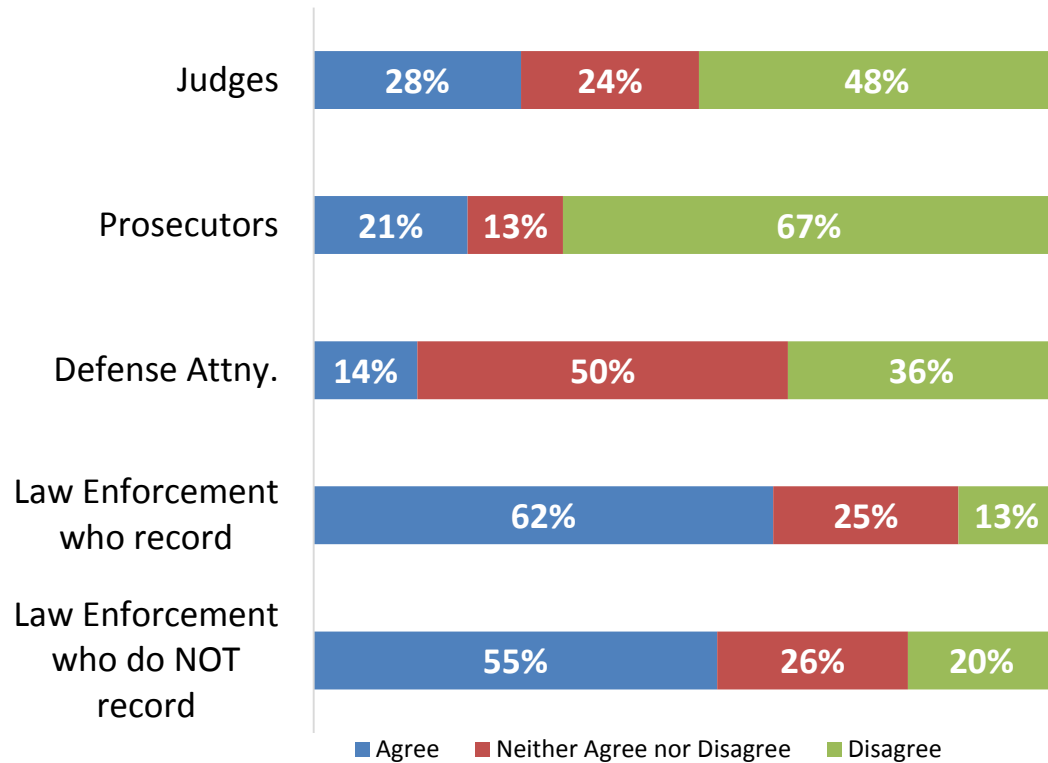
Electronic recording of interrogations found to be beneficial



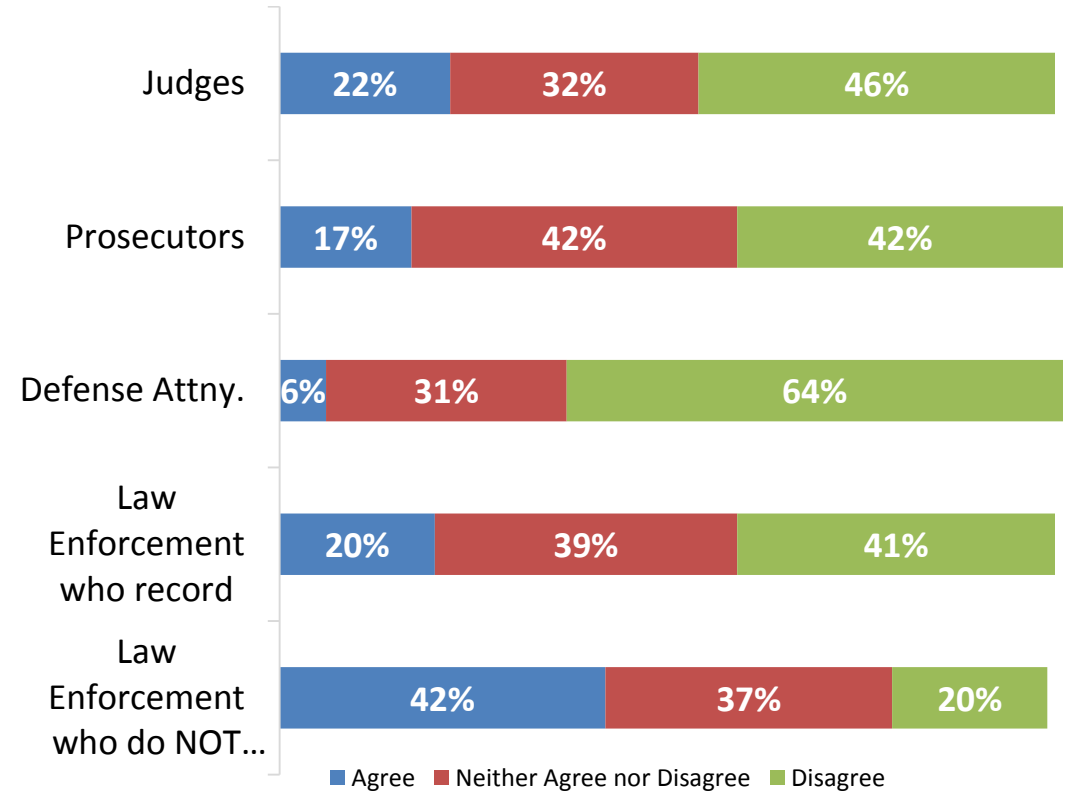
Size and scope of duties and costs are primary barriers to recording



Law Enforcement believe recording will reduce court time



Cooperation from suspect not impacted by recording



The vast majority agree that electronic recording:

- Reduces the risk of false confessions
- Increases the public's trust in the justice system
- Enables better practices and learning opportunities



Law Enforcement who record and do not record agree that electronic recording:

- Reduces lawsuits from claims of officer misconduct
- Allows other officers to observe/review interrogations
- Assists with crime solving for current and other cases
- Results in less time allocated to notes
- Permits officers to concentrate on suspect



Judges, prosecutors, and defense attorneys strongly agree that electronic recording of interrogations:

- Allows the defense to provide better client representation
- Allows the prosecution to build stronger cases
- Allows judges and juries to have a better understanding of statements made by the individual
- Assists in determining if a statement was made freely and voluntarily



About half of judges, prosecutors, and defense attorneys disagree electronic recording of interrogations will reduce the necessity of testimony by those involved in the interrogation



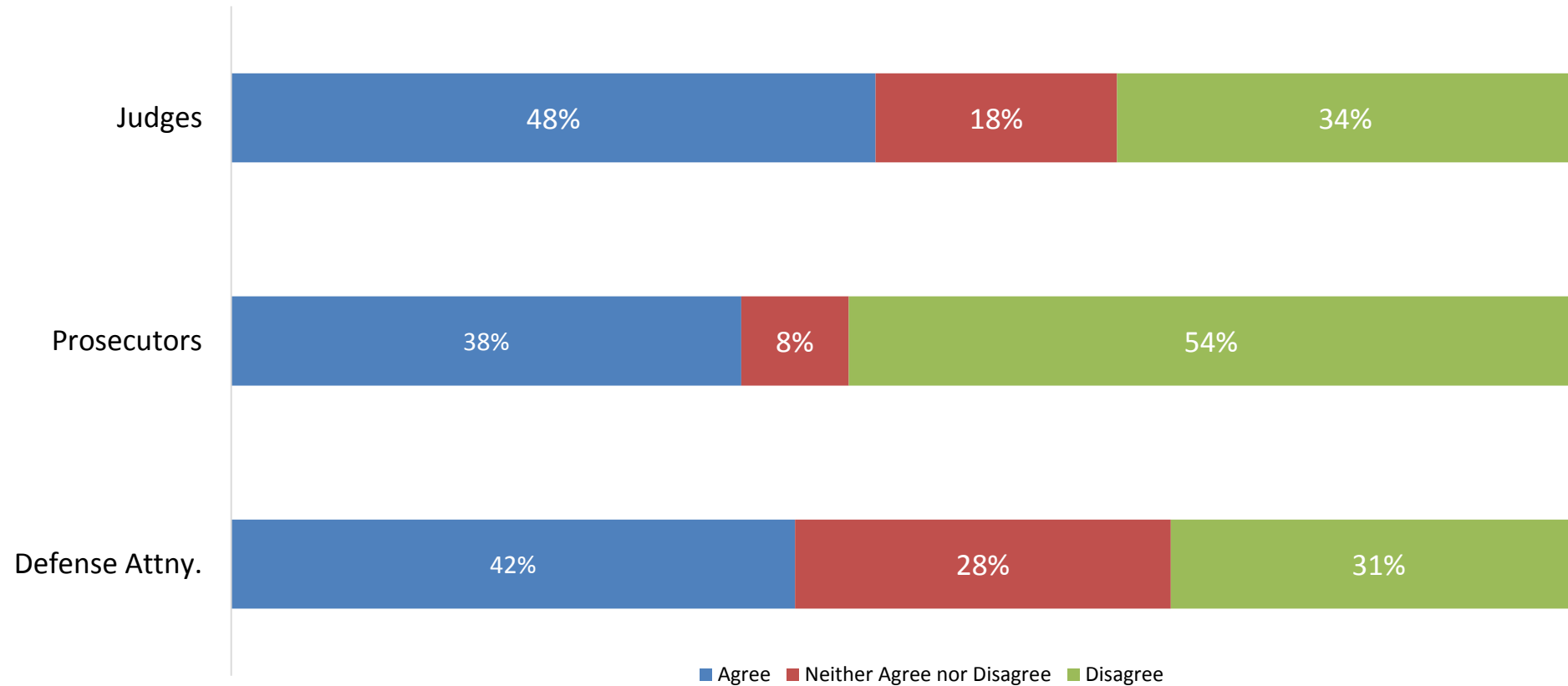
*30% of judges agreed



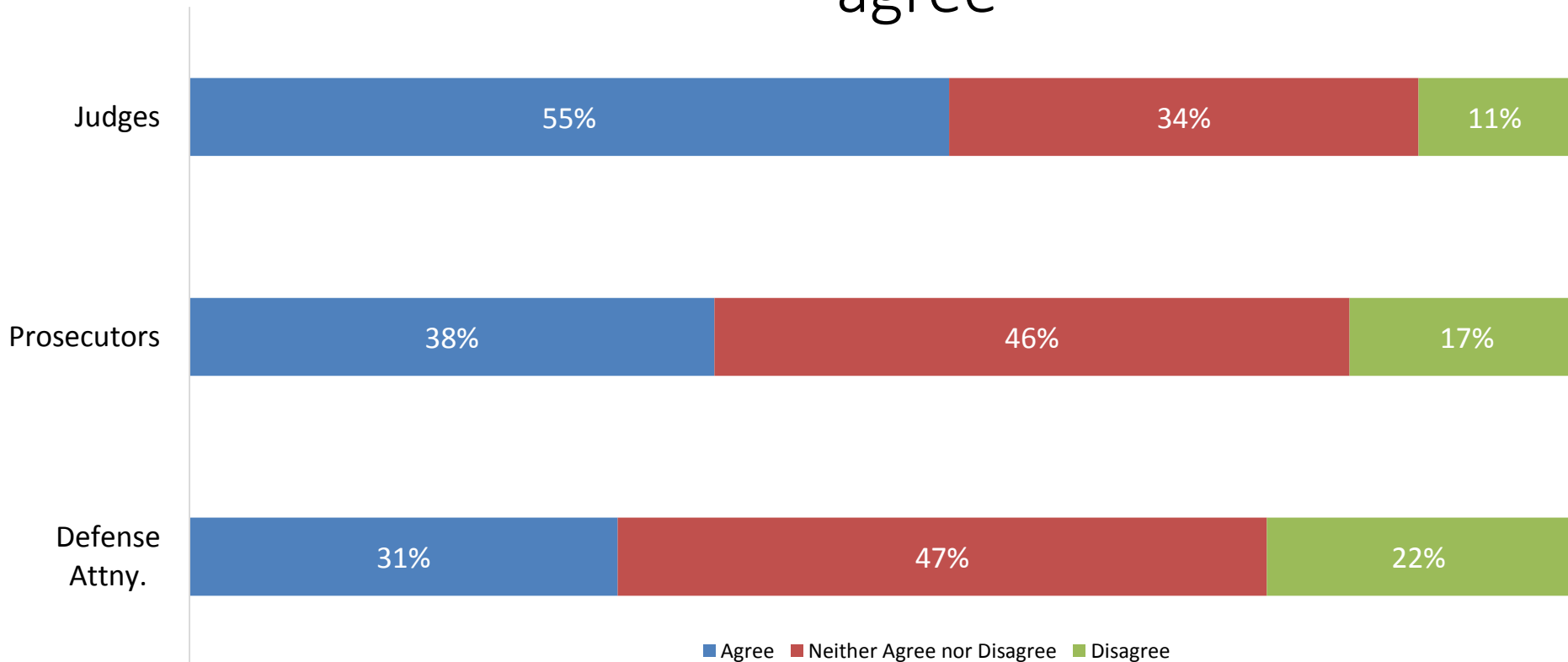
Majority of judges, prosecutors and defense attorneys disagree that electronic recording of interrogations result in the fiscal cost outweighing the value of the recorded confession



Judges and defense attorneys agree that electronic recording results in less time reviewing facts concerning the interrogation while half of prosecutors disagree



Over half of judges agree that electronic recording reduces the risk of civil suits and damage awards for those wrongfully convicted though fewer prosecutors and defense attorneys agree

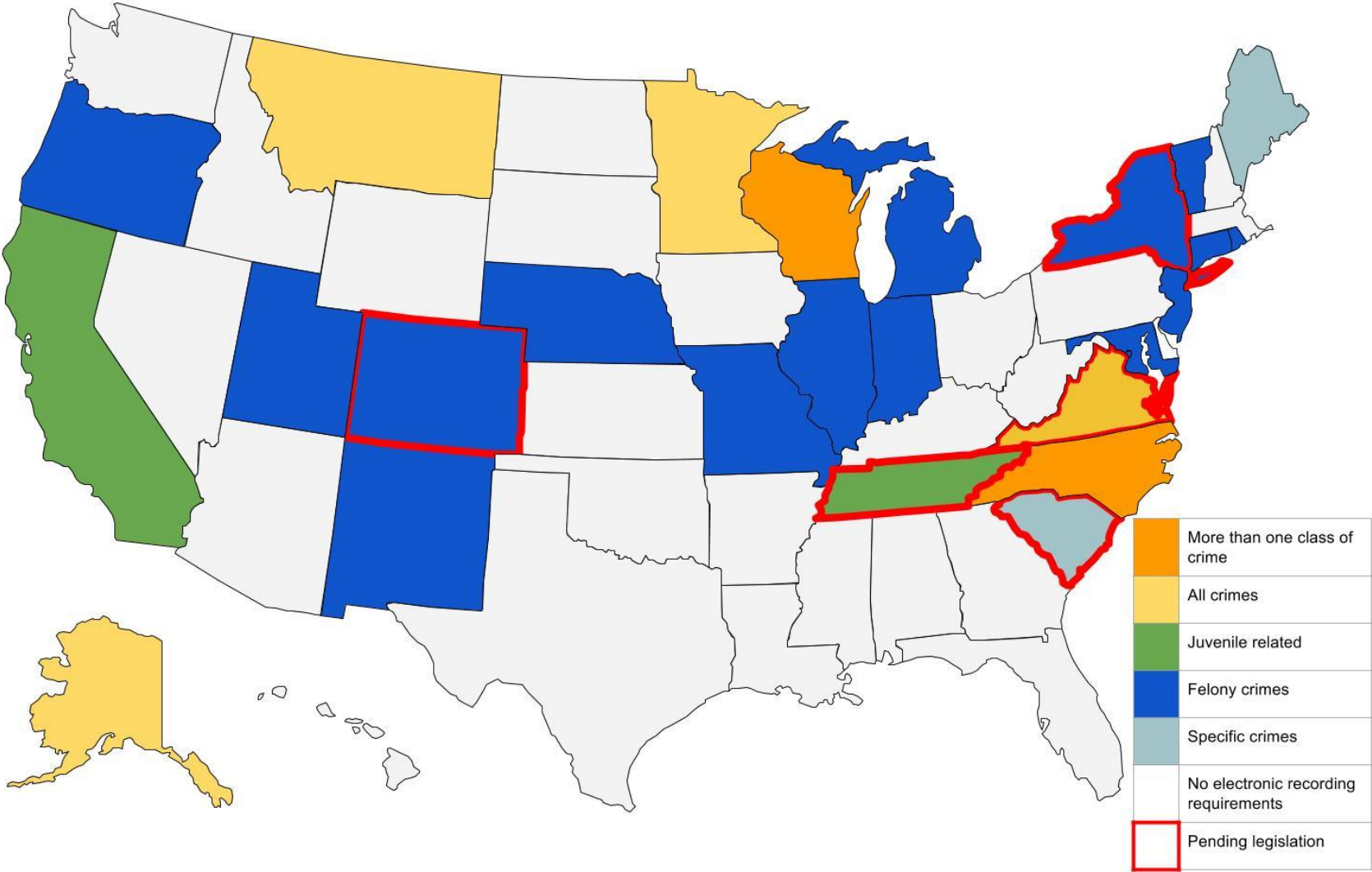


Cost of implementation

- Cost of equipment was found to be relatively inexpensive
- 79% of recording equipment was funded through the department's general funds
- Average reported cost was \$3,500



21 States Require Electronic Recording of Interrogations



Questions?



Potential Timeline for Timothy Cole Exoneration Review Commission

