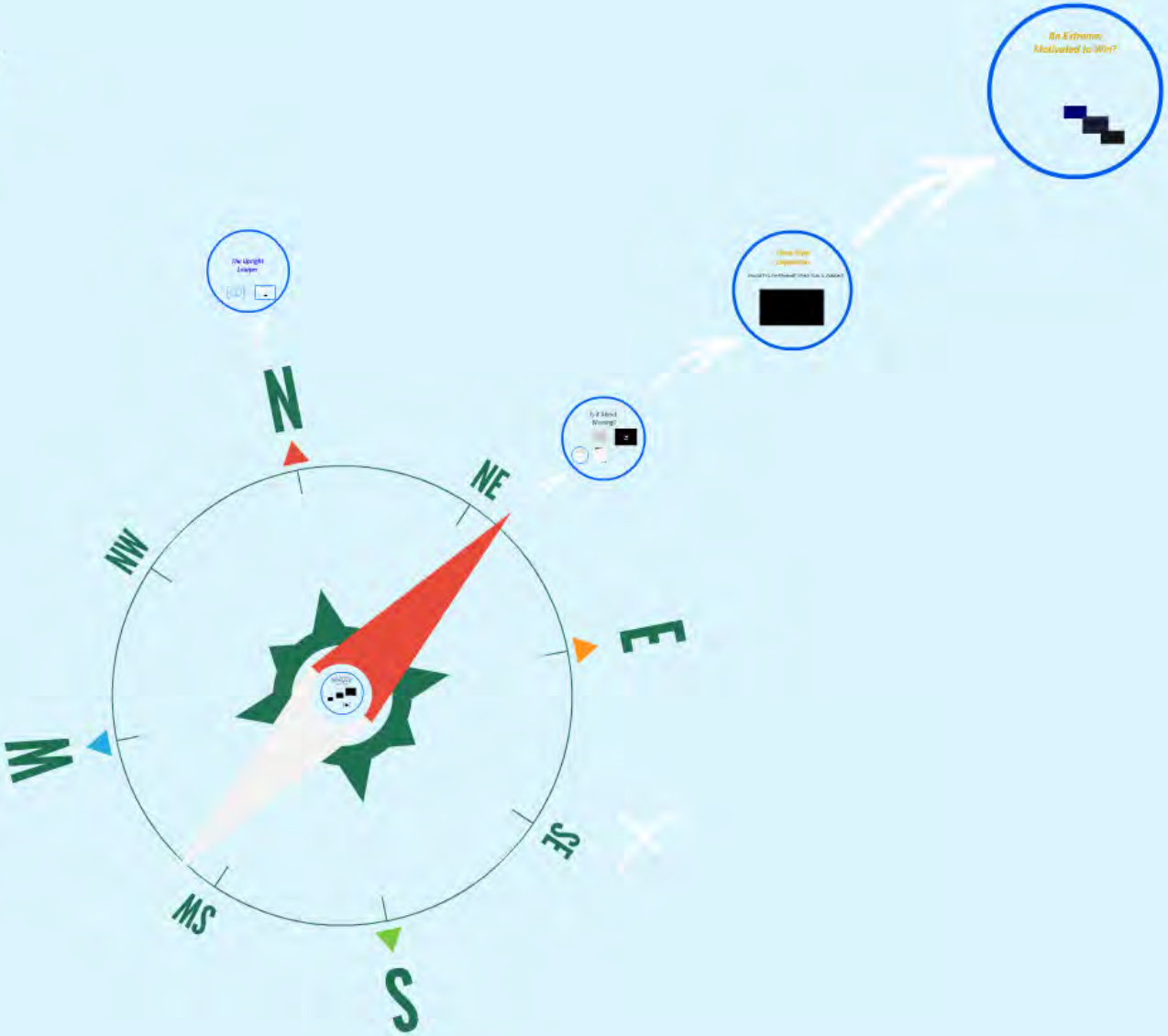
Our Broken Compass
and
The Upright Lawyer



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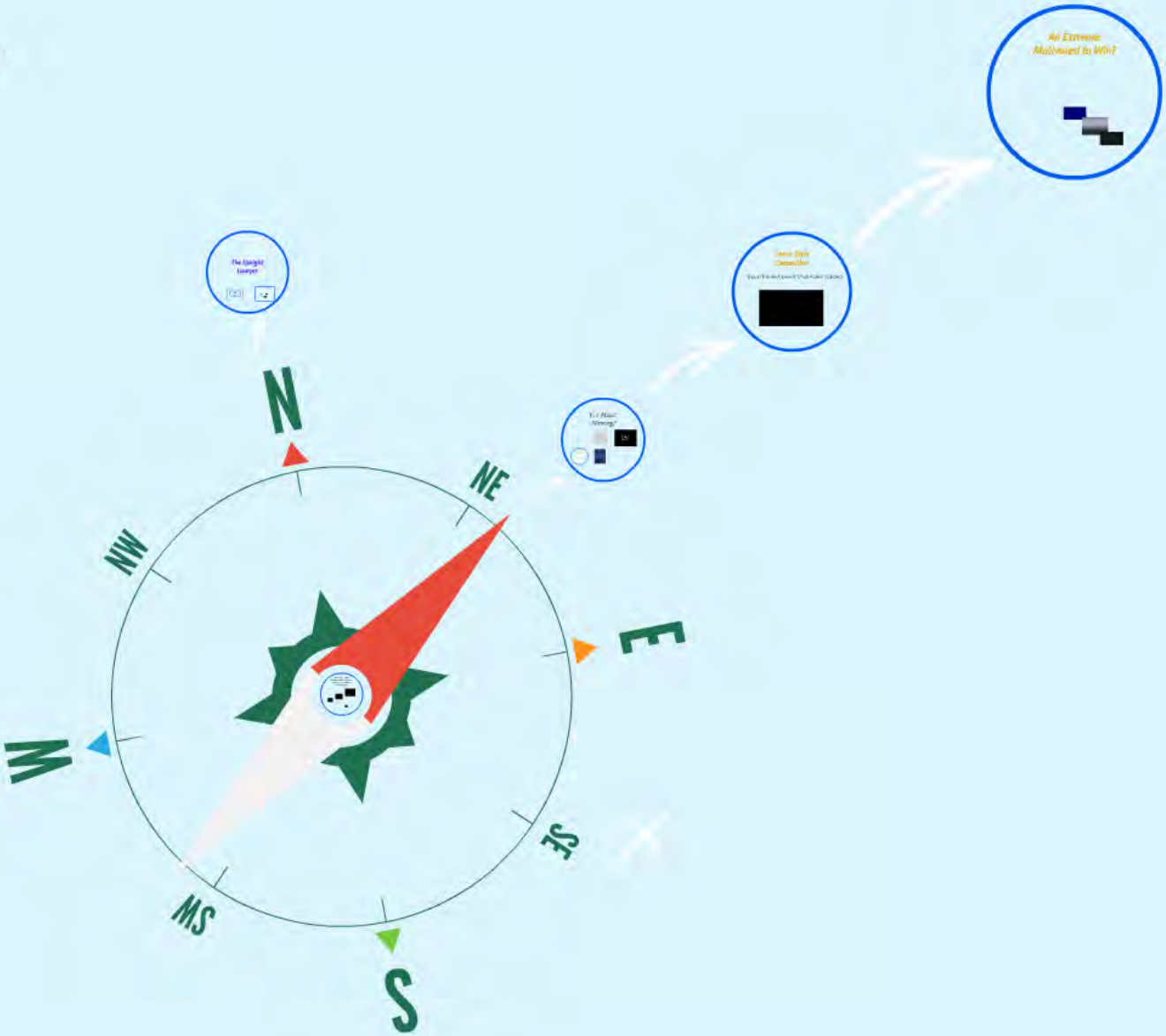

Our Broken Compass and The Upright Lawyer

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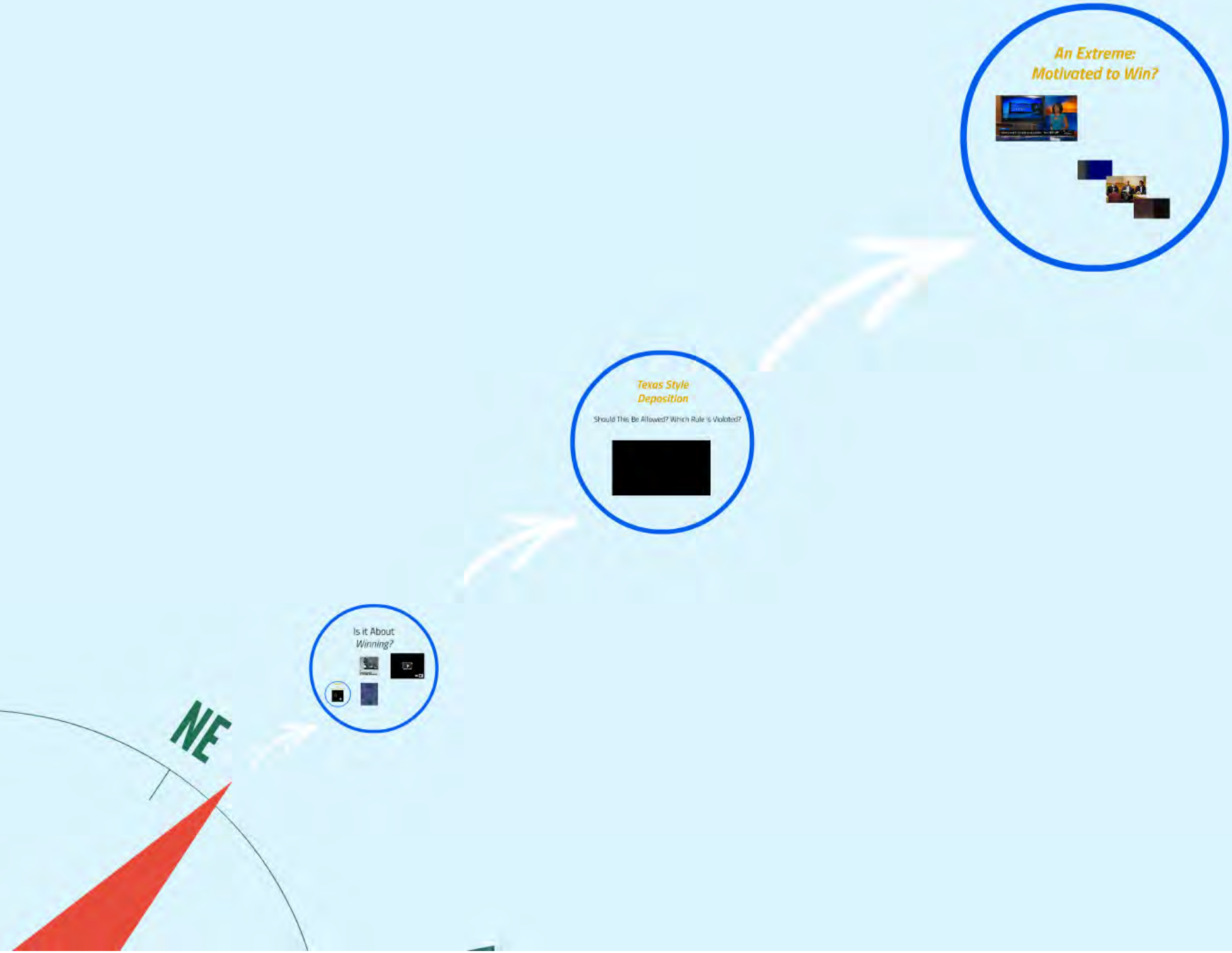
Is it About
Winning?


An Extreme:
Motivated to Win?
Texas Style
Deposition
Should This Be Allowed? Which Rule is Violated?
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Is it About
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NE

An Extreme: Motivated to Win?

DEVELOPING
STORY
NEWS
COMPLAINTS FILED IN ALLEGED "DUI SET-UP"
78°
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WTSP.com
"DUI SET-UP" COMPLAINTS
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abc ACTION NEWS
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87°

DUI Arrest

Philip Campbell, Jr.

DUI Arrest
Philip
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An Extreme: Motivated to Win?

Texas Style Deposition

Should This Be Allowed? Which Rule is Violated?

Is it About *Winning?*

Purpose

[redacted] has one purpose: **winning high-stakes trials.**

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ORLANDO, FLORIDA
June 16, 2017

PRESENTED BY
John W. Dill
Melanie S. Griffin
Jeffrey S. Weiss

CONTINUING EDUCATION
CLE - 7.0 incl. 1.0 ethics (pending)
See inside for details!

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"Winning" OR Professionalism?

"WINNING"
PROFESSIONALISM

ROFESSIONALISM

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[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

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"WINNING"
PROFESSIONALISM

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For many claims, trials by adve
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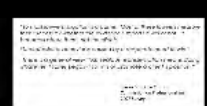
"WINNING"



"What happened to the old maxim that a lawyer sees this happening and says, 'Guys, I can't do this. This is wrong. I'm out of here.' I mean, quit your job. Whatever. I'm out of here. I'm not doing this. Whatever happened to that? I'm just wondering."

"You know, people are talking about doing something wrong. Something bad. You're a lawyer. You look at each. I can't do this. And it's means. Thus, I'm not going to be getting a paycheck from this firm tomorrow... Bye. Go back to the Public Defender's Office, go to the State Attorney's Office, whatever. But we don't do this. That's the whole thing here."

Chief Justice Jorge LaBarga, Florida Supreme Court
The Florida Bar vs. Robert Adam Fitthuat
June 9, 2016

DIVX
VIDEO

"To most lawyers, litigation is a game. Most of these lawyers measure their success by whether the evidence supports a win or not. It becomes about them, not the clients."

"Unprofessional behavior is caused by a desperate need to win."

"There is a general view that zealous representation means doing whatever it takes (legally) to win or promote a client's position."

Illinois Supreme Court
Commission on Professionalism
2007 Survey

The next day, Stephen Diaco made several statements to the media about the DUI of his opposing counsel Campbell, how the arrest caused the trial to be continued, and how Campbell's behavior was a mockery of the justice system and an embarrassment to Diaco as an attorney.

The Respondents' actions constituted a deliberate and malicious effort to place a heavy finger on the scales of justice for the sole benefit of themselves and their client.

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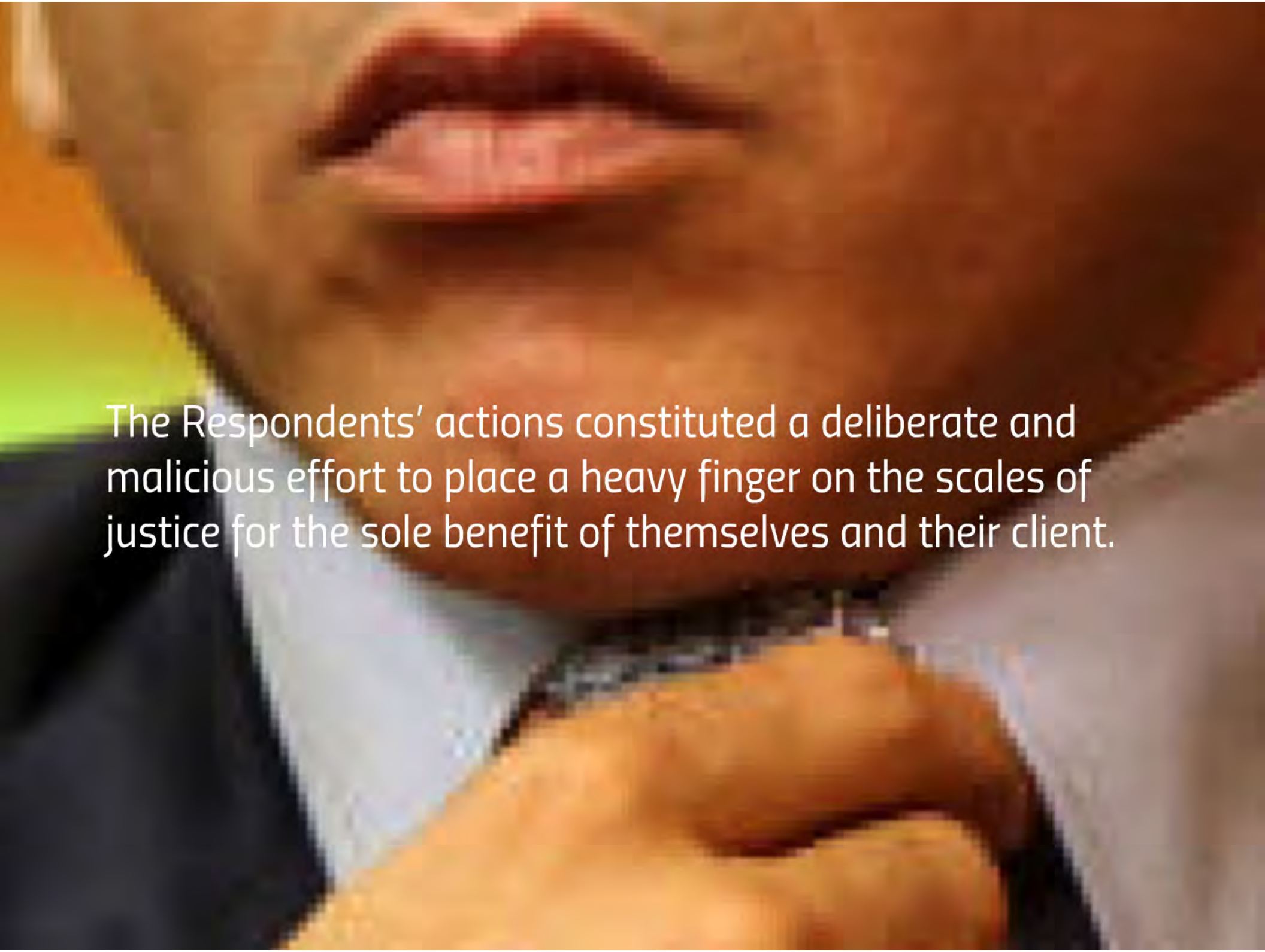

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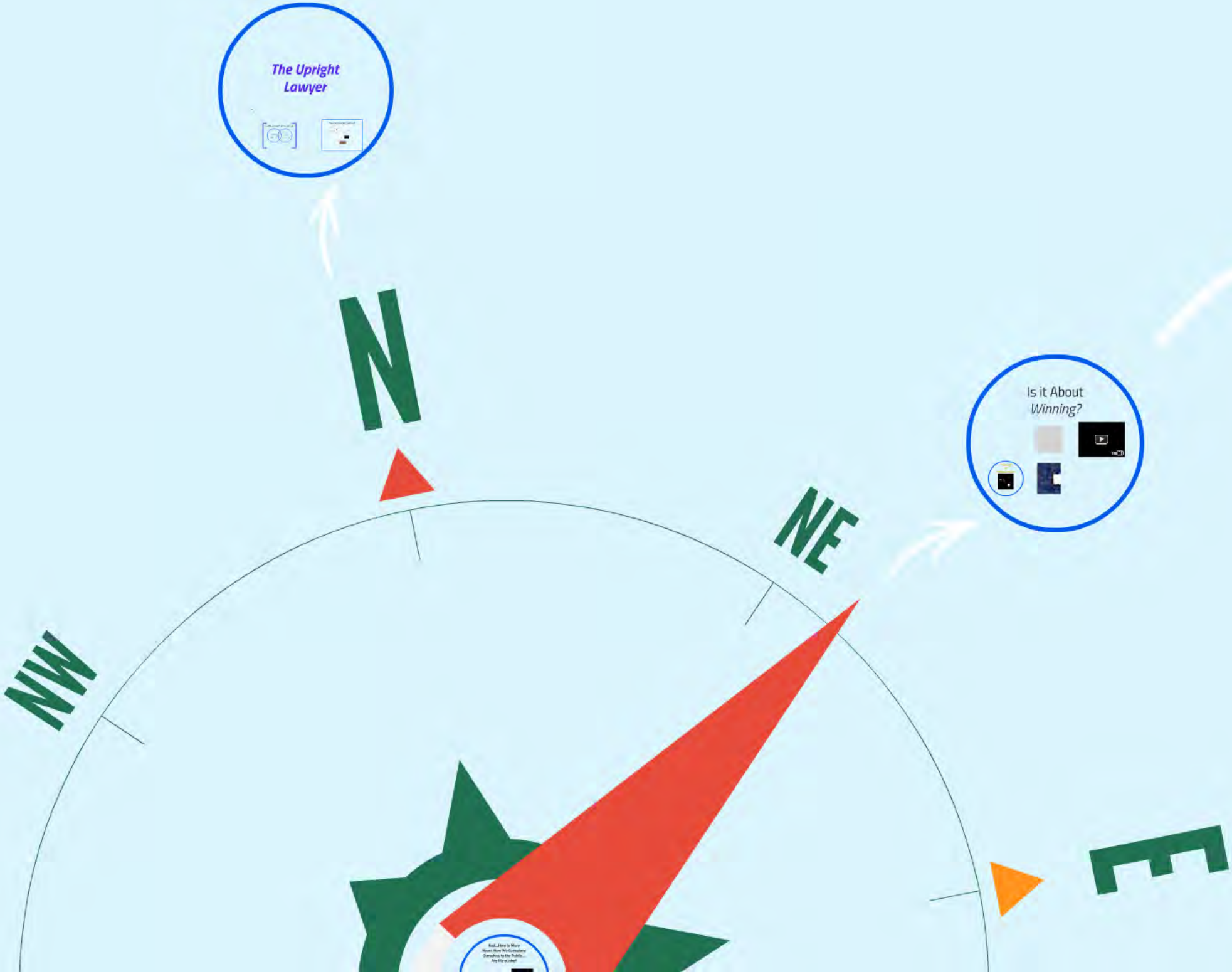
"WINNING"
PROFESSIONALISM

“The entire legal profession – lawyers, judges, law teachers – has become so mesmerized with the stimulation of the courtroom contest that we tend to forget that we ought to be healers of conflicts.

For many claims, trials by adversarial contest must in time go the way of the ancient trial by battle and blood. Our system is too costly, too painful, too destructive, too inefficient for a truly civilized people.”

Chief Justice Warren Burger, 1984

Is it About *Winning?*


The Upright Lawyer
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Is it About Winning?

And...Here is More About How We Caricature Ourselves to the Public... Are We a Joke?

And...Given All of That...
What the Comedians
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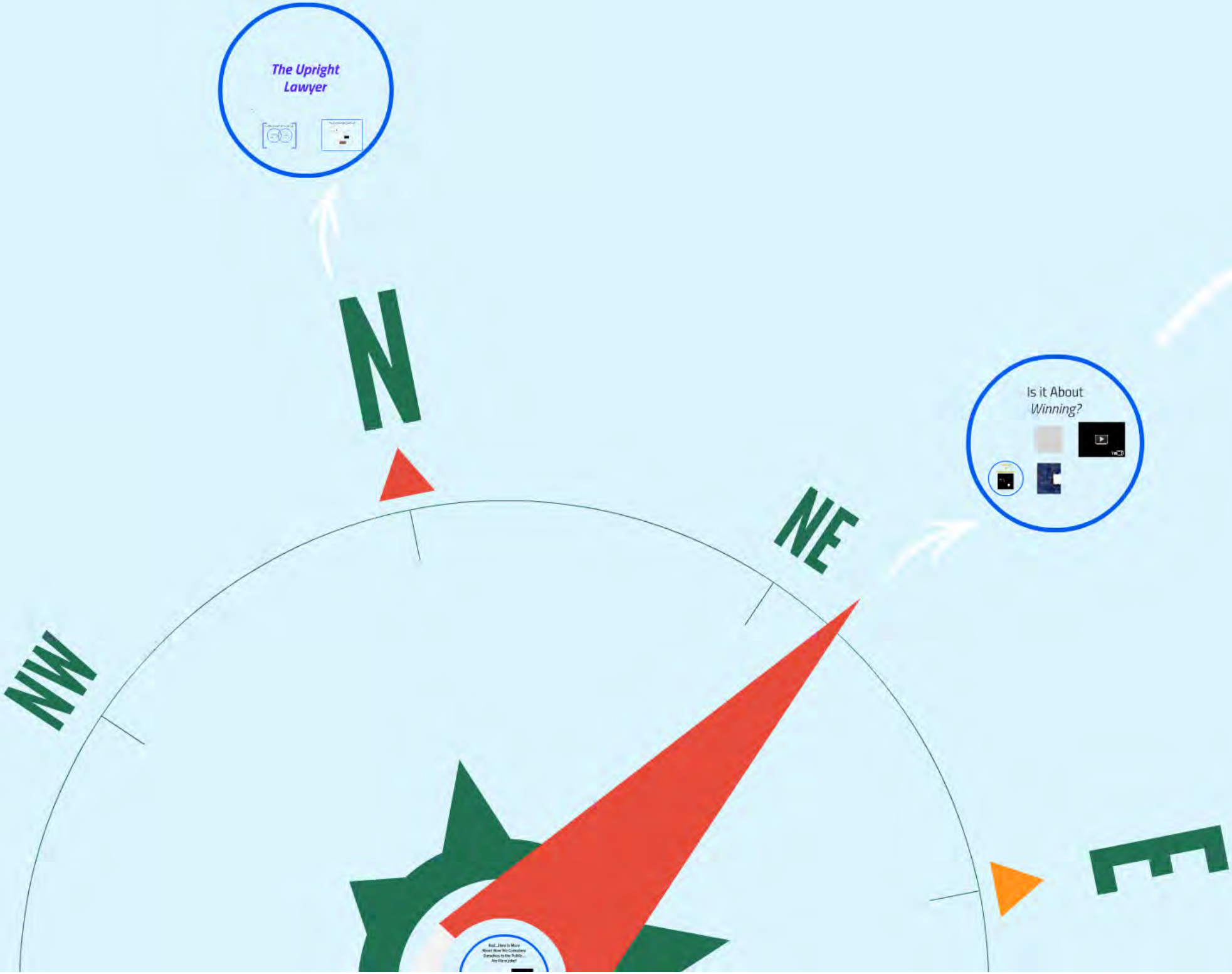
The Upright Lawyer
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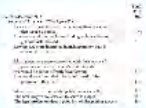
Is it About Winning?

The Upright Lawyer

The Upright Lawyer

The Existential Contrast

Self-respect demands that we get away from the intellectual tyranny of instrumentalism. We are not just means to someone else's ends. We have a far prouder heritage, which, unfortunately, has been obscured in the classroom. This heritage is founded on our ancient duties: to protect the rule of law as an ideal, to serve the system of justice on which our democracy is based, and to study and promote humanism—the mutual bonds of our humanity on which peace itself ultimately depends.



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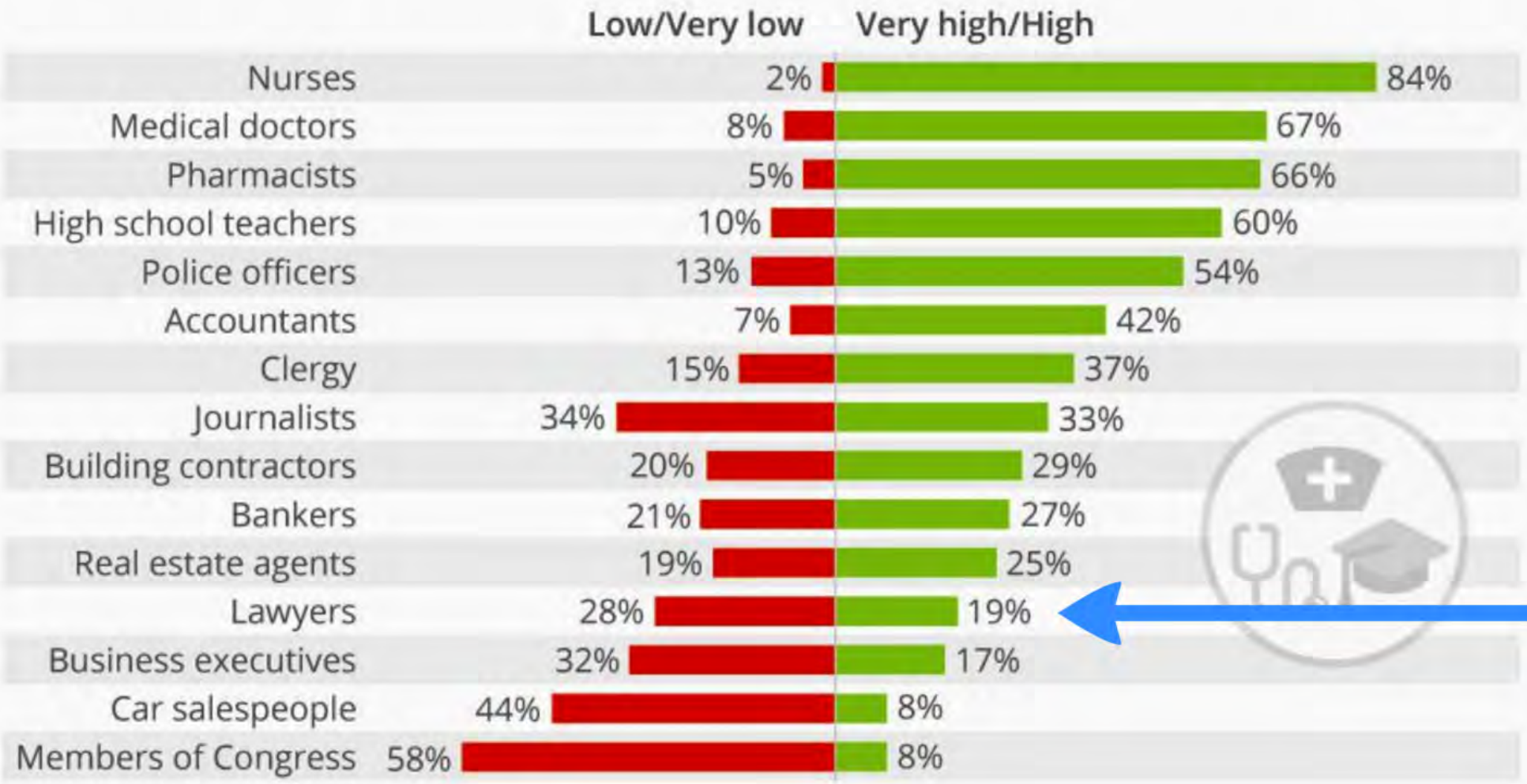
Daniel R. Coquillette. "Professionalism: The Deep Theory." North Carolina Law Review 72, (1994): 1271-1278

America's Most & Least Trusted Professions

Rating of selected U.S. professions in terms of honesty and ethical standards in 2018



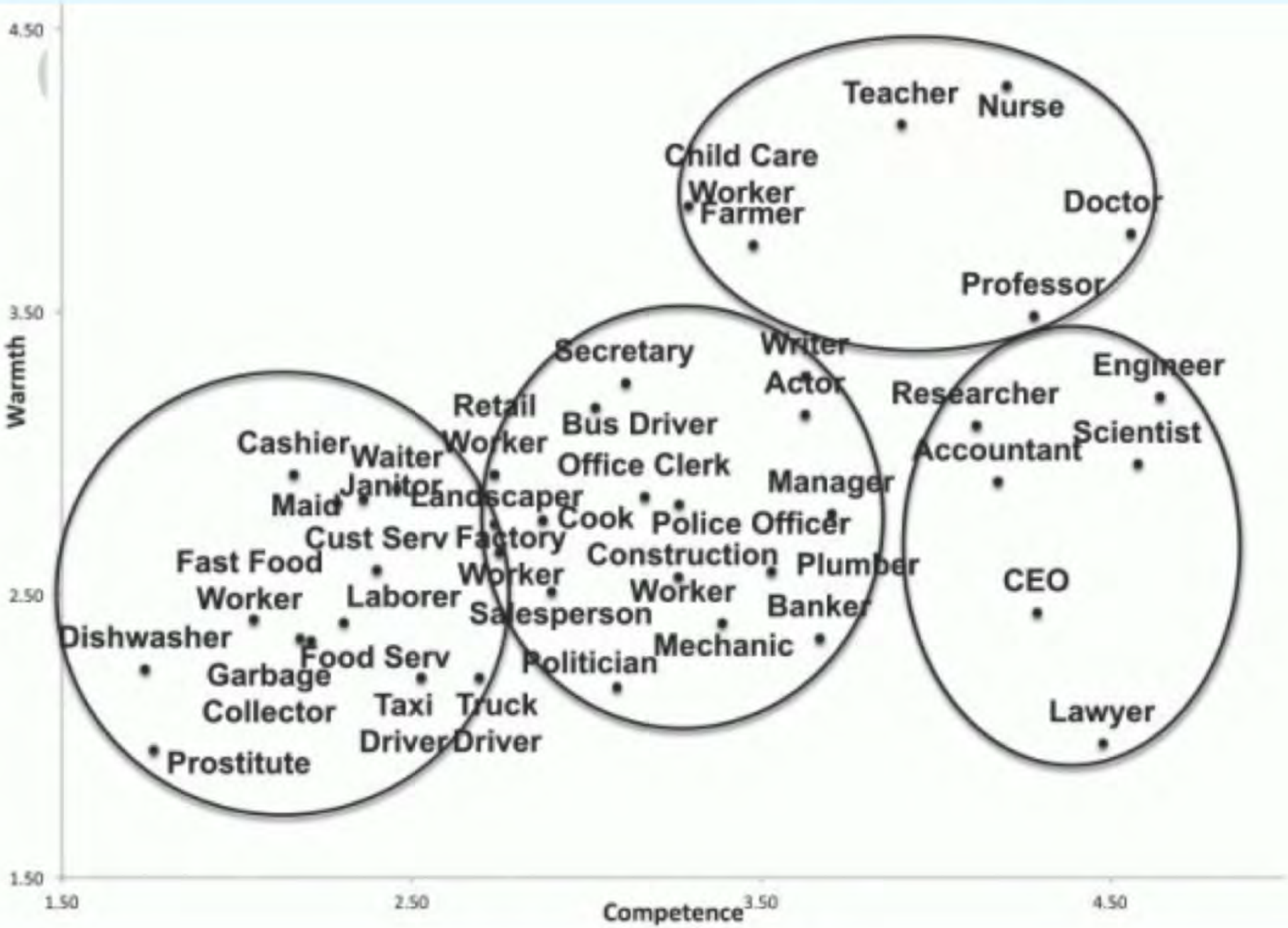
n=1,025 U.S. adults

Source: Gallup

@StatistaCharts

Forbes statista

	Total (450)
ALL RESPONDENTS	100%
Percent of Americans Who Agree That:	
Lawyers are more interested in winning than in seeing that justice is served	74%
Lawyers spend too much time finding technicalities to get criminals released	73
Lawyers are more interested in making money than in serving their clients	69
Most lawyers are more concerned with their own self-promotion than their client's best interests	57
We would be better off with fewer lawyers	51
Lawyers do not keep their clients informed of the progress of their case	40
Most lawyers try to serve the public interests well	39
The best lawyers are selected to serve as judges	28
The legal profession does a good job of disciplining lawyers	26


Teacher
Nurse
Child Care Worker
Farmer
Doctor
Professor
Secretary
Writer
Actor
Engineer
Researcher
Retail Worker
Bus Driver
Scientist
Cashier
Waiter
Accountant
Office Clerk
Janitor
Manager
Maid
Landscaper
Cook
Police Officer
Cust Serv
Factory Worker
Construction Worker
Plumber
Fast Food Worker
Laborer
CEO
Salesperson
Banker
Dishwasher
Mechanic
Food Serv
Politician
Garbage Collector
Taxi Driver
Truck Driver
Lawyer
Prostitute
Warmth
Competence
4.50
3.50
2.50
1.50
1.50
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3.50
4.50

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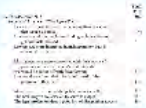
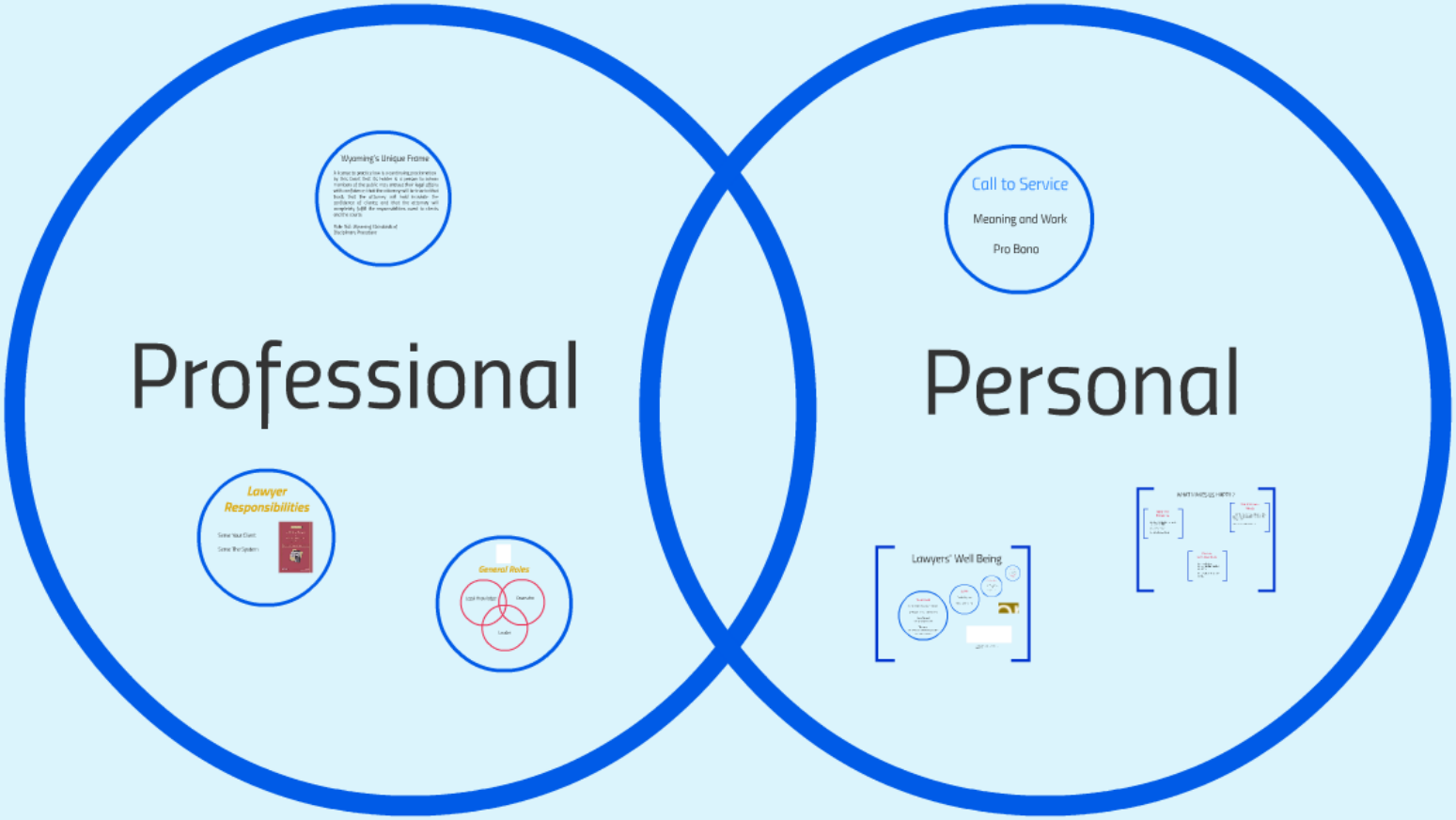


The Upright Lawyer

The Pillars That Hold You Upright



by this Court that its holder is a person to whom members of the public may entrust their legal affairs with confidence; that the attorney will be true to that trust; that the attorney will hold inviolate the confidence of clients; and that the attorney will completely fulfill the responsibilities owed to clients and the courts.

Rule 1(a): Wyoming Standards of Disciplinary Procedure

Professional

Lawyer Responsibilities

Serve Your Client

Serve The System

Wyoming's Unique Frame

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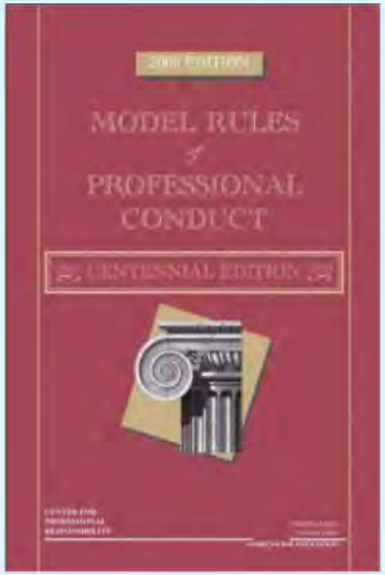

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Rule 11(a): Wyoming Standards of Disciplinary Procedure

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General Roles

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Lawyers' We

General Roles

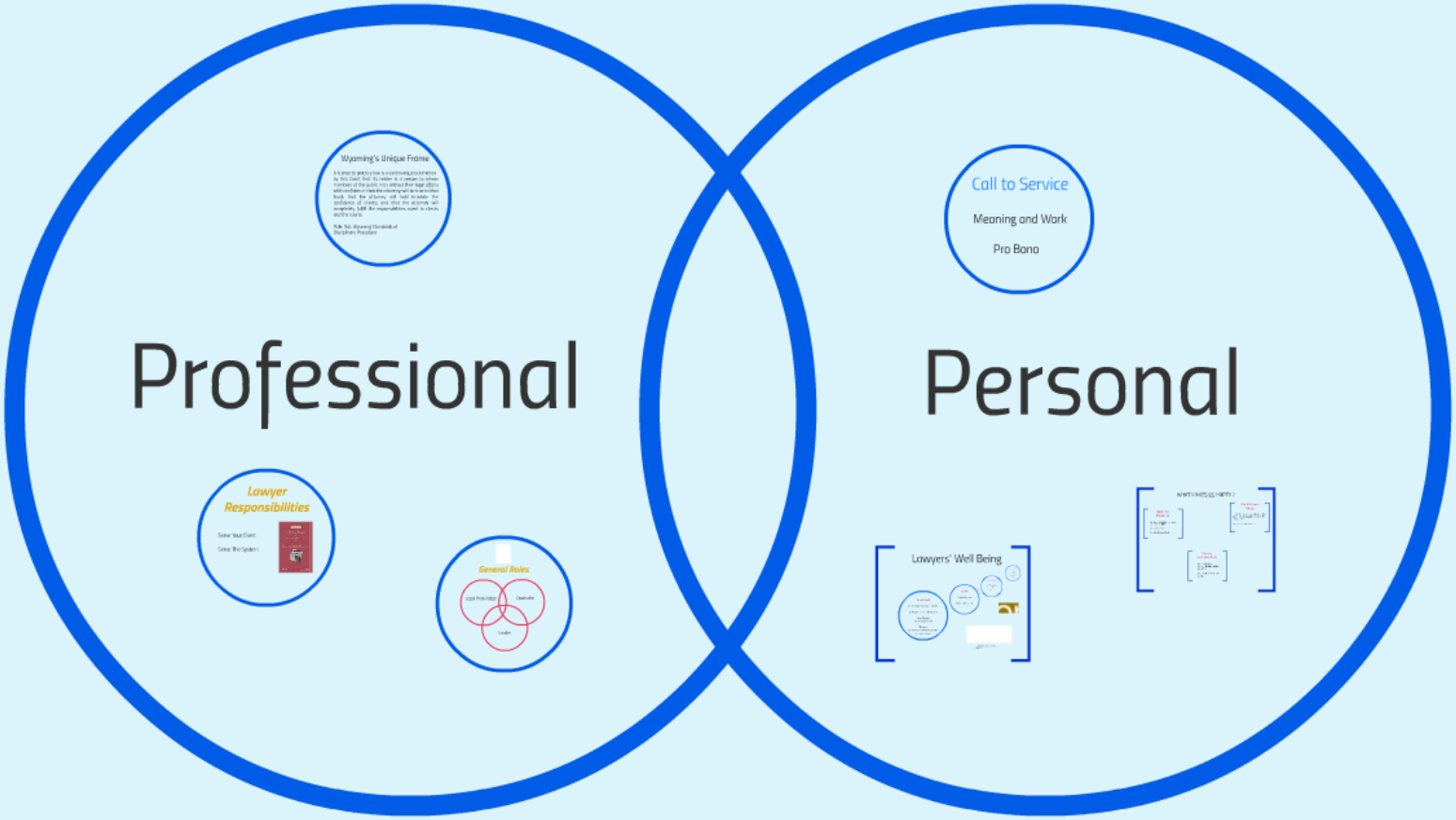
HARVARD LAW SCHOOL
Center on the Legal Profession

Lawyers as Professionals and as Citizens: Key Roles and Responsibilities in the 21st Century

Ben W. Heineman, Jr.
William F. Lee
David B. Wilkins

General Roles

The Pillars That Hold You Upright



Personal

WHAT MAKES US HAPPY ?

Grant-Gl
Stud

Happiness

Lawyers' Well Being

Satisfaction

According to a 2015 Florida Bar Membership Survey:

Cut 10 Lawyers Health Change Careers If They Could

Substance Abuse

More than 20% Problem Drinkers; Younger Impacted More

75% of Discipline Cases

Suicide

Fourth Highest

Men Twice Likely

Mental Health

Depression: 3.6 Times Normal

28% Depressed; 19% Anxiety

Law School
Causes Depression

"Distress"
at 15 times National Average

Sources: The Lawyer's Epidemic, SC Bar HALP Task Force Chilcoat, American Bar Association, Mental Health Policy, Law and Ethics

To be a good lawyer, one has to be a healthy lawyer. Sadly, our profession is falling short when it comes to well-being. The two studies referenced above reveal that too many lawyers and law students experience chronic stress and high rates of depression and substance use. These findings are incompatible with a sustainable legal profession, and they raise troubling implications for many lawyers' basic competence. This research suggests that the current state of lawyers' health cannot support a profession dedicated to client service and dependent on the public trust.

ABA National Report on Lawyers Well Being
August 2017

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DEFINING LAWYER WELL-BEING

A CONTINUOUS PROCESS IN WHICH LAWYERS STRIVE FOR THRIVING IN EACH DIMENSION OF THEIR LIVES:

EMOTIONAL

Value emotions. Develop ability to identify and manage our emotions to support mental health, achieve goals, & inform decisions. Seek help for mental health when needed.

INTELLECTUAL

Engage in continuous learning. Pursue creative or intellectually challenging activities that foster ongoing development. Monitor cognitive wellness.

OCCUPATIONAL

Cultivate personal satisfaction, growth, and enrichment in work. Strive to maintain financial stability.

PHYSICAL

Strive for regular activity, good diet & nutrition, enough sleep, & recovery. Limit addictive substances. Seek help for physical health when needed.

SPIRITUAL

Develop a sense of meaningfulness and purpose in all aspects of life.

SOCIAL

Develop connections, a sense of belonging, and a reliable support network. Contribute to our groups and communities.

Lawyers' Well Being

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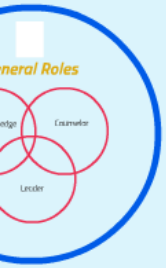
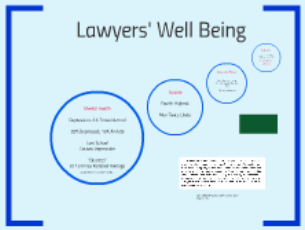


Call to Service

Meaning and Work

Pro Bono

Personal



WHAT MAKES US HAPPY ?

Happiness Economics

More Money Will Not Make You Happier: The Hedonic Treadmill

Lottery Winners Studies

Worldwide Happiness Survey

Grant-Glueck Study

"Warmth of relationships throughout life has the greatest positive impact on 'life satisfaction'"

"Happiness is love. Full stop."

Extrinsic vs. Intrinsic Goals

People with Goals Surrounding Relationships are Happy

People with Material Goals are Not

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Personal

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Grant-Gl
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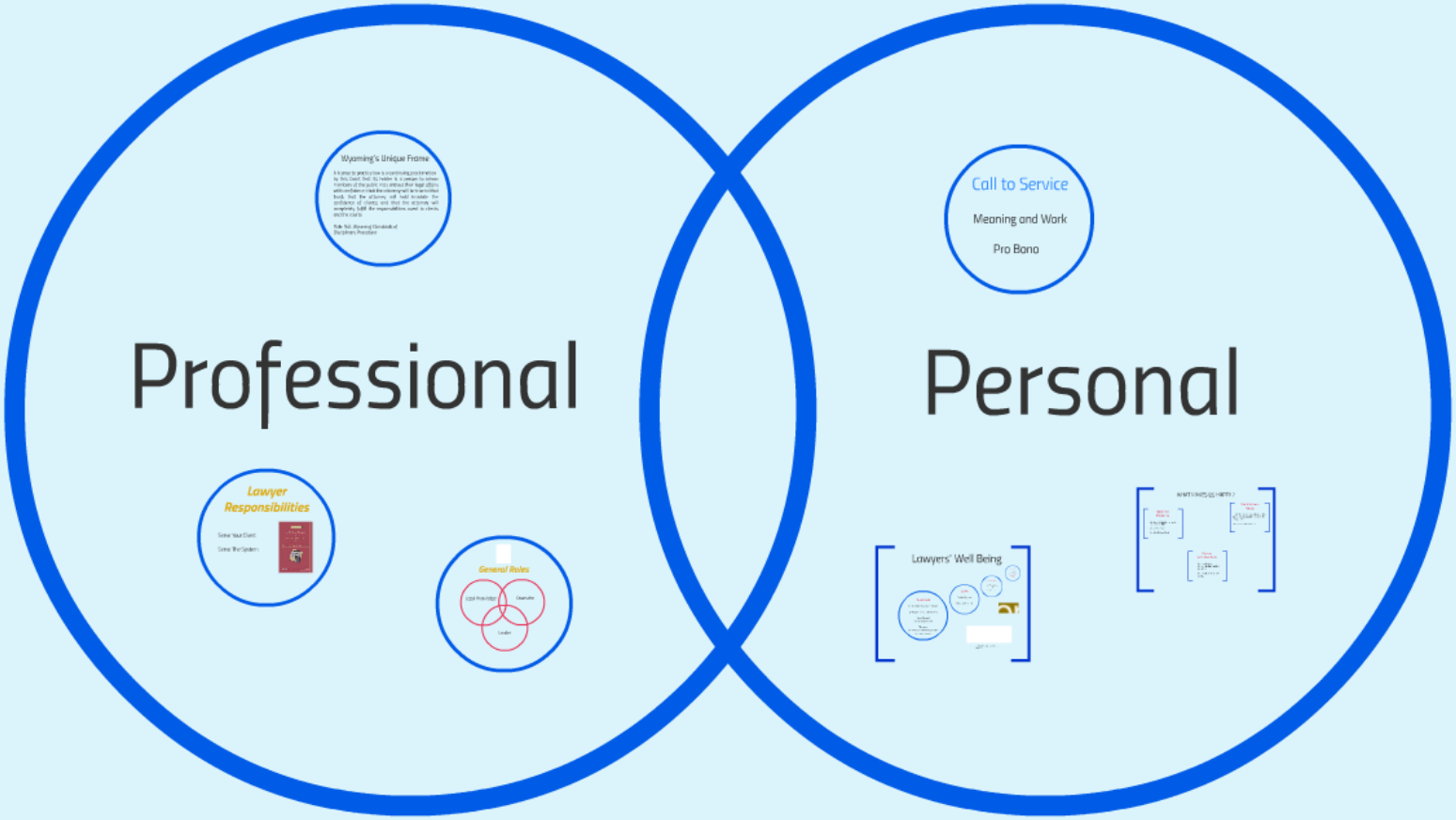
Happiness

Call to Service

Meaning and Work

Pro Bono

The Pillars That Hold You Upright



The Upright Lawyer

Practical Professional Path

A Jerk is a Jerk is a Jerk

You cannot be a bad person and a good lawyer, nor can you be a good person and a lawyer with sharp practices. A lawyer who behaves like a jerk in court is not an "aggressive advocate" with an "assertive strategy," but a jerk.

"To Be a Good Lawyer,
You First Must Be A
Good Person"

Your Character is Embedded
In Your Work:
You Swore an Oath

A LAWYER'S CREED

The legal profession is already struggling. Our profession confronts a dwindling market share as the public turns to more accessible, affordable alternative legal service providers. We are at a crossroads. To maintain public confidence in the profession, to meet the need for innovation in how we deliver legal services, to

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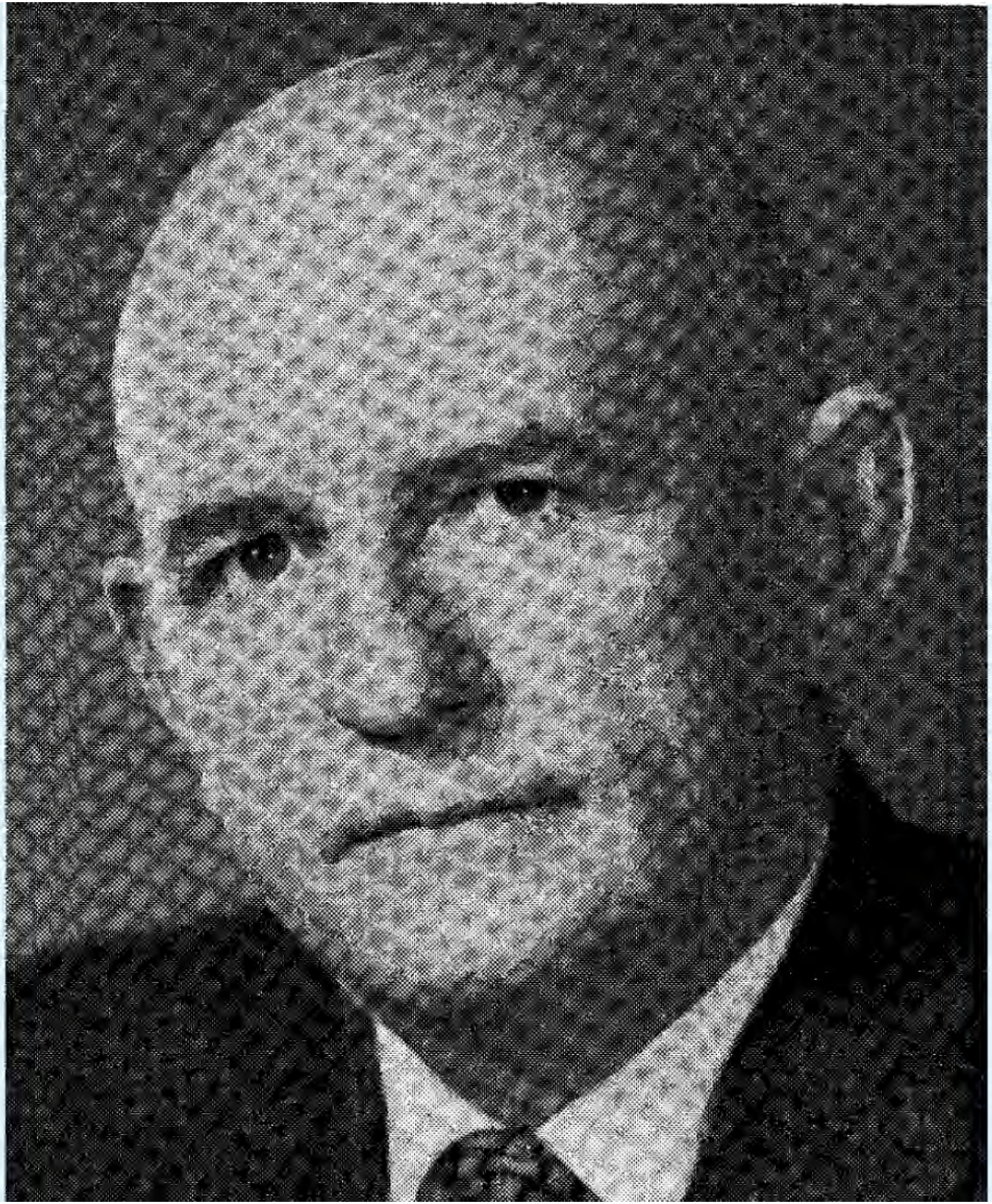
Daniel R. Coquillette. "Professionalism: The Deep Theory." North Carolina Law Review 72, (1994): 1271-1278

"To Be a Good Lawyer, You First Must Be A Good Person"



Good Person

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To my clients, I offer faithfulness, competence, diligence, and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust.

To the opposing parties and their counsel, I offer fairness, integrity, and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.

To the courts, and other tribunals, and to those who assist them, I offer respect, candor, and courtesy. I will strive to do honor to the search for justice.

To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional friendship.

To the profession, I offer assistance. I will strive to keep our business a profession and our profession a calling in the spirit of public service.

To the public and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients.

The legal profession is already struggling. Our profession confronts a dwindling market share as the public turns to more accessible, affordable alternative legal service providers. We are at a crossroads. To maintain public confidence in the profession, to meet the need for innovation in how we deliver legal services, to increase access to justice, and to reduce the level of toxicity that has allowed mental health and substance use disorders to fester among our colleagues, we have to act now. Change will require a wide-eyed and candid assessment of our members' state of being, accompanied by courageous commitment to re-envisioning what it means to live the life of a lawyer.

Our Broken Compass
and
The Upright Lawyer

The Upright Lawyer

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