



NAACC ETHICS UPDATE 2015

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GEORGE T. DAVIS, PH.D. J.D.
APRIL 17, 2015

Background



Ph.D. Clinical Psychology 1984

J.D. Law 1999

Consultant with SSA disability determination since 1986

Consultant with Office of Hearings and Adjudication
(FL, MS, KS, TN)

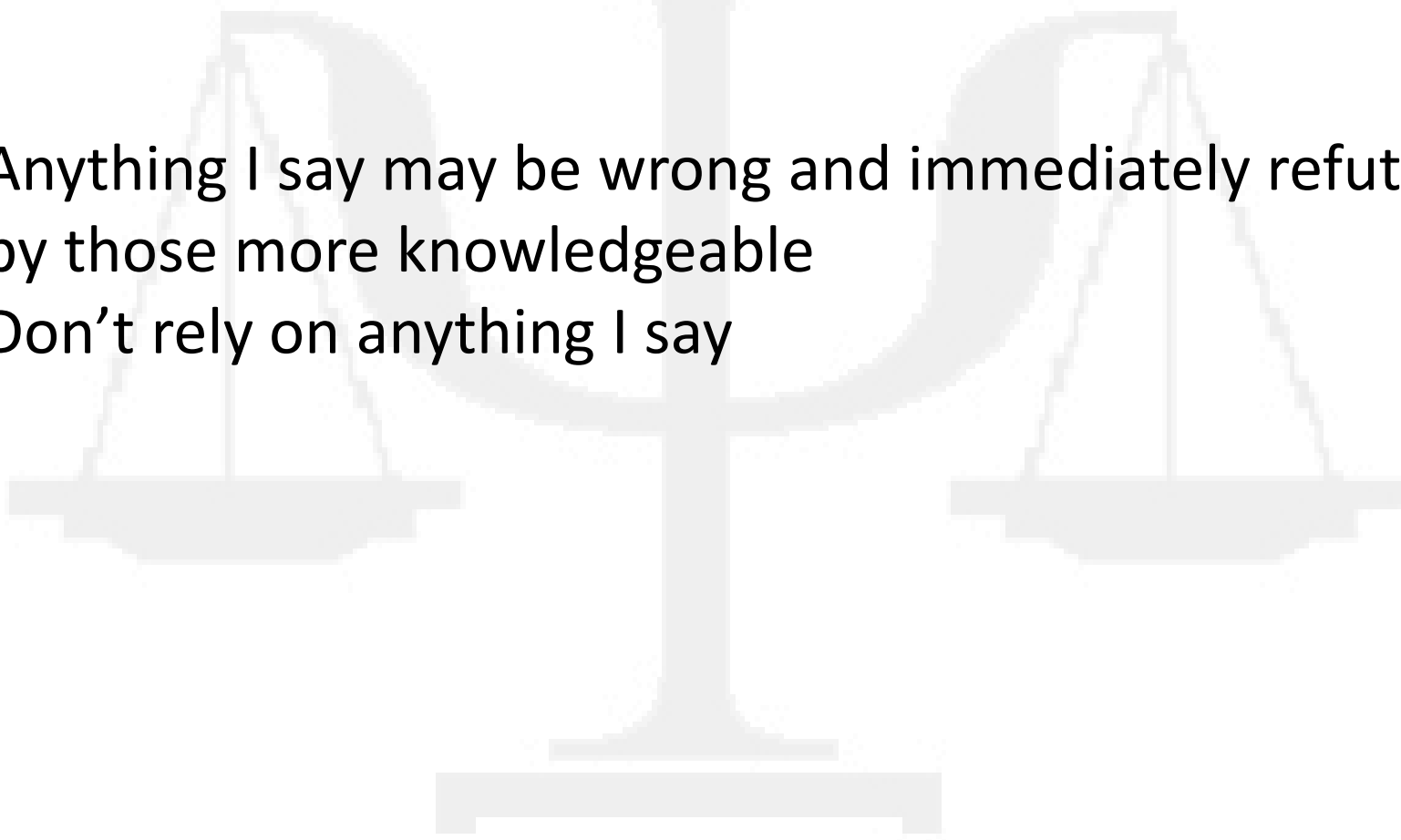
Adjunct Professor at Vanderbilt/Peabody Human

Development and Counseling Program since 2006

Private Practice in Family Law

Disclaimer

- Anything I say may be wrong and immediately refuted by those more knowledgeable
- Don't rely on anything I say





When poll is active, respond at **PollEv.com/georgedavis**



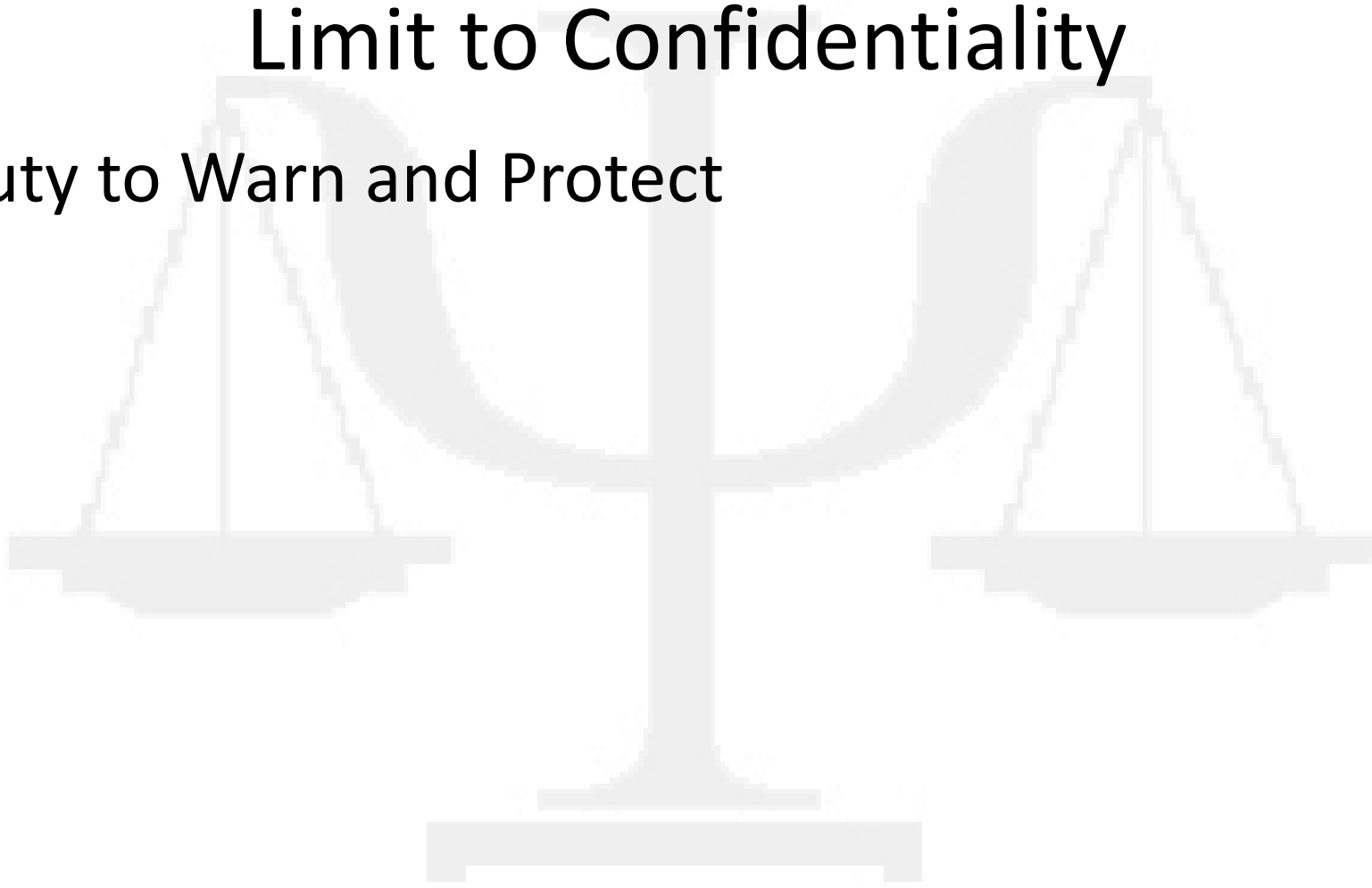
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Dilemma One

Limit to Confidentiality

Duty to Warn and Protect

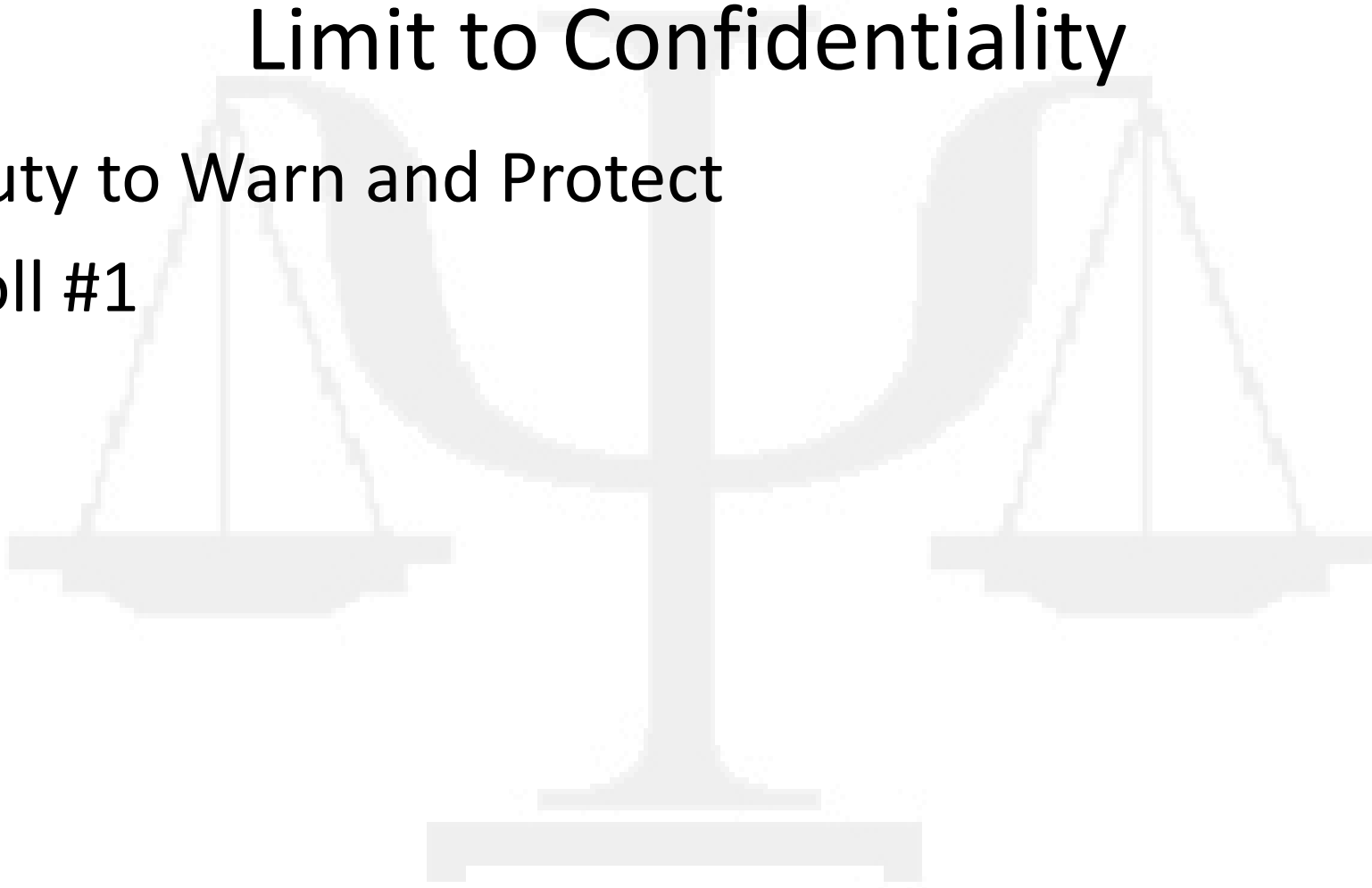


Dilemma One

Limit to Confidentiality

Duty to Warn and Protect

Poll #1



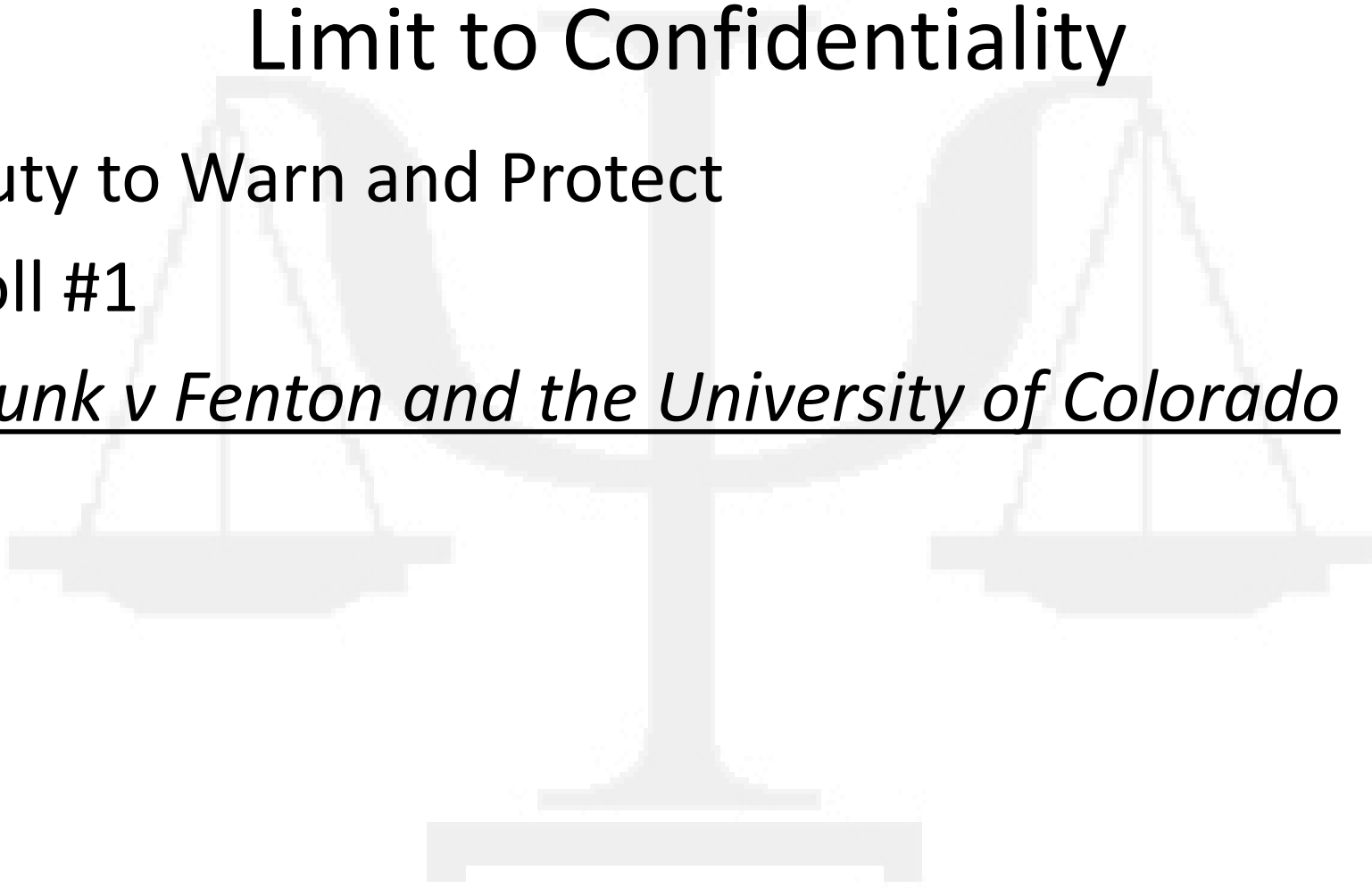
Dilemma One

Limit to Confidentiality

Duty to Warn and Protect

Poll #1

Blunk v Fenton and the University of Colorado



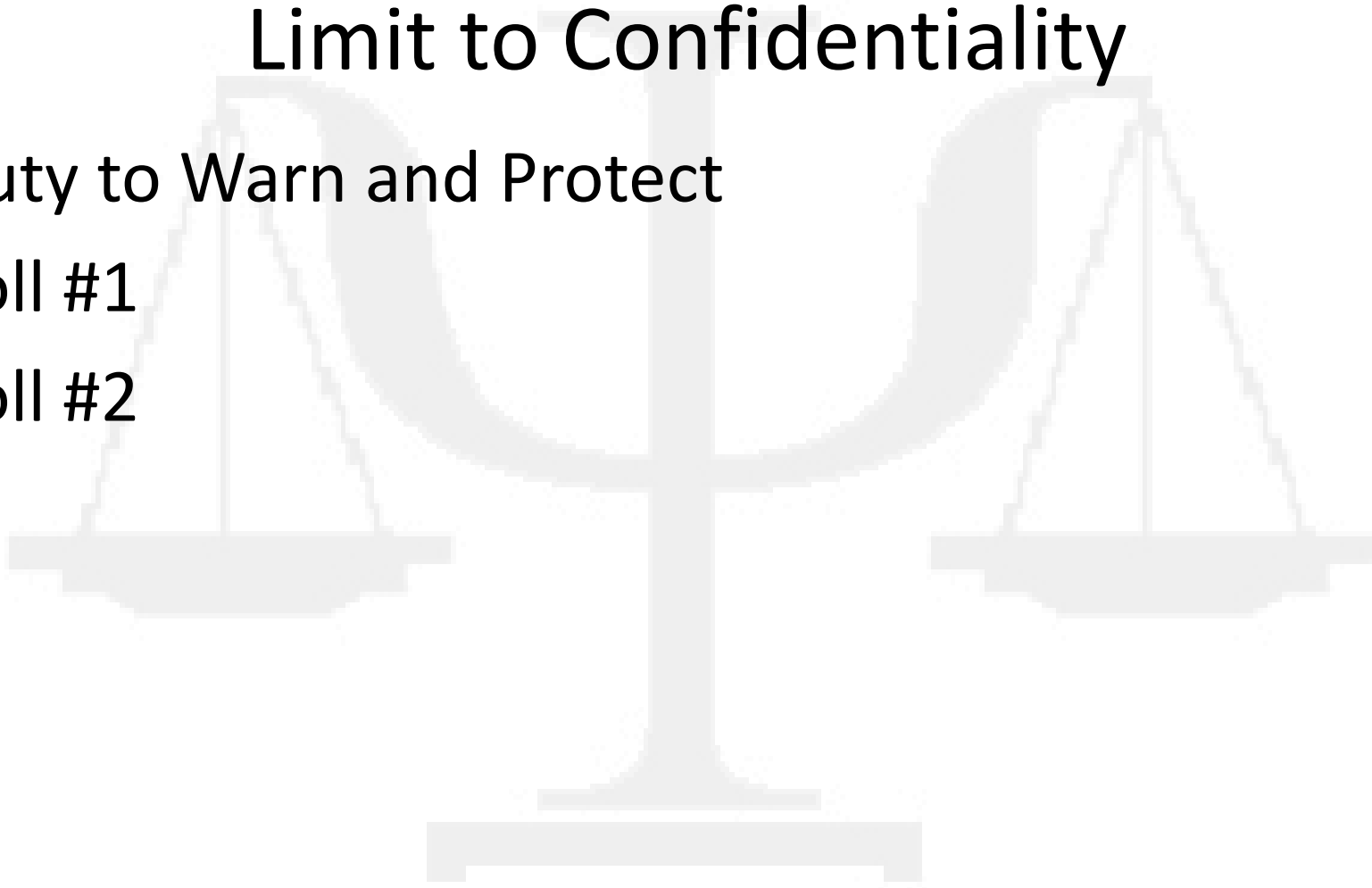
Dilemma One

Limit to Confidentiality

Duty to Warn and Protect

Poll #1

Poll #2



Dilemma One

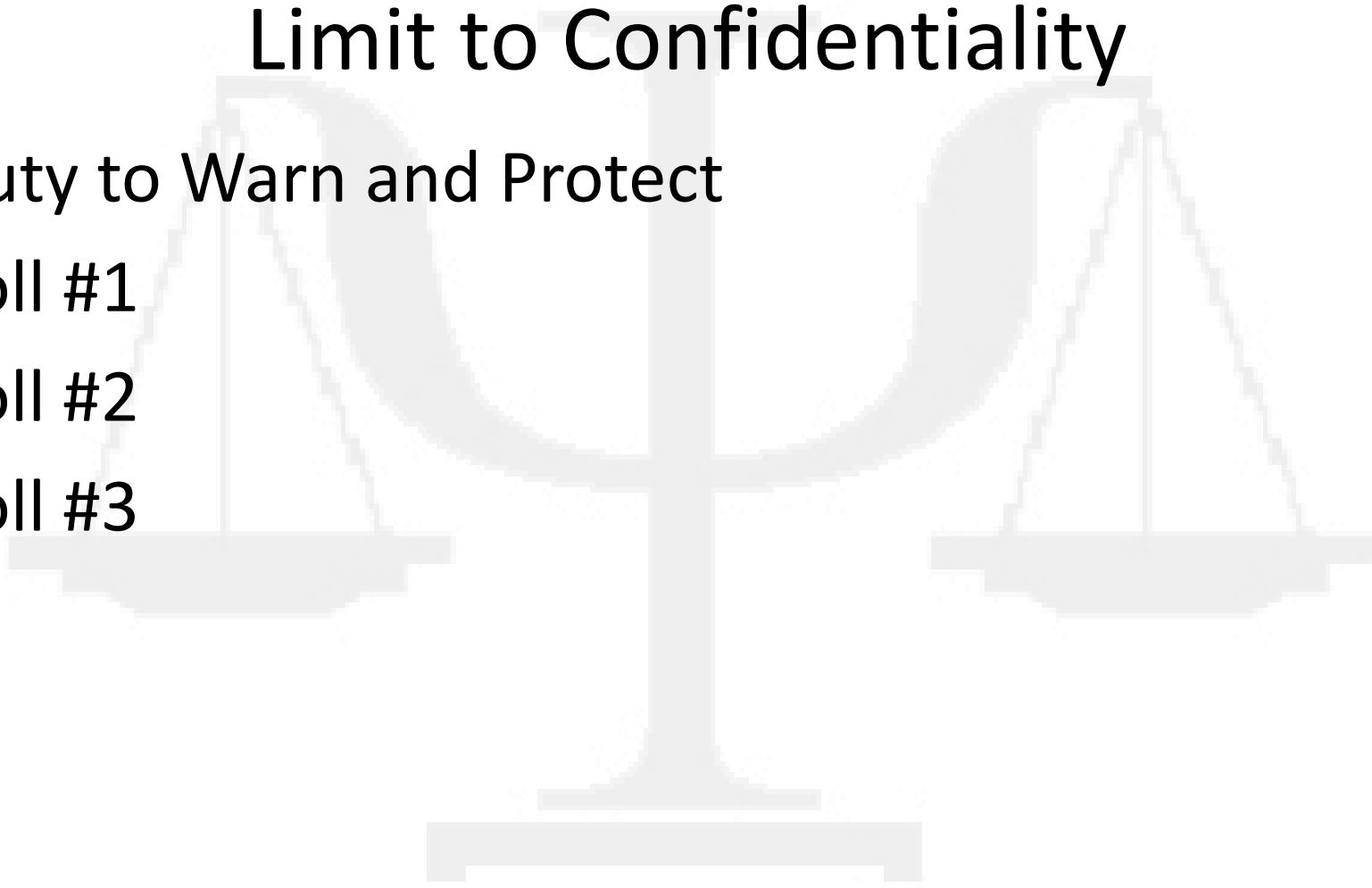
Limit to Confidentiality

Duty to Warn and Protect

Poll #1

Poll #2

Poll #3

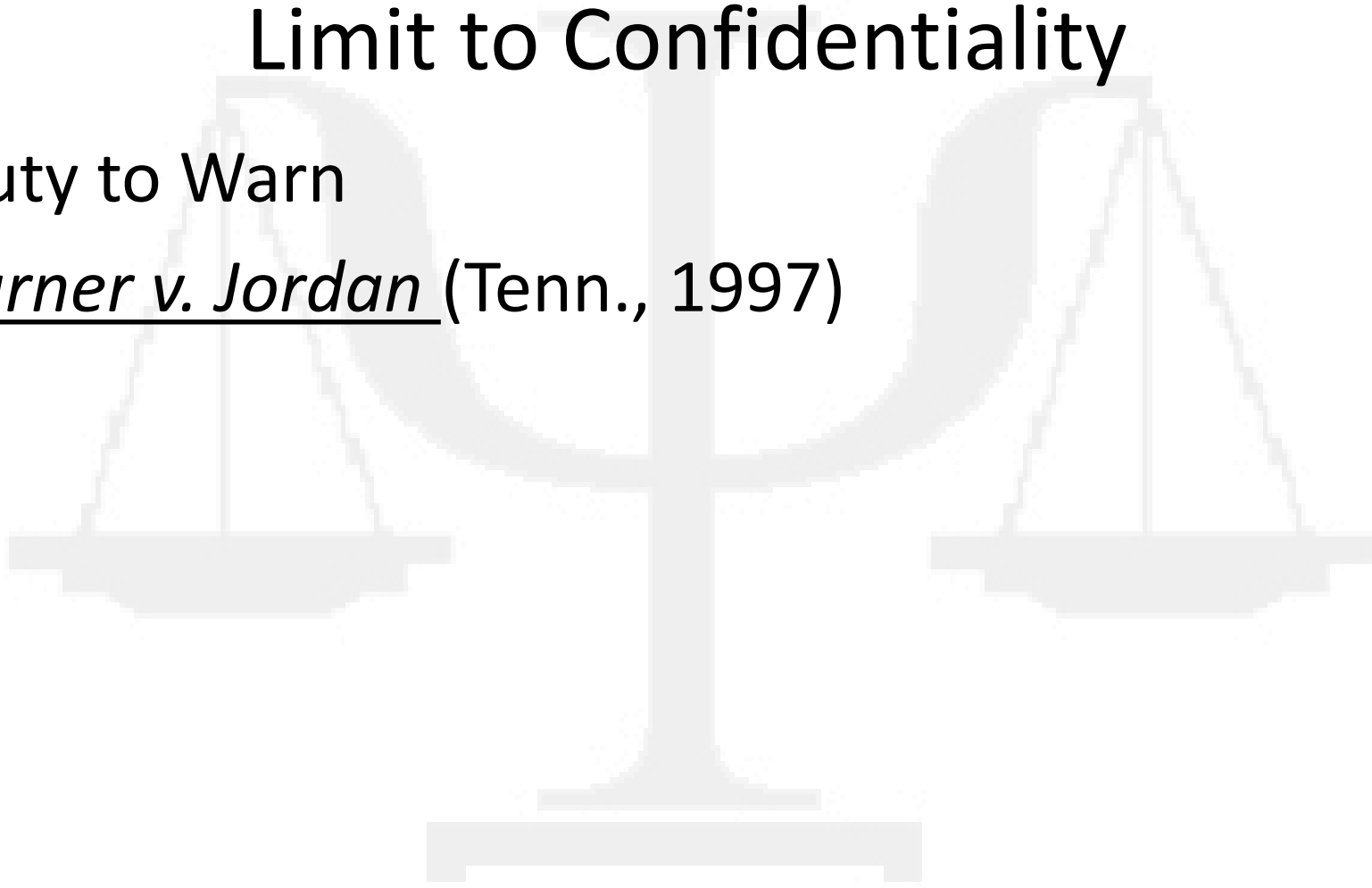


Dilemma One

Limit to Confidentiality

Duty to Warn

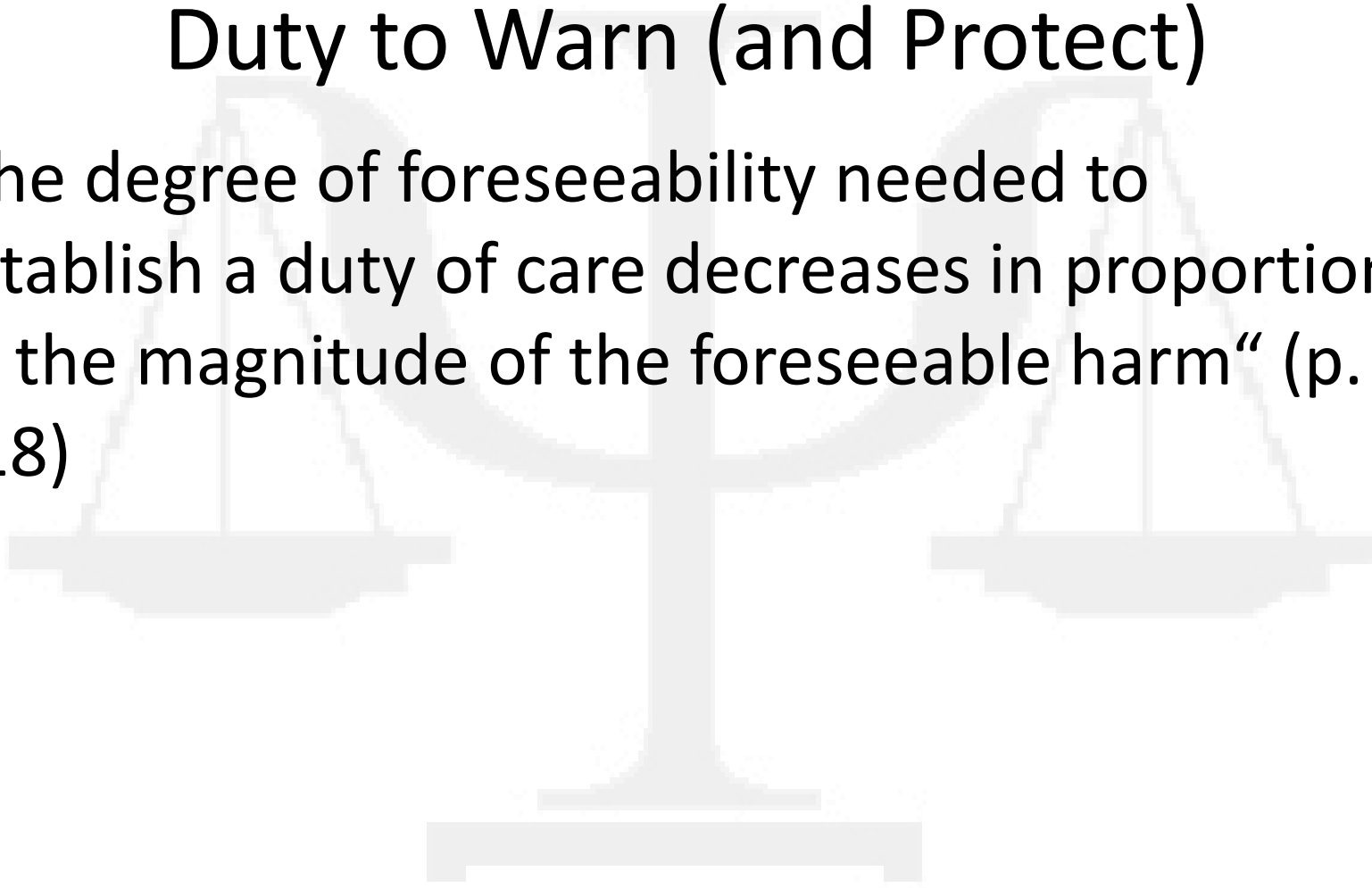
Turner v. Jordan (Tenn., 1997)



Turner v. Jordan

Duty to Warn (and Protect)

"the degree of foreseeability needed to establish a duty of care decreases in proportion to the magnitude of the foreseeable harm" (p. 818)



Turner v. Jordan

Duty to Warn (and Protect)

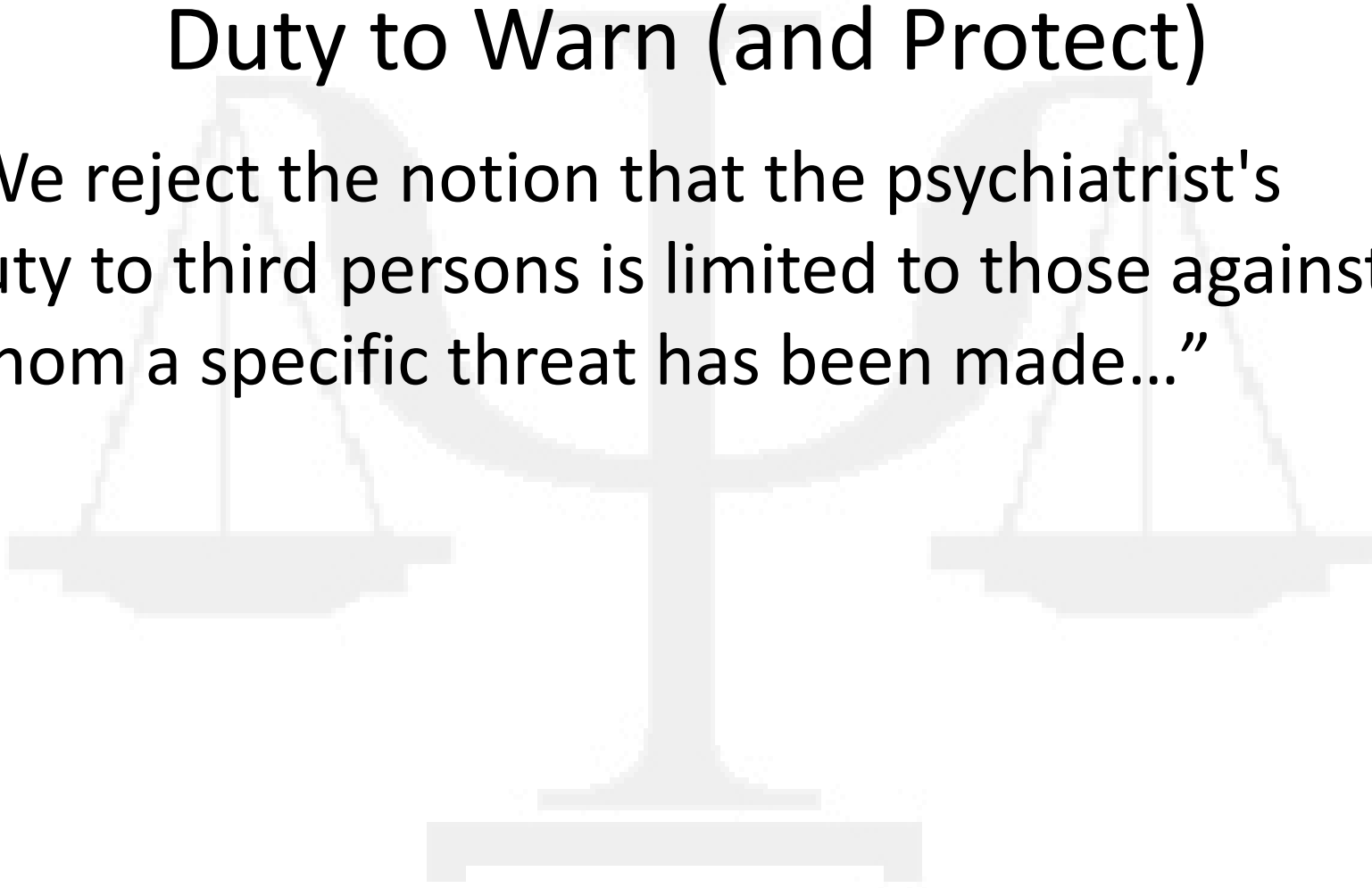
"the degree of foreseeability needed to establish a duty of care decreases in proportion to the magnitude of the foreseeable harm" (p. 818)

"The court explained that, depending on the nature of the case, the duty of care may require warning the victim, notifying the police, or whatever other steps are reasonably necessary to protect the third party" (p. 819)

Turner v. Jordan

Duty to Warn (and Protect)

"We reject the notion that the psychiatrist's duty to third persons is limited to those against whom a specific threat has been made..."



Turner v. Jordan

Duty to Warn (and Protect)

"We reject the notion that the psychiatrist's duty to third persons is limited to those against whom a specific threat has been made. . . . the psychiatrist has a duty to exercise reasonable care to **protect** the foreseeable victim of that danger. The foreseeable victim is one who is said to be within the **zone of danger**, that is subject to probable risk of the patient's violent conduct" (p. 819)

Assessing Dangerousness

- Means/Capacity
- Intent



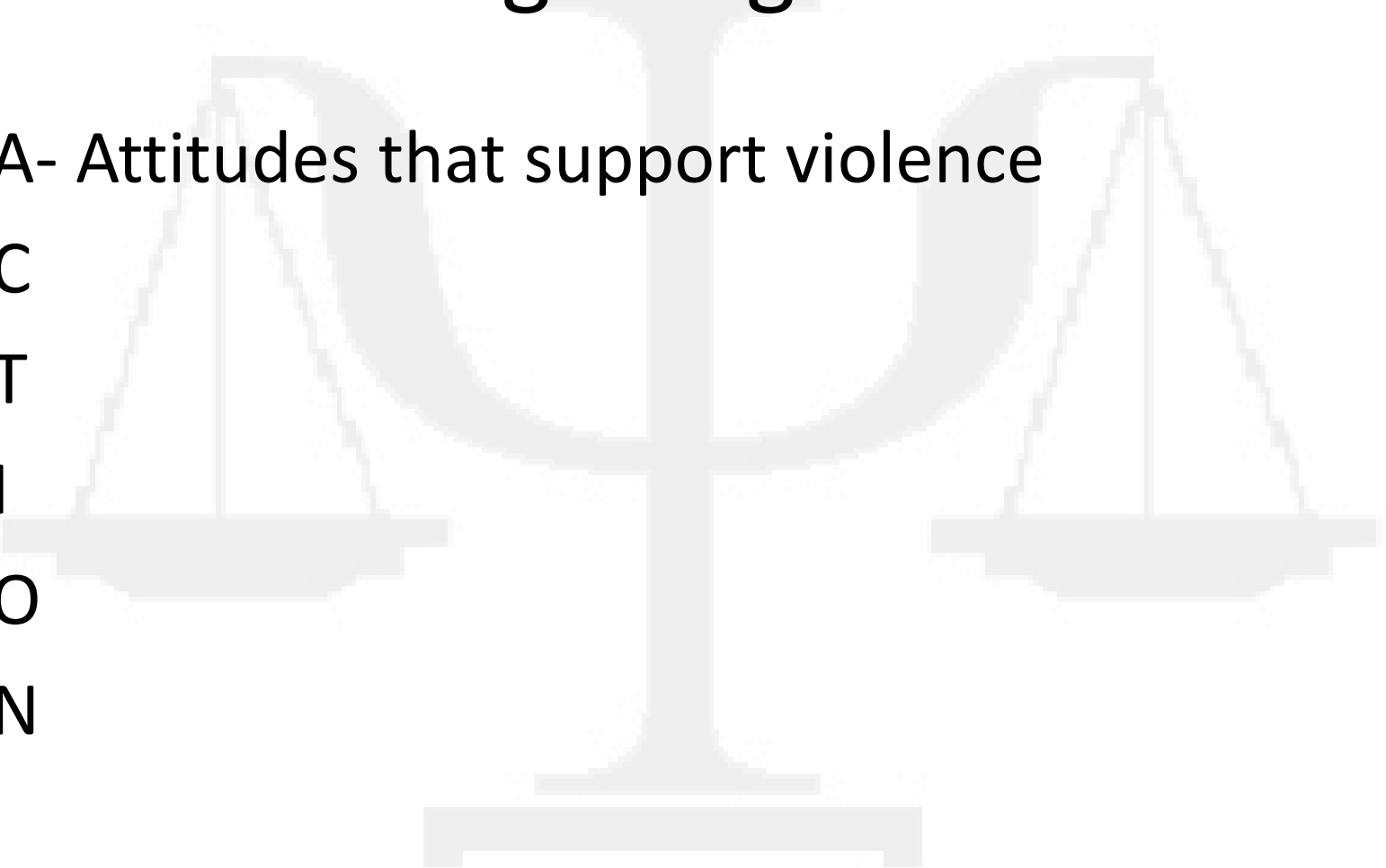
Assessing Dangerousness

- A
- C
- T
- I
- O
- N



Assessing Dangerousness

- A- Attitudes that support violence
- C
- T
- I
- O
- N



Assessing Dangerousness



- A- Attitudes that support violence
- C- Capacity
- T
- I
- O
- N

Assessing Dangerousness



- A- Attitudes that support violence
- C- Capacity
- T-Thresholds crossed
- I
- O
- N

Assessing Dangerousness



- A- Attitudes that support violence
- C- Capacity
- T-Thresholds crossed
- I-Intent
- O
- N

Assessing Dangerousness



- A- Attitudes that support violence
- C- Capacity
- T-Thresholds crossed
- I-Intent
- O-Other's reactions/responses
- N

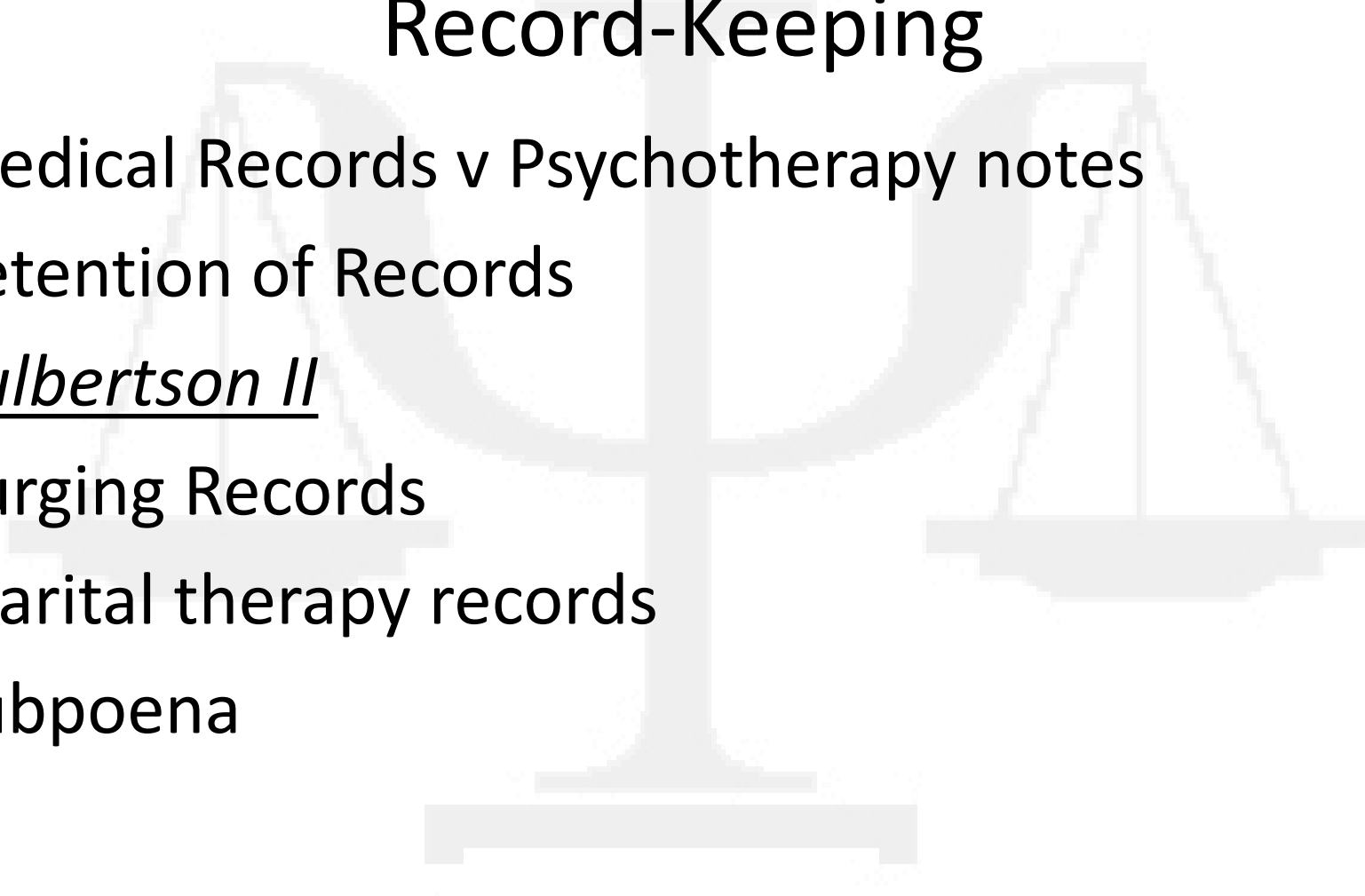
Assessing Dangerousness



- A- Attitudes that support violence
- C- Capacity
- T-Thresholds crossed
- I-Intent
- O-Other's reactions/responses
- N-Noncompliance with risk reduction

Dilemma Two

Record-Keeping



Medical Records v Psychotherapy notes

Retention of Records

Culbertson II

Purging Records

Marital therapy records

Subpoena

Dilemma Two

Record-Keeping

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Confidentiality: Culbertson II

1. By declaring oneself to be stable mentally, that does not constitute a general waiver of privilege.
2. Acknowledging treatment with a specific provider does not constitute a waiver of privilege.
3. Giving some records to an independent evaluator does not constitute a general waiver.

Confidentiality: Culbertson II

4. Allowing an independent evaluator to speak with a confidential treating source does not constitute a general waiver.
5. If evaluating professional asks for access to privileged records, the patient may decline.
6. Any records given to the independent evaluators are deemed to have been waived of any privilege.

Confidentiality: Culbertson II

7. Interpretation of TCA 36-6-106(a)(5)

The mental and physical health of the parents or caregivers. The court may, when it deems appropriate, order an examination of a party pursuant to Rule 35 of the Tennessee Rules of Civil Procedure and, ***if necessary for the conduct of the proceedings, order the disclosure of confidential mental health information of a party pursuant to § 33-3-105(3)***. The court order required by § 33-3-105(3) shall contain a qualified protective order that, at a minimum, expressly limits the dissemination of confidential protected mental health information for the purpose of the litigation pending before the court and provides for the return or destruction of the confidential protected mental health information at the conclusion of the proceedings . . .”

Dilemma Two

Record-Keeping

~~Medical Records v Psychotherapy notes~~

~~Retention of Records~~

Culbertson II

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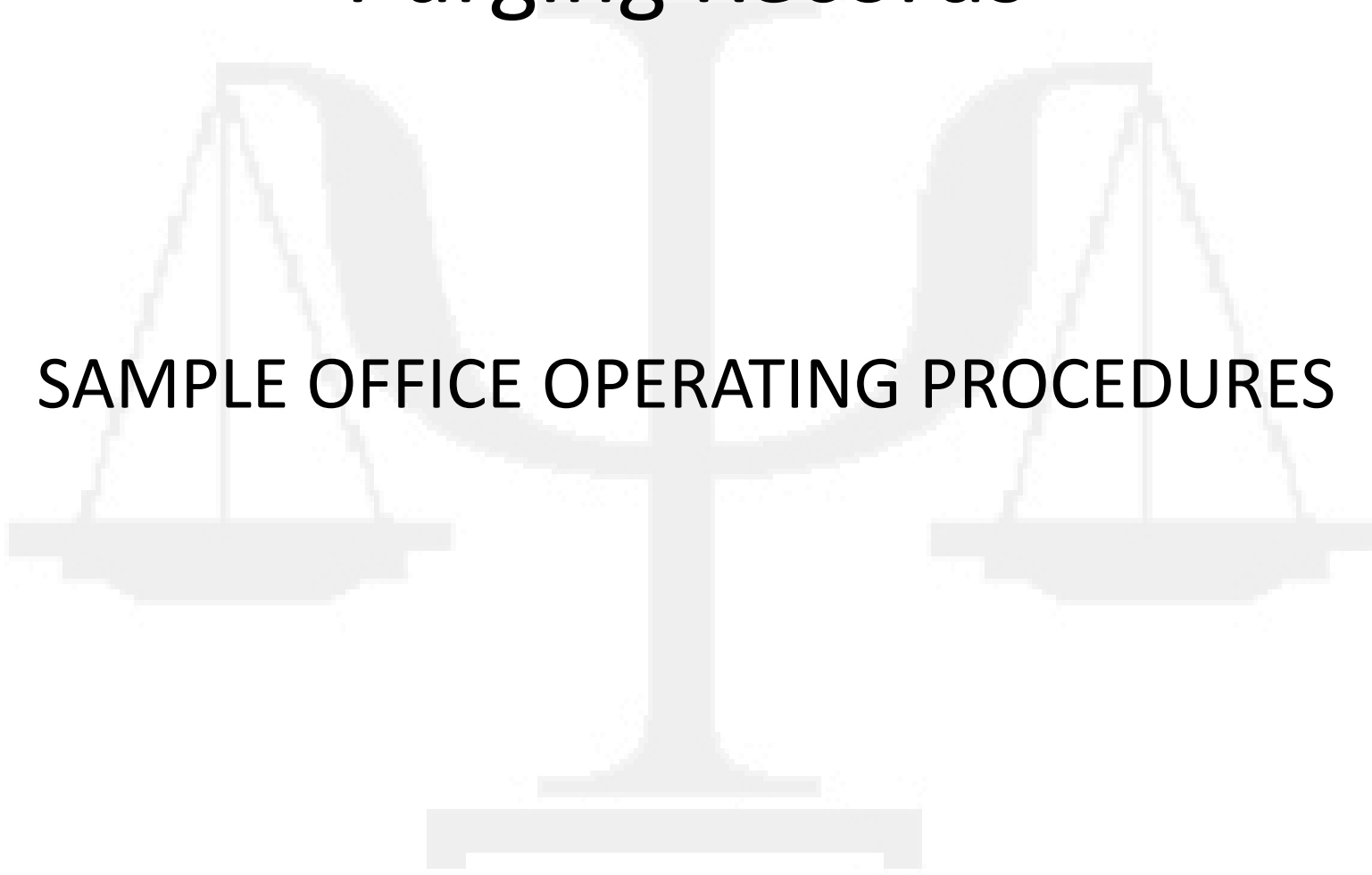
Purging Records



- No patient record singled out
- Requires established office operating procedures
- Burn or shred
- Date, time and method of destruction recorded for reference

Purging Records

SAMPLE OFFICE OPERATING PROCEDURES



Dilemma Two

Record-Keeping

~~Medical Records v Psychotherapy notes~~

~~Retention of Records~~

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Dilemma Two

Record-Keeping

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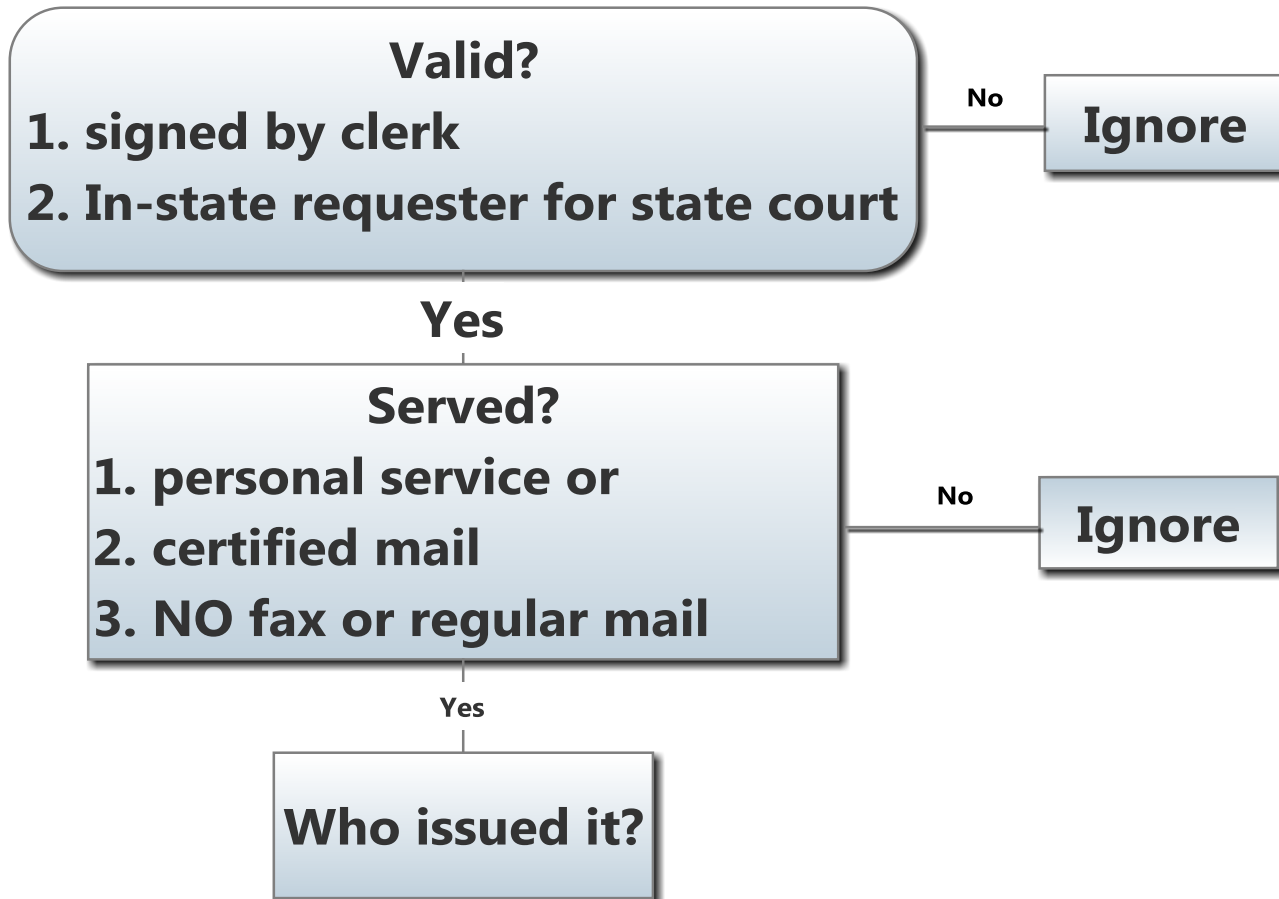
~~Culbertson II~~

~~Purging Records~~

~~Marital therapy records~~

Subpoena

SUBPOENA DECISION TREE



Attorney for your client

Clarify with client/attorney:

- 1. Are they suing with claims involving emotional damage?**
- 2. What are the legal issues (custody, injury criminal)?**
- 3. Do they want you to testify?**
- 4. Are they looking for a fact witness or expert witness?**
- 5. Clarify fees for expert witness, paid in advance; prep time and court time**
- 6. Offer review records before release**

STILL WANTS RECORDS RELEASED?

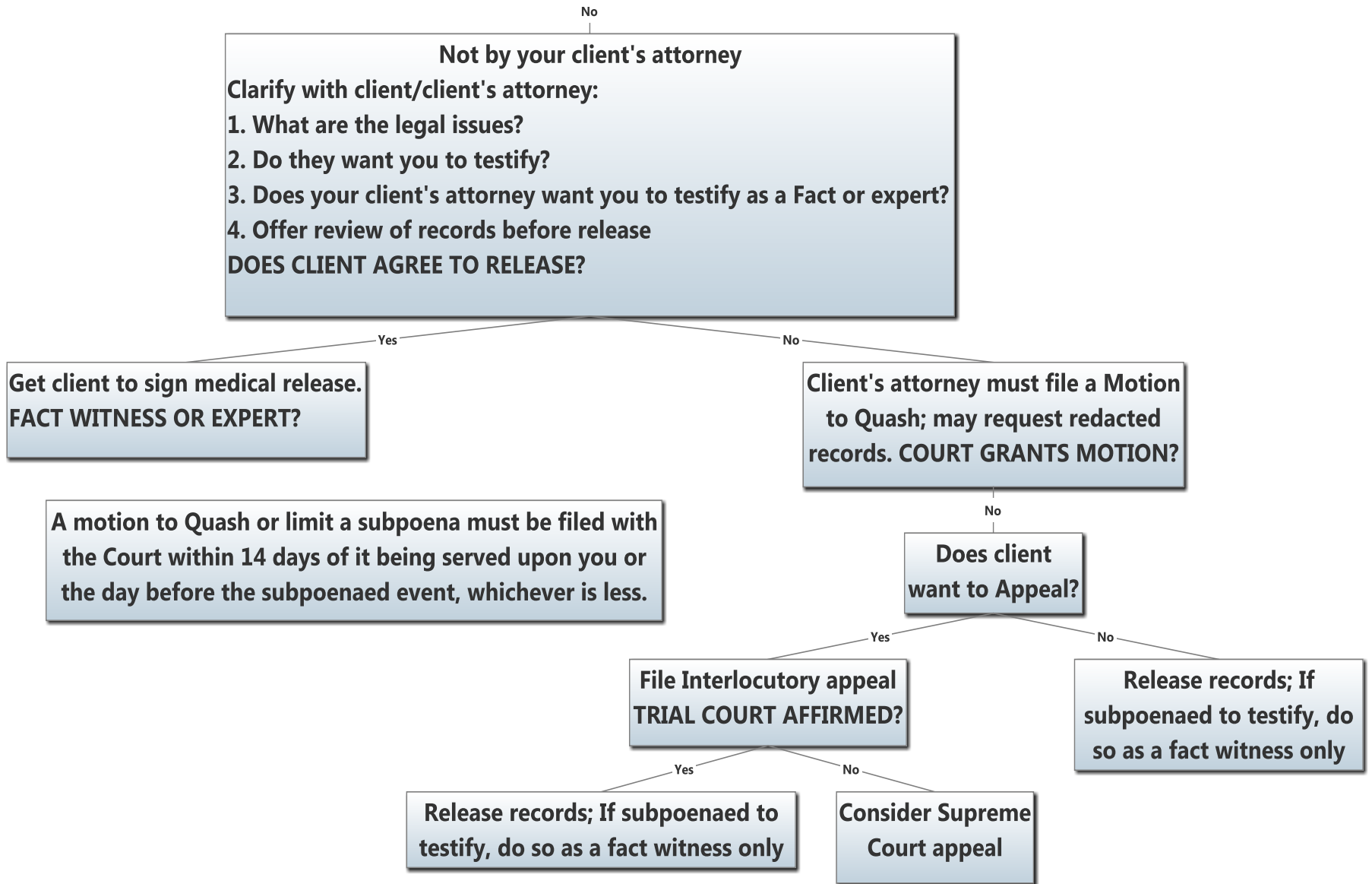
Yes

Wants to release records fully

- 1. No med release needed**
- 2. If yes to testify, see FACT WITNESS V EXPERT WITNESS**

No

**Does not want you to release
Call attorney to notify of
client's change of mind; Ignore**



Fact Witness



1. No or minimal pay
2. Testify only what you saw, heard or observed directly; not expected to prepare
3. State diagnosis given and criteria you observed
4. No testimony/opinion regarding what damages are typical
5. No testimony/opinion regarding typical course of treatment or outcome
6. No testimony/opinion regarding causation

Expert Witness



1. Paid for preparing and testifying
2. Paid in advance
3. Testify as to causation, outcome, future needs, typical treatment

Dilemma Three

Managing Values

Ward v Polite

Keeton v Anderson-Wiley

RFRA (Religious Freedom Restoration Act)

Four-Layered Ethics



Dilemma Three

Religious Freedom Restoration Act

Wildflower Inn in Vermont told a lesbian couple in 2010 that the inn didn't host "gay receptions" because of the owners' "personal feelings." In August, 2012 the Inn settled the lawsuit, it agreed to pay a \$10,000 civil penalty, to place \$20,000 in a charitable trust and to stop hosting weddings -- whether the couple is gay or straight.

In New Jersey, the Methodist **Ocean Grove Camp Meeting Association** refused to allow a lesbian couple to hold a ceremony at its boardwalk pavilion in 2007. The New Jersey Division on Civil Rights ruled in 2012 that the association, which gets a tax exemption, must cease and desist violating the law but did not impose a fine or other penalty. The association stopped renting out the pavilion for marriages.

Dilemma Three

Religious Freedom Restoration Act

In August 2014 the owners of **Liberty Ridge Farm** were fined \$13,000 and told they could not discriminate against same-sex couples after refusing to allow a gay wedding on their New York farm have announced that they will “no longer host any wedding ceremonies on their property.”

The Colorado Civil Rights Commission ruled in May 2014 that Jack Phillips and his staff at **Masterpiece Cakeshop** must create cakes for same-sex celebrations and comply with Colorado’s Anti-Discrimination Act.

Dilemma Three

Religious Freedom Restoration Act

Don't refuse to see gay couples because they are gay.

Refer based on lack of experience and desire to do no harm. . . Not because you refuse to provide services

Dilemma Four

Fraudulent Marketing

Polls

