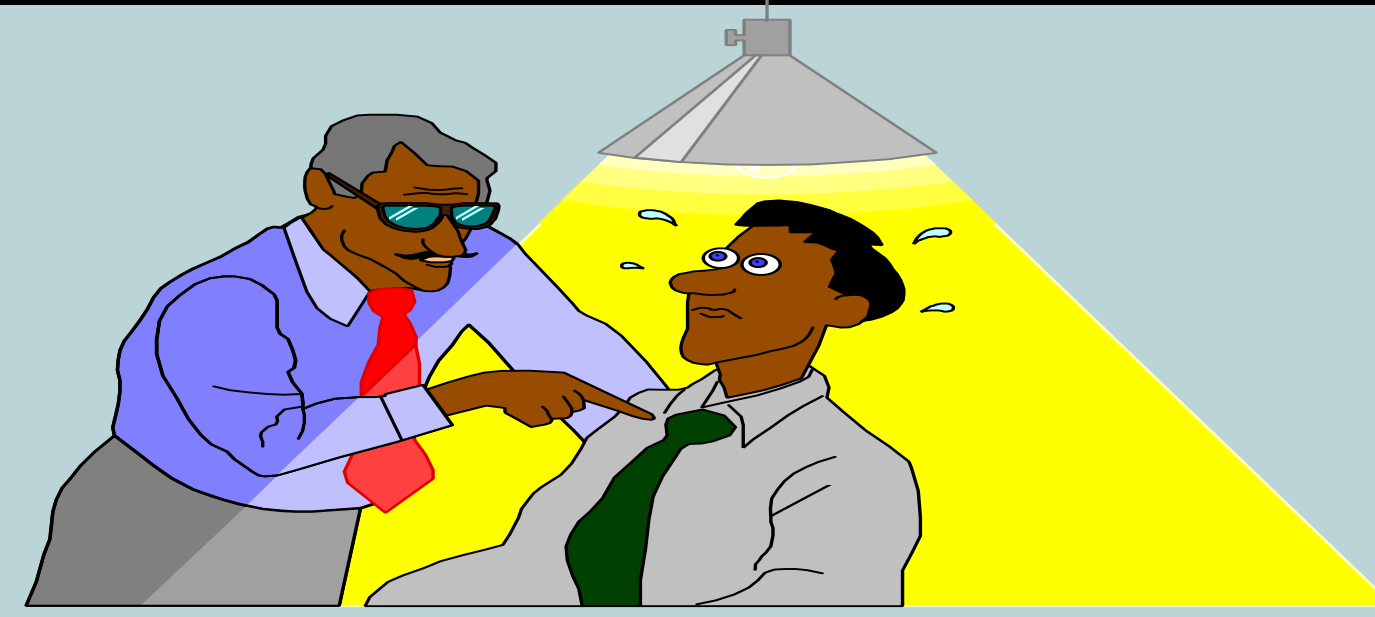


AALS EVIDENCE SECTION POSTER: NO STRICT EVIDENCE RULES IN LABOR AND EMPLOYMENT ARBITRATION



MICHAEL Z. GREEN, PROFESSOR OF LAW

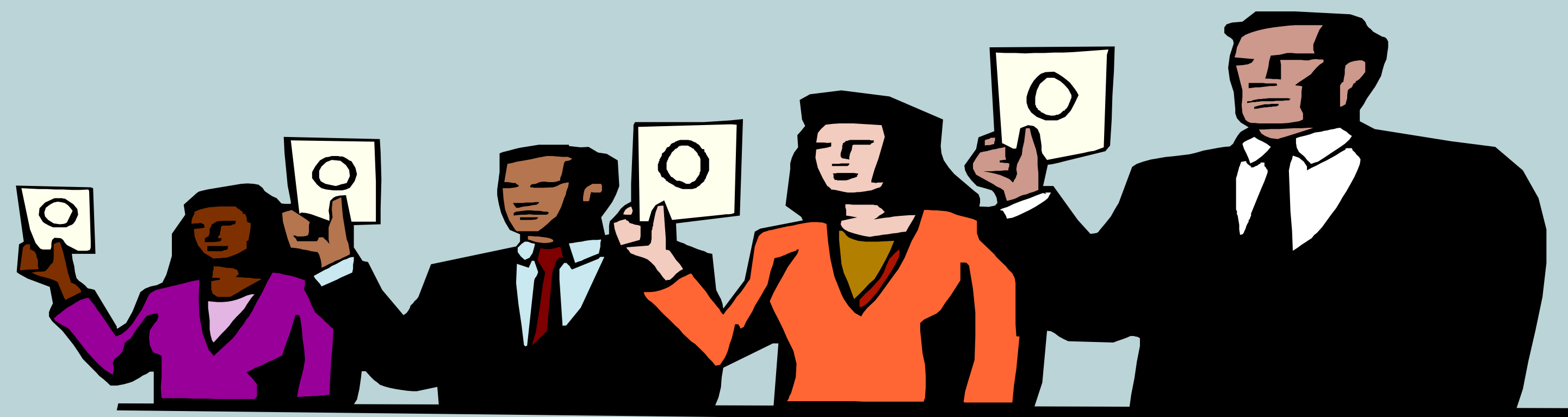


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Value of Using Rules of Evidence?

- Arbitration Becoming More Formal.
- Advocates Expect Rules to Apply.
- Principles Behind the Rules Must Apply.
- Advocates Can Prepare More Effectively.
- Like Judges, Arbitrators Need Rules.
- Rules Give Fair Guidance to All.

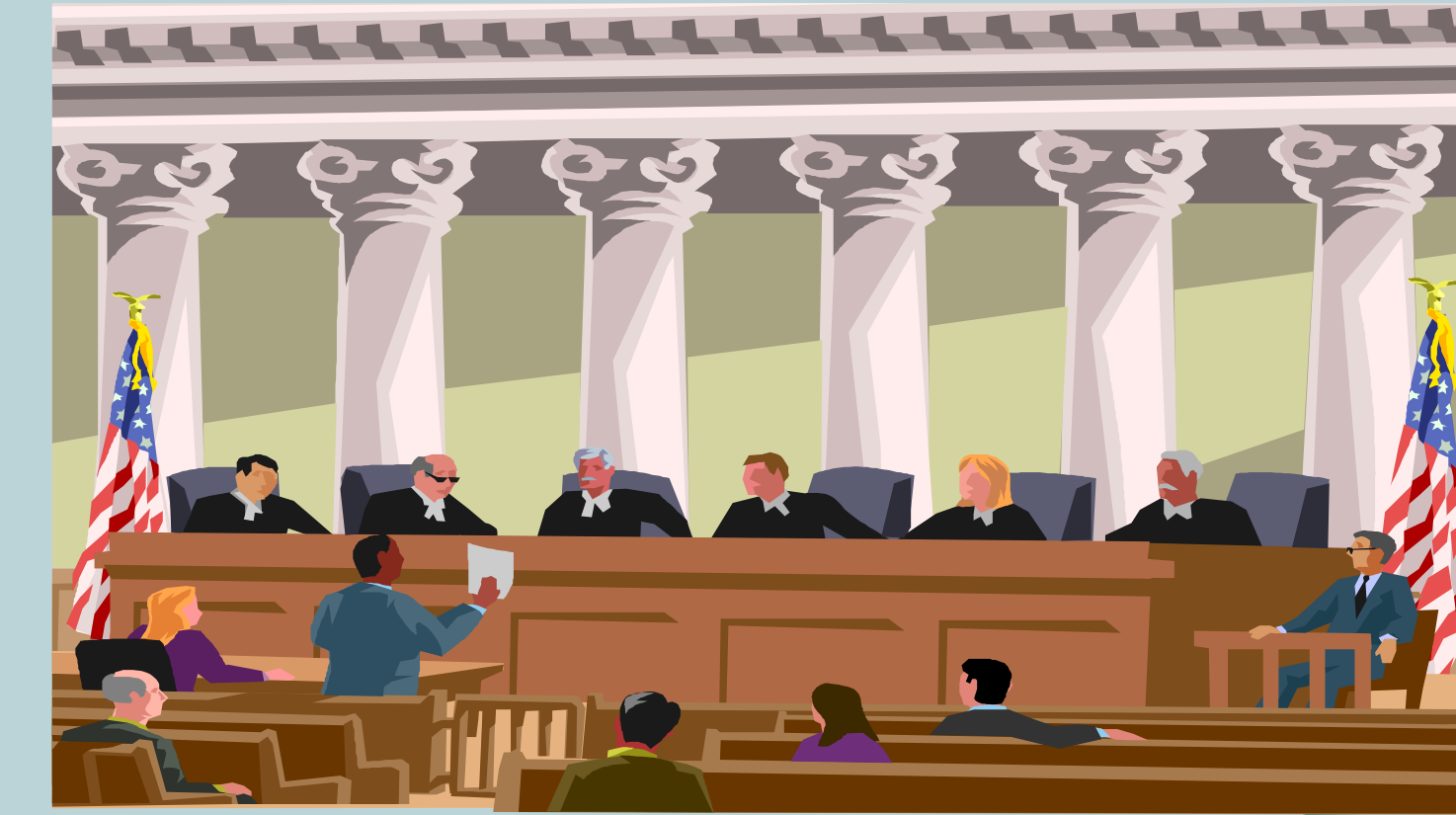
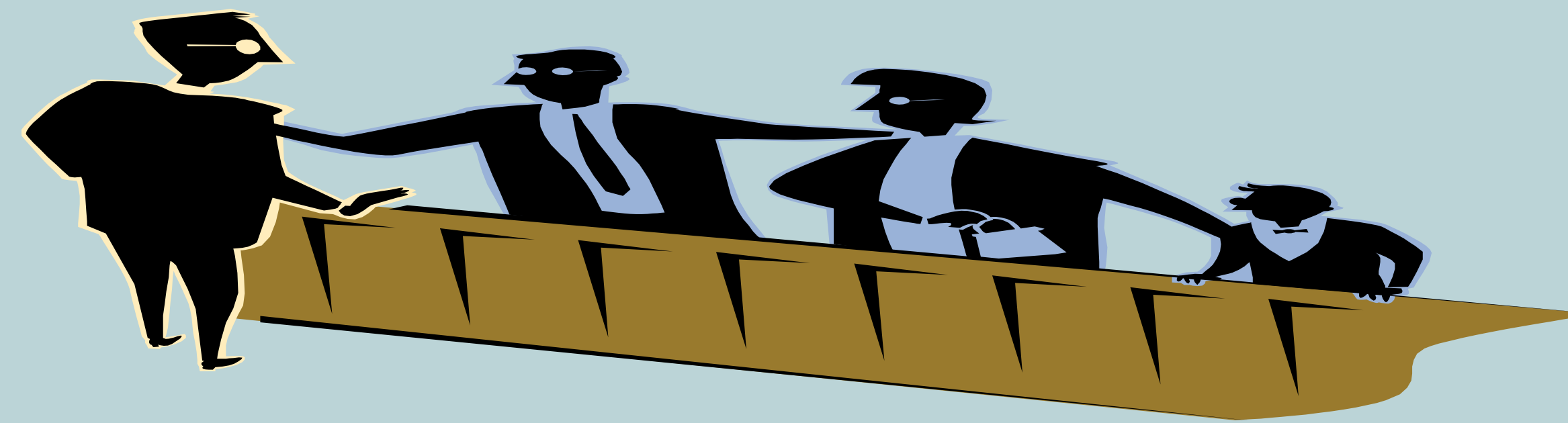


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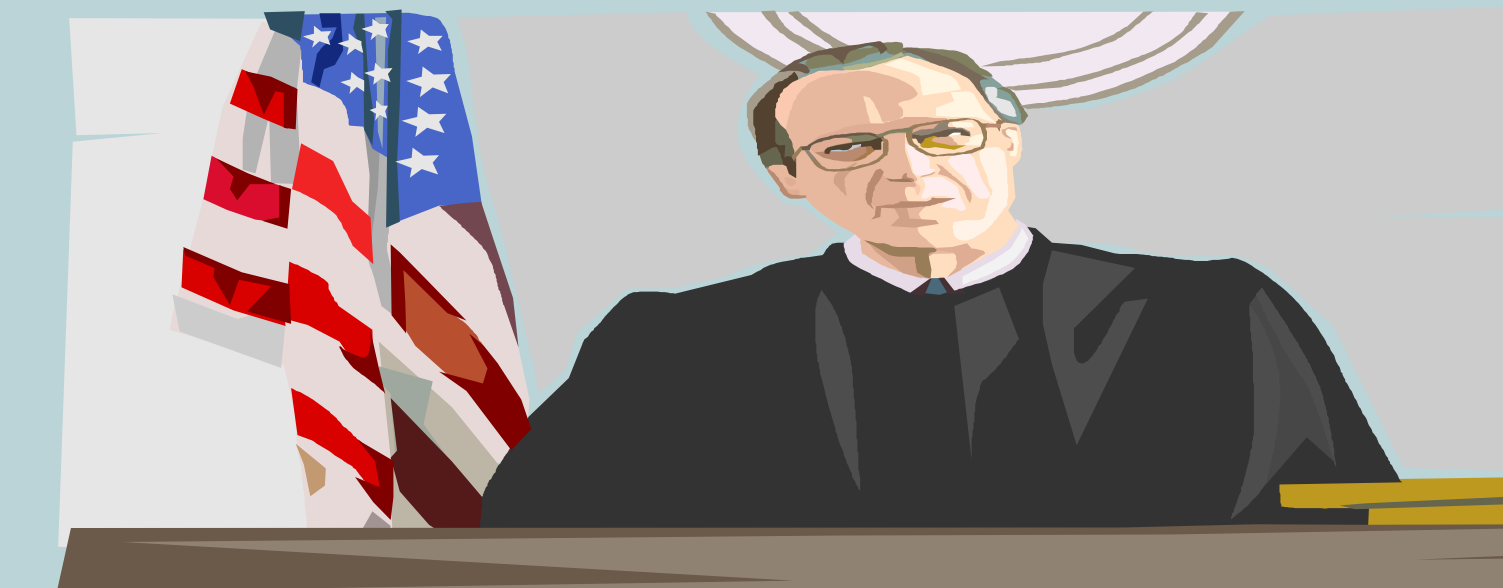


Why Strict Use of Rules is a Problem:

- No Review of Arbitrator Error. Unlike Rule 103.
- An Informal Process, Not Court.



- Evidence Rules Mostly Aimed at Jurors:
 - Hearsay? Unfair Prejudice? Character?
 - Evidence Rules: 801, 403, 404, 104, 105.
- Arbitration is More Like a Bench Trial.



3

Conclusion: No Required Rules

- Evidence Rules May be a Guideline, But Not a Strict Requirement.
- Good Advocates Can Still Convince Us.
- Good Arbitrators Can and Will Explain Rulings.
- Strict Compliance Problems Outweigh Any Benefits.
- Arbitrators May “take it for what it’s worth.”
- But Arbitrators Should Be Guided By the Principles Behind the Rules and Inform Parties of the Basis For Evidentiary Rulings As Soon as Possible to Help the Advocates and the Overall Arbitration Process.



The End

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