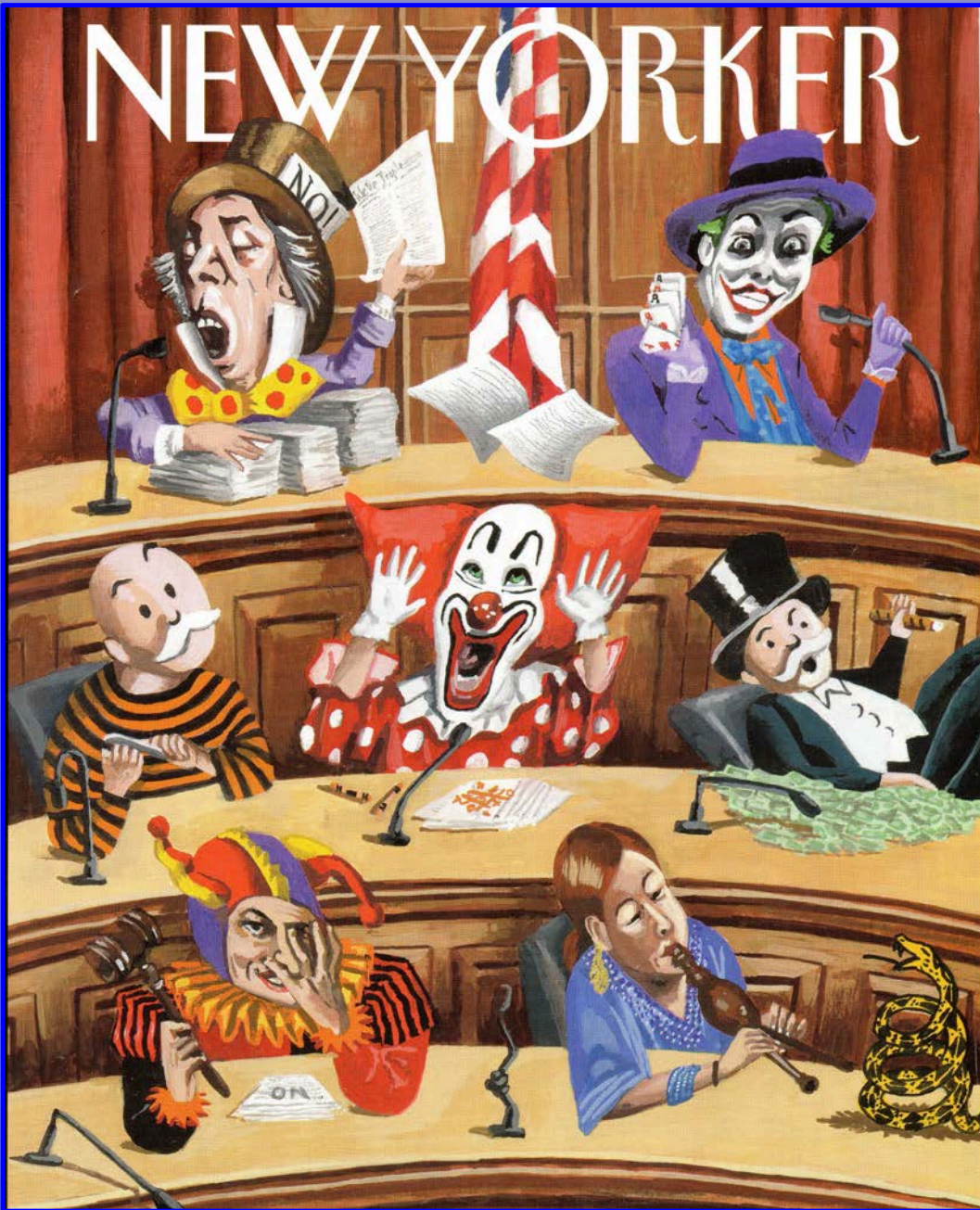


Wishing for a Change in Legal
(and Political) Culture:
The Necessity for Compromise
Musings of a recovering politician

Denver Faculty of Federal Advocates,
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Civility (per Merriam Webster):
polite, reasonable, and respectful
behavior

A fundamental theorem of U S constitutional government and its representative democracy:

- compromise is a necessity born of the intentional architecture of our government
- compromise depends on some modicum of trust
- trust depends on personal relationships
- personal relationships depend on having time to develop
- the electors of the representatives need to understand this

Madison, *Federalist 10*: why compromise

The latent causes of faction are thus sown in the nature of man; and we see them everywhere A zeal for different opinions concerning religion, concerning government, and many other points; . . . an attachment to leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to cooperate for their common good.

Madison, *Federalist 10*: how to compromise

From this view of the subject it may be concluded that a pure democracy, . . . can admit of no cure for the mischiefs of faction. . . .

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, . . .

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; . . .

The effect [is] . . . to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, . . .

As Madison noted even in 1787: then and now, a diverse society, divergent interests, conflicting preferences, factions

- aggravated by political geography: with most legislative districts dominated by one party, little political diversity among districts' voters;
- incentive for candidates to pander to a particular political ideology and not have to explain why s/he will eventually have to deal with contrary points of view;
- demagogic appeal: “I’ll never compromise”

Rise of dysfunction in Congress:
increases in the centrifugal
(alienating) forces,
and decline in centripetal
(cohesive) forces
affecting public life and public
officials

What to do?
Story of the House Bipartisan Retreats:
1997, 1999, 2001 and 2003.

Valiant effort but ultimately unsuccessful:
can lead the horses to water, but . . .

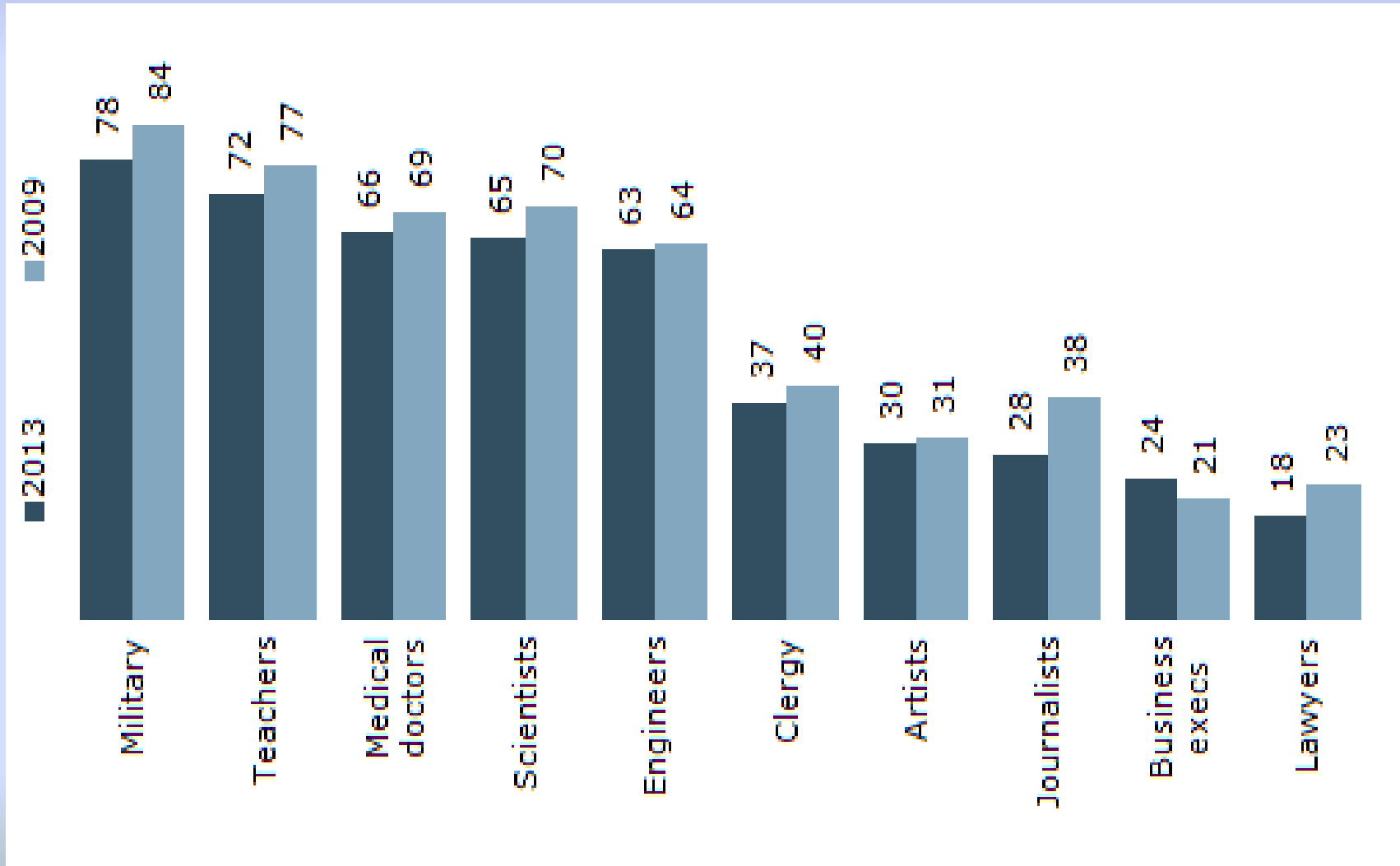
Any relevance for the legal profession and the behavior of lawyers?

CRPC Preamble [9]:

. . . These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law. Zealousness does not, under any circumstances, justify conduct that is unprofessional, discourteous or uncivil toward any person involved in the legal system.

Pew Survey 2013 v. 2009:

% contributing “a lot” to society's well-being



What to do?

For our political life?

For the legal profession?

Thank you.

Questions?