

Lawyers in the Laboratory

OR, CAN THEY RUN THROUGH THOSE LITTLE MAZES?

Marc Galanter

NOT LONG AGO, the Sunday *New York Times* "Week in Review" section ran a feature about the appearance on several Internet sites of animated cartoon shows in which lawyer protagonists were depicted as rats.¹ Those exposed to lawyer jokes should find this unsurprising, for rats figure prominently in current jokes about lawyers, including the single most prevalent of all current lawyer jokes:

Why have research laboratories started using lawyers instead of rats in their experiments? There are three reasons: first, there are more of them; second, the lab assistants don't get attached to them; and third, there are some things a rat just won't do.

The first printed version that I have found

appeared in Tom Blair's column in the *San Diego Union-Tribune*, Oct. 18, 1984:

M.J. Crowley contends lawyers are replacing laboratory rats in popularity among scientific researchers. "There are more of them," says Crowley, "and you don't get so attached to them."²

The pre-existing item "some things a rat (or pig or prostitute) just won't do" was soon attached; the joke in its canonical form – the set-up (a question in riddle versions) followed by the three-part response – first appeared in print in 1986.³

Since then the joke has been considerably elaborated. As invidious comparisons were added, the joke metastasized into a comic list

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¹ William Glaberson, "The Legal Profession Smells a Rat," *New York Times*, Oct. 22, 2000.

² Tom Blair, *San Diego Union-Tribune*, Oct. 18, 1984, at B-1.

³ Fred Strasser, "Bar Mixes Work, Play in Fla." *National Law Journal*, July 7, 1986, at 6 (quoting joke as told to Florida bar meeting by Stephen M. Masterson, executive director of the Florida Academy of Trial Lawyers).

(a genre much favored by the Internet and E-Mail) providing an anthology of anti-lawyer sentiments:

Why do behavioral scientists prefer lawyers to rats for their experiments?

(1) There are more of the lawyers to work with; (2) lawyers are more expendable; (3) lawyers do more harm to society than rats; (4) lab assistants are less likely to develop a bond or feel sympathy for them; (5) rats arouse more feelings of compassion and humanity; (6) they multiply faster; (7) rats have an innate right to life and liberty; (8) animal rights groups will not object to their torture; (9) rats have more dignity; and (10) there are some things even a rat won't do.⁴

Starting in the early 1990s, some versions added an inspired coda:

One problem, though, is that no one has been able to extrapolate the test results to human beings.⁵

Laboratory Rats is frequently told by public speakers, from former Attorney General Edwin Meese⁶ to Harvard Professor Martha Minow⁷ to former Surgeon General C. Everett Koop.⁸ It has gained currency all over the English-speaking world. In many foreign tellings, especially in Britain, it is presented as a report of developments in the United States, sparing (and perhaps warning) local lawyers.

Although it has occasionally been directed at Mexicans, Poles, politicians, guitarists, and hockey players, this joke is overwhelmingly told about lawyers. It offers a convenient

vehicle for voicing a number of interrelated points about lawyers in a wonderfully condensed fashion. The association with rats suggests both repulsiveness and betrayal; the response of the lab assistants depicts the low public regard for lawyers; their abundance suggests the need for something to be done about "too many lawyers"; "some things rats won't do" points to their moral deficiency. The setting reminds us that this is the revenge of the laboratory classes: scientists and doctors who preside in laboratories get to cut up the lawyers (who sue them and cut them up on cross-examination). Lawyers who obstruct finally make a positive contribution when reduced to experimental animals. The joke relishes the fantasy of the diminishment of lawyers and their wholesale removal from social life.

Laboratory Rats maps the themes of the great wave of joking about lawyers that has flowed since the early 1980s: lawyers are parasitic and disloyal, deficient in morality, universally scorned, and in such abundant supply that their removal is desirable. Rats are, after all, the prototypical pest that needs to be exterminated. We are left to imagine how this is to be accomplished, but we can assume that laboratory animals are not put out to pasture.

Jokes referring to the killing or disappearance of lawyers were rare before 1980, but proliferated after that. Shakespeare's oft-cited "The first thing we do, let's kill all the lawyers"⁹ has become the ur-text of the flour-

ishing genre of death wish jokes about lawyers. Notwithstanding its ignominious source – it is uttered by the thuggish Dick the Butcher and endorsed by Jack Cade, demagogue and leader of the rebellious mob – Shakespeare's contempt for the law's enemies has become an emblematic expression of hostility to lawyers, proudly proclaimed and inscribed on T-shirts and coffee mugs.

Another rat story that appeared by 1990 picks up this theme:

A tourist wanders into a back-alley antique shop in San Francisco's Chinatown. Picking through the objects on display he discovers a detailed, life-sized bronze sculpture of a rat. The sculpture is so interesting and unique that he picks it up and asks the shop owner what it costs. "Twelve dollars for the rat, sir," says the shop owner, "and a thousand dollars more for the story behind it." "You can keep the story, old man," he replies, "but I'll take the rat."

The transaction complete, the tourist leaves the store with the bronze rat under his arm. As he crosses the street in front of the store, two live rats emerge from a sewer drain and fall into step behind him. Nervously looking over his shoulder, he begins to walk faster, but every time he passes another sewer drain, more rats come out and follow him. By the time he's walked two blocks, at least a hundred rats are at his heels, and people begin to point and shout. He walks even faster, and soon breaks into a trot as multitudes of rats swarm from sewers, basements, vacant lots, and abandoned cars. Rats by the thousands are at his heels, and as he sees the waterfront at the bottom of the hill, he panics and starts to run full tilt.

No matter how fast he runs, the rats keep up, squealing hideously, now not just thousands but millions, so that by the time he comes rushing up to the water's edge a trail of rats twelve city blocks long is behind him. Making a mighty leap, he jumps up onto a light post, grasping it with one arm while he hurls the bronze rat into San Francisco Bay with the

other, as far as he can heave it. Pulling his legs up and clinging to the light post, he watches in amazement as the seething tide of rats surges over the breakwater into the sea, where they drown.

Shaken and mumbling, he makes his way back to the antique shop. "Ah, so you've come back for the rest of the story," says the owner. "No," says the tourist, "I was wondering if you have a bronze lawyer."¹⁰

In this story, with its overtones of the Pied Piper, the equation of lawyers with rats focuses on lawyers as swarming pests from whom society may experience a miraculous deliverance.

While the laboratory rats joke seems to be a 1980s original, the bronze rat story is an adaptation of a joke that has flourished since the 1960s throughout Communist Eastern Europe:

Hordes of big brown rats have suddenly overrun the Soviet capital and the Politburo is holding an around-the-clock session trying to figure out what to do. Finally someone suggests a call to [President Lyndon] Johnson; those Americans can cope with any situation. Johnson listens to Brezhnev carefully and says: "Yes, we have a sure-fire remedy. But it will cost you one million dollars." Brezhnev reports to his associates, and the Politburo is outraged. The price is too high. It is just like Americans to take advantage of hard-pressed customers!

But the need became greater. Finally the decision is made to accept Johnson's terms. On the appointed day a big package is delivered by the American envoy to the assembled Politburo. Out of it jumps a big white rat. He runs from the room to the Moscow streets, and at once all the big brown rats follow him. The white rat makes a dash for the Moskva River, jumps in and drowns himself. The millions of brown rats jump after him; all are drowned. Moscow is relieved at last. In great joy Brezhnev gets on the hot line again, and shouts: "Mister President, it

¹⁰ This version circulated on the Internet in 1994. The first version in print seems to be in Blanche Knott, *Truly Tasteless Lawyer Jokes* (New York: St. Martin's Paperbacks, 1990), at 44.

worked! Now, for ten million dollars, send us a white Chinaman!"¹¹

On arrival on these shores in the mid-1980s, the story was first told about politicians and blacks, but soon became predominantly a story about lawyers.

Although the rat-lawyer equation is recent, the image of lawyers as a pestilential swarm has long been encoded in our culture. In seventeenth-century England, John Lilburne urged Parliament to arrange "the ridding of this kingdom of those vermin and caterpillars, the lawyers, the chief bane of this poor nation."¹² A contemporary described the Inns of Court as "the devil's school of sophisticating and lying frauds and hypocrisies which bring forth a generation of vipers which destroy and eat up the commonwealth, their mother."¹³ More than three centuries later a British critic now warns his countrymen against "a pestilence so pervasive, rampant, and destructive of the quality of life that it threatens to engulf us all ... the outbreak of lawyers":

In the US, the fountainhead of modern malaise, there are already 800,000 lawyers, 70 per cent of the world's total, and they are expanding at the rate of 40,000 a year. Inevitably, the infestation has reached these shores, borne upon the same wind that blows American junk culture into our lives. ... The obvious solution is a cull. What fun it would be to join the hunt, rounding up rural notaries, small town solicitors, and fat cat barristers, whipping them into the tumbrels, and trundling them screaming to their fate at the

hands of the bloodthirsty mob. But we are a civilized people content to express ourselves through the market. ... Lawyers, however, are a wily breed whose stock in trade is low cunning. Just as rats develop an immunity to poisons, members of the legal profession are prone to circumvent the rules. So it is that the lawyers seek to prolong their existence and maintain their numbers by side-stepping natural selection and creating fresh carrion upon which to feed.¹⁴

Although the imagery wavers among lawyers as game to be hunted, rats to be poisoned, or counter-revolutionaries to be guillotined, the author is constant in his determination to eliminate or at least diminish their presence.

Parallel imagery flourishes in the United States. Surprisingly, its contemporary revival was projected from within the legal establishment, most prominently by no less than the Chief Justice of the United States, Warren Burger, when he warned in 1977 that:

unless we devise substitutes for courtroom processes - and do so quickly - we may well be on our way to a society overrun by hordes of lawyers, hungry as locusts, and brigades of judges in numbers never before contemplated.¹⁵

For the Chief Justice the hordes were a danger posed by the excessive adversariness of our legal system and to be prevented by reforming that system. To other imaginations, the hordes were soon to arrive and needed to be exterminated. Respectable mainstream voices echo the allusion to pests and measures to control them. Surveying "America's Legal Mess," pun-

dit David Gergen concluded: "Clearly, we need to de-lawyer our society."¹⁶ A former chair of the President's Council of Economic Advisors, lamenting slow growth, observed that "[l]aw schools have been flooding the nation with graduates who are suffocating the economy with a litigation epidemic of bubonic plague proportions."¹⁷

What is the problem and what, if anything, can lawyers do about it? The messages in jokes are multiple and sometimes inconsistent. Some critics, for example, read them as pointing to lawyers' egregious behavior. Stuart Taylor, a prolific commentator on the profession, asks:

So what is it that a white rat won't do, but many lawyers will do? ... [T]he joke rings true to a lot of people because of what many

lawyers in this country - including many at the top of the profession - do for their clients: bend, distort, conceal, cover up, obfuscate, or misrepresent the facts, in ways that are simultaneously (1) regarded by ordinary people as just plain dishonest, and (2) defended by many lawyers and legal experts as embodying the finest traditions of the bar, and of legal ethics in our adversary system.¹⁸

But there is another theme in these rat jokes: that lawyers are too numerous and too powerful and that society is too pervaded by law. It would be hard enough for lawyers to meet the Stuart Taylor critique, but if the real source of public discontent is the pervasiveness of law and lawyers, it will hardly be assuaged by better behavior on the part of lawyers. *GB*

11 Albert Parry, "Russia Cracks Jokes About China," *New York Times Magazine*, Jun. 26, 1966.

12 Donald Veall, *The Popular Movement for Law Reform 1640-1660* (Oxford: Clarendon Press, 1970), at 208-09.

13 J. Jones (1652), quoted in Veall, *op. cit.*, at 202.

14 Iain Murray, "Legal Eagles Swoop in for New Kill," *Marketing Week*, May 10, 1996, at 134. For an examination of the widespread, enduring, and thoroughly false "70 percent of all the world's lawyers" myth, see M. Galanter, "News from Nowhere: The Debased Debate on Civil Justice," 71 *Denver University Law Review* 77, 77-83 (1993).

15 Warren E. Burger, Remarks at the American Bar Association Minor Disputes Resolution Conference, May 27, 1977.

16 David Gergen, "America's Legal Mess," *U.S. News and World Report*, Aug. 19, 1991, at 72.

17 Paul W. McCracken, "The Big Domestic Issue: Slow Growth," *Wall Street Journal*, Oct. 4, 1991, at A2.

18 Stuart Taylor, "Why So Many Lawyer Jokes Ring True," *Legal Times*, Sep. 18, 1995, at 25.