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TOURNAMENT OF JOKES: GENERATIONAL TENSION IN LARGE LAW FIRMS*

MARC GALANTER**

In the past quarter-century, the large law firm has grown in size and professional dominance. In this same period, the demography of the legal profession has undergone a dramatic transition, marked not only by the presence of women and minorities but also by a changing age profile. While all this has been happening, the profession has been the target of a great surge of anti-lawyer sentiment, one manifestation of which is a great increase in the presence and hostility of jokes about lawyers. These seemingly diverse phenomena are related in complex ways. I propose to examine how the interaction of firm growth and changing demography is reflected in one corner of the lawyer joke corpus.

Even if we suppose, as I do, that we can learn something about lawyers from the jokes that are told about them, caution is required. Jokes are not descriptive and not reducible to policy prescriptions. There is no one-to-one correspondence between the imaginary lawyers who inhabit the world of lawyer jokes and the flesh and blood lawyers who make up the real-world legal profession. For example, the real-world profession is increasingly specialized and intensely stratified, but these differentiations are only faintly apparent in the world of lawyer jokes. The lawyers in jokes tend to be generic and undifferentiated.

The lawyer population of the joke world is skewed toward private practice. There are no government lawyers (apart from judges and an occasional prosecutor), no in-house corporate lawyers, no legal services lawyers, or public interest lawyers. With few

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exceptions, lawyers in jokes work for individual clients, not for large impersonal corporations—unlike the real world, where lawyers mostly supply services to organizational clients rather than to individuals.¹ An increasing portion of the legal profession is organized in large firms or into large offices in corporations and government, but large law firms and their corporate clients remain almost invisible in lawyer jokes. In their inattention to large firms, jokes diverge from other popular media. Michael Asimow studied the depiction of law firms in movies and found that as firms grew they were depicted as “the embodiment of evil.”²

Big firms are money machines run by greedy old men that eat their young, and are horrible places to work for halfway decent human beings. In conducting litigation, big firms always deploy their superior resources to unfairly thwart rightful claims brought by their adversaries. Big firms are always on the wrong side—generally that of the vicious corporation rather than the deserving plaintiff.³

Among the small number of jokes about large firms, the pre-eminent topic is the tension between junior and senior lawyers.⁴ Stories about seniors instructing and exploiting young lawyers and about juniors turning the tables on their senior colleagues have been around for a long while. A nineteenth-century tale deals with the relationship between the established older lawyer and the ambitious young lawyer.

About seventy years ago there was a lawyer, here in the United States, who had won great successes as a trial lawyer. His ability in court was the talk of his profession, and many a young lawyer would have given a good deal to know how the older man won such honors. There was one young attorney in particular who was envious of the older man.

1. A recent study of the Chicago bar found that more than twice as much of their total effort was expended on behalf of corporate clients than on personal and small business clients. JOHN P. HEINZ ET AL., *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* 43 (2005).

2. Michael Asimow, *Embodiment of Evil: Law Firms in the Movies*, 48 *UCLA L. REV.* 1339, 1391 (2001).

3. *Id.* at 1350.

4. It is the nature of jokes to exist in multiple versions. In the interest of limiting my own editorial input, the texts presented here, taken verbatim from the sources noted, are the versions used in my book, *LOWERING THE BAR: LAWYER JOKES AND LEGAL CULTURE* (2005), where the history of the each joke and additional sources are given.

It chanced that the two men found themselves together one day, in a stagecoach bound for a city in which a circuit judge was to sit. Both lawyers were bound to the sessions of the court. The younger man lost no time in striking up an acquaintance with his older and more famous colleague, and in the course of their conversation said to him:

“Mr. Jones, you are a prominent and successful attorney, while I am but a beginner in the law. Will you not tell me the secret of your great success before a judge and jury?”

“Young man,” said Jones, “my success has been won at the cost of long, hard work. However, I am willing to tell you my secret on one condition.”

Without waiting to hear what that condition might be, the younger man agreed, and Jones said:

“I will tell you my secret, and you will pay all my expenses during the three days we shall be together during the sitting of the court. Agreed? Yes; well, my secret is this, I deny everything and demand proof.”

They stayed three days attending court, and the older man occupied the best room in the inn, ate the best food and plenty of it, drank the finest liquors and smoked the most expensive cigars—all of which went on the bill.

The court sessions were over, and the two lawyers stood in the hotel office while the innkeeper made out their bills. There was a great big one for the older lawyer, and a little one for the younger man. The former took his bill and, without even looking at it, handed it to the other man.

“What’s this?” said the young lawyer.

“My bill, which you agreed to pay.”

“Why,” the young man came back at him, “I deny everything and demand proof.”

“Young man,” said the older lawyer, “you don’t need any lessons from me!”⁵

In this story from the pre-firm era, the connection of the lawyers is temporary and contingent. They are not bound to one another in a firm and they are not dependent upon one another. When the large law firm arrived on the scene some decades later, it proved a successful device for organizing the collaboration of established lawyers with lots of human capital and eager younger lawyers with labor power.⁶ The rivalry and gamesmanship evident in our nineteenth-century story now appears within the firm setting.

A paralegal, an associate and a partner of a prestigious N.Y. law firm are walking through Central Park on their way to lunch when they find an antique oil lamp. They rub it and a Genie comes out in a puff of smoke.

The Genie says, “I usually only grant three wishes, so I’ll give each of you just one.”

“Me first! Me first!” says the paralegal. “I want to be in the Bahamas, driving a speedboat, without a care in the world.”

Poof. He’s gone.

In astonishment, “Me next! Me next!” says the associate. “I want to be in Hawaii, relaxing on the beach with my personal masseuse, an endless supply of pina coladas and the love of my life.”

Poof! She’s gone.

“You’re next,” the Genie says to the partner.

The partner says, “I want those two back in the library after lunch.”⁷

* * * * *

5. CHARLES N. LURIE, MAKE ‘EM LAUGH! 148 (1927). This is an expansive American version of an English story that features a lawyer and his clerk.

6. See MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 89–110 (1991).

7. E-mail from Dan Steward (Feb. 28, 1997, 10:55:49) (on file with the North Carolina Law Review).

A young associate was invited to a party at the home of an august senior partner at his firm. The associate wandered awestruck through the house, especially amazed at the original artworks by Picasso, Matisse and others adorning the walls. As the associate stood gazing at one Picasso, the senior partner approached, and put his arm around the associate's shoulder. "Yes," he said, "if you work long and hard, day in and day out, six, seven days a week, ten, twelve hours a day . . . I could buy another one!"⁸

In both of these stories, those lower in the firm hierarchy are put in their place by partners. In the first, an adaptation of a popular "dumb" joke about the stupid guy who undoes his mates' escape from a desert island, the egalitarian spirit of the shared lunch is quickly displaced by the partner's matter-of-fact subordination of the lightning stroke of good fortune to the requirements of the firm. In the second, the partner seems headed in the direction of inviting the young associate to emulate his own climb to eminence, but reveals that he sees him only as a source of profit. In each, the partner unhesitatingly shears off the dreams of the young and envisions them in entirely instrumental terms. This theme has found expression in lawyer jokes only in the last ten years or so.

More commonly, the tables are turned on the senior. An underground publication aimed at associates includes the following story.

Thomas Dewey was the former New York governor who, according to press accounts, defeated Harry S. Truman for president in 1948. He was also a founder of the law firm Dewey, Ballantine, Bushby, Palmer & Wood.

One Saturday, Attorney Dewey called the office in an effort to find an associate to do some work for him. After getting a young associate on the phone, Mr. Dewey explained what he needed and then emphasized that it had to be done immediately. The associate responded that he couldn't possibly take on more work because he already expected to be at the office all weekend completing a project that was due on Monday.

Attorney Dewey, not believing what he was hearing from the associate, asked, "Do you know who this is?" When the associate replied that he did not, he was told, "This is Thomas

8. E-mail from Susan Bandes (June 2, 1999, 22:51:00) (on file with the North Carolina Law Review).

Dewey.” After a short pause, the associate asked, “Do you know who this is?” When Mr. Dewey said that he didn’t, the associate hung up the phone.⁹

Sometimes the enterprise of the junior lawyer moves from evasiveness to confrontation.

A man in a hot air balloon realized he was lost so he reduced altitude and spotted a woman below. He descended a bit more and shouted, “Excuse me, can you help me? I promised a friend I would meet him an hour ago, but I don’t know where I am.”

The woman below replied, “You are in a hot air balloon hovering approximately 30 feet above the ground. You are between 40 and 41 degrees north latitude and between 59 and 60 degrees west longitude.”

“You must be a 2nd year associate,” said the balloonist.

“I am,” replied the woman. “How did you know?”

“Well,” answered the balloonist, “everything you told me is technically correct, but I have no idea what to make of your information, and the fact is, I am still lost. Frankly, you’ve not been much help so far.”

The woman below responded, “You must be a partner!”

“I am,” replied the balloonist, “but how did you know?”

“Well,” said the woman, “you don’t know where you are or where you are going. You have risen to where you are due to a large quantity of hot air. You made promises which you have no idea how to keep, and you expect me to solve your problems. The fact is you are in exactly the same position you were in before we met, but now, somehow, it’s my fault.”¹⁰

9. THE RODENT, EXPLAINING THE INEXPLICABLE: THE RODENT’S GUIDE TO LAWYERS 161 (1995). The source of this story appears to be someone young enough not to have known that the firm in question, founded in 1909 as Root Clark, was renowned as Root Ballantine for many years before Dewey (1902–1971) joined Ballantine, Bushby, Palmer & Wood in 1955.

10. E-mail from Dorothea Kettrukat to John Kidwell (Aug. 1, 2001, 09:21:56) (on file with the North Carolina Law Review).

This story, which began by poking fun at the uselessness of parliamentary discourse in Britain, has proved wonderfully adaptive to the American law firm setting where it has been used to target the unhelpfulness of legal advice and the fecklessness of clients. In its latest incarnation it is transformed into a weapon in the war within the firm that not only displays the junior-senior gap, but also the gender tension that often overlays it.

The gender theme surfaces in the only story in circulation about promotion to partner, a joke that highlights the persistence of sexism in the law firm setting.¹¹

Three young women have all been working 80-hour weeks for six straight years in the struggle to make partner in the law firm, and the cutoff date is fast approaching. Each one is brainy, talented, and ambitious—but there's only room for one new partner. At a loss as to which one to pick, the senior officer finally devises a little test. One day, while all three are out to lunch, he places an envelope containing \$500 on each of their desks.

The first woman returns the envelope to him immediately.

The second woman invests the money in the market and returns \$1,500 to him the next morning.

The third woman pockets the cash.

So which one gets the promotion to partner?

The one with the biggest tits!¹²

This is another widespread story that is a recent recruit to the lawyer joke canon. The theme of a hiring contest in which qualification is subverted by nepotism or sexual attraction has been around since women entered the white collar workplace. Earlier versions typically depicted the boss selecting a secretary. The law firm version is distinctive in that the women are competing for a position that potentially involves a relationship of professional equality with their male bosses. The joke asserts or concedes or

11. The joke corpus records mixed reception of women lawyers, condemned for both displaying and lacking aggressiveness and for exhibiting or suppressing feminine charms. See GALANTER, *supra* note 4, at 144–48.

12. BLANCHE KNOTT, *TRULY TASTELESS LAWYER JOKES* 8 (1990).

celebrates (depending on how it is told) that male lawyers still see female lawyers as sexual objects and ignore their professional accomplishments. More generally, it depicts partners deciding the fate of young lawyers on grounds that belie their avowals of meritocratic objectivity.

Seniors dishonoring the implicit promises of fair dealing with associates can trigger more heroic responses, as in this switch from a story about a speech writer:

A senior partner at a major New York firm had agreed to address the membership of the Manhattan Chamber of Commerce. Unfortunately, the partner forgot about the engagement until late Friday evening when saw the event on his calendar scheduled for the following Monday night. The partner, who had a weekend at the beach planned, called an associate to prepare the speech.

After listening to the partner describe what had to be done before Monday, the associate tried to explain that he and his girlfriend had already made plans to go away for the weekend. The partner interrupted the associate and emphasized that the assignment had to be on his desk Monday morning.

Come Monday morning, the partner found the freshly typed and neatly bound speech on his desk. On his way to a meeting at a client's office, the partner stuffed the speech in his briefcase without reading it. That night, standing before an audience of five hundred business executives, the partner delivered the speech.

Things were going smoothly, as the material was well written and the partner was making an excellent delivery of the text he was reading for the first time. Near the end of the speech, it reached a crescendo and the partner read:

Before I leave you tonight, I want to share with you my ultimate vision for using the law not only to resolve disputes, but to create a new chapter in world history of mankind. A chapter of unparalleled peace and prosperity worldwide. To accomplish this, I will suggest that we . . .

*The partner turned the page, curious himself to learn of this plan, only to find written on the paper before him: "IMPROVISE, YOU SON OF A BITCH."*¹³

As in many jokes that are critical of lawyers, there is often an undertone of appreciation. Not only do we admire the nerve, resourcefulness, and eloquence of the associate, but we also wonder if the senior partner, so justly punished for his arrogance, will manage to come up with something to save the day.

All of these stories, once told about other protagonists in other settings, have recently gravitated to the theme of generational conflict in the big law firm. Their arrival reflects profound changes in the large-firm sector of the legal profession. Increased demand combined with the growth engine of the promotion-to-partner tournament to produce ever-larger firms.¹⁴ The world of dignified reticence, little lateral movement, and enduring retainer relationships with loyal long-term clients has dissolved. In its place has arisen a world of rapid growth, mergers and breakups, overt competition, aggressive marketing, attorney movement from firm to firm, fears of defection, and pervasive insecurity.

Earlier, the fortunate few who gained partnership in a sizable firm acquired a kind of tenure. Partners could anticipate billing fewer hours with the passing years and could expect to stay on at the same firm until a dignified, often gradual and partial, retirement—beginning in their late sixties. The intersection of changes in the competitive environment with a major demographic transition shattered these expectations. In the 1960s, the annual number of law school graduates doubled and it continued rising for another twenty years.¹⁵ As smaller numbers of older lawyers were joined by much larger cohorts of young lawyers, the profession became much younger, forming an age pyramid with a wide base of young lawyers and a smaller peak of senior lawyers.¹⁶ As time passed and the large new cohorts aged, the number of older lawyers underwent a similar dramatic increase, while the number of new entrants (and thus of younger lawyers) remained more or less steady. The total body of

13. THE RODENT, *supra* note 9, at 176–77; see also MARK STEVENS, POWER OF ATTORNEY: THE RISE OF GIANT LAW FIRMS 179 (1987).

14. GALANTER & PALAY, *supra* note 6, at 37–76.

15. Marc Galanter, "Old and in the Way": *The Coming Demographic Transformation of the Legal Profession and Its Implications for the Provision of Legal Services*, 1999 WIS. L. REV. 1081, 1082–83.

16. *Id.* at 1086.

lawyers continues to grow, but now virtually all of the net growth consists of lawyers over fifty years of age.¹⁷

The resulting “excess” of older lawyers generates increased pressure on firms to thin their ranks to make room for ambitious younger people by mandating earlier retirement, reducing compensation (“decompression”),¹⁸ or even de-partnering those whose performance lags behind ever-ascending standards.¹⁹ Older partners work longer hours than they did twenty years ago.²⁰ Increasingly, firms are shifting to “two-tier partnerships” in which ownership is confined to “equity partners;” non-equity partnership may be a stage on the road to equity partnership or it may be a final destination.²¹ The shift to a two-tier partnership has provided a “management tool to prune the partnership of unproductive equity members.”²² As firms become more highly leveraged and constrict

17. *Id.* at 1085–86. According to the American Bar Foundation’s statistical report on the profession, lawyers fifty and older represented some seventy-two percent of the total growth in the lawyer population from 1995 to 2000. CLARA N. CARSON, *THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2000*, at 6 (2004); CLARA N. CARSON, *THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 1995*, at 6 (1999). Given the present age profile of the profession, this percentage will be surpassed in coming years, barring a sudden massive increase in new entrants.

18. “Decompression” is “the process by which most partners’ compensation was reduced every year after reaching age 65.” Anthony Lin, *Senior Partners Balk at Firms’ Retirement Policies*, N.Y. L.J., Aug. 10, 2005, at 1. Such provisions are “a common feature of firm partnership agreements.” *Id.* A seventy-three-year-old rainmaker sued Winston & Strawn for breach of a special agreement allowing him to avoid decompression. A trial court in New York granted summary judgment to the firm on the ground that the agreement allowed the firm’s executive committee discretion in determining his compensation. Anthony Lin, *Judge Rejects Most Pay Claims in Winston Partner’s Suit Against Firm*, N.Y. L.J., Dec. 15, 2005, at 1.

19. The most dramatic instance of this type was the 1999 demotion of thirty-two equity partners to “counsel” or “senior counsel” by Sidley & Austin (as it then was). Complaints led to the intervention of the Equal Employment Opportunity Commission, which investigated possible age discrimination. *EEOC v. Sidley Austin Brown & Wood*, 315 F.3d 696, 698 (7th Cir. 2002). A challenge to the EEOC’s jurisdiction led to a decision by the Seventh Circuit questioning whether partners in firms with centralized management are not in effect “employees” covered by age discrimination provisions. *Id.* at 701–02; see also Joanna Grossman, *Are Law Firm Partners “Employers” for Purposes of Discrimination Law: A Federal Court of Appeals Suggest They May Not Be*, FINDLAW’S WRIT, Dec. 17, 2002, <http://writ.news.findlaw.com/grossman/20021217.html>. Earlier instances of de-partnering are cited at Galanter, *supra* note 15, at 1095 n.29.

20. A survey by Altman Weil reports that the average number of hours worked by partners in their twenty-fifth to twenty-ninth years—that is, partners in their fifties—has steadily risen from 1,538 in 1985 to 1,703 in 2003, while associate hours in these firms have remained basically flat. William D. Henderson, *An Empirical Study of Single-Tier Versus Two-Tier Partnership in the Am Law 200*, 84 N.C. L. REV. 1691, 1710, 1711 & fig.1 (2006) (citing ALTMAN WEIL, *THE SURVEY OF LAW FIRM ECONOMICS* 138 (2004)).

21. *Id.* at 1709–10.

22. *Id.* at 1710.

the partnership to display high profits, both associates and partners experience more anxiety about their prospects and perquisites. In short, the tournament, once a feature of the early stage of large firm careers, is extended into the later stages as well. As William Henderson observed “there is some empirical evidence that a perpetual tournament involving both associates *and* partners has begun to emerge.”²³ Reviewing the literature, John M. Conley and Scott Baker discern a “never-ending partnership tournament [that] imposes lifelong pressure to produce.”²⁴

The golden age of large law firm felicity corresponded with the high point of popular regard for lawyers and law in the middle years of the past century. The heroic and benevolent lawyer celebrated in the popular imagination was a fully-formed and seasoned professional of mature or advancing years—Mr. Tutt, Perry Mason, Atticus Finch, the E.G. Marshall character in *The Defenders*. The first lawyer to become a television celebrity, Joseph Welch (a senior large-firm lawyer) in the 1954 Army-McCarthy hearings, exuded gravitas as well as proficiency and benevolence. But half a century later the mature accomplished lawyer hero of high professional standing has been eclipsed. Michael Asimow notes that in the books of John Grisham and the films made from them, “the only decent human beings and ethical lawyers to be found . . . are law students and professors, legal service lawyers, lawyers who work for free, and young lawyers who are just entering the profession who have yet to be tainted by it.”²⁵ In virtually all popular film and television portrayals of lawyers over the past twenty years, the heroic lawyer is young and/or professionally marginal. It is not seasoned “parental” lawyers in central locations within the profession who are the good guys.²⁶ The jokes presented here, in which the partner is the heavy and the young lawyer more sympathetic, follow the tilt of the wider popular culture.

The movement away from the collegial partnership with lifelong tenure ratchets up the anxiety of both older and younger lawyers. When older lawyers lose security and control, the partnership prize for which younger lawyers compete is transformed from an assured comfortable seniority to a toilsome and precarious ascent to the

23. *Id.*

24. John M. Conley & Scott Baker, *Fall from Grace or Business as Usual? A Retrospective Look at Lawyers on Wall Street and Main Street*, 30 LAW & SOC. INQUIRY 783, 815 (2005).

25. Asimow, *supra* note 2, at 1352.

26. The great exception here is *Matlock*, which continued the *Perry Mason* tradition of the criminal defense lawyer in a small firm setting who vindicates the innocent.

financial summit. In the immediate present, senior lawyers wield power that can devastate, as well as facilitate, the careers of juniors. Younger lawyers in their collective ambition to rise represent a threat to the security of seniors, as well as the source of their affluence. While the old are anxious about losing their power, the young are anxious about their using it. The jokes point precisely to this covert and undiscussable conflict at the heart of the large firm. As that conflict intensifies, we can expect more jokes about the tensions and rivalries that conflict engenders.