

Research Paper 09-06
December 30, 2008

**Is There a Lawyer in the (White) House?:
Portraying Lawyers in *The West Wing***

Keith A. Rowley
William S. Boyd Professor of Law

William S. Boyd School of Law
University of Nevada Las Vegas

Lawyers in Your Living Room!: Law on Television
(Michael Asimow ed. forthcoming 2009)

This paper can be downloaded without charge
from the Social Science Research Network electronic library at:
<http://ssrn.com/abstract=1345272>

Is There a Lawyer in the (White) House?: Portraying Lawyers on The West Wing[†]

Keith A. Rowley^{††}

At its creative and popular peak one of the best-written and most successful dramas in network television history,¹ NBC's *The West Wing* ushered viewers into the inner sanctum of fictional President Jed Bartlet (Emmy[®] winner Martin Sheen), offering unlimited access to the work and lives of the men and women who stood behind the President and helped formulate and implement his policy agenda. As with any real-life administration of recent memory, a number of President Bartlet's closest advisors during the show's halcyon seasons – notably, Chief of Staff Leo McGarry (Emmy[®] winner John Spencer), Deputy Chief of Staff Josh Lyman (Emmy[®] winner Bradley Whitford), Communications Director Toby Ziegler (Emmy[®] winner Richard Schiff), and Deputy Communications Director Sam Seaborn (Emmy[®] nominee Rob Lowe) – were lawyers by training. Of the four, we only saw Sam acting as a lawyer – reviewing with his clients and partners (in a flashback scene recalling how Josh recruited Sam to join Bartlet's first presidential campaign²) the details of an oil tanker purchase and liability shield;³ accompanying Josh to a Freedom of Information Act deposition inquiring into Josh's investigation of possible

[†] © Keith A. Rowley, 2008. A condensed version of this essay will appear in *LAWYERS IN YOUR LIVING ROOM!: LAW ON TELEVISION* (Michael Asimow ed. forthcoming 2009).

^{††} William S. Boyd Professor of Law, William S. Boyd School of Law, University of Nevada Las Vegas.

¹ *The West Wing* received ninety-five Emmy[®] nominations and won twenty-six Emmy[®] awards. It also won two Peabody Awards[®] and multiple Golden Globe[®], Screen Actors Guild[®], and other awards for acting, casting, cinematography, design, directing, editing, music, producing, sound, and writing.

² Josh was initially trying to recruit Sam to work with him on Texas Senator John Hoynes's presidential campaign. However, after Josh heard then-New Hampshire Governor Jed Bartlet speak, Josh left Hoynes's campaign to join Bartlet's. Sam soon followed.

³ See *The West Wing: In the Shadow of Two Gunmen Pt. I* (NBC television broadcast Oct. 4, 2000). The liability shield, ironically, returned to haunt Sam several years later after the tanker ran ashore, spilling oil into the Chesapeake. See *The West Wing: Bad Moon Rising* (NBC television broadcast Apr. 25, 2001).

substance abuse by White House staffers;⁴ researching whether Josh could sue the Ku Klux Klan for money damages for the injuries Josh suffered during a failed assassination attempt;⁵ evaluating recommendations from the Office of the Pardons Attorney and the White House Counsel's office for presidential pardons;⁶ and advising Josh's assistant, Donna Moss (Emmy[®] nominee Janel Moloney), before a Congressional committee deposition.⁷ Characters outside President Bartlet's inner circle handled most of the interesting lawyering on the show. This essay focuses on four of them: Lionel Tribbey, Ainsley Hayes, Joe Quincy, and Oliver Babish.

Trials and Tribbey-lations

Less than two years into President Bartlet's first term, he was on his fourth White House Counsel.⁸ Our first glimpse of Lionel Tribbey (Emmy[®] winner John Larroquette⁹) came as he burst into Leo McGarry's office, cricket bat in hand, bellowing:

TRIBBEY: I will kill people today, Leo! I will kill people with this cricket bat, which was given to me by Her Royal Majesty Elizabeth Windsor, and then I will kill them again with my own hands! Has anybody in this building heard of "contempt of Congress"?... Congress *will* hold the White House in contempt, Leo, which is nothing compared to the contempt in which *I* will hold the White House if this keeps happening.

LEO: What'd we do?

⁴ See *The West Wing: Lord John Marbury* (NBC television broadcast Jan. 5, 2000).

⁵ See *The West Wing: And It's Surely to Their Credit* (NBC television broadcast Nov. 1, 2000).

⁶ See *The West Wing: Somebody's Going to Emergency, Somebody's Going to Jail* (NBC television broadcast Feb. 28, 2001).

⁷ See *The West Wing: War Crimes* (NBC television broadcast Nov. 7, 2001).

⁸ We are told that Tribbey was preceded by Corcoran, Gates, and Solomon – none of whom appeared during the series, which began in the middle of President Bartlet's second year in office. *Bad Moon Rising*, *supra* note 3.

⁹ No stranger to portraying a lawyer, John Larroquette collected his first four Emmys for his work as assistant district attorney Dan Fielding in NBC's *Night Court*. He has since had a recurring role in ABC's *Boston Legal* as attorney Carl Sack.

TRIBBEY: Steve Joyce and Mark Brookline testified at Governmental Affairs that the White House couldn't produce the Rockland memo because the White House didn't have the Rockland memo.

LEO: Do we?

TRIBBEY: Holding it in my hand, Leo! When your guys go to the Hill, they can't drop their testimony on my desk at 9:15 and testify at 9:30! I was ready to take a vacation, Leo! I was going to go someplace warm, with a beach, somebody bringing me drinks with little umbrellas in them! I had this thing closed. Now I've got to go back up there, hat in hand, because the circus is in town!¹⁰

Tribbey's attention then shifted to Ainsley Hayes (*CSI: Miami's* Emily Procter), who Leo introduced. Tribbey recognized her name.

TRIBBEY: [T]he girl who's been writing the columns.... You're an idiot.

LEO: She's not an idiot, Lionel. She clerked for Dreifort.

TRIBBEY: Well, Dreifort's an idiot.

LEO: Dreifort's a Supreme Court Justice, Lionel, so let's speak of him with respect and practice some tolerance for those who disagree with us.

TRIBBEY: I believe, as long as Justice Dreifort is intolerant toward gays, lesbians, blacks, unions, women, poor people, and the First, Fourth, Fifth, and Ninth Amendments, I will remain intolerant toward him....¹¹

Even if we didn't already know what was coming next, anyone familiar with Aaron Sorkin's writing could see it coming from a mile away.¹² Having watched Ainsley skewer Sam Seaborn on fictional political talk show *Capital Beat*, President Bartlet instructed Leo to hire conservative Republican Ainsley to work for liberal Democrat Tribbey.¹³ Tribbey's initial

¹⁰ *And It's Surely to Their Credit*, *supra* note 5.

¹¹ *Id.*

¹² In a similar vein, Leo hired media director Mandy Hampton (*One Tree Hill's* Moira Kelly), Josh's ex-girlfriend, following several conversations in which Josh emphasized that the choice be "anyone but Mandy." *The West Wing: Post Hoc, Ergo Propter Hoc* (NBC television broadcast Sept. 29, 1999).

¹³ See *The West Wing: In This White House* (NBC television broadcast Oct. 25, 2000).

reaction was less than enthusiastic.¹⁴ But, despite Tribbey's, the senior staff's,¹⁵ and Ainsley's¹⁶ initial misgivings, she accepted the job. Later, Tribbey confronted Ainsley about her motives.

TRIBBEY: These people here are trying to do something. I'll have their backs while they're trying. What are *you* doing here?

AINSLEY: Serving my country....

TRIBBEY: Why?

AINSLEY: I feel a sense of duty....

TRIBBEY: What, did you just walk out of *The Pirates of Penzance*?...

AINSLEY: Is it so hard to believe, in this day and age, that someone would roll up their sleeves, set aside partisanship, and say, "What can I do?"¹⁷

Despite replying "Yes," Tribbey entrusted Ainsley with cleaning up Joyce and Brookline's mess.

TRIBBEY: I want you to go up to the Hill this afternoon and I want you to talk to the Associate Majority Counsel at Governmental Affairs.

AINSLEY: You're sending me to the Associate Counsel 'cause I speak Republican....

TRIBBEY: Yes. Read about it, then fix it.¹⁸

¹⁴ See *And It's Surely to Their Credit*, *supra* note 5 ("Mr. President, ... when you have a few moments, I would like to discuss the hiring of blonde and leggy fascists ... for positions in the White House Counsel's office.").

¹⁵ No one was pleased with President Bartlet's decision to hire Ainsley. Leo tried to talk the President out of offering Ainsley a job. Sam and White House Press Secretary C.J. Cregg (four-time Emmy[®] winner Allison Janney) both yelled at Leo when he told them he was offering Ainsley a job; C.J. then, in Toby's words, "slammed the door so hard it broke.... You heard the news and you broke the White House." *Id.* Josh's reaction was disbelief. Only Toby, who often played his cards close to the vest – right up to the point in Season Seven where he confessed leaking classified information, was promptly fired, and eventually indicted – seemed unfazed by the decision.

¹⁶ See *In This White House*, *supra* note 13 (Ainsley: "Mr. McGarry, I loathe almost everything you believe in.... I find this administration smug and patronizing, and under the impression that those who disagree with them are less than they are, and with colder hearts." Leo: "[D]on't you want to work in the White House?" Ainsley: "Oh, only since I was two.... It has to be *this* White House?").

¹⁷ *And It's Surely to Their Credit*, *supra* note 5.

¹⁸ *Id.*

By the end of the day, after Ainsley dutifully smoothed feathers on Capitol Hill, returned to the White House to offer Joyce and Brookline some friendly advice, held her temper while they berated her, and later returned to her office to find dead flowers and an obscene note awaiting her, Tribbey backed Sam's decision to fire Joyce and Brookline¹⁹ – and, by extension, backed Ainsley.

Tribbey occasionally loomed off-camera for a few more months before Oliver Babish replaced him. Ainsley, meanwhile, appeared in several episodes bridging the last few months of Lionel Tribbey's tenure and the first year of Oliver Babish's.

The Very Model of a Modern (Associate) White House Counsel

Unlike the blustery Tribbey, Ainsley seemed to have taken to heart that one can catch more flies with honey than with vinegar. After meeting with the House Governmental Affairs Committee's associate majority counsel, Ainsley advised Joyce and Brookline – her clients – to make a simple conciliatory gesture.

AINSLEY: [Y]our attitude during your testimony is being taken by some of the Republican committee members as a sign of disrespect.

JOYCE: Oh, please.

AINSLEY: No, hang on a second. This is so easy to fix we are gonna pick up yardage. Write a short note, have it delivered by messenger to the majority counsel, and copy the chairman and the Speaker.

JOYCE: Your first act on the job is asking us to apologize to the Republicans on the Governmental Affairs Committee ...

BROOKLINE: And the Speaker of the House, Steve.

JOYCE: ... because they didn't like our attitude?

¹⁹ See *id.* (instructing the offending staffers, "Leave here, and don't ever come back. It's time for both of you to write your book now.").

AINSLEY: Yeah, I know this doesn't look good. But the fact is, it's the smart thing to do, and if you don't do it at my suggestion, I know Lionel Tribbey is going to come down here and you're gonna have to do it at his.²⁰

Instead of heeding Ainsley's advice, Joyce and Brookline retaliated, which cost them their jobs and fostered sympathy for Ainsley among the senior staff.

That's not to say that Ainsley didn't have some vinegar in her. Having accompanied Sam to meet with Republican staffers and offer reservations to a nuclear test ban treaty that President Bartlet wanted ratified but was bottled up in the Senate, Ainsley showed that sweet and soft are not synonymous when one of the Republican staffers questioned her support for Sam's position.

KEENE: Ainsley, I'm surprised to see you here.... [B]efore you were on Bartlet's payroll you were a fairly vocal opponent of the treaty.

AINSLEY: Well, it's President Bartlet, and I'm on the government payroll. And I believe that politics should stop at the water's edge.

KEENE: Okay.

AINSLEY: See, I don't think you think the treaty's bad; I don't think you think it's good. I think you want to beat the White House.

KEENE: Yeah.

AINSLEY: You're a schmuck, Peter. Today, tomorrow, next year, next term, these guys'll have the treaty ratified and they'll do it without the reservations he just offered to discuss with you.²¹

Ainsley did not pull her punches within the West Wing's walls either, sometimes staking out positions contrary to those of more senior staffers. For example, when Sam asked her to summarize his 22-page recommendation regarding an amendment to a commerce bill, Ainsley

²⁰ *Id.*

²¹ *The West Wing: The Lame Duck Congress* (NBC television broadcast Nov. 8, 2000).

reversed Sam's recommendation and then convinced him that she was right.²² Similarly, Ainsley convinced Josh Lyman that a bill defining, for purposes of programs receiving federal funding, marriage as being between a man and woman was not unconstitutional; and, therefore, the President should not veto it.²³ Ainsley also stood firm against the need for an Equal Rights Amendment,²⁴ despite Sam's adamant support for one.

Despite her and the senior staff's initial misgivings, Ainsley became a valuable and valued member of the team – sometimes serving as a liaison between the White House and the Republican-controlled Congress²⁵ or as a public face of an administration that had few female, Southern, or Republican faces;²⁶ and sometimes pulling back a senior staffer from the legal brink, as she did when Sam wanted to disclose privileged information after an oil tanker he helped purchase ran aground and spilled seven hundred thousand gallons of oil.

²² *See id.*

²³ *See The West Wing: The Portland Trip* (NBC television broadcast Nov. 15, 2000) (Josh: "Talk to me about the Full Faith and Credit Clause." Ainsley: "It says that full faith and credit shall be given by each state to the public acts, records, and judicial proceedings of every other state" Josh: "So, how is the Marriage Recognition Act not unconstitutional?" Ainsley: "'Cause it also says that Congress can proscribe the manner in which such acts and records are proved – which means [Congress] can decide what being married means within the context of Article IV." Josh: "I'm going to tell him to sign the damn thing.").

²⁴ *See The West Wing: 17 People* (NBC television broadcast Apr. 4, 2001) ("[I]t's humiliating! A new amendment that we vote on, declaring that I am equal under the law to a man. I am mortified to discover there's reason to believe I wasn't before. I am a citizen of this country.... The same Fourteenth Amendment that protects you protects me. And I went to law school just to make sure.").

²⁵ *See And It's Surely to Their Credit*, *supra* note 5; *The Lame Duck Congress*, *supra* note 21.

²⁶ *See The West Wing: Bartlet's Third State of the Union* (NBC television broadcast Feb. 7, 2001) (appearing for the White House on the fictional political talk show *Capitol Beat* to discuss the President's statements favoring school uniforms); *The West Wing: Ways and Means* (NBC television broadcast Oct. 24, 2001) (preparing to speak with reporters about the special prosecutor's investigation of President Bartlet's multiple sclerosis disclosure); *The West Wing: The U.S. Poet Laureate* (NBC television broadcast Mar. 27, 2002) (recalled from a vacation cut short to appear on *Capitol Beat* and other talk shows to defend President Bartlet's less-than-complimentary remarks about his challenger in Bartlet's re-election campaign, Florida Governor Robert Ritchie, which Bartlet made while supposedly off-air following a television interview).

AINSLEY: I know how you feel about these things. Trust me, Kensington's going to pay it through the nose.

SAM: No, they're not....

AINSLEY: You think their liability shield is that strong?

SAM: I do.... I bought the *Indio* for them when I was at Gage Whitney.

AINSLEY: Wow. Talk about your chickens coming home to roost.

SAM: Yeah.... I know this is going to sound crazy; but I was thinking, if I could be deposed for the plaintiffs...

AINSLEY: Why?

SAM: ... Look, I was very proud of myself for making such a great deal ... and it really didn't bother me that the boat was cheap for a reason. But then, at the eleventh hour, I had a change of heart.... and I told them the boat wasn't good enough, particularly with regards to the steering and navigation systems, ... and I suggested they spend more money, and they said ...

AINSLEY: Stop talking right now! You *know* better. Neither you nor your clients abdicated attorney-client privilege when you left Gage. If you gave that deposition, you'd be disbarred. And even if you were willing to be disbarred, there's no judge in the country who'd allow privileged testimony.²⁷

Ainsley lived out her dream of serving the President of the United States and came to realize that the Bartlet White House was full of people earnestly striving to do what they thought was right for the country, even if their ideals often did not jibe with hers.²⁸

Meet Joe Quincy

Emily Procter's departure for *CSI: Miami* prompted Ainsley's departure from the White House Counsel's office.²⁹ Into the breach stepped Joe Quincy (*Friends* star Matthew Perry, who

²⁷ *Bad Moon Rising*, *supra* note 3.

²⁸ See *In This White House*, *supra* note 13 ("Say they're smug and superior, say their approach to public policy makes you want to tear your hair out. Say they like high taxes and spending your money. Say they want to take your guns and open your borders, but don't call them worthless. At least don't do it in front of me. The people that I have met have been extraordinarily qualified, their intent is good. Their commitment is true, they are righteous, and they are patriots. And I'm their lawyer.").

earned two Emmy[®] nominations for his performances in three episodes of *The West Wing*), a former Supreme Court clerk who lost his job when a new Solicitor General wanted his own staff. Joe was in the doghouse with his fellow Republicans for arguing in favor of limiting soft money campaign contributions and hoped that the opening in the White House Counsel's office would save him from having to accept a lucrative offer from Debevoise & Plimpton.³⁰

Joe's first day on the job was a memorable one. After the usual hazing – a parking spot covered in mayonnaise, a contest to see which staffer could be the first to get Joe to call himself a “shyster,” and settling into an office that served as the “steam pipe trunk distribution venue” when not occupied by the junior-most attorney in the Counsel's office – C.J. Cregg referred to Joe what she thought would be a laughable assignment: following up on a blind tip the *Washington Post's* science editor received that the White House suppressed a NASA report containing evidence of fossilized water on Mars. When Joe stopped by Josh Lyman's office to ask whether he should report his findings directly to Leo, Donna Moss was telling Josh that the press office asked about an anonymous tip – also to the *Washington Post* – that the White House had pressured the Justice Department to settle an antitrust investigation. Once Donna reported the leverage the source claimed the White House used, it was clear to Josh that there was a leak.

While the three of them talked with Leo, Joe learned that Vice President John Hoynes, who headed the NASA commission whose report was allegedly suppressed, also knew the details of the antitrust settlement. After meeting with Leo, Joe visited Toby Ziegler's office to follow

²⁹ Ainsley resurfaced late in Season Seven to pursue the White House Counsel's job in the newly-elected Santos administration. See *The West Wing: Requiem* (NBC television broadcast Apr. 16, 2006). By then, NBC had decided not to renew *The West Wing* (creating no conflict with Emily Procter's commitment to *CSI: Miami*).

³⁰ See *The West Wing: Evidence of Things Not Seen* (NBC television broadcast Apr. 23, 2003) (Josh: “Is this your fallback?” Joe: “They're my fallback.” Josh: “Why do you want to work here?” Joe: “I like public service. I want to serve. And you guys are the only ones left.”).

up on draft White House comments Toby prepared regarding a recent court of appeals opinion. While there, Joe learned from Toby and Charlie Young, President Bartlet's personal aide, that the *Washington Post's* new gossip columnist was reporting that D.C. socialite Helen Baldwin had signed a lucrative "tell-all" book deal. Later that afternoon, Joe convinced C.J. to call to ascertain whether the gossip columnist had passed the blind tip along to the science editor. He had. Joe put that information, plus what he had learned from Josh, Donna, Leo, Toby, and Charlie, together with White House phone logs showing that Hoynes had placed forty-seven calls to Baldwin – all of which pointed to Hoynes being the source of the leak. When confronted, Hoynes admitted that he had an extramarital affair with Baldwin while vice-president. That revelation, together with the classified nature of some of the information he had disclosed, led Hoynes to resign the vice-presidency.³¹

In Joe's only other on-screen appearance, Toby asked him to convince Chief Justice Roy Ashland, for whom Joe once clerked, to meet with the President to discuss resigning so that President Bartlet could choose Ashland's successor. Despite Joe's extreme reluctance, he arranged the meeting.³² While the meeting did not lead directly to Ashland's retirement, it laid a foundation, so that the untimely death of a young, conservative justice four months later created an opportunity for President Bartlet to appoint a worthy, ideologically liberal successor to Ashland (two-time Emmy[®] winner and five-time Academy Award[®] nominee Glenn Close, brilliant in her portrayal of U.S. Court of Appeals Judge Evelyn Baker Lang), as well as an ideologically conservative successor to the late Justice Owen Brady (William Fichtner,

³¹ See *The West Wing: Life on Mars* (NBC television broadcast Apr. 30, 2003).

³² See *The West Wing: Separation of Powers* (NBC television broadcast Nov. 12, 2003).

stimulating in his portrayal of U.S. Court of Appeals Judge Christopher Mulready) to mollify the Republicans on the Senate Judiciary Committee who would never confirm Lang to replace Brady.³³ Unfortunately, Matthew Perry had since returned to *Friends*, so Joe was not around to admire what he helped facilitate (or regret what he started).

Zen and the Art of Being White House Counsel

The most compelling character in the Counsel's office during *The West Wing's* seven-year run was Oliver Babish (Emmy[®] nominee Oliver Platt³⁴), who succeeded Lionel Tribbey late in Season Two and stayed – often out of sight – well into Season Seven, by which time the focus of the series had shifted from the Bartlet White House to the campaign between Republican Arnold Vinick (five-time Emmy[®] winner Alan Alda) and Democrat Matt Santos (Emmy[®] and Golden Globe[®] winner Jimmy Smits) to become the next president. While Tribbey tended to bluster, Oliver was – or at least appeared, like the above-water part of the proverbial duck – more calm and matter-of-fact.³⁵

That said, Oliver was not beyond bluster or sarcasm. When we first met him, three months into his tenure, he was in his office, preparing to leave for a conference in Borneo, fiddling with a large gavel sitting atop his desk, and talking with two unnamed staffers about his staff's analysis of pending legislation, with which he was less than impressed.

³³ See *The West Wing: The Supremes* (NBC television broadcast Mar. 24, 2004).

³⁴ Like John Larroquette, Oliver Platt was not treading unfamiliar ground. The son of a former U.S. ambassador, Platt played disillusioned divorce lawyer Harry Rex Vonner in 1996's *A Time to Kill*. Following his stint on *The West Wing*, Platt played Judge Jack Moran on CBS's short-lived *Queens Supreme*.

³⁵ See *The West Wing: The Fall's Gonna Kill You* (NBC television broadcast May 2, 2001) (“In my entire life I’ve never found anything charming.”).

FEMALE STAFFER: You were up all night.

OLIVER: Do you know why? Because my staff's work on the analysis of HR 437 ignored the Fourth Amendment implications and instead ... became fascinated with the Third, Seventh, and Eleventh.... Like you've got to be a prime number to get the attention of the U.S. Supreme Court.

FEMALE STAFFER: You can really go home and get a few hours sleep before you go to the airport....

OLIVER: Where am I going? ... Wait, it's coming back to me.... It's an international law summit where I'm supposed to show my support for ... I'm not certain. So, I have that in my notes someplace?

FEMALE STAFFER: Yes.... Would you like us to pack your big hammer?

OLIVER: Okay, you know what? Don't make fun of the big hammer. The big hammer happens to be a gavel given to my father's father by Justice Louis Brandeis. I need a Dictaphone.

FEMALE STAFFER: You've got one on your desk.

OLIVER: It doesn't work.

MALE STAFFER: What's wrong with it?

OLIVER: It's stuck on record. It won't stop recording things; so, it's just what you want lying around the White House Counsel's Office because there's never been a problem with that before.... Okay, you know what else?

FEMALE STAFFER: You're going to go home and sleep until your plane leaves.

OLIVER: I'm fine sleeping until well after that, but somebody call me when my car's on the way.³⁶

Moments later, before he could leave the office, President Bartlet and Leo McGarry came to tell Oliver that the President had been diagnosed years earlier with multiple sclerosis – something neither he nor his campaign disclosed when he was running for president – and to ask

³⁶ *Bad Moon Rising*, *supra* note 3.

about the legal ramifications.³⁷ The President began, “I’m going to tell you a story and then I need you to tell me whether or not I’ve engaged 16 people in a massive criminal conspiracy to defraud the public in order to win a presidential election.”³⁸ Oliver, perched on the edge of his desk, reached over, grabbed the “big hammer,” smashed his always-on Dictaphone to oblivion, then turned back to the President and Leo and said, matter-of-factly, “Okay.”³⁹

Throughout the conversations that followed with President Bartlet, Leo, C.J. Cregg, and first lady Abbey Bartlet (two-time Emmy[®] winner Stockard Channing), interspersed over a fourteen-episode arc spanning the end of Season Two and the first half of Season Three, Oliver displayed a laudable mix of personal loyalty, professional detachment, patience, insistence, meticulousness, circumspection, and candor.

When he asked President Bartlet whether the latter’s condition might affect his cognitive functions without anyone else knowing it (perhaps at a time that could compromise national

³⁷ Unlike many recent real-life presidents, Jed Bartlet hold a law degree. Yet, unlike the many successful non-lawyers who hold lawyers in disdain, see them as a source of humor, or both, President Bartlet clearly respected lawyers and even exhibited awe toward some. On the way to his first meeting with Oliver, the President was clearly intimidated by the prospect of asking Oliver whether he had broken the law.

BARTLET: He looks down his nose at me because I’m not a lawyer.

LEO: Yes.

BARTLET: I didn’t go to law school. I got a Ph.D. in economics instead.

LEO: Your parents were very proud.

BARTLET: Yeah, and all that happened was I won a Nobel Prize and got elected President. So I guess that decision didn’t really pay off.... Should I run back and get my Nobel Prize?

LEO: I think he knows you’ve got one.

Id.

³⁸ *Id.*

³⁹ *Id.*

security) and the President answered “Yes,” Oliver immediately advised him that attorney-client privilege would not protect anything he told Oliver, “So you want to be very careful about what you say in this room right now, Mr. President, because, if subpoenaed to give a deposition, I’m not going to lie under oath.”⁴⁰ President Bartlet insisted he had no reason to be careful about what he told Oliver and did not want a personal lawyer, after which Oliver continued questioning him for some time. The President having insisted that he never lied about his condition under oath or in any proceeding or document subject to the pains and penalty of perjury, Leo later asked Oliver what he thought.

LEO: [I]n the two and a half hours we’ve been sitting here have you discovered one thing that he’s done wrong?

OLIVER: No.

LEO: So, what’s your problem?

OLIVER: *That’s* my problem, Leo. Are you out of your mind? He did everything right. He did everything you do if your intent is to perpetrate a fraud.⁴¹

When President Bartlet, C.J., and Abbey each displayed some petulance toward Oliver’s questioning, he countered with patience: shrugging off the President’s implication that he had better things to do than answer Oliver’s questions,⁴² allowing C.J. some time to vent,⁴³ and

⁴⁰ *Id.* By contrast, while interviewing C.J., Oliver insisted that he was her lawyer – so, presumably, the privilege would attach. See *The Fall’s Gonna Kill You*, *supra* note 35 (C.J.: “Should I have my lawyer here?” Oliver: “I *am* your lawyer.” C.J.: “You’re the President’s lawyer.” Oliver: “I’m the White House Counsel, C.J.”).

⁴¹ *Bad Moon Rising*, *supra* note 3.

⁴² See *id.* (Oliver: “Mr. President, I have some more questions. Is there time now?” Bartlet: “Well, the Mexican economy crashed, an oil tanker busted up about 120 miles from here, and 13 percent of Americans are living in poverty. So, yeah, I can hang out with you and answer insulting questions for awhile.” Oliver: “Good.”).

⁴³ See *The Fall’s Gonna Kill You*, *supra* note 35 (C.J.: “I was told to report to you. I don’t know you. [W]hy should I trust you?” Oliver: “Well, you can do that if you want, C.J. I’ve been through it a couple of times with Josh and Toby, but sooner or later you’re going to have to answer questions.” C.J.: “Either to you or...?” Oliver: “A grand jury.” C.J.: “Well, I have to tell you it’ll be the first time I’ve been asked out in quite awhile.”).

deflecting Abbey's suggestion that he might benefit from the publicity of defending the President in prime time.⁴⁴ That said, Oliver's patience was not unbounded. For example, after several surly responses from C.J., he cut to the chase.

OLIVER: I'm going to have to ask you some questions, and the less you can be pissed at the world for no particular reason the better I think.... It's entirely possible that the President has committed multiple counts of a federal crime to which you were an accomplice.

C.J.: That much has sunk in in the last six hours.

OLIVER: Has it?

C.J.: Yes.

OLIVER: So why don't you knock off the cutie-pie crap and answer the damn question?⁴⁵

Oliver questioned meticulously and urged those he questioned to answer with equal meticulousness. For example, he discouraged C.J.'s tendency to volunteer information.

OLIVER: Do you know what time it is?

C.J.: It's five past noon.

OLIVER: I'd like you to get out of the habit of doing that.

C.J.: Doing what?

OLIVER: Answering more than was asked. Do you know what time it is?

C.J.: Yes.⁴⁶

⁴⁴ See *id.* (Abbey: "I think making a big thing out of it is what makes it into a big thing!... And I'm not a hundred percent sure that that's not what you're going for." Oliver: "Why would I want to make it a big thing?" Abbey: "Because defending the President in primetime looks good on a résumé." Oliver: "Well, I've got a pretty good-looking résumé already, Mrs. Bartlet.").

⁴⁵ *Id.*

⁴⁶ *Id.*

By contrast, Oliver's primary concerns about Abbey were her air of intellectual superiority and her tendency to give inconsistent responses.

OLIVER: [W]ould you mind if I asked you a few questions?...

ABBEY: About Zoey's health form.

OLIVER: Yep.... Was anyone else in the room when you signed it?

ABBEY: Oh, it was over a year ago. I really don't remember....

OLIVER: I understand.... But a lawyer half my size, while cross-examining you during deposition, will say ... "Mrs. Bartlet, do you have an M.D. from Harvard?"

ABBEY: Yes.

OLIVER: "Are you board-certified in Internal Medicine?"

ABBEY: Yes.

OLIVER: "Are you board-certified in Thoracic Surgery?"

ABBEY: Yes.

OLIVER: "Are you an Adjunct Professor of Thoracic Surgery at Harvard Medical School?"

ABBEY: Yes.

OLIVER: "Are you on the staff of Boston Mercy Hospital and Columbia Presbyterian?"

ABBEY: Yes.

OLIVER: "Have you been practicing medicine for twenty-six years?"

ABBEY: Yes.

OLIVER: "Are you not able to recognize a standard medical history form when it is put in front of your face?"

ABBEY: I didn't read it! I didn't think it was important.... Oliver, I am not an expert in the diseases of the central nervous system, but I can tell you that MS is not hereditary. The President's condition has absolutely no relevance to Zoey's health status.

OLIVER: Well, now you're changing your story Did you sign it because you were absent-minded or did you sign it because you knew best?

ABBEY: I just signed it ... It was a form. .. And I think making a big thing out of it is what makes it into a big thing!

OLIVER: Really? ... [I]t's not a big thing because I say so, ma'am; it's a big thing. You're gonna get all the questions I just asked you, and quite a few more. And then they're gonna ask the President if he was in the room when you signed it. And that's when he's gonna give everyone's favorite answer from a President who has just announced that he has MS: "*I don't remember.*"⁴⁷

Oliver was not one to jump to quick conclusions or make rash decisions. After questioning President Bartlet for quite a while during their initial conversation about the President's multiple sclerosis, Leo asked his impressions. Oliver replied, "I am nowhere close to being able to answer that question."⁴⁸ Later, President Bartlet, realizing that Oliver might have felt ambushed by this crisis so soon after taking the Counsel's job, offered him the opportunity to resign – which Oliver declined. Instead, Oliver clearly demonstrated his ability to "speak truth to power"⁴⁹ and his unwillingness to compromise his professionalism or his ability to represent the Office of the President, notwithstanding the enormous political power and influence some of those to whom he was speaking wielded.

OLIVER: If I stay, will you do exactly what I tell you to do?

BARTLET: I guess it depends.

OLIVER: No, I'm afraid it can't depend, sir.... [O]rder the Attorney General to appoint a Special Prosecutor. Not just any Special Prosecutor – the most blood-spitting, Bartlet-hating Republican in the Bar. He's gonna have an unlimited

⁴⁷ *Id.*

⁴⁸ See *Bad Moon Rising*, *supra* note 3.

⁴⁹ Henry Kissinger and others interviewed in an Emmy[®]-winning special episode asserted that the ability to speak truth to power is essential to one's ability to advise a president. See *The West Wing Documentary Special* (NBC television broadcast Apr. 24, 2002).

budget and a staff like an army. The new slogan around here is gonna be “bring it on.” He’s gonna have access to every piece of paper you ever touched. If you invoke executive privilege one time, I’m gone. An assistant DA in Ducksworth wants to take your deposition, you’re on the next plane. A freshman Congressman wants your testimony, ... what do we say?

BARTLET: Bring it on.⁵⁰

Just as Oliver was able to tell the President, in essence, “It’s my way or the highway,” he had the confidence to tell the first lady that her decisions to change the President’s drug regimen, to write prescriptions in her own name, have them shipped across state lines, administer them to her husband, and to not keep proper medical records likely made her the President’s biggest liability in the proceedings that would follow his multiple sclerosis disclosure.⁵¹

It’s About Duty

Lionel Tribbey left a lucrative private practice in Chicago to serve as White House Counsel to a president he considered too moderate on a number of key issues.⁵² Republicans Ainsley Hayes and Joe Quincy each served as Associate White House Counsel in a decidedly Democratic administration. Oliver Babish, about whose personal politics we know little (other than that he was integral to President Bartlet’s electoral success in the Midwest), also left a lucrative practice in Chicago to serve as White House Counsel and stayed on the job through President Bartlet’s multiple sclerosis disclosure and the grand jury proceedings and Congressional hearings that followed, the decision to assassinate a member of a Middle Eastern

⁵⁰ *Bad Moon Rising*, *supra* note 3.

⁵¹ *See The West Wing: Gone Quiet* (NBC television broadcast Nov. 14, 2001); *see also The West Wing: 18th and Potomac* (NBC television broadcast May 9, 2001).

⁵² *See And It’s Surely to Their Credit*, *supra* note 5 (Ainsley: “The President’s way too moderate for your taste.... [o]n affirmative action, capital gains, public schools, free trade... You left a lucrative practice in Chicago and a seven-figure income. It wasn’t out of duty?”).

royal family,⁵³ Vice President John Hoynes's resignation,⁵⁴ President Bartlet's decision to invoke the 25th Amendment and temporarily remove himself from office after his youngest daughter was kidnapped the night of her college graduation,⁵⁵ Leo McGarry's heart attack and C.J. Cregg's appointment as new Chief of Staff,⁵⁶ and Toby Ziegler's dismissal⁵⁷ and indictment⁵⁸ for leaking classified information about a secret military space shuttle – despite never becoming part of the President's inner circle on issues not directly within the Counsel's purview. Why? The rare opportunity to serve and the attendant responsibility were recurring themes throughout *The West Wing*. All of the denizens of the White House Counsel's office we met appeared to embrace both and to value them more than perks, pay, or partisanship. We can only hope that truth mirrors fiction.

⁵³ See *The West Wing: Commencement* (NBC television broadcast May 7, 2003) (referring to events depicted in *The West Wing: Posse Comitatus* (NBC television broadcast May 22, 2002)).

⁵⁴ See *Life on Mars*, *supra* note 31.

⁵⁵ See *The West Wing: Twenty Five* (NBC television broadcast May 14, 2003).

⁵⁶ See *The West Wing: Third Day Story* (NBC television broadcast Nov. 3, 2004).

⁵⁷ See *The West Wing: Here Today* (NBC television broadcast Oct. 23, 2005).

⁵⁸ See *The West Wing: Undecideds* (NBC television broadcast Dec. 4, 2005).