



25 RETURNS

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SHOWBIZ HAS ALWAYS HARBORED A DEEP FASCINATION with stories of succession to the top post in government. For the playwrights of old, the path to power was bathed in blood, giving rise to great theatrical dramas that continue to draw popular audiences to this day. The Greeks had Sophocles' *Oedipus Rex*, wherein the star-crossed Oedipus becomes ruler of Thebes by unwittingly killing his father the King and then marrying his mother the Queen. And fully a fifth of Shakespeare's plays are devoted to the English War of the Roses, recounting the tale of the cutthroat cousins of the Houses of Lancaster and York as they alternately murdered and imprisoned one another for nearly a century in their quest to attain the throne.¹

Modern-day Hollywood is every bit as obsessed with succession drama, but 21st-century screenwriters who stage power struggles in the setting of the American Presidency must confront the labyrinthine legalities of the Constitution's 25th Amendment and the Presidential Succession Act of 1947. Far from diminishing the cinematic potential of such presidential plotlines, however, the arcana of democratic succession actually provide producers a rare opportunity to combine the timeless thrill of the quest for the crown with the cerebral satisfaction of courtroom drama.

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¹ Richard II; Henry IV parts I & II; Henry V; Henry VI parts I, II, & III; Richard III.

Three years ago, Fox's *24* and NBC's *The West Wing* both staged multi-episode plot arcs revolving around the 25th Amendment. Last television season, ABC's *Commander in Chief* upped the ante by going for the perfect entertainment trifecta, airing two episodes that added a dash of emergency room suspense to the already winning combination of raw power grab and bold legal maneuver. As Shakespeare's right of blood gives way to democracy's right of law, readers of the *Bag* and legal geeks such as myself – two categories I suspect may substantially overlap – get the welcome chance to play kingmaker for a day.

IT'S GOOD TO BE THE QUEEN²

At the beginning of *Commander's* pilot episode, we learn that President Theodore Roosevelt ("Teddy") Bridges has been rushed to the hospital with a bleeding cerebral aneurism. We are told that President Bridges' surgical prognosis looks quite good, but that he will almost certainly be unable to perform the duties of the Presidency once his condition has stabilized. Vice President Mackenzie ("Mac") Allen, played by Academy Award winner Geena Davis, is rushed back to Washington from a diplomatic mission in France to meet with the incapacitated President. As the Vice President departs, French citizens line the streets of Paris and enthusiastically wave American flags, sending a clear signal that the writers felt no compulsion to keep the show within the bounds of conceivable reality.

Shortly after Air Force Two takes off for Washington, Mac demands to have a videoconference set up with the Chairman of the Joint Chiefs. Over the sputtering objections of the President's Chief of Staff, Jim Gardner, Mac orders the Chairman to "elevate our readiness posture" and reposition several key carrier groups. We are informed that Mac's *cause celebre* as Vice President is a Nigerian woman who has been sentenced to death by stoning for having a child out of wedlock. Mac's unstated purpose in repositioning the fleet, as she explains to her personal staff behind closed doors, is to

² Paraphrasing the "It's Good to be the King" routine in Mel Brooks, *History of the World Part I*, Twentieth Century Fox (1981).

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ensure that a ship equipped with marine extraction teams is positioned off the coast of Nigeria and prepared to rescue the woman by force if necessary.

Mac's goals may be laudable, but does she really have the authority to issue significant military orders while there is still a sitting President? When Jim angrily inquires, "What do you suggest I tell the President when he asks why you put our navy on high alert?," Mac offers only the cryptic reply, "He won't ask. He'll know." Far from placated, Jim then confronts Mac's top aide, Rod:

Jim: "Rod – this is not going to stand."

Rod: "What are you talking about?"

Jim: "... [W]hat was she thinking, taking over the military like that? It's like some sort of coup d'etat!"

Rod: "Jim, I know what you're going through, but you need to choose your tone very carefully. It's my job to protect the vital interests of the Vice President and the United States, and in this case they are the same. Clear out of your office, Jim."

Not only has Mac laid the groundwork for an invasion of Nigeria, but her top aide thinks he has the authority to fire the President's Chief of Staff! To top it off, when Mac does at last speak with President Bridges, we are treated to this gem:

President Bridges: "I hear you reorganized the Sixth Fleet while I was napping."

Mac: "I was bored. I had already read all the magazines on the plane."

It's a great line – but rather brazen, to say the least, and totally out of place after having been accused by the Chief of Staff of effectively staging a coup. Unless, that is, Mac's actions are on solid legal footing.

So who was right – the flippantly confident Mac and Rod, or the sputteringly indignant Jim? Almost certainly Jim. Mac and Rod would have been on solid footing under the Constitution's original framework, as Article II provides that in case of the President's "Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President"³ So long as the Presi-

³ U.S. CONST. Art. II, § 1, cl. 6.

dent was in surgery or recovering from it, he was probably unable “to discharge the powers of duties of [his] Office,” thus empowering the Vice President to act in his stead. The 25th Amendment, however, substantially changed the way that succession operates in case of presidential disability.

Section 3 of the 25th Amendment allows the President to “submit a written declaration that he is unable to discharge the powers and duties of his office” to the Speaker of the House and the President *pro tempore* of the Senate, in which case “such powers shall be discharged by the Vice President as Acting President.” That section is inapplicable here because President Bridges never submitted a written declaration. Thus, Mac could have become Acting President only under Section 4 of the 25th Amendment, which provides that:

Whenever the Vice President and a majority of . . . the principal officers of the executive departments . . . transmit to the President *pro tempore* of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

But the “principal officers of the executive departments”⁴ never met to discuss the matter, and neither they nor Mac transmitted a declaration of disability to the Speaker or the President *pro tempore*. Thus, Mac could not have become Acting President; as Vice President she had no authority to issue military orders; and her unilateral raising of the country’s Defcon level and reorganization of the Sixth Fleet were thus clearly *ultra vires*.

But shouldn’t we want the Vice President to be able to act as President when the sitting President is clearly incapacitated? *Commander’s* plotline exposes an arguably serious flaw in the 25th Amendment’s structure: while the amendment strengthens the Vice President’s position “[i]n case of the removal of the President from office or of his death or resignation” by making it clear that under

⁴ The phrase is probably best read to mean the Cabinet. See Gregory F. Jacob, 25, 7 Green Bag 2d 23, 24 n.2 (2003).

these circumstances the Vice President becomes President,⁵ the amendment arguably weakens the Vice President's position in case of temporary disability. The original Article II succession scheme allowed for an immediate and automatic transition of power to the Vice President whenever the President is unable "to discharge the powers and duties of [his] Office." But it also gave rise to many difficult interpretive questions. Who decides whether the President is incapacitated? Who decides when he is well enough to resume office again? Once the President has recovered, by what legal mechanism does the Vice President resume the Office of the Vice Presidency?⁶ Because these are not the kinds of questions that one wants to be required to answer in the middle of a succession crisis, the 25th Amendment's framers opted for a bright-line rule specifying that presidential disability must be declared in writing and that only the President, or the Vice President acting in concert with a majority of the Cabinet, can so declare it.

But bright-line rules are both under- and over-inclusive, and the framers of the 25th Amendment gained clarity by sacrificing speed. Perhaps it was assumed that in a true crisis the Vice President could act first and seek *post hoc*, Lincolnian ratification later.⁷ In *Commander's* pilot, however, Mac has no legitimate claim to *post hoc* ratification; her assumption of command over the military was not spurred by an imminent threat to national security, but rather was effected in furtherance of a humanitarian agenda of personal interest to her. Mac's best hope of avoiding serious questions about the propriety of her actions is that she quickly actually become President, allowing her to paper over the difference of the few intervening hours. And that is precisely what happens: shortly after Mac meets with President Bridges he dies. Pursuant to Section 1 of the 25th

⁵ See David P. Currie, *His Accidency*, 5 Green Bag 2d 161 (2002).

⁶ These unanswered questions, among others, were noted on the floor of the House when the 25th Amendment was first introduced. III Cong. Rec. 7942 (remarks of Rep. Young).

⁷ Lincoln suspended the writ of habeas corpus and expanded the Army and the Navy as emergency measures in 1861 while Congress was out of session, and later requested that Congress ratify his actions.

Amendment, Mac becomes the first woman President of the United States.

MASTER OF THE HOUSE

Fifteen thrilling episodes later, we find Mac settling into office nicely. She has ousted a South American dictator; recovered a lost nuclear submarine from North Korean waters; and seen a Vice President it took her six episodes to get confirmed suddenly resign for reasons that the press describes as “sketchy.” Had Mac been a devoted follower of *The West Wing*, she would have realized that the Vice President’s inexplicably sudden resignation surely portended that a 25th Amendment episode was in the offing. And for a sitting President, an encounter with the 25th Amendment is never a good thing – death, disability, removal, or resignation are lurking right around the corner.

En route to Seattle on Air Force One, Mac begins to feel ill and is diagnosed by the on-flight doctor with “acute appendicitis, possibly a rupture.” The doctor states that she needs to be treated at a hospital immediately – there is no time to get her back to Washington. When Mac asks how long she will be “out of commission,” the doctor informs her that the surgery will take 1-4 hours, plus recovery time. While the staff debate the location of the nearest secure hospital, Mac’s thoughts turn to the well-being of the country: “Wait. Wait! I have to talk to [my Chief of Staff]. . . . We’re going to invoke the 25th Amendment.”

Apparently nobody on Mac’s staff has her pocket Constitution handy, because no one reminds Mac that the Vice President just resigned. The 25th Amendment’s three succession clauses all operate to make the Vice President either President or Acting President; the Amendment does not apply if there is no sitting Vice President.⁸ Mac would surely *prefer* to invoke the 25th Amendment, which provides the President substantial control over his or her disabled status through the clear on/off switch of written declarations.⁹ But Mac is

⁸ See Jacob at 29.

⁹ *Id.* at 30-31.

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instead stuck in the world of Article II, which states that “the Congress may by law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President ... until the Disability be removed.”¹⁰

Congress has so provided on three occasions – in 1792, 1886, and 1947. In the Act of 1792, Congress placed the President *pro tempore* of the Senate, followed by the Speaker of the House of Representatives, ahead of the Secretary of State in the line of succession,¹¹ a scheme primarily designed by Alexander Hamilton and the Federalists to keep their arch-rival Thomas Jefferson, then serving as Washington’s Secretary of State, as far removed from the Presidency as possible.¹² When Congress amended the statute in 1886, it had learned from the experience of impeaching Andrew Johnson in 1868 that having legislative officers in line to become Acting President can give rise to serious conflicts of interests,¹³ and it therefore removed the President *pro tem* and the Speaker from the line of succession.¹⁴ At the urging of President Truman, however, Congress restored the Speaker and President *pro tem* to their position ahead of the Secretary of State in 1947, this time in reverse order.¹⁵ Truman believed that democratic principles dictated that officials who have been elected by the people should be at the head of the line to become Acting President, and that the Speaker, as the only elected official other than the President and Vice President who arguably represents the entire nation, should be first.¹⁶

¹⁰ U.S. CONST. Art II, § 1, cl. 6.

¹¹ Act of 1792 § 9, 1 Stat. 239-41.

¹² William F. Brown & Americo C. Cinquegrana, *The Realities of Presidential Succession: ‘The Emperor Has No Clones’*, 75 Geo. L.J. 1389, 1418 (1987).

¹³ Brown & Cinquegrana at 1419-20. Senate President *pro tem* Benjamin Wade’s vote to remove Johnson from office could potentially have propelled him into the Acting Presidency.

¹⁴ Act of 1886, 24 Stat. 1.

¹⁵ 3 U.S.C. § 19.

¹⁶ Brown & Cinquegrana at 1421-29.

So the Speaker of the House must have become Acting President when Mac declared herself disabled, right? Not so fast. Once Mac has the Chief of Staff on the line, she directs him to “speak to the Senate *pro tem* about taking over.” That seems odd – perhaps the writers were unaware that the Act of 1792 had twice been amended and that the President *pro tem* was no longer first in line? But no. When the savvy Press Secretary objects that “Constitutionally, isn’t [the Speaker] next in line?,”¹⁷ the Chief of Staff responds, “But he’d have to resign his seat in Congress to accept. I’ll notify him just as a formality.”

Hold on now. The Chief of Staff is correct that the Speaker would be required both by statute and by the Constitution to resign his seat in Congress to become Acting President. But the same rules apply to the Senate President *pro tem*. 3 U.S.C. § 19(b) provides that “[i]f . . . there is no Speaker, or the Speaker fails to qualify as Acting President, then the President *pro tempore* of the Senate shall, upon his resignation as President *pro tempore* and as Senator, act as President.” And the Constitution’s Incompatibility Clause applies equally to all members of Congress: “no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.”¹⁸ Thus, the President *pro tem* of the Senate would have to resign his seat in Congress to accept the Acting Presidency, just like the Speaker.

There could be a legal rationale to rescue the show’s plotline, however. The show’s premise is that the cost to the Speaker of resigning his seat in Congress would be too high to justify resigning just to become Acting President for a day, whereas whatever unstated costs the President *pro tem* would incur, he probably would be willing to do it. And that might be right. Article I, Section 2 of the Constitution specifies that “[w]hen vacancies happen in the [House of Representatives], the Executive Authority thereof shall issue

¹⁷ Of course, the Speaker is actually *statutorily* next in line -- not *constitutionally*. In fact, placing legislative officers in the line of succession may be *unconstitutional*. See Akhil Reed Amar & Vikram David Amar, *Is the Presidential Succession Law Constitutional?*, 48 Stan. L. Rev. 113 (1995).

¹⁸ U.S. CONST. Art. 1, § 6, cl. 2.

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Writs of Election to fill such Vacancies.” Thus, when a vacancy occurs in the House, a special election must be held to fill the seat – which, over the last 20 years, has taken an average of 126 days.¹⁹ The Seventeenth Amendment, by contrast, generally allows vacant Senate seats to be filled by gubernatorial appointment, which is a much faster process.²⁰ If the President *pro tem* was from a state in which the governor was of the same political party, he might have been able to count on a virtually immediate reappointment following his short stint as Acting President.²¹ Thus, the show’s premise that the Speaker would not be willing to become Acting President but that the President *pro tem* would is at least plausible.

The rest of the plot, sadly, is beyond legal rescue. The Chief of Staff calls the Speaker to ask him to sign a waiver so that the Senate *pro tem* can be sworn in. Not so fast, says the Speaker. He’s smart enough to know that before you sign a waiver, you really ought to speak to your lawyer.

Enter Gavin Kester, who is proclaimed in bold lettering across the bottom of the screen to be a “Constitutional Attorney.” Sadly for

¹⁹ The Continuity of Government Comm’n, *Preserving Our Institutions* at 7 (2003).

²⁰ The Seventeenth Amendment provides that “[w]hen vacancies happen in the representation of any State in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.” Virtually every state has enacted a law allowing for Senate vacancies to be filled by gubernatorial appointment until the next congressional election cycle. *Id.* at 6.

²¹ The Senate *pro tem* would still have good reason not to resign his Senate seat just to become Acting President for a day, however. Seniority is power in the Senate, and a break in continuous service generally strips a Senator of seniority. *See, e.g.*, Raju Chebium, *Lautenberg will run again in 2008*, dailyrecord.com, May 12, 2006 (“He lost his seniority - a key to getting things done in the Senate - when he retired in 2000 after three terms, only to return in 2002 after former Sen. Robert Torricelli, D-N.J., resigned under an ethical cloud.”). Furthermore, although President *pro tempore* is technically an elected position, by mutual agreement the position has for the last 50 years been held by the longest-serving member of the majority party. *See* www.senate.gov/reference/glossary_term/president_pro-tempore.htm. Thus, it seems likely that a break in service – even for a single day – would also mean losing the position of President *pro tem*.

the Speaker, what he really needs at the moment is an attorney who can read statutes, and that apparently is not an area in which Mr. Kester excels:

Kester: “She’s invoking the 25th Amendment, as well as the Presidential Succession Act of 1947.”

Speaker: “That means I’d have to resign my seat in the House.”

Kester: “That’s correct.”

Speaker: “But that means I’m going to have to give up my voting privileges.”

Kester: “You’ll still be Speaker of the House.”

Assistant: “He’ll maintain his authority over Congress?”

Kester: “Yes. He’ll preside over Joint Session, determine Committee appointments – all of which wield significant influence.”

No! As a matter of statutory law, that is completely wrong. 3 U.S.C. § 19(a) provides that “the Speaker of the House of Representatives shall, *upon his resignation as Speaker and as Representative in Congress*, act as President.” Thus, the Speaker is required by law to resign his Speakership to become Acting President. Unless and until he is reelected to both Congress and the Speakership, there will be no presiding over Joint Session or determining Committee appointments.

But even as a “Constitutional Attorney,” shouldn’t Gavin Kester know better? There are several potential constitutional obstacles to someone simultaneously serving as Acting President and Speaker of the House. One is the undecided question whether someone who is no longer a Member of Congress can continue to serve as Speaker. The text of the Constitution provides no clear answer, merely stating that “[t]he House of Representatives shall chuse [their Speaker and other Officers.” The House Rules do not address the election of the Speaker and thus shed no additional light on the subject.²² And

²² Because the entire House stands for re-election every two years, it does not consider itself to be a standing body and thus adopts new rules at the beginning of each Congress. But the House’s first order of business when it convenes at the beginning of a Congress is to elect a new Speaker. Because the Speaker is elected before the new rules are adopted, there is no reason for the rules to address the Speaker’s election. There is one provision of the House Rules, however, that

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several scholars and Members of Congress have read the constitutional text to permit the election of a Speaker who is not a Member.²³

It might seem intuitively obvious that House Officers would have to be Members of Congress, but that is incorrect: in fact, all of the other officers provided for in the House Rules – such as the Clerk of the House, the Sergeant-at-Arms, and the Chaplain²⁴ – are not Members.²⁵ Nevertheless, a strong argument can be made, based on the origin of the term “Speaker” and on historical practice, that the Speaker must be a Member of the House. First, the Framers imported the concept of the Speaker from the British House of Commons,²⁶ where only Members have served as Speaker since 1377.²⁷

might indicate that the Speaker must be a member. House Rule I(8)(B) requires the Speaker to “deliver to the clerk a list of Members in the order in which each shall act as Speaker *pro tempore*” in the case of a vacancy in the Speakership. It might be inferred that, since only Members can be placed on the Speaker succession list, the Speaker must also be a Member.

²³ See, e.g., Brown & Cinquegrana at 1429 n.136; Howard Wasserman, *Structural Principles and Presidential Succession*, 90 Ky. L.J. 345, 403 (2001); Paul Taylor, *Proposals to Prevent Discontinuity in Government and Preserve the Right to Elected Representation*, 54 Syracuse L. Rev. 435 at n.44 (2004); 93 Cong. Rec. 7780 (1947) (statement of Sen. Russell).

²⁴ The Rules of the House of Representatives for the 109th Congress also provide for the election of an Inspector General, a Chief Administrative Officer, a Historian, and a General Counsel.

²⁵ Thirteen Clerks of the House have also served as Members, but none has held both positions at the same time. See clerk.house.gov/histHigh/Congressional_History/clerks.html

²⁶ See David K. Watson, 1 *The Constitution of the United States – Its History, Application, and Construction* 203 (Callaghan & Co. 1910) (“the Convention followed the rule which prevailed in the House of Commons”); Joseph Story, 2 *Commentaries on the Constitution of the United States* 151-54 (Hilliard, Gray & Co. 1833) (“In Great Britain the House of Commons elect their own speaker, but he must be approved by the King. ... The exclusive right of choosing a speaker, without any appeal to, or approval by any other department of the government, is an improvement upon the British system”).

²⁷ Arthur Irwin Dasent, *The Speakers of the House of Commons* 348-415 (1911); Steven G. Calabresi, *The Political Question of Presidential Succession*, 48 Stan. L. Rev. 155, 162 n.9 (1995).

Second, only Members have served as Speaker of the House since the first Congress convened in 1789.²⁸ Perhaps because of this historical tradition, former Speaker of the House Dennis Hastert recently declared in an amicus brief filed with the Supreme Court that “[t]he Speaker is elected *from, and by*, the Members of the majority party in the United States House of Representatives.”²⁹ The issue is ultimately impossible to resolve with certainty; what can be said for Gavin Kester is that – with respect to the constitutional question, at least – he has both the text of the Constitution and the weight of scholarship on his side.

Even if the Speaker is constitutionally permitted to retain the Speakership after resigning his seat in the House, however, as Speaker he would still be a legislative officer, which creates additional impediments to becoming Acting President. By its own terms, the Incompatibility Clause applies only to “Member[s] of either House” during their “Continuance in Office,”³⁰ and thus it is not itself an obstacle. But the clause represents a separation of powers principle embedded deep in the Constitution that sharply divides the Legislative and Executive powers and does not, with a few expressly enumerated exceptions, allow them to be combined in a single agency or officer.³¹ To allow a single individual to serve simultaneously as Speaker of the House and Acting President would result in a form of government closely resembling the British Parliament, which the Framers expressly chose not to adopt.³²

On the other hand, Gavin Kester could point out that the 1792 succession act did not require the Speaker of the House or the

²⁸ Calabresi at 162 n.9.

²⁹ *McConnell v. Federal Election Commission*, Amicus Brief of the Honorable J. Dennis Hastert at 3, 2003 WL 21649644 (2003) (emphasis added).

³⁰ U.S. CONST. Art. I, § 6, cl. 2.

³¹ See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 124 (1976) (“The principle of separation of powers was not simply an abstract generalization in the minds of the Framers: it was woven into the document that they drafted in Philadelphia in the summer of 1787.”); *Springer v. Philippine Islands*, 272 U.S. 189, 202 (1928) (“the legislature cannot engraft executive duties upon a legislative office”).

³² Calabresi at 163-64.

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President *pro tempore* to resign their seats to become Acting President;³³ that when the President *pro tem* actually became Acting President for a day in 1821 he did not resign his office;³⁴ and that the weight of scholarship prior to 1947 held that the power to act as President attached to the offices listed in the succession statute rather than the individuals occupying those offices, such that the listed successors were *required* to retain their offices to act as President.³⁵

In the final analysis, all that can be said with certainty is that the Presidential Succession Act of 1947 did us all a great favor by requiring that the Speaker resign the Speakership to become Acting President, thereby sparing us the need to wade through the constitutional murk in the midst of a true succession crisis.

DENOUEMENT

By the time *Commander's* final 25th Amendment episode aired at the end of May 2006, the viewing public had already rendered its verdict on the fledgling series, and the executioner's ax had unceremoniously fallen. Geena Davis led a rousing chant of "Four more years!" at the show's wrap party at the end of April, but two days later the network announced that it would air only a meager three more episodes.³⁶

When *Commander* was cancelled, National Organization for Women President Kim Gandy saw conspiracy in the wind: "Is it possible that the very real chance of both political parties nominating female candidates for president in 2008 is so threatening that

³³ Act of 1792 § 9, 1 Stat. 239-41.

³⁴ Brown & Cinquegrana at 1418 n.103. Because the scheduled date of President Monroe's second inauguration was a Sunday, he postponed taking the oath of office for a day. This had the effect, according to the constitutional thinking of the time, of creating temporary vacancies in the Presidency and Vice Presidency. Senate President *pro tem* John Gaillard thus briefly became Acting President, but did not resign his Senate seat.

³⁵ Calabresi at 162 n.40.

³⁶ Jessica Shaw, *Anatomy of a Disaster*, Entertainment Weekly, May 19, 2006, at 13-14.

networks are being pressured to stop building the notion that it could be reality?”³⁷ According to Gandy, “[w]omen all over the country planned their Tuesday nights around the show, rounding up their daughters to eat popcorn, critique and bask in wish-fulfillment glow.”³⁸ The show failed only because it had “hardly been given time to develop an audience.”³⁹

Whether women across the country were continuing to gather for popcorn on Tuesday nights by the end of April 2006 is a question that can probably best be answered by Orville Redenbacher. *Commander’s* reality, however, was that it began with nearly 17 million viewers in each of its first two weeks, but was attracting only 6.5 million viewers per episode by the time it was cancelled.⁴⁰ This was not a show that was never given a chance; it was a show that was gift-wrapped a huge audience and lost it on merit.

In the end, Gandy’s press release got it partly right: “Great cast. Decent time slot.”⁴¹ But she left out a critical feature: “Terrible – and, worse, legally unsound – plot lines.” Perhaps the rise and fall of *Commander in Chief* will serve as a lesson for network executives everywhere: if you want to keep a show afloat with important demographic groups like readers of the *Bag*, you need to make a better effort at getting the law right.



³⁷ NOW Press Release, *Will ABC’s “Commander in Chief” Be Cancelled? Fight Back.*, May 9, 2006.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See *Anatomy of a Disaster*.

⁴¹ See NOW Press Release.