

## Book Review

Christopher Buckley, *Supreme Courtship: A Novel*, New York, NY: Hachette Book Group USA, 2008, pp. 285, \$24.99

Reviewed by Jonathan R. Siegel

### The Wolfe of Washington?

Two years after completing *The Bonfire of the Vanities*,<sup>1</sup> a scathing, screamingly funny account of life in New York City as seen through the intersecting stories of characters from Wall Street and the South Bronx, Tom Wolfe published a literary manifesto called “Stalking the Billion-Footed Beast” in Harper’s Magazine.<sup>2</sup> In this essay, Wolfe bemoaned the disappearance of the “realistic novel,” a novel that was *of* a city—that used the format of fiction, but did so to tell the larger truth of life in the city, as Balzac or Zola had used the novel to depict Paris, or as Dickens or Thackeray had portrayed London. Wolfe expressed bafflement that such “big realistic novels” were not being written in America,<sup>3</sup> and he called for a “battalion, a brigade of Zolas”<sup>4</sup> to write them. He wished that authors would use journalistic reporting techniques, which Zola had called “documentation,” to develop material that would allow them to “demonstrat[e] . . . the influence of society on even the most personal aspects of the life of the individual.”<sup>5</sup> Indeed, Wolfe stated that he had written *Bonfire* to prove a point: that “the future of the fictional novel would be in a highly detailed realism based on reporting.”<sup>6</sup>

Wolfe’s challenge to American writers (not well-received by all of them)<sup>7</sup> raised a question: Who would write a big, realistic novel that was *of* Washington,

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1. Tom Wolfe, *THE BONFIRE OF THE VANITIES* (1987).
2. Tom Wolfe, *Stalking the Billion-Footed Beast: A Literary Manifesto for the New Social Novel*, *HARPER’S MAGAZINE*, Nov. 1989, at 45.
3. *Id.* at 45-46.
4. *Id.* at 55.
5. *Id.* at 51-53.
6. *Id.* at 50.
7. Naturally, some were irritated by “the extraordinary complacency with which the author holds up his own ‘Bonfire of the Vanities’ as the perfect exemplar of everything that he

D.C.? Would someone with the literary talent and creativity to write such a work *live* in Washington, D.C.? Wouldn't such a person "insist on being *where things are happening*"<sup>8</sup> and prefer the vibrancy of New York, San Francisco, or some other real, organically grown city to an artificially created city where the primary local industry is government? Not to be too hard on Washington, but no one would mistake it for an artists' colony. If you picked up Washington and gave it a good shake, a lot of lawyers and lobbyists would fall out, but not so many painters and novelists. As *The Washington Post* noted in a recent article (tellingly titled *These Prominent Artists Aim to Change the District's Reputation as No Place for Artists*), artists themselves believe that "[t]here is kind of a stigma with being an artist who lives in D.C.; you're not as well-respected as an artist who lives in New York."<sup>9</sup> Some D.C. artists even recall being advised not to say where they live.<sup>10</sup> When *Forbes Magazine* purported to rank "America's Most Creative Cities" in 2014, Washington came in seventeenth.<sup>11</sup>

Nonetheless, it turns out that at least one talented writer does live in Washington and does use the novel format to depict life there, namely, Christopher Buckley.<sup>12</sup> Buckley, the son of conservative icon William F. Buckley,<sup>13</sup> served as speechwriter to Vice President George H.W. Bush, and his experiences in that post formed the basis for his first novel, *The White House Mess*.<sup>14</sup> His subsequent works exploring different aspects of Washington life have included *Thank You for Smoking*, a sendup of K Street's world of lobbyists;<sup>15</sup> *Little Green Men*, about TV pundits;<sup>16</sup> and, reviewed here, *Supreme Courtship*,

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advocates in fiction." Robert Towers, *The Flap Over Tom Wolfe: How Real is the Retreat from Realism?*, N.Y. TIMES, Jan. 28, 1990. In addition, responses to Wolfe suggested that he was overlooking abundant writing of the kind he claimed had vanished. See, e.g., *id.*; Jack Miles, *Tom Wolfe's Literary Manifesto: A Response*, L.A. TIMES, Nov. 12, 1989.

8. Wolfe, *supra* note 2, at 45 (quoting Wolfe, *supra* note 1, at 80).
9. Tara Bahrapour, *These Prominent Artists Aim to Change the District's Reputation as No Place for Artists*, WASH. POST, Jan. 28, 2018.
10. *Id.*
11. Washington ranked behind not only such obvious candidates as New York and San Francisco but also Boston, Nashville, Austin, Portland, Los Angeles, Seattle, Detroit, Oakland, Philadelphia, New Orleans, Atlanta, Denver, Chicago, and Orlando. See Erin Carlyle, *America's Most Creative Cities in 2014*, FORBES, Jul. 15, 2014, <https://www.forbes.com/sites/erincarlyle/2014/07/15/americas-most-creative-cities/#301d7ed63e2a>.
12. The jacket of Buckley's earlier works say that he lives in Washington, D.C. The jacket of *Supreme Courtship* says that he "lives on the Acela train between Washington, D.C., and New York City."
13. See Christopher Buckley, *Growing Up Buckley*, N.Y. TIMES, Apr. 22, 2009.
14. Christopher Buckley, *THE WHITE HOUSE MESS* (1986). The "mess" in the title refers to the place where White House officials eat lunch; operated by the U.S. Navy, it uses the military term for a place where meals are served.
15. Christopher Buckley, *THANK YOU FOR SMOKING* (1994).
16. Christopher Buckley, *LITTLE GREEN MEN* (1999).

which takes on the government body of greatest interest to the world of legal academics, the Supreme Court.

*Supreme Courtship* appeared in 2008, and one might wonder why anyone is reviewing it now, ten years later. The real, mundane reason is that Professor David Shapiro of Harvard sent a message last year to the Civil Procedure Listserv praising the book, and that message sparked the *Journal of Legal Education* to solicit this review.<sup>17</sup> But if we might be permitted to indulge in a fictional, post hoc rationalization,<sup>18</sup> we could say that the 2016 election of Donald Trump makes the review irresistible. Buckley's wild, improbably absurd work of fiction turned out to foreshadow some real-world events with an almost eerie prescience.

### *Supreme Courtship*

*Supreme Courtship*, set in roughly present-day America (the year is not specified), revolves around the drama of a Supreme Court appointment. The central conceit of the book is that the President, frustrated by the Senate Judiciary Committee's rejection of superbly qualified nominees on ridiculous grounds (the real reason is that the committee chair wants the appointment himself), decides to stick it to the Senate by nominating Pepper Cartwright, a reality TV show judge of the "Judge Judy" variety. Although Judge Cartwright is an actual lawyer, went to a good law school (Fordham), and was a real state Superior Court judge before she went on TV (32), even she recognizes that she is hopelessly unqualified for the Supreme Court (57-59, 110). The President ignores her warnings, as well as those of his closest advisors, and nominates her anyway (57).

The book follows the nomination in detail, portraying the behind-the-scenes "murder boards" and other work by which Judge Cartwright prepares for her committee hearings (58-66, 99-103) and then the hearings themselves (104-21). Dexter Mitchell, the Senate committee chair, does his best to sink the nomination, but Judge Cartwright deploys her media-savvy and folksy charm to outwit him at every turn (74-80, 108-12). She candidly admits her lack of qualifications (57, 110), but proves highly popular with the public all the same (73), and in the end the public pressure to confirm her is so strong that even the committee chair is forced to announce his support for the nomination (117, 121).

The nomination drama over, the book shifts to the Court itself, where now-Justice Cartwright's beginner's luck appears to run out. She soon finds herself called upon to cast deciding votes among Justices who are not only sharply divided legally, but barely able to tolerate one another personally. She puts in a poor performance at her first oral argument (141-47), infuriates the public by

17. I had replied on the Listserv that I had enjoyed *Thank you for Smoking* and *Little Green Men*, so JLE's Margaret Woo asked me to review *Supreme Courtship*.

18. Bearing in mind, of course, that post hoc rationalizations should be "viewed critically." *Citizens to Preserve Overton Parke v. Volpe*, 401 U.S. 402, 420 (1971).

casting an unpopular vote on a high-profile case in which she feels hemmed in by legal arguments even though her instincts tell her to vote the other way (154), and becomes embroiled in an FBI investigation into the early leaking of information about one of her draft opinions (163-65).

Just as things look darkest, however, our heroine rebounds. She helps the Chief Justice with his personal problems (simultaneously getting some relief from the problems in her own marriage to her TV producer/husband) (188-94, 216-18) and regains confidence in her legal instincts (208-09, 266). In the grand finale, she casts the deciding vote in a *Bush v. Gore*-style case that resolves a presidential election (281-83).

*Supreme Courtship as a Realistic Novel of Washington*

*Supreme Courtship*, and Buckley's works generally, are not exactly the kind of big, realistic novels that Tom Wolfe might have wished for.<sup>19</sup> They are not filled with intricately painted descriptions of prosaic yet socially significant details of life based on the author's reporting, and they certainly do not achieve a Dickensian level of social criticism. There are few counterparts to the "wagon train" scene in *The Bonfire of the Vanities*,<sup>20</sup> or the poignant depiction of labor inside a refrigerated warehouse in Wolfe's *A Man in Full*.<sup>21</sup> In *Thank You for Smoking*, Buckley critiques lobbyists who push harmful products on the American public to make their mortgage payments,<sup>22</sup> and his depiction of a meeting to discuss using "product placement" in movies to sell cigarettes<sup>23</sup> has some Dickensian overtones. But Buckley's approach to realism is on the whole far more lighthearted than critical.

Still, the reader who likes art to hold up a mirror to life will enjoy Buckley's depiction of familiar Washington scenes. Confirmation hearings, and the intricate dance that leads up to them, transfix the nation whenever there is a Supreme Court vacancy, and they surely deserve the parodic treatment they get from Buckley. What is more galling than senators pompously reading out a list of staff-prepared questions that they barely understand, unless it is the nominees pretending that they will neutrally find the law and not make it,<sup>24</sup> claiming that they haven't prejudged or even discussed fundamental

19. For that matter, some say *Bonfire* isn't either. See Richard Posner, *The Depiction of Law in The Bonfire of the Vanities*, 98 *YALE L.J.* 1653, 1658 (1988).

20. Wolfe, *supra* note 1, at 178-79. The scene depicts how court personnel, from judges to stenographers, at the Bronx County courthouse deal with the problem of getting to their cars after work if the court session extends past sundown. To protect them from having to go to their cars in the dark, the court calls a "wagon train" recess in the late afternoon, during which they all get their cars from the lot a few blocks away and park them closer to the court.

21. Tom Wolfe, *A MAN IN FULL* 117-33 (1998).

22. Buckley, *supra* note 15, at 12, 88.

23. *Id.* at 170-74.

24. Chief Justice John Roberts, when a nominee, famously said his job was "to call balls and strikes and not to pitch or bat." Nomination of John G. Roberts, Jr. to be Chief Justice of the United States, Hearings Before the S. Comm. on the Judiciary, 109th Congress 55-56 (2005).

constitutional questions,<sup>25</sup> or repeating over and over again that it would be inappropriate for them to give any answer that might foreshadow how they would vote on questions that might come before the Court, even though they have done exactly that in their own lower court opinions and law review articles<sup>26</sup> It is refreshing to imagine a nominee—even a fictional one—who answers questions candidly.

*Supreme Courtship* similarly depicts, albeit in a manner more parodic than journalistic, many other scenes of life among Washington's elite power players. The book opens with a description of how the fateful Supreme Court vacancy occurs, and the way the Justices tell one of their own that he is no longer mentally fit for the job (1-2) recalls famous real-life incidents.<sup>27</sup> Readers then get to see the President's interactions with his senior advisors, including their efforts to stop him from doing something as crazy as appointing a reality TV show judge to the Supreme Court (18-27, 96-99). Once Justice Cartwright is confirmed, the book portrays many of the Court's processes, including oral argument (140-47), the Justices' conference (154-55), and the drafting and internal circulation of opinions (160-63). Small details such as the custom of the Justices' shaking hands before each oral argument are mentioned—although the book imagines that this particular practice had to be abandoned because of the Justices' interpersonal animosity (140-41). Readers may also enjoy the brief portraits of the other Justices (66-72, 134-37), including one who is a thinly disguised Justice Scalia.

Thus, *Supreme Courtship* and Buckley's other novels have their place among works such as Allen Drury's classic *Advise and Consent*,<sup>28</sup> which depicted the course of a controversial nomination for secretary of state and how such a nomination is handled by the Senate. In these works, the plot is not the main point of interest, but serves rather as an excuse for presenting the reader with portrayals of the processes by which power is exercised in Washington. Buckley treats these portrayals as an occasion for comedy rather than the drama for

25. At his confirmation hearings, Justice Clarence Thomas said that he hadn't prejudged the issue of abortion and that he couldn't even recall having discussed *Roe v. Wade* when he was in law school. See Nomination of Clarence Thomas to be Associate Justice of the Supreme Court of the United States: Hearings Before the S. Comm. on the Judiciary, 102d Congress 222 (1991) (statement of Judge Thomas to Senator Leahy).
26. E.g., Nomination of Ruth Bader Ginsburg to be Associate Justice of the Supreme Court of the United States: Hearings Before the S. Comm. on the Judiciary, 103d Congress (1993).
27. The most famous such incident is probably the one in which Justice John Marshall Harlan tried to persuade Justice Stephen Johnson Field to retire and reminded him of how he (Justice Field) had similarly told Justice Grier that it was time to retire, to which Field replied, "Yes! And a dirtier day's work I never did in my life." David J. Garrow, *Mental Decrepitude on the U.S. Supreme Court: The Historical Case for a 28th Amendment*, 67 U. CHI. L. REV. 995, 1009 n.69 (2000). This particular tale "may be more apocryphal than accurate," *id.*, but it has been retold many times. For details on many instances of Supreme Court Justices whose diminished mental capacity raised issues, see Garrow, *supra*.
28. Allen Drury, *ADVISE AND CONSENT* (1959).

which Drury reached, but common to both is that someone has actually taken the trouble to fictionalize the federal government.

*Supreme Courtship as Spookily Accurate Futuristic Vision*

If there is one thing that makes *Supreme Courtship* genuinely entertaining, it is the stunning way that Buckley—perhaps intentionally, perhaps accidentally—foreshadows subsequent real developments. Some of the predictions implicit in the book, such as that the Supreme Court would, by a 5-4 vote, recognize a constitutional right to same-sex marriage, and that the decision would prove controversial (67-69), could have been made by anyone following legal developments in the early 2000s.<sup>29</sup> But who could have predicted Donald Trump?

Lawyers reading the book shortly after its publication in 2008 doubtless sneered at the conceit that the President would nominate a reality TV show judge to the Supreme Court. How absurd! First of all, no President would ever do such a thing. But second, even if a President did have the temerity to try it, the nomination would never succeed. Look what happened to Harriet Miers! Far more qualified than the fictional Pepper Cartwright—she was White House Counsel, after all—Miers was essentially laughed off the stage as unqualified after President George W. Bush nominated her to the Supreme Court.<sup>30</sup> No one could imagine that someone whose main qualification was hosting a reality TV show could really take on such an important national post.

Such a disdainful attitude toward the book's central premise probably continued right up to November 8, 2016. Donald Trump's election as President upended our confidence in our ability to say which fictional premises could really happen and which couldn't. Could someone really parlay a reality TV hosting job into a serious national office? Now that we know the answer, Buckley's portrayal of how a media-savvy TV darling could outwit elite professional politicians shows a prescience that perhaps even Buckley himself finds surprising. Pepper Cartwright exploits her popular appeal in ways reminiscent of, if not identical to, the way Trump exploited his. The senators opposing her nomination expect her to play by the usual rules of engagement for a confirmation hearing (108-09), and her unconventional tactics—declining to make an opening statement, candidly acknowledging her lack of qualifications, equally candidly admitting that the White House told her what to say—leave them flat-footed, unable even to ask a question (108-12). As Cartwright rides to office on the back of her appeal to a popular base, readers are inescapably reminded of Trump's equally unlikely, yet all-too-real triumph over a score of professional politicians in the Republican primaries

29. *Lawrence v. Texas*, 539 U.S. 558 (2003), striking down sodomy laws, provided an early indication that the law was moving in the direction of recognizing discrimination based on sexual orientation as unconstitutional, and the issue of same-sex marriage was percolating in the lower courts. *E.g.*, *Citizens for Equal Protection v. Bruning*, 455 F.3d 859 (8th Cir. 2006).

30. See Jan Crawford Greenburg, *SUPREME CONFLICT: THE INSIDE STORY OF THE STRUGGLE FOR CONTROL OF THE UNITED STATES SUPREME COURT* 266, 277-84 (2007).

and over Hillary Clinton in the general election. As a delightful extra bit of presumably unintentional foreshadowing, Buckley's fictional President is even named Donald (2).

In his Harper's Magazine essay, Tom Wolfe complains of a difficulty facing authors of realistic novels: the challenge of inventing fictional scenarios that outdo the events of real life.<sup>31</sup> As he puts it, "[T]he imagination of the novelist lies helpless before what he knows he will read in tomorrow morning's newspaper."<sup>32</sup> Wolfe describes how he had to scrap a planned description of a menacing subway encounter, drawn from a true story he had from a friend, because it would have looked like thin gruel compared with the spectacle of the real-life Bernhard Goetz subway case, which occurred while he was publishing *Bonfire* in serial form.<sup>33</sup>

Buckley must have had similar feelings when Donald Trump became President. His fanciful tale of a reality show star exploiting her media talents to achieve national office is nowhere near as fanciful as the reality of what subsequently happened. Buckley perhaps breathed a sigh of relief that he had, at least, published his story in time.

Donald Trump's triumph notwithstanding, Cartwright's confirmation still seems improbable. Trump's victory was possible because he was able to go around the elite professional politicians (and the elite media, via Twitter) and appeal directly to the voters who could elect him. A Supreme Court nominee, by contrast, must be confirmed by the professional politicians themselves (that is, by senators), not by the votes of the general public. Popular appeal plays a role in senatorial votes, of course. But even assuming the public would really be captivated by the thought of a TV judge as a Supreme Court Justice (which seems unlikely), it is still hard to imagine senators approving such a nominee. The Senate was designed to withstand popular sentiment.<sup>34</sup> If the President were elected by a vote of the Senate, it is hard to see how a Donald Trump could ever win, and the Senate, not the public, approves Supreme Court nominees. So we are stuck with President Trump, but probably safe from Justice Cartwright, at least for now.

#### *Supreme Courtship as a Book to Buy?*

Should the reader race out and get a copy of *Supreme Courtship*? Sadly, readers who enjoyed Buckley's previous Washington-based novels will find *Supreme Courtship* disappointing. The humor that was delightful in *Thank You for Smoking* or *Little Green Men* seems a little forced this time. There's only so

31. Wolfe, *supra* note 2, at 48, 53-54.

32. *Id.* at 48 (paraphrasing Philip Roth).

33. *Id.* at 54.

34. At any given time, two-thirds of senators are not up for re-election in the current election cycle. Their re-election is at least two years away, and, for one-third of senators, at least four years away. A majority of senators are always therefore as well-positioned as politicians can be to resist whatever matter has caught the popular fancy.

much amusement to be squeezed out of confirmation hearings, and with more than sixty pages from the public announcement of the appointment to the committee's capitulation, the confirmation sequence drags. Do we really need to see Pepper practicing before the murder board three separate times (58-60, 63-64, 100-02)? Readers with long memories will also notice some jokes repeated from Buckley's previous works.<sup>35</sup>

Some of the subplots are also a little baffling. Pepper's marital problems are important to the book, but why is Pepper's father made to be the Dallas police officer who let Jack Ruby have a look at Lee Harvey Oswald (33-35)? Possibly this detail is meant to represent the skeleton that any nominee has in her closet somewhere, but the reader is left wondering whether it means more. As to the Supreme Court sequences, they remind us why popular courtroom-based TV shows focus on trial-level courts, not appellate courts. *Law and Order: Court of Appeals Unit* has yet to make it on the air.

Disappointment in *Supreme Courtship* is likely to be greatest for readers of this review, who are probably lawyers themselves. Legal readers will see the "reporting errors" in the book—the legal errors and the descriptions of things that wouldn't have happened as described. Even putting aside the fundamental question of whether a reality TV judge could ever get nominated or confirmed to the Supreme Court (as noted earlier, this seems highly unlikely, though after Trump's election one hesitates to say that it is impossible), some points in the book ring false. There may be just as many such errors in *Thank You for Smoking* or *Little Green Men*, but a reader who is not a lobbyist or a pundit would be less able to notice such unlikely details in a work that supposedly reveals the life of a lobbyist or a pundit. Any lawyer, however, could hardly miss some of the mistakes in *Supreme Courtship*.

Most glaring is the "oral argument" scene, when Justice Cartwright participates in a Supreme Court oral argument for the first time. This scene is plainly meant to be hilarious, but the big joke is that almost every question from every Justice contains either an obscure Latin phrase (many so obscure that they are actually faux-Latin gibberish) or the invocation of a prior case with an improbable name (142-47). Perhaps this sendup successfully encapsulates what a Supreme Court oral argument sounds like to a nonlawyer, and so

35. Senator Mitchell is introduced with the remark "For the last four years, he had been Chairman of the Senate Judiciary Committee, generally referred to as 'the powerful Senate Judiciary Committee,'" (45) which is an almost verbatim rerun of a line from *Little Green Men*. See Buckley, *supra* note 16, at 173 (noting that a senator was "enormously influential by virtue of being chairman of the Senate Hindsight Committee, always referred to in the press as the 'powerful Senate Hindsight Committee.'""). This usage is quite real, see, e.g., Nick Corasaniti & Shane Goldmacher, *Rodney Frelinghuysen, Powerful House Republican, Announces He Will Not Seek Re-Election*, N.Y. TIMES, Jan. 29, 2018 ("United States Representative Rodney Frelinghuysen, a Republican from New Jersey who is chairman of the powerful appropriations committee, delivered another blow to Republican efforts to hold onto the House in 2018 on Monday after he announced that he would not seek re-election."), but once was enough. A joke about Senator Mitchell's age (45) is also somewhat reminiscent of, but at least sufficiently different from, a joke about senatorial ages in *Little Green Men* that was, admittedly, quite a good laugh. See Buckley, *supra* note 16, at 173.

perhaps the scene is funny for lay readers. But any lawyer, or at least any lawyer who has attended a Supreme Court argument, knows that while the Justices ask difficult questions, the difficulty does not lie in their constant use of Latin or case citations. So for the legal reader, this joke wears thin long before the end of the extended argument scene. The scene is too artificial to be even an amusing exaggeration of real life. Some other way to lampoon oral argument was needed.

The lawyer-reader also can't help but wonder what the case being argued in that scene is doing in the Supreme Court at all. The case is important to the plot of the book, as it gets Justice Cartwright in trouble in several different ways, but the only stated basis of federal jurisdiction is diversity (139), and the case appears to be a purely state-law tort case unaffected by any federal question. Why would the Supreme Court ever grant cert? In fact, it wouldn't.<sup>36</sup> A small point, to be sure, but a nagging one in a book that is supposed to portray Washington institutions, even humorously. The case also seems unlikely to have the kind of public resonance that would lead to the vilification that supposedly follows Justice Cartwright's vote.<sup>37</sup>

There are genuine smiles to be had from *Supreme Courtship*, but on the whole its exaggerations miss their comedic mark. Supreme Court proceedings, it seems, are just not a sufficiently rich subject for humor. The reader who has not yet enjoyed any of Buckley's works would do better to start with *Thank You for Smoking*,<sup>38</sup> and the experienced Buckley reader who gives *Supreme Courtship* a try should do so knowing that it does not live up to the promise of the earlier works in the series.

36. The book claims that "sometimes a 'what the hell' element seems to come into play" in cert decisions (139). That may be true, but the Supreme Court doesn't grant cert in diversity cases that don't raise a federal question, not even on a "what the hell" basis.
37. In a similar vein, the notion that the public could be turned against Supreme Court nominees for the ridiculous reasons described for the rejection of the President's first two nominees to fill the Supreme Court vacancy (4-7) is too absurd to be funny.
38. The reader can skip *The White House Mess*, a fictional memoir by a presidential aide. It was Buckley's first novel and he had not yet hit his stride. This reviewer read it as background for this review and finished it only out of a sense of obligation. It's not that funny, and a sequence in which public suspicions arise regarding the narrator's sexual orientation has not aged well.