

How I Advised the President

Former White House counsel gather to tell tales and prove that national matters are much like business matters.

They were all advisers to the ultimate CEO, the president of the United States. And they all had war stories. But could these former White House counsel offer advice useful to in-house attorneys in their daily dance with corporate management? Yes, indeed.

Last month the Washington Metropolitan Area Corporate Counsel Association gathered a few former counselors to the president to pick their brains about life in the White House and beyond. The discussion follows, edited for length.

Stuart Taylor Jr.: My first question is going to be very general, but with particular reference to three things: one, managing your relationship with the CEO, the president in this case; two, handling relationships with your peers, other top advisers to the CEO; and three, leadership of your own staff in the White House Counsel's Office and any analogies that seem relevant to the job of advising a CEO of a major company. Or a minor company, for that matter.

IN-HOUSE COUNSEL

A.B. Culvahouse Jr.: I came in as part of the Howard Baker rescue team as counsel to the president and focused very heavily on Iran-Contra, really, for the first year of the 22 months that I was there. We met with the president on 17 occasions, me and my principal deputy for Iran-Contra, and intensively investigated his role and prepared for his defense. So within two months, suffice to say I think that the president and I had bonded as attorney [and] client. My staff—what I did was leave them in place to manage the daily affairs of the office.

What you find when you deal with a crisis like Iran-Contra is you have no bandwidth. You are out of resources. So I built a separate

staff to deal with Iran-Contra. . . . With that said, the White House is a small place. I think you barely have enough staff to handle the ordinary affairs.

Lanny Davis: I was supposed to be the person dealing with the press corps about anything to do with scandal, and I was put into the White House Counsel's Office because I was supposed to be a White House lawyer subject to the privileges of being an attorney. . . . I had a boss who was the White House counsel, but I was also responding to direction from the White House press secretary and, ultimately, the president.

Sometimes those were in conflict. I would have the White House counsel telling me to say no comment. I would have [then-press secretary] Mike McCurry saying ignore them, get that story out quickly.

I didn't really have any instruction guide as to how to do this job, other than my instinct was to get the facts out as quickly as possible, satiate the beast, and get it over with before we had nationally televised hearings. And that was the strategy that basically Mike McCurry gave to me—something I subsequently learned was good advice to give to CEOs when they are in the middle of an accounting scandal or a backdating-of-options scandal: Get the facts out as quickly as possible. And you have the tension between the public relations perspective, which is to do exactly that, and the legal perspective, which is lawyers who are afraid of saying too much early on, before plaintiffs' counsel have established their lawsuits or before the regulators decide whether they are going to investigate.

When I got out of the White House, I tried to reinvent myself to do the same kind of mixture of public relations, political, regulatory, and, of course, legal perspectives. I would suggest it's not a great way to live, because you are constantly in the crossfire. . . .

My White House experience at least taught me that when you are in that crossfire, the most important thing a lawyer should do is engage with other lawyers about the need to be transparent. Sometimes you win the argument, sometimes you lose, because there are good reasons not to be transparent. Unfortunately, too often I have seen that when lawyers talk about risk to CEOs, most CEOs defer to the outside counsel, who says you can't talk to the press. Unless there

is somebody in the room who can speak the language of a lawyer to debate that, whichever way it comes out, I think a public company isn't being well served.

Beth Nolan: For me, one of the most important lessons was that the president takes up a lot of energy in the White House and gets a lot of attention. And really remembering that there are a lot of people who have important roles, all ultimately serving the president, but the press [office] and the White House Counsel's Office, for instance, might have very different goals in mind. Understanding and building those bridges with other components of the organization, I think, is the way you best serve your CEO.

Too often people ended up going to the president without understanding where everybody else in the White House stood first. And you are much better off if you really understand ahead of time where other people are and what their goals are, and you can do a more effective job of advocating your own position and a more effective job of advocating for what's right for the president.

I had been an associate counsel so I remember how frustrating it could be when something was getting all the attention of the counsel, and I was still trying to get something done, but I couldn't get anyone's attention. The way I decided to handle that when I came in as White House counsel was to divide my staff up into smaller teams of about four attorneys working on similar subject areas and then have a set meeting time with those teams every week. So no matter what was going on, everybody in the office was guaranteed some time with me every week.

David Leitch: I think [then-Chief of Staff] Andy Card set the tone for the White House when I was there by telling people he worked at the pleasure of the president, and if he decides tomorrow that he is no longer pleased with your being there, you will be gone.

The second thing he told us was, if someone has asked you to do [something] that makes you in any way uncomfortable in an ethical way, come see him and let him know. And the third thing I think is the most relevant for this discussion—which was, you know, everybody wants to see the president.

But, at least in the White House that I was familiar with, it was an incredibly disciplined process for seeing the president. I would often spend time talking with [then-press secretary] Scott McClellan during the investigation into the CIA leak about what could be said and couldn't be said. Sometimes they took our advice, and sometimes they got themselves in trouble—and those are the only two alternatives, by the way. Trying to make sure that all the views were considered before something went to the president was probably the most important discipline.

And I think the same thing applies to the CEOs. They have lots of demands on their time, and you have to be careful that you calibrate when you go to them with an issue, when you are just the ear, and when you let them have some space.

In terms of the relationships with other White House staff, we have already spoken to some of that, which is about making sure that you take the perspective of everyone in the various policy councils and the press office. And that's true in the corporate world, too. There's a lot of stuff that goes on that doesn't appear on the surface to have a legal issue, but if you are in the room, you might see a legal issue that no one else has identified or offer a per-

spective on the way to solve a problem that involves a legal mechanism that no one else would be aware of.

Taylor: One thing the White House counsel spends a lot of time doing is watching the way the president and his top advisers deal with very tough issues. I would like to ask whether you picked up lessons about effective leadership from that process.

Culvahouse: I learned a lot in those 22 months from the president. One of his great assets was, he had a core set of beliefs. Agree with him or not, there were a number of issues that were not negotiable, and that was an advantage. The White House is a place where you don't have a lot of time to react. You don't have a lot of time to develop the perfect plan. And what I learned is that the effort to get from an 85 percent certainty that this is the right thing to do to a 95 percent certainty is just not worth it. You don't have the time, and [it's] far better if you can get to 80 or 85 percent to take that plan and execute it ferociously.

[Also] before my first day in the White House, Howard Baker and President Reagan had met and agreed that there would be three priorities for the remainder of the term, and only three: to survive Iran-Contra, to get an arms agreement with the Soviets, and to elect a Republican president. . . . [Today] as chair of our firm, I tend to have only three main priorities, and that's about all a mere mortal can handle at one time.

Nolan: I think the most profound lesson I got was watching what happened during impeachment. The president stayed focused on all the other things he had to do, and the White House Counsel's Office—a small group of it—and the chief of staff focused on impeachment, and everybody else was asked to do their jobs. You know, somebody early on described to me that the White House is sort of like watching 6-year-olds play soccer. Everybody chases the ball. Nobody is doing anything else. They are just all chasing the ball.

Leitch: I think a common thread through all of this is really being honest with yourself—What are the answers that we have? What's the truth?—and just telling your story. Ford Motor Co. dealt, before I got there, with an experience that is seared in the minds of every employee who was around—the Firestone tire issue with the Explorer rollovers. And they all took away from it the lesson of get your story out—find out the facts, be responsible for what you're responsible for, tell the truth, and move on. You gain credibility, you gain some peace by having people feel like you are trying to be responsive, and you can move on to the things that you really want to be about.

Nolan: I wanted to emphasize what David just said about find the facts and then get out there with your story, because I think the tension between press [office] and legal counsel's office is often [over] that very point: Do we know enough now to go out with something? As an associate counsel, when we were new to the scandal business, the press office would respond almost immediately to an inquiry, and then we would spend the next few days cleaning up what we had responded to—because we just didn't know, we didn't have the facts. And I think that can get you in a

worse mess. . . . You need to know enough that you are not misleading reporters and you are not creating a bigger story by getting out there with something that you then have to explain.

Leitch: I have a bit of a war story that I think illustrates that point in connection with the CIA leak investigation. You may remember that rather early on, Scott McClellan said that certain people on the White House staff were not involved. You can argue about whether that was something that had to be done to protect the White House staff, but it was a critical decision because we kept getting questions after the fact. After you make the statement, you get questions about, well, what's the basis for that. It's just an illustration of the tension between what you would like to do as a lawyer, which is say nothing at all, and sometimes what needs to be done in the political real world.

Taylor: To what extent did your responsibilities include prudential advice as to what's wise, what's good policy, what makes sense, as opposed to here's what the law says?

Culvahouse: Very much, and I think I would probably put it in terms of scandal avoidance. Anything that is issued in [the president's] name—from veto messages to a proclamation that this week is National Dairy Goat Week—is staffed at counsel's office. We were responsible for what is legal, what is prudential, what is wise.

I've been advising a board of independent directors on one of these backdated-stock-options issues, and you have got the corporate secretary's office doing the board stuff, an assistant legal counsel doing the proxy statement, the tax department doing the tax issues, the controller doing the accounting issues, and they never connect. We have an obligation as lawyers to advise our clients on what is wise, as well as to what is purely legal.

Davis: I guess I have a much more mixed view than, maybe, my reputation at the White House. Let's flash forward, and we're in the post-Enron world of Sarbanes-Oxley, and there's a restatement of hundreds of millions of dollars or some obviously questionable behavior about backdating stock options. [The CEO] is asked at an investor analyst conference call [about his reaction] to the reports about backdating. Answer: I'm not going to comment on that; the matter is under investigation. That's what the lawyers will say.

Now, all I'm saying now that I'm in the real world, where that may be the only answer the CEO can give from a legal standpoint, is [that] somebody needs to be in the room who is a lawyer with attorney-client privilege [and who also] has a press perspective or a shareholder perspective to make the argument.

When I'm in the room, I only ask two questions when we start the debate: What is an undisputed fact that is coming out, no matter what we do; and, secondly, how do we get it out without endangering our legal case? Because if it's coming out anyway and it's an undisputed fact, I'd like to be the one that puts it out. I'd like to control how that fact gets out, rather than the plaintiff lawyers putting it out in a distorted story in the newspapers.

Taylor: Could you address the same question, prudential versus legal advice? And also, to what extent your role was a matter of react-

ing to issues presented by the president versus proactively telling the president about issues you think he should be deciding?

Nolan: On the prudential versus legal, I think any lawyer doing his or her job considers both and advises the client on both. For me, the important thing is being honest about which is which.

I think that too often lawyers give advice where they sort of blur. You really do a better service to everyone if you are clear about it. So I might be able to tell you it's legal, and if we ever get you before a jury, you won't be convicted. But that doesn't really help the organization. It's way before then that you have to make your judgment about what to do, and that's often a prudential decision, not a legal decision, and a lawyer really has to be there at that point.

Leitch: I agree with everything Beth just said. And I have to say I would not have said the same thing before I was in the White House. Having spent time previously in the Office of Legal Counsel, I took great pride in saying I only do law, I don't do policy. And I think as you mature and get in different environments, you learn that you have to do both. I'll give you a pretty good example.

I don't know anything about this other than what I read in the papers, but I don't think any of the lawyers at Hewlett-Packard are necessarily being faulted for giving bad legal advice about pretexting. The reason that it became such a scandal was because, even if someone told you it was legal and even if that was good legal advice, why didn't somebody say, wait a minute, what are we doing? And for better or worse, sometimes that falls to the lawyers to do that.

At the end of the day, the president is the president, and he gets to make bad decisions. But we wouldn't be doing our job if we said, you have the power to do whatever you want, and I'm not going to tell you what I think.

Taylor: To what extent are you a better corporate lawyer now because of what you learned in the White House?

Culvahouse: In the White House, the issues you see are of the highest order. If you can survive and do a good job in that environment, you aren't intimidated by the difficulty of anything you are going to see in the private sector. Also, I think I'm much quicker at making decisions and being comfortable that it's better to make a good decision quickly than to make a great decision too late.

Davis: Every single thing that you want to do behind closed doors, ask yourself whether you are ready to read about it on the front page of the newspaper, and then ask yourself a second question written by a hostile reporter. And if the answer is I'm not so sure, don't do it.

Leitch: It's history. What everyone has referred to, really, is the most critical thing, and that is the public-eye aspect, which—with all due respect to people in law firms—I think you have at different [levels] when you're in house and your CEO's name is in the paper. That kind of sensitivity and awareness and preparation and thought about how is this going to look in the public eye—can I defend it, do I want to defend it, what is a hostile and cynical reporter going to write about it—that's daily life in the White House. Unfortunately, it's increasing in the daily life in the corporate suite as well. ■