

The West Wing Weekly
1.09: "The Short List"
Guest: Ronald Klain

[West Wing Episode 1.09 excerpt]

JUDGE PEYTON CABOT HARRISON III: I do this for a living, Mr. Seaborn.

SAM: So do I, Your Honor.

[end excerpt]

[Intro Music]

HRISHI: You're listening to The West Wing Weekly. I'm Hrishikesh Hirway.

JOSH: And I'm Joshua Malina.

HRISHI: We're discussing episode 9 of season 1 of *The West Wing*. It's called, "The Short List."

JOSH: The story is by Aaron Sorkin and Dee Dee Myers, and the teleplay is by Aaron Sorkin and Patrick Caddell. The episode first aired on November 24, 1999, and it was directed by Bill D'Elia, great director I've worked with several times. Very natty dresser, always wears a suit to work. Additionally, he is the dad of stand-up comic Chris D'Elia, whom you might know from *Undateable* and *Whitney*. Talented guy.

HRISHI: Later on in this episode we'll be joined by Ronald Klain, former Chief of Staff to Vice Presidents Biden and Gore, and creator of a short list in the real world. But first, here's the NBC synopsis of the episode:

"When a Supreme Court justice retires, President Bartlet has a golden opportunity to impact the court's composition by nominating a favorite judge. But when further study reveals the candidate's conflicting ideology, the President might change his mind and opt for another judge. In addition, a headline-seeking congressman on the House Government Oversight Committee accuses the White House staff of substance abuse, a dicey issue for one important member."

JOSH: I'd watch that. That sounds good.

HRISHI: So this is an interesting one because I feel like, for the most part, we've had three storylines at least per episode, and sometimes four or five. Here, we've really just got two.

JOSH: Which I liked! I felt that was a strength.

HRISHI: Because you could go a little deeper on each of them?

JOSH: Yes. Whereas I [chuckles] wasn't a huge fan of "The State Dinner," I felt like the presence of so many plots, by nature, kind of vitiated the impact of each.

HRISHI: Mm-hmm.

JOSH: Here, you really have two main plots, and I enjoyed the room that they had to breathe and develop.

HRISHI: This is an interesting episode because, in some ways, not a lot actually happens. You get really the sense by the end of the episode that this is a setup for things to come. Did you feel like that?

JOSH: Absolutely. You know, I'm in for the long haul, as are, I think most of our listeners. It's not a great stand-alone episode, but I don't watch *The West Wing* for the stand-alone jolt of a, say, a *Law and Order*, where it doesn't matter what season you're watching, it doesn't matter what order you're watching, each is a "capsule" story. I like the fact that, as you say, you get the sense here that this is a slow ramp-up for a larger arc that might take place over the course of the season or multiple episodes, at least, and that's one of the reasons why I liked the amount of real estate given to the gradual development of the two main plots.

I get that we are entering a multi-episode arc about the nomination and confirmation of an associate Supreme Court justice, which sounds like it could be dull, but to me as a viewer, feels anything but, and I think it's to the credit of this episode that there's a lot of subtlety to the characterizations and to the motivations of the various staffers. And, you know, the episode opens with this incredible, like, frat-boy elation [Hrishi and Josh chuckle] among Sam and Josh, and even Toby, and the whole "Who 'da man?" with [laughs] Mrs. Landingham...

[West Wing Episode 1.09 excerpt]

SAM: Who 'da man?

TOBY: Who 'da MAN?!

JOSH: [slaps Toby's hand] We 'da MEN! [gives Sam a "high five" and pumps fist] MMM!

DONNA: This is just gross!

JOSH: Wait here for me.

[Josh, Toby, and Sam enter the office of the President's secretary. Toby is giggling uncontrollably.]

TOBY: Good morning, Mrs. Landingham!

MRS. LANDINGHAM: Good morning!

JOSH: [in a singing tone] Good morning!

MRS. LANDINGHAM: Good morning!

SAM: Good morning, indeed!

MRS. LANDINGHAM: Josh?

JOSH: Yes, Mrs. Landingham?

MRS. LANDINGHAM: *Is it done?*

JOSH: *Well, that depends on your answer to this question, Mrs. Landingham: Who 'da men?*

MRS. LANDINGHAM: *Excuse me, Josh?*

[Toby continues to audibly giggle]

JOSH: *Ummmm... who 'da men?*

MRS. LANDINGHAM *[calmly]*: *You 'da men.*

SAM AND JOSH: *[shouting in unison while chest-bumping each other] We 'da MEN!!*

TOBY: *We 'da men.*

MRS. LANDINGHAM: *[pointing to the Oval Office] He's waiting for you. [Toby continues to giggle]*

JOSH: *Thank you!*

[end excerpt]

JOSH: *[cross talk] I did a little bit...*

HRISHI: *[cross talk] So painful...*

JOSH: *...a little bit have to watch "through the cracks in my hand" the way... [laughs] [cross talk]*

HRISHI: *[cross talk] [laughing] Yeah...*

JOSH: *...the way one might watch a horror movie [chuckles], and of course we're treated to a second round of Brad Whitford's "Simian celebration," [chuckles] this time his version of a priapic gorilla.*

HRISHI: *[laughing] Right...*

JOSH: *It's...just the worst kind of [laughs] male showing off, and...*

HRISHI: *Do you have any memory of this "Who 'da men" thing?*

JOSH: *No, I really didn't.*

HRISHI: *Oh, see... [sighs] Ahhh... I did, and I immediately brace up because I'm like, "Oh, they're gonna say it a few more times in this episode," and every time I wince.*

JOSH: *At least by episode's end, you've realized that they're getting their comeuppance...*

HRISHI: *Yes.*

JOSH: And so the level of exultation was a setup for how badly things are gonna go in short order.

HRISHI: Right. Although I feel like any sophisticated viewer knows, right, any victory that comes before a minute thirty-five is probably going to be turned around in some way.

JOSH: Yes, I suspect you're right.

HRISHI: One of the things that I LOVE about this episode, [pause] you know, the reason I liked "The State Dinner" was because of the defeats that the team kept having to handle, and in a similar vein, I loved in this episode that the President just gets served by the outgoing justice, Crouch.

[West Wing Episode 1.09 excerpt]

JUSTICE JOSEPH CROUCH: I wanted to retire five years ago, but I waited for a Democrat. I wanted a Democrat, [chuckles] and instead I got YOU.

[end excerpt]

HRISHI: I mean, it goes on for such a long time, his dressing down of the President, it's [pauses] AMAZING!

JOSH: It's a nice scene between two excellent actors, Crouch played by the late Mason Adams, who is just one of those great character actors whose face you probably recognize from hundreds of TV appearances. He had a very prominent role in the drama *Lou Grant*.

HRISHI: So you're going old school.

JOSH: I AM old school. And he does a very good job in this scene, as does Martin Sheen, because Martin as President Bartlet really takes it... [cross talk]

HRISHI: [cross talk] [chuckles] Yeah.

JOSH: ...and takes it with a smile on his face, although he gets his back up, and he does sort of subtly remind Crouch that he's Dr. Bartlet...

[West Wing Episode 1.09 excerpt]

PRESIDENT BARTLET: Well, I am NOT Harry Truman...

JUSTICE CROUCH: Mr. Bartlet, you needn't point out that fact.

PRESIDENT BARTLET: [with a bit of exasperation] It's Dr. Bartlet, Your Honor. Now, let's go start your retirement.

[end excerpt]

JOSH: And, you know, he has his moments, but what I like about the characterization of President Bartlet is that he's got a strong ego, but he treats people with respect, even if he's taking flak from them, and in this episode, we also get to see how, even if at the

moment, he doesn't seem super open to the criticism he's hearing, it always lands, he always considers it.

HRISHI: Right.

JOSH: And it is, really, what Crouch has to say in this scene that leads Bartlet to a complete reconsideration of his choice.

HRISHI: I did love President Bartlet saying, "Well, I am NOT Harry Truman," and Crouch saying, "Mr. Bartlet, you needn't point out that fact," as sort of an, a bit of an echo of...

JOSH: Bentsen and...

HRISHI: Yes, and Dan Quayle.

[Excerpt from the Bentsen/Quayle Vice Presidential debate, 1988]

SENATOR QUAYLE: I have as much experience in the Congress as Jack Kennedy did when he sought the presidency.

SENATOR BENTSEN: Senator, I served with Jack Kennedy. I knew Jack Kennedy. Jack Kennedy was a friend of mine. Senator, you're no Jack Kennedy. [crowd roars]

[end excerpt]

JOSH: Yeah, I absolutely took it that way and liked it.

HRISHI: We also learned something about the backstory in that exchange, too. We already knew that the President and Hoynes were rivals in a primary situation, but here, Crouch says:

[West Wing Episode 1.09 excerpt]

JUSTICE JOSEPH CROUCH: You ran great guns in the campaign. It was an insurgency, boy, a sight to see.

[end excerpt]

HRISHI: That idea of an insurgency reminds me a lot of Bernie Sanders, you know, that you have an establishment politician, Hoynes, is really sort of like the Hillary Clinton of their primary season, and then the President sort of comes out of nowhere, this, this New England leftist, but he went from great promise and great rhetoric to a much more centrist approach.

JOSH: Well, some of this is baked into the way our government works and you, you can go hard progressive in the primary, and then to win the general you need to start steering a little bit back towards the middle. But I guess what we're learning, too, is that even having won the presidency, we know that he has low approval numbers, and I guess he doesn't feel yet that he has the political capital to take some risk and pursue his agenda. And I think that also speaks to what we've sort of subtly been aware of from the beginning of the season that Toby has some frustration with Bartlet as a president, and his unwillingness to push for things that he once considered vital.

HRISHI: Right.

JOSH: Here's a couple other little points in the Bartlet/Crouch conversation, more exposition - did we know prior to this that a Republican president preceded Bartlet?

HRISHI: We don't know that.

JOSH: So we learn that here, because Crouch says that he's been actually postponing his retirement so that he could retire under a Democrat.

HRISHI: That's right.

JOSH: And interestingly, Toby almost has the reverse situation in this episode. Toby seems really about ready just to notch a win, even though he's normally the idealist, at this one, he's sort of the last person to give his nod towards Mendoza as the choice, because he was just [chuckles] ready to notch a win by getting an easy confirmation with Harrison.

HRISHI: Right. There's one thing that you were saying, too, about the actual compromises that you have to make even after you've won the election, when the President says:

[West Wing Episode 1.09 excerpt]

PRESIDENT BARTLET: But I'd remind you, sir, that I have the following things to negotiate: an opposition Congress, special interests with power beyond belief, and a bitchy media.

[end excerpt]

HRISHI: So he mentions an opposition Congress. And that's real, especially when, when it comes to a Supreme Court nomination.

JOSH: Oh, yes.

HRISHI: I think that there is a lot of, a lot being taken from the Bork nomination [cross talk]

JOSH: [cross talk] Mmm hmm.

HRISHI: ...in this episode. Ronald Reagan nominated Robert Bork to the Supreme Court, and the Democrats had a majority in the Senate, and they destroyed that nomination.

JOSH: They "Borked" him! They invented a word in the process.

HRISHI: Yeah, here's a clip of Robert Bork being asked what "Borking" means:

[Audio clip excerpt]

INTERVIEWER: To "Bork" means what?

ROBERT BORK: I think to attack a person's reputation and views unfairly.

[end audio clip]

HRISHI: Unfairly because, it's not that he was considered unqualified, it's more about his views on potentially *Roe v. Wade*, and specifically his view on privacy. So that's something that I think is also taken from Bork, especially his, this view of privacy being a fundamental issue for the nomination.

JOSH: All that said, you know the final, sort of last litmus test for Mendoza is this question about:

[West Wing Episode 1.09 excerpt]

TOBY: Without knowing details or special circumstances, what would you say of someone being fired for refusing to take a drug test at the order of the President?

[end excerpt]

JOSH: And, he answers in a way that I suspect is precisely how Harrison would have answered the question:

[West Wing Episode 1.09 excerpt]

JUDGE MENDOZA: Without details or special circumstances.

TOBY: Yes, sir.

JUDGE MENDOZA: Without showing cause, I would say the order constitutes an illegal search, and I would order that the employee be reinstated.

[end excerpt]

JOSH: But I think Harrison would have made the same "ruling" that Mendoza gave, without cause being offered, I think based on the Fourth Amendment, Harrison would also have reinstated the employee who refused to take the drug test. In that big scene, he very clearly agrees with Sam that the framers enumerated specific barriers around privacy, including the Fourth Amendment's protection against unreasonable searches.

[West Wing Episode 1.09 excerpt]

SAM: The Third Amendment says soldiers can't be quartered in private homes, the Fifth provides protection against self-incrimination, and the Fourth against unreasonable searches...do you deny the right to privacy lives in those passages?

JUDGE HARRISON: [emphatically] No, I do not deny it. But the fact that the framers enumerated those specific protections is all the more reason to believe that they had no intention of making privacy a de facto right!

[end excerpt]

JOSH: So, on that basis, I didn't love that that theoretical question seemed to be the

tipping point leading to the choice of Mendoza over Harrison. That didn't entirely work for me.

HRISHI: That's interesting.

JOSH: Maybe I'm wrong.

HRISHI: No, I think you make a compelling point. The thing that I do LOVE in that moment is – maybe I should have seen this coming, but I didn't, and I love how they tie this together – that it reminded me of *Sherlock Holmes*, you know, when they're following two cases, and then it turns out, it's the same case!

JOSH: Ah! [chuckles]

HRISHI: They're talking about staffers doing drugs in the White House, and then also this nomination process, and in the end in that one question they synthesize the two. They all kind of tie together in this one moment.

JOSH: Yeah, it's very elegantly done.

HRISHI: I, I really loved that. Also, Edward James Olmos does not have a lot of lines in this episode, but every single one of them counts for a lot. His voice is so fantastic.

JOSH: I completely agree. I think they cast the two potential nominees very well. Ken Howard, the "White Shadow" in the White House, recently passed away, great actor, and, I think he and Edward James Olmos, "Admiral Adama," both have a seriousness, a purpose to them, and a gravitas, that you would want in a potential Supreme Court nominee. And you're right, Olmos really has very little screen time, and he's just got great dignity and power even in this, this quiet dialogue.

HRISHI: It really just felt like it was "Adama" [chuckles] for a second when he said:

[West Wing Episode 1.09 excerpt]

PRESIDENT BARTLET: Will you accept the nomination?

JUDGE MENDOZA: [in a dignified tone] With honor.

[end excerpt]

HRISHI: And then they should have all said, "So say we all."

JOSH: Indeed. And by the way, "adama" being the Hebrew word for "earth."

HRISHI: Hmm.

JOSH: Hmm. So chew on that, *Battlestar Galactica* fans. How about Sam's big speech at the end of the meeting in the Oval with President Bartlet and Toby, wherein he predicts the importance of privacy issues in the coming decades, I mean, and absolutely NAILS it?

[West Wing Episode 1.09 excerpt]

TOBY: *Mr. President, if this is really about abortion, he's already told us...*

SAM: *It's not about abortion, it's about the next twenty years! Twenties and thirties it was the role of government, fifties and sixties it was civil rights, the next two decades are going to be privacy. I'm talking about the Internet, I'm talking about cell phones, I'm talking about health records, and who's gay and who's not. And moreover, in a country born on the will to be free, what could be more fundamental than this?*

[end excerpt]

JOSH: Right? I mean, that's almost eerie.

HRISHI: It WAS eerie. And despite the fact that they've just declared that the Internet isn't a fad, and it feels like maybe on the technological side the show's really showing its age, in that one section of dialogue, yeah, it's incredibly [pauses] prescient.

JOSH: Oh yeah, just everything flows through your mind... Snowden, and drones, and data mining, and everything that we have been dealing with and continue to deal with on a MASSIVE scale.

HRISHI: Right, Apple vs. the FBI, predicted in a line of a TV show from 17 years beforehand, it's crazy!

JOSH: And maybe you'll disagree with me, but I suspect you won't, I wish that Sam's great speech, which is a terrific piece of writing and acting, I wish we didn't have the plaintive oboe [both chuckle] noodling in the background. I may be wrong, I think it's an oboe...

[West Wing Episode 1.09 excerpt]

[presumed oboe and other instruments playing in the background as Sam speaks]

SAM: *And moreover, in a country born on the will to be free, what could be more fundamental than this?*

[end excerpt]

JOSH: I really think that speech would have landed more powerfully without music behind it.

HRISHI: I don't even think I paid attention to the music at that point because I was just so wrapped up in his, in his dialogue, so maybe it actually worked on me, because I didn't make a note about the music.

JOSH: I found a *Los Angeles Times* article from 1996, the headline being, "White House admits it kept on staffers with drug past." And this is a story about the Clinton administration, and [reading from the article] "...twenty-one employees were allowed to continue working at Clinton White House despite FBI background checks indicating that they had used drugs within the year before being hired, government officials confirmed on Monday." That's a quote from the article. [Reading from the article] "Random drug testing is required of all White House employees."

HRISHI: So, this is the thing that [Congressman Peter] Lillianfield has access to.

JOSH: He's on the Government Oversight Committee.

HRISHI: Right. And so they have just reams and reams of data that they have access to that other people might not, and so maybe that's what's tipping him off. You know, Toby's trying to find out, 'What do they know, what do we know?' So, so maybe the White House doesn't actually have the access to, to the results of those drug tests, but Lillianfield does, and so he can make a claim like that. And while they might want to laugh it off, it might actually, you know, when the reason why they are taking it seriously is because he might actually have data to back it up?

JOSH: Mm-hmm. And I like, there is a little veneer of an *All the President's Men* type thing going on in this episode. It's a little bit of the thriller, and how things work, and Josh for once asks Mandy's advice, and she says:

[West Wing Episode 1.09 excerpt]

MANDY: It's time to talk to whoever it is you talk to.

[end excerpt]

JOSH: ...and he meets with Danny Concannon, and Danny says:

[West Wing Episode 1.09 excerpt]

DANNY: Lillianfield's a jackass, but he's not stupid. If he's talking, he's got something.

[end excerpt]

JOSH: That brings me back to this article again, and here's another quote from it: [reading from the article] "The Clinton White House obtained hundreds of FBI background summaries on White House employees and pass holders who are no longer in the government. White House officials have contended that because of a bureaucratic blunder, the Personnel Security Office improperly obtained the background..." [cross talk]

HRISHI: [cross talk] Ha!

JOSH: "...summaries." So, interesting right? I mean...

HRISHI: Yeah.

JOSH: So it speaks to the privacy issues we've been talking about and when data like this is kept, it can either maliciously or not be seen by people who ought not to be seeing it, and...

HRISHI: And another thing we didn't even mention, too, about the privacy is that this, of course, also predates the Patriot Act. We've been living under the Patriot Act for 16 years and I feel like in some ways, I've just gotten used to it. But the question of privacy in this episode is really indicative of an America that I, at least, have kind of mostly forgotten. There is no mention of terrorism in Sam's rousing speech there, about what's

the most important thing about privacy. I mean, it certainly doesn't talk about the idea of privacy as it relates to racial profiling, or the civil rights of people who might be affected by the Patriot Act, something like that.

JOSH: We've been fear mongered into accepting less and less privacy.

HRISHI: Yeah. Did you see this article...I saw an article today about a [sic] Italian mathematician who was pulled off a plane because a woman reported him. She did a "If you see something, say something" kind of [pauses] reporting because she was... [cross talk]

JOSH: [cross talk] What did she see?

HRISHI: Math. He was working on an equation for a presentation that he was on his way to give.

JOSH: Hmm. And this triggered alarms in her, why?

HRISHI: Because he had dark skin and dark, curly hair.

JOSH: Ah. There you go.

HRISHI: Yeah. And so she got off the plane, talked to them, and then they pulled him off, questioned him for two hours...

JOSH: [audibly "winces"]

HRISHI: ...but the best, my favorite part was there was a comment on the article that someone said, "He must be a member of that new organization, "Al Gebra" [sic]

[Both laugh]

HRISHI: I think the major part of the episode that's not about either of these two plot lines is the introduction of C.J.'s goldfish.

JOSH: Mm.

HRISHI: It comes as an offshoot of Josh's secret meeting with Danny, whereas sort of by way of thanks to give him a little leeway in with C.J., he says:

[West Wing Episode 1.09 excerpt]

JOSH: C.J. likes Goldfish.

DANNY: [confused] What?

JOSH: She likes Goldfish. Can't get enough of 'em.

[end excerpt]

JOSH: We have Danny presenting C.J. with the goldfish:

[West Wing Episode 1.09 excerpt]

C.J.: What are you holding?

DANNY: It's a goldfish.

C.J.: Why?

DANNY: It's for you.

C.J.: [confused] Really?

DANNY: Josh said you like goldfish.

C.J.: [begins to laugh hysterically] The crackers, Danny. The cheese things that you have at a party? [continues laughing]

DANNY: Ah. Well.

[end excerpt]

HRISHI: I love that after he makes the mistake, when Danny sits there, saying:

[West Wing Episode 1.09 excerpt]

DANNY: You know, I - I'm not a hundred percent sure I was supposed to know that.

C.J.: [continues laughing]

[end excerpt]

[Both laugh]

HRISHI: Maybe Josh gave him a little...

JOSH: Yeah, I actually went back and re-watched their scene together to decide whether Josh Lyman was trying to mislead him on purpose, and I, I could not divine what his motivations were, which is maybe, the best way to have acted the scene.

HRISHI: [still laughing] It really is... [cross talk]

JOSH: [cross talk] It's not quite clear.

HRISHI: Yeah. That's great. And another great C.J. laugh.

JOSH: Oh, it's a delightful scene, yeah, a very funny scene.

HRISHI: And the kiss that she gives Danny...so great. Despite him making a mistake about the whole thing, he does, he does actually get a little further with her.

JOSH: For sure. Something to look out for, if you are a first-time watcher, is that the goldfish bowl will be used to house sort of little clues in upcoming episodes, there will be

a sort of a different little prop in the goldfish bowl that somehow reflects on the episode. Here's what I will say, just ahead of time: it defies credibility that the goldfish would even be alive in the next episode... [both laugh] if my experience with goldfishes as... or goldfish as a kid is indicative of the current state of affairs, I don't think a goldfish [chuckling] would survive really, probably from one day to the next. But...

[laughing]

HRISHI: Another side scene that I wanted to talk about...[sighs]...because it occupies a [sic] interesting place in the episode. I'm not entirely sure what it does. There's a little scene where Charlie is waiting with Harrison before Harrison leaves, they've already decided it's not going to him, he's going to be escorted out, and the President asked Charlie to sort of see to him until he, he gets escorted out. And there's this little scene where they're just waiting, and:

[West Wing Episode 1.09 excerpt]

JUDGE HARRISON: You look very familiar, is it possible we've met?

CHARLIE: I caddied for three summers at Sandy Hook, sir.

JUDGE HARRISON: [quick sigh of realization] Of course. [struggling to remember a name]

CHARLIE: Charlie Young.

JUDGE HARRISON: Charlie, of course.

CHARLIE: I'll get your coffee.

[end excerpt]

HRISHI: Uh, yeah, I liked it. I also felt like there was no answer... I don't know what question it was asking or what the answer was that it was giving.

JOSH: I was intrigued by the scene as well, and it's another scene that I watched twice because I wanted to go back and see whether I could figure out what its purpose was, and I'm not quite sure. At first I thought perhaps we were supposed to infer something sinister about Harrison because he doesn't recognize a young African-American man, but then on second viewing, it actually made me like Harrison a little bit more. He does recognize him, he wasn't able to put his finger on exactly where he'd seen this young man before, but he's somebody who [pauses] was not so oblivious that he did recognize somebody who occasionally caddied for him. So, I'm not exactly sure what the purpose of it was, and I'm not sure that that's a problem or a fault. I mean it's just, it was just a kind of genuine life moment. It's odd, but that made it intriguing.

HRISHI: Yeah, I liked it. I, I feel like there is so often, even done in an elegant way, all the pieces for an episode of *The West Wing*, ultimately it gets revealed they do have some didactic purpose, and there, there's some vector that's, like, slowly being drawn together, and this didn't feel like it had that. There wasn't anything that it was driving towards, it was just a scene.

JOSH: Maybe the episode was just short.

HRISHI: That's what I was thinking!

JOSH: [chuckles] Well, I mean, it is possible.

HRISHI: There are only two stories, which is again, like, rare, and so there isn't really a chance to have this kind of thing.

JOSH: Right. And we're going to pay Dulé a lot, let's make him come in and do something.

[both laugh]

HRISHI: [laughing] Yeah.

[both laugh]

HRISHI: The one thing that you do get is you get a little more information about Charlie, that he's been working, you know, he's been working hard for a long time.

JOSH: How do you feel about Harrison?

HRISHI: I don't feel one way or another, really, about Harrison.

JOSH: Altogether, throughout the episode?

HRISHI: Yeah. I think that he's wrong about his interpretation of privacy in the Constitution. It seems strange that he would be an originalist in this one area, and that the administration would have managed to get him this far along, that that kind of thinking wouldn't have come out in some other decisions that they would say, "eh, maybe not this guy..."

JOSH: Yeah, I found that also a little bit difficult. We're looking at a specific issue that HAS to be more reflective of his broader interpretation of the Constitution, and I think Toby says at one point, and again to me this is, again, perhaps shining a light where you shouldn't, you know, 'How does this not come up earlier?' And Toby says:

[West Wing Episode 1.09 excerpt]

TOBY: It was simply never an issue in any ruling he handed down, and if I may, Sir, we don't know for sure...

[excerpt faded out]

[end excerpt]

JOSH: But again, a- as I think you're saying, his general [pauses] interpretation of the Constitution would have come up in EVERY case, and I think they would have probably realized, "This is not our guy." I could see why he would appeal to a Republican Senate. And then, and Josh says at one point, you know, 'He was never our guy,' like, 'How did we wind up with Harrison?' And the... [cross talk]

HRISHI: [cross talk] Yeah...

JOSH: ...answer is, they wound up with Harrison because he's somebody they could get confirmed...

HRISHI: Yeah.

JOSH: ...that it really is a significant sell-out for this administration to have landed on this guy as their nominee.

HRISHI: Right. I mean, speaking of the, of the believability of that, I guess if you're meant to go with the idea that...[pauses] Sam makes the leap because his is so familiar with his writing, he is able to identify an unsigned note because he knows this guy's writing and his philosophies so well. But if he knows his philosophies so well, how are they so surprised that he would have a stance like this about privacy...

JOSH: Right.

HRISHI: ...if they are able to read between the lines, so much so that he can be like, 'Without his name, I recognize this is his language.' That seemed a little bit strange. But...but a- as a character, he was fine, I mean he's [pauses] didn't [sic] seem particularly like a villain or anything...

JOSH: No, that's exactly what I was about to say, they did not villainize him, which I thought was wonderful.

HRISHI: Right.

JOSH: I think you end up, you end up rooting, or I did, for Mendoza, and you're psyched when they go with him. But, they refrained from villainizing him. He does seem maybe a little unprepared for what the Senate confirmation process is going to be like, but I didn't dislike him personally.

HRISHI: Right. Like, I don't think that this is a, an intrinsic reason to dislike someone, but I would say that he is, and his stance on privacy reflects this, a product of entitlement. There is some great résumé reading done in this episode because they are talking about these two nominees' qualifications, and he has managed to have a life where he, like, has been part of the elite institutions, and risen to up until the Supreme Court, you know, the highest levels of the Judicial Branch, and [pauses] and I think, to some extent, to have a stance like this on privacy, if you are not at all in a position to ever suffer negatively under it.

JOSH: Right. If you're comfortable with the status quo...

HRISHI: Right.

JOSH: ...then you're comfortable with the Constitution [chuckles] as written...

HRISHI: [chuckling] Yeah. If the system works for you...

JOSH: Right!

HRISHI: ...then to you, the system works.

JOSH: And actually, I think interestingly, and subtly, and with an economy of words, it's Donna who first has something to say to Josh:

[West Wing Episode 1.09 excerpt]

DONNA: Peyton Cabot Harrison III.

JOSH: That's right.

DONNA: Jewish fella?

JOSH: You're not going to ruin this moment for me, Donna.

DONNA: I'm SHARING this moment...

JOSH: This is a big day for us.

DONNA: You 'da men.

JOSH: You know what we're finally going to have?

DONNA: A WASP-y old man on the Supreme Court?

JOSH: A smooth confirmation process.

[end excerpt]

JOSH: It's interesting that she's the only one to really put such a fine point on it, but she's got it from the beginning, and she's kind of calling Josh on it. And I also, I feel like I had greater insight again into our ongoing discussion with our listeners about Mandy, and I think one of the reasons we have trouble, most of us, warming up to Mandy is that she's almost always concerned solely with optics.

HRISHI: Right.

JOSH: And again, in this episode, it's more of the same. We have a core group of characters who really deeply care about the issues and about their ideas and the implementation of them, and she's almost always just fighting the appearances battle. She actually, at the very end of the conversation with Josh, enumerates Mendoza's academic credits relative to Harrison's, and really is sort of poo-pooing where he's come from, so of course we walk away from this liking Mandy even less. I mean, she's always going, 'Oh, we have this great Ivy League-educated guy, and we have, we've got Mendoza, who's a product of public education and went to the police academy,' and she, and she really disparages him for, I guess, what she takes to be his humble beginnings.

HRISHI: Right. She, she has to advocate for what I think the staff and we as viewers would like to not have to acknowledge, which is the darker side of politics, which is that optics matter, that the process of governing has a lot to do with this sort of shallower side of public opinion, and she has to articulate and advocate for that side, and, and it's not pretty, and so I think [pauses] whether she actually believes it or not, or she's just

doing a very good job arguing her case, it's easy to dislike what she's saying.

JOSH: Yeah, and I don't mean to naively say the stuff that she brings up is irrelevant, of course optics plays a huge role, and the other characters in the show acknowledge that and often wrestle with it, she just never seems to be wrestling with it. She says straight out, 'Oh, no, he'd make a great justice, he's just a crappy nominee,' and it's just so out there. And maybe... [cross talk]

HRISHI: [cross talk] Yeah...

JOSH: ...that's her job, and maybe I'm being unfair, and her job is, you be the one about how everything plays to the American public...

HRISHI: Right...

JOSH: ...and don't worry about what you think and what you care about, and don't worry about any of the good stuff. Just be the optics person, and so maybe she's just, you know...

HRISHI: And I think that's great, and that's why I'm so excited to talk to Ron Klain about Ruth Bader Ginsburg being a terrific justice, but a terrible nominee.

JOSH: The "Notorious R.B.G.!"

HRISHI: Yeah!

JOSH: We also get a quick moment, I don't want this to pass by, quick moment in this episode, rare, maybe unique moment of Ed without Larry. No offense to Peter James Smith, but Ed without Larry is peanut butter without jelly. Now, that's not a good thing, because peanut butter is decent on its own. Ed without Larry, I found unsettling, [Hrishi laughs] and almost, almost nausea-inducing [Hrishi laughs again], it just doesn't look right. [Sighs] I love Peter, great actor, great guy. It just, [stutters] it's like, down is up, left is right, black is white. Something was, something's wrong when you see Ed without Larry. Life is imbalanced.

HRISHI: A nose without nostrils.

JOSH: A nose without nostrils, thank you Hrishi. [Both laugh]

HRISHI: Yeah, he sticks his head out and says, what? What does he say?

JOSH: Actually, I would, I would like to introduce it as you might, in *Song Exploder*: "And now, Peter James Smith's performance as Ed, in its entirety."

[West Wing Episode 1.09 excerpt]

ED: Who was that?

[end excerpt]

[Both laugh]

HRISHI: It's just the one line.

JOSH: When we get them on the show, we'll have to ask, "What is the story behind this Ed without Larry?" I'm going to guess that William Duffy, that Duffy was working on something else that day. We'll have to see what, what he turned down *The West Wing* for. How about that Leo/President Bartlet scene in which [pauses] they're just like one of the all-time great friendships, "Oh, you love these guys." When Leo comes to Bartlet and says this pill thing's a problem, and this is going to be big, and Bartlet responds by saying:

[West Wing Episode 1.09 excerpt]

LEO: Mr. President...

PRESIDENT BARTLET: Did you have a drink yesterday?

LEO: No, sir.

PRESIDENT BARTLET: Are you going to have one today?

LEO: No, sir.

PRESIDENT BARTLET: That's all you ever have to say to me.

[end excerpt]

JOSH: It's fantastic!

HRISHI: Yeah. I loved it!

JOSH: And a hat tip to them for not playing music under it.

HRISHI: You know, you have Josh having an exchange with Leo about this, and you have the President having an exchange, and the President's version is the support of, like, "This is all you ever need from me," you know, like, there [pauses] his response to it is what you just said. Josh's response to it is to get his fight up. He's like:

[West Wing Episode 1.09 excerpt]

JOSH: You're Leo McGarry. You're not going to be taken down by this small fraction of a man. I won't permit it.

[end excerpt]

HRISHI: He's ready to put on his armor and wade into battle on Leo's behalf.

JOSH: He also pats him and touches him in such a sweet way.

HRISHI: Yeah.

JOSH: It's a great little moment.

HRISHI: We're going to take a quick break to thank our sponsors, and when we come back, we're going to talk to Ron Klain.

[ad break]

HRISHI: Ron Klain has a long and storied history in U.S. politics. He served as Chief of Staff to two Vice Presidents, Joe Biden and Al Gore. Before that, he clerked for Supreme Court Justice Byron White, but, maybe most notably as far as this episode's concerned, he oversaw President Clinton's judicial nominations, including the Supreme Court nomination of Justice Ruth Bader Ginsburg. Ron, thanks so much for talking to us!

RON KLAIN: Thanks for having me!

JOSH: Thank you for dropping by and classing up the joint.

RON: My pleasure.

HRISHI: Did you get a chance to watch the "Short List" episode?

RON: I have! I watched it back in the day, and I watched it again recently.

HRISHI: Did it seem like it was reflective at all of your experience?

RON: Well, there were elements of it that were very reflective of the experience. I mean I think that in some ways it's a bit of a mash-up of what we went through in 1993 and compressed, you know, to fit in a handy, you know 50 minutes of television. But, but basically, you know, 1993 was very similar as President Clinton considered a number of candidates, and Ruth Bader Ginsburg, his ultimate pick, really wasn't, you know, one of the most likely candidates until the very last minute, when he made a change, and starting... started a final process on the final Saturday before he made it, made an announcement on Monday that pivoted the choice to Justice Ginsburg. And so that part of it, that kind of the last-minute pivot to Mendoza is very reminiscent of what we went through in 1993, and where the episode begins with the White House team very excited about picking kind of a sure thing, a really blue-chip candidate, we went through the same thing at the beginning of that search when President Clinton thought he had, kind of, picked Governor Mario Cuomo...

HRISHI: Um-hmm.

RON: ...there was some outreach to the Cuomos. We thought Governor Cuomo was going to be our nominee, and that kind of blew up when Governor Cuomo decided ultimately he didn't want to do it. So there are, there are pieces of the whole thing that they go through in the White House that reflected the process we went through in 1993.

JOSH: On the *West Wing* episode, just as Crouch's retirement seems planned, and there's a lot of time given and a heads-up given to the administration, with Justice White, that was not the case, is that correct?

RON: That's correct. I mean, the timeline worked the opposite way, which was that there had been a bit of a tradition in the past few vacancies prior to 1993 that justices tended to resign on the last day the court met in June, that, kind of, it had become the *de facto*

resignation date. But Justice White decided to do it significantly earlier. He did it right when the court finished agreeing to hear its last case in, basically in February, March, and so it came much earlier, came kind of unexpectedly. I had clerked for Justice White as you mentioned. He called me on a Wednesday and said...[pauses] I had seen him the week before, the week before he had sworn in Attorney General Reno as President Clinton's new Attorney General, he had been the person who swore her in, I had seen him at the swearing in, he called me the following Wednesday and said, "Hey, it was great to see you. Why don't you come by my chambers for breakfast on Friday morning?" And so I showed up two days later in his chambers, there was no breakfast. Instead, he sat me down opposite his desk, he pushed an envelope across the desk to me, and said, "You should go bring that back to the President," and, "It contains my resignation." We had a brief conversation, and then I went scurrying off to the White House, and delivered the letter to President Clinton. So it was unexpected, it was sudden, and as a result, our searching process, you know, took a bit longer than the handful of days that you see reflected in the "Short List" episode.

HRISHI: I was wondering if you could talk to us about the idea that Mandy brings up in the episode, which is that you might have someone who would make for a great justice, but would be a terrible nominee.

RON: Part of what we went through in 1993 was exactly what you see them going through, not just in this particular episode, but in the context where the episode follows in the, in that whole season, which is President Bartlet's had some political problems, the White House is suffering a little bit. And so, you know, at the beginning of that episode, what Josh and Toby are really excited about is, 'We've got something that will be easy. We'll get this done easily, it'll be a quick win.' And in some ways, when President Clinton began to face this in, in March of 1993, you know, we were in kind of the same place. We'd had a rocky start to the Clinton presidency, we'd had a lot of defeats, and, and so, you know, I think early on in that process, there was a view that we should have a, a nominee that would be kind of a, maybe easy to confirm, a nominee that would be a quick win.

HRISHI: There's a memo that you prepared for the administration in July of 1993 specifically about Justice, err, Judge Ginsburg at the time, and the subject of the memo is "performance pitfalls."

RON: We were about ten days before her hearing. She's already the President's nominee, we were busy getting her ready to appear at her hearings, and I had been asked by the White House senior staff, "Well, how's she doing? How's the prep going?" And, to be very honest, I mean, I wrote this memo confidentially. Twenty years came and went, and it came, the memo came out, and it's a little embarrassing, I mean, I- I'm a huge fan of Justice Ginsburg, and came to really love and respect her in the process, love and respect her jurisprudence, but the prep had been kind of up and down, and Justice Ginsburg, to her great credit, very principled person, and didn't want to be handled, and, you know, some of her answers I didn't think were gonna play that, play that well in the confirmation process, and so, I kind of wrote that memo spotlighting a lot of the, the issues and spotlighting a lot of my concerns about how that would play itself out in the confirmation process to kind of give a heads-up to my, my more senior colleagues at the White House about what might well happen in her hearings. In fact, Justice Ginsburg found as sh-, as no surprise, found a way to give very candid and very straight-forward answers, very, very, [sic] answers that reflected her own views in a very

candid way, but in a way that also really connected with the public. And, and I'll never forget her opening statement where she showed some, some crayon drawings that her granddaughter had done, and, you know, really found a way to make her answers both scholarly and human, just very direct and straight-forward as well as also, highly effective with the folks watching it on TV.

HRISHI: How long was the nomination process all-told, from, from the sort-of decision to nominate Governor Cuomo all the way up until the point when Justice Ginsburg was finally actually confirmed?

RON: Well, I believe we, it took about two months from the time that Justice White stepped down till President Clinton finally announced Justice Ginsburg's choice in, in June. It was long, and every day there'd be a story, why can't the President get a nominee, and people may or may not remember, or maybe older folks will remember, that in the Rose Garden, when President Clinton introduced his nominee, and Justice Ginsburg was there and the President spoke, and it was a great day. He took questions, Brit Hume had the first question:

[Excerpt from President Clinton's announcement, June 14, 1993]

BRIT HUME: The withdrawal of the (Lani) Guinier nomination, sir, and your apparent focus on Judge (Stephen) Breyer, and your turn, late it seems, to Judge Ginsburg, may have created an impression, perhaps unfair, of a certain zig-zag quality in the decision-making process here. I wonder, sir, if you could kind of walk us through it, perhaps disabuse us of any notion we might have along those lines. Thank you.

PRESIDENT BILL CLINTON: I have long since given up the thought that I could disabuse some of you turning any substantive decision into anything but political process. How you could ask a question like that after the statement she just made is beyond me. [crowd applauds]

[end excerpt]

RON: In fact, the news coverage of the day of him announcing Justice Ginsburg was not really that much about Justice Ginsburg but about his back-and-forth with, with Brit Hume. I was really, you know, struck by the, one of the final lines in the episode, the "Short List" episode is that President Bartlet says:

[West Wing Episode 1.09 excerpt]

PRESIDENT BARTLET: You were not the first choice, but you are the last one and the right one.

[end excerpt]

RON: ...and that really captured, I think, how President Clinton felt about Justice Ginsburg. She wasn't his first choice. It was a very long process, it was a public process, but she was the right choice, and I know that he was extremely proud to have nominated her to the Supreme Court and proud of the service she's given there.

JOSH: And she was ultimately confirmed by a landslide, no? That it was a big victory.

RON: Yes, I think, I think the final total was 96-3 or something like that, so it was, it was a very strong confirmation, a very [pauses] very, very strong outcome.

HRISHI: Could you tell us about the actual short list? The one that you made?

RON: The decision by Justice White to step down when he stepped down in the spring of 1993, was a surprise to us. We had, though, myself and one other member of the counsel's office, had, more as a parlor game than as preparation, put together a not-so-short list of about 40 names or so of potential candidates. And frankly, our plan was to start with this list and between then and June, when we expected a vacancy on the court, to present that very brief description but long list to the President, get some feedback, and build towards a short list and have a true short list in June. But when Justice White stepped down, we didn't really have a short list, we had a long list, and that's, that's what we gave the President to look at that first day of the search.

HRISHI: You sent us this incredible photo of a meeting that you're in with the President where he's looking at the list, is that right?

RON KLAIN: Yeah, Justice White resigned on a Friday, we had our first meeting with President Clinton on Saturday. It was myself, Vice President Gore, the White House Counsel was actually out of town, Bernie Nessbaum was White House Counsel, he was in Puerto Rico that weekend, so his deputy, Vince Foster, was there, Bruce Lindsay, the head of Presidential Personnel was there, and I was there, and what you see in that photo is us looking at that one-page long list of about 40 names that we presented to the president that day for his review and initial consideration.

JOSH: And we will put it up on our website with your permission.

RON: Absolutely!

JOSH: And what are your thoughts about the current state of affairs, and Senate Republicans' refusal to even consider Merrick Garland?

RON: Well, you know, it's, it's unprecedented ever since the middle part of the 19th Century, and it's wrong. I mean, I think that every member of the Senate has the right to, you know, vote yes or no on justices as they see fit, but to refuse to give someone, particularly someone as well-qualified, as accomplished as Merrick Garland, to refuse to give that person a hearing, to not even let them come before the Senate and make their case, you know, that's just something that's never happened before, and there's really no excuse for it, and I hope they'll change their minds about it, because it's just, it's just not the way it should work.

HRISHI: I was gonna ask you, when watching the show either the first time around or maybe on this most recent re-watch, is there any character that you feel the most kinship with? Who were you most like in the, in your time at the White House?

RON: [chuckles] Well, I think that virtually everyone who worked at the White House thought they were some combination of Sam and Josh...

JOSH: Not Mandy?

RON: No, because, I think, you know, particularly with regard to the Supreme Court nomination, you know, I was very involved in the President's review of these candidates for the court and his assessment of their credentials and qualifications. I was focused on helping him pick the right nominee and not just how we were going to sell that nominee to the American people, so I think, you know, in that episode I'm a little more the Josh and Sam position. You know, I would say that overall, particularly the first season of *The West Wing*, I can't watch it without getting, like a form of PTSD, [Josh and Hrishu chuckle] I mean, I think that it's, it's so reminiscent, so evocative, not in a literal way, not in like, this is exactly, this is a documentary about the first year of the Clinton presidency...

JOSH: Sure.

RON: ...But in a, in a very impressionistic way, it captures all the emotions and the crises and the problems and the challenges we faced in the first year, the balance between politics and principle, between means and ends, between half a loaf and a whole loaf, between getting something done and standing on principle against getting something done. All those things that we hashed out every day, I think, are so incredibly and powerfully portrayed in the series as a whole, but particularly that, the match-up between the first season of *The West Wing* and the first year of the Clinton administration really is very, very powerful and very emotional for me.

HRISHI: Thank you so much for talking to us about all of this.

RON: Of course! Happy to!

HRISHI: [to listeners] And thanks to you for listening to this episode.

JOSH: We're happy to say that on our next episode, we will be joined by a very special guest.

[audio insert]

RICHARD SCHIFF: I'm Richard Schiff. I play, or I used to play, Toby Ziegler on The West Wing.

[end audio insert]

HRISHI: Until then, if you'd like to discuss this episode, we'd love to hear from you. You can leave a comment on our website, thewestwingweekly.com, or on our Facebook page, facebook.com/thewestwingweekly. You can also hit us up on Twitter. I'm @HrishuHirway, Josh is @JoshMalina, and Ronald Klain is @RonaldKlain.

JOSH: Ok.

HRISHI: Ok.

RON: What's next?

[Outro Music]