

The West Wing Weekly
5.16: "Eppur Si Muove"
Guest: Dr. Muller Fabbri and Jason Zengerle

[Intro Music]

JOSH: Welcome back to the West Wing Weekly. I'm Joshua Malina.

HRISHI: And I'm Hrishikesh Hirway. Today, we're talking about Eppur Si Muove.

JOSH: Nice.

HRISHI: I think. That's Episode 16 of Season 5.

JOSH: It was written by Alexa Junge, directed by Llewellyn Wells, John's brother, and it first aired on March 3, 2004. I got another, another year before this gets hairy again.

HRISHI: You don't have to say February, but I have to say Eppur Si Muove.

JOSH: That's right, but you did it with great élan.

HRISHI: Hmm. We'll see, when we get our angry comments.

JOSH: I mean, nothing like how Martin said it, but I'm giving you the win on that.

HRISHI: Let's hear how the president said it:

[West Wing Episode 5.16 excerpt]

PRESIDENT BARTLET: Ay-poor si me-oh-vay.

[end excerpt]

HRISHI: OK.

JOSH: President mispronunciation.

[laughter]

HRISHI: Here's the synopsis from NBC: [reading] *The president explodes when a rival conservative congresswoman seeks to torpedo funding for a controversial medical study by the NIH by exposing the fact that Bartlet's daughter Ellie is working there as a scientist.*

Errr, that's not right.

JOSH: I don't think so.

HRISHI: But, continued: [reading] *Meanwhile, as Toby searches for the internal White House leak that led to Ellie's press scrutiny, Josh works to convince an old college friend to stay the course for his blocked confirmation as a judge on the 6th circuit federal court. Elsewhere, the First Lady agrees to appear on an episode of Sesame Street with Elmo and Big Bird, despite some political concerns from C.J.*

Again, that's not quite right. It was C.J.'s idea!

JOSH: That's true. Yeah. They're watching this show less closely than I, and that, I find disturbing.

HRISHI: [laughter] Let me switch over to the Warner Brothers' synopsis, just for comparison.

JOSH: Sure.

HRISHI: Here it is, just no respect for the office: [reading] *Bartlet becomes furious when a rival conservative congresswoman tries to end funding for a controversial NIH medical study by exposing the fact that Bartlet's daughter Ellie is working at the institute as a scientist.*

Again, that's not right.

JOSH: Not quite it.

HRISHI: [reading] *As Toby searches for the internal White House leak.. [stops reading] blah, blahdiddy, blah, Josh, friend, contention, 6th circuit court, confirmation blocked. (continues reading) Meanwhile, C.J. urges Abbey to increase her public profile as the First Lady and a working doctor.*

JOSH: Correct. Maybe it's time to return to the rhytnopsis.

HRISHI: Yeah, I guess I might have to write these.

JOSH: These are not quite doing it for me.

HRISHI: [reading] *Part of C.J.'s plan includes educating children about medicine via a public service announcement with Abbey and characters from the children's show Sesame Street: Big Bird, Elmo, Rosita, and Zoe.*

JOSH: Zoe?! Oh. Not Zoey Bartlet.

HRISHI: No, Zoe without a y. What did you think of this episode, Josh?

JOSH: Well...

HRISHI: It's a great Will episode, I think.

JOSH: I'm willing to be convinced that it is. I'm not sure that I understood my storyline.

HRISHI: It's funny, this part of it didn't really get a mention in the synopsis.

JOSH: There's no mention of Will in any of these synopses, I noticed.

HRISHI: So, one first point of order the synopses said that Ellie worked as a researcher at the NIH. She did not. She works at Johns Hopkins, that's where she's doing her post-doc.

JOSH: Right.

HRISHI: Right?

JOSH: Ergo, propter doc.

[Hrishi laughs]

JOSH: Have we ever gone this far off the tracks this early.

HRISHI: *[laughter]* I'm sure but... *[laughter]* Damn you. Yeah. Ok. She's a postdoctoral fellow at Johns Hopkins, where she's studying HPV, and that is where the episode begins. In the lab of Dr. Lewis Foy, when he receives this phone call, this very strange phone call that seems to be political in nature, and then he sends an assistant to go get someone off-screen and it turns out to be Ellie.

JOSH: Yes, and I think a missed opportunity for that to be the bombshell. There's a strange little almost coda to the cold open in which Toby and C.J. kind of recap what we just saw, strangely unnecessary and then it just fizzles out with a bomb-splat leading into the opening theme. Missed opportunity. I felt like the...I didn't really get it. I don't know what the Toby/C.J. scene added that we didn't have with the tension of the actual moment in this scene just previous.

HRISHI: Just revealing that it's Ellie.

JOSH: Right?

HRISHI: Yeah, I'm sorry, I'm still...at least 50% of my brain is still occupied with post-doc, ergo propter doc. Ah. I can't believe I didn't see that one coming.

JOSH: Really?

HRISHI: Yeah. So then we get to C.J. and Toby's office and what is the actual line that we get? It's Toby saying:

[West Wing Episode 5.16 excerpt]

TOBY: Somebody's out for blood and they're targeting Ellie Bartlet.

[end excerpt]

HRISHI: Which, yeah, maybe we would have gotten there ourselves just by hearing the phone call.

JOSH: First of all, I guess I risk repeating myself ad nauseum, but that's essentially what we've surmised from the previous scene. And if we didn't quite wrap our minds around it, so much the better.

HRISHI: And we'll get there soon enough.

JOSH: Right. Exactly. That's the *West Wing* way, normally.

HRISHI: And so, we really get the heart of what this episode is going to be about. The 'A' story drops in our laps right away. Is this a matter of nepotism seems to be the real question. The idea of studying HPV in sex workers in Puerto Rico, which is the real substance of the study that Ellie's lab is working on is kind of a smoke screen. Really, it's about there was money, it was directed in this place where Ellie happens to work.

JOSH: Right. While I will admit that while I was interested, and I like this storyline, I'm a little bit confused by various elements of this storyline. Which is not necessarily a bad thing-it may just be a reflection on me. Scrutinizing where the money goes makes sense, you know, there's nothing on the surface wrong with that. I think we should know where our taxpayer

money is going and where research money is going. First my question is, are NIH grants confidential?

HRISHI: No, I think the very fact that they're paid for with taxpayer money means they can't be. If you go to the NIH website, nih.gov, you can look under--they have a tab that just says "Funding," and you can look up the NIH awards by location and organization.

JOSH: But isn't the central nugget of this storyline how the information got out?

HRISHI: No, I think the thing that got out was that Ellie Bartlet works at this lab. That part was private. Her name isn't on the lab, you know, there's no reason why someone would know that this is a place that might be vulnerable politically until they find out that, oh, the president's daughter is working here.

JOSH: Right, no, I get that, and this is going to be interesting for the president because President Bartlet, before he does a complete 180, which we'll talk about later, we know is absolutely furious that his daughter would be dragged into politics for any reason, given that she's just a doctor doing research work. No, I get that that part is confidential, but they keep talking about the list, the list, and that Will Bailey ultimately leaked the list. Where did they get the list? Well, they found it from this guy, that guy. I don't get the whole megillah about the list. And then, you know, Will Bailey refers to it as a potential career killer. Is it just the element of Ellie's involvement in this particular study?

HRISHI: Here's what I think it is. It's not just a list of projects that are funded by the NIH. Barbara Layton says:

[West Wing Episode 5.16 excerpt]

TOBY: Get C.J.

BARBARA LAYTON: I have a list of 255 projects supported by the Bartlet administration.

CAROL: C.J...it's Toby

[end excerpt]

HRISHI: There was something about earmarks...

JOSH: Right. Two billion earmarked for HIV/AIDS research.

HRISHI: Right. And the president says, this whole thing started because I did that, because I earmarked two billion dollars of the federal research budget, and by doing so, he has politicized things. And from that two billion dollars, that's what that 255 different research projects have come out of.

JOSH: And they wanted to keep them secret? This is what I just don't get. It's the central sort of element of the episode, and often we will start these podcasts, I will have an extremely stupid question and you will answer it for me and we'll go, hey should we start again?

[laughter]

So I'm waiting for you to explain to me. And to further compound my confusion, in the Layton scene, there's still...he's about the list and where'd she get it, and you got it from Mack McCall's organization, no I didn't.

HRISHI: Cherry Jones, by the way, who plays Barbara Layton, this is not her only political role. She would go on to play the president in *24*.

JOSH: Mm-hmm.

HRISHI: The first female president in that series, and although the character is a Republican in *24*, she is based on Hillary Clinton. My favorite role, though, of hers is when she played Matt Damon's mom in *Ocean's Twelve*.

JOSH: Ah, I wasn't even aware of that!

HRISHI: She's great in that one.

JOSH: I saw her on stage in the John Patrick Shanley play, *Doubt*, in which she was quite wonderful. An amazing performance.

HRISHI: Was that turned into a movie?

JOSH: Indeed it was and there was some to-do among theater fans that Meryl Streep got that role. Not that she's any theater slouch herself, but that Cherry Jones had made such an impression playing that role for a long time, a lot of people thought she should be in the movie.

HRISHI: Are there songs in it?

JOSH: There are no songs. You might like it.

HRISHI: Hm. Ok. So...

JOSH: No doubt.

HRISHI: In some ways, it's a musical by *No Doubt*.

JOSH: I beat you to it! I wasn't sure how to get there, [laughter] but I knew it was coming. I said it.

HRISHI: [laughter] [sings] What's this movie about? It's all about doubt!

JOSH: [laughter]

HRISHI: Alright. [sings] Just stay tuned and you'll find out.

JOSH: Yeah, you're good. [laughter] Shame you don't like musicals.

HRISHI: Look out, Lin.

JOSH: And she also says in that scene, I'm on the authorizing committee for that money. How does that work? If she's on the authorizing committee for that money, why would there be any surprise that she knows where that money went? She's on the authorizing committee, and if she has problems with it, why'd you authorize it? The whole thing left me shaking my head like, I'm really not...I always want the show to be...it's 9 steps ahead of me and I cannot figure it out.

HRISHI: I don't have the good answer for any of this stuff. I feel like this is bad research on my part that I don't actually know.

JOSH: But I think it--there may be just like there's a bug in this episode. I feel like maybe there's something huge that we're missing.

HRISHI: Let me tell you a little something about the NIH grant.

JOSH: Please do.

HRISHI: The NIH is responsible for shelling out \$30 billion in research money. The money ultimately comes from Congress, but there's an extensive process to get those grants. I wanted to find out more, so I spoke to Dr. Muller Fabbri. He's a pediatric cancer researcher, looking specifically into neuroblastoma, which is the 3rd most common form of cancer in children. He's been awarded \$1.9 million in NIH funding to do his work and so I asked him about that process.

Thanks so much for joining us, Dr. Fabbri. Will you introduce yourself and tell us more about the work you're doing?

DR. FABBRI: Yes, I'm Muller Fabbri, M.D., Ph.D. I am associate professor at the cancer biology program of the University of Hawaii Cancer Center in Honolulu, Hawaii. Last year, I was awarded two big NIH grants, technically they are called R1s, those are the grants that are used essentially to support basic science and translation of science. So the main research type of grant mechanism that the NIH has for scientists. So what I work on is cancer, of course, but from the perspective of tumor microenvironments. So, without going too much into details, but my research focuses a little bit outside of the enemy, which is the cancer cell itself, but looks also at what happens in the immediate surroundings of the cancer cells, so those that are supposed to be normal cells. And it turns out that they're not so normal, and they tend to, basically respond and become something different upon the education that the cancer cells themselves do to these surrounding cells.

HRISHI: And what was the process like for you in terms of applying for the NIH grant?

FABBRI: It is a long and thoughtful process. It requires the generation of a lot of preliminary data before it is even considered. And so once you have an idea and you have strong preliminary data that supports this idea, then you become competitive to apply for an NIH grant. Really what everybody is after is actually these R1 mechanism, which is the main support for us scientists and requires tons of preliminary data to convince the review panel that this grant is worth it to be supported.

HRISHI: And what's the review panel like for your specific research--were you trying to convince people who understood what you were talking about, or were they laypeople?

FABBRI: No, so the grant is evaluated by what's called a study section which is composed by top-tier scientists. So they are all scientists, and there are different types of expertise, but usually your grant is assigned to three or more of these members of the study section who are really expert in the field. And so basically, your grant is evaluated by top-tier peer reviewers. That is at least the spirit.

HRISHI: How long did the process take to go from your initial application until you were awarded the money?

FABBRI: It depends. So what happens is that the NIH for these types of grants has well-established yearly deadlines, there are usually 3 a year. So you have to apply within the

deadline, at this point let's say one of the deadlines, for instance, is usually February 5th, so if you submit by that deadline, then your grant is reviewed in a study section when the study section meets in June. So already we have a little gap of months here. Then you get your feedback quite fast after the study section met. Basically, it's very difficult to get the grant funded and supported the first time, so the first attempt.

HRISHI: Huh.

FABBRI: So what happens is you receive the feedback from the scientists, and then you have one chance to re-submit again, so in one of the other cycles. And then at this point it depends on you, it depends on what they asked to do, so which type of experiments they want, which type of additional preliminary data they require. So it might take a lot of time to be able to resubmit or it might be a little bit of, you know, not so involving resubmission so you can just go at the next cycle. But generally speaking, so best case scenario, if everything goes smooth, within one year from the original submission you might be able to actually be supported. Assuming that the first time you hardly ever get it, so you have a second chance. Now, if you don't get it the second chance, which is what happens also very frequently because these are very competitive grants, then you have to start anew. So it's a pretty heavy involving process, which sometimes can last a lot of years really. You know, I have friends, and myself actually, when I got my first one supported it took about 3 years from the very original submission to the funding moment. And I have friends who have been even less lucky than I have been, so they are like in the 8th submission and they're still struggling.

HRISHI: It's interesting that you said lucky. Does it feel like a matter of luck in terms of getting the grant, or does it really feel like the strongest research does get awarded?

FABBRI: No, I would say that you need a little bit of both components, of course, because like in everything in life, also in this case, when you submit a grant you hope that the panel is composed of reviewers that are interested and involved in your type of research. This is not always the case, but it's inevitable so in that sense I said lucky. I mean, I cannot think of a perfect system, really I couldn't suggest to you. But I would say that most of the time, if the study section is functional, so that means there is a good chairperson, there is a very good scientific review officer, which is the NIH appointed official that actually assigns the grants to the scientists of the panel, then you might actually have feedback that is very constructive and actually help you improve your proposal or perhaps direct it to directions that you didn't think about and the other scientists give you an orientation towards, so it can be actually quite constructive as a process. At the same time, it can also be very destructive. In a situation in which there is a lot of competition for funding, you might have some people in the panel that have their little agenda sometimes and they simply don't believe in the type of science that is proposed and so then they tend to direct the general sense and the general opinion of the study section towards not funding that project.

HRISHI: Outside of the scientists on the study section, either before, during, or after you've gotten the money, did you ever have any dealings with elected officials? With politicians who might have some oversight over the NIH budget or anything like that?

FABBRI: Not at all. Not in my case. I don't know if others do that, that was not my experience. So the type of interaction that you have, which is part of the system and the mechanism, is with your program official, which is the highest figure in that type of study section, that is the one which really coordinates with you--discusses with you, really--the type of science that you have in mind and you wanted to submit, so the program official is the person who might have a look at your specific page before you even submit the study to the study section. They cannot tell you, of course, it's a great project, it will be funded or not, because this is not what they have to do, they just direct you to one study section or another

and then it's entirely up to the study section to evaluate and assess the scientific merit of the application.

HRISHI: So there's a luck factor in that as well.

FABBRI: There is a luck factor in the sense that not all the program officers are as available as others, so you have to be lucky to be assigned to one of them that is really willing to help you. And then you have the different possible outcomes of the study sections, so in some cases, unfortunately the majority, your grant does not get discussed. So before the study section meets and they provide and they give a preliminary score to the grant, and then when the study section actually meets, they rank all of the preliminary scores and, by law of the NIH, they have to discuss the top 50%, so the top half. I mean, they can discuss all of them, but this is not always possible, and it's actually pointless because there is so little money available that those that are in the second half, in the lower half, of course, they have no chance, essentially to be funded, so they're not even discussed. And this is concerning because of course, a lot of projects cannot be funded and a lot of labs have to close because of that.

HRISHI: Because there is such a diverse set of projects that are being submitted, and studying such a vast range of diseases, do you ever feel like diseases are kind of pitted against each other, in a way, for a finite amount of money?

FABBRI: No. Because the system is set in a nice way in this sense so the NIH has different institutes as you know and so the first thing that happens when you submit an application, the NIH assigns it to an institute which is the one that is usually related to the type of disease. Now, of course, with international cancer institutes, the cancer I'm working on, we compete, in terms of funds, with another type of cancer that is for sure.

HRISHI: Right

FABBRI: Yeah, but I have to say that these are not ... I mean, I don't have a sense that this is a problem. In the sense that if the science is solid in the preliminary data and the hypothesis is really supported by strong preliminary evidence, chances are that your project will be funded, even if it is in a rare type of cancer.

HRISHI: Right. But that is one thing that the episode mentions and maybe does not really get right.

[West Wing Episode 3.12 excerpt]

BARBARA LAYTON: Every dollar you spend on studies of Puerto Rican sex workers is one that you take away from cancer centers and clinical tests.

TOBY: You don't know that.

[end excerpt]

HRISHI: But that the way the NIH divvies up the funds between the different parts of the NIH means that that doesn't actually happen.

FABBRI: No, it doesn't happen because of what I said before but of course, the point here is subtle because it all depends on how much money is given by the government to the NIH. Then, the NIH distributes within institutes, and I guess this distribution, I don't know how it happens, but I assume it's based on the volume of the grant applications they receive.

HRISHI: Right

FABBRI: But the point is that, of course, if you increase the support to the NIH in general then there will be less of this competition in a sense. In the sense, that more people that study tropical diseases will have more of their grants funded so there will be a lower number of grants studying tropical diseases or cancer that are not be discussed. But it's not because a cancer scientist will compete with a heart and lung disease, it is because there is more or less money overall, which is the main problem why research is so competitive and it's so difficult to get these grants.

HRISHI: Right and now the NIH budget has been cut down from \$30 billion to 26.

FABBRI: Yeah, this is a problem. This is a problem for 2 reasons. So, the first one is that, of course, there is less money and the second is that this country, which in my opinion is still the best one where you can do research is in danger. I mean that the danger is that it loses that prime, that first position, let's say, in terms of research in the world because there are other countries that are emerging, especially Southeast Asia, some parts of Europe even, that are very competitive and they do excellent research and if this country, doesn't believe in science and in research so much and keeps cutting the funding, you will insist that a lot of scientists close their labs here and simply move somewhere else, in another country. I mean, I understand the concerns that a lot of the American people have and have expressed, especially in the past, for instance, in cancer research, a lot of them say "well, we've been funding cancer research for so many years, where is the cure for cancer?".

HRISHI: Right.

FABBRI: But what they fail to understand because they're not properly educated I think even by the media is just because nature always surprises you and cancer is a very smart disease. So we have a hypothesis that seems very logical and makes total sense and then you go and test it and you find that the results are not what you expect. But now you have to understand why the answer you got is different from the one you expected. And that is what the real work of the researcher is. That is where the beauty and the challenge and a lot of the frustration of this work comes because you have to follow what the results are. You know, I'm Italian. Galileo Galilei said that the experimental method is an interrogation of the book of nature. And this is exactly what scientists have to do. So there is a book there, the book of nature that has its rule, and every time that we make an experiment, we interrogate this book, we try to read some of the pages and we expect that there is something written in this book and most of the time we find out that there is something else written. So then we have to have the support of funding to be able to put the right on the right pair of spectacles to be able to read what's written in there. If you cut the funding because you say, "oh, you did not read it yet", we don't go anywhere, we simply keep not reading the book properly. That's the problem.

HRISHI: Hmph. And you invoked Galileo which is pretty incredible because I have not told you that the name of this episode is Eppur Si Muove...

FABBRI: Eppur Si Muove, of course

HRISHI: And they talk about Galileo in the episode itself.

FABBRI: Yeah, yeah, it makes sense.

HRISHI: I wanted to just go back to one thing that you had said earlier which is that you need a lot of preliminary data before you can even apply to the NIH and sometimes even that's not enough and you have to do more before you can have them award your studies

and I wanted to mention how I'm familiar with your work to begin with, which is through the Pablove Foundation. Could you tell us about how you came to work with Pablove Foundation before you got to the NIH?

FABBRI: Thank you so much for this question because I was going there. So, as you pointed out properly, since you need strong preliminary data to even apply for an NIH grant, the question becomes where do you get the money to ask for the money? So we have to start somewhere and fortunately there are out there foundations, private foundations such as Pablove Foundation, that take the risk that the NIH doesn't want to take. So they say, "*know what? We have some money that we raised in different ways*" and Pablove has wonderful ways of raising money for their cause and they say, "*well, we want to set up a system to assess applications that are more high risk, high reward kind of idea that have some preliminary data but not as extensively as an NIH application and if we believe in that project, then we support it in order to allow them to generate the data that allows them to apply for an NIH grant.*" So, the Pablove Foundation, to answer your question, is a wonderful foundation. So I just saw online that they had a call for applications and it was a project that, I mean I had to write the project and then they would assess with their own system of scientist reviewers that evaluated the different applications that they received. And they decided to fund my research. And this was incredibly important to me for 2 reasons. The first one is because it was the support I ever got for my research, and you know when you start your own lab the first thing you are worried about is to be able to convince other scientists that your work is worthy. That it's cool research. That it's cool stuff so to speak.

HRISHI: [laughter]

FABBRI: And, you know, and while the clock is ticking, because you have X amount of time to get NIH funding and you know you don't have enough preliminary data to even apply for an NIH grant, you try to apply to these foundations and once you receive an acceptance from them, I can guarantee it is one of the best days of your life. Because it tells you, "*Wow, I'm doing something really others, besides myself, think is worth to be funded.*" And that is when I met the Pablove Foundation and Joanne and Jeff are two wonderful persons and they did amazing work in setting up the foundation and the system to support the scientists like me at the beginning, at the early stage of their career. And, actually after that too because they granted me what they call an Accelerator Award which is the next phase in their grant support system which is something I am still benefiting from because it's still supporting part of my research to generate the data for another one that I hope I'll be able to get pretty soon.

HRISHI: Amazing. People can find out more about the Pablove Foundation at Pablove.org. Dr. Fabbri where can people read out more about what you're doing?

FABBRI: They can read on my page at the University of Hawaii or I think it's still up on my previous page at Children's Hospital of Los Angeles so if they just Google my name, Muller Fabbri, and they go to CHLA which is Children's Hospital of Los Angeles and now they go also to UHCC which is University of Hawaii Cancer Center. They have a sense of my trajectory. So what I have done before and what I'm planning to do now in this wonderful place.

HRISHI: Great. And we'll put some links up on our website as well. Dr. Fabbri, thank you so much for speaking to me.

FABBRI: Thank you for this opportunity. Because really, this is a fight that we fight together. You know, cancer is a very smart enemy. Humans suffer from several type of diseases. Research is the best and most powerful weapon we still have to understand things and to cure more and more people. But in this battle we are not alone. We are good from the

technical perspective but we need the support and the support comes from taxpayers and come from donors that give some of their money for the benefit of humanity.

HIRSHI: Thank you so much. It was really such a pleasure.

FABBRI: Likewise. Thank you.

HIRSHI: Thank you so much to Dr. Fabbri. Ok, back to the episode. I want to go to the moment when Toby and Will finally have their confrontation. Toby says:

[West Wing Episode 5.16 excerpt]

TOBY: Did you or did you not wilfully target the President's daughter?

[end excerpt]

HRISHI: Putting the pieces back together, we discover that where this all started is with opposition research, really, self-opposition research, that Will did about Vice President Russell for his upcoming potential campaign for President.

JOSH: Yes.

HRISHI: And in doing so, it was meant for his eyes only but he was looking at ways that they might be targeted by their opponents and in doing that he came up with this where the money is going, what kind of healthcare causes the Bartlet administration has supported and could the Vice President get hurt by that. Somewhere in there, I guess, there was some note or something that said that this lab, Dr. Lewis Foy's lab, is where Ellie Bartlet was doing her post-doc. And then that whole thing got to Vice President Russell and that got to the Vice President's wife and then that got to Barbara Layton. And then in the telephone game of all of that the headline really became, "*It's all about Ellie,*" and look all this money is going to fund, is basically going into the pockets to secretly enrich Ellie Bartlet and her colleagues.

JOSH: Yeah. I guess I get the Ellie of it all. It's almost in a sense as if Will Bailey has doxed her and put out this--

HRISHI: "post-doxed" her.

JOSH: [laughter] "ergo propter doxed" her. I do get that element and that's a slip up. I don't know if it's an enormous secret of state but I would get that President Bartlet wouldn't want a light shined on the fact that his daughter works in a lab doing research that receives money from the Federal Government. But there's a lot of discussion in this episode about shining a light on NIH grantees altogether, and whether politicians should be doing that. "*Let the scientists do their thing*" seems to be what President Bartlet and his team wants to say. And then there's this scene between Layton and Toby and I think she kind of shrugs off pretty quickly the Ellie of it all. She doesn't seem that interested in it--

[West Wing Episode 5.16 excerpt]

LAYTON: I don't have a problem with homosexuals or injection drug users--

[end excerpt]

JOSH: She comes across as very reasonable to me. What she seems to be saying in that scene is, "*we just have to look where the money goes.*" And it's a zero sum game. Whether it's the \$32 billion or it's \$26 billion. It's a finite amount and a dollar that goes to HPV is a

dollar that can't go to Alzheimer's. Everything she says is absolutely true. And then, although he pushes her on the whole question of where she got the list, she also says, "*I'm on the authorizing committee for that money.*" So that completely twirled my mind. So I don't know why she's out on the floor...

HRISHI: As if it's new information to her.

JOSH: Right. Exactly. Look what I turned up. It turns out I authorized the following things and I strongly object to them. So I found that confusing.

HRISHI: There's something that I think we're missing between the Congressional committee that approves the money...

JOSH: Right. And then what ultimately happens.

HRISHI: And the president's earmarking.

JOSH: Earmarking of \$2 billion.

HRISHI: Yeah. Somehow, you know, because there's \$30 billion being appropriated through Congress and then the president is somehow earmarking some portion of that for this kind of funding and then that funding specifically is going to these 255 labs of which Ellie works at one.

JOSH: I feel like need to have a brief conversation with somebody smarter than we are.

HRISHI: [laughter]

JOSH: I'm just gonna walk out on the street and stop the first person I see.

[laughter]

HRISHI: You said that everything that Barbara Layton says is correct but I would say there is one thing that Toby pushes back on that I think he is correct about. She says, "*every dollar you spend on Puerto Rican sex workers is one that you take away from cancer centers and clinical tests.*" And Toby says, "*you don't know that. You don't know where undirected research will lead.*" And Josh later makes the point that so many scientific discoveries were basically made by accident. While trying to do research for one thing, some other discovery comes up and the application of that discovery leads somewhere else.

JOSH: I love that moment especially because you can just see in Brad's eyes the importance of Rogaine to the character.

HRISHI: [laughter]

JOSH: No. If I said everything that Layton said is correct, that's not what I meant. I just meant...I think she makes some very good points. I also do...like the idea...I think there is some truth to trusting scientists and the average lay person's inability to predict, and the scientist's maybe, inability to predict exactly where research is going to go. I just think she makes a very good point. She's kind of built up, at least in my mind watching, to be probably somebody who's a real socially right-wing conservative...

HRISHI: Yes

JOSH: ...crazy person who's going to come in and harangue against the fact that it's research on sex workers. But she immediately cuts the legs out of that argument...

HRISHI: Right.

JOSH: ...and she proves herself to be fairly logical. And they have a substantive conversation that I wasn't anticipating which I liked...

HISHI: Yeah.

JOSH: ...and it made it I thought a great scene.

HRISHI: I think that that switcheroo was really well done. This feels like an echo of the pilot episode with Barbara Layton standing in for Mary Marsh...

JOSH: Mary Marsh, yeah.

HRISHI: ...and the Traditional Values Alliance standing in for the Lambs of God, the extremist Christian group that was mentioned in that episode. It kind of sets you up being like, oh "*here we go again*," Toby has the moral high ground and we're ready for the idea that he's going to come in and kind of like blast her the way that the president did at the end of that first episode but then he doesn't. The Traditional Values Alliance by the way, the organization that Toby suspects has given Barbara Layton the list is surely a stand-in for the real-life Traditional Values Coalition a, I guess you might say, Christian group, but it's actually designated as a hate group by the Southern Poverty Law Center.

JOSH: Is that true?

HIRSHI: Yes.

JOSH: Woo.

HRISHI: Here's a great little tidbit that Nick Song, our research assistant, our Rina, dug up. "TheLordHatesHomos.org" which gets name-checked by Toby in this as a website that the TVA owns is an actual domain on the internet. And if you go there it redirects you to Warner Brothers.

JOSH: Is that true?

HIRSHI: It does.

JOSH: Well that's really weird.

HRISHI: "TheLordHatesHomos.org" It says, "This website is currently not available. Please check us out at these other Warner Brothers websites."

JOSH: That's really odd.

HRISHI: So I'm guessing they registered it when they were making it--oh here, in fact--

JOSH: You're sure that's not, "The Lord hates Shamas"? That's how I read it.

HRISHI: [laughter]

JOSH: I don't know what Shamas is, but...

HRISHI: This is good work. He says, "The domain was registered on February 3, 2004, two months before this episode aired." Which means that...

JOSH: Huh.

HRISHI: For the last 14 years, Warner Brothers has been paying for a domain, "thelordhateshomos.org"

JOSH: Wow. wow.

HRISHI: Yeah. Someone at Warner Brothers might want to delete that line item.

JOSH: Perhaps, maybe, yeah. Or I'll leak it.

[laughter]

HRISHI: And of course by the time we finish the episode we discover that he's wrong. Layton didn't get the list from that group. And then you see how wonderfully Cherry Jones plays that part, you know, when she's genuinely surprised by the suggestion that that's where it came from. And so her denials are very real. And, you know, the idea that she says, "oh, this guy from the Traditional Values Alliance, he'll just say whatever." She's telling the truth. Because she actually got it from the Vice President's wife. From Mrs. Russell.

JOSH: Mm-Hmm.

HRISHI: We haven't really heard about the Vice President's wife at all before this episode but before this scene, she does get name-checked earlier in this episode in kind of a more benign way that just kind of passes a little bit quickly.

[West Wing Episode 5.16 excerpt]

C.J.: I want you on the Surgery Channel, in women's health magazine, the Today show. Mrs. Russell's approval ratings bumped considerably when she did her cooking segment. Her chilli was so good they're having her back for Christmas.

[end excerpt]

HRISHI: And for a second, I thought, wait who's Mrs. Russell? Like, the words hadn't been mentioned before. And so I had to stop and think who she was referring to.

JOSH: Yeah I don't think I even processed that.

HRISHI: Yeah. It goes by quickly because really at that moment it's about Abbey but there's actually a lot of detail in that little snippet. For one, it's evidence that the Vice President's wife is out there doing media appearances. And there's enough of an awareness of her in the public's eye that there's actual polling data on her popularity. It's this little nod that she is part of the machine of the presidential election to come. And so it actually serves as a little bit of foreshadowing for later, the final reveal, what kind of effect she can have on the actions of the White House.

JOSH: Ah. Very good. Good ear. You're absolutely right. Because we sort of lose track, we only tangentially get an occasional mention of the race.

HRISHI: Right. But that is what's behind all of this. But yeah, I love that this off-screen character who we've never heard before is really the person who kind of tips the dominoes. Sure Will's the one who put together the list but it's really the Vice President's wife, who we've yet to meet, who's the prime mover on all this. The prime "muovver" on this.

JOSH: [laughter] Very good.

HRISHI: OK let's talk about the other main part of the episode which you alluded to which is the storyline that Josh is involved in where he's trying to convince his friend Hayden to stay on as a judicial nominee whose nomination is currently blocked.

JOSH: Yes. And, of course, Eric Hayden played by Michael Gaston. Or Gaston. Or Gaston if you're a Disney fan. But I thought he is another of those, he's obviously a very good actor, he's done quite a lot, and I don't know why, I loved him in this episode. He just made a strong impression on me in the role.

HRISHI: Who does congress think they are? No one says no to Gaston!

[laughter]

JOSH: You love musicals! Just admit it! Every [expletive] reference is a musical!

[Music from Beauty and the Beast song "Gaston"]

HRISHI: No one's slick as Gaston, no one's quick as Gaston, no one's suited to be on the court like Gaston.

[end music]

HRISHI: There you go.

JOSH: But he was also in *Madam Secretary*, he's currently in *The Man in the High Castle*. He's a rather accomplished actor and I really like him in this role.

HRISHI: I had a suspicion. Ok. The decision that Hayden is trying to make is whether or not he stays with this fight waiting to see if he can get appointed to the 6th circuit or if he takes this job that he's been offered to be Dean of the Georgetown Law School. Which is not a bad title. And Josh wants him to hold on. We find out that there are ton of judicial nominations that have been held up at this point. A lot of vacancies.

JOSH: I like that Alexa Junge has Hayden mention that he has a wife and kids and a mortgage. I always think of these people who are up for these potential circuit court judgeships or the Supreme Court as so prominent and probably fine financially. You kind of forget that, you know, while this confirmation process is being held up that this guy has a life to lead and money he needs to earn and these people aren't necessarily well-to-do.

HRISHI: Right.

JOSH: They're in a bind as they sit there for months and months.

HRISHI: Yeah. And the prestige of the job, even the history-making aspect of the job is only one element to consider. The other is feeding your family.

JOSH: Right.

HRISHI: I had a suspicion that maybe Hayden was based on Elena Kagan?

JOSH: Mmm? Why's that?

HRISHI: So Elena Kagan was a law scholar. She was at Chicago. And then she worked in the White House alongside, you know, several of the people who advised on this show. And then in 1999 she was nominated to serve as a judge on the DC Circuit Court of Appeals which is one of the big ones. But her nomination is one of the ones that the Senate judiciary committee decided not to bring forward for a hearing in the Clinton Administration so it expired when Congress adjourned in Fall of 2000 which is one of the aspects here. Hayden might only get to serve for nine months.

JOSH: As a recess appointee.

HRISHI: As a recess appointee yeah. What's so cool is I had that feeling that maybe that might be the case. I know that Eli Attie and Ronald Klain, you know, they're friends with Elena Kagan. And then Elena Kagan went on to become the Dean of Harvard Law School.

JOSH: Ah.

HRISHI: After her term expired. So I asked Eli and he said, "*yeah, for sure it was.*"

JOSH: Huh. Interesting.

HRISHI: He said, "*as I recall, her nomination had stalled. And she got sick of waiting and took a job at Harvard Law School.*" But she'd been a colleague of his at the White House and she's actually chimed in on legal storylines for *The West Wing* here and there, she's advised a little.

JOSH: That's interesting, how about that?

HRISHI: Yeah. One of my favorite moments is when Donna and Josh are speaking and she says, "What about getting judges on the Supreme Court?" And he says, "See this is the problem? It's all about the Supreme Court. Nine guys getting all the ink." And then Donna says, actually, correctly, "It's seven guys and two highly qualified female jurists." But Josh says...

[West Wing Episode 5.16 excerpt]

JOSH: Supreme Court sees 80 cases a year. These guys see close to 20,000. Circuit courts make 99% of judge made law.

[end excerpt]

HRISHI: And that detail does feel incredibly relevant to today. Joining us now is Jason Zengerle. He wrote a piece, "How the Trump Administration is remaking the courts." for *The New York Times Magazine*. Jason thanks so much for joining us.

JASON: Thanks for having me on, I appreciate it.

HRISHI: What did you think of the 6th Circuit plotline in this episode?

JASON: It made me look at the calendar and realize how old this story is. I think the episode would have been in the early noughts and the discussion of the way Senate republicans were holding open these judgeships just made me realize, you know, this has been going on

for a long time. I mean, I think, it went to extremes during the Obama administration but it clearly was happening before and I think it just made me realize that this has been happening for a while.

HRISHI: What were the extremes in the Obama administration?

JASON: Well, I mean, obviously the biggest extreme was the Merrick Garland seat, I mean holding open a Supreme Court seat.

HRISHI: Yeah. But was there stuff at the lower courts as well?

JASON: Yeah, and especially at the appellate court level. You know the Senate Republicans, Mitch McConnell really held the line with his caucus about denying Obama the opportunity to fill these judgeships. You know at first, when they were in the minority they used the blue slip to hold them open. The blue slip is Senate procedure that allows a home state Senator to basically deny a hearing for a judge nominated from his or her state. So Republicans used that, initially, they used the filibuster, they just basically used every procedural move or measure at their disposal to stop Obama from filling these judgeships when they were in the minority. And then once they became the majority they could just use the majority vote to stop it. I think there were instances where the Obama administration, they really tried to sort of work out compromises with these Republican Senators or sort of reach out to them and try to find nominees who would be agreeable to them and the republicans kind of played a more absolute game and just no one would be agreeable. So they just kind of refused.

HRISHI: Do you think the Bartlet administration in this episode felt like precursor to what the Obama administration's strategy was?

JASON: Yeah except for the recess appointments part. They didn't, they didn't...in the episode, I guess, they ultimately settle on this idea that they're gonna, you know, appoint these judges with a recess appointment which allows them to sit for nine months.

[West Wing Episode 5.16 excerpt]

LEO: The appointments are only going to last for nine months then we gotta nominate these guys again and we're back to square one.

JOSH: It's not square one we increase public awareness, we re-examine the process.

LEO: We have our own little whiskey rebellion on the floor of the Senate.

JOSH: In response to which we circulate a complete bio of every one of our new judges and let the country decide who's in the right.

[end excerpt]

JASON: I have to be honest, I actually don't know where that storyline goes after this episode, maybe it doesn't work. The Obama administration was much less willing to pick a fight. And I think that's something that, you know, Democrats today are kind of wringing their hands about and having some sort of Monday morning quarterbacking regrets. But, you know, for the most part, the Obama administration just didn't want to fight the Republicans on this and I think the place where you see that more than anything was the Merrick Garland nomination. Obama, he tried to sort of out-reasonable the Republicans in the Senate. That turned into a big mistake. Garland was...he picked Garland because he thought there was no way republicans could object to him. He was older, he was very moderate. And still

Republicans rejected him. There are some democrats who feel like if Obama had picked a younger judge, a more liberal judge maybe one who wasn't a white man that maybe that could have served as, you know, a rallying cry during the presidential campaign the way Trump was able to use the open Supreme Court seat as a rallying cry for conservative voters.

JOSH: And could President Obama indeed have made a recess appointment with Merrick Garland? Or would that have been considered unconstitutional?

JASON: Well I guess it, I think it would have wound up in court. Right?

JOSH: Mm-hmm.

JASON: I can't imagine the Obama administration having the stomach to do that to begin with and I also would wonder about just the political consequences of such a move. I think that, that was not on the table. I think picking a more liberal, younger, non-white potential Supreme Court justice was probably more in the realm of possibility. I think a recess appointment would not have been something that they would even consider.

HRISHI: There's a moment in the episode where Josh says, "*the Supreme Court, that's where all the ink goes*". But your piece for the New York Times Magazine really is about how the lower courts are a huge part of the political machinery. Has that always been the case? That administrations have seen filling those seats as political moves? Ways of exerting their power?

JASON: Yes and no. I think Republicans have actually been more cognizant of that than Democrats. I think republicans have kind of kept their eyes on the ball a little bit more with these appellate courts than Democrats have. I think Republicans have been more focused on courts than Democrats in general but I do think that, you know, that has carried over to these appellate courts. And, you know, I think especially as the Supreme Court has become, as the caseload has shrunk in the Supreme Court over time I think these appellate courts have become more important. There are all sorts of cases that never make it to the Supreme Court and so the decision made by these appellate courts is the law of the land. And then number two they really do serve as kind of the proving ground and the farm team for eventual Supreme Court picks.

HRISHI: And at this point, Trump is appointing judges at a faster rate, certainly than Obama, is it faster than any other president?

JASON: Yeah. At the appellate court level. Yeah. He's going to get over 30 probably by the end this year which will be a record for a president's first two years. Part of it is he has the vacancies, the story of the Obama administration was Republicans keeping these judgeships open so Trump has been able...he's had all these empty spaces to put these judges in. But then on top of that, he's nominating a ton of them and the Senate is moving extremely fast to confirm them. I mean the same way you're seeing the Senate trying to move so quickly to get Kavanaugh in there they've moved even faster on some of these appellate court nominees.

JOSH: As a way in a sense to embed Trumpism. No matter how long we might have Trump, Trumpism gonna be baked into the system because of these judges.

JASON: Yeah. I mean I think it's pretty interesting because, you know, it's not even Trumpism per se, right? I mean this is...it's originalism, and textualism, it's a very specific judicial philosophy that I don't think Donald Trump probably knows or cares much about. Like, these are judges who Jeb Bush or Marco Rubio or any sort of mainstream Republican

would have been trying to put on the bench. My guess is they might not have had as much success as Trump has had. I mean, Trump has basically sub-contracted this out to the Federalist Society which is this very influential conservative legal group which has had more influence on Trump than basically any other president which is kind of counter-intuitive because Trump had no interest in the Federalist Society before he, you know, started running for president. Whereas other republicans, you know, they actually sort of understand what the Federalist Society is, they probably are like-minded. The Federalist Society has been able to kind of basically just take this portfolio from Trump and go crazy with it, you know, getting like every one of their choices through. And I mean the thing I think is interesting is because Trump doesn't actually have sort of a personal or intellectual belief in this stuff the clock's kind of running on these people who favor these kind of judges cause right now Trump is quite happy to turn it over to them. But as soon as, say, one of these judges who he appoints rules in a way that Trump personally dislikes or as soon as a nomination blows up or it embarrasses Trump in some way, I don't think Trump is going to be beholden to these people. And my guess is he'll stop taking their advice on who to appoint to the bench. So I feel like in a lot of ways they're trying to get as many of these people on the bench either before Trump is gone or before Trump changes his mind and decides to take his advice on judgeships from someone else.

JOSH: Stack the deck.

JASON: Yeah. Yeah.

HRISHI: What about someone like Brett Talley? That didn't count as an embarrassment enough for Trump that he would change strategies? Was that not part of the Federalist Society's kind of overall influence? Talley is the lawyer who was rated "not qualified" by the American Bar Association.

JASON: Yeah. And actually but I think the bigger problem for Talley was that in addition to being rated "not qualified" he was also...they found some old posts of his on a University of Alabama football board that seemed to be defending the honor of the early KKK...

JOSH: The Klan.

JASON: Yeah. And then also he was a ghost hunter. I mean, he was an unusual guy.

JOSH: I like the ghost hunter. Just personally.

JASON: Yeah.

HRISHI: That was a plus for Josh.

JASON: So as I understand it though, Talley was actually not a Trump pick, he wasn't a White House pick. He was actually picked from the Hill. So that one yeah, it probably didn't embarrass him for specific reasons. Also, it was a district court judge, it wasn't an appellate court judge. The one that recently, the guy in the 9th circuit, from Oregon whose name I'm now forgetting. He got to a vote on the floor and then right before they were gonna vote Tim Scott came out against him, the republican senator from South Carolina because of some writings this guy had done at Stanford that were potentially racist. That was probably a little more of an embarrassment for Trump.

HRISHI: That was Ryan Bounds?

JASON: Yes. Ryan Bounds. That one. But again these don't sort of rise to the level. The Kavanaugh one, that will be really interesting to see if Kavanaugh winds up not getting

through it will be interesting to see how Trump processes that and what his reaction is to that.

HRISHI: Let me go back to the 6th circuit here. The 6th circuit is where Josh's friend Hayden is supposed to be headed. Some of the circuits have sort of reputations for being more liberal skewing or being more conservative skewing, right? Because of the makeup of the judges on the bench there, in those places?

JASON: Yeah.

HRISHI: And in your article, you mention that the 6th and 7th circuit have actually flipped from more liberal to more conservative skewing.

JASON: So this actually became a big bone of contention with my article. It's kind of funny you bring this up. Because if you look at the 6th circuit right now it has more Republican appointed judges than Democrat appointed judges. And so there were people, you know, close followers of this stuff who raised like a reasonable objection to my piece and said the 6th circuit is already...the 6th circuit did not flip under Trump. It already had a majority of Republican appointed judges. Trump supporters, you know, people in sort of the conservative legal movement who are really cheering on Trump, they believe that Trump has flipped the 6th circuit because even the Republican appointed judges who are on the 6th circuit are not sufficiently conservative in their mind.

HRISHI: Yeah. Is there something just crazy that's so taken for granted but just stop and talk about how crazy it is that judgeships are even political by nature. I mean the principle of it is that they should just be reviewing cases on their merits right? Is it a modern kind of conception that the judiciary should even be sort of a politically deterministic role?

JASON: Well you have a lot of...there was a real backlash to the Warren court and that Berger court among conservatives. I think basically presidents used to pick judges kind of on ideology but not, more just on competence, a lot of times it was on friendship it was on, you know, who had been a campaign supporter. But conservatives I think sort of started to realize that they perceived law schools as sort of inherently liberal and so therefore even if democratic presidents were picking judges without sort of thinking about what their ideology would be conservatives believed they were picking judges who had a liberal bias and that's how you got all these civil rights rulings and the like. So then beginning in the 70s and then you know when Reagan becomes president in the 80s you had a real effort among conservatives to find a president who is gonna be willing to pick, you know, conservative justices. And it became a more explicitly political enterprise and I think for Republicans it's still more explicitly political than Democrats. I mean I think you can argue about what the outcomes are. But I think republicans tend to sort of be open about how there's an ideological test. But yes there is something a little crazy about it. And it's just become just more pronounced as time's gone by especially with Supreme Court. We're gonna enter into an era where if a president doesn't have a majority in the Senate from his or her same party they're just not gonna get a Supreme Court justice appointed. The seat's gonna just sit open. What happened with Garland is gonna happen I think you know going forward if there are different parties in control of the Senate and the White House. And that's a new development.

JOSH: It seems like that's what the GOP does well is approach the judiciary as a hedge against losing power in the executive and legislative branches.

JASON: That's definitely what they're doing right now. You saw that during the Obama years. And you see it with the particular judicial philosophy that they now subscribe to. There is a debate among originalists and textualists about how activist or engaged is the term they

use these judges should be and I think the ones who favor engagement now are really in the majority and that means they're willing to overturn democratically passed legislation. I mean in the past the idea was judicial restraint among conservatives, you know, judges should hesitate to overturn democratically enacted laws. Now I think they're more willing to overturn these laws and that is I think a hedge against where Congress is going and things like that.

HRISHI: Are you a *West Wing* fan? Had you ever seen this episode before?

JASON: I had not seen this episode. I'm one of those people who I don't think I ever really kind of watched *The West Wing* sort of regularly like every week but I have over the course of however many years it's now been, I've seen so many episodes so many times at various points like I knew who every character was. I did forget, Josh, that you were the Vice President's Chief of Staff and it took me awhile to figure out what was going on there.

JOSH: It's taken me years to forget that myself.

JASON: But I knew who everybody was so I was pretty familiar with the plotlines. It's a funny feeling to sort of watch this portrayal of a White House that is run so kind of competently by professionals and people whose hearts seem to be in the right place. It's a strange feeling to see that right now.

JOSH: Nostalgia.

JASON: Yeah. Yeah.

HRISHI: Jason, what is your beat regularly?

JASON: I write about politics and I don't often write about the courts, this just happened to be the assignment. Actually the original idea for this story when I started it was we wanted to focus on these appeals courts because the idea was you might have heard of Neil Gorsuch but actually it's all these appellate court judges that are really kind of in some ways more important. By the time the story came out Kennedy had retired and Kavanaugh had been nominated you couldn't really make the argument that these appeals court judges were more important than two Supreme Court justices that Trump would appoint. So we had to make a few adjustments on that score. But yeah for the most part I just write about politics.

HRISHI: That's really interesting because that's exactly what happens in this episode we spend the whole episode...

JASON: Yes!

HRISHI: ...you know, talking about the validity of the recess appointment and you know whether Hayden should stick with it and then by the end a Supreme Court justice has died and the whole thing just has to be put on hold.

JASON: Yeah. No it totally...the whole conversation between Leo and Josh reminded me of the conversation with my editor when Kennedy retired...just like, "*oh crap. We gotta change this.*"

HRISHI: Jason, thank you so much for joining us, this has been awesome.

JASON: Oh, thanks a lot for having me, I really appreciate it.

HRISHI: And now we're going to take a quick break.

[Ad Break]

HRISHI: You know who I felt differently about after this episode?

JOSH: Tell me.

HRISHI: Rina.

JOSH: Mmm. Tell me why.

HRISHI: One. She is doing a great job as Toby's research assistant that's undeniable and she's the one who catches so many of the details.

[West Wing Episode 5.16 excerpt]

RINA: But the \$14 bucks kept bugging me so I checked Layton's list against our internal NIH generated...

C.J.: Very unpublic list and...

TOBY: And they're the same.

[end excerpt]

HRISHI: On top of that there's that little moment between Rina and Toby where she tells him that she has a daughter.

JOSH: Yeah. I was just going to add that if you didn't get to it.

HRISHI: I love that moment, I love everything about it and it warmed me to Rina that much more just finding that out like knowing what her job is and what she puts up with.

JOSH: In both the writing and the performance in just a few lines suddenly we learn a lot more both about Rina and about her relationship with Toby, and the fact Toby doesn't know. You can imagine the guy's never asked her a personal question but he does stop and say, "wait you have a kid?" And there's something very sweet in Melissa Marsala's response...

[West Wing Episode 5.16 excerpt]

RINA: Yeah I have a little girl.

[end excerpt]

JOSH: She says it was just a...you get with that means to her, what her life is all about away from work. It's very well done.

HRISHI: Yeah. It totally makes up for the tell-a-Rina of that moment otherwise, you know, she's really now the one who's asking. She says, "why should we be studying female sex workers at truck stops?" allowing Toby the chance to say...

[West Wing Episode 5.16 excerpt]

TOBY: Well what's the purpose of the study? To try to improve and protect the public's health, scientists have a responsibility to study whatever they think will lead them to answers.

[end excerpt]

HRISHI: And at first I was kind of like, “*ok here we go...*” and then they completely disarmed me with that reveal. And I liked their dynamic throughout. As Toby says...

[West Wing Episode 5.16 excerpt]

TOBY: *Please don't say you rock.*

[end excerpt]

JOSH: Hey. Don't say shizzle.

HRISHI: The shizzle part did confuse me a little bit. She says, “*maybe you're running out of shizzle.*” Because, I mean, as far as I can tell...

JOSH: I think it's acceptable as a synonym for like juice.

HRISHI: Is it? Is it though?

JOSH: You don't like it? I accepted it.

HRISHI: I think it's really just a synonym for [expletive].

JOSH: Well I accepted it in context.

HRISHI: When Toby said, “*please don't say shizzle.*” I also wanted to say to *The West Wing* writers, “*please don't write a character saying shizzle.*”

JOSH: [*laughter*] I noticed a phenomenon by the way. For some reason I did, but I rarely do. Oh I was watching on my laptop and I did some rewinding to re-watch moments and everybody sounds strange when you listen in reverse, Richard sounds exactly the same. Backwards or forwards.

[Sound of dialogue in reverse]

JOSH: Richard's intonations, his cadence, everything's the same. You can't make out the words exactly but everything else sounds exactly the same with Richard.

HRISHI: That's great.

JOSH: I don't know what that says.

HRISHI: I think that...there are a couple things that bugged me in this episode. And we've talked about this a little bit but I don't appreciate it when the show is trying to tell me that something is funny nor when they tell me that someone is handsome. And again, both those things happen in this episode. All these Big Bird/C.J. jokes....

JOSH: Woofa...

HRISHI: Yeah.

JOSH: They are rough. And I feel like, I can see myself doing my best as I have to come in the room and say...

[West Wing Episode 5.16 excerpt]

WILL: What do C.J. and Big Bird have in common?

C.J.: This'll be fun 'cause no one's ever made a joke about me and Big Bird before.

WILL: Your heads are in Ohio and your feet are in Florida.

[end excerpt]

JOSH: That isn't a joke. I can see that like, "wow, *this has been written for me so I have to say this.*" But I can almost see on my face like, "*I don't think this is funny.*" It doesn't even try. It's the same as saying, "What's the same about C.J. and Big Bird? They're both tall."

HRISHI: Right.

JOSH: I mean, that's not a joke. That's just a statement.

HRISHI: This one...but at least they're both tall makes sense.

JOSH: Right. This one...right. This one doesn't even make sense. Their head is in Ohio and their feet are in Florida. And then even worse is C.J. and Charlie have a rata-tat-tat back and forth of incredibly lame tall jokes.

HRISHI: That one is worse. Again, once I finished the episode, I felt differently about certain scenes like this one, this incredibly lame exchange from Will. At first I thought, Will kind of seems like a dummy here. I was surprised by how this once very sharp guy seemed just like a moron in this moment but then I realized he's just covering, what's actually on his mind is this list and Layton and he's trying to find some intel and he's playing it nonchalantly and he's failing. Now I actually like how terrible that joke is because it's maybe some insight as to how panicked he is.

JOSH: I would like to believe that he could come up with a better joke to cover.

HRISHI: Even while stressed.

JOSH: Even given the circumstances, yes.

HRISHI: I would like to think so too but maybe maybe not. But then the Charlie/C.J. one is...

[West Wing Episode 5.16 excerpt]

C.J.: I don't know Charlie, C.J. and Big Bird are so tall that what?

Charlie: When you do cartwheels...

C.J.: We kick God in the chin? When we trip on a rock we hit our heads on the moon? When we do pushups we burn our backs on the sun?

Charlie: And you read the Tall Street Journal.

C.J.: Go away.

[end excerpt]

JOSH: It's literally like I don't know like when do people start talking? At whatever age people start talking if they immediately you're like, "*give me some tall jokes.*" It would be like, "*if you push up, you get burnt by the sun.*"

HRISHI: "*When we trip on a rock, we hit our heads on the moon. When you do cartwheels, we hit God in the chin.*"

JOSH: That is hilarious.

HRISHI: Yeah. And you read the Tall Street Journal.

JOSH: Oof. I'll be honest. By the time he got to that I was fine with that I was like, "Ba-Boom!" Comparatively that was frickin' Noel Coward. Oscar Wilde's in the room.

HRISHI: And in a much lesser way, being told that, again I'm sorry to Brian Kerwin. But, you know, I bristle a little at the First Lady saying,

[West Wing Episode 5.16 excerpt]

ABBEY: You have a handsome man in your doorway.

[end excerpt]

JOSH: There's been so much build up around it.

HRISHI: It's just a matter of expectations at this point. I can't imagine what actor they could have there that would live up to that. This happened with C.J.'s Argentinian lettuce suitor.

JOSH: Indeed, you're right. I'm glad we're finally here to the Ben/C.J. C-story because that really didn't work for me. That to me just was a sitcom plot line that doesn't quite work in this context and on top of it if you're going to do a sitcom plot line it doesn't pay off comically. She comes in and she says to him,

[West Wing Episode 5.16 excerpt]

C.J.: I'm sorry Ben, I can't have lunch and I don't have a lot of time but you did the dance, you paid your dues. I want you to know that, I'm in.

[end excerpt]

JOSH: And then gives him the most cringe-worthy screen kiss in the history of cinema.

HRISHI: Yeah. Have you seen Manhattan?

JOSH: [laughter] Good point.

HRISHI: What was so bad about the kiss?

JOSH: It's meant to be I think. Because...

HRISHI: If he's not expecting it...

JOSH: On the same wavelength or expecting it.

HRISHI: Ok

JOSH: It's appropriate to the moment. But I don't buy that C.J. who's been putting this guy off for all this time and we know has this backstory with him all the sudden without any discussion or anything is just like, "*you know what? Yeah. Let's do this.*" People don't act that way. They act that way occasionally in rom-coms and in sitcoms but those are weirdly heightened comic scenarios where, you know, if it's written well and done well you can kind of accept it but it doesn't work in *The West Wing*.

HRISHI: I thought just the mechanics of having Ben kind of flit in and out of the White House including areas with press and staff seemed unprofessional to the level of unrealistic. And I thought, "*can't you just stick to what everybody else does which is date relatives of your bosses like Sam and Charlie? Or just flirt with whoever comes in for a meeting? Do what Josh does and flirt with whoever is gonna walk into your office.*"

JOSH: There you go, exactly.

HRISHI: At the very least, Danny, you know, at least he worked there.

JOSH: That's true.

HRISHI: Here she has to get him a pass to ignore him.

JOSH: I have to get you a pass just to do this inappropriate thing at work.

HRISHI: Exactly.

JOSH: Am I wrong? Did that storyline work for you?

HRISHI: No I agree. And I also...this is neither Danny, nor is it Simon Donovan in terms of the stakes.

JOSH: Yeah, no. Again, no offense to Brian Kerwin, he hasn't been given enough real estate to establish anything. We've been told...just like we're told he's super handsome and charming and Carol thinks he's a doll and Dr. Bartlet thinks he's cute and we've been told that they have a steamy backstory but we haven't seen anything that would lead us up to this moment that we do see.

HRISHI: We haven't certainly seen any indication of chemistry. Most of the time we've heard from him it's been C.J. avoiding talking to him.

JOSH: Mmm-hmmm

HRISHI: So I agree. I did appreciate just now you called the First Lady "Dr. Bartlet". Because I can never forget what she said. I always think of the scene when she says...

[West Wing Episode 2.21 excerpt]

ABBEY: When did I stop being Dr. Bartlet? When in the campaign did I decide that women were going to like me more if I called myself Mrs.? When did I decide that women were that stupid?

[end excerpt]

HRISHI: And I always think, you know, there's so much importance on the "President Bartlet" of it all and she...these are her wishes. She is a doctor. Why can't she be "Dr. Bartlet"? Every time, since seeing that episode, whenever people refer to her as Mrs. Bartlet I feel a twinge of offense on her part.

JOSH: Sure. Absolutely.

HRISHI: And so I was pleased when Elmo referred to her by her actual proper title.

[West Wing Episode 5.16 excerpt]

ELMO: Mrs. Doctor Abbey First Lady Doctor?

[end excerpt]

JOSH: [laughter] By the way, I'm sorry, I think Elmo killed in this episode.

HRISHI: He does.

JOSH: He was actually...his stuff is hilarious.

HRISHI: Asking for the medical license?

JOSH: Asking for the medical license. Incredibly hilarious. It was good. There are a couple moments, I know we discussed this when our heroes don't seem to understand that these are puppets.

HRISHI: Yes.

JOSH: Right? I think it's Rosita who compliments Donna's hair and Donna responds as if she's face value talking to a puppet. And then I love the image of Big Bird sitting next to C.J. and her getting up but that was a prolonged interaction that maybe we didn't need.

HRISHI: [laughter] I'll take it all for "Mrs. Doctor Abbey First Lady Doctor" which is how I'm gonna refer to her from now on.

JOSH: It's pretty funny. And I remember I brought my daughter to the set if I can dig up the pictures and she got to hang out with the muppets. Which was way cool.

HRISHI: Wow. That is pretty awesome.

JOSH: Yeah. And we'll post a picture. Yeah Isabel came to the set. I was like, "*for once!*" because prior to this moment and subsequent to this moment my children have absolutely no use for my career. Other than one episode of *I, Carly* which they also enjoyed, it was visiting the set of *The West Wing* for my daughter and meeting the muppets.

HRISHI: That's pretty good.

JOSH: They couldn't have been nicer, the performers.

HRISHI: Did she get to interact with the actual muppet characters?

JOSH: Yes, indeed she did.

HRISHI: That's pretty great. You mentioned the sort of confusion about the career suicide of Will's move and I don't understand why what Will did was so terrible. He is not the one who leaked the list. He put something together.

JOSH: I guess in the end he's saying, what he is saying is, "*the buck stops with me,*" having set it into motion.

HRISHI: I guess so. I still don't see why. I mean I appreciate him taking responsibility for it in that way in that maybe he should have kept it under lock and key better or something like that.

JOSH: I think his feeling was that if he took ultimate responsibility for it there was at least an outside chance the episode would end with a shot of him.

HRISHI: [laughter]

JOSH: And it worked. His little plan worked.

HRISHI: But then he goes to confront the Vice President about it at the end and I think this is a bit of a wake up call. I think Will has been pretty clear-eyed about much regarding his boss and what he's able to accomplish there through that office, you know, what the character of...you know, Will has been un-romantic about his boss in a way that a lot of the Bartlet administration staffers are not. You know, they're really sipping the Kool-aid there.

JOSH: Absolutely.

HRISHI: But still I think this moment in this episode really clears some cobwebs for Will.

[West Wing Episode 5.16 excerpt]

WILL: You're going to need to tell the President sir.

RUSSELL: Am I?

WILL: It's going to come out sir. The list is all over town.

RUSSELL: Well maybe that's not so bad. It wasn't my plan but might be a happy accident. Just the thing we need to put a little distance between us and them.

[end excerpt]

HRISHI: Basically he's taken a moment that makes Will look really bad, especially to his friends over in the West Wing and they're going to capitalize on it. And the scene ends with Will saying, "*Thank you Mr. Vice President.*" And using the title everything in that way is I feel like this is Will Bailey is, "*Wow, you are an [expletive].*"

JOSH: You're a monster. Yeah. Although I'm not sure I felt like the moment was earned. I don't see the horrible, horrible thing that Russell has done. I mean, he's playing, you know, down and dirty politics, but again I don't...the whole reveal of Ellie working in that lab doesn't hit me the way I think it's meant to.

HRISHI: What I thought was more of the betrayal of Will. That Will had done this research...

JOSH: Research, right. That was not meant to get out.

HRISHI: Exactly. It was not meant to get out. And the Vice President completely betrayed his intentions. And he doesn't give a damn.

JOSH: Yeah. Oh it's absolutely like an, "*I'm the boss,*" moment.

HRISHI: Yeah.

JOSH: You know, "*That'll be all. I'll do what I want.*"

HRISHI: But you don't find that part villainous at all.

JOSH: I don't know. I guess, I think it's because I still feel like there's something missing from the central plotline that I can't quite wrap my mind around that the whole Gestalt of it doesn't seem as high stakes as we're meant to take it.

HRISHI: Ok, well then as the episode ends Ellie, you know, has been convinced, we can get back to this but she has been convinced and Will looks like he's taking in this moment with the Vice President and he's got some reckoning to do. Toby had said to him...

[West Wing Episode 5.16 excerpt]

TOBY: I'll take you at your word this was a mistake. Whatever the hell else you want to do about it's your own business.

[end excerpt]

HRISHI: This is Will contemplating what he is going to do about it.

JOSH: Yeah. That's right. Here's I think ultimately what's sticking in my craw about this whole situation is that I think it's a misplay on the part of Bartlet and all his staffers for it to have been a secret in the first place that Ellie works where she does.

HRISHI: Even with the whiff of nepotism that that might carry?

JOSH: Because of the whiff of the nepotism. It seems stupid not to have gotten ahead of something that if you're open about and answer questions about you can probably dispel the sense of impropriety. But that if you don't say anything about and it's a big secret and "*who leaked it and oh my God it got out!*" then of course it does sound like, "*oh, there's some secret here. What were you hiding?*" It seems like amateur politics on the part of the Bartlet administration to me.

HRISHI: You're making me think of the famous line, "*it's not the crime, it's the cover up.*"

JOSH: It's the cover up. There you go, exactly.

HRISHI: And it feels like there's been a cover up by keeping it secret.

JOSH: Right. And then here's another thing that I find odd which is that...it's a little bit like the, "*boy is Ben handsome*" and what was the other thing? "*Boy is this funny?*"

HRISHI: Yes. These Big Bird jokes are hilarious.

JOSH: Yes. There's a little bit of I think a slightly clunky set up but, "*boy is President Bartlet going to be furious.*" Because if it has to do with his kids..."*I don't want to tell him, you tell him, oh my God!*". And then we get a screaming Bartlet, we hear him from outside the Oval.

And then we get in there and Martin is absolutely quaking with anger. And then when he finally has a private moment with Ellie he's like, "*you gotta do the right thing, you gotta go out there, you gotta make a statement.*" It's such a 180, I'm not saying it's impossible. You can be furious and then, you know, when you have a moment, you know, realize, "*hey, you're in this position and you gotta do what you gotta do.*" But it felt like such a turnaround. He's so absolutely infuriated at the thought that she would ever be involved or she would be exposed to anything, she's just somebody just trying to do her work. And then they get a moment and he's basically like, "*hey, you gotta get out there, you gotta ahead of this.*" And she's like, "*I don't like to give a book report.*" And it's like, "*well, you still have to do it.*" It was such a turnaround, I found it a little bit jarring.

HRISHI: I mean he's still trying to appeal to the part of her that cares about science saying that this is also part of the job. He's not trying to convince her to be a politician the way she says that, you know, Zoey is able to do this naturally and Liz, they're able to do this naturally.

[West Wing Episode 5.16 excerpt]

PRESIDENT BARTLET: If you believe in what you're doing you have to speak up.

[end excerpt]

JOSH: Yes. Yes, no and I get that message. It's just to me it's a real turnaround from wanting to protect her, like, they didn't choose this, the glare of public scrutiny and she's just a doctor who wants to sit in a room and go over her data. And then he's like, "*what I really think you ought to do is give a press conference.*" It's just...it's odd to me. And I feel like he has to do a little bit more reflective listening. Because he's not really getting his daughter who's trying to say to him, "*I don't want to do this.*"

HRISHI: Yeah. It is actually really funny too that he really doesn't listen to...the title of the episode is "Eppur Si Muove" and as they discuss in this scene it's this apocryphal story about Galileo being forced to recant his theory that the earth moves around the sun and then after he recants it, under his breath he says, "*but it still moves.*"

JOSH: I know, yeah.

HRISHI: And Ellie rightly points out she says....

[West Wing Episode 5.16 excerpt]

ELLIE: It's apocryphal, Dad. A story for tourists. If Galileo had muttered 'it still moves' after they made him recant his life's work they would have killed him on the spot...

[end excerpt]

HRISHI: And she's getting worked up. But then later on in the same conversation the President acts like it's fact, he says....

[West Wing Episode 5.16 excerpt]

PRESIDENT BARTLET: When Galileo said 'Eppur Si Muove' it meant that he would continue no matter what to study in public...

[end excerpt]

HRISHI: I just told you.

JOSH & HRISHI: It didn't happen.

JOSH: (*laughter*) I am going to start using that though because I really like to mutter things and that completely abrogate if that's the correct word, what I just said like, you know apologizing and then muttering, "*you kind of started it.*" I like the idea of just now start muttering, "*Eppur Si Muove.*" And yet it moved.

HRISHI: The nice thing about it is that even if people hear what you're muttering they won't understand it.

JOSH: Right, exactly. I will say while she's not necessarily a master of tall jokes, Alexa Young is very funny and you can see her years at *Friends* and she's a great comic mind and there are two wonderful moments I thought almost similar in that the punch line comes two beats after the other character in the conversation leaves frame and both are written and performed particularly well great feats of timing. One when Leo and C.J. have a brief conversation and we know that she's wearing a lot of cologne and he refers to it...

HRISHI: Oh yeah.

JOSH: "*Is that White Shoulders?*" and I can't remember he refers to someone else having worn White Shoulders...

HRISHI: His piano teacher.

JOSH: Yeah. His piano teacher used to wear it and then C.J. steps out of frame and after a beat he says, "*not that much.*" Which I thought was really funny.

HRISHI: Although I did find that a little bit confusing because I did not know that White Shoulders was a perfume. And so when at first when he said, "*Are you wearing White Shoulders?*"

JOSH: Is it clothing? A sartorial comment?

HRISHI: I just...I had to Google it to figure out what he was talking about.

JOSH: Through context I surmised that White Shoulders was a cologne of some sort. And then the other moment that I think is really funny is President Bartlet asking whether we really need to fund a study of female sexual fantasy and genital arousal. He steps out, a beat later, Toby says...

[West Wing Episode 5.16 excerpt]

TOBY: How can we afford not to.

[end excerpt]

JOSH: Also, very funny. If predictable.

HRISHI: That one made me shake my head. I definitely saw that one coming. Which although I guess Toby hasn't really had that experience.

JOSH: Ooh...boom!

HRISHI: Is that too dirty?

JOSH: No. It's just the right amount of dirty.

HRISHI: Alright. Another stylistic thing that I liked was when Toby and C.J. first see Ellie in the episode they see her on the news and she's running from the cameras because people have found out. They're trying to figure out how are they going to protect Ellie from this moment or how are they going to get ready because people are going to find out and then it turns out they're too late already and there's footage of her on the news. I love how everyone on screen around Ellie is dressed in dark clothing but Ellie has this khaki coat on and a green scarf and a blue hat. It just makes her stick out among all those sort of people rushing past like she can't hide.

JOSH: Interesting. It's funny, I noticed that scene I just liked the way that scene was shot and directed by Lew Wells. There's something about a sort of swirl of the information coming up and C.J.'s there and Dr. Bartlet is there and then all of the sudden they pan up to the screen and it's happened and I just like the kinetic nature of that moment and that scene.

HRISHI: Toby at one point says,

[West Wing Episode 5.16 excerpt]

TOBY: Let's just make a statement and call it what it is. People who don't like you using your daughter as a partisan pinata.

[end excerpt]

HRISHI: It made me think of "Arctic Radar" and who's alliteration happy now, Toby?

JOSH: Mmmm.

HRISHI: When Ellie first shows up, she comes into the Oval office and she apologizes, you know, the President is talking about how he wants to make threats against people who have outed his daughter or even looked into her personal life at all. She comes in and she says she's sorry, you know, she's sorry that this happened. That's a perfect moment for the President to say, "*there's no need for you to apologize.*"

JOSH: You're right.

HRISHI: "*This has only happened because I'm the President.*"

JOSH: Yes.

HRISHI: But instead he says nothing. And I thought, you know, I know they have a strained relationship; this is kind of a gimme.

JOSH: Yeah. That's something else I wrote down. I wanted to lay off a little bit because I've been critical but there are a couple more of those soap opera moments where nobody says anything for a beat too long because it's a TV show and nothing else has been written. And that Ellie scene too that I just praised also ends that way where Dr. Bartlet and C.J. kind of look at each other and then look off and nothing happens when really they would say, "*oh my God, look wow they got her.*" You know they would just talk about what is happening.

HRISHI: The President at one point asks, "*have you seen one of these grant applications?*" Which I think is a relevant point. You know, we've talked about this a little bit so far but there is an elaborate NIH review process. It's not like, you know when they say, "*oh, look at this*

study.” as if it’s this frivolous thing and someone awarded it in a dark room with no oversight. And then the President says explicitly, “*have you seen one of these grant applications? We’re lucky Einstein didn’t have to fill one out or God knows what E would equal.*” And the answer is E would equal Eric Murphy as we learned in “Entourage”.

[Entourage excerpt]

JOSH: [laughter] That’s good.

HRISHI: Thanks so much for joining us. We hope you’ll join us again next week when we’ll be talking about “The Supremes”.

JOSH: Mmmm. Great Group.

HRISHI: We didn’t actually talk about yet but this episode sets us up for that next episode because at the very end we find out after all of Josh’s work on the Hayden scenario it has to be put on the back burner because a Supreme Court justice has passed away setting us up for a nomination battle in the Supreme Court. And I hope you’ll join us next week so that you can finally hear a story about the Supreme Court.

JOSH: *The West Wing Weekly* remains a proud member of Radiotopia a collection of the finest podcasts in the land about which you can find more information at radiotopia.fm Our podcast would just not be as good without the help of Zack McNeese, Margaret Miller and Nick Song.

HRISHI: And if you want to let us know how you felt about this episode, you can leave a comment on thewestwingweekly.com or on our Facebook page or tweet at us.

JOSH: That’s right. And if you want to give us money for this free product that we’ve been giving you for years, you can go to thewestwingweekly.com/donate That would be a nice thing to do. If each of you gave us \$5 bucks, I would probably stop doing the podcast.

HRISHI: [laughter] Did it work?

JOSH: I hope so. Ok.

HRISHI: Ok.

JASON: What’s next?

[Outro Music]