

Libby: Putting the festival together as you have to think a few months in advance. Like what are people gonna want to hear about? Um, in June? And we were debating, are people still gonna want to talk about Mueller in June? And my colleague Garrett here wisely said yes, definitely. And I think, um, he was right. So here we are. Um, so let's get started. And Mary Louise Kelly from NPR, she's the cohost of all things considered. I'm sure, uh, her voice will be very familiar to you. Is here to lead us in conversation with our distinguished guests. Thanks. Welcome.

Mary Louise: Thank you. Good evening everybody. Thank you for skipping. The what, what are we on the last half hour of the democratic debate to join us, um, whether that was a welcome respite or not. You are, you're most welcome and thank you. Let me start and I'll just introduce who's up here with me. Uh, Ted Olsen, who, uh, most of you may know from his, uh, multiple roles in government, including, uh, representing Bush in Bush versus Gore. Um, Bush who became President Bush as the result of that. And then he served as solicitor general and is now a partner at Gibson Dunn, or at least was as of yesterday. He just told me. So we'll hope he survives the panel tonight. We're hoping, uh, beside him, Neal Katyal of, uh, Georgetown law school and a partner at Hogan Lovells. Welcome and Garrett Graff, uh, who I have known for many years, a fellow writer and reporter on national security now at the Aspen Institute.

Mary Louise: Um, I would like to just second what Libby just said and kick us off with a profound and heartfelt thank you to the house judiciary and intelligence committees for giving us an most excellent peg for this conversation. Tonight. It was looking as though Mueller was maybe dropping off the front pages that president Trump's fondest wish was being fulfilled and we were all moving on. And then the subpoena descended on Tuesday just when I thought I might actually be able to take vacation in July. That was canceled about five minutes after. Uh, the, uh, chairs of the judiciary and intelligence committee revealed that they, uh, had agreed July 17th from all or two appears. So here we are, um, because who wouldn't want to be in DC in the middle of July? Anyone in their right mind, obviously. Um, so I want to kick us off and get just a brief take from each of you. Um, we'll start at the end and come down. Robert Mueller will testify under oath on the record public testimony July 17th. Is there value to this exercise? And if so, what is it? Since Mueller himself says, I've said everything, I'm going to say, you've seen my testimony, it's the report.

Ted Olson: Well, I think that, um, he did say, I did the report. We picked our words very carefully. Uh, and he's a very, very careful person to put the Mike A. Little bit closer. Um, he's a very, very careful person. He said he selected his words carefully. He said in connection with one of those press conferences. Uh, he wouldn't have anything to add to what he said in the report. Uh, he's the kind of person that I think would be reluctant to start trying to explain this report, which is 448 pages something and tabbed with post it notes. Well, I put those in so you would think that I'd read it. So unlike most of the other people commenting on that goes a bit. It's a very comprehensive report is very thick.

It's very detailed. It's very factual. I think he says in this report that um, he, um, issued more than 2,800 grand jury subpoenas.

Ted Olson: That is one heck of a chore. That's a lot of testimony. Executed nearly 500, uh, search and seizure warrants obtained more than 230 orders for communication records under federal statutes obtained almost 50 Penn registers, which is tracking telephone calls and made 13 requests for information from foreign governments and interviewed approximately 500 witnesses 80 before a grand jury. So he did, and his staff did a lot of work. So this is to my question now it's all in there. Why, why does it? That's what he said. I think he's very reluctant to start talking about what he did or tried to explain what he did. He thinks he did the job, then I don't, I mean I think he felt that he was a private citizen. Now he felt that it was respond his responsibility to respond to a subpoena from, um, committees in Congress. But I think, and I don't know what he will do when he is there, is keep very, very close to his report now.

Neal Katyal: So. So first of all, thank you all for being here. I know you're missing some of the debate. Um, and it's a real privilege to be here with, with, uh, with these folks on the panel. Um, I'm, by the way, not at all surprised. We're talking about molar. I told Katie Boon last year, the festival organizer put a panel in for Mueller a year from now. And I will tell you now, put another panel in next year because on Trump and lawlessness, because that's his emo. So of course we're going to be here next year talking about it. If he's, you know, maintains the presidency, um, that I think that's what we'll be doing. I do think there's going to be huge value in Mueller's testimony on July 17th and that's because we are really now a culture, much more a video than we are in a pictures think Instagram than we are of Dispo of the written word.

Neal Katyal: So just a show of hands for those in the room. How many of you have read the actual molar report? No shame here. We'll go off the record briefly. Yeah, there's nobody stopping us or anything like that. Okay. So this is about as sophisticated and audience as exists in the United States and I think, you know, maybe 10 hands. Um, so I think if I were to ask you on July 18th how many of you watched Mueller's testimony, I think almost every hand going to go up. So, and this becomes important because, look, I do not think Mueller's testimony was inevitable when he wrote his report. Um, when we wrote the special council regulations. I, when as a young puppet at the age of 28, when, uh, at the Justice Department when I was tasked by Miss Reno to write draft the special counsel regulations, we didn't envision necessarily a final report like the one that Mueller had. The fact that he issued it, I suspect he thought when he wrote it, game over, I'm done. I take it.

Mary Louise: Can I just pause you there for a second? You don't think he knew somewhere in his heart of hearts it was inevitable that Democrats were going to let him just walk away into the sunset?

Neal Katyal: No. Well, I don't think it was inevitable. I think it was inevitable that I think he thought that I detailed my conclusions in my findings and uh, you know, who knows, but I think I've written it all out. What more would testimony do? My job as a prosecutor is to outline the facts that I saw. The problem was right after he turned his report in within 48 hours, you had an attorney general who completely, completely distorted what the report says up, down, backwards, forward, sideways, and frame the debate. So that so many people now think, oh, the Muller report clears the president when their report actually says the opposite. It says, if I cook, Muller says, look, if I could clear the president, I would, I can't. Where was that in bars letter 48 hours after nowhere. So because of the distortion of the debate and gendered by this Attorney General, um, uh, I think were Mueller's testimony became inevitable. And I think we'll see July 17th the stark contrast between bars, spin and molars real kind of by the book careful method and it's going to be devastating for the president.

Mary Louise: Garrett, and I should just mention, I was remiss when I introduced you and not pointing out that if you, if you want to understand Bob Mueller's thinking and where he comes from and his background, you could do no better than to read Garrett's book, uh, on, on Mueller with the title being The Threat Matrix. Okay. Go on value in the exercise of Mueller testifying. What do we get out of it?

Garrett Graff: Um, I think that this is, you know, first I think I agree with Neil that this was not inevitable and that when you take this step back and sort of look at who Bob Mueller is and what his character is and what his sort of natural disposition is, this is a somewhat, this is someone who has turned down more interview opportunities and more camera, uh, on camera appearances than most people get in their entire life in Washington.

Garrett Graff: And that when you sort of look back over his entire time as FBI director, he would give sort of one or two major public speeches a year. You know, he did not do the Sunday shows. He did not sort of participate in the, uh, the TV circus in Washington and that he didn't do that when he was special counsel that, you know, he turned down sort of every opportunity he could make to, um, uh, to, uh, to appear before cameras. The three times that, uh, something rose to the level of a press conference. Uh, during his time, uh, twice he had Rod Rosenstein go out and give the press conference and one spill bar went out and gave his press conference. And, uh, Brian Williams actually did this really funny bit, which I'll Bet Neil, uh, saw where he, um, he's, he actually played a bunch of clips of Bob Mueller talking because he said, you know, if you woke up and, uh, if you sort of watched our TV coverage on a daily basis, you would think that Bob Mueller woke up every morning and just walked up and down empty hallways in the capitol because that's all the video that the nation saw of him for two and a half years was sort of walking up and down the same hallway.

Garrett Graff: And that Muller clearly didn't want to give, uh, give public remarks, be on camera saying any of this. Um, but we've, we've gotten sort of stuck as a country on this logic problem that he has left us, which is, I would say Donald

Trump is innocent, if that's what I thought. I haven't said that or go and then sort of we're sort of all stuck on, ah man, this is a real tough one. I don't, I don't really know what comes next. And there's a one addition, right? Because it also says in their report, I can't say that you committed a crime that that's forbidden under these justice department opinions. So the ergo implication becomes even stronger. Exactly. And so I, I completely agree with Neil that I think that there's going to be tremendous power in him just simply going up even if he does nothing but read the executive summaries of part one and part two of the report.

Mary Louise: All right, I'm going to fast forward us all and our time capsule. We are now at July 17th House Judiciary Committee I think gets first shot and then he will go to house intelligence house judiciary will be focused on part two of the report, which all seven of you have read it now has to do with obstruction of justice. Intelligence Committee's going to be focused more on the Russian collusion, Russian election interference questions. Um, if you had one question, you got one shot at this, what you, not everyone, well, by the way, because there's so many democrats and timing constraints, so on the judiciary committee at least they're saying they will consolidate and not everyone will get a chance to question. Um, what would you ask, what do you want to know that's not in there?

Ted Olson: Well, I, one of the things I think is implicit from the report, and by the way it should be said that prosecutors don't declare people innocent. They investigate, they decide whether to prosecute or not. And if they're not going to prosecute, they stopped the investigation. They don't say someone's innocent and they don't say if, if I had found no ability to prosecute, I would've said, so they don't say that this is an unusual situation where he said the various things he said, he said that with risk, with certain things, with respect to the so-called collusion issue and certain things with the, with respect to the, the obstruction issue. And there's a lot in there, but he was not pronouncing guilt or innocence and it was, so this is not unusual situation for a prosecutor. He didn't want would be put in that situation. I suppose one of the things I would ask him on the record is that there, is there anything that you wanted to do? Um, I know he wanted to interview the president. The president declined. He accepted that for various reasons. He explains it in the report, but is there any investigation? Is there any person you want it to investigate? Are there any documents you wanted to see? Is there any aspect of the investigation that you were prohibited or prevented from doing? If so, tell us. Yeah,

Neal Katyal: so, so from my perspective, the Muller report lays out pretty clearly that the president committed obstruction of justice just on the facts. And that's what over a thousand former federal prosecutors have now said after reading the report, which is an extraordinary thing. There are a bunch of Republican prosecutors on there and the like, um, so I don't like this whole idea that we need to have the full Mueller report. We need to have more stuff from Mueller. I think all molar has to do is tell us what the report actually says. Let me give you

one very concrete example. The White House council is the president's top lawyer, Don McGahn. In the Mueller report, it says, the president told McGann to fire molar as a result of this Russia stuff. And McGahn didn't carry it out. I want to know, I'd want just Mueller to tell that story and then I'd want Megan up there to answer a simple question.

Neal Katyal: Why when you had a direct order from the president of the United States, your boss, why did you not follow it? There's a very simple reason, which is I think everyone knows, which is cause it would be obstruction of justice. You're firing the prosecutor, you can't do that. Um, and that's why I suspect the president has asserted executive privilege over him. Again, trying to block him from testifying because if this is on video as opposed to that cold piece of paper, if this is on video, it's gonna change everything. Just think about the, our oral argument last week that many of you saw on the ninth of the ninth circuit, the, the, uh, safe and sanitary conditions. You know, I read a lot of transcripts, um, that would've gotten me nowhere, but to see it in video, to see a lawyer saying those kinds of things that sleep in toothbrushes aren't necessary, aren't net for, for conditions to be safe and sanitary. The same kind of power of video will exist when Mueller testifies and when McGann does.

Garrett Graff: Yeah. Um, and I think sort of along those lines, Neil, one of the things that we forget when we think back over the history of sort of the previous sets of these proceedings is that it was really the televised proceedings of Watergate that changed the nation's mind about President Nixon. That actually, that public opinion shifted very dramatically over the course of those hearings. And so for all, you know, you hear so much from, uh, Capitol Hill of, well, you know, public opinions already sat there. People aren't paying attention to this. They're not paying attention to it because they haven't, they don't really understand it. They don't really know what it actually says and that I think that the Muller testifying begins that moment when the country sort of has to wrestle with what is actually a very damning document. And I think, um, that was one of the things that really surprised us as observers or as journalists covering this was given bars summary and given bars, Reese summary of his summary. Um, we sort of all thought that we knew what it said and then we sort of all started reading it the day it was released and we're all like, oh man, this is actually pretty bad.

Mary Louise: I just, before we move on, want to follow up on something you nodded to Neal, but I just want to let you tell us a little bit about it. You actually wrote the guidelines that, I mean you set up the special counsel. Did this work the way it was supposed to?

Neal Katyal: Largely yes. I mean I think the regulations did. Um, she had mentioned we were at DOJ that I was in charge. It was at the Justice Department 20 1998 and 1999. At that point, the independent counsel act was in effect, can start. My very first day at the Justice Department was the day that Ken Starr's deputies went to her colder and said, can we wire up Linda trip? Um, and that led obviously to, we all know. So, uh, there was a bipartisan consensus and this man has done more

than anyone I think to really bring attention to the real evils of the independent counsel act. There's a very famous supreme court case called Morrison vs Olson Olson. Um, and uh, and Ted bravely fought the constitutionality of that scheme and I think really forced saw the problems with a headless fourth branch of government prosecutor and you know, I'll let him talk about it, but we definitely did not want that.

Neal Katyal: At the same time, we didn't want to have a, someone who is just totally within the Justice Department who is subject to control. So that the basic idea was that independence and accountability are mutually exclusive. You both, you always want to maximize both, but you can't because the more you have of one, the less you have of the other. And the Independent Counsel Act at very much on the side of independence. We want it to take a little bit of independence away and more accountability. And generally I think that worked. Now we did say if the special counsel was ever overruled by the attorney general, then that would trigger or report to Congress. So there was a way to shed sunlight in and it evidently appears that none, this I think is related to the question Ted wants ask. It appears that the attorney general or the Acting Attorney General Rod Rosenstein never said no to anything that Muller saw.

Neal Katyal: That's the way, at least I think everything that we, the initiative that we have now, I think the one thing that we didn't really anticipate was how much party politics would drive this debate. It's not really about the special council regulations. It's really about Congress. Because, you know, I grew up at a time when I thought like if the, if the Democrats engage in wrongdoing, you know, call them out on it and if the Republicans did call him out on it and um, I really feel like, you know, it's become such all just churned through a partisan lens and I get it if it's, you know, something about someone's personal life, but we're talking about obstruction of justice, you know, I can't really think of something more serious and something that deserves a real public, real debate in Congress.

Mary Louise: Ted, do you want to jump in on this? Did this all unfold? Understanding all of the many twists and turns nobody saw coming but in the way that it was written?

Ted Olson: Well, I have, one of the things is, and Neil can answer this and I can, did you contemplate a lengthy 448 page detailed examination of everything that was done? Because as I understand it, and I might be wrong, that it wasn't understood the way those regulations were written. I think there's, it's important to make this distinction. We were living in an era earlier with a, um, independent council provision that was written into this statute as a result of the Nixon administration that created judges creating a special prosecutor who would then be sub, not be subject to removal, will have independence from the Justice Department. We fought that, the supreme court held that them to be constitutional. Um, I maintain the view that the supreme court was wrong, but

that doesn't carry much weight. You know, when the Supreme Court decides these things, seven to one but so --

Neal Katyal: Well, but that one opinion, Justice Scalia dissenting by himself, and I think his first year on the bench was I think the one of the best opinions in the 20th easily.

Ted Olson: Well as, as a beneficiary of that opinion. I thought so too. So, uh, and I think many people feel that there was a lot more, you know, that we've learned since then that what Justice Scalia said had a lot of value to it as a result. But, but when the independent, when that's provision for special prosecutors was implemented during the Clinton administration over and over and over again, I think many people on the other side of the political spectrum decided that isn't such a good system. There should be a mechanism then. So the statute that created that officer, that independent officer was allowed to lapse both Republicans and Democrats agreed with them and then then lots of other history, but then comes along the Justice Department decided, well, there may be certain situations where we feel the attorney general or the inhabitants in incumbents in the justice department won't be perceived as objective.

Ted Olson: If we investigate, maybe the president may be the vice president, so forth. So we'll create this role in the Justice Department where a prosecutor, every people call it independent counsel. People call it different names. It's a special prosecutor. That's what it is. We'll be subject at least to the control of the Justice Department, eliminating some of the problems that were raised by the constitutional questions that we debated. But the, but I was going to ask Neil and he should talk about this because I don't think, and again, I may be wrong, I don't think it was understood that the prosecutor would then layout in page after page after page at two year investigation talking about this witness that listens with this witness said and so forth. And I have a different view about whether or not the incumbent president could be indicted and I've testified in front of the judiciary committee about that. But that's sort of,

Neal Katyal: I want to come back to that quick answer from you. And then I know the history of this was we had the Democrats saying because of Lewinsky and in water and Whitewater independent counsel act doesn't work. The Republicans were saying it because of Iran Contra and things that happened to Ted and other folks. Um, and so there was a bipartisan consensus that emerged, but then it had to be replaced with something. Nobody thought you could just get rid of the independent counsel act. So even Ken Starr as a sitting independent counsel went up and testified in Congress and said, kill the independent counsel act. It's terrible policy. Okay, so you then the question was what do we replace it with? We replaced it with the special council regulations and Ted's right. One of the things we were concerned about was a lengthy and lurid report by the special prosecutor because we'd basically seen that in the form of the star report and so unlike the independent counsel act which required a lengthy report, the

special council regulations contemplated a report and there was flexibility given to the special counsel as to how detailed it would be.

Neal Katyal: If you can't indict someone for some reason like because there were sitting president, then you'd expect you're going to have a longer report. Otherwise you would let the indictments speak for itself because here Muller was saying, I can't indict you. He obviously had to detail more of his findings.

Ted Olson: I'm sorry to take your call here, but I thought that the lot, a large amount of discretion was vested in the attorney general with respect to the extent to which the report would be made public.

Neal Katyal: Yeah, absolutely. So, uh, the attorney general and you know, I, um, I really do think this attorney general has behaved miserably with respect to the Miller report. But I will say the one thing that he did was released at least a good chunk of it so that people can read it as all of you have.

Mary Louise: [inaudible] quick add one more show of hands. How many lawyers in this room tonight? Okay. You're in heaven. And following all of this, I'm going to turn us away from the law though. And toward I have a political question. I realized none of y'all are politicians, but you know the ways of Washington. So just roll with us. Garrett, you first does July 17th mark the beginning of impeachment proceedings?

Garrett Graff: Uh, if impeachment proceedings begin, they will begin on July 17th, W W which I don't really mean as quite that. Um, and I think it started, my slightly longer answer is I think Democrats are still trying to figure that out. And I, and I think that in some ways they're political question, that it's actually the pros and cons of that. And I think part of what Democrats have been struggling with on Capitol Hill is that the House Democrats, perhaps even more than Donald Trump, wanted to be able to put the Mueller report in the rear view window or rear view mirror that they, um, they sort of heard the bar summary. They were like, okay, this is done. You know, Nancy Pelosi has been consistent since January saying, um, she doesn't want impeachment proceedings. Um, as she said, he's not worth it. Um, was her direct quote. Um, and the Democrats very much want to turn the page to, uh, the 2020 election, which, you know, we're, is literally playing out at the same time. And I think that what we, the, the challenge is the report is so devastating to the president that the House Democrats, uh, and particularly, you know, the presidential candidates themselves sort of find themselves boxed into having to take some sort of action in part to preserve the prerogatives of congress. That sort of, if we decide

Garrett Graff: that obstruction is a crime, that we will settle at the ballot box. I mean that, that sort of begins to write the precedent of what will happen with future presidents and future impeachment proceedings.

Neal Katyal: Yeah. So, so my sense is impeachments inevitable. Um, and I say that because it may not have been one smaller turned in the report, but because of the actions taken by the White House in the wake of it, so they have asserted executive privilege trying to bar as we've talked about Don McGahn from testifying the presence top White House lawyer. They've also done it with junior lawyers and other people in the White House. They'd done it with Kelly and hope pex. They've done it with Kellyanne Conway. Um, this is just kind of ridiculous that they are blocking so much testimony about this from coming out in Congress and they are forcing Congress's hand to basically impeach because if you mph, you have much more broad, broad discretion to pierce these privileges. And so I think as a result of these decisions, that's what's going to happen.

Neal Katyal: Um, and I'm not sure that Trump minds that and it may be politically good for him. I don't know. It doesn't seem like he has much of an agenda besides, you know, his wall and tweets. And so impeachment at least allows him to do something and rail against something. Um, so, uh, you know, so I can understand, um, Pelosi's concern, um, the speaker's concerned, but at the end of the day, I think that's likely to be where we wind up. Um, and it may be a kind of weird thing in which the house in peaches and doesn't go to the Senate, it doesn't get turned over. There could be any number of unusual procedural things that happen, but I do think it'll happen. I think it also happened because really fundamentally this is a rule of law issue. I mean, what do we send people to Congress for? But for asking a question like this has our president committed crimes while in office.

Mary Louise: Ted, I'm going to let you cut in here, but I'll just mention in a moment right after that answer, we're going to open it up to questions from you, so please get your questions ready. I know you have a lot. Ted -- impeachment, inevitable?

Ted Olson: I didn't think it's inevitable. I think that's what Nancy Pelosi is talking about and thinking about. I think she's looking at that. What is that going to accomplish? Are we going to, if we do have a vote now, I don't think this testimony on July 17th is going to reveal a lot more information. The morning report is very thorough. I read you the statistics about how many witnesses and how many searches and seizures and so forth. There's not going to be a whole lot more information discovered as a result of this testimony, especially if Mueller says, I've said it all. I don't have much more to say and I'm not going to start to characterize it.

Ted Olson: If you want to do that, you can do that. So if there's an a, a process, which Nancy Pelosi in as a very smart, keen political instinct for the next election. She wants to win the presidency, but she also wants to retain the house and she would like to take the Senate. I think she's thinking how much good is that going to do her party if we conduct these hearings and then we report out and impeachment based upon everybody says there's horrible, horrible stuff in here. There's a lot of arguments that I'm not going to get engaged in here with respect to intent and corrupt motive and all of those things, but there's going to

be then a trial in the house of Representatives and there's going to be both sides presented and that's going to take some time. We're talking about we're less than 18 months, I think, away from the next election.

Ted Olson: So Nancy Pelosi's thinking about, well, what are we going to accomplish with that? It's not going to result in a conviction in the United States Senate. I think she thinks that, and I think if she does think that she's right and what is that going to help us or hurt us with respect to the defeat of Donald Trump and the election that, that comes in next November. And I think she's thinking, looking back on the Clinton process where Clinton was impeached, he was acquitted, not convicted by the Senate, um, and it, and he, his popularity and he says he survived it. So I think that the, and I don't know, I'm not a politician, I'm just a lawyer in Washington DC listening to Neil on MSNBC every morning, um, um, saying the same things he's saying here tonight. Um, but I, I don't consistent, I don't, I don't think that, I actually don't think that was going to be an impeachment. If there is, there won't be a conviction and I'm not so sure that that whole process might not help the president.

Mary Louise: Isn't it so much more interesting when people on a panel disagree? Are you with me? Am I right? Um, just quickly cause I did promise to go to questions, but separate from impeachment, the indictment question, I don't want to move on. You said you're, you're not, you're not quite there on this. I notion that a sitting president can't be indicted.

Ted Olson: Yes. One of the things in the Mueller report is that I didn't go, he says I didn't go any further with respect to the issue of obstruction of justice because I believed that the Justice Department had said in earlier legal opinions that you can't indict a sitting president. That the only remedy for bad conduct buyer's sitting president is impeachment. Um, that is an office of legal counsel opinion that goes back into, I think the Clinton administration one thing, clear the Clinton and then 74 and then, but I testified, and I can't remember the date of it in the Senate Judiciary Committee, that I believe that the Constitution does not preclude the indictment of a sitting president. Constitution doesn't say that every other officer of the United States beside the president can be impeached. I mean, can be indicted. Aaron, um, um, burr was indicted, um, and other officers of United States throughout history.

Ted Olson: So all other officers in the United States can be indicted. The president is the only one. It doesn't say any of the anything in the constitution about immunity for the president, uh, from indictment. Um, in fact it does say in article two that the members of Congress are immune from prosecution with respect to what they do in office. There's a lot and that the supreme court and other authorities have held that the president is not immune from civil process requiring to produce documents. The Clinton versus Jones case requires said that the president could be sued civilly. Nixon versus the United States said the president of the United States could be compelled in a criminal proceeding to produce documents. So I think there's a lot of evidence that would support the

proposition that a sitting president could be indicted. Now nobody petting intention to that opinion. When Mueller wrote his report, I didn't see any citation to it and I'm very pleased that I could stay out of it. But I think that it's an interesting question. There's not quite as clear as Mueller assumed.

Mary Louise: All right, questions? We have microphones. I will call on you. Please keep your question short if you can and actually make it a question so we can fit in as many as we can. Gentlemen, right here on the right, uh, blue shirt. Hi. Hold on, hold on. We need needed just this gentleman right here. Yep. Thank you. And then we'll come to you sir.

Audience Member: Does the impeachment process carry a statute of limitations. For example, they, they don't do it now, but upholding the constitution, God forbid he gets reelected cause they do it then.

Garrett Graff: Yes.

Ted Olson: Yes. There is no statute of limitations. This is a political process. The, the, the, the constitution says, um, um, uh, an officer of the United States may be impeached for high crimes and misdemeanors that there's no time limit on that. Once a person leaves office, that's the end of impeachment. But at any time when the person is in office, um, that the house of Representatives can determine in its judgment that high crimes and misdemeanors have been committed and there's an impeachment

Mary Louise: Agreement? Okay. A gentleman in the blue.

Audience Member: Is there anything you can tell us about the status of the proceedings in New York? Namely the, what the Attorney General of New York is investigating about a possible crimes under New York law and what's going on in the southern district. And if either of those people were to issue indictments, how would that affect Nancy Pelosi?

Garrett Graff: southern district in New York? I'll take the easy first half of the question and then the Neil can do the second harder question. Um, so, uh, I've actually, uh, been tracking this pretty closely, um, and have kept a running count of the investigations targeting the president. Um, there are sort of, depending on how exactly you define it, uh, 16 criminal investigations, uh, targeting the president, uh, and his inner circle by eight different, uh, sets of city, state and federal prosecutors. Um, the, most of that activity is focused, as you said, in the southern district. Um, and in New York state, uh, where there's insurance fraud investigations, tax fraud investigations, um, uh, potentially bank fraud, uh, investigations. Um, but it's not limited to that. Um, New Jersey has an active investigation, is two immigration violations at the, um, uh, Bedford Golf, uh, golf course. Um, that's both a New Jersey state investigation and a federal, um, immigration violation investigation. Um, and then there are, um, several other investigations. Um, and then, you know, don't forget also about the, um, I've

lost track now of exactly how many there are, but about 12 Muller investigations that have been handed off, uh, to, uh, spun off to other federal prosecutors that we don't know what the targets of all of those investigations are, although presumably they're not targeting, you know, the president himself. Um, as to how that would, uh, how sort of state, uh, charges might impact, um, the, uh, the president. That's a great question for a lawyer.

Neal Katyal: Oh, okay. So first of all, I think it's important to, from what you just heard, 16 investigations criminal investigations is, just to put that in context. I mean, there were no investigations of President Obama or his staff. Um, and this was occurring at a time when, you know, there was Republicans controlled the House and Senate. There were a lot of hostile states to, to the president, to Obama, but nothing, I don't really single person in the White House who had a lawyer, not a single person lawyered up here. Like you got the Trump White House, you gotta have like nine different lawyers. They all have, you know, uh, for each person, they're more lawyers and they have people I'm working there. Um, and uh, you know, I do think that that's telling and I do think that we'll, you know, particularly as the hearing on July 17th happens, these kinds of statistics, which aren't 2,800 subpoenas, but how many investigations and what they were about are gonna start reasserting themselves in the public consciousness.

Neal Katyal: Just let me give you one example cause your question mentioned the southern district of New York investigation and also investigated state investigations. These are two different things. The southern district of New York are federal prosecutors. And last fall, just a few months ago, they issued a document that said individual number one, which we now all know to be the president directed the commission of two federal felonies. That's extraordinary. That has never happened. I mean w outside of Nixon, it's not happening in our lifetimes. Anything like that, to have federal prosecutors submitting something like that. So I do think that these things will have resonance. Then on the state side, uh, they're not bound by this office of Legal Counsel opinion that Ted was talking about, about whether a sitting president can be indicted. They could indict. And indeed in New York right now, there's civil litigation against Donald Trump by Zervos in a civil case saying, I can go after you civilly in the state of New York. And that case is proceeding. And so, you know, it's not inconceivable if there were prosecutors that found a wrongdoing on the state level that they could go after the president.

Garrett Graff: And, and I would sort of add one more thing to Neil, uh, in thinking through sort of how unprecedented the criminal territory in which we find ourselves really is historically. Um, I ran through a counterfactual, uh, at one point this spring of sort of, uh, thinking through what the parallel set of charges that Robert Mueller brought against the Trump campaign would have looked like against the Hillary Clinton campaign. And if you sort of imagine the Hillary Clinton as president, where campaign chairman John Podesta had been arrested and pleaded guilty to carrying out a \$65 million money laundering scheme. Deputy campaign chairman, uh, Cheryl Mills had been arrested, uh, for participating in

that same money laundering scheme. Uh, national security advisor, Jake Sullivan had been arrested, uh, and, uh, charged with, uh, lying to federal investigators and carrying out to this sort of very weird, uh, or participating in this very weird Turkish kidnapping plot. Houma Aberdeen had been arrested for a decade long, a taxi medallion scheme. I, I find it hard to believe that Mitch McConnell wouldn't have found time to hold at least one congressional hearing on that level of criminality had it occurred in the Hillary Clinton campaign. What in an election that Hillary Clinton won, as Neil said, with the help of what Robert Mueller has identified as two separate criminal conspiracies, one directed by the president and the other in which he obstructed justice.

Mary Louise: Gentlemen over here who's had his hand up patiently. Yes. Hi.

Audience Member: Thank you to the attorneys. Um, getting back to the impeachment, uh,

Audience Member: once that, uh, is concluded or the, during the process or after the process, they vote to impeach. What rights as a defendant, as the president have to call on other people to cross examine, subpoena, uh, or ask for documentation and it does that enter into a Polosi decision to proceed with a impeachment?

Ted Olson: I'll start off, um, in the first place, I think that there would be opportunities in the House of Representatives with respect to impeachment proceedings for the minority to call witnesses and the minority would be in, in, in consultation with the president's lawyers and so forth. So there would be evidence and witnesses there. Once there is a decision to impeach in the House of Representatives, it goes to the United States Senate. There is a trial in the United States Senate. We saw this during the Clinton administration. The constitution requires that that trial be presided over by the chief justice of the United States. This happened once before in Andrew Johnson's administration after the civil war. During that period of time, the president's lawyers and or President Clinton's lawyers called witnesses and presented evidence and cross-examined and so forth so that there would be a trial, um, the rules are made up, um, as they go along.

Ted Olson: Um, because these, these things are relatively unprecedented, but the rules take place and there will be in the United States Senate as presently constituted, um, out and certainly opportunities for the president's representatives and lawyers to provide witnesses and documents and defenses and arguments and that sort of thing and briefs so that that would be a full blown trial. I want to say one more thing about this is separate and apart from your question, as I said, there's 18 months, so between now and the next election of president. So what Nancy Pelosi and the House of Representatives and other people who are considering this thing have to consider what is going to be the impact of that? On the election, is it going to be successful? Is it going to what, what is the outcome politically going to be? What is the outcome legally going to be? Is it better to wait to see what the outcome of the election because the American public will be voting on this.

Ted Olson: They will be voting on whether or not this individual should be returned to office. Let's say he is, I know people will be fainting all over the room, but that could happen. It happened, you know, two, two and a half years ago. Would there be a different approach to impeachment and that sort of thing? If he is defeated, then what is going to happen with respect to all of this and is there going to be some momentum in some quarters? Um, and I'm trying to be somewhat neutral about the possibility and, and things that are going to come along, have some people saying, let the people decide. Let's not go through this process of impeachment drag the country we give roads to fix. We have borders to problems to solve with immigration and health and all of these other things. I won't go through the litany.

Ted Olson: You heard it all on the debates just a minute ago. But there are things that need to be done and if we're going to be concentrating on this, that is going to consume a lot of oxygen. And should we, given the fact that Mahler's report is very, very exhaustive and very critical and in many respects, should we let the American people decide? Well what, but they are entitled to read it. And the people of the United States, the constitution provides for a check on an abusive precedent. One of them is impeachment and the other one is election and we're coming up to them.

Neal Katyal: So, so I don't think Ted, that an entitlement to read is going to block the momentum here. And I look call me naive and I think you're absolutely right. Some of the politics will be against impeachment, but fundamentally we are country built on the rule of law and that's in our DNA. And I think what happens on July 17th is Americans start to see what said is, I do think that they, that this call for impeachment grows and I think it comes not just from Democrats but from Republicans as well and if you want to ask for my source of faith in that, it's actually you because you have stood for constitutional principle in your life apart from party. Not just marriage equality, but even like on this whole question of president Trump and whether he can be indicted. You know, you were the first person I recall this a couple of years ago saying, actually I think a sitting president could be indicted and I think there's a whole group of people in this country, Republicans who think this is a lawless president. This is a president who is out of control. He attacks our judiciary, he attacks our media, he attacks everything that constraints him, including the constitution of the United States and I think they're going to do something about it.

Mary Louise: We've got time for a couple more of this gentleman. We'll take it up front here.

Mary Louise: Right up here.

Audience Member: I have a question. For a Ted and Neil, can you speak a little bit about double jeopardy and how it applies to impeachment first and secondly about state trials say charges against the president?

Ted Olson: Well, I'll let Neil talk because he's already started talking about the state trials double jeopardy as no, it does not inhibit what the house of the representative or the Senate will do with respect to impeachment. They, they could do it again and again if it's a, it's a political remedy. And I say that in with a small p, it's provided is a check in the constitution to where the House of Representatives and the Senate fields and now high crimes and misdemeanors never been defined either. And there was a lot of debate about that during the Clinton administration. The issue there was, was it, was it, um, arguable that it was a high crime misdemeanor to lie under oath to a grand jury. Um, and then other people were saying what just about sex. And so I mean, but, but the fact is that, I mean, I'm not going to repeat or re repeat all of that debate. There's a lot of debate about whether or not what conduct justifies the decision by the house to go forward with an impeachment in the Andrew Johnson thing. Part of it had to do with whether or not he was refused to go along with the congressional legislation that prevented him from removing the secretary of war. And he was probably right from a constitutional standpoint there. So there was a lot of controversy that was political there, but double jeopardy would not protect the president at all.

Neal Katyal: So on the state level, so the double jeopardy clause of the Fifth Amendment is basically this idea you can't have a do over. So he can indict, you know, ted for murder on Monday, lose your trial against him. You know, he is innocent. Of course he's innocent. Of course, dead after he's declared innocent, he's acquitted then on Thursday, try him again. You can't do that. That's double jeopardy. Now there's a big exception and that's what the question is getting at. What if a state does? So if the state does, so generally there's something called the dual sovereignty doctrine, which allows you to do that. The best example of that is Rodney King. So as you may recall, after those, uh, those police officers that beat Rodney King were first tried in state court. They were acquitted and then the federal government came in and tried them in federal court on federal charges.

Neal Katyal: That case went to the United States Supreme Court, and the Supreme Court said, no double jeopardy problem because it's a different sovereign step federal vis-a-vis the state. And the Supreme Court just last week reaffirmed that doctrine. It looked like it might be actually in some, in some doubt, but they reaffirmed it. And then there's a one tiny other wrinkle, which is the effect of a pardon. So New York had a law until about two weeks ago that said that if you get a federal pardon and that federal pardon happens to encompass crimes that look like the state crimes, then your pardon is good for the state crimes to New York just repealed that.

Speaker 9: [laughter]

Mary Louise: total coincidence. Total coincidence at yes, ma'am. Right here, up towards the front. Hold on one sec. Mike is almost with you. Okay.

Audience Member: What do you think about the idea that if Mueller testifies and people hear what he has to say, and he clarifies what he wrote in his, in his report and people start to get all worked up over it. Republicans also, what do you think the odds are that the Republicans will take a look at this situation and some will decide to primary Trump and the whole thing will fizzle?

Garrett Graff: Okay. Um, well there, there are people, primary and Trump. Um, uh, Bill Weld, the former Massachusetts governor, uh, has a primary campaign going against him. Uh, I don't think that that's likely going to end up being the remedy. Um, I, I think what you see in the Republican Party is a party that is solidifying more and more for Donald Trump with every passing month. Um, and in some ways that is also reflective, I think of a shrinking base. Um, but Donald Trump's approval ratings within the Republican Party are still, um, you know, around the 90% mark and that that is, uh, I think that, um, I actually interviewed Bill Weld, uh, at a conference a couple of weeks ago. Uh, and that's a pretty tall order to, uh, even if there are large scale defections um, among the Republican primary voters, you know, there's still a lot of Trump supporters left there.

Mary Louise: All right. Uh, one last one. Yes ma'am. In the yellow right here.

Speaker 8: Okay.

Audience Member: Thank you all for being here. I had a question for all four of you. Of the 16 state, um, criminal investigations, how many of those do you think could put Trump behind bars?

Garrett Graff: Yeah.

Garrett Graff: Um, so I think the, the challenge is, um, and uh, you know, Neil is the Department of Justice veteran. Uh, the challenge is, uh, federal prosecutors in general have a pretty high success rate in cases that they bring. Um, the idea that you would go, Oh for 16 is pretty rare. It would be pretty remarkable from a legal luck standpoint.

Neal Katyal: So, and I would say the other thing, you know, we've talked so far the whole discussion impeachment, which is about a sitting president or you can't indict a sitting president. We have not talked about the question. What happens when the president is no longer sitting? That barrier that get out of jail card, he's wielding against federal prosecutors expires the minute he's out of office. And you know, the New York Times reported that that's one of the main reasons he wants to run because if he runs, he then can get out of jail for longer. Um, and so, uh, yeah, I do think that's probably why the district, uh, filing was written the way it was last fall to say effectively he's an unindicted co-conspirator and they can't indict him yet, but that it's attaining over his head. Um, on January 20th.

Garrett Graff: and by the way, I think that in you guys might disagree because you are actually experienced lawyers. Um, but that was one of the things that I think was

interesting in the subtext of what Muller has said in his statement and that he wrote in his report, which is that he saw his role as special counsel as being a fact gatherer and going out there and laying down facts and gathering documents while documents were still able to be gathered and gathering memories when memories were still able to be gathered. Um, and it sounded to me in at least that he was laying the groundwork in some ways for future federal prosecutors to maybe come back and pick that up after the president left office.

Neal Katyal: Yeah. I don't think there's any doubt. I mean I think any prosecutor can pick up that report and file an indictment on January 21st it doesn't require any connecting of the dots. It's literally all there.

Mary Louise: Alright. I'm going to exercise moderator's prerogative and a word myself. The last question because I'm, I'm interested in just a line or two from each of you taking us in a beyond this current fascinating fraught moment and trying to take the long view on this. Part of my job at NPR is I'm interviewing members of Congress constantly and asking them are, you know, are we headed toward impeachment? Some of the same questions we've been wrestling with tonight and I have been struck by more than one from both parties have raised their grandkids in answering questions to me saying one of the things on their mind as they way the way forward is, what am I telling my grandkids? Like, what is this going to look like in their civics textbook, you know, 20-30 years from now. What, what will the Muller chapter say? And understanding that we are not at the end of the Mueller chapter yet. We real, we will see what developments the next year, year and a half July 17th bring to us. But right now, I mean in terms of what we have learned about, you know, sure, the Trump campaign Russia, but just the state of our democracy, you know, how does that Mueller Chapter Start? Garrett?

Garrett Graff: I think it's actually a really interesting way to look at this challenge because I think that that's actually the way that Robert Mueller is looking at this challenge. Um, which is I think Muller is looking at this and his investigation in his report on a timeframe completely different than the one that we are measuring sort of the day to day politics of this and worried about how this is going to play in November, 2020 and he's not worried about that. And I think that that's also by the way, why he was not worried about 18 days of bill bars, misleading summary hanging out there that he's, he knew what was in his report. He knew the report would become public. He knew that this would come out eventually and that he would be measured sort of against the standard of history. I think that there is an interesting question for those grandkids historians to weigh as to whether Bob Muller was too forthright of an individual to be the investigator in this case, whether he was sort of too fair to the president in his language and his legal argument, uh, and sort of to straitlaced and whether the book to buy the book and whether in this modern political culture, um, a different prosecutor, um, might have actually indicted

everyone and then said, these are very interesting legal questions and they're questions for the courts to sort out instead of me.

Neal Katyal: Okay.

Neal Katyal: Um, what do I want to tell by grandkids? Um, I think that, um, you know, I saw the democratic debate yesterday and they were talking about climate and things like that, which are obviously very important, but, but to me, I think I want to look at them and be able to say, I fought this president with everything I had and I hope all of you share that because this is an unprecedented thing. We have never had a president like this with such disrespect for the rule of law, disrespect for the constitution. My parents came here from another country to flee that kind of stuff. And that's, I know the story of many people in this room. And, um, I think that that question will be asked by more and more people as the facts come out. They may not read them, they'll see 'em on TV, but they'll understand what's going on and take back our country in the way that it was meant to be.

Ted Olson: Okay.

Speaker 9: [inaudible]

Ted Olson: I would, I ought to leave the closing argument to Neil. Um, I would think that we ought to, and my, uh, my grandchildren are already grown up.

Speaker 9: Okay.

Ted Olson: I'm working on my great grandchildren now. So, but I, but I, one of the things that I do talk about with my kids and my grandchildren and people ask me about these things is don't take it from me. Um, don't listen to my take on the evidence or my take on this political person or that political person because there's been lots of disreputable things done by presidents in our history, not just presidents, but vice president, secretary of states and so forth. We've have lots of scandals, we have a lot of misbehavior. And I'm not to start naming recent presidents who have engaged in misbehavior that might've warranted him preach an impeachment and might have warranted prosecution. We have added a former vice president, you know, in jail for tax evasion and things like that. So what I would say is take a look at the history, take up, put it in context with what our system of government has coping with, with respect to dealing with either misbehavior or alleged misbehavior with people in office.

Ted Olson: And is this the kind of republic that was created in 1787, 1789 to deal with these kinds of questions. One of the things that I was asked about after the Bush versus Gore election, which was extremely controversial on many, many people feel that the Supreme Court made the wrong decision and it was very contentious for 35 weeks -- 35 days and five weeks, five weeks is that w at the end of the day, the people in this country accepted the decision of the Supreme

Court. They may not have agreed with it. They may have felt that it was egregiously wrong, but they accepted the decision in the supreme court. And I gave speeches in England and France and other parts of Europe and they said the people of the United States did not go into the streets. They accepted the decision. We have an a justice briar has written about this. The Supreme Court itself has made egregiously wrong decision.

Ted Olson: Dred Scott, Plessy versus Ferguson, um, and so forth. And justice. Briar talks about the fact that we do get it wrong, but over time we strive to get it right. And then we've got a system in this country, including the things we're talking about here with respect to impeachment. And we've got an election coming up. And the, this kind of system that we've got as flawed as it is, is built to take these kind of strange, and they may be very anguishing, uh, in various situations in particularly now to many, many people. But I have faith in this country and its institutions that we will handle this and we will be able to take, tell our great grandchildren that this is the kind of country, this is the kind of constitution that can deal with

Ted Olson: [inaudible]

Mary Louise: to the great grandchildren. Ted Olson, Neal Katyal, Garrett Graff. Thank you.

Speaker 9: Thank you.